IN THE HIGH COURT OF NEW ZEALAND
NEW PLYMOUTH REGISTRY

CP No 12/95

ORDER PROHIBITING PUBLICATION OF NAME ADDRESS OR OTHER INFORMATION IDENTIFYING THE WITNESS REFERRED TO ON PAGE 22.

BETWEEN STEPHEN ALBERT ANSELL, underwriter and THERESA LAI HAR ANSELL, health inspector, both of Inglewood

Plaintiffs

AND STATE INSURANCE LIMITED a duly incorporated company having its registered office at 3-11 Hunter Street, Wellington

Defendant

Hearing: 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29 November and 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13 December 1996

Counsel: S D Galloway and M J Bromley for Plaintiffs
G R Burnet and P M Smith for Defendant

Judgment: 27 MAR 1997

JUDGMENT OF GREIG J

Solicitors
Rudd Watts & Stone, WELLINGTON, for Plaintiffs
Burnes Burnet & Co , AUCKLAND, for Defendant

On 17 February 1993 in the early hours of the morning a fire broke out on a property at Egmont Road, Egmont Village. In spite of the efforts of the local fire brigade the property was destroyed It comprised a dwelling-house, garage, the contents of the house and the garage including a motor vehicle, a 1989 BMW 316i The property was the residence of the plaintiffs. They and the other occupants of the house had gone to Auckland the day before leaving the house secured but empty The house, contents and the motor vehicle were all insured under three different policies with the defendant The defendant appointed an insurance investigator at once. That was Mr K C Byrne who began his investigations the next day. After a lengthy investigation the defendant declined the insurance claims in a letter dated 16 November 1993 addressed to the plaintiffs The grounds for declining the claim were that the property had been destroyed as a result of the wilful act of one or both of the insured, that statements made in support of the claim were false as to the value, the quantity and the quality of the items and the property destroyed in the fire. Specific reference was made, without limitation, to fraudulent inflation of claims for carpets, antiques and paintings The plaintiffs issued these proceedings seeking declarations of entitlement to indemnity, damages for their losses and additional and exemplary damages for the manner in which the investigation was conducted by Mr Byrne and the failure by the defendant to carry out its duties as insurer

Mr Ansell was born in England in 1948 After a period of service in the British Army commencing in 1964, which included terms of duty in Berlin, Cyprus and Northern Ireland, he sought to migrate to Australia in 1970. He was not able to pass the medical examination for entry to the Australian Army but from Australia he joined the Merchant Navy for some three years From about 1974 he worked for a number of employers in the oil industry, living and working in the United Kingdom and in a number of places in the Middle East In 1989 he became a member of Lloyds Mr Ansell said the correct description of his association with Lloyds was as an underwriter member of Lloyds of London As such he, with a number of other persons, a syndicate, relied on a managing agent to take part through an underwriting agent or underwriter in various forms of insurance policies issued through Lloyds of London Mr Ansell was recorded as stating, on 1 March 1993, that by mid 1990 all of their investments were in Lloyds and he regarded himself principally as living from

investment income. The Ansells were married in 1974. Mrs Ansell is Malaysian Chinese and was born in 1952 She had and has British citizenship and is entitled to a United Kingdom passport Her employment and career has been in nursing Mr and Mrs Ansell bought a house at 239 Ongar Road, Brentwood in England in 1981. Later they purchased the neighbouring house, number 241, and converted it into a residential care home for disabled persons. Mr and Mrs Ansell have no children Both have continued in permanent employment and were able to build up significant savings.

Mr Ansell has had an unfortunate history of accidents and injury both in the Army and in his occupation in the oil industry in the Middle East. These have caused permanent injury and affected, permanently, his feet and back In addition he has had intestinal trouble which creates a permanent disability. Mr Ansell appears to have made only two claims in respect of his personal injuries, one arising out of a motor accident in or about 1973 and the other arising out of an accident in 1986 while he was working in the Middle East That claim was finally settled in 1994 when he received some £50,000 in a settlement following the earlier issue of proceedings.

Mrs Ansell too suffered in an employment accident in the United Kingdom for which she issued proceedings seeking compensation. That claim was settled in 1995. She received something in the region of £35,000.

In about 1989 the plaintiffs decided to migrate to New Zealand They sold their property at 241 Ongar Road as a going concern. A substantial capital gain was achieved They bought a number of antiques and other items to bring to New Zealand and in May 1990 arrived in New Zealand by air having shipped the BMW and other belongings They came to New Zealand with something in the order of $300,000 in cash to begin their life here They early decided upon Taranaki, found the property at Egmont Road and purchased it for cash for $160,000 The property is of an area of 1.366 hectares on the road up to Mount Egmont, a somewhat isolated situation though the road has seasonal traffic. The property included a dwelling-house with what became five bedrooms and other accommodation, a garage and other outhouses or buildings used as a farmlet Title was taken in the name of

Mrs Ansell alone The Ansells undertook a number of additions, repairs, alterations and improvements to the land and the buildings, including the dwelling-house. The cost and value of these were variously estimated but no precise figures or documents were produced to substantiate the claims as to the amount or value of the alterations actually undertaken In spite of Mr Ansell's injuries and disabilities he was fit enough and able to undertake a number of the work operations around the property. He gave evidence of some drainage work and other manual tasks that he did. Both Mr and Mrs Ansell took up employment in New Plymouth He worked part time at Workbridge Inc which provides jobs and training for people with disabilities He earned about $12,000 per annum Mrs Ansell was employed by the New Plymouth District Council as a Health Inspector She earned about $27,000 per annum

The belongings that were shipped to New Zealand were the subject of a claim A number of items were damaged and a number were lost or not delivered An insurance assessor was engaged in that matter on behalf of the agents of the insurers in New Zealand In the end a sum of $18,000 was paid out in settlement of the Ansells' claims Included in that claim was a claim for loss of clothing and books and that is a matter of some significance in this case That loss claim was settled in or about September 1991

The house and contents were originally insured with the New Zealand Insurance Company. The BMW brought out to New Zealand was originally insured with AMI (Allied Mutual Insurance). In 1991, on proposals dated 12 July 1991, the defendant, State Insurance, accepted the insurance and issued policies in respect of the dwelling-house under a Homeowner's Premier Insurance policy and the contents under a Homecontents Premier Insurance policy The Homeowner's insurance was in the name of Mrs Ansell as the owner, she being the registered proprietor of the property. Her name alone is entered in the box on the proposal for the details of each person named as the insured She signed the proposal. The amount of the insurance was, as to indemnity, $160,000 and as to replacement the sum of $250,000. The indemnity sum is the same as the purchase price. How the replacement sum was calculated can not now be ascertained The suggestion that an officer of State Insurance mentioned $100 a square foot as replacement cost as a basis for this

figure, I reject. Likewise I think that it is unlikely at that stage there had been any attempt to measure the floor area of the house and other buildings. The contents insurance fixed as a total of the insured amount the like amount of $250,000 Again it is not now possible to ascertain how that was calculated overall. That insurance was in the name of both the plaintiffs as owners, both their names being entered in the box for the details of the persons named as the insured The proposal was signed by Mrs Ansell.

Before the Homecontents proposal was accepted a Mr Patchett from State Insurance visited the house and made an inspection of the contents. State Insurance was furnished with a number of documents providing a basis for values of a number of items in the house, particularly antiques, paintings and other items of special value The insurance proposal required details of particular items, including money collections and paintings The named items in the proposal were described as a money collection valued at $3,560 and paintings by Tom Keating valued in all at $84,397. These were based upon Pounds Sterling valuations which had been obtained by the Ansells and brought with them to New Zealand A number of these so-called valuations were in fact no more than the invoices or the receipts for the purchase of the items, a number of which, as I have noted, had been made in or about 1989 in anticipation of the move to New Zealand. There was however, in addition, a valuation made by a Mr Rowe in New Plymouth, an auctioneer and antique dealer. It is to be noted, in particular, that State Insurance, through Mr Patchett, clearly accepted those documents and their valuations for the purposes of the issue and acceptance of the insurance.

