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TRANSCRIPT OF PROCEEDINGS

O/N H-643914

FEDERAL COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY

MR C. NG, Deputy District Registrar

No. NSD 619 of 2015

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

SYDNEY

10.19 AM, TUESDAY, 16 FEBRUARY 2016

MR P. KULEVSKI appears for the liquidators

MR S. HEDGE appears for Mr J. Castrisos

MR D.L. COOK appears for Mr R. Johnson

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

MR KULEVSKI: Registrar, we will continue, with your leave, with Mr Castrisos this morning.

5

THE REGISTRAR: Yes.

MR KULEVSKI: He will be finished before lunch, is my anticipation. We've got Mr Johnson ready to come after lunch.

10

THE REGISTRAR: Okay.

MR KULEVSKI: My anticipation is that he will take the rest of the afternoon, but even if he doesn't take the rest of the afternoon, what we've got in place is we're preparing some bundles for Mr Johnson in order to make the process simpler. They will be a – and quicker. They will – and a common bundle, hopefully, for he and the future examinees, and they will be available for the next time we meet, so that even if we finish early with Mr Johnson this afternoon, he will be required back on the – on the next day.

15

THE REGISTRAR: On the next occasion.

MR KULEVSKI: Yes.

25 THE REGISTRAR: All right. I see. Mr Hedge, you are representing Mr Castrisos.

MR HEDGE: Yes, Registrar, I appear for Mr Castrisos.

THE REGISTRAR: Yes. We will have him come back into the witness box.

30

<JAMES VICTOR CASTRISOS, RESWORN

[10.20 am]

35 **<EXAMINATION BY MR KULEVSKI**

THE REGISTRAR: Just for the record, I will get you to state your name again?---James Victor Castrisos.

40

And your occupation, sir?---I'm a company director.

And address?---35 William Street, Roseville.

Thank you. Mr Castrisos, you're back to continue the examination that you started last week, and I understand you're represented by Mr Hedge, so no doubt if anything arises he will raise any relevant objection, and I will deal with it. Mr Kulevski.

5 MR KULEVSKI: Thank you, Registrar.

Mr Castrisos, do – recall that on the last occasion we were speaking about the December 2011 board pack and the mooted restructure therein?---Privilege. Yes.

10 And you say that that – no part of that restructure actually took place, as mooted in the board paper; is that correct?---Privilege. No. I'm not saying it didn't take place; it changed slightly, but essentially the principles in that restructure were the ones that unfolded over the next 18 months.

15 They were the ones that unfolded?---Yes.

And if I could ask you to just sort of not worry about any papers at the moment, but just sort of ask you about a series of transactions, and perhaps you can help us with what you might recall about them. Now, do you recall that in 2011 and 2012 there were a series of dividend payments made by Bruck Textile?---Privilege. Yes.

20 Now, do you recall that on or about 16 May 2011, Bruck Textile paid a \$750,000 dividend to Foy's?---Privilege. Look, I – I don't recall the exact numbers, it was that long ago. But – but there – there were certainly dividends paid during that period.

25 Do you recall at around the time of the board paper we've been discussing, December 2011, that an unfranked dividend of \$2 million was paid to Foy's in cash?---Privilege. Again, I don't recall the exact numbers, but – but as I said, there were definitely dividends paid; I just don't recall the exact numbers.

30 And do you recall that they were dividends in that sort of range?---Privilege. Yes.

35 And could you, please, inform the court what the justification for the 2011 dividends was?---Privilege. They – they had – the company had retained earnings, so, I mean, it was just in the ordinary course that dividends were to be paid out of profits.

40 And those dividends were ultimately for the benefit of Mr Bart, weren't they?---Privilege. Ultimately, they were flowing through to his – his private companies.

45 Yes. And so while you don't recall the exact numbers, in 2011 it was considered by the board of Bruck Textile appropriate to pay dividends in the range of 2.75 million for the ultimate benefit of Mr Bart; is that right?---Privilege. Yes. There – there were quite substantial retained earnings, so they were approved.

