

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 Tuesday, 21 February 2006, at 10am

1 THE COMMISSIONER: Soon the focus of the inquiry will turn
2 from AWB to the other parties to the Tigris transaction and
3 to the knowledge of the Commonwealth. I have previously
4 invited any person who has knowledge of information which
5 may be material to this inquiry to provide it to those
6 assisting me.

7
8 In light of the extensive public commentary on matters
9 said to touch upon supposed aspects of actual or
10 constructive knowledge of the Commonwealth concerning
11 matters relating to the subject matter of this inquiry, I
12 am extending a specific invitation to any Member of
13 Parliament, any member of the media, any public servant or
14 any member of the public who believes that they have
15 information relevant to this aspect of the inquiry to
16 provide any such information to those assisting me.

17
18 Whilst the inquiry is well advanced in its
19 investigation of these matters, I do not want the situation
20 to arise, after the hearings are concluded and the report
21 delivered, where persons suggest that there is information
22 which was not properly investigated. Now is the time for
23 any person with information to provide it to the inquiry.

24
25 I will briefly adjourn.

26
27 SHORT ADJOURNMENT

28
29 <TIMOTHY OSWALD SNOWBALL, on former oath: [10.40am]

30
31 <EXAMINATION BY MR AGIUS CONTINUING:

32
33 THE COMMISSIONER: You're on your former oath,
34 Mr Snowball.

35
36 MR AGIUS: Q. Yesterday afternoon, Mr Snowball, we had
37 reviewed some copies of notebook entries that you had made.
38 It may have become exhibit 386. We spent some time in
39 relation to the second page of that, which dealt with some
40 notes written on a diagonal concerning Canada. Have you
41 given that matter any thought overnight?

42 A. I have given some thought to one of the other diary
43 notes, not the one written on a diagonal.

44
45 Q. Does it deal with this issue of the Canadian
46 complaint?

47 A. It mentions Canada, yes.

1
2 Q. I'm sorry?
3 A. Yes, it mentions Canada, the diary note.
4
5 Q. Which diary note was that, Mr Snowball? Do you have a
6 copy of it?
7 A. I don't have it in front of me, sir. There's two
8 diary notes - three diary notes that were put up yesterday,
9 I think one by yourself earlier on and then two that I had
10 mentioned. One of them had writing on a diagonal, the
11 other one had some writing that we were referring to at the
12 top of the page.
13
14 Q. Yes.
15 A. It's the latter that I'm now talking about.
16
17 Q. All right. Could we put up, please, part of
18 exhibit 386, barcode SN0.0001.0015. It's on the screen.
19 Can you see it clearly there, or I can provide you with a
20 hard copy?
21 A. A hard copy would be better, please.
22
23 Q. Is that the document that you are referring to?
24 A. Yes, up the top of the page.
25
26 Q. What thought have you given to that document?
27 A. When I read this, and when I also read the fax that
28 you showed me that Mark Emons had sent to Zuhair, I think,
29 there appeared to be possibly some connection between this
30 diary note and that fax.
31
32 Q. We'll bring up the fax. It's exhibit 122,
33 AWB.0136.0524.
34 A. The first paragraph of this facsimile mentions AWB -
35 payments by AWB to the Jordanian trucking company. There
36 seems to be possibly some sort of link between this fax and
37 my diary note, which I hadn't picked up on before.
38
39 Q. Has that assisted your recollection?
40 A. It hasn't - I don't have a clear recollection of this
41 at all. However, I do feel that I very often, if I came
42 across information in the US, and I thought it was relevant
43 to the sales and marketing team - that I would pass that
44 information through to them, often acting, if you like, by
45 way of a postbox to pass information through that I thought
46 was relevant. So it is a possibility that I had passed on
47 the details of this diary note to Mark Emons.

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Q. Which has resulted in his fax to the Grain Board of Iraq of 15 March 2000?

A. Well, I think there's a possibility; I don't know for sure.

THE COMMISSIONER: Q. The diary note you're referring to is the second paragraph, is it?

A. Yes.

Q. Where it says "Can", which is short for "Canada", "vessels rejected at Umm Qasr, rejected for E coli", is it?

A. Yes.

Q. Is that "asked about trucking fee"?

A. Yes.

Q. And a note "AWB pays the Jordan trucking Co"?

A. Yes. It seems to match with this facsimile here.

MR AGIUS: Q. Have you any recollection as to what your source of the information in that part of the note was?

A. I don't recall, but if you look at the first part of that diary note, it's talking about processing of contracts through the UN, and whilst I don't know for sure, I would expect that the diary note would have been the result of a conversation with the Mission to the UN, but I don't know that for sure.

Q. If we go back to your email of 15 March 2000, exhibit 121 - MAE.0002.0091 - you met with Alistair Nicholas, so it seems, the week before. Do you have a note of where that meeting took place? Was it the AWB Limited New York office?

A. No, it took place in the Australian Embassy building in Washington.

Q. Do you recall the date?

A. I don't recall the exact date, but I believe, from my reconstruction of what happened at that time, that I had met - this meeting took place a week prior, somewhere between the 8th and the 10th of March.

Q. Do you recall whether the quantum of the trucking fees - that is, the amount of the trucking fees - was referred to in this meeting with Mr Nicholas?

A. I don't recall, sir.

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Q. You called the Australian Mission to the UN and asked Bronte Moules to speak to the UN to make sure the UN had actually requested some information, and you also went on to say that Bronte confirmed that the UN were asking for information on the contract clause. Did you make a note of your conversations with Bronte Moules?

A. Well, I've looked back through my diary notes and I don't think there is anything there referencing that, although we did uncover one this morning that said "Bronte standard terms and conditions", I think, and I believe my counsel provided that to you this morning.

Q. I'll come to that a little later, but you couldn't find any diary note or any notebook entry in relation to your two conversations with Bronte Moules that you referred to at paragraphs 4 and 5 of this email?

A. No, I couldn't.

Q. Mr Snowball, having seen your notes and Mr Emons' fax to Mr Yousif Abdul Rahman at the IGB, would you now concede that when you wrote the sentence "If all the UN wants is some understanding on standard terms and conditions in AWB contracts, then I think we have nothing to worry about" - will you concede that what you had in mind there as something to worry about would be if the UN started making inquiries about the mechanism of the transport payments?

A. I don't concede that, sir, because my recollection of this is that I was taken by surprise to be talking about this and getting this message from Alistair, and, no, I don't believe that's what I'm saying there.

Q. That evidence that you have given in your statement, and orally, about being taken by surprise doesn't fit with a suggestion that you had an earlier conversation with Mr Emons and an earlier conversation with somebody at the Australian Mission.

MR CARTER: I object to that question, Commissioner. Can I just explain why? It's clear from this, going back to yesterday, the witness has given evidence that he's attempting to reconstruct events six or seven years ago and that what he's in fact offering in his cooperation to the inquiry is a reconstruction. To suggest that there's therefore a non-fitting or a discord between the evidence given in relation to his state of mind at the time and the documents is therefore, in my respectful submission, unfair

1 and --

2

3 THE COMMISSIONER: Why?

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5 MR CARTER: Because of the fact that what he's engaged in
6 is a reconstruction.

7

8 THE COMMISSIONER: If he makes a reconstruction and it
9 doesn't fit the facts, why shouldn't that be put to him?

10

11 MR CARTER: It's a similar objection to the one I made
12 yesterday.

13

14 THE COMMISSIONER: I overruled the one yesterday and I'll
15 overrule this one.

16

17 MR CARTER: Ultimately these will be matters of legitimate
18 submission as to the drawing of inferences, but as a mode
19 of questioning it's unfair and --

20

21 THE COMMISSIONER: I've allowed the question, Mr Carter.
22 Yes, Mr Agius.

23

24 MR AGIUS: Q. You understand, Mr Snowball, I'm just
25 giving you an opportunity to review the evidence you've
26 given and to reconsider the construction that you've placed
27 on it. I'm not challenging you. I'm just asking you to
28 review the situation. You've put in your statement, and
29 you've said orally, that you were surprised at the
30 information when you received it from Mr Nicholas. We know
31 now from your notes and from the fax that Mr Emons sent to
32 Mr Yousif Abdul Rahman that it appears that you'd had some
33 earlier conversation with Mr Emons about it. If that's the
34 case --

35

36 THE COMMISSIONER: Q. You're nodding, do you agree?
37 A. It's a possibility, yes. That's why I brought it up,
38 because I think there is possibly some connection.

39

40 MR AGIUS: Q. If that's right, then it would mean that
41 your recollection or your construction of your surprise or
42 your feelings when Mr Nicholas spoke to you is perhaps
43 mistaken, it just doesn't fit --

44

45 A. I don't want to change my statement. I can understand
46 where you're coming from, but I still stand by what I
47 wrote. My feeling and recollection here is that I was
surprised by this, and I think really, if I may, I don't

1 think we should get - well, I don't think I want to try to
2 get too hung up on the words here. My actions following
3 this meeting I think should speak for themselves, and the
4 first thing I did was speak to the Mission to the UN, tell
5 Bronte exactly what happened in the meeting, asked her to
6 speak to Alistair Nicholas to get Alistair's direct
7 comments on what he was referring to and to talk to the UN
8 and then come back to AWB, either via me or via DFAT, and
9 explain exactly what is required with respect to this
10 issue. So it's very hard for me to try to reconstruct
11 without a full recollection, but, you know, if we can focus
12 on what I did after the meeting, I think that's important.
13

14 Q. What did you do after the meeting in terms of
15 discussions with Mr Emons? Did you have a discussion with
16 him concerning the mechanism of the payment of the
17 transport fee?

18 A. No, I recall speaking to Mark and I don't think, from
19 my recollection, there was much information forthcoming
20 from Mark at all. And, yes, so I don't recall him speaking
21 in any detail about the mechanism.
22

23 Q. Can I draw this circumstance to your attention: the
24 contract that we looked at yesterday discloses a payment
25 for discharge fees of up to US\$12 a metric tonne, but it is
26 silent as to the manner or mechanism of that payment.
27 Exhibit 122, which is Mr Emons' fax to Yousif Rahman, says
28 this:
29

30 We are very concerned to learn from the UN
31 that the Canadian Government has taken
32 action within the United Nations to
33 discover the manner of AWB payments.
34

35 He uses the phrase "the manner of". Did you have some
36 discussion with Mr Emons about the manner of payments of
37 the discharge fees?

38 A. I think it's possible I would have asked him, and,
39 from my recollection, I don't think I learnt any more than
40 really what's displayed in that diary note, that AWB pays a
41 Jordan trucking company. I don't believe I uncovered any
42 information other than what I already knew, or seemed to
43 have known.
44

45 THE COMMISSIONER: Q. The passage you drew attention to
46 in your diary note this morning which says "asked about
47 trucking fee" with a line or note "AWB pays the Jordan

1 trucking company", is that information you sought from
2 someone, or is it information that was given to you?

3 A. It appears to me to be information that was given to
4 me.

5

6 Q. By whom?

7 A. Well, I don't have a person nominated here in terms of
8 where this information has come from, but, to the best of
9 my knowledge, it appears to me to be a discussion with the
10 Mission to the UN. But I don't know that for sure.

11

12 Q. Mr Snowball, if the position is not as Mr Agius is
13 putting to you, what am I to make of these words "I think
14 we have nothing to worry about"?

15 A. Well, I've covered it in my email in terms of I was
16 taken by surprise by what seemed to be in Alistair's mind a
17 big issue, and when I've looked at what he's provided me
18 and the follow-up discussion with Bronte Moules, it didn't
19 appear to me to be as if there was a problem that we needed
20 to be worrying about. That's all I can recollect from what
21 I've written there.

22

23 MR AGIUS: Q. You see, by the time you wrote this email
24 you clearly had spoken to Mr Emons and you'd had two
25 conversations at least with Bronte Moules; is that right?

26 A. Yes.

27

28 Q. That much is apparent from the email itself?

29 A. At this stage I would have called Bronte Moules and
30 also had received either a call or a fax back, or an email,
31 I'm not sure - I assume a phone call back - prior to
32 writing this email, yes.

33

34 Q. So by now - that is, by the time you come to write
35 this email - you are in possession of some more information
36 about what it is that the UN is requesting?

37 A. Well, it appears that I have confirmation that the UN
38 is requesting the other terms and conditions.

39

40 Q. Well, you have confirmation that the UN is making an
41 inquiry, and you have confirmation that that inquiry is for
42 information on the contract clause above, and that contract
43 clause is "All other terms and conditions as per AWB Ltd
44 and Grain Board of Iraq standard terms and conditions".

45 A. Okay, yeah, it doesn't appear as if I know that it's
46 just these standard terms and conditions at that point, by
47 the looks of reading that again, yes.

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Q. What you say is if that is all the UN wants, which it seems was one possibility,

If all the UN wants is some understanding on standard terms and conditions, then I think we have nothing to worry about.

What I'm asking you is what did you have to worry about? What was the question or the answer about which you did have something to worry?

A. I don't recall, Mr Agius, I'm sorry. I tried to give you all the information that I can reconstruct and that I can recall.

Q. You see, by the time you wrote this email you had already had a discussion with Mr Flugge and with Mr McConville.

A. Yes.

Q. And you'd already spoken to Mr Emons.

A. Yes.

Q. Had you been told in those conversations of the mechanism - that is, the manner of AWB payments?

A. I don't recall.

Q. Is that what you had to worry about, the UN finding out about the manner of the payments?

A. I don't know, Mr Agius, I'm sorry.

Q. But can you see why this inquiry might be interested in that fact?

A. I can, but, you know --

Q. And can you see how that arises as an inference to be drawn from the whole of the evidence --

A. I can see where you're leading to, Mr Agius, but, I mean, I think, from my point of view, I'm pretty clear that I had a very open discussion with Bronte, and at that point - and I passed on what happened in the meeting, and it was out of my hands, really, at that point, in terms of the follow-up on this. So I passed on everything that I knew, and I was hoping that this issue would be resolved without any problem.

Q. Mr Snowball, I'm not suggesting that you didn't have

1 an open discussion with Bronte Moules, or that you didn't
2 say to Bronte Moules that she should speak to Mr Nicholas,
3 I'm not suggesting any of that; what I'm drawing your
4 attention to is that your statement "then I think we have
5 nothing to worry about" is written after all of that. I'm
6 suggesting that there is an inference, and I suggest a
7 strong inference, that after all of that you learnt that
8 there was something which could cause a problem which did
9 give rise to a worry, and that's why you wrote in this
10 email, "If all the UN wants is some understanding on
11 standard terms and conditions in AWB contracts, then I
12 think we have nothing to worry about". That's what I'm
13 suggesting to you.

14 A. And I can't recall, I'm sorry, Mr Agius.

15
16 Q. Yesterday I took you to the email in June 1999 in
17 which Mr Hogan speaks of a problem. If we put that
18 together with Mr Emons' fax to the IGB and your email in
19 which you speak about "I think we have nothing to worry
20 about", the inference is that what you did have to worry
21 about was the problem that had been identified by Mr Hogan
22 in his email to you and others in June of 1999, which did
23 concern the method of paying for the discharge of trucking
24 fee. I just put that to you and ask for what your response
25 is to that.

26 A. I think, if I may, my focus with Iraq was not on the
27 detail of standard terms and conditions or any contractual
28 terms and conditions; my focus was on trying to ensure we
29 had speedy payment against shipments through the UN. So I
30 don't believe - and also Iraq was a very small and minor
31 part of my role in the US.

32
33 Now, for me to come to a period in March and be
34 presented with something that might have related back to an
35 earlier email or correspondence six to nine months earlier,
36 I don't believe I would have drawn that connection. In
37 hindsight now, going back and looking through all the
38 material, you know, it may appear that there is a
39 connection there, but I don't believe at the time I would
40 have drawn that connection. My understanding was that we
41 had UN-approved contracts and there was no issue here.

42
43 Q. The issue that Mr Emons draws attention to is not that
44 which relates to the UN-approved contracts. Of course you
45 had UN-approved contracts. The issue that he draws
46 attention to is discovering the manner of AWB payments,
47 which is quite a different matter to approval to make

1 payments of \$12 for discharge costs. Do you see the
2 difference? On the one hand there's the fact of approval
3 to make payments, but, on the other, there's the question
4 of how those payments are to be made. Do you see that
5 difference?

6 A. Yes, sir.

7
8 Q. And you knew, didn't you, that payments could not be
9 made to an Iraqi entity under the sanctions unless those
10 payments were in Iraqi dinars?

11 A. There is some correspondence on that in emails, but
12 I'm not sure I would have really have known that. I think
13 I would have picked it up from the emails possibly, yes.

14
15 Q. As the AWB representative in New York, wasn't it your
16 business to know what the sanctions were?

17 A. No, sir. I mean, my focus with Iraq was on ensuring
18 that there was speedy payment against shipments, and
19 everything else to do with the UN or Iraq or sanctions was
20 all a result of a question for Melbourne and a discussion
21 with the Mission to the UN. I didn't have a detailed
22 understanding of the sanctions.

23
24 Q. No, I'm not asking you about a detailed understanding;
25 this is a pretty basic understanding. It boiled down to
26 the most basic elements, these sanctions meant that you
27 could not make a payment in US dollars or in any currency
28 other than Iraqi dinars to the Iraqis - you would have at
29 least understood that, would you not?

30 A. I think I would have picked that up from the June
31 correspondence, and I don't think I'd have any reason to
32 doubt that.

