

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY**

2016/CLE/gen/00473

BETWEEN:

PAUL MAJOR

PLAINTIFF

AND

**FIRST CARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED
DEFENDANT**

**Appearances: Ms. Krystal Rolle Q.C., Counsel for the Plaintiff
Mr. Ferron Bethell Q.C., Counsel for the Defendant**

**Hearing Dates: 27TH May, 2019
28th May, 2019
29th May, 2019**

[1] This action was commenced by a generally indorsed Writ of Summons filed April 05th, 2016. The general indorsement provides:

“GENERAL INDORSEMENT

**THE PLAINTIFF makes the following claims against the Defendant
namely:-**

- 1. A claim for Damages for Unfair Dismissal by reason of the Defendant's termination of the Plaintiff's employment on the 2nd day of June, A.D., 2015 contrary to the provisions of the Employment Act 2001, Chapter 231A of the Statute Laws of the Bahamas.**
- 2. Further or in the alternative, a claim for Damages for Wrongful Dismissal by reason of the Defendant's termination of the Plaintiff's employment on the 2nd day of June, A.D., 2015 without any notice period and without payment in lieu of notice.**
- 3. Further or in the alternative, a claim for Damages for Breach of Contract made initially between the Plaintiff and Barclays Bank PLC in 1993 and thereafter novated by and/or assigned to the Defendant by reason of the Defendant's termination of the Plaintiff's employment on the 2nd day of June, A.D., 2015.**
- 4. A claim for Damages for slander by reason of the fact that the Defendant's servants and/or agents, during the course of their employment with the Defendant, uttered spoken words of and concerning the Plaintiff to third parties which were defamatory of the Plaintiff both personally and by way of his occupation and/or profession.**
- 5. Interest on any and all damages pursuant to the Civil Procedure (Award of Interest) Act 1992.**
- 6. Such further and/or other relief as the Court deems just.**
- 7. Costs.**

AND THE PLAINTIFF CLAIMS:-

- 1. Damages for Unfair Dismissal, Wrongful Dismissal, Breach of Contract and Defamation as aforesaid.**
- 2. General Damages.**
- 3. Interest on all damages pursuant to the Civil Procedure (Award of Interest) Act, 1992.**
- 4. Costs.**
- 5. Such further or other relief as the Court deems just.**

[2] The Statement of Claim (SOC) contains 45 pages and sets out the Plaintiff's case in great detail.

[3] The Plaintiff commenced employment with the Defendant in 1993 initially with Barclays Bank PLC. On the 14th October, 2002 Barclays Bank PLC ("Barclays") and Canadian Imperial Bank of Commerce ("CIBC") combined their retail, corporate and offshore Caribbean Banking operations and launched FCIB.

[4] Upon this happening, the Plaintiff's contract of employment was continued uninterrupted under FCIB. There was an agreement between the Plaintiff and the Defendant to certain variations of the terms and conditions taking place from time to time.

[5] When the Plaintiff was terminated he held the position of Head of International Banking, which was concerned primarily with the banking business of

foreign/international customers. This was a managerial position and the Plaintiff's employment spanned some twenty-two (22) years.

- [6] The terms and conditions which governed the employment relationship are to be found in several documents, namely, the employment contract Code of Conduct (March 2015 (updated) and the Code of Discipline of 2013). The Plaintiff pleaded that he was also covered under an Agreement dated September 20th, 2013. However, the Defendant disagrees.

FACTUAL MATRIX:

- [7] The Plaintiff was the relationship manager for several clients of the Defendant including one Mr. Charles "Chuck" Blazer. At the time of his termination, the Plaintiff's position with the Defendant was that of Head of International Banking and he reported directly to the Managing Director Ms. Marie Rodland-Allen. Ms. Rodland-Allen had appointed him to that position with effect from May 01st, 2012 by way of a promotion letter dated May 9th, 2012.
- [8] One point can be cleared right away and that is the Plaintiff's claim that he was covered under an industrial agreement referred to in the Plaintiff's Bundle of Documents Volume 1 at Tab 8. On page 5 of the agreement, Article 3.1 it provides:-

"The Bank recognizes the Union as the Sole bargaining agent for the permanent full-time and permanent part-time management employees, levels FC5 – FC 8 of the Bank."

[9] Paragraph 3 of the Amended Statement of Claim provides:

“The Plaintiff up until and including the date of his termination as hereinafter pleaded was a member of The Bahamas Financial Services Management Workers’ Union (hereinafter referred to as (“The Union”))”

[10] Ms. Antoinette Turnquest, the then Head of Human Resource in her evidence on May 29th, 2019 confirmed that the Plaintiff was not covered by the union agreement and if he wanted representation he would have had to ask for it. There was no obligation on the bank to provide representation.

[11] Ms. Turnquest’s evidence on May 29th, 2019 states at paragraphs 64 lines 6 - 32 and page 65, lines 1 – 4:-

“1. . Q. And 3.2?

2. A. Yes.

3. Q. I guess you can take your time and read it and

4. then explain to us what your understanding would be

5. at this time as respect to that provision.

6. A. Yes. This provision basically was intended to

7. cover persons who are at the FC-8 level and under the CMC

8. and were part of the CMC. So there were persons who were
9. FC-8 also CMC members. And then there were persons who
10. were FC-9 and above who were CMC members as well.

11. Q. So FC-9 and above and CMC members, this
12. provision would speak to them as well?

13. A. Pardon me?

14. Q. You had said the provision would cover FC-8?

15. A. Right. FC-8 persons who were a part of the
16. CMC, so like myself. And there were a few other persons
17. who were at the FC-8 level and also a part of the CMC?

18. Q. Okay. What about FC-9 and CMC?

19. A. No. It would not have covered those persons

20. Q. So tell me how does this assist me because I
21. know you are familiar with this provision; 3.1 and 3.2,
22. how do they correlate with each other?

23. A. To me 3.1 provides the scope of the agreement
24. that covers those levels in particular, and 3.2 makes

25. makes provisions for those persons who are at that level and

26. also a part of the Management Committee.

27. Q. So your view then is that it broadens 3.1 but
28. it applies to the same people?

29. A. That it broadens 3.1?

30. Q. Yes.

31. A. I don't think it broadens 3.1. I think it sets
32. the limit for the grades that the Industrial Agreement

Page 65, lines 1 – 4:

1. would cover.

2. Q. And that's how it is treated?

3. A. Yes.

4. Q. Thank you."

[12] I am fully aware of what has been pleaded by the Plaintiff in this regard however, if the Plaintiff allowed the Defendant to continue deducting funds (dues) from his salary to be paid to the Union then that's on the Plaintiff as he was the only one authorized to instruct the discontinuance of such deductions in conjunction with the Union.

[13] The Defendant could not unilaterally discontinue the deductions.

[14] At Tab 38 of the Defendant's Supplemental Bundle is the promotion letter of the Plaintiff dated May 10th, 2012, the first paragraph of which provides:

“Dear Paul,

We are pleased to inform you of your appointment to the position of Head International Banking. This position reports to the Managing Director, Bahamas and the grade for this role is at the level FC9.”

[15] This promotion to an FC-9 Officer automatically took the Plaintiff out of the confines of the industrial agreement, as it only covered employees from FC 5 – FC 8. In this regard therefore, there will be no consideration of any of the terms as set out in the industrial agreement.

[16] The issues which give rise to this action are that the Plaintiff was the manager of the account of certain of the Defendant's customers including Mr. Charles Blazer, who for all instants and purposes is an international client who, according to the Defendant's policies would be subject to its International Banking Rules and Regulations.

[17] At the heart of this matter therefore, is a document entitled US PERSON'S POLICY.

[18] There is also the Code of Discipline and the Code of Conduct.

- [19] It becomes obvious that the Plaintiff had a long standing relationship with Charles Blazer. Mr. Blazer opened his first account in or about 2002 at which time the Plaintiff was his relationship manager. The Plaintiff handled small matters and large matters for Mr. Blazer.
- [20] The evidence discloses that the Plaintiff, prior to the end of April, 2011 early May 2011 was well aware of certain allegations being made about not only Mr. Blazer but also the executives of CONCACAE.
- [21] In the transcript of 27th May, 2019 page 88 lines 12 – 32, page 89 lines 1 – 32 and page 90 lines 1 – 5 it confirms what knowledge the Plaintiff had regarding what was unfolding with Mr. Blazer. That evidence is as follows:

Transcript of May 27th, 2019

Page 88 lines 12 – 32:

12. Q. Now, were you aware that Mr. Blazer had a
13. senior position in FIFA?
14. A. Yes.
15. Q. Did you know he was a member of FIFA's
16. Executive committee?
17. A. Yes.
18. Q. And that he was one of the three persons
19. appointed by CONCACAF? There were three persons on the

20. board of CONCACAF. He was the general secretary.

21. A. Okay, Yes. I am familiar with his position

22. With CONCACAF.

23. Q. He was the only member who was responsible for

24. the United States?

25. A. You might say, I mean I wouldn't know the

26. details like that, but okay.

27. Q. Now, prior to May 2011, think carefully about

28. this, Mr. Major. Were you aware that FIFA was being

29. publically accused of corruption including bribery?

30. A. That's FIFA?

31. Q. Yes FIFA.

32. A. I mean I can't recall."

Page 89, 1 – 32

1. Q. Didn't you say that you were kind of doing

2. extensive internet exploring, deep research regarding

3. FIFA, CONCACAF?

4. A. I mean, around which time, though?

5. Q. I posed the question, prior to May 2011.

6. A. I don't have an answer to that. You are asking

7. me to recall if I have done any research on the internet

8. prior to May.

9. THE COURT: You don't recall?
10. THE WITNESS: I don't recall.
11. BY MR. BETHELL:
12. Q. But you did do research?
13. A. From 2011 to now?
14. Q. No. I am just asking whether you did do
15. research on FIFA and corruption and bribery and Blazer?
16. A. Corruption, bribery and Blazer?
17. Q. Anyone of those topics or all, corruption,
18. bribery and Blazer.
19. THE COURT: It doesn't matter when.
20. THE WITNESS: Okay, yes, yes, okay.
21. BY MR. BETHELL:
22. Q. Can you go to the Defendant's Supplemental
23. Bundle of Documents?
24. A. Sure.
25. Q. Can you turn to Tab 23?
26. A. I have it.
27. Q. Now, looking at page 1 at the bottom there, you
28. received an email from Offshore alert regarding a
29. conference they were having addressed to you, subject
30. "FIFA wants offshore with a head of next week's

31. conference.”

32. A. Yes.”

Page 90, lines 1 – 5:

1. Q. And that’s 29 April 2010?

2. A. Yes.

3. Q. And you immediately flipped that around and

4. sent it to Chuck Blazer within minutes of receiving it.

5. A. I see your timeline yes.”

[22] There was a series of e-mails which the Plaintiff sent to Mr. Blazer during the critical period. There was one on April 29th, 2010 where the Plaintiff forwarded an article to Mr. Blazer entitled “FIFA Warns Offshore Alert Ahead of Next Week’s Fraud Conference.”

[23] On November 10th 2010, the Plaintiff again set Blazer another e-mail suggesting that Blazer stay out of the news. All of this was around the time the Plaintiff collected a \$250,000.00 cheque from Blazer in New York. However, the Plaintiff at paragraph 101 of his witness statement says:

“When I collected the cheque from Blazer in May 2011 I HAD NO KNOWLEDGE AT ALL OF HIS CRIMINAL CONDUCT. I HAD NO REASON TO SUSPECT THAT THE CHEQUE WAS ANYTHING OTHER THAN WHAT HE SAID IT WAS, THAT IS, HIS FEES/COMMISSIONS. (My emphasis).”

US PERSONS POLICY:

[24] At paragraph 200 of the Plaintiff's Witness Statement he says:

**200. "My awareness of a US Persons Policy document is in 2013.....
a copy of the US Persons Policy document dated August 2013."**

[25] However, on December 12th, 2005 in an e-mail from one Malcom Whetnall the Director of Sales and Service International Weather Management copied to Audley Dawson, Ken Bain, Benjamin Freeman, Bob Griffiths, Mark McIntyre, Mark St. Hill, Anna Jan and Ella Hoyas, Mr. Whetnall says;

"Guys,

I have posted this into our intranet site, which as you know I have also updated. The specific section on US Persons is at the below link which is part of the wider International Wealth Site [also noted below] [now aligning our external website also]

US Persons link:

**[http://inside first/westindies/fcib/
home pages/Intl/docs/US%20Policy.htm](http://insidefirst/westindies/fcib/homepages/Intl/docs/US%20Policy.htm)**

International Wealth Management Intranet site

<http://insidefirst/westindies/fcib/homepages/Intl home.htm>"

I have also attached a word document of the US Persons Policy.

Can we make sure all staff read and note the contents and advise me when this has been done. I will dearies for end of January to follow through on this.

As always any questions arising let me know. I have advised both Anna Mclean and Mary Birke on this as more wider note should follow. However, as head of this I wanted to make sure our policy on US Persons was in our shop and known by our terms.

Ken – please make sure Bob sees when he is back.

Thanks team.”

[26] On December 14th, 2005 Ken Bain pursuant to the instructions from Whetnall forwards Whetnall’s e-mail to Timothy Munnings, Audley Higgs, Steve Bonamy, Ingrid Carey, Bernadette Cartwright, Katrice Darville, Phelan Ferguson, Dorothy Gibson, Robin Knowles, Antoinette Lowe-Collie, PAUL MAJOR (emphasis), Toni Cartwright, Christine S. Smith, Tonya Sullivan, Inmalasha Thompson, Maledas Watson-Smith and Sheila Woods.

[27] Subject: FW VS Persons Policy Attachments: US – FCIB Policy [enhrev] 26.10.05 wherein Ken Bain says;

“Dear All,

Please see below. Please ensure you read this. Audley: You have a copy. Please ensure the term reads;

Ken.

[28] The evidence shows and is accepted by the court that this US Persons Policy was updated in August of 2013 and again in November of 2014. Therefore, in 2011 when the Plaintiff collected the \$250,000.00 cheque from Blazer. I accept that, there was a US Person’s Policy in place. Attached to the e-mail was a hard copy of the US Persons, Policy.

[29] In the US Persons' Policy 2005 at Clause 4 "WHY" it states:

"US State and Federal Laws require banks to be licensed as a condition of engaging in banking in the United States. Most states either by statute or by common law, have adopted a definition of the business of banking that encompasses.

ACCEPTING CHEQUES, cashing cheques and lending money. Anyone, including a foreign bank that conducts anyone of these core-banking functions IN THE UNITED STATES (my emphasis) would need to be licensed and therefore regulated in the United States."

[30] The updated US Persons policy of 2013 and 2014 are of a similar language but in my opinion more specific:

[31] US PERSONS POLICY (2014) PROVIDES: (Under the heading POLICY REQUIREMENTS in particular (Section 4) and Section 4.2.

4.2 Requirements for Banking Services:

"U.S. Laws require banks to be licensed as a condition of engaging in Banking Services in the U.S. Most states, either by statute or by common law, have adopted a definition of the business of banking that encompasses accepting or, in some states, soliciting deposits, accepting cheques, cashing cheques or lending money ("Core Banking Functions"). Any bank (including non-U.S. BANKS) CONDUCTING ANY ONE OF THE Core Banking Functions in the U.S. is required to be licensed and regulated in the U.S. To ensure compliance with state laws. CIBC FirstCaribbean does not allow U.S.

Persons to initiate applications for Banking Services via email when located in the U.S.

These licensing requirements do not include Banking Services conducted with U.S. Clients outside of the U.S. by institutions not located in the U.S. CIBC FirstCaribbean in a non-U.S. Services outside of the U.S. to U.S. Clients who are physically outside of the U.S. without triggering a U.S. license requirement.

It is this objective that this Policy seeks to secure, applying the following safeguards:

- a) CIBC FirstCaribbean may not establish an office or place of business in the U.S. without a license. CIBC First Caribbean meets this requirements by not having an office, branch or agency in the U.S. or maintaining any U.S. presence.**
- b) CIBC FirstCaribbean may not engage in Core Banking Functions in the U.S. without a license.**
- c) CIBC FirstCaribbean may not send employees to conduct Banking Services with any clients in the U.S. or use agents in the U.S. to conduct Banking Services with any of CIBC First Caribbean's clients. For liaison with existing U.S. Clients in the United States see the discussion below at 4.5.2.**
- d) CIBC FirstCaribbean must comply with the requirements of not accepting deposits or making loans, accepting cheques, cashing cheques or lending money in the**

United States via email. U.S. Clients may use email communication to complete submissions only if the application was initiated at CIBC FirstCaribbean locations outside the U.S. In this case, it also allows for an existing client to take advantage of services CIBC FirstCaribbean offers to existing clients such as setting up standing orders for transfers of funds from deposit accounts and other banking services. Evidence of the account application being initiated at CIBC FirstCaribbean locations outside of the U.S. must be maintained in the client file.”

[32] Mrs. Edith Sands, a witness subpoenaed by the Plaintiff also gave evidence regarding the US Persons Policy.

[33] Mrs. Sands testified that she joined International in 2008. When asked by counsel for the Plaintiff about the U.S. Persons Policy she said the first instance that she was familiar with it and went on to explain her understanding as it being:-

“A procedure whereby it was stated that personnel weren’t allowed to conduct business, personnel being relationship managers weren’t allowed to solicit business on U.S. soil. They couldn’t travel to the U.S to conduct or seek clients.”

[34] She however, said she didn’t remember a document existing at that time. Her evidence was that she could only recall one hearing the time she was about to leave, about four (4) years prior to her leaving.

[35] Under cross-examination counsel inquired whether the bank had an intranet and she confirmed that it did. She also confirmed that policies were posted on the intranet which she said applied to the whole bank and as an employee you are

obligated to familiarize yourself with those policies and to comply with them. See pages and lines of her evidence set out below:

1 just need your Lordship to make a decision as to whether
2 you were going to amend your --

3 THE COURT: I have already decided.

4 MR. BETHELL: Otherwise I am prepared to deal
5 with the other witnesses.

6 THE COURT: Okay. I have already decided to
7 amend the Order and to allow the witnesses subpoenaed by
8 subpoena to come and put in the witness box examined by
9 Mrs. Rolfe and cross-examination by yourself. I think
10 that would be the --

11 MR. BETHELL: And I have no doubt that Mrs.
12 Rolfe will appreciate that she can put no leading
13 questions to them.

14 THE COURT: I am sure she is fully aware of
15 that.

16 MR. BETHELL: Thank you.

17 THE COURT: So the subpoenaed witnesses
18 pursuant 31(a)(18) is: whereby amending the Case
19 Management Order.

20 MRS. ROLFE: I am obliged, my Lord.

21 With your leave, my Lord, we would wish to
22 start with Ms. Edith Sands.

23 THE COURT: And you did say yesterday, Mrs,
24 Rolfe, that you intend to be extremely brief. I am not
25 limiting your time with your witnesses.

26 MRS. ROLFE: I am hoping we can do two before
27 lunch, my Lord. Well, I don't know. We will see how it
28 goes.

29 THE COURT: I said I think it is going to take
30 some time.

31 MRS. ROLFE: Yes.

32 E D I T H S A N D S, having been called as a witness,

2025 - 20 May 2016

Paul Major v FCIB - CLE/gen/473/2016

1 being duly sworn, testified as follows:

2 MRS. ROLLE: Shall I, my Lord?

3 THE COURT: Yes.

4 EXAMINATION IN CHIEF BY MRS. ROLLE:

5 Q. Good morning, Ms. Sands. Mrs? Ms?

6 A. Ms.

7 Q. Ms. Sands, how are you?

8 A. I am fine. Thank you.

9 Q. My name is Krystal. I am going to ask you a
10 few questions and then Mr. Bethell will do the same.

11 A. Okay.

12 Q. Could you state your full name and address for
13 the Court, please?

14 A. Edith Karen Annette Sands, number 30 Bacardi
15 Road, New Providence, Bahamas.

16 Q. Mrs. Sands are you employed?

17 A. No I am not.

18 Q. Retired?

19 A. Yes, retired.

20 Q. Can you state where you retired from?

21 A. CIBC, First Caribbean International Bank.

22 Q. And where did you retire?

23 A. When?

24 Q. When, sorry.

25 A. June 1, 2018 was my starting of retirement
26 date.

27 Q. June 1, 2018, last year.

28 A. Yes.

29 Q. And can you indicate when you started at the
30 bank?

31 A. October 1980.

32 Q. And at the date of your retirement, what

ROUGH - 29 May 2019

Paul Major v FCIB - CLE/gen/473/2016

1 position did you hold?

2 A. Risk and Control Associate in the Private
3 Wealth Unit.

4 Q. And how long did you hold that position?

5 A. Up to retirement.

6 THE COURT: What did you say it was, Risk and?

7 THE WITNESS: Control Associate.

8 THE COURT: Yes.

9 THE WITNESS: I joined International in 2008,
10 but from then until retirement the title changed but the
11 duties were basically the same.

12 BY MRS. ROLLE:

13 Q. So you joined International in 2008?

14 A. Yes.

15 Q. So now I am going to ask you about the US
16 Persons Policy, okay. What can you tell us if anything
17 about this US Persons Policy? Are you familiar with it?

18 A. Yes.

19 Q. What can you tell us? Well let me bring it,
20 that's kind for broad. Let me pick a date. You joined
21 International in 2008 you said?

22 A. Yes.

23 Q. So let's use 2008. What can you tell us if
24 anything about the US Persons Policy in 2008?

25 A. Generally it was a procedure whereby it was
26 stated that personnel weren't allowed to conduct
27 business, personnel being Relationship Managers weren't
28 allow to solicit business on US soil. They couldn't
29 travel to the US to conduct or seek clients.

30 Q. Okay. Were you familiar with a document called
31 the US Persons Policy?

32 A. Not at that time. No, I don't remember a

ROUGH - 29 May 2019

Paul Major v FCIB - CLE/gen/473/2016

1 document existing.

2 Q. When you said, 'not at that time', when do you
3 recall there being a document called the US Persons
4 Policy?

5 A. I don't remember the exact date, nearing the
6 end. I left in 2018. I would have to guess. I can't
7 really say specifically a date when it came into being.

8 Q. Well let me try and help. You left in 2018.
9 Are you able to say how many years approximately before
10 you left that you became familiar with a document called
11 the US Persons Policy?

12 A. I would say at least four years.

13 Q. Prior to you leaving in 2018?

14 A. Yes.

15 Q. Now this concept, I am going to read it because
16 I keep forgetting to say the word in the correct
17 sequence. "Key Control Insurance Review". What does
18 this mean if anything?

19 A. The management control test were a set of what
20 we call test where we were required to examine processes
21 and procedures to make that they were being adhered to.

22 Q. And when you say policies and procedures?

23 A. Processes.

24 Q. Processes, I am sorry. I was about to say,
25 would that include policies that has been implemented?

26 A. I don't remember a specific test for policies.
27 There was no test specific to policies that I can
28 remember.

29 Q. Okay. Now I probably should have asked you
30 this from the very beginning. What was your job
31 description of the time that you retired?

32 A. To conduct tests as I just mentioned, on

ROUGH - 29 May 2019

Paul Major v FCIB - CLE/gen/473/2016

1 adhering to policies and procedures, in particular
2 customer, on-boarding, managing, helping to manage audit,
3 Central Bank inspection, managing the business continuity
4 plan, that sort of things.

5 Q. Okay. Now the testing and the audit that you
6 just spoke of as being a part of your job description,
7 and you had said earlier in your evidence that you joined
8 Wealth in 2008. Between 2008 and your retirement, it was
9 like ten years later, you said in 2018.

10 A. Yes.

11 Q. Are you aware of any tests or audits involving
12 the US Persons Policy?

13 A. There was no tests specific to the USP Persons
14 Policy, no.

15 Q. Now, I wouldn't know. Is there anything
16 significant about that? Does that mean anything, the
17 fact that there was no tests?

18 A. Well the test would have basically, would have
19 covered KYC, "Know Your Customers", and any one would
20 have fallen into it who was elected to testing whether
21 they were US customers or not.

22 Q. I am wrapping up. You mentioned recording to
23 the Central Bank. And you said that you were in risk, in
24 the area of risk. My question is this. If you have what
25 I think you referred to, well I think I will ask you.
26 Does the term "High-Risk Account" mean anything to you?

27 A. Yes.

28 Q. Tell us what a High-Risk Account is please.

29 A. High-Risk were politically exposed persons
30 known by the acronym PEP, anyone who had any political
31 affiliation, if a client was also from a High-Risk
32 country, Latin American country were considered

ROUGH - 29 May 2019

Paul Major v FCIB - CLE/gen/473/2016

1 High-Risk.

2 Q. Is that it?

3 A. That's all the type of people.

4 Q. If you had specifically an account holder
5 involved in or suspected of money laundering, can that be
6 considered a High-Risk Account?

7 A. It would be considered as being High-Risk, but
8 if they were suspected of money laundering. And the
9 question is if we would have on-boarded them in the first
10 place.

11 Q. Well, let's assume that suspicion had manifest
12 after they were already on-board.

13 A. Yes. They would be considered High-Risk and
14 they would require a more heightened monitoring.

15 Q. And what would this heightened monitoring
16 involve, if anything?

17 A. More frequent reviews of their files, their
18 financial transactions, ensuring that their documents
19 were all up to date and current. And as I said, tracking
20 their transaction, the volume of transactions, receipts
21 of resources of funds ensuring that what transactions
22 going through the accounts were appropriately accounted
23 for.

24 Q. And was that something that fell within your
25 job description?

26 A. Well.

27 Q. Or your department?

28 A. It would be in conjunction with the Compliance
29 Department.

30 Q. Okay. Finally, the concept of a High-Risk
31 Account, in specific the context of money laundering or
32 suspicious criminal activity, are there any obligations

ROUGH - 29 May 2019

Paul Major v FCIB - CLE/gen/473/2016

1 as it relates to the Central Bank regulatory rules?

2 A. Sorry, can you repeat that?

3 Q. If you have a High-Risk Account, or you had a
4 High-Risk Account and it is of the nature where there is
5 suspicion of criminal activity or money laundering, are
6 there any obligations that the bank has as it relates to
7 that account and the Central Bank?

8 A. I wouldn't say the Central Bank specifically.
9 It would be more compliance, filing, reports what we call
10 our unusual activity report, and then going to the
11 Compliance Department who would in turn go to the
12 Financial Intelligence Unit. Central Bank specifically,
13 if anything, no we wouldn't as far as I am aware, we
14 wouldn't report directly to Central Bank in a matter like
15 that. We would go to Compliance and to the FIU.

16 Q. And I guess if we were to follow that type of
17 scenario, if there is a report to the FIU, what would we
18 expect to see happening as it relates to that company if
19 anything?

20 A. I would, well we would get a Court Order to say
21 pull the file and we would get instructions on what to do
22 via the Court Order.

23 Q. Okay.

24 MRS. ROLLE: My Lord, I have no further
25 examination-in-chief for Ms. Sands. Thank you, Ms.
26 Sands. I know that the past few days has been
27 challenging and I want to speak for the Plaintiff to
28 thank you in accommodating us.

29 THE WITNESS: Yes.

30 I can leave?

31 MRS. ROLLE: No, no, no. Not quite.

32 THE COURT: Mr. Bethell has to now put some

ROUGH - 29 May 2019

Paul Major v FCIB - CLE/gen/473/2016

- 1 questions to you.
- 2 MR. BETHELL: Yes.
- 3 CROSS-EXAMINATION BY MR. BETHELL:
- 4 Q. Good afternoon, Ms. Sands.
- 5 A. Afternoon.
- 6 Q. In 2008 when you went over to International
- 7 Corporate?
- 8 A. No. Well International Department because
- 9 there were both Corporate and Personal.
- 10 Q. Does the bank have an Intranet?
- 11 A. Yes.
- 12 Q. Of policies posted on the Intranet?
- 13 A. Yes.
- 14 Q. Of policies restricted to particular
- 15 departments or they applied to the whole bank?
- 16 A. They apply to the entire bank.
- 17 THE COURT: Sorry, Mr. Bethell. Could you ask
- 18 her that question again, please?
- 19 MR. BETHELL: Does the bank have an Intranet?
- 20 THE COURT: Yes. She said yes.
- 21 BY MR. BETHELL:
- 22 Q. Does the bank have policies on that Intranet?
- 23 A. Yes.
- 24 Q. Do those policies apply to a particular
- 25 department or the entire bank?
- 26 A. They are available to everyone.
- 27 Q. And as an employee are you obligated to
- 28 familiarize yourself with those policies?
- 29 A. Yes we were.
- 30 Q. And to comply with them?
- 31 A. Yes.
- 32 MR. BETHELL: My Lord, I wish to show the

ROUGH - 29 May 2019

Paul Major v FCIB - CLE/gen/473/2016

1 witness the Defendant's Bundle of Document. It is the
2 green one, tab 3.