On 19 June 1992 Mr Ansell signed a proposal to State Insurance for the insurance of the BMW He was named as the proposer but his wife was entered in the box as the person named as the insured The vehicle was first registered in England in 1988 and remained registered in the name of Mr Ansell in New Zealand Invoices and other documents show that he continued to hold himself out and to be treated as the owner of the vehicle It was claimed that it was Mrs Ansell's vehicle and that she alone used it, at least after an accident to it when Mr Ansell was driving In the State Insurance proposal the speedometer reading was shown as 30,000 miles

and the maximum amount to be insured was $28,000 At the time this attendance at State Insurance Mr Ansell was alerted to the possibility of the need for a review of his insurances State Insurance, in common no doubt with other insurance companies, encourages its insured to review and reconsider their insurance needs.

In January 1993 Mr Ansell called on the State Insurance to arrange insurance on a motor vehicle which he owned, a Subaru, which likewise had previously been insured with AMI He wished to consolidate all his insurances in the one company. At the time he was again alerted to the need to reconsider insurance and he left with a view to doing that There had been at the relevant time, and for some time afterwards, a display in the office at New Plymouth alerting customers to the possibilities and the results of total loss in fire A few days later he called again, obtained a form of inventory in a pamphlet by which the State Insurance encouraged and advised customers as to a systematic way of calculating the values of their property and belongings Mr Ansell then proceeded, as he said, to pace out the house by walking around the outside and making an allowance for a conservatory to estimate the floor size of the house. He did not have a tape measure which was long enough Using as a basis $80 a square foot for replacement cost, and the costs of the other subsidiary items allowed for in the pamphlet, he came to the conclusion that on the house and on the basis of a square foot area of about 3,000 feet, they were under-insured by about $57,000.

I have concluded and find that at about this time Mr Ansell prepared an inventory. There was some conflicting evidence as to whether this document had been prepared in 1991 or 1993 but on balance, and having regard to the evidence of Mr Brittain, Mr Ansell's superior at Workbridge, I believe that this document was prepared at the later time It listed room by room various items of furniture and other possessions, setting out a description of each item and an estimated value or dollar amount On the first page of this document is a reference to books amounting to 308 plus with a value of $14,270, and also clothing in the bedroom which must be treated as the personal clothing of the Ansells with a value of $24,400 The grand total of the inventory as printed is $226,000 excluding the Keating paintings but then

adding in handwriting, Keating paintings at $84,397, and carpets at $33,444, making the final total, entered in handwriting, $343,841.

It was Mr Ansell's evidence that the spur to concluding this exercise and taking steps to increase the insurance was an incident at home in which his nephew had put a stockinette bandage over the open end of a light shade which had been turned upwards with the bulb lit. The bandage had begun to smoulder but caused no damage The implication was that this when reported to him by his wife had alerted him anew and immediately to the danger of fire and the need to ensure that insurance was appropriate On 4 February 1993 Mr Ansell called again on the State Insurance and increased the Homeowner's insurance from $250,000 to $307,000 and the contents insurance from $250,000 to $343,841 On the same day an invoice was raised for a total of $373 90 including the new insurance on the Subaru and the increase on the Homeowners and the contents That amount was paid.

The New Zealand members of the Lloyds syndicate, of which Mr Ansell was a member, met once a year in Auckland The meeting was to be held on 17 February at the Northern Club in Auckland A copy of the notice of that meeting, produced in discovery, was dated 23 December 1992. Mr and Mrs Ansell had decided to drive to Auckland and they set out on 16 February. Mr Ansell had spent the morning working at Workbridge in town Mrs Ansell commenced preparations to leave the house. Mrs Ansell's sister and her children were living with her and it was intended that all of those who were in the house would go to Auckland. When Mr Ansell came home from work he had a number of things to attend to including changing his clothes, making sure the house was secured and packing up the car At that point it had been decided to take the Subaru rather than the BMW The BMW was put into the garage It was Mr Ansell's evidence that the garage was prone to being flooded and so it was necessary to ensure that things that might be damaged were not on the floor of the garage. Two golf bags were removed from the garage and put into the main bedroom to which there was direct communication through a wardrobe abutting the garage The women continued to repack the Subaru The doors and windows of the house were locked Mr Ansell set up two timers, one in the

living room, one in the main bedroom, to turn on lights at different times to indicate to those who might see them that there was somebody living in the house. It was his evidence that he had the timer in the living room timed to turn on a light up to midnight and the one in the bedroom to turn on a light from midnight to 4 am in the morning The timer in the bedroom was connected to a table lamp made out of pottery of a substantial size and weight with a bare bulb, that is to say no lampshade on the lamp The bulb was either 100 or 150 watt This was the first time that Mr Ansell had used a timer in this residence in which they had been living since 1990 Indeed a timer was purchased on 15 February 1993. They had on other occasions been away from their residence and left it vacant but presumably without a timing device to bring on lights

It was the evidence of the Ansells that for some time before this Mr Ansell had been doing some painting in their bedroom In doing this the paint had encroached onto the panes of an internal window between the bedroom and an internal passage of the bedroom wing He was still in the process of removing the paint from the window glass which was made more difficult because it was a rippled surface. This had been a painstaking job which had taken some time and was not yet finished There was in the room a burner which he had stopped using because it removed all the paint. He had some substance, not clearly identified, which was used to soften and scrape away the paint. In his evidence-in-chief he stated that there was half a litre of turpentine or methylated spirits and a four litre can of paint. It was Mr Ansell's evidence that on the floor underneath the window there were two cloths, one cotton type material and the other polyurethane They were spread on the floor to prevent damage to the carpet and presumably to make it easy to collect up any material that might be dropped.

Mr Ansell was the last person in this room before the party left for Auckland He had put the two golf bags with some clubs in each on a sofa extending bed. Beside that was a bureau desk with a sloping front which could be let down as a desk top It was Mr Ansell's evidence that he had pulled this out from the wall, that it was on a right angle to the wall and slightly out from the wall He put the light that I have mentioned on the top of this bureau attached to the timing device and a flex which was placed upon the desk, let down, extending to some extent over the

adjacent sofa on which the golf bags were placed. He set the timer going, ensured that the doors and windows were shut, set a rat trap and left the house.

In the early hours of the morning a neighbour investigating a noise discovered the house was on fire. The neighbour phoned another neighbour who went to the property. The fire brigade was summoned. The neighbour who arrived on the scene was unable to get into the building because of the fire. It was his evidence that his impression was that all the doors were shut The fire brigade was summoned at about 3 am. It arrived It had some difficulty in obtaining adequate water supply In the end water was obtained at some distance away from a local primary school swimming pool In spite of the endeavours of the Fire Service the building and its contents were almost totally destroyed

The Ansells were advised of the fire and its result during the meeting with the other members of Lloyds in Auckland They returned to New Plymouth The next day they were met at the site by Mr Byrne, appointed by the insurers to investigate the claims and the fire. There were a number of discussions, then and later, between the Ansells and Mr Byrne in the next few days. At this early stage Mr Byrne made further investigations and examined the site of the fire, taking a number of photographs. With the approval of the State Insurance Mr Byrne instructed Mr Simon Cox, a forensic investigator from Australia, to make investigations. He arrived and examined the scene on 23 February 1993 On that date the Ansells submitted claim forms for the destruction of the car, the house and the contents. No value was provided or other calculation in any of these claims.