33
34 Q. Now, you received a fax from --

35
36 THE COMMISSIONER: Q. Just before you leave this email,
37 if one looks at paragraph 2, it says:

38
39 Alistair had visited the UN in NY the week
40 before. A UN official had asked him for
41 clarification of the following wording in
42 our short form contract...

43
44 It's set out:

45
46 Alistair mentioned that someone at the UN
47 was asking him quietly/informally about

1 payments AWB was making to Iraq for
2 discharge/trucking.

3
4 You then set out paragraphs 3, 4 and 5 and conclude
5 paragraph 5:

6
7 If all the UN wants is some understanding
8 on standard terms and conditions in AWB
9 contracts then I think we have nothing to
10 worry about.

11
12 The comparison you're drawing between paragraphs 2 and 5 is
13 a comparison about a query about standard all other terms
14 and conditions as compared with discharge/trucking
15 arrangements, and it's the latter, it would seem, on that
16 reading of the document, to be the thing that you would be
17 worrying about. That construction, if I may say so, seems
18 to fit entirely with your diary notes and, indeed, with the
19 letter Mr Emons wrote of the same date, after you'd
20 apparently had a conversation with him.

21 A. I think I'm connecting what you're saying there. I'm
22 not sure of the question, but I think Alistair is drawing
23 the connection between discharge of trucking and all other
24 terms and conditions as per the standard contracts.

25
26 Q. He's not drawing a connection, he's drawing a
27 distinction.

28 A. The way I read it is he's drawing a connection between
29 trucking and some information that may be in the other
30 terms and conditions. That's the way I read it.

31
32 Q. Then you go on and distinguish them and you say "If
33 it's only the standard terms and conditions, we have
34 nothing to worry about", in parenthesis one would put "if
35 it's about trucking discharge, we do".

36 A. Where have I put that?

37
38 Q. You haven't. That's the omission that I'm putting to
39 you flows from a natural reading of the email.

40 A. Look, I don't believe that's the case, but - no, I'm
41 trying my best to reconstruct this and giving you all the
42 information I think that I had at the time --

43
44 Q. Yes.

45 A. -- and to me the important part here is that I've
46 openly discussed everything with Bronte at the Mission to
47 the UN and left it with her to tell us exactly what the UN

1 would like to investigate or look at or see, and - rather
2 than rely on Alistair to provide just that information that
3 he's giving us here. I wanted to make sure we had the full
4 picture and everyone had the full picture. To me that's
5 the important part of this meeting.

6
7 MR AGIUS: Q. Now, you received a fax from Mr McConville
8 which we find in the attachments to your statement. Have
9 you got a copy of the attachments there? I'll bring it
10 up - AWB.0172.0330. This is said to include four pages,
11 and what we have in the annexures to your statement are an
12 additional three pages containing the standard terms and
13 conditions. Mr McConville has said to you:

14
15 Spoken with Canberra - they are OK with
16 waiting for Mark's OK.

17
18 Message was if he is OK, could you then
19 deliver copy of Terms and Conditions to our
20 UN Mission.

21
22 Then if we bring up, please, SN0.0001.0018 - these are
23 included in the annexures to your statement - these are the
24 standard terms and conditions. If we go to the third page,
25 0020, you'll see that for the buyers, the Grain Board of
26 Iraq, the standard term seems to have been signed by
27 Mr Stott, and for the sellers, the Australian Wheat Board,
28 the standard terms seem to have been signed by somebody
29 else; do you see that?

30 A. Yes.

31
32 Q. If we go back to 0018, and go to the top of that page,
33 the very top, there's a fax tracer line which seems to
34 indicate that these terms and conditions were in force from
35 at least 14 August 1996, since that's the date on the fax
36 tracer line at the top of the page - do you see that?

37 A. Yes.

38
39 Q. They're already an exhibit. Mr Emons had, in the
40 meantime, written to Mr McConville about this, and we have
41 it in exhibit 123. Could we bring up, please,
42 AWB.5117.0226. At the bottom of the page Mr McConville, on
43 31 March, has asked Mr Emons - we need to go to the next
44 page, 0227 - "Can you give me some ones to address the para
45 in the standard terms and conditions that refers to
46 demurrage/discharge as we discussed yesterday". Then if we
47 go to 0026 you'll see Mr Emons' explanation offered to

1 Mr McConville:

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The Standard Terms and conditions apply except as and when these are in contradiction to UN policy to trade with Iraq. This is pertinent to the clauses covering Despatch/Demurrage and the cross referencing clause guaranteeing a minimum discharge rate. As the UN contract specifically excludes such contractual conditions then the terms and conditions quoted are superseded.

Now, you understood that to mean that, because of UN sanctions, you couldn't have an active dispatch/demurrage clause in contracts with Iraq?

A. It appears so, yes.

Q. And that was because to have an active dispatch/demurrage clause one would need to have an opportunity to make payments to Iraq if Iraq, in relation to the dispatch/demurrage position, came out ahead?

A. I expect that's correct, sir, yes.

Q. Then you wrote to Bronte Moules - could we bring up, please, DFT.0001.0438, this is exhibit 216 - by fax enclosing the standard terms and conditions, and you included a portion of Mr Emons' email; is that right?

A. Yes.

Q. You made no reference in your fax to the problem as it had been expressed to you by Alistair Nicholas on 15 March, if we go back to MAE.0002.0091, wherein you record in paragraph 2:

Alistair mentioned that someone at the UN was asking him quietly/informally about payments AWB was making to Iraq for discharge/trucking. Alistair suggested to us that the request for information on the above contract clause was linked to this discharge/trucking payment issue.

In your fax to Bronte Moules you make no reference to "discharge/trucking", you don't use the phrase at all. Why did you say nothing about that to Bronte Moules when you enclosed the standard terms and conditions?

1 A. Mr Agius, after I'd spoken to Bronte after this
2 meeting, to me this issue was out of my hands. I'm just
3 acting as a postbox here under direction from Mark Emons
4 and Andrew McConville, and Bronte Moules at the Mission to
5 the UN, and they've asked me to send this through and make
6 mention of demurrage/dispatch. That's what I've done.

7
8 Q. In fact you were told by Mr McConville that, in
9 effect, you couldn't send these standard terms and
10 conditions on to the UN unless it had been cleared by
11 Mr Emons.

12 A. That's what Andrew McConville's fax is telling me,
13 yes.

14
15 Q. And the portion that you - I won't say you cut and
16 paste it, but the portion that you lifted from Mr Emons'
17 email was about all that you said to Bronte Moules in
18 addition to providing her with a copy of the standard terms
19 and conditions.

20 A. That would probably be right, sir.

21
22 Q. Did you have any discussion with anybody at AWB about
23 not referring to the discharge/trucking payment issue?

24 A. I don't think so, no. As I say, I mean, I'm acting
25 under instruction from the Melbourne office and from the
26 Mission to the UN, and I use the word "postbox" because
27 really that's all I'm doing here. I'm not sure why they
28 even put these through to me. They could have sent them
29 straight through DFAT or straight to the Mission to the UN.

30
31 Q. They could have sent them to Canberra?

32 A. Could well have.

33
34 Q. And they could have sent them directly to the United
35 Nations?

36 A. I didn't - I don't think I have any information from
37 Melbourne as to what they did and who they spoke with, but,
38 as I say, I'm just acting on their instruction to pass this
39 through.

40
41 Q. Now, did Bronte Moules or anybody else from DFAT ever
42 come back to you and say, "What about this
43 discharge/trucking payment issue, what can you tell us
44 about that?"

45 A. From what I've looked at in my email traffic and
46 documents I've seen it doesn't appear as if Bronte has come
47 back to me with anything. I think if we go back to that

1 16 March email, it suggests that DFAT will be in contact
2 with the Melbourne office of AWB.

3

4 Q. I know what's in the email; I was asking you whether,
5 given that you had sent the standard terms and conditions
6 to Bronte Moules, you had covered it with the fax, given
7 that you'd said nothing about discharge/trucking payment
8 issue. I really want to know whether Bronte Moules or
9 anybody from DFAT came back to you, not to AWB - we'll deal
10 with that later.

11

12 MR CARTER: Something the witness should be asked as a
13 matter of fairness here is did he ever have direct contact
14 with DFAT, because what he's said is "we only ever dealt
15 through the Australian Mission".

16

17 THE COMMISSIONER: Go ahead, Mr Agius.

18

19 MR AGIUS: Q. Did Bronte Moules ever come back to you on
20 the issue of discharge/trucking payment?

21 A. I don't believe so. I can't recall anything. I have
22 looked at my emails and there is an email that I've sent to
23 Mark on 7 April, I think, which suggests that Bronte has
24 indicated - we may have to bring it up, I don't know the
25 exact words. That's my only bit of information. I've
26 looked through my diary notes. I don't believe I can find
27 anything there, and I don't recall any discussion.

28

29 Q. There is a reference in your notebook that I want to
30 take you to.

31

32 THE COMMISSIONER: Before you do, Mr Agius, do you wish to
33 make that page, the AWB page from Mr McConville to
34 Mr Snowball and the annexures, an exhibit? They are part
35 of the annexures, but --

36

37 MR AGIUS: Perhaps I will make that a separate exhibit
38 together with the standard contract terms and conditions.
39 So that will be AWB.0172.0330 and SNO.0001.0018 through to
40 and inclusive of 0020.

41

42 EXHIBIT #387 PAGE FROM MR MCCONVILLE TO MR SNOWBALL AND
43 ANNEXURES, TOGETHER WITH STANDARD CONTRACT TERMS AND
44 CONDITIONS, BARCODED AWB.0172.0330 AND SNO.0001.0018

45

46 MR AGIUS: Q. Now, we were kindly given some further
47 copies of notebook entries that you made by your counsel

1 this morning, Mr Snowball. I trust you've had an
2 opportunity to see these.
3 A. I was shown something about five minutes before we
4 came down here today.
5
6 Q. I don't think we've had an opportunity to put these on
7 the system. I wonder if we might try, just in case some
8 miracle has been performed - SNO.0001.0093.
9
10 THE COMMISSIONER: No.
11
12 MR AGIUS: Q. I'll just show you a copy of a page that
13 was drawn to our attention.
14
15 THE COMMISSIONER: Do you have a spare copy, Mr Agius, to
16 put on the screen, please?
17
18 MR AGIUS: Yes, I have two spare copies, one for the
19 monitor and one for you, Commissioner.
20
21 THE COMMISSIONER: Thank you.
22
23 MR AGIUS: Q. We can identify "Bronte" underlined and an
24 arrow, "copy of standard terms", and that is a note that
25 you probably made, either to remind yourself to send the
26 terms or as a note that you had done so; is that right?
27 A. It looks like it, or it might have been a conversation
28 with Bronte, I don't know.
29
30 Q. Then underneath that there's an arrow "short covering
31 note, bounced off the" what?
32 A. I'm not sure what's written after "covering", but this
33 looks to me to be a reference to some commentary on the
34 futures market, where it may have bounced off its lows as a
35 result of some short covering. I don't think that's a
36 related issue to Bronte.
37
38 Q. Now, is that the only note that you've been able to
39 find of any additional contact with Bronte Moules over this
40 matter?
41 A. I've looked through my diary notes and I couldn't find
42 anything. This one I don't recall looking at over the last
43 couple of weeks, but it was shown to me this morning. But
44 I don't recall - I can't find anything else that references
45 this period.
46
47 MR AGIUS: Mr Commissioner, I'll tender that page from the

1 notebook as a separate exhibit, SNO.0001.0093.

2

3 EXHIBIT #388 PAGE FROM MR SNOWBALL'S NOTEBOOK,
4 BARCODED SNO.0001.0093

5

6 MR AGIUS: Q. You referred to an email that you sent to
7 Mr Emons. We have that as exhibit 130. Could you bring
8 up, please, AWB.0172.0093. It is dated 6 April 2000,
9 addressed to Mark Emons:

10

11 Mark,

12

13 I sent the contract standard terms and
14 conditions via Aust Mission to the UN. The
15 UN has now confirmed that everything in the
16 contract is fine and there is no issue.

17

18 That last piece of information, "The UN has now confirmed
19 that everything in the contract is fine and there is no
20 issue", from where did you obtain that?

21

22 A. I would have obtained it from Bronte Moules, but I
23 don't have any diary note or record of it that I can see.

23

24 Q. Did you have any conversations with anybody at AWB in
25 the Melbourne office about this matter?

26

27 A. I don't recall any conversation other than the call to
28 Mark Emons straight after the meeting. And I haven't been
29 able to find anything in my correspondence that suggests I
30 have.

30

31 Q. Can I bring you forward a year to February of 2001.
32 Can we bring up, please, confidential exhibit 74C,
33 AWB.5004.0183. This is an email from Mr Borlase to
34 M-AWB-International -New York. That would have included
35 yourself, would it not?

36

37 A. Yes.

37

38 Q. He refers to a brief summary of his trip to Iraq and
39 he has attached a trip report for the file. If we go to
40 the trip report at 0188, there is a paragraph headed
41 "Trucking Fee/Services Fee". Now, it's likely that you
42 read that paragraph, is it not?

43

44 A. I don't think I'd say it's likely I've read that,
45 because there's quite a detailed summary email, and this is
46 an attachment. No, I think I would have possibly read the
47 summary. I'm not sure I would have read the full report.

47

1 Q. Mr Snowball, you were by this time much better
2 acquainted with the UN sanctions, were you not?

3 A. No, I wouldn't say that.
4

5 Q. Well, can we go back to an email that you sent in July
6 of 2000, AWB.5117.0080. If we go back to 0081 - this is
7 the page before; this is an email train - Mr Jones has
8 asked you at the bottom of that page to check out with the
9 UN what the policy is as far as vessel movement off the
10 berth, and you will recall at this time there were real
11 issues about demurrage and delays in unloading vessels at
12 Umm Qasr.

13 A. Is this not referencing a vessel that was rejected?
14

15 Q. Yes.

16 A. Okay.
17

18 Q. If we go to the next email, you'll see at the bottom
19 of the previous page, on 10 July, although it's written as
20 7 October, Ms Scales gives you a little bit of background,
21 as she refers to it --

22 A. Sorry to interrupt, but can I please have that on my
23 screen?
24

25 Q. Yes, we need to go to the bottom of this page. This
26 is Ms Scales' email to you on 10 July providing you with
27 some background. When you've read the bottom of that page,
28 we can go back to 0081.

29 A. Is there anything over the page?
30

31 Q. Yes, could we go to the next page, please.

32 A. Okay.
33

34 Q. So you've had two emails now dealing with the question
35 of the UN policy concerning vessels moving off berth, and
36 then you respond on 11 July, if we go to 0080 - it's about
37 the first eight lines that I want to draw your attention
38 to:
39

40 The UN's stance on this oil for food
41 program is:
42

43 Iraq agrees to a contract for supply of
44 wheat from Australia. This is a commercial
45 agreement and has no involvement from UN.
46 UN will not arbitrate/influence the terms
47 and conditions of the contract as long as

1 there is no threat of the oil money being
2 used for things like purchasing weapons.
3 The UN secretariat has a responsibility to
4 execute the Oil for Food programme, but
5 their role is centred around ensuring the
6 goods Iraq purchases are for humanitarian
7 food/medicine and that there are funds from
8 the sale of oil to pay for the goods.

9
10 Then you go on to deal with the rest of the problem
11 concerning vessels being taken off berth, et cetera. So at
12 least as at July 2000 you were aware of as much information
13 as I've just read from this email?

14 A. Yes, and I would have got that from the Mission to the
15 UN.

16
17 MR AGIUS: I tender those two pages, Mr Commissioner,
18 AWB. 5117.0080 and 0081.

19
20 THE WITNESS: Mr Agius, I think that's in reference to the
21 question as to whether the UN can - who actually shifts the
22 vessel off the berth as a result of some sort of quality
23 problem, and it appears that the UN's quality analysis is
24 not the determining factor here in terms of whether the
25 vessel moved off the berth. I think that's what I'm trying
26 to explain.

27
28 EXHIBIT #389 TWO-PAGE EMAIL TRAIN, THE FIRST BEING FROM
29 MS SCALES TO MR SNOWBALL, THE SECOND BEING FROM MR SNOWBALL
30 TO MS SCALES, BARCODED AWB. 5117.0080-0081

31
32 MR AGIUS: Q. In the course of explaining that, you
33 indicate a certain familiarity with the operation of the
34 Oil-for-Food Program, which, if I may boil it down, at
35 least includes the following: that the UN were interested
36 in ensuring that the money that Iraq attained from the sale
37 of its oil was used and was spent on humanitarian food and
38 medicine?

39 A. Meaning that if there was weapons on the vessel then,
40 you know, the UN would reject it - no other reason than
41 that. That's what I think I'm referring to here.

42
43 Q. But you agree with the portion that I just put to you?

44 A. Yes, in reference to quality of vessels, yes.

45
46 Q. Well, if you had read what Mr Hogan and Mr Borlase
47 wrote in their Iraq trip report for February 2001, if you

1 had read this, "We believe the increase in trucking fee and
2 addition of the service charge is a mechanism of extracting
3 more dollars from the escrow account", you would have been
4 alarmed, would you not?

5 A. If I had read that, yes, I might have been alarmed,
6 but I'm not sure I read that.

7
8 Q. Just stay with me for a moment. It's very dangerous
9 to try to get ahead of me, Mr Snowball. If you had read
10 it, you would have been alarmed, given your state of
11 knowledge as to the purpose of the program and how the UN
12 operated the Oil-for-Food Program?