3 BY MR. BETHELL:

4 Q. Ms. Sands, do you see that document?

5 A. Yes.

6 Q. It is entitled First Caribbean International
7 Bank USP Persons Policy?

8 A. Yes.

9 Q. Can you turn to the page?

10 About three quarters down, item 2. Effective
11 date of this policy.

12 A. Yes.

13 Q. This policy is effective from the date of
14 issue, this policy document being December 1st, 2005?

15 A. Yes.

16 Q. Are you familiar with this document?

17 A. I am familiar with the policy. But I can't say
18 specifically that I am familiar with it at that date.

19 Q. Okay.

20 MR. BETHELL: My Lord, I would like to show the
21 witness the Supplemental Bundle of Documents.

22 THE COURT: Tab?

23 MR. BETHELL: Tab 35.

24 BY MR. BETHELL:

25 Q. Now, Ms. Smith, what was your function?

26 THE COURT: Ms. Sands.

27 BY MR. BETHELL:

28 Q. Sands, sorry, as a Risk and Consultant
29 Associate?

30 A. Sorry, what was my function?

31 Q. Risk and Control Associate, sorry.

32 A. Yes.

ROUGH - 29 May 2019

Paul Major v FCIB - CLE/gen/473/2016

- 1 Q. What was your principal function?
- 2 A. To review client files, to make sure that
- 3 they're adhering to the client on-boarding procedures.
- 4 That was the general function.
- 5 Q. The client on-boarding procedures?
- 6 A. Yes.
- 7 Q. I want you to have a look at tab 35. There is
- 8 an email from Paul Major to yourself in July of 2011.
- 9 A. Gentleman.
- 10 Q. Where he flips an email that he received from
- 11 Randy Taylor. Do you know Randy Taylor?
- 12 A. Yes, I do.
- 13 Q. Okay. What was his function?
- 14 A. He was the Compliance, I can't remember the
- 15 title, but he was the main compliance person who we
- 16 communicated with.
- 17 Q. Okay. And Randy was seeking certain
- 18 information regarding the Blazer account, that he sent
- 19 you an email asking you to arrange. You see that?
- 20 A. Yes.
- 21 Q. And if you turn over the pink divider, at the
- 22 very bottom, there is an email from you on the 2nd
- 23 August, sending Randy certain information. Do you see
- 24 that?
- 25 A. I do.
- 26 Q. Okay. And turn over the page.
- 27 A. I haven't read it. Am I suppose to read it?
- 28 Q. You can read it.
- 29 A. Okay.
- 30 Q. And then over the page there is another email
- 31 from you to Randy at 28th July, at 4:19 p.m.?
- 32 THE COURT: Which is almost in the middle of

ROUGH - 29 May 2019

Paul Major v FCIB - CLE/gen/473/2016

1 the page.

2 THE WITNESS: Yes, I see it.

3 BY MR. BETHELL:

4 Q. Okay. You remember the context in which this
5 request came about?

6 A. No. I am sorry I don't.

7 Q. Let me refresh your memory. There was an
8 article published, called the "Dead Spin" article, Mr.
9 Markeson because it referred to proceeds of nefarious
10 activity being deposited in CIBC's account. Mr. Mark St.
11 Hill requested Compliance, the full Compliance team as
12 well as Mr. Major to investigate this matter and to give
13 reports to him.

14 MRS. ROLLE: My Lord, I just ask that the
15 account be accurate. Mr. Mark St. Hill didn't ask for
16 them to carry an investigation. He asked for Compliance
17 investigation. He copied Paul Major on the email.

18 MR. BETHELL: That is correct.

19 BY MR. BETHELL:

20 Q. And Paul Major then sent you that email saying
21 "Kindly arrange for you to give that information." Do
22 you recall that?

23 A. Well.

24 Q. Or you don't know the background?

25 A. Well I am hearing what you are saying now, but
26 when I take a look that's possibly what it is, but I
27 can't really remember the exact situation.

28 Q. How long did you work closely with Mr. Major?

29 A. Well I would say from, when I say closely, when
30 I joined the department he wasn't in charge. So that's
31 for the first I guess few years that was just a regular
32 relationship I would have had with him as any of the

ROUGH - 29 May 2019

Paul Major v FCIB - CLE/gen/473/2016

1 members of staff. When he took over head of the
2 department then I got to work more closely with him
3 because I would have reported directly to him at the
4 time. I can't remember exactly the year that took place
5 but it would have been a few years before I retired,
6 several years before I retired.

7 Q. When Compliance investigates a matter and they
8 ask for information, are you obligated to turn over all
9 information you have and what you know about a particular
10 file?

11 A. Yes.

12 Q. So even though it is not written down, if you
13 know some things you are supposed to disclose it to them
14 as well?

15 A. Yes, I would think so.

16 Q. Now. This is in July of 2011 that the
17 Compliance is asking for all of this information on Mr.
18 Blazer, right?

19 A. Yes.

20 Q. They are asking about account opening, how much
21 is in accounts, the full relation with the bank with Mr.
22 Blazer. Is that correct?

23 A. Yes.

24 Q. And the evidence before this Court at the
25 moment is that two months before that Mr. Major had gone
26 up to New York, collected a check of two hundred and
27 fifty thousand (\$250,000) from the office of Mr. Blazer,
28 brought it back and deposited in CIBC. That's the
29 evidence before this Court as it stands. In your
30 opinion, in your position in the bank, given the duties
31 of trust and honesty and integrity imposed on a banker,
32 in your opinion, would Mr. Major inform Compliance if he

ROUGH - 29 May 2019

Paul Major v FCIB - CLE/gen/473/2016

1 had done that just two months ago?

2 A. You are asking should he have told Compliance
3 that he brought a check back?

4 Q. That he collected a check from Mr. Blazer's
5 office in New York and brought it back and deposited it.

6 A. In my opinion?

7 Q. Yes.

8 A. It wouldn't necessary have come from me.

9 Q. I don't understand that.

10 THE COURT: Do you understand the question?

11 BY MR. BETHELL:

12 Q. I am asking you in your experience, given your
13 functions in risk or control, knowing the question that
14 would had been asked by Compliance, right?

15 A. Yes.

16 Q. Given the fact that a banker's profession is
17 based on honesty and integrity, that's the cornerstone of
18 your profession, should, in your opinion, Mr. Major have
19 disclosed to Compliance that he has picked up a check in
20 New York from Mr. Blazer and deposit it in the bank?

21 A. No. Because I wouldn't have seen anything
22 untoward about him getting a check from a client and
23 depositing it on the client's behalf.

24 Q. But you just told us earlier what the US
25 Persons Policy was.

26 A. But I wouldn't look at that as having done
27 business in the US. You are asking me for my opinion.

28 Q. Okay. Let's just go back.

29 MR. BETHELL: My Lord, the Defendant's Bundle
30 of Document tab 3 again.

31 THE COURT: That's the green one?

32 MR. BETHELL: The green one.

ROUGH - 29 May 2019

Paul Major v FCIB - CLE/gen/473/2016

1 BY MR. BETHELL:

2 Q. You have the document?

3 A. I do.

4 Q. Turn the page over. The same where I read you
5 the effective date?

6 A. Yes.

7 Q. Let's look down to the last one, "4. Why."

8 "U.S. State and Federal laws require banks to
9 be licensed as a condition of engaging in banking in the
10 United States. Most states, either by statute or by
11 common law, have adopted a definition of the business of
12 banking that encompasses accepting cheques, cashing
13 cheques and lending money. Anyone, including a foreign
14 bank that conducts any one of these core-banking
15 functions in the United States would need to be licensed
16 and therefore regulated in the United States."

17 MRS. ROLLE: My Lord, I have an objection. My
18 learned friend already took the witness to this document.
19 She said she has no familiarity with this document. She
20 already stated in her evidence that's her
21 understanding --

22 THE COURT: No. Sorry.

23 MRS. ROLLE: If I may, my Lord.

24 THE COURT: She said she was familiar with the
25 policy.

26 MRS. ROLLE: And she said what that policy was.

27 THE COURT: She couldn't speak to the date.

28 MRS. ROLLE: No. She said she couldn't speak
29 to that document. She said she is familiar with the
30 policy. And in her evidence she said her understanding
31 of the policy was that solicitation of new business was
32 prohibited. That is what her evidence was. And when she

ROUGH - 29 May 2019

Paul Major v FCIB - CLE/gen/473/2016

1 would have specifically thereafter taken to this, she
2 said she had no awareness of this document. So I don't
3 think it is proper for the contents of the document to be
4 put to her when she has already said she has never seen
5 it. She doesn't know anything what it entails.

6 You remember I starting out by asking her what
7 is her familiarity about the policy and she said she
8 doesn't know any documents but she knows her policy of no
9 solicitation of a new business. Now, I don't know where
10 my learned friend is taking her in light of what she has
11 already said as her evidence.

12 MR. BETHELL: My Lord, the witness' evidence
13 was that policies were posted on the Intranet and you are
14 supposed to be familiar with the policies. So I am
15 directing her to a part of the policy because she didn't
16 think that that his actions were in violation. So I am
17 pointing out the clause and I intend to ask her again
18 whether she maintains that answer.

19 THE COURT: Well, if you go back to when what
20 the witness said, in that she said, you asked her would
21 you be responsible for familiarizing yourself with the
22 policies. And she said yes. So I think that's a
23 starting point.

24 MR. BETHELL: Yes, my Lord. So if I can put
25 the question to her, please?

26 BY MR. BETHELL:

27 Q. Now, having regard to what you stated in
28 section 4 there, do you think it was an obligation of Mr.
29 Major to disclose the fact that he had collected a check
30 in New York and deposit it?

31 A. Yes.

32 MR. BETHELL: I have no further questions, my

ROUGH - 29 May 2019

Paul Major v FCIB - CLE/gen/473/2016

1 Lord.

2 MRS. ROLLE: No re-examination.

3 THE COURT: Thank you, Ms. Sands, you may step
4 down.

5 (Witness excused)

6 MRS. ROLLE: Should we proceed with Antoinette
7 Turnquest?

8 THE COURT: It depends on how long you are
9 going to be. We can call her in.

10 A N T O I N E T T E T U R N Q U E S T, having been
11 called as a witness, being duly sworn, testified as
12 follows:

13 EXAMINATION IN CHIEF BY MRS. ROLLE:

14 Q. Good morning, Mrs. Turnquest.

15 A. Good morning.

16 Q. Could you give us your full name and address
17 please?

18 MR. BETHELL: It is afternoon.

19 BY MRS. ROLLE:

20 Q. Sorry. Good afternoon.

21 A. Good afternoon.

22 Q. Let's try that again. Can you give us your
23 full name and address, please?

24 A. Okay. Antoinette Turnquest, Sandy port Drive.

25 Q. And are you employed?

26 A. Yes I am.

27 Q. Where are you employed, and what capacity?

28 A. Director of Human Resources, Commonwealth
29 Brewery Limited.

30 Q. And what is your occupation?

31 A. Um, I.

32 Q. Do you have any specific training or

ROUGH - 29 May 2019

[36] The above pages and lines is the discourse between Mrs. Sands and counsel for the Defendant.

[37] On October 12th, 2006 the Plaintiff, Marion Blyden, Frank Ebanks and Ingrid Carey received an e-mail from Janet Marion International Premier-Personal Manager which asked:-

“Hi Guys,

Does anyone have the communication re. speaks about the prohibiting of the sales of securities to US citizens? I can’t find it anywhere: Help!”

[38] Ms. Marion Blyden responded on the very same day to the same individuals saying:

“Hi Janet,

You can find a copy of the US Persons Policy on the intranet. Under “Manuals”. Click on International and you will find it there (under manuals).

Give me a call if the above is unclear.

With kind regards.”

[39] In a string of e-mails, starting on July 25th, 2007 the subject stated as “Wie Payment Form.” It wasn’t until the Plaintiff sent an e-mail that the subject changed to “INVESTMENT USD PERSONS”. In this string they speak about one Mr.

Vaynshten, who was trying to get Curaco to open an account but he was a US Citizen and the e-mail goes on to say:

“The only reason he is talking to Curaco directly and not us is that we have advised US person policy prohibits relationship. What is your position on this? We need to tell the same story!”

Thanks

Dennis”

[40] After many questions regarding the US Persons Policy, the Plaintiff sought to maintain that as far as he was concerned, there was no US Persons Police in place or in force until in or about 2014. His answers in reference to the Policy were always evasive to say the least.

[41] In paragraphs 21 to 23 of the Plaintiff's Witness Statement he says:

“21. I was employed with FCIB from 14th October, 2002 up to 2nd June, 2015.

22. I continued as the International Corporate Manager between the years 2003 and 2007. Between 2007 and 2010 I worked as the Team Leader for Transactional Banking. Between 2010 and 2012 I was the Head of International Corporate Banking. Between 2012 and 2nd June 2015 I served in the capacity of Head of International Banking Wealth Management.

23. I was serving in the capacity of Head of International Banking Wealth Management at the time of my termination of employment on 2nd June, 2015.”

[42] By his own admission, the Plaintiff says he was International Corporate Manager between 2003 and 2007. Between 2010 – 2-12 he was head of International Corporate Banking. This in and of itself would in my opinion require the Plaintiff to be more than familiar with any policy involving international clients.

[43] Of particular interest is the questioning of the Plaintiff by counsel on May 27th, 2019 during the hearing captured in the transcript of even date on pages:

79 - lines 8 – 32;

80 – lines 1 – 32 and

81 – lines 1 – 22

PAGE 79 – Lines 8 – 32:

- “8. Q. Mr. Major, can you go to the Defendant’s Bundle
9. of Documents, please?
10. Now, you recall testifying before the luncheon
11. adjournment, and in fact you corrected me and told me
12. what the proper, what the Bahamas Wealth Management
was
13. all about. You said it was a distribution?
14. A. The Bahamas Wealth Management, yes. You had
15. said something about a committee and I had said it was
16. not a committee.
17. Q. Right. You told me it was a distribution list
18. for receiving emails.

19. A. Yes.
20. Q. Okay. Good.
21. Now, can you turn to Tab 21 in that bundle? Do
22. you have it?
23. A. Tab 21?
24. Q. Yes.
25. Here is a email from your friend Mr. Dennis
26. Govan, the middle of the page, dated Wednesday 7th May
27. 2008, 4:16 p.m., addressed to Bahamas Wealth
- Management,,
28. and Turks and Caicos Wealth Management, subject, 'Why
- we
29. have a US Persons Policy'> It says, "The team see below
30. a note JS comments. Please also refer to our US Persons
31. Policy on the intranet."
32. And then below that an email from Janor Phasar"

PAGE 80 – Lines 1 – 32:

1. (phonetic) to Dennis Govan which obviously he then
2. forwarded to The Bahamas Wealth Management. And it
- says,
3. "Gentleman, the gentleman referred to in this article is
- 4 a former colleague and friend of mine ... laptops,

5. **blackberry.”**
6. **And the heading is “Top US Banker detained by**
7. **US Bank.”**
8. **And I won’t bother to read. It states why. Do**
9. **you remember receiving this email?**
10. **A. Yes, this incident I do recall.**
11. **Q. And Mr. Govan is reminding you of the US**
12. **Persons Policy you had in place on the intranet?**
13. **A. Yes, I see that.**
14. **Q. And the consequences of breaching that policy?**
15. **A. Sorry?**
16. **Q. And the consequences of breaching that policy?**
17. **A. Well, I see it is no. It is his comment.**
18. **Q. And do you still maintain that there was no US**
19. **Policy in practice in 2011, despite this admonishment,**
20. **despite the fact that it is on your intranet, despite the**
21. **fact it is on your intranet, despite the fact that you**
22. **were sent a hard copy of it?**
23. **A. The only thing I can recall from this incident,**
24. **we did have a meeting with the staff. And all that**
25. **meeting talked about was whether or not we can take out**
26. **laptop or our Blackberry when we travel to the United**
27. **States. I think at the end of the day they advised us to**

28. take our Blackberry. That was the crux of that meeting.
29. Q. So, having gone to that meeting, as Head of
30. International Corporate, the responsibility for training
31. and enlightening the five staff under you, you didn't
32. bother to read the policy?

PAGE 81 – Lines 1 – 22:

1. A. Well the policy wasn't discussed in the
2. Meeting.
3. Q. That's not my question.
4. A. Well, to put things in context here - -
5. Q. Are you saying you have never read the policy?
6. Up to this date you have never read the policy?
7. A. This policy was not discussed in the meeting.
8. Q. As at May 7th, 2008 are you telling this Court,
9. despite the fact that you had been given a hard copy of
10. the policy, despite the fact that there was a soft copy
11. of the policy on the intranet, you never read it?
12. A. Well my recollection, sir, they called the
13. general meeting with all staff.
14. Q. Could you answer my question?
15. A. Okay.
16. Q. Answer it.

17. A. I was answering your question.

18. Q. No, you weren't. It was simple,

19. A. Continue.

20. THE COURT: It is a yes or no.

21. THE WITNESS: Okay. Fine. I don't recall

22. reading it, no."

[44] In or about November 10th, 2010, the Plaintiff received an e-mail from Ammy Gomez providing him with an updated agenda for a conference in Miami, Florida which was to take place on November 17th, 2010, on "Private Banking Latin America".

[45] The Plaintiff sent an e-mail to Mark St. Hill on November 10th, 2010 at 4:16 p.m. reminding Mr. St. Hill that the Plaintiff had sent him an e-mail requesting Monday off from work to attend the conference. At 7:55 p.m. Mr. St. Hill e-mailed the Plaintiff in reference to the conference and told the Plaintiff:

"Paul,

Please give me a call on this as we have to be very careful of our US Policy and being seen as doing business in the US. We have gotten ourselves in trouble in the past with advertising at conferences and business meetings in the US. Call me in the morning.

Mark"

[46] The Plaintiff in paragraphs 92 – 95 of his Witness Statement says:

“92. I cannot recall the exact date but on one of the days between 27th April, 2011 and 2nd May, 2011 while on vacation in New York I received a telephone call from Blazer. He asked me where I was and I told him I was in New York, I told him that I was departing New York on Monday, May 2nd, 2011.

93. Blazer told me that he had a cheque to deposit to his Current Account. He told me that the cheque was from CONCACAF and that it represented fees/commissions owed to him. He asked if I could stop by his office to collect the cheque and take it for deposit to the current Account.

94. Blazer also expressed concern about the Mortgage loan for the Reef Condo at Atlantis stating that the Condos were overvalued and that he wanted to start paying down the loan ahead of schedule. He said that the funds would be used for this purpose, that is to start paying down the Mortgage loan.

95. I collected the cheque from Blazer and on 2nd May, 2011 I returned to the Bahamas with the cheque. The cheque having been described by Blazer as his fees/commissions from CANCACAF was entirely consistent with the Account Profile for the Current Account. Consequently, the cheque was deposited to the Current Account.”

[47] Upon returning to the Bahamas the Plaintiff endorsed the back of the cheque and deposited it into Charles Blazer’s account with the Defendant. This took place on May 03rd, 2011. In the transcript of May 27th, 2019, page 95 – Lines 16 – 27 is the evidence in this regard:

“PAGE 95 – Lines 16 – 27:

- 16. Mr. Major, can you go to the Defendant’s Bundle**
- 17. of Documents? Can you turn to Tab 5? Is that a copy of**
- 18. the cheque you received from Charles Blazer?**
- 19. A. That looks like it, yes.**
- 20. Q. And could you turn over the page?**
- 21. Is this your signature on that cheque?**
- 22. A. Yes.**
- 23. Q. Which one?**
- 24. A. Top line.**
- 25. Q. And you would have deposited this cheque on 3rd**
- 26. May, 2011?**
- 27. A. Yes. That’s the date of processing.”**

[48] The Plaintiff willingly and knowingly collected that cheque on US soil and electronically input information on the transaction report that the amount deposited was in line with Mr. Blazer’s account profile.

[49] Charles Blazer was subsequently under investigation by US Authorities. It was shortly after the Blazer debacle came to the public domain that the Bank instructed it’s US COUNSEL, Mayer Brown to carry out an investigation to determine the identity of the Bahamian bank representative referred to in paragraph 55 of the information.

- [50] It was known that the Plaintiff was Charles Blazer's relationship manager and upon reviewing various customer accounts this was confirmed. The investigation was headed by Steven Wolowitz, a partner of the firm and Melissa Francis, a Senior Associate at the time.
- [51] On May 27th, 2015, Ms. Francis e-mailed the Plaintiff to schedule a time interview with him regarding various accounts. It was agreed that the parties would meet the following day, May 28th, 2015. The meeting commenced shortly after 3:00 p.m. The Plaintiff was given, in advance numbers for certain accounts for the interview which included the Blazer account. Therefore any question regarding that account could not have been a surprise. In fact, upon receiving the list of accounts the Plaintiff had someone look up the accounts with the CIF numbers provided to him by Ms. Francis in order to answer any questions which may have arisen during the investigation. The Plaintiff had requested this information in advance and was provided the same.
- [52] Ms. Francis appears to have asked the majority of the questions. I have read and re-read Ms. Francis' Witness Statement and compared it with the Interview Memorandum and find both to be in tandem.
- [53] In this regard therefore it is critical that some of the paragraphs of her Witness Statement are set out herein in particular paragraphs 3, 4, 5, 6, 8, 9, 10, 12, 14, 15, 16, 19, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 43, 44, 45, 46.

“3. In connection with that review, from Wednesday, May 27, 2015 through Friday, May 29, 2015, my former Mayer Brown colleague Steven Wolowitz (“Mr. Wolowitz”) and I conducted interviews of a number of FCIB Bahamas employees – including the Plaintiff, Paul F. Major (“Mr. Major”), who served as the Head of International Banking of FCIB Bahamas at that time – about

certain accounts for which they served as the Relationship Manager (RM”).

4. On the morning of Wednesday, May 27, 2015, the 10-count indictment captioned *United States v. Charles Blazer*, Cr. No. 13-602 (RJD) (the “Indictment” or the “Information,” which is the proper term, given that the formal charges brought were not issued by a grand jury) – which was pending in the U.S. District Court for the Eastern District of New York – was unsealed, along with the guilty plea transcript of Charles Blazer (“Mr. Blazer”).

5. Paragraph 55 of the Information provided as follows: *“The third payment, in the amount of \$250,000, was made by check drawn on an account held in the name of CFU [Caribbean Football Union] in a bank in the Caribbean. The check was delivered to BLAZER by another individual who traveled by airplane from Trinidad and Tobago to John F, Kennedy International (‘JFK’) Airport in Queen, New York, and then to a CONCACAF’s headquarters in New York, New York, where he delivered the check to BLAZER. A representative of First Caribbean International Bank in the Bahamas, where BLAZER held another account, subsequently traveled by airplane to New York, landing at JFK Airport. After arriving, the bank representative traveled to New York, New York, where he took custody of the check. He subsequently traveled to the Bahamas and, on or about May 3, 2011, deposited the check into BLAZER’s account. Approximately two months earlier, on or about March 13, 2011, Co-Conspirator #1 sent an email to BLAZER to advise him that the payment was forthcoming.”*

6. **Shortly after the news broke about Mr. Blazer's Information, Mayer Brown was instructed by Colette Delaney (who served as FCIB's Chief Operating Officer) and Charles Gerber (who served as a senior member of FCIB's Legal department) to conduct an investigation in order to determine the identity of the "bank representative" referenced in Paragraph 55 of the Information.**

8. **Accordingly, on the morning of Wednesday, May, 27, 2015, I reached out via email to Mr. Major to schedule a time for Mr. Wolowitz and me to interview him about various accounts for which he served as the RM. In my email to Mr. Major, I proposed that the interview take place the following day (May 28th), from 3:00 – 4 PM ET."**

9. **Having received no response from Mr. Major, I then followed up with him that evening to ensure his availability to meet the following day (May 28th). At 8:15 PM ET, Mr. Major responded as follows: *"Tomorrow is not a good day (I have two committee meetings scheduled at the last minute). We can play it by ear and see how it goes."* Later that evening, I responded to Mr. Major's email, stating that my colleague and I wanted to speak with him at some point the following day (May 28th) *"about a few files that we'[d] reviewed for which [he was] listed as the RM."* I told him that, given that we were being asked to complete all of the FCIB Bahamas interviews that week and that we were returning to New York on the afternoon of Friday, May 29, 2015, Thursday (May 28th) seemed like the best option, and asked whether he could meet with us that day."**

10. **The following morning (May 28th,) Mr. Major confirmed his availability to meet with us at 3:00 PM ET that afternoon. At Mr.**

Major's request, shortly thereafter – and several hours in advance of his interview – I forwarded him the Customer Information File numbers (“CIFs”) corresponding to each of the seven accounts that we planned to ask to him about. One of those seven CIFs was “140746”, which corresponded to Mr. Blazer.

- 12. During the interview, I asked the majority of questions that were posed to Mr. Major. Our questions and Mr. Major's verbal and nonverbal responses thereto were memorialized in the Interview Memorandum.**
- 14. During the interview, before Mr. Major was asked any questions about Mr. Blazer, he was asked about three other customer accounts for which he served as the RM.**
- 15. We told Mr. Major that we wanted to discuss Mr. Blazer's previous request of Mr. Major for multiple years of historical account statements – as such requests are often indicative of a U.S. person's entry into the Offshore Voluntary Disclosure Program, a program that was previously instituted by the U.S. Internal Revenue Service (“IRS”) to enable U.S. persons who were non tax compliant to become tax compliant and avoid substantial civil and criminal penalties by disclosing their offshore accounts or entities and paying a civil penalty to the IRS – and given the news about Mr. Blazer's Indictment, which had become public the day before, we wanted to discuss that topic with him as well.”**
- 16. Accordingly, we first asked Mr. Major about Mr. Blazer's request back in October 2012 for account statements spanning**

a number of years. Mr. Major said that Mr. Blazer never volunteered why he needed the account statements and that he could not recall whether he had asked Mr. Blazer why they were needed. According to Mr. Major, upon receipt of the request from Mr. Blazer for the historical account statements, he likely forwarded the request “*to the girls*” at FCIB Bahamas to handle.

19. We then asked Mr. Major whether he recalled coming across any articles that were published prior to Mr. Blazer’s request for multiple years of historical account statements – such as an article published by *Deadspin* in July 2011.

28. Turning to the allegations contained in the Information, we then told Mr. Major that we had a hard copy of the document and wanted to show it to him and then ask him about it. We handed him a copy of the Information, referred him to Paragraph 55, and asked him to read it.

29. There was an extensive pause after Mr. Major finished reading Paragraph 55. He then, unprompted, said: “*Hmmmm...wow*”, and he appeared visibly worried and shaken. He said that although he had read some articles the day before about the “*indictment*,” he had not read the document itself.

30. We then asked Mr. Major whether he was the “*bank representative*” referenced in Paragraph 55 of the Information, to which he responded: “*I’ll have to look at my records.*” Mr. Major, thinking aloud, wondered whether he might have been handed something in an envelope.

31. When, after another pause, Mr. Major began to speculate about other persons who might have made such a trip, we told Mr. Major that he appeared to have signed a Large Transaction Report attesting that the deposit of a certain check to Mr. Blazer's bank account in the amount of \$250,000 that matched the description of the check described in Paragraph 55 was in line with the account's profile. We then brought to Mr. Major's attention the fact that the "*bank representative*" was referred to in Paragraph 55 as "*he*" and that Paragraph 55 had left open the possibility that the "*bank representative*" may have traveled to New York from somewhere other than the Bahamas.
32. In fact, the day before the interview of Mr. Major – having read the press articles about Mr. Blazer's indictment and having read the Information itself- we had reviewed Bank records pertaining to Mr. Major. As a result of our review, we found a number of emails to and from Mr. Major that had been sent during the period between mid-April 2011 and early May 2011, which established that he had traveled from the Bahamas to Hungary and back for vacation during that timeframe and that he had returned to work on May 3, 2011, the same day the \$250,000 check was deposited into Mr. Blazer's account. Having found that information, we undertook to determine whether Mr. Major's travel from the Bahamas to Hungary or his return could have involved a connection through JFK Airport in New York, which was referenced in Paragraph 55 of the Information. Indeed, we did confirm that Mr. Major had been charged a \$35 JetBlue fee on his personal credit card on April 21, 2011, the same day he departed the Bahamas for his vacation. We then confirmed through an internet search that during the timeframe in which Mr. Major was away from the office, JetBlue had flights

from the Bahamas to JFK Airport. We also confirmed through an internet search that flights from Nassau, Bahamas to Budapest, Hungary included connections through JFK Airport.

33. During the interview with Mr. Major, with this information in mind, which we had found the day before, we tried to refresh his recollection as to whether he was the *“bank representative”* referred to in Paragraph 55 of the Information by asking him a few additional questions. Such questions included whether during the relevant timeframe: (1) he had traveled through New York via JFK Airport or (2) returned to the Bahamas from abroad via JFK Airport.
34. After contemplating these questions, Mr. Major responded: *“I suppose it’s possible it was me.”*
35. We then asked Mr. Major whether there was anything that could clarify for him whether he was the *“bank representative”* described in Paragraph 55, to which he replied: *“I’ll need to check my emails.”*
36. When asked whether he frequently met with Mr. Blazer in New York, Mr. Major responded: *“Not like that,”* and he then mentioned a time that he randomly ran into Mr. Blazer on the street in New York.
37. We then asked Mr. Major whether he recalled having a telephone conversation with Mr. Blazer in which Mr. Blazer asked him to pick up a check from him in New York. Mr. Major said that he could not recall. When asked whether such a phone conversation between him and Mr. Blazer might have taken

place on Mr. Major's cell phone, Mr. Major said that such a conversation would have likely occurred, if at all, on Mr. Major's office line.