And as you said last week, there was certainly no suggested at that time that there were any major structural difficulties that would mean that Bruck was heading into any threat of insolvency; is that correct?---Privilege. Yes, that's correct.

5 Thank you. Now, do you recall that on or about April – or in or about April 2012, that Bruck Textiles changed the accounting treatment of the 21 December dividend to not be paid by Foy's but to have been paid to ATG on 2 January 2012?---Privilege. Yes. There was some correction to the minutes, and I believe it was because the restructure had occurred and they had made a mistake in the – in the
10 minute.

So the – which restructure are you then speaking about?---Privilege. That Bruck Group had been established 1 January 2012, which subsequently became ATG, and I think the minute had incorrectly reflected that it was being paid to Mark Foy's.
15

Had it incorrectly reflected the payment, or was the payment changed?---Privilege. My recollection is that it incorrectly – it incorrectly documented the – the dividend; it wasn't that the payment was changed.

20 So characterisation of the payment wasn't changed, on your recollection?---Privilege. No.

Thank you. Now, do you recall that – were you a director of ATG, the Australian Textile Group?---Privilege. Yes. I became a director. At the time I think it was called Bruck Group.
25

Now, do you recall a meeting of the directors on 6 April 2012, that it was resolved that ATG would use the proceeds of that 2 January dividend to loan Foy's \$2 million?---Privilege. I don't – I don't recall.
30

You don't recall that. Do you recall, as part of the restructure, that there was a transfer of ownership from Foy's to ATG?---Privilege. From – you're talking about from Bruck - - -

35 Yes?--- - - - Trading? Privilege. Yes. I think that's correct.

Now, the business of Bruck Textiles operated from the mill at Sisely Avenue, Wangaratta, wasn't it?---Privilege. Yes.

40 And that's, in fact, to your knowledge, where it's operated from now; is that correct?---Privilege. That's correct.

Now, do you recall that on 1 January 2012 that Bruck Textiles sold its shares in Sisely to ATG for just over \$8 million?---Privilege. That's – yes, that's correct.
45

Did you ever see a written sales agreement between Bruck Textile and ATG?---Privilege. No.

Are you aware of whether a written sales agreement between Bruck Textile and ATG exists?---Privilege. I'm not aware of one.

5 Perhaps if I could take you to an asset register. Sorry. I will just show you one piece of paper that's not in your folders. Do you recall seeing this document? I will give you a moment to familiarise yourself with it?---Privilege. No. I don't recall seeing it.

10 Do you recall, at all, discussing any of the figures that made up that ultimate payment of just over \$8 million?---Privilege. Yes. They obtained an independent - - -

15 Sorry, I hate to interrupt you. When you say they, who do you mean by they?---Privilege. The – the – well, it was the management and – and Phillip Bart obtained a independent valuation of the property. I don't recall the date but I believe it was before 1 January 2012 and that valuation came in under the book value. So they determined that the consideration would be the book value.

20 Well, do you remember what the valuation actually was?---Privilege. The – my recollection is that there were – there was one – one figure that was for vacant possession and one based on current usage.

And do you remember the discrepancy between them?---Privilege. I believe it was significant. I think it was probably four or 5 million.

25 Yes. Now, I will take you to the valuation in a moment but do you recall that the valuer determined that he considered a fair value for the financial reporting purposes to be 7.5 million?---Privilege. That figure – that's my recollection. Yes.

30 But, however, he determined that a market value assuming sale of the freehold interest with vacant possession was 2.8 million?---Privilege. That's my recollection.

35 And do you remember receiving a curb-side estimate used in the BRI Ferrier report of 2 million?---Privilege. I don't – I – my recollection is that there was a – a verbal report and that I – I think I had specifically asked that it be in writing.

Separate to this report you mean or do you mean this report?---Privilege. No, separate to this one.

