

INQUIRY INTO CERTAIN AUSTRALIAN  
COMPANIES IN RELATION TO THE UN OIL-FOR-FOOD PROGRAMME

Before The Hon TRH Cole AO RFD QC

Held at Court 2, Level 5,  
55 Market Street, Sydney

On Monday, 23 January 2006, at 10.10am

1 MR WIGNEY: Mr Commissioner, in his opening statement on  
2 16 January of this year, senior counsel assisting the  
3 inquiry advised that the hearings in relation to Rhine Ruhr  
4 Pty Limited were listed for today and that the matter would  
5 be opened at that hearing. I propose, therefore, to make a  
6 brief opening statement in relation to Rhine Ruhr.  
7

8 As indicated, Mr Commissioner, in senior counsel  
9 assisting's opening statement, tables 6, 7 and 8 annexed to  
10 the final report of the Independent Inquiry Committee into  
11 the United Nations Oil-for-Food Program refer to a company  
12 named Distall Rhine Ruhr Pty Limited. The proper name for  
13 this company is, in fact, Rhine Ruhr Pty Limited.  
14

15 Table 6 of the final report indicates that the company  
16 we now know to be Rhine Ruhr Pty Limited entered into one  
17 contract for the sale of "pipes", with a contract face  
18 value of US\$181,181, and that "contract disbursements" were  
19 US\$197,520. I will come later to describe what goods were  
20 in fact supplied by Rhine Ruhr. Suffice it to say at this  
21 stage that the goods were not limited simply to pipes.  
22

23 A note to table 6 in the final report indicates that  
24 the figures in that table were "based in whole or in part  
25 on actual data". Table 7 annexed to the final report  
26 repeats the data in table 6 and states that there was  
27 levied in this contract "ASSF", denoting aftersales service  
28 fees, of US\$16,470 and inland transportation or transport  
29 fees of US\$1,500.  
30

31 Notes to table 7 state that the figure for the  
32 aftersales service fee was "based entirely on actual data".  
33 A note also indicates that the company did not respond to  
34 the committee's letter giving notice and inviting the  
35 company's response to the information about aftersales  
36 service fees. I will have something more to say about that  
37 note in due course.  
38

39 Table 8 annexed to the final report of the IIC again  
40 repeats the information in table 7 but states that the  
41 levied ASSF - that's aftersales service fee - is based on  
42 company correspondence documents, that the paid ASSF is  
43 based on "ministry financial data", and that the inland  
44 transportation fees figure is based on "other documents".  
45

46 Mr Commissioner, evidence that those assisting you  
47 have gathered, and which will be before you, will confirm

1 that, firstly, in October 2001 Rhine Ruhr Pty Limited  
2 entered into a contract to supply certain equipment, being  
3 "valve trays for regenerators", to entities in Iraq. The  
4 other parties to the contract are, or were, the Economics  
5 and Finance Department of the Ministry of Oil, referred to  
6 in the contract as the "first party", or client, and the  
7 Northern Gas Industry, described in the contract as the  
8 "end user". The evidence will also confirm that Rhine Ruhr  
9 did make a payment amount, 10 per cent of the contract sum,  
10 and that payment ultimately found its way into a Jordanian  
11 bank account of an Iraqi government ministry. I will come  
12 to the detail of those matters in due course.  
13

14 Mr Commissioner, before I do come to give you some  
15 detail of the evidence that I anticipate will be before you  
16 in relation to the Rhine Ruhr contract, and so as to put  
17 this matter and the evidence in context, can I remind you,  
18 in the briefest possible terms, about what the IIC final  
19 report said about the imposition of aftersales service fees  
20 by the Iraqi government. The final report stated that  
21 in August of 2000 - that is, two months after the state of  
22 phase 7 of the Oil-for-Food Program - Vice President  
23 Ramadan circulated a memorandum to Iraqi ministries that  
24 stated that the command council had decided to impose what  
25 came to be called an aftersales service fee in respect of  
26 commercial contracts. This fee was to be a percentage of  
27 the monetary values of the goods the subject of the  
28 contract. In the case of non-food items, the directive  
29 stated that the fee was to be between 5 per cent and  
30 10 per cent. By October of 2000 the command council raised  
31 the minimum percentage to 10 per cent, and this, in due  
32 course, became the standard amount levied. As referred to  
33 by senior counsel assisting in his opening statement last  
34 week, the final report referred to the imposition of the  
35 aftersales service fee as "a mandatory kickback to be paid  
36 by all suppliers to Iraq".  
37

38 Importantly, the final report noted that Iraq  
39 incorporated the aftersales service fees into the contract  
40 value that was paid to the supplier out of the UN escrow  
41 account. The final report stated:

42  
43 Iraqi officials across a number of  
44 ministries have explained that suppliers  
45 were informed or reminded of their  
46 obligation to pay the additional percentage  
47 after they had participated in a tender

1 process and been selected by a purchasing  
2 body to contract under the program. If a  
3 supplier agreed to these terms, its  
4 contract value would be inflated by the  
5 percentage demanded by the contracting  
6 ministry. Often this upward revision was  
7 accomplished by increasing the unit price  
8 but, in many instances, an explicit  
9 aftersales service fee equal to the levied  
10 amount was inserted in the contract. In  
11 other instances the fee was disguised as a  
12 performance bond or a maintenance or  
13 training expense.

14  
15 In relation to the method of payment of the aftersales  
16 service fee, the final report stated, inter alia, that fees  
17 could be paid by several methods: firstly, by cash payments  
18 in Baghdad or at embassies in foreign capitals; secondly by  
19 bank transfers or, thirdly, via front companies.

20  
21 Mr Commissioner, my purpose in reminding you briefly  
22 of what the final report said about aftersales service fees  
23 is that I anticipate that it will be seen, when the  
24 evidence is placed before you, that the imposition and  
25 payment by Rhine Ruhr of a fee of 10 per cent in respect of  
26 the contract it entered into followed almost precisely the  
27 procedures that were outlined in the final report. Indeed,  
28 it can almost be said that the Rhine Ruhr payment of the  
29 fee could be a case study of the imposition of aftersales  
30 service fees as described in in the final report.

31  
32 I will turn now, then, to briefly outline the evidence  
33 that I believe will be before you in relation to the  
34 payment of this sum by Rhine Ruhr. Rhine Ruhr is an  
35 Australian company that specialises in the design and  
36 supply of removable vessel internals used in oil  
37 refineries, chemical plants, water treatment plants and  
38 processing facilities. During the period relevant to this  
39 inquiry, the directors of Rhine Ruhr were a Mr Bruce  
40 Thurgood, a Mr Richard Bryden, and a Mr James Tyzzer,  
41 although, as we will be seeing, Mr Tyzzer was not himself  
42 directly involved in the contract negotiations or  
43 administration.

44  
45 In June of 2001, Rhine Ruhr submitted a tender to the  
46 commercial committee of the North Gas Company, a company  
47 apparently under the control of the Iraqi Ministry of Oil,

1 for the supply of "trays for regenerator towers", under the  
2 terms of phase (ix) of the Oil-for-Food Program. The offer  
3 price for the supply of these goods was 123,500 pounds  
4 sterling, plus 7,000 pounds for freight to Kirkuk via  
5 Umm Qasr, giving a total offer price for the supply of  
6 goods to Kirkuk of 125,015 pounds sterling.  
7

8 I anticipate, Mr Commissioner, that the evidence  
9 before you will be that, in submitting this tender to Rhine  
10 Ruhr, Rhine Ruhr utilised the services of an agent, a  
11 Mr Tony Davies, of a company called Eastoft Hall Limited.  
12 Eastoft Hall was or is an English company and Mr Davies was  
13 or is apparently a resident of the United Kingdom. It is  
14 apparent that he played an instrumental role on behalf of  
15 Rhine Ruhr in negotiating the contract with the North Gas  
16 Company and the administration of the contract, including  
17 the payment of the fee that is the main focus of this part  
18 of the inquiry. Mr Davies, it seems, will not be a witness  
19 before this inquiry, despite his apparent close connection  
20 with Rhine Ruhr.  
21

22 Rhine Ruhr was ultimately the successful tenderer for  
23 this contract. There will be documents before you,  
24 Mr Commissioner, which set out the substance of the  
25 negotiations that led to Rhine Ruhr being awarded the  
26 contract. It would appear that, as a result of  
27 negotiations, the price ultimately struck between  
28 Rhine Ruhr and the Iraqi parties for the supply of their  
29 goods, including freight, to Kirkuk was 113,650 pounds  
30 sterling.  
31

32 Importantly, one of the documents relating to the  
33 negotiations, authored, it seems, by Mr Davies, refers not  
34 only to the price of 113,650 pounds being struck, but to  
35 the fact that there was to be added to this price "as  
36 before" the extra 10 per cent, and then "Iraqi engineering  
37 services fee", to be covered by an enhanced L/C - that is,  
38 letter of credit. Another document makes it plain that the  
39 flipside of the addition of this 10 per cent fee, which  
40 amounted to 11,365 pounds sterling, to the contract price  
41 was that Rhine Ruhr was obliged to pay this fee to the  
42 Iraqis prior to the delivery of the goods to Iraq.  
43

44 I should add that the reference to "as before" in this  
45 document was apparently a reference to an earlier contract  
46 that had been entered into by Rhine Ruhr with the same  
47 Iraqi entities. That contract ultimately was not performed

1 and did not go through the United Nations approval process.  
2 It will, however, be the subject of some evidence. Rhine  
3 Ruhr also tendered for a number of other Iraqi contracts,  
4 though ultimately these tenders are of little relevance to  
5 the present inquiry.  
6

7 The contract that was entered into by Rhine Ruhr will  
8 be before you, Mr Commissioner. As I have already stated,  
9 it is between Rhine Ruhr, the Ministry of Oil, as first  
10 party or client, and the Northern Gas Industry as end user.  
11

12 Consistently with the documents to which I have just  
13 referred, the price in the contract for the supply of the  
14 goods is not the price that was ultimately struck in the  
15 negotiations for the supply of the goods - that is, 113,650  
16 pounds. Rather, the contract price as stated in the  
17 written contract is said to be 125,015 pounds, which is  
18 113,650 pounds plus an additional 10 per cent.  
19

20 Importantly, however, there is no reference in the  
21 contract, or, indeed, any of the attachments to it, to the  
22 fact that there had been added to the fee an amount  
23 referable to engineering services fee, and no reference to  
24 the provision of any engineering or any other services in  
25 the contract. Anyone who read this contract and its  
26 attachments alone, and nothing more, would have no idea  
27 that the contract price had incorporated into it a figure  
28 representing 10 per cent of the price for an "engineering  
29 services fee", or, indeed, any other type of fee, charge or  
30 impost, and would have no idea that Rhine Ruhr was, on the  
31 other hand, obliged to pay the same amount on to the Iraqi  
32 entities.  
33

34 As was the case with all contracts entered into  
35 between Australian companies and Iraq during the sanctions  
36 period, it was necessary for Rhine Ruhr to obtain United  
37 Nations approval of the contract under the Oil-for-Food  
38 Program and, following from this approval, a permission to  
39 export under the relevant Australian customs regulations.  
40 Rhine Ruhr, in due course, did submit to the Department of  
41 Foreign Affairs and Trade an application form, that form  
42 being a United Nations form that was to be submitted to the  
43 United Nations via the Department of Foreign Affairs and  
44 Trade, and copies of the contract and some other  
45 documentation. I anticipate, however, Mr Commissioner,  
46 that the evidence will be that none of the documents sent  
47 to the United Nations via DFAT or the Department of Foreign

1 Affairs and Trade disclosed in any way the fact that  
2 10 per cent of the contract price represented a fee or  
3 impost of some sort to be paid either to the Northern Gas  
4 Industry or any other Iraqi company or government ministry  
5 or instrumentality. Following the submission of this  
6 documentation, the United Nations approved the contract and  
7 the Department of Foreign Affairs and Trade issued a  
8 permission to export the goods the subject of the contract.  
9

10 Mr Commissioner, some further light will be shed on  
11 the nature of this 10 per cent fee that was incorporated  
12 into the contract price by some other documents that will  
13 be before you. In an email to Rhine Ruhr authored by  
14 Mr Davies that post dates both the UN approval and DFAT  
15 permission to export, Mr Davies states as follows:  
16

17 Before the goods will be allowed to be  
18 shipped to Umm Qasr, we will have to  
19 provide the shipping company with the  
20 official receipt for the 10 per cent Iraqi  
21 government fee added to this contract of  
22 UK11,365. Can you ask Mardi --  
23

24 That's a reference to an administrative officer employed at  
25 Rhine Ruhr at the time --  
26

27 if she needs an Eastoft Hall Limited  
28 invoice to cover these arrangements and we  
29 will make the arrangements as to where this  
30 money needs to be transferred to so we can  
31 obtain a receipt.  
32

33 You will note from this document, Mr Commissioner, in due  
34 course when it is before you, that the fee is no longer  
35 described by Mr Davies as an engineering services fee.  
36 Rather, it is described as an "Iraqi government fee",  
37 clearly indicating that it was a fee to be paid ultimately  
38 to the Iraqi government. This is confirmed in some other  
39 documents to which I will come in a moment.  
40

41 There will be a number of other documents before you,  
42 Mr Commissioner, that were seen or authored by relevant  
43 officers, employees or agents of Rhine Ruhr, that describe  
44 this 10 per cent payment variously as an "aftersales tax",  
45 or a government fee or a surcharge. These descriptions are  
46 quite inconsistent with the original label attached to the  
47 fee; namely, an engineering services fee. It may be open

1 to infer that the description of the fee as an engineering  
2 services fee was designed to disguise the true nature of  
3 the fee, which, as we will be seeing, was nothing more than  
4 an impost to be paid to the Iraqi government in apparent  
5 contravention or circumvention of the UN sanctions.  
6

7 Notwithstanding the fact that the fee was ultimately  
8 to be paid to the Iraqi government, as foreshadowed in  
9 Mr Davies' email to which I have just referred, Eastoft  
10 Hall did provide an invoice to Rhine Ruhr for the  
11 10 per cent fee. This invoice required Rhine Ruhr to pay  
12 Eastoft Hall 11,365 pounds on account of what is described  
13 as a technical service engineering fee. On its face, this  
14 document suggests that a service for which this fee was  
15 payable was to be, or had been, provided by Eastoft Hall to  
16 Rhine Ruhr. Inferences may be able to be drawn from what  
17 could only really be described as the misleading nature of  
18 this document.  
19

20 Rhine Ruhr paid the sum of 11,365 pounds to Mr Davies  
21 at Eastoft Hall, supposedly pursuant to this invoice. It  
22 is apparent from documents gathered by those assisting the  
23 inquiry that Mr Davies then paid the sum into a Jordanian  
24 bank account. I will come shortly to the identity of the  
25 owner of this account.  
26

27 As I have already indicated, Mr Commissioner, there  
28 will be other documents before you that clearly establish  
29 that this sum of 11,365 pounds was a sum payable to and  
30 paid to an Iraqi government ministry. Important amongst  
31 these documents are some documents that emanate from a  
32 shipping company, being a shipping company that was  
33 ultimately utilised by the freight forwarders retained by  
34 Rhine Ruhr. These documents make it plain that, in respect  
35 of all shipments of goods into Iraq at this time - that is,  
36 2001, relevantly, and 2002 - it was necessary for the  
37 consignor to provide evidence of the payment by the  
38 consignor of a 10 per cent aftersales service tax. These  
39 documents, which appear, on their face, to have been widely  
40 disseminated to anyone shipping goods into Iraq at the  
41 time, provide that the evidence of the payment of this tax  
42 could take one of four forms: firstly, Arabic bank  
43 confirmations from Rafidain Bank in Baghdad, indicating  
44 receipt of money; letter from Alia Transport, who were  
45 authorised by the consignee/SCWT - that is the Iraqi State  
46 Company for Water Transport - to receive money on their  
47 behalf, if the money has been transferred through them; or

1 a letter from the consignee confirming receipt of the  
2 money; or a letter from the SCWT - that's the Iraq State  
3 Company for Water Transport - confirming receipt of money.  
4 As I have said, Mr Commissioner, Mr Davies paid the  
5 10 per cent fee on behalf of Rhine Ruhr from the funds that  
6 Rhine Ruhr had remitted to him. He paid it into a  
7 Jordanian bank account. In accordance with the procedures  
8 to which I have referred earlier, a receipt for this  
9 payment was, in due course, created and no doubt provided  
10 to the shippers and the authorities so as to enable the  
11 goods to be shipped into Iraq. A copy of this document  
12 will be before the inquiry.

13  
14 A copy of that document is in Arabic script, but a  
15 translation has been made by a service retained by those  
16 that assist you. This receipt evidences that the sum of  
17 11,365 pounds, referable to the shipment of goods by Rhine  
18 Ruhr, was paid into the al-Rafidain Bank in Amman, Jordan,  
19 in the name of the Ministry of Petroleum.

20  
21 In summary, Mr Commissioner, I anticipate that the  
22 evidence that has been gathered by those assisting you -  
23 and it will be before you in relation to the Rhine Ruhr  
24 contract - will demonstrate the following four matters:  
25 that Rhine Ruhr paid the 10 per cent aftersales service fee  
26 to the Iraqi government. The 10 per cent fee, amounting to  
27 11,365 pounds, was added to the contract price. The  
28 transaction was, accordingly, financially neutral as far as  
29 Rhine Ruhr was concerned. Whilst the transaction was  
30 financially neutral for Rhine Ruhr, it was not so for the  
31 Iraqis and the United Nations. The contract price, which  
32 included the 10 per cent fee, was paid for out of the  
33 United Nations escrow account, but Rhine Ruhr paid the fee  
34 through Mr Davies of Eastoft Hall to the Iraqi government,  
35 as I have said, the Ministry For Petroleum.

36  
37 It is apparent that the point of the transaction -  
38 that is, adding 10 per cent to the contract price and then  
39 requiring Rhine Ruhr to pay it back to the Iraqis - is, we  
40 would say, self-evident. It was plainly designed to  
41 extract funds from the UN escrow account for payment to the  
42 Iraqi government in circumvention of the sanctions regime.

43  
44 Fourthly, the documentation that was submitted to the  
45 Department of Foreign Affairs and Trade, ultimately  
46 transmitted to the United Nations, did not refer to the  
47 10 per cent fee or to the fact that the contract price had

1 added to it an amount referable to the fee. There is no  
2 evidence to suggest that either the Department of Foreign  
3 Affairs and Trade or the United Nations were informed about  
4 the fee. The clear inference is that they remain ignorant.  
5

6 The main issue for consideration by the inquiry, as  
7 far as Rhine Ruhr is concerned, is what the officers and  
8 employees of Rhine Ruhr knew about the payment of the fee  
9 and, in particular, whether they knew that the fee was paid  
10 or to be paid to the Iraqi government in apparent  
11 contravention of the sanctions regime.  
12

13 The officers primarily involved in the transaction  
14 were, as I have said, Mr Thurgood and Mr Bryden. They will  
15 be giving evidence before the inquiry today.  
16

17 THE COMMISSIONER: Mr Wigney, the inquiry held  
18 confidential hearings in relation to this matter on  
19 22 December last year.  
20

21 MR WIGNEY: Yes.  
22

23 THE COMMISSIONER: There were three bundles of documents  
24 which were then, at that stage, marked as confidential  
25 exhibits. Is there any reason why they should remain  
26 confidential?  
27

28 MR WIGNEY: No, Commissioner. Indeed, we would ask that  
29 those confidentiality orders be lifted, with the exception,  
30 at this stage, of four documents within the bundle, to  
31 which it is necessary to make some edits. That has been  
32 done in hard copy form. Perhaps the appropriate way to  
33 deal with this is, firstly, to identify what those  
34 documents are, and then to substitute the edited versions  
35 of those documents in the bundles that would be made  
36 public. I have had some discussions with my learned friend  
37 Mr Winneke about that. He is, as I understand, content  
38 with that procedure.  
39

40 MR WINNEKE: Yes, I am, Mr Commissioner.  
41

42 THE COMMISSIONER: Thank you, Mr Winneke. Very well, the  
43 bundle of documents which previously was marked on  
44 22 December as confidential exhibit 7C will, subject to any  
45 substitution just referred to, become exhibit 49.  
46  
47

1 EXHIBIT #49 BUNDLE OF DOCUMENTS PREVIOUSLY MARKED  
2 EXHIBIT 7C, SUBJECT TO ANY NECESSARY SUBSTITUTION

3  
4

5 EXHIBIT #50 BUNDLE OF DOCUMENTS PREVIOUSLY MARKED  
6 EXHIBIT 8C, SUBJECT TO ANY NECESSARY SUBSTITUTION

7  
8

9 EXHIBIT #51 BUNDLE OF DOCUMENTS PREVIOUSLY MARKED  
10 EXHIBIT 9C, SUBJECT TO ANY NECESSARY SUBSTITUTION

11

12 THE COMMISSIONER: What about the confidentiality order  
13 relating to the evidence of the two witnesses who  
14 previously gave their confidential evidence?

15

16 MR WINNEKE: Again, Mr Commissioner, we would ask that the  
17 confidentiality order in relation to that evidence and the  
18 transcript be lifted.

19

20 MR WINNEKE: No objection, Mr Commissioner.

21

22 THE COMMISSIONER: Thank you. The confidentiality order  
23 in relation to the transcript of evidence of Mr Bryden and  
24 Mr Tyzzer, which was given in confidential session on  
25 22 December 2005 and which appears in confidential  
26 transcript pages 106 to 230 inclusive, is lifted and that  
27 transcript is now public.

28

29 MR WIGNEY: Thank you. Mr Commissioner, in terms of the  
30 order of proceedings today, I propose, in a moment, to call  
31 Mr Thurgood. In relation to Mr Bryden and Mr Tyzzer, as  
32 has just been made clear, they were examined or gave  
33 evidence before the inquiry in confidential session on  
34 22 December. It may ultimately not be necessary to take  
35 any additional evidence from them or, if it is taken, it  
36 may be brief, but we can perhaps cross that bridge after we  
37 have dealt with Mr Thurgood.

38

39 THE COMMISSIONER: I think Mr Tyzzer and Mr Bryden each  
40 presented a statement, which I don't think were marked as  
41 exhibits. I may be wrong about that.

42

43 MR WIGNEY: I don't think they prepared statements,  
44 Mr Commissioner; it was just simply that they gave  
45 evidence. However, Mr Thurgood, as I will come to in a  
46 moment, has provided a statement which will be tendered.  
47 The only other matter to attend to is there has also been  
prepared a statutory declaration from a Mardi Nys, which

1 will be referred to in evidence. I can tender that now or  
2 perhaps deal with it later.

3

4 THE COMMISSIONER: You can tender it now.

5

6 EXHIBIT #52 STATUTORY DECLARATION OF MARDI NYS, SWORN  
7 18/1/2006

8

9 MR WIGNEY: I should indicate in relation to that  
10 statutory declaration, Commissioner, a copy has been  
11 provided to the legal representatives for Rhine Ruhr and  
12 the witnesses Messrs Thurgood, Bryden and Tyzzer, and, as  
13 I understand it, no application is to be made to  
14 cross-examine Ms Nys and, in those circumstances, we don't  
15 see the need to call her to give oral evidence before the  
16 inquiry. Having dealt with that, I call Mr Thurgood.

17

18 <DAVID BRUCE THURGOOD, sworn: [10: 40am]

19

20 <EXAMINATION BY MR WIGNEY:

21

22 MR WIGNEY: Q. Could you give the inquiry, please, your  
23 full name?

24 A. David Bruce Thurgood.

25

26 Q. Is it the situation that you are currently a permanent  
27 resident of Malaysia?

28 A. I am not a permanent resident of Malaysia, I am a  
29 temporary resident. I have a work permanent. It is  
30 renewed on an annual basis.

31

32 Q. Where is your permanent residency, your address and  
33 permanent residence?

34 A. Well, I consider might have to be a resident of  
35 Malaysia at the moment, so I guess, in that situation,  
36 I don't really have a permanent residence.

37

38 Q. Very well. Mr Thurgood, you have, I think, provided  
39 to the inquiry a document described as a proof of evidence.  
40 Could I show you, please, a document. Perhaps the first  
41 page of this document can be put on the screen. It is  
42 RRP.0005.0456. I will show you the complete hard copy,  
43 Mr Thurgood.

44 A. I am familiar with this document.

45

46 Q. That's a proof of evidence that you have prepared and  
47 read in recent times?

1 A. That's correct.

2

3 Q. I think it comprises 74-odd paragraphs and a number of  
4 annexures; is that right?

5 A. I didn't count them, but it sounds right.

6

7 Q. Is it your evidence that the contents of that document  
8 described as a proof of evidence are true and correct to  
9 the best of your knowledge and belief?

10 A. That's correct, yes.

11

12 Q. Having read it in recent times, are there any changes,  
13 clarifications or retractions you wish to make in relation  
14 to its contents?

15 A. None at all.

16

17 MR WIGNEY: I tender that statement.

18

19 EXHIBIT #53 MR THURGOOD'S STATEMENT, PROOF OF EVIDENCE,  
20 BEING THE DOCUMENT PAGES RRP.0005.0456-0474, PLUS ANNEXURES

21

22 MR WIGNEY: Q. Can we deal, firstly, please, with some  
23 formal matters which are touched upon in your proof of  
24 evidence. Can I indicate, firstly, that the questions that  
25 I direct to you this morning will be primarily directed to  
26 the period 2001 to 2002, unless I explicitly say otherwise.  
27 During that period at least up to 25 June 2002 you were the  
28 managing director of Rhine Ruhr, were you not?

29 A. That's correct.

30

31 Q. On 25 June of 2002 Mr James Tyzzer was appointed a  
32 director and took over from you as managing director; is  
33 that right?