38. We then asked Mr. Major if the *"bank representative"* was not him, whom it could have been. Mr. Major's response was that he did not know.
39. We told Mr. Major that we would be at the Shirley Street Branch for the rest of the day and the following day, so that he could follow up with us. After a long pause, his response was: *"This one I'm going to need sometime on."* Mr. Major did not follow up with us either later that or the following day. Nor did he follow up with me via email or telephone at any point prior to his termination.
43. Mr. Major said that Mr. Blazer stopped traveling when he fell ill and wondered aloud as to when Mr. Blazer had last visited the Shirley Street Branch. He said that when Mr. Blazer was too ill to come to the branch, Mr. Blazer would send people there, including his girlfriend, on his behalf. When asked whether it was the case that Mr. Blazer or someone on his behalf always came to the Shirley Street branch and that no one from FCIB Bahamas ever went to see Mr. Blazer in New York, Mr. Major responded that he would *"have to check."*
44. Mr. Major then – once again, entirely unprompted – said that just the day before (May 27th), Marie Rodland Allen (*"Ms. Rodland-Allen"*), the Managing Director of FCIB Bahamas, had circulated an email asking about Mr. Blazer, and that Mr. St Hill had weighed in, saying that FCIB had previously visited

questions concerning Mr. Blazer. Referring to the email from Ms. Rodland-Allen, Mr. Major then added: *“I hope you’re not writing this part down.”* Despite Mr. Major’s comment, our note-taking continued.

45. At the conclusion of the interview, as Mr. Major was opening the door to leave the office in which it had been conducted, his last remark was: *“You really know how to shake a person.”*

46. Throughout the entire portion of the interview in which the allegations contained in Paragraph 55 of the Information were discussed, Mr. Major’s demeanor was that of shock and concern. The Information remained open to Paragraph 55 in front of him and he repeatedly read it to himself. There were often long periods of silence before Mr. Major responded to our questions concerning Mr. Blazer, as compared to his responses to our questions concerning the other six customer accounts.”

[54] Mrs. Antoinette Turnquest who was subpoenaed by the Plaintiff’s counsel prepared a Minute dated June 2nd, 2015 of a meeting held with the Plaintiff. Present were Marie Rodland-Allen, Carolyn Lewis and Ms. Turnquest. Ms. Turnquest’s evidence was that her Minute as written was an accurate record of what took place at the meeting.

[55] That Minute is set out below:

SY "P1"

Minutes of Meeting – Paul Major

Tuesday, June 2nd, 2015.

MDO, 2nd Floor, Shirley Street Branch

- ATTENDEES:** Marie Rodland Allen, (MRA) Managing Director, BAH & TCI
Carolyn Lewis, Deputy Managing Director, HR
Antionette Turnquest, (AET) Head of HR Bah & TCI
Paul Major, Head of International Banking

Marie greeted Paul, thanked him for attending the meeting and acknowledged the presence of the Head of HR BAH & TCI and advised him that Carolyn Lewis, Acting MD of Human Resources was joining the meeting via teleconference.

Marie then proceeded by advising Paul as follows:

“Paul, we confirm that your dealings and actions taken with regard to the Bank’s customer, Mr. Charles Blazer are in breach of the Bank’s US Person’s Policy. As a result, we have taken the decision to end your employment with the Bank effective today. The details are outlined in this letter”

Marie then handed the letter over to Paul (who seemed visibly shocked by what was being said). He quickly scanned the letter and immediately asked her to explain what exactly the Breach was?

Marie responded by saying that it was documented in the letter which he could take and review further.

Paul again asked Marie if she could explain what breach was being referred to and said that he was at a complete loss. He then expressed his disbelief at what he was being told.

Marie then informed him that he had spent some 20yrs with this organization and that none of us was taking this matter lightly. However, it was the Bank’s decision which was final.

Paul again asked what the specifics were. Marie informed him that we were not able to discuss this in any further detail.

AET then advised Paul that in light of the Bank's decision he would need him to return all of the Bank's property in his possession and that she would need to go upstairs with him to his office to retrieve any personal belongings and then he would have to leave the property immediately.

Mr. Major stood up slowly took one to two steps and then collapsed on the floor in front of MRA's office closed office door and proceeded to cry. AET told him that while we understood that this was hard, it was the Bank's decision which is final. AET also explained to him that at that moment no one outside of the office would be aware of what transpired and he was asked to try to compose himself so as not to alert anyone as to what had occurred prior to him being allowed to leave the premises.

He then asked AET if she could allow him to enter the third floor ahead of her to avoid the appearance of being escorted. This was agreed to.

Paul then handed over his keys, cell phone and corporate cards and he and AET left MRA's office. On the third floor AET allowed Paul to enter the offices and a few seconds later followed suit. His office door was then closed and Paul was allowed to collect a few items which may have taken approximately 5 to 10 mins. In light of the number of personal items that Mr. Major had in his office it was agreed that we would facilitate him coming back on property on the weekend to remove the remainder of his items.

Paul and AET then both left and took the elevator down to the main Lobby where Mr. Major exited the building. There were no additional persons present while this occurred.

[56] Ms. Turnquest was of the opinion as a human resource manager, that she would not have made the termination listen any more detailed than it was. Counsel then

directed her to Tab 9 of the Plaintiff's bundle of documents the Code of Discipline paragraph 4.2.3 "**GROSS MISCONDUCT**" which provides:

"4.2.3. Gross Misconduct:

Gross Misconduct is defined as any serious breach of the law, Bank policy, regulation or procedure which is so severe it exposes the Bank, its customers and/or its employees to serious risk. Employees will be summarily dismissed (i.e. dismissal without notice or pay lieu of notice) for Gross Misconduct.

Such conduct may also result in possible civil, criminal or regulatory action taken against the employee. The Bank reserves the right to pursue legal action and implement measures to recover assets, where appropriate.

CIBC FirstCaribbean can and will use any and all avenues at its disposal to deal swiftly and effectively with allegations of Gross Misconduct. Every instance of Gross Misconduct will be thoroughly investigate and documented by Human Resources, Legal and Corporate Security, as appropriate. Examples of Gross Misconduct include, but are not limited to the following:"

- [57] The purpose for this reference was the last paragraph which is self-explanatory. There was confirmation from Ms. Turnquest that the terms and conditions of the Industrial Agreement between the Bank and the Management Union was not applicable to the Plaintiff's contract of employment. In this regard, she also confirmed that the Bank had no obligation to consider any of the disciplinary procedures in the Industrial Agreement.

CASE FOR THE DEFENDANT:

- [58] Ms. Melissa Francis, an Attorney-at-Law, licensed to practice law in the States of New York, New Jersey and the District of Columbia gave evidence for the Defendant.
- [59] In May of 2015, she was an Associate in the New York Office of Mayer Brown LLP. At the time Mayer Brown had been retained by the Defendant to conduct a review of several of the Defendant's customer accounts with a view to highlighting any evidence which must have raised a suspicion of wrong doing by any of its employees in connection with the various accounts.
- [60] From May 27th, 2015 to May 29th, 2015 she and another Mayer Brown colleague, Mr. Steven Wolowitz conducted interviews with a number of employees of the Defendant, one of whom was the Plaintiff who at the time was Head of International Banking with the Defendant.
- [61] On the 27th May 2015, a ten count indictment entitled "UNITED STATES V. CHARLES BLAZER, CR. NO. 13-602 (RJD) was unsealed along with a guilty plea transcript of Charles Blazer.
- [62] Paragraph 55 of the Information provided:

"55. The third payment, in the amount of \$250,000, was made by check drawn on an account held in the name of CFU [Caribbean Football Union] in a bank in the Caribbean. The check was delivered to BLAZER by another individual who traveled by airplane from Trinidad and Tobago to John F. Kennedy International ('JFK') Airport in Queens, New York, and then to CONCACAF's headquarters in New York, New York, where he delivered the check to BLAZER. A representative of

FirstCaribbean International Bank in the Bahamas, where BLAZER held another account, subsequently traveled by airplane to New York landing at JFK Airport. After arriving, the bank representative traveled to New York, New York, where he took custody of the check. He subsequently traveled to the Bahamas and, on or about May 3, 2011, deposited the check into BLAZER'S account. Approximately two months earlier, on or about March 13, 2011, Co-Conspirator #1 sent an email to BLAZER to advise him that the payment was forthcoming.

[63] Immediately subsequent to the information becoming public, Mayer Brown received instructions from Ms. Colette Delaney, the COO and Mr. Charles Gerber to carry out an investigation to determine the identity of the "BANKER REPRESENTATIVE" mentioned. However, it was already known that the Plaintiff was Mr. Blazer's Account Manager and the decision to interview him had been made prior to the information becoming public.

[64] On the morning of May 27th, 2015, Ms. Francis sent an e-mail to the Plaintiff to schedule an interview. The Plaintiff did not respond and a follow up later that evening was done. The Plaintiff after having been asked to attend a meeting on May 28th, 2015 responded at 8:15 p.m. responded this way:

"Tomorrow is not a good day. (I have two committee meetings scheduled at the last minute.) We can play it by ear and see how it goes."

[65] The Plaintiff was advised that Ms. Francis and her colleague wanted to speak to him at some point and time the following day about a few files they had reviewed and for which he as listed as the manager.

- [66] The Plaintiff finally confirmed his availability to meet at 3:00 p.m. on May 28th. The Plaintiff requested and received the customer information and file numbers for him to refresh his memory for the meeting, one of which was the Blazer file. The interview started at 3:10 p.m. and ended at 4:20 p.m.
- [67] Ms. Francis' evidence is that she asked the majority of questions and the Plaintiff's verbal and non-verbal responses were recorded in the interview memorandum.
- [68] Questions about three files other than the Blazer's file were asked of the Plaintiff before they dealt with the Blazer file.
- [69] An excerpt from the interview memorandum below sets out what I deem to be critical.

“Information: [Note: for this next part of the interview, there were extensive periods of silence as PM repeatedly looked at Paragraph 55 of the Information that was put in front of him, and he was obviously deep in thought for fairly extensive periods of time; PM never expressly admitted nor denied that he was the “bank representative” referenced in Paragraph 55, throughout the portion of the interview pertaining in the Information, PM’s demeanor exhibited concern and nervousness.]

- **So with regard to yesterday’s news of his indictment, we got a copy of it and wanted to show it to you. Take a look at paragraph 55 on pages 23-24 and then I’ll ask you a question. It says there that: “A representative of [FCIB] in the Bahamas, where 140746 held another account, subsequently traveled by airplane to New York, landing at JFK Airport. After arriving, the bank representative traveled to New York, New York, where he took custody**

of the [\$250,000] check. He subsequently traveled to the Bahamas and, on or about May 3, 2011, deposited the check into 140746's account."

- **After he read paragraph 55 of the Information, his first words were:**

"HMMMMMM.....Wow" and he appeared both very concerned and shaken. He said that he had read some articles about the "indictment" (referring to the information), but that he had not read the actual document.

- **Were you the "bank representative" referred to in Paragraph 55? When asked this question, he said "I'll have to look at my records." He began to think aloud and wondered whether he might have been handed something in an envelope. After a pause, PM began to speculate about potential others who might have made such a trip, but he was quickly advised that he had signed a Large Transaction Report that effected the deposit of the \$250,000. Check that perfectly matches the description of the check described in Paragraph 55 of the Information, on which he had attested that the deposit was in line with the account's stated objectives. It was also brought to attention that the "bank representative" was referred to in Paragraph 55 as "he" and that Paragraph 55 left open the possibility that the representative may have traveled to New York from somewhere other than the Bahamas.**

- **PM was asked a few questions designed to refresh his recollection as to whether he was the ‘bank representative’ referred to in Paragraph 55 of the Information, including:**
 - **Whether at the time in question he had traveled through New York via JFK Airport; and**
 - **Whether he was returning to the Bahamas from abroad via JFK Airport.**
- **PM pondered these questions and then said “I suppose it’s possible it was me.”**
- **PM was asked if there was anything that could clarify for him whether the bank representative described in paragraph 55 was him. His response was: “I’ll need to check my emails,” a comment he made repeatedly throughout the interview.**
- **PM was then asked whether he met with the AH often in New York. PM replied: “Not like that.” PM then mentioned a time that he “happened to run into” the AH on the street in New York.**
- **PM was asked whether he had a phone conversation with the AH in which the AH asked him to come to NY to pick up a check. PM said he did not recall.**

- **PM was then asked, if there was such a phone conversation, whether it might have been on his cell phone. PM said that if the AH had called, it was mostly likely on PM's office phone number.**

- **PM was then asked if the "bank representative was not him, who could it have been. PM replied that he does not know.**

- **PM was told that the interviewers would be at the Shirley branch the rest of that day and the following day, so that he could follow up with them. After a long pause, his response was: "This one I'm going to need some time on."**

[Note: At this juncture, the interviewers asked PM about three additional customer accounts for which PM ACTED AS Relationship Manager.]

- **After the interviewers concluded the last of the questions regarding PM's customer accounts, PM, unsolicited, came back to the subject of the AH. The first thing he noted was that an individual whose first name was [REDACTED], who had some position with [REDACTED] and was the [REDACTED] of "some" [REDACTED]," was someone whom the AH used as a delivery guy."**

- **PM said that years ago, before the AH [REDACTED], the AH used to come to the Bahamas frequently and would swing by the branch for small amounts of cash to spend at the Atlantis casino.**

- **PM said that when the AH [REDACTED], “he stopped traveling.” PM undertook to determine the last time that the AH stopped by the branch. He said that if the AH could not come to the branch because he was [REDACTED], the AH would “always sent people here,” including {REDACTED}, the AH’s girlfriend.**

- **PM was then asked whether it was the case that either the AH or someone on his behalf always came to the branch and that no one from FCIB ever went to see the AH in NY. PM responded that he would “have to check.”**

- **PM then, unsolicited, said that the day before (May 27, 2015), Marie Rodland-Allen had circulated an email asking about the AH, and that Mark St. Hill had weighed in, saying that the Bank had visited questions about the AH before. In referring to the Marie Rodland-Allen email, PM added: “I hope you’re not writing this part down.”**

- **On his way out the door, PM’s parting remark was: “you really know how to shake a person.”**

[70] Ms. Francis was cross-examined by the Plaintiff’s counsel. She confirmed that before the news broke about Blazer they had intended to meet with the Plaintiff on accounts that did not include Blazer. The Blazer account was only added after the news broke. Counsel sought to extract from Ms. Francis that the Plaintiff was not told that the Blazer’s account was added to the list of accounts before the interview.

However, Ms. Francis explained that the Blazer's account was included in the list of accounts of seven for the interview the following day.

[71] Ms. Francis did confirm that the Plaintiff was not expressly informed that there was an investigation going on. The term investigation was not used by Ms. Francis.

[72] Ms. Francis was taken to paragraph 28 of her Witness Statement and questioned. I am of the view that paragraphs 28 – 46 of Ms. Francis' Witness Statement are extremely critical.

“28. Turning to the allegations contained in the Information, we then told Mr. Major that we had a hard copy of the document and wanted to show it to him and then ask him about it. We handed him a copy of the Information, referred him to Paragraph 55, and asked him to read it.

29. There was an extensive pause after Mr. Major finished reading Paragraph 55. He then, unprompted, said: “Hmmm...wow”, and he appeared visibly worried and shaken. He said that although he had read some articles the day before about the “indictment,” he had not read the document itself.

30. We then asked Mr. Major whether he was the “bank representative” referenced in Paragraph 55 of the Information, to which he responded: “I’ll have to look at my records.” Mr. Major, thinking aloud, wondered whether he might have been handed something in an envelope.

31. When, after another pause, Mr. Major began to speculate about other persons who might have made such a trip, we told Mr.

Major that he appeared to have signed a Large Transaction Report attesting that the deposit of a certain check to Mr. Blazer's bank account in the amount of \$250,000 that matched the description of the check described in Paragraph 55 was in line with the account's profile. We then brought to Mr. Major's attention the fact that the "bank representative" was referred to in Paragraph 55 as "he" and that Paragraph 55 had left open the possibility that the "bank representative" may have traveled to New York from somewhere other than the Bahamas.

- 32. In fact, the day before the interview of Mr. Major – having read the press articles about Mr. Blazer's indictment and having read the information itself- we had reviewed Bank records pertaining to Mr. Major. As a result of our review, we found a number of emails to and from Mr. Major that had been sent during the period between mid-April 2011 and early May 2011, which established that he had traveled from the Bahamas to Hungary and back for vacation during that timeframe and that he had returned to work on May 3, 2011, the same day the \$250,000 check was deposited into Mr. Blazer's account. Having found that information, we undertook to determine whether Mr. Major's travel from the Bahamas to Hungary or his return could have involved a connection through JFK Airport in New York, which was referenced in Paragraph 55 of the Information. Indeed, we did confirm that Mr. Major had been charged a \$35 JetBlue fee on his personal credit card on April 21, 2011, the same day he departed the Bahamas for his vacation. We then confirmed through an internet search that during the timeframe in which Mr. Major was away from the office, JetBlue had flights from the Bahamas to JFK Airport. We also confirmed through**

an internet search that flights from Nassau, Bahamas to Budapest, Hungary included connections through JFK Airport.

- 33. During the interview with Mr. Major, with this information in mind, which we had found the day before, we tried to refresh his recollection as to whether he was the “*bank representative*” referred to in Paragraph 55 of the Information by asking him a few additional questions. Such questions included whether during the relevant timeframe: (1) he had traveled through New York via JFK Airport or (2) returned to the Bahamas from abroad via JFK Airport.**
- 34. After contemplating these questions, Mr. Major responded: “*I suppose it’s possible it was me.*”**
- 35. We then asked Mr. Major whether there was anything that could clarify for him whether he was the “*bank representative*” described in Paragraph 55, to which he replied: “*I’ll need to check my emails.*”**
- 36. When asked whether he frequently met with Mr. Blazer in New York, Mr. Major responded: “*Not like that,*” and he then mentioned a time that he randomly ran into Mr. Blazer on the street in New York.**
- 37. We then asked Mr. Major whether he recalled having a telephone conversation with Mr. Blazer in which Mr. Blazer asked him to pick up a check from him in New York. Mr. Major said that he could not recall. When asked whether such a phone conversation between him and Mr. Blazer might have taken place on Mr. Major’s cell phone, Mr. Major said that such a**

conversation would have likely occurred, if at all, on Mr. Major's office line.

38. We then asked Mr. Major if the *"bank representative"* was not him, whom it could have been. Mr. Major's response was that he did not know.
39. We told Mr. Major that we would be at the Shirley Street Branch for the rest of the day and the following day, so that he could follow up with us. After a long pause, his response was: *"This one I'm going to need sometime on."* Mr. Major did not follow up with us either later that or the following day. Nor did he follow up with me via email or telephone at any point prior to his termination.
40. After the abovementioned line of questioning concerning Mr. Blazer, Mr. Wolowitz and I asked Mr. Major about three other customer accounts for which he served as the RM.
41. When we had concluded our line of questioning concerning those three other customer accounts, Mr. Major – again, unsolicited – returned to the subject of Mr. Blazer. Mr. Major noted that on occasion Mr. Blazer had used as his *"delivery guy"* someone by the name of *"Othello,"* who he said held a position within CONCACAF and served as the President of a European football club.
42. Mr. Major then added that years ago, before Mr. Blazer had fallen ill, Mr. Blazer would frequent the Bahamas and swing by the Bank's Shirley Street branch to withdraw small amounts of cash to spend at the Atlantis casino.

43. Mr. Major said that Mr. Blazer stopped traveling when he fell ill and wondered aloud as to when Mr. Blazer had last visited the Shirley Street Branch. He said that when Mr. Blazer was too ill to come to the branch, Mr. Blazer would send people there, including his girlfriend, on his behalf. When asked whether it was the case that Mr. Blazer or someone on his behalf always came to the Shirley Street branch and that no one from FCIB Bahamas ever went to see Mr. Blazer in New York, Mr. Major responded that he would *“have to check.”*
44. Mr. Major then – once again, entirely unprompted – said that just the day before (May 27th), Marie Rodland Allen (“Ms. Rodland-Allen”), the Managing Director of FCIB Bahamas, had circulated an email asking about Mr. Blazer, and that Mr. St Hill had weighed in, saying that FCIB had previously visited questions concerning Mr. Blazer. Referring to the email from Ms. Rodland-Allen, Mr. Major then added: *“I hope you’re not writing this part down.”* Despite Mr. Major’s comment, our note-taking continued.
45. At the conclusion of the interview, as Mr. Major was opening the door to leave the office in which it had been conducted, his last remark was: *“You really know how to shake a person.”*
46. Throughout the entire portion of the interview in which the allegations contained in Paragraph 55 of the Information were discussed, Mr. Major’s demeanor was that of shock and concern. The Information remained open to Paragraph 55 in front of him and he repeatedly read it to himself. There were often long periods of silence before Mr. Major responded to our

questions concerning Mr. Blazer, as compared to his responses to our questions concerning the other six customer accounts.”

[73] It is the further evidence of Ms. Francis that the Plaintiff knew in a certain respect that the bank had certain information. She sought to support this by explaining that when she had posed the specific question to him as to whether he was the bank representative referred to in paragraph 55 of the indictment he said he would have to check his records. She then asked several questions which were designed to try and refresh his recollection.

[74] A number of the questions posed came about as a result of e-mail correspondence they found the day before. The bank had evidence of the Plaintiff travelling from Nassau to JFK Airport on Jet Blue after discovering a \$35.00 fee on his FCIB issued credit card on the day he had travelled, April 21st, 2011.

[75] Ms. Francis also testified that they had discovered e-mails to and from the Plaintiff from mid-April, 2011 through early May 2011. These suggested that he was travelling on vacation from April 21st, 2011 through May 2nd, 2011 to Hungary and back, returning to work on May 3rd, 2011 which just happened to be the same day the information said the check was deposited at the bank.

[76] Counsel asked Ms. Francis if she extended an invitation to provide any additional information he may have had on the matter? The answer to that is contained in paragraph 39 of the Francis Witness Statement.

“39. We told Mr. Major that we would be at the Shirley Street Branch for the rest of the day and the following day so that he could follow up with us. After a long pause, his response was: “This one I’m going to need some time on.” Mr. Major did not follow

up with us either after that day nor did he follow up with me via e-mail or telephone at any point prior to his termination.”

[77] Counsel sought to push the position that the Plaintiff was not advised specifically of the purpose of the meeting. However, the Plaintiff himself admitted to having read certain articles and stories about Blazer the day before about the indictment but not the actual indictment.

EVIDENCE OF MARIE RODLAND-ALLEN:

[78] Ms. Rodland-Allen executed a Witness Statement which was filed May 20th, 2019. The relevant paragraphs are set out below

“I, MARIE RODLAND-ALLEN, of the Western District of the Island of New Providence, Executed, State as follows THAT:

- 1. I have been employed at the Defendant Company (“the bank”) for just under 9 years, and am currently the Managing Director of the Bank.**
- 2. Since September, 2010, I have had overall responsibility for managing senior officers of the Bank, including the Plaintiff, Paul Major (“Paul”). Prior to his termination from employment with the Bank on the 2nd June, 2015, Paul was the Head of International Banking, and reported directly to me. I appointed him to that position with effect from the 1st May, 2012, by way of the promotion letter dated 9th May, 2012, located at Tab 38 of the Defendant’s Supplemental Bundle of Documents. As Head of International Banking, Paul’s job level was designated as grade level FC-9.**

- 3. Prior to his promotion to Head of International Banking, Paul was the Head of International Corporate Banking, a grade level FC-8 position, and reported directly to Mark St. Hill, the Director of International Corporate Banking. Paul held this position from the 21st December, 2009 until the afore-mentioned promotion.**
- 4. His earlier position at the Bank include International Corporate Manager, a grade level FC-7 position, and Transactional Corporate Banking Manager – Team Leader, a grade level FC-8 position. In these positions he reported at various times to Kenworth Bain, Jan-Arne Farstad and Dennis Govan. Kenworth Bain was Paul’s direct manager from the 3rd November, 2003 to the 30th June, 2006. Dennis Govan was his direct manager from, at the earliest, July, 2006 or, at the latest, from the 1st August, 2007 until the 20th December, 2009. Mark St. Hill was his direct manager from the 21st December, 2009 until the 30th April, 2012. Finally, I was Paul’s direct manager from the 1st May, 2012 until the 2nd June, 2015.**
- 5. The Industrial Agreement referred to in the Plaintiff’s Bundle of Documents Volume 1 at Tab 8 was an agreement between the Bank and the Bahamas Financial Services Management Worker’s Union (“the Union”). The Union was the bargaining unit for Bank employees with grade levels FC-5 through FC-8.**
- 6. Once Paul was promoted to Head of International Banking, he no longer fell within the category of persons for which the Union was the bargaining unit. However,**

the standard practice is that an employee who wishes to cease the automatic deduction of Union dues from his or her salary must write to the Union and to the Human Resources Department to request the cessation of the deduction. Paul did not write to make such a request, therefore Union dues continued to be deducted from his salary after his promotion to a grade level FC-9 position.”

- 7. Paul was the Relationship Manager for a number of client accounts, including the accounts of Charles Blazer (“Mr. Blazer”).**
- 8. I recall that on 27th July, 2011, Paul forwarded me an email with a link to an article titled, *“FIFA Whistleblower Chuck Blazer is Too Fat to Fit In Town Cars, Has “Trousered” Millions From International Soccer,”* and advised that the Bank had Mr. Blazer’s account. Paul’s email is located at Tab 34 of the Defendant’s Supplemental Bundle of Documents.**
- 9. Prior to May 2015, the Bank had engaged outside Counsel Mayer Brown to conduct a review of certain client accounts. In that regard, in May 2015, lawyers from Mayer Brown were in The Bahamas conducting their review.**
- 10. During the course of this review, Mayer Brown lawyers Steven Wolowitz and Melissa Francis met with a number of Relationship Managers, including Paul.**

- 11. In the late afternoon of May 28, 2015, Steven and Melissa came to my office to report to me about an interview of Paul that they said they had just conducted.**

- 12. Colette Delaney (the Chief Operating Officer) and Brian Clarke (the General Counsel), were also present via teleconference when Steven and Melissa came to my office. Steven and Melissa relayed the facts concerning their interview of Paul that afternoon, wherein he was questioned about a number of his customers, including Mr. Blazer.**

- 13. I was aware that Mr. Blazer had been indicted in the United States, as the press coverage had come to my attention the day before, on May 27, 2015.**

- 14. Steven and Melissa relayed to me and the participants on the call that it had been ascertained that Paul had been involved in the depositing of a USD check in the amount of \$250,000.00 to Mr. Blazer's account on May 3, 2011. They reported to us that when questioned as to whether Paul was the "bank representative" mentioned in the indictment who had picked up the \$250,000.00 check from Mr. Blazer in New York, Paul ultimately responded "I suppose it's possible it was me." They also reported to us that they had found email correspondence to and from Paul during the period between mid-April, 2011 and early May 2011 showing that in that timeframe Paul had traveled from the Bahamas to Hungary and back, returning to work on May 3, 2011, the same day that the**

\$250,000.00 check was deposited into Mr. Blazer's account.

- 15. Based on the information given to us, Colette, Brian, Carolyn Lewis (Deputy Managing Director of Human Resources), and I concluded that Paul was in breach of the Bank's U.S. Persons Policy and should be terminated as a result.**

- 16. The Bank has had a U.S. Persons Policy in effect for many years. In 2011, the relevant U.S. Persons Policy was the document located at Tab 3 of the Defendant's Bundle of Documents. That version of the Policy was in effect from the 1st December, 2005 until August 2013, when the updated Policy went into effect. The U.S. Persons Policy was and continues to be the subject of ongoing discussion and review. The U.S. Persons Policy was updated in August 2013 and November 2014, and it has been updated since then.**

- 17. For Paul to have even considered the possibility that he had received the check from Mr. Blazer in the United States for deposit into Mr. Blazer's account at the Bank indicated to us that Paul was a real danger to the Bank. His admission that it could have been him who accepted the check in the United States for deposit into Mr. Blazer's account at the Bank made it clear that he posed a real risk to the Bank. The acceptance of such a check in the United States for deposit at the Bank is conduct of the worst order and was and is – strictly prohibited by the Bank. Paul was aware of this prohibition under the U.S.**

Persons Policy through his training and experience with the Bank, his general access to the intranet and specifically as a member of the Bahamas Wealth Management email distribution list. The Bank's consensus was that even at its best, Paul's equivocation concerning whether he might have engaged in such wrongdoing and, at its worst, his actual commission of the wrongdoing, meant that the Bank could not repose any further trust and confidence in him that he would carry out his job function at the Bank with integrity.

- 18. As my Delegated Authority did not allow me to effect the termination without authorization from my superior, the Bank's CEO, Rik Parkhill, provided the necessary authorization to me to effect the termination of Paul's contract of employment. I completed Paul's termination letter ("Termination Letter") and arranged for him to come to my office and meet with Antoinette Turnquest (the Human Resources Manager) and me. There is a small typographical error on the Termination Letter, in that it refers to section 4 of the U.S. Persons Policy, when in fact it should refer to section A.4.**

- 19. On June 2, 2015, Antoinette and I met with Paul in my office, and Carolyn Lewis, Deputy Managing Director of Human Resources, joined the meeting via teleconference from Barbados. I explained to Paul that he had breached the Bank's U.S. Persons Policy and that, as a result, the Bank had taken the decision to terminate his employment, which was effective immediately. I told him that the details were outlined in a letter and handed him a**

copy of the Termination Letter. We then proceeded in the usual course of asking that he attend quickly to return the Bank's property in his possession, retrieve his personal belongings from his office, and leave the Bank. He did this without incident."