40 And do you remember what the other separate report was?---Privilege. I believe it was a letter from the agent that was tabled at the board meeting.

45 I see. And do you remember what the value attributed to the property by that agent was?---Privilege. Look, I don't remember the exact but they – they were similar to the numbers you just – you just mentioned.

Perhaps if I take you – perhaps to clear up the confusion if I take you to that report. I will give you one to familiarise yourself with that document.

THE REGISTRAR: Should that first document be marked, Mr Kulevski, or not?
The one that you just showed.

5 MR KULEVSKI: Yes, please, Registrar. I'm terribly sorry. I think we're up to 4,
aren't we?

MR: 5.

10 MR KULEVSKI: 5.

MR: Yes, that's right.

MR KULEVSKI: I think that will be 5, Registrar.

15 THE REGISTRAR: Yes. All right. I will just see that document. The one page
document headed S-i-s-e-l-y Properties Proprietary Limited Asset Registrar at 1
January 2012 should be the next one on the list. My assistant will confirm it but I
think it's MF15.

20

**MF1 #5 SISELY PROPERTIES PROPRIETARY LIMITED ASSET
REGISTRAR DATED 01/01/2012**

25 MR KULEVSKI: Yes.

THE REGISTRAR: Yes, it is.

30 MR KULEVSKI: Is this the valuation that you recall?---Privilege. No.

It's not the valuation you recall?---Privilege. No.

35 So there was another valuation, was there?---Privilege. I – yes, I believe there was
another one page letter that was received back in – around the time that the transfer
occurred that – that just supported the curb-side valuation. I actually – I had resigned
as a director by the – by this date.

That's what I was - - -?---Yes.

40 - - - going to ask you. So you've never seen that valuation before?---Privilege. No.

And so the only valuation you say existed at the time was maybe a one
pager?---Privilege. Yes, that's – that is my recollection. It was a one pager.

45 Do you remember who drafted that valuation?---Privilege. No. It was a local agent
but I don't remember his name.

And so you might see at page 130 – I know it's not a document you've seen before but if I could just take you to – sorry, I don't the pages are internally numbered. If I could take you to 7.0 and 8.0 of the report, Mr – with your leave, Registrar, Mr Shenkel will help.

5

THE REGISTRAR: Yes.

MR KULEVSKI: 7.0 and 8.0. Thank you. You will see there that Dickenson Consulting has opined that they assessed the fair value of the land and building assets for company accounting purposes at 7.5 million?---Privilege. Yes.

10

And you said that they assessed the market value of the land and building assets on the basis of a sale of the unencumbered freehold interest with vacant possession as 2.8 million?---Privilege. Yes.

15

Now, were they the two different assessments in your recollection given -- -?---Privilege.

-- - in that one pager?---I can't be certain that they're exactly the same numbers but -- but they were similar. So in terms of the – the difference between the two, very similar numbers.

20

And do you recall whether the two valuations given in the one page letter were on a similar basis in the sense of the way in which Dickenson Consulting later valued the company?---Privilege. Yes.

25

So if we perhaps go back to the document that you just had, MFI – Registrar, could that be marked MFI6?

30 THE REGISTRAR: Yes.

MR KULEVSKI: Thank you.

THE REGISTRAR: The bundle of documents headed Market Value Land and Buildings Assessment for 19–81 Sisely Avenue, Wangaratta, Victoria 3677 by Dickenson Consulting is MFI6.

35

MFI #6 MARKET VALUE LAND AND BUILDINGS ASSESSMENT FOR 19-81 SISELY AVENUE, WANGARATTA, VICTORIA 3677

40

MR KULEVSKI: Now, are you able to explain why it was the accounting value of the property was considered justified at such a different amount to – I withdraw that. I will start that again. You're aware that there was a large discrepancy between the market value and the fair value for accounting purposes?---Privilege. I mean, there was a difference obviously but I – are you comparing the 8 million to the 7.8?