34 A. That's correct, yes.

35

36 Q. Did the handover to Mr Tyzzer - that is, from you  
37 being managing director to he being managing director -  
38 occur largely because you had then become a resident of  
39 Malaysia?

40 A. I guess, yes. I spent most of my time overseas and  
41 the intention was that I could concentrate on overseas  
42 duties.

43

44 Q. Notwithstanding the fact that Mr Tyzzer became  
45 managing director as at that date, 25 June 2002, or  
46 thereabouts, you continued to be a director of Rhine Ruhr;  
47 is that right?

1 A. That's correct, yes.  
2  
3 Q. And you remain a director to this day?  
4 A. That's correct, yes.  
5  
6 Q. Mr Thurgood, you were one of, I think, five founding  
7 directors or shareholders of Rhine Ruhr, were you not?  
8 A. That's correct, yes.  
9  
10 Q. You were originally appointed a director in  
11 about February of 1987; does that accord with your  
12 recollection?  
13 A. That's about right, yes.  
14  
15 Q. The other four directors that were also appointed in  
16 1987, is it the situation that all of them resided outside  
17 of Australia?  
18 A. That's correct, yes.  
19  
20 Q. I think three of them were German residents and one a  
21 resident of the United Kingdom; is that right?  
22 A. That's correct, yes.  
23  
24 Q. The records of the Australian Securities and  
25 Investments Commission show these other four non-resident  
26 directors to have resigned as directors of Rhine Ruhr  
27 in November 2002; does that accord with your recollection?  
28 A. That's about right, yes.  
29  
30 Q. As I have said, Mr Thurgood, the focus of this inquiry  
31 is largely the period 2001 and 2002 and, in particular, a  
32 contract or contracts entered into by Rhine Ruhr in that  
33 period with Iraqi entities. Is it the case that none of  
34 these other four founding directors had any direct dealings  
35 or involvement with those contracts?  
36 A. That's correct.  
37  
38 Q. Indeed, did any of those other four non-resident  
39 directors have any involvement in the day-to-day business  
40 of Rhine Ruhr during the period 2001 to 2002?  
41 A. They had no day-to-day involvement.  
42  
43 Q. During that period 2001 to 2002, did Rhine Ruhr have  
44 board meetings?  
45 A. Not formally, no.  
46  
47 Q. What do you mean by "formally"?

1 A. Well, the directors, as you have just said, were  
2 overseas directors; it was impossible to get everybody  
3 together. So, if we had anything to discuss, it would be  
4 done informally via email or fax.  
5  
6 Q. I see. Were any minutes taken of those discussions  
7 with your fellow directors?  
8 A. There were minutes. I cannot recall what was minuted.  
9  
10 Q. Are you able to recall in the period 2001 to 2002  
11 discussing with any of those other four non-resident  
12 directors, if I can refer to them as such, the contract  
13 entered into with the Iraqi entities?  
14 A. No. I did send monthly sales reports, that sort of  
15 thing, where it would have been mentioned, but it wouldn't  
16 have been - there was no significant conversation.  
17  
18 Q. You are aware that a large number of documents have  
19 been provided to the inquiry by Rhine Ruhr, are you not?  
20 A. That's correct, yes.  
21  
22 Q. There are, it seems, no board minutes within those  
23 documents.  
24 A. Yes. I - I believe so, yes. There are no such  
25 documents.  
26  
27 Q. So there are no minuted discussions with the directors  
28 about the Iraqi contracts?  
29 A. No.  
30  
31 Q. During the period 2001 to 2002, was it the situation  
32 that you were primarily, at least, a resident of Malaysia?  
33 A. Primarily, yes.  
34  
35 Q. During that period, Rhine Ruhr's offices were in  
36 Melbourne, were they not?  
37 A. Yes.  
38  
39 Q. And so during that period, 2001/2002, it follows, does  
40 it not, that there was no resident director in Australia,  
41 at least, until Mr Tyzzer's appointment in June of 2002?  
42 A. I guess that's correct.  
43  
44 Q. Did you travel to Australia during that period,  
45 2001/2002, at all?  
46 A. Yes.  
47

1 Q. Are you able to recall how often or how frequently you  
2 travelled to Australia?  
3 A. Offhand, no - probably could have been about half a  
4 dozen times during the year.  
5  
6 Q. Apart from those trips, you largely managed the Rhine  
7 Ruhr office as managing director from afar - that is, from  
8 Malaysia?  
9 A. That's correct.  
10  
11 Q. Who was the most senior employee in the Melbourne  
12 office of Rhine Ruhr?  
13 A. Prior to the appointment of Jim Tyzzer, it was  
14 Richard Bryden.  
15  
16 Q. Would it be a fair description to say that he  
17 effectively was the resident manager of the Melbourne  
18 office?  
19 A. I suppose you could say that, yes.  
20  
21 Q. He reported to you as managing director on a regular  
22 basis?  
23 A. He reported to me, yes, on a regular basis, yes.  
24  
25 Q. What about Mardi Nys?  
26 A. On most times she also reported directly to myself.  
27  
28 Q. Did she report to you frequently on a regular basis?  
29 A. Yes.  
30  
31 Q. May we take it that you, being the managing director,  
32 at least expected to be notified, informed of, any matters  
33 of significance?  
34 A. Yes.  
35  
36 Q. Were you copied in, as far as you were aware, to  
37 correspondence, being emails, of significance?  
38 A. That's correct, yes.  
39  
40 Q. Again, just dealing with a couple of formal matters,  
41 the inquiry has heard some evidence that the turnover of  
42 Rhine Ruhr during the period 2001 to 2002 was typically  
43 between about \$3m and \$5m. Is that a figure that accords  
44 with your recollection?  
45 A. That's about right, yes.  
46  
47 Q. In your statement you described the business of Rhine

1 Ruhr as the design and supply of removable vessel internals  
2 used in oil refineries, chemical plants, water treatment  
3 plants and gas processing facilities. Was it the position  
4 that - again, focusing, at least at this stage on the  
5 period, say, 2000 to 2003 - much of Rhine Ruhr's business  
6 was export orientated?

7 A. I would say it was about half-half, roughly.

8  
9 Q. Putting aside for present purposes Iraq, and again  
10 focusing on the period 2000 to 2003, what other countries  
11 did Rhine Ruhr export to?

12 A. Okay, Malaysia, obviously, which is where I was  
13 residing, Taiwan, Singapore, South Africa, UK. During that  
14 period it is hard to say which other countries, because we  
15 had a lot of one-off orders, but typically places like  
16 India, Pakistan, Thailand, Indonesia. It was probably  
17 several others, but I cannot recall, to be sure.

18  
19 Q. What about - again putting aside Iraq for the moment -  
20 the Middle East?

21 A. At that point we were just looking at the Middle East.  
22 I don't think we had been very active in that part of the  
23 world at that point in time.

24  
25 Q. I think, as you have indicated in your statement,  
26 since July 2002 - that largely coincides with the time that  
27 Mr Tyzzer became managing director in Australia - a  
28 Malaysian company controlled by you was appointed an agent  
29 in all territories other than Australia and New Zealand; is  
30 that right?

31 A. That's right, yes.

32  
33 Q. Prior to that time - that's July of 2002 - and still  
34 putting Iraq aside for present purposes, in relation to the  
35 export sales to those countries to which you have just  
36 referred, did Rhine Ruhr have agents in those countries  
37 representing its interests?

38 A. Yes. We had - we have had an agent in Taiwan for a  
39 long time. At that stage I believe we had a very active  
40 agent in South Africa, and we did have a formal agent in  
41 Thailand, although he wasn't very active. At this point I  
42 can't recall any others, but there may have been.

43  
44 Q. In terms of the appointment of those people in Taiwan,  
45 South Africa and Thailand that you have just referred to,  
46 were there agency arrangements recorded in writing?

47 A. In Taiwan, no, and Taiwan was our best agent. In

1 South Africa, yes, and Thailand, yes.

2

3 Q. Were those agents remunerated on a commission basis in  
4 respect of sales made into the regions for which they were  
5 responsible?

6 A. Yes.

7

8 Q. Doing the best you can, can you tell us what rates of  
9 commission were paid to those agents?

10 A. Well, in fact, in Taiwan - the kick-off rate was  
11 10 per cent. That was standard. That was our  
12 understanding. But the Taiwan market is very competitive,  
13 so it was pretty normal to negotiate that down in order to  
14 take a contract. I think probably the minimum we ever paid  
15 was 5 per cent. So it would be in the region of 5 to  
16 10 per cent. In fact, our agent in South Africa was more  
17 of a distributor, so I don't think we did pay commissions.  
18 They used to purchase from us and resell.

19

20 Q. So they weren't really a --

21 A. They were more of a distributor.

22

23 Q. Rather than agent?

24 A. Yes.

25

26 Q. May we take it from your evidence so far that, at  
27 least prior to 2001, Rhine Ruhr had not made any sales to  
28 the Iraqi market?

29 A. That's correct, yes.

30

31 Q. In your statement you refer to being contacted by a  
32 Mr Tony Davies of Eastoft Hall in September of 2002;  
33 correct?

34 A. That's correct.

35

36 Q. Is it the situation you did not know Mr Davies prior  
37 to that time - that is, September 2002?

38 A. That's correct.

39

40 Q. You - that is, Rhine Ruhr - had had no commercial  
41 dealings with Mr Davies or Eastoft Hall before that time?

42 A. That's correct.

43

44 Q. And is it your evidence that in September of 2002,  
45 when Mr Davies contacted you, he offered his or Eastoft  
46 Hall's services to assist you - and by "you" I mean Rhine  
47 Ruhr" - to supply goods to Iraq under the UN Oil-for-Food

1 Program?  
2 A. That's correct.  
3  
4 Q. And he told you, did he not, that he had experience  
5 and expertise in relation to the Iraqi market?  
6 A. That's correct.  
7  
8 Q. Did he tell you that he had and continued to represent  
9 a number of companies as agent for the Iraqi market?  
10 A. That's correct.  
11  
12 Q. And he told you, did he not, that he knew a good deal  
13 about the Oil-for-Food Program?  
14 A. That's correct.  
15  
16 Q. He could assist you in relation to the operation of  
17 that scheme or program - that is, the Oil-for-Food Program?  
18 A. That's correct.  
19  
20 Q. Did he tell you that he had a number of local contacts  
21 or connections in Iraq?  
22 A. That's correct, yes.  
23  
24 Q. It seems, Mr Thurgood, that Mr Davies is not going to  
25 grace the inquiry with his presence, so I just want to ask  
26 you a little bit more about him. Since that initial  
27 contact you had with him in September of 2002 you have had  
28 a fair amount of contact with Mr Davies, have you not?  
29 A. That's correct, yes.  
30  
31 Q. Putting aside the two contracts that we will come to  
32 shortly with the North Gas Company and the Iraqi ministry,  
33 Rhine Ruhr has submitted at least 15 or so tenders to Iraq  
34 through Mr Davies and Eastoft Hall?  
35 A. That would be right, yes.  
36  
37 Q. He is still acting as your agent in Iraq; is that  
38 right?  
39 A. I understand so, yes.  
40  
41 Q. And, as I understand it from your statement, you in  
42 fact have some what you call active tenders in the Iraqi  
43 market as we speak?  
44 A. Yes. Those are being handled by our Melbourne office,  
45 so I'm not aware of those.  
46  
47 Q. I see. You have met Mr Davies face to face?

1 A. Yes.  
2  
3 Q. How many times?  
4 A. Twice.  
5  
6 Q. You are still in regular contact with him?  
7 A. Not so much these days, no.  
8  
9 Q. When was the last time you spoke with him?  
10 A. He called me in December. I can't remember the exact  
11 date. It was shortly after I returned from a visit to  
12 Australia.  
13  
14 Q. When did you first become aware of the establishment  
15 of this inquiry?  
16 A. Virtually on the day it was announced. I can't  
17 remember the exact date.  
18  
19 Q. Have you had any discussions with Mr Davies about this  
20 inquiry and his participation in it?  
21 A. I believe I did call him, yes.  
22  
23 Q. When was that?  
24 A. It would have been very soon after I was made aware of  
25 the inquiry.  
26  
27 Q. Did you suggest to him that he may have some  
28 information of importance or relevance to the inquiry?  
29 A. I can't remember exactly what we discussed. It would  
30 have been around the inquiry, but the details I can't  
31 remember.  
32  
33 Q. In any event, he is a resident of the United Kingdom;  
34 is that right?  
35 A. That's correct, yes.  
36  
37 Q. His company, Eastoft Hall Limited, is a company  
38 incorporated in the United Kingdom?  
39 A. I would believe so.  
40  
41 Q. You are aware that he has had incorporated at least  
42 one other company to assist Rhine Ruhr's attempts to sell  
43 into the Iraqi market, has he not?  
44 A. If you are referring to the company formed in Russia,  
45 I'm aware of that.  
46  
47 Q. Eastoft (Russia) Limited?

1 A. That's correct.  
2  
3 Q. Is it the situation that, unlike you and, as we  
4 understand it, Mr Bryden, Mr Davies is not an engineer?  
5 A. I don't think I've ever asked him that question.  
6  
7 Q. He has been described to this inquiry as being "a  
8 trader". Is that an apposite description of Mr Davies?  
9 A. Possibly, yes.  
10  
11 Q. He is not in the business of providing engineering  
12 services, is he?  
13 A. No.  
14  
15 Q. He has never provided any engineering services to  
16 Rhine Ruhr, has he?  
17 A. No.  
18  
19 Q. You - that is, Rhine Ruhr - back in about September of  
20 2002 agreed to retain Mr Davies or his company, Eastoft  
21 Hall, as Rhine Ruhr's agents for the Iraqi market; is that  
22 right?  
23 A. Not formally, but it was understood.  
24  
25 Q. Well, what do you mean "not formally"?  
26 A. Well, we did not, in 2002, sign any agreement, any  
27 written agreement, I don't believe.  
28  
29 Q. You agreed to pay Mr Davies 10 per cent commission,  
30 did you not?  
31 A. Yes.  
32  
33 Q. And you are saying that you did not otherwise reduce  
34 any agreement or understanding you had with Mr Davies or  
35 Eastoft Hall to writing; is that right?  
36 A. That's correct, yes.  
37  
38 Q. The 10 per cent commission that you had agreed to pay  
39 Mr Davies, was that commission designed to cover what he  
40 referred to as his local contact or local agent in Iraq?  
41 A. That was to cover, I guess, everything that - all his  
42 expenses plus his profit.  
43  
44 Q. Is there any particular reason why you did not  
45 reduce - that is, Rhine Ruhr - the agreement that it had  
46 with Mr Davies and Eastoft Hall to writing?  
47 A. I guess we didn't at the time think it was necessary.

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Q. Well, I think you have just given evidence that, at least in relation to one or possibly two other agents that Rhine Ruhr had overseas, the agency agreements had been reduced to writing; correct?

A. Yes.

Q. Potentially very large sums of money were involved in your contracts for supply of the equipment for oil and gas refineries and the like; correct?

A. That's correct, yes.

Q. Meaning potentially large amounts of commission payable to Mr Davies; correct?

A. That's correct.

Q. You have annexed to your proof of evidence a document. It perhaps may be brought up on the screen. It is RRP.0005.0479. Can you tell us, please, again, what that document is?

A. That is a document which I believe I was asked to provide to Mr Davies following his first phone call to me in order to enable his local contacts in Iraq to canvass for work on our behalf.

THE COMMISSIONER: Q. It is dated January 2006?

A. I think that was the date it was printed, unfortunately.

MR WIGNEY: Q. I think we will come to a number of documents where that particular word processing curse has infected the document. Did you, yourself, have any dealings with the gentleman named in that document - that is, where it says "attention"?

A. Not at all. I had totally forgotten about it until I started looking for documents for this inquiry.

Q. When did you start looking for documents for this inquiry?

A. Oh, it would have been in December.

Q. This particular document here, may we take it that you have, according to the date, printed it out on 6 January 2006?

A. I think that was - I think I provided that electronically, and that was probably the date it was printed out by my legal assistants.

1  
2 Q. Provided electronically, I gather, to your legal  
3 advisers?  
4 A. That's correct, yes.  
5  
6 Q. You were aware, of course, that the company Rhine Ruhr  
7 had received a notice to produce documents to this inquiry  
8 in the latter stages of last year?  
9 A. That's correct.  
10  
11 Q. Did you search your computer to ascertain what, if I  
12 can call them, soft copies of documents existed on your  
13 computer?  
14 A. I did.  
15  
16 Q. And are you able to verify that all documents on your  
17 computer have been produced to your legal advisers?  
18 A. Yes, yes, to the best of my knowledge, yes.  
19  
20 Q. What about hard copy documents that you had with you  
21 in Malaysia?  
22 A. I can't recall if I found any. I don't believe I had  
23 any.  
24  
25 Q. So the position is, whilst you had not reduced your  
26 agreement or understanding with Eastoft Hall into writing,  
27 you had, at the request of Mr Davies, sent this letter to  
28 his local contact in Iraq; is that right?  
29 A. No, I sent this to Mr Davies to forward.  
30  
31 Q. This document doesn't refer to any commission payable  
32 to this gentleman or his company?  
33 A. Yes. No, it doesn't.  
34  
35 Q. Were the contents of this document dictated to you by  
36 Mr Davies?  
37 A. Possibly; I can't recall.  
38  
39 Q. You, yourself, had no contact with Emlod Electrical  
40 Mechanical Contracting Co or the gentleman Mr Younis?  
41 A. Certainly not.  
42  
43 Q. In terms of your I think you call it understanding of  
44 your contact with Mr Davies at Eastoft Hall, was it to  
45 provide the following services for Rhine Ruhr - firstly, to  
46 identify opportunities in Iraq?  
47 A. That's correct.

1  
2 Q. That is, opportunities to make sales to Iraqi  
3 entities; right?  
4 A. That's right, yes.  
5  
6 Q. Communicate them to Rhine Ruhr; right?  
7 A. That's correct, yes.  
8  
9 Q. Ensure that documentation, including tenders, was  
10 submitted in an appropriate form?  
11 A. That's correct, yes.  
12  
13 Q. And he, as we have just heard - that is, Mr Davies -  
14 was to have a local agent to be on the ground, as it were,  
15 in Iraq; is that right?  
16 A. That's right. That's correct, yes.  
17  
18 Q. Was it the local agent or Mr Davies who was to be  
19 involved in contract negotiations?  
20 A. I would say it was a combination of both. I only  
21 spoke to Mr Davies. I left it to him to decide if he was  
22 going to have anything to do with it or he was going to  
23 leave it to his people on the ground in Iraq.  
24  
25 Q. Mr Davies represented to you that he had a large  
26 number of contacts himself in Iraq; correct?  
27 A. Yes.  
28  
29 Q. Were they contacts within the Iraqi government?  
30 A. I wouldn't know that at all.  
31  
32 Q. Did you ask him?  
33 A. No.  
34  
35 Q. Would that not have been something material for you to  
36 know, in terms of Mr Davies' dealings in Iraq?  
37 A. Possibly, in hindsight, yes.  
38  
39 Q. So he never told that you he had contacts within the  
40 Iraqi government?  
41 A. I can't say for sure. I don't recall any such  
42 information being given to me.  
43  
44 Q. Mr Davies also represented to you that he would ensure  
45 that the tenders that were submitted and the negotiations  
46 occurred within the operation of the Oil-for-Food Program;  
47 correct?

1 A. That's correct, yes.  
2  
3 Q. And he represented that he knew a good deal about the  
4 Oil-for-Food Program; right?  
5 A. That's correct.  
6  
7 Q. Can I ask you this: in your discussions with  
8 Mr Davies in September of 2000 and perhaps in the months  
9 thereafter, he told you a good deal about aspects of the  
10 operation of the Oil-for-Food Program?  
11 A. He told me a fair bit, yes.  
12  
13 Q. Prior to your discussions with Mr Davies, did you have  
14 any knowledge or understanding of the program and its  
15 operations?  
16 A. Only what the man on the street would know, which was  
17 it was a humanitarian program designed to provide food and  
18 medicine to the Iraqi people.  
19  
20 Q. In September 2000 and the months that followed,  
21 Mr Davies provided more information to you so that you knew  
22 more about it than, as you have said, the man in the  
23 street; right?  
24 A. That's correct, yes.  
25  
26 Q. Could I put these questions in fairly general terms:  
27 you understood, in the latter months of 2000 into 2001 and  
28 2002, that the Oil-for-Food Program related to sanctions  
29 that had been imposed on the Iraqi government by the United  
30 Nations; right?  
31 A. Yes, that was understood, yes.  
32  
33 Q. And you understood that the proceeds of oil sales by  
34 Iraq were to be paid into an account called an escrow  
35 account controlled by the United Nations; is that right?  
36 A. That's right.  
37  
38 Q. You knew, did you not, during that time that Iraq was  
39 permitted to purchase food and some other goods, items, if  
40 those purchases were approved by the United Nations under  
41 the Oil-for-Food Program; right?  
42 A. That's correct, yes.  
43  
44 Q. You understood, did you not, that any contract entered  
45 into by Rhine Ruhr would have to receive United Nations  
46 approval; correct?  
47 A. That's correct, yes.

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Q. You understood, did you not, that purchases made by Iraq were to be paid for out of the funds in the United Nations-controlled escrow account; correct?

A. Yes.

Q. And you understood, did you not, in general terms, that the purpose of the sanctions regime and the operation of the Oil-for-Food Program was to prevent currency, in particular foreign currency, from going or being paid to the Iraqi government; right?

A. Yes.

Q. I want to take you now, Mr Thurgood, to what we understand to be the first contract that Rhine Ruhr tendered for under the Oil-for-Food Program; do you understand?

A. Yes.

Q. That first tender occurred in the months of May and June of 2001, and was a tender to supply goods described as "valve trays for stabiliser towers"; correct?

A. That's correct.

Q. If we can perhaps go to a document, RRP.0006.0028, that document, Mr Thurgood, is a quote or tender that was prepared by you and sent to Mr Davies; is that right?

A. That's correct, yes.

Q. For the supply of "valve trays for stabiliser K-DA-201"?

A. That's correct.

Q. What are those numbers, K-DA --

A. Those would refer to the - in a gas plant or refinery every single vessel, every single piece of equipment, has a code, just like the documents in this inquiry, so that everybody knows what's what. So that particular vessel would have had a unique number in the - in the overall plant.

Q. That's a number assigned to the item by the owners of the plant, as it were?

A. That's correct, yes.

Q. In this case the owners of the plant were the North Gas Company; correct?

1 A. That's correct, yes.

2

3 Q. If we can just go through that quotation, if you  
4 wouldn't mind, you will see under the first subheading,  
5 "Engineering Analysis", that the proposal is for you - that  
6 is, Rhine Ruhr - to supply certain goods; right?

7 A. That's correct.

8

9 Q. They being the 36 valve trays and the chimney tray,  
10 and the like, referred to in the first paragraph?

11 A. That's correct.

12

13 Q. Without taking you through all of the details, if you  
14 go, then, to the second page of the document, which is  
15 0030, you have got "Scope of Supply" and again, under that  
16 subheading, without taking you through it in detail, it is  
17 apparent that what you are tendering to supply or contract  
18 with the Iraqi entity is the supply of certain goods;  
19 right?

20 A. That's correct.

21

22 Q. In particular, if you then go to the subheading 1.3,  
23 "Price Schedule", you state:

24

25 Our price for the design, manufacture,  
26 corrosion protection, inspection, packaging  
27 and delivery to FOB Melbourne for the  
28 equipment listed in the above scope of  
29 supply is 32,500 pounds.

30

31 Is that right?

32 A. That's correct.

33

34 Q. That's what you were proposing to contract with the  
35 Iraqi authorities to provide; right?

36 A. That's correct.

37

38 Q. Now, there is a reference there to FOB Melbourne -  
39 free on board Melbourne. Is it the situation that Rhine  
40 Ruhr's usual terms of supply, when it supplied equipment,  
41 goods overseas, was free on board?

42 A. No, it could either be FOB or CIF but, in this case,  
43 we had no idea how much it would cost us to get to  
44 Umm Qasr, in this case. We left that out.

45

46 Q. When the terms of supply were CIF, ordinarily it was  
47 the case that the price was, including freight, up to the

1 port in the country to which you were exporting goods; is  
2 that right?

3 A. That's correct, yes.

4

5 Q. We will come to the position in a moment but it was  
6 unusual or, indeed, not the case that Rhine Ruhr had  
7 entered into contracts before these Iraqi contracts where  
8 the contract involved delivering the goods inland in the  
9 country - inland from the port; is that right?

10 A. It was unusual, but it was - it had been done before.  
11 We preferred not to do it because you get into - you get  
12 into situations that you have no control over, so we do  
13 that only when we are forced to - very seldom.

14

15 Q. Again, if we just go through this document, please, to  
16 the next page, I want to take you to the second sub heading  
17 on that page. That's "Installation Supervision":

18

19 We can offer installation supervision and  
20 inspection at the following site rates for  
21 TBA...

22

23 That meaning "to be advised"?

24 A. That's to be advised, yes.

25

26 Q. The letter, or the tender offer, then refers to  
27 potential costs of that service - that is, mobilisation  
28 cost - again, to be advised - and then a rate per date/part  
29 day on site for one supervisor; is that right?

30 A. That's correct.

31

32 Q. May we take it that this document, this tender  
33 document, was in fairly standard terms for Rhine Ruhr?

34 A. That's correct.

35

36 Q. Was it the situation that Rhine Ruhr, in certain of  
37 its contracts of supply to overseas countries, provided  
38 services relating to installation or supervision of  
39 installation?

40 A. That's correct, yes.

41

42 Q. Was it usual to include such terms in the contract?

43 A. Almost always.

44

45 Q. When that service was to be provided by Rhine Ruhr, it  
46 was the case, wasn't it, that it was included in the  
47 contract of supply; right?