Mr Byrne, following his discussions with Mr and Mrs Ansell, prepared a lengthy draft statement and on 1 March 1993 he conducted a lengthy interview with them, going through the statement page by page and line by line. During this period, which extended over the lunch hour during which a further part of the statement was provided by fax from a distance to Mr Byrne in New Plymouth, the statement was amended in various places in handwriting, partly that of Mr Byrne, partly that of Mrs Ansell and partly that of Mr Ansell The document was signed by the Ansells on each page At pp 49 and 50 of this statement there is typed the following

> " The preceding pages of our joint statement represent the full extent of questions put to us by Kevin Byrne, as our Insurers representative, together with our truthful answers as best we can recollect, or explain. We are happy to continue providing whatever additional information our Insurers reasonably require, relevant to our insurance claims. We have not withheld any information which is relevant or important to the insurance claims "

Because that is partly on p 49 and partly on p 50 it is, in effect, signed twice by the Ansells. There then follows a hand-written addition on p 50 disavowing any form of financial pressure or financial difficulty, ending with the sentence

> " In short, we don't owe anybody any money. "

That addition is also signed by Mr and Mrs Ansell Whatever may be said in disputes about that document I am satisfied that it correctly records a contemporary account of the Ansells' statements and position in respect to the matters set out in the statement On 16 March a further statement was signed which related more to financial aspects At the same time some particular authorities were provided by the Ansells to Mr Byrne to obtain information from banks, accountants and other parties. At about this time the first list of contents alleged to have been destroyed in the fire was supplied by the Ansells to Mr Byrne The total of the column headed Estimated Value was $107,470

At an early stage Mr Byrne had suspicions about the claims that were being made by Mr Ansell and the cause of the fire and from about 5 March onwards he made a tape-recording of telephone conversations that he had with Mr and Mrs Ansell These recordings, not all of which were full recordings of the whole of the conversations purported to be recorded, were transcribed and copies of the tapes were furnished in the course of the trial I have perused the transcripts which were referred to on a number of occasions during the course of the hearing I have listened to the tapes and in particular those in which there are conversations with Mrs Ansell and some of these I have listened to more than once As well as telephone conversations there was correspondence between Mr Byrne and the Ansells in which

a large number of items were specified and details about description, price and value were requested

On 30 March Mr Ansell altered the form of an authority to an insurance assessor who had attended to the claim on their arrival in New Zealand in 1990 and cancelled the authority that had been given to his bank in the United Kingdom. The reason expressed for the latter was an anticipation of the possibility of the Ansells taking legal action against State Insurance He did not want the State Insurance to know his financial position Mr Ansell expressed also his anxiety at the delay in settlement of the claim and his wish to have it settled before he left for England to have a planned operation on his ankle There was also a discussion in that letter about rearranging of his financial affairs in the United Kingdom with a view to releasing a sum of money to enable him to rebuild in New Zealand The State Insurance, through Mr Byrne, expressed their dismay in a letter of 6 April which was responded to by Mr Ansell on 12 April in a lengthy letter which complained again about the delay and what he thought was the lack of good faith and reasonable conduct on the part of the State Insurance, and presumably Mr Byrne, in concluding the claim Mr Ansell repeated those complaints to the State Insurance Office direct.

Formal claims were presented on 25 April 1993. On the contents there was a claim for a total of $392,351 inclusive of GST. That was supported by six pages of listed contents, each page carrying the declaration made by both the Ansells that the descriptions and the values were true and accurate descriptions of the property The columns of the lists included a description of each item, its approximate age in numbers of years, a column for the new price where that was known and an "est" column for estimated value. Formal claim was also made, again by both the Ansells, for the Homeowners policy on the basis of plans, specifications and quotations to be prepared In May 1993 Mr Byrne wrote letters to the Ansells requesting proof of purchase of a large number of items included in the contents insurance as well as requests for proof about payment of tax, tax liability, course of employment over the years and about the value and cost of home improvements

On or about 5 June 1993 Mr Ansell went to England for an operation on his ankle Thereafter there were further letters requiring more details of purchases, values and costs There were a number of conversations between Mr Byrne and Mrs Ansell who remained in New Zealand While Mr Ansell was in the United Kingdom he wrote to the Norwich Insurance Company, the owners of State Insurance Limited, making a number of demands and threats and complaints about the conduct of the claim and in particular the conduct of Mr Byrne.

In this case the plaintiffs had the onus of proving the quantum of their claims and their claim in respect of general and exemplary damages. The defendant had the onus of proving the affirmative defences as pleaded Although there might have been a case for the defendant to go first and take the burden of the presentation of its defences it was agreed by counsel that the plaintiff should proceed first but without altering, of course, the onus or the incidence of it

The onus in a civil case is on the balance of probabilities That clearly is the onus which the plaintiffs have to meet in their part when it comes to quantum There was no question but that there was insurance, an insurance contract in respect of property, and that there was a fire and destruction of property. The quantum of the claim was in issue both as to the number and value of the items and the proper replacement cost The real issue in the case was the defences put forward by the defendant that the plaintiffs were implicated or conjointly involved in the setting of the fire, the destruction of the property, and the exaggerated and inflated claims both as to numbers, quantity and value, in particular in respect of the contents

Traditionally in cases like this the description of the insurer's onus is that the proof remains on the standard of the balance of probabilities but adopting the words of Denning LJ (as he then was) in *Hornal v Neuberger Products Ltd* (1957) 1 QB 247 at 258·

> " The more serious the allegation the higher the degree of probability that is required· but it need not, in a civil case, reach the very high standard required by the criminal law "

An example of that standard being applied in an insurance case involving an allegation of arson is *Engel v The South British Insurance Co Ltd* (1983) 2 ANZ Insurance Cases 60-516 at 77,938 Recently Fisher J in *Gate v Sun Alliance* (1995) Lloyds Re-insurance LR 385 at pp 396-398, discussed the difficulties perhaps of a philosophic or jurisprudential nature which arise in this kind of case. He concluded

> " Where the allegation is that a serious crime was committed, the approach will differ little from the demand for full proof beyond reasonable doubt "

In *Back v National Insurance Co of NZ Ltd* (unreported, High Court, Hamilton Registry, CP No. 23/95, 4 April 1996, Hammond J) that judge referred to Fisher J's formulation and after discussing these matters came to the conclusion that he would proceed "on the footing in relation to the allegations of arson/fraud that the evidence must be clear and convincing." Whatever words may be used it is plain enough that when serious allegations are made amounting to criminal conduct the Court should be cautious before it comes to a conclusion which, without the full safeguards of criminal procedure, will in effect brand the party as a criminal or as implicated in criminal conduct. It is, however, not appropriate, I believe, that the Court should withhold its finding unless it is brought to proof beyond reasonable doubt. For my part I have no difficulty in understanding or applying the traditional formula on the balance of probabilities but with due allowance for the gravity of the allegation against the plaintiffs. The exercise by the judge starts with the proposition that a house fire is usually thought to be accidental Deliberate destruction of one's own property is abnormal. The exercise must also take account of the fact that apart from the assertions of the claimant there is likely to be little direct proof of the absence of deliberate fraud and that the proof of its existence is likely to be circumstantial It would be unusual for there to be direct evidence of arson by the claimant.

The plaintiffs' credibility is a pivotal issue in this case This is not a case in which there is a dispute about the events with conflicting evidence as to them The question is whether the plaintiffs' assertions as to innocence can be believed when weighed against the opinion evidence and the facts put forward in support of those opinions The plaintiffs' case is that this was an accidental fire and that they

were not implicated in any way in that. They assert that their claims made are to the best of their ability true and that they have done their best to provide appropriate value evidence as required by the insurers There is no direct evidence by eye witnesses or others to contradict what the plaintiffs assert The defendant's case is based on the inferences which they submit should be drawn from other evidence such as scientific and forensic evidence on the cause of the fire There is other circumstantial evidence which the defendant suggests gives the lie to the plaintiffs' assertions, their bona fides and their honesty in all respects of the claim It is, I think, appropriate and convenient to deal with this pivotal issue first

It was suggested that in respect of a number of personal matters Mr Ansell had been dishonest These included exaggerating his association with Lloyds in describing himself as an underwriter or a Lloyds underwriter There is clearly a difference between those who are underwriters or underwriting agents and underwriting members who carry on business in syndicates operating through a managing agent who is or who appoints an underwriter or underwriter's agent. A short description of the way Lloyds underwriting is carried on is set out by Lord Hoffmann in *Deeny v Gooda Walker (No 2)* [1996] 1 All ER 933 at 937. Likewise it was suggested that Mr Ansell had made claims as to his service in the Army which was inaccurate and exaggerated that service. I believe that on both these counts Mr Ansell was less than completely honest. In the course of the hearing and, indeed, as appears in a number of documents that were submitted to me, Mr Ansell has claimed that he suffers from dyslexia and has put this forward to excuse some of his statements and writings as recorded. Again this, I think, exaggerates the position There are a number of documents typed or hand-written by him which display no sign of dyslexia and in the course of his evidence and lengthy cross-examination he showed no signs of any difficulty in dealing with documents and reading and coping with the matters that were put before him