45

I'm preparing the 8 million to the market value of 2.8 million?---Privilege. So I – my take on it would be that the 8 million reflected the going concern value which is consistent with – with the property being occupied.

5 And occupied in what sense?---Privilege. Occupied by – by Bruck.

And do you know how the figure was calculated? Was it by reference to what rent Bruck would be prepared to pay to occupy the premises?---Privilege. You mean in – in regard to the valuation that - - -

10

Yes?--- - - - was done? Privilege. I don't recall but – but – I mean, I guess common sense would dictate that that's what it was based on.

15 Was there a discussion at all at board level about why the book value was seen as slightly over 8 million when the market value was under 3 million?---Privilege. The – the 8 million was compared to the 7.8 because both – both of them reflect Bruck continuing to occupy the property.

20 But was there any discussion at board level about why those two figures were so different to the market value of less than 3 million?---Privilege. I guess – I guess everyone understood the fact that – that in Wangaratta, a property that size was not going to be easily rented.

25 I see. And when you say not easily rented, that means that the value was attributed to what the – rent it to anyone is what you mean or not capable for being sold? I'm not quite sure what you mean?---Privilege. There – there – there probably weren't too many companies, you know, in Wangaratta that would have a – a need for a property that size.

30 It had no other or not much other commercial value did you see in terms of its market value?---Privilege. I think if Bruck wasn't – if it wasn't occupying that premises, there would be some significant issues with regard to renting it and there were some – there were also some remediation issues.

35 I see. So before the restructure that took place, you said on 1 January 2012?---Privilege. Yes.

40 What rent was Bruck paying for the land?---Privilege. There – there was no rent being paid.

So how was it determined that the book value was justified at just over 8 million?---Privilege. It was done – as I recall, it was done at cost.

45 When you say at cost, what does that mean?---Privilege. So I – I – it – it was historical cost so whatever the cost was in the balance sheet.

I see. Earlier we discussed the rent someone would be prepared to pay was a component in the value. Do you remember that?---Privilege. Yes.

5 Now, if Bruck wasn't paying any rent and no one else would want to rent it, how was the rent considered a component of the value?---Privilege. I don't know exactly how that agent, or the valuer, did it but it would normally be done on comparable. So – and obviously not that easy with this size of property, but that's how it would normally be done.

10 But what or who were the comparables that were prepared to pay that amount of rent?---Privilege. I don't know who he looked at.

15 Did you ever discuss, at board level, the fact that you weren't – that Bruck itself wasn't paying any rent meant that it was an inherently loose figure?---Privilege. Look, any unique property there's going to be some inherent issues with it, obviously.

20 And so no one at that point thought, did they, that the smartest attitude was to go with the market value?---Privilege. I mean we believe we did go with the market value because it was based on Bruck continuing to occupy it which was the fair – fair value.

25 Well, you were told that the market value, though, was 2.8 million. Weren't you?---Privilege. That's the market value with it being unoccupied which wasn't the situation.

Yes. But the fair value was almost three times higher than that, according to the estimate?---Privilege. Correct.

30 But based on, you would accept, wouldn't you, rubbery figures?---Privilege. No. I wouldn't accept it's rubbery figures. I think it just represents the uniqueness of that property.

35 So unique in the sense that no one's prepared to pay any rent for it?---Privilege. That it would have been difficult to rent it to another company.

40 So I'm just trying to understand then, if it's difficult to rent it to another company and the company then occupying is paying no rent, what justifies the much larger premium over market value?---Privilege. That the company was going to start paying rent.

What did Bruck receive for the sale of its shares in Sisely to ATG?---Privilege. There was a consideration of 8 million and it was represented in the form of a loan.

45 A loan by whom to whom?---Privilege. It was a loan from Bruck Group to Bruck Textiles.

And how was that loan extinguished?---Privilege. By the payment of a dividend and a capital reduction.

5 So there was a payment of a dividend of slightly over \$6 million, was there not yet?---Privilege. That's correct.

And there was a \$2 million capital reduction from Bruck to ATG?---Privilege. That's correct.