13 A. This email here is in 2000, and I think you're
14 referring to February 2001. In the meantime, I've got a
15 clear message, I think, when I read back through my emails,
16 that the Melbourne office didn't see much of a role for me
17 to be involved in the UN program. I think I've read that
18 email somewhere. I think my focus on anything to do with
19 Iraq other than the odd question on payments or issues like
20 this that might have popped up, I don't think I had a very
21 large focus at all, so I'm not sure, even if I'd read that,
22 that I would have created myself some sort of alarm.

23
24 Q. Well, you were aware, at least in July 2000, that the
25 UN took an interest in ensuring that there was, to use your
26 words, "no threat of the oil money being used for things
27 like purchasing weapons", but its interest "is centred
28 around ensuring the goods Iraq purchases are for
29 humanitarian food/medicine and that there are funds from
30 the sale of oil to pay for the goods". Given you had that
31 state of knowledge, if you read a document that said that
32 AWB employees were of the belief that the Iraqis were using
33 a mechanism to extract more dollars from the escrow
34 account, you would have been concerned that perhaps the
35 Iraqis were attempting to get around the UN sanctions,
36 would you not?

37 A. Possibly, but that's something that the guys in
38 Melbourne are managing. I mean, I don't think I could have
39 cause for alarm without knowing the full picture anyway.
40 So, I mean, I - possibly, but I don't know for sure.

41
42 Q. Well, at any time after February of 2001 - and I mean
43 right up until the end of 2005; I remind you that the
44 Volcker Report, the final Volcker Report, was published at
45 the end of October 2005 - did anybody within AWB come and
46 speak to you about the trucking fee or an aftersales
47 service fee or a service fee and what your knowledge of it

1 was?

2 A. Yes. I'm not sure of the exact date, but in 2004 or
3 2005 I did spend some time with a lawyer going through
4 documents and trying to discuss what I knew about Iraq and
5 anything to do with trucking fees.

6

7 Q. Did you go through this trip report of February 2001
8 at that time?

9 A. I don't recall.

10

11 Q. Are there any documents that you do recall going
12 through at that time?

13 A. I think there might have been some documents from the
14 hard copy Iraq file that I used to keep in the US - I
15 think, but I don't really recall much about the detail.
16 There wasn't much in terms of email correspondence, I don't
17 think.

18

19 Q. There wasn't much in terms of email correspondence?

20 A. I don't think we - I looked at or discussed much in
21 terms of email correspondence - I don't think.

22

23 Q. Did you look at Iraqi market briefs?

24 A. No, I don't recall.

25

26 Q. Did you have copies of Iraq market briefs in your New
27 York office?

28 A. If I had received an email that I thought was worth
29 keeping in a hard copy, I would often place it in the file,
30 yes.

31

32 Q. So if you received a trip report relating to Iraq that
33 touched upon demurrage, would you have included that in
34 your hard copy file?

35 A. I don't know, sir. It's possible.

36

37 Q. Is it just a decision that you made at the time when
38 you opened an electronic document - you just made a spot
39 decision as to whether you'd keep it or not?

40 A. Yes.

41

42 Q. You didn't have any set rules as to whether you'd keep
43 certain documents or not?

44 A. No, just if I thought it was relevant to possibly look
45 back on or keep a record.

46

47 Q. You kept, then, hard copy files in the New York AWB

1 office?
2 A. Yes, and the Portland office. We shifted from
3 New York to Portland.
4
5 Q. Did you bring those with you from the USA to
6 Australia?
7 A. No.
8
9 Q. Where are they today?
10 A. I don't know, sir.
11
12 Q. When did you last see them?
13 A. I have a compact disk copy with me that I've seen over
14 the last three, four weeks.
15
16 Q. What, that includes all of the documents that were on
17 those files that you had in the US?
18 A. I don't know whether it includes all, but I assume as
19 much as possible. I don't know whether it includes all or
20 not.
21
22 Q. Who made the disk?
23 A. One of our lawyers. I was given the disk from an
24 internal legal person, who I believe got the disk from
25 Minters, I think.
26
27 Q. Let's focus on these files that you had in the US.
28 You had them in the New York office and then the New York
29 office moved to Portland, and you took the files with you?
30 A. Yes.
31
32 Q. How many binders were there?
33 A. I would only be guessing. I think we had an upright
34 file, I think, and perhaps there was a couple of lever-arch
35 binder equivalent size, perhaps. I don't really know for
36 sure.
37
38 Q. Did that relate entirely to Iraq?
39 A. Yeah, it was labelled "Iraq" or "Iraq/UN", I think.
40 It was probably dating back well before I got to the US.
41
42 Q. And you added to it from time to time?
43 A. Yes.
44
45 Q. You never stripped any documents out of it?
46 A. No.
47

1 Q. And you had it with you at the time that you were
2 interviewed by this lawyer?
3 A. I think the lawyer might have presented some of that
4 information to me in hard copy. I didn't have any way of
5 drawing that information. It was still sitting in the US
6 as far as I knew.
7
8 Q. So where did you have this discussion with the
9 lawyer - in Australia or in the US?
10 A. No, in Australia, and I think it was 2004, or sometime
11 around there. I don't recall the exact time.
12
13 Q. Where were you working at that time?
14 A. In Melbourne.
15
16 Q. You had left the US and left these files behind?
17 A. Yes, I left the US in September 2001.
18
19 Q. And the lawyer showed you documents which you
20 recognised as having been on the files that you had in the
21 US?
22 A. I don't know for sure, but I think so. I mean, I
23 don't --
24
25 Q. Did you draw anybody's attention to the fact that you
26 had these documents in the US?
27 A. Yeah, I think someone would have asked me if there was
28 a file in the US, I'd say.
29
30 Q. Did you ever see that file in Australia?
31 A. No.
32
33 Q. Do you know whether that file is still in existence in
34 the US?
35 A. I don't know, sir.
36
37 MR AGIUS: Is that a convenient time for a short break,
38 Commissioner?
39
40 THE COMMISSIONER: Yes.
41
42 SHORT ADJOURNMENT
43
44 MR AGIUS: Q. Mr Snowball, I wonder if you would turn
45 up, please, in the bundle of documents a barcoded page
46 ending with the number 0103.
47 A. This bundle?

1
2 Q. Yes. Does that have barcoded pages?
3 A. "SNO" barcoding?
4
5 Q. Yes, "SNO" - SNO.0001.0103. Could you bring that up
6 for us, please, monitor?
7 A. Oh, position description or - no, sorry, I'm a bit
8 lost.
9
10 Q. It will be 0001.0103.
11 A. It doesn't appear to be in this bundle here.
12
13 THE COMMISSIONER: Q. My copy doesn't have page numbers,
14 but it's the page immediately after --
15 A. Oh, it's in the other bundle, I think.
16
17 Q. The bundle produced this morning.
18 A. The diary note. Yes, I've got it.
19
20 MR AGIUS: Q. Do you have it?
21 A. Yes.
22
23 Q. Do you see two-thirds of the way down the page there
24 is a reference to "Bronte"?
25 A. Yes.
26
27 Q. I wonder if the monitor could enlarge that section,
28 the two lines referring to Bronte. Could you read that,
29 please, Mr Snowball? We need your assistance.
30 A. So "Bronte", arrow, "payment no issue". The next line
31 says, "Don't want Aust. Govt to get involved?" Another
32 arrow, "general discussion and raise the issue of rejected
33 wheat?" There's further information there and a bracket
34 "people in Amman raised some question".
35
36 Q. We happily received this this morning from your
37 counsel, and we are not able to place this page in any
38 chronology. Can you assist?
39 A. Sorry, Mr Agius, but I really need to see all the
40 books that were provided to know the chronology.
41
42 Q. Do you know from which book this note comes?
43 A. No, I don't.
44
45 Q. It refers at the top to "15 Aug - 15 Sept", but
46 there's no year. At the bottom of the page, in the
47 left-hand corner, there's a reference to "August 18" and

1 "settlement".
2 A. 15 Aug-15 Sept looks a bit like a shipment period, but
3 I'm not sure that's a reference to the date of this diary
4 note. "August 18 settlement", yeah, again, that might be a
5 reference to some sort of contract. I'm not sure that
6 gives me much information. Dean Manion was a computer
7 person, and so this may have been in 2000 perhaps, later in
8 the year. I don't know. If I had all the of the books, I
9 could perhaps help you a little more.

10
11 Q. Leaving aside the period and the time when the note
12 was made, can you put the note into some kind of context,
13 what were the circumstances in which you made it?

14 A. I quickly had a look at this before I came to the
15 hearing this morning and it appears like it's some
16 discussion around a rejected vessel, but I think that's
17 what it's referring to mostly. I'm sorry, I don't recall
18 exactly what it's all about.

19
20 Q. You had no recollection of the circumstances in which
21 you made the note?

22 A. No.

23
24 Q. Do you know whether it's a note of a conversation you
25 had with Bronte Moules, or whether it's a note that you
26 made in anticipation of a conversation with Bronte Moules?

27 A. I would say it's a note that I've had as a result of a
28 conversation with Bronte, I've jotted these things down
29 whilst I'm on the phone with Bronte.

30
31 MR AGIUS: I will tender that page, SNO.0001.0103.

32
33 EXHIBIT #390 PAGE OF NOTES FROM MR SNOWBALL'S DIARY,
34 BARCODED SNO.0001.0103

35
36 THE WITNESS: Just one more thing, I notice down there
37 there's a reference to properties, so it may well have been
38 around the time that we shifted the New York office to
39 Portland. August 18th, maybe, possibly - a bit of a long
40 shot - maybe that was settlement on the building, perhaps,
41 settlement date.

42
43 THE COMMISSIONER: Q. What year did you move?

44 A. It was 2000 - I think September 2000. So it may well
45 possibly be somewhere around July, August, September,
46 October 2000, but I'd need to look at the books to be a
47 little clearer.

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MR AGIUS: Q. Can I bring you now to March of 2001. Could we bring up, please, AWB.5044.0329. If we go to 0332, you'll see that Mr Rowland writes to you on 23 March 2001 - I won't read it all, but it commences:

Tim we have recvd the foll msg from Iraq State Port Agents whom hve introduced a levy of USD 0.50 cents p/mt to be paid in cash to them prior to a vessel being able to take berth and discharge. This charge has only just been introduced and the Iraqi's are making it retrospective to the 11/3/01.

All vessel's that call Iraq have been paying USD 1500.00 in cash to the Iraqi port state agents for normal port agency but this charge is a cargo based charge in addition to the USD 1500.00 per vessel.

Dom is of the opinion that this charge contravene's the UN sanction's on Iraq as nobody is meant to be able to transfer US Dollars into or out of Iraq without UN approval.

Can you please confirm this is correct and that this charge is in effect illegal under the current sanctions.

Then you are given an excerpt of the message which had been received from the ISCWT in Basra. You can read the message. When you get to the bottom of the page, we can turn over for you.

A. Yes.

Q. Have you read the whole of that email?

A. Yes.

Q. Then we go to your response at 0331, which is 25 March:

As we discussed on Friday, Bronte Moules from the Australian Mission to the UN will be following this up directly with the UN on Monday. Bronte had heard of a similar

1 USD/mt charge that Iraq has been trying to
2 place on other bulk imports. Bronte seemed
3 to think that the current USD1500 flat fee
4 for normal port agency fees does not
5 violate current sanctions procedures, but
6 the USD0.50/mt would.

7
8 I will let you know as soon as possible.
9

10 Then above that we have your further email of 27 March 2001
11 reporting a conversation that you had with Bronte Moules
12 that day.

13 A. Yes.

14
15 Q. You've read that email?

16 A. Yes.

17
18 Q. Can I take you to a note in your notebook. It's at
19 page 0115. There's a heading underlined "Bronte Moules -
20 26 Mch", which I take to be "March". Have you found that?

21 A. Yes.

22
23 Q. I wonder if you could assist by reading it, so that we
24 can read your note?

25 A. "Iraq can charge port fees (not a sanctions issue) but
26 can only pay in Iraq currency." I've got in brackets
27 "dinars" there on the left-hand side. There's an arrow
28 saying "technically", which might mean therefore -
29 "technically in breach of sanctions", "but sanctions
30 committee have been aware", and then an arrow leading down
31 with further information, which appears to be "was a recent
32 case where it was tried to include it in contract and
33 sanctions committee rejected it". Another point "putting
34 contracts on hold if large amounts of money being handed
35 over. Any USD to Iraq govt is a definite no. But sympathy
36 for the situation and the sanctions committee will look at
37 it. Could take 1-2 weeks. Just got the new 1 million
38 tonne approval." An arrow, "will let DFAT Canberra know".
39 I don't believe "CWRS 13%" refers at all to this
40 conversation with Bronte.

41
42 Q. But for the "CWRS 13%", that is a note that reflects a
43 conversation that you had with Bronte Moules on 26 March?

44 A. That's what it looks like, sir, yes.

45
46 Q. In the conversation it appears that she told you "any
47 US dollars to the Iraqi Government is a definite no."

1 A. Yes.

2

3 Q. Now, you then prepared an email to send to the AWB
4 office, which is the email we saw at AWB.5044.0331. Is
5 that email meant to reproduce the substance of what
6 Ms Moules told you?

7 A. Yes, it looks like it's very close to my diary note.

8

9 Q. There's one significant difference. Have you detected
10 what it is? Your handwritten note records that line that
11 I've read to you, "any US dollars to Iraqi Government is a
12 definite no"?

13 A. Yes.

14

15 Q. I don't see that in your email.

16 A. "any payments in US dollars to Iraq are breaching
17 sanctions". I assume that's what I'm referring to.

18

19 MR AGIUS: I tender those three pages of emails from 0331
20 through to 0333. That's AWB.5044.0331 through to 0333.
21 I'll include within the tender the handwritten note
22 SNO.0001.0115.

23

24 EXHIBIT #391 THREE PAGES OF EMAILS AND HANDWRITTEN NOTE,
25 BARCODED AWB.5044.0331-0333 AND SNO.0001.0115 RESPECTIVELY

26

27 MR AGIUS: Q. We have Mr Hogan's email to the grain
28 board. Could we bring up, please, AWB.5049.0277. This is
29 Mr Hogan writing to Miss Moona at the Iraqi Grain Board
30 objecting to the payment of the 50 cent fee. Then if we go
31 to AWB.0005.0288, this is a telex from AWB Limited
32 Melbourne to the ISCWT in Basra confirming that AWB is
33 unable to place the ISCWT in funds for the additional
34 demands as they fall outside the United Nations terms and
35 conditions for the shipment of wheat. Then if we go to
36 AWB.5049.0278, there is an email from Mr Hogan to the grain
37 board asking Miss Moona to advise urgently what the status
38 of the removal of the discharge fee at Umm Qasr is. Then
39 there is an email from Mr Todd Lees to "Market-Info" at
40 AWB, AWB.5077.0205. Under "Iraq" you'll see the reference:

41

42 Vessels continue to discharge without
43 paying USD0.50 port fee. IGB state that it
44 is not within their control. AWB refuse to
45 pay as per UN and Contract terms.

46

47 Continue to request IGB to confirm no

1 disruption to AWB vessels.

2
3 Yousif and Minister out of Iraq. Yousif in
4 Egypt but they will not provide contact
5 number for D Borlase to have meeting.
6

7 Then there is a further email from Mr Hogan to the IGB, of
8 3 April, AWB.5049.0282, again objecting to the imposition
9 of the 50 cent fee and cutting and pasting the earlier
10 email to Miss Moona. The next is a document of 5 April
11 2001, which appears to come from the IGB, AWB.5101.0081:
12

13 Pls be advised that our recent contracts
14 specifications do not include any
15 additional charges of discharge fees. So
16 there is no need for payment A.M total
17 amount.
18

19 Then on 6 April there's AWB.0005.0287, a telex to the ISCWT
20 in Basra from the AWB, which again takes issue with the
21 imposition of the port expense, and then a further telex to
22 the ISCWT, AWB.0090.0326, again taking issue with the
23 imposition of this charge:
24

25 As you well know, it is impossible for AWB
26 (or any other organisation) to remit US
27 dollars to Iraq.
28

29 If, some how AWB did remit the US dollars
30 you request, AWB would be in contravention
31 of the UN sanctions against Iraq...
32

33 Et cetera. And then a telex AWB.0090.0347 from the ISCWT
34 to the AWB, subject "ISCWT - US 20 cent per tonne". This
35 refers to a telex dated 18 April. It records:
36

37 You have to pay the amount through Alia Co.
38 If it not possible you can pay it cash in
39 Umm Qasr bank in Iraqi-dinars and this
40 expenses just like all expenses taking in
41 the other ports all over the world.
42

43 B rgds
44 ISCWT Basrah

45 Then there's an email from Peter Wall to Todd Lees, Dominic
46 Hogan and others regarding the ISCWT additional port
47 charges of 23 April 2001, copying a telex from the ISCWT to

1 the AWB. It's AWB.0103.0034, indicating that a ship had
2 just completed and sailed without hindrance. Then if we go
3 to AWB.5064.0362, there is an email from Sandra Gatto of
4 27 April 2001 to AWB personnel - Hogan, Lees and
5 Edmonds-Wilson - including a message that had been received
6 from Pacific Rim Shipping Pty Limited relating to three
7 ships and recording a message from the ISCWT:

8
9 Pls coordinate with AWB for payment addl
10 charges of US 0.50 cents pmt in order avoid
11 unnecessary delays berthing.

