

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2011-463-475
[2014] NZHC 258**

BETWEEN

**DENNIS WILLIAM ANGUS AND
BRIAN ERSKINE-SHAW
First Plaintiffs**

**SHERYL ELEANOR ANGUS AND
BRIAN ERSKINE-SHAW
Second Plaintiffs**

**DENNIS WILLIAM ANGUS AND
SHERYL ELEANOR ANGUS
Third Plaintiffs**

AND

**ACE INSURANCE LIMITED
First Defendant**

**CERTAIN UNDERWRITERS AT
LLOYDS AS PER POLICY CHG090466
Second Defendant**

Hearing: 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 28 and 29
November 2013

Appearances: K M Quinn and S M Thompson for Plaintiffs
D P H Jones QC and M L Evans for Defendants

Judgment: 24 February 2014

JUDGMENT OF COOPER J

This judgment was delivered by Justice Cooper on
24 February 2014 at 1.00 pm, pursuant to
r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

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Lance Lawson, Rotorua
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Introduction

[1] In the early morning of Friday 2 July 2010, the main building of the Pinelands Hotel in Kawerau was destroyed by fire. There is no dispute that the fire was deliberately lit.

[2] The plaintiffs, who were the proprietors and operators of the hotel, seek to recover money allegedly owing by the defendants as a result of the fire under two policies of insurance. The first, the “material damage policy”, indemnified the insured in respect of any unintended and unforeseen physical loss or damage to the insured property. The second, the “business interruption policy”, indemnified the insured in respect of interruption or interference with the hotel business.

[3] The plaintiffs’ case is that there was a robbery in which Mr Angus was doused with petrol and compelled to hand over money before the robbers set the hotel on fire. However, when the plaintiffs made claims under the insurance policies, the claims were declined. The defendants say there was no robbery, and that the fire was set by Mr Angus. They plead as an affirmative defence that Mr Angus made a false claim on the policies inasmuch as he deliberately “in person or otherwise” started the fire. The defendants’ pleading alleges that his wife, Mrs Sheryl Angus, was also involved but allegations against her were not explicitly pursued at the trial.

[4] The defendants say that the alleged robbery and assault of Mr Angus was simply a dishonest cover for Mr Angus having started the fire by igniting accelerant which he had poured in up to six separate areas of the main building. He did so because the business was faring badly, he had tried unsuccessfully to sell it, and he wanted to be free of it. It is said that claims made under the insurance policies were fraudulent, and a breach of the policy holders’ duty of utmost good faith, which entitled the defendants to forfeit all benefit under the policies.

[5] The issue on which the case turns is whether the fire was set by Mr Angus. The police carried out their own investigation and concluded that he was responsible for setting the fire. That was a view that appeared to have been significantly influenced by input from experts advising the defendants, and I have not been

influenced in my determination of the issue by the conclusion that the police reached.

The plaintiffs

[6] The first plaintiffs are the trustees of the Dennis William Angus Trust. The second plaintiffs are the trustees of the Sheryl Eleanor Angus Trust. Mr Erskine-Shaw is a chartered accountant who for many years has provided accounting advice to Mr and Mrs Angus.

[7] When the fire occurred in July 2010, two mirror trusts, the DW Angus Trust and the SE Angus Trust, each owned a one-half share in the three titles which together comprised the property known as the Pinelands Motor Hotel.

[8] Mr and Mrs Angus are named as the third plaintiffs. The statement of claim describes them as the owners and operators of the hotel business.

[9] There was an issue raised by the defendants as to whether or not any of the plaintiffs were the parties actually insured. The insurance policies describe the insured as “Dennis & Sheryl Angus Partnership Trust T/as Pinelands Motor Hotel”. It appears that in a strict sense that is an entity which does not exist. In fact, the business was run by Mr and Mrs Angus as a partnership; the mirror trusts referred to above owned the land and buildings. On this basis, the statement of defence denied pleadings in the statement of claim that the plaintiffs had entered into the relevant contracts of insurance.

[10] However, Mr Quinn also noted that the definition of “the insured” was expanded later in the schedule, in the case of both policies. In respect of the material damage policy the expanded definition provided:

As detailed above but also including all other Entities in which the Named Insured has more than half of the equity or over which management control is exercised and all Principals, Directors, Employees and Employee Social Clubs and Family Trusts of the Entities Insured not otherwise insured.

[11] A similar expanded definition applied under the business interruption policy. This read:

As named Insured but also including all other entities in which the Named Insured has more than half the equity or over which management control is exercised and all Principles, Directors, Employees and Employee Social Clubs and Family Trusts of the Entities Insured not otherwise insured.

[12] Mr Quinn pointed out that the two mirror trusts had for many years had their financial statements prepared together as a partnership, identified as “DW & SE Angus Trust’s Partnership”. He submitted that the name was very similar to that actually inserted on the schedule as the “insured”, the only real difference being transposition of the words “Partnership” and “Trust”.

[13] In the end Mr Jones QC conceded that the named plaintiffs were able to mount the claims under the policies and this issue does not need further discussion.

The onus and standard of proof

[14] There is no dispute about the law to be applied. It is for the defendants to prove on the balance of probabilities the affirmative defence raised that Mr Angus started the fire and that in those circumstances, his claim under the policy was dishonestly made and properly declined.

[15] The standard of proof in a case such as this was discussed by the Court of Appeal in *AMI Insurance Ltd v Devcich*.¹ That case involved a fire that caused extensive damage to a house in Auckland and, as here, it was not disputed that the fire was the result of arson. The house was insured by the appellant, AMI, but it declined cover, being of the view that Mr Devcich, a beneficiary of one of the trusts that owned the house, had set the fire. The owners succeeded in the High Court,² but the judgment was overturned on appeal. The Court of Appeal noted that in the course of a detailed judgment Lang J made many factual findings adverse to the owners, but at the end of an exhaustive analysis he held that AMI had not established its claim to the required standard, that the evidence left him in a state of “genuine uncertainty” and that he was not “sufficiently sure” that Mr Devcich started the fire.³

¹ *AMI Insurance Ltd v Devcich* [2011] NZCA 266.

² *Devcich v AMI Insurance Ltd* HC Auckland CIV-2009-404-5567, 20 July 2010.

³ At [10].

[16] In discussing the requisite standard of proof, Lang J noted that AMI had a reasonably heavy onus, because it had to establish that Mr Devcich had been guilty of conduct that was criminal in nature, and involved allegations of fraudulent conduct.⁴ He described that standard as not as high as the criminal standard of proof beyond reasonable doubt, but not far removed from it.⁵ He considered that AMI was required to adduce “clear and convincing evidence” that its allegations, were correct. The Court of Appeal thought that this was to suggest that because of the nature of the allegations the standard of proof required was more exacting than the ordinary balance of probabilities test in civil cases. This was incorrect, and there is no intermediate test between the criminal and civil standards, as was held by the Supreme Court in *Z v Dental Complaints Assessment Committee*.⁶

[17] The Court quoted what was said in that case by McGrath J, who wrote also for Blanchard and Tipping JJ:⁷

The civil standard has been flexibly applied in civil proceedings no matter how serious the conduct that is alleged. In New Zealand it has been emphasised that no intermediate standard of proof exists, between the criminal and civil standards, for application in certain types of civil case. Balance of probabilities still simply means more probable than not. Allowing the civil standard to be applied flexibly has not meant that the degree of probability required to meet this standard changes in serious cases. Rather, the civil standard is flexibly applied because it accommodates serious allegations through the natural tendency to require stronger evidence before being satisfied to the balance of probabilities standard.

(Footnotes omitted.)

[18] I consider this means that in a case such as the present, where the crucial issues turn on the credibility of Mr Angus, the assessment of the evidence must take into account the seriousness of the allegations and the fact that there is no evidence he has previously acted dishonestly. These are considerations which mean that there needs to be strong evidence that supports the defendants’ allegations in order to meet the balance of probabilities standard.

⁴ At [11].

⁵ At [12].

⁶ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1.

⁷ At [102].

[19] The ultimate issue is whether or not Mr Angus started the fire or whether there was a robbery, and the robbers started the fire before they left the premises. In order to resolve that issue it is necessary to examine in some detail the accounts given by the witnesses as to what happened on the night. For many of the most significant events, the only witness called was Mr Angus. The robbers, if they existed, have not been identified or located.

[20] The evidence given by Mr Angus in this Court followed interviews that he gave to the police at the scene on 2 July and later that morning at the Whakatane Police Station, a video reconstruction interview at the site on 5 July and a further police interview on 27 August 2010. In addition, he discussed what had occurred with a loss adjuster instructed by the defendants, Mr Hall, also on 2 July; with an investigator appointed by the defendants, Mr Bourgeois, on 5 July and 16 September; and with Mr Noble, a fire expert appointed by the defendants, on 3 July 2010. Reference is made to those interviews at various points in the discussion below.

[21] Before turning to the evidence that Mr Angus gave about the key events at the trial, it is appropriate to say something about the Pinelands Hotel.

The Pinelands Hotel

[22] The hotel was situated on the corner of Tamarangi Drive and Parimahana Drive in Kawerau. It comprised three buildings. The largest of these (which I will call the main building) contained bars, a restaurant and kitchen, lounges, and storage areas. The layout of the main building was depicted on a plan that was prepared by Mr Noble, the defendants' fire investigator. This plan (the "Noble plan") had acknowledged inaccuracies, but no other plan was produced, and the Noble plan was referred to by both parties during the trial. One of the lounges (called the "Gaming Lounge" on the Noble plan) contained poker machines. There was a substantial storage room (called the "Workroom" on the Noble plan), which gave access to a yard to the rear of the main building. The yard was fenced and had a wire mesh gate that was kept locked unless vehicular access was needed through it.

[23] Behind a wall at the rear of the Workroom were stairs that led up to a mezzanine floor. That floor comprised four rooms, in one of which was a safe and a considerable quantity of stored alcohol. It is common ground that accelerant was poured on these stairs in preparation for the lighting of the fire. At the base of the stairs was the control panel or keypad for the alarm system, which was the focus of much evidence at the trial.

[24] The hotel property included a substantial parking area located to the west of the main building. Hotel patrons would enter the premises through the doors that faced the car park. Truck drivers staying in the hotel on the night of the fire parked their vehicles on the southern side of this parking area.

[25] Sleeping accommodation for travellers was provided in two other buildings located roughly to the south and east of the main building.⁸ The southern accommodation building was orientated at right angles to the main building, to which it was linked by a covered walkway. The covered walkway joined the southern block at a point where the office and reception area for the hotel were located. The southern block contained, proceeding in an easterly direction, the manager's office, (adjacent and with access to the hotel office and reception area) and accommodation units one to five. There was a manager's unit adjacent to the office at the western end of the southern accommodation block.

[26] The eastern end of the southern block was linked by a covered walkway to the eastern accommodation block, which was orientated parallel to the main building. The eastern block contained accommodation units numbered (from south to north) six to 15. To the east of the eastern block was vacant land. A yard beside unit 15 led to a boundary fence between the hotel property and the vacant land.

[27] Other parts of the premises will be discussed below in the context of particular issues to which they are relevant.

⁸ The evidence about the orientation of the buildings was unclear, and I was told from the bar that the Noble plan showed an incorrect compass point. I have nevertheless taken north as shown on that plan for the purposes of describing the relative location and orientation of the buildings on the site. The actual orientation does not matter once the relative position of the three buildings is understood.

The account given by Mr Angus at the trial

[28] Mr Angus gave oral evidence at the trial in relation to the robbery and arson that he claimed had occurred, in the manner contemplated by r 9.10(3) of the High Court Rules in recognition of the fact that his credibility would be crucial. Surprisingly, the defendants opposed his evidence being given in that way, expressing a strong preference that he read from the brief that had been served. After hearing argument on this issue prior to the trial I made an oral evidence direction as had been sought by the plaintiffs. The order allowed those aspects of his evidence that contained his account of the robbery and fire to be led in the traditional manner, and not read from his brief.

[29] I record that the defendants have made no suggestion that any prejudice arose as a result of that order during the trial. In fact, Mr Jones has addressed various discrepancies between the evidence that Mr Angus actually gave at the trial and what was contained in his written brief, contending that they assist the defendants. The following is based on the evidence that he actually gave.

[30] After referring to events earlier in this evening, Mr Angus was asked about the presence outside the hotel during the evening of Thursday 1 July of members of the local Mongrel Mob:

Q. So Mr Angus these Mongrel Mob guys are gathered out the front, about how many of them would you say?

A. Between probably six to 10.

Q. Did they have vehicles with them?

A. Yes they had vehicles, yes.

Q. How many?

A. Probably two or three vehicles, yeah, may have been a few more because there was patrons cars parked around as well.

Q. Did you speak to any of them or did any of them speak to you?

A. No.

Q. Was a call made to the police that night?

A. Yes.

- Q. Who made that?
- A. Um, I think Sheryl made the call to the police, I'm actually not sure, I think Sheryl did.
- Q. What was the reason for the call to the police?
- A. Because the guy had punched one of the regulars in the bar and he'd been refused service and we thought that it could have been an issue 'cos it looked like he could have been coming back inside wanting to come back inside. We noticed when he was out in the carpark he kept putting his patch on and then he'd take it off and he'd put it on and at that stage Sheryl and I were on the front doorstep and she pointed him out, number 16 out to me, the guy that had number 16 on and he was the one that kept putting his patch on and off and they were making abusive comments to us both standing on the doorstep, they were calling out things like, "Seig heil you fuckin bitch." They mainly made comments like that to Sheryl.

[31] Later he said:

- Q. Were you there at the front steps when the police arrived?
- A. Um, I don't think I was, I think I might have been in the bar.
- Q. What time did the live music finish up that evening?
- A. The live music finished at 1.00 am sharp. Might have been just a bit before sorry, because of the problems we knew we were going to have outside we sort of cut the evening off to a short.
- Q. How many patrons approximately did you still have in the bar at 1 o'clock?
- A. It was still quite a full house still and once the music goes off we put the juke box on and it's generally older type music to wind the bar scene down and people just exit pretty smartly.
- Q. Were the Mongrel Mob guys still outside at that point?
- A. Yes they were, yes, they were floating around, yes.
- Q. So you put the juke box on and things start to wind down?
- A. Yes.
- Q. How long does it take for people to leave the bar?
- A. Generally it takes, we normally have 30 minutes to clear the bar. Once the bar's closed, so we close the bar and flick the bar lights down and they all know that they can't be served after that so they generally just drink up what they've got left and go. But we do encourage them to move on after that, after we close the bar.

- Q. What time do you think it was when the last patron left that night?
- A. Pretty quick actually, I think it was about 1.15, 1.20 maybe, 1.15.
- Q. So when the last patron's gone, there would be just the four of you left there at that point?
- A. Yes but that particular night there was one lady who was stuck for a ride home, I think she was on our front doorsteps and Sheryl called her back inside and I think one of the bar staff ran the courtesy van because he'd sort of taken the last load and she rang the courtesy car and he came back to pick her up soon after that.

[32] The four persons left at that point were Mr and Mr Angus and their employees Jackie Peka and Casey Bennett. Mr Angus regularly stayed in the manager's unit on Thursday evenings, but Mrs Angus would return to their home in Whakatane. On the night of 1 July she left at 1.30 am, exiting via the back door of the Workroom, marked as Door 5 on the Noble plan. Normally Mr Angus would unlock the wire mesh gate that was kept locked, so as to let her drive out. On this occasion, the evidence of them both was that she took the key, which was on a chain in the vicinity of Door 5, unlocked the gate, then returned the key to the place where it was kept, drove out and then closed the gate and padlocked it.

[33] Mr Angus's evidence continued by noting that Ms Peka had "sorted the TAB out" and put the money in a canvas bag, as normal. Next they together cleared the gaming machines, taking all the notes out. The three then had their customary supper of toasted sandwiches and a soft drink.

[34] Mr Angus said:

- A. Um, while we were sitting down having our sandwiches I noticed that, um, the front doors are very visible from where we sit that's why we sit there 'cos you can look right through to the front doors which is Door 1. And I noticed that there was someone that walked past there and I said to the girls, "Oh, there's someone just gone past the door." And that's not abnormal because people often come to the doors when we're closed and they'll either want us to sell them some late liquor or if they even think that the pub is still open. They still sometimes they're rolling into the pub after one, our licence was till two but they would still, no our licence was till one it used to be at two but they would still come to the pub. 1.30 or 2 o'clock if we were late closing. So it wasn't anything abnormal.

[35] Following that, they tidied up, took the money, turned the lights off in the bar and went through to the Workroom. Mr Angus said:

A. ... From there I walked around past all the metering, all the meter boards and I just went to the alarm panel pressed the alarm as normal, and walked away and the girls were sort of milling around where work room is written in this diary. I think Casey had walked to the door and opened the door, and –

Q. Which door Mr Angus?

A. Ah, Door 5.

Q. Thank you.

A. And as we walked out I noted that the alarm, um, made a different beeping to what it normally would do and it was Jackie that said to me, “Oh, that doesn’t sound right Den.” And, um, I said, “Oh, maybe.” And I went back and had a look and it was still beeping and I said, “Oh, no it’s showing armed.” And she, by then she had walked back partially with me and she looked over my shoulder sort of thing and she just said, “Oh, yeah it’s sweet.” So we just turned around and walked out really fast. As –

Q. Where’s the, where is the keypad for the alarm?

A. Ah, the keypad is, um, just at the bottom of the stairwell....

Q. So you went back over to the keypad?

A. Yes.

Q. Did you touch the keypad again?

A. No, I didn’t, no.

Q. Did the alarm appear to be set to you?

A. Ah, yes it did, yes.

Q. So what happened next?

A. Oh, Jackie just said to me, “Oh, it’s sweet.” And we both just walked out promptly. The door was open so we just slammed our back door, and that locks and we proceeded to walk on to the, um, office.

[36] The three then made their way towards the hotel office. Mr Angus unlocked the office and he and Ms Peka went inside while Ms Bennett waited in the foyer of the office. Mr Angus opened the safe and put the tills on the top shelf, and the bags of money on the bottom shelf. He then locked the door and Ms Peka said goodnight

and left. Using a key that he kept in the office, Mr Angus then set the office alarm, walked into his own office and stood observing as the women drove off from the car park. After they had gone Mr Angus walked through into the manager's unit, relieved himself in the toilet, filled a hot water bottle and sat on the bed, retuning the radio to a talkback station to which he liked to listen. He recalled that on the talk back station there was a discussion about obese people which he had found quite interesting.

[37] It was at that point that he heard a knock on the door. He was unsure whether the door was the door to his office or the motel office. He walked into another bedroom in the manager's unit and looked out to where he could see a person standing with a bag. He placed the person by reference to a photograph that was produced in evidence. His evidence proceeded as follows:

Q. Well when you look out your window and see this man, what do you see?

A. I just see a guy there that he had sort of curlyish hair, clean shaven, just a normal looking person really. He had black clothes on and he was carrying a black sort of like an older type of sports bag.