[79] Questions about the U.S. Persons Policy were put to Ms. Rodland-Allen. Further questions about the International Banking Department were also put to Ms. Rodland-Allen. All of these questions seemed to be aimed at the U.S. Person's Policy. Counsel asked the question as to whether Ms. Rodland-Allen would agree that there was some lack of understanding of the U.S. Persons Policy regarding mortgages. However, in my humble opinion, that was not the issue. The issue was simply whether it was the Plaintiff who was referred to in the indictment as collecting the cheque. There is a distinct difference as to how a policy is supposed to work as opposed to alleged wrong doing.

80. Counsel moved on to what she referred to as the "termination minutes", the first sentence of the third paragraph.

"Paul, we confirm that your dealings and actions taken with regard to the Bank's customer, Mr. Charles Blazer are in breach of the Bank's U.S. Person's Policy."

[80] Counsel sought to emphasize that Ms. Rodland-Allen, during the June 02nd 2015 meeting did not specifically identify the 2005 U.S. Person's Policy. Mr. Rodland-Allen agreed and said that she only said; "U.S. Person's Policy."

[81] Reference was then made to the termination letter, first sentence which reads:

"Your conduct related to our customer Mr. Charles Blazer violated section 4 of our applicable U.S. Person's Policy."

[82] Counsel then returned to the 2014 U.S. Person's Policy, paragraph 4 under the rubric "**POLICY REQUIREMENTS**" more specifically 4.2. Counsel highlighted 4.2 (c) and Ms. Rodland-Allen pointed out 4.2 (d).

"4.2 Requirements for Banking Services:

U.S. Laws require banks to be licensed as a condition of engaging in Banking Services in the U.S. Most states, either by statute or by common law, have adopted a definition of the business of banking that encompasses accepting or, in some states, soliciting deposits, accepting cheques, cashing cheques or lending money ("Core Banking Functions"). Any bank (including non-U.S. banks) conducting any one of the Core Banking Functions in the U.S. is required to be licensed and regulated in the U.S. To ensure compliance with state laws, CIBC FirstCaribbean does not allow U.S. Persons to initiate applications for Banking Services via email when located in the U.S.

These licensing requirements do not include Banking Services conduct with U.S. Clients outside of the U.S. by institutions not located in the U.S.; therefore, as a general rule, it may offer Banking Services outside of the U.S. to U.S. Clients who are physically outside of the U.S. without triggering a U.S. license requirement.

It is this objective that this Policy seeks to secure, applying the following safeguards:

- a) CIBC FirstCaribbean may not establish an office or place of business in the U.S. without a license. CIBC FirstCaribbean meets this requirement by not having an**

office, branch or agency in the U.S. or maintaining any U.S. presence.

- b) CIBC FirstCaribbean may not engage in Core Banking Functions in the U.S. without a license.**
- c) CIBC FirstCaribbean may not send employees to conduct Banking Services with any clients in the U.S. or use agents in the U.S. to conduct Banking Services with any of CIBC FirstCaribbean's clients. For liaison with existing US Clients in the United States see the discussion below at 4.5.2**
- d) CIBC FirstCaribbean must comply with the requirements of not accepting deposits or making loans, accepting cheques, cashing cheques or lending money in the United States via email. U.S. Clients may use email communication to complete submissions only if the application was initialed at CIBC FirstCaribbean locations outside the U.S. In this case, it also allows for an existing client to take advantage of services CIBC FirstCaribbean offers to existing clients such as setting up standing orders for transfers of funds from deposit accounts and other banking services. Evidence of the account application being initialed at CIBC FirstCaribbean locations outside of the U.S. must be maintained in the client file."**

[83] Counsel took Ms. Rodland-Allen back to her Witness Statement, paragraph 18 which reads:

“18. As my Delegated Authority did not allow me to effect the termination without authorization from my superior, the Bank’s CEO, Rik Parkhill, provided the necessary authorization to me to effect the termination of Paul’s contract of employment. I completed Paul’s termination letter (“Termination Letter”) and arranged for him to come to my office and meet with Antoinette Turnquest (the Human Resources Manager) and me. There is a small typographical error on the Termination Letter, in that it refers to section 4 of the U.S. Person’s Policy, when in fact it should refer to section A.4.”

[84] Ms. Rodland-Allen denied she was referring to the 2014 U.S. Person’s Policy by citing section 4. She was then asked to explain the first sentence in paragraph 17 of her Witness Statement, which reads:

“For Paul to have even considered the possibility that he had received the check from Mr. Blazer in the United States for deposit into Mr. Blazer’s account at the Bank indicated to us that Paul was a real danger to the Bank.”

[85] Ms. Rodland-Allen explained that he was a very senior officer of the Bank who would have known the policies of the Bank, who would have led a team. She further explained that he had been in the position as a banker in excess of two decades. She continued:

“The U.S. Person’s Policy is clear and the fact that he could have made such a blunder puts not only the Bank at risk but even its employees. It was therefore a danger in the fact that it was a real act of what we consider a gross misconduct to actually conduct poor Banking services in the United States.”

[86] Under re-examination, Ms. Rodland-Allen said that the integrity report and the investigation back in 2013 had nothing to do with the Plaintiff being terminated. In fact, she confirmed that he was terminated because he had violated the U.S. Person's Policy by accepting a cheque on U.S. soil. The danger she spoke about which could have possibly been inflicted on the bank was that the bank is ultimately owned by CIBC and CIBC's subsequent owner has a presence in the United States but the Defendant does not have any relationship in the U.S. other than a correspondent bank which does all of the Defendant's U.S. clearing of cheques.

[87] Ms. Rodland-Allen was asked to read from the 2005 U.S. Person's Policy, paragraph 4 which provides:

"4. Why

U.S. State and Federal laws require banks to be licensed as a condition of engaging in banking in the United States. Most states, either by statute or by common law, have adopted a definition of the business of banking that encompasses accepting cheques, cashing cheques and lending money. Anyone, including a foreign bank that conducts any one of these core-banking functions in the United States would need to be licensed and therefore regulated in the United States."

[88] She further stated that accepting cheques is a core banking function and a violation of the policy.

[89] There is also the 2013 U.S. Person's Policy which provides at page 4:

"4.2 Requirements for Banking Services:

U.S. Laws require banks to be licensed as a condition of engaging in Banking Services in the U.S. Most states, either by statute or by

common law, have adopted a definition of the business of banking that encompasses accepting or soliciting deposits, accepting cheques, cashing cheques or lending money. Anyone, including a non-U.S. Bank that conducts any one of these Core Banking Functions in the U.S. would need to be licensed and therefore regulated in the U.S. To ensure compliance with state laws, we do not permit U.S. Customers to initiate applications for Banking Services over the internet.

These licensing requirements do not reach Banking Services that are conducted with U.S. Clients outside of the U.S. by institutions that have no U.S. presence. Thus as a general rule, a non-U.S. bank such as CIBC FirstCaribbean, that has no U.S. office may offer Banking Services outside the U.S. to U.S. Clients who are physically outside of the U.S. without triggering a U.S. license requirement.

If, however, the non-US bank wishes to offer Banking Services to a U.S. Client when the client is in the U.S., then the non-U.S. bank must be mindful to ensure that its activities from outside the U.S. are not subject to U.S. banking laws applicable in the state where the U.S. Client is resident. It is this objective that this Policy seeks to secure, applying the following safeguards:

- 1. CIBC FirstCaribbean may not establish an office or place of business in the U.S. without a license. Note, CIBC FirstCaribbean does not have an office, branch or agency in the in the U.S. neither does it maintain any U.S. presence, therefore this requirement is met.**
- 2. CIBC FirstCaribbean may not engage in Core Banking Functions in the U.S. without a license. Obtaining a license to offer Banking Services within the U.S. would**

necessitate a major police change within the bank and such a change must of necessity be communicated to the Board of CIBC FirstCaribbean along with other stakeholders.

- 3. CIBC FirstCaribbean may not send employees to conduct Banking Services with any clients in the U.S. or use agents in the U.S. to conduct Banking Services with any of CIBC FirstCaribbean's clients.**

- 4. CIBC FirstCaribbean should be in conformity with the requirements of not accepting deposits or making loans, accepting cheques, cashing cheques or lending money within the U.S., its territories and possessions or accepting applications for new products over the internet. Clients may use the internet to complete submissions of applications that were initiated at CIBC FirstCaribbean locations outside the U.S. and may take advantage of services CIBC FirstCaribbean offers to existing clients such as setting up standing orders for transfers of funds from deposit accounts and other banking services."**

[90] Ms. Rodland-Allen explained this as having the same intent as the U.S. Person's Policy of 2005 reiterating that accepting cheques on U.S. soil was not permitted.

[91] The next reference was to the December, 2014 U.S. Person's Policy page 4 Section 4.2 which provides:

4.2 Requirements for Banking Services:

- a) CIBC FirstCaribbean may not establish an office or place of business in the U.S. without a license. CIBC FirstCaribbean meets this requirement by not having an office, branch or agency in the U.S. or maintaining any U.S. presence.**

- b) CIBC FirstCaribbean may not engage in Core Banking Functions in the U.S. without a license.**

- c) CIBC FirstCaribbean may not send employees to conduct Banking Services with any clients in the U.S. or use agents in the U.S. to conduct Banking Services with any of CIBC FirstCaribbean's clients. For liaison with existing US Clients in the United States see the discussion below at 4.5.2**

- d) CIBC FirstCaribbean must comply with the requirements of not accepting deposits or making loans, accepting cheques, cashing cheques or lending money in the United States via email. U.S. Clients may use email communication to complete submissions only if the application was initialed at CIBC FirstCaribbean locations outside the U.S. In this case, it also allows for an existing client to take advantage of services CIBC FirstCaribbean offers to existing clients such as setting up standing orders for transfers of funds from deposit accounts and other banking services. Evidence of the account application being initialed at CIBC FirstCaribbean**

locations outside of the U.S. must be maintained in the client file.”

- [92] As to the intent, she explained this simply emphasized that collection of cheques on U.S. Soil was not permitted. From 2005 – 2015 this was the policy.
- [93] Counsel pointed out in both the 2013 and 2014 U.S. Person's Policy that there were sections dealing with security and mortgages. In the 2005 U.S. Person's Policy is also a part of a section dealing with securities for mortgages on page 5.
- [94] Counsel directed Ms. Rodland-Allen to Tab 31 of the Plaintiff's bundle of documents, an e-mail dated September 02nd, 2013, sent at 12:08 p.m. to "ALL STAFF" which I believe is a critical document and I set it out for ease of reference.

“Major, Paul

From: Internal Communications
Sent: Monday, September 02, 2013 12:08 P.M.
To: ANG ALL STAFF; ANT ALL STAFF; BAH ALL STAFF; BAR ALL STAFF; BEL ALL STAFF; BVI ALL STAFF; CAY ALL STAFF; CUR – ALL STAFF; DOM ALL STAFF; GRE ALL STAFF; JAM – ALL STAFF; STKN ALL STAFF; STL ALL STAFF; STM ALL STAFF; STV ALL STAFF; TCI ALL STAFF; TRI ALL STAFF
Subject: CIBC FirstCaribbean US Persons Policy

Colleagues,

I am pleased to advise that the revised US Persons Policy has been Approved. The intent of this policy is to foster due care and diligence

in CIBC FirstCaribbean's relations and dealings with U.S. Persons in order to reduce the risk of inadvertent violation of U.S. Laws. Contravention of U.S. Laws may lead to regulatory sanction and criminal liability, as well as civil liability and reputational damage.

Please note this policy now applies to ALL customer segments of the bank and hence should be read and understood by staff in all segments. In addition the contents of this policy supersede any other policy elements on US Persons which is currently being used.

You can find this document at the following link, : US Persons Policy.

Regards,

**Mark Young
Managing Director, Wealth Management"**

- [95] Having been asked about reputational damage, she explained that the branch could be seriously damaged. She further explained that CIBC was one of the largest institutions spinning from First Caribbean.
- [96] An objection came from counsel for the Plaintiff upon a question being put to Ms. Rodland-Allen about, the e-mail concerning the revised US Person's Policy. Plaintiff's counsel obviously had placed some level of reliance on the answer that Ms. Rodland-Allen had given by saying that she did not understand what Mr. Young was intending to convey. In this regard, there is no confusion or misunderstanding for the Court. When given the interpretation of the words it is plain and unambiguous. The US Persons Policy was revised and supersedes any other policy elements by US Persons currently being used.

[97] Ms. Rodland-Allen confirmed that the US Person's Policy was absolutely in practice prior to the International Banking Team meeting Minutes dated June 25th, 2014. Counsel's last question to Ms. Rodland-Allen was in reference to the termination letter. She further testified that there was only one (1) section 4 and in all of the US Persons Policies it referred to core banking functions such as accepting cheques on US Soil.

THE LAW:

[98] The Plaintiff is claiming damages for the following causes of action as against the Defendant.

1. Unfair Dismissal;
2. Wrongful Dismissal (in the alternative);
3. Breach of Contract and
4. Defamation.

[99] What is critical in arriving at a reasoned decision regarding 1 – 4 above is firstly determining that the 2005 US Person's Policy was within the knowledge of the Plaintiff at the time it is alleged that he committed a breach of the Defendant's policy.

[100] In this regard I set out page 61, lines 16 – 32 of the May 27th transcript.

Page 61, Lines 16 – 32:

16. Q. Would you familiarize yourself with policies

17. that were sent to you?

18. A. I would familiarize the policies that were

19. relevant to me, yes.
20. Q. I asked you whether you would familiarize
21. yourself to the policies that were sent to you and I
22. think your answer was you would familiarize yourself with
23. policies that were relevant.
24. If you were sent a specific policy as head of
25. International Corporate Banking, would you familiarize
26. yourself with that policy?
27. A. Okay. It is a genera - - it would have to be
28. relevant to my section, my unit.
29. Q. Would a US Person Policy be relevant to your
30. unit?
31. A. Of course. That should be relevant to the
32. entire bank."

Page 65, Lines 10 – 32:

10. Q. Good afternoon, Mr. Major. When we took the
11. adjournment I asked you to look at your witness
12. statement, in particular page 35 at paragraph 221.
13. A. Okay. Yes.
14. Q. And you had read that for me and stated that
15. Unequivocally, the first time you saw those US Persons
16. Policy was in 2015. Now, can you look at paragraph 223
17. on that page?

18. A. Yes, I have it.

19. Q. That says, "I maintain that there have been no
20. US Persons Policy circulated, implemented and practiced
21. by FCIB prior to 2013 and that the circulation,
22. implementation, general application and practice of the
23. US Persons Policy began to FATCA Compliance Initiatives."
24. Is that your position on the matter, sir?

25. A. Yes.

26. Q. And can you go to your Amended Statement of
27. Claim please? That's the Pleading Bundle. I think it
28. was Tab 3.

29. THE COURT. Which paragraph?

30. MR. BEHELL: Paragraph 82 at page 20.

31. BY MR. BETHELL:

32. Q. This is under the rubric, "The US Persons

Page 66, Lines 1 – 32:

1. Policy Referenced in the Termination Letter."
2. You say at 82, "In the Termination Letter FCIB
3. advised the Plaintiff that his 'Conduct' regarding Blazer
4. violated Section 4 of its US Persons Policy. The
5. Plaintiff will aver in this action that FCIB's US Persons
6. Policy was put into practice in November, 2014, more than
7. three (3) years after the Presumed Offending Conduct was

8. allegedly committed. The Plaintiff will rely on the US
9. Persons Policy at the Trial of this action for its full
10. terms and effect.”

11. And then over at page 86, on page 21, it says,

12. “In or about May, 2011 when the Presumed Offending
13. Conduct is alleged to have been committed by the
14. Plaintiff, FCIB had no US Persons Policy in practice.”

15. That is your position, sir?

16. A. Yes.

17. Q. How long have you been with FCIB prior to your
18. termination?

19. A. Pre - - remember I started with Barclays.

20. Q. Yes, when did they take over, or merge, sorry?

21. A. They started in 2002.

22. Q. Okay. So when you would have deposited those
23. Cheques 2011 you would have been employed with FCIB for 9
24. years?

25. A. Yes.

26. Q. Now, Mr. Major, I put it to you that prior to
27. May of 2011 you had received numerous emails regarding
28. the US Persons Policy.

29. A. Numerous emails?

30. Q. Yes.

31. A. I mean am I being referred to something to look

32. at?"

Page 67, 1 – 32:

1. Q. No. I am just putting the question to you.

2. A. Numerous emails?

3. Q. Yes.

4. A. One, two, five, ten?

5. Q. More than three?

6. A. Okay. So you are putting that to me?

7. Q. Yes. Either you agree with that or deny.

8. A. Obviously I can't recall that.

9. Q. You can't recall that.

10. A. No.

11. Q. I need you to go to the Defendant Supplemental

12. Bundle of Documents. Can you go to Tab 9 please? Do you

- 13. have it, sir?**
- 14. A. Tab 9?**
- 15. Q. Tab 9.**
- 16. A. Yes.**
- 17. Q. It should be an email dated Wednesday, December**
- 18. 14th, 2005 at 11:39 a.m.**
- 19. A. Yes. I see that.**
- 20. Q. Sent by Kent Bain. Do you know Kent Bain?**
- 21. A. Yes.**
- 22. Q. And if you look at the recipient on the third**
- 23. line down where it starts Collie, Antoinette Collie.**
- 24. A. Yes.**
- 25. Q. You are the next named person.**
- 26. A. Yes.**
- 27. Q. And the subject is US Person Policy.**
- 28. A. Yes.**

29. Q. And it says, "Dear all, please keep a note.
30. Please ensure that you read this or via your copy.
31. Please ensure your team reads. Ken."
32. And that is effectively an email that has been

Page 68 – Lines 1 – 32:

1. Received by Kent Bain earlier from some person, Malcolm
2. on the 12th December, 2005 at 11:10 a.m. Do you see it
3. there, sir?
4. A. Yes, I do.
5. Q. And it says, "Guys, I have ...this as to
6. intranet which as you know I have also update the
7. specific section on the US Persons. The attached below
8. link which is part of the wider international website.
9. Also noted, now aligning our external web also."
10. And there is the link.
11. And it says, continue, "I have also attached a

12. word document to the US Policy. Can we make sure all
13. staff read and note the contents and advise me when this
14. has been done? I will diarized at the end of January to
15. follow through on this. As always, if any questions
16. arising let me know. I have advised both Ann McClain and
17. name Mary Burke on this is a wider note should follow.
18. However, the Head of this to make sure our policies and
19. US person with our shop and known by our team - -

20. THE COURT: "Was in our shop."

21. MR. BETHELL: "Was in our shop and known by our
22. team. Ken please make sure Bob see this when he gets
23. back."

24. Do you recall receiving this email?

25. A. 2005, now.

26. Q. If you had received it would you have read it?

29. some type of feed back.

30. Q. And you were one of the ones it was circulated

31. to.

32. A. Yes, I know. I see the names I see myself. I

Page 69 – 1 – 32:

1. see Immalasha.

2. Q. My question is would you have received this

3. A. I mean if my name is written there I gather I

4. would have.

5. Q. And if you have received it you would have read

6. it?

7. A. Very much 2005

8. Q. Here it is they says specific instructions to

9. make sure you read it and your team knows. You just told

10. us you were in charge and you led a team of five persons.

11. A. Uh-huh. Can I see the policy in question?

12. Q. Go ahead, but first before you get to that, I

13. just want you to - - if you turn over the page, two pages
14. over the policies are set out there It is headed "US Policy
15. Banking Services."
17. email.
18. THE WITNESS: Yes.
19. BY MR. BETHELL:
20. Q. Do you see where it says US Policy at the top,
21. Banking Services?
22. A. Uh-huh.
23. Q. And then at the very bottom, left hand corner
24. the date, 11th January 2005.
25. A. Uh-huh.
26. Q. Can you turn over the page? At item 2
27. "Effective date of this Policy. This Policy is effective
28. from the issued date of this Policy document."
29. Do you see that?

30. A. Yes. I see that.

31. Q. And at four, "Statement as to why it is being

32. issued."

Page 70, Lines 1 – 32:

1. A. Uh-huh.

2. Q. "US States ... cheques and lending money."

3. A. Uh-huh.

4. Q. "Any one including a foreign bank ... regulated

5. in the United States."

6. Now, do you still maintain that the US Person

7. Policy was not in effect until 2014?

8. A. Why I am still unclear is because of the

9. effective date. The covering in this seem to say the

10. issue date is the effective date. I take your point but

11. there is a date at the bottom of the document. So

12. something was emailed out. Whether this is the document

13. **fashioned I can't confirm.**

14. **Q. Alright.**

15. **A. There is covering.**

16. **Q. Alright. So you are disputing the issue date**

17. **is that correct?**

18. **A. It is not, the covering is missing.**

19. **Q. Okay. Can you go to the Defendant's Bundle of**

20. **document. That's the green cover one.**

21. **A. Yes.**

22. **Q. Can you go to Tab 3?**

23. **A. Uh-huh.**

24. **Q. You see a document there, US Persons Policy?**

25. **A. Yes, I do.**

26. **MR. BETHELL: My Lord, do you have it?**

27. **THE COURT: Yes.**

28. **BY MR. BETHELL:**

29. Q. If you turn the page, “Section A,
30. Introduction.”
31. A. Uh-huh.
32. Q. And then at 2, “Effective Date of this Policy?

Page 71, 1 – 32:

1. A. That is the December 1st, 2005?
2. Q. Uh-huh.
3. THE COURT: Sorry. Where are we?
4. MR. BETHELL: We are on.
5. THE COURT: I have the document.
6. MR. BETHELL: Yes. If your Lordship turns to
7. the second page where it says, “Section A, Introduction.”
8. THE COURT: Yes.
9. MR. BETHELL: Item 2, “Effective Date of this
10. Policy.
11. “This policy is effective from the issue date

12. of this Policy Document (December 1st, 2005).”

13. THE COURT: I see it.

14. MR. BETHELL: And then at 4, “Why

15. U.S. State and Federal laws require banks to

16. be licensed as a condition of engaging in banking in the

17. United States. Most states, either by statute or by

18. common law, have adopted a definition of the business of

19. banking that encompasses accepting cheques, cashing

20. cheques and lending money. Anyone, including a foreign

21. bank that conducts anyone of these core-banking

22. functions in the United States would need to be licensed

23. and therefore regulated in the United States.”

24. BY MR. BETHELL:

25. Q. So, Mr. Major, do you still maintain that there

27. was no US Persons Policy in practice in 2011?

28. Management is not listed. I know this document appears

29. to be pulled from among some things - - buildup and that
30. can be something in banking. On the cover, all the
31. parties that are - - should be listed out here. This
32. saying, Wealth Management is not listed. And I would

Page 72: 1 – 32:

1. have no need to go to retail to look up a policy.
2. Q. So you would not have been aware of this
3. document?
4. A. This document how you are presenting to me in
5. this fashion, no.
6. Q. It is not how I am presenting to you. Either
7. you are aware of it or you are not.
8. A. I am aware of a US Person Policy, but I am
9. saying I am not aware of this particular policy I am
10. looking at.

11. Q. Were you aware of a US Persons Policy, being
12. issue prior to 2011?
13. A. Being effectively issued in 2011?
14. Q. Prior to 2011.
15. A. I mean that takes us back to your email from
16. Malcolm Webber (phonetic).
17. Q. Which was 2005?
18. A. Correct.
19. Q. So you are aware of that?
20. A. I mean I have seen this document, yes. I have
21. seen the email.
22. Q. So would you agree that there was a US Persons
23. Policy in practice prior to 2011?
24. A. In practice?
25. Q. Prior to 2011.
26. A. For me to answer that question for you would

27. need to have, was there a K-Cars testing in place? Was
28. the management control testing in place for me to put it,
29. as you put it in your words in practice.
30. Q. Where does the K-Cars and all the rest of that
31. belongs? Is that your answer?
32. A. I mean, again - -

Page 73: Lines 1 – 32:

1. Q. Your answer is there was need to be a K-Cars
2. (phonetic) practice testing in place? Think carefully
3. now.
4. A. You are asking me if I was aware of this 2005
5. policy document, whether or not this policy from 2005 was
6. in place?
7. Q. No. I am asking you whether it was in practice
8. in 2011?
9. A. In 2011?

10. THE COURT: Was it enforced? Was it something

11. that you had to comply with?

12. THE WITNESS: No. No. No. Not that I am aware

13. of.

14. BY MR. BETHELL:

15. Q. Okay.

16. In the Defendant's Supplemental Bundle of

17. Documents, can you go to Tab 12? You have that?

18. A. Yes I do.

19. Q. Okay. This is just an email dated Thursday

20. October 12, 2006. 2:52 p.m. from Marion Blyden

21. (phonetic) to Paul Major, Ingrid Carey, Franky Banks

22. (phonetic) and Janet Munroe (phonetic).

23. A. Uh-huh.

24. Q. And then at the bottom you will see that it

25. originally came from Janet and went to yourself and the

26. others and it says, "Hi, guys. Does any one have the
27. communication receipt about the prohibiting of sales
28. securities for US Citizens? I can't find it anywhere.
29. Help."
30. Right? And Marion emails back and copies you,
31. "Hi, Janet, you can find the copy of the US Persons
32. Policy on the intranet under manual 6 on the

Page 74 – Lines 1 – 32:

1. international and you will find it there under manual.
2. Give me a call if the above is unclear."
3. So this document was on your intranet for all
4. to see. And your earlier email from Ken you had been
5. mandated to read it and explain it to your staff. So do
6. you still maintain that there was no US Persons Policy in
7. practice in 2011?
8. A. Yes, I do. This document seems to suggests

9. more something to do with securities.

10. Q. Whether it has anything to do with securities

11. or not, sir, the question is whether was it in practice

12. and were you aware of it?

13. A. I think I have answered the question, sir.

14. Q. Which is?

15. A. Again, not that I am aware of

16. Q. It was not in practice.

17. MR. BETHELL: My Lord, with respect to the

18. email at Tab 9 and the one at Tab 12, can I mark those

19. for identification please, being FCIB-4 and FCIB-5?

20. THE COURT: Yes. FCIB-4 and 5 at tabs 9 and

21. 12.

22. MR. BETHELL: And then, my Lord, the policy at

23. Tab 3 of the Defendant's Bundle of Documents, can we mark

24. that FCIB-6? The one that came effective 1st December

25. 2005.

26. THE COURT: Yes.

27. BY MR. BETHELL:

28. Q. Mr. Major, do you know a Dennis Govan?

29. A. Yes, I do.

30. Q. Do you know him well?

31. A. Yes, I do.

32. Q. Can you turn to Tab 18 in the Defendant's.

Page 75 – Lines 1 – 32:

1. Supplemental Bundle of Documents?

2. A. Uh-huh.

3. Q. Now, this is a chain of emails.

4. A. Uh-huh.

5. Q. If you turn to page 5 it is one of five pages.

6. The first email is from Edgar Weinstein (phonetic) to

7. Dorothy Gibson regarding a week payment form.

8. A. Uh-huh.
9. Q. It says, "To put everything in context we just
10. wanted to cheque back the bank began offering ATM card
11. services for the business accounts.' And that's dated
12. Wednesday 25th July 2007.
13. And Dorothy replies to him saying "Not as yet,
14. sir. How are you doing? It has been a while."
15. And then he, on 31st July emailed her, "Dear
16. Dorothy, another question. I am corresponding with First
17. Caribbean in Curacao ...thank you very much in advance,
18. Beth Inca (phonetic)."
19. And she responds to him on the 1st August, and
20. she copies you, as you can see from the bottom of the
21. page. "Dear, Weinstein, as we are same bank we also
22. carry the same line of investments. I note you are only
23. used to dealing with Paul and myself, however we do have

24. an investment department that can speak with you on other
25. options with us.”
26. And then on page 3 she again emailed
27. him, copied to you on the 1st
28. “Mr. Weinstein, you are correct, however I think
29. that it is across the board for all First Caribbean
30. Branches. You can confirm with your contract at Curacao
31. office before proceedings further.”
32. Ant then he responds to her, “Hi, Dorothy.

Page – 76 – Lines 1 – 32:

1. Looks they have been able to do this when they used to be
2. AB & Amro (phonetic) and are able to continue this practice
3. at FCIB. Therefore, I do need this letter to open an
4. investment account with them.”
5. And then she sent an email back to him on
6. Wednesday August 1st, at 12:12 p.m., copies you.