12 Best regards
13 ISCWT

14
15 THE COMMISSIONER: Could you go down to the bottom,
16 please? Is it on the next page?

17
18 MR AGIUS: Q. That message is repeated three times in
19 the telex from the ISCWT. If we go to the top of 0362,
20 Mr Lees reports to Sandra Gatto, copied to Messrs Hogan,
21 Long, Gomersall and Edmonds-Wilson:

22
23 Sandra

24
25 Dom has advised that this issue has been
26 resolved with the Grains Board of Iraq and
27 agreement reached that the 50 cents/mt will
28 not be paid by the AWB. Our understanding
29 is that our vessels have been berthing and
30 discharging in the last month as per normal
31 and expect this situation to continue for
32 future vessels.

33
34 Please respond to Pacrim accordingly.

35
36 Then we have an Iraqi trip report from Mr Hogan dated
37 12 June 2001. Perhaps before I move on, Mr Commissioner, I
38 will tender all of the emails and telexes to which I have
39 referred.

1 EXHIBIT #392 EMAIL FROM MR HOGAN TO THE IGB BARCODED
2 AWB. 5049.0277; TELEX FROM ABW TO ISCWT BARCODED
3 AWB. 0005.0288; EMAIL FROM MR HOGAN TO THE IGB BARCODED
4 AWB. 5049.0278; EMAIL FROM TODD LEES TO "MARKET-INFO" AT AWB
5 BARCODED AWB. 5077.0205; TELEX FROM AWB TO ISCWT BARCODED
6 AWB. 0005.0287; TELEX FROM AWB TO ISCWT BARCODED
7 AWB. 0090.0326; TELEX FROM ISCWT TO AWB BARCODED
8 AWB. 0090.0347; EMAIL FROM P WALL TO T LEES AND OTHERS
9 BARCODED AWB. 0103.0034; AND EMAIL FROM S GATTO TO VARIOUS
10 AWB PERSONNEL BARCODED AWB. 5064.0362

11

12 MR AGIUS: Would you make an order prohibiting the
13 publication of the names of the ships that are referred to
14 in those emails and telexes?

15

16 THE COMMISSIONER: Yes, I make that order.

17

18 MR AGIUS: Q. If we go to AWB. 0084.0058, which is
19 Mr Hogan's trip report to Market-Info, as well as Messrs
20 Owen, Aucher, Cracknell, Werner and McMullen - could we go,
21 please, to 0061. There's a reference to, at the very
22 bottom of the page, under the heading "Performance Bond":

23

24 Minister is under pressure over our split
25 payments for inland transport. Working on
26 way, whereby we would pay one vessel in
27 full and roll these funds. This will keep
28 a security balance and no performance bond
29 will be required.

30

31 New contract is 100% payment for inland
32 transport before discharge.

33

34 ***The USD0.50 fee (which Umm Qasr port
35 tried to apply earlier this year) is now
36 built into inland transport fee.

37

38 This is confidential exhibit 116. Then, to return to the
39 emails, could we bring up AWB. 0094.0012. The email at the
40 top of the page of 3 January 2002 from Mr Edmonds-Wilson to
41 Sandra Gatto, subject "ISCWT Fee", and Mr Edmonds-Wilson's
42 message is:

43

44 Pls see below email re ISCWT fees... they
45 are incorporated into inland Transport
46 Fees.

47

1 There's a reference to the name of a ship, saying for that
2 ship they were remitted to Alia on 15/11/01. I add that
3 page to the emails and telexes that I earlier tendered,
4 Mr Commissioner, if I may.

5
6 THE COMMISSIONER: Yes, and I make the same order in
7 relation to the vessel name.

8
9 EXHIBIT #392 ADDITION OF EMAIL FROM MR EDMONDS-WILSON TO
10 MS GATTO, BARCODED AWB. 0094. 0012

11
12 MR AGIUS: Q. Mr Snowball, as we went through that chain
13 of emails and faxes some of that material was copied to
14 "Market-Info", and in particular the Iraqi trip report of
15 June 2001 was copied to Market-Info. Did you receive that?
16 A. I don't know whether I received that or not, sir.

17
18 Q. Did you read it?

19 A. Would I read it? I may have, if I had received it,
20 but I don't know.

21
22 Q. Where were you in June of 2001, in particular 12 June
23 2001?

24 A. Well, my home base was still the US, I was still over
25 in the US.

26
27 Q. Did you become aware in 2001 that the inland transport
28 fee had built into it a component of US 50 cents to cover
29 the ISCWT fee that the ISCWT had attempted to impose in
30 March of 2001?

31 A. I don't recall, sir. I could probably offer some
32 comments, I guess, in this exercise, in that my role in the
33 US was not to focus on these issues with Iraq day to day;
34 it was to be under instruction from Melbourne if they
35 needed me to follow something up, for whatever reason it
36 might be, I would always not act with any authority in
37 terms of providing information, it would always be a
38 discussion with the Mission to the UN and just pass that
39 information back. Really at that point I didn't feel I had
40 any further role in these types of issues. In fact I think
41 from my diary note here it actually mentions that DFAT
42 Canberra will let Melbourne know what the outcome of the
43 initial inquiry was. So I don't believe - I don't think I
44 was copied in on any of this correspondence, so to me I
45 think my job would have been done back on 26 March and I
46 wouldn't have had a focus on this.

47

1 Q. Could we bring up, please, a letter from the Permanent
2 Representative of Australia to the United Nations of
3 26 March 2001 to the Chairman of the Security Council
4 Committee established by Resolution 661. It's
5 DFT.0001.0458. This letter appears to have been written at
6 about the time that you were in communication with
7 Bronte Moules, and it seeks the advice of the chairman of
8 the Security Council Committee established by Resolution
9 661 in relation to the question that you had apparently
10 raised with Ms Moules concerning the request for payment of
11 the US 50 cents per tonne.

12
13 MR AGIUS: I tender that copy of the letter,
14 Mr Commissioner.

15
16 EXHIBIT #393 LETTER FROM PERMANENT REPRESENTATIVE OF
17 AUSTRALIA TO THE UNITED NATIONS TO THE CHAIRMAN OF THE
18 SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661,
19 DATED 26/3/2001, BARCODED DFT.0001.0458

20
21 MR AGIUS: Q. Mr Snowball, did you become aware that the
22 Australian Mission to the United Nations had indeed written
23 to the chairman requesting guidance on this issue?

24 A. I don't think I was made aware of that, sir, but I
25 don't recall.

26
27 Q. Did you ever see any reply from the chairman of the
28 Security Council Committee to this request?

29 A. I don't believe so, sir. Something like this would
30 have been passed through to DFAT in Melbourne without me
31 normally seeing this type of information.

32
33 Q. You will remember, Mr Snowball, that I asked you about
34 the Iraqi trip report of February 2001, which is
35 confidential exhibit 74C. Can we go to AWB.5004.0183.
36 This is the email which covered the trip report. On the
37 same day it appears that you responded to this email,
38 Mr Snowball. Could we bring up as part of exhibit 20
39 AWB.5077.0192. Do you see that this email is a response to
40 the email that I've just shown you?

41 A. Yes.

42
43 Q. Do you see that it refers to the UN "authentication"
44 certificates, as it's written, and you offer some comments
45 in relation to them?

46 A. Yes.

47

1 Q. Would you not have had to have read the trip report to
2 be able to offer those comments?
3 A. Does the summary that is provided prior to the trip
4 report cover what I'm talking about here, do you know?
5
6 Q. No, it doesn't?
7 A. It doesn't?
8
9 Q. If we go back to AWB.5004.0183 --
10 A. Would I be able to see a hard copy of that, sorry,
11 Mr Agius?
12
13 Q. Yes.
14 A. Okay.
15
16 MR CARTER: Mr Commissioner, as I understood, the witness
17 requested a hard copy. It's clear from the evidence that
18 preceded that request that he referred to the summary
19 provided by Mr Borlase to the trip report, and that's been
20 the subject of earlier evidence. The witness then asked
21 the question of Mr Agius, "Does that appear in the
22 summary", at which point a hard copy was provided to the
23 witness. I just wanted to ensure that he does in fact have
24 a hard copy of the one-and-a-half-page document before he's
25 required to answer the question.
26
27 THE WITNESS: Yes, I do.
28
29 MR AGIUS: I would have thought that was plain from what
30 we've done, we've provided the witness with a hard copy of
31 the email.
32
33 Q. You do have that, do you not, Mr Snowball?
34 A. Yes, I do.
35
36 Q. That is what you've been reading for the last few
37 minutes?
38 A. Yes.
39
40 Q. You confirm, do you, that the one-and-a-half-page
41 email that my learned friend refers to does not pose any
42 question concerning UN authentication or authentication?
43 A. Yes.
44
45 Q. Behind that email you see the Iraq trip report,
46 Mr Snowball?
47 A. Yes.

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Q. That's part of the documentation that we handed to you?

A. Yes.

Q. If you would look, please, at the third page --

THE COMMISSIONER: AWB.5004.0187.

MR CARTER: Mr Commissioner, this is not an objection, but we are in possession of a summary from Mr Borlase dated 7 February 2001 that on the second page, in the first bullet point, reads:

Discharge at Aqaba is only 1,000 pmt per day on average. Weight is final at discharge. However UN authentication is done at the Jordan/Iraq border.

Et cetera.

THE COMMISSIONER: That's irrelevant to the point we're addressing, Mr Carter.

THE WITNESS: Can I just - where is that point here on the summary?

THE COMMISSIONER: Q. Do you see the page on the screen now, from the third page of the trip report, under the heading "UN Authentication"?

A. Yes, I see that part, but the part that Mr Carter was mentioning, that dot point, can I just --

MR AGIUS: Q. Mr Carter was helpfully drawing your attention to the third paragraph on page 0184, the second page of the email.

A. Yes.

Q. I had asked you a question which was, "You confirm, do you, that the one-and-a-half-page email that my learned friend refers to does not pose any question concerning UN authentication or authentication?", and your answer was "Yes"?

A. It does make small mention of it here in the third dot point that Mr Carter is pointing out, but not a lot of detail, but it does mention it.

1 Q. It makes reference to UN authentication?

2 A. Yes.

3

4 Q. But to go back to my question to you, which you have
5 answered, you confirm that the one-and-a-half-page email
6 does not pose any question concerning UN authentication or
7 authentication, and that's true, isn't it?

8 A. I think "authentication" or "authentication" are the
9 same.

10

11 Q. Yes, but it doesn't raise any questions about it, does
12 it?

13 A. No, it doesn't. It makes mention of it, but it
14 doesn't raise a question, I agree.

15

16 THE COMMISSIONER: Q. Let's cut to the chase,
17 Mr Snowball.

18 A. I am, I agree.

19

20 Q. Your response to 7 February clearly expresses the
21 issue raised under UN authentication which is now on the
22 screen?

23 A. That's what it appears like, sir, I agree.

24

25 MR AGIUS: Q. Not only would you see that issue raised
26 at 0187, but if we go to the action items arising at 0188,
27 you'll see at the bottom of the page that the authors of
28 this report have listed a number of matters for action; do
29 you see that?

30 A. Yes.

31

32 Q. If we go over the page to 0189, the second-last point:

33

34 Try to get AWB shipping agents to approach
35 Cotecna at Umm Qasr to provide the issue
36 date of the UN authentication certificates.

37

38 A. Yes.

39

40 Q. Do you see, if we go to your email at 0192, part of
41 exhibit 20, AWB.5077.0192, do you see the large paragraph
42 which forms the body of this email under the sentence, "I
43 have made some comments below". The very next thing you
44 write is:

45

46 The UN Authentication certificate can be
47 issued by UN/Cotechna once vessel discharge

1 is complete, weights are known and UN have
2 declared that the wheat is fit for human
3 consumption.

4
5 Do you see that?

6 A. Yes.

7
8 Q. Isn't it abundantly clear that you wrote that in
9 response to the second-last entry in the trip report?

10 A. It looks that way, yes, I agree.

11
12 Q. Doesn't that mean that you read the trip report?

13 A. It meant I read this authentication area, yes.

14
15 THE COMMISSIONER: Q. Unless you skipped from page 1087
16 to 1089, you would have also read 1088?

17 A. I would have skimmed through it, yes, I think.

18
19 MR AGIUS: Q. And you would have read the sentence that
20 I put to you before, "We believe the increase in trucking
21 fee and the addition of the service charge is a mechanism
22 of extracting more dollars from the escrow account"?

23 A. I possibly could have. I don't recall, but it's
24 possible.

25
26 THE COMMISSIONER: Q. Mr Snowball, if there are three
27 pages and you address a topic which is addressed on page 1
28 and page 3, it seems improbable to me that you would not
29 have read page 2.

30 A. It seems possible that I would have read that, yes,
31 sir. I think I'm admitting to that. I think I'm admitting
32 to possibly having read that paragraph there on trucking
33 fee.

34
35 MR AGIUS: Q. When I asked you about this earlier, I
36 asked you whether, if you had read that - and I read the
37 section to you - you would have been alarmed. Your answer
38 was:

39
40 If I had read that, yes, I might have been
41 alarmed, but I am not sure I read that.

42
43 Well, it's apparent now that you did read it, isn't it?

44 A. I don't recall reading it, but it appears from what
45 we've just been through that I could have read that, I
46 might have read that, but I think my email addresses
47 authentication, not trucking fees, so the focus for me is

1 not on trucking fee/service fee, it's on authentication.

2

3 Q. If you read that, as you told me earlier, you might
4 have been alarmed; is that right?

5 A. It's possible, I might have been alarmed. Mr Agius, I
6 don't think I had a focus on this - on contractual terms
7 and conditions. I had a focus on shipment payments. In
8 fact, in my email, if you notice at the end, I'm stating
9 that I haven't even looked at shipment payments for the
10 last six months as I have been directed by the Melbourne
11 office that I don't need to be involved. So I don't think
12 I had a focus here at all on anything other than maybe
13 authentication, and perhaps I felt that they were moving
14 down a path that might not get the right outcome in terms
15 of speedy payments against shipments, and I've taken the
16 time to detail quite extensively what I understand to be
17 the process and how we might be able to help that process,
18 and I've made a note to say that, "as per your
19 instructions, I don't think I've looked at anything since
20 August 2000".

21

22 Q. If you have a trip report which plainly speaks of a
23 concern that the Iraqis were extracting more dollars from
24 the escrow account by means of a mechanism which is set out
25 there, you were aware that the escrow account had been set
26 up to pay for humanitarian goods, and now you're told that
27 there was a belief that the increase in the trucking fee
28 and the addition of a service charge was a mechanism of
29 extracting money out of that escrow account. Why didn't
30 you act on that?

31 A. It's not my responsibility, sir.

32

33 MR CARTER: Commissioner, I do object, and I ask that,
34 rather than simply rejecting the objection, that perhaps
35 you, Mr Commissioner, explain why it is fair for
36 questioning on the basis of a hypothesis to continue to
37 proceed when he's already been taken to this matter at
38 least four or five times over the last day.

39

40 THE COMMISSIONER: I reject the question. Yes, Mr Agius.

41

42 MR AGIUS: Q. In March of 2000 you had no doubt, did
43 you, that the Iraqis could not be paid money by the AWB in
44 currency other than Iraqi dinars?

45 A. In March 2001, I think, sir - if you're referring to
46 my diary note?

47

1 Q. No, I'm referring to your state of knowledge,
2 Mr Snowball. It's not the case, is it, that you're only
3 going to answer questions when there is a written document
4 to challenge you.

5
6 MR CARTER: I object to my client being ridiculed in this
7 fashion, Mr Commissioner. I ask that you control counsel
8 assisting.

9
10 THE COMMISSIONER: You go on, Mr Agius.

11
12 MR AGIUS: Q. It's not the case, is it, that you're
13 limiting your evidence to written material which might be
14 used to contradict you?

15 A. Well, that's my best recollection, to go back to the
16 written material.

17
18 Q. You had a recollection, didn't you - indeed, you well
19 knew - as at February 2001 that the escrow account had been
20 set up for a particular purpose and that was to pay for
21 humanitarian goods; you knew that, didn't you?

22 A. Yes, I believe I did, sir.

23
24 Q. There is no doubt that if you'd read this in February
25 2001, you would have realised that there was a serious
26 concern that the Iraqis were attempting to extract more
27 money from that escrow account than they were otherwise
28 entitled to?

29 A. I possibly could have, sir. In terms of my role, Iraq
30 is not a big part of my day-to-day job and really --

31
32 THE COMMISSIONER: Q. No, but breaching the terms of the
33 United Nations sanctions was part of your job, wasn't it,
34 because you'd had some discussion about, amongst other
35 things, 50 cent fees.

36 A. If I was asked a question, I never acted on any
37 authority myself, I would always refer back to the Mission
38 to the UN, and pass that information back to the guys in
39 Melbourne.

40
41 Q. Did you pass on this paragraph about trucking fees and
42 service fees, and "we believe the increase in trucking fee
43 and the addition of a service charge is a mechanism for
44 extracting more dollars from the escrow account" - did you
45 pass that back to the United Nations Mission for Australia?