Q. Was he holding it?

A. Yes he was, yes.

Q. Having seen that what did you do?

A. I just thought, oh, it's someone wanting a late sale of beer or maybe accommodation, I didn't know, so I just proceeded to walk out of our flat into my office and then went into Nancy's office, deactivate the alarm and before I did that I called out to the guy and I said to him, "Oh, how can I help you mate?" And I just kept walking, just turned the alarm off and he just said, "Oh, I've got a bag here for Mike from K & S." And at that stage I knew that I didn't have a Mike in from K & S. I think we have about three or four Mikes from different companies that come and stay with us and there is, I think there was two Mikes from K & S that stay with us and I just proceeded to the door, when he said that I proceeded to the door thinking nothing of it and I just opened the door, and I said, "Oh, there's no Mike staying here tonight mate." And I happened to glance at our accommodation book which is always left open on the desk right by the door and I could see that there was no Mike anyway, and he just said, "Oh, no, no, no, no, he's going to pick it up tomorrow." And I said, "Oh, that's okay, I'll just take it and leave a note on it for when Paula gets in in the morning, she will know that it's for Mike when he comes in to collect it." And as I bent – by then I had walked, like I had one foot on the door because the door would

spring back because it's got a spring on it and I went to bend, by then I had walked like I had my foot one foot on the door because the door would spring back 'cos it's got a spring on it and, um, I went to bend down to pick up the bag he'd moved forward to talk to me and I had absolutely no idea to be – no reason –

Q. No first of all where was the bag at this stage?

A. – um, he'd put it down on the floor – on the ground and I had absolutely no reason to be suspicious of the guy I mean he was just I think I was just sort of like chatting normally to him. So there was just no reason for me to be suspicious of the guy because this was, this would happen on a regular occurrence. Like if they've changed drivers they would leave a bag or swap over so, um, at that stage, um, I said, "That's fine I'll put it in the office and leave it for Paula." I bent down to pick the bag up and as I stood up that's when I felt, um, something freezing poured all over me and at first I thought it was, um, a water pipe that had broken which runs parallel to where the gas line is. Um, and then I smelt petrol and that was when the guy that had obviously thrown it from behind me came up put his hand around and he just said, "Where's the fuckin money you bald head cunt we want the fuckin money?" Um, sort of pushed me a bit on the shoul – just touched me on the shoulder pushed me around and by the time I looked up the guy that had the bag had pulled his hoodie down and he'd pulled what I thought was a black scarf up covering his face so all I could see was that area of their face, of his face. And I looked around as I was pushed around and pushed down onto the ground, um, pushed semi into the office, um, the guy behind me that was threatening – or they both started threatening me then just kept saying, "Give us the fuckin money cunt, give us the fuckin money you bald head cunt." He had pulled his hoodie down and, um, he had a red scarf, um, in the same area across his nose and just their eyes showing. Um, and from there it was all on they just kept abusing and swearing calling me a bald head cunt and for those that don't know what a bald head cunt means that means a Pakeha, or European that's what mobsters call Pakehas. I've been called that many a time in the pub if they'd been kicked out. Um, I made my way slowly to the safe they kept saying, "Open the fuckin safe I want the fuckin money." So I did that and I took particular note of, um, their footwear and what they were actually wearing roughly from the waist down I didn't want to look them in the eye – in the face.

Q. What made you think to concentrate on their footwear?

A. Oh, we had been to a, um, a seminar and put on, made by Icon through our gaming machine trust and we'd also done one through the breweries on, on robbery, armed robbery. Um, and, um, the guy that took us told us that footwear is the last thing that robbers usually change they might change their clothes or take their tops off but the footwear is something that you should always take note of. And that's something that sort of comes to you when something like this happens. It's never happened to me before, um. And that's what I did I took particular notice of their footwear and the bottom half of what they were wearing.

Q. All right, so what did you notice about the footwear?

A. I noticed that the guy that was holding the bag had, um, dark green and black shoes they were like sports shoes and he had black sweats on and obviously I'd seen what they had on top they had black sweat shirts with a hood. The other guy had, um, sort of like a dirtish white shoes and they had an obvious big red tongue in the shoe and that was hanging out over the shoe and he had black sweats on as well with a black hoodie.

[38] Mr Angus gave further evidence that immediately prior to being doused with accelerant he had been holding the hotel office door open with his left foot (the door was on a spring, as he said above)⁹ and bending down to pick up the bag that the man with the black shoes had left on the ground. He felt the accelerant on the back of his neck, partly in his hair, but mainly on the right side of his body and back. It had been propelled onto him from some sort of receptacle (which he did not at any stage see) held by the man in the red and white shoes. That man then presented a red and yellow lighter and demanded "the money".

[39] Mr Angus proceeded to describe events that then occurred in the hotel office, including him being pushed to the ground and crawling towards the safe, which he opened. At first he gave the robbers coins, but they demanded the "real stuff". He began emptying canvas bags in which notes were stored, and one of the robbers threw him a plastic bag in which to put them. He described the bag as a "milky coloured plastic" bag with no handles, "the size of a shopping bag that you'd get from any grocery store". He estimated that he handed over about \$9,000 to \$10,000 in notes of various denominations from \$5 to \$50. He did not empty the till drawers that had been placed in the safe's top shelf, calculating that the robbers would not be able to see they were there from where they were standing.

[40] When he handed over the plastic bag with the money in it, Mr Angus said that he noticed that the two men were wearing latex rubber gloves. The robbers then allowed him to stand and pushed him into his (the manager's) office. Once there they took a roll of tape from his desk and said that they were going to tie him up. He went to put his hands behind his back, but they pulled his arms forward and proceeded to tie him up with his left hand over his right, in front. He thought this

⁹ As will emerge, Mr Angus subsequently corrected this evidence, claiming to have kept the door open with a rock that was kept near the door for the purpose.

was strange, but was not too worried by it, because he knew that it was a cheap tape that he had purchased at a two dollar shop, and he knew that he would be able to stretch and loosen it.

[41] They then pushed him back into the hotel office, insisting that there was more money. According to Mr Angus:

... they'd kept insisting there was more money and I said, "Yes, it's at the hotel," and they just said to me, "Well fuckin move it, we're going over there. We want the rest of the money." They kept demanding the rest of the money, so I thought well, the best thing I can do is maybe give it to them, so we walked out of my office and that door slammed, 'cos it's got, as we walked out it just slammed shut and —

[42] He continued:

I started to walk across to the main hotel. All this time they were threatening me, telling me that they were going to fuckin fry me and so I, I mean I just moved it but I — walking across to the hotel it went through my mind that I should try and slow them down because I actually noted that there were bathroom lights on in the accommodation units and I knew that the truckies were, or one or two of them may come out and would be ready to go or that the lights were on in the bathroom and at that stage I sort of walked with a limp, making out I sort of had a sore hip, sore leg, trying to slow it down and one kept pushing me and just kept saying, "move it cunt, fuckin move it or we'll fuckin fry you," so I just kept going at that pace, hoping that someone would come out by [sic] they didn't.

[43] Mr Angus had the keys to the hotel in the right pocket of his shorts. Although his hands were taped together he was able to remove the key using his right hand, and he opened Door 5 and entered the hotel. The robbers were pushing him. He said he walked directly to the alarm panel and he pressed in 1919 to deactivate the alarm. As he did so the robbers were moving around behind him. He described them as "jittery".

[44] He then moved up the stairs to his right, pushed by the robbers. He said that at the time he thought this was strange, because they appeared not to be surprised by the fact that there was a stairwell. Strange, because given that the back of the hotel was "strictly out of bounds", there were not many people who knew there were two storeys.¹⁰ The three then entered a room where there was a safe, Mr Angus turning

¹⁰ I note that the fact there were two storeys would not have been apparent to patrons viewing the

on the light. They pushed him down in front of the safe and told him to open it. He proceeded to do so.

[45] At this point the robbers noticed a wall lined with shelves carrying alcohol. According to Mr Angus:

... they happened to notice I had flicked the light on when we walked in there and they happened to notice a whole back wall full of liquor stacked with liquor, um, and they just I think they couldn't believe how much liquor was there and they were just going, "oh, fuckin hell look at all this fuckin shit here." And that's when they proceeded to — I don't know where the bags came from but they — I noted that they started filling bags up they opened bags like a backpack and they started filling the, their bags up with alcohol and saying to me, "get the fuckin money, get the fuckin money."

[46] Mr Angus described these bags as being "like an old fashioned gear bag with a pull cord" and like an "army bag". They were black with a white cord coming up to "little loops at the top that would pull tight". They were particularly focused on Jagermeister (a strong pre-mixed spirit), and Jim Beam. At one stage one of the robbers dropped a 325 ml bottle of Heaven Hill or Jim Beam¹¹ and told him pick it up and "put his fingerprints" on it. Seeing they were apparently engrossed in stacking their bags with the liquor, Mr Angus said that he grabbed the folded bag that was in the safe which contained money for banking and slipped it into the front of his shorts. The robbers did not notice that he had done this.

[47] He then told them that there was not money there, saying "She must have done the banking". After a period during which they abused and pushed him they then "for some reason ... seemed happy with what they had." Mr Angus stood up and they pushed him down the stairs telling him to "move it". As he arrived at the alarm panel he asked one of them whether he wanted him to set the alarm again. He was told not to be smart and pushed towards the other end of the Workroom in the vicinity of the freezers. One of them asked Mr Angus where the key to the back gate was. As he was near where the key was kept, Mr Angus was able to grab hold of the key chain. He described this as a light chain about a metre long. It was on a hook,

hotel from the car park, or from public areas within the main building.

¹¹ Mr Angus said that he assumed the bottle was Heaven Hill or Jim Beam. Both are bourbons. As will be explained later, bottles of these spirits were later found next to Unit 15.

and he was able to reach up and flick it to the robbers, notwithstanding that his hands were still taped together.

[48] Just after doing that he was hit on the side of the head, and he “went down”. He was unable to say for how long he was down. He said that when he was hit he was still inside the Workroom, between a freezer and Door 5. Photographs were produced in evidence, taken by the police later that day, which showed Mr Angus had an abrasion on the right side of his forehead. He said he was stunned, and just lay on the ground. He was conscious of the robbers shuffling around on either side of him and he said he “started shuffling myself” and was pushed down again. He thought he lay there “for a little while”. After that he was able to go out the door, but was pushed on to a table and knocked it over. He lay in that position for a “wee while” and then crawled to a position half way under a veranda covering adjacent to the workroom roller door. At that stage he had just rolled over onto one of his elbows when he heard a very loud noise. He continued:

The whole building shook, all the windows in the kitchen were rattling, the roller door was rattling and I just happened to see flames shooting out of the top door of the mezzanine floor and flames were coming out of the very right of the building and they were brown orange colour. That’s what I noticed most about the smoke and the flames, they were a very unusual colour, they were sort of like a brown orange colour. I will never forget the sight.

[49] He could feel the heat coming out of the back door (Door 5), which was open. He thought he should move away and he “semi-crawled” on his hands and feet, but during this process he was again pushed down by one of the robbers. He arrived at a pile of wood in the yard, and lay on it. He decided to retrieve his phone from the left hand pocket of the shorts he was wearing. However he was observed doing this, and one of the robbers grabbed the phone and also pulled his glasses off. The robber threw them away; Mr Angus did not see where the glasses went.¹²

[50] After a further period lying down Mr Angus said he heard the robbers discussing the whereabouts of a female person who was expected but had not arrived. He described the two as “skitterish” at this point. Then one said to the other

¹² They were subsequently found in a covered area behind the woodpile.

“Come on dog, move it dog, move it”.¹³ One of them then opened the yard gate, and went through it. The other walked out through a door between the yard and the barbeque area of the hotel. Mr Angus said that neither appeared to be in a hurry.

[51] At this stage he retrieved the bag of money from inside his pants and flicked it into the woodpile. He said that by this point he had managed to free his hands by biting and pulling on the tape: however, the tape remained attached to his left hand. He tried to crawl further way from the heat of the fire, but he was feeling exhausted, and ended up only about three or four metres from the woodpile. Near the position he said he had reached, a piece of tape was subsequently located and photographed by the police.

[52] In the meantime he could hear truck drivers who had been staying in the hotel calling out about moving their vehicles. He could hear the sound of things exploding and there was a lot of smoke billowing about. He saw a fireman approaching and was eventually noticed by him. He told him that he had been doused in petrol and robbed, and the fireman assisted him to walk away. He sat him down under a banksia tree near the property boundary, and returned to the fire.¹⁴ Mr Andrews said that he sat there for some time, on his jacket. It was “freezing cold”. He remembered putting his hand out and feeling frost on the ground.

[53] He then walked towards an ambulance that had arrived at the scene. An ambulance officer¹⁵ approached him and he went to the ambulance with her. He did not get into the ambulance, but sat on its back step. She took his jacket from him and gave him a sheet to wrap around his shoulders. She checked him over, including his head, and according to Mr Angus, said “oh, you seem to be talking ok”. He then went off to talk to a Mr Reuben Southee, the owner of a motel located opposite the Pinelands hotel who was present at the scene. He arranged for him to call Mrs Nancy Pickering, the Pinelands hotel administration assistant and receptionist.

¹³ The term “dog” is apparently used by members of the Mongrel Mob when addressing each other.

¹⁴ The fireman was Mr Neil Patrick who was called by the defendants, and whose evidence will be referred to below.

¹⁵ This was Ms Suzanne Hutchinson, a paramedic employed by St John Ambulance, also called by the defendants.

He could remember her phone number, but not that of Mrs Angus: her cell phone number was stored in a speed dial setting on his own phone, which he did not have.

The principal issues

[54] The plaintiffs' case stands or falls according to whether the main components of the evidence given by Mr Angus set out above are accepted. The defendants say that in its essential aspects his evidence is false.

[55] There are several substantive issues about the evidence that I will need to address below, but I record here that this is not a case where it would be possible to draw any inferences adverse to Mr Angus on the basis of his demeanour in the witness box or the way he responded to the questions put to him. In the course of a lengthy, rigorous and at times vigorous cross-examination by Mr Jones, Mr Angus answered the questions in a calm and apparently straightforward way, conceding there were some points that he could not explain. For example, when asked where the bags the robbers used to carry liquor out of the main building had come from, Mr Angus said he did not know. Similarly, he could not explain what later happened to the bag that he observed from the manager's unit when speaking to the first of the robbers at the outset of the robbery (it was never found).

[56] When on occasions Mr Jones challenged the truthfulness of his evidence Mr Angus politely expressed his disagreement. He did not prevaricate or attempt to avoid giving a responsive answer. I also accept the submission made by Mr Quinn that Mr Angus appeared on occasions, both when being interviewed by the police and in his evidence, to be quite suggestible, ready to accept propositions put to him that might have been thought to be adverse to his interests. For example, in the police interview on 27 August, he accepted the statement put to him that there were many inconsistencies between his first and subsequent statements.

[57] The consideration of the main issues must also take place against the background that nothing in Mr Angus's history would suggest that he is a person who might commit arson, and I accept submissions made by Mr Quinn that he apparently took pride in the hotel, and was regarded by those who worked there as a good employer. One of them, Mrs Pickering, paid him the compliment that he was

“the most honest business person” she had ever known. It is also necessary to bring into account the fact that the Anguses had recently completed the renovation of the manager’s unit in the hotel. All of these matters tend to suggest that it would be unlikely that Mr Angus would deliberately burn down the hotel and make a false insurance claim.

[58] However, the issue of whether the account given by Mr Angus should be accepted must be assessed in the context of all of the evidence called by the parties, including in particular the evidence about what happened on the night. In the end, the resolution of the case turns on some key issues, including in particular:

- (a) the evidence about the alarm system installed in the main building, its operation and whether it was or was not set when Mr Angus left the building prior to the fire in the early morning of 2 July 2010;
- (b) the plausibility of the account given by Mr Angus about his initial encounter with the alleged robbers;
- (c) accelerants found on Mr Angus’s clothing;
- (d) how the fire was set;
- (e) the timing of the events recounted by Mr Angus; and
- (f) whether Mr Angus had a motive to start the fire.

[59] The resolution of these issues depends not on any impression gained of Mr Angus (or Mrs Angus) in the witness box but rather on what has been called the logic of events. In that respect I have been guided by the observations of the High Court of Australia in *Fox v Percy*¹⁶ in which the Court referred to assessing the appearance of witnesses as they give their testimony in the following passage:¹⁷

... in recent years, judges have become more aware of scientific research that has cast doubt on the ability of judges (or anyone else) to tell truth from

¹⁶ *Fox v Percy* (2003) 214 CLR 118.

¹⁷ At 129 (footnotes omitted).

falsehood accurately on the basis of such appearances. Considerations such as these have encouraged judges, both at trial and on appeal, to limit their reliance on the appearances of witnesses and to reason to their conclusions, as far as possible, on the basis of contemporary materials, objectively established facts and the apparent logic of events. This does not eliminate the established principles about witness credibility; but it tends to reduce the occasions where those principles are seen as critical.

[60] I approach the case on this basis.

The alarm

The significance of the issues concerning the alarm system in the main building

[61] The plaintiffs' case had to confront the fact that the records of the operation of the hotel's alarm system showed that there was a "partial set" of the alarm at 7.23 pm¹⁸ and that the system was disarmed at 1.59 am. In this respect it was Mr Angus's evidence, as set out above,¹⁹ that immediately prior to leaving the building with his employees Jackie Peka and Casey Bennett, he attempted to set the alarm and, prompted by Ms Peka who thought that the system had not made the right sound, he checked it and confirmed that it was alarmed. But this "full set" was not recorded by Chubb.

[62] The defendants say that Mr Angus deactivated the partial set of the alarm at 1.59 am, leaving the entire premises unprotected, and then deliberately did not perform a full set. This was part of a predetermined plan to enable him to return to the building once his employees had left for the evening. Otherwise, his re-entry would have required a deactivation that might have attracted the attention of the monitoring company. Without a full set, Chubb would not be aware that the hotel had closed for the night, and the possibility of a monitoring response that might be generated by a full set followed by a subsequent deactivation, would be avoided.

[63] However, Mr Quinn submitted in closing that there was a very simple explanation for the fact that the records did not show that the alarm had been armed. It was the plaintiffs' case that Mr Angus did set the alarm on leaving and then

¹⁸ As will shortly be explained, the partial set affected only part of the premises not in use at that time.

¹⁹ At [29].

disarmed it when he re-entered with the robbers, but the monitoring log failed to record these events. Alternatively, Mr Angus thought that he had done those things when in fact he had failed to do so. On this second scenario, he successfully achieved the deactivation at 1.59 am (of the earlier partial set), but the log would not have registered his subsequent failed attempt to arm the system.

[64] I note that Mr Angus consistently maintained that he had set the alarm on leaving the building. The possibility that he had failed to do so was nevertheless raised by Mr Quinn as an inference that might be drawn from the facts as a possible explanation for the fact that the log did not record that the alarm had been set.

[65] Either way, whether there was a malfunction of the log, or whether Mr Angus simply failed to set the alarm when he thought he had, it was a coincidence that one or other of these events occurred on the night of the robbery.

[66] These issues need to be considered carefully because a conclusion that Mr Angus had deliberately not set the alarm would obviously tell strongly against his allegations of robbery and arson.

The alarm system

[67] The alarm system installed in the main building of the Pinelands Hotel was for some years monitored and maintained by Mr Colin Reid's company, Computech Alarms Ltd ("Computech"). Mr Reid was called to give evidence about it by the plaintiffs. He said he was very familiar with the system, although he had not worked on the alarm since 2001 when Chubb Monitoring took over its monitoring. He could not recall whether the system was a model DSC 5010 or a DSC 5015, but he recalled it as having an LED keypad.

[68] There could be both a "full set" and a "partial set" of the system. Under the latter the system would be armed in parts of the hotel but unarmed in other parts. Mr Reid explained that he had set the system up to operate in this way for Mr and Mrs Angus. By pushing a button on the keypad marked "Stay", the operator could activate the alarm for the restaurant and lounge bar only, leaving other parts of the building not alarmed. The ability to do this was desirable because those parts of the

main building were often not used after sometime between 7.00 and 8.00 in the evening.

[69] Mr Reid was not certain as to the parts of the premises that were covered by the partial set. Cross-examined by Mr Jones, he said that he thought that the partial set resulted in the alarming of the areas described on the Noble plan as the Restaurant and Lounge 1, but not the area referred to as Lounge 2 on the plan (also referred to in evidence as the “function lounge”). However, there was evidence from both Mr and Mrs Angus, and also from Ms Casey Bennett, who was a member of the bar staff, that Lounge 2 was included in a partial set. I accept their evidence on this point, given Mr Reid’s uncertainty about it.