7. **“Many thanks. Kindly advise with whom you**
8. **would like the reference address in FCIB.”**
9. **And then he provides the address copying you.**
10. **This should be addressed to Janine Blacko (phonetic)**
11. **Private Banker, First Caribbean**
12. **And then on page 1 there is an email from**
13. **Dennis Govan to Tim Vanderburg (phonetic) it says, “Tim,**
14. **see below. I understand that Curacao are considering**
15. **opening an investment account of Mr. Weinstein (phonetic)**
16. **a US resident, a client of ours. The only reason you are**
17. **talking to Curacao direct and not us is that we have**
18. **advised us Persons Policy prohibits relationship. What**
19. **is your position on this? We need to tell the same**
20. **story.”**
21. **And then on Tuesday 7th of August at 8:33 a.m.**

22. Dennis Govan sends an email directly to you for your
23. information. It says, "Absolutely, we should. There is
24. only one policy. I will cheque this out and get back to
25. you."

26. Now, Mr. Major, this is your department and
27. only you and Dorothy handle this account. And here it is
28. your superior telling you that you are not supposed to
29. happen having regard to our US Persons Policy. And this
30. is August 2007, and the backdrop of this email, do you
31. still maintain that there are was no US Persons Policy in
32. practice in 2011?

Page 77 – Lines 1 – 32:

- 1. A. Yes. I still stand by my previous comment.**
- 2. Q. Mr. Major, I put it to you that you are being**
- 3. totally and completely dishonest. You have no honesty.**
- 4. You have no integrity.**

5. **MRS. ROLLE:** **I don't thing that the Plaintiff**
6. **recognizes that that's a question. Often lay person**
7. **don't realize that when something is being put that they**
8. **are required to answer. It is a question.**

9. **THE COURT:** **Mr. Bethell said that he is putting**
10. **To you that you are being completely dishonest.**

11. **THE WITNESS:** **I disagree with his statement.**

12. **BY MR. BETHELL:**

13. **Q. One further thing I wish to point out to you,**

14. **Mr. Major - -**

15. **THE COURT:** **Sorry. On page 1 of the emails**

16. **from Dennis Govan was sent directly to Paul Major, Mr.**

17. **Major can you point out to me your responds to the email**

18. **please?**

19. **THE WITNESS:** **Did I respond to the email?**

20. THE COURT: Yes.

21. THE WITNESS: I don't have anything in front of

22. me that gives evidence I responded. What I have said, I

23. don't know.

24. BY MR. BETHELL:

25. Q. Mr. Major, I would like to point out one

26. further thing to you please in that email before we leave

27. it. You see, when Mr. Govan at the bottom of page 1 sent

28. the email, sorry when you send, this interesting.

29. When you sent the email on Wednesday, 1st August 2007, at

30. 3:31 p.m. in the afternoon to Dennis Govan, you changed

31. the subject. You changed the subject to "Investment USD

32. Persons'. Prior to that the subject was, 'Re Payment

Page 78 – Lines 1 – 32:

1. Form'?

2. A. Yes.

3. Q. So why did you change the subject?
4. A. If you are asking me to go back in time say
5. whether or not Dennis and I had a conversation about this
6. prior to sending me this email, or whether Dorothy and I
7. had a conversation and she gave me more information that
8. maybe was changed to get the message across, this is in
9. the even of some US person, I mean again, my
10. my recollection is not going to that but I am assuming I
11. might have had a conversation with Dennis about it.
12. Q. Well, given the focus of this email from you to
13. him, and his response to you is the US Persons Policy
14. prohibiting this relationship.
15. A. On the security side, yes, that was one thing
16. with Dennis he deals with that part of the business and
17. he has the entire recollection of the policy.

18. Q. You said the security side but only you and
19. Dorothy handled this gentleman's account.
20. A. Uh-huh. Okay. A customer has an account, they
21. have an account managing the operations. So even though
22. they might be the central points of contact, if a
23. customer comes and say I want a mortgage you sent them to
24. Katrice. If a customer comes and say they want
25. investment advice, you sent them on to that relevant
26. department . So it is like you are guiding them through
27. where they need to go.
28. Q. And you can guide them without knowing what the
29. policy of the bank is?
30. A. He was the Head.
31. Q. No. I am talking about you guiding Dorothy and
32. answering Mr. Weinstein's question.

1. **A. Right. So we would have gone to Dennis.**
2. **MR. BEHELL: My Lord, can we mark email at 18**
3. **FCIB-7?**
4. **THE COURT: This would be the supplemental**
5. **bundle?**
6. **MR. BETHELL: Yes.**
7. **BY MR. BETHELL:**
8. **Q. Mr. Major, can you go to the Defendant's Bundle**
9. **of documents, please?**
10. **Now, you recall testifying before the luncheon**
11. **adjournment, and in fact you corrected me and told me**
12. **what the proper, what the Bahamas Wealth Management was**
13. **all about. You said it was a distribution?**
14. **A. The Bahamas Wealth Management, yes. You had**
15. **said something about a committee and I had said it was**

16. not a committee.
17. Q. Right. You told me it was a distribution list
18. for receiving emails.
19. A. Yes.
20. Q. Okay. Good.
21. Now, can you turn to Tab 21 in that bundle? Do
22. you have it?
23. A. Tab 21?
24. Q. Yes.
25. Here is a email from your friend Mr. Dennis
26. Govan, the middle of the page, dated Wednesday 7th May
27. 2008, 4:16 p.m., addressed to Bahamas Wealth Management,
28. and Turks and Caicos Wealth Management, subject, 'Why we
29. have a US Persons Policy'. It says, "The team see below
30. a note JS comments. Please also refer to our US Persons
31. Policy on the intranet."

32. Ant then below that an email from Janor Phasar”

Page 80 – Lines 1 – 32:

- 1. (phonetic) to Dennis Govan which obviously he then**
- 2. forwarded to The Bahamas Wealth Management. And it says,**
- 3. “Gentleman, the gentleman referred to in this article is**
- 4. a former colleague and friend of mine ...laptops,**
- 5. blackberry.”**
- 6. And the heading is “Top US Banker detained by**
- 7. US Bank.**
- 8. And I wouldn’t bother to read. It states why. Do**
- 9. you remember receiving this email?**
- 10. A. Yes, this incident I do recall.**
- 11. Q. And Mr. Govan is reminding you of the US**
- 12. Persons Policy you had in place on the intranet?**
- 13. A. Yes, I see that.**
- 14. Q. And the consequences of breaching that policy?**

15. A. Sorry?
16. Q. And the consequences of breaching that policy?
17. A. Well, I see it is no. It is his comment.
18. Q. And do you still maintain that there was no US
19. Policy in practice in 2011, despite this admonishment,
20. despite the fact that it is on your intranet, despite the
21. fact it is on your intranet, despite the fact that you
22. were sent a hard copy of it?
23. A. The only thing I can recall from this incident,
24. we did have a meeting with the staff. And all that
25. meeting talked about was whether or not we can take our
26. laptop or our Blackberry when we travel to the United
27. States. I think at the end of the day they advised us to
28. take our Blackberry. That was the crux of that meeting.
29. Q. So, having gone to that meeting, as Head of

- 30. International Corporate, the responsibility for training**
- 31. and enlightening the five staff under you, you didn't**
- 32. bother to read the policy?**

Page 81 – Lines 1 – 32:

- 1. A. Well the policy wasn't discussed in the**
- 2. meeting.**
- 3. Q. That's not my question.**
- 4. A. Well, to put things in context here - -**
- 5. Q. Are you saying you have never read the policy?**
- 6. Up to this date you have never read the policy?**
- 7. A. This policy was not discussed in the meeting.**
- 8. Q. As at May 7th, 2008 are you telling this Court,**
- 9. despite the fact that you had been given a hard copy of**
- 10. the policy, despite the fact that there was a soft copy**
- 11. of the policy on the intranet, you never read it?**
- 12. A. Well my recollection, sir, they called the**

13. **general meeting with all staff.**
14. **Q. Could you answer my question?**
15. **A. Okay.**
16. **Q. Answer it.**
17. **A. I was answering your question.**
18. **Q. No, you weren't. It was simple.**
19. **A. Continue.**
20. **THE COURT: It is a yes or no.**
21. **THE WITNESS: Okay. Fine. I don't recall**
22. **reading it, no.**
23. **MR. BETHELL: My Lord, may this be marked as**
24. **FCIB-9?**
25. **THE COURT: Yes.**
26. **BY MR. BETHELL:**
27. **Q. Now, in the Defendant's Supplemental Bundle of**
28. **Documents, can you turn to Tab 25?**

29. A. This is the one subject 'Private Banking,
30. America"?
31. Q. Yes.
32. Now, this Tab has a pink divider in it. And on

Page 82 – Lines 1 – 32:

1. the other side of the pink divider, there is, under page
2. 2 there is an email from Annie Jones (phonetic) to
3. yourself dated Wednesday, 10th November 210 at 2:27 p.m.
4. "Dear, Paul, please find the updated agenda attached to
5. the email ...in one week."
6. And it sets out the type of link for the
7. agenda. And then you respond, or sent the email to Mark
8. St. Hill. Who is Mark St. Hill?
9. A. Director of International Corporate Banking.
10. Q. You reported to him?
11. A. Um, 2010, 2010, 2010, um, all I can say was at

12. that, even up to the current time when I left, it was
13. kind of like a dotted line, do it line between the both.
14. But like, he was the guy that was responsible for that.
15. Q. He was above you in the hierarchy?
16. A. Yes.
17. Q. “You attained high marksand wants me to
18. come along with her.”
19. And Mark response to you on Wednesday 10th at
20. 4:26, “Paul, my apologies for not realizing you’re asked
21. to attend. I did note the email. Approved.”
22. Ant then he sent you another email on later
23. that day. “Paul, I would have to go to ...and I can
24. reimburse that cost. Regards, Mark.”
25. And then later at 7:55, a fresh thought that he
26. needs to bring to your attention. It says, “Paul, please
27. give me a call on this as we have to be very careful of

- 28. our US Policy and being seen as doing business in the US.**
- 29. We have gotten ourselves with problems in the past with**
- 30. advertising at conferences and business meetings in the**
- 31. US. Call me in the morning. Mark.”**
- 32. Do you recall that email?**

Page 83: Lines 1 – 32:

- 1. A. It looks familiar.**
- 2. Q. Did you call him?**
- 3. A. Yes I did.**
- 4. Q. Did you discuss the US Persons Policy?**
- 5. A. No.**
- 6. Q. What was discussed?**
- 7. A. He was giving directions not to take any sales**
- 8. and marketing materials and only give out my business**
- 9. cards. He mentioned something about advertising in the**
- 10. US and still the marketing activities, but he didn't go**

11. into much details.
12. Q. What would that have been in relation to?
13. A. Sorry?
14. THE COURT: Why would he have told you that?
15. THE WITNESS: Sir? In terms of what? Giving
16. out?
17. THE COURT: Not to give out.
18. THE WITNESS: Right. He called, said not to.
19. THE COURT: Why?
20. THE WITNESS: Because that would have been in
21. contravention.
22. THE COURT: of?
23. THE WITNESS: Some US law.
24. THE COURT: US?
25. THE WITNESS: US law.
26. THE COURT: Law or policy as it relates to the

27. bank

28. THE WITNESS: I guess, yes because of the

29. Policy.

30. THE COURT: No, no, law or US policy as it

31. relates to the bank?

32. Why would he say 'call me'? We have to be very

Page 84 – Lines 1 – 32:

1. careful. You are saying that he never mentioned the term

2. 'US Policy' when he was telling you not to do certain

3. things?

4. THE WITNESS: All I can say from my

5. recollection, the whole conversation was on taking sales

6. and marketing material.

7. THE WITNESS: All I can say from my

8. THE WITNESS: Not taking it, right

9. THE COURT: Why?

10. THE WITNESS: Yes. I take your point.
11. THE COURT: No. I am asking you why?
12. THE WITNESS: Because it would have been a
13. contravention of the US Law.
14. THE COURT: Is that how he termed it, US Law,
15. or did he say US Policy as he referred to it in the email
16. to you later on?
17. THE WITNESS: I mean, policy.
18. THE COURT: What did the email say? We have to
19. be very careful of that.
20. THE WITNESS: "Please give me a call on this as
21. we have to be very careful of our US policy and being
22. seen as doing business in the US."
23. THE COURT: Precisely. Now, when he told you
24. not to take these items, what was that in relation to?

25. Was it in relation to US Law, or was it in relation to

26. the US Policy that he referred to in his email.

27. THE WITNESS: Well, in the context that this is

28. written, yes, I take your point, it is the policy.

29. BY MR. BETHELL:

30. Q. Mr. Major, I ask you again, in light of these

31. series of emails, and in particular the last email, do

32. you still maintain being cognizant of the oath that you

Page 85 – Lines 1 – 32:

1. swore that there was no US Persons Policy in practice in

2. 2011?

3. A. Well, it is clear from this and other emails,

4. evidence of it was being followed.

5. MR. BETHELL: My Lord, the last email, the one

6. at Tab 25, can that be marked FCIB-9?

7. BY MR. BETHELL:

8. Q. Now, looking at that email, Mr. Major, when you
10. “Mark St. Hill, Director of International Corporate
11. Banking.”
12. A. Yes.
13. Q. That was his position?
14. A. Correct in that Corporate Investment Banking,
15. Yes.
16. Q. And between 2010 and 2012 you were the Head of
17. International Corporate Banking for The Bahamas?
18. A. Yes.
19. Q. Now, Mr. Charles Blazer, was he a friend of
20. yours?
21. A. Friend? I would classify our relationship as
22. professional.
23. Q. Right. You would have dinner with him when he
24. was in town?

25. A. Yes.
26. Q. You would meet up with him when you went to New
27. York?
28. A. The last time.
29. Q. Not last time, generally you went to New York.
30. A. Generally, no.
31. Q. He knew about your favourite bar in New York,
32. right?

Page 86 – Lines 1 – 32:

1. A. Yes.
2. Q. And you were his relationship manager when he
3. opened his account at First Caribbean?
4. A. When he first opened?
5. Q. Yes.
6. A. Boy, you are taking me back to early 2000.

7. Q. I am looking at your Statement of Claim. You
8. said he opened up his account on or about the 9th April,
9. 2002.
10. A. Okay.
11. Q. Were you Mr. Blazer's primary point of contact
12. at the bank?
13. A. Let me see, not that I can recall. It is going
14. back a long time. In 2002, I would have been like
15. hovering between Sabrina Cartwright was the manager, and
16. then Bob Griffith (phonetic) he was the Head, and so I
17. kind of settled, not in terms of the relationship manager
18. but the support staff.
19. Q. Would you have assisted him in 2010 in opening
20. a personal account for his then girlfriend?
21. A. In 2010, yes that's possible.
22. Q. And around that time you would have assisted

23. him in setting up two fixed time deposits?
24. A. Yes. That sounds possible. All you have to do
25. is send instructions and tell us what to do and we would
26. forward it to the department they need to carry out the
27. instructions.
28. Q. And when he needed those broken in 2013,
29. November 2013 he contacted you to do that?
30. A. Yes.
31. Q. And he contacted you to repatriate 1.7 million
32. dollars to his account at JC Morgan Chase in New York?

Page 87 – Lines 1 – 32:

1. A. I mean, I don't have the document in front of
2. me.
3. THE COURT: One point how much?
4. MR. BEHTELL: One point seven.
5. THE WITNESS: Yes, that would be - -

6. **BY MR. BETHELL:**
7. **A. He asked you to break the deposits and he asked**
8. **you to transfer the money, correct?**
9. **A. Yes.**
10. **Q. He sent you a stream of emails wanting to know**
11. **how quickly you were going to do it, it hadn't reached as**
12. **yet.**
13. **A. Okay. I remember seeing that in the bundle**
14. **somewhere, yes.**
15. **Q. And when he was town you occasionally provided**
16. **him with cash to go gambling?**
17. **A. Yes.**
18. **Q. And even though he had the mortgage over the**
19. **units at the Cove in Atlantis, you were still the point**
20. **person or involvement with him?**
21. **A. I guess you can say it was a dual. The**

22. mortgage people would look after the mortgage.
23. Q. But you were the relationship manager, his
24. relationship manager. He would reach out to you.
25. A. No, I accept that.
26. Q. Did you at times travel up to New York with
27. him?
28. A. No.
29. Q. You never travelled with him up to New York?
30. A. Never.
31. Q. In August of 2009 he didn't contact you asking you
32. when you would be going up to New York, and you indicated

Page 88 - Lines 1-32:

1. that you would be travelling at 3:00 p.m. on Delta?
2. A. I don't know what you are referring to.
3. Q. Don't worry what I am referring to.
4. A. Okay, but your question to me was have I ever

5. travelled up together. So I took that to mean you and I
6. are travelling together jumping on a plane going to New
7. York.
8. Q. Okay. Were you ever on the same plane going up
9. together?
10. A. No. Not that I can recall. I don't recall
11. seeing him on the same plane.
12. Q. Now, were you aware that Mr. Blazer had a
13. senior position in FIFA?
14. A. Yes.
15. Q. Did you know he was a member of FIFA's
16. executive committee?
17. A. Yes.
18. Q. And that he was one of the three persons
19. appointed by CONCACAF? There were three persons on the
20. board of CONCACAF. He was the general secretary.

21. A. Okay, Yes. I am familiar with his position
22. with CONCACAF.
23. Q. He was the only member who was responsible for
24. the United States?
25. A. You might say, I mean I wouldn't know the
26. details like that, but okay.
27. Q. Now, prior to May 2011, think carefully about
28. this, Mr. Major. Were you aware that FIFA was being
29. publically accused of corruption including bribery?
30. A. That's FIFA?
31. Q. Yes. FIFA.
32. A. I mean I can't recall.

Page 89 – Lines 1 – 32:

1. Q. Didn't you say that you were kind of doing
2. extensive internet exploring, deep research regarding
3. FIFA, CONCACAF?

4. A. I mean, around which time, though?
5. Q. I posed the question, prior to May 2011.
6. A. I don't have an answer to that. You are asking
7. me to recall if I have done any research on the internet
8. prior to May.
9. THE COURT: You don't recall?
10. THE WITNESS: I don't recall?
11. BY MR. BETHELL:
12. Q. But you did do research?
13. A. From 2011 to now?
14. Q. No. I am just asking whether you did do
15. research on FIFA and corruption and bribery and Blazer?
16. A. Corruption, bribery and Blazer?
17. Q. Anyone of those topics or all, corruption,
18. bribery and Blazer.
19. THE COURT: It doesn't matter when.

20. THE WITNESS: Okay, yes, yes, okay.
21. BY MR. BETHELL:
22. Q. Can you go to the Defendant's Supplemental
23. Bundle of Documents?
24. A. Sure.
25. Q. Can you turn to Tab 23?
26. A. I have it.
27. Q. Now, looking at page 1 at the bottom there, you
28. received an email from Offshore alert regarding a
29. conference they were having addressed to you, subject
30. "FIFA wants offshore with a head of next week's
31. conference."
32. A. Yes.

Page 90 – Lines 1 – 32:

1. Q. And that's 29 April 2010?
2. A. Yes.

3. Q. And you immediately flipped that around and
4. sent it to Chuck Blazer within minutes of receiving it.
5. A. I see your timeline yes.
6. Q. And then he respond to you later that date.
7. "Paul, amazing. These guys are criticizing action taken
8. in London when it is where man write and publish...than
9. with Andrew Jenkins."
10. MRS. ROLLE: James.
11. MR. BETHELL: James.
12. BY MR. BETHELL:
13. Q. Do you remember that email?
14. A. Yes.
15. Q. Do you know why Blazer said James had called
16. him, said he had too many beautiful girlfriends, him
17. being too fat and having homes in from Bahamas and in
18. North Carolina?

19. A. No.
20. Q. You hadn't read anything on that?
21. A. It doesn't ring a bell.
22. Q. No.
23. A. I mean again this was a long time ago. I just
24. remember when I told the headlines I just flipped it to
25. him.
26. Q. And then over the page is the response from
27. FIFA to Offshore Alert. Did you attend the conference?
28. A. This particular conference? No. This doesn't
29. ring a bell.
30. Q. Can you go to - - oh.
31. MR. BETHELL: My Lord, may we mark that one
32. FCIB-10?

Page 91 – Lines 1 – 32:

1. THE COURT: Yes.

2. BY MR. BETHELL:

3. Q. Mr. Major, going back to Tab 23.

4. THE COURT: Of the?

5. MR. BETHELL: The Supplemental Bundle of

6. Documents. The same email we were looking at and the

7. attachment.

8. BY MR. BETHELL:

9. Q. If you look at the fourth paragraph down, where

10. it says "Greetings" at the top?

11. A. Yes.

12. Q. "You will see that notwithstanding the letter,

13. the session on corruption and soccer, the secret world of

14. FIFA, bribes, vote rigging and ticket scandals by the

15. British base investigative reporter and film maker Ander

16. James will proceed unfettered by outside interference."

17. And you said you didn't go to that conference?

18. A. Ritz Carlton, South Beach?

19. Q. Well Mr. Blazer seem to think that you were

20. going.

21. A. He probably thought that because I just flipped

22. that to him. I've only been to one Offshore Alert

23. conference. And then you know once they have your email

24. they just keep sending you stuff every time they are

25. having a conference.

26. Q. So slipping that to him you didn't have a

27. suspicion in your mind that he may have been one of those

28. persons that they were speaking of, corrupt, taking

29. bribe?

30. A. No. I think when I saw it was FIFA I just

31. Q. And here is the person that has three units

32. over at the Cove and a minimum of 1.7 million sitting in

Page 92 – Lines 1 – 32:

1. his account?
2. A. Yes.
3. Q. Nothing, you didn't think anything of it? It
4. didn't flip across your mind?
5. A. At that point in time, no.
6. Q. Aren't bank supposed to be very suspicious?
7. A. We are.
8. Q. But that didn't occur to you?
9. A. Sorry, at the same token if monitoring tools
10. were out there, it is like here again this is me flipping
11. something.
12. Q. But you must have had a reason for wanting to
13. flip it to him.
14. A. Again, all I probably saw was FIFA AND I JUST
15. flip it over to him.
16. Q. You did see bribe, corruption?

17. **A. Honestly I don't even know if I actually**
18. **clicked on it. I mean it is possible. Anything is**
19. **possible.**
20. **Q. I don't know.**
21. **Can you turn to Tab 24, the same bundle?**
22. **A. Yes.**
23. **Q. Okay. This email is dated 1st November, 2010.**
24. **Yes.**
25. **Q. This is after things started breaking with FIFA**
26. **in the world press or something like that. And you right**
27. **here, "Head shot ...stay out of the news. Lol."**
28. **What does LOL stand for?**
29. **A. Laugh out Loud.**
30. **Q. So did you come across something or hear things**
31. **in the news about him that prompted you to send this?**
32. **A. I honestly don't know.**

Page 93 – Lines 1 – 32:

1. **Q. Because here it is five months earlier you**
2. **flipped him an audible about corruption and bribery, what**
3. **not. All hell breaks loose in Switzerland and elsewhere**
4. **and you send him an email saying, “Stay out of the news.**
5. **Lol.”**
6. **A. I take your point, noted I obviously can’t**
7. **recall what prompted me to add that line. I mean from**
8. **the subject it seem as if I was doing a follow up on a**
9. **new application.**
10. **Q. This is not written in your application. Your**
11. **application follows this. Because obviously you had seen**
12. **something with him in the news and you thought it quite**
13. **funny.**
14. **MR. BETHELL: My Lord, can we mark that email**
15. **at Tab 24. FCIB-11.**

16. THE COURT: Yes.

17. MR. BETHELL: My Lord, just for the record, I

18. want the record to reflect that I maintain my early

19. position that I am entitled to put these emails through

20. Mr. Major who having either authored, received and have

21. identified receipt of those emails is the person to whom

22. I tender those emails. I just want that reflected on the

23. record.

24. THE COURT: Yes.

25. BY MR. BETHELL:

26. Q. Now, I want you go to your witness statement,

27. Mr. Major. Go to page 15. Page 15, paragraph 101. You

28. say, "When I collected the cheque from Blazer in May 2011

29. I had no knowledge at all about his criminal conduct. I

30. also had no knowledge at all that the cheque was proceeds

31. of his criminal conduct. I had no reason at all to

32. suspect that the cheque was anything other than what he

Page 94 – Lines 1 – 32:

1. said it was, that is, his fees/commission.”

2. Do you still maintain that statement in light

3. of what we have just gone through?

4. A. Yes, I do.

5. Q. Mr. Major, I put it to you that even the most

6. novice of bankers would have flagged this as suspicious

7. activity.

8. A. You lost me there.

9. Q. Here is a man who you have seen in articles as

10. having a session conference dealing with the organization

11. of which he is a senior executive, alleging corruption

12. and bribery. You obviously read something about him that

13. compels you to tell him to stay out of the news. And

14. then you go to New York. You collected the cheque from

15. **him. You bring it down and deposit it, a sizeable**
16. **cheque. And yet you see nothing that should sound any**
17. **bells of suspicion? There is nothing there that would**
18. **alerted you?**
19. **A. At that time.**
20. **Q. No?**
21. **A. At that time, no. In compliance nobody reached**
22. **out to me.**
23. **Q. But you are the relationship manager. Nobody**
24. **should be reaching out to you. You should be screaming**
25. **from the towers.**
26. **A. Uh-huh.**
27. **Q. You agree?**
28. **A. No, I disagree with that statement.**
29. **Q. As relationship manager you are not the one who**
30. **should have set off the alarm?**

31. A. I did set off the alarm.

32. Q. Okay, we will come back to that.

Page 95 – Lines 1 – 32:

1. You are talking about the Integrity Report in

2. 2013. Is that it?

3. A. Yes.

4. Q. So that's the first time you had reason to be

5. suspicious?

6. A. Well that Report was just kind of, laid it out.

7. So yes.

8. Q. Now, just to be certain, is it your evidence

9. that prior to May 2011, you had never picked up a cheque

10. from Blazer in New York or anywhere else?

11. A. Yes.

12. Q. That is your evidence?

13. A. Yes.

14. Q. Can you go to the Defendant's Supplemental
15. Bundle of Documents please?
16. Mr. Major, can you go to the Defendant's Bundle
17. of Documents? Can you turn to Tab 5? Is that a copy of
18. the cheque you received from Charles Blazer?
19. A. That looks like it, yes.
20. Q. And could you turn over the page?
21. Is this your signature on that cheque?
22. A. Yes.
23. Q. Which one?
24. A. Top line.
25. Q. And you would have deposited this cheque on 3rd
26. May, 2011?
27. A. Yes. That's the date of processing.
28. MR. BETHELL: My Lord, can we mark that cheque
29. FCIB-12?

30. COURT: Yes.

31. BY MR. BETHELL:

32. Q. Can you turn to Tab 34 of that bundle? What is

Page 96 – 1 – 32:

1. that document?

2. A. This appears to be what they call the on demand

3. intranet system of the bank.

4. Q. Relating to what account?

5. A. Relating to what account?

6. Q. Yes.

7. A. This shows activity on - -

8. Q. No. I think you are looking at the wrong

9. document. I said at Tab 34.

10. A. Oh, yes. Sorry. I was on the one before.

11. Q. Yes.

12. What is that document at 34?

13. A. This appears to be a screen chart from the bank
14. system.
15. Q. And which account?
16. A. Charles Blazer.
17. Q. Does that reflect the deposit?
18. A. Yes, the 3rd May \$249 - -
19. Q. So why isn't it \$250,000?
20. A. I gather a stamp duty maybe.
21. Q. And this deposit that you would have made?
22. A. Assuming that, yes. No, I am just like in my
23. head like what fees did they take out and why is it, I
24. gather that is the stamp duty or order or something like
25. that.
26. MR. BETHELL: My Lord, can we mark that - -
27. BY MR. BETHELL:
28. Q. And you would have seen this document before?

29. A. Yes. I think you guys shared this with

30. counsel, I think.

31. THE COURT: That's 13?

32. MR. BETHELL: Yes, my Lord.

Page 97 – Lines 1 – 9:

1. THE COURT: Okay. We will resume tomorrow at

2. 10:00 a.m.

3. MRS. ROLLE: Yes, My Lord.

4. THE COURT: We are going to adjourn and the

5. same thing applies. We don't want you to taint your

6. evidence and put yourself in a detriment.

7. THE WITNESS: Yes, my Lord.

8. (Witness stood down)

9. (Matter recessed at 4:00 p.m.)”

[101] There was a series of emails running between the Plaintiff, Edith Sands and Randy Taylor among others regarding Blazer and his accounts and the activities.

[102] Around August 8th, 2011 Edith Sands went into details in an e-mail as to the accounts held and the authorization documents. The Plaintiff then e-mailed Edith Sands and Randy Taylor and gave a breakdown of the amounts earned by Blazer in various years and explained to them, all the payments coming from the FIFA group to Blazer's personal account in US Dollars via the US clearing system. The Plaintiff then confirmed that it was just about two (2) months prior that he had deposited a cheque that he had collected from Blazer in New York.

[103] In this regard, I point out certain discourse from the transcript of May 28th, 2019. Page 11, lines 1 – 32, page 12, lines 1 – 32, pages 26 – 31, lines 1-32 (each page).