1 A. Normally, yes.  
2  
3 Q. The rates that would ordinarily be charged by Rhine  
4 Ruhr for that service were a per-day rate for an employee  
5 or officer, together with what's called a mobilisation  
6 cost; right?  
7 A. That's the arrangement we prefer, because it is easier  
8 to control. It occasionally happens that we are asked to  
9 do that on a lump-sum basis.  
10  
11 Q. If it is a lump-sum basis, you agree with the client  
12 beforehand and that sum is included in the contract;  
13 correct?  
14 A. That's correct, yes.  
15  
16 Q. You might just explain what is meant by "mobilisation  
17 cost"?  
18 A. That's the cost of getting our engineers to the site,  
19 wherever it is, and back again.  
20  
21 Q. And when there is provision in Rhine Ruhr's contract  
22 with the client for the provision of that service, the  
23 client pays Rhine Ruhr a sum of money for the provision of  
24 that service?  
25 A. That's correct.  
26  
27 Q. That's included in the contract; correct?  
28 A. Correct.  
29  
30 Q. Is it the position that, having sent that tender  
31 letter, or offer letter, to Mr Davies of Eastoft Hall, in  
32 accordance with the arrangements you had with him,  
33 Mr Davies put the contents of that quote into a tender  
34 document to be provided to the Iraqi authorities; right?  
35 A. That's correct.  
36  
37 Q. That was ostensibly because he had knowledge of what  
38 the Iraqi contracting authorities expected to receive in a  
39 tender document; right?  
40 A. That's correct.  
41  
42 Q. If we could go, please, to document RRP.0005.0486,  
43 that's the first page of the document. Do you identify  
44 that as the document that Mr Davies created, based, no  
45 doubt, on the document that you had sent to him that we  
46 have just seen in evidence?  
47 A. Yes.

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Q. Mr Davies sent you a copy or draft of this document prior to it being dispatched to the commercial committee, North Gas Company; is that right?

A. That's right.

Q. If we might just go through that briefly, please, you will see that the first subheading refers to the submission of a proposal for the supply of equipment under the terms and conditions of phase (ix) of the memorandum of understanding, MOU, signed by the United Nations and government of Iraq; right?

A. Yes.

Q. And then the second subheading deals with the scope of supply; correct?

A. That's correct.

Q. This document in the box that's under the subheading "Scope of Supply" provides, in substance, that the scope of supply by Rhine Ruhr was the design, manufacture, corrosion protection, inspection and packaging of certain goods; right?

A. That's correct.

Q. There has now been inserted by Mr Davies in the scope of supply provision for CIP Kirkuk, via Umm Qasr; do you see that?

A. That's correct, yes.

Q. Did you have any discussions with Mr Davies in relation to the change from what you had put in the tender offer - that is, FOB Melbourne - to CIP Kirkuk?

A. Yes, Mr Davies explained that.

Q. How did he explain it?

A. He said from his experience that would be a fair charge. The Iraqis wanted a CIP price. We didn't have much idea of the costs of getting it delivered. He believed he was in a better position to advise us there, so we accepted his explanation.

Q. Was that a proposal that you at Rhine Ruhr were comfortable with?

A. Yes.

Q. In relation to this document - and you can have a look

1 at the full copy; it is a two-page document, if we turn the  
2 page over --

3  
4 THE COMMISSIONER: Q. What does CIP mean? What is the P?  
5 A. To be honest, I am very embarrassed. I don't know.  
6 Really I think it is similar to CIF.

7  
8 MR WIGNEY: Q. Just look at the second page of this  
9 document. I take it you have seen this in recent times?  
10 A. Yes.

11  
12 Q. Unlike your proposal that you had put to Mr Davies at  
13 Eastoft Hall, there is nothing in this document about  
14 additional costs for installation, supervision and the  
15 like; right?  
16 A. That's correct, yes.

17  
18 Q. Did you have any discussions with Mr Davies at or  
19 about the time that you received the copy or draft of this  
20 document about that omission?  
21 A. No, I don't believe so.

22  
23 Q. You would agree, wouldn't you, that it is apparent  
24 from this document that what offer was to be put to the  
25 Iraqi entities was an offer to supply goods and nothing  
26 else; right?  
27 A. That's correct, yes.

28  
29 Q. You will see here that the price in this document,  
30 back on the first page, the total offer is 34,100 pounds;  
31 right?  
32 A. That's correct.

33  
34 Q. In due course you were advised that agreement had been  
35 reached with the Iraqi party for supply of the goods at  
36 that quoted price - that is, 34,100 pounds; right?  
37 A. That's correct.

38  
39 Q. In due course you received from Mr Davies a draft  
40 contract; right?  
41 A. Yes.

42  
43 Q. If we can go, please, to a document at RRP.0005.0493,  
44 that, again, on the screen, is the first page of the  
45 document. Tell us if you want a hard copy of it or if you  
46 want to look through the entire document, but do you  
47 identify that as a copy of the draft contract that was sent

1 to you by Mr Davies in relation to this proposal?  
2 A. It appears to be, yes.  
3  
4 Q. Do you know who prepared this contract in this form?  
5 A. To be honest, no.  
6  
7 Q. Did you ask Mr Davies about that?  
8 A. I don't believe I did.  
9  
10 Q. May we take it that when you received this draft you  
11 read it over carefully?  
12 A. Yes, obviously I would have read it over, yes.  
13  
14 Q. An important document, assuming that it was to be  
15 signed and executed; correct?  
16 A. Yes.  
17  
18 Q. You will see that the first party is described as the  
19 client, and it is the economics and finance department,  
20 Ministry of Oil, Baghdad, republic of Iraq; right?  
21 A. That's correct.  
22  
23 Q. So you knew that your contract involved contracting  
24 with the Iraqi government; correct?  
25 A. Yes.  
26  
27 Q. The second party supplier is described there and it is  
28 described as "Distal Rhine Ruhr Pty Limited (Australia)"?  
29 A. Yes.  
30  
31 Q. I think you have an explanation for how it came to be  
32 that there was confusion about the name of your company; is  
33 that right?  
34 A. I wish I did have an explanation. It was confusing.  
35 It caused us some problems and we couldn't really get to  
36 the bottom of it.  
37  
38 Q. The problems particularly came home to roost, I think,  
39 at the letter of credit stage; is that right?  
40 A. Yes; that's correct.  
41  
42 Q. In any event, there is no doubt that the contract, in  
43 due course, was to be with Rhine Ruhr Pty Limited, the  
44 Australian company of which you were, at this stage,  
45 managing director; is that correct?  
46 A. That's correct.  
47

1 Q. Again, just dealing with the parties, the other party  
2 is described as the end user, and that's the Northern Gas  
3 Industry?  
4 A. I can't see that here, but I believe that was the  
5 case.  
6  
7 Q. If you see about a third of the way down the page, it  
8 says "end user"?  
9 A. Oh, yes. Yes.  
10  
11 Q. If we look at this contract - again, we will move  
12 through it as quickly as we can, but tell us if you need  
13 more time - it is apparent, is it not, that the contract  
14 was to supply what is said to be materials described as  
15 "trays"; right?  
16 A. That's correct.  
17  
18 Q. If you go over the page, you will see at the top of  
19 the page "total value CIP Kirkuk", we have the contract sum  
20 being a fee of 37,510 pounds sterling; do you see that?  
21 A. That's correct, yes.  
22  
23 Q. As we now know, that is 10 per cent more than the  
24 figure that you knew had been struck or agreed to between  
25 Rhine Ruhr and the Iraqi entities for the supply of the  
26 goods; right?  
27 A. Right, yes.  
28  
29 Q. As we understand the evidence in your statement, it is  
30 that the first you learnt of that increase of 10 per cent  
31 in the contract price was when Mr Davies sent you a fax on  
32 21 June together with a copy of this contract; right?  
33 A. That's correct.  
34  
35 Q. We might go, please, now to document RRP.0005.0491.  
36 I am sure you will identify that as the fax of 21 June that  
37 you received from Mr Davies; right?  
38 A. Yes. I have read that many times in the last few  
39 weeks.  
40  
41 Q. As it suggests, it included the draft contract, and it  
42 had some other documents to which we will come in a moment;  
43 right?  
44 A. That's correct.  
45  
46 Q. What I want to direct your attention to - and I am  
47 sure you will anticipate - is the second paragraph, which

1 reads:

2

3

The contract is for our quoted amount of  
34,100 pounds (goods 32,500 pounds + CIP  
Kirkuk 1600 pounds)...

6

7

8

9

That's consistent with what you had understood to be the  
agreement between Rhine Ruhr and the Iraqis as a result of  
negotiation for the supply of goods; right?

10

11

A. Yes.

12

Q. Then Mr Davies states:

13

14

15

16

17

18

19

...enhanced by an Iraq "Engineering  
Services Fee" of 10%. This additional 3410  
pounds is required to be paid as the goods  
are dispatched (4 weeks before arrival on  
site) but you will receive an L/C --

20

That's letter of credit --

21

22

23

for the full contract amount to cover this  
enhancement.

24

25

26

27

Was this the first time that you learnt of what Mr Davies  
refers to as an "engineering services fee"?

28

A. That's correct, yes, it was.

29

30

31

Q. And he says - that is, Mr Davies - that the contract  
was to be enhanced by 10 per cent, representing that fee;  
right?

32

A. That's correct, yes.

33

34

35

36

37

Q. Did you understand, upon reading this, that what was  
to occur was that the contract price, as we have seen,  
would be increased by a 10 per cent figure?

38

A. That's correct.

39

40

41

42

Q. Did you understand, when you received this fax and its  
attachments, that the other side of that addition to the  
contract price was that Rhine Ruhr was obliged to pay that  
amount to someone?

43

A. That's correct, yes.

44

45

46

Q. So the enhancement that is referred to is the increase  
in the contract price; right?

47

A. Yes.

1  
2 Q. Were you surprised when you received this fax?  
3 A. Possibly I was. I can't remember, to be certain.  
4  
5 Q. Just focusing on your state of mind when you received  
6 these documents, as you have said, you looked at the  
7 contract; right?  
8 A. That's correct, yes.  
9  
10 Q. May we take it that you, when you read the contract,  
11 observed that the contract, the draft contract that had  
12 been provided to you, whilst it had the enhanced price, to  
13 use Mr Davies' word, made no reference whatsoever to any  
14 engineering services fee?  
15 A. Yes. There was an attachment which described the  
16 engineering services fee.  
17  
18 Q. I am going to come to that in a moment, but the  
19 contract itself --  
20 A. No, the contract itself, no.  
21  
22 Q. -- made no reference to the fee?  
23 A. No.  
24  
25 Q. There was nothing in that contract that suggested that  
26 the supply of goods was in fact for a lesser amount but had  
27 been enhanced to take into account the payment of this fee?  
28 A. There was, actually, although I only picked it up  
29 recently.  
30  
31 Q. Okay, in the contract itself?  
32 A. Yes.  
33  
34 Q. Perhaps you might take us to that, then. It is the  
35 third page of that document. That's the first page. Is it  
36 on the first page?  
37 A. It is actually on the first page and in the order  
38 itself. There is a reference to Tony Davies' quotation.  
39 Let me just see if I can see it here. Near the bottom of  
40 the page here, underneath "Location: Kirkuk".  
41  
42 Q. Yes:  
43  
44 Based on the attached offer no. dated --  
45  
46 THE COMMISSIONER: 28/5/2001.  
47

1 THE WITNESS: It also appears in the order, at the top of  
2 the page.  
3  
4 MR WIGNEY: Q. I am sorry?  
5 A. It also appears in the order document.  
6  
7 Q. Which was attached to the contract?  
8 A. That's correct, yes.  
9  
10 Q. So that reference there that you have just taken us  
11 to, putting aside the order document for the moment, you  
12 say that disclosed, do you, the engineering services fee?  
13 A. Well, to be honest, at the time I didn't notice that.  
14  
15 Q. Well, you were looking in the contract to see whether  
16 there was anything --  
17 A. I wasn't looking.  
18  
19 Q. Didn't it surprise you when you received this fax  
20 about the enhanced price?  
21 A. I don't believe it did.  
22  
23 Q. Wasn't the first thing you did to look to see whether  
24 there was anything in the contract about that enhanced  
25 price?  
26 A. I guess I accepted the explanation in the letter  
27 attached to it.  
28  
29 Q. Tell us, please, what was your understanding of that  
30 explanation?  
31 A. Well, that it was a fee for the inspection of the  
32 goods on receipt and the installation of the parts into the  
33 vessel.  
34  
35 Q. Where does it say that in the letter?  
36 A. There was an attachment to that which described it.  
37  
38 Q. I am asking for the moment about the letter. There is  
39 nothing in the letter about that explanation?  
40 A. Nothing in the letter, no.  
41  
42 THE COMMISSIONER: Q. Why would your company pay that  
43 fee?  
44 A. Well, I guess it was unusual that we would pay it back  
45 to the customer. We could pay it to other people who were  
46 undertaking that work, but it was unusual that we would pay  
47 it to the customer, but this was an unusual contract.

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MR WIGNEY: Q. Mr Thurgood, you have taken us to a passage on the first page of this contract that refers to the attached offer. That is the document that I took you to before of 26 May 2001, isn't it?

A. Yes.

Q. That's a reference to that?

A. Yes.

Q. You have already agreed that that document, the offer document of 26 May 2001, refers only to the supply of goods being the scope of supply; right?

A. That's correct, yes.

Q. How does that reference on the first page of the contract disclose the existence of the engineering services fee?

A. No, but it - you were referring to the price of the goods, and that quotation document would have described the scope of supply and the price as the price of the goods only, not the enhanced value.

Q. My question that started off this chain of inquiry was that there is nothing in the contract itself that reveals the fact that, to use Mr Davies' words, the contract price had been enhanced to take into account the engineering service fee?

A. No, I entirely agree with that, yes.

Q. You agree with that?

A. Yes.

Q. That's something that you noticed at the time, isn't it?

A. At the time I was only looking for terms and conditions which would have impacted on Rhine Ruhr.

Q. Well, I think you have already agreed that you understood that what was being proposed in Mr Davies' fax was that Rhine Ruhr would be required to pay a sum of money; right?

A. That's correct.

Q. Well, that's something that impacts on Rhine Ruhr, does it not?

A. Well, yes, but the fax clearly states that the LC

1 would be enhanced to cover that cost, so there was no  
2 impact.

3

4 Q. I'm talking about the contract documents. There's  
5 nothing in the contract documents about that, is there?

6 A. No.

7

8 Q. Didn't you regard it as important for that matter to  
9 be reflected in the contract documents?

10 A. I guess at the time I didn't.

11

12 Q. Did you think about it?

13 A. Probably not.

14

15 Q. There's nothing in the contract document itself that  
16 refers to Rhine Ruhr's obligation, as you understood it, to  
17 pay this fee to an Iraqi entity, is there?

18 A. No.

19

20 Q. I just want to continue to take you through this --

21

22 THE COMMISSIONER: Q. "CIP", by the way, refers to  
23 "carriage and insurance paid".

24 A. Thank you.

25

26 MR WIGNEY: Q. We may take it that the reference to CIP  
27 in the contract was carriage and insurance paid, not just  
28 to Umm Qasr, but to Kirkuk, which is inland in Iraq;  
29 correct?

30 A. Yes; that's correct.

31

32 Q. I want to take you to the attachments to this  
33 contract. If you go six pages into that document - one  
34 page back, I am sorry.

35

36 THE COMMISSIONER: Page 0498.

37

38 MR WIGNEY: Q. That document is headed "Purchase Order".  
39 Was that a document that was prepared by Rhine Ruhr?

40 A. No.

41

42 Q. This was submitted together with the contract  
43 document; right?

44 A. That's correct.

45

46 Q. What it does is set out the items that will be the  
47 scope of supply for the goods - that is, it particularises

1 the items that made up the trays for the stabiliser tower;  
2 right?  
3 A. That's correct, yes.  
4  
5 Q. It provides a unit price of 37,510; right?  
6 A. That's correct.  
7  
8 Q. I am sure, again, that you looked at this document,  
9 but it contains no reference whatsoever to the so-called  
10 engineering services fee; right?  
11 A. That's correct.  
12  
13 Q. It represents that the cost of supply of these goods  
14 alone has a unit price, or a total price, of 37,510 pounds,  
15 doesn't it?  
16 A. That's correct, yes.  
17  
18 Q. But that was incorrect, wasn't it?  
19 A. In hindsight, yes.  
20  
21 Q. Because the deal that you had struck was for a lesser  
22 sum for the supply of the goods, wasn't it?  
23 A. I agree it is misleading.  
24  
25 Q. If the operator could go to the next page, the  
26 document on the screen now was also a document that was  
27 supplied along with Mr Davies' fax of 21 June 2001, wasn't  
28 it?  
29 A. That's correct.  
30  
31 Q. May we take it that you looked at that document at the  
32 time you received it?  
33 A. Yes, I did, yes.  
34  
35 Q. You will see that it purports to come from at least  
36 you, as managing director of Distall Rhine Ruhr Pty Limited  
37 Australia; do you see that?  
38 A. That's correct.  
39  
40 Q. There is some fairly unclear writing above the "yours  
41 faithfully". Did you ever sign --  
42 A. I don't believe I ever signed that.  
43  
44 Q. Were you concerned when you received this document - a  
45 document that purported to be from you and signed by you -  
46 that it had been created?  
47 A. I don't believe that that was ever meant to be my

1 signature, by the way. I can't remember being concerned.

2

3 Q. What did you understand to be denoted by the  
4 handwriting above the "yours faithfully"?

5 A. Possibly - this appears to have been a document from  
6 some other contract that had been amended, whited out, and  
7 doctored to fit this particular contract. So that may be  
8 someone else's previous signature that had been whited out.

9

10 Q. I see. Did that strike you as a fairly unusual  
11 document for you to be receiving as the managing director  
12 of Rhine Ruhr in relation to a significant contract with  
13 entities in Iraq?

14 A. It did not.

15

16 Q. It was a document that, as you have said, appears to  
17 have been prepared for some other contract and then  
18 doctored in some way, be it by white-out or by handwriting,  
19 to fit the purposes of your contract; right?

20 A. Yes.

21

22 Q. In terms it says:

23

24 With reference to your request.

25

26 It is directed to the Northern Gas Industries. It  
27 represents that the Northern Gas Industries had made a  
28 request for what is described as "payment against  
29 engineering services, installation, handling", I think  
30 that's probably meant to be "verification", "inspection on  
31 site" - do you see that?

32 A. That's correct.

33

34 Q. Did you ever see a request from the Northern Gas  
35 Industry for the provision of payment against those items  
36 described there?

37 A. No.

38

39 Q. Did you ever ask to see a request?

40 A. No.

41

42 Q. Did you not consider it significant to ask for such a  
43 request which involves, on its face, the payment out of a  
44 sum of money described as 3,410 pounds?

45 A. I took the advice of Tony Davies.

46

47 Q. We will come to Mr Davies in a moment. I am just

1 trying to focus on your state of mind when you received  
2 these documents. Do you understand?  
3 A. Mmm-hmm.  
4  
5 Q. This all struck you as most unusual, did it not?  
6 A. I don't believe it did.  
7  
8 THE COMMISSIONER: Q. Mr Thurgood, these documents we  
9 are just going to now come under cover of the facsimile  
10 from Mr Davies of 21 June, did they not?  
11 A. That's correct.  
12  
13 Q. That concludes by saying:  
14  
15 Please reply by return on the contract  
16 signing issues.  
17  
18 How did you interpret that paragraph?  
19 A. I can't really remember, to be exact.  
20  
21 Q. Did you expect that the document which is on the  
22 screen was something you were being asked to sign?  
23 A. I expected that if we didn't sign it someone would  
24 probably sign it on our behalf.  
25  
26 Q. So you knew that, as it were, it was a condition of  
27 this contract that there be some document like that  
28 containing an undertaking to pay this additional 3,410  
29 pounds?  
30 A. That would have been my understanding, yes.  
31  
32 Q. But you didn't have any understanding of what that  
33 3,410 pounds was, except insofar as it might be called an  
34 engineering services fee or it might be - well, engineering  
35 services fee?  
36 A. Yes. I believe I would have accepted the explanation  
37 in this particular piece of paper.  
38  
39 Q. But, on any commercial basis, there is no basis for  
40 your company paying such an engineering services fee?  
41 A. Sorry, I'm not quite understanding.  
42  
43 Q. If you were to supply goods, as you were --  
44 A. Yes.  
45  
46 Q. -- and they were to be installed and it was not your  
47 obligation to install them --

1 A. Mmm-hmm.  
2  
3 Q. -- then any installation, et cetera, would be someone  
4 else's responsibility --  
5 A. That's correct.  
6  
7 Q. -- and somebody else's cost?  
8 A. That's correct.  
9  
10 Q. What is being put here is that there should be an  
11 additional 10 per cent paid on top of the agreed contract  
12 price, including freight and insurance, described as an  
13 "engineering services fee"?  
14 A. That's correct.  
15  
16 Q. But your company was not providing any --  
17 A. That's correct.  
18  
19 Q. -- engineering services fee, and so there would be no  
20 basis for the price being inflated to include that sum?  
21 A. Well, somebody has to undertake that work and it was -  
22 I guess we accepted that if the customer was going to have  
23 to do it himself, possibly he needs to be paid for it.  
24  
25 Q. But if the customer needs to be doing it himself, why  
26 do you have to include it in your price?  
27 A. I guess, in this case, this was unusual - this was an  
28 unusual contract. We accepted that this was the system for  
29 doing business with Iraq and I was led to believe that this  
30 was known by everyone and this was accepted.  
31  
32 Q. The system, as you understood it, being that you  
33 include in your contract price a figure for a service which  
34 you are not going to provide?  
35 A. That's correct.  
36  
37 Q. And then you pay that increased figure to the person  
38 who is purchasing your goods?  
39 A. That's correct.  
40  
41 MR WIGNEY: Q. Mr Thurgood, you have just referred to  
42 the system that you understood everyone knew about. It was  
43 part of that system, wasn't it, that the contract made no  
44 reference to what the Commissioner has just referred to -  
45 that is, the fact that the contract price was to be  
46 enhanced by a 10 per cent figure and that the supplier was  
47 to pay that amount, that 10 per cent amount, on to someone

1 else? It was part of the system that that wasn't to be  
2 included in the contract documents, wasn't it?  
3 A. Sorry, you said that a bit quickly, I am trying to  
4 take it all in.  
5  
6 Q. You have referred to the fact that you understood that  
7 there was a system or process that everyone knew about in  
8 relation to these Iraqi contracts; right?  
9 A. That's correct.  
10  
11 Q. It was part of that system or process that the payment  
12 of this 10 per cent fee was not to be something referred to  
13 in the contract document, wasn't it?  
14 A. No, I didn't understand that at the time. I mean, in  
15 hindsight, I understand that now, but, at the time, it  
16 didn't occur to me.  
17  
18 Q. You have referred on a couple of occasions to the fact  
19 that this was an unusual contract. Why was it unusual?  
20 A. Well, I guess the main thing which was unusual is that  
21 the customer, the person who was buying the goods, was not  
22 the customer - was not the person who was actually going to  
23 pay us, and this made it different.  
24  
25 Q. The customer that was going to pay you was who?  
26 A. Well, the customer who was going to use the goods was  
27 North Gas Industries, and the payment was being made by the  
28 United Nations, so this was a very unusual way of doing  
29 business.  
30  
31 Q. So you understood at the time that when the contract  
32 fee was enhanced by 10 per cent, that enhanced price, the  
33 enhancement, was to be paid by the United Nations - you  
34 knew that at the time, didn't you?  
35 A. Yes.  
36  
37 Q. And you knew at the time that, insofar as Rhine Ruhr's  
38 commitment to pay the equivalent sum of 10 per cent out,  
39 that was not a figure that was to be paid to the United  
40 Nations, was it?  
41 A. No, it wasn't paid to the United Nations.  
42  
43 Q. It was to be paid to an Iraqi entity, wasn't it?  
44 A. Yes.  
45  
46 Q. And that's what was unusual about it; right?  
47 A. Yes.

1  
2 Q. You knew this was to be - that is, the contract -  
3 processed through the Oil-for-Food Program, didn't you?  
4 A. That's correct, yes.  
5  
6 Q. As we have already established, you knew that the  
7 contract had to be approved by the United Nations; right?  
8 A. Yes.  
9  
10 Q. You knew that the United Nations would be paying the  
11 contract sum, as you have just said; right?  
12 A. Yes.  
13  
14 Q. Didn't that make it all the more important when you  
15 checked the contract documents to ensure that this was all  
16 recorded in the contract?  
17 A. Sorry, I did not - I did not think about that at the  
18 time.  
19  
20 Q. Didn't alarm bells start ringing in your ears when you  
21 started receiving a fax talking about the payment of a fee  
22 that wasn't referred to in the contract documents?  
23 A. I don't recall thinking those things.  
24  
25 Q. Didn't alarm bells start ringing in your ears when you  
26 received this curious document that's on the screen here,  
27 that seems to be a document created for some other contract  
28 that's just been doctored up for your contract?  
29 A. No.  
30  
31 Q. That represents, on its face, to be signed by you or  
32 on your behalf?  
33 A. No.  
34  
35 Q. Didn't you think it was unusual, and didn't alarm  
36 bells start to ring, when this document that's on the  
37 screen refers to a request, a request being one that you  
38 had never seen?  
39 A. Not really, no.  
40  
41 Q. I think you have already said that you didn't ask to  
42 see the request?  
43 A. No.  
44  
45 Q. When you got Mr Davies' fax of 21 June, if we can go  
46 back to the first page of that document, please - it is  
47 RRP.0005.0491. This is the first time that you had heard

1 of it; right?