I think that Mr Ansell is and has been guilty of a number of exaggerations about his life and his position. He is what is sometimes described as a self-made man By dint of his own hard work and saving he has built up a considerable number of assets and reached a degree of financial stability which is

considerably beyond his origins. He is proud of his possessions and his membership of Lloyds and has, I think, boasted about that He also allowed others to draw inferences about his services career and other aspects of his life and position not warranted by true facts I am not inclined to classify Mr Ansell as lacking in reliability in the witness box merely by such common failings I attach little weight to them

One of the particular items involved in the claim and in the defendant's case against the Ansells related to the BMW motor car. The car was first registered in the United Kingdom on 27 June 1989 It had been purchased new. It was registered in Mr Ansell's name and when it was imported to New Zealand in June 1990 it was again registered here in his name In Mr Ansell's brief of evidence at p 63 he said that he ordered the car when he was in England for exporting to New Zealand In cross-examination at p 52 he claimed that he had purchased it as an anniversary present for his wife and that she used it. Mrs Ansell in her brief at p 17 said that the car was always considered to be hers. It was the first new car she had ever owned and she felt some emotional attachment to it In her cross-examination at p 310 she said that it was her money that purchased the car and was not a gift at all. The mileage of the car as recorded on 25 October 1991 in relation to an insurance claim arising out of an accident showed 37,784 miles The odometer, since this was a car registered in England and bought there, was in miles rather than kilometres A BMW dealer who had had some dealings with the car noted the mileage on 19 February 1992 at 41,774.

In the insurance proposal for the car on 19 June 1992 the car's mileage was recorded by Mr Ansell at 30,000 miles On 12 August 1992 Mrs Ansell, in reregistering the car, put its mileage down at 50,000 miles. Clearly both those round figures were estimates and Mr and Mrs Ansell have both claimed that to be the case. I believe, however, that Mr Ansell well knew that the 30,000 miles was an incorrect figure His explanation of just making a guess was not convincing There was also a question as to his knowledge of the value of the car when the insurance was proposed upon it Evidence was given as to the valuation estimate of the car sight unseen, by people who had some expertise in the matter Valuations of motor vehicles are always a matter of some difficulty and I do not believe that Mr Ansell was

dishonest in that aspect of the matter. I do think, however, that the other matters show a departure from the truth.

There was a computer which was described as a 386. That was the way in which the Ansells described it throughout this claim. In fact it was not a 386 but was an older lesser capacity which had been upgraded It was clearly an item that was used by the parties and I am satisfied that Mr Ansell well knew that it was not a computer as described by him in his claims and throughout his dealings in the claims

Another matter in issue on this question of credibility was the carpet. The evidence was that, after the Ansells purchased their home in New Plymouth the bedrooms were recarpeted Other carpet was purchased and put down in an addition which became a dining room The main living room was already carpeted No further carpeting was done there The usual rooms and other areas which are not commonly carpeted were not carpeted in this house although there was vinyl covering on such places as the kitchen and a bathroom. It was the Ansells' evidence that Mrs Ansell had paid for the carpet and had arranged for its installation. Mr Ansell was ignorant of the cost or the value When he came to increase the insurance in 1993 he said that he had paced out the house, asked his wife something about the cost, had been told a figure of $100 per metre and had then proceeded with the assistance of a clerk at State Insurance to make a calculation based on the floor area as paced out by him The figure that was put in at the time of the increase was $33,444. The evidence at the hearing was that one estimate for the valuation of the replacement of the areas which were required to be carpeted, inclusive of GST, was just over $6,500. A quote of $12,990 for carpet and vinyl had been produced in June 1993 and Mr Ansell was in possession of that.

It is difficult, I think, to say, as Mr Ansell did, that he was unaware that carpet was sold on a broadloom basis, not per square foot but per foot or per metre on the length of the carpet. Nor does it seem likely that Mr Ansell could have no real idea as to what it had cost to replace the carpet in the bedrooms alone. It seems that his calculations were based, in any event, upon the total floor area of the house, not taking into account those areas which were not or were not usually carpeted at all In

his claim lists Mr Ansell put forward $21,000 as the cost for replacement of the carpet. It was his evidence that this had been an oral quotation by one of the carpet dealers in New Plymouth The carpet dealers were called but denied ever making a quotation orally and that, in any event, $21,000, let alone $30,000 odd, would have been a gross exaggeration It seems that the Ansells continued in their claim for $21,000 as part of their claim additions in spite of the knowledge that they had in their possession a quotation at substantially less than that for floor coverings for the whole house.

I find that Mr Ansell knowingly made and maintained claims for the cost of the carpets which he knew were not correct Mrs Ansell I believe was equally at fault in this.

The defendant attacked Mr Ansell's credibility in a number of other respects on this general topic including the claim as to measurement of the house There was some conflict in the evidence as to measurement of the house, at least in its total floor area. Mr Ansell had on a previous occasion, as part of his general exaggeration of matters, indicated that his house was larger than it was. I do not think that he was dishonest in his measurement or his claims about that but I do not believe that he was honest in the calculations as to the carpeting and as to the way in which that was continued in the course of the claim.

One of the features which had engaged the attention of the defendant's investigators, and was given much emphasis in the course of the trial, was the question as to the number of books which were in the house and which were claimed in the claim form There was, I think, some confusion by counsel as to this matter, it being suggested that, in accordance with some figuring on the schedule of items, there was a claim for up to 200 books In fact the figures that are shown are in a column which, on a number of these lists, was clearly indicative of the age of the books It was Mr Ansell's claim, indeed, that he had a number of antique or old books and that one or more of them was up to 200 years old. His claim was that there was something over 300 books in the house that were destroyed and that their value was $14,270 The precise description as recorded in the list of matters put in the claim form of 25 April 1994 is in this form

" Total for all books as orig estimate1-200 14,270 "

The original estimate reference is I believe a reference to the inventory which was created at the time that the insurance was increased in 1993 It was Mr Ansell's evidence that he had counted the books at that time. In that list there is a general description of 62 reference books, 146 hardbacks and 100+ softbacks In his discussions with Mr Byrne and as recorded in the interview notes on 1 March 1993 in which some additions were made in hand-writing, other estimates were recorded exceeding 300 books in total but, in particular, identifying in particular places and in particular shelves and bookcases estimated numbers of books

In the contents shipped to New Zealand there were 20 cartons of books The books were insured for a total of £1,500 Six cartons of books were not delivered A claim was made for $2,000 In that claim Mr Ansell had asserted that approximately half of his good books, -meaning hardback expensive ones, were missing and the others were relatively worthless On that basis he was paid out $2,000. It was asserted that books had been bought after arrival in New Zealand in 1990 but there was no evidence forthcoming as to how much or how many. Careful search was made, particularly in the remains of the building, for evidence of books outside the main bedroom where it was claimed was a bookshelf with a number of books in it Particular search was also made in the remains of the office and in the living room

The clear evidence from the experts was that there was an absence of the remains of books in any number which approached 300 I accept the evidence that where books are held in a shelf or in a pile they remain visible with severe damage to the outside but lesser damage to the inside Indeed, in a number of places including the bedroom, the seat of the fire, some small piles of books or their remains were ascertained or identified There was evidence from persons who had visited the house that there were a lot of books in the house Indeed, there is a photograph taken some time before the fire in the living room of the house which photograph has some importance later That shows two shelves of books which, on a rough count, would be in excess of 100 I have concluded that there were not 300 books in the

house and that there were not, in any event, collections of books on bookshelves in places where it was claimed they were I accept the evidence given by the experts that, in the absence of the traces of the books that they did not exist in the house at the time of the fire I believe that Mr Ansell did not honestly believe that at the time of the fire there were the number of books or that they were in the places which he specified and in the numbers at those places that he specified. In the absence of any documentary evidence of substantial purchases and having regard to the transit claim I am satisfied that Mr Ansell knowingly inflated the value of the books in the fire claim. Mrs Ansell must also and equally be at fault here.