46 A. No, I doubt whether I would have, sir. I wasn't
47 instructed to do that.

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Q. So what did you do, just ignore this paragraph?
A. I probably did ignore it. I mean, I don't recall reading it to start with, and I don't recall that I've done anything about that, and, you know, for me sitting in the US, I don't have the full picture as to what the sales and marketing team are doing in terms of managing this market, and it would be not appropriate for me to be doing anything about that, without any instruction from them.

MR AGIUS: Q. What about raising it with somebody in the AWB office in Melbourne as a problem?

A. Well, I had some clear direction from Melbourne that there was no need for me to be involved in Iraq. I think I've made that clear in my email.

Q. Is that what your email says?

A. I think so. Perhaps we should bring it up again.

Q. Let's turn it up. Does it say no more than this:

Please note the US office has not been in contact with the UN since August 2000, when AWB began taking these issues up directly with DFAT in Canberra.

A. That's what it says to me. Previously I took upon myself to have some role in the shipment payment process, because I thought that I could add some value, but the message has come from Melbourne to say, "Don't worry about it, Tim, we'll take this up directly with DFAT in Canberra."

Q. That's not a message that, if there were matters of concern to you about whether AWB was acting in breach of sanctions, you should simply go quiet on, is it?

A. I didn't have a focus on it, sir.

Q. I'm sorry?

A. I never had a focus on anything other than what I was instructed to look at with respect to Iraq, and that instruction always came from Melbourne. So I wasn't getting involved in any of their issues around sanctions or sales terms and conditions at all, unless they instructed me to have some involvement.

Q. Did you query that?

1 A. No, I don't believe I queried - sorry, what was the
2 question, did I query?
3
4 Q. Did you query it?
5 A. Query?
6
7 Q. Did you query an instruction that directed you, as you
8 understood it, not to concern yourself with these matters?
9 A. I think I would have queried it at the time, and I
10 assume the answer came back, "Well, we'll just manage that
11 with DFAT from Melbourne." They didn't see any value in
12 having me involved in shipment payments, and that's my
13 understanding of what the message was.
14
15 Q. This isn't about shipping payments, Mr Snowball --
16 A. I realise that.
17
18 Q. -- this is about a trucking fee and a service fee
19 which two AWB employees are expressing real concerns about;
20 you agree?
21 A. Yes, sir.
22
23 Q. If we read those words in the way in which they're
24 written, the real concern is that this might be happening
25 in breach of sanctions; do you agree with that?
26 A. Yes, sir.
27
28 Q. So why not contact somebody in AWB and say, "Look,
29 I've read this, there's an issue here about breach of
30 sanctions, we should do something"?
31 A. It's not part of my job remit, sir. I wasn't focused
32 on this. I wasn't given any instruction to focus on it and
33 I didn't - I didn't need to focus on it.
34
35 Q. Do you need an instruction to raise a concern about a
36 breach of sanction?
37 A. Certainly, if I was sitting in the New York - in the
38 Portland office, which I was at this time, dealing in a
39 whole lot of other responsibilities in my role, I did not
40 see a need to be involved in this type of issue around
41 Iraq, whatever it might be.
42
43 Q. Do you concede that you recognised this trip report as
44 raising a serious issue about breach of sanctions?
45 A. Having read it over the last three or four weeks, yes,
46 I do.
47

1 Q. Do you concede that you recognised that at the time?

2 A. I don't believe so, sir, no.

3

4 MR AGIUS: Is that a convenient place to stop,

5 Mr Commissioner?

6

7 THE COMMISSIONER: Yes. I'll adjourn until 2 o'clock.

8

9 LUNCHEON ADJOURNMENT

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1 UPON RESUMPTION:

2

3 MR AGIUS: Mr Commissioner, that is as far as I can take
4 the examination of Mr Snowball at this point in time. It
5 may be that, pending the receipt of additional material, we
6 will require him to return, so for that reason I ask that
7 he not be released from his summons.

8

9 THE COMMISSIONER: Yes, very well. Mr Carter, do you wish
10 to ask your client any questions?

11

12 MR CARTER: Just a couple of short matters,
13 Mr Commissioner. Could we place on the record following on
14 from what counsel assisting has just said that once the
15 position as to the provision of the diary books is
16 clarified, we in fact will seek that they be tendered as an
17 exhibit.

18

19 <EXAMINATION BY MR CARTER:

20

21 MR CARTER: Q. Mr Snowball, could I ask you, please, to
22 look at the final section of your supplementary statement,
23 paragraphs 31 and 32 --

24 A. Yes.

25

26 Q. -- which contains reference to what might be described
27 as the emails concerning the payment to Iraq State Port
28 Agents; is that the case?

29 A. Yes.

30

31 MR CARTER: Could the witness be shown, please, part of
32 exhibit 391 - I'm just trying to find the barcode number,
33 if you will bear with me, Mr Commissioner. It is the
34 handwritten note of the witness that he has given evidence
35 of this morning concerning the conversation with
36 Bronte Moules on 26 March 2001.

37

38 THE COMMISSIONER: SNO.0001.0115, I think it may be.

39

40 MR CARTER: Could the witness be shown that, please?

41

42 Q. I think you have a hard copy in front of you. Does
43 that have barcode numbers on it?

44 A. Yes.

45

46 Q. If you read that, there is also a facsimile that is
47 discernible on the top right-hand corner. It is page 31.

1 A. Yes.

2

3 Q. I just wonder if you could clarify how that notation
4 relates to the email of yours referred to in paragraph 32
5 of your supplementary statement?

6 A. Well, the diary entry here is almost mirrored in my
7 response back to Mark Rowland.

8

9 Q. Yes. I think you said yesterday in your evidence that
10 you regard yourself as a person who - and these are my
11 words, not yours - takes some pride in your job you did
12 whilst on behalf of the AWB in the New York office in terms
13 of your accuracy of reporting back to the Melbourne office?

14 A. Yes, and I think my diary note here reflects that I
15 have reported back almost everything word for word.

16

17 Q. It is a very good example of that, isn't it?

18 A. Yes, it is a good example.

19

20 Q. At the end of the note there is an arrow and it says
21 "Will let DFAT Canberra know"; is that right?

22 A. Yes.

23

24 Q. Could you just clarify your understanding of who it is
25 that would be letting DFAT Canberra know?

26 A. Well, Bronte Moules would be letting DFAT Canberra
27 know, which is normal.

28

29 Q. When you say it is normal, did you in fact ever
30 communicate directly with DFAT Canberra?

31 A. No.

32

33 Q. And I think that - I am sure this is no doubt common
34 ground, Commissioner - there was a reference you made in
35 the before-lunch session to DFAT Melbourne; I take it that
36 was in error?

37 A. Yes. It was DFAT Canberra.

38

39 Q. In terms of your communication with the United
40 Nations, was that almost exclusively done via - that is,
41 through - the Australian Permanent Mission to the United
42 Nations?

43 A. Yes, it was - and your words are probably correct -
44 almost always. I think I recall one or two possible
45 exceptions to that where there might have been some
46 communication directly between myself and the UN, and there
47 would also have been a couple of meetings with the UN, but

1 the right protocol was for me to approach the Mission to
2 the UN and for the Mission to the UN to speak to the UN.

3
4 Q. Now, this morning, in cooperating with this inquiry,
5 you clarified some evidence you gave yesterday concerning
6 the diary note about payment being made to the Jordanian
7 trucking company and the exhibit 122, which was Mr Emons'
8 facsimile referred to in evidence yesterday at page 3039
9 and following, where he writes - and it is probably not
10 necessary that it be brought up, Commissioner, the evidence
11 is still fresh in everyone's mind:

12
13 We wish to advise that the office of
14 AWB Ltd in New York has been approached by
15 the Customs Office of the United Nations...

16
17 And it goes on. I want to take you back to the evidence
18 you have already given with respect to that. Given the
19 evidence that you have just given, that normally or almost
20 exclusively your communication would only be via the
21 Australian Permanent Mission, does that tell you anything
22 about how it is, if it was in fact the case that you were
23 the person that passed this on from Mark Emons, that the
24 contact was in fact had with the Customs Office of the
25 United Nations?

26 A. Yes, it would be very unlikely that I would have had
27 contact with the Customs Office of the UN. It is not
28 impossible, but it would be very unlikely.

29
30 Q. Well --

31 A. So, in that case, the diary note would have most
32 likely, or more likely, been the result of a conversation
33 with the Mission to the UN, rather than directly with the -
34 whatever Mark was mentioning there, the Customs Office of
35 the UN.

36
37 Q. So does that mean that we can take it - and
38 I understand that you have explained that this is some six
39 years ago - that it is likely, if it was in fact
40 Bronte Moules that you had spoken to on the day or around
41 the time there has been some communication with Mr Emons,
42 if that did in fact happen, that it was Bronte Moules
43 telling you that she had been approached by the Customs
44 Office?

45 A. That's the likely scenario, yes.

46
47 MR CARTER: Thank you, Mr Snowball.

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MR LACAVA: May I ask a couple of questions?

THE COMMISSIONER: Yes, certainly.

<EXAMINATION BY MR LACAVA:

MR LACAVA: Q. I just want to ask you a couple of questions, if I may, on behalf of Mr Stott. I want you to cast your mind back, if you would, to about November of 2000. Could we bring up, please, AWB.0144.0221, which I think is part of exhibit 56C. This is an email sent to, amongst others, yourself by Mr Hogan on 2 November of 2000. Do you recall getting this email?

A. I don't recall receiving it, but I - I think I have looked at this over the last three or four weeks, I think.

Q. Yes. If I could take you to about the middle of the page, you will see the words "Net FOB = [figure withdrawn] per metric tonne and 10 per cent will be added to px and included into trucking fee - ie IGB will confirm USD" --

THE COMMISSIONER: We are excluding those figures from the transcript.

MR LACAVA: I am sorry, Commissioner.

THE COMMISSIONER: A figure.

MR LACAVA: Q. Do you see that there is a figure there and the words "Trucking fee will be USD44.50... this has been approved by UN (as per IGB - I will get this in writing)." Do you recall getting that?

A. No, I can't recall getting that.

Q. All right. Could I ask that we put up WST.0005.0030. Mr Snowball, this is part of a statement tendered in evidence through Mr Hogan. It is Mr Hogan's statement or statutory declaration given to the inquiry; do you understand? Now, I want to take you to paragraph 105. Do you see that? Could you just read that to yourself, please, and tell me when you have finished it.

A. Yes.

Q. Now, do you recall Mr Hogan contacting you in about November of 2000 and asking you whether or not the contract terms agreed by the AWB with the IGB had been

1 approved by the UN?
2 A. I don't recall that.
3
4 Q. He could have phoned you but you can't recall?
5 A. He possibly could have. I don't recall him ringing
6 me. I think, if I remember rightly, there was very little
7 correspondence between August 2000 and February 2001 with
8 respect to Iraq and myself in the US office, and I would
9 think it would be quite improbable. I don't know for sure,
10 but I don't think he would have rung me.
11
12 Q. Well, now, having regard to the time difference
13 between the east coast of Australia and New York, if
14 Mr Hogan communicated with you, how would that normally be
15 done; would it be by phone or email?
16 A. Normally by email, but it could be by phone. Where
17 was Mr Hogan based at this time?
18
19 Q. In Melbourne?
20 A. So - probably by email, but possibly by phone.
21
22 Q. You did have phone conversations on occasions, did
23 you?
24 A. I don't recall any with Dominic, but it is possible
25 that I could have spoken to Dominic.
26
27 Q. In preparing to give evidence before this inquiry you
28 have refreshed your memory, have you not, from time to time
29 with diary notes, and so forth, that you have made?
30 A. I have been back through my diary notes, yes.
31
32 Q. Have you seen any diary notes at all that touch upon
33 this matter?
34 A. No.
35
36 Q. Namely, whether or not you had a conversation with him
37 in early November of 2000?
38 A. Not that I recall.
39
40 MR LACAVA: Thank you. I have no further questions,
41 Commissioner.
42
43 THE COMMISSIONER: Mr Judd?
44
45 MR JUDD: I have given way to my friend, who is on the
46 ascendancy, Commissioner. We have no questions.
47

1 THE COMMISSIONER: Thank you.

2

3 <EXAMINATION BY MR ROBERTSON:

4

5 MR ROBERTSON: Q. Mr Snowball, my name is Robertson.

6

7 THE COMMISSIONER: I think I should give you authorisation
8 to appear, Mr Robertson. I think I have only given it to
9 your junior.

10

11 MR ROBERTSON: I think you have, Mr Commissioner, if I may
12 have that authorisation.

13

14 THE COMMISSIONER: Yes.

15

16 MR ROBERTSON: Q. Mr Snowball, I wanted to take you back
17 to March 2001 and Mr Rowland asked you, did he not, to
18 raise an issue with Foreign Affairs about a port fee of
19 US50 cents per tonne to be paid by AWB to Iraq State Port
20 Agents; is that right?

21

22 MR CARTER: I object to that question. It is not fairly
23 put. There is no document, certainly not that we have
24 seen, that asks Mr Snowball to raise any issue with Foreign
25 Affairs. If there is such a document in existence, I would
26 call for it to be put. The documents that we have been
27 concerned with concern Mr Snowball raising something with
28 the Australian Mission to the United Nations.

29

30 THE COMMISSIONER: No, I will allow the question.

31

32 MR ROBERTSON: Perhaps I will rephrase the question,
33 Mr Snowball.

34

35 Q. Mr Rowland asked you to find out, did he not, whether
36 a levy of US50 cents per metric tonne to be paid in cash to
37 Iraq State Port Agents would or would not contravene UN
38 sanctions; is that right?

39

40 A. Can you bring up the email and perhaps I can --

41 THE COMMISSIONER: Q. Can you not recall the email?

42

43 A. I recall the email, we spoke about it this morning,
44 but I would like to know what Mr Rowland said in that
45 email.

45

46 MR ROBERTSON: I think it is AWB.5044.0332.

47

1 THE WITNESS: Who is Mr Robertson representing?

2

3 THE COMMISSIONER: It is of no concern to you,
4 Mr Snowball. Mr Snowball, your obligation is to tell the
5 truth, no matter who asks you questions.

6

7 THE WITNESS: I realise that.

8

9 MR CARTER: Mr Commissioner, the witness has been in here
10 for a day. He had the rudeness, it seems, according to
11 you, to say, "Who does this man appear for?" What is wrong
12 with him knowing the answer to that?

13

14 THE COMMISSIONER: Go on, Mr Robertson.

15

16 MR ROBERTSON: Q. I'm sorry, I didn't hear that question,
17 Mr Snowball. I represent the Department of Foreign
18 Affairs, if that helps. Do you see now on the screen a
19 copy of the communication from Mr Rowland to you?

20

21

22 Q. That asks you, does it not, to confirm whether or not
23 it is correct that the US 50 cents per metric tonne
24 required by the Iraq State Port Agents was or was not in
25 contravention of the UN sanctions?

26

27 A. "Can you please confirm this is correct and that this
28 charge is in effect illegal under the current sanctions".
29 That's what I would have looked at when I read that email.

30

31 Q. So do you agree with my question, then?

32

33 A. I'm not sure your exact words, but I agree with what's
34 written here, "Can you please confirm this is correct and
35 that this charge is in effect illegal under the current
36 sanctions". That's what I would have followed up with
37 Bronte Moules.

38

39 Q. And the charge that he was asking you to inquire about
40 was 50 cents per metric tonne to be paid in cash to the
41 Iraq State Port Agents, was it not?

42

43 A. Paid to them in cash, and then refers to Iraq State
44 Port Agents.

45

46 Q. Do I take it you have no recollection outside the
47 terms of this document of this request?

48

49 A. That's correct. Yes.

50

51 Q. What Mr Rowland was querying was the proposed payment

1 because, as you understood it, it required payment in
2 US dollars; is that right?
3 A. It appears that way, yes.
4
5 Q. That was the problem, wasn't it - US dollars?
6 A. That's what it appears to be, yes - and also the fact
7 that there is a levy here that - just the fact that there
8 is a levy and it appears that Dom is of the opinion that
9 this charge contravenes UN sanctions, as nobody is meant to
10 be able to transfer US dollars into or out of Iraq. That's
11 what it is telling me.
12
13 Q. You spoke on the telephone to Ms Moules shortly after
14 that?
15 A. Yes. It appears that that's what I did, yes.
16
17 Q. She told you, did she not, that while port fees were
18 not necessarily inconsistent with UN sanctions, payments
19 could only be made in Iraqi currency?
20 A. We would have to bring up the diary note, but that --
21
22 THE COMMISSIONER: Q. Do you not recall that? We went
23 through this before lunch.
24 A. Yes, I think that's right, yep.
25
26 MR CARTER: Commissioner, he is entitled to look at the
27 document.
28
29 THE COMMISSIONER: Mr Carter, I am conducting these
30 proceedings.
31
32 MR CARTER: Well, it is an objection, Commissioner. I am
33 not just standing up to say it for the fun of it. He is
34 entitled to look, as a matter of fairness, at the document
35 that he has been taken to in the giving of his evidence.
36
37 THE COMMISSIONER: Mr Carter, he is entitled to have his
38 recollection tested. Would you please resume your seat.
39 You go on, Mr Robertson.
40
41 MR ROBERTSON: Thank you, Mr Commissioner.
42
43 Q. Did Ms Moules also say to that while port fees were
44 not necessarily inconsistent with the sanctions regime,
45 that was on the proviso that they were a reasonable amount;
46 do you agree with that?
47 A. I'm not sure that the word "reasonable" is used in

1 here, but I think in essence that's what she is saying.