Page 11, Lines 1 – 32:

1. Q. Why didn't you inform Compliance of that?
2. A. Because it didn't appear to be a red flag to
3. me.
4. Q. Mr. Major, in November 2010, you are aware that
5. Offshore Alert is holding a conference into corruption
6. and bribery?
7. A. Yes.
8. Q. Charles Blazer told you don't mentioned his name,
9. right?
10. A. Agreed,

11. Q. There's obviously some sort of article comes
12. out because you respond to him saying "stay out of the
13. news laugh out loud, right?
14. A. I'm just trying to think back to the e-mail.
15. That was the one new account, right?
16. Q. Right?
17. A. Okay.
18. Q. And then here it is seven months later or
19. sorry, six months later you collected and deposited a
20. cheque in the background of this corruption conference,
21. two months after depositing the cheque the Deadspin
22. article comes out specifically naming Charles Blazer as
23. having benefitted from bribers and corruption. Your
24. superiors implement a compliance investigation, they
25. bring you in to that investigation because they copied
26. you and asked for your views.

27. A. Agreed.

28. Q. But you fail to disclosed the fact that you

29. collected and deposited a cheque for \$250,000.00?

30. A. I mean agreed. That's what happened.

31. Q. Why didn't you tell them?

32. A. Again as I said before at that point in time

Page 12 – Lines 1 – 32:

1. even with the Deadspin article that Mark described as

2. light hearted remember there was some discussion on

3. Deadspin itself, like is Deadspin a tabloid style news

4. outlet that publishes rumors v it being Wall Street

5. Journal and Wall Street Times.

6. Q. You had discussion with who concerning the

7. Deadspin article?

8. A. That would have been either between myself and

9. **Randy Taylor. I mean there were discussions going on in**
10. **between this gaps and dates.**

11. **THE COURT: Sorry Major, Mr. Bethell asked you,**
12. **he went through the chronology of what had taken place**
13. **including the Deadspin article and the e-mails as**
14. **between you and Mr. Blazer and the e-mails between the**
15. **other members of FirstCaribbean, Edith Sands and Randy**
16. **Taylor etc, etc. What Mr. Bethel, is asking you, in**
17. **light of all of that and you having deposited a cheque**
18. **in the amount of \$250,000.00, he's asking you, didn't**
19. **you thing it was your duty to disclosed to the bank that**
20. **you had been asked to collect the cheque by Mr. Blazer**
21. **and to bring it to Nassau and deposit it to his account.**
22. **he's asking you, if you didn't think you had**
23. **an obligation to disclose that to the bank. That's what**
24. **he's asking you.**

25. **THE WITNESS:** Again I'm just trying to think
26. back what was the mindset what was going on but
27. obviously I didn't do it.
28. **BY MR. BETHELL:**
29. **Q.** My question to you, sir, given your
30. professional obligations of integrity and honesty in the
31. backdrop of this compliance investigation why didn't you
32. do it? You have to answer, you can't move your head or

Pages 26 - 31 – Lines 1 – 32:

1. **MR. BETHEL:** My Lord, I accept that this
2. witness statement goes on for an excess of twenty
3. paragraphs alleging that we or the defendant breach
4. specific guideline.
5. **BY MR. BEHTEL:**
6. **Q.** Mr. Major can you get the Defendant Bundles of
7. Documents.

8. A. The green one or the supplemental?

9. Q. The green one.

10. A. Yes.

11. Q. Can you turn to the Amended Statement of Claim

12. to page 11 - -

13. THE COURT: So, you're back to the Amended

14. Statement of Claim?

15. MR. BETHEL: Yes. But I will be going between

16. the two of them.

17. THE COURT: Where in the Amended Statement of

18. Claim are we?

19. MR. BETHEL: Page 11, paragraph 46.

20. BY MR. BETHEL:

21. Q. Now you have a heading here Mr. Major, "The

22. Meeting of the 28th of May, 2015 – The Interrogation

23. Meeting." Why do you refer to it as The Interrogation

24. Meeting.

25. A. That's my interpretation of the meeting.

26. Q. What give rise to that interpretation, what

27. facts existed to enable to put that interpretation on

28. there?

29. A. That's how I felt. I was being interrogated

30. by two US attorneys.

31. Q. And that would have been Melissa Francis and

32. Mr. Steven Wolowitz?

Page 27 – Lines 1 – 32:

1. A. Yes, sir. Those were the two US attorneys

2. that were interrogating me.

3. Q. Now, if you were to go to the Defendant Bundle

4. of Documents at tab 16, there's an e-mail trail?

5. A. Melissa Francis to me.

6. Q. Starting on Wednesday the 27th of May, 2015 at

7. **11:25 a.m.?**
8. **A. Yes.**
9. **Q. She's asking you to meet with her the**
10. **following day?**
11. **A. Correct.**
12. **Q. And you there's an e-mail tag trying to agree**
13. **a time?**
14. **A. And again committee meetings and stuff was**
15. **just dropped on me.**
16. **Q. And you finally agreed a time for Thursday**
17. **afternoon?**
18. **A. Yes.**
19. **Q. Between 3 – 4?**
20. **A. Yes.**
21. **Q. So, you met on Thursday the 28th?**
22. **A. Yes.**

23. Q. And if you go to the first page of that e-mail
24. thread to the very bottom she said to you - - you would
25. have asked her in the previous e-mail to forward the CFI
26. numbers for the accounts in question?
27. A. Correct.
28. Q. And she said, "yes, she will". And then she
29. sends you one, two, three, four, five , six, seven
30. e-mails CFI accounts?
31. A. There CFI's numbers it does not necessarily
32. means that they are individual accounts. But, yeah

Page 28 – Lines 1 – 32:

1. CIF's.
2. Q. Would I be correct and saying that account
3. number 140746 was Mr. Charles Blazer account?
4. A. I cannot confirm that. I would need to see
5. because there's another section in the computer system

6. that ties in the CIFs number to the customer where you
7. can confirm the name.
8. Q. And when you met with Ms. Francis and Mr.
9. Wolowitz was Ms. Francis taking notes on a laptop?
10. A. No. I remember - - yes, she had a laptop?
11. and lots of stuff was on the deck and Mr. Wolowitz was
12. in the chair with a notepad.
13. Q. So, he was taking notes and she was on her
14. laptop?
15. A. Yes.
16. Q. Were you taking notes?
17. A. I might have been scrabbles?
18. notepad.
19. Q. Do you have those scrabbles?
20. A. No. No, those would be in the banks
21. possession or if they say they don't exist. I don't know.

22. Q. And you produced no notes or transcript from

23. that meeting?

24. A. I don't have access to that information.

25. Q. So, you took notes but you don't have access

26. to them. Is that what you're saying?

27. A. If I took notes?

28. Q. I'm asking did you take notes?

29. A. Yes. I was scabbling certain things on leaf

30. note but I left the notepad when I departed the bank,

31. so, therefore, like, I don't have a reference point

32. then.

Page 29 – Lines 1 – 32:

1. Q. Now going to your Amended Statement of Claim

2. at paragraph 46. Can you tell the Court - - because we

3. were not there. How did that meeting go from when you

4. walked in, what was the format, what was said?

5. A. What was the format?
6. Q. Yes.
7. A. I walked in, I don't remember there was no
8. official for example laid out to say we're going to
9. discussed A, B, C, or D, she was in the corner at a
10. little side deck with her laptop, files, and he was
11. sitting in front of them, in terms of did they say - -
12. Q. Did they give you any instructions, did they
13. give you any guidelines for how the meet would take
14. place? We're trying to find out we were not there.
15. A. Okay. We're here to discuss accounts, some
16. accounts we would like to go over with you and ask you
17. some questions.
18. Q. And she just proceeded in asking questions?
19. A. Yes. She stated that she had a list of
20. accounts and then she proceeded to go through questions

21. regarding those accounts.

22. Q. Now, Mr. Major, let's go to paragraph 46 of

23. your Amended Statement of Claim page 11. You say that,

24. "On or about the 28th of May, 2015, the Plaintiff was

25. called into a meeting thereafter referred to as (The

26. Interrogation Meeting) with Mr. Steven Wolowitz and Ms.

27. Melissa B. Francis, a Partner and Associate respectively

28. in the Law Firm of Messrs. Mayer Brown, FCIB's external

29. United States Attorneys. FCIB, via its said US Attorney

30. mandated that no person could be present at the

31. Interrogation Meeting other than the Plaintiff and the

32. said two (2) Attorneys representing FCIB.

Page 30 – Lines 1 – 32:

1. Messrs. Mayer Brown as the agents of FCIB

2. denied the Plaintiff his rights to have representation,

3. Union, legal or otherwise, during the Interrogation

4. Meeting despite Clause 3.5 of the Code of Discipline and
5. Clauses 19.5.1, 21.1 and 21.2.5 of the Industrial
6. Agreement.”

7. Now, Mr. Major, you just told this Court that
8. you were given no instructions when you walked in, you
9. weren't given any guidelines. She just started
10. questioning you as to the accounts. So, when did these
11. US attorneys mandated you or tell you that you could not
12. have any person present?

13. A. We would have to go back to the beginning of
14. when - -

15. Q. No, we're not going back to the beginning,
16. this here I will read it to you again. “On or about the
17. 28th of May, 2015, the Plaintiff was called into a
18. meeting with Mr. Steven Wolowitz and Melissa Francis US
19. attorneys. FCIB, via its said US attorneys mandated

20. that no other persons could be present at the
21. Interrogation Meeting". And the Interrogation Meeting
22. was the 28th of May.
23. So, when in that meeting that they mandate to
24. you that you could not have any person present?
25. A. This was not the first meeting with Mayer
26. Brown, sir.
27. Q. I put it to you that you have not pleaded any
28. other meetings in this Amended Statement of Claim. Do
29. you agree with that?
30. A. If that's how it is present and if its not,
31. yes.
32. Q. I put it you have only pleaded one meeting the

Page 31 – Lines 1 – 32:

1. Interrogation Meeting with Melissa and Steven. And you
2. said in your Amended Statement of Claim that they

3. mandated that you could not have anyone present. And

4. your evidence prior to that in this Court was they

5. issued you no instructions provided, no guidelines on

6. the meeting they went right into the questioning.

7. So, when during that meeting the 28th of May

8. that they tell you that you could not have anyone

9. present?

10. A. Again we would have to go back to the previous

11. meetings.

12. Q. So, you were not told in that meeting that you

13. could not have anyone present?

14. A. It was - -

15. Q. Were you told in that meeting of the 28th of

16. May, that you could not have anyone present. That's yes

17. or no?

18. A. Was I told? That wasn't even discussed.

19. Q. Thank you.

20. THE COURT: So, you're saying that wasn't even

21. discussed in that meeting, yes or no?

22. THE WITNESS: No, no.

23. BY MR. BETHEL:

24. Q. I would like you to go to the Plaintiff's

25. bundle of documents volume one. My mistake. I need you

26. To look at the Plaintiff bundle of document volume three

27. tab 11.

28. A. Yes.

29. Q. Now, Mr. Major, being employed at

30. FirstCaribbean and earlier Barclays and what's not, is

31. that consider Commercial Banking?

32. A. Is it consider Commercial Banking?

[104] The Plaintiff was questioned extensively on how he sought to mitigate his losses and the best way to compare his answers would be to quote him exactly from the transcript of May 28th, 2019 at pages 33 – 40, lines 1 – 32 of each page and page 41, line 1 only.

Pages 33 – 40:

1. Q. And numeration there is better than the
2. Commercial or?
3. A. It depends but usually especially in the
4. Bahamas, Yeah.
5. Q. Thank you very much. I was wondering about
6. that. Now at tab 11, this is your - - I gather from this
7. here and I'm not that knowledgeable in computers, this
8. is some LinkedIn something or the other?
9. A. Yes.
10. Q. And up here it said "applied jobs 513"?
11. A. Yes.
12. Q. So, that would means that you would have made

13. **513 applications over Lindedin for jobs?**
14. **A. Yes.**
15. **Q. And that would be global?**
16. **A. Bahamas, it's a mix. Like you can see Baha**
17. **Mar is at the top but it's a mix. But yes like all**
18. **companies now have gone this route.**
19. **MR. BETHEL: My Lord, I want to take the witness**
20. **through certain of these - -**
21. **BY MR. BETHEL:**
22. **Q. So, at Tab 11 these little boxes and what not**
23. **would just show the various places that you applied to,**
24. **the 513?**
25. **A. Yeah. Its list and tracks and every time when**
26. **you apply it keeps account.**
27. **Q. And then going to Tab 12?**
28. **A. Yes.**

29. Q. There's a series or varies e-mails of persons

30. that you would have reached out to?

31. A. Yes.

32. MR. BETHEL: My Lord, my Tab 12 is not

Page 34 – Lines 1 – 32:

1. paginated and we've taken the liberty in being more

2. efficient to reprint those - -

3. THE COURT: You mean your Tab 12?

4. MR. BETHEL: No, my learned friend's Tab 12 is

5. not paginated, so, I would have to ask your Lordship, to

6. count pages, so, rather than doing that we just

7. Photocopied it and paginated it. So, if I can just hand

8. it up it will make it so much easier.

9. THE COURT: So, this is actually Tab 12.

10. MR. BETHEL: That's correct. But its just

11. numbered.

12. THE COURT: Yes.
13. BY MR. BETHEL:
14. Q. May I ask you to turn to page 17 that's an
15. e-mail from you to a person call Mr. Hayward?
16. A. Yes.
17. Q. "Greeting from the Bahamas, Senior Director
18. Asian UNHNWI Market Private Banking"?
19. A. Yes.
20. Q. In that e-mail you state, "Dear Mr. Hayward,
21. hope all is well with you. I have a few questions to
22. run about the above mention role. I just apply via
23. LinkedIn but honestly I don't usually get replies by
24. applying this way".
25. So, that statement there "but honestly I don't
26. usually get replies by applying this way." You act that
27. this was not a very efficient means of job seeking?

28. A. It could be challenging but it's the way the

29. industry is going.

30. Q. Isn't the industry going towards Headhunter?

31. A. Yes.

32. Q. Did you do that?

Page 35 – Lines 1 – 32:

1. A. Yes, I tried that.

2. Q. You tried that?

3. A. Yes. And a lot of companies will tell you go

4. on line and apply, its like the way the industry has

5. moved.

6. Q. So, and in looking for jobs outside of Bahamas

7. would you agree that you would have been at a

8. disadvantage because of language barrier you don't speak

9. any other languages?

10. A. No. I don't. A little Spanish but honestly I

11. would have to be like in that environment to be but, no.
12. Q. But when you're looking for jobs in Far East
13. and Middle East that would be a complete waste of time?
14. A. I wouldn't say so, because in a lot of those
15. areas English is still the language of the day, so, that
16. was something in terms of when I would talk with people
17. who work in certain parts of the world they would still
18. say regardless you can be in the Middle Eastern but
19. banking pre say English is still the language.
20. Q. Can you turn to page 21 of that tab.
21. A. Yes.
22. Q. There's an e-mail to a Mr. Ambremum
23. (checked) and said "First have my apologies for the
24. delays its been a roller coaster ride with family
25. issues, greeting from the Bahamas hope all is well with
26. you. How is the financial services in Singapore regarding

27. finding a position similar to my past, i.e. Head of
28. International Banking Wealth Management or Head of
29. International Corporate Banking, also open to small
30. boutique style/family offices.
31. Question regarding Hong Kong. As an English
32. speaker only can one find a position or language barrier

Page 36 – Lines 1 – 32:

1. will always be an issue". So, you were concern about
2. the language barrier?
3. A. Only in Hong Kong.
4. Q. Only in Hong Kong?
5. A. It depends.
6. Q. Would you agree that recutting firms differs
7. and some are much better than others?
8. A. Yes.
9. Q. And just has a mass amount of clients and
10. others are much more restricted and focus on placements?
11. A. Yes. But they're all different.
12. Q. What type of Headhunter firm did you engage?

13. A. Ones that - - well, first. I would try to reach
14. out and ask people within the Industry, who did you use
15. and then they would then throw names out at me, friends.
16. So, it was a different bundle. I did research as well
17. on some of them. So, it's a mix bag, some friends
18. would've referred me to or former clients would say this
19. is who we use when we're looking for something.

20. Q. Can you turn to page 24. This is an e-mail
21. from you to a Ms. Knicks.

22. A. yes.

23. Q. You say. "Dear Ms. Knicks, hope all is well,
24. your background summary on LinkedIn is very powerful
25. presently looking to relocate from the Bahamas and I
26. need your expertise to guide me along the journey.
27. Offshore Banking background of over fifteen years in
28. financial services. Tried working with another firm out
29. of New York but it would appear to me that I am one of
30. thousands in their data base, I'm sure you are busy but
31. would appreciate your guidance".

31. So, this placement firm that you engage firm

Page 37- Lines 1 – 32:

1. you engage had thousands of persons in your opinion and

2. wasn't very helpful. Did you go out and seek another
3. firm?
4. A. Yes. In doing research, so, it's obviously I'm
5. not the only client that they have. And some of them
6. were very ;upright and forthcoming, you know we have a
7. data base of three thousand people in it but we will put
8. you in it and if there's a hit and there's a match that
9. type of thing.
10. Q. So, whilst you're out there looking for a
11. placement outside of the Bahamas, would I be correct in
12. saying that you were employed?
13. A. No
14. Q. Mr. Major I put it to you that you were
15. gainfully employed from 2016 to 2018?
16. A. I mean are you referring to me helping out in
17. my family business?
18. Q. I'm saying you were employed, I don't know?

19. A. I wouldn't classified that as - -

20. Q. So, you say you helped out in your family

21. business?

22. A. Yes.

23. Q. What is that?

24. A. It's a Restaurant, Bar and nightclub.

25. Q. Were you being paid?

26. A. Sometimes.

27. Q. Now, you consider yourself to be an honest

28. person?

29. A. Yes.

30. Q. Would you mislead this court?

31. A. No.

32. Q. Would you mislead others?

Page 38 – Lines 1 – 32:

1. A. Mislead others?

2. Q. Other persons?
3. A. I try not to.
4. Q. Can you turn to page 19 of that bundle. This
5. it an email to Ivan Harper CEO of Winter Bottle Trust
6. Company Limited.
7. A. Yes.
8. Q. And its dated the 26th of July, 2016.
9. A. Yes.
10. Q. And you say, “Hi, Irvine, thanks for including
11. me on your special anniversary celebration. As
12. mentioned a number of consulting projects I am working
13. on are now coming to an end . I’m on the market and
14. would readily appreciate any job opportunities, perhaps
15. we should meet up for a chat when your schedule
16. permits”. So, these consulting projects here
17. are in the bar and restaurant?

18. A. No. These are one - - for example, someone
19. will come, okay, I need help with my business license,
20. so, you help them with their business license. Or
21. someone will say can you help me look at VAT returns.
22. Q. So, why didn't you tell us that earlier when I
23. asked you?
24. A. But that's not full time you asked me if I was
25. employed.
26. Q. I didn't ask you whether it was full time or
27. not. You would've received compensation, right?
28. A. Those were just ad hoc.
29. Q. You would have received compensation, right?
30. A. Yes.
31. Q. Now, can you turn to page two of that bundle,
32. This is an e-mail to some Christal person it doesn't say

Page 39 – Lines 1 – 32:

1. **where its at?**
2. **A. Wiser Capital.**
3. **Q. And its 21st of September, 2017. "Hi Chriser,**
4. **long time, sir, Paul Major here, tall guy ball head.**
5. **Hope all is well, wanted to reach out to you regarding any**
6. **employment opportunities at Wiser. Was working on a**
7. **number consultant projects but looking for more**
8. **stability. Let me know when you have a few minutes to**
9. **chat".**
10. **So, here it is in 2017, you are still working**
11. **on consultant projects?**
12. **A. Okay, when asked.**
13. **Q. Now, can you turn to page 26. This is an**
14. **e-mail of the 13th of June 2018, to Mr. Jesse Morris."**
15. **I'm interested in the head of accounts management job at**
16. **Street ID. I am currently an independent financial**

17. **services consultant”.**
18. **So, hear it is in 2018, you are now a**
19. **financial services consultant?**
20. **A. That’s just a title that I gave to myself.**
21. **Q. So, you weren’t working?**
22. **A. No. In terms of - -**
23. **Q. You were misleading him?**
24. **A. That’s not in terms of misleading I said that**
25. **I am an independent financial services consultant.**
26. **Q. You were suggesting that you were providing**
27. **financial services consultancies in 2018. Is that**
28. **correct?**
29. **A. Yes, I’m agreeing when you look at the**
30. **statement that’s what I said.**
31. **Q. Now, can I ask you to turn to page 36. This**
32. **is an e-mail, 1st of June, 2018, to a Mr. Burstin IWI**

Page 40 – Lines 1 – 32:

- 1. Relationships Management and Business Control Unit from**
- 2. you and you said. “Dear Mr. Burstin, as a Senior**
- 3. International Banking Executive I offer proven success**
- 4. in maximizing productivity in improving project margins.**
- 5. My twenty plus years of work experience spans companies**
- 6. and business units varies stages of growth, including**
- 7. establish British and Canadian Banking groups.**
- 8. Having worked in various roles throughout my**
- 9. career history I’ve had the responsibilities with**
- 10. department such as Transaction Banking, International**
- 11. Corporate Banking, International Primer and Personal**
- 12. Service Banking, Risk and Compliance Scheme,**
- 13. International Mortgage Center, Securities and**
- 14. Investment”. Is that the truth?**
- 15. A. Again one of the Consultancy - -**

16. **Q. Sir, that's not suggest, that said four years.**
17. **And not only that, it said you have been working as a**
18. **Private Consultant to family offices. Now, explain that**
19. **to this court please?**
20. **A. Again it was not as if for example, if you aid**
21. **to me, Paul Major, do you have a contract with ABC, this**
22. **was a case where again if somebody came to me for one**
23. **off project to work on - -**
24. **Q. That one off project expand a few years?**
25. **A. Again there's no specific company name, I just**
26. **listed the types of companies I was working with. I**
27. **don't have for example a contract with this company or**
28. **that company.**
29. **Q. Mr. Major, I'm putting it to you, that you are**
30. **thoroughly dishonest. You've made statements to**

31. completely mislead this court as to your circumstances.

32. Do you agree or disagree with that, sir?

Page 40 – Line 1:

1. A. I disagree.”

[105] The Plaintiff was again questioned regarding Section 55 of the Indictment which was captured via transcript of May 28th, 2019, pages 42 – 57, Lines 1 – 32 of each page and page 58, lines 1 – 3.

1 I was thinking, okay --
2 Q. Pause there. Can you go to the defendant's
3 bundle of document. The green one go to tab 16.
4 A. Yes. Melissa Francis.
5 Q. Yes. There are seven CIFs listed there. Are
6 you saying that none of those accounts or which of those
7 accounts were yours?
8 A. I can't determine because again what I'd
9 mentioned before with this CIF's number I don't know
10 what that means with the CIF's, it should have been
11 included section of the ICBS computer system that
12 confirms who the customer was. So, showing me the CIF's
13 numbers like this I can't even tell you if that was, A,
14 B, C, company or J, B C.
15 Q. When you receive this e-mail couldn't you have
16 looked up those accounts?
17 A. Yes.
18 Q. Did you?
19 A. I'm sure I had somebody else looked it up.
20 Q. And did you indicate when you went into the
21 meeting that this particular accounts is not mines?
22 A. Yes. That came up during the meeting.
23 Q. Was the Blazer accounts yours?
24 A. The Blazer account was one of them. Yes. 4.
25 Q. Was the Blazer account your account?
26 A. The account in question, yes.
27 MR. BETHEL: My Lord, I refer to this e-mail
28 earlier and I neglected to tender it, I like to tender
29 it as FCIB-19.
30 THE COURT: You mean at tab 16?
31 MR. BETHEL: Yes, my Lord.
32 THE COURT: Yes.

(Exhibit FC1B mark and received)

BY MR. BETHEL:

Q. Now during the course of the interrogation as you termed it, were questions put to you concerning the Blazer account?

A. Yes.

Q. Firstly, were you provided with a copy of the indictment in particular or the information in particular Section 55?

A. I was shown a document with the indictment and the page was folded, so, I was reading from a section of something.

Q. Did you read Section 55?

A. Yes.

Q. You did?

A. Yes, sir.

Q. And were questions put to you concerning Section 55?

A. Yes.

Q. And was one of those questions whether you were the representative referred to in Section 55?

A. Representative -- I remember a question --

THE COURT: Were questions put to you concerning Section 55?

THE WITNESS: Yes.

BY MR. BETHEL:

Q. Perhaps we should look at Section 55. If you can turn to paragraph 34 of your Amended Statement of Claim.

A. Yes.

Q. You have it?

A. Yes, I do.

1 Q. Let's look at what that says. "The third
2 payment, in the amount of \$250,000, were made by a
3 cheque drawn on the account held in the name of CFU in a
4 bank in the Caribbean. The cheque delivered to Blazer
5 by another individual who travelled by airplane from
6 Trinidad and Tobago to John F. Kennedy International
7 (JFK) Airport Queens, New York, and then to CONCACAF's
8 headquarters in New York, New York, where he delivered
9 the cheque to BLAZER. A representative of
10 FirstCaribbean International Bank in the Bahamas, where
11 BLAZER held another account, subsequently traveled by
12 airplane to New York, landing at JFK Airport."

13 Pausing there would you agree with me that
14 that doesn't anywhere say that the person traveled from
15 Nassau to JFK?

16 A. No. It just simply said that the person came
17 via plane landing in New York.

18 Q. Correct. And they speak about a
19 representative and not a person, correct?

20 A. Yes, sir.

21 Q. Not a courier?

22 A. No. Agreed.

23 Q. There's no mention of a courier?

24 A. Yes.

25 Q. And then said after "arriving the Bank
26 representative traveled to New York, New York", where he
27 took custody of the cheque, "he subsequently traveled to
28 the Bahamas and on or about May 3rd, 2011, deposited the
29 cheque into Blazer account. Correct?

30 A. Yes.

31 Q. And you were questioned regarding this
32 paragraph?

1 A. Well, yes.

2 Q. And I put it to you, sir, that you were
3 specifically asked whether you were the representative
4 referred to in that paragraph? Think carefully Mr.
5 Major.

6 A. With their line of questioning and where they
7 were going, yes, that's where they were going with it.

8 THE COURT: No, no. Mr. Bethel asked you -- he
9 put it to you if you were specifically asked if you were
10 that person --

11 MR. BETHEL: That representative.

12 THE COURT: That representative?

13 THE WITNESS: Yes.

14 BY MR. BETHEL:

15 Q. Yes, and that you were, that question was
16 asked of you?

17 A. Yes.

18 Q. Can you go to paragraph 49 of your Amended
19 Statement of Claim?

20 A. Yes.

21 Q. It said, "During the interrogation Meeting the
22 Plaintiff was questioned by FCIB's US attorneys on a
23 number of issues with questions (hereinafter referred to
24 as the Blazer Related Questions) including though not
25 limited whether the Plaintiff had ever travelled to
26 Trinidad & Tobago, whether the Plaintiff was "courier"
27 for Blazer and whether the Plaintiff had ever received
28 gifts from Blazer. The Plaintiff answered in the
29 negative to each of these specific Blazer Related
30 Questions.

31 During the interrogation Meeting FCIB's
32 Attorneys had a copy of a cheque in the amount of

1 \$250,000 which had been deposited to the Blazer Account
2 on the 3rd May, 2011 (hereinafter referred to as "The
3 Blazer Cheque") and asked the Plaintiff whether he had
4 signed the endorsement stamp at the back of Blazer
5 Cheque. In response to this question the Plaintiff
6 stated that the Blazer Cheque would have been endorsed
7 by either himself or his Assistant, that the deposit was
8 in line with the Blazer Account Profile and that the
9 funds were to be used to satisfy Blazer's commitments
10 under the Blazer Mortgage. The Plaintiff also pointed
11 out that at the time of the deposit there was nothing
12 suspicious about Blazer or his banking activity with
13 FCIB".

14 Now, is there any reason why this does not
15 indicate that you were asked whether you were the
16 representative in Section 55 of the information?

17 A. Is there any reason why?

18 Q. Yeah. You did not plead that because that was
19 the trust of the article, there's nothing in the article
20 about Trinidad & Tobago transcript and courier etc. Now,
21 can I ask you to go to the same green bundle at tab 17.
22 Do you have that?

23 A. Yes.

24 Q. You would have seen this before?

25 A. Yes.

26 Q. Did you read it?

27 A. Yes.

28 Q. Is there anything in this note of the
29 interview that you disagree with?

30 A. Yes.

31 Q. What in particular?

32 A. There was questions during the meeting as to

1 why I listed Blazer on my list of the accounts from
2 Mayer Brown review and going back to the document that
3 Sherilyn had sent out with those e-mails and Brian
4 Clarke had sent out asking the staff prior to them
5 coming down what accounts you want them to review.

6 So, during the meeting Melissa said that one
7 of my staff Robin Knowles had listed the account because
8 she remember Blazer requesting a bunch of statements for
9 x amount of years. I said, okay, that's fine and well.
10 But I said the reason why I listed him was for the
11 Integrity Report. And I even offered to go and get the
12 report for her because I said when I printed it a couple
13 of years ago I still have a copy of it sitting in my
14 tray on my desk because at one point she said that she
15 couldn't find the Integrity Report and she asked me if
16 it still out there and I said I have a copy on my
17 officer desk and she said, no, no, she will -- so, that
18 line of question -- I mean that's not even here.