There were a number of antiques and other items of particular value which were in the house A number of these were purchased, it seems, in anticipation of and for the purpose of bringing them to New Zealand Among the particular items was a collection of eight pictures by one Tom Keating. Two of them were oil paintings, four were water colours, one was pastel and the other was a limited edition of a print Keating was an art forger who painted in the style of a number of notable painters In pursuance of a letter apparently dated 9 November 1988 addressed to Mr and Mrs Ansell from Brandler Galleries in Brentwood, Essex, the Ansells were advised to insure that collection of pictures at various amounts, making a total of £28,400 In the proposal form dated 12 July 1991 these Sterling figures were calculated and translated to an amount of $84,397 Mr Ansell was particularly proud of this collection of paintings. He was especially fond of one of the paintings which it was said was of Keating's own house and was in his own style, not a copy of another painter. Mr Ansell was interested in this person and had gone to the trouble of taking a copy of a television programme which included some reference to Keating and his life and work. Keating was convicted, spent some time in prison and is now dead. Mr Ansell was sufficiently interested in this person to take to Auckland the day before the fire in a large briefcase that video with some other items which will be mentioned later In the claim form of 25 April 1993 these pictures are alleged to have a total value of $106,850. In the statement of 1 March 1993 it is recorded that Mr Ansell considered that he knew for a fact that those paintings had appreciated in value between 1988 and 1992 He referred to a good deal of reading on the topic and the reference to the video tape as well as a small book

Mr Grigg, a valuer and auctioneer in New Zealand who had considerable experience, estimated the value of the paintings at $105,750. He had not seen the paintings and relied on his valuation on discussions or evidence from other persons, including persons overseas The defendant called a Mr Hector Paterson from London who has an extensive experience in the London art market It was his evidence that although the market for Keating's paintings had been keen in the 1980's that had fallen markedly since then and now few of his paintings were being sold He also gave evidence about a general downturn in the art market which had affected prices generally His estimate of value of the Keatings was between £5,500 and £9,000 I accept that evidence Mr Paterson also gave evidence that the downturn in the art market was well known and, in particular, the falling fortune of the favour of Keating's paintings was also well known He was satisfied that anyone with any knowledge or an interested collector would have known that the values would have fallen and could certainly not have believed that the values had risen I believe that Mr Ansell must have been sufficiently informed and that he well knew that the paintings had not increased in value and that the claim was therefore inflated. He relied upon an alleged valuation from Brandler Galleries in 1989 but that was not extant and no evidence was forthcoming from the writer of the letter or from the Brandler Galleries to support these values or their increase.

In the course of Mr Ansell's discussions with Mr Byrne and as recorded in the statement of 1 March 1993, Mr Ansell had alleged that he had seen a rat in his bedroom one night, that he had mentioned it to his neighbours and that he had set a rat trap. It was suggested by him as a possibility that a rat could have caused the fire either by chewing the wiring or knocking over the lamp. In his evidence Mr Ansell produced a copy of a Visa or Mastercard chit evidencing the purchase of two rat traps and rat poison The voucher was dated 9 1 92. It was suggested to Mr Ansell during his examination that that date might have been incorrect and might have been a mistake for 1993. He rejected that although the period of his credit card, as shown on the voucher, was from April 1992 to March 1994. Mr Ansell explained that that might have been in use early because it might have been sent to him from the bank some months before its commencing date It may also be noticed, on the contrary, that in another Visa/Mastercard sales voucher

bearing the date 5.2 92 the earlier credit card had been used with a period commencing in March 1990 and expiring in March 1992 A similar indication is given with the use of that card in the purchase of a barbecue dated 12 11.91. While it is possible that a credit card could be issued early and that both credit cards might be used, it seems more likely to me that the rat trap voucher, within the first days of the new year, was wrongly dated and that the rat trap was in fact purchased in 1993 I think Mr Ansell well knew that he had purchased a rat trap in 1993, not in 1992.

It was also his evidence and his statement of 1 March that in the early hours of Sunday 7 February 1993 he received a call on the telephone between 1 am and 2 am which was of a threatening nature. He identified or recognised the voice as a person with whom he had had some fleeting dealings at Workbridge some time before Christmas As is recorded in his statement he did not consider the threat too seriously but mentioned it at work and later instructed his solicitors to write regarding the threat Evidence was called by his superior at the time at Workbridge to give evidence that the matter was raised after that particular weekend. By that time there had been some further matters arising out of the dealings that Mr Ansell had had with this man. There had been a complaint about Mr Ansell's conduct of the matter and some correspondence about it. There was evidence that Mr Ansell had sought an appointment with a solicitor for 5 February. She did not see him on that day but had a full interview with him on 11 February and on his instructions wrote a letter to the alleged caller which specified 16 January as the date on which the threatening call had been made. Her evidence was that she believed that Mr Ansell probably checked the contents of the letter before it was sent. The alleged caller gave evidence. He denied completely that he had ever made the call at all He explained how he could not have made the call at any relevant time mentioned in January because not only was he not in town but he had been totally unaware of the matters of which he later complained. There was clearly some confusion in Mr Ansell's mind as to when this incident occurred or was alleged to have occurred. Mrs Ansell was unable to give any evidence in support of the claim. She was not able to remember any telephone call which might have disturbed her at night when her husband went to answer the call I accept the evidence given by the alleged caller I do not believe that he did call I do

not believe that there was a call and that this was a matter which Mr Ansell chose to fabricate

I note that a permanent order was made suppressing the name, occupation and employer of that caller.

I have already mentioned the polyurethane sheet which it was said was placed on the floor of the bedroom That was a matter which had been referred to in the discussions at the earliest point with Mr Byrne and was contained in the earlier part of the written statement of 1 March in a passage in which there was an a written addition and a particular acknowledgment by signature or initials It was confirmed or reconfirmed in a plan to which reference and marking to show the positions of both the cotton type sheet and the polyurethane were added on 16 March under Mr Ansell's signature In that plan the latter is described as "Flat foam underfelt sheet (one piece)". It was a matter which was reconfirmed in his brief of evidence.

The position of this polyurethane under-felt was under the internal window which was being given the clean up attention When the bedroom was carefully excavated in the course of the investigations it was found that the glass from the window had fallen into the bedroom in a form which spread over the floor It was broken but provided a sheet, as it were, like a crazy paving perhaps, over the floor area. The expert evidence was that in such circumstances there would have been traces of the remains of the polyurethane underneath the glass. In spite of a systematic and detailed examined no trace of that polyurethane was found Traces of the carpeting were found and, indeed, traces of the remains of the substance which had been placed on the glass as part of its manufacturing process were also discovered The irresistible conclusion is that, at the time of the fire, the polyurethane sheet was not on the ground I find it difficult to believe that the Ansells would not have remembered accurately after the fire the state of their own bedroom when they left it on the day before the fire.

This is a bedroom which it is asserted was being used by Mr and Mrs Ansell They had slept in it the night before It seems perhaps surprising that he was

continuing his work with liquids which smelled pungently and which Mrs Ansell didn't like It is not as if this was an unused room which was being redecorated over a period where the state of it might have been left for some time and perhaps forgotten

One of the issues in this case, and indeed a specific claim for damages, is that the conduct of Mr Byrne, and in particular his persistent interviews of Mrs Ansell in her husband's absence in England caused the break-up of their marriage. The question of their marital stability was an issue early on In the course of a discussion on the telephone on 16 April 1993 when the topic of who was insured under the policy was being mentioned, Mr Ansell told Mr Byrne that they were separated Mr Ansell's words were, "we are legally separated", ". . we're completely divorced in UK and all this is why I've got it cleared with barrister in England before we left " He made a reference to living in separate beds There was some confirmatory evidence of this from a Mr Chong, the Administrations Manager of Coopers and Lybrand who had discussed with Mr Ansell in July 1991 whether that firm would handle his accountancy and tax affairs According to his recollection, supported by contemporary notes, Mr Ansell had referred to his state of being semi-separated. Mr Byrne raised this matter later in a telephone interview with Mrs Ansell on 11 May 1993, and before Mr Ansell had gone to England, in which there was confirmation that there had been a separation but her assertion was that they were now, as she put it, truly and completely married sharing the same bed.