2

3 Q. What are you looking at?

4 A. My diary note.

5

6 THE COMMISSIONER: Q. Do you have any recollection at
7 all of this conversation otherwise than what's in this
8 note?

9 A. No, I don't sir, I am sorry.

10

11 MR ROBERTSON: Q. She also said to you in this
12 conversation, did she not, Mr Snowball, that the sanctions
13 committee were aware of the issue of port fees?

14 A. Yes. It appears that way, "But sanctions committee
15 have been aware".

16

17 Q. And that they were looking into that matter further?

18 A. Well, I think they were going to look into this matter
19 that I raised here further. It says "And the sanctions
20 committee will look at it. Could take 1-2 weeks".

21

22 Q. And did she also say, "Don't expect a quick response"?

23 A. Yes - well, she said "Could take 1-2 weeks" is what I
24 have written here.

25

26 Q. And in early April 2001, on or about 9 or 10 April,
27 you had a further conversation with Ms Moules about this
28 topic of port fees, did you not?

29 A. I don't recall having a conversation.

30

31 Q. May I suggest to you that you told Ms Moules on that
32 occasion that the vessels in question had been allowed to
33 discharge their cargoes without payment of the US 50 cents
34 per tonne fee?

35 A. I don't recall that, but if you have some evidence
36 there, I am happy to have a look.

37

38 Q. And you also said, did you, that a further attempt may
39 be made to impose that fee in the future - do you remember
40 that?

41 A. I don't recall any of that, sir, I'm sorry.

42

43 Q. And that Ms Moules told you again that the port fees
44 could only be paid in Iraqi currency?

45 A. Again, I don't recall, but that - Iraqi currency has
46 been in my diary note here anyway, so that might well be
47 the case.

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Q. Could I ask you to look at your email to Mark Rowland of 27 March 2001, which is part of exhibit 391, and I think is AWB.5044.0331. Have you got that?

A. Yes.

Q. Is this, to the best of your recollection, meant to be word for word what Ms Moules told you on the telephone?

A. I believe so, yes. It seems to mirror my diary note.

Q. Where in your diary note does it say "The sanctions committee has actually been aware that these types of payments have been happening but have been turning a blind eye if the amounts are not excessive"?

A. "But sanctions committee have been aware".

Q. I'm not sure what the document number is, because I don't have a copy of it.

THE COMMISSIONER: It is SNO.0001.0115.

THE WITNESS: It doesn't say "blind eye" in my diary note.

MR ROBERTSON: Q. It doesn't say anything like it, does it?

A. It says the sanctions committee have been aware, "But sanctions committee have been aware".

Q. That means no more than they are aware of the problem, does it?

A. It may. It says "putting contracts on hold if large amounts of money being handed over".

Q. What I wanted to suggest to you, Mr Snowball, is that Ms Moules said nothing like what you have put in the fourth sentence of your email to Mr Rowland - that is, that the sanctions committee has been turning a blind eye if the amounts are not excessive.

A. Well, I don't recall the conversation, so I don't know where I would have got "turning a blind eye" from.

Q. Not in your file note?

A. It is not in my diary note here.

Q. And - go on.

A. It doesn't appear to be in my diary note, the words "turning a blind eye", but, you know, I have relayed what

1 I thought we have discussed on the phone, by the looks of
2 it here, and, you know, that's all I can recall, I'm sorry.

3

4 Q. And you have no memory of the conversation beyond your
5 diary note?

6 A. I don't recall another conversation, no. It is not to
7 say there wasn't, but I don't recall it.

8

9 Q. And would you agree with me that for Ms Moules to have
10 said that the UN sanctions committee was turning a blind
11 eye to these payments would be entirely inconsistent with
12 what she had told you - that is, that the fees could only
13 be paid in Iraqi currency?

14 A. If you want my interpretation of my diary note,
15 I don't think turning a blind eye is out of line with
16 what's written in this file note here in my diary note. It
17 is basically saying that they are not worried about small
18 amounts of money. If they are large amounts, then they
19 have a concern.

20

21 Q. When you say "small amounts of money" do you mean in
22 US dollars?

23 A. Yes. That's the way my diary note is reading, yes.

24

25 Q. And that would be inconsistent, would it not, with
26 what Ms Moules told you that any payments had to be in
27 Iraqi currency?

28 A. It would be, but I think that's the point of the
29 note - that small amounts of US dollar currency are
30 technically in breach of sanctions, but the sanctions
31 committee has been - and I have used the words "turning a
32 blind eye". Whether those were used by Bronte Moules,
33 I don't know, but that's my interpretation, by the look of
34 it here, of what we discussed.

35

36 Q. I want to take you to exhibit 386, which is
37 AWB.0187.0226. I think you have given some evidence about
38 this this morning. Do you see that on the screen?

39 A. Yes.

40

41 Q. What I want to suggest to you, Mr Snowball, is that
42 the sixth to eighth or ninth lines on that page are not a
43 note of a conversation that you had with Ms Moules?

44 A. I don't think I've said anywhere in my evidence that
45 I am absolutely certain that this is a conversation with
46 Ms Moules. I have tried to help the Commission here by
47 making an interpretation of what I have seen, and that's my

1 best interpretation of where this diary note has come from.
2 But I don't know for certain.

3

4 Q. Can I ask you this: the conversations with Ms Moules
5 about allegations or suspicions of breach by AWB were using
6 the language of "a third country" or "a third party has
7 complained"; do you agree with that?

8 A. Which allegation?

9

10 MR CARTER: I object to that - just a moment,
11 Mr Snowball - Mr Commissioner, the specific objection is
12 that my learned friend is putting in the question the
13 conversations about allegations or suspicions of breach by
14 AWB. If there is in evidence material - well, it is
15 certainly not in evidence to date in public hearings, but
16 there has been no evidence given indicating that Ms Moules
17 has in fact raised allegations or suspicions of breach by
18 AWB with Mr Snowball.

19

20 THE COMMISSIONER: Yes.

21

22 MR CARTER: But that's the assumption that's built into
23 the question.

24

25 THE COMMISSIONER: Yes. I will allow the question.

26

27 MR ROBERTSON: Thank you, Mr Commissioner.

28

29 Q. This file note or diary note of yours, Mr Snowball,
30 seems to refer to - correct me if I am wrong - something to
31 do with Canada, does it?

32 A. It says "Can"?

33

34 Q. Yes.

35 A. Yes.

36

37 Q. What I am putting to you is that, insofar as you had
38 any discussions with Ms Moules about a complaint by a third
39 country, the expression that was used was "third country",
40 or "third party" complaint; would you agree with that?

41 A. Which conversations might you be referring to - after
42 the subsequent meeting with an Austrade representative, or?

43

44 Q. You can't deal with my question?

45 A. No, I don't know really where you are.

46

47 Q. Okay. What I also want to suggest to you is that,

1 insofar as you had any conversation with Ms Moules about a
2 complaint by a third country, the complaint was couched in
3 terms of irregular payments rather than any discussion of
4 trucking fees, or the like; would you agree with that?

5 A. Can you just take me to the exact time that I'm
6 talking to Bronte Moules about this? Is this in response
7 to a meeting with an Austrade representative in Washington?
8

9 Q. Well, let me ask you this question, Mr Snowball: what
10 do you say is the approximate date of your note which is on
11 the screen there?

12 A. The approximate date is late February, is what I'm -
13 what I believe.
14

15 Q. Which year?

16 A. 2000.
17

18 Q. All right. Well, can you answer my question with
19 reference to that assumed date - late February 2000? Do
20 you say you had any conversations with Ms Moules at about
21 that date about a third party complaint?

22 A. I don't recall this note, in terms of when I wrote it.
23 I don't know for sure whether this reflects a conversation
24 with Bronte Moules, and I think I have said that in my
25 evidence. I have gone back through my diary notes and my
26 emails and I have tried to reconstruct as best I can what
27 I might have known about Canada and trucking fees, which
28 seems to be an issue, or was a question posed by Mr Agius,
29 I think, what did I know about the Canadian issue, and
30 I have produced this diary note to help work through that
31 topic of Canadian issue. It has been asked of me, what
32 does this diary note refer to, and I have said, suggested
33 that it may refer to a conversation with the Mission to the
34 UN. I don't know that for sure, but I was asked the
35 question, and I believe that was my response.
36

37 MR ROBERTSON: All right. Thank you, Mr Snowball. Thank
38 you, Mr Commissioner.
39

40 THE COMMISSIONER: Does anybody else have any questions
41 they wish to ask this witness?
42

43 MR ALLEN: No, sir.
44

45 MR AGIUS: I have just one matter arising,
46 Mr Commissioner.
47

1 <EXAMINATION BY MR AGIUS:

2

3 MR AGIUS: Q. In the course of that examination my
4 learned friend Mr Robertson put to you this question in
5 relation to your conversation with Ms Moules concerning the
6 US 50 cents per tonne fee, and he was speaking of your
7 conversation with Ms Moules:

8

9 And you also said, did you, that a further
10 attempt may be made to impose that fee in
11 the future - do you remember that?

12

13 And your answer was, "I don't recall any of that, sir, I'm
14 sorry". Now, that was the evidence that you gave about it.
15 Mr Snowball, did you say to Ms Moules, "Look, if this
16 problem props up again, I will get back in touch with you"?
17 A. I don't know.

18

19 Q. Did you have a conversation with Ms Moules in which
20 you said that ships had been allowed to discharge and that,
21 in effect, the problem had gone away?

22 A. I may have. I don't have any record of that in my
23 communications that I can see, but I may have.

24

25 MR AGIUS: Mr Commissioner, we have from DFAT a document
26 dated 10 April 2001 - DFT.0001.0193. I wonder if that
27 could be brought up.

28

29 Q. This is a document written by Ms Moules, Mr Snowball,
30 on 10 April 2001. There is a summary in the first
31 paragraph which reads relevantly as follows:

32

33 AWB (USA) Ltd has informed us that their
34 shipments to Iraq which were facing delays
35 as a result of demands by Iraqi port agents
36 for port fees have now been allowed to
37 discharge their cargo without insistence on
38 payment of the port fees. It is not clear
39 whether future AWB Ltd shipments to Iraq
40 will be subject to requests for port fees.

41

42 Now, is it not likely that you had indeed informed
43 Ms Moules that shipments which were facing delays had been
44 allowed to discharge without insistence on the payment of
45 fees?

46

47 A. I don't have any reason to doubt what Ms Moules is
saying here. That might well be the case. What's the date

1 on that, Mr Agius?

2

3 Q. This is 10 April 2001.

4 A. 10 April?

5

6 Q. Yes.

7 A. Oh, 10 April. Okay, yep.

8

9 Q. If we go to the second-last page, 0194, under the
10 paragraph "Comment", which is at the bottom of that page:

11

12 The current environment of increased
13 scrutiny of the operation of the
14 Oil-for-Food Program and heightened
15 awareness of attempts by Iraq and by some
16 suppliers to circumvent the sanctions
17 regime underlines the importance of AWB
18 adhering closely to the current regulations
19 concerning the payment of port fees. It is
20 not yet clear whether AWB will be placed
21 under further pressure by Iraqi agents to
22 pay port fees in a manner inconsistent with
23 sanctions, and AWB New York has said it
24 will stay in touch with us if needed
25 regarding forthcoming shipments.

26

27 Is it not likely that you had said to Ms Moules that you
28 would stay in touch with her, or with her office, if the
29 assistance of that office was needed in relation to
30 forthcoming shipments?

31 A. I may have, or she may have requested that of myself.
32 I don't know.

33

34 Q. Is that your recollection - that you may have raised
35 that with Ms Moules?

36 A. I don't recall doing that. My recollection of this -
37 and I'm reconstructing this, really, in terms of what
38 correspondence I have seen - I don't see anything after the
39 26 March diary entry and the email back to Mark Rowland.
40 Now, there may have been some further contact with Bronte
41 Moules, which seems to appear to be evident from here, but
42 I don't have a recollection about it, and I can't find
43 correspondence to that effect.

44

45 MR AGIUS: Mr Commissioner, I tender that
46 three-page document, barcoded DFT.0001.0193 through to
47 0196.

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EXHIBIT #394 THREE-PAGE DOCUMENT DATED 10/4/2001,
BARCODED DFT.0001.0193-0196

MR AGIUS: That's the further examination of Mr Snowball
to this point in time, Mr Commissioner.

THE COMMISSIONER: Thank you, Mr Snowball. I can't
release you at this point of time, but if you are further
required, then it will be by arrangement with your
solicitors. Thank you.

THE WITNESS: Thank you.

<THE WITNESS WITHDREW

MR AGIUS: The next witness is Mr Aucher. Could we
adjourn for just a few minutes, Mr Commissioner?

THE COMMISSIONER: Yes, very well.

SHORT ADJOURNMENT

MR AGIUS: Mr Commissioner, the next witness is Mr Terry
Aucher.

<TERENCE ARTHUR AUCHER, sworn: [2.52pm]

MR ABBOTT: Commissioner, Michael Abbott. I seek leave to
appear for Terence Arthur Aucher, with Michael Burnett, on
the usual terms and conditions.

THE COMMISSIONER: Yes, Mr Abbott. That leave is granted.

<EXAMINATION BY MR AGIUS:

MR AGIUS: Q. Mr Aucher, might we have your full name,
please?

A. My name is Terence Arthur Aucher.

Q. You appear here in response to a notice requiring your
attendance?

A. That is correct.

Q. You have prepared a statement dated 20 February 2006.
I wonder if we can bring up WST.0010.0029. I will pass you
a copy of it whilst it is coming up. Would you look at it

1 and confirm that it is a copy of your statement?

2 A. Yes, sir.

3

4 Q. Mr Aucher, you should know that from that copy there
5 has been removed the names of any Pakistan agent, for
6 reasons of confidentiality. Leaving that aside, do you say
7 that the contents of that statement are true and correct to
8 the best of your knowledge and belief?

9 A. Yes, sir.

10

11 MR AGIUS: I tender the statement.

12

13 MR ABBOTT: Commissioner, we seek a confidentiality order,
14 or at least ask that you consider it, in respect of
15 paragraphs 131 to 143. I haven't attended any sessions, so
16 I am not sure of the status of that document that we refer
17 to, but if the document itself has been kept confidential,
18 we would ask that these paragraphs also be kept
19 confidential.

20

21 THE COMMISSIONER: What do you say, Mr Agius?

22

23 MR AGIUS: I cannot see any reason why this would need to
24 be kept confidential, Mr Commissioner. There appears to be
25 nothing in it of any commercial confidence, and it doesn't
26 refer to any material that is adverse to this witness, not
27 that that, of itself, would be a reason, and it doesn't
28 refer to any material that's adverse to any other witness,
29 nor does it refer to any of the material which gave rise to
30 our application to have the Arthur Andersen report declared
31 a confidential exhibit.

32

33 MR JUDD: Commissioner, I'm speaking in a vacuum, which is
34 often an allegation made against me, but I notice in
35 paragraph 2 of the document on the screen there is a
36 reference to "This statement also contains some material
37 confidential to the AWB Group and should not be released
38 publicly without clearance from the AWB Group". We have
39 not seen a copy of this statement.

40

41 MR AGIUS: I was going to ask that it be marked as a
42 public exhibit but that it not be published until you have
43 had an opportunity to vet it.

44

45 THE COMMISSIONER: Yes. Mr Abbott, what's the basis for
46 the claim for paragraphs 131 to 143?

47

1 MR ABBOTT: They rebut some passages of the report which
2 might be said to be unfairly critical of the report, and he
3 is --

4
5 THE COMMISSIONER: I did not read that as saying anything
6 adverse to your client.

7
8 MR ABBOTT: Very well. I don't then ask, on the basis of
9 your intimation, Commissioner, that it remain confidential.

10
11 THE COMMISSIONER: Yes. I will mark it exhibit 395 and I
12 will make a non-publication order in respect of its
13 contents until Mr Judd has had a chance to consider it.

14
15 EXHIBIT #395 STATEMENT OF TERENCE ARTHUR AUCHER,
16 DATED 20/2/2006, BARCODED WST.0010.0029

17
18 MR JUDD: Thank you, sir. Might I mention, while this is
19 on my mind, we marked up Mr Ingleby's exhibits and
20 statement and returned them to my friend. We are now
21 without a copy of it, so if I can just put Mr Agius on
22 notice and perhaps he can have someone, during the course
23 of the afternoon, arrange for a copy to be made available
24 to us. It was, in effect, our only copy.

25
26 THE COMMISSIONER: Yes, very well.

27
28 MR LACAVAL: Mr Commissioner, could I just, whilst we are
29 on this topic, say that Mr Ingleby gave evidence I think
30 last Thursday, or thereabouts, and he had quite a large
31 folder - I think it was 496 pages - of annexures to his
32 statement. That was, I think, not released, it certainly
33 hasn't been released to us until such time as AWB looked at
34 it. We would like to get that as soon as possible.

35
36 I just rise because I don't want the same to happen
37 with this witness. I assume his statement has been
38 prepared in a similar way, with a number of annexures. It
39 is very difficult to know whether or not you should
40 cross-examine without knowing exactly what's in the
41 annexures to which he refers. So it is just a little bit
42 of a problem that I hope can be avoided.

43
44 THE COMMISSIONER: I am sure it can be. I am sure counsel
45 and the solicitors can have discussions to sort this out.