2 A. Yes.

3

4 Q. You see, when Mr Davies, in the second paragraph, is  
5 seeking to explain it to you, he puts engineering services  
6 fee in quotation marks; right?

7 A. Yes.

8

9 Q. There are other documents we will come to where he  
10 similarly puts it in quotation marks, the reference to  
11 engineering services fee?

12 A. Yes.

13

14 Q. You would agree that often when someone is using a  
15 term as a bit of a euphemism one puts it in inverted  
16 commas; right?

17 A. Yes.

18

19 Q. You noticed that at the time?

20 A. I don't know if I really noticed it at the time, no.

21

22 Q. Did that not increase your suspicions about what, in  
23 fact, this so-called engineering services fee represented?

24 A. I don't think so. I don't believe so.

25

26 Q. You knew that compliance with the Oil-for-Food Program  
27 was a very serious matter, didn't you?

28 A. Well, I know now. I'm not so sure I really took that  
29 on board then, but I agree with you, yes.

30

31 Q. And you say that nothing in these documents that we  
32 just looked at - Mr Davies' fax describing the engineering  
33 services fee in inverted commas and the curious document  
34 referring to the request - caused you any concern in  
35 relation to compliance with the Oil-for-Food Program?

36 A. Not really. I put my faith in Tony Davies.

37

38 THE COMMISSIONER: Q. There is a very basic thing, isn't  
39 there: if there were engineering services fees, however  
40 you want to describe them, that your company was going to  
41 be paid for, didn't you expect that that would impose some  
42 obligation on your company to ensure that those services  
43 were provided?

44 A. That's probably correct.

45

46 Q. But you didn't know what the services were and you  
47 hadn't agreed to provide them.

1 A. That's correct.

2

3 Q. So didn't you ask, "Why on earth are we being paid for  
4 something that we haven't agreed to do and we don't know  
5 what is required of us?"

6 A. I didn't really see that as being necessary at the  
7 time. What we were doing was paying the customer to take  
8 that obligation away from us.

9

10 Q. But you didn't have any obligation to do it in the  
11 first place?

12 A. Well, it is possible that the customer could have said  
13 to us, "Hey, you must come to Iraq, to Kirkuk, to install  
14 these trays for us", and I think we would have been, under  
15 the circumstances, quite reluctant to do that.

16

17 Q. But they hadn't done that?

18 A. No, they hadn't done that, and I think --

19

20 Q. So you couldn't assume you had an obligation to  
21 install, because you specifically didn't, but here is a  
22 document that says you are going to be paid for these  
23 engineering services, none of which you knew you had to  
24 provide.

25 A. That's correct.

26

27 MR WIGNEY: Q. Mr Thurgood, my reason for, at the  
28 commencement of this examination, taking you, admittedly in  
29 a tedious way, through your various offer documents was to  
30 demonstrate, as I think you agreed, that in no document  
31 that you sent or Mr Davies sent to the Iraqi entities on  
32 behalf of Rhine Ruhr did you ever offer to provide the  
33 service relating to installation or pay for anything  
34 relating to installation; that's right, isn't it?

35 A. That's correct.

36

37 Q. It just comes out of the blue, right, in this document  
38 and the documents attached to Mr Davies' fax of 21 June  
39 2001?

40 A. That's correct.

41

42 Q. Completely out of the blue, and yet you didn't regard  
43 it as unusual or extraordinary?

44 A. I guess we have probably seen other unusual things.  
45 It - I guess, because there was no - there didn't appear to  
46 be any impact on the company, we looked at other situations  
47 that would impact on the company.

1  
2 Q. When you say "no impact on the company", you mean, to  
3 put it bluntly, it was no skin off Rhine Ruhr's nose  
4 because you get the enhanced price and then you pay it out,  
5 so financially it was neutral to you; correct?  
6 A. You could put it that way, yes.  
7  
8 Q. It certainly wasn't financially neutral to the United  
9 Nations escrow account, was it?  
10 A. No.  
11  
12 Q. Because they pay the money out, don't they?  
13 A. Yes.  
14  
15 Q. And yet you don't pay the money back into the escrow  
16 account, as you understood it; right?  
17 A. That's correct, yes.  
18  
19 Q. Wouldn't that knowledge have made it incumbent on you  
20 to ensure that the United Nations knew about the enhanced  
21 contract price?  
22 A. I don't think I realised that at the time.  
23  
24 Q. Did you come to realise it later?  
25 A. Yes.  
26  
27 Q. When?  
28 A. I guess probably when we saw the independent inquiry  
29 last year.  
30  
31 Q. We will come to that in a moment. May we take it that  
32 after you received Mr Davies' fax of 21 June 2001, you at  
33 least contacted Mr Davies to see what he was talking about  
34 in relation to the engineering services fee?  
35 A. Well, no doubt I would have contacted him to  
36 congratulate - well, to thank him for winning the order for  
37 us and obviously, since I didn't say so in writing, to  
38 accept the contract.  
39  
40 Q. Do you recall that conversation?  
41 A. Not specifically, no.  
42  
43 Q. Do you recall whether you ever asked Mr Davies to  
44 explain what he had put in quotes as the "engineering  
45 services fee"?  
46 A. Again, I don't recall it specifically, but most likely  
47 I did mention it.

1  
2 Q. And do you recall what he said to you about it?  
3 A. No.  
4  
5 Q. You had observed that there was nothing in the  
6 contract documents relating to that fee. Did you ask him  
7 why that was so?  
8 A. No, I didn't ask him, because I hadn't noticed that at  
9 the time.  
10  
11 Q. Did you notice it at any time?  
12 A. Only since we've been looking back on these documents  
13 for this inquiry, yes.  
14  
15 Q. Mr Thurgood, you had been the managing director of  
16 Rhine Ruhr since 1987; right?  
17 A. That's correct, yes.  
18  
19 Q. And may we take it that, during the period 1987  
20 through to this date of 2001, Rhine Ruhr had entered into  
21 many, many contracts for the supply of equipment; right?  
22 A. That's correct.  
23  
24 Q. Indeed, was it the case that you were in the business  
25 of providing engineering equipment before you became a  
26 director of Rhine Ruhr?  
27 A. That's correct, yes.  
28  
29 Q. And it was your practice as an experienced and  
30 qualified and careful and diligent managing director to  
31 check contract documents that Rhine Ruhr was to execute;  
32 right?  
33 A. Yes.  
34  
35 Q. Are you seriously suggesting that you didn't notice at  
36 the time that you received this draft contract from  
37 Mr Davies that you didn't notice, on that very day, that  
38 Rhine Ruhr's obligation to pay this fee was not reflected  
39 in the contract documents?  
40 A. Unfortunately I did not notice.  
41  
42 Q. Do you recall now having any conversation with  
43 Mr Davies about the engineering services fee?  
44 A. I don't recall specifically, but no doubt it was  
45 mentioned.  
46  
47 Q. Why do you say "no doubt" if you don't recall?

1 A. Well, there would have been questions regarding the  
2 mechanism. I mean, we might have complained that it was  
3 going to hurt the cash flow, or something like that, but  
4 I don't - you know, it is so far back that I cannot recall  
5 any details.

6  
7 Q. So you are not able to assist us at all in relation to  
8 any actual recollection of a discussion with Mr Davies  
9 where you queried him about this engineering services fee?

10 A. Unfortunately not.

11  
12 THE COMMISSIONER: I will take a short adjournment to give  
13 the shorthand writers a break.

14  
15 SHORT ADJOURNMENT

16  
17 MR WIGNEY: Q. Mr Thurgood, because of the wonders of  
18 real-time transcript, you can hopefully see on the screen  
19 before you the last question I asked before the short  
20 adjournment. I will repeat it to you. My question was:

21  
22 Q. So you are not able to assist us at all  
23 in relation to any actual recollection of a  
24 discussion with Mr Davies where you queried  
25 him about this engineering services fee?

26  
27 And you answered, "Unfortunately not". Can I just ask you  
28 a slightly broader question than that: you are not able to  
29 assist us in relation to any actual recollection of a  
30 discussion with Mr Davies about the so-called engineering  
31 services fee at all; is that right?

32 A. That's correct, yes.

33  
34 Q. Are you absolutely certain of that?

35 A. Anything would be guessing. I can't remember any  
36 specific details.

37  
38 Q. So if you were to give a version of a conversation  
39 that you had with Mr Davies about the engineering services  
40 fee, it would just be guessing?

41 A. I would just be guessing.

42  
43 Q. Could there be put on the screen, please, this page of  
44 a document, RRP.0005.0464. Mr Davies, if you still have  
45 that copy of your proof of evidence, you might just go to -  
46 I am sorry, it is not paginated, but if you find  
47 paragraph 27 and then go over to the next page. You will

1 see it on the screen in any event. This is part of  
2 paragraph 27 of your proof of evidence that I asked you  
3 about when you first started giving evidence this morning;  
4 right?

5 A. Mmm-hmm.

6

7 Q. Do you understand?

8 A. Yes.

9

10 Q. I think you said that you had read it in recent times?

11 A. Yes.

12

13 Q. And it was true to the best of your knowledge and  
14 belief?

15 A. That's correct.

16

17 Q. And you didn't want to make any clarifications or  
18 retractions, and the like; right?

19 A. That's correct.

20

21 Q. I should take you back to the previous page, the  
22 commencement of paragraph 27, to be fair. It reads:

23

24 To the best of my recollection, the first  
25 time I became aware of the 10 per cent  
26 engineering services fee was upon the  
27 receipt of the facsimile from Tony Davies  
28 dated 21 June 2000.

29

30 That's the document that I had been asking you about before  
31 the adjournment; right?

32 A. That's correct.

33

34 Q. Then you refer to the single-page document explaining  
35 what the engineering service fee represented:

36

37 ...purporting to be an acknowledgment by me  
38 that Rhine Ruhr were agreeing to pay the  
39 fee. I do not recall whether I queried the  
40 Engineering Services Fee further at this  
41 time with Tony Davies but I do recall  
42 discussing the nature of the fee with Tony  
43 Davies at some stage.

44

45 Right?

46 A. I obviously discussed it at some point with him, yes.

47

1 Q. You have just told us that any evidence you gave about  
2 that discussion would just be guessing?

3 A. Yes, I can't recall the detail.  
4

5 Q. Well, you see that then, in the next passage in this  
6 statement, you give a fairly detailed recitation of what  
7 Tony explained, and you say that he told you that it was a  
8 normal part of doing business with the Iraqi oil ministry;  
9 right?

10 A. That was the impression I got.  
11

12 Q. But you just told us that anything you said in  
13 evidence about a discussion with Mr Davies would be  
14 guesswork?

15 A. Well, yes, but I can't - I can't tell you exactly what  
16 were the circumstances that he told me this, exactly his  
17 words, anything like that. That was the impression that  
18 I was given. How I was given that impression, whether it  
19 was a false impression or a correct impression, that was  
20 the impression I had.  
21

22 Q. I see. But, in accordance with the evidence you have  
23 just given, it follows, doesn't it, that this recitation of  
24 Tony's explanation in this paragraph of your proof of  
25 evidence is just guesswork, isn't it?

26 A. I guess it is guesswork, but I did have that  
27 understanding. How I came to have that understanding,  
28 I don't know.  
29

30 THE COMMISSIONER: Q. Mr Thurgood, you say, "He informed  
31 me" --

32 A. Yes.  
33

34 Q. -- "that the United Nations were aware of the fee".  
35 Did he tell you that?

36 A. In what shape or form, I don't know, but that was  
37 ingrained in my brain, that he had told me that the United  
38 Nations were aware of it. He may have misled me. I may  
39 have misunderstood. But that's what I did understand.  
40

41 MR WIGNEY: Q. Mr Thurgood, you understood when this  
42 document called a proof of evidence was being prepared that  
43 it was to be put before the inquiry as a reflection of your  
44 evidence, didn't you?

45 A. That's correct, yes.  
46

47 Q. You read it carefully, no doubt, to ensure that it was

1 accurate?  
2 A. That's correct, yes.  
3  
4 Q. And you understood the gravity of the situation and  
5 the importance of being accurate; right?  
6 A. That's correct, yes.  
7  
8 Q. This statement says, in terms:  
9  
10 Tony explained that the payment of the fee  
11 was a normal part of business with the  
12 Iraqi Oil Ministry. He informed me, and  
13 I believed from that, that the United  
14 Nations were aware of the fee.  
15  
16 Right?  
17 A. That's correct.  
18  
19 Q. What you have put in that statement there suggests  
20 that you had a discussion with him and you recollected the  
21 discussion with him, doesn't it?  
22 A. I am sure I had discussions, but I don't recall when  
23 and I don't recall the detail.  
24  
25 Q. There is nothing in your proof of evidence that  
26 suggests that what you are putting in paragraph 27 here is  
27 just guesswork, is there?  
28 A. No.  
29  
30 Q. Well, is there any other guesswork in this proof of  
31 evidence that you want to tell us about before we come to  
32 it?  
33 A. I don't believe so.  
34  
35 Q. I think you have said that the impression that you had  
36 was that this was the ordinary, normal part of doing  
37 business with the Iraqi oil ministry, and you say that that  
38 was some impression that you got from Mr Davies but you  
39 can't be precise when or how; right?  
40 A. That's correct.  
41  
42 Q. When did you get that impression?  
43 A. I really couldn't say.  
44  
45 Q. Did you ever seek specific confirmation from Mr Davies  
46 in the form of a document or letter that that was so?  
47 A. No.

1  
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47

Q. Did you ever make any queries with the United Nations?

A. No.

Q. Did you ever make any query or inquiry with the Department of Foreign Affairs and Trade, whether the impression you got from Mr Davies was a correct impression?

A. No.

Q. Did you ever take any steps of your own, as managing director of Rhine Ruhr, to inquire of either the United Nations or the Department of Foreign Affairs precisely what was expected of Rhine Ruhr in terms of having a contract approved under the scheme?

A. I don't believe I did, no.

Q. Did you cause any of your officers or employees to make such a query?

A. No.

Q. That would have been a sensible thing to do, would it not?

A. In hindsight, probably, yes.

Q. Amongst the documents produced to the inquiry by Rhine Ruhr is a document that appears to be a print-out from the Department of Foreign Affairs and Trade's website, at least as at 2 October 2001. Could the document RRP.0001.0048 be put on the screen, please. Are you able to assist us as to whether, firstly, you ever saw that document or website, which it seems to be a print-out from?

A. Yes, I - I'm pretty sure the first time I saw that particular document would have been when I went through the documents for this inquiry in December.

Q. Did you ever have any discussions with Ms Nys about approval procedures under the Oil-for-Food Program?

A. Not that I remember specifically, no.

Q. Mr Thurgood, I just want to, before I move on, deal with one further thing: you replied, at least in part, to Mr Davies' facsimile of 21 June 2001, did you not?

A. That's correct, I did.

Q. I can take you to the document if you like, but it is clear, isn't it, that in that reply you did not seek any clarification or information about the engineering services

1 fee that had been referred to in his letter under "reply"?  
2 A. That's correct, yes.  
3  
4 Q. Have you got any explanation for that?  
5 A. I would only be guessing.  
6  
7 Q. What's your guess?  
8 A. My guess is that I probably clarified it by phone and  
9 I - there was nothing to be confirmed.  
10  
11 THE COMMISSIONER: Q. You didn't refer in your response  
12 to any telephone call?  
13 A. No.  
14  
15 MR WIGNEY: Q. Doesn't that suggest to you that it is  
16 unlikely that you did have a telephone call, at least prior  
17 to the time that you dispatched your reply?  
18 A. Well, in reading through those documents, I must have  
19 given them verbal acknowledgment of acceptance of the  
20 contract, which means that I - if it wasn't mentioned in  
21 the fax, I must have called him. But that is - that's  
22 still guessing.  
23  
24 Q. Could this be an explanation: you considered that the  
25 less documents created about Rhine Ruhr's payment of the  
26 so-called engineering fees the better?  
27 A. That never entered my head at the time.  
28  
29 Q. As at June 2001 you have agreed that Mr Bryden was the  
30 senior employee of the Melbourne office of Rhine Ruhr;  
31 right?  
32 A. That's correct, yes.  
33  
34 Q. Was Mr Bryden involved in any of the negotiations in  
35 relation to this particular contract, the first contract?  
36 A. No.  
37  
38 Q. Did you have any discussions with Mr Bryden about it?  
39 A. Only probably to let him know that there was potential  
40 work to be prepared for engineering and manufacture, but  
41 nothing technically, nothing to do with the negotiations.  
42  
43 Q. Did you discuss with him, as at 21 June or  
44 thereabouts, the so-called engineering services fee?  
45 A. I can't recall specifically.  
46  
47 Q. Do you have any recollection whatsoever of discussing

1 the engineering services fee with Mr Bryden at any time?  
2 A. I unfortunately have no such recollection, no.

3

4 Q. Do you have any recollection of ever providing  
5 Mr Bryden with a copy of any of the documents to which we  
6 have just referred - that is, the contract, the purchase  
7 order and the one-page document?

8 A. I am sure I would have forwarded those documents to  
9 him, but, again, I can't say for certain. That would have  
10 been normal practice.

11

12 Q. In any event, it seems that this particular contract  
13 that we have been discussing in your evidence didn't  
14 ultimately proceed with the Iraqi authorities; is that  
15 right?

16 A. That's correct, yes.

17

18 Q. As a result, the contract or any other documents were  
19 never submitted through the United Nations approval?

20 A. I believe so; that's correct, yes.

21

22 Q. And can you tell us again, please, what the reason for  
23 that was?

24 A. Some months later we were informed that the vessel  
25 that this equipment was to be installed in had been  
26 condemned due to severe corrosion, so they had decided to  
27 replace the whole vessel and not just the internals.

28

29 Q. I want to take you now to what you have described in  
30 your statement as the second contract in relation to the  
31 Iraqi contracts, and that was the contract that ultimately  
32 was performed and approved in due course by the United  
33 Nations; do you understand?

34 A. Yes.

35

36 Q. It seems - and we will come to the documents in a  
37 moment - that the various proposals and negotiations in  
38 relation to the second contract overlapped, to a certain  
39 extent, with the proposals and discussions in relation to  
40 the first contract that we have just discussed?

41 A. That's correct.

42

43 Q. I want to take you, then, to those documents relating  
44 to the second contract. The first document I want to take  
45 you to is a document at RRP.0001.0014. You will see that  
46 on the screen. It is what appears to be a facsimile from  
47 the North Gas Company, in a sense, in substance, requesting

1 a tender; right?  
2 A. That's correct.  
3  
4 Q. Again, it seems to be addressed to Distall Australia,  
5 and you have already indicated that that was just a mistake  
6 on someone's part?  
7 A. That's correct, yes.  
8  
9 Q. This document certainly came to the attention of Rhine  
10 Ruhr; right?  
11 A. That's correct, yes.  
12  
13 Q. You will see that what it calls for is a quote for the  
14 supply of materials as per the attached. Now, this  
15 particular document doesn't seem to have an attachment, but  
16 what I wanted to point out to you and get your agreement  
17 with is that there is no reference in this document to the  
18 need to provide for an engineering services fee or any such  
19 matter; right?  
20 A. That's correct, yes.  
21  
22 Q. I just want to move through these documents. They are  
23 very similar to the documents created in relation to the  
24 first contract, so hopefully we can do it slightly faster  
25 than we did then. The next document I want to take you to  
26 is RRP.0001.0022. You will see that that is a fax from  
27 you, on Rhine Ruhr letterhead, to Mr Davies of Eastoft  
28 Hall, putting forward your quotation to North Gas Oil in  
29 response to the quotation we have just seen; right?  
30 A. Yes.  
31  
32 Q. Again, without taking you through all the sections of  
33 this quote again, it is in very similar terms to the  
34 standard quote that we referred to in the first contract;  
35 right?  
36 A. That's correct, yes.  
37  
38 Q. It talks about simply the supply of goods; right?  
39 A. That's correct.  
40  
41 Q. It has included in it Rhine Ruhr's standard provision  
42 in relation to installation and supervision; right?  
43 A. That's correct, yes.  
44  
45 Q. Again, you have already confirmed that that, if it was  
46 required or requested by the client, would be included in  
47 the actual contract documents; right?

1 A. That's correct.  
2  
3 Q. I don't need to take you to all of these documents.  
4 You have already agreed, I think, that the price in that  
5 document we are just referring to, or the quote, is for  
6 123,500 pounds; right?  
7 A. That's correct.  
8  
9 Q. That figure included 10 per cent commission to be  
10 payable to Mr Davies of Eastoft Hall; right?  
11 A. That's correct, yes.  
12  
13 Q. If I can take you next to the document at  
14 RRP.0001.0027, you will see - I think you will agree - that  
15 that is the document prepared by Mr Davies reformatting  
16 your quotation and putting it in a form suitable for the  
17 North Gas Company and the tender; right?  
18 A. That's correct.  
19  
20 Q. Again, it simply refers to the scope of the supply as  
21 being "design, manufacture, corrosion protection,  
22 inspection and packaging" of the goods described in the  
23 quotation; right?  
24 A. That's correct.  
25  
26 Q. Nothing about the provision of any services  
27 whatsoever; right?  
28 A. Yes.  
29  
30 Q. Nothing about the provision or payment of any fee;  
31 right?  
32 A. No.  
33  
34 Q. Incidentally, your impression from Mr Davies was,  
35 wasn't it, that it was the ordinary part of business of  
36 doing business with the Iraqi Ministry of Oil to have this  
37 engineering services fee included in contracts; right?  
38 A. Yes.  
39  
40 Q. That was your impression?  
41 A. By this point, yes.  
42  
43 Q. Did you not query, then, the fact that this quotation  
44 made no reference to what you were under the impression was  
45 a standard part of doing business?  
46 A. I didn't query it, no.  
47

1 Q. Why?  
2 A. I left it to Tony Davies to put in a quotation that  
3 was acceptable to the client. It was his job. That's what  
4 we were paying him for.  
5  
6 Q. But your impression was it was the ordinary part of  
7 doing business with the Iraqis, and yet in none of the  
8 documents that Mr Davies, the so-called expert, prepares on  
9 behalf of Rhine Ruhr is there any reference to it; right?  
10 A. That's correct.  
11  
12 Q. Could I ask you to look at the document at  
13 RRP.0001.0035. That would appear to be a fax from Rhine  
14 Ruhr, again to the North Gas Company, and it seems to be an  
15 amended further quote for the same materials --  
16 A. That's correct, yes.  
17  
18 Q. -- supply of the same goods; right?  
19 A. Yes.  
20  
21 Q. Is this a document that you saw on or about the date  
22 that it bears - 31 August 2001?  
23 A. I don't believe I did. I am fairly sure I didn't.  
24  
25 Q. Why do you say that?  
26 A. Well, to be honest, the first time I can recall seeing  
27 this document was in December last year.  
28  
29 Q. We will come to it in a moment. This document was in  
30 fact appended to the contract that was entered into, wasn't  
31 it?  
32 A. Yes.  
33  
34 Q. You are obviously familiar with the document now, at  
35 least, but, again, you will agree that it makes no  
36 reference whatsoever to the payment of an engineering  
37 services fee or the enhancement of the contract price to  
38 take into account such a payment; right?  
39 A. That's correct, yes.  
40  
41 Q. Again, that's entirely inconsistent, I would suggest,  
42 with your impression that you gained from Mr Davies that it  
43 was an ordinary part of doing business with the Ministry of  
44 Oil to pay an engineering services fee.  
45 A. That's correct.  
46  
47 Q. Could we go next, please, to the document at

1 RRP.0001.0038. Are you able to identify that? You can  
2 look at the entire document if you wish, but it is the  
3 contract that was in due course entered into between Rhine  
4 Ruhr and the Economics and Finance Department, the Ministry  
5 of Oil, and the Northern Gas Industry; right?

6 A. That's correct, yes.

7  
8 Q. Before I take you through that document, can I take  
9 you, please, to another document. Let me ask you this  
10 firstly: you are aware, are you not, and you were aware at  
11 the time, that in relation to this particular proposal  
12 Mr Davies, or his associates, struck a deal on behalf of  
13 Rhine Ruhr with the Iraqi entities for the supply of the  
14 goods referred to in the proposals that I have just taken  
15 you to for the price of 113,650 pounds; right?

16 A. That's correct, yes.

17  
18 Q. That was the agreement that was struck about the  
19 supply of goods; right?

20 A. That's correct, yes.

21  
22 Q. If you go, please, to the document at RRP.0001.0070,  
23 could that just be taken off the screen for a moment. I am  
24 told that that may be one of the documents including some  
25 commercially sensitive information. What I will do is  
26 provide to the court assistants an edited version. The  
27 edits are obvious in black text. I don't think the edits  
28 to this document, or redactions as they seem to be called  
29 these days, make any difference to the questions that I  
30 will ask you, but, in any event, do you identify this  
31 document, RRP.0001.0070, as an email from Mr Davies to you  
32 in relation to this particular quotation and contract?

33 A. That's correct, yes.

34  
35 Q. He's advising you of the substance of the negotiations  
36 that led to the agreement being struck for the supply of  
37 these goods at 113,650 pounds?