In the course of her cross-examination Mrs Ansell was reluctantly forced to admit that she had had a relationship with a Mr Gillingham which had commenced on 6 June 1993, just the day after Mr Ansell had left for England for his operation Mr Gillingham, who became an important witness for the defendant, had first met the Ansells in or about August 1991 They became friends and from about May 1992 onwards saw a lot of each other. Mr Ansell and Mr Gillingham frequently played golf together. Mr Gillingham visited the Egmont Road property, he said, almost every Sunday He had spent Christmas with the Ansells at the end of 1992. In or about April 1993, he was interviewed for a job in Malaysia On 27 April 1993 he married Mrs Ansell's sister She had come to New Zealand and was living with the Ansells at Egmont Road with her children It is clear that this was a convenient

marriage to assist the sister to obtain residency rights in New Zealand. As I say on 6 June, following a social occasion at a restaurant, Mrs Ansell and Mr Gillingham became intimate On or about 26 June 1993 Mrs Ansell's sister and children left New Zealand and returned to England On 18 July Mr Gillingham left to go to Malaysia Between 6 June and 18 July Mrs Ansell and Mr Gillingham had a continuous intimate relationship, including a period in which they lived together in Mr Gillingham's flat Mrs Ansell remained in that flat after he left At the end of August 1993 Mrs Ansell went to Malaysia and spent some time with Mr Gillingham there There was correspondence between the parties Mr Gillingham kept the letters. Copies were produced in court These confirm the close and infatuated feelings that Mrs Ansell had for Mr Gillingham and there is repeated talk about her wish to have a child Subsequently she did become pregnant but she miscarried.

Mr Byrne had a number of conversations with Mrs Ansell commencing with the interview immediately after the fire on 18 February and thereafter. There was a long attendance with Mr and Mrs Ansell on 1 March during which the statement was completed That, as I have already said, extended over the luncheon adjournment A large part of the interview form was faxed to Mr Byrne at lunch time and was dealt with by the parties afterwards. It was both Mr and Mrs Ansell's evidence that Mrs Ansell had been very disturbed during this meeting She had been upset by references that Mr Byrne was alleged to have made about his recent purchase of a BMW and that thereafter she took no part in the matter. That clearly is incorrect She did take part in the interview. There are a number of places in the record where she has made insertions and has given information which has been inserted into the document Part of the document dealt with after lunch relates particularly to her own affairs and her own intervention in various matters including, at the end of the interview, discussion about the purchase of the carpet I do not believe Mr and Mrs Ansell's claims on this matter and it affects, of course, the evidence generally in relation to the conduct of Mr Byrne in the case and its effect on Mrs Ansell.

As I said Mrs Ansell was spoken to on several times All the telephone calls after 16 March were taped and I listened to them Mrs Ansell was spoken to at various times and at various lengths on 2 and 24 April, 11 May, 12 and

19 July. There are no telephone calls with Mrs Ansell between 11 May and 12 July. It is the June period, of course, in which Mrs Ansell forms and continues the relationship with Mr Gillingham. The earlier calls are quite neutral and indeed show or indicate a friendly feeling on the part of Mrs Ansell towards Mr Byrne and his various calls

In the course of the calls in July Mr Byrne was pressing Mrs Ansell to make some admissions In the course of this he suggested to her that her husband was perhaps not intending to come back to New Zealand, had gone to England falsely claiming to have an operation, had not had an operation and was not at the address which had been mentioned Mr Byrne suggested to her that Mr Ansell had burnt the house down No doubt these were all disturbing suggestions to Mrs Ansell, whether she had a guilty or an innocent mind. She rejected them in her conversations with Mr Byrne In her letters to Mr Gillingham, although there are references to the ongoing inquiries, the most that she says or writes is that on 22 July 1993, three days after the last interview on 19 July:

> " On the home front, I feel that although I am strong enough, plus I love you enough to stop Steve from overstepping the line, I also feel that I have undergone enough stress in recent times already without Steve adding more I am in such a turmoil Steve in UK means a lot of stress for me from the Loss Adjuster. Steve staying on in UK means that the Insurance claim will drag on and on In fact the claim just will not be settled without Steve here in NZ. "

There is also a reference to this matter in a note that she made on 13 July in which she describes Mr Byrne's interviews as attempting to create doubt and suspicion in her mind so that she will say things that are not true about the fire The note, of which a copy was sent to her husband the next day, ends with this sentence

> " He appears to me to be grasping at straws to show that Steve has reasons to set fire to our house. "

Listening to the tapes and having regard to the contemporary record, whatever pressure she was feeling from Mr Byrne's interviews she was withstanding I had the

opportunity to see Mrs Ansell over a relatively lengthy period in the witness box She did appear emotional from time to time but when pressed in cross-examination she remained firm and, if anything, determined and alert as to the meaning and the purport of the questions She was well able to parry questions without making any direct response The whole tenor of her evidence in cross-examination was to deny and to maintain a denial, as far as she could, of her association with Mr Gillingham I am satisfied that Mr and Mrs Ansell always knew that there was nothing in Mr Byrne's actions or conduct which caused the breakdown in the marriage and that, indeed, Mr Byrne's procedures while forceful and calculated to obtain admissions did not go beyond the bounds of appropriate conduct and were not in fact perceived at the time by Mrs Ansell to be doing so I find that this claim that Mr Byrne's conduct caused upset to Mrs Ansell and a break-up of their marriage is a fabrication by the Ansells

Mr Gillingham gave evidence not only about the letters and correspondence and his association with Mrs Ansell but also produced a box and a number of items of chattels which had belonged to the Ansells and which he had brought to the attention of Mr Byrne at the beginning of 1996. These chattel items included a framed print comprising four scenes of London, three albums of photographs, a number of items of crystal and china, and ornaments of mice and of models of buildings There was also a pilot log book which was Mrs Ansell's, a chilly bin and a clock in a glass case. There was a small oil painting of a fisherman It was Mr Gillingham's evidence that the box with a number of the items in it and the other items had been brought to his flat in New Plymouth when Mrs Ansell moved out of her flat and into his He stated and produced a photograph to confirm that the clock had been in open display in his flat for a period All these items had then been taken to Australia and had remained there while Mrs Ansell and Mr Gillingham lived together. He had remained in possession of them and ultimately brought them to the attention of the State Insurance and Mr Byrne Most of the items were wrapped in newspapers or pieces of newspaper bearing dates at the end of January 1993 Some were wrapped in newspapers dated in April 1993

In the course of the investigation Mr and Mrs Ansell had produced to Mr Byrne some photographs of the exterior and interior of the house One of these

photographs showed, as displayed on a built in bookcase in the living room, most of the crystal, china and a number of the items of animals Other pieces were recognised as having been in the house. Mr and Mrs Ansell had a number of explanations for the existence of these items They were not willing in every case to admit that the items were items that had been in the house It was suggested that some had been taken to Mr Ansell's office before the fire and I accept that, in respect of the fisherman picture and the clock, that is more likely than not. It was suggested that these items, particularly the crystal, china and other ornaments, had been given by Mr Ansell's mother to insult and annoy Mrs Ansell, that they were displayed on the occasions when Mrs Ansell senior had visited New Zealand to visit them but had then been taken down and wrapped up and put aside The evidence suggests clearly that the last visit by Mrs Ansell senior was considerably before the period at the end of 1992 The suggestion that the box of ornaments had been left in the woodshed is, I think, unbelievable It still does not explain how they came to remain in the possession of the Ansells or how they could have forgotten, at the time they were making claims in a preliminary way, that they had retained or obtained them after the fire I am satisfied that there was nothing in the woodshed which Mr Byrne, as a careful investigator, did not see