46
47 MR LACAVAL: One of the issues, Commissioner, is that it

1 has been a bit of a glitch in the system. We understood
2 that we were to get copies of the confidential exhibits in
3 any event, but there seems to be a view taken by some that
4 we should not. So we've been having a lot of difficulty
5 actually getting hold of them.

6
7 THE COMMISSIONER: It depends what you mean by
8 "confidential exhibits", I think. My understanding is that
9 exhibits which are confidential and marked as such are
10 having read on to the public transcript that which counsel
11 assisting regards as important for this Commission to
12 address.

13
14 MR LACAVA: Yes.

15
16 THE COMMISSIONER: The balance I therefore regard as not
17 being material. If there is some other understanding, then
18 it should be sorted out between counsel.

19
20 MR LACAVA: Yes. I will take that up with Mr Agius if
21 I need to. We thought that we were getting copies of all
22 of the confidential exhibits, our client being --

23
24 THE COMMISSIONER: A lot of confidential exhibits are
25 marked confidential because they have commercial in
26 confidence material in them which is not regarded by
27 counsel assisting as important.

28
29 MR LACAVA: Yes.

30
31 THE COMMISSIONER: Now, if AWB has no objection to you
32 seeing them, then I have no objection, but my understanding
33 is that that is the basis on which they have been marked as
34 confidential.

35
36 MR LACAVA: Yes. Our understanding was that, as our
37 client is an employee of AWB, we would be able to receive
38 them.

39
40 THE COMMISSIONER: You take that up with Mr Judd, will
41 you?

42
43 MR LACAVA: Thank you, Commissioner.

44
45 MR AGIUS: Mr Commissioner, can I include with that last
46 tender a letter which notes certain errata.

47

1 THE COMMISSIONER: Yes. That will be part of exhibit 395.

2

3 EXHIBIT #395 ADDITION OF LIST OF ERRATA,
4 BARCODED AWB. 0293. 0223

5

6 THE COMMISSIONER: So that I don't overlook it, if and
7 when this statement becomes a public exhibit, I make a
8 non-publication order in relation to the names of the two
9 Pakistani agents who have been noted in here as AA6 and
10 AA7.

11

12 MR AGIUS: Mr Commissioner, I tender as well the annexures
13 to Mr Aucher's statement, barcoded TAA.0001.0001 through to
14 0070.

15

16 EXHIBIT #396 ANNEXURES TO STATEMENT OF TERENCE ARTHUR
17 AUCHER, BARCODED TAA.0001.0001-0070

18

19 MR AGIUS: Might there be a non-publication order in
20 relation to that exhibit as well until my friend Mr Judd
21 has had an opportunity to examine it for any material which
22 is commercial in confidence.

23

24 THE COMMISSIONER: Yes, I will make that order.

25

26 MR AGIUS: Q. Before I go to your statement, Mr Aucher,
27 the inquiry was provided this morning with a document that
28 I will pass to you. It is a document which is barcoded
29 AWB.0293.0220. It has not yet found its way on to the
30 system. It came under the cover of a letter from Messrs
31 Arnold Bloch Leibler on behalf of AWB Limited, which
32 records the following:

33

34 We attach a further copy of the flow chart
35 provided to you earlier today.

36

37 Earlier today we had received a document attaching a
38 version of this chart which was the same except spread over
39 two pages. The covering letter recorded:

40

41 We attach a further email to be added to
42 the folder of Terry Aucher material
43 provided to you earlier today.

44

45 Have you seen that document before today, Mr Aucher?

46

47 A. No, I have not.

1 Q. It is entitled "AWB Iraq deal - February 2001 -
2 Foreign Exchange Flows". Were you privy to any of the
3 information which is contained in that document prior to
4 today?

5 A. No, sir. This information here would be of little
6 relevance to me or my area. It would appear to be more of
7 a marketing type document to me, the flow.

8
9 Q. There is a schedule attached to it. Can I show you a
10 copy of the schedule - AWB.0293.0221. Have you seen that
11 before today?

12 A. I personally haven't, no.

13
14 Q. And were you privy to any of the information contained
15 in it before today?

16 A. No, it means nothing to me.

17
18 MR AGIUS: Mr Commissioner, I will tender those two
19 documents, just for the sake of making the record complete.
20 We will continue our inquiries as to their origin.

21
22 EXHIBIT #397 LETTER FROM MESSRS ARNOLD BLOCH LEIBLER DATED
23 21/2/2006 AND ATTACHED FLOW CHART AND SCHEDULE,
24 BARCODED AWB.0293.0220 AND AWB.0293.0221 RESPECTIVELY

25
26 THE COMMISSIONER: Can you shed any light on this,
27 Mr Judd?

28
29 MR JUDD: No, I have made some inquiries.

30
31 MR ABBOTT: Commissioner, we received this for the first
32 time at 12.30 today.

33
34 THE WITNESS: Mr Agius, may I make another comment on this
35 document?

36
37 THE COMMISSIONER: Q. Please do.

38 A. Just following through down to the bottom, it appears
39 to be a chartering document because they concentrate on the
40 payment of chartering and down the bottom giving them the
41 net chartering, so it may very well be from chartering.

42
43 MR AGIUS: Q. If it deals with foreign exchange flows,
44 is there not a reasonable prospect that it is a Treasury
45 document?

46 A. I would - I could not argue with that, but it doesn't,
47 to me, look like a Treasury document.

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Q. We will keep that matter under notice, Mr Aucher. I will endeavour to bring up the version of the document which appears as an annexure to your statement. Could we bring up TAA.0001.0005. This is an email that has been copied to you by Mr Owen. You appear to deal with this in paragraph 42 of your statement, in which you say you can't recall seeing item 10 in the email, although you did become aware between 1999 and 2003 that AWB were paying the costs for delivery in Iraq of about this amount. Mr Aucher, why would Mr Owen be copying you in on emails to do with matters concerning payments associated with the Iraqi contracts if the Iraqi contracts were not within your area?

A. If I can give as brief an answer to this or expand if you want further. We were an area of only three people, of which there were two very - well, what were considered senior trade finance people - one was Graham and one was myself. So, within that area, we used to split, for the sake of it, countries, if they were large countries. That way someone always had a tab on it.

Basically, what would happen, that person would have charge of that country - a la Iraq with Graham or Pakistan for myself - and we would run with those and basically, if we had a problem, we would discuss it with each other but just keep running with it ourselves. And it wasn't uncommon for some of these emails just to be copied to me or, conversely, I would copy different emails to Graham, and, quite frankly, when I got these I would always open an email and I would read it, more or less skim it, but I would take no action with it, because that was under control unless he came to see me that he had a problem. Iraq was Graham's from the start, and he ran with it.

Q. Well --

A. The other thing, if I can just point out early in the piece, Mr Agius, is that our area was not concerned with payments going out. Our area was to make sure we got paid for grain going out. So we were more focused on the receipts, certainly than on the payments side.

Q. Mr Owen, however, as we know from other exhibits, became concerned in particular with the new proposed clause in a contract which required the AWB to pay US\$12 per tonne in respect of an inland trucking fee, and it appears that he copied you in on some emails in that regard. Given what you have said, is it not likely that he discussed the

1 issues with which he was concerned with you?

2 A. If we did specifically discuss that, I cannot recall
3 the conversations, but what he does is he raises the issue
4 and puts it back to the people concerned, and we naturally
5 assume that the people in charge of these procedures
6 upstairs would comply. We can only raise issues with
7 people. We are an area which isn't part of the make-up of
8 the actual deal.

9

10 Q. Well, can we bring up AWB.0293.0224. This is an email
11 from Mr Owen to you, the sole purpose of which appears to
12 be to copy to you three earlier emails relating to the Iraq
13 trucking fee. You have seen this two-page document earlier
14 today?

15 A. Correct. I can recall that one. Correct.

16

17 Q. You will see that each of the emails is marked
18 "Private and Confidential: Iraq trucking fee" and that
19 they are all dated 20 October 1999. Did Mr Owen discuss
20 the matter to which these emails relate with you?

21 A. No, there was no discussion on that. He was handling
22 it between himself and the ccs on that email, and at the
23 end of that he just copied it to me for information.

24

25 Q. Taken just as these emails are, these three emails,
26 they don't make a lot of sense without some context.

27 A. I'm not sure what you mean by that, sir.

28

29 Q. Well, if you just read the emails by themselves and
30 you didn't know anything about the background, they
31 wouldn't make a great deal of sense.

32 A. Well, to be quite honest with you, sir, as I said,
33 I would have only scanned read these because Iraq - I had
34 other issues, Iraq was Graham's issue.

35

36 Q. I understand that it was his issue, and I understand
37 that you would have skim-read them, but, for the sake of
38 these questions, putting oneself in Mr Owen's position,
39 there wouldn't be much point in sending you these emails
40 unless it was against a background of some kind which he
41 would have had to have shared with you, otherwise these
42 emails would not have made any sense to you.

43 A. I don't disagree with you, but, once again, Graham is
44 the sort of person that, no matter what we're doing, he
45 copies - whether it is relevant or not, where, in
46 hindsight, we can always look back at this and read them
47 differently.

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Q. I'm not really applying hindsight, Mr Aucher. I am just actually going back to 20 October and asking you to consider whether or not, given that these emails make little sense unless you knew something of the background, it is likely that Mr Owen had in fact told you what the background to them was?

A. Not the specific background to those questions, but we all had a knowledge of Iraq, but how deep that knowledge was --

MR AGIUS: I will tender those two pages, Mr Commissioner - AWB.0293.0224 and 0225.

MR ABBOTT: They are already part of the statement. They are exhibits to his statement behind tab 44.

MR AGIUS: I understand that, but that's a confidential exhibit. It is an exhibit on which there is a non-publication order and I just wish to have these two pages marked as a public exhibit to be readily identified in the transcript.

THE COMMISSIONER: Yes. They will be exhibit 398.

EXHIBIT #398 TWO PAGES OF EMAILS
BARCODED AWB.0293.0224-0225

MR AGIUS: Q. Would you keep them handy, Mr Aucher, and could we bring up exhibit 108, which is MAE.0001.0015. I will just remind you that Mr Owen's email to you on 20 October 1999 is timed at 4.38pm. Exhibit 108 is a chain of emails which begins with Mr Emons' email on 20 October, the same day, at 11.01am, and for that we will need to go to the bottom of page 0016. Would you read that email, and it goes over the page. When you get to the bottom of the page, if you indicate, we will turn the page for you.

A. Are you only referring to reading that Mark Emons one of 20 October, 11.01, I have read that part.

Q. If you go over the page, you will see the rest of that email, 0017.

A. Yes, sir.

Q. Then if we go to Mr Owen's response to that email, we will need to go to the bottom of page 0015.

A. I'm not sure that I've got the right thing on the

1 screen here.

2

3 Q. Have you got an email from Mr Owen to Mr Emons at
4 14:12 hours?

5 A. Correct, yes.

6

7 Q. This is Mr Owen's reply to the email that you have
8 just read, in which he begins by saying that he has a
9 number of problems with the suggested proposal in regards
10 to payment of US\$12 per tonne to Iraqi trucking company.
11 He details below his comments on the issue. You will see
12 that, when you get to the bottom of that page - we will
13 turn over to 0016 - there are six numbered matters that he
14 refers to.

15 A. All right. Yes, sir.

16

17 Q. Then you will see at page 0015 Mr Emons' reply to
18 Mr Owen, that's at the top of that page, where he says, at
19 3.26pm:

20

21 I will reply in reverse order.

22

23 Do you see that?

24 A. Yes, sir.

25

26 Q. Now, that is an email that Mr Owen copied to you?

27 A. Correct.

28

29 Q. Mr Emons' reply in reverse order really makes no sense
30 unless you have Mr Owen's email of 14:12 where he sets out
31 the six issues numbered 1 to 6.

32 A. Sir, I think when that was copied to me it came as a
33 trail.

34

35 Q. Yes. But it didn't include Mr Owen's email to
36 Mr Emons at 14:12 hours. So the point I am trying to
37 demonstrate and to get your assistance with is this, that
38 Mr Owen didn't copy you in on every email that day?

39 A. Correct.

40

41 Q. And his email to Mr Emons, which you see on page 0015,
42 contains six matters which are itemised. What he does copy
43 you in on is Mr Emons' reply to those six matters. I am
44 suggesting to you that he would only have done that if he
45 expected that you knew what this email was about.

46 A. I'm sorry, Mr Agius, I can't speak for what he thinks,
47 but I - it raised no issue with me that I had to go and

1 specifically ask him a question when I read it, and, once
2 again, I didn't take a great deal of interest in it,
3 because it was under control.

4
5 Q. Were you aware that in October 1999 there was a plan
6 to pay these trucking fees through shipping companies?

7 A. I was never aware of payment of trucking fees through
8 shipping companies.

9
10 Q. Were you aware of a proposal to do that?

11 A. I cannot recall any such proposal.

12
13 Q. That is what Mr Owen was dealing with when he spoke to
14 Mr Emons in exhibit 108.

15 A. I can - I'm aware that that issue was raised there,
16 but, to my knowledge, it was a dead issue; it was just not
17 an issue.

18
19 Q. You would say it was not even an issue that the
20 department that you and Mr Owen were in ought to have had
21 anything to do with?

22 A. Basically what has been said here, with small shipping
23 companies going broke, if money was paid to a small
24 shipping company and to be passed on to wherever, there is
25 a fair chance that that money would be lost if that small
26 shipping company went broke. It was never, as far as I was
27 aware, ever going to go past there.

28
29 Q. But that's not my question.

30 A. I am sorry.

31
32 Q. This whole area of the payment of money to an Iraqi
33 entity through a shipping company was not a matter which
34 concerned the department at AWB where you worked, was it?

35 A. Correct.

36
37 Q. And if you were following strict departmental
38 responsibilities, it is not a matter that Mr Owen ought
39 ever to have been concerned in; isn't that right?

40 A. Right and not right. However, if you look at our job
41 descriptions, one of the things is to offer advice if
42 asked. Now, Graham may very well have been asked for some
43 advice.

44
45 Q. Did he not discuss the matter with you?

46 A. Depending on the question he is being asked, he might
47 very well take carriage of that question himself.

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Q. Did he discuss with you the proposal to pay trucking fees through a shipping company?

A. No.

Q. Can I bring you a long way forward now, Mr Aucher, to a memorandum from Mr Whitwell of 26 August 2003 - AWB.0202.0077.

A. Yes, sir.

Q. This memorandum was copied to you. You received it?

A. Yes, sir.

Q. Prior to your receipt of it, which we understand to have been by email on or about 27 August 2003, what did you know about the Tigris matter?

A. In actual fact very, very little. We had dealings with Tigris in our department but, once again, that was under Graham's carriage. He had his own situation running with that. This type of transaction - not the Tigris one, but wherever companies were having deposits with the AWB, if they were international companies, would always come under our carriage for basically looking after withholding tax, payment of interest, et cetera, et cetera. And I read that memo as that there was money for Tigris, it is an overseas company, and Graham's been asked to invest that money with Treasury and pay the interest to Tigris as and when it falls due but deduct withholding tax.

Q. And what did you know about the Tigris Petroleum matter before you read this memorandum?

A. Very, very little, if anything, other than it was a name that had been mentioned by Graham, but nothing in particular.

Q. Were you told anything about why it was that Tigris was due to receive US\$7.875m prior to your receipt of this memo?

A. Not that I can recall, sir.

Q. Did you and Mr Owen discuss what was to be done with the money?

A. The \$7.875m?

Q. Yes.

A. At that time, no.

1 Q. When you read this, you would have read the third
2 sentence, which is as follows:

3

4 In agreement with Tigris the quantum value
5 of this commission is USD 7,875,000 and is
6 to be accumulated on a USD 7.875 pmt basis
7 against tonnage shipped and paid for under
8 the two contracts referred to.

9

10 A. Yes, sir.

11

12 Q. Did it occur to you as to how that could be done?

13 A. Methodology and reasoning behind it was of no concern
14 to me, sir, but I know Graham ran spreadsheets on those
15 contracts, so as the tonnages or payments for those
16 tonnages came in he could monitor it.

17

18 Q. Did it occur to you that it was improper to have built
19 into those contracts an amount on account of the Tigris
20 debt?

21 A. No, sir. I had no reason to think that there was
22 something untoward with this.

23

24 Q. Well, were you aware that that's what was happening -
25 that in relation to contracts 1670 and contract 1680 --

26 A. At that point in time, no, sir.

27

28 Q. Didn't you gather that information from this memo,
29 though?

30 A. No, sir. We were asked to invest some money for
31 someone and make sure the interest was paid to them and
32 take appropriate action if tax was applicable.

33

34 Q. But weren't you being told, in the first part of the
35 memo, that the money was being collected against those
36 contracts --

37 A. Yes, sir --

38

39 Q. -- on a per metric tonne basis?

40 A. But, sir, we have to understand that, when we are
41 given these transactions by our seniors upstairs, they have
42 gone through all the processes and procedures and we are
43 just being asked, on an operational level, to perform
44 what's written to us in a request.

45

46 Q. Do you include Mr Whitwell as your "seniors upstairs"?

47 A. No, sir.

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Q. Well, who would have been the seniors upstairs associated with this memorandum?