10 And that purchase was approved, was it not, by a circulating resolution of ATGs directors, which included you?---Privilege. That's correct.

15 So Bruck Textile didn't receive any cash consideration from ATG for the sale, did it?---Privilege. There was no cash transferred, as I understand it.

What it received, according to the records, was an intercompany loan receivable. That's correct?---Privilege. That's – yes. That's my understanding.

20 But then that was extinguished by the payment of the dividend and the capital reduction. Isn't that correct?---Privilege. Yes. That's what I believe happened.

25 And then are you aware that, subsequently, the liquidators received an informal proof of debt form from Sisely which claimed the amount of 8.8-odd million in respect of rental arrears pursuant to a lease agreement between Sisely and the company?---Privilege. I'm not aware of what proof of debts were lodged, so I'm not aware of what was done.

30 Was there any discussion at board level about the fact that there were over \$8 million of rental arrears pursuant to a lease agreement between Sisely and the company?---Privilege. No.

35 Were you aware of Bruck ever actually paying any rent?---Privilege. No. There was an arrangement in place where there was a lease put in place to document the rental and Bruck Trading would pay, if cash flow allowed it to, but there was no requirement to pay it on a monthly basis.

And now do you recall it ever paying?---Privilege. Not that I recall.

40 But dividends were still going up to Mr Bart?---Privilege. I don't recall the exact payments after that date but it is quite possible there were still dividends being paid.

45 So let me just get the sequence right. Large dividends paid in 2011, ultimately for the benefit of Mr Bart. Is that correct?---Privilege. There were dividends paid. Correct.

At 2012, there was a restructure of the Bruck Group?---Privilege. That's correct.

You're told that the market value of the factory is under \$3 million. That's correct?---Privilege. There were two values presented. So I believe the market value was the higher number because Bruck was continuing to occupy the premises.

5 I see. And that – as we discussed – that value was determined on the basis of what rent would be prepared to be paid by Bruck. That's correct?---Privilege. Yes.

Now, Bruck had never paid rent before that time, had it?---Privilege. That's correct.

10 Bruck disposed of its interest in the shares that owned the factory. That's correct, isn't it?---Privilege. That's correct.

And part of the valuation was done on the basis of what rent – sorry. I withdraw that. And Bruck never actually paid any rent after 2012, did it?---Privilege. No, but
15 there was an obligation to pay rent.

I see. In your experience, how long does an ordinary tenant last with an obligation to pay rent, when they never actually pay rent?---Privilege. Obviously not very long but, you know, they were part of the one group so there was obviously an
20 arrangement there to account for it through a loan account.

I see. And what was the nature of that arrangement?---Privilege. It's my understanding, it was just to go through a loan account.

25 I see. What I'm trying to understand is the justification for selling your shares in land when you're not paying rent before and you don't pay rent afterwards but – and you also receive not cash consideration for the sale. Could you please explain the justification?---Privilege. It was obviously part of the overall restructure to form the Bruck Group and have the property separate and to have rent paid so that there was a
30 return on that property assist.

You weren't seriously expecting rent ever to be paid though, were you?---Privilege. I – no. That's not a correct statement. I think – I think there was intention so long as it didn't put any cash flow pressure on Bruck Trading for the rent to be paid.
35

So was it ever raised, the fact that no rent was being paid?---Privilege. No, not after – I don't recall after the initial discussion about the lease being put in place that it was ever raised. Having said that, I think the lease was put in place mid-2013 and the last board meeting I attended was November 2013 so there was probably one
40 board meeting after that.

So you value the land on the basis of it as a going concern. That's correct?---Privilege. That's correct.

45 And a significant part of that basis is that someone will pay rent for it?---Privilege. That's correct.

No one in your time ever does pay rent for it, do they?---Privilege. No, over a six-month period, I don't believe there was rent paid, but I'm not certain.