[70] Where there was a partial set, it was necessary to deactivate that partial set before carrying out the full set. Consequently, to alarm the whole premises when leaving on the early morning of 2 July, it was necessary for Mr Angus first to deactivate the partial set and then press the button marked “Away”.

[71] The defendants called evidence from Mr Anthony Stephens, the Technical Support Manager of a company called Intek, which imports and distributes access control, intrusion, and surveillance devices, including those manufactured by DSC. His specialty included the DSC Power Series.

[72] Mr Stephens referred to advice from Chubb that the system installed in the Pinelands hotel was what he described as a “DSC PC 5015/Power 832 Contact ID Panel Interface”. Noting that Mr Reid had referred to it as a DSC PC 5010, Mr Stephens said that the DSC PC 5010 and PC 5015 are similar models, both part of the DSC Power 832 series and both operating in the same way. He described their operation, and I am satisfied on the basis of his evidence that it does not matter whether the system was a DSC PC 5010 or PC 5015.

[73] The keypads have an audible indicator and command entry keys, with either an LED or LCD keypad. Mr Reid said the keypad was an LED one, and I have no reason to doubt his evidence about that. In any event, on the basis of Mr Stephens’ evidence, the operation of the system is the same, whether the keypad is of the LED

or LCD variety. Mr Stephens confirmed that when armed in the “Away mode”, all zones are active. In the “Stay mode” certain zones can be armed with the remaining zones inactive.

[74] Arming the system, whether in the Away mode or the Stay mode, can only occur if the green “Ready” light is continuously lit. If it is, then to arm the system in the Stay mode requires the operator to push the Stay button. The red “Armed” light and the green “Ready” light will then be lit for about 90 seconds (this period can be altered by the installer). The green light will flicker if motion is detected in the “protected exit area” during this period, and the keypad screen will read “exit delay in progress”. Once the exit delay period is completed, all keypad lights are extinguished save for the red “Armed” light. The system is armed. The keypad screen will read either “Armed-Stay” or simply display the time or date.

[75] Access codes are used to disarm the system, whether it is in the “Stay” or “Away” mode. These codes can be a four- or six-digit number, depending on how the system has been programmed. A four digit code was in use at the Pinelands hotel. Mr Angus’s code was 1919.

[76] When the system has been armed in the “Stay” mode, and the operator wishes to arm the system in the “Away” mode to leave the premises, it is necessary first to enter the four- (or six-) digit code to turn off the “Stay” mode. Once that is done the red light that has been active during the Stay mode will be extinguished. The green “Ready” light will come on if all the zones are sealed. At that point, providing the green light is lit continuously, the operator can then push the “Away” button to activate the entire system.

[77] Once the Away button is pushed, the red “Armed” light and the green “Ready” light both remain lit for the exit period as when arming in “Stay” mode. During the exit period the green light will flicker if motion is detected in the protected exit area, and the keypad screen will read “exit delay in progress”. At the end of the period all lights will go off apart from the red “Armed” light. Once armed, entry to the premises other than through the designated entry path would immediately activate the alarm.

[78] Mr Stephens said that at any time the red “Armed” light is on, the four- or six- digit code must be entered to turn the alarm off. A user returning to alarmed premises, and entering through the designated entry path, will hear a constant beep emitted by the alarm system. The beep will cease on entry of the digit code. As each digit of the code is entered the system will emit a short beep. The red “Armed” light will then be replaced by the green “Ready” light.

Evidence given by Mr Angus

[79] The evidence in chief given by Mr Angus about setting the alarm prior to leaving the premises has been set out at [35] above. In essence he said that he pressed the alarm “as normal” and walked away. However, he noted that the alarm did not make its normal sound and Ms Peka had said to him that it did not sound right. As a result, Mr Angus said he went back to the keypad, the beeping was continuing and the keypad was showing “Armed”. Ms Peka then walked towards him, looked over his shoulder “sort of thing” and then said “Oh yeah it’s sweet”. He said that he did not touch the keypad a second time.

[80] He was cross-examined on this evidence by Mr Jones. After initially stating that he simply went to the keypad and pressed the “Away” button, when prompted by Mr Jones he added that he had first entered his code to deactivate the partial set. Otherwise he confirmed the substance of his evidence in chief. He denied a proposition put to him that after he had deactivated the alarm he had deliberately not set it, but tried to make it look like he had.

[81] Mr Jones referred Mr Angus to the fact that, a week earlier, the alarm in the hotel had been triggered and Chubb had attempted to telephone Mr Angus. Mrs Angus, the hotel premises and finally an employee, Mrs Pickering, to alert them. Mr Angus denied that he had not activated the alarm so as to avoid this kind of attention from Chubb when, as planned, he later re-entered the main building. It simply “happened” to be a situation where the activation had not occurred or had not been recorded.

[82] As has been seen, Mr Angus also said, in his evidence in chief, that on entering the main building with the robbers he walked directly to the alarm panel and

pressed 1919 to deactivate the alarm. Mr Jones put it to him that he had not done that, because the alarm was not on and he knew that to be the case. Mr Angus denied those propositions.

Evidence given by Ms Peka

[83] Ms Peka was called by the defendants. She had been employed at the Pinelands hotel for about five years at the time of the fire. She assisted behind the bar and with the poker machines and other aspects of the hotel's operation, including the TAB which was located just inside the front door (facing the car park). She generally worked through until the hotel was closed and the premises were alarmed and locked up at the end of the day.

[84] Her evidence in chief, read from the brief provided before the trial, was that the alarm beeped as Mr Angus pushed the buttons on the alarm but that when they went to walk out of the building the "timer beeper" did not sound. This led her to ask Mr Angus if he had set the alarm. He responded that he had, and she then asked him if he was sure. At that, Mr Angus turned around and went back to check. She also stepped back a few steps to a position from where she could see the keypad panel. She said that "the alarm panel's red light (to show it was armed) appeared to be on. It was flashing."

[85] Responding to further questions from Mr Jones, Ms Peka clarified that she was standing near the outside door to the Workroom when she realised the "timer beeper" had not sounded, and that she had just taken a couple of steps back to a point where she could see the keypad panel. Her evidence did not match that of Mr Angus insofar as she did not describe herself as looking over his shoulder, but she claimed to have been in a position from which she could see the panel on the keypad. She said that she thought Mr Angus must have reset the alarm because the red armed light "came on". She then heard what she described as the "hold down beep" (she demonstrated the sound made as a continuous tone of two or three seconds) that, as she put it, "gives you that 20 odd seconds to walk out". This was followed by what she described as the "second [beeps] to go out".

[86] Mr Jones was evidently concerned about the implications of these additional answers and put to Ms Peka statements that she had previously made to the police on the morning of 2 July 2010, and to Mr Bourgeois, the defendants' investigator (on 5 July). She had not in those statements made any reference to Mr Angus resetting the alarm or hearing a beeping noise after he had done so. She said that these events must have slipped her mind. However she stood by the evidence that she had just given in Court.

[87] In cross-examination by Mr Quinn she said that if she had thought that the alarm was not properly set she would have raised that with Mr Angus: she had in fact done so, when initially the alarm did not beep and that had caused him to check it.

[88] I have not been able to accept the additional evidence that Ms Peka gave, supplementing her brief. I consider it likely that the statements she made on the day of the fire and three days later, the substance of which was repeated in the brief she read as her evidence in chief, are likely to have been more accurate than the apparent afterthoughts she had in the witness box. I do not think it credible that she would have remembered in some detail, near the time, the events that led her to ask Mr Angus whether he had set the alarm (including the absence of the beeping sound normally emitted once the alarm was set) but omitted to mention the facts that he had reset the alarm and that had been followed by the normal beeping noises as they left the building.

[89] More importantly, Ms Peka's additional evidence is in fact contrary to what Mr Angus said happened. On his account, prompted by her, he simply went back to confirm that he had set the alarm, he had not touched the keypad again, but noted that it was beeping and that it was reading "Armed". A conclusion that he reset the alarm following Ms Peka's intervention would be incompatible with this evidence.

Evidence given by Ms Bennett

[90] Such a conclusion would also be in conflict with the evidence given by Ms Bennett, to which I now turn. She was called by the defendants. Her evidence was that Mr Angus set the alarm, but that initially it did not beep the way it normally

did. She reported Ms Peka saying “it’s not making that beep sound”. Then Mr Angus walked back to keypad and said the light was set, “so it must be on.” She was not in a position to see the panel as she was standing at the back door at the relevant time. Ms Peka was half way between her and the alarm panel when she made the comment about the absence of the beeping sound.

[91] This evidence was essentially compatible with that of Mr Angus. It did not support the amplified account given by Ms Peka in the witness box.

[92] Ms Bennett was not cross-examined on this aspect of her evidence.

Evidence given by Mrs Angus

[93] It is appropriate next to refer to the evidence by Mrs Angus about her part in the events of the evening and early morning of 1 and 2 July. She had been working in the main building on the evening of 1 July, and as was often the case she acted as a de facto door-person ensuring that patched members of the Mongrel Mob, which has a strong presence in Kawerau, did not enter the premises. Mrs Angus would sit or stand near the front door of the hotel from about 8.00 pm onwards, so as to be in a position to turn gang members away if they tried to enter.

[94] There were members of the Mongrel Mob present in the hotel car park on the evening of 1 July, a place where they would gather from time to time. Mrs Angus said there were about 12 of them, and at about 9.30 pm she went to the darkened lounge bar (Lounge 2) from where she could observe them without being seen. In order to do that, she said she had to deactivate the alarm, because an employee, Paula Te Rito, had performed a partial set earlier in the evening; unless deactivated the alarm would have been triggered when she entered that part of the hotel. Mrs Angus said that she reactivated the system once she had finished observing the car park and left the lounge.

[95] This was important evidence, because the deactivation and reactivation of the partially set alarm were not recorded in the alarm records provided by Chubb. If accepted, the evidence would lend support to the plaintiffs’ claim that the system

malfunctioned when Mr Angus attempted to set it when leaving the premises later that night.

[96] In cross-examination Mr Jones put to Mrs Angus the possibility that she had not gone into the lounge bar, but into the TAB area (an area not affected by a partial set) and looked out the front door, which would also have afforded her a view of the car park. She denied that was what she had done and repeated that she had deactivated the alarm before going into the lounge bar area to look out the window. She was unable to recall the process she had followed in deactivating the alarm saying vaguely that she knew she “pushed something”. In re-examination she said that she had gone into the lounge bar to look because there was a large number of members of the Mongrel Mob present in the car park and she would have been conspicuous looking at them from the front doors.

[97] I note that Ms Peka was asked in cross-examination whether she could recall if “at one point during the night” Mrs Angus had gone into the functions lounge to look outside at what was happening in the car park. She said “yes”, but was unable to give any detail about when it was, simply saying “she always went in there and checked ... but I can’t give you a time” and “she did it every band night, or every function night.” Although Mr Quinn relied on this evidence as corroborating the evidence given by Mrs Angus, it does so in a very limited way. The absence in Ms Peka’s evidence of any detail about the timing or any other aspect linking her memory to this particular evening makes it of limited value.

[98] The difficulty with Mrs Angus’s evidence is that the alarm seems (from the Chubb records) to have registered the partial set at 7.23 pm, but not the deactivation that Mrs Angus claimed to have made at about 9.30 pm, nor the subsequent partial reactivation by her. Yet, when Mr Angus left the premises at 1.59 am, the system recorded a deactivation. This would mean that the system had malfunctioned when operated by Mrs Angus, but was able to function properly when Ms Te Rito performed the partial set at 7.23 pm and Mr Angus deactivated it at 1.59 am (he would have been deactivating the 7.23 pm partial set). It then would have malfunctioned again at the point when, immediately after the deactivation of the partial set, Mr Angus claims to have set the alarm.

The Chubb records

[99] Both the plaintiffs and the defendants sought to rely, for different purposes, on the Chubb records relating to the alarm for the period from 1 October 2009 to 2 July 2010. These took the form of a log, recording the occasions on which the alarm had been activated and deactivated, using the words “OPEN” and “CLOSE” to describe these events, and giving the dates and times that they occurred on a 24 hour clock. The last two entries were “CLOSE” at 19:23:41 on 1 July and “OPEN” on 2 July at 01:59:46.

[100] As noted above, the records did not support the account given by Mrs Angus that she had deactivated the alarm at about 9.30 pm on 1 July, and reactivated it shortly after that. Nor did they support Mr Angus’s evidence that he had reset the alarm immediately after the deactivation at 1.59 am on 2 July.

[101] As already described Mr Angus was sure that he had deactivated and then set the alarm, and Mrs Angus was also clear that she had earlier deactivated and then activated a partial set. If she is right, then Mr Angus was able to deactivate her partial set before leaving the premises, but was either unable to set it because he made a mistake or the alarm somehow malfunctioned.

[102] Mr Jones provided a helpful analysis of the material contained in the Chubb records. It showed 127 occasions on which the alarm had been partially set early in the evening, followed by, in swift succession, a deactivation and full set later the same night. Such events occurred consistently over the period that the records covered, right down to Wednesday 30 June, on the night before the fire. There were, over the same period, 23 occasions where a partial set was followed, well before closing time, by a deactivation and further partial reset. There would then be, after closing time, the usual deactivation of the partial set and full alarming of the premises for the night. This occurred three times in October, once in November, and three times in December 2009, and three times in January, three in February, four in March, three in April and three in June 2010.

[103] The records also showed that on ten occasions there was the apparent repetition of the same signal. For example, the record “OPEN” appeared twice in

succession (with no intervening “CLOSE”) about 4 seconds apart on Thursday 15 October 2009. There were also two consecutive “OPEN” records, on 26 February, Sunday 7 and Sunday 14 March, and Friday 7 May and on Tuesday 13 April 2010. Similarly, there were consecutive “CLOSE” records (with no intervening “OPEN”) on Tuesday 23 March, Thursday 6 May, Saturday 8 May and Tuesday 8 June 2010. In each case after the 15 October occasion, the records were two or three seconds apart.

[104] There were however three other occasions where consecutive records of “OPEN” (with no intervening “CLOSE”) were recorded further apart in time. These were on Thursday 31 December 2009/Friday 1 January 2010, when there consecutive records of “OPEN” at 07:08:32 and 02:09:27; Wednesday 20/Thursday 21 January, with “OPEN” recorded for 07:01:23 and 00:16:01; and the same applying on Friday 19 March/Saturday 20 March, at 07:20:32 and 07:04:02. It seems likely that there were unrecorded intervening “CLOSE” events on these occasions.

Discussion

[105] Mr Reid gave evidence about possible explanations for the failure of the alarm to record the events that Mr and Mrs Angus described.

[106] He recalled what he described as a “large number of times” in the period when Computech was providing monitoring services for Pinelands that the alarm was not set properly. He thought this was understandable because it would often be required to be set in the early hours of the morning, when those responsible for setting it would be tired and wanting to leave quickly. When Computech was responsible for the monitoring, Mr Angus would be contacted and advised if the alarm had not been set properly; Mr Angus would go back over to the main building and arm the system. Mr Reid clarified in cross-examination that the occasions when the alarm was not set properly to which he was referring were ones on which Computech had noticed that the alarm had not been set by a time when that would normally have occurred, and made contact with Mr Angus accordingly.

[107] Mr Reid was critical of the Chubb records. He pointed out that the records failed to distinguish between a “full set” and a “partial set”. However, the fact that a set was only a partial set was a matter able to be inferred from the timing recorded for the set, since the partial sets consistently occurred well before the closing time. Thus, it was, for example, common ground that the set recorded for 7.23 pm on 1 July was a partial set.

[108] Mr Reid also pointed to the fact that the records showed a number of occasions when the alarm appeared to have been opened or closed twice in succession, an operation which in his view should not have been possible. This had occurred, he said, without any follow-up by Chubb. However, Mr Stephens explained how consecutive signals could be sent. It was his evidence that when the alarm panel communicates with the receiver at the monitoring station it will seek confirmation that the message has been received. If the panel does not “hear” the confirmation message or for whatever reason the panel confirmation message is not sent, the panel sends the signal a second time. I note that in cross-examination, Mr Reid accepted that, as he put it, “the panel actually looks for an acknowledgement signal from the receiver and if it doesn’t get that clearly it repeats it”. I am satisfied that this must be the explanation for the occasions when the records showed two events of the same sort in close proximity in time.

[109] However, Mr Stephens accepted that explanation will not apply to the same events being recorded many hours apart, as happened on 1 and 21 January and 20 March 2010. Mr Stephens agreed that in those cases there must have been some sort of malfunction resulting in a “CLOSE” not being recorded between two “OPEN” events. He said that under normal situations, where the equipment is still available for analysis, it is possible to ascertain the reason such an event has occurred: that is not possible in the present case because of the fire.

[110] I have not been persuaded by evidence given by Mr Reid that the explanation for the Chubb records on the evening of 1 and 2 July not recording the events which the plaintiffs claimed occurred could be found in operator error, such as an unsuccessful attempt on the part of Mr Angus to set the alarm. I think this is unlikely given his familiarity with the system and the fact that, as the Chubb records

show, there had been a deactivation of a prior partial set followed by a successful alarming of the premises on numerous occasions in the past when the premises were closed for the night. Further, according to Mr Angus, when an issue about the sound of the audible signals given by the system was drawn to his attention by Ms Peka, Mr Angus says he checked it, and the panel was reading armed. The idea that he had been inadvertent when attempting to set the alarm does not fit with this evidence.

[111] Mr Angus was also clear that he did not touch the panel a second time. His evidence was that he set the alarm immediately after performing the deactivation of the partial set.

[112] I note too that Mr Reid appeared to accept, on the basis of the Chubb monitoring records, that the system was not armed when Mr Angus left the premises on 2 July. However, he suggested there was a possible explanation for Mr Angus thinking he had done so. This was movement in the designated exit area, which would have been by Ms Peka or Ms Bennett. Mr Reid agreed with the evidence of Mr Stephens that in the case of such movement, the alarm would have emitted three short beeps followed by a long beep as a warning to the user that the alarm had not activated. Mr Reid said in his evidence in chief that if Mr Angus had merely glanced at the keypad panel at that point he would possibly have seen a red light on, or even flashing on and off for zone 1 (the designated exit area), and this may have led him to believe that the system was armed. I note that Ms Peka also claimed to have seen a flashing red light at the point when Mr Angus went back to check that the alarm was armed.

[113] This evidence must be seen in the context that on the panel there is a row of red “zone” lights above the red (armed) and green (ready) lights referred to by Mr Stephens in the evidence discussed above.²⁰ Mr Reid’s explanation was essentially that Mr Angus could have mistaken one of the red zone lights for the red light that would be lit if the system had been successfully armed. That seems to me unlikely given the long period over which Mr Angus had successfully operated the system and given also the fact that a failed attempt to set the alarm would also be

²⁰ In addition to the green and red lights in the lower row there is a third, yellow, light. The function of the yellow light is to indicate some sort of fault in the system.

accompanied by the different beeps that Mr Stephens described in evidence. While Mr Reid expressed the opinion that, in his experience, operators were often inattentive to the audible signals given by the alarm, in this case there is the evidence that the nature of the signal had actually been drawn to Mr Angus's attention by Ms Peka. The query she raised must surely have focused his attention on what he needed to be looking at on the alarm panel.

[114] Apart from these considerations, there are two real difficulties with the plaintiffs advancing the argument that Mr Angus believed he had set the alarm when in fact he had failed to do so. They arise, first, from the fact that Mr Angus said he did set the alarm, that he checked it and it was "showing armed". More significantly, he also said that he deactivated the alarm when he re-entered the main building with the robbers, having heard a constant tone. In order for him to deactivate it, it would have had to be armed to start with.

[115] This point arises both from the evidence that Mr Angus gave at the trial about having deactivated the alarm on entering the main building with the robbers, and also from a statement that he made to the police during a reconstruction of the events that he carried out for Detective Darryn Gabb of the New Zealand police on 5 July 2010. During the reconstruction he said that when he went into the main building with the robbers the alarm started beeping, and he walked "real slow" hoping the alarm would go off. However, he said that the robbers forced him to enter his four digit code to deactivate it. He made a similar statement in a subsequent police interview, on 27 August 2010, in which he confirmed that the sound emitted by the alarm before he deactivated it was a constant tone.

[116] Mr Reid speculated that the failure of the system to record the entry by Mr Angus of the four digit code (to deactivate the alarm) could have been because of movement of the robbers in the area covered by the movement detector. This was the same possibility he identified in respect of the point earlier in time when Mr Angus failed to activate the alarm. He considered that the result would have been that the system, previously not armed, would have given a long beep and then remained in the unarmed state. However, that does not meet the present point.

[117] As Mr Stephens noted, since the alarm had been deactivated at 1.59 am and not subsequently activated, it was not possible for the alarm to emit a constant tone when Mr Angus re-entered. If, after his re-entry, Mr Angus had input the correct pin code while the green ready light was constantly illuminated, the alarm would have commenced activation of the system, and the alarm would have been triggered by subsequent movements in the premises. If the green light was flashing, the alarm would have given the warning beeps signalling that it had not been properly armed (three short beeps followed by a long beep). But Mr Stephens could think of no reasonable explanation why the alarm would have emitted a constant tone after Mr Angus re-entered the building, if it was not armed at the time. There is in fact no explanation for that in the evidence.

[118] Mr Quinn pointed out that Mr Angus himself had consistently maintained that he had set the alarm, and that was consistent with him having later deactivated it when accompanied by the robbers. The possibility of Mr Angus mistakenly assuming he had set the alarm was one raised by counsel, not by Mr Angus himself. I doubt that it was appropriate to attempt to draw a distinction between Mr Angus and his counsel in this way. What matters is what the plaintiffs' case is. And in this respect, the salient point is that to suggest that Mr Angus thought he had set the alarm but had in fact failed to do so is completely inconsistent with the account he gave of having deactivated the alarm after entering the premises and hearing the constant tone emitted. Plainly, he would not have heard that tone had he earlier failed to activate the alarm.

[119] For these various reasons I reject the contention that Mr Angus thought he had set the alarm but in fact failed to do so. I find on the balance of probabilities that the fact that the alarm was not set by Mr Angus following the deactivation of the partial set at 1.59 am is not to be explained by operational error on his part.

[120] That leaves for consideration the possibility that Mr Angus did all that was necessary to set the alarm but due to some malfunction his action was not recorded or was ineffective. Evidence pointing to a malfunction includes that of Mrs Angus that she had gone into Lounge 2 to check what was happening in the car park by looking from one of the windows there. This required her to deactivate the partial

set already put in place at 7.23 pm on 1 July by Ms Te Rito, and subsequently reactivate the partial set. Neither event was recorded in the system. The plaintiffs also rely on the unexplained juxtaposition of the “OPEN” records on earlier occasions, referred to above.

[121] The plaintiffs’ malfunction argument sits uncomfortably with the evidence given by Mr Angus that the alarm panel showed that it was armed before he left the premises, and that he deactivated the alarm when he later went in with the robbers. The argument relies on the alarm panel misreporting its status at the time it was allegedly set, stating it was activated when that was not the case. No reason was advanced as to why this should be the case.

[122] Notwithstanding the concessions he made about the consecutive “OPEN” records when these were many hours apart, Mr Stephens was clear that alarm systems such as those at the Pinelands hotel do not misreport their status, so that, when the records recorded “OPEN” at 1.59 am on 2 July, that meant that the alarm had been deactivated. I find that it had been. This, of course, coincides with what Mr Angus said he did. The system was working satisfactorily at that point. I consider, on the basis of Mr Stephens’ evidence, that it is most unlikely that immediately following the successfully recorded deactivation, the system then malfunctioned and by its red panel light showed that it was armed when that was not the case, and also failed accurately to report its status to the Chubb monitoring station. I find on the balance of probabilities that it remained deactivated.

[123] If accepted, the evidence of Mrs Angus would suggest that the system also malfunctioned in some way by failing to record her actions earlier in the evening. This would have been a malfunction that involved a failure to *report* both an “OPEN” event, and a subsequent “CLOSE”; Mrs Angus must have been able to deactivate the alarm *in fact* and then set it again, otherwise she would have triggered the alarm on entering the lounge, and Mr Angus would have been unable to deactivate it at 1.59 am. This was not a case where two events of the same kind were recorded as having occurred consecutively, so the past occasions where that occurred do not appear to be relevant. Other than the broad general assertion of a malfunction, there is really no explanation for why the alarm system functioned

properly in so far as some events on the night of 1 and 2 July were concerned, but not on others. Nor is there any explanation for the pattern of the system failures that allegedly occurred here (after the point when Ms Te Rito set the alarm at 7.23 pm on 1 July), interrupted as they were by the deactivation by Mr Angus at 1.59 am.

[124] There was no evidence of any previous occasion on which there were two different types of malfunction on the same night: a monitoring failure in the case of Mrs Angus's actions and a failure of the alarm itself to "CLOSE" in the case of Mr Angus's actions. The suggestion that there were these two different types of malfunction on the same night adds to the peculiarity of the circumstances on which the plaintiffs rely.

[125] The fact that all these different malfunctions happened to occur on the very night that the hotel was robbed is in my view too much of a coincidence to be credible. It is a pattern of events unlike anything contained in the Chubb records. It stands in stark contrast with the clear preponderance of successful activations of the alarm after the earlier deactivation of partial sets demonstrated by those records.

[126] I consider that Mrs Angus must have been mistaken when she recounted, as events that occurred on this particular evening, deactivating then reactivating the alarm for the purpose of going into Lounge 2 to observe the car park. I reject her evidence. I reiterate that although Ms Peka claimed to remember Mrs Angus going in to Lounge 2 on the night, she could not say when that occurred.

[127] I also reject the evidence of Mr Angus about setting the alarm and deactivating it on re-entering the main building with the robbers. I find on the balance of probabilities that the alarm did not malfunction on the night of 1 and 2 July.

[128] I have earlier rejected the plaintiffs' contention that Mr Angus thought he had set the alarm but in fact failed to do so. The further finding that the alarm did not malfunction means that Mr Angus must deliberately have failed to set it. On the balance of probabilities I find that is what occurred.

[129] That finding is of great significance in relation to the principal issue in the case, which is whether the fire was lit by robbers or by Mr Angus himself. Notwithstanding his previous good character, it points towards a conclusion that it is likely Mr Angus lit the fire. Other issues however need to be addressed.

Other issues with the account given by Mr Angus

[130] There were a number of other aspects of the account given by Mr Angus which do not seem plausible and adversely affect his credibility. Collectively, they too suggest that his account of what happened on the night is not correct.

Initial encounter with the robbers

[131] I mention first his evidence about his initial encounter with the robbers. This is set out and summarised at [37]-[38] above. Mr Angus describes seeing a “normal looking person”, clean shaven and with curly hair, dressed in black and holding a black sports bag. This person (who I will call Robber 1) had just knocked at the hotel office door. It appears that in the course of asking him what he wanted Mr Angus went from the manager’s unit into the adjoining motel office where he turned off the office alarm.²¹ Robber 1 said that he had a bag for “Mike from K & S”, K & S being a trucking company whose drivers often stayed at Pinelands. Mr Angus said he knew of two Mikes from that company who would stay from time to time. However, Mr Angus told Robber 1 there was no-one of that name staying that night. The robber responded that Mike was going to pick the bag up on the following day. It was the sort of thing that happened regularly and Mr Angus agreed he would take it.

[132] Mr Angus initially said that he opened the door, and because it was on a spring held it back with his foot, and bent down to pick up the bag from the ground where Robber 1 had put it. As he stood up he felt freezing liquid poured all over him. This came from behind and to his right, and was propelled by Robber 2. The liquid smelt of petrol. Robber 2 then spoke to Mr Angus demanding money, and Mr Angus observed at this point that Robber 1 had pulled a hoodie down and now

²¹ This alarm was not connected to the alarm in the main building. It was not monitored, and simply emitted a sound if triggered.

had a black scarf covering his face. Robber 2 was also wearing a hoodie, his face obscured by a red scarf.

[133] Later in his evidence in chief Mr Angus corrected this part of his account to say that he had not propped the door open with his foot, but had slid a rock into place that was kept near the door to be used for this purpose.

[134] A key difference between this account and that given to Detective Gabb during the reconstruction interview on 5 July concerns his initial sighting of the bag carried by Robber 1. At that time he said that, when he first saw Robber 1 he could not see the bag. However, when giving evidence he said that he could. He was also asked to mark on a photograph the location of the bag when he opened the door and came out to pick it up. He located it out from the hotel office door in a position where he had to walk out to get it.

[135] It seems strange that after 2.00 am he would have walked out to get the bag, going to the trouble of propping open the door, when he had previously confirmed that there was no-one staying in the motel called "Mike" that night, when he did not know the person who had brought the bag, when he had had to turn off the alarm in the office before unlocking the door and when there was a significant amount of money in the hotel safe (that was not locked with a combination).

[136] This aspect of his account was of course a necessary foundation for the claim that he was doused with petrol, poured on to him from behind by Robber 2. This allegedly occurred as he bent down to pick up the bag. If his account were accepted it would establish that the robbers were in possession of accelerant, and that would be consistent with their subsequently setting fire to the hotel.

[137] However, unless the robbers came to the hotel for the purpose of burning it down, this was an odd way of coercing Mr Angus. He could have been threatened, more straightforwardly, by the use of a weapon or weapons, and the robbers would not have needed to go to the trouble of bringing a quantity of accelerant to the property. Even if they were intent on robbery and arson, it is not immediately obvious why they would douse Mr Angus with accelerant.

[138] Mr Angus said that bags had been dropped off in this way before, although that evidence was not corroborated. It does seem odd that that this would occur and not be thought unusual so late at night. Mr Angus relied on the previous occurrences and the fact that the person to whom he spoke looked like a “normal person”. However, Mr Angus also gave evidence that, earlier in the evening, he had seen a person going past the hotel’s front door after the premises had been closed to the public, as he, Ms Peka and Ms Bennett had been having their usual supper before locking up and leaving.²² This is a further aspect of his account that, coupled with the evidence about the earlier presence of members of the Mongrel Mob in the hotel car park that night,²³ makes it seem odd that Mr Angus would have physically left the office to go outside to pick up the bag, as he claimed he did.

[139] It is remarkable also, I think, that the robbers were able to hit on a method of successfully getting Mr Angus to come out of the manager’s unit to be doused with petrol, saying they wanted to leave a bag for “Mike” from K & S. Apart from what Mr Angus said had happened, there was no evidence from which I could safely infer a connection between the robbers and K & S, or any basis on which the robbers could have known in advance that this would be a successful method of inducing Mr Angus to come out of the unit at this late hour. Yet on Mr Angus’s account, this must have been an essential component of the robbers’ plan. I find this difficult to accept.

A planned robbery and arson, but who were the robbers?

[140] There was evidence that accelerant was present in the vicinity of the point at which Mr Angus said he was doused with the petrol. This was the subject of evidence by Mr Jonathon Rewi, of the New Zealand Fire Service. On 2 July he visited the site and used a machine called a Photo Ionization Detector (PID)²⁴ to identify possible locations of accelerant. He described the PID as a very sensitive broad spectrum monitor designed to detect gas or vapour of volatile organic compounds and other toxic gases present at very low levels. It will be necessary to refer to his evidence again later, but at this point it is sufficient to say that he was

²² The evidence is set out in the passage quoted at [34] above.

²³ This evidence is discussed below.

²⁴ The model he used was referred to as a PPB RAE 3000.

able to detect the possible presence of accelerant at the base of a pot plant in front of the hotel office door, roughly in the location where it would have been had some of the accelerant intended for Mr Angus (in the position he described himself as having been when it was poured on him) gone past him and fallen to the ground. On analysis by ESR this was later shown to be a mixture of petrol and kerosene.

[141] Using the PID Mr Rewi also located traces of what was later shown to be accelerant in other locations, including the carpet at the top of the stairs to the mezzanine floor in the main building. On analysis, this was shown to be of petrol only. Again, it will be necessary to discuss these and other findings flowing from the investigation carried out by Mr Rewi subsequently. For present purposes, the point is that it is likely that there were two containers used for the accelerant, one containing a mixture of petrol and kerosene, and one containing petrol only. The containers were never found; it seems probable that they were consumed by the fire.

[142] If there was a robbery and the robbers were responsible for the arson, then they carried with them to the site two containers of accelerant, together with the bag used to induce Mr Angus to come out of the office, and the bags that were later used to carry the alcohol that they allegedly took from the upstairs room in the main building. The only inference available is that it was a planned robbery and arson.

[143] But there is little evidence that would enable a conclusion to be drawn that any third parties would have been motivated to carry out a robbery and arson at the hotel.

[144] Although the plaintiffs have not expressly alleged that members of the Mongrel Mob were responsible for the robbery and arson there was reasonably extensive reference to the gang in the evidence given by both Mr and Mrs Angus, and other witnesses also referred to ongoing issues with gang members. Effectively, I am invited to conclude that it is possible that the robbery and arson were carried out by gang members or their associates. The account given by Mr Angus, as set out above, contained frequent references to him by the robbers as a “bald head cunt”. As he explained:

... and for those that don't know what a bald head cunt means that means a Pakeha, or European that's what mobsters call Pakehas. I've been called that many a time in the pub if they'd been kicked out.

[145] There was mention of the policy adopted of refusing entrance to patched members of the gang, and to frequent occasions in which the gang maintained a worrying presence in the hotel car park, especially on a Thursday night. Mrs Angus, as the de facto door person, described herself as taking a hard line with them.

[146] Mrs Angus claimed that on the night of the fire she observed that one Scobie Te Poono, was present in the car park. He was a gang member who she described as scary and foul-mouthed. Another member of the mob who was also there, Billy Hohepa, was, like Mr Te Poono, banned from the hotel bar.

[147] Mrs Angus also referred to the presence in the bar that night of a patron wearing a rugby league jersey with the number 16 on it. Mrs Angus did not know who this person was, but there was an incident in which he punched another patron. He was refused further service and ushered out. She later saw him standing outside, and getting in and out of a patched jacket, and looking agitated. Clearly, this man was another member of the Mob. Mrs Angus said she was left feeling "very uneasy". She called the police and they arrived at about 11.00 pm, driving up to the front door of the hotel. In the discussion that ensued, Mrs Angus was able to tell them about the incident involving the man in the number 16 jersey, and describe what had occurred. She asked the police to "do some drive-bys over the next few hours".

[148] At one stage Ms Peka went outside for a cigarette. She described seeing a number of mobsters and their girlfriends. One of them walked towards the bar: he was wearing a black scarf around his mouth. He was able to enter the building but was then shown out.

[149] However, Ms Bennett gave evidence that she thought it had been a quiet night. She said it was busiest at about 11 o'clock, when there were about 30 patrons present. She worked in the public bar for her entire shift from 8.00 pm on. There had been the usual "Thursday night" customers, and to her it had been "a typical

Thursday shift”. Cross-examined by Mr Quinn, Ms Bennett said that when having supper with Mr Angus and Ms Peka that night, there had been nothing out of the ordinary to discuss. Prompted by Mr Quinn about the patron being punched, she said “that was kind of normal, normal for a Thursday night”.

[150] I have earlier mentioned evidence that Mr Angus gave about seeing a person going past the front door of the hotel as he, Ms Peka and Ms Bennett were having their late night snack after closing. He did not describe the person. Ms Bennett could not remember this incident, but Ms Peka gave evidence that Mr Angus had said that he had seen someone outside the main doors, and that both she and Ms Bennett turned to look out, but were unable to see anyone.

[151] Mrs Angus also gave evidence that about two weeks before the fire, a man had visited the motel looking for a job. He had been seen by Mr Angus and Mrs Pickering. He returned a few days later, when he was observed by Ms Rohipa, the cleaner. Mrs Angus, Mr Angus and Mrs Pickering discussed this person. It was agreed that he “seemed suspicious”. As a result Mrs Angus put up a sign by the back door of the service area and another in the TAB room to alert the staff. The sign read “Keep a look out and make sure all doors are locked because we’ve had a suspicious person hanging around.”

[152] Whoever this person was, it was clearly not the person (Robber 1) Mr Angus said he saw from the manager’s unit with the bag, otherwise he would presumably not have opened the door on the morning of 2 July.

[153] The identity of the robbers is an issue, because apart from the very general description that Mr Angus gave of Robber 1, and the description of the clothing worn by both of the robbers, there is no evidence that points to who they might have been, or why the crimes might have been committed, apart from the evidence about difficult relations from time to time with members of the Mongrel Mob.

[154] It is possible I suppose that as a result of the strict rule that patched members would not be served that they might have been ill-motivated towards the plaintiffs, but I do not really understand why that would lead them to burn down the hotel. The

plaintiffs called evidence from Grant Webb,²⁵ the owner of the Plains Hotel in Edgecumbe. Mr Webb employed Mr Angus as the manager of the hotel after the Pinelands fire. He referred to experiencing “continuous trouble with the Mongrel Mob” in the area, saying this was a fact of life, and that it was difficult to explain to outsiders what a “menace” they were. He said that because the two hotels were close together they shared their list of banned persons, so that anyone banned at one hotel was banned at the other.

[155] He referred to an incident on 2 December 2012 when eight members of the Mongrel Mob arrived and bought boxes of beer from the hotel’s wholesale outlet. Although not allowing patched members in the bar, serving them at the wholesale shop was usual as the best way of ensuring that they moved on. However, on this night they refused to move on and Mr Webb called the Police to attend and “get rid” of them. Of itself, this evidence suggests that there was nothing particularly unusual in the relationship between the Pinelands hotel and the Mongrel Mob.

[156] However, Mr Angus also referred to an incident that occurred during the time that he was working as the Manager of the Plains hotel involving Mongrel Mob member Jimmy Awahou. On 20 January 2012 he walked into the hotel at about 11 pm. As soon as he realised he was there Mr Angus asked him to leave, in a “low key” kind of way. Mr Awahou then started referring to the Pinelands fire. He then repeatedly threatened Mr Angus and said that “he would burn the Plains Hotel down too if we didn’t let the Mob into the bar”. Mr Angus said that Mr Awahou claimed he was outside the Pinelands with other mobsters the night of the fire.

[157] In another incident on 18 July 2012 another member of the Mongrel Mob, Junior Tarei, was in the bar of the Plains hotel. He was not wearing his patch, but Mr Angus asked him to leave. He became very aggressive, saying with expletives, words to the effect that they should have done him in properly, and began throwing things around the bar. Mr Angus made it clear that he was not alleging that Mr Tarei had been involved in the Pinelands fire, saying that if he had been he would have recognised him.

²⁵ By consent, Mr Webb’s brief was provided in the form of an affidavit and read in his absence.

[158] Mr Jones objected to Mr Angus giving this evidence about what Mr Awahou and Mr Tarei had allegedly said, but Mr Quinn argued for its admissibility on the basis that it was not relied on as evidence of admissions of involvement by mob members in the Pinelands fire, but only as evidence about the state of mind of Mr Awahou and Mr Tarei. Mr Quinn submitted it showed that they were hostile to Mr Angus for barring them. The evidence is of little value, even for that purpose, relating as it does to a period after the Pinelands fire. But I think it can be accepted that there would have been annoyance, perhaps even anger, about the ban of Mongrel Mob members from entering or remaining in the bar. This does not really explain why, in the case of the Pinelands hotel, Mob members would have resorted to robbery and arson on the morning of 2 July.

[159] Mr Quinn submitted that there was nothing inherently implausible about a group of gang members, or persons associated with them, stealing money and alcohol from a hotel and deciding to set fire to it as they leave. I do not consider that is an accurate characterisation of what happened here. I consider that, if Mr Angus's account is accepted as accurate, the robbers must have planned to carry out the arson from the outset, otherwise they would not have brought two containers of accelerant to the premises.

[160] Even if accelerant was useful to facilitate the robbery by making Mr Angus compliant with their wishes, it is not obvious why they would then want to carry out the arson. There could be no real benefit to them in doing so. The evidence Mr Angus gave about Robber 1 being a "normal looking person" (it was this that evidently made him think it was safe to open the door) also tends, I think, against the idea that the person would have been a member or associate of the Mongrel Mob.

[161] Nor is there anything in the evidence that would explain why, given that any general ill-feeling between the plaintiffs and the Mongrel Mob based on the ban on serving patched members must have existed for some time, the crimes were committed on this particular night: I accept Ms Bennett's evidence that there was nothing particularly unusual about the events of that Thursday evening while the hotel was open. So, if the fire was set by robbers who were members or associates

of the Mongrel Mob, they must have been acting on motives that were of comparatively long standing.

[162] The fact that the account given by Mr Angus appears to have been of a planned robbery and arson also makes it most unlikely that the events he alleged were the result of a random decision by persons with criminal tendencies and no other connection with the hotel. This conclusion is supported by other evidence that Mr Angus gave, in which he suggested that the robbers appeared to be familiar with the layout of the hotel: for example they seemed to know that there would be more money than what he produced from the office safe (as set out above, they insisted that there was more money), and they also appeared to know that there was a mezzanine floor in the main building: they were not surprised to be taken up the stairs by Mr Angus.

[163] I note also that Mr Noble, a fire investigator of some 27 years' experience, said that the only other cases with which he was familiar in which accelerant had been poured over another person involved domestic relationships. That is not this case.

[164] It is not of course for the plaintiffs to prove who the robbers were. The defendants must prove it was Mr Angus who set the fire. However, Mr Angus has referred to two men whom he said robbed him and set fire to the main building in circumstances where both the robbery and the arson were pre-meditated. The evidence does not lead me to the view that it is likely they would have been members or associates of the Mongrel Mob, nor is there any other credible suggestion as to who they might have been or why they would have been motivated to carry out what was a very unusual crime. These conclusions also support the further conclusion that it must have been Mr Angus who set the fire.

The taping of the wrists

[165] As has been seen, Mr Angus claimed that his wrists were taped in the manager's office. He says that his wrists were taped in front, which he thought was strange. However, the account he gave depended on the hands being taped in front of him, otherwise he would not have been able to do various things which the

robbers required. These included reaching into his pocket to obtain the keys to open Door 5, deactivating the alarm, unlocking the door to the safe on the mezzanine floor, and opening the safe with the combination lock.

[166] He was also able to stuff the canvas bag containing cash down his trousers and zip up his vest on top of it. When the robbers were about to leave he was able to reach up and flick the key to the back gate off its hook and also later reach into his pants, pull out the canvas bag and throw it onto the woodpile.

[167] A piece of tape was later found near where Mr Angus was found by Mr Patrick, one of the firemen who arrived on the scene in response to the fire. Another piece of tape, rolled up as if it had been wound around his wrist was later found near where Mr Angus was subsequently taken to sit by Mr Patrick. A roll of tape was found in the yard about five metres from where Mr Angus was found by Mr Patrick. It matched the tape that was allegedly wrapped around Mr Angus's wrists. The presence of the tape is relied on as supporting evidence for the robbery.

[168] However, there was no real reason for the robbers to tape Mr Angus's wrists and to do so at a point in time where they knew that they would be reliant on him taking them into the main building and facilitating their access to the money kept there. After all, the accelerant that they had doused him with and the lighter that they carried would have been sufficient to control his conduct as they continued the robbery.

[169] Further, the range of tasks that Mr Angus claims he was able to carry out with his hands taped of itself seems implausible.

[170] The presence of the roll and pieces of tape is physical evidence supporting Mr Angus's account, but it seems contrived. Although it is not an overly significant matter, the evidence about the taping of Mr Angus's wrists further reduces the plausibility of his account.

Bags carried by the robbers

[171] Another issue related to the events on the mezzanine floor concerns the bags that on Mr Angus's account the robbers were able to use to store substantial quantities of alcohol. Mr Angus had not seen these bags until they were being used by the robbers for this purpose. He said that he did not know where the bags came from. He described them as being "like a backpack" and "like an old-fashioned gear bag with a pull cord", and "like an army bag".

[172] It seems odd that they would have bags that were evidently of sufficient size to carry a significant number of bottles of alcohol when the apparent objective of the robbery was obtaining money, and the discovery of the alcohol came as a surprise and was a diversion. Mr Angus could not say in cross-examination how many bottles there were, but he described bottles of various sizes being stacked into the bags. In his interview by Detective Holder on the morning after the fire, he referred to "20 or 30 bottles of liquor" and described the bags as "chocka", so much so that as they went down the stairs one or two of the bottles fell out.

[173] Mr Quinn suggested that the absence of any evidence in Mr Angus's account about seeing where the bags came from was one of a number of examples in the evidence where Mr Angus had not taken the opportunity to embellish his story or fill in obvious gaps. However, it appears strange that the robbers, who persistently demanded money, came to the premises with bags suitable for the purpose for which Mr Angus claims they were used. In making that observation I also emphasise that these bags were in addition to the bag that was placed on the ground by Robber 1 outside the hotel office.

A trail of items left by the robbers

[174] One of the interesting aspects of the evidence was of a number of items found on the hotel property after the fire, which were supposedly consistent with the robbery that Mr Angus said occurred.

[175] In his account Mr Angus described that one of the robbers left through the main gate to the yard. He described the other as having gone through a side door.

That person could then have turned left through the area behind the hotel barbecue and arrived at a point where a yard (recently cleared of vegetation) ran along the side of unit 15 to a fence. Unit 15 was at the northern end of the eastern accommodation block; it was the last of the units in that block.

[176] Along the route supposedly taken by the robber who left through the side door were found, in the direction moving away from the main building, a red and black checked cap stuck into a lemon tree, beneath which was a flask sized bottle of Jim Beam bourbon. Another flask sized bottle of bourbon, this time the Heaven Hill brand, lay on the ground adjacent to unit 15. Opposite that, on the northern boundary fence was a box containing a power battery which had been pulled out from its normal location. Near the intersection of that fence and the eastern boundary of the property a 750 millilitre bottle of Jim Beam had been perched upright on a tree stump. Just on the other side of a wooden gate in that fence there was a grey coloured handkerchief. None of these items were found to be of any forensic value.²⁶

[177] Mr Angus made no mention in his account of the red and black checked hat, but it would be possible to infer that it had been worn by Robber 2 under his hoodie, and so concealed from view before ending up in the lemon tree. The presence of the handkerchief was also unexplained; an inference could be drawn that it fell as the robber made his escape into the neighbouring property. The bottles are consistent with the idea that the robbers had stuffed their bags with bottles, and they could have fallen out during the escape from the scene.

[178] The presence of these items in what amounts to a kind of evidence trail does not ring true. The fact that Mr Angus seemed keen to draw their presence to the attention of Detective Holder during his second interview on 2 July, when the items had not yet been found, adds to my concern. Initially, Mr Angus told Detective Holder that he thought both the robbers must have gone out the yard gate. However, the layout of the property was such that if both robbers had left by that route, the area next to unit 15 would not have been easily accessible. After saying a number of times in the interview that both left together he changed his account to say that one

²⁶ It appears that only one of the bottles of bourbon was tested by ESR.

of the robbers had gone out through the side gate. He said that the red one²⁷ might have gone through the door:

... when I think about it, yeah one went one way and one went the other. The one with the red and white shoes, I think he went through the door, not the back door, but through the side door, and went that way out through the barbecue area...

...

So he would've gone out between the lemon trees and ... what we call Room 15, the end of rooms, and gone out that way and probably the other guy come round and met them, and then they would've gone out onto the road.

[179] He had earlier told Detective Holder that he had told Mrs Pickering that morning to try to get the police to check between room 15 and the “walkway through” because it had been cleared:

See we had trees all there, and we had them all cut out only about three weeks, so it's all open, very clear, so if there was anyone there, they'd actually see it, ah like they'd ... you know they'd ... they'd see the people there, cos there's ... there's no ... there's two lemon trees and that's it. And that way they could run around what we call Room 15 and then go right on, and out then out of the road.

[180] If Robber 2 took this path to leave, he would have been walking past Door 5 in proximity to the fire because that is where the side gate was located. He also would have been visible to anyone in the accommodation units who happened to have been woken by the explosion, while carrying a bag full of alcohol making what Mr Angus described as a “jingling” or “clanking” noise. It should also be noted that one of the bottles that was later found is the type that one of the robbers allegedly drank upstairs in the main building. As Mr Jones pointed out, this means that the bottle had been carried from that point until, almost on the verge of leaving the property, the robber has dropped it.

[181] Finally, it seems odd that a bottle would have been left upright on the tree stump. Looked at collectively, the the trail of items found appears contrived, and Mr Angus's concern that the area be checked by the police adds to my doubts about Mr Angus's account.

²⁷ This was a reference to the shoes worn by Robber 2 which were white with a red tongue.

Accelerant on Mr Angus's clothing

Accelerant on the vest, shirt, shorts and shoes

[182] On the night of the fire Mr Angus was wearing a vest, which was described in evidence as “a sleeveless polar fleece top” or vest. In addition he was wearing a striped shirt, blue denim shorts and a pair of black leather lace-up shoes. Each of these items of clothing was submitted to ESR for analysis and Mr Wevers gave evidence that a mixture of petrol and kerosene was detected on the vest, the shirt and the shorts. Petrol only was detected on the “shoes”. As far as the shoes are concerned, however, the evidence did not establish whether the petrol was on one shoe or on both, nor on what part or parts of the shoe or shoes the petrol was.

[183] The fact that a mixture of petrol and kerosene was detected on the vest, shirt and shorts is consistent with Mr Angus' account of being doused with accelerant outside the hotel office. It is also consistent with the fact that a petrol and kerosene mix was found beneath a pot plant outside the entrance to the office, roughly in the position it would have been had Mr Angus been doused with accelerant by Robber 2 as he claimed.

[184] It will be recalled that on Mr Angus's version of events he was only doused once with accelerant. Since the evidence establishes that the accelerant on his clothing was a mixture of petrol and kerosene, I consider it is likely that there were two containers of accelerant, one which contained petrol and kerosene and the other which contained petrol only. The version of events recounted by Mr Angus does not admit of any possibility that the accelerant that was purely petrol was used other than inside the main building, for the purpose of setting the fire. In fact, with one exception, there is no evidence of petrol being detected other than inside the main building.²⁸

²⁸ The one exception relates to a plant sample analysed by ESR taken from the pot plant outside the hotel office. This sample was originally reported as negative for the presence of hydrocarbon fuels, but Mr Wevers said in his reply brief that there was “strong support” for the proposition that petrol was present. He did not say it was a petrol/kerosene mixture. Petrol only at that location would not be consistent with the petrol/kerosene mix found on Mr Angus's clothing and on the ground in the vicinity of the pot plant, and Mr Wever's evidence does not really assist the cases advanced by either party.

[185] This means that the petrol found on Mr Angus's shoe or shoes must have got there when he was inside the main building. That gives rise to a number of issues concerning his account. In particular, he did not describe actions which the robbers must have taken to set the fire. He did not see the containers used to dispense the accelerant nor did he describe the accelerant being poured within the main building. Yet he must have been in the vicinity of the petrol either when it was being poured or after it had been poured by the robbers. This had to be after they had returned to the ground from the mezzanine floor because Mr Angus made no mention of petrol being poured at an earlier stage. In cross-examination he was very clear that he had not seen accelerant poured at any stage, nor walked through any accelerant at any time prior to being hit on the head.

[186] It was common ground between the fire experts called²⁹ (whose evidence is discussed below) that accelerant was laid on the mezzanine floor, and from there down the stairs to their base. That being the case, I consider the most likely explanation for petrol being on Mr Angus's shoe or shoes is that it was spilled or splashed there as it was poured. The robbers are unlikely to have accompanied Mr Angus down the stairs, carrying heavy bags of alcohol as he described them doing, hit him over the head and then returned to the mezzanine floor. In discussing the fire later in this judgment I also conclude that petrol accelerant was laid elsewhere in the main building. That would have been a further opportunity for Mr Angus's shoes to be splashed with petrol, although of course he denies being present when that would have occurred.

[187] One possible alternative is that after Mr Angus was struck in the vicinity of Door 5, petrol could have got onto this shoe or shoes if it was applied to the floor or ground area near to where Mr Angus was lying. But Mr Angus did not give evidence that that occurred, and there is no evidence of petrol accelerant being detected in that vicinity. Essentially the plaintiffs invite the conclusion that the petrol could have got on the shoe(s) after Mr Angus was struck on the head and perhaps knocked out.

[188] The consideration of this possibility is made difficult by the differences between his evidence at trial and statements he previously made about where he was

²⁹ Mr Legat by the plaintiffs and Mr Noble by the defendants.

when he was allegedly hit with a piece of wood and the uncertainty of his evidence about whether or not he ever lost consciousness.

[189] In the brief of evidence provided prior to the trial, Mr Angus described the robbers and him going to the back door (Door 5) where they asked for the key to the gates to the yard, which was in its usual place on a nail just by the door. He continued:

It was straight after that, more or less as I was handing over the key by the door, that I got whacked on the head. I didn't see it coming at all. I don't think it knocked me out but it was enough to knock me down, and I did go down. When I got up after a bit, I moved out the door over by the outside staff table which you can see in photo 36. I reached for a chair but only knocked it over. In my interviews I described being like a stunned mullet, which is right. I don't know if I was properly knocked out but I was definitely dazed. I said in the interviews that I thought I was hit with a piece of firewood, but that was just my guess. It was definitely something heavy like that.

[190] In his evidence given orally he said that he had been "whacked" on the side of his head and he was near the end of the freezer near Door 5. In cross-examination he confirmed that it was "just by Door 5". He did not see what hit him, and assumed it was a piece of firewood lying in the yard.

[191] This evidence may be compared with the various statements that Mr Angus made starting with his initial statement to Constable Midgley at the scene. On the version of events he then gave, he was outside before he was hit on the head with the piece of firewood and he said that one of the robbers pushed him onto the ground and he fell into the wood. This was a reference to a woodpile some distance away from Door 5. In the interview with Detective Holder which took place later that morning, he described being pushed out the door and then being "whacked with a bit of wood".

[192] In an interview with the defendants' loss adjuster Mr Hall on that afternoon Mr Angus is recorded by Mr Hall as saying that he was pushed out through the back door and "at the point of entry to the back door he was struck with a piece of wood". Interviewed by Mr Noble, the defendants' fire investigator, he said that he had

walked down the stairs, pushed by the robbers, and that they pushed him quickly towards the back door. Then:

I opened the door and I went to look around and bang, I got hit across the ear and head. I went down and I thought I would fox and pretend I was worse than it looked. They were shuffling around. I was just outside the door, I was down as they whacked me.

[193] In the video reconstruction on 5 July that he carried out with Detective Gabb, he said that he opened the door, and was then struck at a point half in and half out. To Mr Bourgeois he said that he was hit by something, possibly a piece of wood. This knocked him to the ground “half out the door”. In his interview with Detective Gabb on 27 August, he was asked to clarify where he was but did not really do so.

[194] Mr Jones referred to what he described as a “creep” in the accounts given by Mr Angus, in which he moved from being hit and falling outside Door 5 (statements made after the fire) to being hit and falling inside Door 5 (evidence at the trial). Mr Angus was clearly outside when struck in the accounts he gave first to Constable Midgley and secondly to Detective Holder on 2 July. Thereafter the statements seem to put him in the vicinity of Door 5, and it is unclear whether he is inside or out. Yet, at trial, his evidence was that he was inside when hit.

[195] Assuming the robbers existed I think it unlikely that they would have hit Mr Angus and potentially knocked him out leaving him lying inside the building. That would have been to risk his life in the fire. I consider that if he was hit and rendered unconscious it is more likely he was outside the building at the time.

[196] The evidence given in relation to the effect on him of the claimed assault is also unclear. To Constable Midgley he said that on being hit with a piece of firewood he “semi fell down”. To Detective Holder he said that the blow had “stunned” him and he was “just like a stunned mullet”. Later, he said he did not think he was concussed, that he had “played their game a little bit ... maybe ... foxed a little bit ... that’s when I heard the humongous bang”. Later again he said “it wasn’t like ... a real knock out ... more of a push bang than anything ... when I went down I sort of ... acted a bit like a stunned mullet”.

[197] To Mr Hall he said that he pretended to be more dazed than he was. To Mr Noble on 3 July he said what has already been set out above.³⁰ He told Mr Bourgeois on 5 July that he was dazed and that he made out he was hurt so they would not hit him again. He made a second statement to Mr Bourgeois on 16 September in which he said that he was “stunned and possuming”. However Mr Bourgeois asked him directly whether he had been knocked out. Mr Angus said, “in hindsight I think I was”.

[198] I have already set out what Mr Angus said on this subject in his brief of evidence provided prior to the trial. When he gave oral evidence he referred to going down and said that he basically “felt like I was stunned and I just lay there .. maybe possuming”.

[199] The first person who saw Mr Angus after the fire was Mr Patrick, one of the firemen. He described him as appearing to be “quite petrified”, and very shaken as he walked with him back to his fire truck. Mr Angus told Mr Patrick that he had been hit with something. Mr Patrick using his torch noticed a welt on his forehead.

[200] Shortly after that Mr Angus was spoken to by Mrs Suzanne Hutchinson, a St John Ambulance paramedic who had been called to the scene, and arrived at 3.15 am. Mr Angus told her that he had been hit on the head and she identified a superficial wound to the top of his head. She described it as a wound, but said that it was not bleeding. There was “some minor swelling” around the area and in her opinion it would not have taken a great deal of force to inflict the injury. She asked Mr Angus if he had been knocked out and he said he had not. He also said that he had not sustained any other injuries, and appeared calm and rational. She did not fill in “an official report”: she did not consider there was any need to as Mr Angus did not require medical treatment.

[201] Ms Hutchinson conceded in cross-examination that it is possible for somebody to be knocked out and not realise subsequently that they have been knocked out, and possible for someone to be in a state of semi-consciousness and subsequently not realise that either. However, in re-examination she confirmed that

³⁰ At [192].

she was satisfied from her assessment of Mr Angus that what he had told her (i.e. he had not been knocked out) was correct.

[202] Pulling these various strands together the evidence by itself does not justify a conclusion that Mr Angus was or was not knocked out. If his story about being hit by the robbers with a piece of wood is correct, he might have been. That would be consistent with the observations about his state when found by Mr Patrick. On the other hand the injury that Mrs Hutchinson described was not very severe, and if Mr Angus's account is false, could have been self inflicted. The fact that there was evidently a very loud explosion as the fire took hold³¹ might also explain the "petrified" and "shaken" state of Mr Angus, described by Mr Patrick.

[203] If he was knocked out, it is possible that petrol might have got on his shoe or shoes (but not his other clothing) as the robbers went about their business of setting the fire, while he was lying unconscious. But that seems to me unlikely, especially given my earlier conclusion that he would have been outside at the time. In any event there is no evidence of accelerant being detected or used inside or outside the main building in the vicinity of where Mr Angus was hit.

[204] In the end I have concluded that the most likely explanation of the petrol on Mr Angus's shoe or shoes is that it fell or splashed there as he poured it inside the main building.

More about the vest

[205] There is another aspect of the evidence concerning the accelerant found on Mr Angus's vest, which needs to be considered. Mr Angus told Detective Holder that he was suddenly "covered in petrol", that petrol had been thrown "all over" his back and up and down, and it was "splashed all over the place". He told Mr Noble that the petrol "came all over me", and asked how much was on him, he responded "it was dripping".

³¹ There is no reason to doubt the accuracy of Mr Angus's account of what happened at that point, quoted above at [48].

[206] In the video reconstruction, he described bending down to pick up the bag and said, “that’s when from behind petrol just went all over me”. Again, he said to Mr Bourgeois on 5 July, that there was petrol “all over”. He said that it was on the back of his head, but mainly the vest, and the top of his shorts. He added that it had splashed over his shoes. In his interview with Detective Gabb he was asked whether he was “fairly soaked” on his back and he agreed that was the case. At that stage, he said that he could not recall seeing splashes on his shoes. Later in the interview he said he did not think the vest would have been dripping in petrol and that there was not a lot of petrol.

[207] On 16 September 2010 he told Mr Bourgeois that the petrol was mainly on his back and neck area, on the right hand side, that there was enough to smell it and that he did not consider that it was “dripping in petrol”.

[208] In his brief of evidence provided prior to the trial, he described feeling a cold shower of what he originally thought was water dripping onto him, but he smelt petrol straight away. He described it as being on his back and neck and some of the back of his bare arms. He could not recall feeling any of the petrol on his legs. He gave similar evidence orally.

[209] Looked at as a whole, the amount of petrol poured on Mr Angus seems to have reduced with his successive accounts. The earlier versions are likely to be more accurate because of their proximity to the events described. Mr Jones, in a submission reliant on the earlier accounts, submitted that if petrol had been poured on him in sufficient quantities to be dripping, it was surprising that no trace of accelerant had been found in the hotel office when Mr Angus knelt before the safe there. However, at the trial, Mr Angus when cross-examined by Mr Jones said that the petrol “sort of got sucked up with my vest so it’s difficult to say how much it was”. He conceded however that petrol had gone onto the back of head and neck, on one of his arms and that there had “maybe” been splashes on his legs.

[210] Given various accounts Mr Angus gave of the dousing incident, it is puzzling that accelerant was not found in the office notwithstanding the fact that the area was examined by Mr Rewi with his PID device. Mr Rewi gave evidence that the PID

readings were insignificant, and there was no smell of accelerant, inside the office area.

[211] Mr Quinn suggested that might be explicable on the basis that Mr Rewi deployed the PID only in “a very small area” which was “a couple of inches away from the safe”. He suggested that Mr Angus would have been kneeling closer to the safe than that and noted that the PID was very location specific. I consider that these propositions misstate the substance of Mr Rewi’s evidence. While he talked about deploying the PID “a couple of inches away from the safe” and said that he had used it in a “very small area”, those answers were only part of the evidence he gave. He was told by the police, as Mr Angus had told them, that Mr Angus had been made to kneel in front of the safe and open its door. Other evidence that Mr Rewi gave included that he had covered the width of the safe and came back about a quarter of a metre.

[212] I consider it likely given his evidence that he tested the area in which Mr Angus would have been kneeling. It is significant in the circumstances that he obtained no reading suggestive of the presence of accelerant. The evidence that Mr Angus gave about the amount of accelerant poured onto him is naturally not particularly precise. However, if it was as extensive as he initially claimed it would be surprising that there was no accelerant detected in the office in the vicinity of the safe.

[213] The accelerant on the vest has to be considered also in another context arising toward the end of the relevant events. That is because of the condition of the vest when Mr Angus was seen by Ms Hutchinson. She suggested to him that he take off his vest and that he did so, putting it on the ambulance step. The jacket remained there for what she described as a “short time” before she put it into a yellow “biohazard” bag and gave it to a police officer. Referring to the vest (which she called a jacket) she described it as “soaked”. She said she could not say whether it was dripping, because she was not looking for that; however, it was “laden with liquid and was quite heavy to put into the bag”.

[214] Sergeant John McCarthy was also called to give evidence. He said that he noted the “fleece jersey” which had been placed on the step of the ambulance and that there appeared to be petrol dripping from it. He was cross-examined on this evidence, however, and initially conceded that his reason for believing there was petrol on the jersey was because of what he was told by Ms Hutchinson at the time, namely that she had taken the jersey from Mr Angus, as it had petrol on it. However, he added that he could smell petrol, and it was definitely dripping. The dripping was sufficient for him to notice it.

[215] Based on this evidence, Mr Jones invites me to conclude that petrol was on the vest in such quantity that it was dripping from it and that would be inconsistent with accelerant having been poured on Mr Angus at the outset. The defendants maintain that Mr Angus would have soaked his vest in accelerant at a later stage after he had lit the fire. Accelerant was dripping from it because it had been recently soaked.

[216] However, it will be recalled that Mr Angus had been left sitting on the ground by Mr Patrick, prior to Ms Hutchinson attending to him. Mr Angus gave evidence that the ground was frosty. The plaintiffs say it is possible that what was dripping from the vest was the result of that period on the ground and moisture absorbed at that time. The petrol smell could have been present, because of the earlier dousing incident described by Mr Angus. I do not consider the evidence allows me to resolve this issue either way.

[217] Consequently, the only finding that I make in this part of the judgment is that the absence of any indication of accelerant in the office is another consideration that counts against the veracity of Mr Angus’s account.

The vest and the sequence

[218] Mr Quinn was critical of the defendants’ case on the basis that they had not presented a coherent explanation for the accelerant on Mr Angus’s vest, unless it had happened near the outset of his encounter with the robbers. Mr Noble in a report prepared for the defendants on 25 July suggested that Mr Angus first set the fire, then applied the petrol/kerosene mix “sparingly” to his clothing in front of the office,

using a separate fuel container to the one used inside the hotel. He thought this would explain the results of the sampling from beneath the pot plant.

[219] However, bearing in mind that Mr Angus was later found wearing the vest in the vicinity of the wood pile, a position to which he would have had to return when the fire was underway, it seems unlikely that he would have run the risk of passing in close proximity to the fire wearing a vest soaked in petrol. There would also be the issue of what happened to the container used to douse the vest at that point; he would have had to approach the building to throw it in there if it was to be disposed of in that way.

[220] Mr Jones argued for a different scenario in his closing address, suggesting that Mr Angus laid the accelerant, then doused his vest, left it outside, went back into the hotel to ignite the fire and then got back into his vest once the fire was underway. Mr Quinn pointed out some difficulties with this approach including the fact that what was on Mr Angus's clothing was the petrol/kerosene mix while petrol only had been detected in the hotel. Once again there would be an issue about the disposal of the container on this scenario and Mr Angus would have been putting the vest on at a point not too far distant from the fire.

[221] In the end the evidence does not afford a clear explanation of where and when Mr Angus would have applied the petrol/kerosene mix to his vest. It is, however, clear that he was able to wear the vest in proximity to the fire, without it catching fire: that statement is true whether or not it was he who lit the fire or the robbers. In the circumstances I do not think it matters that the defendants have not established a clear sequence of events in relation to the dousing of the vest and the starting of the fire.

Conclusions about the accelerant on Mr Angus's clothing

[222] The conclusions that the petrol on Mr Angus's shoe(s) must have got there when he was inside the main building, and that it is likely to have fallen or splashed there as he poured it inside the main building, are fatal to the plaintiffs' claim. The absence of any evidence of accelerant in the hotel office is another indication that Mr Angus's account is false.

The fire

[223] The fire experts called by the parties agreed that the point of the fire's origin was at the foot of the stairs leading to the mezzanine floor. They also agreed that accelerant was poured at the top of the stairs, on the stairs coming downwards and at the base of the stairs where the fire would have been lit. There was however disagreement about the extent to which accelerant was or may have been poured in other parts of the main building.

[224] The extent to which accelerant was poured in the building was relevant because of a submission advanced by Mr Jones that the use of accelerant in other parts of the main building indicated that Mr Angus was responsible for setting the fire. It was he who had the keys throughout, and he had handed them to the police shortly after they arrived at the scene. His evidence made no mention of taking the robbers into the other parts of the premises where Mr Noble maintained that accelerant had been used. If accelerant was poured where Mr Noble claimed it was, then access to the kitchen would have been necessary through a supposedly locked door. Ms Bennett gave evidence about that door, through which access would have been obtained to the kitchen, and from there to the restaurant and toilet areas, by anyone who was moving from the Workroom:³²

There was also a door between the kitchen and back room. That was a single door and it was the last door we always locked before we left. It had a big large latch and a padlock on the "back room" side of the door.

[225] Ms Bennett also said that she did not personally check any of the internal doors to see if they were locked, nor whether the padlock to the kitchen door had been locked. She added, however, that to her knowledge the "kitchen door was always padlocked".

[226] She was not cross-examined on this evidence. Nor was she cross-examined on her further evidence that access to other parts of the premises would have been barred by another door locked with a padlock at night. She said that except for a circuitous route which would not have been obvious to anyone not very familiar with

³² Ms Bennett's references here to the "back room" were plainly to the Workroom. Her reference to a door between the kitchen and "back room" is a reference to Door 16.

the premises, if someone was in the Workroom after hours they would need “keys to the two padlocks to go anywhere, except upstairs”.

[227] The defendants rely on the evidence of Mr Noble to claim that accelerant was poured on the landing at the top of the mezzanine stairs, in the kitchen (on its eastern side) between Door 16 and 15, in the restaurant area, and in the toilet block at the southern end of the building. These areas were illustrated on a marked up version of the Noble plan that was produced in evidence. To some extent, Mr Noble’s views were consistent with Mr Rewi’s evidence. But Mr Rewi, properly recognising the limitations of the PID technology, did not purport to actually locate the presence of accelerant, merely to identify areas that it would be appropriate to further investigate. And he did not include the kitchen area (between Doors 16 and 15) or the Restaurant in that category.

[228] I have already noted that Mr Noble has extensive practical experience as a fire investigator (he has some 27 years experience in fire-related matters), and he referred in evidence to qualifications obtained in New Zealand and overseas, in both the United States and the United Kingdom. Mr Rewi has been employed by the New Zealand Fire Service for over 36 years; he is currently the Specialist Fire Investigator in the Bay of Plenty/Waikato Fire Region. In this role he was required to investigate the fire, as a significant fire in the region, in accordance with instructions issued by the National Commander of the Fire Service.

[229] I have earlier referred to his use of a PID to detect traces of accelerant at the Pinelands hotel on the day following the fire. Mr Rewi said that when he used the PID to detect the existence of accelerant he obtained “particularly high readings” at the top of the stairs leading to the mezzanine floor, a section of carpet that remained at the top of the stairs following the fire, and in the toilet area and an associated passageway on the ground floor. He recommended that samples be taken from the areas where these high readings had been obtained. He did not keep a record of the readings: the PID was used to identify the areas from which samples would be taken for subsequent analysis.

[230] It appears that Mr Noble, who was present during Mr Rewi's investigation, subsequently arranged for samples collected at the site to be sent to Environmental Science and Research Limited ("ESR") for analysis. The result of that analysis was given by Mr Gerhard Wevers, a suitably qualified analyst employed by ESR. He noted receipt of seven fire debris samples from Mr Noble on 12 July 2010. Further samples, forwarded by the police, were received on 14 July, and subsequently analysed. Petrol was detected on a sample coming from the landing at the top of the stairs on the mezzanine floor. However, no hydrocarbon fuels were reported as present in other areas identified by Mr Noble as likely to have been places where accelerant was poured.

[231] Mr Wevers explained in a supplementary brief, however, that in the case of some of the samples, some of the chemical compounds that are present in petrol were detected in low levels. The results had been reported as negative because not *all* of the compounds necessary to identify the presence of petrol had been identified. He went on to say that the compounds that *had* been detected in the samples justified statements that there was "moderate support" for the proposition that petrol was in fact present in samples described as "a carpet mat taken from the passageway outside the toilets on the southern side of the ground floor" and "carpet taken from beside the concrete block wall on the southern side of the passageway - on the southern side of the ground floor". I infer from the evidence that the "passageway" referred to was the same in the case of both samples.³³

[232] The description "moderate support" was to be understood in the context of a range of possible conclusions that comprised neutral, slight, moderate, strong, very strong, and extremely strong support, and conclusive support.

[233] Mr Wevers also said that the analysis was "neutral" as to whether petrol was present in the case of a sample, described as of carpet and underlay, taken from another toilet identified by Mr Noble as a place where accelerant was poured. This was Toilet 2, located to the north of Toilet 1 on the Noble plan. A "neutral"

³³ The passageway is shown on the Noble plan as intersecting toilets 1 and 3. In the marked up version of that plan Mr Noble showed accelerant as having been poured adjacent to the wall dividing the passageway from toilet 3.

conclusion was one that neither supported nor refuted the presence of petrol in the sample.

[234] To the extent that his conclusions were not verified by the ESR analysis Mr Noble relied on his expertise and experience to proffer conclusions based on his observations at the scene on 2 July 2010 and the following days. His approach was based in particular on visual observation of burn patterns and damage, and odours, from which he claimed the presence of accelerant could be inferred. He was able to explain his reasoning by reference to an extensive number of photographs that were produced in evidence.

[235] In the case of the passageway between Toilets 2 and 3, Mr Noble said that burn patterns outside the entrance to Toilet 3, and in the vicinity of the doorway leading to the passageway (Door 9) indicated that flammable or ignitable liquid accelerant had been dispersed there. In addition, he said that he detected a strong hydrocarbon fuel odour, particularly when debris was cleared from the carpet in the passageway. Similarly, he thought that the burn pattern adjacent to the concrete block wall was consistent with the presence of accelerant.

[236] In Toilet 1, Mr Noble described noticing the “same strong accelerant odour” once debris was removed from the linoleum, and he thought that a circular clear patch and trail pattern looked like “a fuel pattern that protected the surface beneath it while the surrounding area was affected.” He explained that burning fuel can leave a protected area where the cool liquid pools, and that thermal damage is more pronounced where burning occurs around the edges of the fuel.

[237] In Toilet 2, Mr Noble described burn patterns on the back of a door which he thought consistent with a low level point of ignition, followed by the immediate and rapid spread of fire up the door and surface finishings of the wall. He also observed “pronounced calcination” of the wall linings, which he considered showed a heat release consistent with the use of accelerant, since there was only carpet and underlay in this room.

[238] Mr Noble was further of the opinion that the extent of damage to the carpet in the restaurant, in conjunction with low level charring of the table legs and the undersides of tabletops there, indicated that accelerant had been poured in the middle of the room. He also considered that a trailer had been laid back from the bi-fold doors between the restaurant and Lounge 2.

[239] In the kitchen, at the northern end, Mr Noble smelt an odour similar to the one he had smelt in Toilets 1 and 3. From his inspection of this room Mr Noble ascertained that both Doors 15 and 16 had self-closing mechanisms that had resulted in them being shut when the fire commenced. However, Door 16, at the northern end, which gave access to the Workroom, was unlocked. That door had a padlock and towerbolt; these were still attached to the frame when Mr Noble inspected the scene. The padlock was open and the towerbolt was retracted, indicating the door had been left insecure. Consequently, there could have been access to the kitchen and other rooms to the south, including the restaurant and toilet areas.

[240] Mr Noble's conclusions were criticised by another expert, called by the plaintiffs, Mr Kenneth Legat. Mr Legat described himself as a Fire Origin and Cause Investigator. Between 1976 and 2011 he was a member of the New Zealand Police. In the course of his employment he had investigated arsons, and he had been the Fire Investigation Co-ordinator for the Canterbury CIB. In that role he had both undertaken and supervised the investigation of major and serious fires, including fatal fires, so as to determine their origin and cause. He was suitably qualified by both training and experience to give evidence about the Pinelands hotel fire.

[241] However, in cross examination by Mr Jones, Mr Legat conceded that he was at an "enormous disadvantage" because he had not inspected the premises in the aftermath of the fire. As to that, he accepted that Mr Noble had carried out a thorough scene examination using the best practice recommended in the United States National Fire Protection Association "Guide for Fire and Explosion Investigations" ("NFPA 921").³⁴ Nevertheless he was critical of Mr Noble's reasoning process and refuted his conclusions, giving what was a effectively a paragraph by paragraph critique of Mr Noble's brief.

³⁴ Extracts from this publication were produced by Mr Legat as exhibit 4.

[242] With Mr Noble, Mr Legat considered that the fire was intentionally lit, and that flammable or ignitable liquid had been used to promote the fire in the area of the stairwell leading to the mezzanine area of the main building. However, in his evidence in chief he said that he did not “necessarily” agree that accelerant had been placed in the other areas indicated by Mr Noble. It became clear as his evidence progressed that in fact he did not consider Mr Noble had a proper basis for his conclusions that accelerant had been used in the toilets, restaurant or kitchen. In responding to further questions put to him by Mr Quinn he expressed the opinion that the fire had been lit at the base of the stairs leading to the mezzanine floor, taken hold in the mezzanine area and moved from there to other parts of the building; by inference from the photographs (and the ESR analysis) the course of the fire had not been influenced by accelerants poured in the other areas identified by Mr Noble.

[243] Mr Legat’s starting point on this issue was his view that Mr Noble’s evidence was not supported by the forensic analysis carried out by Mr Wevers. In the case of the passageway between Toilets 2 and 3, he did not accept that photographs on which Mr Noble relied established that accelerant had been used. However, in respect of two of the areas photographed, he conceded that accelerant may have been present, and he also conceded that it was possible that it had been poured adjacent to the concrete block wall. This evidence was based on the visual analysis of the photographs only, and in one case Mr Legat said that the photograph was not good enough for him to comment on it.

[244] He added however that he thought it unlikely that an arsonist would pour fuel along the base of a concrete block wall, and noted that the concrete block wall, which was painted white, did not appear to be exhibiting any damage to the paint. He would have expected to see such damage if accelerant had been poured along the base of the wall.

[245] Although he accepted in cross-examination that being at the scene and “smelling petrol or smelling something” could be an indication of the presence of accelerant, Mr Legat did not refer to Mr Noble’s evidence about noticing a strong hydrocarbon smell in this part of the premises. He also conceded in cross-examination that the evidence given by Mr Wevers that there was moderate support

for the presence of petrol in this area made it more likely that accelerant had been poured there. He suggested that the burn patterns observed by the wall could have been caused by fire venting from elsewhere and igniting edges of the carpet. Mr Noble however was adamant that the burn pattern could not have been the result of drop-down burning.

[246] Mr Quinn put it to Mr Noble that the areas in the passageway at the interface between the carpet and the linoleum laid inside the toilet would be affected by cleaning products that would have been regularly used on the toilet floor, but Mr Noble rejected that possibility on the basis of the burn patterns he had observed.

[247] Mr Quinn submitted it was significant that ESR testing of carpet taken from the landing of the mezzanine floor had conclusively established the presence of accelerant there, an area substantially destroyed by fire, when testing in the vicinity of Toilet 3 had only produced moderate support for their presence. However, Mr Noble offered the explanation that in the case of the mezzanine carpet, a substantial amount of debris had fallen on top of it. This would have sealed the vapours, so that they did not evaporate at the same rate as the carpet in the passageways which was uncovered. He was also of the opinion that less accelerant would have been used in the passageway than in the mezzanine area.

[248] I consider on the balance of probabilities that accelerant was poured in the passageway as claimed by Mr Noble. In this case Mr Noble's observations about burn patterns and the strong odour of hydrocarbon fuel derived some support from Mr Wever's evidence that the analysis carried out by ESR provided moderate support for the presence of petrol. The absence of evidence of a trail linking the accelerant poured in the passageway to other parts of the premises may mean that pouring the accelerant in the passageway was unlikely to assist the propagation of the fire through the building. The same might be said of the fact that it had evidently been poured close to the concrete block wall. Both points were made by Mr Quinn. Nevertheless it would be wrong to approach the evidence on the basis that the fire was set by a skilled arsonist, because that would not be justified by anything in the evidence.

[249] Insofar as Toilet 1 is concerned, Mr Noble also described a “strong accelerant odour” once debris was removed and Mr Rewi recorded a high reading with the PID device. However, no sample was sent from this area for analysis by ESR. While Mr Legat agreed with Mr Noble that burning can leave a protected area where the cool liquid pooled, he considered that there were other possible causes for the burn pattern on which Mr Noble relied. He noted that in areas of high traffic, the traffic load can result in the carpet or vinyl in that area being crushed and worn. The crushed material combusts at a slightly different rate than the other floor material around it and that can result in a pattern being misinterpreted as having been caused by a pool of flammable liquid. He also thought that the high PID reading in Toilet 1 could be the result of the machine reacting to detergents and cleaning products used in the toilet and noted that a high PID reading had not been detected in the centre of the room.

[250] Once again I prefer Mr Noble’s evidence, based on his scene examination. I do not consider that he would have misinterpreted the burn pattern in this room in the manner suggested by Mr Legat, nor was it specifically put to him in cross-examination that he had. I was satisfied by Mr Noble’s further evidence in re-examination that the burn pattern was consistent with a fire moving upwards from the ground, and of an intensity consistent with the use of an accelerant in this area, in the absence of any other loading that could have contributed to the intensity of the fire.

[251] I turn next to Toilet 2. It was Mr Legat’s opinion that the burn patterns relied on by Mr Noble could be explained by other causes related to the growth and progression of the fire originating from the mezzanine floor. He said the damage observed on the door relied on by Mr Noble was more likely to have been caused by the spread of the fire and the fire venting when the glass in the door failed.

[252] One of Mr Legat’s criticisms was that Mr Noble had proceeded on the basis that both Toilets 1 and 2 had carpet in them, whereas it was “more likely” that the floor covering was linoleum. In fact, Mr Noble said that there was linoleum in Toilet 1 and carpet in Toilet 2. Mr Legat was not speaking from personal knowledge on this point, and I have no reason to doubt the evidence of Mr Noble who was there.

[253] As to the damage to the door, once again it was physically observed by Mr Noble. However, in this case he made no reference to odour, and the ESR analysis provided no support for the presence of petrol.

[254] Mr Legat gave additional evidence, expanding substantially on the brief he provided before the trial, in which he explained his view that the fire damage in the area of the toilets generally (he referred collectively to what he called “the southern toilet block”) was simply the result of the fire that originated in the mezzanine area. Thus:

... it's quite possible and likely that the fire area, or fire development in lounge 2, when it gets into the ceiling space of Lounge 2, travels along and burns into the areas above Toilets 2, 1 and 3 and then burns down. We know from the fire service report that that area was one of the last areas they went into to suppress, so it's been burning for some time, so the fire could travel from [the] lounge ... into those areas by going through the roof space, or ceiling space, above the toilets. That's another possibility.

[255] As a matter of logic that is an obviously a possible process, albeit one not articulated in his original brief. However, it is a possibility that needs to be supported by the actual evidence about the state of the building after the fire. In this case, Mr Legat did not directly confront Mr Noble's evidence about the burn pattern on the door being consistent with a low level point of ignition. That, and the other evidence about the intensity of the fire and the absence of any loading other than the carpet, have led me to accept Mr Noble's evidence.

[256] As to the restaurant, Mr Legat agreed that it was possible that accelerant had been poured there, but he considered there were other explanations for the observations that led Mr Noble to think that was the case. Mr Legat relied in particular on two photographs which he said demonstrated that:

- (a) the fire penetrated into the restaurant from Lounge 2;
- (b) the damage was worse at the far end of the room (towards Lounge 2) and nearer the ceiling;

- (c) the edges of tables showed charring, but there were no discernible fire patterns on the floor area;
- (d) patterns apparent on the tables may have been caused by their covers; and
- (e) three support poles running down the middle of the room had high level charring but little or no damage at ground level

[257] Mr Legat expressed the view that the photographs were at odds with Mr Noble's opinion that an apparently large amount of accelerant had been poured in the centre of the room. Mr Jones did not specifically cross-examine Mr Legat on this evidence, although he did get Mr Legat to confirm that it was possible that accelerant had been disbursed throughout the restaurant. Nevertheless, Mr Legat preferred his view that there had been a "high level" fire in the restaurant. Mr Legat's theory about the fire having spread to the restaurant from Lounge 2, and also from the direction of the shared wall between the restaurant and the kitchen, (which he added in additional evidence) was compelling and apparently well-justified by reference to the photographs that he discussed.

[258] However, I do not consider that the fact the fire would have spread to the restaurant from other parts of the building is necessarily contrary to Mr Noble's view that accelerant was poured in the restaurant. A fire started in the mezzanine area would inevitably migrate to the restaurant area if not confined: that does not mean that another source of fire could not have been present in the restaurant itself.

[259] Mr Noble's evidence was based on the presence of low-level charring to the table legs and underside of table tops, which he thought pointed to the fact that accelerant had been disbursed throughout the centre of the room. One of the photographs by which he demonstrated this view showed table tops photographed lying in an outdoor courtyard adjacent to the restaurant. One of the points that Mr Legat made was that there was no evidence of where the two tables were originally located. In his evidence however, Mr Noble confirmed that the tables had been in the restaurant. One of the table tops had a large hole in it, and Mr Legat

suggested that this could have been caused by something falling on it from above. Mr Noble rejected that suggestion on the basis of his overall assessment of the damage to the carpet and tables.

[260] Mr Legat was also critical of Mr Noble's evidence of a trail of accelerant leading back from the bi-fold doors between the restaurant and Lounge 2, following a path toward the kitchen. Mr Legat's point was really an argumentative one based on the fact that the door leading from the restaurant to the kitchen had not been wedged open: Mr Legat's thesis was that if an arsonist is trying to promote fire by using trailers of accelerant, then the door would have been wedged open to achieve that result.

[261] Mr Legat's point assumes that the arsonist was aware of the best way of going about the task, but as I have said above, there is no real justification in the evidence for adopting that approach. There was a rational basis for Mr Noble's opinion that accelerant had been poured in the restaurant and I accept on the balance of probabilities that it was.

[262] The remaining area as to which there was controversy as to whether accelerant had been poured was the area of the kitchen between Doors 16 and 15. The main justification for Mr Noble's view that accelerant had been poured in this part of the premises was the fact that during his inspection he noted an odour similar to the one that he had detected in Toilet 1. In his brief of evidence provided before the trial Mr Legat made no comment on Mr Noble's evidence on this subject other than to note that Mr Noble had not referred to the main gas supply to the building. He went on to suggest that the release of gas into the building through breached pipes would likely have contributed to the growth of the fire. He also observed that the fact that Mr Angus had heard an explosion and seen flames coming out of the roof was consistent with the presence of gas.

[263] Mr Noble stated in response that his inspection of the pipes and control dials for the gas-fuelled appliances showed that they had not been turned on as part of setting the fire. However, he accepted that some gas would have vented from compromised pipes and supported localised combustion. However, he had observed

no evidence to suggest that a major conflagration had occurred near any of the gas supply pipes or kitchen appliances. While the explosion that Mr Angus heard, also heard by Mr Lyndsay Welton (one of the truck drivers staying in the hotel that night), would be consistent with the presence of gas, it was equally consistent with the ignition of liquid vapours built up as the result of pouring accelerant. In cross-examination Mr Legat agreed that was the case. Indeed, he also conceded that it was most likely that the initial explosion had been caused by petrol vapours and was not a gas explosion.

[264] In the expanded evidence that he gave at the trial, Mr Legat developed a new line of attack based on photographs taken of the outside of the kitchen wall. He said the photographs did not exhibit the damage that they would have had accelerant been poured inside the kitchen in the location identified by Mr Noble. In particular he identified an absence of low level burning shown in the relevant photographs. However, this evidence overlooked the fact that there was a row of cupboards on the inside of the wall, which to some extent would have acted as a barrier to fire affecting the exterior wall. Mr Noble maintained his view that the low level burn patterns that he observed inside the kitchen at this point were consistent with there being a low level burn on that side of the room.

[265] Having reviewed the evidence of the two experts, I am satisfied that it is likely that accelerant was poured in all the parts of the main building identified by Mr Noble and I reject Mr Legat's evidence to the contrary. That would have required access to parts of the building that were behind locked doors, and since Mr Angus retained the keys throughout this is a further finding that tells against his account of the alleged robbery and arson.

Timing

[266] The Chubb records establish that Mr Angus, Ms Peka and Ms Bennett left the main building soon after 1.59 am. The three walked to the hotel office of Mr Angus carrying the two float trays and the TAB money bag, to be placed into the hotel office safe. Mr Angus went into the office, and Ms Bennett and Ms Peka left.

[267] Ms Bennett left the property first. Ms Peka got into her car but stopped it under the canopy outside the hotel office and waited there with the engine running to defrost her window. She estimated that she left about five minutes after Ms Bennett. There was no direct evidence of the time at which Ms Bennett left. However, the evidence is clear that Mr Angus and the other two left the main building at 1.59 am. There was then the short walk to the hotel office with the tills and Ms Bennett left after that. It seems to me that five minutes or less would have elapsed. Supposing that Ms Peka was in the car with the engine running for another five minutes she would have gone by 2.10 am.

[268] Mr Quinn suggested that a longer period may have elapsed on the basis of Ms Peka's evidence that she arrived home at about 2.20 or 2.30 am and that the drive would have taken her no more than five minutes. He suggested that that would have her leaving at 2.15 am at the earliest. However, that evidence is not precise and I think it is more likely that she would have gone by 2.10 am.

[269] Mr Patrick was the next witness to see Mr Angus. Mr Patrick had arrived at the site at about 3.04 am. As the fire engine approached the site, Mr Patrick could see that the fire had already broken through the roof even though the emergency call to which they were responding had only been received three or five minutes earlier. After banging on the doors of the motel units, Mr Patrick walked around the back of the hotel looking for a point of access to the building. As he did so, he heard a male voice calling for help. It was Mr Angus. This must have been only about three or four minutes after his arrival.

[270] Truck drivers who were staying in the hotel that evening were called to give evidence, and on the basis of what they said it is possible to fix a point in time by which the fire was underway. In particular, Mr Wayne Shaxon said that he was awakened by his alarm at 2.15 am and walked to his truck at about 2.35 to 2.40 am. His door was hard to lock and he had to slam it, which he thought made a noise loud enough for anyone nearby to hear. He saw night lights on inside the hotel in the areas of the restaurant and lounge bar, but he did not observe anyone. There were no lights on in the office. He left the car park at 2.45 am.

[271] Mr Welton was another truck driver staying at the hotel, who was called by the plaintiffs. He was in unit 11, one of the accommodation units in the block to the east of the main building. He described being woken in the middle of the night by an explosion. He described hearing a loud bang such that he thought a truck was “coming through the motel”. Within seconds he said, fire alarms were sounding and he recalled looking at his cell phone. It was showing 2.50 am.

[272] The Kawerau Fire Station received an alert as a consequence of a “private fire alarm call” (PFA”), routed via the Northern Communications Centre at 2.59 am. PFAs are received into a processing centre maintained by a private company. The processing centre then relays the information to the Northern Communications Centre which handles 111 fire response calls, despatches fire engines and communicates with personnel at incidents. The evidence included an invoice from Argus Fire Protection recording that a call was paged from the hotel fire alarm at 2.56 am.

[273] Consequently, it seems that the fire must have been lit at some time between 2.45 and 2.50 am. It would have been after Mr Shaxon drove off and before Mr Welton was awakened by the noise to which he referred. I note that Mr Welton said that he put some clothes on and went to the door, by which time he could see flames in the kitchen area.

[274] That means that the other events comprising the alleged robbery and the setting of the fire took place in the period between 2.10 am and 2.50 am, a period of about 40 minutes. According to Mr Angus, after Ms Peka left and before Robber 1 arrived, he had been to the toilet, filled a hot water bottle and sat on the bed listening to a radio talk-back station. It is unclear how long those activities would have taken.

[275] The defendants say that the intervening period would have given Mr Angus the opportunity to set the fire and lay the trail of objects that were later discovered by the police in an attempt to provide corroborating evidence of the presence of the robbers on the property. I accept that is so.

[276] Mr Quinn makes the point that if Mr Angus had committed the arson, he would have been acutely aware of the timing. On the defendants' case he would have taken elaborate steps to create false evidence, but at the same time neglected to work up a basic explanation for how long the robbery had taken. He could simply have said that the knock at the back door occurred at 2.30 am and that would have dealt with any issues about timing. That also is a valid point.

[277] In the end, however, the fact remains that there would have been time for Mr Angus to hide the money taken from the hotel office, set the fire and lay the trail of items leading to the property boundary adjacent to unit 15. His familiarity with the property would have assisted him in this task and he could have done so quietly, so as not to disturb the truck drivers some of whom he must have known from past experience might be early risers.

Did Mr Angus have a motive to set the fire?

[278] It is part of the defendants' case that the plaintiffs, or Mr Angus in particular, had a motive to start the fire. The defendants claimed that the Pinelands business was failing; that it was gradually eroding Mr and Mrs Angus's resources; they had tried and failed to sell the business and the premises over a period of years and wanted out. In the circumstances the fire, followed by an insurance payout, would achieve their purposes.

[279] All this was disputed by the plaintiffs. They conceded that in the two financial years prior to the fire the business had not performed well, but they claim that there were prospects of an improvement in the foreseeable future. Although they had attempted unsuccessfully to sell the business and the land and buildings they were in no hurry to do so. They say that because of a sound asset backing they were able to resist any pressure on them as a result of the performance of the business. These points were all made in the evidence in chief of Mr Angus, who maintained his position in cross-examination.

[280] Apart from his evidence, evidence touching on these issues was called by both parties from valuers and forensic accountants, whose opinions will be discussed below. Before that, it is appropriate to refer to the evidence about the attempted sale

of the hotel and the business, because that forms an important context for the other evidence.

The attempted sale of the business

[281] Mr Angus said that Mrs Angus and he did want to sell, but their attitude was that they would only sell if they could get a good price.

[282] There was evidence that from time to time Ngati Tuwharetoa Holdings Ltd (“NTHL”) expressed interest in the property. That interest went as far back as 31 March 2006, when after viewing the hotel, a representative of NTHL, Ms Elaine Savage wrote to land agents instructed by the plaintiffs seeking consent to obtain a LIM report from the council and a valuation and building report. Consent was duly granted and on about 17 August 2006, an offer was presented on behalf of NTHL offering to purchase the land and buildings for \$1.1 million, with retention of the hotel business and chattels by the plaintiffs. Other terms offered including a lease back of the hotel for ten years, and two and a half yearly rental reviews.

[283] The plaintiffs counter offered seeking payment of \$1.2 million plus GST for the land and buildings, agreeing to the proposal that they should retain ownership of the hotel business and chattels but querying the proposed lease back and rental review proposals.

[284] A director of NTHL wrote to Mr Angus on 8 March 2007 making a further offer to purchase the land, buildings and fixtures for \$1 million, with a lease for ten years at \$100,000 per annum back to the plaintiffs and various other terms.

[285] Mr Angus also referred in evidence to an LJ Hooker brochure which he said would have been put together in 2006 or 2007, in which an asking price for the hotel as a going concern was set at \$1.65 million made up of \$1.2 million for the land and buildings and \$450,000 for the business.

[286] In April 2007 an agreement for sale and purchase was executed between the DW and SE Angus Trusts Partnership and Raffles Properties Ltd, a company controlled by the author Alan Duff. Under the agreement, the land and buildings

would have been sold for \$1.25 million. At the same time, Alan Duff Productions Ltd entered into an agreement to purchase the business, which was also executed by Mr and Mrs Angus, for the sum of \$400,000 plus GST, if any and \$20,000 for stock. In the event, neither of these agreements proceeded because of the inability of Mr Duff and his company to complete them.

[287] On 15 February 2008, LJ Hooker wrote to the Tuwharetoa Trust enclosing a registered valuation of the hotel on a confidential basis. According to Mr Angus the valuation that was enclosed with his letter would have been the valuation prepared by Mr Alastair Pratt in February 2008 and which will be referred to in more detail below. That valuation valued the hotel as a going concern at \$1.45 million.

[288] On 15 July 2008 the same director of NTHL who had written on 8 March 2007, wrote again enclosing an agreement for sale and purchase which provided for a purchase price of \$1 million for the land and buildings. The proposal also contained a proposed lease back to the plaintiffs, but at a reduced lease rental of \$80,000. It appears that that offer was not accepted by Mr and Mrs Angus.

[289] There was further correspondence between Mr Angus and NTHL in May 2009 in which Mr Angus offered the hotel for sale as a going concern for \$1.3 million plus stock, estimated at a value of \$30,000. In reply, NTHL indicated that the company was not in a position to purchase the hotel as a going concern and declined the offer. Mr Angus said that at about this time NTHL explained to Mrs Angus and him that the company did not want to be in the business of owning and running a hotel and they wanted any purchase to relate only to the land and buildings.

[290] Mr Angus also referred in evidence to an undated communication from a Mr Heinz Fett of Affiliated Business Consultants in which Mr Fett discussed a six-week marketing programme, following a discussion with Mr Angus. Mr Angus thought that the letter must date from late July or August 2009. Subsequently, Mr Fett prepared a “business profile” recording the price for the hotel as a going concern at \$1.475 million, including \$35,000 for stock. That brochure included a

copy of an extract from Mr Pratt's valuation of February 2008 valuing the hotel as a going concern at \$1.5 million.

[291] None of these efforts came to fruition and there was no evidence of any other parties being interested in the purchase of the hotel.

The valuation evidence

[292] Both sides called valuation evidence. The valuation evidence was given by Mr Gary Gillespie for the plaintiffs and Mr Pratt (who had prepared the February 2008 valuation for the plaintiffs) for the defendants. Both valuers were clearly qualified to give expert evidence on the matters which they addressed.

[293] However, they had different instructions. Mr Gillespie was asked, amongst other things to value all of the Pinelands land and buildings as part of a going concern as at 30 June 2010 (the day before the fire). Mr Pratt, retained by loss adjusters employed by the defendants, was instructed to consider the reinstatement value and indemnity value of the main building only, and exclusive of any land value. He provided a reinstatement value of \$2,120,000, a market related value of \$320,000 and a depreciated replacement cost figure of \$1,220,003.

[294] Mr Gillespie's evidence was that as at 30 June 2010 the value of Pinelands land and buildings as a going concern was \$1.35m plus GST. That sum comprised \$634,000 for the main building, \$196,000 for the accommodation units, \$70,000 for other improvements, \$360,000 for the land value and \$90,000 for chattels.

[295] Although Mr Pratt's instructions meant that his valuation exercise had different objectives, in the course of carrying them out he arrived at a figure of \$640,000 as the effective equivalent of Mr Gillespie's \$1.35m. Mr Pratt had provided a valuation in 2008, on instructions from the plaintiffs. In that valuation he had assessed a value on a going concern basis of \$1.45m, exclusive of GST. Consequently, the \$640,000 figure appears on the low side, and is apparently a figure for the lessee's interest only.

[296] Considerable time was spent in the hearing in analysing the different approaches of Mr Gillespie and Mr Pratt and both were extensively cross-examined. The main point of that cross-examination related, however, to the quantum of the plaintiffs' claims. For present purposes, the important issue is not really what the actual value of the land and buildings was, whether on a going concern or other basis. In assessing whether Mr Angus had a motive to set the fire, I infer that he would have assumed a value somewhere in the vicinity of the figure assessed by Mr Gillespie, because he was aware of the value assessed by Mr Pratt in 2008. However, he would also have been aware from Mr Pratt's 2008 valuation that the performance of the hotel had a substantial impact on its value as a going concern.

[297] Mr Pratt explained in evidence that his 2008 valuation took into account the performance of the hotel in the three years to 31 March 2007, and details of weekly banking for the weeks ending 6 April 2007 to 18 January 2008, so as to derive a realistic net cash flow for the business as at January 2008 of \$201,420 (excluding rent, depreciation, proprietors' salaries and interest). He had adopted a similar approach for the July 2010 valuation. In the three years to 31 March 2010, there had been a considerable decline in the trading income: the total trading income for the year ended 31 March 2008 was \$635,383, compared with \$463,545 for the year to 31 March 2010. In the latter year he calculated a net cash flow of \$90,271 (exclusive of rental, depreciation, proprietors' salaries and interest), which was 55 per cent down on the equivalent figure used in his 2008 valuation. This had a significant impact on the valuation of the business.

[298] Mr Gillespie considered that Mr Pratt's approach was based on an aggressively low rental, having regard to the figures Mr Pratt had assessed in his 2008 valuation. However, it is not necessary to resolve the differences between the valuers at this point. There can be no suggestion that Mr Angus would have been aware of the actual impact of any reduction in revenues on the value of the hotel on the eve of the fire.

[299] But I think it realistic to infer that he would have been aware that there would be an impact on the value: not only is that common sense, but the methodology employed and explained in Mr Pratt's 2008 valuation made the importance of

turnover in assessing the value clear. The recent performance of the hotel would therefore have been of concern to Mr Angus, especially against the background of the failure to sell the business over the comparatively lengthy period that it had been on the market. The fact that the only credible potentially interested party, NTHL, was not interested in purchasing the business on a going concern basis would have added to that concern.

The accounting evidence

[300] The forensic accountants who gave evidence were Mr Shane Hussey, called by the plaintiffs, and Mr Andrew McKay for the defendants. Both had slightly different instructions. Mr Hussey was asked to consider the financial position of the plaintiffs around the time of the fire, and further whether that position was indicative of any financial stress. Mr McKay was instructed to provide an evaluation of the financial position of the various entities through which the Pinelands land and business were owned and operated, and Mr and Mrs Angus personally, considered separately. Accordingly, he considered the financial position of the Pinelands hotel operation (owned and operated by the partnership between Mr and Mrs Angus, which Mr McKay referred to as the “Pinelands Partnership”) and the DW & SE Angus Trusts Partnership (by which the land and buildings were owned and leased to the Pinelands Partnership).

[301] Mr Hussey accepted that from an accounting point of view there was nothing wrong with Mr McKay’s approach of considering the position of the Trusts and the Anguses separately. That was done in order to consider whether Mr and Mrs Angus were under financial pressure at the time of the fire. It was more appropriate to consider the overall position. I agree with that approach. I doubt that Mr and Mrs Angus would have viewed the position of either of the trusts and themselves in other than a holistic way. As Mr Hussey pointed out, the financial position of the Pinelands Partnership and that of Mr and Mrs Angus were inseparable, and they had access to the assets of the Trusts Partnership. Any conclusion that their financial position was such as to give Mr Angus a motive to set fire to the hotel would have to be based on an overall appraisal of their position including that of the trusts.

[302] Commendably, both Mr Hussey and Mr McKay had endeavoured to reach agreement on matters where that was possible. Although differences between them remained, I was assisted by the candid and straightforward approach taken by them both. In the end, they were able to record a substantial level of agreement, recorded in a joint statement provided to the court in various drafts and, in final form, on 18 November 2013. In the joint statement they recorded that, notwithstanding their different instructions, they had both considered the historical trading results and financial position of the Pinelands operation and the financial position of Mr and Mrs Angus around the time of the fire.

[303] The defendants allege that the Pinelands business was in decline, and this would have been of serious concern to the plaintiffs since the property and business were by far their major assets. The deteriorating trading performance would inevitably have affected the price that they would have been able to achieve on sale of the business. The defendants say that this was sufficient to motivate Mr Angus to set the fire to procure payment under the insurance policies issued by the defendants.

[304] Mr and Mrs Angus purchased the Pinelands business in 1996 and the freehold of the property in 2002. As has been seen, since 2006 they had endeavoured without success to sell both the property and the business. The business (the Pinelands Partnership in the terminology of the joint statement) had returned a reasonable profit of \$99,175 in the financial year ending 31 March 2006 but sustained a loss of \$2,938 in the year ending 31 March 2007. There was a profit of \$58,948 in the financial year ending 31 March 2008, but another loss, of \$11,065 in the 2008/2009 financial year. There was a more substantial loss of \$43,798 in 2009/2010.

[305] In their joint statement, Mr Hussey and Mr McKay expressed the opinion that in the two years before the fire the Pinelands Partnership was performing poorly, and was effectively relying on the support of the Trusts Partnership during this period. Considering the performance of both partnerships combined, the business was still performing poorly, in that it was not providing a reasonable income to Mr and Mrs Angus: the combined “cash profit” (net loss with depreciation expense added back) for those two years was a total of \$23,359 (\$22,603 in 2009 and \$756 in 2010). Mr McKay said in cross-examination that this did not represent a “reasonable return” on

the assets, and was an income well below the average wage. Although he also accepted, as put to him by Mr Quinn, that the Anguses were “treading water”, rather than going backwards financially, he pointed out that except for 2008, the profitability of Pinelands was trending down.

[306] Mr Hussey disputed that downward trend. He considered that there had been considerable variability in the performance of the hotel business over the period 2003-2010. While the results for the 2009 and 2010 financial years were the worst, the result for the 2008 year was the second best of the eight years he had analysed. Nevertheless, there was “no denying”, as he put it, that the performance of the business in the 2009 and 2010 financial years would have been “troubling”.

[307] While they agreed that the performance of the combined operations was poor during the two years prior to the fire, Mr Hussey and Mr McKay disagreed on the future outlook for the business at the time. Mr Hussey’s opinion was that the poor trading performance in the years preceding the fire was the result of the global financial crisis, and not indicative of the long-term outlook for the business. Short-term matters on which he relied for a more optimistic view of the future included the proposed maintenance shut down at the Carter Holt Harvey Kawerau mill in late 2010 and early 2011, and an offer from the Lion Foundation to increase the rental sums payable in respect of the hotel gaming machines. The effects of the GFC would abate in the future.

[308] Mr McKay was less optimistic. He considered that the difficult trading environment was likely to continue at least in the short to medium term (three to five years and beyond). The increase in rental from the Lion Foundation was “nominal” and the maintenance shut downs at the mills had previously occurred and been reflected in the financial results of previous years.

[309] The new deal that had been secured for the gaming machines would have resulted in an increase in revenue from the \$144,000 derived from that source in the 2010 financial year, to a minimum of \$154,440. There was also a guarantee of \$238,680 over an 18-month period (equivalent to \$159,000 per annum). The weekly payment received on 12 April 2010 was \$3,645. Mr Hussey considered that it was

reasonable to expect that the 2011 year gaming rental income would have been at least \$160,000, a sum \$16,000 higher than what was achieved in the previous year.

[310] It was his evidence that if the 2011 year mirrored the 2009 year (the second worst year on record), allowing for the increased gaming machine rental, the result would have been cash generated of around \$25,500.

[311] The maintenance shut at the Carter Holt Harvey mill had been arranged during a visit to Pinelands by Mr Joseph Parry in April 2010. Mr Perry gave evidence that preparations were underway for a lengthy shutdown due to occur over the period from December 2010 to March/April 2011. It was a longer shut than most previous shuts. He had told Mr and Mrs Angus that bookings would be required for 30 contractors to stay at Pinelands over this period, during which the hotel's bar and restaurant facilities would be used extensively. At some point in the middle of 2010 Mr Perry confirmed with Mrs Pickering that the accommodation would be required at Pinelands. Both Mr Angus and Mrs Pickering explained in evidence that during the shutdown the accommodation units at the hotel would usually be double booked because of the round the clock shifts in which the work was carried out.

[312] Mr Hussey also mentioned that the construction of a major geothermal power station in the area completed in late 2007 had contributed to the "excellent results" for the 2008 financial year.

[313] The plaintiffs also referred to other upcoming events that might have assisted revenue streams in the 2011 financial year, including the Kawerau half marathon, to take place on 4 July 2010, which would have involved expenditure in the hotel bar and restaurant; a 10 day school trip to the area by a party from Perth, for which there would be breakfast and dinner at the hotel on most days; and a Transfield conference to be hosted on 5 and 6 July 2010, with lunches provided.

[314] Against this background of future events and patronage of the hotel, Mr Quinn asked rhetorically why Mr Angus would not have waited for them to occur before burning down the hotel. That question is not able to be answered, of course. However, the more substantial point made was that there was some prospect of an

improvement in the financial performance of the business, making it less likely that Mr Angus would wish to set the fire.

[315] Mr Angus accepted that the business had not been performing well, observing “things had been slow”. Nevertheless, he said that he and Mrs Angus thought that they were making a reasonable living from it, that the hotel was reasonably busy at the time of the fire. They also knew it was about to get busier with the upcoming shut at the mill.

[316] Mr Angus also gave evidence that prior to the fire he and his wife were giving consideration to selling their house in Whakatane and moving back into the manager’s unit in the hotel. There was another option that they were also considering, namely retaining ownership of the house and renting it out. To facilitate either option, the manager’s unit had been renovated in the early part of 2010, with new carpet, paint and wallpaper.

[317] According to Mr Angus, the move would have been undertaken because they were tiring of the travel between Whakatane and Kawerau, and not because of their financial circumstances. Nevertheless, Mr Hussey considered that selling or renting out the Whakatane house would likely have generated a further \$15,000-\$20,000 per annum, either by way of reduced interest charges or from rental income. Putting this together with the extra income from the gaming machines and an improved trading performance, Mr Hussey spoke of Mr and Mrs Angus “generating around \$40,000-\$45,000 of cash per annum whilst enjoying virtually no living costs.” He considered that, from the point of view of cash being generated, Mr and Mrs Angus were not in a “dire” position in mid-2010.

[318] However, the proper assessment of the position requires consideration also of their overall financial position. Mr Hussey and Mr McKay were unable to agree on this, essentially because of differences in the opinions given by Mr Gillespie and Mr Pratt about the values of the Pinelands land and buildings, and the business.

[319] They agreed that the overall combined net worth of Mr and Mrs Angus was represented by the net assets in their personal names, together with the net position

of the Pinelands Partnership and the Trusts Partnership. Their significant personal assets included the house in Whakatane and personal cash of about \$65,000. The house was valued between \$300,000 and \$360,000, and was not mortgaged, although it provided collateral security in support of the bank debts of the partnerships. It was subsequently sold for \$330,000 and that value can appropriately be adopted for present purposes.

[320] Mr and Mrs Angus also had a personal debt of \$241,580, owed to the Trusts Partnership, which was shown as a current asset in the financial statements of that partnership. Offsetting that liability against their total personal assets gives a personal net asset position of approximately \$153,000. Combining that with the net asset position of the business determined by Mr McKay would give a combined net worth of \$393,000. The similar calculation on the basis of Mr Hussey's assessment of the net value of the business would give a figure of \$1,053,000.

[321] The Joint Statement also said that if the value of the land, buildings and business was taken as \$1.3m, as assessed by Mr Gillespie, then the combined net worth of Mr and Mrs Angus was \$1.075m. However, because the property and business had been on the market at that price for an extended period without selling, Mr McKay did not accept the \$1.3m figure.

[322] If Mr Pratt's assessed valuation of the land, buildings and business at \$640,000 was taken as correct, Mr Hussey and Mr McKay agreed that the combined net worth of Mr and Mrs Angus was \$415,000.

[323] As can be seen, there is a difference in the Joint Statement between the net asset position said (by Mr Hussey and Mr McKay) to be assessed on the basis of the different Gillespie and Pratt valuations for the Pinelands land, business and buildings, and the net asset position assessed by Mr Hussey and Mr McKay themselves. The difference in each case is \$22,000: between \$1,053,000 and \$1,075,000 in the case of Mr Hussey and \$393,000 and \$415,000 in the case of Mr McKay. This difference was not focused on at the trial and may have been obscured by the range of values given by Mr Hussey and Mr McKay for the Whakatane property (which they said was between \$300,000 and \$360,000). I have taken the

midpoint of that range for present purposes, but this does not explain the \$22,000 difference. However, I do not consider the difference to be material.

[324] There is merit in Mr McKay's view that the period for which the hotel had been on the market and had failed to sell casts doubt on the value that the plaintiffs were trying to achieve. However, whether the plaintiffs' net asset position was the higher figure assessed by Mr Hussey, or the lower figure assessed by Mr McKay, the hotel was by far the most substantial contributor to their worth. As at July 2010 I consider it likely that Mr Angus would have been concerned about the impact of the hotel's performance on the value of their most substantial asset. He knew that they had been unable to sell the business for the value assessed by Mr Pratt in 2008, and he knew that no party was interested in purchasing it at that value. The economy had deteriorated. I accept Mr McKay's assessment that the income being produced was well below the average wage in the two years before the fire.

[325] Even on Mr Hussey's more optimistic approach, the cash generated in the 2011 financial year would not have been a significant figure: he postulated that cash generated in the 2011 financial year would have been \$25,500. While there was some prospect of a slight improvement in the months ahead, I doubt that the increased gaming machine revenue, the expenditure resulting from the mill shutdown and the other anticipated business would have had a significant impact on Mr Angus's concerns about the future.

The defendants' right to require reinstatement

[326] Mr Quinn submitted that Mr Angus would not have been motivated to start the fire because of the right of the defendants to insist on reinstatement, and some evidence that he wanted to rebuild in any event. Under the material damage policy, the indemnity provided was in the following terms:

If any unintended and unforeseen physical loss or damage happens to any of the Property Insured at the Location and during the Period of Insurance the company will indemnify the Insured by payment for that loss or damage and other costs as insured, *or; at the option of the company, by the repair or replacement of the Property Insured.*

(Emphasis added.)

[327] Mr Angus gave evidence that after the shock of the fire and robbery had passed, Mrs Angus and he had decided they would rebuild and continue to run the hotel. In fact, he said they were looking forward to it as a project and they were keen to make something positive out of the events that had occurred. He referred to a letter he had written to the Kawerau District Council on 22 November 2010 seeking an extension of time for the gaming licence for the hotel which he thought was due to expire on 2 January 2011. Near the end of the letter he wrote:

We have no future plans of the outcome as the Insurers have, and will not, accept the claim until the police have made a decision. Then we will be in a negotiation stage as to a rebuild.

[328] Mr Angus said that at that stage he expected that eventually the claim would be accepted. He said that by referring to “negotiation” he had in mind the dealings he expected to have with “builders etc” regarding the cost and timing of the rebuild.

[329] Mr Quinn referred to observations made by Fisher J in *Monkley v Guardian Royal Exchange Assurance of New Zealand Ltd* which he said were apt in the present case:³⁵

There does not seem to have been any obvious advantage in burning down the business premises under the insurance policy itself. There was the customary insurer’s power to require reinstatement. Mr Dugdale makes the point that the plaintiffs may not necessarily have appreciated that at the time. However, even ignoring the potential reinstatement requirement, from the plaintiffs’ point of view a fire could not be equated with selling the property, and that is what they had previously been trying to achieve. They would still be left with the land and remains of the building, thereby sacrificing the goodwill for which they had paid \$60,000 two years earlier and built up since.

[330] Mr Quinn submitted that destruction of the tavern building by fire would result only in a right to have it rebuilt. The fact that neither the manager’s flat nor the motel units were damaged or threatened by the fire would leave the plaintiffs with an even more difficult scenario. Mr Quinn referred to a passage in Mr Angus’s videoe interview with Detective Gabb (on 27 August 2010) in which there was the following exchange:

³⁵ *Monkley v Guardian Royal Exchange Assurance of New Zealand Ltd* HC Hamilton CP209/88, 23 August 1990 at 31-32.

Q. And you burnt your place of work down for the insurance money, yeah, to have the place replaced?

A. And what good would that have done?

Q. Well it gives you a better place to sell doesn't it?

A. Oh for goodness sake.

[331] The issues raised by Mr Quinn are significant and have given me occasion to pause. On the face of it, as Mr Quinn submitted, burning down the hotel, and leaving the accommodation blocks intact could have left the Anguses in a difficult situation. There would be no cover for the undamaged accommodation blocks, and any prospect of selling the business as a going concern would have been lost. Any payout for the damage sustained to the main building was contingent on the defendants deciding not to insist on reinstatement. Looked at from these points of view it does not seem sensible for Mr Angus to have put so much at risk for an uncertain outcome.

[332] On the other hand, Mr Quinn's submissions assume knowledge on Mr Angus' part about the contents of the insurance policy which he may not have had. The passage quoted from the video interview with Detective Gabb dates from a period of about seven weeks after the fire when he would have had more opportunity to consider the content of the policy. The letter to the Council on which he relied was also written well after the fire and may not be a reliable indication of Mr Angus' thought processes prior to it.

[333] He may also have calculated that the defendants would not require the repair or replacement of the main building and have factored in the possibility of selling the accommodation blocks to NTHL as in fact later occurred.

Conclusion on motive

[334] Mr Hussey concluded that Mr and Mrs Angus were not under financial pressure at the time of the fire, and their position was not "dire". While the latter may be an accurate statement, given that the plaintiffs were continuing to meet their obligations as they fell due, I consider there must have been financial pressure. The combination of circumstances represented by the recent poor performance of the

business, the failed attempts to sell over a period of about four years, the absence of any prospective purchaser interested in buying the business and the lack of real prospects for significant improvement in the future could have been sufficient motivation to set the fire for the purpose of making a false claim on the insurance policy.

[335] The issues raised by Mr Quinn, based on the ability of the insurer to require reinstatement and the impracticality of burning down the main building only, weaken the defendants' position on motive, but in the end do not lead me to a different conclusion from that compelled by the evidence about what happened on the night of the fire.

Conclusions and result

[336] For the reasons discussed, I have concluded on the balance of probabilities that the fire at the Pinelands Hotel was set by Mr Angus for the purpose of making a false claim under the insurance policies issued by the defendants. The most significant findings that support that conclusion are those that relate to:

- (a) the alarm, and my conclusion that Mr Angus deliberately failed to set it on leaving the hotel in the early morning of 2 July; and
- (b) the petrol detected on Mr Angus's shoe(s) compared to the petrol/kerosene mixture on his other cloths, which puts him in the vicinity of the petrol as it was being poured in the main building at a time when he would not have been present if his account is correct.

[337] The fact that accelerant was poured in various parts of the main building, requiring access to parts of the building behind locked doors when the keys were retained by Mr Angus throughout adds to the weight of the evidence against him.

[338] The same applies in the case of the various other issues which I have identified as implausible aspects of Mr Angus's account.

[339] In the circumstances there will be judgment for the defendants together with costs. If costs cannot be agreed I will receive memoranda from the parties: by the defendants within 15 working days and by the plaintiffs within 15 working days of receipt of the defendants' submissions.