A. It would have been either Mr Long or - Mr Geary's not on there, it would have been Mr Long.

Q. And you spoke to Mr Long about this, did you?

A. No, sir. As I said, I didn't see anything untoward with it.

Q. Do you know whether Mr Owen spoke to Mr Long about this?

A. I suspect not. I can't answer for him, though, sir.

Q. You were copied in on other emails concerning the recoupment of this \$7.875m, were you not?

A. Most likely, sir. I would have to be shown them.

Q. Could we bring up, please, AWB.0202.0073. You have been copied in on this email of 27 August 2003 from Tony Au?

A. Yes, sir.

Q. It is talking about the accrual of the Tigris commission on a monthly basis.

A. Yes, sir.

Q. Could we bring up page 0074.

MR JUDD: While that's happening, Commissioner, we've had an opportunity to look at the statement of Mr Aucher and we see no reason to claim any confidentiality in relation to the statement itself, so it can become a public exhibit.

THE COMMISSIONER: Thank you. Mr Aucher's statement, exhibit 395, is now a public exhibit.

MR AGIUS: That has been edited already to remove the name of the Pakistani agents and they are referred to as we know them as AA6 and AA7.

Q. Do you see that you were copied in on this email from Mr Whitwell to Mr Au?

A. Yes, sir.

Q. Can we go to page 0077. I am sorry, I should give you the full number. AWB.0199.0077. Again, this is another

1 email about the Tigris commission that you were copied
2 into. Do you see that?
3 A. Yes, sir. I am just trying to read it, yes.
4
5 Q. Yes. Please do.
6 A. If it can just be scrolled down a bit further, thanks.
7 And a bit further. Yes, sir.
8
9 Q. Do you agree you were copied in on that email as well?
10 A. My name is at the top, yes, sir.
11
12 Q. If we go to page 0080, do you see that you are copied
13 in on this email from Mr Whitwell to Mr Owen?
14 A. Yes, sir.
15
16 Q. Can we go to page 0086. That's another email that you
17 were copied in to about this matter?
18 A. Yes, sir. Sir, these all still relate to the same
19 matter of investing that deposit.
20
21 Q. They all relate to the Tigris commission?
22 A. That's right, sir.
23
24 Q. And page 0087.
25 A. Yes, sir.
26
27 Q. So there were a great many emails concerning the
28 Tigris commission which you were copied in to?
29 A. Probably nowhere near the amount of emails that were
30 flying around on the subject, but there were a few, sir.
31
32 Q. Ought we not to infer from that that you were involved
33 in dealing with this Tigris commission within AWB?
34 A. No, sir. My involvement in this, or my department's
35 involvement in this, was paying an interest on their
36 deposit. So we had no involvement in negotiating, looking
37 at contracts, looking at anything. All we did was ensure
38 that the deposit was paid and, if applicable, withholding
39 tax was collected, in line with the accountants.
40
41 Q. What happened to that withholding tax?
42 A. As far as I'm aware, sir, it was paid to the
43 government.
44
45 Q. As withholding tax?
46 A. As withholding tax - 10 per cent was the applicable
47 rate for that.

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Q. It was collected?

A. Yes, sir.

Q. And upon what do you base your evidence that, as far as you were concerned, it was paid?

A. Sir, if you want me to take it on notice, I will, through my counsel, provide you with information.

Q. How was the balance of it treated in the books of the AWB?

A. I have no knowledge of accounting or how to ledger entry in accounting. I have no knowledge of that.

Q. Do you know that it was treated as a tax deduction for the AWB?

A. I have no knowledge of that, and I wouldn't understand it if it was shown to me, sir.

Q. And what involvement would your department within AWB have had with dealing with the 10 per cent that had been retained from the \$7.875m?

A. Are you talking withholding tax, sir?

Q. Yes, withholding tax?

A. We were responsible for, if we were paying interest to a customer, in making sure that withholding tax was collected and paid to the government if necessary.

Q. So it was your department, your division, that was responsible for making the payment of the withholding tax to the taxation commission?

A. We would instruct someone to make that payment, yes, sir, and that's the information I will get you, if you require.

Q. Who would you instruct?

A. There would be a form filled out and it would go to - this is where I'm not sure, sir; I think it would go to accounts payable, to be made payable to the ATO.

THE COMMISSIONER: Q. That's withholding tax on the interest component?

A. Correct, sir.

MR AGIUS: Q. Who within AWB, to your knowledge, would have had the authority to determine how the \$7.875m was

1 treated for the purposes of taxation by AWB?
2 A. Oh, I have no idea, sir. I don't - I'm not an
3 accountant.
4
5 Q. So you wouldn't have had any input into that decision?
6 A. No, sir.
7
8 Q. And you would have expected that to have been dealt
9 with in the accounts department?
10 A. The accountants would, I assume, put together - I just
11 have no knowledge of that side of the business.
12
13 Q. But if your department was responsible for investing?
14 A. No, sir, we were never responsible for investing. We
15 would arrange for it to be invested with Treasury, or
16 whatever, and then monitor it and make sure the withholding
17 tax was collected. We would never do the investment
18 ourself.
19
20 Q. Any investment of the \$7.875m would have been effected
21 by Treasury; is that what you are saying?
22 A. It would have been done with Treasury. They would
23 have supplied the rate applicable to us.
24
25 Q. And, to the extent to which accounts needed any
26 information about that figure, the \$7.875 million, they
27 would have obtained that from Treasury and not from you?
28 A. No, they would have tick-tacked with us because our
29 department would have put it on deposit for seven days,
30 30 days, et cetera, et cetera, and when that was due to
31 roll over, we would confirm with marketing or whoever do
32 they want the deposit rolled or paid, and then instructions
33 would go to whatever area was applicable with the answer.
34
35 Q. And when it came time for this money to be paid to
36 Tigris Petroleum, would your department, or your division,
37 have issued the instruction for that payment, following
38 advice from IS&M?
39 A. No, sir.
40
41 Q. Where would that instruction have come from?
42 A. Well, I don't have the document with me, but there is
43 a document which is signed which authorises that payment to
44 be made.
45
46 Q. We have that document signed by Ms Scales and
47 Mr Cooper?

1 A. That's the one.

2

3 Q. But prior to Ms Scales and Mr Cooper having to make a
4 decision about that, would your department have been
5 concerned in that at all?

6 A. Sir, I have a feeling that that instruction came from
7 Mr Cooper and Sarah Scales before the deposit matured, so
8 we in fact had paid that money out three or four days, but
9 I would need to check that. So the payment was made
10 without our knowledge.

11

12 Q. Now, after March of 2003 the inquiry understands that
13 AWB took on the responsibility for actually ensuring that
14 the wheat that was shipped to Iraq found its way from
15 Umm Qasr to the various parts of Iraq that the UN required
16 the wheat to be delivered to. In that regard, were you
17 involved in the arrangements that were made for the
18 shipments of wheat from Umm Qasr to the governorates of
19 Iraq?

20 A. There is one small part of that that I was involved
21 in, and I have searched what documents I can. My only
22 involvement in that was when we were delivering C&F to
23 Umm Qasr, we had insurance on the vessel and grain right up
24 until there. If we were delivering into the governorates,
25 the question was asked were we insured, and I did go to our
26 insurance department - I think it was Annette Bury - and
27 requested her to advise me if we had insurance cover from
28 truck to end delivery.

29

30 Q. From the ship's rail to the final point of delivery?

31 A. I'm not sure if it was over the ship's rail or from
32 truck. I'm not sure of the actual details, but they came
33 back and I think it just got down to the fact that
34 providing we had tarps over the trucks at the time of
35 delivery we were insured. That was my only involvement in
36 that that I can recall.

37

38 Q. Was that insurance that was effected after March of
39 2003?

40 A. I'm not sure of the date, sir. There are emails which
41 I have given in my statement which evidence --

42

43 Q. We have the material in your statement.

44 A. Sorry.

45

46 Q. You may take it that we have the material in your
47 statement and the emails there.

1 A. Yes. Well, they will evidence the date, sir.
2
3 Q. We have confidential exhibit 116, AWB.0084.0058.
4 I wonder if that could be brought up, please. This is an
5 email from Mr Hogan which has been copied to you, amongst
6 others. It is dated 12 June 2001 and it relates to his
7 then recent trip to Iraq.
8 A. Yes, sir.
9
10 Q. If we go to page 0061, at the bottom of the page
11 Mr Hogan speaks of the US 50 cent fee being built into the
12 inland transport fee.
13 A. Yes, sir.
14
15 Q. Now, this email was copied to you. Did you read that
16 trip report, Mr Aucher?
17 A. I cannot recollect reading that trip report, but if it
18 was copied to me I would have opened it. I don't just
19 destroy emails. I would have read it, but I can't recall
20 it.
21
22 Q. If you read that, you would have learnt, as we see
23 from the plain language of the email, that the 50 cent fee
24 was being built into the inland transport fee, and that
25 that was a fee that the Umm Qasr port had tried to apply
26 earlier that year. Did it strike you, then, that the
27 inland transport fee was being paid to the Iraqis, given
28 that this port fee had been built into it?
29 A. No, it didn't, sir. In the area and the environment
30 in which I was working we weren't concerned about the
31 ongoing contractual obligations or payments that were going
32 on. Our focus was purely on letters of credit, ensuring
33 the letters of credit and getting payment. It wasn't our
34 side of the business.
35
36 Q. The last matter I want to ask you about concerns the
37 use of Ronly as a conduit for payments of the inland
38 trucking fee.
39 A. Yes, sir.
40
41 Q. At some stage you came to learn of that, did you not?
42 A. At some stage, sir, yes.
43
44 Q. Can you recall how it was that you came to learn of
45 that? Were you told about it?
46 A. Sir, I would have been told about it, but as to the
47 date, I suspect that may be covered in my statement.

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Q. We have an email from Mr Watson to Mr Stott, which is copied to you, at AWB.0138.0378. In this email you are told that with immediate effect the trucking fee of US\$15 is being paid directly by the AWB to the trucking company?

A. Yes, sir.

Q. And the address and bank details are set out.

A. Yes, sir.

Q. On the same day we have your email to Mr Stott, AWB.0138.0379.

A. Yes, sir. Can I comment on that one?

Q. Yes.

A. That is not in answer to Mr Emons' previous email. That's in answer to an email that Charles Stott sent to Kathy Gibson, talking about payments, and I just pointed out to Mr Stott that we're not an area that does payments; the only payments we make are bank fees. But there is another email between those two. That was from Charles Stott to Kathy Gibson. I don't have that.

Q. In this email, 0379, from you to Mr Stott, you say in the second paragraph:

Our role in the Iraq business has been to advise the relative areas of what tonnage the Iraqi's actually pay for, to enable the payments to be calculated, authorised and made by whoever. (Chartering and or the M/E desk or both).

So it is apparent that you were providing information so that payments could be calculated.

A. Sir, we were providing them information, which was the tonnage that had actually arrived in Iraq or been signed off by the UN agents, and we were forwarding that information on a regular basis.

Q. Were you aware that that information was being used to calculate the trucking fee?

A. No, sir.

Q. And that the last 10 per cent of the trucking fee was paid on the basis of the information that you provided concerning the actual tonnage signed off by the UN agents

1 in Iraq?

2 A. No, sir. It is - that sort of information was just
3 meaningless to us. That was just way above us.

4
5 MR AGIUS: I will tender those two emails,
6 Mr Commissioner, AWB.0138.0378 and 0379.

7
8 EXHIBIT #399 EMAIL FROM MR WATSON TO MR STOTT, COPIED TO
9 MR AUCHER, BARCODED AWB.0138.0378, AND EMAIL FROM MR AUCHER
10 TO MR STOTT BARCODED AWB.0138.0379

11
12 MR AGIUS: Q. I was asking you, Mr Aucher, when was it
13 that you became aware that Ronly was being used as a
14 conduit for payments of the trucking fees?

15 A. Sir, that's what I said, if I can refer to my notes,
16 because we tried to very much - I have just got to find the
17 Ronly section, sir.

18
19 Q. You refer to this in paragraph 52 - 0077.

20 A. Which paragraph, sir?

21
22 THE COMMISSIONER: Paragraph 70 is Ronly.

23
24 THE WITNESS: Yes, sir. I see paragraph 52.

25
26 MR AGIUS: Q. Can we bring up AWB.0138.0377. This is
27 Mr Stott's email to Michael Watson, at the top of the page:

28
29 Suggest shipping continue to make payments
30 for ocean freight and land transport costs.
31 I was under the impression that the
32 trucking costs were \$14 not \$15 grateful if
33 you would check and confirm. Assume that
34 chartering will also pay to whoever Ronly
35 direct the 0.20 cents.

36
37 Now, you refer to that email, I believe, in paragraph 52.

38 A. Yes, sir.

39
40 Q. Were you aware, as at 27 July, that Ronly was being
41 used as a conduit for the payment of the trucking fee?

42 A. Sir, I would have been, if I read that email.

43
44 Q. Well, does that email tell you that Ronly is actually
45 concerned in the payment of the trucking fee? It just
46 speaks of "Assume that chartering will also pay to whoever
47 Ronly direct the 0.20 cents". Without more, it doesn't

1 tell you anything about Ronly, the 20 cents or its
2 relationship to the payment of the trucking fee. That's
3 why I am asking you, did you have some earlier knowledge?
4 A. Not to my knowledge, sir. It is - and it was - even
5 when I did understand it, I didn't understand what it was
6 for and it had no bearing on my role.

7
8 MR AGIUS: I tender that page, barcoded AWB.0138.0377.

9
10 EXHIBIT #400 MR STOTT'S EMAIL TO MICHAEL WATSON,
11 BARCODED AWB.0138.0377

12
13 MR JUDD: I note there is a vessel name and a bank
14 account.

15
16 THE COMMISSIONER: Yes. I make a non-publication order in
17 respect of the vessel name and the bank account number.

18
19 MR AGIUS: That completes my examination of Mr Aucher,
20 Mr Commissioner. Now, I should add a rider to that: we
21 received a volume of emails said to relate to Mr Aucher
22 that we've not yet had an opportunity to examine closely.
23 I believe we received them this morning. I cannot ask for
24 Mr Aucher to be released until we've had an opportunity to
25 examine that and any other fresh material. I would ask
26 that he not be released from his notice.

27
28 THE COMMISSIONER: Yes. Very well. Mr Abbott, do you
29 have any questions?

30
31 MR ABBOTT: Yes, one matter.

32
33 <EXAMINATION BY MR ABBOTT:

34
35 MR ABBOTT: Q. You were asked some questions, Mr Aucher,
36 about the email of 20 October 1999, which is behind tab 44
37 in your book of documents. Do you have the book of
38 documents? If you go to tab 44.

39 A. Yes, sir.

40
41 Q. This is a series of emails. Mr Agius put it to you
42 that all that you had was Mark Emons' response to
43 Graham Owen - namely, the one that begins "I will reply in
44 reverse order" - and that you hadn't received, when you got
45 that email, Mr Owen's email to Mark Emons which sets out in
46 six numbered paragraphs some concerns that he has. Do you
47 remember those questions?

1 A. Yes, sir. I have now found the file in this folder,
2 which evidences the information I gave Mr Agius is
3 incorrect. I did have that previous information.

4
5 Q. Well, I don't think the information you gave was
6 incorrect. I think it was put to you that you didn't have
7 it, and you may have agreed. But in the folder, I think,
8 are the emails which you produced from your records to your
9 counsel; correct?

10 A. They are there, yes.

11
12 Q. And that indicates that you did get the complete trail
13 of emails, if you like, including the one that he put to
14 you that you may not have had?

15 A. Yes.

16
17 MR AGIUS: I apologise for that. I should say that we
18 only got this bundle of attachments this morning and I only
19 saw it at about five to two.

20
21 MR ABBOTT: I am not complaining.

22
23 THE COMMISSIONER: Mr Judd?

24
25 MR JUDD: No, thank you.

26
27 THE COMMISSIONER: Does anybody else have any questions?

28
29 MR FORREST: Commissioner, at the moment, and I think
30 I speak for pretty much everyone at this Bar table, we
31 haven't seen yet this witness's statement, we haven't seen
32 the annexures and we haven't seen, like my learned friend
33 Mr Agius, the emails, so I'm reluctant to ask that he be
34 brought back tomorrow. I know that my learned friend
35 Mr Abbott has commitments. If we could have him stood down
36 for perhaps 15 minutes, if the statements could be made
37 available to us, we could determine whether or not we have
38 a position.

39
40 THE COMMISSIONER: Yes. Very well. Mr Agius, are you
41 going to start Mr Jones this afternoon?

42
43 MR AGIUS: No, I do not believe we are in a position to do
44 that, Mr Commissioner. I propose to start Mr Jones
45 tomorrow.

46
47 THE COMMISSIONER: All right. I will adjourn for

1 15 minutes.

2

3 SHORT ADJOURNMENT

4

5 MR FORREST: Thank you for that time, Commissioner. We
6 have no questions.

7

8 THE COMMISSIONER: Does anybody else have any questions?
9 Mr Agius?

10

11 MR AGIUS: I have nothing further at this stage,
12 Commissioner.

13

14 THE COMMISSIONER: Thank you, Mr Aucher. I can't release
15 you at this stage, but if you are required further, that
16 will be by arrangement with your solicitors.

17

18 <THE WITNESS WITHDREW

19

20 MR AGIUS: Is that a convenient time to adjourn?

21

22 THE COMMISSIONER: Yes. I will adjourn until 10am.

23

24 AT 4.23PM THE COMMISSION WAS ADJOURNED
25 TO WEDNESDAY, 22 FEBRUARY 2006 AT 10AM

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