5 What was the formal obligation in 2012 to pay the rent?---Privilege. There was nothing documented in 2012.

I see. So when was something documented?---Privilege. I understand it was documented in mid-2013.

10 Perhaps if I could show you a copy of that lease. Just excuse me a moment. I'm sorry. I have a copy of the lease in front of me but I'm just trying to source it in your bundle. I apologise for the delay. Perhaps if we can give you a separate copy of the lease, because it doesn't appear to be in your bundle. Do you have a copy in front of you?---Yes.

15 Do you recall that document?---Privilege.

20 Do you recall who drafted that document?---I don't recall seeing the final document, but I'm aware that Phillip Bart had instructed Colin Biggers & Paisley to prepare the document.

25 And you don't recall who the partner or solicitor responsible for that document was?---Privilege. There was a comment in an email, but who – who prepared it, I just can't remember her name.

I see. Now, if I could take you to page – to the reference schedule of that document, which is towards the end, the last – the – think it will be the second page from the end of your document. Just after the signature page. And do you see the commencement date of the lease is 1 January 2012?---Privilege. Yes.

30 Can you explain why this document was backdated 16 months?---Privilege. No, I can't.

35 So you have no recollection of any discussion with anyone about why this document was backdated 16 months?---Privilege. I don't recall any discussion. No.

Do you recall seeing this at the time?---Privilege. I don't believe this was tabled at the board meeting.

40 So this was never approved by the board, this list?---Privilege. The – the – my recollection is that Phillip had raised the need to prepare a document in relation to the rental arrangement, and that it was going to be for around about that figure, of 700,000 for a three to five year period.

45 Now, the lease itself was never approved by the board; is that correct?---Privilege. I don't recall approving this document.

Do you recall ever seeing this document before, I've having shown it to you now?---Privilege. No.

5 I see. So you never discussed with anyone why that document was backdated?---Privilege. I don't recall discussing it. No.

10 So there was no discussion with Mr Bart in the context of preparing some document, that the document would need to be effective from 1 January 2012; is that right?---Privilege. I don't recall discussing it. No.

You would accept, wouldn't you, that it would have been a significant thing to have happened; is that correct?---Privilege. Yes.

15 And so you accept you have significant experience on boards; do you not?---Privilege. Yes.

20 You would accept, wouldn't you, that this is exactly the sort of thing you would be likely to remember if it had been brought to your attention; is that correct?---Privilege. Yes.

Do you see that the term of the lease is listed as 10 years?---Privilege. Yes.

25 Do you recall discussing that?---Privilege. No. I – my recollection is that the discussion was – was that it would be at market rental and that it would be for around three to five years.

30 Okay. So do you recall agreeing, as a board member, the \$700,000 plus GST was market rental?---Privilege. I don't know if we agreed the specific number. We agreed that there would be a process to actually obtain the market rental.

Do you recall what that process was?---Privilege. I believe they were going to talk to local agents and get some comparisons.

35 I see. And the results of those comparisons, were they ever presented to the board?---Privilege. I don't recall.

Do you recall whether they were ever presented to you in any capacity?---Privilege. I don't recall specific. No.

40 Do you recall the figure \$700,000 plus GST ever being presented to you?---Privilege. That – that number does – I – I do have some recollection of that number. Yes.

45 And did you agree at the time that that was an appropriate market rent for the property?---Privilege. Based on the process, because it – it actually operated outside the board meeting, but they were going to get that advice. But I didn't review the actual - - -

Yes?--- - - paper, so I can't say that I specifically approved that 700.

Now, as nice as possible I want to put to you, Mr Castrisos, that you're smiling and – at me because you accept, don't you, that \$700,000 plus GST is a wildly
5 inappropriate rental value for that property; is that correct?---Privilege. No. I'm not, because it is – it is a significant – it – it's a significant property. So I – I don't think it's unreasonable.

Okay?---And I – I did see what numbers they were talking about in terms of square
10 metre rates, and it didn't see – didn't seem off – off – off the mark.