19 Q. My question to you was, did you read this
20 report and you said you did?

21 A. Yes, I did.

22 Q. And I asked you what aspect of this report do
23 you disagree?

24 A. Yes, that aspect.

25 Q. Well, if its not in here how can you disagree
26 with it?

27 A. This is what I'm saying. It missing that
28 whole section of conversations we had.

29 Q. So, the section related to the Integrity
30 Report is missing?

31 A. Correct.

32 Q. Okay, that's one. What else?

1 A. This part.

2 Q. Which part?

3 A. Its something [REDACTED], and then it says

4 "unprompted, PM mentioned that he knew about a large

5 wire transfer [REDACTED] of over \$1 million that was

6 made the same week that he made the penalty payment to

7 the IRS".

8 I don't agree with that.

9 Q. You don't agree with the fact that --

10 A. That was not discussed in the meeting and I

11 didn't bring that up, my memory is not that good.

12 Q. And you have no notes -- contemporaneously

13 notes of the meeting?

14 A. Had I had known that I definitely would have

15 taken them. So, that I don't agree with. Again

16 following under that she asked me about a Deadspin

17 article and I told them, yes, I do remember the article

18 not the details of it but just the name Deadspin jumps

19 out at you. If my memory is correct I do remember

20 having telling them about the phone conversation with

21 Anna McLean, the section about -- its not numbered.

22 Q. The first page or the second page?

23 A. The second page.

24 Q. Which bullet point?

25 A. The third bullet point.

26 Q. Starting "PM acknowledged"?

27 A. "That a decision not to exit what would have

28 been made by Compliance and that such a decision would

29 have been made, if at all on the business side". That

30 statement there is not correct. This part to the bottom

31 last bullet point, it states. "On Tuesday May 26, 2012,

32 a day before the new broke about what Carol Ann

1 Beckles-Paul, who works in receivables in Trinidad --
2 Q. So, that isn't correct?
3 A. I'm trying to remember that e-mail, Carol Ann
4 Beckles in Trinidad -- that I don't recall. I'll have to
5 see the e-mail.
6 Q. On the third page in, the page that starts at
7 to top "according to PM"?
8 A. Yes.
9 Q. If you go down to the third bullet point,
10 "were you". You see that?
11 A. Yes, I see that.
12 Q. It said "were you the bank representative
13 referred to in Paragraph 55? When asked this question,
14 he said "I'll have to look at my records." He began to
15 think aloud and wondered whether he might have been
16 handed something in an envelope. After a pause, PM
17 began to speculate about other's who might have made
18 such a trip, but he was quickly advised that he had
19 signed a Large Transaction Report that effected the
20 deposit of the \$250,000 cheque that perfectly matches
21 the description of the cheque described in Paragraph 55
22 of the information, on which he had attested that the
23 deposit was in line with the account's stated
24 objectives. It was also brought to the attention that
25 the bank representative was referred to in Paragraph 55
26 as "he" and that Paragraph 55 left open the possibility
27 that the representative may have traveled to New York
28 from somewhere other than the Bahamas."
29 Now, were you asked whether you were the bank
30 representative?
31 A. There was a series of questions, which was
32 dancing around it or leading up to it.

1 THE WITNESS: To the date.
2 THE COURT: No. What was the question put to
3 you. For you to respond "I suppose it was me."
4 THE WITNESS: Identifying the individual --
5 THE COURT: The representative?
6 THE WITNESS: In the indictment.
7 THE COURT: No, no.
8 THE WITNESS: Yes, the representative.
9 THE COURT: So, are you saying then that you
10 were asked whether you were the representative?
11 THE WITNESS: Yes, okay.
12 BY MR. BETHEL:
13 Q. You were asked whether you were the
14 representative?
15 A. Yes.
16 Q. So, why did you answered "I suppose it was
17 possible it was me when you knew for certain that it was
18 you?
19 A. Again I wanted to double check my records to
20 confirm dates.
21 Q. But Mr. Major, you knew that you collected a
22 cheque in New York from Charles Blazer, you returned to
23 Nassau and you deposited that cheque of the 3rd of May?
24 A. I'm sorry.
25 Q. I asked you, why did you answer "I suppose it
26 possible it was me when you knew for a certain that you
27 had collected a cheque and had deposited that cheque on
28 Mr. Blazer's account on the 3rd of May?
29 A. Yes, I did.
30 Q. If you knew that why didn't you say to the two
31 lawyers that person is me?
32 A. As I said before I just wanted to confirm

1 timelines that's all.
2 THE COURT: I just want to ask a question for
3 my clarification. The copy of the cheque is at which
4 tab?
5 MR. BETHEL: Tab five of that same bundle.
6 THE COURT: And I think over the page --
7 MR. BETHEL: He said that the top signature is
8 his.
9 THE COURT: Was this shown to Mr. Major during
10 the interrogation meeting?
11 THE WITNESS: No. She was looking for it she
12 said she could not find it and then they were giving me
13 verbal statements back, you signed this or your
14 assistance did this. And again so, no document was
15 actually shown to me she was digging up through papers
16 on her desk but she never presented it.
17 BY MR. BETHEL:
18 Q. Now, if you would turn over the page please.
19 It will be the final page of that interview. At the
20 top, "PM was then asked whether he had met with the
21 Account Holder which is Chuck Blazer often in New York."
22 PM replied. "Not like that. PM then mentioned a time
23 that he happened to run into Chuck Blazer on the street
24 in New York."
25 A. Yes.
26 Q. When that question was asked of you why didn't
27 you indicate to them that you had gone to Blazer office
28 and collected the cheque? Mr. Major you keep doing your
29 hand like this. I don't know what that
30 means(indicating). That's a straight forward question.
31 A. Whether I met with the client often in New
32 York --

1 Q. PM was asked whether he met with --
2 A. Is AH a code?
3 Q. AH is Account Holder.
4 A. Okay. I wasn't provided with the key to this
5 memo, so, I don't know.
6 Q. The Account Holder they were talking about was
7 Chuck Blazer and you were being asked questions about
8 Chuck Blazer weren't you?
9 A. Correct.
10 Q. And you were asked whether you had met with
11 him at his office in New York?
12 A. How I met with him at his office in New York.
13 Q. And you replied "Not like that. Paul Major
14 then mentioned a time when he happened to run into Chuck
15 Blazer on the streets in New York." You remember
16 telling them that?
17 A. Yes.
18 Q. My question to you, why didn't you also tell
19 them you had visited his office and collected a cheque?
20 A. I mean I did not.
21 Q. Is there a reason why you did not?
22 A. Again thinking back I can't recall.
23 Q. And then PM was asked "Whether he had a
24 telephone conversation with Chuck Blazer in which Chuck
25 Blazer asked him to come to New York to pick up a
26 cheque. PM said he did not recall." And then they
27 asked" -- do you recall being asked that?
28 A. Yes.
29 Q. Is that an accurate reflection of your answer?
30 A. The Account Holder never asked me to come to
31 New York to pick up a cheque.
32 Q. Mr. Major, but my question is, when asked that

1 question was your response that you did not recall?
2 A. Might have been.
3 Q. And then "PM was then asked, if there was such
4 a telephone conversation, whether it might have been on
5 his cell and PM said that if Chuck Blazer had call it
6 was most likely to PM office line number."
7 Do you recall that?
8 A. Yes.
9 Q. And would that been your answer?
10 A. On office phone, cell phone. Yes, that would
11 have been my answer, we would talk in the office.
12 Q. But the truth of the matter is Blazer called
13 you on your cellphone to come to his office to collect
14 the cheque, isn't that correct?
15 A. Yes.
16 Q. So, why didn't you indicated that to the two
17 lawyers that he sometime called you on your cellphone?
18 A. I wasn't thinking at the time.
19 Q. Do you have any idea as to how Blazer would
20 have known that you were in New York?
21 A. My out of office e-mail would have been on if
22 he sent an e-mail, bounce back, if he would have called
23 my office line it would have said that I'm out of
24 office, if he would have contacted my assistance --
25 Q. She would have said your in New York, you were
26 in Hungary, where?
27 A. I don't know but if he had contact with my
28 assistance or the receptionist and they knew my
29 whereabouts. I means it's a lots of variables.
30 Q. Did you and Blazer have this prearranged that
31 you would stop on your way back to Hungary to collect
32 the cheque?

1 A. Prearrange, no.

2 Q. Its just a coincidence that you happen to be
3 in New York on that very day that he called?

4 A. Again, did he contact my office, did he send
5 be an e-mail, did it bounced back, did he contact -- I
6 don't know I can't answer that.

7 Q. Now, the final bullet point on that page. "On
8 his way out the door PM's parting remark was: "You
9 really know have to shake a person."

10 Did you say that?

11 A. Yes. Because I had a flight to catch, so, in
12 that meeting at the back of my head I'm gonna miss my
13 flight I'm just trying to get this over and done with
14 and leave.

15 Q. Now, can you go to your Amended Statement of
16 Claim, page 15, paragraph 63?

17 A. Yes.

18 Q. It reads. "In June, 2015, subsequent to the
19 Plaintiff termination of employment as hereinbefore
20 pleaded, FCIPB's Chief Executive Officer Mr. Douglas
21 "Rik" Parkhill at a Town Hall Meeting held in Grenada
22 stated words to the effect of 'unfortunately we had a
23 staff member that travelled to New York to collect the
24 cheque mentioned in the press'. The statement was made
25 in response to a question put to Mr. Parkhill by a FCIB
26 member."

27 Were you present in Grenada to hear that
28 statement?

29 A. No.

30 Q. That was just reported to you by someone?

31 A. No, I got a phone call.

32 Q. And isn't it true that a staff member of FCIB

1 did traveled to New York to collect the cheque?
2 A. Yes.
3 Q. So when you met with the two lawyers on the
4 28th of May, did you feel that an investigation was
5 being conducted?
6 A. The entire Mayer Brown project.
7 Q. I'm only speaking about the 28th of May, sir.
8 A. Yes, to the answer of your question.
9 Q. You were asked questions?
10 A. Yes.
11 Q. How long did that interview take?
12 A. I don't know.
13 Q. You don't know?
14 A. I mean -- I would have to go back to what was
15 the agreed time.
16 Q. Three to four, an hour?
17 A. It could have been an hour it could have been
18 less.
19 Q. Longer?
20 A. I honestly don't --
21 Q. I'm going to ask you turn to page 27 of your
22 Amended Statement of Claim. Do you have it?
23 A. Yes.
24 Q. Paragraph kk. It's the heading "The
25 Plaintiff's Termination was Premature and driven by
26 Improper Motives:
27 You said "The Plaintiff's dismissal in the
28 midst of the FCIB investigation without resort to the
29 option of Suspension pending the determination thereof
30 as provided for in the Code of Discipline was improperly
31 and hastily driven inter alia by the publicity
32 surrounding the FIFA and Blazer Scandals commencing with

1 the First Tribune Article and by perceived external
2 regulatory pressure and ramifications emanating from its
3 own mishandling of the Blazer Account and the Blazer
4 Mortgage and related Compliance deficiencies."

5 Now, why do you say that the termination was
6 premature?

7 A. I was never given a change to -- I'll start
8 again. Usually in most cases with the bank and I've
9 been through HR Training and Industrial Training when
10 we're dealing with such matters we present the specific
11 allegation to the staff. So, never before in my
12 training in the bank I've ever had to terminate or
13 suspended an employee without having them know exactly
14 what was going on.

15 So, like if I had to discipline someone or had
16 to fire someone you will bring them in, okay, John Doe
17 this in an incident going on, this is what we've found
18 tell us your side of the story kind of thing.

19 Q. Are you telling this court you didn't know why
20 you was terminated?

21 A. During the termination meeting I asked Marie
22 Rodland-Allen more than one occasion tell me what I do.
23 I specifically asked her that question and all Marie
24 kept on saying "on the advise of counsel I can't
25 comment, on the advise of counsel I can't comment."

26 Q. And didn't the termination letter said as it
27 relates to your conduct relating to Blazer and the US
28 person policy?

29 A. Yes, it stated that but she wouldn't elaborate
30 what that ment.

31 Q. Did that need elaboration?

32 A. Yes.

1 Q. You are of the view when the US Person Policy
2 wasn't in practice, right?
3 A. Agreed.

[106] The Plaintiff claims:

1. **UNFAIR DISMISSAL**
2. **WRONGFUL DISMISSAL (in the alternative)**
3. **BREACH OF CONTRACT**
4. **SLANDER**

UNFAIR DISMISSAL:

[107] The Plaintiff asserts that he has a right not to be unfairly dismissed. The grounds of which are particularized at paragraph 95 of his SOC. in a nutshell, can be summarized as;

1. **FCIB FAILED TO PARTICULARIZE THE “CONDUCT” IT RELIED ON FOR THE PLAINTIFF’S DISMISSAL**
2. **FCIB BREACHED THE AUDI ALTERAM PARTEM RULE OF NATURAL JUSTICE and SECTION 19.5.1 OF THE INDUSTRIAL AGREEMENT.**
3. **FCIB ACTED WITHOUT RIGHT AND AUTHORITY WHEN IT DISMISSED THE PLAINTIFF.**
4. **THERE WAS NO LEGAL BASIS FOR THE TERMINATION;**

5. FCIB DENIED THE PLAINTIFF HIS RIGHT OF REPRESENTATION;
6. FCIB FAILED TO COMPLY WITH THE ESTABLISHED DISCIPLINARY PROCEDURES;
7. THE FCIB INVESTIGATION WAS UNFAIR AND UNREASONABLE;
8. THE TERMINATION WHICH WAS STARTED BY FCIB TO BE BASED ON "CONDUCT RELATED TO BLAZER" WAS DISPROPORTIONATE TO FCIB'S OWN INDIFFERENCE TOWARDS BLAZER'S CRIMINALITY AND VIOLATION OF US TAX LAWS AND THEREBY EXCESSIVE;
9. THE PLAINTIFF'S TERMINATION WAS PREMATURE AND DRIVEN BY IMPROPER MOTIVES and
10. FCIB DID NOT FOLLOW THE "SPIRIT OF FAIRNESS" and "RESPECT FOR EMPLOYEE RIGHTS" WHICH WERE ENSHRINED BY SECTIONS 19.1 and 19.2 OF THE INDUSTRIAL AGREEMENT.

[108] During the interrogation meeting the Plaintiff was not only asked about his travel to Trinidad; being a courier for Blazer and receiving gifts from Blazer as asserted. The interview Memorandum sets out very pointed questions relating to Blazer's relationship with the Plaintiff, an example is:

- **“Information: [Note: For this next part of the interview, there were extensive periods of silence as PM repeatedly looked at Paragraph 55 of the Information that was put in front of him, and he was obviously deep in thought for fairly extensive periods of time; PM never expressly admitted nor denied that he was the “bank representative” referenced in Paragraph 55: throughout the portion of the interview pertaining to the Information, PM’s demeanor exhibited concern and nervousness.]**
 - ***So, with regard to yesterday’s news of his indictment, we got a copy of it and wanted to show it to you. Take a look at paragraph 55 on pages 23-24 and then I’ll ask you a question: It says there that: - “A representative of [FCIB] in the Bahamas, where 140746 held another account, subsequently traveled by airplane to New York, landing at JFK Airport. After arriving, the bank representative traveled to New York. New York, where he took custody of the [\$250,000] check. He subsequently traveled***

to the Bahamas and, on or about May 3, 2011, deposited the check into 140746's account."

- **After he read paragraph 55 of the Information, his first words were:
"HMMMMM ... Wow" and he appeared both very concerned and shaken. He said that he had read some articles about the "indictment" (referring to the Information), but that he had not read the actual document.**
- **Were you the "bank representative" referred to in Paragraph 55? When asked this question, he said "I'll have to look at my records." He began to think aloud and wondered whether he might have been handed something in an envelope. After a pause, PM began to speculate about potential others who might have made such a trip, but he was quickly advised that he had signed a Large Transaction Report that effected the deposit of the \$250,000 check that perfectly matches the description of the check described in Paragraph 55 of the Information, on which he had attested that the deposit was in line with the account's stated objectives. It was also brought to attention that the "bank representative" was referred to in Paragraph 55 as "he" and that Paragraph 55 left open the possibility that the**

representative may have traveled to New York from somewhere other than the Bahamas.

- **PM was asked a few questions designed to refresh his recollection as to whether he was the “bank representative” referred to in Paragraph 55 of the Information.**
 - **Whether at the time in question he had traveled through New York via JFK Airport; and**
 - **Whether he was returning to the Bahamas from abroad via JFK Airport.**
- **PM pondered these questions and then said “I suppose it’s possible it was me.”**
- **PM was asked if there was anything that could clarify for him whether the bank representative described in Paragraph 55 was him. His response was: “I’ll need to check my emails,” a comment he made repeatedly throughout the interview.”**

[109] I am satisfied in my mind that the questions put to the Plaintiff as set out above were extremely direct and patently clear. The Plaintiff had every opportunity to be honest in answering the questions. If he wasn’t certain as to the answers, he was given an opportunity to go off and refresh his memory and get back to Ms. Francis and her colleague. This was not done.

[110] What is referred to as the interrogation interview was in fact in the Court's opinion the beginning of the investigation. I have set out already the redacted Minutes of that meeting. In a nutshell the Court has been asked to adjudicate on unfair dismissal, wrongful dismissal, breach of contract and a claim for slander. Remedies being sought are damages for unfair dismissal, future loss of earnings, breach of an implied term (stigma damages), assessment for loss of future earnings and damages for defamation.

UNFAIR DISMISSAL:

[111] The Plaintiff relies in the first instance on Section 34 of the Employment Act 2002 which provides:

“34. Every employee shall have the right not to be unfairly dismissed, as provided in Sections 35 to 40, by his employer.”

[112] Further, in addition to every employee not to be unfairly dismissed as provided for in Sections 36, 37, 38 and 40, Section 35 clearly states that subject to Sections 36 – 40 which is now referred to as “statutory unfair dismissal” **THE QUESTION WHETHER THE DISMISSAL OF AN EMPLOYEE WAS FAIR OR UNFAIR SHALL BE DETERMINED IN ACCORDANCE WITH THE SUBSTANTIAL MERITS OF THE CASE (see B.M.P. LIMITED D/B/A/ CRYSTAL PALACE CASINO V. YVETTE FERGUSON CA IndTrib App No. 116 of 2012. (para 37).**

[113] The Plaintiff claims that the Defendant failed to particularized the conduct relied on. Section 4.2.3 of the Code of Discipline provides:

“4.2.3. GROSS MISCONDUCT:

Gross Misconduct is defined as any serious breach of the law, Bank policy, regulation or procedure which is so severe it exposes the bank, its customers and/or its employees to serious risk. Employees WILL BE SUMMARILY DISMISSED (i.e. dismissed without notice or pay in lieu of notice) for Gross Misconduct.

[114] Section 33 of the Employment Act provides:

“33. An employer shall prove for the purposes of any proceedings before the Tribunal that he honestly and reasonably believed on a balance of probability that the employee had committed the misconduct in question at the time of the dismissal and that he had conducted a reasonable investigation of such misconduct except where such an investigation was otherwise unwarranted.”

[115] The Plaintiff denied that there was a US Person's Policy in place in 2005, which would have fixed him with any notice of the prohibited action he engaged in by accepting a cheque on US soil. This denial is in no way accepted by this Court as the evidence of the existence of such a code is patently clear. The Plaintiff was copied in several e-mails in reference to the US Person's Policy in 2005 and onward. I have set those out at paragraph 123.

[116] In the interview the Plaintiff was specifically asked whether he was the Bank Representative referred to in the information. He never answered definitely at any time, but chose to be evasive in his answers. However, he, later admitted during the trial that it was in fact him. In the transcript of May 28th, 2019, page 51 at lines 13 – 15 it states;

“12: BY MR. BETHEL:

13. Q. You were asked whether you were the

14. representative?

15. A. Yes.”

[117] I hasten to add the following from the same transcript pages 53 (lines 6 to 32) and 54 (lines 3 – 18.

6 Q. The Account Holder they were talking about was
7 Chuck Blazer and you were being asked questions about
8 Chuck Blazer weren't you?
9 A. Correct.
10 Q. And you were asked whether you had met with
11 him at his office in New York?
12 A. How I met with him at his office in New York.
13 Q. And you replied "Not like that. Paul Major
14 then mentioned a time when he happened to run into Chuck
15 Blazer on the streets in New York." You remember
16 telling them that?
17 A. Yes.
18 Q. My question to you, why didn't you also tell
19 them you had visited his office and collected a cheque?
20 A. I mean I did not.
21 Q. Is there a reason why you did not?
22 A. Again thinking back I can't recall.
23 Q. And then PM was asked "Whether he had a
24 telephone conversation with Chuck Blazer in which Chuck
25 Blazer asked him to come to New York to pick up a
26 cheque. PM said he did not recall." And then they
27 asked" -- do you recall being asked that?
28 A. Yes.
29 Q. Is that an accurate reflection of your answer?
30 A. The Account Holder never asked me to come to
31 New York to pick up a cheque.
32 Q. Mr. Major, but my question is, when asked that

[118] It becomes very clear that the Plaintiff did not co-operate fully with his employer when the employer sought to do the right thing by carrying out an investigation, which would have given the Plaintiff the opportunity to be heard. It is clear that he is the reason for his own demise.

[119] The law is clear. Just as an employer is expected to comply with the applicable terms and conditions he has put in place for events such as these, likewise the employee is obligated to co-operate.

[120] In the Code of Conduct at 5.6 under the rubric "INTERNAL INVESTIGATIONS" it provides:

"To uphold our commitment to stakeholders, it is necessary for FirstCaribbean at times to conduct internal investigations.

WE HAVE A DUTY TO COOPERATE FULLY WITH INTERNAL AUDIT AND CORPORATE SECURITY, LEGAL AND COMPLIANCE, HUMAN RESOURCES AND OTHER AREAS OF FIRSTCARIBBEAN THAT AUDIT, TEST OR INVESTIGATE ISSUES WITHIN FIRSTCARIBBEAN.

WE ARE PROHIBITED FROM OBSTRUCTING, DELAYING OR PREVENTING SUCH AN INVESTIGATION".

[121] The above code is applicable to ALL EMPLOYEES.

[122] Throughout the cross-examination of the Plaintiff the very same evasive approach expressed in what he termed the interrogation meeting was displayed from the witness box. I found the testimony of the Plaintiff to be somewhat dishonest in several respects. The critical display of dishonesty came when the Plaintiff sought

to maintain that there was no US Persons Policy in place when he collected the \$250,000.00 cheque on US soil.

[123] This position taken by the Plaintiff is strongly rejected in light of the following:

From: Bain, Ken <IMICEADK-G-CIB_COU=SCIBOBS_ON=SECURITY_ON=BAIRN@cibfcib.com>
Sent: Wednesday, December 14, 2005 11:39 AM
To: Munnings, Timothy; Higgs, Audley; Bonamy, Steve; Carey, Ingrid; Cartwright, Bernadette.; Darville, Katrice; Ferguson, Phelan; Gibson, Dorothy; Knowles, Rob; Lowe, Collie, Antoinette; Major, Paul; Cartwright, Tonia; Smith, Christine S. (Ban); Sullivan, Tonya; Thompson, Immalasha; Thompson, Matedas; Watson-Smith, Sheila; Woods, Daphne
Subject: FW: US Persons Policy
Attachments: US -FCIB policy [enh rev] 26.10.05.doc

Dear All:

Please see below. Please ensure you read this.

Audley: You have a copy. Please ensure the team reads.

Ken

-----Original Message-----

Malcolm
December 12, 2005 11:10 AM
Carey, Dawson, Ken; Bain, Ken; Freeman, Benjamin; Griffiths, Bob; McIntyre, Mark I.; St. Hill, Mark
Cartwright, Antoinette; Hoyos, Ella
US Persons Policy

Guys

I have posted this onto our Intranet site, which as you know I have also updated. The specific section on US Persons is at the below link which is part of the wider International Wealth site [also noted below] [now aligning our external website also]

- US Persons link <http://insidefirst/westindies/fcib/homepages/Intl/docs/US%20Policy.htm>
- International Wealth Management Intranet site http://insidefirst/westindies/fcib/homepages/Intl/intl_home.htm

I have also attached a word document of the US Persons Policy.

Can we make sure all staff read and note the contents and advise me when this has been done. I will diarise for end of January to follow through on this.

As always any questions arising let me know. I have advised both Anna McLean and Mary Burke on this as a more wider note should follow. However ahead of this I wanted to make sure our Policy on US Persons was in our shop and known by our teams

Ken - please make sure Bob sees when he is back

Thanks team

Malcolm Whetnall ACIB MSI (IAC CEMAP)

From: Blyden, Marion <IMCEAEX-_O=CIBC_OU=SCCB0008_CN=RECIPIENTS_CN=BLYDENM1@cibcfib.com>
Sent: Thursday, October 12, 2006 2:52 PM
To: Mahon, Janet; Ebanks, Frank; Major, Paul; Carey, Ingrid
Subject: RE: Information Required

Hi Janet,

You can find a copy of the US person Policy on the intranet.

Under "Manuals" click on international and you will find it there (under manuals)

Give my a call if the above is unclear.

With Kind Regards,

Marion A. Jefferson-Blyden, MBA
International Premier/Personal Manager
International Wealth Management
FirstCaribbean International Bank (Cayman) Ltd
Road Town, Tortola, British Virgin Islands

☎ Phone: 284-494-2171 Ext. 2196 ☎ Fax: 284-494-7405
E-mail: marion.blyden@firstcaribbeanbank.com
Client Care: Care@firstcaribbeanbank.com
website: www.firstcaribbeanbank.com

-----Original Message-----

net
October 12, 2006 2:53 PM
on; Ebanks, Frank; Major, Paul; Carey, Ingrid
mation Required

Hi Guys

Does anyone have the communication re speaks about the prohibiting of the sale of securities to US citizens? I can't find it anywhere. Help!

Janet Mahon (Miss)
International Premier/Personal Manager
FirstCaribbean International Bank (Offshore) Ltd
Rendezvous, Christ Church, Barbados, BB15006
Tel: 246 430-3533
Fax: 246 429-4785
Corporate Website: www.firstcaribbeanbank.com

From: Major, Paul
Sent: Wednesday, November 10, 2010 2:27 PM
To: St. Hill, Mark
Subject: RE: Private Banking Latin America - Miami

thanks

From: St. Hill, Mark
Sent: Wednesday, November 10, 2010 3:26 PM
To: Major, Paul
Subject: RE: Private Banking Latin America - Miami

Paul

My apologies for not realizing your ask to attend. I did note the email.

Approved..

Regards

Mark

Mark St.Hill
Director, International Corporate Banking
Corporate Investment Banking
FirstCaribbean International Bank
Tel: (246) 367-2036 Fax: (246) 425-0770
E-mail: mark.st.hill@firstcaribbeanbank.com

FirstCaribbean International Bank is a member of the CIBC Group

From: Major, Paul
Sent: Wednesday, November 10, 2010 4:16 PM
To: St. Hill, Mark
Subject: Private Banking Latin America - Miami
Importance: High

Hi Mark,

The following was sent to you a few weeks ago.

Terah Rahming (MD/President of Premier Fund Services – rep for Cerberus Private Equity from NY) will be attending the session on Monday and I am requesting Monday away from work to attend the seminar at the my expense. She is setting up some meetings on the weekend and wants me to come along with her.

Thanks

Sent: Wednesday, November 10, 2010 2:22 PM
To: Major, Paul
Subject: RE: Test
Importance: High

Dear Paul,

Please find the updated agenda attached in the e-mail.

The conference ~~Private Banking Latin America~~ will be taking place in Miami - November 15th - 17th in the ~~morning~~.

Agenda: <http://www.terrapinn.com/2010/pblatam/data/tm30.pdf>

In case you decide to register on-line, I kindly ask you to use the registration link below. It comes to my attention and secures the best price.

Registration link: <https://secure.terrapinn.com/V5/rCalc.aspx?E=3485&DS=2160> (Please use voucher code: TM 30.)

If you have any question regarding the conference, please let me know.

Kind Regards,

Anny Gomes

terrapinn use your brain

Anny Gomes
Account Executive
Terrapinn Inc, USA
96 Spring Street
New York
NY 10012
Tel: +1 646 619 1803
Email: anny.gomes@terrapinn.com
LinkedIn: <http://www.linkedin.com/pub/anny-gomes/15/2a0/40a>

From: Major, Paul [mailto:Paul.Major@firstcaribbeanbank.com]
Sent: Wednesday, November 10, 2010 2:22 PM
To: anny.gomes@terrapinn.com
Subject: Test

This email has been scanned by the MessageLabs Email Security System.
For more information please visit <http://www.messagelabs.com/email>

From: St Hill, Mark <Mark.St.Hill@cibcfib.com>
Sent: Wednesday, November 10, 2010 7:55 PM
To: Major, Paul
Subject: Re: Private Banking Latin America - Miami

Paul

Please give me a call on this as we have to be very careful of our US policy and being seen as doing business in the US.

We have gotten ourselves in trouble in the past with advertising at conferences and business meetings in the US.

Call me in the morning.

Mark

"Internet communications are not secure and therefore FirstCaribbean International Bank does not accept legal responsibility for the contents of this message. Although FirstCaribbean International Bank operates anti-virus programmes, it does not accept responsibility for any damage whatsoever that is caused by viruses being passed. Any views or opinions presented are solely those of the author and do not necessarily represent those of FirstCaribbean International Bank. If this email has not reached the intended recipient, please disregard and delete the message."