Photograph albums are one of the things which are made much of by people who have lost their belongings in a fire. A number of burnt photographs were found in the remains of the fire. These were later recovered. There were no traces of any albums. The albums produced by Mr Gillingham have a number of empty pages but include in the complete pages a number of photographs of Mr and Mrs Ansell in their earlier life which clearly would have particular significance to them but unlikely to have any significance to others It was a somewhat vague suggestion on the part of the Ansells in the course of their evidence that these albums might have been obtained from Mrs Ansell's sister after she had returned to England. It was Mr Gillingham's evidence that he saw these albums in June or July 1993. That is before the sister had returned to England. It was his evidence that he tackled Mrs Ansell about these matters and there is a copy of a letter which he wrote to her in which there is a suggestion that she should make a clean breast of her knowledge of the matters to the police or to the investigator I have no doubt, and I so find, that all of

these ornaments and items, the pictures and the albums, were and are the property of Mr and Mrs Ansell The ornaments, glass, crystal, china and the print were in the house before the fire and they form part of the claimed items referred to in the claims and repeated throughout the lists of items in the claim forms I am satisfied that both Mr and Mrs Ansell knew of all of these matters and have deliberately lied about them

There were a number of other matters raised by the defendant's counsel in support of his attack on the credibility of Mr and Mrs Ansell One of these was an issue of under-insurance in relation to the marine transit claim on the damage of their articles when they first came to New Zealand I think that there was some under-insurance and some over-claim in the course of this. The insurance was expensive and I think while certain items were fully insured the Ansells deliberately took the attitude that they did not need to go to the expense of full insurance in respect of other items

Mr and Mrs Ansell made a claim against Petrocorp in respect of some alleged damage, actual and prospective, arising out of some oil exploration in the neighbourhood of their home There was clearly some exaggeration on the part of the Ansells in the pursuit of this claim and what might be thought to be a very generous settlement in their favour in the matter. Included in this was a suggestion that the Ansells had spent some $70,000 in improvements. This was to be compared with the claim in this case that some $30,000 had been spent. There was no confirmatory evidence as to these amounts and I am not prepared to take any great account of those matters.

There was a reference to the existence or otherwise of pistols in the house but I discount the evidence of that as being too vague to draw any particular conclusion against the Ansells

There is reference to a Peugeot car which was noted in the additional interview on 16 March 1993 as a motor vehicle estimated to be worth NZ$15,000 and being an asset of Mr Ansell That is a hand-written statement under Mr Ansell's signature In fact it was Mr Ansell's evidence that the car belonged to his brother, that

he had given it to his brother but that it may have remained in his name on the registration papers He claimed that it was worth no more than £500 and so was worth on a proper translation into New Zealand currency $1,500 rather than $15,000 I think it must be said that Mr Ansell's explanation lacks credibility and that I think that this is an instance of Mr Ansell's exaggeration in which he wished to indicate his good financial position

Finally there is an allegation that Mr Ansell misrepresented to the State Insurance that a passport of his had been destroyed in the fire Mr and Mrs Ansell had UK passports At the time of the fire they were not New Zealand citizens although they had made application for permanent residence It was their evidence that when they travelled around New Zealand they customarily took their passports with them. They were in a briefcase which was taken to Auckland in the car. I think that in the circumstances that is perfectly reasonable Mr and Mrs Ansell needed, if necessary, some proof of their identity and although they had purchased land and had been in the country for some considerable time the immediate possession of a passport could no doubt be seen as a prudent step As is not unusual the earlier passports had been retained. The previous passport was later discovered in the United Kingdom. There was, I think, some confusion about the destruction of a passport. Mr Ansell always knew that he had the current passport in his possession. The State Insurance I think misconstrued what had been said to them and assumed, incorrectly, that Mr Ansell had indicated that his current passport had been destroyed I do not take this point against Mr Ansell.

The cumulative effect of the various findings I have made against the Ansells so far must be significant Weighing all that and having regard to the lengthy opportunity that I had in this case to watch and consider the demeanour of the Ansells in the witness box I have come to the conclusion with reluctance but without doubt or reservation that their evidence is not reliable or worthy of credit without confirmation from an independent or incontrovertible source.

The overwhelming evidence is that the fire began in the main bedroom and spread through the house That is the evidence of the lay persons, the

neighbour, the Fire Service officers and the evidence of the experts and investigators Mr Byrne and Mr Cox Mr Byrne had examined the premises on 18 February 1993 and following Mr Cox first examined the remains on 23 February. In the course of a fire, as here, damage is most severe at the seat of the fire In and around the main bedroom the structural members of the house were consumed to the level of the floor plate, brick walls had collapsed and the contents burnt to floor level. To investigate the cause, course and effect of the fire the layers of debris that remain have to be sifted through to recover and examine relevant items and from those to draw the conclusions which most closely fit all the facts In the course of fighting the fire some movement of structure and contents is inevitable Indeed, some clearance was made as the fire was extinguished then dampened down in order to provide access in and through the debris What might be called the over-burden of roofing and ceiling material was removed to make for easier access for investigation Before the expert investigation the site had remained unsecured in the sense that there was nobody living on the site, no guards. There was opportunity for neighbours and others to come on the site There was the possibility, it was suggested, of contamination of the site by wind and weather and indeed it was clear that a number of items of paper and other matter had been spread around the site The important matters, however, upon which Mr Cox and Mr Byrne relied were things which were, I believe, intact, had not been interfered with in any way which would affect their opinions They were the only experts who did any detailed examination of the premises. The plaintiffs called an expert who had not had the opportunity to examine the site after the fire but who gave his evidence in reliance on photographs taken by Mr Byrne and Mr Cox and other written material which was available to him.

In the end I accept the opinions of Mr Cox and Mr Byrne They were not, I think, seriously challenged It was Mr Cox's opinion, following his investigations, that the fire had commenced in the bedroom That was confirmed, in his view, not only by the relative charring, which is a common way of testing the point of the fire commencement by the extent of the damage to the floor plates and other items. He also confirmed that from his investigation of the electrical system and what he described as the "fire induced response" as the cabling failed and fuses burnt out as the fire destroyed the covering of the cables and short circuits were induced Mr Cox

was able to discover the remains of the electrical conductors for the lamp to which the timer had been fitted He was satisfied that the lamp switch was on at the time of the fire. His conclusion from investigation of the wiring from the lamp was that this was the location of the area of ignition, that is to say where the fire had started. He was, from his later experiments, able to exclude the possibility that the fire could have occurred by the lamp or its bulb coming into accidental casual contact with curtains or upholstery material He was able to conclude, however, that a light bulb, unshielded as this one was, could cause ignition when in contact with cotton and insulated by some layers of that material or other inflammable material. The thicker the wrapping the shorter the period of time for ignition Without such insulation or wrapping it was impossible, he felt, for any ignition to occur He was satisfied that that lamp was the only possible source of ignition and that it would be possible for the ignition to occur if it had been insulated or wrapped by some combustible material. He did not consider that the accidental displacement of the light bulb or the lamp light standard could have caused the accident by falling off the bureau on to the sofa. Another expert gave technical evidence as to the unlikelihood of a rat, mouse or other animal knocking over the lamp, a possibility which appeared to me in a common sense way to be incredible in any event. It was Mr Cox's final conclusion that the fire was probably caused by a light bulb having been deliberately placed in contact with combustible material or having been deliberately wrapped in combustible material. The proposition was that Mr Ansell had deliberately wrapped the light bulb in a combustible material or had placed it in or on the sofa in such a surrounding circumstances with combustible material as to cause a fire. Reference particularly was made to Mr Ansell's own discussions with the State Insurance at the time that he increased the insurance amounts to an incident which had occurred allegedly at home when one of Mrs Ansell's sister's children had put a bandage or stockinette bandage across an upturned lamp so that the metal shade was enclosed over by the stockinette. The stockinette had charred although it had not burst into flames.