So in the history of Bruck Textiles, when had any rent been payable up until that time?---Privilege. That – there hadn't been, and that was one of the issues coming out of the – the restructure that they – they wanted that to occur.

15 I see. And we determined at 1 January 2012 that no one else was likely to pay that rent for the property; is that correct?---Privilege. Yes. The – the – I think the point you're making is that the – there – there weren't too many obvious tenants in the Wangaratta area to take over a property that size.

20 That's correct, isn't it?---Privilege. That's correct.

And that was the justification for the book value, as opposed to the wildly smaller market value; is that not correct?---Privilege. No. I keep coming back to the fact
25 that there had to be some value attached to that property having Bruck Trading occupying it, paying a market rent, and that's the principle of it. You're – you're obviously asking about some of the specifics in regard to the numbers, but I don't think they're – I really don't think they're off the mark.

30 I think you will find we're in vigorous agreement on that, that that book value could only be justified on the basis that it be valued as a going concern, with someone paying a market rent; is that not correct?---Privilege. Yes.

35 And when did anyone ever pay a market rent?---Privilege. I think we agree that that – that rent wasn't paid, but it was in the form of a loan, and I don't know specifically whether they paid rent in that last six months. I don't know.

But they certainly never paid rent at any time before or after the restructure that you were on the board; is that correct?---Privilege. I don't recall them paying rent. No.
40 I mean, it – it's quite possible it wasn't brought to my attention because there was one or two board meetings, and that was it.

And was any discussion about the payment or non-payment of rent ever brought to the attention of the board?---Privilege. There was – there was a clear understanding
45 that the rent would be paid when – if – if it didn't cause any issues for Bruck Trading.

But you're paying dividends, aren't you?---Privilege. I don't recall in that last six months whether there were dividends paid. I'm not sure.

5 But you had paid over \$2 million in dividends in the year prior to that; is that correct?---Privilege. Yes. That was – that sounds correct. Yes.

10 That seems like an unlikely thing for a board to approve, doesn't it, if it thinks it has a rental obligation coming; is that not correct?---Privilege. I think we – the issue was this lease was done in mid-2013. You're talking about 2012.

15 But you would accept, wouldn't you, what you said earlier, that the rental obligation supposedly persisted, you said, from 1 January 2012 to support the book value?---Privilege. Yes. I did say that, but I guess it was looking at the – the value on an ongoing basis.

20 Please explain that to me?---I don't – I don't know – I – I don't know how to explain it to you. I mean, I – the – the value that was – they clearly had got a value based on Bruck continuing to occupy. There was an intention that at some time it would pay the rent, my understanding at the time.

25 How long will you or I last as tenants if we have an intention to pay rent but we never do?

MR HEDGE: Registrar, I object to that question. It's unnecessary. It's not relevant to the issues. He's - - -

MR KULEVSKI: I withdraw it.

30 MR HEDGE: Ask him about the - - -

MR KULEVSKI: I withdraw it, Registrar.

MR HEDGE: - - - affairs of the company, please.

35 THE REGISTRAR: Yes.

MR KULEVSKI: Have you been the director of other companies that require rent to be paid?---Privilege. Yes.

40 Do those companies pay their rent?---Privilege. Yes.

45 So were you not concerned at all that Bruck was not paying its rent, or were you unaware of it?---Privilege. There – it wasn't presented that Bruck would never pay its rent. It was just – it was just put to the board that it would pay the rent when the cashflow allowed it to do so, and that was discussed in mid-2013.

But was it discussed at all the fact that it hadn't paid rent for the last 13 months?---Privilege. No.

5 So you were unaware of that fact?---Privilege. The lease hadn't been put in place.

So what justified the value at 1 January 2012 if there was no obligation from that point to pay rent?---Privilege. There was nothing in place from 1 January.

10 So from your understanding, there was no obligation to pay the rent until the lease was put in place; is that correct?---Privilege. That – that's my understanding. Yes.