38 A. That's correct, yes.

39  
40 Q. Then he continues in the last paragraph:

41  
42 Please confirm if you are happy for us to  
43 sign and stamp the contract on these prices  
44 and if this is the case we add, as before,  
45 the extra 10% "Iraqi engineering services  
46 fee", to be covered by enhanced L/C.  
47

1 A. That's correct.  
2  
3 Q. The "as before" is obviously a reference to the  
4 documents that we have taken you to this morning in  
5 relation to the first negotiation?  
6 A. That's correct.  
7  
8 Q. So you understood, when you received this document,  
9 that whilst the agreement that had been struck for the  
10 supply of the goods was 113,650 pounds, that figure was to  
11 be, to use Mr Davies' words, enhanced by this 10 per cent  
12 Iraqi engineering services fee; right?  
13 A. That's correct.  
14  
15 Q. And the flipside was that Rhine Ruhr would be obliged  
16 to pay the same amount to an Iraqi entity; right?  
17 A. That's correct, yes.  
18  
19 Q. Mr Davies seeks your confirmation that he ought go  
20 ahead on the terms as suggested in this email; right?  
21 A. That's correct, yes.  
22  
23 Q. May we take it that you did give that confirmation?  
24 A. I think you can take that, yes.  
25  
26 Q. Consistently with your evidence this morning, you  
27 don't recollect any conversation you had with Mr Davies  
28 about the Iraqi engineering services fee; right?  
29 A. Nothing specific, no.  
30  
31 Q. Did you confirm with Mr Davies very soon after  
32 receiving this email on 20 October?  
33 A. I would have confirmed it almost straight away,  
34 I guess.  
35  
36 Q. Do you recall whether you did it orally or in writing?  
37 A. I can only assume that since there's nothing in  
38 writing I would have done it verbally. That was more my  
39 style anyway.  
40  
41 Q. Prior to confirming with Mr Davies that he ought go  
42 ahead on the terms as suggested in this email, did you seek  
43 to see any documentation whatsoever in relation to the  
44 so-called Iraqi engineering services fee referable to this  
45 contract?  
46 A. No.  
47

1 Q. None at all?

2 A. No.

3

4 THE COMMISSIONER: Q. Have you had a discussion with  
5 Mr Davies in the last month or two about this 10 per cent?

6 A. Not specifically. I think, as I mentioned earlier, he  
7 called me in December, but that was in response to a letter  
8 he received from our lawyers asking him to come to  
9 Melbourne, and I don't think we went - I avoided going into  
10 any detail about it.

11

12 Q. Mr Davies did come to Melbourne?

13 A. No.

14

15 MR WIGNEY: Q. Has Mr Davies been out to Australia at  
16 any time, to your knowledge, within the last, say, two or  
17 three months?

18 A. I don't believe so.

19

20 Q. As I understand it, it is your evidence that until  
21 recent times - that is, the collating of documents to  
22 produce them for this inquiry - you hadn't seen the  
23 contract that was ultimately signed on behalf of Rhine Ruhr  
24 in relation to this particular matter; is that right?

25 A. That's correct, yes.

26

27 Q. I should take you to it just to confirm one other  
28 thing. If there could be put on the screen, please --

29

30 THE COMMISSIONER: Could you put up RRP.0005.0541, please.  
31 Is that your signature, Mr Thurgood?

32 A. No.

33

34 Q. Do you know who put it there, what purports to be your  
35 signature?

36 A. On this document it is hardly recognisable as  
37 anything, but it is not my signature; I didn't sign it.

38

39 Q. What about the other note on it?

40 A. Sorry?

41

42 Q. What about the other note on the document?

43 A. I don't know. That seems to be in Arabic.

44

45 Q. Can we enhance that, please?

46 A. It means nothing.

47

1 MR WIGNEY: Q. Mr Thurgood, may we take it that you have  
2 seen that particular document that's on the screen before  
3 today?

4 A. Yes.

5  
6 Q. When did you first see it?

7 A. Possibly it was a week or so ago, when I was in  
8 discussion with my lawyers.

9

10 Q. Did it cause you any concern that this document had  
11 been created which at least purported to have been signed  
12 by you?

13 A. Well, if I say no, it was because I had picked up a  
14 similar problem with documents I looked at in December, and  
15 I was concerned then. Of course this is just one  
16 additional document.

17

18 Q. Can you tell us, please, what, if any, arrangements  
19 you had with those representing you in relation to the  
20 Iraqi market about the signature of documents on your  
21 behalf or on behalf of Rhine Ruhr?

22 A. Well, I don't believe we discussed that in detail, but  
23 we assumed the normal thing would be that whoever would  
24 sign it would sign it on my behalf and put, let's say, "PP"  
25 before my name, or something like that.

26

27 Q. When you saw this document, did you not think to  
28 contact Mr Davies to see if he was responsible for the  
29 affixation of your signature to it?

30 A. I probably thought that. Obviously I was a little bit  
31 upset when I saw it because it was the first time I had  
32 seen it in December and it did cause me some concern and  
33 I was a little bit unhappy about it.

34

35 Q. You will see that that document is consistent in some  
36 respects with the one-page document that I spent some time  
37 asking you questions about earlier this morning; right?

38 A. That's correct, yes.

39

40 Q. What you say now in relation to this document is that  
41 it doesn't contain an accurate statement in relation to  
42 what's been called the engineering services fee?

43 A. Sorry, I didn't quite catch your words there.

44

45 Q. What do you say about the contents of this document  
46 now that you have got it before you? Does it contain an  
47 accurate description of what you understood to be Rhine

1 Ruhr's obligations in relation to the payment of the  
2 so-called engineering services fee?  
3 A. Well, I guess, without hanging on every word, yes, it  
4 does.  
5  
6 Q. But, again, in the first line there is reference to a  
7 request. You have never seen --  
8 A. Mmm-hmm.  
9  
10 Q. -- a request from the North Gas Company for payment of  
11 such a fee, have you?  
12 A. That's correct.  
13  
14 Q. You never asked for one?  
15 A. I never saw such a request.  
16  
17 THE COMMISSIONER: Q. This was sent to you by Mr Davies  
18 at some point of time?  
19 A. I don't believe it was.  
20  
21 Q. Where do you think you got it from?  
22 A. This was passed to me by Mr Winneke last week, and  
23 that was the first time I believe I ever saw it.  
24  
25 MR WIGNEY: I should say, Commissioner - and there may be  
26 some evidence in due course about it - this document did  
27 not form part of the production by Rhine Ruhr; indeed, it  
28 was obtained from another source. I will clarify that in  
29 due course in evidence.  
30  
31 THE COMMISSIONER: Yes.  
32  
33 MR WIGNEY: Q. I just want to take you again through  
34 some of the documents relevant to this particular contract.  
35 The next one I want to take you to is the document at  
36 RRP.0001.0071. I am just being told that this is another  
37 confidential exhibit, so I will provide you with a hard  
38 copy edited version. I am sorry, this one has actually  
39 been marked, it seems - RRP.0007.0206. Could that document  
40 be put on the screen, please. It doesn't seem to be on the  
41 system. I will do it via the screening equipment again.  
42 You will see that this document is said to be a sales  
43 order. Is that in your handwriting?  
44 A. It is, yes. Mostly - I think the "CIP Kirkuk" is not,  
45 but I think the rest of it is all my handwriting.  
46  
47 Q. You will see that under the sales item details you

1 describe in brief terms the goods to be supplied.

2 A. Yes.

3

4 Q. Unit price being, or total price being, 108,900  
5 pounds, freight charges, making the total price the figure  
6 we have discussed earlier; that is, 113,650 pounds - right?

7 A. That's correct.

8

9 Q. There is some further detail in this document,  
10 including some budget items, budget breakdown; do you see  
11 that?

12 A. Yes.

13

14 Q. It includes what I gather to be an Australian dollar  
15 figure for the freight charges; right?

16 A. That's correct.

17

18 Q. As opposed to what had been provided for in the  
19 contract?

20 A. Yes.

21

22 Q. Commission to Eastoft Hall of \$25,000; that's a sum  
23 paid to Mr Davies; right?

24 A. That's correct, yes.

25

26 MR WIGNEY: I am sorry, that's one of the confidential  
27 figures. Perhaps, Mr Commissioner, having blurted it out,  
28 I should have an order made that it not be disclosed.

29

30 THE COMMISSIONER: Yes. I shall make that order.

31

32 MR WIGNEY: My apologies.

33

34 Q. What I wanted to point out to you, Mr Thurgood, is  
35 that there is no reference in that document to the  
36 so-called Iraqi engineering services fee?

37 A. Yes.

38

39 Q. Have you an explanation for that?

40 A. Unfortunately, I haven't. I only noticed that  
41 in December and I couldn't think why that was omitted.

42

43 Q. Well, it was a not insubstantial sum of 11,000 pounds,  
44 or the like?

45 A. Yes; that's correct.

46

47 Q. Again, could it be an explanation that you formed the

1 view that the less items of writing referring to the  
2 payment of this Iraqi engineering services fee the better?  
3 A. No, that's got nothing to do with it.

4  
5 Q. Just bear with me and I will keep going through these  
6 documents, if you wouldn't mind. I am sorry, I took you to  
7 the first page of the contract which was ultimately entered  
8 into. I want to take you to one other document in relation  
9 to it. Just bear with me while I get the barcode number.  
10 I will come back to that. Could we go, please, to  
11 RRP.0005.0543. You will see that that contains two emails.  
12 The bottom email, which is first in time, is an email from  
13 Mr Davies at Eastoft Hall to Richard B at Rhine Ruhr -  
14 that's Mr Bryden, may we take it?

15 A. That's correct.

16  
17 Q. There is a copy to you, referring to the purchase  
18 order for the regenerator trays that are the subject of  
19 this contract that we are discussing at the moment; right?

20 A. Right.

21  
22 Q. You have, in due course, forwarded that email on to  
23 Mardi Nys, the administrative assistant at Rhine Ruhr,  
24 together with a comment for her that the attached document  
25 appears to be urgent to start the ball rolling before  
26 Richard returns. May we take it that Mr Bryden was away  
27 from the office at this particular time?

28 A. I think that's an obvious conclusion, yes.

29  
30 Q. Your email attaches a purchase order, which was the  
31 document I was trying to find before, but I will come back  
32 to it, in relation to this particular contract, and then it  
33 refers to the fact:

34  
35 ..our Baghdad office has partly completed  
36 the form 986 which is required by the  
37 United Nations. After the form has been  
38 amended to include the US tariff code for  
39 these items at point 4b it should then be  
40 sent to the Australian Foreign Trade  
41 Department for sending on to the Australian  
42 Mission to the United Nations in New York  
43 for presentation to the 661 (technical  
44 approval) committee.

45  
46 Right?

47 A. Mmm-hmm.

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Q. May we take it that you were aware of these procedures that had to be gone through for the approval of this

contract as a result of this email received from Mr Davies?

A. Not in detail. When I saw that it was something that I didn't want to have a look at, so that's why I sent it to Mardi, because I felt that it was more her department than mine.

Q. You have certainly agreed already that you understood and were aware that the contract had to be approved under the Oil-for-Food Program by the United Nations; right?

A. Yes, I did, yes.

Q. The reference in this document to "form 986", if I can take you, please, to this document, RRP.0001.0076, you will see that that's a document headed "Notification or request to ship goods to Iraq"; do you see that?

A. Yes.

Q. Do you agree that it was that form, albeit in a partially completed state, that had been attached to this email from Mr Davies to you?

A. Well, I don't believe I opened the attachment. I don't believe I have seen that at the time.

Q. Mr Thurgood, you understood that obtaining United Nations approval for this contract was an imperative; it was necessary?

A. That's correct, yes.

Q. It was an important matter?

A. Yes.

Q. A matter in which you took interest?

A. That's correct.

Q. And you are suggesting that you didn't look at the document at all, you simply forwarded it on to Ms Nys; is that what you are saying?

A. That appears to be the case, yes.

Q. Well, you say "it appears to be the case"; is that your recollection or are you guessing again?

A. I don't believe I opened it. I don't believe I opened the attachment.

1 Q. In any event, you forwarded it on to Mardi Nys and  
2 effectively asked her to start the ball rolling, by which  
3 I gather you mean complete the form; right?  
4 A. Yes, I guess so - do whatever she can until Richard  
5 comes back to take it over.  
6  
7 Q. Did you tell Ms Nys about the fact that the contract  
8 price had been, to use Mr Davies' word, enhanced by the  
9 engineering services fee?  
10 A. I can't recall if I told her or not specifically.  
11  
12 Q. You would agree that it would be important, if the  
13 form was to be filled out correctly, for the person filling  
14 it out to be aware of that - do you agree?  
15 A. I would agree, yes.  
16  
17 Q. Ms Nys hadn't been involved at all in the  
18 negotiations; right?  
19 A. Mmm-hmm.  
20  
21 Q. Correct?  
22 A. Agreed, yes.  
23  
24 Q. She was really an administrative officer; she wasn't  
25 an engineer or a person involved in contract negotiations,  
26 was she?  
27 A. No.  
28  
29 Q. And, as far as you were aware, she is just being sent  
30 the form in a contract document, she would have no means of  
31 knowing about the enhancement of the contract price; right?  
32 A. If I hadn't have told her she wouldn't have known.  
33  
34 Q. It would have been important to tell her, wouldn't it?  
35 A. Yes.  
36  
37 Q. But you didn't?  
38 A. I'm not saying I didn't, I just - I can't recall if  
39 I told her or not.  
40  
41 Q. Well, you certainly didn't in this email forwarding  
42 the form on to her; right?  
43 A. That's correct, yes.  
44  
45 Q. May we take it that you impressed upon Ms Nys the  
46 importance of completing these documents accurately?  
47 A. That would have been understood, yes.

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Q. Did you tell her that?

A. I don't recall specifically saying that.

Q. Where you have referred to the fact in this email that Ms Nys should start the ball rolling before Richard returns, is it the situation that Mr Bryden, being the senior officer in the Melbourne office, was the person ultimately responsible for ensuring the submission of this form to the appropriate body?

A. I don't think it quite infers that. The email from Tony Davies was directed to Richard, and it would have normally been Richard who would delegate, or sub-delegate to Mardi anything which he felt that Mardi would be more capable of doing, but because Richard wasn't there, obviously he couldn't do that, it would be delayed until he got back to the office. So, to avoid delays, I copied it to Mardi so that she could do whatever was in her domain to look after.

Q. But do you agree with my suggestion that ultimately Mr Bryden, as the senior officer in the Melbourne office, would have been expected to be responsible for checking the documents ultimately submitted to the United Nations?

A. Yes.

Q. This document that's on the screen, you have seen it in recent times, have you?

A. Yes.

Q. You have seen it in preparation for your evidence today, in the preparation of your brief of evidence; right?

A. Yes. I have seen it. I have actually not looked at it in detail, but I have seen it.

Q. What do you mean you haven't looked at it in detail?

A. Well, I - I didn't go through it word for word.

Q. When was the first time you saw it?

A. In December.

Q. Of last year?

A. Yes, last year, yes.

Q. You are aware, aren't you, that, I think in the latter stages of 2004 and into the early stages of 2005, the Independent Inquiry Committee of the United Nations was

1 conducting investigations, inter alia, into Rhine Ruhr's  
2 participation in the Oil-for-Food Program; right?  
3 A. That's correct, yes.  
4  
5 Q. You were still a director of Rhine Ruhr, obviously, at  
6 that time; right?  
7 A. That's correct, yes.  
8  
9 Q. We will come to it shortly, but you had some  
10 involvement in responding to the inquiries by the  
11 Independent Inquiry Committee?  
12 A. That was left to Jim Tyzzer, as the principal contact.  
13  
14 Q. Did you cause any inquiries or investigations to be  
15 made internally within Rhine Ruhr at the time of the IIC  
16 inquiry?  
17 A. No.  
18  
19 Q. You didn't seek to look at the documents that had in  
20 fact been submitted to the United Nations under the  
21 Oil-for-Food Program at that time?  
22 A. No.  
23  
24 Q. Not at all?  
25 A. Not at all.  
26  
27 Q. Let's just have a quick look at this document now,  
28 then, notwithstanding the fact that you have only seen it  
29 in recent times. I just want to take you to a couple of  
30 passages in it. Let's just, I suppose, cut to the chase:  
31 you would agree, wouldn't you, that there is absolutely no  
32 reference in this document to the payment of an engineering  
33 services fee; agreed?  
34 A. That's correct, yes.  
35  
36 Q. If you look in box number 5, a quarter of the way down  
37 the page, you will see "Goods to be shipped", and it seeks  
38 a description of the goods; right?  
39 A. Yes.  
40  
41 Q. It attaches a document. I will come to the attachment  
42 in a moment, but the detail includes two sets of the  
43 attached items that we will come to in a moment, with a  
44 total value of 125,015 pounds sterling?  
45 A. Right.  
46  
47 Q. That, as we know, is the price that has been enhanced

1 to include the engineering services fee; right?  
2 A. That's correct, yes.  
3  
4 Q. You would agree that, on the face of this document,  
5 there is absolutely nothing to suggest that the contract  
6 price had been enhanced to incorporate the payment of that  
7 fee or any other fee, tax or impost; right?  
8 A. Yes, I agree.  
9  
10 Q. You would agree that, on its face, this document is  
11 quite misleading as to the total price of the goods to be  
12 supplied, wouldn't you?  
13 A. I can see that now, yes.  
14  
15 Q. Did you see it at the time that you looked at it  
16 in December of last year?  
17 A. It possibly looked that way.  
18  
19 Q. Why do you say "possibly"?  
20 A. Well, as I say, I don't think I looked at that  
21 particular document in detail.  
22  
23 Q. I think, for completeness, you should look at the  
24 various annexures to it - RRP.0001.0077. Can we just go to  
25 that. That is the attachment referable to box 5, "Goods to  
26 be shipped". It simply sets out the particulars of the  
27 goods to be supplied; right?  
28 A. Mmm-hmm - yes.  
29  
30 Q. Again, no reference to the engineering services fee or  
31 the fact that the price had been enhanced to allow that to  
32 be paid; right?  
33 A. That's correct.  
34  
35 Q. If we could just go back to the first page of that  
36 form, page 0076, you will see that there is a box 16,  
37 "Additional information". Again, it says "see attached".  
38 That allows for the insertion of additional information  
39 referable to the contract being approved; do you agree?  
40 A. Yes.  
41  
42 Q. If one goes over to page 0078 on this document, there  
43 is the insertion of the information, being additional  
44 information. Again, there is no reference whatsoever to  
45 the engineering services fee; right?  
46 A. I don't see it, no.  
47

1 Q. You will agree that, on its face, this document  
2 presents quite a misleading picture of the contract?  
3 A. Yes, I would have to agree with that, yes.  
4  
5 Q. And is that a matter of concern to you now?  
6 A. Now it is, yes.  
7  
8 Q. You say you didn't see this until December?  
9 A. No.  
10  
11 Q. Notwithstanding the fact that the IIC was making  
12 inquiries in relation to this matter in late 2004, early  
13 2005?  
14 A. Unfortunately, it didn't occur to me to look back and  
15 check these documents.  
16  
17 Q. You are certainly aware that the United Nations  
18 approved this contract under the Oil-for-Food Program,  
19 aren't you?  
20 A. Yes.  
21  
22 Q. Did you see the UN approval at the relevant time -  
23 that is, back in 2001?  
24 A. I can't specifically recall seeing it.  
25  
26 Q. If we go to RRP.0001.0127, you identify that as the  
27 United Nations approval; right?  
28 A. That's correct.  
29  
30 Q. You will see that it includes a box with the specified  
31 goods to be shipped, it being a contract to supply those  
32 goods being approved; right?  
33 A. That's correct.  
34  
35 Q. If you go to RRP.0001.0128, you will see that that is  
36 the particulars of the goods subject to the United Nations  
37 approval; right?  
38 A. That's correct, yes.  
39  
40 Q. Back in 2001 you were obviously concerned to know  
41 whether or not the United Nations approved this contract;  
42 right?  
43 A. Yes.  
44  
45 Q. Because without the approval it couldn't proceed;  
46 right?  
47 A. Without the approval it wasn't an order.

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Q. You knew that it had been approved?

A. Yes.

Q. Did you ask to see the approval?

A. I don't believe I did.

Q. Wouldn't that have been important for you to be aware of what, in fact, had been the subject of approval?

A. In hindsight, yes.

Q. You weren't closing your eyes to all of this because you knew about the so-called Iraqi engineering services fee, were you?

A. No.

Q. Trying to stay as far away from the processes as you could?

A. No.

THE COMMISSIONER: Is that a convenient time, Mr Wigney?

MR WIGNEY: Yes.

THE COMMISSIONER: Very well. I will adjourn until 2 o'clock.

LUNCHEON ADJOURNMENT

1 UPON RESUMPTION:

2

3 MR WIGNEY: Q. Mr Thurgood, you agreed shortly before  
4 the luncheon adjournment that the United Nations form -  
5 I'll show it to you again if need be - presents a quite  
6 misleading picture of the contract between Rhine Ruhr and  
7 the Iraqi entities; correct?

8 A. That's correct, yes.

9

10 Q. You would agree, wouldn't you, that if that form was  
11 provided to the United Nations and there was not provided  
12 with it any document that specified that the price of the  
13 goods had been enhanced to provide for an engineering  
14 service fee, then the UN approval had been obtained on the  
15 basis of misleading information?

16 A. I can agree with that, yes.

17

18 Q. Do you accept as at today that the 10 per cent fee  
19 referred to as an engineering services fee in fact had  
20 nothing whatsoever to do with the provision of engineering  
21 services, installation, verification, and the like?

22 A. No, I can't accept that.

23

24 THE COMMISSIONER: Q. Why is that?

25 A. Well, I think there are some questions to be asked.  
26 Obviously it is suggesting that we've been misled, but I  
27 don't think at this stage that it is proven that it wasn't  
28 initially intended for that purpose.

29

30 Q. It plainly wasn't because you were paying the money.  
31 You were to be paid the money and you weren't providing the  
32 services.

33 A. I agree there's a question, but I'm not convinced  
34 personally. Maybe at the end of this I will be convinced.  
35 Hopefully you can convince me.

36

37 Q. I'm not going to convince you; I'm not going to try.  
38 But I don't understand how you can give the answer you did  
39 when you have previously agreed that you paid in excess of  
40 10 per cent which you knew was above the contract price --

41 A. Yes.

42

43 Q. -- which you knew was said to be for the provision of  
44 engineering services and which you knew were services you  
45 were not providing and therefore you shouldn't have  
46 received the money.

47 A. Well, that part is correct, yes.

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MR WIGNEY: Q. Mr Thurgood, have you seen anything as of today's date - so that includes documents that you reviewed for the purpose of giving evidence today - that gives you cause to doubt that the 10 per cent payment in fact related to the provision of engineering services of some sort?

A. Well, as I said earlier, I think the United Nations inquiry raised a lot of questions. Yes, certainly going back through the documents I can see one or two little things which, in retrospect, possibly we should have noticed and maybe asked a few questions.

Q. Perhaps we might come to some of those documents in a moment, but can I again just ask you this general question: I think your evidence is to the effect that you got the impression from Mr Davies that the engineering services fee, so-called, was known to and approved by the United Nations; is that right?

A. That's correct, yes.

Q. If it turns out to be the case that that was not correct - that is, that the United Nations did not know and did not approve of the payment of such fees - it follows, does it not, clearly, that Mr Davies misled you?

A. I would have to agree with that, yes.

Q. You're aware, are you not, that the 11,365 pounds supposedly referable to the engineering services fee was paid by Eastoft Hall?

A. That's correct, yes.

Q. You paid some money to Eastoft Hall to enable that to occur, did you not?

A. That's correct, yes.

Q. That payment was made prior to the delivery of the goods to Iraq?

A. Yes.

Q. Let me just ask you this: to whom did you understand the fee was ultimately to be paid?

A. Well, I know now, reading the documents, it was intended to be paid to the oil ministry or the refinery, but I guess at that stage I didn't take a lot of notice.

Q. Prior to July of 2002 you were still the managing director of Rhine Ruhr, were you not?

1 A. That's correct, yes.  
2  
3 Q. The buck stopped with you, did it not, in relation to  
4 these sorts of issues?  
5 A. Unfortunately, yes.  
6  
7 Q. You knew at the time that the payment of this fee was  
8 to be paid firstly to Mr Davies and then onwards to an  
9 Iraqi entity; correct?  
10 A. I was informed that there were problems with the  
11 payment, and I also was informed that Tony Davies stepped  
12 in to assist us, and he arranged that payment.  
13  
14 Q. Well, let's perhaps go to some documents in relation  
15 to this. I think you've already agreed in your evidence  
16 that Mardi Nys, the administrative assistant at Rhine  
17 Ruhr's offices in Melbourne, reported to you directly;  
18 correct?  
19 A. That's correct, yes.  
20  
21 Q. Usually on a daily basis?  
22 A. Most days, yes.  
23  
24 Q. You expected her to inform you of matters of  
25 significance to Rhine Ruhr?  
26 A. That's correct, yes.  
27  
28 Q. As far as you were aware, she did so?  
29 A. Yes.  
30  
31 Q. I think you've already agreed that you expected her  
32 to, and understood that she did, copy you in on important  
33 correspondence; right?  
34 A. I assume she did, yes.  
35  
36 Q. That included copying to you various emails relating  
37 to this contract; right?  
38 A. That's correct, yes.  
39  
40 Q. Can I take you, please, to this document,  
41 RRP.0001.0204. You'll see that that is an exchange of  
42 emails. There's two on the page. If you look at the  
43 bottom one, it's an email from Eastoft Hall - that's  
44 Mr Davies - to Richard Bryden on 10 July 2002; right?  
45 A. Yes.  
46  
47 Q. Then it would appear that Mr Bryden has replied to

1 that email on the top of the page and indicated that "Mardi  
2 will deal with you direct regarding the fee"; do you see  
3 that?

4 A. Well, it's hardly legible, but I'll take your word for  
5 it.

6

7 Q. I can provide you with a hard copy of the document if  
8 you wish, but I particularly want to direct your attention  
9 to the bottom of the email in any event and the numbered  
10 paragraph 4. Can I ask you firstly, do you remember seeing  
11 this email exchange?