From: St. Hill, Mark
To: Major, Paul
Sent: Wed Nov 10 16:50:23 2010
Subject: RE: Private Banking Latin America - Miami

Paul

Whilst I would have to go to Mahes for the airline travel etc and do not like to jump him at the last moment. Please place the hotel and incidentals on the business card and I can reimburse that costs.

Regards

Mark

Mark St.Hill
Director, International Corporate Banking
Corporate Investment Banking
FirstCaribbean International Bank
Tel: (246) 367-2036 Fax: (246) 425-0770
Email: mark.st.hill@firstcaribbeanbank.com

FirstCaribbean International Bank is a member of the CIBC Group

From: St. Hill, Mark
Sent: Wednesday, November 10, 2010 4:26 PM
To: Major, Paul
Subject: RE: Private Banking Latin America - Miami

Paul

My apologies for not including your address in the original e-mail.

~~Regards~~

Regards

Mark

Mark St.Hill
Director, International Corporate Banking
Corporate Investment Banking
FirstCaribbean International Bank
Tel: (246) 287-2036 Fax: (246) 425-0770
Email: mark.st.hill@firstcaribbeanbank.com

FirstCaribbean International Bank is a member of the CIBC Group

From: Major, Paul
Sent: Wednesday, November 10, 2010 4:16 PM
To: St. Hill, Mark
Subject: Private Banking Latin America - Miami
Importance: High

Hi Mark,

The following was sent to you a few weeks ago.

Terah Rahming (MD/President of Premier Fund Services – rep for Cerberus Private Equity from NY) will be attending the session on Monday and I am requesting Monday away from work to attend the seminar at the my expense. She is setting up some meetings on the weekend and wants me to come along with her.

Thanks

From: Anny Gomes [<mailto:anny.gomes@terrapinn.com>]
Sent: Wednesday, November 10, 2010 2:27 PM
To: Major, Paul
Subject: RE: Test
Importance: High

Dear Paul,

Please find the updated agenda attached in the e-mail.

The conference Private Banking Latin America will be taking place in Miami – November 15th – 17th, in one week.

Agenda: <http://www.terrapinn.com/2010/pblatam/data/tm30.pdf>

In case you decide to register on-line, I kindly ask you to use the registration link below. It comes to my attention and secures the best price.

Registration link: <https://secure.terrapinn.com/V5/rCalc.aspx?E=3485&DS=2160> (Please use voucher code: TM 30.)

If you have any question regarding the conference, please let me know.

Kind Regards,

Anny Gomes

terrapinn use your brain

Anny Gomes
Account Executive
Terrapinn Inc, USA
96 Spring Street
New York
NY 10012
Tel: +1 646 619 1803
Email: anny.gomes@terrapinn.com
LinkedIn: <http://www.linkedin.com/pub/anny-gomes/15/2a0/40a>

From: Major, Paul [<mailto:Paul.Major@firstcaribbeanbank.com>]
Sent: Wednesday, November 10, 2010 2:22 PM
To: anny.gomes@terrapinn.com
Subject: Test

This email has been scanned by the MessageLabs Email Security System.
For more information please visit <http://www.messagelabs.com/email>

"Internet communications are not secure and therefore FirstCaribbean International Bank does not accept legal responsibility for the contents of this message. Although FirstCaribbean International Bank operates anti-virus programmes, it does not accept responsibility for any damage whatsoever that is caused by viruses being passed. Any views or opinions presented are solely those of the author and do not necessarily represent those of FirstCaribbean International Bank. If this email has not reached the intended recipient, please disregard and delete the message."

[124] There is absolutely no denying of a US Persons Policy being in force from 2005. During the interrogation meeting I accept without a doubt that a direct question

was put to the Plaintiff as to whether he was the bank representative, who had travelled to New York and collected the \$250,000.00 cheque. The evidence in this regard is re ipsa loquitar, it speaks for itself.

[125] The Defendant took the correct first step in that it gave the Plaintiff an opportunity to answer questions directly put to him. He had every opportunity to answer the allegations being made against him. He chose not to answer and to be evasive. He was given an opportunity to get back to Ms. Francis and her colleague after having checked his records to confirm dates as he said he needed to do but never got back to them. He squandered the very opportunity he now complains of not having. The process was in my view fair, (See **SHERYL CARTWRIGHT V. U.S. AIRWAYS SCCivApp No. 130 of 2015 para 49 & 50**). The evidence shows that the Plaintiff's own words were;

"I suppose it was possible it was me."

[126] Excerpts of the transcript above clearly show this. Apart from the duty to cooperate, the case of **LEVER BROTHERS V BELL [1931] UKHC 2 (15th December 1931)** speaks directly to the instant case. LORD ATKINS in that case stated:

"It is said that there is a contractual duty of the servant to disclose his past faults. I agree that the duty in the servant to protect his master's property may involve the duty to report a fellow servant whom he knows to be wrongfully dealing with that property. The servant owes a duty not to steal, but having stolen is there superadded a duty to confess that he has stolen? I am satisfied that to imply such a duty would be a departure from the well-established usage of making and would be to create obligations entirely outside the normal contemplation of the parties concerned. If a man agrees to raise his butler's wages, must the butler disclose that two years ago he

received a secret commission from the wine merchant; and if the master discovers it, can he without dismissal or after the servant has left avoid the agreement for the increase in salary and recover back the extra wages paid? If he gives his cook a month's wages in lieu of notice can he on discovering that the cook has been pilfering the tea and sugar claim the return of the month's wages? I think not. He takes the risk; if he wishes to protect himself he can question his servant, and will then be protected by the truth or otherwise of the answers."

[127] In the Book **SELWYN'S LAW OF EMPLOYMENT**, Eleventh Edition at page 40, 10.150 – 10. 160 under the rubric **"DUTY OF DISCLOSURE"** it states:

"An employee is under no duty to disclose to his employer facts which are inital to the employer (EXCEPT IN RESPONSE TO A DIRECT QUESTION), nor to disclose his own conduct. (Bell v Lever Bros Ltd.)"(supra).

[128] This is the principle set out above. There is no doubt that the Plaintiff was asked the direct question;

"Were you the bank representative referred to in paragraph 55 of the information?"

[129] Having had the opportunity to defend himself in the interrogation meeting, the Plaintiff cannot now come and complain of not having the opportunity.

[130] In paragraphs 25 – 39 the Francis Witness Statement at para 72 above it is patently clear.

[131] Certain information was confirmed prior to the interrogation meeting and put to the Plaintiff. I accept that having questioned the Plaintiff in regard to paragraph 55 of

the indictment and having searched for evidence regarding the same there was sufficient information discovered to put the Defendant in a position to meet the standard set out in Section 33 of the Act. The evidence provided the Defendant with honest and reasonable belief on the balance of probability that it was. The Plaintiff referred to in paragraph 55 of the indictment. I hasten to add that due to the evasiveness of the Plaintiff in answering the direct question relative to paragraph 55, the Defendant was propelled over the standard required by Section 33. I find no flaw in the investigative process or put another way, there was no further need for progressive discipline – The Plaintiff was only dismissed after a full, fair and reasonable investigation had been carried out. As a result, the Defendant obviously concluded that it honestly and reasonably believed on a balance of probability that it was the Plaintiff who collected the cheque on US soil.

[132] I have already concluded that there is no doubt that the Plaintiff was covered by the collective agreement. The evidence in that regard is also patently clear, it only covered up to FC8, the Plaintiff was FC9.

[133] The Plaintiff accepted that he was no longer able to maintain his entitlements per the collective agreement. In fact, the collective agreement expired on December 31st, 2014. The Plaintiff was terminated on June 02nd, 2015. There was no collective agreement in place and even if it was, it only covered employees in categories FC5 – FC8. The Plaintiff agreed that he was not covered by the collective agreement.

[134] Further, Article 3.1 of the expired collective agreement provided:

“The Bank recognizes the Union as the sole bargaining agent for the permanent full-time and permanent part-time management employees, LEVELS FC5 – FC8 of the Bank.”

[135] The Plaintiff's promotion letter also set out his level as being FC9 , which would have taken him outside the coverage of the collective agreement and outside of levels FC5 – FC8.

[136] In light of the foregoing, the Plaintiff's claim for unfair dismissal fails as nothing was deliberately or intentionally kept from the Plaintiff.

[137] As to Nos. 1 – 10 under the unfair dismissal claim, they all fall away and as a result they all fail.

WRONGFUL DISMISSAL:

[138] It is trite that two conditions must be fulfilled for a successful action for wrongful dismissal. The first is that the employer terminated the contract without notice or with inadequate notice and the second is that the employer was not justified in doing so.

[139] The question to be answered therefore is what is justification? Put another way, even if the employer terminates the contract with no notice or with inadequate notice, the employee will not be able to succeed on a wrongful dismissal claim of the employer is justified in terminating.

[140] The answer is that justified summary dismissal takes place in essentially the same circumstances in which an innocent party would be entitled to terminate any other contract, in other words there is justification when the other party ;has committed a fundamental breach of contract.

[141] An employer is therefore entitled to dismiss an employee has committed an act of gross misconduct. The test for this is to be found in the case of **LAWSON V LONDON CHRONICLE (INDICATION NEWSPAPERS) [1959] 1 W.L.R. 698**. In this case **LORD EVERSHED STATED:**

“To my mind, the proper conclusion to be drawn from the passages I have cited and the cases to which we have been referred is that, since a contract of service is but an example of contracts in general, so that the general, law of contract will be applicable, it follows that the question must be – if summary dismissal is claimed to be justifiable – whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service. It is, no doubt, therefore, generally true that willful disobedience of an order will justify summary dismissal, since willful disobedience of a lawful and reasonable order shows a disregard – a complete disregard – of a condition essential to the contract of service, namely, the condition that the servant must obey the proper orders of the master, and that unless he does so the relationship is, so to speak, struck at fundamentally.”

[142] The possible consequences or fall out of the actions of the Plaintiff in my opinion had the potential of the Defendant losing its banking licence altogether thereby being prevented from carrying on the very purpose of their existence.

[143] In the book EMPLOYMENT LAW by Gwynett Pitt 1992 under the sub-heading “JUSTIFIED SUMMARY DISMISSAL” pg. 132 she states at page 133:

“Generally speaking, things like disobedience, dishonesty and violence are regarded as gross misconduct, although it seems that the employer may stipulate offences as very serious which would not usually be so regarded, to take account of the firm’s particular circumstances.”

[144] The Defendant made it abundantly clear those things against which swift action would be taken by way of section 4.2.3 set out at paragraph 113 above. The

Defendant fully complied with the said section on “GROSS MISCONDUCT”. There was no premature termination nor were there improper motives involved.

[145] The principle emanating from the LAWS case on wrongful dismissal is that an employer is entitled to arrive at the conclusion that the actions of an employee constituted gross misconduct in instances where the conduct complained of has so undermined the a TRUST and CONFIDENCE inherent in the contract of employment that the employer is no longer required to keep the employee employed. In the case of ELOISE SHANTEL CURTIS-ROLLE V. DOCTOR'S HOSPITAL (BAHAMAS) LIMITED SCCivApp No. 149 of 2012 at paragraphs 23 – 29 Mrs. Justice Anita Allen (as she then was) opined.

“23. The law relating to summary dismissal is as set out in sections 31,32 and 33 of the Employment Act (Chapter 321 A of the Statute Laws of The Bahamas) (hereinafter “the Act”), which provide:

“31. An employer may summarily dismiss an employee without pay or notice when the employee has committed a fundamental breach of his contract of employment or has acted in a manner repugnant to the fundamental interests of the employer:

Provided that such employee shall be entitled to received previously earned pay.

32. Subject to the provisions in the relevant contract of employment misconduct which may constitute a fundamental breach of a contract of employment or may be repugnant to the fundamental interests of

the employer shall include (but shall not be limited to) the following:

- a. theft;**
- b. fraudulent offences;**
- c. dishonesty;**
- d. gross insubordination or insolence;**
- e. gross indecency;**
- f. breach of confidentiality, provided that this ground shall not include a report made to a law enforcement agency or to a government regulatory department or agency;**
- g. gross negligence;**
- h. incompetence;**
- i. gross misconduct.**

33. An employer shall prove for the purposes of any proceedings before the Tribunal that he honestly and reasonably believed on a balance of probabilities that the employee had committed the misconduct in question at the time of the dismissal and that he had conducted a reasonable investigation of such misconduct except where such an investigation was otherwise unwarranted.”

24. It is an established principle of law that where statutory provisions exist, the case law can only be a guideline as to the possible meaning and interpretation to be given to the statutory provisions.

- 25. As is evident from Section 31 of the Act, the conduct which may justify an employee's summary dismissal must be such as to amount to a fundamental breach of his conduct, or is repugnant to the fundamental interests of the employer. Section 32 of the Act provides a non-exhaustive list of misconduct which may constitute a fundamental breach of a contract of employment or may be repugnant to the fundamental interests of the employer. Gross Misconduct is included in this list at section 32(i) and indeed, the employer alleges gross misconduct as a reason for the appellant's summary dismissal.**
- 26. The statute however, does not define what conduct, on the part of an employee, will amount to gross misconduct of a kind that could be considered a fundamental breach of a contract of employment or which may be repugnant to the fundamental interests of the employer. It is at this point that we must look to the common law, to give meaning to the term 'gross misconduct'.**
- 27. Lord Jauncey in Neary v. Dean of Westminster (1999) IRLR 28 provides that definition. He stated: "That conduct amounting to gross misconduct justifying dismissal must so undermine the trust and confidence which is inherent in the particular contract of employment that the master should no longer be required to retain the servant in his employment."**

[146] The Plaintiff's counsel spoke about non-compliance with a proper unreasonable investigation and procedural impropriety. As it relates to wrongful dismissal, Section 33 sets out above at paragraph 114 sets the standard of proof required in matters such as these. It also includes "a reasonable investigation of the conduct

complained of” and the exception of “where such an investigation is otherwise unwarranted.”

[147] In the case of **ISLAND HOTEL COMPANY LIMITED V. SHAREIRA ISAACS-SAWYER, CA IndTribApp. No. 88 of 2018**, Sir Hartman Longley P (as he then was) opined at paragraphs 29 – 35:

“29. This, of course, begs the question: what is a reasonable investigation and was the holding of a Review Board essential to a reasonable investigation?”

30. Section 33 of the Employment Act provides:

“33. An employer shall prove for the purposes of any proceedings before the Tribunal that he honestly and reasonably believed on a balance of probability that the employee had committed the misconduct in question at the time of the dismissal and that he had conducted a reasonable investigation of such misconduct except where such an investigation was otherwise unwarranted.” Emphasis added]

31. In Amachree v Wandsworth BC [2010] 8 WLUK 119 the Employment Tribunal addressed the issue of what is a reasonable investigation. It said:

“115. A reasonable investigation? The Court of Appeal in Hitt held that the range of reasonable responses test “applies as much to the question of whether the investigation into suspected misconduct was

reasonable in all the circumstances as it does to other procedural and substantive aspects of the decision to dismiss a person from his employment for a conduct reason. ... The objective standards of the reasonable employer must be applied to all (sic) aspects of the question whether an employee was fairly and reasonably dismissed. ...?

- 116. An employer's investigation does not need to be conducted forensically, nor to the standards of a criminal investigation. While an investigation may not be required in every case, it is usual for there to be some sort of fact finding process before disciplinary proceedings are proceeded with. The purpose of an investigation is not to establish whether or not the employee was guilty of the alleged conduct but whether there were reasonable grounds for the employer's belief that there had been misconduct on his part to which a reasonable response was to dismiss him.**
- 117. A number of possible challenges to the adequacy of the investigation were advanced during the hearing. Criticism was made, for example of the failure to investigate Ms. X's background and beliefs in detail (as we have said, and which we have already rejected [para113]). In this case, there was a separate and through investigation carried out by Mr. Hussain, who interviewed the Claimant on three occasions. This was initialed after the complaint by Ms. X. Mr. Hussain also interviewed**

Ms. X. We were satisfied that going back to Ms. X and interviewing her again after two interviews with the Claimant was a reasonable exercise to undertake.

- 118. There was a considerable amount of disagreement at the various hearings and before the Tribunal as to how long the conversation about religion had lasted. As far as the length of the discussion was concerned there was a major discrepancy between the Claimant's version (2-3 minutes) and Ms. X's version (initially half and hour, subsequently 20 minutes.) Mr. Hussain, having interviewed both Ms. X and the Claimant, preferred the evidence of Ms. X. as we have indicated, we were satisfied that the Respondent had reasonable grounds for preferring Ms. X's account to that of the Claimant. Under Hitt, it is not for us to determine which version of events are between Ms. X and the Claimant was correct. We need to satisfy ourselves, based on what the Respondent actually did, that a sufficient and reasonable investigation was carried out. This was, in our judgment, a different case from the Salford v Rodan case referred to above, not least because in this case, Ms. X was not an employee of the Respondent, but a customer, and further and in any event, the Respondent had gone back and questioned Ms. X about her evidence and had not taken it at face value. The allegation that she had lied was put to her and rebutted by her, Ms. X's , who was not an**

employee of the Respondent and was under no obligation to co-operate, was nonetheless willing to be further interviewed.

119. In summary, given the matters set out above, judged objectively, in our view, the investigation conducted by the Respondent here was a “reasonable” investigation when judged by the range of reasonable responses test as set out by the Court of Appeal in Hitt.”

32. In Byrne and Another v Australian Airlines Limited [1994] FCA 21:

“It is well established that, for present purposes where a dismissal is based upon alleged misconduct, the employer will not breach the Award if it is demonstrated that, insofar as it was within the employer’s power before dismissal, the employer conducted as full and extensive investigation into all of the relevant matters surrounding the alleged misconduct as was reasonable in the circumstances (see Bi-Lo Pty Ltd v Hopper (1992) 34 AILR 330; as to the analogous law of unfair dismissal in England, see Steven D Anderman, The Law of Unfair Dismissal (2nd ed, (1985), pp 118-120; Rubenstein and Frost, Unfair Dismissal (10th ed, 1992), pp 63-5; Hugh Collins, Justice in Dismissal: The Law of Termination of Employment (1992), pp 119-120).

The failure of the respondent to interview Mr. Harvey is not, of course, to be looked at in isolation. But when the whole of the surrounding circumstances are looked at, they tend to confirm the conclusion that the respondent acted unreasonably.”

33. In *Santamera v Express Cargo Forwarding t/a IEC Ltd* 2002 WL 31523299 the court said:

“38. Mr. Horne accepted, as he was bound to, that there was no rule of law which rendered it incumbent on an employer, when dismissing an employee for misconduct, to arrange a hearing which gives the employee who is liable to be dismissed the opportunity to cross-examine the person making the complaint. He accepted that the law was accurately stated in paragraph 21 of *Ulsterbus –v- Henderson (supra)* where O’Donnell LJ stated:

“It is quite clear in this case that a careful investigation was carried out by Ms. Campbell, an appeal was heard by Mr. Wilson, and a most meticulous review of all the evidence was carried out as evidenced by Mr. Heubeck’s letter of 31.12.85. As I have indicated, in that letter Mr. Heubeck meticulously reviewed all the evidence and considered whether there was any reasonable possibility, indeed any possibility, that a mistake had been made. What the Tribunal appears to be

suggesting is that in certain circumstances it is incumbent on a reasonable employer to carry out a quasi-judicial investigation with a confrontation of witnesses, and cross-examination of witnesses. While some employers might consider this to be necessary or desirable, to suggest as the Tribunal did, that an employer who failed to do so in a case such as this was acting unreasonably, or in the words of Lord Denning, acting outside ‘.... A band of reasonableness, within which one employer might reasonably take one view, another quite reasonably take a different view’, is in my very insupportable.’

- 39. Ms. Campbell drew our attention to an unreported decision of this Tribunal in ADT Actions Ltd. – v- Nayar (7April 1998) in a constitution presided over by Maurice Kay J. The case involved allegations of sexual harassment against a senior member of staff. Neither complainant was at the disciplinary hearing, nor was either available for cross examination. The argument put to the EAT by Counsel for the Respondent was not that there was a general legal requirement that witnesses be seen and questioned, but that cross-examination in the instant case was essential. The EAT referred to the passage in Ulsterbus to which we have already referred and to Khanum v- Mid Glamorgan Area Health Authority (supra) and concluded.**

'At the end of the day it was the Industrial Tribunal to decide what was fair and reasonable in the circumstances of this particular case and whether the employer had acted outside the parameters of fairness and reasonableness. It may be that another, differently constituted Tribunal would have come to a different decision but we are entirely satisfied that the decision of this Tribunal was a permissible one and does not manifest perversity or an error of law on this issue.

- 40. Ms. Campbell also referred us to the decision of this Tribunal in Southdown Housing Association – v- Barnard 27 June 1997, a division of the EAT presided over by His Honour J Hull QC. In the course of giving the Tribunal's judgment, Judge Hull said:**

"... although an employer when conducting a disciplinary enquiry is undoubtedly required to behave fairly, he is not required to conduct a forensic hearing, a court-style hearing, in which witnesses are produced for cross-examination. He is not required to permit the attendance of legal representatives. What he is required to do is to be fair.'

41. We note, as did Lindsay P, that in Harvey on Industrial Relations and Employment Law, section D/1 paragraph 1515., the learned editors, in their commentary on Ulsterbus Ltd –v- Henderson say this:

'Query, however, in exceptional cases it may be unfair to refuse cross-examination, such as where the decision to dismiss turns on a critical issue of fact which is the subject of conflicting evidence. It has after all been held that in such circumstances natural justice itself requires cross-examination:- see RB Howell Prison Boards of Visitors ex parte St Germain (No. 2) [1979] 1 WLR 401. Moreover in the Ulsterbus case the relevant witnesses were not employees of the dismissing company. That case concerned the dismissal of a bus conductor and the witness were passengers. Arguably the position ought to be different where the relevant witnesses are fellow employees who can readily be required to attend a hearing for cross-examination purposes. It may be, therefore, that the principles stated in Ulsterbus that cross-examination can never be required of a reasonable employer, is too broad.'

42. We do not read Ulsterbus Ltd –v- Henderson, and in particular paragraph 21 of the judgment in that

case, as laying down the proposition that cross-examination can never be required in any investigation carried out by a reasonable employer. O'Donnell LJ rejects the proposition that "an employer who failed to do it in a case such as this" was "acting unreasonably". The issue, in section 98(4) of the Employment Rights Act 1996 is always reasonableness and fairness. We do not exclude the possibility that there will be cases in which it would be impossible for an employer to act fairly or reasonably unless cross-examination of a particular witness is permitted. The question, however, in each case is whether or not the employer fulfils the test laid down in *British Homes Stores –v- Burchell*, and it will be for the Tribunal to decide whether or not the employer has acted reasonably, and whether or not the process has been fair.

43. In the instant case, we are of the opinion that the Tribunal directed itself appropriately within the framework of section 98(4) and that the conclusions of the majority cannot, accordingly, be challenged. We think it unfortunate that the Respondent did not give reasons for its refusal to allow the Appellant to cross-examine the complainants: we also think it unfortunate that Ms. Phillips and Mr. McKenna, when they re-interviewed the complainants did not put to them all the matters which the Appellant raised at the disciplinary hearing. We also think it unfortunate

that the Appellant was not given the report of the disciplinary hearing which set out the reasons for her dismissal; and finally, we think the Tribunal was in error when it asserted in paragraph 3€ of its Reasons that the complainants “refused to attend the hearing” when, in reality, they were not asked.

44. None of these matters, however, either individually or collectively seems to us sufficient to render the Respondent’s behavior unreasonable or the process unfair. In our judgment, this is a case in which cross-examination of the witnesses may well have been helpful to both sides ...”

34. The following is the case summary of Sainbury’s Supermarkets Ltd., v Hitt [2002] EWCA Civ 1588:

“Applicant dismissed for gross misconduct following investigation by respondent into stolen property found in applicant’s locker – Employment Tribunal substituted own standards holding investigation flawed – Necessary to apply objective standards of reasonable employer to all aspects of whether employee fairly dismissed – Purpose of investigation not to establish guilt but whether reasonable grounds existed to support dismissal for gross misconduct – Correct approach in this case led to conclusion that investigation reasonable and resulting dismissal fair – Employment Rights Act 1996 s 98.

S appealed against a decision of the Employment Tribunal which upheld a finding that H, an employee, had been unfairly dismissed. H had been dismissed for gross misconduct after stolen items were found in his locker. Throughout the disciplinary process, H maintained that a number of other people had keys which would have opened his locker and that the stolen items had been planted in his locker by someone else. At the first instance hearing, the employment tribunal followed the approach to the interpretation of the Employment Rights Act 1996 s. 98 given in HSBC Bank Plc (formerly Midland Bank Plc) v Madden [2002] 2 All E.R. 741, [2000] 3 WLUK 197 and concluded that S had carried out a flawed investigation and that consequently H had been unfairly dismissed. S appealed to the EAT and contended that the decision in HSBC had been reversed by the Court of Appeal in HSBC Bank Plc (formerly Midland Bank Plc) v Madden [2001] 1 All E.R. 550, [2000] 7 WLUK 954. The EAT accepted that the tribunal had not adopted the correct test, but considered that the error had not made any difference to the outcome as the issue was not whether the decision to dismiss S was reasonable, but whether it was vitiated by the failure to carry out an adequate investigation.

Held, allowing the appeal, that the EAT had not correctly interpreted the impact of the Court of Appeal's decision in HSBC. The range of

reasonable responses test or the need to apply the objective standards of the reasonable employer applied as much to the question of whether the investigation into the suspected misconduct was reasonable in all the circumstances as it did to the decision to dismiss for the conduct reason, *HSBC Bank Plc (formerly Midland Bank Plc) v Madden* [2001] 1 All E.R. 550, [2000] 7 WLUK 954 followed. When the correct test was applied to the facts of the instant case, the only conclusion which was open to a reasonable tribunal was that the investigation was reasonable in all the circumstances. S's investigation had not been carried out for the purpose of determining whether H was guilty of theft. The purpose of the investigation had been to establish whether there had been reasonable grounds for S's belief that there had been misconduct on H's part and the decision to dismiss him had been a reasonable response to that belief."

35. What then is a reasonable investigation? The authorities seem clear. What one gleans from them is that the investigation must enable the employer to ascertain the true facts upon which it can make an informed decision to ground or support an honest belief on reasonable grounds that the employee committed the act of misconduct. It must be within reason, full and fair. That would normally involve where it is considered necessary an account of the incident from as many eye witnesses or persons in the know as possible yet at the same time

giving the employee an opportunity to be heard and to respond to the gathered information and complaint.”

[148] In the Francis Witness Statement at paragraph 32 she states:

32. “In fact, the day before the interview of Mr. Major – having read the press article about Mr. Blazer’s Indictment and having read the Information itself – we had reviewed Bank records pertaining to Mr. Major. As a result of our review, we found a number of emails to and from Mr. Major that had been sent during the period between mid-April 2011 and early May 2011, which established that he had traveled from the Bahamas to Hungary and back from vacation during that timeframe and that he had returned to work on May 3, 2011, the same day the \$250,000 check was deposited into Mr. Blazer’s account. Having found that information, we undertook to determine whether Mr. Major’s travel from the Bahamas to Hungary or his return could have involved a connection through JFK Airport in New York, which was referenced in Paragraph 55 of the Information. Indeed, we did confirm that Mr. Major had been charged a \$35 JetBlue fee on his personal credit card on April 21, 2011, the same day he departed the Bahamas for his vacation. We then confirmed through an internet search that during the timeframe in which Mr. Major was away from the office, JetBlue had flights from the Bahamas to JFK Airport. We also confirmed through an internet search that flights from Nassau, Bahamas to Budapest, Hungary included connections through JFK Airport.”

[149] The above authority demonstrates that the Defendant met the standards required to summarily dismiss the Plaintiff..

BREACH OF CONTRACT:

[150] There has been no breach of contract based on the overwhelming evidence against the Plaintiff's conduct. This claim is based partly on breach of an expired industrial agreement and failure to comply with the Code of discipline. I have found no such breach or failure to comply. The claim for breach of contract therefore fails.

[151] There is one issue I am of the view that should be addressed in matters such as these and on their own facts. An employee should not be able to benefit from his or her own wrong.

[152] In the book Statutory Interpretation A Code Third Edition by F.A.R. Bennion at page 886 it provides:

“The principle against wrongful self-benefit embodied in the maxim of natural Law NULLUS COMMODUM CAPERE POTEST DE INJURIA SUA PROPRIA is found in Coke.”

One of the translations is:

“No one can improve his position by his own wrongdoing.”

[153] This in my view is a principle grounded on public policy. Despite the evidence and subsequent admission by the Plaintiff he still seeks to persuade this Court that he is entitled to some form of compensation.

[154] However, this Court has not been persuaded in the least especially in light of the evidence in this matter.

[155] Therefore, after careful consideration and a very detailed assessment of the law and evidence, I find that all claims made by the Plaintiff fail.

[156] I therefore order that the Plaintiff's claims are dismissed in their entirety. Costs to the Defendant for two counsel to be taxed if not agreed.

I so order.

Dated this *26th* day of *April* A.D., 2021.


Keith H. Thompson
Justice

: