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TRANSCRIPT OF PROCEEDINGS

O/N H-613925

FEDERAL COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY

MR C. NG, Deputy District Registrar

No. NSD 619 of 2015

IN THE MATTER OF BRUCK TEXTILE TECHNOLOGIES PTY LTD (IN LIQUIDATION)

SYDNEY

10.11 AM, MONDAY, 26 OCTOBER 2015

MR P. KULEVSKI appears for the liquidators

MR J.P. LAMAN appears for the producing party

MR D. EDNEY appears for R. Johnson, S. Ranjan, J. O'Connor and P. Rogers

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THE REGISTRAR: Yes.

MR KULEVSKI: May it please the court, Kulevski, K-u-l-e-v-s-k-i, for the liquidators.

5

THE REGISTRAR: Yes, Mr Kulevski.

MR KULEVSKI: Now, Registrar, might I just – since this is the first day of the examinations, might I just lay some matters out.

10

THE REGISTRAR: Yes.

MR KULEVSKI: The two people we intend to examine today are both currently solicitors at DLA Piper. And both the witnesses were retained to give legal advice to the company in liquidation.

15

THE REGISTRAR: Okay. And who are they?

MR KULEVSKI: Mr Cantanzariti and Mr Tsiakis.

20

THE REGISTRAR: All right. Okay.

MR KULEVSKI: Now, neither of those gentlemen have anyone appearing for them today. And the reason for that is because all the information – I imagine, all the information they give must be disclosed to me. It's my privilege – my company. And everything that I asked them has been in the examinable affairs of the corporation. Now, I was intending to potentially call some other witnesses today, but I can't do that because I was waiting on orders for production. Now, there were some witnesses that were due to produce in July. We then had a dispute in – before Markovic J - - -

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30

THE REGISTRAR: Yes.

MR KULEVSKI: - - - about whether they would need to produce. That was resolved in the liquidator's favour. Markovic J ordered that that production take place by the 21st of this month before the first day that was set before you, Registrar.

35

THE REGISTRAR: Yes.

MR KULEVSKI: That production hasn't occurred and I'm told that that production will occur by the end of this week.

40

THE REGISTRAR: So it's more a logistical issue as to the production – that's why you're waiting for the additional material.

MR KULEVSKI: That's why I'm waiting for the additional witnesses.

THE REGISTRAR: All right. Yes.

5 MR KULEVSKI: Now, we have some dates for next year. So what I'm going to
- - -

THE REGISTRAR: Yes. I see you have a number of dates next year, Mr Kulevski.
Yes.

10 MR KULEVSKI: So what I'm going to ask you to do at the end of today is just
formally stand over the other examination summonses for those individuals until the
2nd of February – which I hope my information accords with yours, Registrar, and
that's the first day we have.

15 THE REGISTRAR: That's the first day in the New Year. That's right.

MR KULEVSKI: Yes.

20 THE REGISTRAR: But I think I have a date for production of documents on the
18th of November. Are you - - -

MR KULEVSKI: Yes. That's somebody else.

25 THE REGISTRAR: Okay.

MR KULEVSKI: But in terms of the other – the main witnesses – I will call them
that – they were due to produce finally last week.

30 THE REGISTRAR: I see.

MR KULEVSKI: And they're doing that by the end of this year. So we'll have to
stand those over until the 2nd. In terms of today, I'm not going to ask for any order
other than this be a public examination. I will ask for the other usual orders to be
35 made, but in terms of the public nature of this examination – even though it's our
privilege and that privilege will be being revealed by the nature of the public
examination. We want to be transparent as liquidators about this process - - -

THE REGISTRAR: Yes.

40 MR KULEVSKI: - - - and about the advice that the company's solicitors gave or
didn't give. And so it's in the interests of justice, it would be our submission, that
that transparency takes place, particularly in the context where one of the focus of the
examinations is how this company came to receive so much government assistance
45 when it went into liquidation.

THE REGISTRAR: All right.

MR KULEVSKI: And so transparency is important in that context.

THE REGISTRAR: Okay.

5 MR KULEVSKI: With that said, Registrar, perhaps if we call Mr Cantanzariti.

THE REGISTRAR: Is Mr Cantanzariti here?

MR KULEVSKI: Yes. He's just waiting outside.

10

THE REGISTRAR: All right. Well, before he comes in to be examined or be sworn, I just want to check – so he's the first witness. And then the second one, I think you told me, was Mr - - -

15 MR KULEVSKI: Tsiakis.

THE REGISTRAR: - - - Tsiakis.

MR KULEVSKI: And I imagine we will get to him after lunch, Registrar.

20

THE REGISTRAR: All right. So can Mr Tsiakis be excused and to come back later on. I don't think he needs - - -

MR KULEVSKI: Yes, and we've informed him of that.

25

THE REGISTRAR: He's not here presently, is he?

MR KULEVSKI: Yes, yes.

30 THE REGISTRAR: All right.

MR LAMAN: Sorry. Might I interrupt, Registrar, just to produce some documents that are returnable today.

35 THE REGISTRAR: Yes. Let's do that first.

MR KULEVSKI: Yes, please.

THE REGISTRAR: All right. Where – first of all, who are you?

40

MR LAMAN: Sorry. It's Laman, L-a-m-a-n.

THE REGISTRAR: Yes, Mr Laman.

45 MR LAMAN: And representing James Castrisos. He's – yes – one of the parties that have been asked to produce documents.

THE REGISTRAR: Okay.

MR LAMAN: So I've just got a bundle of documents here to produce on behalf of Mr Castrisos.

5

THE REGISTRAR: All right.

MR LAMAN: I'm not quite sure whether you want me to produce them here in court or to the registry.

10

THE REGISTRAR: Well, you, Mr Kulevski, will want access to that at some point, won't you?

MR KULEVSKI: I don't need it today.

15

THE REGISTRAR: You don't need it right now.

MR KULEVSKI: But if my solicitors could uplift that immediately for their own purposes, please, Registrar.

20

THE REGISTRAR: They are here presently?

MR KULEVSKI: Yes.

25 THE REGISTRAR: All right. Well, rather than for this material to be taken to the registry, I will grant access to this material in court so – and uplift access is granted and to be returned – are there any original documents in that, Mr Laman?

30 MR LAMAN: To be honest, Registrar, I'm not quite sure whether there's original documents or not.

THE REGISTRAR: All right.

35 MR LAMAN: There is just, I suppose, one quick matter which I – yes – will raise. I've got two bundles of yellow documents here which are totally fine but in a small envelope just on top marked "confidential" is a small bundle of documents relating to the personal financial situation of Mr Castrisos. And – yes – we've written to the liquidator's solicitors before but just ask that that small envelope containing documents relating to Mr Castrisos' private financial information be kept
40 confidential. So we don't think that there's anything contentious about that. We just ask that there's only access given to the liquidator and his representatives and without further order of the court. So - - -

45 THE REGISTRAR: So in relation to the confidential – the smaller bundle which is marked "confidential", are you content for the liquidator's counsel and solicitor to see it or is that - - -

MR LAMAN: Yes.

THE REGISTRAR: All right.

5 MR LAMAN: Yes.

THE REGISTRAR: Mr Kulevski, what do you say?

10 MR KULEVSKI: Registrar, for present purposes, that's satisfactory.

THE REGISTRAR: Or do you need to take some instructions on that?

15 MR KULEVSKI: Yes. And my solicitors have told me they've given an undertaking to keep it confidential to the liquidator and his legal representatives and anyone – yes. For present purposes, that's sufficient.

20 THE REGISTRAR: All right. Well, on that basis, I grant access to that bundle. And since everybody is here now, that can be uplifted but to be retained in its original form to the court when complete. Is there any time that – that's why I asked whether there's any original documents in that, Mr Laman – whether there's anything in there – in that bundle which your client may need back. But you don't know.

25 MR LAMAN: Yes, yes. To be honest, I don't know. I haven't been told that there's anything he needs, you know, straight back away or anything. Yes. So we're producing it on the basis it's produced to the court and, yes, we're happy for the other side to have, you know, photocopy access or whatever they need.

30 THE REGISTRAR: All right. Well, if you find you have instructions that they need to be returned by a certain time, then let the court know and then we will work around it. But it sounds to me as if there's no time limit for that to be returned, so I will grant access to that in the courtroom and for uplift access at the end of the day, as well.

35 MR LAMAN: Thank you.

THE REGISTRAR: Thank you, Mr Laman. Is there anything else you need to do?

40 MR LAMAN: No. That's it.

THE REGISTRAR: All right. Thank you. You're excused.

MR LAMAN: producing

45 THE REGISTRAR: Yes. Well, just assist me by handing it to the lawyers behind you. Anybody else?

MR EDNEY: Yes.

THE REGISTRAR: Yes.

5 MR EDNEY: Edney, E-d-n-e-y, from Polczynski Lawyers for Ronald Johnson. We also act for Penny Rogers, Sandip Ranjan and John O'Connor, but none of them have any documents to produce today.

10 THE REGISTRAR: All right. Neither of those people are being examined today, are they, Mr Edney?

MR EDNEY: That's correct. Ronald Johnson, however, had a – his summons for examination did include an order for the production of some documents, of which I have a bundle to produce. Now, just with respect to that there's two issues. One is
15 while the orders did include some orders in respect of producing personal financial material. Firstly, to confirm my understanding, unless my friend wishes to correct me, is that the implied undertaking still applies such that to the extent that this includes personal financial material, being tax notices of assessment, in particular, notwithstanding the absence of an express undertaking, it's not to be distributed –
20 sorry – it, of course, can be used in the public examination but simply not distributed to the world at large without cause.

MR KULEVSKI: Well, it's a public examination.

25 MR EDNEY:

MR KULEVSKI: not giving any undertaking other than what - - -

30 THE REGISTRAR: All right. But, I mean – but the documents you produce are not going to be – I mean, disseminated to the press or anything like that, is it? Is that what is going – suggested or - - -

MR KULEVSKI: Well, that's it. No. Whatever my obligations are under the law, I will comply with. If my friend wants to make any other application, he's free to do
35 so.

MR EDNEY: I don't make any application. I was – the context of the last production – I was seeking to confirm and – however, with regard to the production, there are actually some tax returns still to be produced. I've had a word
40 with my friend's instructing solicitor who – to the effect that we're expecting to be able to simply informally produce them within probably about the next week to week and a half. We can produce them directly to the liquidator on the premise that they are subject to, again, the same obligations if they were produced in court. So if it's, as a matter of formality, stood over until the next examination and if there's
45 difficulties it can be re-listed. But - - -

THE REGISTRAR: Well, do you think those additional documents will be produced – or can be produced by 18 November, Mr Edney?

MR EDNEY: I do.

5

THE REGISTRAR: Because that's the next date it's before me for – I think it's a Wednesday, isn't it, the 18th? I believe so.

MR EDNEY: Yes.

10

THE REGISTRAR: Yes. It's a Wednesday, so it will be in the return of subpoena list in the morning. So - - -

MR EDNEY: That would work perfectly well as an alternative.

15

THE REGISTRAR: Assuming you're not able to produce earlier than that, but these witnesses – the documents relating to these examinees, Mr Kulevski, are not being examined today, are they?

20

MR KULEVSKI: That's correct.

THE REGISTRAR: All right. So I think that that will be the easiest course in relation to that.

25

MR KULEVSKI: We're content with that, Registrar.

THE REGISTRAR: All right. Well, again, I will grant access to that bundle on, I suppose, the same basis that the previous bundle was also granted access. And uplift is granted, as well.

30

MR: May it please the court.

THE REGISTRAR: All right. Thank you, Mr Edney. Anything further you need to say?

35

MR EDNEY: No, Registrar.

THE REGISTRAR: All right. Thank you. You're excused.

40

MR EDNEY: Thank you.

THE REGISTRAR: Mr Kulevski, did you say that – I think you wanted Mr Cantanzariti first.

45

MR KULEVSKI: Yes.

THE REGISTRAR: But I understand Mr Tsiakis is here, as well. Is that right? Is he physically here? My assistant tells me that he's here.

5 MR KULEVSKI: He may be excused till after lunch, Registrar. I thought I – and your Registrar has – you've already made that order.

THE REGISTRAR: Well, perhaps you can let him know and that he can come back when we resume at 2.15.

10 MR KULEVSKI: Yes. Thank you, Registrar.

THE REGISTRAR: All right. Okay. And we will have Mr Cantanzariti brought in when he's ready.

15

<RICK CANTANZARITI, SWORN

[10.23 am]

20 THE REGISTRAR: Yes. All right. Take a seat, please. Just for the record, say your name?---Yes. Rick Cantanzariti.

And your occupation, Mr Cantanzariti?---I'm a lawyer – partner at DLA Piper.

25 Thank you. And a residential address, please?---Eighteen Kintore, K-i-n-t-o-r-e, Street, Camberwell, Victoria.

You're here pursuant to a summons issued by the court on behalf of the liquidator in the matter of Bruck Textiles Proprietary Limited?---That's correct.

30 All right. Before you commence the examination, Mr Cantanzariti, I will just provide you with this document, which I provide in all examinations. And I will give you one as well, Mr Kulevski. It's a notice concerning incriminating answers. Just take a moment to read that?---Yes. Thank you, Registrar.

35 You've seen that?---Yes.

You understand that all?---I do understand that.

40 All right. You are not represented by a lawyer today?---No, I'm not.

All right. Well, on the basis that you are also, no doubt, an experienced solicitor, Mr Cantanzariti, you've read that form – I don't think I need to explain it beyond what's already written there. You just need to say the word "privilege" if you think any answers may either incriminate you or make you liable for a civil penalty?---Yes.

45

That doesn't protect you if anything you say is not true. But no doubt, again, you're familiar with that. I'm just making sure that this is all on the transcript?---Yes.

The Auscript transcriber is here, so just speak in a reasonably audible voice and that should be picked up for the purpose of any transcript?---Thank you. Thank you.

5 All right. And I think we made it – we indicated, Mr Kulevski, we will probably proceed until, say, 1 o'clock. But if you need to take a break in between for a few minutes, we can do that, as well.

10 MR KULEVSKI: Perhaps for the sake of the witness that – we will see as we go along, Registrar, but that might be appropriate that we take, say, maybe the Supreme Court morning tea break at around 11.45.

THE REGISTRAR: Yes. That suits me.

15 MR KULEVSKI: Yes. Thank you, Registrar.

THE REGISTRAR: All right. Yes. Yes, Mr Kulevski.

20 <EXAMINATION BY MR KULEVSKI [10.25 am]

MR KULEVSKI: Mr Cantanzariti, could you please tell the Registrar your occupation?---I'm a lawyer and a partner at DLA Piper.

25 And do you have a particular specialty?---I do. I'm an employment lawyer.

And how long have you been an employment lawyer?---For approximately 18 years.

30 And did you practise in any other area at the same time or prior to that?---Prior to that I did a bit of workers' compensation law and a bit of commercial law as well with a small firm.

And how long have you been a partner of DLA Piper?---14 years.

35 And were you retained at some point to give advice to the company in liquidation?---Yes. I think probably in around 2013 I first commenced acting for Bruck.

40 Now – but before we go on, were you asked to give documents in production – under orders for production to this court?---Yes, I was.

And did you produce?---I did.

45 Were you responsible for collating those documents?---I was.

And so you oversaw the process of production?---Yes, I did.

Before we continue, Registrar and Mr Cantanzariti, what we have done is we've taken some of those documents and put them into two folders to make it easier for the witness to be given the documents. If I could - - -

5 THE REGISTRAR: Yes.

MR KULEVSKI: - - - hand up a copy to you, Registrar, and to the witness.

10 THE REGISTRAR: Did you want those to be marked for the time being, Mr Kulevski.

MR KULEVSKI: Yes. If they could be marked just A, that's potentially the only hand up there will be today.

15 THE REGISTRAR: All right. So there should be two – so there's two folders. So – I see. So one is – well, these two folders - - -

MR KULEVSKI: Are documents produced by DLA Piper - - -

20 THE REGISTRAR: Yes.

MR KULEVSKI: - - - in response to the orders for production.

25 THE REGISTRAR: All right. So DLA Piper Australia documents volumes 1 and 2 will be marked MFI1 for the purpose of the examination – we will say 1A and 1B, because there's two separate folders.

MR KULEVSKI: Yes. Thank you.

30 THE REGISTRAR: It's easier to refer to.

MFI #1 DLA PIPER AUSTRALIA DOCUMENTATS VOLUMES 1A AND 1B.

35

MR KULEVSKI: And, Mr Cantanzariti, when I take you to those folders you will see on the right that they're tabbed, and I will just take you a document that's behind a particular tab number?---Thank you.

40 So you say that you first were retained by the company in liquidation in around 2013?---It may have been earlier. I was acting for another company in the group, so – and I wasn't acting for the Bruck Group until at least a couple of years ago. So - - -

45 Okay. So do you have – was this the first retainer you had for any companies that were associated with either Mr Phillip Bart or Mr Geoff Parker?---No. Prior to that, from perhaps as early as the year 2000 I think I was retained by a company called Australian Weaving Mill Proprietary Limited, which was based in Tasmania. And

that was – I think was a company associated with Mr Bart, although I wouldn't have known it at the time. But the chief executive was Mr Geoff Parker.

5 And have you been giving legal advice to companies associated with these gentlemen reasonably consistently since 2000?---Employment advice in relation to Australian Weaving Mill since about 2000, and as I said Bruck, and then I think Wilson Fabrics also from about – yes – two or three years ago.

10 And to the best of your recollection, in relation to the company in liquidation can you recall the first time you were approached to give any legal advice in relation to the company?---No, I can't. As I said, it would've been 2013, perhaps earlier. Primarily, you know, I would be instructed either by Geoff Parker or – or the human resources manager to give, you know, various bits of advice about employment matters to do with, you know, dismissal of employees, disputes, enterprise agreement issues etcetera. But I don't recall when that first happened in the case of Bruck.

15 And when you say the human resource manager, was that a Ms Christine Spencer?---That's correct.

20 Mr Cantanzariti, if I could ask you to take the bigger of the two documents – two folders, which we will call 1A, if you could turn to tab 16 - - -?---Yes.

25 - - - do you recognise that document?---If it's the – is it the document that is the decision in relation to the Bruck Textiles Agreement?

Yes. Correction – it's headed Correction to Decision, Bruck Textiles Enterprise Agreement 2011?---Well, I probably had the document on file, but I don't think I had anything to do with that – that particular matter.

30 If I take you to tab 24, Mr Cantanzariti - - -?---Yes.

35 - - - you will see that there is an email by Rochelle Fielden on behalf of Amber Millhouse. Could you tell me who Amber Millhouse is?---Yes. She was a senior associate in my team at the time, and Ms Fielden was my personal assistant.

Yes. And you will see that your name is at the bottom of that email?---Yes.

40 Now, if I could ask you to turn behind – it may be orange or red – the red mark - - -?---Yes.

45 - - - is that to the best of your recollection the first engagement letter - - -?---Yes, that would - - -

- - - you gave in respect of - - -?--- - - - that would – that would seem about correct.

Yes. Okay. So we will see that the engagement letter is dated 4 May 2012?---Yes.

And you will note that the first paragraph says:

5 *We refer to your telephone conversation with yourself on 1 May 2012 and thank you for instructing us to provide general employment advice to Bruck Textiles Proprietary Limited.*

?---Yes, that's correct. I see that.

10 All right. And at the bottom of the page, under subheading 1, you will note that it says:

Our client in this matter will be Bruck Textiles Proprietary Limited, and DLA Piper will be the lawyers.

15 ?---Yes, I see that.

And that was the engagement at that time?---Yes.

20 And to the best of your recollection that's the first engagement on this matter?---Yes. It would've been at the time of sending that letter or shortly before that I would have
- - -

Yes?--- - - - received first instructions, yes.

25 And if you just turn over the page, Mr Cantanzariti, just under subheading 2 you will see what the scope of services there that you were being asked to provide at that point?---Yes, I see that.

30 And they are (1) the transfer of two employees currently engaged in accordance with the Bruck Textiles Engineering Agreement to the enterprise agreement?---Yes.

(2) the operation of the redundancy buyback clause?---Yes.

35 And (3) the introduction of a voluntary retirement program?---Yes.

And you will see that it's twice said now that you will be providing that advice to Bruck Textiles Proprietary Limited?---Yes.

40 Did at some point that company become named as the company in liquidation?---Yes. I'm not sure about how Bruck Textiles became Bruck Textile Technologies, but it would seem that at some point I was acting for Bruck Textiles Technologies - - -

45 Yes?--- - - - the company in liquidation.

And that's why you produced these documents in response to the order for production - - -?---Yes, that's right.

- - - because this company was formerly Bruck – Bruck Textiles Technologies was formerly this company?---That was my understanding.

5 Yes. Thank you. Now, if I could ask you to turn – well, if I could ask you to just put that down for a moment, do you recall at all the initial approach to you to give the advice set out in the engagement letter?---Not really, Registrar. I’ve been working with Mr Parker in relation to employment advice for Australian Weaving Mills, and I think he may have become the chief executive of the Bruck Group around that time. So it would’ve been a conversation I had with him, asking me to talk to him about
10 some issues he had at Bruck, but I don’t recall exactly how it happened.

Now, did Ms Millhouse, did she have an established relationship with Mr Parker in what are – to take telephone calls from him?---She may have from time to time.

15 Yes?---I – I would suggest that I would have taken most of the phone calls from Mr Parker, but she may have, particularly if I wasn’t available.

Now, I understand from your earlier evidence that you weren’t involved at all in advising on the enterprise agreement that took place at – that was passed in 2011 and then approved in early 2012?---No. I understood that was conducted in-house or - - -
20

Yes?--- - - - perhaps through an employer association. But - - -

But that was a – at the time you were instructed or retained that was a recent agreement, wasn’t it?---Yes, I believe so. Yes.
25

And it was therefore part of the scope of your services, was it not, to give advice on the impact and effect of that enterprise agreement?---Yes, but that would have been a very important document in the background of advice I gave, particular for staff
30 covered by it.

Yes. So, effectively, you were asked very recently after it had been done, the enterprise agreement, to give advice on that document, but you, of course, had had no input in the construction of the agreement?---That’s – that’s correct, and – and the advice would have been asked would have been about specific issues that may have touched on the agreement or specific clauses in the agreement. Yes.
35

Yes. And without going into any detail at this point, as – before the company went into liquidation some two years later, the scope of services did increase over time, didn’t they?---Yes, I think so. I think I probably had regular contact. Most of it were fairly small, you know, telephone advice or a short piece of written advice, but probably the number of individual times I was instructed probably did increase.
40

Now, before this matter had you had any experience with giving clients any advice on either of the GEERS or the FEG scheme?---Yes, I think some time back in early
45 2000 or maybe late nineties.

THE REGISTRAR: You might want to enlighten us with what the acronyms stand for, Mr Kulevski, so that the transcript officer can have that recorded.

MR KULEVSKI: So GEERS is G-E-E-R-S, and for now we will concentrate on
5 FEG, which is F-E-G, and that is the Fair Entitlements Guarantee.

THE REGISTRAR: Thank you.

MR KULEVSKI: So perhaps once before you had given advice on those
10 areas?---Once or twice, yes.

Yes. But it wasn't a - - -?---It doesn't come up very often, in my experience, anyway.

15 And why doesn't it come up very often?---I'm not sure. It hasn't in my experience; perhaps either companies not going into liquidation a lot or I haven't dealt with a lot of companies that go into liquidation.

Is one of the reasons why is because someone who has an employment speciality
20 wouldn't be expected to be giving advice to a company in liquidation?---I'm not sure what the answer to that is. I can't answer to what people might be thinking. Obviously, the GEERS scheme as an element of employment as the FEG does, so, presumably, that's why I would have been asked to do it.

25 Yes. But you hadn't been in your speciality, apart from perhaps one other circumstances, been asked to give advice on GEERS or FEG?---No, not really.

Yes. Thank you. Would it be fair to say, just as a general idea, that at this point Mr
30 Parker was coming to you because you had been giving him advice for quite some time and he suddenly found himself confronted with what he thought was a fairly inflexible enterprise agreement and he wanted advice from you as to how to negotiate that enterprise agreement?---I'm not sure. We had a good relationship while we dealt with Australian Weaving Mills. As I said, I believe that around that time he became the chief executive officer of Bruck; not sure about Wilson. But I
35 assume he felt that there was a value in the relationship because I – you know, the two of us dealt with a lot of employment advice issues like, you know, termination of employees, engagement of employees, those sort of things. So perhaps I hoped that the answer is he saw value in it. I don't know that there was a particular purpose that I was aware of beyond that.

40
Did he at all at the beginning of your engagement on this matter express to you, to your recollection, that he was confronted with an inflexible enterprise agreement?---We had conversations about the redundancy clause, that that was a – you know, it was, obviously, a very generous clause. We also had a number of
45 discussions about various other aspects of the agreement like the shift patterns, the – you know, rostering hours of work, all of which were matters that made it difficult to create a more flexible business.

And they were matters that for one reason or another had not been addressed in the agreement – in the process leading up to the agreement itself?---I believe he would have said that he felt that.

5 Did he actually ever say that to you?---I think he said something along the lines of that the previous chief executive officer hadn't – hadn't done a great job as a chief executive officer, and that perhaps included the enterprise agreement.

10 If I could ask you to turn to tab – to the document behind tab 17, please?---Yes. That is – it's like a file note of – dated 1 May 2012.

Yes, that's correct?---Yes. That looks like Amber Millhouse's writing.

15 That's what I was going to ask you. So you're able to identify that writing, are you?---Yes.

And it says there – and it's Ms Millhouse's writing, is it?---That's correct.

20 And she no longer works for you?---No, she doesn't.

Does she work for DLA Piper?---No, she doesn't.

25 And we will see from that – I take it the person acting – that's a shorthand or quick version of Amber, even though it's pretty hard to make out?---I think that's her initials, ARN.

Thank you. Thank you. And then the person that called was Chris Spencer; is that right?---That's correct.

30 And we've established that she's the – she was, at the time, the human resource manager for the company liquidation?---That's right. That was my understanding.

35 And I know this is difficult in the context, but what I might ask you to do is since it's not your file note, might I ask you to just spend 10 seconds reading it – or as much time as you need, because I'm going to ask you if you were actually present on that call?---Yes. Yes. I will have a look at it, thanks. Yes. I've read it. I don't believe I was present in the phone call. I say that because generally, if I was, they would have signified that, so Amber would have written my name in there, or if I took the file note, I would have written her name in. But I'm familiar with that generally.

40 Yes. And she would have discussed this probably with you, because – well, first, I will ask you this question: this is the first dated file note we have in this series that you've produced, so is it possible that Ms Millhouse was given the first instruction or the first person called in relation to this matter?---It's possible, yes.

45 And given that it was a new engagement, if that had happened, she probably would have come and discussed it with you - - -?---Almost certainly.

- - - wouldn't she? Yes. Do you recall her discussing this with you?---I don't. But as I say, I do recall the general subject matter, so I may have discussed it with someone from the company as well.

5 And – well, perhaps to the extent that you can, and please tell the registrar if you can't, if you see that it says the COO was Sam Deep?---Yes.

And then it says another question, I think; would that be a fair - - -?---Yes, that probably is fair.

10 We don't know what the first question was, but anyway, another question says the textile enterprise agreement - - -?---Yes.

There's nothing in there about a voluntary retirement program?---Yes.

15 And:

Know we need ATO approval for tax reasons.

20 ?---Yes.

Are there any issues putting that forward in a policy.

25 Are you able to shed any light on what that may mean?---My understanding was that the company was looking to make voluntary redundancies, or asking voluntary retirements, perhaps, and the question was, you know, in terms of getting concessional tax treatment, did they need ATO approval, and I'm not sure exactly what the referencing to putting in the policy is. Perhaps the question was could they do so in a policy, and would that be consistent with tax laws.

30 And just a little bit further down, it says:

Know you need a target group - - -

35 ?---Yes.

- - - of over 63 years. Do you need to give it to everyone.

?---Yes.

40 Do you - - -?---I think it says, do you – I think it says, do you need a target group, and then perhaps says eg over 63 years. Yes, do you need to give it to everyone. Yes.

45 Yes. And do you know what – could you shed any light on what that means?---I think that to have ATO approval of an early retirement scheme, it has to be directed at a class of people, not just a random selection of people, so that's my

understanding. And I think the next question, which I assume was from Ms Spencer, was do you have to offer it to everybody, either generally or in that class.

5 Thank you. Thank you. Now, in your experience, have you acted for manufacturing companies before?---Yes, I have.

10 Would it be a common item in an enterprise agreement to deal with – or a common clause to deal with voluntary retirement?---Not really. Where you sometimes see it is in a redundancy clause. It might say that you first have to ask for volunteers as part of the selection process, but it's not common, I don't think, to have a voluntary retirement clause. But, you know, there may be some that I'm not aware of.

15 Thank you. If I could ask you, then, to just turn to the document behind tab 20. Now, this file note is three pages long, and it's dated the same day, 1 May 2012?---Yes.

And based on what you've told me, do we assume that once again, that's Ms Millhouse's writing?---It's her writing yes.

20 This seems to have been, by the length of the file note, a lengthier call?---Yes.

25 Do you know whether you were – I might give you as much time as you need to familiarise yourself with that file note and perhaps if you could tell us whether you recall being present in that call?---Sure. Yes, I've read that.

Do you recall whether you were present on that lengthier?---No. Again, I don't recall whether I was or wasn't, but I expect that, given that I'm not mentioned there, I probably wasn't.

30 Yes. Do you recall whether Ms Millhouse discussed that call with you?---Not that call specifically, but there are elements of it that I do recall discussing with her.

35 Was it your practice, or is it your practice, to read file notes of lawyers under your supervision in matters that you're on the record for?---No, it's not my practice.

And was it your practice in this matter?---No.

40 Thank you. Would it be fair to say that, having read that file note, at that point, Bruck is concerned to be getting some advice about redundancies and potentially the restrictive nature of the enterprise agreement in that regard?---Certainly in the redundancies, that would be fair.

45 And at that point, if you see from page 3, they were tossing the idea of buying up all the redundancies back in one hit?---Yes.

And it says:

And then two years down the track, after we've made them redundant, what do we have to pay them?

?---Where – sorry, where does it say that?

5

Sorry. Top of page – the third page 0303 in the top right-hand corner?---Yes. I do see that. Yes.

10 Could you please explain – are you able to explain to the registrar what that means in employment – what the employment shorthand there is?---I'm not sure what the file note necessarily means, because Amber may have summarised it in a different way – sorry, Ms Millhouse – but my recollection at the time was that Bruck was asking for advice about the redundancy clause. It was a significant amount of redundancy that employees were entitled to, and we were looking at options to reduce that
15 redundancy obligation, and one of the ways I think was discussed was a buyback scheme.

20 What are traditionally, in your experience, the most common ways to reduce what are considered possibly are generous redundancy entitlements?---Renegotiating an agreement. That's usually very unsuccessful.

And was it likely in this case, given that one had just been concluded?---Well, it – you probably would have needed to wait until the expiry of this one, I expect.

25 Was that a legislative requirement?---I don't recall this agreement, but they usually run, on average, for about three years, so it's very hard to renegotiate one in that period, so usually you wouldn't get a renegotiation of an agreement within the nominal period of the agreement.

30 I see. And are there any other common ways, common legal ways to reduce an employee's redundancy entitlement?---Yes. You can make people redundant. That means you pay up the entitlement, obviously, but then I suppose another way is you can try and performance manage people if you think they're not good performers.

35 So sorry, just – so just to pause you there, one way is to renegotiate the enterprise agreement?---Yes.

That's very unlikely when it was just approved three months earlier?---Yes.

40 The second way is to actually pay it out, which reduces it in terms of a liability
- - -?---Yes.

- - - but it has to be paid in full?---Correct.

45 And the third way is effectively to make sure that people are no longer employees in a manner that doesn't strike the – doesn't bring into bear the redundancy requirement or obligation?---I think my point was that if you've got an underperforming

employee and you performance manage them, or they're guilty of misconduct, for example, and they're dismissed, then that would – if they had a redundancy liability, that would be – that would reduce the redundancy liability for that employee.

5 And can you just explain to the registrar why it might be that in your field of expertise, dismissing an employee for performance reasons or misconduct would reduce their redundancy liability?---Well, once they're dismissed, they're no longer entitled to redundancy.

10 No. Thank you. I just wanted that on the record. So once they're dismissed, there's no obligation for redundancy; that's right, isn't it?---As long as they're not dismissed for redundancy reasons, yes.

Yes?---Yes.

15

So we either renegotiate the agreement, or if possible, we find a way to dismiss them. They're really the two major ways?---Yes. Legitimately, of course.

20 Legitimately. Yes. Yes. So then if I could ask you to turn to the next document behind tab 21, do we now reach your handwriting, Mr Catanzariti?---Yes. That is my handwriting.

Now, that's – you will see the same date, 1 May 2012?---Yes.

25 And the time is earlier than the previous file note - - -?---Yes.

- - - so 9.08. It might be possible – in fact, Mr Catanzariti, I will let you – I will give you an opportunity to read that file note before I ask you a question?---Yes. Thank you. Yes. Yes, I've read that.

30

Judging by the file notes we've just seen, it's probable that this case, in line with the relationship that you may have received the first call in the engagement?---That seems fair, based on the order of the files notes.

35 And so - - -?---That – sorry.

I'm terribly sorry. I will let you finish what you - - -?---No. I was going to say, I'm not sure that initial conversation was the – necessarily on the same subject matter as the others, but yes.

40

Yes. And the attendances with Mr Parker?---Yes.

And so we're told there – are you being introduced or being told about Ms Spencer being the HR manager? Had you not dealt with her before, or - - -?---That's right.

45 My recollection was that Geoff was telling me that Christine Spencer was the HR manager.

And she's not used to dealing with lawyers?---Yes.

Do you remember what that meant in the sense of were you meant to sort of – how your mental approach – were you meant to put your layman's voice on?---I think that
5 – the latter, yes.

Yes?---I think I was meant to be cognisant of the fact that she wasn't used to deal with lawyers, so presumably I speak in a very lawyerly way.

10 And certainly Mr Parker thought, "Well, I'm used to this guy; I understand him, but you're probably going to have to explain yourself in a more layman sense with ms Spencer"?---Possibly.

Yes?---Yes.
15

And then the next entry says:

They delegate decisions upwards, but they're trying to change that.

20 Do you know what that means?---I don't really recall what it means now, actually. I may have at the time. I think what it meant was that they don't make decisions; they want the CEO perhaps to make all the decisions; they don't take responsibility for any decisions. But that would be a guess.

25 Yes. Thank you. And then the comment is just made that they just finished an EBA?---Yes.

And do you recall whether at that point Mr Parker expressed any dissatisfaction with the EBA?---I don't recall that, and I must say my file note's probably not as
30 comprehensive as Ms Millhouse's, so it's possible he did, but I don't recall.

Do you recall a time at all that he expressed dissatisfaction with the EBA?---Yes. I think I mentioned earlier that we had, you know, certainly more than one conversation where he had said that the previous CEO he didn't think had done a
35 great job in running the mill generally, but also that he hadn't done a great job with the enterprise agreement in the past.

And before we get to some further documents, are you able to recollect what some of his key concerns may have been about the EBA?---No. Just really the fact that it was
40 difficult to run the workforce flexibly. So my understanding had been that, you know, not surprisingly in the manufacturing industry that they had lost a few contracts. They didn't have the same kind of revenue as previously, and they found it difficult, particularly with peaks and troughs, to respond to asking people to do different shifts or reduced hours or whatever.

45 Yes. Well, thank you for that. If I could ask you then to turn to the next document, behind tab 22?---Yes.

Now, you'll see that's a DLA Piper – I take it that's an internal memo?---Yes, that is.

And could you please tell me – so it's to Amber?---Yes.

5 Could you tell the registrar, please, who Madeline Forster is?---Madeline Forster was a graduate and also a lawyer. I'm not sure if at that time she was a graduate or a lawyer. It looks like she was a lawyer.

10 Okay?---Judging by the fact that she signed off. So she was in our team for about a year or so after she was a graduate.

15 Thank you. And so what I might – I might give you a chance to quickly refresh. Is this the sort of document – sorry. I'm terribly sorry. I will let you read it first?---Yes. I've read through that in general. Yes.

So – and congratulations on the prompt turnaround of your team on that one?---It's 3 May. Yes.

20 Is that a general memo talking about the – whether a voluntary early retirement scheme would be available, is it?---Yes, it is.

And would you have been given a copy of this memo?---I would have been given a copy of it. Yes.

25 And would the way – to the best of your recollection or by reference to practice, would the way, as in many law firms, this have worked is your senior associate, Ms Millhouse, would have said to the graduate or the lawyer, Ms Forster, "These are some things I need you to write a memo on. Could you please do me a memo on it"?---Yes. I think that's how it would have happened.

30 Yes. And we see that from the summary, that Ms Forster is pretty quick to point out that the Commissioner of Taxation is only going to approve a voluntary early retirement scheme where there's a genuine need for the business to reinvigorate its business with a younger workforce?---Yes. I see that.

35 And did you understand that business reinvigoration was an objective of Bruck at that time?---Yes. I think – well, I don't know if it was the business objective of that particular thing. I may have been. But I certainly remember Geoff saying that there were some older people in the business who perhaps weren't as good as they used to be.

40 And in terms of voluntary retirement, does that affect – if someone is voluntarily retired - - -?---Yes.

45 - - - does that affect their redundancy entitlements?---Yes. Well, the retirement would mean they would cease to be an employee, so they wouldn't be entitled to

redundancy. They would just get their voluntary retirement benefit, whatever that might be.

5 And that would, in the usual course, be significantly less than the redundancy?---I don't know. I think in this case that was the proposal, but I'm not sure if it always is. I imagine it would be; otherwise there seems little point in doing it. But - - -

10 Yes?---But there might be some voluntary schemes where you encourage people – they get more money if they volunteer, but I'm not sure.

10 Didn't this company, although, from what we've spoken about earlier and what you've told the registrar, have a generous redundancy scheme?---They did. I think it was three and a half weeks per year of service.

15 Yes. So in this case – and what – in your experience, what would be a more standard amount?---For redundancy or for - - -

20 Yes, for redundancy?---It does vary a lot. The minimum is obviously set out in the Fair Work Act. In a negotiated enterprise agreement setting, particularly in manufacturing, it's not uncommon to see three to four weeks, but I think two weeks would be fairly common, perhaps the most common – two weeks per year of service.

25 And so three and a half weeks is fairly generous in the scheme of things?---Fairly generous, but not uncommon in manufacturing, certainly.

If I could ask you to turn, then, to the next file note, which is behind – I'm sorry. No. If I could ask you to turn to tab 29, please?---Yes.

30 And so what we see there is a letter, again from Ms Fielden to Ms Spencer, the HR manager. You see that?---Yes.

And that has your name as a partner on it?---Yes.

35 If I could then ask you to turn to the advice that's attached to that email, which is - - -?---Yes.

- - - under the same tab?---Yes.

40 And perhaps if you could familiarise yourself with that document?---Yes. Thank you.

45 I'm sorry if this takes some time, Mr Catanzariti. I just think it's fairer to you that you get a chance to read the documents before I ask you questions about them?---That's – that's all right. Thank you. Yes. I've gone through that generally.

Now, this is an initial advice, and it doesn't profess to be anything more, so we will work on that basis. Would it be fair to say that the impetus for the advice at this

point is that Bruck is keen to restructure or reorganise its workforce and is interested in reducing its workforce as much as possible?---That's correct.

5 And it would prefer to reduce its workforce in a way that it didn't have to pay the maximum redundancy entitlement?---I guess they're looking at a few options, and that's one of them.

10 That's one of them. And first you've given advice that on a subsidiary issue that two particular employees can't be transferred to the Bruck enterprise agreement?---Yes.

So we understand that. That's one thing you're asked to advise on?---Yes.

15 And then the other things you're asked to advise on is how the redundancy buyback clause works?---Yes.

And the legal requirements for early retirement schemes?---Yes.

And if we go to the very last paragraph - - -?---On the last page, or - - -

20 On the very last page. I'm terribly sorry?---Yes.

25 Yes. You make the entirely appropriate point that a further issue that must be considered is whether the redundancy provisions of the textile agreement, including the Bruck textile redundancy agreement, would apply in the circumstances?---Yes.

And then you conclude by saying:

30 *At the most basic level, however, we consider that employees contemplating a voluntary retirement package will expect to be given the same payments as those employees whose position is to be made redundant.*

?---Yes.

35 So is it fair to say that what you're effectively telling the client is voluntarily retirement may not be the boon you're looking for, because in order to get employees to agree to that, they're going to expecting the same thing that the redundancy people are getting?---That's fairly much what I was saying.

40 Yes. And so, to be fair, because we do it all the time, that's lawyers' code for don't think, this is an easy way out, right?---Yes. I think the point I was making was given that it's voluntary and they have to agree - - -

Yes?--- - - - there has to be an incentive to do so.

45 And that incentive's not going to be there unless you would have thought they're getting the same benefit that people getting redundancy are getting?---Unless, perhaps, they were looking to depart, you know, fairly soon and saw a good

opportunity, but I think my point was that there may be some employees who say, well, I would rather just sit and wait.

5 Yes?---I like my job, and I don't want to go, and unless you make it worth my while, there's no point.

10 And so far, to be fair, that had been your understanding of the conditions of Bruck, hadn't it, that no one was screaming to be let go?---I can't say I knew that. I think it would be a fair guess that that would have been what I would have thought.

Yes?---But I'm not sure I knew it.

15 Now, if I go to – if you would go to behind paragraph 32, you will see that that's a printout of a webpage?---Yes. I see that.

And the heading is Bona Fide Redundancy Payments - - -?---Yes.

- - - and Approved Early Retirement Scheme Payments?---Yes.

20 Now, do you know who – I know this is a difficult question, but do you know who was responsible for printing that page out?---No, I don't know.

Do you think it was you?---It may have been Ms Forster, actually.

25 Yes?---Given that she may have used it for the basis of the memo. I don't recall. I have printed out ATO website pages, but I certainly don't remember that.

30 And that page would be printed out, would it not, for the purposes of distinguishing between what a bona fide redundancy payment is and what one is not; isn't that right?---Yes. I thought it actually might have been printed out for the purposes of the early retirement schemes, but I could be wrong about that.

If I could then ask you to turn to the next tab, which is behind tab 33?---Yes.

35 You will see that we're now still in May 2012?---Yes.

Now, Ms Karen Marshall, is she Ms Millhouse's personal assistant?---Yes.

40 Or was at the time, I should say?---Was at the time. Yes.

And so that's sent on 18 May 2012, late on a Friday afternoon. Well done. And we see that there's a follow-up advice attached?---Yes.

45 Now, if I could take you to that follow-up advice, and it's only a couple of paragraphs long, so perhaps if you familiarise yourself with that?---Yes. Yes.

And that advice is signed by you and Ms Millhouse?---It is. Yes.

And it says that:

Following a telephone call with Rick late last week –

5 this is to Mr Parker?---Yes.

Continuing:

10 *we thought it would be helpful to provide you with a summary of our advice
and suggest the preferred option.*

?---Yes.

15 And would that telephone call be in respect of how to make these early retirement
schemes work?---It's possible that the phone call was a series of questions from
Geoff, and I may not have answered them in the phone call, but that could have been
a summary of it. I suspect I sometimes go a bit further or change the advice after
I've actually thought about it, but - - -

20 Sure. And I'm not being critical right now, but just for completeness, that's not a
phone call we have a file note of - - -?---No.

- - - so far, is it?---No, it's not.

25 So sometimes it's your practice - - -?---Yes.

- - - to not take file notes of conversations you have?---Yes. That's right. Yes.

30 And, I would suggest, possibly because you think the substance of the phone call is
going to be recorded in the advice at some later point in any event?---Look, he may
have asked for it, so I can't tell you. I might sometimes summarise it if I think it's
important or whatever, but he may have actually asked for it, so - - -

35 Right?---That could have been the reason.

So if we go to the second dot point, it says that both the enterprise agreement and the
textile agreement and the workshop agreement - - -?---Yes.

40 - - - allow Bruck to make an employee redundant and reengage them as a
casual?---Yes.

But then it goes on to talk about what the problems with that would be, doesn't
it?---Yes. Yes, it does.

45 And if we go to the last paragraph – sorry, then if we go to the third paragraph, you
say that:

We recommend that further consideration is given to a “informal” voluntary retirement scheme.

?---The fourth paragraph, you mean, or the - - -

5

Yes, sorry, the fourth paragraph?---Yes.

The last one on the page?---Yes, I see that.

10 So if employees are to be re-engaged as casuals, the Tax Office will not approve the separation payment for tax-free status under an early retirement scheme?---Yes. That’s right.

And that, of course, is still – was correct advice at the time?---I hope so.

15

Yes. If we go to the next page, the bullet point say:

20 *In our view, exploring such a suitably framed early retirement scheme, not one that needs to be ATO approved, however, is a better option than targeted redundancies. However, if there is interest in exploring it, we still need to carefully consider and manage the potential risk of the scheme being interpreted as Bruck avoiding paying required redundancy entitlements under its enterprise agreements.*

25 ?---Yes, I see that.

So at that point, to your recollection, does Mr Parker, as we’ve discussed earlier – I know this is early on in the piece, but does he have a concern to try and manage these general – generous redundancies?---He does.

30

And he has employed you to, to the best of your legal ability, find a way that Bruck doesn’t have to pay these redundancy entitlements?---He’s certainly asking me to see what options there are to reduce the workforce without having to pay any more money than he has to, but that last comment was actually directed at the union. His concern was that the union would not like the scheme because they would see it as an attempt to have the employees not be paid their redundancy.

35

And one imagines that the union would – well, sorry, I withdraw that. Perhaps if we turn to the document that’s then behind the red tab, which is an attachment. Now, are you able to tell me whether that’s an attachment to the advice?---I can’t tell you because – I’m just having a look at the last page – refers to contractors which doesn’t seem to relate to that previous tab advice, so I’m not sure where that might have come from.

40

45 Are you able to tell from any DLA Piper markings, say at the footer or anything else, what the date of this attachment might be?---No, although I do notice the document number seems to be the same as the previous document number, which is the far left

footnote. But that doesn't seem to really make any sense. So it may well be – may well have been part of that document.

5 And just to explain it for the barristers and the laypeople in the room in terms of the very modern document management systems of the big law firms - - -?---Yes.

- - - the same document number would generally, what, indicate that it has been prepared at the same time or - - -?---Well, it would be the same document.

10 Yes?---Yes. So it would have followed.

And that document number wouldn't be reused?---Could be, sorry?

15 Would not be reused?---I have been known to type over documents from time to time so I couldn't rule it out, but I think it would be fair to suggest that the attachment is part of that summary.

20 Yes. Thank you. Now, we don't go through it in depth, but if we just note some of the summaries – some of the executive summaries given about the advice?---Yes.

25 Would the first summaries on the first page would suggest that the textile agreement allows Bruck to make a textile employee redundant and re-engage them as a casual employee, but Bruck will need to be aware of the impact of the conversion of casuals clause for casual textile employees performing regular work for six months?---Yes.

30 Could you enlighten us as to what a conversion of casuals clause is?---Yes. There was a clause – I think it was in the enterprise agreement – that would say that if you engaged someone as a casual for a period of at least six months, they become – they're deemed to be permanent employees.

And then if we go to the third page under paragraph 12, you note the summary in response to targeted redundancy, that:

35 *Even if a full-time employee is offered and accepts casual employment with Bruck, Bruck cannot avoid paying the full redundancy package to a former employee whose position is made redundant.*

?---Yes.

40 So that's advice in response to a way to reduce your workforce without having to pay full redundancy packages and you're advising them that that can't be done in such a circumstance; is that right?---I'm certainly advising them that just converting them to casual wouldn't relieve them of an obligation to pay redundancy, yes.

45 Yes. And that would be in request to advice requested from Mr Parker, would it, about whether that would be a way to do so?---Yes, I think Mr Parker was looking for numerous ways to try and make the business more flexible and lean.

And it would be fair to say that he was looking for numerous ways to reduce the redundancy obligations the company had; is that correct?---I think that was right.

5 And when you say think it was right, you've had – you had conversations with him, didn't you, where he expressed that desire?---I was thinking about that particular issue but, yes, I have had conversations with him about that.

10 Yes. And did the conversations range from approximately 2012 to 2014?---That's correct.

And if we look at the last issue, the issue of contractors, had Mr Parker asked you to give advice about whether re-engaging redundant or retired employees as contractors might affect the tax treatment of the redundancy payment?---He must have, I assume.

15 Yes. And you've advised him that employees in these situations need to be mindful of sham contracting rules?---Yes.

And then at paragraph 22 you say:

20 *Given the risks associated with the sham contracting rules in this case, we would caution Bruck from moving to terminate an employee and re-engage them as a contractor without careful thought.*

25 When you said “in this case”, what were you thinking about when you gave that advice?---He must have given an example, perhaps, but I don't recall what the example was, and I assume it was similar to the casual employment issue, that he was looking to create as much flexibility as he could, and the question would have been, “If – if I make someone a contractor, what would the implications be?” And obviously, you know, I said that one of the issues would be the taxation, which may
30 not be affected in that case, but it might be regarded as not a genuine contract relationship if – particularly if they continue to work as they were previously.

35 When – and we note that this is still early on, but “flexibility” is a word of various meanings, depending on the context in which it's used?---Yes. That's right.

And we all know that employers and employees think different things about the nature of flexibility; would that be a fair statement?---I think that's fair.

40 In the context of this, was a significant part of the intention that Mr Parker expressed to you about flexibility was wanting to restructure the business in a way to reduce the redundancy entitlements that workers were entitled to?---Sorry, can you just repeat that.

45 Yes. Was a significant part of any intention – of the intention he expressed to you about bringing flexibility into the workforce a way to make sure that workers – that the company, sorry, was reducing the workers' redundancy entitlements as much as

possible?---Well, my understanding was that the company wasn't making much money, or losing money, and that Geoff - - -

5 I'm sorry to interrupt you. So your understanding at that time was that the company was losing money, was it?---Well, I may have, you know, perhaps exaggerated that. I've never seen the company's financial records, but my understand from Mr Parker was that the company was having issues with revenue being reduced and excess capacity and so forth, so he was charged with looking at ways to create greater flexibility, obviously reduce costs. That was his – as I understood, his objective.

10 Do you know who he was charged by to do that?---No, I wouldn't know that.

So when you say “charged” - - -?---Well, he was – it was part of his role to do that.

15 Right. And reducing the cost, a big reduction would be these generous entitlements we were talking about earlier?---I don't know that, but that would have been a cost, certainly.

20 And so when you say you don't know that, did you not know it at this time or you don't know it now?---I don't know the extent of – didn't know the extent of the redundancies. We didn't talk about the amount or anything like that. I certainly didn't know it in the context of their overall costs.

25 Before we continue, did you ever have a conversation with him, that you can recollect at this point, about reducing redundancy entitlements being a significant driver?---No, I don't think he ever said that.

30 I see. Well, perhaps if we go to some more file notes that might become a little bit clearer. If we go behind tab 36 – and I take it from Ms – that Ms Millhouse's file note?---That's right.

And that is a conversation on 14 June that you seemed to be present at?---Yes.

35 Perhaps if I allow you to refresh your memory of that?---Yes, I've read that.

40 So at that point we're concerned, are we, with now a separate issue, are we, about: can we move these employees to a four-day week?---Yes. Again, I think that was one of the proposals that Geoff had to reduce – to deal with the peaks and troughs, where he just had a backlog of product.

Right. Okay. Thank you. And perhaps if we then move to the next tab, tab 37?---Yes.

45 That's your file note, is it?---It is. Yes.

And I will let you refresh your memory on that?---Yes. Thank you. Yes, I've read that. Thank you.

So within that file note, Mr Parker is discussing with you, is he, some further options about how to reduce costs?---Yes, I think so. I can't recollect that conversation about the sales marketing manager very well. But, yes, the others are to do with options for dealing with peaks and troughs, if you like.

5

So, effectively, on the sales and marketing manager, he's saying that, "Let's get rid him. He's independently wealthy. He has about 15 properties in Melbourne and we need him to perform flat out"?---That seems to be the gist of it but, yes, I don't recall it very well.

10

Yes. And if we go to the next page, Mr Parker – at the middle of the page, Mr Parker says to you, does he, that he would like to be able to say to the unions in the future, "These EBAs are all underpinned by awards that go back to the sixties"?---Yes.

15

In other words, he's saying, is he, that they're not flexible enough for modern conditions?---I think that's a fair call.

And he's seeking to get more flexibility in a context where the EBA isn't allowing him to do that; is that fair?---That's fair.

20

And so is that a concern that he had expressed with you, that the EBA doesn't give him the opportunity to be as flexible as he would like to be?---Yes.

25

And one of the key flexibilities he would like is to reduce these generous entitlements; is that right?---I think that would be fair.

Yes. So if we go to the next page – the next tab, I'm sorry?---The next what, sorry?

30

The next tab?---Tab.

Yes. Behind 38?---Yes.

So that's dated 29 June, and that's another advice sent?---Yes.

35

And that's signed by you and Ms Millhouse?---Yes.

If you turn to the actual advice which is behind the orange tab?---Yes.

40

And it says:

Dear Geoff,

We refer to the previous telephone call with Rick about getting more production and hours flexibility.

45

?---Yes.

Continuing:

And we outline our comments for your records.

5 I will give you an opportunity to read that, Mr Catanzariti?---Thank you. Yes, I've refreshed myself. Yes.

And so the three options that this advice professes to be considering, are they options that were presented by Mr Parker to you, or options you've come up with?---I
10 couldn't say that it was all of them Geoff's. Some of them may have been mine, but I don't recall whether it was he or I.

And so - - -?---I think the four-day working week was definitely Geoff's option. Sorry. He raised that proposal, but I can't remember with the other ones.

15 So if you look at the second page which talks about the advice - - -?---Yes.

- - - on the four-day working week - - -?---Yes.

20 Paragraph 5 says:

Bruck can't do it unilaterally.

?---Yes.
25

Paragraph 9 says:

Bruck's unlikely to be able to satisfy the legal requirements of the stand down clause.

?---Yes.
30

And it would be fair to say, wouldn't it, that in the whole, this advice does not bode well for the prospects of implementing the plans therein being discussed?---I think I
35 put a few roadblocks in front of most of the suggestions. Yes.

So Mr Parker has come to you with some suggestions. You've put some quite appropriate roadblocks in the way, ie, those roadblocks coming from the law, and his suggestions aren't possible in the circumstances?---Yes.

40 So we don't have, then, another document until October 2012 apart from - - -?---Yes.

- - - of course, your judicious bills?---Yes.

45 And so if we just pause at that point, you've been instructed in early May?---Yes.

You've sent some advices out about a range of issues?---Yes.

On general employment issues. Would the following summary so far be fair, and want you to base this on conversations you had with Mr Parker. Would it be fair to say that at this point, Mr Parker has expressed that he has an undesirable enterprise agreement?---Yes.

5

And that he wants to do everything he can to get around it?---I think he was looking to work within it as far as he could to create more efficiency.

10 And by more efficiency, we mean lowering the amount of employees or reducing the employee's entitlements?---Lowering the amount of employees. Certainly, reducing excess capacity in terms of staff was one option. I think he was interested in ways of lawfully reducing entitlements, and I assume he wouldn't have come to me otherwise.

15 I see that point. And so far to this point, you've predominantly, it would be fair to say, put roadblocks up on his suggestions?---Yes. I think that's probably right.

20 And none of your suggestions so far in terms of introducing what he would call flexibility have been particularly successful?---I think – I'm not sure if you're referring to – he obviously tried through agreement with the union and the employees to achieve some of the objectives like a four-day week, etcetera, and I believe that had been largely unsuccessful certainly at around that time. It may have been successful earlier, but was no longer being met with agreement.

25 Yes?---Yes.

30 And certainly, in terms of things that he or Bruck would do unilaterally legally – most of those suggestions or all of those suggestions have been unsuccessful, haven't they?---Correct.

So if we turn, then, next to the next file note behind tab 42, and we're still in 2012 - - -?---Yes.

35 And we see there that there's a file note dated 1 October 2012?---Yes.

And that's your file note, is it?---Yes. That's my file note.

Well, I will let you read it, then?---Thank you. Yes. Thanks. Read that.

40 Now, the file note is, I take it, a call from Chris Spencer?---Yes. That's correct.

And that she has been asked by Geoff for you to answer some legal questions. Would that be right?---That's correct.

45 And he wants to re-agitate, does he, the discussion about a stand down under the textile enterprise agreement - - -?---That's correct.

Which you've already said can't happen?---Yes. That's correct. Yes.

And so he's suggesting – she's suggesting through – he's suggesting through her – I apologise – that the part 3-5 of the Fair Work Act is relevant?---Yes.

5

Are you able to tell the registrar how?---Yes. Thankfully, yes. It's just the part of the Fair Work Act that deals with when employees can be stood down without pay when they can't be usefully employed. So, for example, if there's an electricity strike, and the factory can't operate.

10

Now, is the next suggestion:

What if water refused to take our effluent and had to close down?

15 Is that a hypothetical, a real situation, and if either raised by either you or him?---I don't think it would be something I raised because it doesn't make a lot of sense to me, but I think what it meant was it was a hypothetical, but could have actually happened where Geoff was asking through Ms Spencer whether what if the local water authority refused to take their effluent, and they had to close down the plant.
20 I'm not sure how that actually works, but that's what I understood the – that conversation to be about.

Now, there's a comment there made:

25

What if I can't – what if can't agree on new term.

What does that mean?---Probably that I've missed something in between there that leads into that, but I think what that meant was what if we can't agree to new terms of a stand down, perhaps, or a – perhaps an enterprise agreement. I'm not sure.

30

And then you suggest that I said I think it's still within Bruck's control within our power to reach agreements?---Yes.

35 And so you're being positive about the situation?---No. I think what I was saying was that it – I think this is going back to the water effluent issue - - -

40 Yes?--- - - - that – you couldn't just say – it had to be a situation where they had no control over the water authority being able to stop their water effluent being treated or whatever. So if there was something Bruck could do to remedy the situation and have the situation addressed, then it wouldn't be a stand down situation.

Yes. I understand. And then so the final thing you say is not sure if word reasonable makes a big difference?---Yes.

45 Is that a word coming from an agreement or the Act or - - -?---To be honest, I really don't know. It's certainly not in the stand down – maybe it is in the stand down provision. It – I think it was in the context of – Geoff may have been asking what if

it's not reasonable to continue to employ them, and I said that I didn't think that that word would make a big difference in the overall scheme of things.

5 So is it fair to say, then, that at this point, Mr Parker after having some roadblocks thrown up in his way is testing hypotheticals about when the stand down provision might be able to be activated?---That seems fair. Yes.

10 And he wishes to, if possible, activate the stand down provisions?---Yes. I think he was looking at ways that that could work.

I understand. And at the moment, you've been unable – obviously, this is not a criticism. You've been unable to give him a scenario where that can be done to his satisfaction?---That's correct.

15 So then if we ask you to turn to – behind tab 44, that's the next document in the scheme of things. So we go from October to February 2013?---Yes.

20 And that's an email, I take it, from your common personal assistance, Ms Marshall - - -?---Yes. Correct.

- - - from you to Mr Parker?---Yes.

If I ask you to familiarise yourself with that?---Yes. Yes. I have.

25 So, obviously, once again, not a criticism intended, there's not a file note of the discussion you speak about yesterday?---Yes. That was almost like a file note. I was really just confirming what I had suggested in a - - -

30 Yes?--- - - - telephone conversation, but yes. No file note. Sometimes I took calls from Geoff in the car or at home, etcetera. So I may not have made a file note. So I just didn't want people to think that I don't take file notes.

35 Yes. No. I think everyone in this room understands what you mean by that, Mr Catanzariti. Now, you suggest an audit of the Bruck workforce. What is that in response to?---I think it's just in response to general conversations I'm having with Geoff about how we can create what I might term efficiency and so forth. So one of the things I suggested is, well needs to look through workforce and decide whether there's, you know, things he can do to create a more efficient workforce, and that might mean, you know, performance management. You know, there are
40 employees who aren't able to work, you know, at 100 per cent because they're unwell, and it has, perhaps, been a situation that has been allowed to continue for a very long time and doesn't need to, etcetera.

45 Does efficiencies in this context mean anything other than reducing the amount of employees given the items discussed in the email?---That's – I think that's the – most of the import of it is reducing, but there might be some where you might say that,

you know, employees with performance issues – you might try and improve their performance, if that was possible, but I think much of it is about reductions.

And all of the reductions, speaking neutrally - - -?---Yes.

5

- - - would have the consequence, wouldn't they, if they were successful, that the generous redundancy entitlements wouldn't be the – Bruck wouldn't be obliged to pay generous redundancy entitlements?---Well, for those who had generous redundancy entitlements – some of them may not have been there for very long – and yes. As long as they were covered by the agreement, of course.

10

Yes?---That's correct.

Now, if we turn to the next tab which is tab 45 – is that your folder?---Yes. It is.

15

I will let you – I only intend to ask you about the first two lines. I don't need to ask you about the employees who are looking at porn on the computers?---Yes. I've read that.

20

So that's March 2013?---Yes.

And the first line is:

Getting rid of people.

25

?---Yes.

You speak to Mr Parker. Now, the next line is:

30

80 people too many in Bruck.

?---Yes.

35

So would it be a fair summary – is it your recollection that Mr Parker would express to you a desire to get rid of people at Bruck and that he had 80 people too many?---The latter is certainly correct. I assume that getting rid of people meant he was in the process of it, but I can't recall exactly, but yes. He was certainly suggesting that he had 80 too many people to me.

40

To your knowledge, he hadn't yet begun the process of getting rid of 80 people, had he?---Not that I'm aware of.

45

Yes. And so is it your recollection, or is it a fair summary of that conversation, that he wanted to begin a process where he did get rid of 80 people?---Yes. He may have started it, but that was the – that was what I understood the conversation to be about.

So if we then turn to tab 47, we're then – your file note, I take it, Mr Catanzariti?---Yes. It is.

1 May 2013?---Yes.

5

And it's a conversation between you and Mr Parker?---Yes. It is.

And I will give you an opportunity to read that?---Thank you. Yes.

10 Could you explain – so the first paragraph says:

We need 25 to 30 people - - -

?---Yes.

15

- - - by 1 July 2013 to do AWM work.

?---Yes.

20

And when it comes across in the future, we need to take out 45 at the moment.

?---Yes.

25 What does that mean?---I believe the first part of that – 2013 referred to the work that was being undertaken – Australian weaving mills in Devonport, Tasmania – was shifted to Bruck where they had excess capacity. So they would use some of their excess staff to do the Australian weaving mills work. So that's what I believe the 25 to 30 was. So those 25 to 30 would have work to do, and then it looks as though at the end of that that there would still be 45 that would be excess to their requirements
30 that, as Geoff said, would – I think his words were need to take them out, and I assume they're his words, not mine.

35 No. I assume they are his words as well. And I assume, they being the more generic rather than the American version, will need to take them out – the Australian version, of a need to take them out. And then 25 to 30, he wants them to take long-service leave or holidays; is that right?---Yes. I'm not sure if that's the same 25 to 30 years
- - -

40 No?--- - - - the one before. But, yes.

45 So based on, certainly the previous file note, Mr Parker says Bruck wants to – he wants to get rid of people. He has 80 people that he needs to get rid of. And, to the extent possible, he needs your help to facilitate this business restructure?---You've used the words business restructure. He certainly was asking me to assist him with reducing the workforce.

And so, if it's not a business restructure, what is it?---I don't know. It's a reduction in the workforce.

5 Okay. So he needs you to help him reduce 80 people from the workforce in a way that minimises costs to the business?---Yes. I think it was less than 80, because he had the 25 to 30 that were being kept. But - - -

10 Well, the previous file note said 80 any people?---Yes. But I think then he's saying that he has got the 25 to 30 that he needs to do the Australian weaving mills works, and that's why he says only 45 extra. That was my understanding, but - - -

I see?---Yes.

15 I see. Thank you for that. So then if we can pause for the moment and just talk a little bit about where we're at, so far the relationship has – well – so the retainer has been going for about a year?---Correct.

20 We have an inflexible enterprise agreement, according to Mr Parker; is that correct?---Yes.

Mr Parker wants to reduce the workforce - - -?---Yes.

- - - in a manner in which it's the least cost?---Yes.

25 And so far neither you nor him have been able to come up with a way in which to lawfully do so?---Well, yes. Certainly, I couldn't come up with a way of doing so. When he suggested things, there was usually a problem with doing it.

30 Yes. I understand. And at this point you say you've only ever in your career have you given advice on G.E.E.R.S. or the FEG - - -?---Yes.

- - - once perhaps previously?---Yes.

35 Would it be fair to say that you're familiar with the terms at this point, or not?---Yes. I'm – I was aware of it.

40 And were you familiar with the way it worked? I know you were aware of it. Were you familiar with the way it worked?---Not entirely. It had been some years since I had ever looked at it in any detail.

Were you aware, for instance – we're in May 2013, were you aware that it was no longer GE.E.R.S. but it was now FEG?---No. Not necessarily. I might have still thought about it as G.E.E.R.S.

45 Yes. Are you aware now of how it changed from G.E.E.R.S. to FEG?---Yes.

And do you know when that happened?---I think it was 2014, perhaps.

No. Well, actually, might I suggest that it changed from G.E.E.R.S. to FEG in December 2012?---Yes. Yes. That may be right. Yes.

5 And primarily as a result of the High Court's decision in Williams, which said that such a scheme required legislative - - -?---Yes.

- - - underpinning?---Yes.

10 And at that point did you understand that the Act provided a basis for the payment of financial assistance to employees who had unpaid employment entitlements as a result of the insolvency of their employer?---I did.

15 And were you aware, certainly under G.E.E.R.S., that the payment was not intended to supplement any form of business restructuring?---Yes. I was aware of that.

And at that point you understood it as being something that employees were entitled to, if their employer went insolvent?---Yes.

20 So perhaps if we go to the next file note behind tab 49. That's your file note, I take it, Mr Catanzariti?---It is. Yes.

And you will see that the date is 21 May - - -?---Yes.

25 - - - 2013. And that's a call from Mr Parker to you, is it?---Yes. Correct.

And the heading is G.E.E.R.S. Now, is that topic that you raised or that Mr Parker raised?---Mr Parker raised it.

30 And do you remember the context in which he raised it?---No. I think he was asking me was I familiar with it and how would it apply if the company went into liquidation.

So you will see that the first comment made – and this is on 21 May 2013 – is:

35 *Company goes into liquidation or administration*

?---Yes.

The second comment made is:

40

G.E.E.R.S. will cover the full entitlement as per the EBA

?---Yes.

45 Is that your words or his?---I think they were his words.

And then you will see the third comment is:

If Bruck had to shut down, Bruck pays the minimum.

Is that your comment or his?---Mr Parker's.

5 And did you understand what that meant?---I certainly understand what the first two meant. I'm not sure what that means, actually. I don't know whether he thought that they would – Bruck would pay the minimum under the Fair Work Act. I'm not really sure what that reference to paying the minimum is in the context of G.E.E.R.S.

10 But you understood, did you not, from what Mr Parker was suggesting to you, that if the company – whether he was right or wrong, he was suggesting to you that if the company went into liquidation or administration, G.E.E.R.S. would cover the full entitlement under the EBA, and Bruck would only have to pay a minimum, whatever that minimum was?---Yes. I think so. I'm not sure how that relates to it, because I
15 think his understanding was G.E.E.R.S. pays the full entitlement. But, yes, it could be that he thought they would pay a minimum.

Could it be that G.E.E.R.S. would pay the full entitlement, and by Bruck paying the minimum it meant classes of matters that G.E.E.R.S. did not cover?---I'm not sure.
20

I understand. And do you at all – and I don't wish to be unfair to you. It's not a lawyer's – it's not a legal exam. But were you aware, particularly for the textile clothing and footwear industry, that in May 2013 important events happened in relation to the FEG Act for May 2013?---I wouldn't have been aware of it at the
25 time. I'm not exactly sure what you mean now.

Were you aware that a regulation came into effect on 15 May 2013 whereby the FEG Act was extended by regulation, and extended the Act to contract outworkers in the TCF industry?---I wasn't aware of that, and certainly wasn't at the time either.
30

Did you become aware at some point?---No. I wasn't aware that it extended to contract workers. Was that the?

Yes. Contract outworkers?---No. I wasn't aware of that.
35

So you had a situation whereby the Act covered employees, whatever industry?---Yes.

And then by regulation coming into effect on 15 May 2013 - - -?---Yes.
40

- - - the Act was extended by regulation to contract outworkers in the TCF industry?---Yes. I wasn't aware of that.

Six days later Mr Parker's galling you and raising G.E.E.R.S. with you?---Yes.
45

And he's saying that if G.E.E.R.S. came into effect it would cover the full entitlement, as per the EBA, and he would have to pay the minimum?---Yes. That's correct.

5 At that point, did you find that this was an odd conversation to be having?---I don't know. It was probably another conversation I had had with Geoff along the similar lines as previously.

10 And what do you mean by that?---Well, I think, you know, Geoff was obviously thinking about redundancies at the company.

15 And, I mean, it's this company's privilege as much as it was Mr Parker's then, so – I mean, before we go further on, were your sensors at all alerted that this was an unusual conversation to be having?---Probably was an unusual conversation.

20 And why would you think it was unusual?---Well, I suppose a company going into liquidation is a pretty significant event, and that was probably an unusual event in the first place, and I guess that would have perhaps caused me to wonder what was happening. But it was consistent with what Geoff had been saying, which was that the company had been struggling financially since the time we had been acting in relation to Bruck, and so forth. So perhaps in that sense it didn't surprise me.

25 And you weren't – you say you had never looked at the books?---No. I've never looked at them.

So you wouldn't have been aware that in 2012, when you were retained, that the company had \$40 million worth of assets, or was making a profit of over \$3 million dollars a year?---Not aware of that.

30 And did you subsequently become aware of that?---No.

35 Did you find it unusual at all that the conversation about G.E.E.R.S., certainly from your file notes, didn't go on from company goes into liquidation and say this is bad, how can we stop this, woe is us, and immediately went into G.E.E.R.S? G.E.E.R.S will cover the full entitlement of all the employees under the EBA?---Sorry. What was the question in that?

Did you find that unusual at the time?---Well, you know, possibly.

40 You don't recollect finding them unusual?---I – I may have found it unusual. I don't recollect expressly.

45 And what did you understand that Mr Parker wanted to achieve by what he was asking you to do on this phone call?---I didn't understand he was trying to achieve anything. I understood he was asking, if the company went into liquidation, what would happen to the employee entitlements, and he mentioned the G.E.E.R.S.

scheme. And – he may have been doing it to ensure the employees were paid their entitlements in circumstances where the company couldn't.

5 So that was your understanding at the time, was it: his concern for the employees?---Well, as I said, I think my discussions with Mr Parker had always been that the company was having financial difficulties, and so it followed from that that the company may not have been in a financially sound position, and one option would have been liquidation and what would have happened in that circumstance. And he raised the question of G.E.E.R.S. in that circumstance.

10 Well, perhaps, if I could ask you then to turn to the next tab?---Yes.

THE REGISTRAR: Could you undertake that break around now, Mr Kulevski.

15 MR KULEVSKI: Thank you, Registrar. Yes. That would be convenient.

THE REGISTRAR: I think you mentioned about quarter to 12.

MR KULEVSKI: That would be convenient. Thank you, Registrar.

20 THE REGISTRAR: I think we will stop for 15 minutes.

MR KULEVSKI: 15, Registrar?

25 THE REGISTRAR: Yes.

MR KULEVSKI: Yes. Thank you.

30 THE REGISTRAR: All right. We will temporarily adjourn.

ADJOURNED [11.52 am]

35 **RESUMED** [12.17 pm]

THE REGISTRAR: Yes, Mr Kulevski. And, Mr Catanzariti, you're still under the oath you took before the adjournment. Yes.

40 MR KULEVSKI: Thank you, Registrar.

So, Mr Catanzariti, we've just been discussing before the break that Mr Parker has raised GEERS with you?---Yes.

45 You're not very sure of the context in which he raised it with you?---That's correct.

But at the time, he expressed to you that if the company went into liquidation or administration, GEERS would cover the full entitlement?---Yes.

5 Did you understand that he was requesting your advice on anything?---I – I don't know that he – I assume he did in that conversation, because I then gave advice, but yes. I don't know. I assume he did specifically ask me for it.

10 So if we then turn to the next tab behind tab 50, it's there that we will find that advice?---Yes.

And I will let you read that to yourself?---Yes. I've read that.

You've read that?---Yes.

15 So the emails from you – it says Dear Geoff – it goes through – you talk about the circumstances in which the GEERS scheme will be triggered?---Yes.

20 Now, just pausing there, were you aware at that time that it was FEG from December 2012?---Obviously not.

Yes?---I was thinking GEERS. Yes.

25 So you say that it's triggered if a liquidator or provisional liquidator is appointed?---Yes.

Requires the employee's employment to be terminated due to the appointment of a liquidator?---Yes.

30 And the employee must be owed certain entitlements?---Yes.

And where there cannot be sufficient funds or assets available to the employer to pay those entitlements?---Yes.

35 And then you set out the entitlements that are covered?---Yes.

And then you set out the entitlements that aren't covered, and things which aren't covered are payment of time in lieu or leave in lieu, bonus payments, commissions or reimbursement payments?---Yes.

40 Did you understand at the time you were writing that that you were responding to Mr Parker about GEERS will pick it all up and Bruck pays the minimum?---No, I don't think so. I think I was just writing a reasonably comprehensive outline of what was covered and not covered in the circumstances.

45 The next thing you go on to say is:

The GEERS scheme states that it's not intended to supplement any form of business restructuring.

?---Yes.

5

And then you say:

Three points to note are if the department which administers the scheme believes the insolvency is designed as a business restructure, it will not pay the employee entitlements; that the department has an overriding discretion –

10

in other words, it's not an obligation that the department must pay?---Yes.

And, thirdly:

15

There may be a risk the department would look to see whether a related entity of Bruck might have funds to pay the entitlements, particularly if it believes that any assets part of the business, etcetera, has been transferred from Bruck to those other related entities.

20

?---Yes.

Do you see that?---Yes.

25

Did you write those things because at that point, early on though it may be, you were concerned that that might be occurring?---I was concerned about the way it would be perceived, yes.

30

And when you say you were concerned about the way it would be perceived, what is it?---I think at that point I must have – I did understand that there was a proposal that the company would continue, as in the business of the textile business would continue.

35

So what I want to suggest is that the file note where this was first raised with you was on the 21st. This went out late on the 24th?---Yes.

40

And you had some time to consider that telephone call, or had there been further calls as well?---I don't know that there had been further calls, but I had obviously had time to consider the - - -

45

And obviously no criticism intended, but of all the things in the comprehensive GEERS or FEG scheme that you've spoken about, you spoke about – half your email is directed to it can't be used to restructure the business?---That's correct.

And could you tell I and the registrar, who represent – I represent the company in liquidation – why you gave that advice to that company?---About the concern about the business - - -

Yes?---As I said, I was concerned about how it would appear in the - - -

5 And why were you concerned about how it appeared? Did you have knowledge of something?---No. I didn't have knowledge of – as I said, I didn't know the detail of the arrangements and how it would work, or certainly the financials, other than, as I said, I understood the company was having financial difficulties. My concern was that the business would continue after the event.

10 Where did that concern arise from?---I imagine a discussion with Mr Parker. That's the only person I was dealing with.

And so it wasn't your idea; Mr Parker had suggested to you that the business would continue after the insolvency?---It certainly wasn't my idea.

15 And so is it fair to say that Mr Parker had discussed that with you?---That it would - - -

20 That the business would continue after insolvency?---Yes. As I said, I think so, because he was the only one I was dealing with on this issue.

So it wasn't your idea; it must have been his?---Well, it wasn't my idea. I don't know whether it was – it was – he raised it with me, but I don't know whether it was his idea.

25 Right. But he did raise it with you?---Yes, he did. Yes.

30 Yes. So as at May 2013, you've suddenly, it's fair to say, had been having practical conversations within your area of expertise about how to “make the business more flexible”?---Yes.

And now you're being asked to give advice on how the Commonwealth can pick up the tab if the business goes under. Is that fair?---I was asked how the GEERS scheme worked. Yes.

35 Yes. So then, if we turn to the next tab, which is tab 51, that's your file note?---Yes, it is.

27 May 2013?---Yes.

40 And I will let you - - -?---Yes. Thank you.

- - - read that?---Yes. I've read that.

45 And so if you see at the bottom, has Mr Parker told you or Mr Bart told you that there will be a report written by Geoff to the directors to review the operations?---No. I think that was – I suggested – I think it was in the context that they were looking to manage performance of employees and their fitness for work,

and the concern was that no one had done much about it, and it was a bit of a – it was a difficult thing to suddenly review people’s performance, as I understood, because it had never really been done. So I suggested that perhaps Geoff could write to the directors and it could come from the directors that the company needs to have a
5 review of everyone’s performance.

I understand. So GEERS is raised with you?---Yes.

And then you have a subsequent phone call that says we need to move out 20 to 30
10 people at the top?---Yes. That was certainly a separate discussion. I don’t recall GEERS being mentioned in that discussion.

No, no, no?---Yes.

15 GEERS was discussed with you earlier?---Yes.

You say, in quite pointed advice, hey, it can’t be used for a business restructure?---Yes.

20 Then we have another phone call later in the month that says, well, let’s move out 20 to 30 people?---Yes. That’s right.

And then you say, hang on, this has to be done in an appropriate fashion?---Yes. That’s right.

25 And so would it be fair to say that – so you’re on the phone call with Mr Bart and Mr Parker?---Yes.

30 And do you recall how that advice of you putting up another legal roadblock was received?---I don’t actually recall how it was received. Probably as well as my last ones.

Which were?---You know, they would have preferred me to give different advice, I suppose, that said we could do it easily, but - - -
35

Just what I will ask you, and I understand that you’re being – there’s no question so far that you’re being truthful. What I would ask you is that to the extent that you have a recollection of - - -?---Yes.

40 - - - how they respond to you, whether you could give that, rather than y our understanding?---I don’t have a recollection of that.

Yes. But had you been told previously that you weren’t perhaps being novel enough or creative enough?---No. Not at all. Not at all. I think, like any employer, they like
45 to do things, and if it doesn’t work, they’re perhaps disappointed. But I don’t think they’ve ever said to me that my advice wasn’t novel or robust or, etcetera, enough.

Fortunately, we will get to that, but for now, what we're suggesting is that you've put a roadblock in about how quickly they can get rid of these 20 to 30 people. Is that correct?---Yes.

5 Yes. So thank you. If we turn to behind tab 52, that's a bill or an invoice that has been sent?---Yes. That's right.

So if you just turn to the page that has got 16 in the top right-hand corner, so 14, 15, 16?---Yes.

10 You will see there's an entry on 16 May: telephone discussion with Geoff Parker about GEERS scheme?---Yes.

22 May: drafting advice for Geoff Parker about GEERS scheme?---Yes.

15 And then five days later, meeting with Phillip Bart and Geoff Parker about restructuring?---Yes.

20 And do you recall anything other than what's in the file notes about those engagements?---No, I don't. Actually, there's a little bit over the page on that file note that talks about the, I guess, early retirement. But I would have used the term restructuring in a general sense to refer to the, you know, implementation of the looking at people's performance, moving out people for poor performance, etcetera.

25 Yes?---That would have been the word I used for restructuring, and the involuntary – obviously it's a summary of - - -

I understand?--- - - - that conversation.

30 And, in fact, you're quite right. There's a suggestion at the end of the previous file note, is there not, that you've been asked for advice about whether you can make certain employees sign a resignation with effect of, say, Christmas?---Yes.

35 And do you remember what you said in response to that?---No, I don't, actually. I don't even remember that – that request.

40 So then, if we go to tab 55, that's an email from Mr Parker to you and Ms Cheryl Watts. Could you please tell the registrar who Cheryl Watts is, to the best of your recollection?---Yes. I think Cheryl might have been Mr Parker's administrative assistance.

Not someone internally within DLA Piper, then?---No, no. From – from Bruck or Australia Weaving Mills. One of those. Yes.

45 So the first one is:

Dear Rick, we've spoken on this issue a number of times in the past; however, is there another way of looking at the problem?

5 Which tends to suggest – well, what did you understand by that, Mr Catanzariti?---Think you have a different way to achieve it lawfully.

Yes. Okay. And then the – and so the emails about the 40-hour week?---Yes.

10 And whether we can make people – whether we can – whether Bruck can get around that. Is that correct?---Yes. That's correct.

And then the final suggestion is:

15 *Do you have any other examples of other sites or industries that have found novel ways around this problem, or any ideas on the issue that we have not considered.*

?---Yes.

20 And do you recall whether you did at that time?---Did have novel ways or did provide advice?

25 Yes?---No, I don't. I think I would probably say that I couldn't find any other ways. I only seemed to find roadblocks, not ways through.

That's many a good lawyer's task, unfortunately, Mr Catanzariti, particularly if that's what the law provides. But if we then turn to tab 56?---Yes.

30 I think you've given the matter – I will let you read that document. I think you've given the matter some consideration there in an email to Mr Parker?---Yes. Thank you. Yes. I've read that.

35 So I think it would be fair to say that it's an advice of sorts, not – or at least a summary of the position. And you say:

Hi, Geoff. I've given some thoughts to your operational challenges.

40 And is that the way in which Mr Parker had described them previously, or is that just your phrasing?---No. That might have been my phrasing.

And you say to him:

45 *The main problem seems to be the restrictive nature of the Bruck EBA, which has very structured arrangements for hours and payment for those hours.*

?---Yes.

Continuing:

And this tends to reduce the options compared to other workplaces where the EBA may not be prescriptive.

5

?---Yes.

10 And is – do you think that’s a fair summary of what the position was at the time?---Yes. I may not have compared it to the others in the industry, but I was probably comparing it to a lot of other employers generally.

15 And, certainly, this is something, based on your advice, that Mr Parker had communicated to you that he understood that to be the problem. Is that correct?---I’m not sure. I think – my recollection was Mr Parker had come from the UK and perhaps his experience in Australia was limited to Australian Weaving Mills and Bruck, so perhaps his experience within that group was that it was a very prescriptive EBA. I’m not sure what his experience was outside of that. So I think he explained to me that he found this enterprise agreement quite inefficient or prescriptive.

20

Yes. Perhaps I didn’t declare – you’re quite correct, Mr Catanzariti. What I’m suggesting is certainly over the last year that you’ve been discussing this together at this point. It has been a continuing course of conversation between you and Mr Parker that this EBA is inflexible. Is that right?---Correct. Yeah, it is.

25

And you’ve finally come to the position, haven’t you, after all the roadblocks that you’ve got some – Bruck had some operational challenges, and the restrictive nature of the EBA, perhaps, doesn’t allow you to get around those operational challenges?---Yes.

30

Would that be a fair summary as at July 2013?---That would be a fair summary.

And so perhaps now we need to find another way to provide the results that Mr Parker wants to provide. Is that correct?---That’s not my suggestion.

35

No, but had that been suggested to you at all?---I don’t believe it was suggested at that time. No.

Was it suggested to you ever?---As in, finding a novel way? I don’t think so. No.

40

Right. Well, perhaps if we then go to tab 61. And that’s your file note, is it?---Yes. That’s correct.

And it’s 8th of August 2013. It’s your next file note?---Yes.

45

And who – when it says:

Attendance: Geoff Parker and parties present, Frank –

who's Frank?---Someone from Brack, but I can't remember who it was.

5 That's okay. I understand. So I'll let you refresh yourself - - -?---Yes. Thank you.

- - - of that file note?---Yes. I've looked through that.

Yes. So we see the file note begins with:

10

AWM new company. Who will the employer be, the new company? Australian Weaving Proprietary Limited eventually.

?---Yes.

15

Continuing:

Not yet decided when we will transfer new business to new company, maybe

20 - - -?---Between. That's a shorthand for between.

Continuing:

- - - between now and the 31st of December?---Yes.

25

Could you please explain to the registrar what that means?---Yes. My recollection of that meeting was that they were redistributing – how shall I put it – certain functions within the business, so I think I mentioned earlier that there was the weaving that was being done in Tasmania.

30

Yes?---And that might have been the time when that work was shifted up to Wangaratta. I think that companies in the group, and I don't recall exactly which ones, but some did some distribution and sales and manufacturing, and I think the idea was to try and streamline it so that all the distribution work went into one
35 company, and all the sales went into another, etcetera. So it was – it was an internal restructure of sorts that I'm not – you know, can't recall the exact detail other than, obviously, what's in the file note.

Yes. And then if you look at the next page, you'll see:

40

AWM will be moving the dye house equipment to the Bruck side

- - -?---Yes.

45 Continuing:

... and the new company will employ new people.

?---Yes.

Now, was there a suggestion at that time – you’ve told him about the operational challenges and the fact that the EBA is prescriptive and it’s hard to get around. Was there a suggestion at that time that Bruck would be put into liquidation to get over those?---No. No. Not – certainly not my recollection in that meeting. I know they were transferring some of the business equipment, which is the reference to the dye house equipment moving to the Bruck site, because they eventually closed down the Devonport site, and I think that was part of their plan to try and reduce costs like electricity, etcetera, and just operate out of the one site or – I think they had two sites in Wangaratta.

So at this point - - -?---Yes.

15 - - - this is, to your understanding, what you were told is a general restructuring proposal?---Yeah. That was my understanding. Yes.

- - - for companies that – what, Mr Bart had an interest in or the Bruck Group or - - -?---I understood – well, there were the three. There was Australian Weaving or Australian Weaving Mills. There was Wilson Fabrics, and there was Bruck. I understood Mr Bart had an interest in all of those, but I don’t know what that interest was, whether it was as a creditor or – I assumed he was a shareholder, a director of some or all of them.

25 Yes. And who were you providing advice for?---In relation to this particular issue?

Yeah?---To Bruck.

Yes. I understand?---I never provided advice to Mr Bart.

30 But you weren’t providing advice to Wilson or Australian Weaving Mills?---I had provided advice to Wilson and to Australian Weaving Mills, but on issues specific to that business or enterprise agreement.

35 So if we then turn to tab 63, and that’s a file note of a conversation you’ve had with Mr Parker on the 13th of August 2013?---Yes, it is.

And you’ll see that the first line is:

40 *We’re getting rid of the factory manager at Bruck and a couple of others.
Can’t get change implemented.*

?---Yes.

45 Could you shed any further light on that conversation?---I don’t recall specifically other than the people there, I think they thought, weren’t able to implement changes in production, and beyond that, I – I don’t recall.

So it's – it's a fair summary at this point to say you've got operational challenges?---Yes.

Prescriptive EBA?---Yes.

5

And not only that, I can't get changes implemented at the work site?---Yes, although I probably don't – didn't ask what those changes were, but – and I certainly don't know what they were.

10 But you were told that?---Yes.

And so there was a concern about that as of the 13th of August?---Yes.

15 Thank you. Let's then turn to the very next document, which is for the 14th of August, and I'll let you reacquaint yourself with that file note, and that's your file note of a conversation with Mr Parker, is it not?---It is. Yes. I've read that.

Now, I take it that would have been a very nervous conversation for you to have with Mr Parker. Is that correct?---Little bit.

20

And did you express to him that you felt nervous about that conversation?---I can't recall.

But you certainly felt nervous about it at the time?---Probably did. Yes.

25

Do you recall feeling nervous?---No, but it would be a nervous conversation.

30 So let's go through the conversation. It's headlined GEERS. Now, having read the file note, is this things that were being said to you or things that you were saying to Mr Parker?---These are things being said to me.

So to start, what's the first word with the arrow – under the arrow?---Yarn.

So yarn is not bought by Bruck?---Yep.

35

Continuing:

Stock and debtors not in

40 - - -?---Bruck.

Not in Bruck.

45 *The company that has the employee liability owns the machinery and the building.*

?---Yes.

Continuing:

We need to take a number of people out. It will cost a fortune.

5 Is that what it says?---It does say that.

And then it says:

We're looking at every option.

10

Now, when we're looking at every option, is that you saying that to Mr Parker or him saying it to you?---That's Mr Parker saying that to me.

And he says:

15

Lots of core businesses go into administration and use GEERS to supplement it.

Is that what the file note says?---It does say that.

20 And what did you say to Mr Parker at the time?---I don't recall what I said to him. The next line is what Mr Parker said to me.

Yeah, he kept going, didn't he?---Yes.

25 He said:

If, in a year's time, it's easier to put it into admin, we'll buy backorder assets.

?---That's what the file note says.

30

And what did you understand by that conversation?---Well, I understood that the company would go into liquidation, and the company either didn't have the assets, presumably, to pay, and, therefore, GEERS would have to step in, and there would be a buyback of sorts.

35

And why would the company not have the assets?---Well, my understanding was the financial difficulties meant that their liabilities exceeded their assets.

40 Doesn't the file note tell you why the company would not have the assets, because there would be some transfers before the insolvency?---I don't know the answer to that.

Well, the file note says it, does it not?---It does, but I don't know whether that is the reason why the company couldn't – why its liabilities exceeded its assets.

45

So what did you understand at the time you took the file note about the words:

The company that has the employer liability owns the machinery in the building.

5 ?---Well, I understood that the legal entity that employed the staff was different to the legal entity that may have owned some of the assets.

10 And did you understand that to have been a long-lasting thing, a recent thing or a future thing?---It was probably the first time I had ever had a conversation along the lines of entities owning what assets, so I certainly didn't know it before then.

Did you understand or was it said to you at any point that what would result from this situation is certainly not the ceasing of Mr Parker and Mr Bart in a Bruck-type business afterwards. Is that correct?---Sorry. Could you repeat that?

15 I'm sorry. I'll repeat that. Did you understand that Mr Parker, from what he was telling you in this file note, intended to continue on with the business after Bruck was put into liquidation?---I understood that from the buying back the assets. Yes.

20 So what did you understand by:

We're looking at every option. Lots of core businesses go into administration and use GEERS to supplement it.

25 ?---I understood they were looking at put – placing the company into administration, and that GEERS would be part of that.

30 But, given that the company in liquidation is your client, and I'm representing them, when he said to you lots of core businesses go into administration, did you think that was odd at the time?---I don't know that I specifically thought it was odd. I think the gist of it was he was saying it's not unusual for a company to go into liquidation.

35 But wasn't he saying to you, isn't this a response in part to the email that you had sent him saying, you can't use this as business restructuring, and he says to you, well, lots of core businesses go into administration and use GEERS to supplement it?---Look, I don't know. Beyond the file note, I can't say that that's what he was suggesting. It seems to me that he was certainly saying that lots of businesses go into liquidation and that GEERS would be involved.

40 Well, does use GEERS to supplement it if, in a year's time, it's easier to put it into admin and buy back all the assets – does that suggest to you the normal course of events of GEERS being involved?---Not really.

45 What I'm going to suggest is that you must have been very nervous after having this phone conversation?---I don't have a specific recollection, but it would certainly – certainly have been somewhat of a interesting conversation.

Did you feel at the time that you were put on inquiry about having to be very careful in any future advice you gave in respect of this matter?---I can't recall specifically, but I imagine so.

5 You're in a big firm. Did you speak to any insolvency partners or anyone else or any other lawyers about what's going on here, am I exposed here?---I don't think so.

10 So not that long after you've told him you can't use GEERS to restructure, is it a fair reading of that file note, and it's your file note, and I don't want to put words into your mouth, that he – Mr Parker says to you, we're looking at every option. Lots of core businesses go into administration and use GEERS to supplement it. In other words, wake up, Rick. You've said you can't use it to restructure, but, let me tell you, in reality, this is what happens all the time?---I don't know about the wake up, but he was telling me that businesses – this happens quite commonly.

15 And not just companies going into liquidation, but companies using GEERS as a way to restructure their – supplement their business activities?---Yeah. I can't recall that specifically, but, certainly, from the file note, it may suggest that.

20 Well, perhaps if we go on, and then we'll go to the next – perhaps if we – if I just ask you this: are you at that point thinking to yourself, I've had a number of conversations about GEERS. I've had a number of conversations also about the fact that this EBA is very prescriptive, and the lawful ways around it aren't great. And you've also had conversations, is that not right, about the fact that we want to get
25 more flexibility out of this workplace?---Yes.

And that we want to pay – we want GEERS to pay the maximum and us to pay the minimum?---Yes.

30 So did you at all think at that point, as the lawyer advising them, why are business persons who should be focusing on a business that is profitable or making it profitable telling me so much about the opportunities that insolvency brings for the business?---Sorry? What was the - - -

35 Were you concerned about why those – about those conversations taking place?---Probably, yes.

And if we then turn to paragraph 67 - - -?---Tab 67?

40 To tab 67. I apologise. That's another file note, 13 September, between you and Mr Parker, isn't it?---Yes.

And what does the first line say?---I think it should be – it's a question – some way to take people out to deal with bumps. That's – again, that's from Mr Parker.

45 So we're going now back to the taking the people out?---Yes.

And had you ever come across, in your experience, any company that you were advising suggesting that the best way out would be to put the company into administration or liquidation, use the Commonwealth to supplement that, and then buy back the assets later?---No.

5

That has ever happened to you?---No.

Never? Has it happened to you since?---No.

10 And how – roughly, give me a guesstimate of how many companies or persons you’ve given advice to over the years?---I don’t know. Perhaps 100.

Fair to say, based on your website, that you’re a leading practitioner - - -?---Yes.

15 - - - in the area? So at this point, this is what – in the life of a lawyer, this is the sort of client that’s putting you right on inquiry about your exposure at this point, is it not?---Fair to say, yes.

20 And did you feel like that at the time?---A little bit. I think, as this file note says, I was looking for alternative ways for them to make the business viable.

So this is a fair summary, isn’t it: you tell them that there’s operation challenges; they come back to you and say lots of companies put themselves into administration and use GEERS to supplement it?---Yes.

25

And you come back and say, “Come on, guys. Let’s think of other ways to get out of this”?---Probably fair.

30 Because you are concerned, as you should be, with a lawful way out, rather than what you are at that time concerned may be a dodgy way out. Would that be fair?---I was certainly concerned that it would not look very good.

And when you say not look very good, to who? Who’s the relevant stakeholder in this?---Anyone, I think – employees, union, GEERS, no doubt.

35

And it would not look good because it may be unlawful. Would that be fair to say? Based on the advice you’ve given about not being able to use it to restructure?---Well, I wasn’t an insolvency practitioner, but my concern was certainly that it didn’t sit very well with me to have the business continue having made – put the company into liquidation, having the business continue, but then, I suppose I didn’t know how they would go about that.

40

Did you express any concern at this point to Mr Parker or anyone else?---I may have, but I don’t recall.

45

You don’t recall. And it’s not file noted?---No.

But at this point, these are his ideas and not yours?---Yes. That's right.

5 And the words were said to you, were they, that lots of companies put themselves into administration and use GEERS to supplement it?---If I had written it down, yes, it must have been said.

Thank you. So if we then go to tab 68, you will see at the bottom of the page there's an email from Mr Parker to you, subject: better offer overall?---Yes.

10 We like that:

When we talked the other day and you mentioned the award set the minimum conditions of pay, did you mean the hourly rate or the 38 by 52 weeks?

15 And then you - - -?---Yes. Sorry. Yes. I see that.

And then your response is – you summarise – perhaps you – effectively, your summary is you haven't really understood what I was saying:

20 *Bruck has to ensure that the employee gets benefits in the EBA, ie, wages and other benefits, which overall are better than the benefits they would get under the award.*

?---Yes.

25

So, fair to say, another roadblock?---Fair to say.

At the moment, we're not coming up with too many lawful ways to get over these inefficiencies, are we?---Not many.

30

No. Any?---I don't think so.

But lots of – you were told lots of companies just put themselves into admin and use GEERS to supplement it?---That seems to be the case from my file note. Yes.

35

If we go to tab 76 – now, behind that, Mr Catanzariti, is a Fair Work Commission application?---Yes.

Do you see that?---Yes, I do.

40

We don't – and this is no criticism. We don't have many documents produced by DLA Piper about this. Could you please explain what that Fair Work application was about?---Yes. I think – well, I don't know that I actually went to the hearing, but this one is a dispute that the union lodged with the Fair Work Commission in relation to the company's proposal, presumably, to change shift times, the start and commencement times, and I'm not sure whether it was permitted under the enterprise

45

agreement, but clearly the union had a concern about it and therefore lodged a dispute in the Commission over it.

I see. If we turn to tab 82?---Yes.

5

You will see there an outline of opening submissions. I take it you drafted those?---Yes, I did.

10 Just reacquaint everyone in the court about the procedure down there. Is that
-- -?---Yes. So with a dispute in the Fair Work Commission, the applicant, in that
case the union, lodges a dispute, as you saw with that previous document. The
Commission then, within a few weeks usually, lists the dispute for a conference or
conciliation, and then the parties, the union and the employer representatives, attend
and give their version of events, if you like, and then the Commission tries, usually at
15 first instance, to see if it can be resolved by negotiation.

20 Thank you. Do we know – or do you recall how this turned out?---No, not
specifically. I think they didn't want me or didn't need me at the conciliation, so I
think I suggested that I would prepare sort of an outline. I call them submissions, but
they would have been in the nature of sort of talking document for them, yes, at the
conciliation.

25 And we don't know what the result was?---I'm not sure that they reached an
agreement, but I don't specifically recall the result.

25

I'm actually not I have no idea?---No, no. It certainly was never arbitrated, so it
was either resolved by agreement or unresolved.

30 Right. Do we know whether the shift changes did take place?---I don't recall.

30

Yes?---I don't recall.

35 If we turn to tab 87, if – that's a file note between you and Mr Parker on 19
November. Is that right?---Yes. That's right.

35

And then, at the middle of the page, do you see that six employees are going from
Bruck to AWM?---Yes.

40 Union said will resist because they will not be able to vote on future Bruck
EBA?---Yes.

45 Was your understanding at the time that Mr Parker wanted – was it conveyed to you
– to move employees from Bruck so that they wouldn't be able to vote on a future
EBA?---No. No. That wasn't my recollection. My recollection was just that they
were doing more AWM-type work, so he wanted to move them from Bruck to AWM
side of the business.

I understand. Then, down the bottom of the page, you put up potentially another roadblock, don't you, where you say:

5 *I said that normally comparable offer, no redundancy, so cannot force them to accept, but –*

and could you please help me with that?---Yes. Cannot force them to accept, but lose redundancy pay and job. I said redundancy agreement not clear. Some risk that they can still get redundancy pay. I think I was referring to if an employee was, let's say, made redundant from Bruck but was offered an alternative position with AWM, the question was would they still be entitled to redundancy pay if they refused, and I said it wasn't clear - - -

15 Right?--- - - - from the terms of the agreement.

So at that point, they were still focusing on Bruck not having to pay for people's redundancies?---Well, I'm not sure. I think they were worried about an employee getting redundancy even though they got the job. So they got a comparable job but still got paid redundancy, which would be a highly unusual situation.

20 If we turn to tab 92, it's a conversation with Mr Parker on 13 December with you in 2013?---Yes. Yes, it is.

If you look at the middle of the page, Mr Parker says to you:

25 *Have to sack and reemploy. I have absolutely no flexibility.*

?---Yes. Yes. I see that.

30 And then he suggests – that's him speaking to you, I take it, rather than the other way around?---That's correct.

And then he says:

35 *The SPC EPA, they have flexibility to put people on and off at short notice.*

?---Yes.

40 What had happened to SPC in December 2013?---I don't recall.

Didn't they go under?---I'm not sure. I may have known at the time. I don't recall.

45 Was he suggesting to you that at the time, the way SPC had gone would be a good way for Bruck to go?---I took it to mean that how come they can get flexibility in their EBA and we can't get the same sort of flexibility.

And was he talking retrospectively or prospectively?---I don't recall that at all.

As in the current one has no flexibility, or why can't we get - - -?---The current Bruck one?

Yes?---Yes. He was talking about the current Bruck one.

5

Right?---Yes.

Not why can't we arrange it for the next EBA?---No. I don't think so.

10 Because did you know that – were you aware that there was a plan at the time to put Bruck into liquidation?---No. I wasn't aware of that.

So that had not been suggested to you?---Sorry? What?

15 That had not been suggested to you?---No.

Notwithstanding the earlier conversations about GEERS?---Yes. I think Geoff had put it as a hypothetical, but obviously hypotheticals are usually discussed in the context of people thinking about them.

20

Yes. Hypotheticals under privilege particularly; is that correct?---Possibly.

Yes. Would that be a convenient time, Registrar?

25 THE REGISTRAR: Yes. All right.

MR KULEVSKI: Thank you.

THE REGISTRAR: Is Mr Catanzariti – is he coming back again this afternoon?

30

MR KULEVSKI: Yes. Yes, he is. Thank you, Registrar.

THE REGISTRAR: You are. All right. Well, Mr Catanzariti, please do not speak to anyone about your examination in the interim period. What's happening with the second examinee?

35

MR KULEVSKI: I hope to get to him this afternoon, Registrar.

THE REGISTRAR: How long do you think this examinee will be for the balance of this afternoon?

40

MR KULEVSKI: Probably about another hour, hour and a half, so - - -

THE REGISTRAR: Right. Well, I will leave it with your lawyers to liaise with the next examinee so that as much inconvenience to that person is avoided, if you can.

45

MR KULEVSKI: Thank you very much. Yes. We will endeavour to do that, Registrar.

THE REGISTRAR: All right. We will resume at quarter past 2.

5

MR KULEVSKI: Thank you.

ADJOURNED

[12.59 pm]

10

RESUMED

[2.23 pm]

15 THE REGISTRAR: Yes. Are you ready to continue?

MR KULEVSKI: Yes. Thank you, Registrar.

20 THE REGISTRAR: All right. You're on the same oath as before?---Yes. Thank you, Registrar.

MR KULEVSKI: Mr Catanzariti, we were just talking before the break about Mr Parker's statement to you about companies using GEERS to supplement their activities in administration?---Yes. I recall that.

25

If – sorry?---I just said I recall that.

Yes?---Yes.

30 If I could – then I will ask you to put aside the big folder and move to the smaller folder. Now, if I could ask you to turn behind the first tab there – 99 – and you will see that that's a file note of 6 March from last year?---Yes.

And the attendees on the court are Geoff Parker and Phillip?---Yes.

35

I take it that's Mr Bart?---That's – yes. It is.

And this is your file notes?---Yes, it is.

40 And you will see that, halfway down the page, the statement is made that the big issue is redundancy benefits and the lack of flexibility. Was that a comment made to you or is that a comment from you?---To me.

And do you recall from who?---No. I don't recall.

45

And then you respond:

I said maybe a termination of agreement is in order.

?---Yes. That's right.

5 Could you explain that?---Well, there are circumstances where you can apply to the Fair Work Commission to terminate an enterprise agreement that has been negotiated and is in operation.

10 And so it's fair to say that they've told you the big issue is redundancy benefits and you're thinking of a lawful way out of that big issue?---I'm thinking of that option. Certainly. And I believe that's lawful.

Yes?---Yes.

15 Yes. And then let's turn to the next file note, then. Page 100. Same day. They call you back, 6 March. It's Mr Parker?---Yes. I think it was just Mr Parker that time.

Yes?---Yes.

20 And he calls you back and he says:

Well, under GEERS, if we had to use it, do they –

25 and it just says "get paid"?---Yes.

What does that mean?---I'm not sure.

Does it mean - - -?---I think it means they get paid under GEERS, I'm assuming.

30 And then they say:

If –

35 and I take it this is Mr Parker to you rather than the other way round?---Yes. Yes.

And it says:

If new company offers the job, same terms, etcetera, then no redundancy.

40 ?---Yes. Meaning no redundancy pay.

From GEERS or from Bruck?---I think – I – I think I – possibly both. But I think I meant Bruck.

45 Yes. Well, is this from him to you or from you to him?---This is from him to me.

Yes?---Yes.

And then:

What if company 2 offers everything the same but redundancy?

5 ?---Yes. Meaning, I think, except for redundancy was – was his comment.

Yes?---And I don't know what I said to that at the time. It's not there. So I think his question was what if company 2 – which I assume is the new company – offers employees the same terms and conditions but doesn't offer redundancy.

10

Yes?---And obviously it's not recorded and I don't specifically recall, but I probably would have said there would still be a possibility that the employees would receive redundancy pay.

15 So you've said to him earlier in the morning, "How about a termination agreement"?---Yes.

And he has rung you back and said, "Let's have a talk about who gets paid under GEERS." Is that right?---I think so. I think he – and he went through a couple of scenarios, by the look of it, in terms of when redundancy would or wouldn't be paid.

20

And is it fair to – this is just after we've had the discussion the day before about -- -?---Yes.

25 - - - how redundancy is the big issue?---Yes.

So redundancy of Bruck's obligations to its employees to pay redundancies is the big issue?---Yes.

30 And now we're looking at how GEERS could possibly pay that redundancy?---Yes. And also, I think, what obligations the company would have if it then made offers to some of the staff.

35 Because it was your understanding, wasn't it, that this would not be the normal situation of a company going into liquidation. It was, "Let's find out a way to get GEERS to pay for the redundancies and us to start up the new business without those obligations." Is that right?---Well, it was certainly in the context of a company that, by all intents and purposes I was told was under financial stress, may well go into administration or liquidation. And, in that circumstance, there may be GEERS payable. Whether they designed it that way, I can't say.

40

Well, let's turn to tab 105, shall we?---Yes.

45 And that's your tax invoice, your firm's tax invoice - - -?---Yes.

- - - up to and including 24 March 2014?---Yes.

If we turn the page and look at the narrations - - -?---Yes.

- - - you will see 25 February '14 - - -?---Yes.

5 - - - yourself, half an hour, telephone discussion with G. Parker about GEERS?---Yes.

Email advice to G. Parker about GEERS?---Yes.

10 27 February. Mr Anthony Runia. Is he a lawyer - - -?---He is.

- - - who was working under you?---Yes.

Is he still working under you?---Yes. He is.

15

And his narration for 1.4 hours is research. General Employee Entitlement Scheme. GEERS?---Yes.

20 Then 5 March, Rick – that's yourself – 0.4 hour. And we will skip that one. 6 March '14. .8 hours. Your entry:

Telephone call with G. Parker about repurchase of business after administration.

25 ?---Yes.

Continuing:

Telephone discussion with G. Parker and Phillip about it.

30

?---Yes.

35 So is it fair to say you've been asked for your advice about GEERS and then a day later or a few – sorry, a week later, you've received a telephone call to talk with Mr Parker and Phillip about the repurchase of the business after administration?---That is correct.

40 Now, at that point, are you on red alert?---Well, as I said, in the context that I'm told the company is in financial difficulty, I suppose a company can be placed into administration in that circumstance. And, if that's the case, then it comes down to a question of whether the company has sufficient assets to meet its liabilities, including employees. So it may not be an unlawful situation, for example. It may be a legitimate situation.

45 And would the normal situation be that it would be placed in administration, to your knowledge, rather than liquidation if you were trying to restructure the business?---I – I – I just don't have any experience in this kind of thing.

Right?---So I couldn't tell you.

And then – so you say placed in – sorry, that the company is not profitable, is what you're being told at that time?---That's correct.

5

So you were being told that the company wasn't profitable?---Yes. That's correct.

Would it surprise you to hear that up until that point it had been making profit of 2 to 3 million dollars a year?---Probably. Yes.

10

It does surprise you?---Yes.

Now – and you had never been given the figures?---No.

15 Had you asked for them?---No.

And so, at that point where it – you talk about GEERS picking up the entitlements, would it be in your experience common for, in the same conversation, to be talking about the same entities that are going to put – the same persons that are going to put the company into administration to repurchase the business afterward?---I've never been involved in that kind of situation before, so not common in my experience.

20

Yes. Okay. Now, if we turn to tab 108, that's a file note of yours, is it?---Yes. That's my file note.

25

With Mr Parker?---Yes.

On 5 May 2014?---Yes. Yes.

30 So there has now been a break of about a week. And the first line says:

We've done numerous "retirements".

But the "retirements" is in inverted commas?---Yes.

35

What's that meant to indicate? That the retirements weren't bona fide or - - -?---No. Not necessarily. I – I'm not sure, really, why I would have said that. I assume it was because it was a reference to the earlier intention to try and voluntarily retire people. I don't think much – in my recollection, I don't think anything turned on the quotes.

40

Okay. Thank you. So let's turn to tab 110?---Yes.

Trying to move through this. And this is a file note of 15 May 2014?---Yes.

45 And it's between you and Mr Parker, is it not?---That's correct.

Now, well, let's read the file note together. And please correct me if any of my readings of the file note are incorrect?---Yes. Yes.

Continuing:

5

Going to do this liquidating, selling one company to another.

?---Yes.

10 Is this from him to you or from you to him?---From Mr Parker to me.

Continuing:

15

Huge project. One person running it. Probably G.P. running it.

?---Yes. I – they're the words. I'm not sure what that means, because that would be Geoff saying that he's running it, I assume.

20 Yes. And you writing down that he will be running this new company; is that right?---Yes. That – yes. Well, I thought maybe the project. But – yes. Possible that it was the new company.

25 And was it – well, could it possibly have been the liquidation of the present company?---It's possible. I think, in that context where I'm talking about a huge project or he's talking to me about a huge project. I think that it – it could mean – yes. It may well mean that Geoff Parker was going to run the new company. That makes sense.

30 And then the next line is:

Want me to give advice - - -

?---Yes.

35 - - - *but we don't know on what yet.*

?---Yes.

40 And then the next line:

GEERS scheme will go back to 16 weeks in January.

?---Yes.

45 Is that you or him?---That's Mr Parker.

So he's fairly knowledgeable about the old GEERS scheme at this point, is he?---He seems to be.

5 And did you understand what that meant at the time?---It's hard to know because I certainly know what it means now.

Did he explain it to you?---Yes. I believe so.

10 And what does it mean?---Well, I understood that it meant that there was a cap on redundancy pay being introduced.

Yes. So if it was known at the time that, on 1 January 2015, that what was the present FEG entitlement - - -?---Yes.

15 - - - of up to four weeks a year - - -?---Yes.

- - - but unlimited amount of years depending on what the entitlement was under the agreement - - -?---Yes.

20 - - - was being changed to just a maximum of 16 weeks. Do you agree with that?---Yes. I do agree with that.

And so Mr Parker was presenting that to you?---Yes.

25 So was he suggesting that we need to get in with this litigation – liquidation before 1 January?---That was the inference.

That you drew?---Yes.

30 Based on what he said to you?---Yes.

35 And the reason for that, would it not be, is because if you didn't get the unlimited cap, Bruck might be up for some of the excess?---I'm not sure. He may have been thinking about the employees, but that – that's also possible. He didn't express that particularly.

Now, could you please read the next bit for me?---That part that says "liquidate"?

Yes?---

40

Liquidate and sell assets. Defunct –

COYS is my abbreviation for company.

45 Yes?---So:

Defunct company employees will want 80, not 100. 20 will get GEERS.

5 So he was saying that there would be two companies, would he not? That he would liquidate and sell the assets and the defunct company would be left with the employees?---I'm not sure, actually, what that meant. I thought it would mean the new company would take on 80 employees, not that the – not the hundred that were there.

Yes. That's right. But what – doesn't it say, "I will liquidate and sell the assets" ---?---Yes.

10 --- "and the defunct company will have the employees"?---I see what you mean. Yes. That's probably right. I think it would mean that the company that previously had the assets that would be sold would retain the employees, as I assume they did at that time, anyway. So it would be a company with employees.

15 So, at this point, are you very nervous?---Yes.

Did you express to Mr Parker that you were nervous?---I think it was at this point that I suggested we needed some insolvency advice.

20 And why did you suggest that?---Well, it sounded like it was happening rather than a hypothetical, which was perhaps as it had been in the past. And I was concerned to make sure that they did it correctly.

25 And by "correctly", you mean legally?---Yes. Obviously. Yes.

And were you concerned, at that point, that they were looking to enter liquidation so as to reduce the recovery of some of the employees of their redundancy entitlements as against Bruck?---To be honest, I – I – I think that I was just concerned more generally to protect Mr Parker's position in all of this.

30 I understand. So if we turn to 112, is that your file note?---Yes, it is.

Now, it starts with – and that's with Mr Parker on 25th of – 21 May 2014?---Yes. Yes.

35 It starts with:

Kon was very good.

40 ?---Yes.

And that's your comment or his comment to you?---No. That's his comment to me.

45 So I take it – at that point, what have you done to bring Kon – and who is Kon – into the situation?---So Kon is Mr Tsiakis, who will – is also subpoenaed. He is our restructuring partner in Melbourne. I had had a discussion with Kon about what the company was thinking about doing and I had said to him, "Look, it might be a good

idea if you get involved”, and he obviously had a discussion with Geoff by that point – Mr Parker.

5 And were you involved in all the discussions he had with Mr Parker?---Doesn't sound like I was involved in this discussion. I was in a subsequent meeting, which I think is file noted, with Mr Bart, Mr Parker and Mr Tsiakis, but it sounds like he had an independent conversation with – or this could have followed that meeting. I can't recall, actually, but, yes, I was in a meeting with Mr Parker and Mr Bart, but I don't know if that's the one he was referring to.

10 I see. And did Mr Tsiakis at that point express any concern to you about what was happening?---I – I think he said – I don't know that I recall him saying he had any particular concern, but I think he did express to me that he thought that this was a matter that required someone who was, you know, a good insolvency practitioner to be involved and he – I think he told me that he had a colleague or someone he used at maybe Ferrier Hodgson or someone.

15 Yes. And we will get to Mr Lindholm. Is that who you meant?---Yes, I think that's who it was.

20 But he didn't want to be involved. He didn't want to be any part of this, did he?---Mr - - -

Lindholm?---I don't recall. I didn't have a discussion with him at all, so I don't know the answer to that.

25 Okay. If we turn to the next tab, then?---Yes.

30 Is that a call between you and Mr Tsiakis?---Yes. That's right.

So 21 May '14?---Yes.

And the statement is:

35 *Don't do the deal a day or week before you put it into a VA.*

?---Yes.

Continuing:

40 *Any GEERS payments around 2009.*

?---Yes.

45 What does that mean?---I'm not sure what the GEERS payments refers to, actually. I don't know what – why 2009 would be – sounds like a year, but I – I can't really understand what that means.

Could it have been a comment about your clients having received payments three years before?---Well, actually, I had had no recollection of that, but now that rings a bell.

5 And can you tell me what bell it's ringing?---I think Mr Parker might have told me about that. I – I don't know any of the detail, but I think there was some reference to maybe National Textiles, something like that. I can't remember.

10 And why aren't we doing the deal a day or week before you put it into a VA?---I think Mr Tsiakis was saying don't – his thinking was don't do the deal the day or week before you put it into a VA, which was what - - -

15 Yes. Why?---I don't know. He thinks – he thought from an insolvency point of view that wasn't advisable.

Would it look good?---Sorry?

Would it look good?---I suspect that's what he would say. Yes.

20 So at this point are we concerned at all about things looking good, simply, or about the lawfulness of the conduct that's taking place?---I can't speak for Mr Tsiakis. I mean, I, you know, had some concerns. I suppose for me it was more about having moved it into the hands of people who knew more about it than I did.

25 And your concern, was it, at the time was that GEERS was being used to supplement redundancy payments?---I think I was just concerned that if they were going to have a transaction where company goes into liquidation and, you know, perhaps one or more of the same people come back into it, that it better be the right legal thing to do.

30 Right. And you were concerned at the time that it might not be the right legal thing to do?---Well, I thought it sounded somewhat odd.

You hadn't been faced with it before?---No, I haven't.

35 And you had been told, hadn't you, that it was being used – or that companies used this process with GEERS to supplement their restructures?---They were words used. Yes.

40 And you had known from your previous advice that that was not a basis on which GEERS would be paid?---I – yes. Back in the 2013 year I had given that advice. That's right.

45 Yes. So weren't you concerned with the fact that the reason why it looked bad was that you had given advice that GEERS will not be paid for a business restructure and now it was looking to you like that's exactly what Mr Parker intended?---I was concerned that the company was not doing that. Yes.

And you were concerned that that was an intention of why they were going into liquidation; isn't that right?---It certainly crossed my mind.

5 Well, you had been told that, hadn't you – that that's what companies do?---Yes.
Yes. That's correct. And, as I said, it certainly crossed my mind and I was concerned that – I had a good relationship with Mr Parker and I wanted to make sure that he was doing the right thing.

10 And by making sure he was doing the right thing – can you amplify that, given that we're here for the company. You sensed that he wasn't doing the right thing and you wanted to put him on course with an expert in the field; isn't that right?---Yes.
Look, I had a concern that there might be some questions raised about the transaction, if I can call it that. That's why I spoke to Mr Tsiakis and he seemed to share my view and suggest that – you know, that there was – there may be some
15 issues with it and that's where he obviously spoke to Mr Lindholm, but I – probably my concerns were justified to some extent.

And justified how?---In the sense that obviously Mr Tsiakis didn't say to me, “No. You're – you're an idiot.”
20

No. I don't think anyone would have said to you at that point that you're an idiot because you had been told that this was a common way in which people were using GEERS to supplement the business when you had given advice that that's not a purpose for which it could be used?---I had – I had heard that. I had been told that.
25 Yes.

If we then move to tab 115?---Yes.

Now, I know that you're not copied on this email?---Yes. Yes.
30

If I could ask you to turn to the email and tell me if you've ever seen – turn to the attachment. Tell me if you've ever seen that document before?---Yes, I've seen that document.

35 And when did you see it? At the time?---I think so. I think at some point shortly after that Mr Tsiakis would have sent me a hard copy of it.

Yes. So if we look at the first paragraph of that document where it says “summary”?---Yes.
40

And the last line of that paragraph is:

For the financial year ended 30 June 2011 the company reported revenue of 56.02 million - - -
45
?---Yes.

Continuing:

- - - and a net profit of 2.37 million –

5 which, as you will see, is up from the two years before that?---Yes. Yes.

Did that come as a surprise to you when you read that?---I'm not sure how closely I read the document, but it's certainly a surprise that – that information, anyway. And I may've looked at it, not read it carefully, but it would have come as a surprise.

10

Does it come as a surprise to you now?---Yes.

Does it make you – does it ring a bell for you, perhaps, about the veracity about some of the things that you may've been told in some of your phone conversations up to this point?---Not necessarily, although, you know, obviously I am surprised, as I said. I do recall that the – I was informed that the company was expecting a – a loss for the next financial year, but again I don't know whether that was the case or not. I – I hadn't looked at any figures.

15

20 Now, if I ask you to turn to paragraph 119, please?---Tab 119?

Tab 119. I apologise. Is that your handwriting?---Yes. It is.

25

Thank you. If I could ask you to turn to tab 120?---Well, maybe – yes.

122, I'm sorry?---122?

Yes?---Yes.

30 Were you involved at all, I should ask, about giving advice in regard to the general security agreement and the six-month time period for the charge?---No.

Was that all Mr Tsiakis?---I'm not sure he gave advice. I certainly didn't.

35 Well, if I ask you – sorry, I apologise – to turn back to - - -?---Yes.

To tab 120?---Yes.

I would ask you to have a – I know you're not copied on that. Were you shown a copy of that ever?---No. I probably wasn't at the time. I may have seen it since. Yes. I'm not sure what the advice was around that. I was certainly not involved. You would have to ask Mr Tsiakis that.

40

So if we turn to tab 122 - - -?---Yes.

45

- - - that's a memo from you to Mr Runia?---Yes. Correct.

And I think we're going to have to take this quite slowly, Mr Catanzariti?---Yes.

I apologise?---That's okay.

5 So the date is 23 May 2014. So we start with the first paragraph?---Yes.

There are a number of companies in the Bruck Group with common ownership?---Yes.

10 The main company in question is Bruck Textile Technology. It primarily manufactures uniforms for use by Defence or fire-fighting uniforms. Bruck Textiles as – and have you replaced that with “has”?---It looks like Mr Runia's handwriting actually.

15 Like his handwriting?---Yes.

Bruck Textiles has an EBA which has very generous redundancy provisions of three and a half weeks per year of service plus pro rata long service leave in the event of a redundancy and capped at 75 weeks?---Yes.

20 So that's reasonably generous?---Yes.

And you would accept, wouldn't you, based on what we discussed earlier, that if you got in before the 1 January 2015 window, FEG would pay for anything up to 75 weeks, but after 1 January 2015, it would be 16 max?---Yes. That's correct.

25 So paragraph 3 says:

30 *The generous redundancy payments coupled with the fact that many of the Bruck employees are long-serving employees means that there is a redundancy liability of in excess of 12 million were all of the employees to be made redundant. This far exceeds the net assets of the Bruck company.*

35 Do you see that?---Yes. I do.

Were you aware that the net assets of the Bruck company were in excess of 40 million only 18 months before that?---No. I wasn't.

40 And were you aware that the reason why the net assets of the Bruck company were less now were because of the restructures we talked about during 2013?---No. I wasn't.

Paragraph 4:

45 *Bruck has approximately 180 employees but in fact probably only needs 100 given the status of orders for its products. This is unlikely to change.*

Now, you've already been told that this is going to go, haven't you? That this is happening?---I think it was fairly certain.

5 And we had had that file note earlier where it said we're going to do this?---Yes. I think they had got some advice about that independently of us.

Then it says:

10 *Bruck is proposing to effectively liquidate the Bruck business. As part of that, the inventory, currently valued at \$10 million, although this may not be a true reflection of its value in a sale or liquidation, will be sold. The 180 employees will effectively be made redundant.*

15 ?---Yes. I see that.

Here's where we get to the good bit. Paragraph 6:

20 *However, a new company will be formed which will purchase the assets, eg, inventory of Bruck. This new company will also be owned by the same shareholders in the broader Bruck group.*

?---Yes. I see that.

25 And do you see the word that's written underneath the new company?---I do see the word. I do see the word.

And what is the word?---It looks like the word "phoenix".

30 It is the word "phoenix". Who wrote that on the memo?---Mr Runia.

Did he discuss with you the fact that this was a phoenix company?---I don't recall. It's unlikely he would have thought of that himself. I don't know.

35 But the point is, isn't it, that his thought was accurate?---Well, that's for others to decide; not me.

40 What do you think?---My recollection is it wasn't a phoenix company because the company actually took on the liabilities. I understood from my limited knowledge of phoenix companies that it's only where a company doesn't take on any of the liabilities that it's a phoenix company, so my understanding was that that wasn't the case here.

That was your understanding?---Yes.

45 Based on what your understanding of what a phoenix company is?---Yes. Correct.

And what you were told about the financial circumstances of the new company?---Correct. Yes.

Continuing:

5

This new co. will make offers of employment to approximately 100 of the Bruck staff. The offer will be fairly much in the same terms and conditions they currently enjoy.

10 ?---Yes.

We're not at red alert or DEFCON 1 at this stage?---No more than previously.

And paragraph 8:

15

The liquidator of the Bruck company will therefore have to make 80 employees redundant. It is unlikely they will have sufficient assets to extinguish those redundancies and the liquidator will therefore have to rely on the GEERS Scheme.

20

?---Yes. I see that.

So then we turn to the next page and it says:

25

Advice. We've been asked to provide the following advice. 9.1: Does Bruck's proposal to "reorganise" its business fall within paragraph 4(b)(v) of the GEERS policy which refers to GEERS not intending to supplement any form of business restructuring?

30 ?---Yes.

Now, pause there. First, at this point, is it being discussed at all that FEG has a different requirement?---I can't remember.

35

And, secondly, you're being asked to give advice in circumstances where the words being used are exactly what you were told by Mr Parker is what companies do all the time?---That's correct.

40

And isn't it true that you understood that at the time Mr Parker said that to you that that's precisely what he wanted to do when he put the company into liquidation?---It's consistent with what he had said to me.

45

So why would you be providing advice on that issue? Were you being used as a way to try and think up of a legal argument to disguise the true facts of what was occurring?---No, I don't think so. I think, as I said, the company was proceeding down a particular course and they had – my understanding was they had obtained

advice that it was a lawful and reasonable process to take and he – his question to me was in that context, would that have any effect of the G.E.E.R scheme.

Okay. So point one is you are told that companies do this all the time?---Yes.

5

That they use G.E.E.R.S to restructure, to supplement the restructure?---Yes. Yes.

The second point you tell me is that you thought they had received advice that what they were doing was lawful?---Yes.

10

But you had never asked to see that advice?---No.

Did you discuss that advice?---With?

15 What was the basis of your thought that they had received advice that this was lawful?---I think they had been to an insolvency expert and they had advised them that this was reasonable from a – an Insolvency Corporations Act point of view and that was the path they were going to look at.

20 But aren't they coming back to you for the legal advice now?---On the G.E.E.R – on the G.E.E.R scheme they are, yes.

25 Yes. And isn't the advice – isn't the instructions you have already been given by your client that it's common that these things are being used to supplement?---Well, that – that was in a conversation we had had, yes.

30 So what facts are you using to provide this advice that it's not being used to supplement?---Well, on the basis that the company had told me that they insufficient assets to meet their liabilities; the fact that they are not going to make a profit next year; the fact that I think at that point in time their major – one of their major financiers had pulled the finance from them and that Mr Bart, as I understood, was not going to contribute any more of his funds to keep the company afloat and the company would be – if it did not take action, including possibly putting it into administration, that it would be – wouldn't have sufficient funds to meet its
35 obligations.

And where are these instructions recorded?---They are not recorded here.

40 And the process of giving those – receiving those instructions, did you just accept them on face value, did you?---I did. Yes.

You never asked to interrogate the financial documents on which they were based?---No, I didn't ask to.

45 Well, then, if we move to 9.2:

Wouldn't it affect our view of the above –

That was the answer to 9.1?---Yes.

Continuing:

5 *... if the 100 employees who are offered a job by Newco are placed to a service company rather than being offered employment by the company that takes over the assets of Bruck?*

?---Yes.

10

I have got to suggest to you at this point that you must be very concerned about what you are being asked to give advice on?---No, it's not unusual for companies to use service companies to employ their staff, so that – that wasn't in itself anything unusual.

15

I understand that, but in the context of where that company is going to take over the assets of Bruck and G.E.E.R.S is being discussed as paying for the entitlements of the employees?---I don't think that fact would have affected anything to do with the employment liability issues.

20

Well, then, let's move to 9.3?---Yes.

Continuing:

25 *In a usual transfer of business this arrangement would involve a transfer of business from the liquidating company to Newco, the new employer – ie. Newco has the option to require the old employer, ie the liquidating –*

which means liquidated company?---Yes.

30

Continuing:

...to pay out the annual leave for employees it makes offers of employment to –

35 ?---Yes.

Continuing:

40 *...rather than have Newco take over the accrued leave entitlements. If Newco told the liquidator that it would make offers of employment to the 100 employees but that required the liquidator to pay out their annual leave, could this annual leave payment be funded from the G.E.E.R scheme?*

?---Yes.

45

Isn't all of this about – aren't you being asked for advice on how to make the G.E.E.R scheme restructure this business so that it bears the liabilities of the

entitlements rather than the shareholders interested in the Bruck Group?---Well, there certainly were elements of this that were about whether – how much of it G.E.E.R.S would pay in these circumstances of an insolvency, yes.

5 Let's move to 9.4. And I'm going to ask you to answer that question again once you have read 9.4?---Yes.

Continuing:

10 *As part of the arrangement consideration is being given to having an expression of interest from staff about whether or not they would want to put their hands up for redundancy. My concern about this is whether this makes the arrangement look better or worse from a G.E.E.R.S point of view.*

15 ?---Yes.

What I want to suggest to you is that normally when a company goes under it goes under because it is insolvent. And normally it goes under because it wasn't profitable?---Yes.

20

Would you agree with both those statements?---Yes.

Therefore, it is unusual that the same people who ran the insolvent company would seek to start up a new company running exactly the same type of business. Would you accept that?---Yes. As I said, I haven't done it before, but - - -

25

Even what advice you are being asked for is not for what G.E.E.R.S will pay for in the ordinary course of things, but how the transactions may be structured so that G.E.E.R.S pays as much as possible of the entitlements?---There was an element in which they were looking to G.E.E.R.S to minimise the redundancies, yes.

30

So it was an intention of the transactions that they wanted to enter to have G.E.E.R.S – to avoid Bruck's entitlements to its employees for redundancy and have G.E.E.R.S pick up as much as possible?---I think in the case of employees made redundant, yes, that's right.

35

Thank you. And had you discussed that with Mr Parker?---Which part, sorry?

The response to this advice?---Yes. I think that the discussions were along the lines that Mr Parker said that the alternative was that if the company was insolvent that they would all be – need to be made redundant in a – in a liquidation and, therefore, if the company didn't have sufficient assets, which it didn't according to Mr Parker, then they would all go into the G.E.E.R scheme anyway.

40

How did he explain to you how this new business would be picking up the 100 new employees?---Well, presumably the funds came from somewhere else.

45

So funds that weren't available to Bruck but would be available to this new company?---Yes, that's correct.

5 On the hypothesis that G.E.E.R.S paid the entitlements of Bruck's employees?---Yes, that's right.

10 So someone – we don't know who – was willing to fund the new company that would run the same business. That same person wasn't willing to fund the existing company and was looking for G.E.E.R.S to pay for the entitlements of the employees that weren't required?---Well, yes, certainly someone, presumably, who wasn't currently funding the Bruck company would fund the new company.

Are you sure about that?---Well, that's what – that was my understanding.

15 Were you told that?---Yes.

You were told that somebody different would fund the new company?---Not somebody different, no.

20 You were told the same – some - - -?---I thought Mr Bart would be somehow involved in the funding of the new company. That was my understanding.

25 So you were told that Mr Bart was prepared to fund the new company which would conduct the same business with 100 of these existing employees, but wasn't prepared to continue to fund the existing Bruck?---That's what I was told.

30 On the basis that you would enter into that transaction to have G.E.E.R.S pay for the entitlements?---I'm not sure about that. I was certainly told that – by Mr Bart that he had put in lots of money into the company and it wasn't a viable business going forward and he - - -

35 Because of the amount of the redundancy entitlements?---Well, I think it was – I think his – his explanation was that the company wasn't going to make a profit and wouldn't make a profit in the foreseeable future.

40 But wasn't the thing that he told you on the file note you recorded that the big issue is the redundancy entitlements?---That was a major issue, yes, but I don't think profit is based on redundancy entitlements, so that would have been a contingent liability. It was – my understanding was that the company just wasn't making a profit.

But it certainly would make things better if somebody else picked up the tab for those redundancy entitlements, wouldn't it?---That sounds right.

45 And an intention of starting the new company upon which the same business would be conducted would be to have G.E.E.R.S pay for as much of the discarded employees – and I put that neutrally – the discarded employees' entitlements being paid for by G.E.E.R.S?---That would be an advantage to a new starter.

And that's what you were told, wasn't it?---Probably. I don't know that I was told in so many words, but I think that's probably right, that if they had a company with a lot less employees that would be advantageous and the business would be worth more.

Did you at all read the fact that you were asked to be giving advice about this as to help them execute something that may be a sham?---No, I wasn't concerned based on my understanding of the instructions they gave me that it wasn't a viable business and that it would go into liquidation in any event and the employees would all be
5 made redundant in that circumstance. But I think it was also the fact that we had – I had organised for Mr Tsiakis to be involved and that gave me a level of comfort in that we had let them know our views about the transaction.

10 And when you say let them know your views, what was your views about the transaction?---Just, I think, as per the file note previously that Mr Tsiakis – whether it was his view or after having discussed it with Mr Lindholm – thought that what they were proposing, which I understand was one of a few options – but what they were proposing with the – one of their options, at least, was not necessarily the way they would recommend it.

15 But it's not Mr Lindholm that carried this through, is it?---No, it wasn't. It was - - -

20 He didn't want a part of it, did he?---Again, I don't know the answer to that. I think that – actually my recollection was that Mr Bart had arranged for independent insolvency advice. They continued through the path of their advice having come up with a few options and recommended one of them. And that had been carried out in accordance with that advice. I think the liquidator was then a different person altogether.

25 Mr Tsiakis didn't discuss with you any of this meetings with Mr Lindholm?---Not really, maybe briefly. I think he's again – as I have said, I think he said Mr Lindholm didn't favour the – the suggestion of selling the assets and then liquidating the company. So he didn't want to – he didn't agree with that, but in the end I don't think that we were asked to provide any ongoing advice and support in relation to the
30 insolvency arrangements.

Let's go to tab 126 then?---Yes.

35 I think that's another of your file notes, is it not?---Yes, it is.

And it's you and Mr Tsiakis?---Yes.

40 And you go through on 26 May and you talk a little bit about what happens if it goes into liquidation - - -?---Yes.

- - - for the security interests?---Yes.

45 Whether they will be void. And I think it must be Mr Tsiakis who says to you, "Unless it's at least six months before liquidation". Is that right?---Yes, that makes sense.

And that it was registered on 8 January 2014?---Yes.

So, in other words, the security interests must have been registered at least six months before the company goes into liquidation in order for it to withstand liquidation?---That seems to be what that means.

5 And you knew you had another window approaching, didn't you, on 1 January 2015?---I was aware of that, yes.

So G.E.E.R.S would then be capped – well, FEG would then be capped on 1 January?---Yes.

10

What does the next line say?---“What will G.E.E.R.S think?”

15 Why do we care what will G.E.E.R.S think?---Well, again, I think my concern was that depending on the arrangement they chose I was concerned about – that the scheme saying, “What's this arrangement?”

20 But don't you just go insolvent and if you go insolvent legitimately G.E.E.R.S picks up the tab. And if you don't go insolvent legitimately – if you use it to restructure your business then G.E.E.R.S won't pick up the tab?---Well, that's true. And, as I said, my concern was – in particular, because of what I had been told from Mr Tsiakis – that the arrangement they were proposing wasn't necessarily one that he or Mr Lindholm would recommend. So my concern was, well, how does this all look?

25 So you were concerned, how does it look for the terms of G.E.E.R.S on the basis that it probably wouldn't pass muster with G.E.E.R.S. Or, sorry, I withdraw that. You were concerned about what G.E.E.R.S would think because, in your mind, there was a possibility that this was being done to supplement a restructure rather than being a genuine insolvency?---I certainly was concerned it may look that way.

30 Well, you were concerned it may look that way because it might be that way?---Possibly.

35 Yes or no? At this point, I would have thought you would have had concerns?---I did have concerns, but as I said, I'm being told that there's a company that legitimately can't trade and has liabilities that don't meet its assets, so that might be a circumstance where you can lawfully place the company into liquidation.

But isn't your internal expert - - -?---Yes.

40 - - - telling you that he had concerns as well?---He – he was saying that, yes.

45 And the reason why we think – we're worried about what G.E.E.R.S will think at this point is because G.E.E.R.S might think the truth?---Well, I think we're thinking the company should think about how it's doing it because it needs to make sure that it's doing it correctly. I don't know that we - - -

I just want to know how you go insolvent correctly?---Well, you go insolvent correctly because you legitimately may be trading while insolvent if you don't go into liquidation and you don't have – well – and that – that's first of all, and then, I suppose, G.E.E.R.S would be the second part of that, which is if their liabilities don't meet the assets - - -

I think - - -?---I'm sorry. Assets - - -

- - - that's my point. You go insolvent because you can't meet your debts as and when they fall due?---Yes.

And so why would what G.E.E.R.S think have any impact on whether you've gone insolvent – you're going insolvent or not?---Well, clearly because the – there's a new company setting up to do the same thing.

Precisely, and that's what made this different, right?---Well, it certainly made it unusual from my point of view, yes.

So it wasn't just about whether this company was insolvent – the company now in liquidation?---Yes.

You were concerned because you knew that this company was going insolvent - - -?---Yes.

- - - but another company doing exactly the same thing with the same people interested in it was going to be started up?---Yes, that's that's correct.

And Mr – to your knowledge, from conversations with him, Mr Tsiakis had that concern as well, didn't he?---I think so.

And so what happened? Were those concerns expressed and somebody else was found to do the deal?---Those concerns were expressed in a meeting we had with the company.

So tell me about that?---I can't remember when it was. It would have been around that time. It was with Mr Bart and Mr Parker and Mr Tsiakis and I, and they – I think they canvassed the three options that their insolvency expert had canvassed with them and the recommendation that – that they – I think there was supposed to be a sale of various assets prior to the liquidation, and then the company would be put into liquidation soon after.

So this is Mr Nicodemou, is it?---I don't recall the name.

But it's not Mr Lindholm?---No.

So to your understanding, Mr Lindholm gave negative advice, did he, and somebody else was found?---No. They went with the original person who gave them, I think,

those – those first options. By the time we got in, they'd – I felt as though their course of action was already in train, and they were kind of asking us to pressure test it, and we did, and they decided to follow the original advice.

5 Okay. So let's – I'm sorry. Let's break that down. What do you mean by the time you got in? You've been in this since 2012?---Well, by the time I got Mr Tsiakis involved, they already had their advice, as I understand, from their insolvency practitioners. I didn't necessarily know that at the time, I don't think, but anyway, I asked Mr Tsiakis to be involved. We had a meeting with them. It was at that point,
10 certainly, that their insolvency advice was outlined to us.

And when you pressure tested it, how did you pressure test it?---I didn't pressure test it. That was the purpose of Mr Tsiakis being there.

15 And so the purpose of Mr Tsiakis being there was to pressure test it?---I think so.

And he did so according to – with your knowledge, he did so?---Yes.

20 And he said to you, what, it didn't pass – it exploded?---I think he may have even – well, I don't know if he used those words. I think he – as I said, he expressed concerns about selling the assets prior to the liquidation event, and that was – I'm fairly sure that was conveyed in the meeting we had.

25 Did you know that some of that had already been going on in 2013?---What – what was that?

Selling the assets of - - -?---No.

30 - - - Bruck Textile's?---No.

So if we then turn to the next tab, 127, that's another conversation between you and Mr Parker - - -?---Yes.

35 - - - on 26 of May?---Yes.

John knows everything about it. Chris is not aware of it?---Yes.

Sandip not aware of it?---Yes.

40 EOI explained my misgivings. Can you, please, help me with - - -?---I'm not sure
- - -

45 - - - understanding that?--- - - - what EOI is. That's usually expression of interest
- - -

That's what I thought too?--- - - - but I'm not sure how it works in that context. John, I think, is John O'Connor - - -

Yes?--- - - - who's internal Bruck. Chris I assume is Chris Spencer. Sandip is also Bruck. I think he might be the CFO or something of that nature, and when I talk about it, I think the - the probable or - probable insolvency or liquidation.

5 I see. So it was being withheld by Chris - from Chris and Sandip, but John knew all about it?---I think that's what that file note means, yes.

And so then further down, we go to talk about does G.E.E.R.S only apply to EBA staff?---Yes.

10

But we know, of course, it applies to not only to or contract benefits you spoke of, but to outworkers - - -?---Yes. I didn't know - - -

- - - as well?--- - - - at the time, but yes.

15

So at that point, Mr Parker was seeking to know from you, was he not, all about G.E.E.R.S and how we can maximise the value from Bruck out of G.E.E.R.S?---I don't know. He was asking me who it applies to. I see. Well, he was asking if it extended beyond EBA staff, yes. So I suppose his question was does it apply if non-enterprise agreement covered staff are made redundant.

20

And is part of the reason for that, in your discussions with him, that he wanted to know who he should and could rehire for the new company?---I don't know the answer to that. He certainly didn't say that.

25

He hadn't discussed that with you?---No.

Can we turn to the next page - the next tab, behind 128?---Yes.

30 That's - down the bottom of that page - - -?---Yes.

- - - there's an email from Rhonda Wallis on behalf of you - - -?---Yes.

- - - to John O'Connor, to yourself, obviously, and to Mr Parker and Sandip?---Yes.

35

It says:

Dear John, I had a brief discussion with Geoff about this morning. I haven't had a look at the expression of interest yet.

40

And that's why I took your attention back to - - -?---Yes.

- - - EOI. Do you recall what expression of interest that was?---That may have been expressions of interest for redundancy.

45

I think that's probably right, if you read - - -?---Yes.

- - - on?---Yes.

5 *I explained to – however, I explained to Geoff that I had some concerns about us issuing the expressions of interest for redundancy payments at the moment or even next week. My concerns were for the following reasons.*

?---Yes.

10 *By asking for expressions of interest for redundancy, the message it sends is that we have money to pay for potential redundancies or we wouldn't ask for expressions of interest in the first place. If the company then goes into some form of administration, G.E.E.R.S might question why we would offer redundancies on the basis that the company would presumably pay them and then, soon after, go into administration.*

15

?---Yes.

20 Why are you sending those sorts of emails?---Because my concern was why would you have expressions of interest in these circumstances.

Yes. And why was that your concern?---Well, it looked odd that we were asking people to step forward for redundancy and paying them redundancy in circumstances where the company didn't have liability – sufficient assets to meet its liabilities.

25 And so that's what you were told?---Which part of that, sorry?

That the company didn't have sufficient - - -?---Yes, that's right.

30 And - - -?---Well, that's what I've been told for some time, so it seemed off in that context.

And what was the response to this?---I think, from John O'Connor - - -

35 Yes?--- - - - it sounds logical.

Sounds logical because – did you then have a discussion about how we wanted G.E.E.R.S to pay as much as possible?---No, I don't think we had that discussion.

40 But, see, this is what I want to understand, and perhaps you can help me with this. If we're talking about offering expressions of interest for redundancies - - -?---Yes.

45 - - - why are we concerned about not doing it so that G.E.E.R.S can pay for those redundancies?---Well, I suppose the point I was making there is I'm not happy with what they're – pardon me. I'm not happy with what they're doing, and I thought that there was something that didn't look right about it.

See – and I understand what you're saying - - -?---Yes.

- - - but you need to understand that at this point, it's either your idea or it's their idea?---Yes.

5 So when you say you're not happy with what they're doing, could you, please, elaborate on that?---Well, my concern was that it didn't look – it didn't look above board, if you like because they seemed to have money to pay for some staff, and I was concerned that that seemed at odds with what they were saying to me.

10 So what I'm worried about – or sorry. I withdraw that. When you say you were concerned about how things look, do you really mean you're concerned with how things are? Because what we're – shouldn't you be concerned about not making a silk purse out of a sow's ear, but trying to figure out whether it is a sow's ear in the first place?---Yes, to some extent, but as I said, I think I suppose I rely on the instructions I receive, and that was that they were a company with financial difficulty
15 and in sufficient assets to meet their liabilities and also that according to the company, they were – they had obtained advice that said this was all legitimate from a liquidation or insolvency point of view, and therefore, there shouldn't have been any issues with it, but as I said, the only concern I had was, well, if that was all the case, then what are the expressions of interest about?

20

Can we turn to tab 132, please?---Sure.

So that's a file note of your conversation with Mr Tsiakis, is it?---That's correct.

25 And this is Mr Tsiakis giving you an update?---Yes, it is.

So let's go through this file note.

Update. Got on well with Phillip.

30

I imagine, at this point, that's an important thing?---Yes.

He conceded we will have to wait until July.

35 And that's because of the charge, is it?---Yes. I believe so, yes.

John thinks he would prefer to pre-appointment sale, whereas Jay thinks do sale through VA.

40 ?---Yes.

Can you help me with that? Which John and which Jay?---I think that's John Lindholm.

45 Yes?---I'm not sure who the other Jay is. No. I don't know. I'm assuming another insolvency person.

John loath to be involved if it is a pre-appointment sale.

?---Yes.

5 Mr Lindholm was loath to be involved in this if it was a pre-appointment sale; is that correct?---That's what it says, yes.

He had only been involved in this after a couple of meetings, hadn't he?---Yes, that's right.

10 And his reaction was that he was loath to be involved in it?---That's what Mr Tsiakis must have said to me, yes.

15 And did Mr Tsiakis explain to you why he was loath to be involved in it?---Not sure. I think, based on previous discussions, that he didn't think that was the right way to go about it.

20 Is it a bit stronger than that? That he may not have thought it was a lawful way to go about it?---I don't know that he has ever said that, but you would have to ask Mr Tsiakis that.

I will. The next line is:

Have obtained government grants over the period.

25 ?---Yes.

And that means Bruck, correct?---Yes.

30 *They made money over the period. Now they're saying they cannot make money moving forward.*

?---Yes.

35 Then we have a reference to section 596AB of the Corps Act?---Yes.

And the reference is transactions that may adversely affect an employee's entitlements?---Yes.

40 *If you enter into a transaction that leaves 80 employees behind that don't get any redundancy from the company, it could be a breach of that.*

?---Yes.

45 *I will not include that in my advice.*

?---That's right.

Please, explain to me what that means. I want to be fair to you?---Well, I have got no – I had no idea what that Corporations Act provision was, and I said to him I wouldn't include it in my advice because that was outside the realms of my expertise.

5 Is it within – was it within Mr Tsiakis' expertise?---I don't know. He was obviously aware of the provision. I wasn't.

Now, to be fair to you, let me tell you how an objective observer would read this file note?---Yes.

10

An experienced insolvency practitioner, Mr Lindholm, with a good reputation is loath to be involved in this transaction. The next statement is that the company has obtained government grants over the period, and they've made money over the period, and now they're saying to people they can't make money going forward.

15 Then the next comment is, "Is this a breach of section 596AB of the Corps Act?"

What I want to suggest to you is that you and Mr Tsiakis were discussing whether what Bruck was doing would be a breach of section 596AB of the Corps Act in the context of those other things in the file note?---Well, he certainly raised it for that purpose – that he raised it, presumably, because he said could that be an issue?

20

Why would he be asking you?---I don't know. That he, perhaps, was – was aware of it. I don't know whether he independently was aware of it or Mr Lindholm had said something, but he was obviously raising it with me.

25 But do you not see now, based on everything we've gone through in your recollection of the events, that what was happening could very well have been a breach of section 596AB of the Corps Act?---Yes. That was a concern. Well – well, not sure about 596, but certainly that was something that presumably Mr Tsiakis thought was a concern.

30

And so he thought it was a concern at the time - - -?---Yes. I - - -

- - - because he thought - - -?--- - - - assume so.

35 He thought that an intention of entering into this was to prevent the employees from Bruck receiving the full amounts at all or the full amount of their entitlements?---Well, that seems to be the suggestion of the provision, so I assume that was his concern. Yes.

40 Did – he expressed that concern to you, didn't he?---Well, I guess so. I mean, I don't really remember that conversation, but, yeah, I – I expect that he did express that as being a concern.

45 And didn't – why didn't you – or did you already have that concern yourself, based on everything we've been through?---I didn't have a concern in relation to that provision of the Corporations Act, as I said, because I didn't know that provision existed. But - - -

Did you have a concern about the – let’s assume that the provision didn’t exist. Did you have a concern about the facts, the facts being that the liquidation was being entered into and the assets were being sold in order to prevent the employees of Bruck receiving their entitlements at all or any – or the full value of them from Bruck?---Certainly, I didn’t until that point, because I had no idea of that provision.
I - - -

No. No?---I - - -

10 Just those facts. Forget about the provision?---Yes. Well, I was certainly concerned that the employees may not get their complete entitlements. But as I said, my instructions were that had the company not been reborn, if you like, that all of the employees would have been made redundant.

15 Didn’t you have a concern that – forget the provision. Put the provision to one side. Didn’t - - -?---Yes.

- - - you have a concern that this liquidation was being entered into and the transactions were being entered into so that G.E.E.R.S would pay for the entitlements rather than Bruck?---The – certainly, you know, G.E.E.R.S was being used as part of the transaction. But the – as – as was explained to me, if the company had gone into liquidation or, indeed, if they had tried to make 60 employees redundant, the company wouldn’t have had the funds to pay them, anyway. So, presumably, it would have gone into liquidation in any event.

25 That was what you were told?---Yes.

So if we turn, then, to tab 133, and we have an email from the honest Mr Runia, don’t we, to you?---Yes.

30 And it’s dated 29 May 2014?---Yes.

And begins:

35 *Howdy, Rick. I thought I should email you a summary of some of the issues we were discussing yesterday, with a view to preparing the advice for Bruck.*

?---Yes.

40 Continuing:

45 *There is clearly some uncertainty around how this will play out, maybe because the Department of Education appears to have discretion with respect to granting financial assistance under the scheme.*

So then there’s some dot points. The first ones are the headings:

G.E.E.R.S Now Known as FEG

?---Yes.

5 So we've finally caught up with that some 16 months later. And then is the next subheading:

10 *Are Brucks employees that are made redundant and not reengaged by the Newco following Bruck's reorganisation eligible to receive their entitlements under FEG?*

?---Yes.

15 So the point that Mr Runia was putting in his email to you was that what was happening was Bruck's employees were being made redundant and not being reengaged by Newco following Bruck's reorganisation, that – in other words, was it not the case, as Mr Runia points out, that this liquidation was a reorganisation of Bruck?---Well, it was a reorganisation of sorts, I suppose, in that the business continued on in the – in the new company.

20 So if it's a reorganisation of Bruck and we've known from the beginning that G.E.E.R.S/FEG doesn't pay for the restructuring of businesses, what have we been doing for the last year and a half in giving advice on it?---Well, I think the word "reorganisation", though, is simply a summary of what I had told him, which is that
25 the company is having financial difficulties. It's proposing to sell some of its assets, enter into liquidation. May have told him that that's consistent with its insolvency advice and there will be employees who will not be offered jobs.

30 Were you aware under the FEG Act that the person receiving the claims or the department who received the claims for FEG assistance have a discretion to refer those claims to an interagency phoenix task force?---No. I wasn't aware of that.

35 And that some of the agencies on that interagency phoenix task force are ASIC and the ATO and the Australian Crime Commission?---Not aware of that.

Were you aware of it now - - -?---Yes.

- - - before I told you?---No.

40 And so in circumstances where Mr Runia has described this as Bruck's reorganisation and where he has previously described the new company as a phoenix company, did the two of you have a discussion at all about what was going on here?---Well, I don't recall. And as I said, I – my understanding is it's not a Phoenix company, first of all. And a reorganisation is simply a description that we've used to
45 paraphrase what has occurred or what was proposed to occur.

Which is the same company being reorganised rather than the company going into liquidation?---Well, which is consistent with their insolvency advice that they sell assets in this business, it goes into liquidation and then a new company is formed. If that's – that's what I would refer to as a reorganisation, I suppose.

5

Who's the lawyer giving them insolvency advice?---I've got no idea.

Right. And you've never seen any legal advice?---No. I believe Mr Bart has his own lawyers.

10

Right?---So - - -

So just to get this clear, your instructions are, "We will go insolvent if we don't do this." You accept those instructions?---Yes.

15

And that, "We have advice that all of this is lawful"?---Yes.

And so that is what is expressly said to you?---Yes.

20

And so you say, "On the basis of that two factual instructions, I will now give advice about how to get this through so it looks the best way for G.E.E.R.S"?---No. That's not true.

25

Well, then, what is true?---Well, it's true that I had – was told that the company would go into liquidation one way or the other, because it didn't have sufficient assets or funds to meet its debts, that it wasn't going to make a profit. I was aware that they had their own independent insolvency advice. I had never been asked to provide anything to do with that. I had never looked at the financial circumstances. So I accepted what they said was the case, and I accepted that it was therefore, based on those instructions, lawful. But my concerns, nevertheless, were that I still had some concerns about the way it looked.

30

Notwithstanding those two instructions - - -?---Yes.

35

- - - those concerns arose because you had concerns, did you not, about whether those instructions were correct?---I – not really. I think my concerns were I wasn't aware of what the company had been doing internally. I wasn't familiar with, you know, company restructures and insolvencies. So I – I was no expert in that area, but primarily because I wasn't aware of what the company may or may not have been doing. I was – I accepted their instruction that it was an insolvent company or potentially and acted on that basis.

40

So what I really want to put is that – and it may be because of the naivety of a junior lawyer; I don't know. But Mr Runia's advices seemed to have a remarkable clarity about the way in which they've expressed, which seems to reflect the true position we've been discussion. Would you accept that?---With the use of the words "reorganisation" and "phoenix company"?

45

Yes?---Well, I'm not sure if it is a phoenix company. As I said, I don't accept that as being an accurate representation of it. And in terms of reorganisation, well, it's, you know – I mean, they had been reorganising for some time, as I understand, moving employees here and there. I don't think that that word "reorganisation" was used to mean anything other than the changes that were being made.

I see. Well, if we turn over to the back of the page:

10 *Again, I think the risk is that FEG financial assistance is discretionary.*

?---Yes.

Continuing:

15 *And DoE might exclude these payments on the basis that it supplements the cost of Bruck's restructure.*

?---Yes.

20 Is that something the two of you discussed?---Yes. It would have been. And, again, as I said, my concern still remained that, notwithstanding the advice they had received, you know, there was a concern about how it looked.

25 And you didn't want to inquire any further?---I'm not sure how I would have inquired any further. If I had looked at the financials, I would have been none the wiser, because I'm not really very – very experienced or knowledgeable in that area, so that wouldn't have helped.

30 I see. And then you will see Mr Runia's final point of advice, that voluntary administration not going to do it; it has to be an insolvency event?---Yes. That's right.

And so this – he says:

35 *This reflects the logic that the FEG scheme should not be used as a restructuring tool to supplement the funds that might otherwise be available to creditors generally.*

?---Yes.

40 well, then, let's go to the next note, which is a file note, I take it, of a conversation you've had with Mr Parker and Mr Bart?---That's right.

45 29 May. And it says:

Bruck Textile Technologies Proprietary Limited is a 60 to 70 year business, and it's down to 180 employees.

?---Yes.

Now, down the page:

5 *New company Bruck Textiles will become a wholesaler and deals with customers. Buys from BTT.*

The vast majority of EBA employees are in BTT. Is that correct?---Yes. That's what it says. Yes.

10

So there will be a new company to take care of that?---Yes.

Then it says:

15 *We need to rationalise and reorganise the supply side financially and can't do that with 80 people, because of the EBA.*

?---Yes.

20 Continuing:

Total redundancy costs are 12 to 14 million. Even a partial redundancy is 8 to 10 million.

25 ?---Yes.

Then the next line:

The business is solvent today. All the restructures had approval from banks.

30

What did you understand by, "The business is solvent today"?---Well, I assume that means it was trading solvent, so it could meet its debts.

But it went into liquidation - - -?---That's right.

35

- - - just more than a month - - -?---That's right.

- - - after. Now, did you get any further information about why it went into liquidation more than month after?---I did. I understood that G.E then withdrew its funding in May. It might have been the end of May. And it was also the time when, according to Mr Bart, he had asked the company to provide a budget for the following year. And the – the budget for the following year showed that it would make a loss or a significant loss – I can't recall which – and that he was not prepared – he was a – a creditor of the company, I think, and he wasn't prepared to keep putting in any more money or put in any more money that would be needed.

45

I see. I see. So if we go the next page - - -?---Yes.

- - - you – there set out a conversation between Mr Bart and Mr Tsiakis?---Sorry.
Where you – where are you reading from?

The page 144 in the top right-hand corner?---Yes.

5

Is that, in the middle of the page, a conversation between Mr Bart and Mr Tsiakis?---Yes. Yes. I see that.

So Mr Bart says:

10

I believe, as long as the company is solvent at the time of the restructure, it's difficult for a court to undo, as opposed to if a company is insolvent and the court has greater scope to interfere.

15 ?---Yes.

Mr Tsiakis says:

20

That is true as a general rule. Look at the efficacy of the decisions.

I'm not sure what that means, but - - -?---I'm not sure what it means.

25

- - - I'm not sure what you – I don't think you would know what it means either, but I just want to get a correct understanding of what the words are. And Mr Bart says:

This restructure is preserving our ability to be a wholesaler, as we think that will work.

30

Is that correct?---Yes. That's what the words say.

I've read the words correctly?---Yes.

35

So then on the next page, under point 2 for Bruck Textiles Technology, Liquidate the Company, and what does the final line say?---Sorry. The final - - -

So under subheading 2, Liquidate Company, what does the final dash point say?---Final dash point:

40

Creditors get nothing. Employees go to G.E.E.R.S.

What does the first dash point say?---In number 2?

Yes?---

45

Zero money left for creditors or employees.

So we got to the situation that file note records, does it not, that if we liquidated the company in a month, there will be no money for the creditors, and the employees can go to G.E.E.R.S?---That's – that seems to be the inference. Yes.

5 And, yet, we're also discussing that there will be a profitable new business starting up, running exactly the same thing?---That's right.

I see. Then on the next page, about two-thirds of the way down:

10 *The intention is the two companies –*

that means second company, I take it, company number 2?---Yes. I guess that's right.

15 Continuing:

The intention is there's two companies. One buys the assets – and one company buys the assets and one company takes over the employees.

20 ?---Yes. I think that was the service company idea.

And so one company will be bad company and one company will be good company. Is that what you understood it to mean?---How do you mean?

25 Well, one company would be left with all the employee entitlements and that's the company that will go into liquidation and everything good will go to the new company?---Sorry, I was thinking that was the reference to the – after the liquidation. Yes. I – I think – well, I'm only guessing, I suppose, but I thought it meant that a company would buy the assets from Bruck and another company would employ the employees which I assumed means after the liquidation.

30

Well, then let's go to the next page and perhaps that - - -?---Yes.

- - - might make it clearer. Could you read out that part of the file note for me, please?---On the third page?

35

Yes?---So it's a heading GEERS. Liquidator makes decisions not enough work for employee. Makes position redundant, contacts GEERS and makes claims on behalf of employee for redundancy entitlements. Keep going?

40

Yes, please?---Employees will be placed into service company not operational company. Is that okay. Does it affect the smell of the transaction in terms of GEERS. Also change on 1 January reducing Need to do before that. Also advice is not supplementing business – sorry, advice – also advice in not supplementing business restructuring, shifting annual leave onto GEERS for employees taken over by company should we – should - - -

45

We do - - -?--- - - - we do expressions of interest staff in redundancy, perhaps. And then five is liaising is with union, when and how much.

5 So we're worried about how the transaction will smell in terms of GEERS are we not?---That's what the file note says, yes.

Well, that must have been – was that your concern or somebody else's concern?---I think it was probably someone else's concern but it could have been mine.

10 And we're - - -?---As I said, I was concerned about how it would look.

Well, it says does it affect the “smell” of transactions in terms of GEERS?---Yes, yes.

15 And there's also a concern – either yours or somebody else's, perhaps you can tell us - - -?---Yes.

- - - that this happened before 1 January before the cap sets in for GEERS?---Yes.

20 So GEERS can bear the full brunt of the entitlements?---Correct.

Rather than Bruck having to bear any of it?---Yes. I think they were wanting to do it before 1 January.

25 Well, you know because you were on the call. Was it your idea or was it their idea?---No. It has never been my idea.

30 And so whose idea was it?---I don't know whether it was expressed by Mr Parker or Mr Bart but certainly in the initial discussions I had only ever spoke to Mr Parker so he would have conveyed those sentiments to me.

And they would want advice from you in not supplementing business restructuring?---Yes.

35 How can you give that advice when you don't know any of the facts about the restructuring?---Well, I suppose it's based on what they're telling me.

40 So – honestly, no offence is intended by this question – but I didn't stab the person. Your advice is I therefore didn't – you therefore didn't commit murder. Something along those lines?---Well, yes. Perhaps that's not the analogy I would use. I suppose I was relying on their insolvency expertise and their familiarity or someone else's familiarity with the financial affairs of the company and how this works from an insolvency point of view.

45 I think probably that was unfair. I think more correctly what I'm trying to suggest to you is this: someone tells you that the transaction is lawful?---Yes.

And then they say give me advice about why this isn't an instruction – this isn't about the restructuring in terms of GEERS?---Yes.

5 I'm not quite sure what your role is then. What is the advice you're giving in those circumstances?---Well, I'm obviously relying on their insolvency advice that they've already received that this is permissible from a liquidation Corporations Act point of view so I guess the question for me is and how would the GEERS scheme work in that context and would employees still have access to the GEERS scheme.

10 But they want advice from you, do they not, that this is not supplementing business restructuring?---Yes. That's probably fair. Well, I think what the advice was would this be something that if they say they've got the insolvency advice that's okay, would this be something that the GEERS scheme would nevertheless have an issue with or the FEG scheme.

15 Okay. So let's move to tab 137 – sorry, 136 which is advice?---Yes.

I will give you an opportunity to reacquaint yourself with that?---Thank you.

20 THE REGISTRAR: How are you going for time, Mr Kulevski?

MR KULEVSKI: Registrar, I think that we should – and I apologise – excuse Mr Tsiakis given the time it has taken. I think we will just be finished with this – we will be finished before 4.15 but not enough time to reasonably commence with Mr
25 Tsiakis.

THE REGISTRAR: Do you want to let your instructing solicitors let him know.

MR KULEVSKI: Yes. Stand this matter over to – 2 February.

30 THE REGISTRAR: All right. Well, so that – is he proposed to be catching a flight back to Melbourne today. Do you know?---Yes.

Or were you both travelling back together?---Yes. That's right.

35 You are. What time is that flight?---I think it was 5.30.

All right. So shall we finish Mr Catanzariti first and then we will have – I need to have Mr Tsiakis back in court just to formally - - -

40 MR KULEVSKI: Yes.

THE REGISTRAR: - - - adjourn this summons.

45 MR KULEVSKI: Yes.

THE REGISTRAR: Shall I do that now or shall he just wait till 4.15?

MR KULEVSKI: Well, I think that's a matter for the gentleman – if he wants to – if they want to fly back together I don't know so perhaps if one of my instructors could mention it to Mr Tsiakis and ask him what he wishes to do.

5 THE REGISTRAR: Yes. Just find out and then you might want to continue with – or resume that question.

THE WITNESS: Yes. I've read that, by the way.

10 MR KULEVSKI: Good. Thank you. So that's your advice on GEERS but
- - -?---Yes.

- - - is really about FEG. And Registrar, I should just mention something. My apologies, Mr Catanzariti.

15

THE REGISTRAR: Yes.

MR KULEVSKI: I think I will only require about an hour or an hour and a half with Mr Tsiakis. Is it possible that there would be a date before the end of the year for just that amount of time? Perhaps if I could leave that with you.

20

THE REGISTRAR: I will see if – I will check my diary before we come back to that question.

25 MR KULEVSKI: Thank you.

THE REGISTRAR: All right.

MR KULEVSKI: So if we can go straight to your summary - - -?---Yes.

30

- - - Mr Catanzariti. At paragraph 12, you say – paragraph 11 you say:

..... will therefore be whether the secretary –

35 And that's of the department –

takes the view that the insolvency caused employment of the relevant employees to end or whether in fact the secretary forms the view that the employment ended to a business restructure.

40

Paragraph 12:

The key will be to ensure that the liquidation is transparent and that steps are taken to minimise any suggest that assets were diluted or sold at below market value.

45

And paragraph 13:

In my view the best way to avoid any finding of insolvency did not cause the ending of the employment is to have the liquidator sell the assets rather than having a sale of any of the assets prior to liquidation.

5 ?---Yes.

That's right. Now, obviously, you wanted the liquidation to be – well, sorry, you advised that the liquidation must be transparent but isn't the real concern about what had been happening up until that point rather than what was to happen after it went
10 into liquidation?---Sorry, I – you might have to ask that again. Sorry.

Well, isn't the concern about in terms of the GEERS scheme whether given your knowledge of the restructuring that had been taking place continuously, what had happened with that rather than what would happen after liquidation?---No. That's
15 not correct. That advice stemmed from the fact that I had been told in that meeting with Mr Bart that the proposal was that the company would purchase the assets, for example, the stock I think it was, at a cost or at a price that was far less than the market value of the stock and that that was where I expressed a concern about that and that's why I put that in the advice.

20

I see?---That I had a concern about that and whether that was in fact accurate.

Now, are these advices just going out into the ether or are you getting feedback?---Well, I think you will see that there's not a lot of – Mr Parker and
25 certainly Mr Bart don't respond in writing to me.

Yes?---So - - -

And are they ringing you and saying we see or we agree or could you look at this?---I
30 think Mr Parker agreed with me.

And when you smiled is there a prospect that Mr Bart did not agree with you?---I think Mr Bart was heading in a certain direction.

35 I think you're going to have to elaborate on that please, Mr Catanzariti?---Well, I think that he believed that the advice he had received was correct and I think despite, you know, any concerns we had he believed that it was a legitimate course of action to take and – and so no amount of persuasion would seem to alter his views about the way to go ahead.

40

So when you say I think that you knew that based on, what – conversations with Mr Parker or from Mr Bart directly?---I think it was from conversations with Mr Parker.

45 And when you say the advice he had received, you're saying the independent other solvency advice he is receiving?---Correct.

And that your suggestion is that all the advice you've been giving on GEERS to this point, you thought that the he was preferring independent advice he was getting?---Mr Bart, you mean?

5 Yes?---Yes. I do believe that.

And you believe that because Mr Parker told you so?---Yes. I think I had a couple of conversations where he thought that Mr Bart was, you know – I don't know whether he said had confidence in that advice but believed that that was a sensible way
10 forward.

And was the implication that the advice was contrary to the advice you were giving?---I'm not sure what the – what his other advice was but certainly he took a different course of action to the one you will have seen in the notes where we didn't
15 believe it was appropriate to sell the assets before the liquidation.

But that wasn't so much your belief or your advice. Was that partly your advice and partly Mr Tsiakis' or was it - - -?---Well, you will – I think part of the advice I've given in that is – encapsulates Mr Tsiakis' advice too that he didn't believe that that
20 was the way to go.

I see. I see. Now, if we go to 141, so that's a conversation between you and Mr Parker on 18 July?---Yes, it is.

25 Less than a month before the company goes under?---Yes.

And he says at the middle of the page:

30 *Can they change gears including timing of changes to entitlement without changes going through Parliament. I said no, it is regulations that needs to be passed in Parliament.*

?---Yes.

35 What did he mean by that?---I'm assuming he may have meant could they change the – retrospectively change that 1 January 2014 date.

15 date?---Sorry, 15 date, yes.

40 And so he wanted it brought back or - - -?---No, no. I think he wondered whether they could change the date retrospectively, that is, the GEERS scheme – if they could change the date retrospectively.

45 Sorry, I think I understand. What you're suggesting is that Mr Parker rang you and said we know that the cap is coming into effect on 1 January 2015?---Yes.

Is there any possibility that if we put this company under this year that it could be changed retrospectively so as to impose the cap on that liquidation?---I – I think that would have been the gist of it, yes.

5 So what he is concerned about is even if I do it so as to take advantage of the cap-free environment at this stage I'm worried that – for this transaction to go ahead I need to know whether this transaction is going to go ahead whether they might retrospectively apply the cap to me?---That seemed to me to be his concern.

10 Now, at this point you know about 596AB of the Corps Act?---Yes. Well, yes. Although I hadn't looked at it I did – I would know about it, yes.

Even after all these file notes and all these conversations in all these years, is the preoccupation with GEERS and timing the liquidation around GEERS at all
15 concerning you?---Yes. It continued to be a concern for me but, you know, as I said, there were a number of issues. There was the sale of the assets and, you know, whilst I was being told that there were insufficient funds to meet debts, etcetera, and there wasn't going to be a profit some of the things seemed to be at odds with that and I was – the only comfort I had, if you like, was the insolvency advice that they
20 claim they had that seemed to say everything was all right but obviously I was attempting to do my best to persuade them that a sale of assets beforehand was not the way I would recommend or that we would recommend.

So – I see. So if you were – if your instructions were different about the 2013
25 restructures you may have had different GEERS advice to give?---What were the 2013 restructures?

Well, there were a whole series of them which I haven't put to you just on the basis that you didn't know anything about them, you say?---That's right. So if I had been
30 aware of them, did you say?

Yes. Your advice may have been different?---Well, it may have been. I think probably I might have looked a bit more carefully.

35 Yes?---But having said that, that's probably more a matter for an insolvency expert, not an employment expert.

And in terms of what's going on now, you've put all your faith on the fact that there is independent insolvency advice that what is going on - - -?---Yes.

40 - - - is lawful or is appropriate?---Yes. I think that's absolutely correct.

Now, in that context the fact that the insolvency itself is appropriate did you see that as a separate question about whether they were entering into the insolvency or
45 entering into – or any of the sales in an attempt to prevent their employees getting some of their entitlements and having GEERS pick up the tab?---I'm not sure if I'm answering the question correctly but I saw that as long as the insolvency or the

liquidation was lawful I didn't see an issue from a GEERS perspective or from an employee entitlements perspective.

5 Right. So you – to you it was one and the same question that an independent insolvency practitioner said the procedure for the insolvency is lawful as well as entering into it for the purposes of preventing employee entitlements. You thought they were the one question?---You might have to ask me that question - - -

10 I'm sorry, I will do that again?---Yes.

Let's assume that the insolvency advice - - -?---Yes.

- - - was that the procedure for the insolvency was appropriate and lawful?---Yes.

15 You thought that it was bundled up in that question – sorry, I withdraw that. For your purposes it wasn't a separate question about why we were entering into the insolvency including whether it was so that Bruck wouldn't have to pick up the tab for the employee entitlements?---No. I didn't think it was a separate question. I thought that if – if the insolvency advice was correct and it was lawful, that it would
20 be like any normal liquidation, that a company can't pay its debts then it legitimately is able – or employees legitimately can access the GEERS scheme. I saw it as one and the same question.

25 And so you never turned your mind towards whether this company was being put into the position that it couldn't pay its debts so as to avoid its employee entitlements?---Well, that seemed to me to be an insolvency issue. I may have wrongly assumed that but I took that to be the same question as to whether the insolvency was a – was in fact lawful.

30 And you didn't feel that you were put on inquiry by the fact that you were told companies do this all the time. They get GEERS to pay to supplement their restructures?---In hindsight - - -

35 Yes?--- - - - I probably should have asked the questions but, as I said, I did rely on the fact that I thought if it was insolvency – a legitimate insolvency that it would be okay from a GEERS perspective.

Now, looking at the documents just from your files now - - -?---Yes.

40 - - - and based on a recollection of the conversations you had, are you concerned that an intention of these transactions was to deprive employees of their benefits from Bruck and have GEERS pay for them?---I suppose I would say to that that I'm not sure it's within my expertise to – to make that call. Obviously it's a consideration of corporations law issues, general insolvency practice, etcetera, and I'm just not
45 familiar with that so I can't answer whether I have a concern about it independently of that. It would only be my opinion, obviously.

But you had running concerns about it, generally, as things were going on?---Yes. There were some – certainly, you know, as I’ve expressed, there were some issues around how it was happening that would have made a normal person concerned let alone a lawyer.

5

Yes. I agree with that. If we go behind tab 143 – well, sorry, if we go to 142. That’s an email from you to Mr Parker?---Yes, it is.

And I will just give you a moment to acquaint - - -?---Sure.

10

- - - yourself with that?---Yes.

My question to you is, really, didn’t you feel that you were giving the same advice over and over again?---I did.

15

And why were you giving the same advice over and over again?---I think it was my attempt to persuade them that I didn’t think this was the course to take.

And what is this?---Sorry?

20

What is this – this not being the course to take?---The – the – to – to have a sale of assets and then have a liquidation.

And why is that not the course to take, in your opinion? Why was it not the course - - -?---Well, I thought, you know, the – my understanding – and perhaps this was after having discussed it with Mr Tskiakis too – was that it would be more appropriate to have if the – if the business was in fact insolvent and went into liquidation and there assets to be sold it would be more arms length, if you like, for the liquidator to put the assets or the business on sale and – and you know, determine the fair market value, if you like. So I didn’t think it was appropriate not to do it that way and it was, I suppose, my attempt to persuade Mr Parker that perhaps that they were leading themselves into difficulties.

25

30

So based on what I had said earlier was your concern that some of the good stuff that might be available to pay out creditors and employees was being sold to another entity and only the bad things would be left to go into liquidation?---I wasn’t necessarily concerned about that because I wasn’t aware of the previous changes as you’ve referred to if – if that’s what happened - - -

35

40

Or even at that point?---Yes. I - - -

Whatever is left?---I think was more concerned about the – the shifting of – well, not the shifting, the – the purchase of assets and – and whether that represented a fair market value.

45

Were you concerned of that because the purchase, to your knowledge, was by related parties?---Well, that was my understanding, that it was a – a company associated with the current shareholders would – would purchase the assets.

5 I see. So what you're effectively saying to the client, Bruck Textiles, at that point is, is that if you're using GEERS to pay for any of the entitlements it looks better for the purposes of GEERS if everything that the company has now got – if the company is allowed – I withdraw that. If the company is allowed to go into liquidation with everything it has now got rather than anything being sold just pre-liquidation to a
10 related party?---That was a long question.

I apologise?---No, that's all right. I – I think my concern was – and I hope I'm answering the question – was that if the company was legitimately insolvent and needed to be placed into liquidation then it should do so by placing the company into
15 liquidation and – and having a sale and then whoever purchased the assets including, you know, a related company – if that all happened appropriately then I couldn't see that there should be an issue with GEERS.

I see. So your concern was that an independent party like a liquidator sell the assets rather than the company decide for itself to sell them to a related party before it goes
20 into liquidation?---I mean, from – certainly from a lay point of view it would seem more arms length, as I said, to do it that way.

And that your concern for GEERS was that it wouldn't pass the smell test – that's the word you used – if it operated – if the other thing was done?---That was a concern,
25 yes.

Because the inference would be that a sale of some valuable assets had been done at not fair market value?---Well, to a related party, I think, was the concern - - -
30

To a related party?---Yes.

And that GEERS would be left to pick up the entitlements?---Some – some of it. Obviously they didn't pick up all of the redundancy entitlements but, yes, my
35 concern was that – that the GEERS scheme would certainly scrutinise a transaction in that way.

And was there a response from Mr Parker or Mr Bart to you about your concerns?---I didn't have many conversation with Mr Bart independently but Mr Parker certainly
40 didn't disagree with me.

If we can go to 143 – so that's a conversation between you and Mr Barker – Mr Parker, sorry?---Parker, yes.

45 Yes. 20 June?---Yes.

'14. At the middle of the page Mr Parker is concerned someone – an employee may go to the media and make something of the restructure?---Yes, yes.

And he wants advice on whether doing so - - -?---Yes.

5

- - - would be a breach of the disparagement clause in his contract?---Yes.

Non-disparagement clause, I should say, in his contract?---Yes.

10 And then you talked – it says:

We talked about GEERS.

?---Yes.

15

And so what does that say?---It says only about six may be rehired. I said that minimises suspicion, better to re-engage through labour hire. Bring back later if possible to make easier to say change in circumstances.

20 Right. Okay. So what we have here is an attempt to minimise the suspicion for the purposes of GEERS. Is that right?---Yes.

And then you saying:

25 *We can bring back the employee later if possible to make it easier to say there was a change in circumstances.*

?---Yes.

30 And that was so to put the best spin on it possible for GEERS?---No. What had happened was that Geoff had said to me that there were about six employees that they may or may not need in the future. They didn't need them at the time. And his concern was, well, what if we brought them back, would that be a problem. And I said, well, if there's a change in the circumstances that alleviates the issue that it may
35 look as though you deliberately didn't offer them redundancy.

And did you think at that point that you were at all creating a road map rather than responding to a concern?---Well, sometimes you do that and then sometimes your advice can be taken that way in the sense that if I give advice that one way of doing
40 things can obviously be followed but, as I said, my understanding was that Mr Parker legitimately said that they didn't need the six at the time. So his concern was, well, I don't really want to hire them because I'm not sure whether I'm going to need them but will that look terrible in the future. Will GEERS say, well, you didn't really need to make them redundant. So I said, well, if you can – if there is a change in
45 circumstances, ie, there's, you know, more production, more contracts won, etcetera, then that wouldn't be an issue if you could show that change in circumstances.

I see. I see. Can I at last take you to the tab 147, please?---Yes.

Now, that's a conversation between you and Mr Parker - - -?---It is.

5 - - - on 8 June?---Yes.

And this is from Mr Parker, is it:

10 *The timing is we're proposing to do this Friday.*

?---That's right.

And does that mean the liquidation?---I believe so, yes.

15 Continuing:

On Thursday we will have the sale of assets and we will bring in the liquidator for Friday morning.

20 ?---Yes.

Continuing:

25 *Tried to meet the union for Friday. They have put it off until Monday. They're not aware of what's going on.*

?---Yes.

30 And this is all Mr Parker to you?---That's correct.

And then it says:

Summary document based on legal advice.

35 What does that mean?---I'm not sure, actually. It could be insolvency document. I can't honestly tell you what that is

Well, let's look at the other - - -?---Yes.

40 - - - the next line:

Other lawyers Corps Act advice logic is sound but they did bring up some issues that overlap with IR.

45 ?---Yes.

Do you know who those other lawyers were?---I don't know.

But you were provided with the copy of the advice, weren't you?---No, I wasn't

So how do you know if the logic is sound?---No. That's what Geoff is telling me, not me telling him.

5

And then "Corps Act" – what does that say?---Corps Act something overrides EBA – Corps Act – I'm not sure. Yes, I don't know what that means. The gist of it is that the advice was that from their lawyers the Corporations Act overrides the enterprise agreement obligations.

10

And do you know what this advice was about?---No. But I think in that conversation it was about consultation with staff. The enterprise agreement has – like just about all agreements – has a – well, in fact, all agreements have a provision that deals with consultation with employees in the event of major change like redundancy. So I take it that the Corporations Act – sorry, the advice was that the Corporations Act overrides the enterprise agreement in terms of – so if I go back a step. So the consultation clauses usually require the employer to give advice as soon as practicable after a decision has been made or immediately after a decision is made and I think the advice was that the Corporations Act where you have a liquidation and you appoint a liquidator and that happens suddenly, for example, that it overrides the consultation obligations in the enterprise agreement. That's what I understood it to mean.

15

20

25

Thank you. So you're being told that against your previous advice that the timing is to do it this Friday and to sell the assets on Thursday?---That's correct.

And did you say anything in response to that?---I probably expressed my views before that conversation, so I probably didn't say it again.

30

Based on what you were therein discussing, were you then at that point thinking to yourself that there's something fishy going on here?---I thought it was unfortunate that that was happening. My recollection again was that Mr Parker had said to me that the – you know, the finance had been withdrawn, which I already knew, from GE, Mr Bart wasn't prepared to continue to fund the company, and that they had had a meeting of the board of directors – actually, I'm not sure. I think it was – a meeting of the board was going to take place, I think, on Thursday night, and it was likely that the company would be placed into liquidation or the decision would be made at that time, and that they would therefore be making – need to make employees redundant on the Friday.

35

40

And so there was – was a concern expressed by you about the fact that there was a sale of assets happening less than 24 hours before that?---Yes. I think I did, but then I had already expressed that view.

45

So did you express a concern given that you were worried – so you were worried at this point about how this would smell for G.E.E.R.S; isn't that right? Because that

was your remit?---Yes, and the insolvency generally, I suppose, but certainly G.E.E.R.S, yes.

5 So were you worried – were you concerned at this point that with the sale of assets happening on Thursday and the liquidator being pulled in for Friday morning
- - -?---Yes.

10 - - - that the transaction – either the sale or the liquidation was occurring so that G.E.E.R.S were paying for the employee entitlements rather than Bruck?---I didn't think anything much turned on the Thursday night decision and then Friday night – Friday redundancy, because I assumed that if a decision was made that the company was – couldn't trade because it was insolvent, that would be a fairly immediate decision and that therefore the following day, well, the liquidator would presumably be appointed and would have to make a decision fairly quickly. So I didn't see
15 anything unusual in the timing, necessarily, but again, not being experienced in that, but as I said, I was – I thought it was unfortunate that they had adopted that approach.

20 But did the unfortunate nature of it arise from the fact that you were concerned for G.E.E.R.S purposes that these transactions were being entered into so that the Commonwealth would pay for the entitlements rather than Bruck?---Well, as I think I said before, I was just concerned that they needed to make – if it was a legitimate insolvency, they ought to sell the assets afterwards, and that doing it this way was not the way to do it.

25 Registrar, if you could excuse me for a moment, please. I have no further questions at this point for Mr Catanzariti, Registrar. If he could not be excused generally on the basis that I need to examine Mr Tsiakis first before I can excuse Mr Catanzariti depending on Mr Tsiakis' evidence.

30 THE REGISTRAR: What I normally, Mr Kulevksi, is I make the usual order for an adjournment, which means that the summons for Mr Catanzariti is alive for six months.

35 MR KULEVSKI: Yes. Okay.

THE REGISTRAR: So in that timeframe, if he needs to come back, then at a mutually convenient time, that can happen within that six months. I think that should be enough – ample time - - -

40 MR KULEVSKI: Yes.

THE REGISTRAR: - - - from that point, and from today.

45 MR KULEVSKI: And if – leaving aside Mr Tsiakis for the moment, if the examination and summonses for the others could be stood over to 2 February, because we will definitely be calling one of those on 2 February.

THE REGISTRAR: All right. Well, we will deal with Mr Catanzariti first.

MR KULEVSKI: Yes.

5 THE REGISTRAR: So what I will do is I will adjourn your summons generally, which has a life of six months from today, and if you need to come back after Mr Tsiakis is examined, then that can be arranged at a mutually convenient time within the next six months. So you're free to go for now, Mr Catanzariti.

10 MR KULEVSKI: Thank you, Registrar.

THE REGISTRAR: In relation to Mr Tsiakis, is he outside? Can he come inside? You can step down?---Thank you.

15 Thank you.

<THE WITNESS WITHDREW [4.13 pm]

20

MR KULEVSKI: Thank you, Mr Catanzariti.

<KON TSIAKIS, CALLED [4.13 pm]

25

THE REGISTRAR: Yes, Mr Tsiakis, come forward. Regrettably, counsel's estimate, as usual, is never correct. You are not – we were not able to get to you to be examined today, and I think the solicitors for the liquidator have notified you of that. Is that - - -?---Yes.

30

So in terms of resuming for you, you asked me before, Mr Kulevski, what's a suitable date, and my assistant has notified me that I have two between now and the end of the year. You have 17 December. I don't know if that's convenient to Mr Tsiakis at all to travel here. Is that a suitable date?

35

MR KULEVSKI: It's convenient to me, your Honour.

THE WITNESS: Look, I'm not sure without checking my calendar.

40

THE REGISTRAR: Are you able to do that quickly now, Mr Tsiakis?---Possibly. What time, Registrar?

It would be the same as today, so it would be a 10.15 start or thereabouts. We were meant to start at 9.45 today, but for whatever reason that didn't transpire, so about 10.15, I think. So perhaps half a day, I understand.

45

MR KULEVSKI: Well, less than that. What is the other date, Registrar?

THE REGISTRAR: The other date? 24 December 2015, if he wants to come here on Christmas Eve. I didn't think that was a popular date.

5

THE WITNESS: Registrar, on the 17th I'm actually caught in Melbourne.

MR KULEVSKI: Well, then, second – if you don't have anything before 2 February, I can't – 2 February would be convenient, Registrar, if that's - - -

10

THE REGISTRAR: All right. Well, that's the date that you would need to come back, then. Is that – does that date suit, if we confirm that date now, Mr Tsiakis? 2 February 2016?---Lock that in until – yes, it appears to be

15

All right. Well, perhaps we should keep that date free. Just let me go back and check the – I think we were back on - - -

MR KULEVSKI: That's the first date.

20

THE REGISTRAR: So we have a whole list of dates, I think starting on 2 February.

MR KULEVSKI: I have written down, Registrar, the 2nd and 9th – so every Tuesday. The 2nd, the 9th, the 16th, the 23rd and the 1st.

25

THE REGISTRAR: 1 March, yes.

MR KULEVSKI: Yes.

30

THE REGISTRAR: Yes. So in terms of Mr Tsiakis, your summons is adjourned to 2 February 2016 at 10.15 am, so you will be first up, I think, just – since you've been waiting here the whole day, so you're back on that date, and I adjourned the other summonses also to 2 February 2016, and the liquidator's lawyers can no doubt speak to the raft of examinees as to what's a suitable time to come to court from 2 February onwards, either that date or 9 February, 16th, 23rd or 1 March.

35

MR KULEVSKI: And we shall do that.

THE REGISTRAR: So I will leave you to work out the logistics of those examinees.

40

MR KULEVSKI: Thank you, Registrar.

THE REGISTRAR: So you're free to go for now. Thank you, Mr Tsiakis. Both you and Mr Catanzariti can make your flight back to Melbourne.

45

<THE WITNESS WITHDREW

[4.16 pm]

THE REGISTRAR: Now, in relation to the two MFIs, after I go off the bench, Mr Kulevski, those can be returned to the liquidator for your safekeeping.

MR KULEVSKI: Thank you, Registrar.

5

THE REGISTRAR: I don't need that to be retained on the court – in the registry file. In relation to the transcript, do I need to make an order under section 597(13) at this stage? That is for the – he has already gone, but Mr Catanzariti to look at any transcript that is requested or ordered by the liquidator so that they – he can initial it and confirm that – does that need to happen now?

10

MR KULEVSKI: I think the usual order should be made in that respect, Registrar, if it please.

15 THE REGISTRAR: All right. Mr Catanzariti has since left, but no doubt you can let him know that I made that order.

MR KULEVSKI: Yes. We shall do.

20 THE REGISTRAR: I will just speak to my assistant for a moment. So my assistant will return to you the two sets of folders, including the one that was used by the examinee today.

MR KULEVSKI: Thank you, Registrar.

25

THE REGISTRAR: I think that's all we need to do. So in relation to this matter, the application in the matter of Bruck Textile Technologies Proprietary Limited in liquidation, the examination is adjourned for ongoing examination, first of all Mr Tsiakis on 2 February 2016 at 10.15. All the other summonses are also adjourned to that date, and as I said, Mr Catanzariti's summons is adjourned generally with an order under section 597(13) that if the transcript is ordered by the liquidator, that he be given the opportunity for that – to see the transcript and make any corrections if any are found.

30

35 MR KULEVSKI: May it please the court.

THE REGISTRAR: All right. Thank you all. Adjourn.

40 **MATTER ADJOURNED at 4.18 pm UNTIL TUESDAY 2 FEBRUARY, 2016**

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