In the course of their investigations Mr Byrne and Mr Cox ascertained that the bureau or desk had been situated close up to the wall. This was done by examining the remains of the legs or feet of this piece of furniture and the marks that it had left in the remains of the carpet and floor immediately adjacent to the outside wall

It was Mr Ansell's evidence that he had pulled this desk/bureau out from the wall with a view to ensuring that the curtains at the nearby window would not come into contact with the lamp

The expert evidence, which I accept, excludes the accidental cause of the fire It does not prove that the fire was caused deliberately and it certainly does not prove who might have done that The only possible persons are realistically Mr or Mrs Ansell or both of them The children can be excluded as I think can Mrs Ansell's sister. There has never been any suggestion that she might have caused the fire There is the possibility that someone might have broken in The complainant that Mr Ansell spoke about was one such person I reject that I do not believe that he was involved and do not believe that he in fact had even threatened Mr Ansell in the way that he suggested We can exclude animals such as a rat or an opossum. There is no suggestion that any windows had been left open.

There are a number of peculiar and what one can only describe as suspicious circumstances in this case There are the increases to the insurance amounts on the Homeowners and the Homecontents policies. That was done very close to the date of the fire, a date which it was known, at that stage anyway and earlier, that the family would have left the house and gone to Auckland The circumstances surrounding the increase in the insurance policies made by Mr Ansell himself, indicate the references to the nephew's fire raising with his bandage, emphasised on more than one occasion. There is the unusual situation in which Mr Ansell appears to have taken some steps to create the suspicion as to a possible malcontent who might have caused or wished to cause harm to him and his family in which he adverted to the matter by mentioning it at work, seeing his solicitor and writing a letter Notable it may be said that in contemporary correspondence about this incident at Workbridge and a report upon it he did not mention this alleged threat on the telephone and although he suggested that he was going to take action against this man it was not at all on the grounds of his alleged threat, a subject upon which he had instructed his solicitor and in reference to a different date

This is the first time that Mr Ansell uses a timing device to set a light burning in his absence He has purchased that timer shortly before and shortly before that has purchased a rat trap. There are to hand in the house and in the room combustible materials which have been used to protect the carpet from damage in his painting He uses an unshaded lamp with a powerful bulb. He said that this lamp in this unshaded form had been in regular use in the bedroom which appears to be inconsistent with the apparent type and standard of lighting in that bedroom and the rest of the house. His timing is somewhat unusual in that he proposes to leave the lamp on all night. It is in the back of the house, not visible directly from the roadway which is some considerable distance from the house. Mr Ansell explained that the light would shine through into the corridor through the internal window and then indirectly through the windows opposite, in the opposite bedrooms and out to the night. One would have expected rather that the additional night light might have been put in one of the front bedrooms which would have been immediately visible to anyone approaching the house from the road One would have expected, too, that the light might have been left to come on and off It is not, one would have thought, usual to have a light burning in a bedroom all night as a sign of occupation.

The Ansells took with them a briefcase. It is a large briefcase which he says he always carries with him. In it were his passports and the papers which he was to discuss at his Lloyds meeting. That seems innocent and reasonable. There was, however, in addition to that in the briefcase his wife's pilot logbook, a photograph from his service life or part of his service life, a collection of gold sovereigns, the video of Keating and a number of receipts or chits which included those referring to the purchase of the timer, the rat trap and other particular items As well he had taken with him, and perhaps unexceptionably, a valuable watch and an item of silver which he was looking to have repaired in Auckland It seems unusual to say the least that one would carry all of these sundry items and, in particular, items which might be useful to support explanations for an accidental fire. Carrying the collection of gold sovereigns, which was of some value, when one has left a collection of more ancient coins in the house, seems to be peculiar. It certainly raises questions as to the reasons for doing that.

There is no immediately apparent motive for destroying the property and claiming the insurance. It is not a case where the Ansells were in any financial straits of any kind. He has sufficient assets and few liabilities to be counted and in a comfortable position He and his wife both work He was making money from his ventures at Lloyds Unlike others he had not suffered any drastic losses and had continued to make some profits. He had an income from the house in England and was able to sell that. The property in New Zealand was unencumbered and there were additional funds used to provide support for the guarantee of his position at Lloyds which were also available to him if necessary

That his marital situation was not as stable as is claimed is, I think, supported by the fact that almost immediately after his departure his wife entered into an intimate relationship with a man who was technically her brother-in-law That relationship continued at a high intensity and was the cause of their final separation I do not think that Mr Ansell had any immediate intention of returning to England. In the fire a damaged paper was discovered which, on its face, indicated that he had intended at an earlier stage to return to New Zealand but I think that that truly was a mistake on his part in the writing of it and that he wished to continue to live in this country. That he was proud of his possessions is clear enough. But the possibility of converting all that into cash, rebuilding the house in modern materials and replacing assets might not be unfavourably considered. It is, of course, not necessary that I should discover a motive as I am sufficiently satisfied that this was deliberate arson

A factor I think in this is the conduct of the claim by Mr and Mrs Ansell. As has already appeared the claim was inflated, it was inflated by the inclusion of items which were not destroyed in the fire. I refer to the china, glass, ornaments and the water colour picture The claim was inflated by the inclusion of a greater number of books than there was and I believe in the value of the books too. There was no evidence of his further purchases after losing, as he had said, most of his valuable books. The claim for carpet was knowingly inflated by them There were a number of other items such as golf clubs in which it was claimed there were two complete and valuable sets of golf clubs They were in the fire Only 18 golf clubs totally were visible out of the two golf bags of clubs which had been placed on the sofa together

with some other additional clubs. The claim in respect of clothing was also inflated and, I believe, knowingly This is another item in which a number of clothes had been lost on the transit to New Zealand. A claim was made in respect of those and there seems to be some difficulty, I feel, in adjusting that claim with the claim made in 1993 following the fire. Although, no doubt, some clothing had been purchased since there was no evidence to support that and indeed it was not suggested that any great quantity of clothes had been purchased. But in spite of the alleged loss of valuable clothes in the course of the transit a similar claim was made in value and quantity as at 1993. Likewise there was little, if any, attempt to provide evidence as to the purchase of items such as books, clothing, golf clubs and other chattels There was evidence of ownership of a number of the items arising out of documents which had been furnished to State Insurance when the contents insurance was first taken out There were, furthermore, some purchases verified by the production of receipts from traders in New Zealand and by the valuations made by Mr Rowe, again at the time of the chattels insurance.

Mr Byrne and the State Insurance presented to Mr Ansell a very daunting task because they asked for proof of a very large number of items Admittedly there would be some difficulty of providing proof of all these purchases but a number of the items had been purchased in New Zealand The local dealers, as indeed they did in respect of some items, could produce records. Likewise from England. While Mr Ansell spent some time there for his ankle operation it could have been possible to have obtained some further material in proof of purchases from various shops there. Apart from obtaining quotations for the replacement of the items the requests for further information remained unanswered

Bearing in mind the gravity of the allegation and the very serious effect of the finding I have nonetheless come to the conclusion that this fire was deliberately lit or organised by use of the lamp in the bedroom by Mr Ansell. I am satisfied that, contrary to her assertions, Mrs Ansell knew about this action of her husband and acquiesced in it At the very least I am satisfied that she was aware, later, that the fire had been deliberately lit but she maintained falsely to the insurance company that it was accidental and failed to bring to their attention, contrary to her

duty under the terms of the policies, her knowledge of that deliberate action. Furthermore, I am satisfied that in respect of the contents claim both Mr and Mrs Ansell made false and fraudulent claims, inflating their claims both as to quantity and value in a number of respects which I have detailed above. I consider that this is a claim which must be treated in its totality and that the false and fraudulent aspects of their claim affect all of the claims made and that they can not succeed at all. It will be apparent from what I have already said that I reject their claims against the State Insurance and Mr Byrne and his conduct of the case and would not have awarded them either general or exemplary damages

The plaintiffs fail in all their claims and there will be judgment for the defendant

Costs should follow the event but I will reserve the question of costs for further consideration and submission if necessary