12 A. Not specifically, no.

13

14 Q. Do you see that paragraph 4 reads as follows:

15

16 Before the goods will be allowed to be  
17 shipped to Umm Qasr we will have to provide  
18 the shipping company with the official  
19 receipt for the 10% Iraqi Government Fee  
20 added to the contract of UK11,365 pounds.  
21 Can you ask Mardi if she needs an Eastoft  
22 Hall Ltd invoice to cover this cost and we  
23 will make the arrangements as to where this  
24 money needs to be transferred so that we  
25 can obtain the receipt.

26

27 Do you see that?

28

29 A. Yes.

30

31 Q. Does that refresh your memory as to whether you've

32

33 seen this document before?

34

35 A. It doesn't.

36

37 Q. You'll see that the fee is now simply referred to by  
38 Mr Davies as a "10 per cent Iraqi Government Fee"; do you  
39 see that?

40

41 A. That's correct, yes.

42

43 Q. Have you seen this document at any time?

44

45 A. I'm not sure. It wasn't one of the documents that  
46 were passed to me to review last month, because it did not  
47 have my name on it, so I can't be sure. I may have  
stumbled on it elsewhere, but I can't say for sure.

48

49 Q. Do you recall at any time Mr Davies referring in  
50 correspondence to the fee as something other than an  
51 engineering services fee?

52

1 A. Well, at the time, no, but, yes, in reviewing the  
2 documents, we have noticed different descriptions.

3

4 THE COMMISSIONER: Q. But this document is suggesting  
5 something different as well?

6 A. Yes.

7

8 Q. It's suggesting that Eastoft Hall would provide your  
9 company with an invoice --

10 A. Yes.

11

12 Q. -- for moneys that, according to the email, were to go  
13 to the Iraqi Government?

14 A. Yes.

15

16 Q. Why would he ever suggest that an invoice should come  
17 from his company?

18 A. Look, I can't say for sure, but I seem to recall that  
19 Mardi had some difficulty in finding out where that money  
20 should be paid to, but I'm only guessing.

21

22 MR WIGNEY: Q. You'll see in this email, as well as the  
23 fact that the fee is referred to as an "Iraqi Government  
24 Fee", which, on its face, suggests that the payment is to  
25 be made to the Iraqi Government, right --

26 A. Yes.

27

28 Q. -- in the second-last and last line, Mr Davies states:

29

30 ...we will make the arrangements as to  
31 where this money needs to be transferred to  
32 so that we can obtain the receipt.

33

34 On its face, that suggests that Mr Davies wasn't aware of  
35 the precise arrangements as to payment; right?

36 A. That's what we can see now, yes.

37

38 THE COMMISSIONER: Q. But he did know where he could pay  
39 it to, or he could find out where he could pay it to, so he  
40 could get a receipt for the Iraqi Government's fee,  
41 apparently?

42 A. I guess if I'd known this at the time I may have been  
43 surprised, because I was led to believe Tony Davies knew  
44 all of this, so it would have surprised me if he didn't  
45 know. Looking at it now, it does have that suggestion,  
46 that he didn't know.

47

1 MR WIGNEY: Q. Mr Thurgood, in this email that we're  
2 looking at there's a reference to Eastoft Hall providing an  
3 invoice. You're aware, are you not, that Eastoft Hall did  
4 provide an invoice?

5 A. Yes, I'm aware, yes.

6

7 Q. Indeed, as I understand it, you accept that ultimately  
8 you were the person responsible for approving the payment  
9 of that invoice; is that right?

10 A. That's correct, yes.

11

12 Q. If we can go to those documents, please, the first is  
13 RRP.0001.0205. That is an email from Mr Davies to  
14 Mardi Nys, the administrative assistant, attaching, no  
15 doubt electronically, an invoice and requesting payment to  
16 be made into a bank account in the United Kingdom in the  
17 name of Eastoft Hall Ltd; right?

18 A. That's correct.

19

20 Q. You've accepted that you ultimately were responsible  
21 for approving payment of the invoice. Do you recall seeing  
22 the invoice at the time?

23 A. No.

24

25 Q. Well, if you go over the page to 0206 on the screen,  
26 please, you'll see that that is a document on the  
27 letterhead of Eastoft Hall Ltd. It's addressed to Rhine  
28 Ruhr. Then, under the heading on the left-hand side of the  
29 page, just under halfway through, it has "Service Details";  
30 do you see that?

31 A. Yes.

32

33 Q. "Technical Service/Engineering fee in respect of  
34 Contract NGI/10/12"; right?

35 A. That's correct.

36

37 Q. Do you agree that, on its face, this document suggests  
38 that Eastoft Hall has provided a service for which  
39 Rhine Ruhr is to make a payment?

40 A. I guess that is a reasonable deduction, yes.

41

42 Q. You would agree that if in fact the intention was  
43 simply that Mr Davies was to receive a payment referable to  
44 the fee and then pay it on to the Iraqi entities, this  
45 invoice is quite misleading, is it not?

46 A. Yes, I think I can agree with that.

47

1 Q. Do you recall seeing it at the time?

2 A. No.

3

4 Q. Are you able to offer any explanation for why an  
5 invoice, on its face misleading, was created?

6 A. No.

7

8 THE COMMISSIONER: Q. But you approved payment?

9 A. Well, I didn't put any stamp or signature on it. It  
10 was just understood that - like many invoices that would  
11 have gone through the company at the time, I didn't have to  
12 see them. This was probably one of many invoices that went  
13 through the company at that particular time.

14

15 Q. So who was it who decided whether to pay an invoice or  
16 not?

17 A. It would have been ultimately Mardi, but she wouldn't  
18 do that without either myself or Richard acknowledging that  
19 it was a correct payment.

20

21 Q. Did you acknowledge that this was a correct payment?

22 A. Well, of course I knew about the fee, so if she'd  
23 asked me, I would have agreed.

24

25 Q. Even though you knew the invoice was false?

26 A. Well, I don't believe I saw the invoice, but --

27

28 Q. No, no, you said you would have approved it, even  
29 though you knew the invoice was false?

30 A. I guess, if I'd seen the invoice, I probably wouldn't  
31 have queried it at the time.

32

33 Q. Even though you knew it was false?

34 A. Well, I probably wouldn't have known it was false,  
35 because I didn't - I wouldn't have looked at it in the same  
36 way as it's being looked at right now.

37

38 Q. But you would have, because you knew that your company  
39 had not received any technical or engineering services from  
40 Eastoft Hall in relation to that contract. You knew, in  
41 fact, that the sum there sought was a payment to the Iraqi  
42 Government.

43 A. Yes.

44

45 Q. So you knew the invoice was false, yet you still would  
46 have approved it?

47 A. Unfortunately, I probably wouldn't have looked into

1 it - looked at it in such detail. I wouldn't have - it  
2 would have just - I would have just looked at it on face  
3 value and said, "That belongs to that one, so we'll pay  
4 it."

5

6 Q. Would you have claimed this service fee as a tax  
7 deduction?

8 A. Well, yes, it would have been included in the  
9 expenses, it would have been included in the costs, I would  
10 imagine, of the job.

11

12 Q. Just as you'd include in the income aspect of your  
13 accounts the moneys which you were drawing down for the  
14 United Nations ultimately to pay to Iraq?

15 A. Yes, because that was actual income, it must have been  
16 included, yes.

17

18 Q. No doubt as income from sales, which you knew it  
19 wasn't?

20 A. Well, I'd have to think about that. I don't think I  
21 agree with you.

22

23 Q. What, that the extra 10 per cent was the product of a  
24 sale?

25 A. Well --

26

27 Q. It plainly wasn't.

28 A. The engineering services fee was put in our quote as  
29 if we'd used another subcontractor. The subcontractor in  
30 this case happened to be the customer.

31

32 Q. But that's attributing reality to a transaction which  
33 you knew was entirely fictitious, because there was nothing  
34 that your company had to do, or so far as you were aware,  
35 there was nothing that the purchaser had to do in relation  
36 to this excess 10 per cent.

37 A. I think --

38

39 Q. Indeed, by now you knew it was a payment to the Iraqi  
40 Government.

41 A. I don't believe we saw it that way at the time.

42

43 Q. It says so in the document we just looked at - the  
44 previous document we just looked at, "10 per cent  
45 government fee", or words to that effect, "Iraqi fee", so  
46 you knew that.

47 A. Well, I guess, even if I hadn't seen that particular

1 email, the oil refinery was owned by the government, so it  
2 was obviously a government fee.

3

4 MR WIGNEY: Q. As I understand your evidence,  
5 Mr Thurgood, you understood at the time that this fee was  
6 to be paid to the end user in the contract - that's the  
7 North Gas Industry company - is that right?

8 A. That was my understanding, yes.

9

10 Q. It would have been a fairly straightforward thing to  
11 have inquired of North Gas Company what account to pay that  
12 fee into; right?

13 A. I think normally that would have been the case, yes.

14

15 Q. You're an engineer, you know what a conduit is, do you  
16 not?

17 A. I suppose so. I don't know what you're getting at,  
18 but I know what a conduit is.

19

20 Q. That's what Mr Davies and Eastoft Hall was in relation  
21 to the payment of this fee; right?

22 A. Yes.

23

24 Q. It went into his account and then he paid it off, you  
25 understood, to NGI, North Gas Industry; right?

26 A. I guess that's the way I understood it, yes.

27

28 Q. Did you follow up with Mr Davies as to whether he in  
29 fact did pay it to the North Gas Industry?

30 A. Personally, no.

31

32 Q. Why not?

33 A. I had staff in Melbourne to do that. My  
34 responsibility at that stage was to find more work for the  
35 company.

36

37 Q. You had staff in Melbourne that reported to you as  
38 managing director?

39 A. Yes. Yes.

40

41 Q. Did you ever ask them to look into and confirm with  
42 Mr Davies that the money had been paid to the North Gas  
43 Industry?

44 A. Not specifically.

45

46 Q. Why not?

47 A. Well, it was probably, I felt, one of the things, if

1 they saw a problem, they'd inform me. If I wasn't  
2 informed, I'd assume there was no problem. In fact, I  
3 didn't know there was a problem because that piece of paper  
4 was hard to come by later, but at the time I --

5

6 Q. We'll come to those documents in a moment. Let's just  
7 deal with your state of knowledge as at 11 July 2002, or  
8 thereabouts, when, as I understand it, you or Mr Bryden  
9 authorised the payment of this money to Eastoft Hall, okay;  
10 do you understand?

11

12

13 Q. As I understand your evidence - I'll just put it in  
14 shortform - you were aware that a contract had been entered  
15 into at this stage with the North Gas Industry; right?

16

17

18 Q. As I understand your evidence, you hadn't seen the  
19 contract with NGI by that stage, right?

20

21

22 Q. You had seen an earlier draft contract in relation to  
23 the first contract; right?

24

25

26 Q. You knew that that contract had nothing in it relating  
27 to the payment of an engineering services fee; right?

28

29

30 Q. May we assume that you assumed at the time - that's at  
31 July 2002 - that the contract in relation to this  
32 particular matter also would have contained no reference to  
33 the engineering service fee?

34

35

36

37 Q. I see. As at July of 2002 you had seen nothing, no  
38 piece of paper, from the Iraqi side requesting or requiring  
39 the payment of this fee; right?

40

41

42 Q. The only thing that you had seen in writing in  
43 relation to this fee was the reference in Mr Davies' email  
44 that we took you to before lunch about the engineering  
45 service fee being added to the contract price; right?

46

47

1 Q. You'd seen a one-page document in relation to the  
2 earlier contract; right?  
3 A. That's correct, yes.  
4  
5 Q. You'd seen no document whatsoever in relation to this  
6 particular contract?  
7 A. That's correct.  
8  
9 Q. You're uncertain of whether you'd seen the Eastoft  
10 Hall invoice that is still on the screen; right?  
11 A. That's correct.  
12  
13 Q. If you had seen it, you would have noticed that it was  
14 quite inconsistent with those other documents; right?  
15 A. Perhaps.  
16  
17 Q. And misleading; right?  
18 A. Perhaps, yes.  
19  
20 Q. The only other information you had obtained about the  
21 so-called engineering services fee was an impression you  
22 believe you had gleaned from Mr Davies that this was an  
23 ordinary part of doing business with the Ministry of Oil;  
24 right?  
25 A. That's correct, yes.  
26  
27 Q. But you'd done nothing to confirm whether that was so?  
28 A. That's correct.  
29  
30 Q. You'd seen nothing in writing from the Department of  
31 Foreign Affairs and Trade to suggest that this sort of fee  
32 was properly payable under the Oil-for-Food scheme; right?  
33 A. That's correct.  
34  
35 Q. Likewise, you'd seen nothing in writing in any form  
36 from the United Nations to the same effect - that is,  
37 suggesting that it was known to and approved by the United  
38 Nations; right?  
39 A. That's correct.  
40  
41 Q. You'd made no inquiries of either of those bodies -  
42 the Department of Foreign Affairs and Trade or the United  
43 Nations - about the payment of such a fee; right?  
44 A. That's correct.  
45  
46 Q. You were aware that UN approval had been obtained, but  
47 you can't presently recollect whether you saw that UN

1 approval document in writing; right?  
2 A. That's correct, yes.  
3  
4 Q. If you had seen it, of course, it would have made no  
5 reference whatsoever to the engineering services fee.  
6 A. Yes.  
7  
8 Q. Mr Thurgood, by this stage, July of 2002, can I  
9 suggest to you that you must have known, at least  
10 suspected, that this so-called engineering fee in fact was  
11 not a fee approved in any way by the United Nations; right?  
12 A. No, I never suspected anything.  
13  
14 Q. Did you know or suspect by this time that the fee was  
15 not in truth a fee relating to engineering services or the  
16 installation of goods?  
17 A. No.  
18  
19 Q. Had you seen the Department of Foreign Affairs and  
20 Trade's permission to export?  
21 A. I cannot be sure if I saw that or not.  
22  
23 Q. Well, let's just make certain about that. It might  
24 refresh your memory. If you go to the document  
25 RRP.0001.0124, would you see if that refreshes your  
26 recollection about whether you had seen that permission to  
27 export before?  
28 A. I just can't recall if I saw that at the time. As far  
29 as I know the first time I saw that was in December last  
30 year.  
31  
32 Q. If you had looked at it at the time, it would have  
33 been apparent to you that the only thing that had been  
34 permitted by this document was the supply of goods under  
35 the contract referred to; right?  
36 A. Yes.  
37  
38 Q. Nothing at all about engineering services fee --  
39 A. That's correct, yes.  
40  
41 Q. -- or any other fee payable to an Iraqi entity; right?  
42 A. Yes.  
43  
44 Q. You say, do you, that you weren't closing your eyes to  
45 what was really going on in relation to this fee at the  
46 time?  
47 A. Not deliberately.

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THE COMMISSIONER: Q. Have you subsequently read this permission to export?

A. Yes, I guess I have.

Q. Do you see what Schedule Part 3 says:

This permission is granted because the exportation from Australia of the goods specified in Part 1 of the schedule does not infringe the UN Security Council sanctions against Iraq.

A. That's correct.

Q. But here was your company engaging in a transaction paying an excess fee of 10 per cent unrelated to goods, said to be for provision of engineering services which you were not providing at all, and you say you didn't even think about whether or not any question of sanctions or sanctions busting was involved?

A. That's correct.

Q. Because you'd been told by an agent that paying a 10 per cent fee in Iraq was a usual Iraqi business transaction, or the usual way of doing business in Iraq?

A. I guess so, yes.

Q. What did you think the 10 per cent was for? You knew it wasn't for an engineering fee, because you weren't providing that service.

A. Well, somebody had to provide that service.

Q. Yes, but not you, not your company. So it should have had nothing to do with your company. You weren't asked to provide the service, you weren't providing the service, but you were charging for it, so you say.

A. That's correct.

Q. By adding in undisclosed a 10 per cent excess on the contract price. None of this, you say, gave rise to any concern at all?

A. Unfortunately it didn't.

MR WIGNEY: Q. Mr Thurgood, you do recall, however - I think you've already adverted to it in your evidence - that at some stage in the latter part of 2002 you became aware

1 of an issue relating to the evidencing of this payment of a  
2 10 per cent fee; right?  
3 A. That's correct, yes.  
4  
5 Q. You were aware that, prior to the goods actually being  
6 able to be shipped to or unloaded at the docks in Iraq,  
7 there had to be provided a receipt evidencing this payment;  
8 right?  
9 A. That's correct, yes.  
10  
11 Q. I want to take you to a couple of documents in  
12 relation to that. That obviously became a matter of some  
13 considerable concern to Rhine Ruhr; correct?  
14 A. Yes.  
15  
16 Q. Rhine Ruhr had paid out some 11,000 pounds to  
17 Mr Davies; right?  
18 A. Mmm.  
19  
20 Q. You don't know where he was going to pay it; right?  
21 A. That's correct.  
22  
23 Q. You were told by him that he had paid it to someone;  
24 right?  
25 A. That's correct.  
26  
27 Q. Now there was an issue as to evidence of the fact that  
28 it had in fact been paid; right?  
29 A. That's correct.  
30  
31 Q. Surely at that stage you must have started to become  
32 concerned about what was going on in relation to this fee?  
33 A. I would have been concerned.  
34  
35 Q. And surely, when you became so concerned, you would  
36 have yourself, as a director of this company, made  
37 investigations about what was going on, to whom this fee  
38 had been paid and what it was payable for; would you agree?  
39 A. I would agree.  
40  
41 Q. Again, you've already agreed that it was ordinarily  
42 the case that important documents and correspondence would  
43 be copied to you as a director of the company from Ms Nys  
44 and Mr Bryden; right?  
45 A. That's correct.  
46  
47 Q. Could you go to this document, please, RRP.0001.0332.

1 You see that that is an email from Mr Davies at Eastoft  
2 Hall of 6 September 2002. It's to a Brenda Georgeson at  
3 Hartrodt.com.au. I pause there. You're aware that  
4 Hartrodt were the freight forwarders retained by Rhine Ruhr  
5 to consign this shipment overseas?

6 A. Yes.

7  
8 Q. It's copied to Mardi Nys. I want to read a passage to  
9 you. Can I ask you this question firstly: do you recall  
10 seeing this document?

11 A. I don't specifically recall seeing that document at  
12 the time, no.

13  
14 Q. You've certainly seen it since, though?

15 A. I have, yes.

16  
17 Q. Mr Davies says:

18  
19 We are the agent for the Iraqi market for  
20 Rhine Ruhr as well as about 12 other  
21 companies from around the world.

22  
23 He then says:

24  
25 We normally would be expected to have paid  
26 the money deposited by Rhine Ruhr to the  
27 State Company for Internal Transportation  
28 in either Baghdad or Umm Qasr...

29  
30 Do you see that?

31 A. Yes.

32  
33 Q. That statement is entirely inconsistent with what you  
34 say your belief was at the time; that is, that this fee was  
35 to be paid to the NGL; right?

36 A. That's correct.

37  
38 Q. Of course, if the fee was, in truth, relevant or  
39 related to any engineering services or installation, and  
40 the like, there would be absolutely no reason to pay it to  
41 the State Company for Internal Transportation; right?

42 A. That's correct.

43  
44 Q. That would suggest, on its face, that this fee had  
45 absolutely nothing to do with the provision of engineering  
46 services, of installation, and the like; right?

47 A. It has that suggestion, yes.

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Q. Do you recall Ms Nys ever contacting you in relation to this and telling you about it?

A. I can't recall her calling me specifically about this, no.

Q. Do you recall becoming aware of the fact that the payment was made to a bank account in Jordan?

A. Not specifically, no.

Q. What investigations or inquiries did you make at the time, in September 2002, when this issue arose about evidencing the payment of this fee? What did you do?

A. I actually don't recall doing anything. I left it to my staff, I left it to Tony Davies.

Q. If you had made inquiry and ascertained, amongst other things, this email, had been sent by Mr Davies, it would have caused you considerable concern because it would have been entirely inconsistent with what you understood to be the position; that's right, isn't it?

A. I would imagine that I may have queried one or two things on there, yes.

Q. What would you have queried?

A. Well, as I say, you pointed out that we're now talking about State Company for Internal Transportation.

Q. Which suggests, of course, that the fee had nothing whatsoever to do with engineering services, doesn't it?

A. It does, yes.

Q. What about the fact that the fee was paid to an account in Jordan, not in Iraq?

A. I think I knew at the time that there may be things like that happening because of the fact that you couldn't transfer - I think it was Iraqi dinars to anybody. I'm not sure of the details, but I did understand there was some problem with the transfer because of the fact that this payment had to be made in local currency.

Q. Well, you agreed, I think, at the very commencement of your testimony today, that you were aware, certainly by 2001, that the sanctions prohibited payment of foreign currency to the Iraqi Government; right?

A. I wasn't specifically aware of it. I'm aware of it now. I don't know when I actually became aware of that

1           speci fi c cl ause.

2

3           Q.     We can have the transcript checked, if you like,  
4           Mr Thurgood, but my clear recollection is that you agreed  
5           with the proposition that you did know that foreign  
6           currency could not be paid to the Iraqi Government by 2001  
7           at least, as a result of discussions you'd had with  
8           Mr Davi es; right?

9

10          MR WINNEKE:    I object, Mr Commi ssi oner. My recollection  
11          was that my learned friend put the question in a general  
12          way. He said, "generally speaking, were you aware". That  
13          was the basis of the question that was put. The witness  
14          has now given a speci fi c response, so perhaps, to be fair  
15          to the witness, he should be reminded --

16

17          THE COMMI SSIONER:    We can check the transcript. Yes,  
18          Mr Wi gney.

19

20          MR WIGNEY:    Q.     Didn't that cross your mind when you  
21          found out that this payment of 11,000-odd pounds had in  
22          fact been paid to an account in Jordan, not in Iraq?

23          A.     No.

24

25          Q.     That it might have had something to do with avoiding  
26          the sanctions regime?

27          A.     No.

28

29          Q.     It didn't cross your mind at all?

30          A.     No.

31

32          Q.     It's a bit of a head-in-the-sand attitude you had,  
33          Mr Thurgood, isn't it?

34          A.     I probably understood that there was a problem with  
35          foreign currency, which is why we had to use a Jordani an  
36          bank in order to effect the transfer in local currency and  
37          Iraqi dinars.

38

39          Q.     Did this not start ringing alarm bells sufficient to  
40          make you inquire of the Department of Foreign Affairs and  
41          Trade, or the United Nations, about what was going on?

42          A.     No.

43

44          Q.     I want to take you to a couple of other documents at  
45          around this time, please. I'll just take you to some other  
46          documents and see if it jogs your recollection of what you  
47          did or didn't know at this time - that's in September 2002.

1 Can it be put on the screen, please, RRP.0001.0323. Do you  
2 recall seeing that email? It's an email from Mr Davies to  
3 Mardi Nys confirming that the money had been paid into the  
4 Al-Rafidain Bank, Amman, Jordan branch. Do you recall  
5 seeing that?

6 A. As far as I remember, the first time I saw this was in  
7 December last year.

8  
9 Q. I wonder if there could be put on the screen the  
10 document at RRP.0001.0327. Do you see that that is an  
11 email - the original email it seems is from Mr Davies to  
12 Mardi Nys, and it is in relation to this load into  
13 Iraq - that's the goods that are being exported under this  
14 contract - and a query about the 10 per cent receipt?

15 A. That's correct.

16  
17 Q. She's forwarded it on to you on this occasion?

18 A. That's correct, yes.

19  
20 Q. Do you recall seeing this email?

21 A. I don't recall seeing it at the time. Obviously if it  
22 was forwarded to me I would have seen it.

23  
24 Q. I think you've already agreed it would have been a  
25 matter of some considerable concern to you what was going  
26 on in relation to this fee?

27 A. It was a concern. I felt that my staff were capable  
28 of sorting it out. There was not much I could do.

29  
30 Q. Well, by this time you had known and met Mr Davies for  
31 a couple of times and you had had some considerable  
32 dealings with him; right?

33 A. That's correct.

34  
35 Q. Didn't you pick up the telephone and say, "Listen,  
36 Tony, what's going on here?"

37 A. Perhaps I did, but I don't recall.

38  
39 Q. It would be quite simple to ascertain what he'd done  
40 with this money, and you don't have any recollection of  
41 that at all?

42 A. Well, I trusted him. It wasn't a question of what  
43 he'd done with the money, it's where is the piece of paper.

44  
45 Q. Do you recall ever seeing the piece of paper, as you  
46 call it?

47 A. I believe the first time I saw that piece of paper was

1 in December last year.

2

3 Q. Let's just have a look at that piece of paper. Would  
4 you go, please - I'm afraid it's not a very good copy - to  
5 RRP.0001.0347. I'm afraid that that's not a terrific copy,  
6 but do you recollect seeing that document at some stage in  
7 December of last year?

8 A. Well, it wouldn't have registered. It possibly has  
9 been put in front of me, but it doesn't register. I don't  
10 remember it.

11

12 Q. What steps have you taken, as at today's date, to  
13 ascertain exactly where this money was paid?

14 A. Personally, I don't - I haven't taken any steps  
15 myself.

16

17 Q. What steps have you taken to have members of your  
18 staff - that's Rhine Ruhr's staff - ascertain precisely  
19 where this money has been paid?

20 A. I think we just accepted everything at face value, it  
21 was paid to Tony Davies and we left it to him to make sure  
22 it got to the correct location.

23

24 Q. May we take it that the answer to my question --

25

26 THE COMMISSIONER: Q. So that the business would be  
27 done?

28 A. Sorry?

29

30 Q. So that the business could be done?

31 A. I suppose so, yes.

32

33 Q. So this agent was to receive a 10 per cent commission  
34 himself, he told you he wanted another 10 per cent added on  
35 top of the contract price. That was part of doing business  
36 in Iraq, and that's what you agreed to?

37 A. Well, this is the way it transpired. This isn't the  
38 way we anticipated it upfront.

39

40 Q. But it transpired into reality before the business was  
41 done?

42 A. That's correct, yes.

43

44 Q. And you had no concerns about who got that extra  
45 10 per cent?

46 A. Well, obviously I would have had concerns because we  
47 wanted to see our goods delivered and wanted to see our LC

1 paid out.  
2  
3 MR WIGNEY: Q. Rhine Ruhr were contacted in late 2004  
4 and early 2005 by officers or investigators with the UN  
5 independent inquiry; right?  
6 A. Yes.  
7  
8 Q. You knew that that was in relation to this particular  
9 contract; right?  
10 A. That's correct, yes.  
11  
12 Q. You knew that the focus of their inquiries was this  
13 10 per cent payment; right?  
14 A. That's correct.  
15  
16 Q. Did you endeavour to obtain a copy of the receipt at  
17 that time?  
18 A. No.  
19  
20 Q. Did you cause any of your staff or fellow directors to  
21 make inquiries?  
22 A. Not exactly. I think that request was made to  
23 Jim Tyzzer. He told me he was responding and I left it to  
24 him to look after it.  
25  
26 Q. May we take it that it would come as a complete  
27 surprise to you, putting aside what I said in my opening  
28 statement this morning, that this payment was made to the  
29 Ministry of Oil or Ministry of Petroleum? Would that come  
30 as a surprise to you?  
31 A. No.  
32  
33 Q. Have a look at this document on the screen, please -  
34 sorry, it's not on the system, I'm told. I understand a  
35 copy has been provided to your legal representatives. I  
36 inform you that that is a translation of the document that  
37 we just looked at on the screen, that's the Iraqi script  
38 document, apparently your receipt, pointing out that the  
39 payment relating to what's called Australian Rhine Ruhr for  
40 a sum that appears to be similar to the pounds sterling  
41 payment made to Eastoft Hall was paid into a Jordanian  
42 account in the name of the Ministry of Petroleum; do you  
43 see that?  
44 A. That's correct, yes.  
45  
46 Q. Does that come as a surprise to you?  
47 A. Not really, no.

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Q. I suggest that this fee had absolutely nothing whatsoever to do with the North Gas Industry and installation service fees, and the like; do you agree?

A. No, I can't agree. The Ministry of Petroleum is responsible for the refinery, as far as I understand.

THE COMMISSIONER: Q. This document, if it's accurate, is addressed under the "Details" section to the Northern Gas Company and to Australian Rhine Ruhr, so it's not the Northern Gas Company that's receiving the money, it's the ministry.

A. Okay.

MR WIGNEY: I tender that document, Commissioner.

EXHIBIT #54 ENGLISH TRANSLATION OF DOCUMENT BEING CREDIT ADVICE TO MINISTRY OF PETROLEUM

MR WIGNEY: Q. I just want to take you to a couple more documents that were created at around this time; that is, September 2002, when there were these issues about evidencing this payment of the fee. Do you recall seeing some email correspondence emanating from the shippers P&O Nedloyd?

A. I saw that in December. I don't know if it was copied to me or not, but I cannot recall seeing it at the time.

Q. You can't recall seeing it at the time?

A. I can't recall seeing it at the time, but I did see it last month.

Q. Let's just turn some of those documents up, please. The first of them is RRP.0001.0223. There's a couple of pages to this document, but it would appear that the lead email is an email from someone at P&O Nedloyd to Brenda Georgeson, who's from Rhine Ruhr's freight forwarders; that's Hartrodt, right?

A. That's correct.

Q. I just want to direct your attention to about halfway down the page, it says:

Please note changes to:  
point (dd) have added that we need a proof  
of payment of the 10% aftersales  
Tax levied on all shipment to Iraq moved

1 under phase 8 onwards. [For your  
2 information], this is paid directly by  
3 shipper to consignee. The carrier is not  
4 involved, but shipments which has not been  
5 paid for will not be allowed to discharge  
6 in Umm Qasr...  
7

8 Right? When you saw these documents in December, was it  
9 apparent to you that this 10 per cent aftersales tax  
10 referred to in this document was related to the so-called  
11 engineering services fee?

12 A. I tied the two together, yes.  
13

14 Q. This is indicating, is it not, that, in relation to  
15 shipments of all goods into Iraq, the consignor had to  
16 evidence payment of a 10 per cent aftersales tax; right?

17 A. That's correct, yes.  
18

19 Q. A tax; right?

20 A. Yes.  
21

22 Q. That's completely inconsistent, is it not, with an  
23 engineering services fee?

24 A. I agree, yes.  
25

26 Q. Suggesting, again, that this had nothing whatsoever to  
27 do with engineering services; right?

28 A. It suggests that, yes.  
29

30 Q. Yet you sit there in the witness box today still  
31 unwilling to concede that this fee that you paid through  
32 Mr Davies, as your conduit, to the Iraqi authorities, had  
33 something to do with engineering services or installation;  
34 is that what you say?

35 A. That was an understanding at the time of the contract.  
36 Obviously events which have happened since have raised  
37 doubts.  
38

39 THE COMMISSIONER: Q. Mr Thurgood, let me put this to  
40 you: your company operates a commercial business. It's  
41 asked to quote, it does, it appoints an agent to get  
42 business for it, a price is agreed. The agent then says,  
43 "Add 10 per cent to the price, but give that 10 per cent  
44 back to me because it has to be paid somewhere" - to a  
45 government as a tax, to an engineering services fee. Did  
46 it never occur to you that adding 10 per cent to the agreed  
47 price and not disclosing it and then paying that

1 10 per cent back to the agent for onforwarding somewhere  
2 was getting close to bribery?  
3 A. No.  
4  
5 Q. Has this ever happened in your business before?  
6 A. Not that I recall, no.  
7  
8 Q. So this is the first time this has occurred?  
9 A. Yes.  
10  
11 Q. And it never occurred to you that adding undisclosed a  
12 10 per cent increase in contract price and then paying that  
13 extra 10 per cent back to the agent was likely to be an  
14 untoward transaction?  
15 A. At the time it did not occur to me, no.  
16  
17 Q. How long have you been in business?  
18 A. Obviously in Rhine Ruhr since 1987, and prior to that  
19 I was in a similar position for probably about seven years  
20 before that.  
21  
22 Q. When a one-off situation like that occurred for the  
23 first time in your experience, no alarm bells rang?  
24 A. Yeah, but the OFF Program was a first-time experience  
25 in any case. It had to be unusual.  
26  
27 Q. But the OFF program can't in any way justify adding in  
28 a 10 per cent hidden cost and repaying that money to the  
29 agent, can it?  
30 A. Well, the explanation that was put to us was plausible  
31 at the time. It did not ring any alarm bells.  
32  
33 MR WIGNEY: Q. I want to take you to all of these  
34 documents. Let me just ask you this question: are you  
35 able to recall discussing this fee with Mr Bryden back in  
36 July to September 2002?  
37 A. I cannot recall any details of any discussion with  
38 Mr Bryden. Obviously he was informed. How and when I  
39 discussed it with him I can't recall.  
40  
41 Q. Do you recall Mr Bryden describing this  
42 10 per cent payment as a surcharge?  
43 A. No, I don't recall that.  
44  
45 Q. If he did, would it surprise you?  
46 A. Possibly not.  
47

1 Q. Why not?  
2 A. Well, people use loose words. It would have been  
3 accurate, providing he understood my explanation of it.  
4  
5 Q. I see. I'll ask you a couple of questions about the  
6 inquiries that were conducted by officers of the UN in an  
7 inquiry into the Oil-for-Food program in late 2004 and  
8 2005; right?  
9 A. Yes.  
10  
11 Q. You were aware that was occurring at that time?  
12 A. Yes.  
13  
14 Q. You were aware, I think you've already agreed, that  
15 their inquiries were directed at this very contract we're  
16 talking about and the 10 per cent fee; right?  
17 A. Well, at the time, at the beginning of that inquiry,  
18 we had no idea that that fee was illegal, so we assumed  
19 that that's what the inquiry would find. We were surprised  
20 when the outcome was different.  
21  
22 Q. You knew that they were investigating that; right?  
23 A. We knew that they were investigating, but we were  
24 under the impression that they were investigating out and  
25 out bribes.  
26  
27 Q. Even if the investigation was as limited as you  
28 suggest, that was obviously a matter of some considerable  
29 importance to Rhine Ruhr; right?  
30 A. I guess it was, yes.  
31  
32 Q. What do you mean you guess it was?  
33 A. Well, I felt we had nothing to worry about because at  
34 that stage I didn't believe that anything we had done was  
35 illegal.  
36  
37 Q. I see. So your belief at the time was if you were  
38 full and frank with the UN investigators and provided them  
39 with all information that was accurate, then you would be  
40 exonerated; right?  
41 A. I guess that was our understanding, yes.  
42  
43 Q. It was obviously a matter of some considerable  
44 importance for you to facilitate that process so you could  
45 be exonerated; right?  
46 A. That's correct.  
47

1 Q. Of course, you were aware of the absolute importance  
2 of being accurate and full and frank with the UN?  
3 A. Yes.  
4  
5 Q. You wanted to ensure that Rhine Ruhr fully cooperated  
6 with the UN?  
7 A. That's correct.  
8  
9 Q. You discussed this with your fellow directors, who by  
10 this time were Mr Tyzzer and Mr Bryden?  
11 A. I think it was only Mr Tyzzer who took up this  
12 inquiry.  
13  
14 Q. I wanted to ask you about that, because you know,  
15 don't you, that Mr Tyzzer was the one director of the three  
16 of you - that's yourself, Mr Bryden and Mr Tyzzer - who had  
17 no direct involvement whatsoever in this transaction;  
18 correct?  
19 A. That's correct.  
20  
21 Q. Whose decision was it to appoint him as the contact  
22 point for the UN investigators?  
23 A. Well, I think, by default, he appointed himself.  
24  
25 Q. I see. Did you not think it would be more prudent to  
26 appoint either Mr Bryden or yourself to deal with the UN  
27 investigators, since both of you two had some direct  
28 involvement in the matter?  
29 A. Well, Mr Bryden was sitting next to the entire thing.  
30 He would have had full access to all the information. I  
31 had nothing in Malaysia with me, all the documents were in  
32 Melbourne.  
33  
34 Q. Because it was Mr Tyzzer who was to respond to the UN  
35 investigators and he had had no direct involvement in this  
36 contract and the 10 per cent payment, it was all the more  
37 important for you to discuss the matter with Mr Tyzzer and  
38 provide him with all relevant information; right?  
39 A. I guess so, yes.  
40  
41 Q. Did you discuss it with Mr Tyzzer?  
42 A. It was discussed. I don't think it was discussed in  
43 any detail, only in principle, that he would look after it  
44 and he would provide the UN with any information that they  
45 required.  
46  
47 Q. Didn't he ask you - that is, Mr Tyzzer - what you knew

1 about the payment of this 10 per cent fee?  
2 A. I don't think he asked me specifically.  
3  
4 Q. Well, did he ask you at all?  
5 A. I can't say for sure.  
6  
7 Q. We're only talking here, Mr Thurgood, about late 2004,  
8 early 2005?  
9 A. That's correct.  
10  
11 Q. It's not that long ago, right?  
12 A. Yes. We didn't spend a lot of time dwelling on it.  
13  
14 Q. But you've just agreed that it was a matter of some  
15 considerable importance to Rhine Ruhr; right?  
16 A. Yes.  
17  
18 Q. If it had been the case that Rhine Ruhr had somehow  
19 been involved in the payment of improper payments, to put  
20 it neutrally, it would have been of considerable concern to  
21 Rhine Ruhr; right?  
22 A. That's correct, yes.  
23  
24 Q. It could have destroyed your reputation?  
25 A. Yes.  
26  
27 Q. Surely you must have discussed this with Mr Tyzzer?  
28 A. I had confidence in Mr Tyzzer's ability to look into  
29 this and answer it appropriately. If he had any questions,  
30 he only had to pick up the phone and ask me.  
31  
32 Q. If he had picked up the phone and asked you, "Listen,  
33 what was this 10 per cent payment all about?", Mr Thurgood,  
34 what would you have said?  
35 A. I guess I would have had to have refreshed my own  
36 memory. It was a thing of the past at that stage.  
37  
38 Q. Well, I've attempted to refresh your memory by showing  
39 you various documents today. Having had your memory  
40 refreshed, if he had asked you questions in late 2004,  
41 early 2005 about what this payment was all about, what  
42 would you have said?  
43 A. Well, to start with, it was an engineering services  
44 fee, as it was intended to be at the beginning.  
45  
46 Q. Because your evidence is that's what you understood it  
47 to be at the time?

1 A. Yes.  
2  
3 Q. And, as I understand your evidence, you still maintain  
4 that that's your belief?  
5 A. I think there's reason to doubt that now, yes.  
6  
7 THE COMMISSIONER: Q. You couldn't possibly believe that  
8 once you'd received invoices from Eastoft Hall --  
9 A. Well, as I say --  
10  
11 Q. -- because you knew you were making payment --  
12 A. I hadn't seen those invoices.  
13  
14 Q. You knew you were making a payment to Eastoft Hall,  
15 and they certainly hadn't provided any engineering services  
16 to you or anyone else?  
17 A. My understanding was that Eastoft Hall were assisting  
18 us to make that payment. That was the reason behind that  
19 invoice.  
20  
21 MR WIGNEY: Q. Mr Thurgood, you recall in relation to  
22 this UN investigation that the UN investigators emailed  
23 some queries to Mr Tyzzer about this 10 per cent payment  
24 and Mr Tyzzer replied?  
25 A. That's correct.  
26  
27 Q. Do you recall seeing Mr Tyzzer's draft replies to the  
28 UN investigators before they were sent and dispatched?  
29 A. He sent them to me. I don't have any vivid  
30 recollection of it, but I know he sent them back to me.  
31  
32 Q. Let me again endeavour to refresh your recollection.  
33 Are these documents that you've seen in recent days in  
34 preparation for your evidence today?  
35 A. I'm not too sure if I have, actually.  
36  
37 Q. I'll have to give you hard copies and put them on the  
38 screen, because there have been edits from these documents  
39 that relate only to the identity of the names of the UN  
40 investigators; do you understand?  
41 A. Yes.  
42  
43 Q. Let me just show you this one to start with. That  
44 might just be put up on the overhead screen, please. This  
45 is an email from Mr Tyzzer to, you may take it, the  
46 relevant UN investigator. You'll see the "CC", copied to -  
47 firstly, Mr Davies; right?

1 A. Yes.  
2  
3 Q. Secondly, you; that's your email address, isn't it?  
4 A. That's correct.  
5  
6 Q. tBruce@pd.jaring.my", and Mr Bryden, right?  
7 A. Yes.  
8  
9 Q. Does this refresh your recollection as to whether you  
10 saw this email at or about the time, or indeed before it  
11 was sent?  
12 A. I saw it. I can't say specifically if it was before  
13 or after or when.  
14  
15 Q. I see. Mr Tyzzer notifies the investigator that the  
16 agent for Iraq was Mr Davies at Eastoft Hall, and providing  
17 a contact number, apologises for the delay in the email and  
18 points out, as we've just established, that he was only  
19 involved at the very end of the contract, right, do you see  
20 that?  
21 A. Yes.  
22  
23 Q. Then he says:  
24  
25 Our records show the following...  
26  
27 I won't read it all out, but you recall I showed you  
28 earlier today an email in which Mr Davies set out the  
29 substance of the negotiations that had led to the contract  
30 price being struck at 113,000 pounds. It would appear that  
31 the next five or six lines of this email seem to have been  
32 drawn from that earlier email --  
33 A. Sorry, I'm not picking you up very clearly. I'm  
34 reading and listening to you at the same time.  
35  
36 Q. I'm trying to do it in shorthand, which always is at  
37 one's peril. I showed you a document earlier today dated  
38 20 October 2001 - I'll take you back to it if need be - in  
39 which Mr Davies set out the substance of the negotiations  
40 that led to the contract price being struck at 113,650  
41 pounds; right?  
42 A. That's correct.  
43  
44 Q. My suggestion is that the first half dozen lines of  
45 the second paragraph of this email seem to be drawn from  
46 that document; right?  
47 A. It seems to be, yes.

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Q. In that document Mr Davies described the fee in inverted commas as an "Iraqi engineering services fee", didn't he?

A. Well, that's what Jim was saying here.

Q. I want to direct your attention to these words, commencing on the sixth line down, towards the end of that line:

Tony Davies was made aware of the requirement of the additional "Iraqi sales tax" of 10% and this tax of UKP 11365 was requested to be in addition to our price and covered by the LC documentation in order for it to be seen by the UN as a reimbursable cost.

Right?

A. Yes.

Q. If, as one would expect, you read this email at the time that it was copied to you, you would have seen that Mr Tyzzer described this fee in quotes as an "Iraqi sales tax"; right?

A. That's correct.

Q. Do you say that that's an accurate portrayal of what the fee is?

A. Well, it is now, now that you're telling me, now that you're showing me this.

Q. Well, that is, in substance, entirely different from a fee that somehow relates to the provision of engineering services or installation, as you've said; right?

A. That's correct, yes.

Q. So if you'd read this email at the time, you would have seen that Mr Tyzzer's description of the fee was entirely at odds with what you've said in your evidence today was your understanding of the nature of the fee.

A. That's correct.

Q. Well, did you do anything about it?

A. I don't believe I did anything about it.

Q. But Mr Tyzzer, perhaps unwittingly, has provided an

1 in accurate or incomplete, as far as your evidence goes,  
2 response to the UN investigators in this email, hasn't he?  
3 A. Well, he had access to all the documents in Melbourne  
4 which I didn't, so I assume that what he was putting  
5 together was accurate and it's his version of it.

6  
7 Q. Yes, but you see you've agreed that the first few  
8 lines of this paragraph, where the substance of the  
9 negotiations leading to the contract price of 113,000  
10 pounds is extracted, seems to come from the 20 October  
11 email that we've referred to in evidence this morning;  
12 right?

13 A. Mmm.

14  
15 Q. In that email it's described as an Iraqi engineering  
16 fee; right?

17 A. Mmm.

18  
19 Q. Are you able to offer any explanation, if that's so,  
20 for how it came to be described by Mr Tyzzer as an Iraqi  
21 sales tax?

22 A. I guess, even at this stage, all this terminology I  
23 didn't take a lot of notice of. It was only when we were  
24 going through the documents in more detail for this inquiry  
25 that I started to pick up these discrepancies.

26  
27 Q. What do you say now? Was it an Iraqi sales tax or was  
28 it engineering services?

29 A. Well, I can say that there appears to be doubt about  
30 it.

31  
32 Q. What's the doubt?

33 A. That possibly the first explanation that we were given  
34 may not have been the real explanation.

35  
36 Q. Meaning Mr Davies had misled you; is that what you  
37 say?

38 A. Possibly.

39  
40 Q. Well, what other explanation?

41 A. Well, I'm not going to accuse Mr Davies, but it does  
42 suggest that.

43  
44 Q. Do you accept now, from all of the documents that  
45 you've seen, that this had absolutely nothing to do with  
46 the provision of engineering, installation services, and  
47 the like?

1 A. I suspect now that it may not have, yes.

2

3 Q. I asked you before whether you thought it was  
4 important to ensure that the UN investigators were provided  
5 with full and frank disclosure and information from Rhine  
6 Ruhr; right?

7 A. Mmm.

8

9 Q. Do you say that occurred?

10 A. We did our best.

11

12 THE COMMISSIONER: Q. But it's plainly not good enough,  
13 Mr Thurgood. Look at the next paragraph:

14

15 As discussed with you, the only strange  
16 action that I'm aware of is when the  
17 10% Iraqi tax payment was required we were  
18 instructed at the last moment to deposit  
19 the payment in the client's account (Al  
20 Rafidain Bank), Amman branch, instead of  
21 the Baghdad branch.

22

23 A. Yep.

24

25 Q. That's not even part of the truth, is it --

26 A. Well, I don't know.

27

28 Q. -- because the reality was you got an invoice from  
29 Eastoft Hall, or whatever their name is, saying they'd  
30 provided you with a service, which they hadn't, and you  
31 paid the money to them.

32 A. That's true, yes.

33

34 Q. Did you tell the United Nations that?

35 A. Well, at this time I didn't have the benefit of all  
36 the documentation. He was in Melbourne, I was in Kuala  
37 Lumpur.

38

39 MR WIGNEY: Q. I want to direct your attention to  
40 another line in this email. I think I've already read it  
41 out. It's in the second paragraph. It refers to "the  
42 Iraqi sales tax of 10 per cent of 11,365 pounds was  
43 requested to be in addition to our price". These are the  
44 words I want to emphasise:

45

46 ...covered by the LC documentation in order  
47 for it to be seen by the UN as a

1 reimbursable cost.

2

3 Do you see that?

4 A. That's correct.

5

6 Q. When you saw this email, did you conduct any  
7 investigations to ascertain what in fact the UN had been  
8 notified of?

9 A. No, I accepted that Jim Tyzzer had gone through the  
10 documents and he had put down on this piece of paper what  
11 he had been able to piece together from the documentation.

12

13 Q. You accept, now, that the documents that were provided  
14 to the United Nations made no reference whatsoever to this  
15 fee, whether it be described as an Iraqi sales tax, an  
16 engineering service fee or any other fee?

17 A. Yes.

18

19 MR WINNEKE: Mr Commissioner, to be fair, it's being put  
20 to this witness which documents were provided to the UN,  
21 and this witness certainly hasn't said that he understands  
22 which documents were provided to the UN.

23

24 THE COMMISSIONER: But this one was. Go on.

25

26 MR WINNEKE: I think Mr Wigney is talking about documents  
27 which were provided to either the UN or DFAT at the time or  
28 shortly after the contract was entered into.

29

30 MR WIGNEY: I'll withdraw the question and put it in this  
31 way.

32

33 Q. As you sit in the witness box today, you are unable to  
34 point to a single document that went from Rhine Ruhr to  
35 either the Department of Foreign Affairs and Trade or the  
36 United Nations informing them of the nature of this fee, or  
37 the existence of this fee; right?

38 A. That's correct.

39

40 THE COMMISSIONER: Q. This account in this email is just  
41 both incomplete and wrong. What it's saying is the  
42 explanation for the increased price was so that the  
43 so-called Iraqi sales tax of 10 per cent could be seen by  
44 the UN as a reimbursable cost. The first thing that's  
45 wrong with that is there was no, so you tell me, known  
46 Iraqi sales tax. What it said is that it was an  
47 engineering fee.

1 A. Yes.

2

3 Q. The second thing is if it was to be reimbursable, in  
4 the sense that it was paid by the United Nations, someone  
5 would have to tell them about it. The documents made it  
6 entirely clear that that didn't occur. None of that is  
7 spelt out.

8

9 MR WIGNEY: Q. That's right, isn't it?

10 A. That's right.

11

12 THE COMMISSIONER: Q. And the third thing is that when  
13 the time comes to pay that 10 per cent back to somebody  
14 else, your agents sent you an invoice which is false saying  
15 that they have provided you with a service, which they  
16 haven't, and you paid the money to them. Thereafter, as I  
17 understand your evidence, your company has no idea what  
18 happened to the money.

19 A. We only have Tony Davies' word as to what happened to  
20 the money, yes.

21

22 Q. We now have, as the last exhibit, a receipt showing it  
23 went into an Amman branch of the Al Rafidain Bank, for the  
24 credit of the Ministry of Oil.

25 A. That's correct.

26

27 MR WIGNEY: Q. Mr Thurgood, doesn't it strike you as odd  
28 in the extreme that a tax payable to the Iraqi Government,  
29 sales tax or whatever type of tax, would go into an account  
30 in Jordan?

31 A. Normally that would be odd, but I think we understood  
32 the situation there, that it wasn't possible to pay because  
33 of sanctions into Baghdad accounts.

34

35 Q. Exactly. It would be a bit like me making my GST  
36 payment to a bank account in New Zealand, wouldn't it?

37 A. I guess so.

38

39 Q. The only explanation is it was done to avoid the  
40 sanctions; that's right, isn't it?

41 A. I think I would disagree with that.

42

43 Q. What other explanation is there?

44 A. Well, obviously we had to find somewhere to pay Iraqi  
45 dinars, because I understood this money had to be paid in  
46 Iraqi dinars and it wasn't possible to pay through a normal  
47 bank account.

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Q. Sorry, you said you understood this amount to be payable in Iraqi dinars. From where did you glean that understanding?

A. I don't know. I can't recall.

THE COMMISSIONER: Q. But you paid Eastoft Hall in pounds?

A. Because I think we struggled to find out how we'd pay it ourselves.

Q. We now know Eastoft Hall paid pounds into the Amman account?

A. It would appear so.

MR WIGNEY: Q. Finally, Mr Thurgood, can I show you what is in effect a follow-up email. Again I'll provide edited versions. Take a moment to read that to yourself, please. Do you see that in that email the fee is variously described as a 10 per cent Iraqi tax and an internal tax; right?

A. That's correct.

Q. Again, that is entirely inconsistent with your evidence today that you understood the fee to relate to engineering services; right?

A. That's correct.

Q. You'll see that this email again is copied to you; right?

A. Mmm-hmm.

Q. What steps did you take to contact Mr Tyzzer about this email?

A. None.

Q. It is entirely inconsistent with your evidence you've given today?

A. Well, I can't recall seeing this email at the time.

Q. Come on, Mr Thurgood, here we have an investigation by the United Nations, you're a director of the company, it's a matter of considerable importance, as you've already agreed, and you're seriously suggesting you didn't read this email?

A. Again, I would have probably looked at it. If it was on my computer, I would have seen it, but I may not have

1 fully understood what he was saying.

2

3 Q. If you had looked at it, it would have been as plain  
4 as a pikestaff that it's entirely inconsistent with your  
5 evidence today about the nature of this fee, right?

6 A. I guess so, yes.

7

8 Q. What's true, Mr Thurgood - is it an engineering  
9 services fee? Is it an Iraqi sales tax? Is it an internal  
10 tax? Is it a surcharge? What is it?

11 A. Well, what started out as an engineering services fee  
12 has been described as all sorts of things. This is one of  
13 the things that bothers me because this has happened over  
14 the course of time.

15

16 Q. What I'm asking you is, putting aside what it's  
17 described as, what in substance was it? What do you  
18 believe it was?

19 A. It was obviously a fee to the Iraqi Government.  
20 Whether or not it was for engineering services I think is  
21 in question.

22

23 Q. A fee paid by Rhine Ruhr through the conduit of  
24 Mr Davies to the Iraqi Government in foreign currency -  
25 that is, pounds sterling; right?

26 A. Yes.

27

28 Q. To this day you're saying that you still really have  
29 no idea what it all was about; is that what you're saying?

30 A. Well, no, I only got actively involved in trying to  
31 piece this together in December.

32

33 Q. When you did get actively involved in December in  
34 piecing it together, what view did you form?

35 A. Sorry.

36

37 Q. What view did you form even in December?

38 A. I did see these little things where it was described  
39 as something else, which raised questions, but clearly from  
40 the correspondence I would have accepted the initial  
41 explanation upfront and probably from then on, because I'd  
42 won the order, passed it to Melbourne, I didn't take a hell  
43 of a lot of notice of what words they were using.

44

45 THE COMMISSIONER: Q. Again, this document is contrary  
46 to that. It says, "The contract was awarded with our  
47 requirement but this internal tax was not for our account".

1 That suggests that it was Rhine Ruhr who said that this tax  
2 is "not for our account." Was it Rhine Ruhr who suggested  
3 that this money be included in the contract price --  
4 A. No.  
5  
6 Q. -- and that they would then pay it to somebody else?  
7 A. This was never ever our suggestion.  
8  
9 Q. That's not what the email says, is it?  
10 A. Unfortunately, I did not look at this email in detail.  
11 I have not seen this email since I've gone through  
12 documents. I've not really had an opportunity to look at  
13 this email and understand it properly.  
14  
15 MR WIGNEY: Q. Would you agree with this proposition,  
16 Mr Thurgood: on your own account, as you've given in  
17 evidence today, you have adopted a head-in-the-sand  
18 approach about this fee; right? Do you agree with that?  
19 A. Not exactly, no.  
20  
21 Q. You've done nothing to ascertain exactly what it was  
22 referable to, either at the time it was paid or even up to  
23 this very day; that's right, isn't it?  
24 A. Not deliberately.  
25  
26 Q. You see that this email is copied to Mr Davies at  
27 Eastoft Hall; do you see that?  
28 A. Yes.  
29  
30 Q. One very simple investigation you could have conducted  
31 yourself is to pick up the blower and say, "Listen, Tony,  
32 what's all this about, we have to answer the UN  
33 investigators and I might even have to give evidence to an  
34 inquiry in Australia, what's it all about?" Have you ever  
35 done that?  
36 A. No.  
37  
38 Q. Why?  
39 A. I guess the only time I had any doubts was, as I say,  
40 when I started going through these documents and I was  
41 advised not to talk to Mr Davies.  
42  
43 Q. Are you aware that, through your solicitors, Mr Davies  
44 has been asked whether he would be prepared to attend and  
45 give evidence before this inquiry?  
46 A. That's correct, I am.  
47

1 Q. Are you aware that he has indicated that he is not so  
2 prepared?  
3 A. Yes.  
4  
5 Q. Have you sought in any way to persuade him to the  
6 contrary?  
7 A. Sorry?  
8  
9 Q. Have you sought in any way to persuade him to the  
10 contrary --  
11 A. No.  
12  
13 Q. -- that is, that he should come and explain himself?  
14 A. No.  
15  
16 Q. Why not?  
17 A. I was advised not to talk to him. He called me in  
18 December, shortly after I got back - I was here in early  
19 December -- shortly after I got back. He said he had tried  
20 to call our office in Melbourne. He couldn't get through,  
21 so he called me. I immediately told him that I'd been  
22 advised not to talk to him. He insisted on just asking -  
23 he's got this letter, should he come to Melbourne or not?  
24 I said, "That's your decision, I don't want to have  
25 anything to do - I don't want to influence you on that."  
26  
27 Q. Accepting for present purposes the wisdom in not  
28 discussing the substance of your evidence with Mr Davies,  
29 there was nothing to stop you from saying, "Listen, Tony,  
30 you're the man that was involved in all of this, you're the  
31 man who can give the explanation" - there was nothing to  
32 stop you from doing that, was there?  
33 A. Well, I wanted to, but I was advised not to.  
34  
35 THE COMMISSIONER: Q. Let me give you some contrary  
36 advice. Now that you've given your evidence, there is no  
37 inhibition whatsoever in you ringing up this gentleman this  
38 evening and asking him to hop on the next plane, come out  
39 here and tell the inquiry about all of this.  
40 A. I believe that he could help us a lot, obviously.  
41  
42 Q. Yes, quite.  
43 A. But I did not think it was my job to put any pressure  
44 on him to actually come here.  
45  
46 Q. Let me make that your job.  
47 A. Sorry?

1  
2 Q. Let me make that your job now.  
3 A. Would you like me to persuade him?  
4  
5 Q. I would.  
6 A. I can do my best.  
7  
8 THE COMMISSIONER: Thank you.  
9  
10 MR WIGNEY: He would be welcomed with open arms,  
11 Mr Thurgood. On that note, I have no further questions.  
12  
13 THE COMMISSIONER: Mr Winneke?  
14  
15 MR WINNEKE: Thank you, Mr Commissioner.  
16  
17 <EXAMINATION BY MR WINNEKE:  
18  
19 MR WINNEKE: Q. Mr Thurgood, you are an engineer, I take  
20 it?  
21 A. Yes.  
22  
23 Q. What sort of an engineer are you?  
24 A. A chemical engineer.  
25  
26 Q. That's your area of knowledge?  
27 A. That's correct.  
28  
29 Q. And that's an area that you've worked at for some  
30 years?  
31 A. That's correct, 35 years.  
32  
33 Q. Do you proclaim to be an expert in matters of  
34 international trade when it comes to these sorts of  
35 contracts, or this type of contract?  
36 A. I don't claim to be. I try my best.  
37  
38 THE COMMISSIONER: Q. But your company does trade  
39 throughout Asia?  
40 A. Yes.  
41  
42 MR WINNEKE: Q. In relation to this particular contract  
43 that we've been talking about today, your evidence is that  
44 you and your company had no experience prior to this - in  
45 fact, the two contracts - in dealing under the Oil-for-Food  
46 Program; that's correct, isn't it?  
47 A. That's correct.

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Q. Indeed, I think you said that you hadn't really had any experience, or your company hadn't, in dealing in the Middle East?

A. That's correct.

Q. In relation to the Oil-for-Food Program, and, indeed, the sanctions, had you in fact read UN Resolution 661?

A. No.

Q. Had you read - at the time, in 2001, 2002 - UN Resolution 986?

A. No.

Q. You've given evidence, in response to a question as to your general knowledge about the purpose of the sanctions, that being to, in effect, preclude the Iraqi Government from obtaining funds through trade - did you have a detailed or specific knowledge about what was permitted or what was not permitted by virtue of the UN resolutions?

A. Not in detail, no.

Q. Did you have a belief that moneys could be paid to either the Iraqi Government or to Iraqi instrumentalities by way of moneys either ancillary or as part of a contract under the UN Oil-for-Food Program?

A. If it had the blessing of the UN I guess, yes.

Q. Were you aware, and are you aware now, what documents came to be in the possession of the UN in relation to the contracts that your company entered into?

A. No.

Q. Did you or your company attempt to deceive the UN as to the nature of the contracts or the content of the contracts?

A. No.

Q. Was that your intention?

A. It was our intention not to deceive.

Q. You were asked very early on today some questions about the set-up of your company in 2001/2002. Can you tell the Commission how the company was in effect set up and run in 2000, the various responsibilities of the participants in the company?

A. Okay. I was the managing director. We had - we had a

1 small company. We had a total staff of about possibly as  
2 many as 15, mainly technical staff. Below me Richard  
3 Bryden looked after manufacturing issues, engineering  
4 issues, in relation to execution of contracts. I had  
5 another process engineer who looked after process aspects  
6 of executing contracts, and Mardi looked after  
7 administration functions. Since I was always on the road,  
8 I preferred to restrict my discussions to those three  
9 people so as not to confuse the situation.

10  
11 Q. Now, you've been asked questions about who it was who  
12 reported to you on the various topics. Can you tell the  
13 Commission how the office in Melbourne reported to you?

14 A. As I say, each of those three individuals - our  
15 administrator Mardi Nys, our chief process engineer and  
16 Richard Bryden - all reported to me.

17  
18 Q. And on what matters did Mr Bryden report to you?

19 A. Mainly on matters affecting the execution of projects.

20  
21 Q. Mr Bryden is an engineer also, is he?

22 A. That's correct, yes.

23  
24 Q. Indeed, he's not a qualified engineer, but he's a man  
25 with considerable experience?

26 A. That's correct.

27  
28 Q. Ms Nys, what are her qualifications, or what does  
29 she --

30 A. I don't think she has any formal - certainly no  
31 tertiary qualifications.

32  
33 Q. Was there anyone in the office in Melbourne with  
34 specific tertiary qualifications in business  
35 administration?

36 A. No.

37  
38 Q. What was your function in 2000, 2001, 2002? What was  
39 your function within the firm? What sorts of things did  
40 you do?

41 A. Obviously I was carrying the managing director's hat.  
42 My main function was to solicit for new business. I was  
43 the salesman, the one and only salesman for the company.

44  
45 Q. So, in practical terms, in day-to-day terms, we've  
46 heard that you negotiate a contract; is that what you do as  
47 a sales engineer?

1 A. That's correct.

2

3 Q. Once the sale has been negotiated, what do you do in  
4 relation to it?

5 A. I make sure I collect all the appropriate information,  
6 send it to Melbourne, and instruct them to get on with it.

7

8 Q. Can I ask you about the initial contact you had with  
9 Mr Davies. Mr Davies called you - I think my learned  
10 friend asked you questions this morning which suggested  
11 that there was an initial agency agreement which occurred  
12 in 2002. In actual fact is it fair to say that the initial  
13 conversations with Mr Davies occurred in September of 2000?

14 A. That's correct.

15

16 Q. How did the contact come about?

17 A. Okay. Well, I understand from the documentation that  
18 I went through in December that he was put in touch with me  
19 through a fellow director of a UK company, Keith Sheldon.

20

21 Q. Keith Sheldon is a director of a company in the UK; is  
22 that correct?

23 A. That's correct.

24

25 Q. Do you know Mr Sheldon?

26 A. That's correct.

27

28 Q. How long had you known Mr Sheldon for?

29 A. I have known Mr Sheldon I think since either 1998 or  
30 1999.

31

32 Q. Perhaps I'll show you a document. Mr Commissioner, I  
33 have here a document which has been provided in the various  
34 tranches of documents. It's document number 1 in tranche  
35 number 3. I don't have documents with barcodes on them, so  
36 I can't nominate any numbers.

37

38 MR WIGNEY: The document barcode is RRP.0004.0032

39

40 MR WINNEKE: Q. Mr If you would just look at the screen  
41 in front of you. That seems to be a response - although  
42 it's dated 5 December 2005; it may be that that is one of  
43 the documents that falls foul of the word processing  
44 system. You'll note that it's a letter to Mr Tony Davies  
45 at Eastoft Hall. There's a copy to Keith Sheldon,  
46 Cooltech. That is a response to a telefax of 17/9/2000.  
47 Can you tell the Commission about that document?

1 A. Yeah, I think this was probably in relation to an  
2 inquiry which Mr Davies sent me shortly after he made  
3 contact. I'm guessing, I suspect that when he called me he  
4 had this inquiry in mind. When I received it, I found it  
5 wasn't the sort of work that we should be doing in Iraq, it  
6 was - these were commodities that we buy from third  
7 parties. This is not the sort of equipment that we  
8 manufacture in Melbourne.

9

10 Q. Now, in the last paragraph of that document it says:

11

12 Therefore, in case you would still have an  
13 interest to pursue a more restricted scope  
14 on our behalf, we attach an agency  
15 agreement addressed to Emlod as suggested  
16 by Keith Sheldon.

17

18 A. Yes.

19

20 Q. You've been asked questions about the agency  
21 agreement. Does that last paragraph suggest to you that  
22 you had a discussion with Mr Sheldon --

23

24 A. It suggests that, but I can't recall any such  
25 discussion. It may have been that Tony himself mentioned  
26 that Keith Sheldon had suggested this agreement. I can't  
27 remember any specific discussion with Keith Sheldon.

27

28 Q. In any event, after September of 2000 did you continue  
29 to liaise and communicate with Mr Davies?

30

31 A. Yes.

32

33 Q. Did you form a view as to Mr Davies' reliability?

34

35 A. Over time, yes.

36

37 Q. What was the view that you formed - I'm talking about  
38 prior to entering into any contracts?  
39 A. Yeah, I got the impression he was quite knowledgeable  
40 on aspects of the UN program. He was experienced in the  
41 system. He also came over to me as being trustworthy.

40

41 Q. Can you tell the Commission how you, as an engineer  
42 and a businessman, carried on business when it comes to  
43 these sorts of transactions, in terms of your relations  
44 with people such as Tony Davies?

45

46 A. Well, I guess - I guess business is about dealing with  
47 people that you feel you can trust, in short.

47

1 Q. In relation to Mr Davies, did you feel that you could  
2 trust him?  
3 A. Yes, I did.  
4  
5 Q. Did you understand that Mr Davies had relationships  
6 with other companies throughout the world which dealt in  
7 Iraq in this program?  
8 A. Yes.  
9  
10 Q. When you were provided with inquiries in relation to  
11 the first contract, the contract which subsequently did not  
12 go through because of the corrosion of the vessel into  
13 which your components were to go, did you form a view as to  
14 the ability of Tony Davies to send appropriate business  
15 your way?  
16 A. Yes.  
17  
18 Q. And that was a positive view?  
19 A. Yes.  
20  
21 Q. He appeared to know what he was doing?  
22 A. Yes.  
23  
24 Q. You provided him with the initial quote in relation to  
25 the first contract?  
26 A. Yes.  
27  
28 Q. And he sent to you subsequently the document which he  
29 had prepared to forward to the North Gas Company?  
30 A. That's correct.  
31  
32 Q. Were you satisfied with the work he had done --  
33 A. Yes.  
34  
35 Q. -- in relation to that?  
36 A. Definitely.  
37  
38 Q. Subsequently you learnt about this engineering  
39 services fee, and I think you've said that the first time  
40 you learnt about that was in a facsimile on 21 June of  
41 2001?  
42 A. That's correct.  
43  
44 Q. Attached to that facsimile was the document which has  
45 been put to you today, which is the document - perhaps I'll  
46 refer to the number. RRP.0005.0499 did you read that  
47 document?

1 A. Yes.

2

3 Q. The matters that are set out in it, being services,  
4 installation, handling, verification, inspection on site,  
5 in relation to your contract, were those matters which were  
6 usual or unusual for that sort of contract?

7

8 THE COMMISSIONER: Mr Winneke, you know that they were not  
9 included in the contract. We've been over all this ground.

10

11 MR WINNEKE: I understand that, sir. I propose to ask  
12 further questions about Mr Thurgood's understanding of it,  
13 and in his mind his justification for it. Are you  
14 preventing me from doing so?

15

16 THE COMMISSIONER: We've covered all that ground already.  
17 It's been covered. He's told me what he understood about  
18 that document, what he knew was in the contracts and what  
19 wasn't.

20

21 MR WINNEKE: Yes, but I would wish to explore, to his  
22 mind, his understanding of it.

23

24 THE COMMISSIONER: Understanding of what?

25

26 MR WINNEKE: Of that component of the contract.

27

28 THE COMMISSIONER: I'll disallow that question. That  
29 already has been covered - fully, I think, several times.

30

31 MR WINNEKE: Yes, thank you, sir.

32

33 Q. You were asked questions as to your understanding as  
34 to whether the UN was aware of this component or this  
35 payment, and you said that you had a general understanding  
36 of it and, although you couldn't recall specific  
37 conversations with Mr Davies, you believed that the  
38 understanding came from him.

39

40 A. That's correct.

41

42 Q. Would you have obtained an understanding from any  
43 other person?

44

45 A. I can't see that happening.

46

47 Q. In relation to the second contract, are you able to  
say, from your knowledge, who prepared the contract?

48

A. No, I wouldn't have a clue.

1  
2 Q. In relation to the quote dated 31 August which was  
3 attached to that contract --  
4 A. Yes.  
5  
6 Q. -- are you able to say who prepared that?  
7 A. I can only assume it was Tony Davies.  
8  
9 Q. In examination you responded to a question by talking  
10 about your style of doing business and you said your style  
11 is to do things orally. What do you mean by that?  
12 A. I guess it's quicker to talk than to write an email or  
13 a telefax, so it's preferred.  
14  
15 Q. You were asked questions about a sales order in  
16 relation to the second contract.  
17 A. Mmm-hmm.  
18  
19 Q. You know the document I'm talking about?  
20 A. Sales order that came with the second contract - that  
21 was the order attached to the - yes, I think I know which  
22 one.  
23  
24 Q. Well, a document in that form?  
25 A. Oh, no, that's our internal document.  
26  
27 Q. An internal document, sales order. In that document  
28 you didn't mention an engineering services fee.  
29 A. That's correct.  
30  
31 Q. It was suggested to you that the reason you didn't was  
32 because you wanted to leave out references in documents to  
33 that sort of payment. Do you recall those questions?  
34 A. I do, yes.  
35  
36 Q. Did you, in the earlier sales order for fabricated  
37 products in relation to the first contract, include it or  
38 leave it out?  
39 A. I included it.  
40  
41 Q. Did you ever instruct anyone in your company not to  
42 make written references or records --  
43 A. Never.  
44  
45 Q. -- of this payment?  
46 A. Never.  
47

1 Q. Did you ever instruct anyone in your company not to  
2 include references to it in any document which went to  
3 DFAT?

4 A. Never.

5

6 Q. When this matter was raised in 2004, prior to  
7 Mr Tyzzer responding to a representative of the UN in  
8 relation to these matters, you've indicated that at that  
9 stage you didn't believe that you'd done anything wrong.

10 A. That's correct.

11

12 Q. Did you get any legal advice about how to respond?

13 A. Unfortunately, no.

14

15 Q. Did you think you needed to?

16 A. Jim did mention it, but I left it to him.

17

18 Q. Ultimately you got no legal advice?

19 A. No.

20

21 Q. The responses which were sent by Mr Tyzzer, do you  
22 recall reading them or not?

23 A. I don't recall reading them in detail. I do recall  
24 that Mr Tyzzer did respond and I - it was copied me, but I  
25 can't remember how much attention I paid to it.

26

27 Q. Why did you not pay attention to it?

28 A. Well, I had confidence that Mr Tyzzer would look at it  
29 very thoroughly. As I say, I didn't believe we'd done  
30 anything wrong, so I was of the opinion that if Mr Tyzzer  
31 did his job properly, there is nothing to worry about.

32

33 Q. Were you aware that, in the payment of what you  
34 described as an engineering services fee and what was  
35 described to you as an engineering services fee, you were  
36 in breach of UN sanctions?

37 A. No.

38

39 Q. If you had been aware that you were doing something  
40 improper and were in breach of UN sanctions, would you have  
41 done it?

42 A. No.

43

44 Q. You were shown documents being a letter from  
45 P&O Nedlloyd to your shipping agents Hartrodt concerning the  
46 payment of what was there described as an aftersales tax, I  
47 think it was, and you gave evidence that you drew the

1 connection between what your company paid and what was  
2 there referred to as an aftersales tax. Why did you draw  
3 that connection?

4 A. It's hard to say. I guess I was - my attention was  
5 obviously on other things. I didn't pay too much attention  
6 to it.

7

8 Q. You were aware that there was a reference in that P&O  
9 document to the fact that that payment had to be made  
10 before the goods were taken up the coast to Umm Qasr; is  
11 that correct?

12 A. That's correct.

13

14 Q. Were you aware, when you read it - perhaps I'll ask  
15 you this: do you recall reading it in 2002, or not?

16 A. I don't specifically recall reading it.

17

18 Q. Had you read it, and given that what it was was a  
19 document from P&O Nedlloyd - is that a large shipping  
20 company?

21

22 THE COMMISSIONER: I know who they are.

23

24 MR WINNEKE: Q. Had you read it, would you have drawn  
25 any comfort from it to the effect that what you were doing  
26 was correct?

27 A. Well, I didn't think we needed any verification at the  
28 time. We were under the impression that what we were doing  
29 was correct. I think when we looked at the documents in  
30 December that gave us some comfort.

31

32 Q. You've been asked questions about the invoice which  
33 was created by Eastoft Hall and forwarded to you in  
34 relation to the payment --

35 A. Mmm-hmm.

36

37 Q. -- as it said, a technical engineering services fee in  
38 relation to that contract. Do you understand why that  
39 document was created?

40 A. I believe I do.

41

42 Q. What's your explanation?

43 A. My understanding is that my administration in  
44 Melbourne had got into problems trying to carry out the  
45 transaction themselves, so Tony Davies stepped in and said  
46 "I will help, send me the money and I will sort it out for  
47 you."

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Q. What was your understanding as to how he was going to sort it out?

A. I don't know if I really paid too much attention. I would have assumed possibly that he knew where the money had to be paid and he had the ways and means to effect that transaction.

Q. At the time the money was paid, what was your belief as to the proposed application of those funds?

A. Well, I don't think at that stage anything had taken place to make me change my mind. In fact, probably it was almost a year since we'd had the contract, so possibly my recollections of the initial contract were diminishing.

Q. Did you have a view to the application of the funds, what they ought to be applied to, for what purpose they were being paid?

A. I can't say for sure if that really did occur to me at the time the money was paid. I guess, as far as I was concerned, that was possibly history. I can't say for sure.

Q. At that time did you understand that the payment was for an engineering services fee?

A. I understood at the time of the contract and I don't think anything had been put forward to me that would make me change my mind by then.

MR WINNEKE: Thank you, sir.

THE COMMISSIONER: Thank you, Mr Winneke. Anything arising?

MR WIGNEY: Just one very brief issue, I think.

<EXAMINATION BY MR WIGNEY:

MR WIGNEY: Q. Mr Thurgood, you were asked some questions about your knowledge of what documents went to the United Nations in relation to this contract, do you recall those questions, and you say you don't know; is that correct?

A. That's correct, yes.

Q. The inquiry has received evidence to the effect that the persons at Rhine Ruhr responsible for providing

1 documents to Department of Foreign Affairs and Trade and  
2 ultimately on to the United Nations were Ms Mardi Nys in  
3 consultation with Mr Bryden; is that your understanding of  
4 the position?

5 A. That's correct.

6

7 Q. I think my learned friend asked you some questions, or  
8 a question, about a sales order in relation to the first  
9 contract. I should indicate that that document is in  
10 evidence. It's part of exhibit 8C, which I think is now  
11 exhibit 50. I should put it up on the screen, in fairness,  
12 just briefly, RRP.0006.0026. I'll just put it up on the  
13 overhead projector. I want to make plain, in fairness,  
14 what that question was directed to. If we could show  
15 towards the bottom of the page, please. Your answer is  
16 with reference towards the bottom, in the budget section  
17 there's a reference to "other and engineering services"; is  
18 that right?

19 A. That's correct.

20

21 Q. That's in relation to the first contract that  
22 ultimately did not go through UN approval?

23 A. That's correct.

24

25 MR WIGNEY: I have nothing further at this stage,  
26 Mr Commissioner. I should say that, in light of the  
27 possibility at least of Mr Davies assisting, it may be the  
28 prudent course to stand Mr Thurgood's evidence over to a  
29 date to be fixed at this stage.

30

31 THE COMMISSIONER: Do you have any objection to that,  
32 Mr Winneke?

33

34 MR WINNEKE: Well, I have no objection.

35

36 THE COMMISSIONER: I understand he has to go back to  
37 Malaysia.

38

39 MR WINNEKE: When I say "I have no objection", I wonder if  
40 I can object.

41

42 THE COMMISSIONER: You can't.

43

44 MR WINNEKE: Thank you, sir. Mr Thurgood does need to get  
45 to Malaysia. He has a wife who is Malaysian and they  
46 respect the Chinese new year. That's coming up shortly.

47

1 THE COMMISSIONER: All I will do at this stage is formally  
2 adjourn the examination to a date to be fixed. It may be  
3 unnecessary for you to return at all, Mr Thurgood. We'll  
4 just see how events pan out. If it is necessary to return,  
5 then there will be liaison with your solicitors about that.  
6 Thank you for your assistance.

7  
8 <THE WITNESS WITHDREW

9  
10 MR WIGNEY: Commissioner, two or three other minor  
11 matters. As I indicated in my opening statement today,  
12 Mr Bryden and Mr Tyzzer have been examined. Their evidence  
13 was taken at a private hearing, but it is now public. The  
14 likelihood is it will not be necessary to further question  
15 them, but, again, in light of the possibility at least of  
16 Mr Davies giving evidence, perhaps it would be appropriate  
17 to simply adjourn their evidence to a date to be fixed, in  
18 the event that they are required.

19  
20 THE COMMISSIONER: Yes. I'll make the same order as I did  
21 in relation to Mr Thurgood in relation to those two  
22 witnesses. Anything further?

23  
24 MR WIGNEY: No, Commissioner.

25  
26 THE COMMISSIONER: I'll adjourn until 10am tomorrow  
27 morning.

28  
29 AT 4PM THE HEARING WAS ADJOURNED TO  
30 TUESDAY, 24 JANUARY 2006 AT 10AM

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