And that was your understanding as a board member; is that correct?---Privilege. Correct.

15 Thank you. I won't take you to it, but there's a provision in the lease agreement – just accept this for a moment – that the tenant must pay the rent in arrears within 20 business days after the landlord makes a demand and provides an invoice. Were you aware of any invoices ever being issued for the rent?---Privilege. No.

20 Thank you. Now, if I take you back to the lease agreement on that page – if I take you back to the front page of the lease agreement. You see the front page where it lists Bruck Properties and Bruck Textile?---Privilege. Yes.

25 Was that the ABN from your recollection of Bruck Textiles Proprietary Limited?---Privilege. I – I don't recall the ABN number.

Would it surprise you to hear that that ABN matches that of the trustee for the Bruck Textiles Unit Trust?---Privilege. Yes, it would.

30 Could you tell us anything about the trustee for the Bruck Textiles Unit Trust?---Privilege. It's some time ago and I don't recall the details but originally Bruck Textiles was a unit trust and it was – the unit trust was terminated and – and the assets transferred to the corporate structure.

35 And that was wound up as far back as July 2005. Do you recall that?---Privilege. That – that timing sounds about right.

Yes?---Yes.

40 So are you aware of any justification why the ABN for Bruck Textiles Proprietary Limited would match the unit trust's ABN rather than Bruck Textiles?---Privilege. No.

45 Was that ever raised at the board meeting?---Privilege. I hadn't seen it so I didn't – yes. I – I didn't raise it, no.

No, no, not you. Had it ever been raised with you that the tenant with have the ABN of the unit trust?---Privilege. No.

5 Thank you. So could you to your recollection not having ever seen the lease before today, recall what actually was discussed with you about the obligation to pay rent in 2013?---Privilege. What was put to the board as I recall is that rent would be paid by Bruck Textiles to Bruck Properties so long as cash flow allowed for it to occur and, look, at the time, the cash flow was reasonable. So there could have been rent payments.

10 There could have been but there weren't, is that correct?---Privilege. Not that I – not that I was aware that the rent. But, again, they may not have told me because it was – really, that's just a – I guess, a normal day-to-day management issue.

15 So there was the money to pay the rent while you were a director?---Privilege. I – look, my recollection is there was sufficient cash flow that would have allowed for it to be paid.

20 Thank you. And the fact that the rent might not have been being paid was never raised with you, is that correct?---Privilege. No. The only thing that was raised was that the – you know, if Bruck couldn't pay the rent because it had working capital requirements that wouldn't allow it to, there wouldn't be an issue.

25 What were the processes in place for the board approval of documents like this lease and by that I mean how many directors were needed to approve a document of that nature?---Privilege. Yes, I believe there were only two required.

30 I see. Do you recall who approved the lease?---Privilege. No. But I mean, I – I assume Phillip Bart obviously was one of them. And given I didn't approve the lease, I presume Geoff Parker was the other one.

35 I see. And had there been a practise to your knowledge of significant items not being approved by you but being approved by the other directors?---Privilege. Look, I – I can't recall any in time there that – that – that were significant. There were certainly a process whereby things were brought to the board and then obviously were dealt with by – by management and in some cases, obviously the other two directors would – would – would be there on a day-to-day basis.

40 I see. But this lease were never brought to the board, is that correct?---Privilege. I don't – I don't recall it being brought to the board, no.

45 Did you ever raise with either Mr Bart or Mr Parker what happened with those lease discussions we were having?---Privilege. I – I believe in the June 2013 board meeting that we – my recollection is we talked about the process for the lease being documented and I was satisfied with what they – they said to me.

And what was said to you?---Privilege. That it would be done on a – on a commercial basis and based on a market rent.

5 And you weren't told what that rent would be?---Privilege. I – I don't recall but that – that number doesn't surprise me, the 700.

10 I see. Even though no one you knew was going to pay it?---I will – I will just restate what I've said previously that I don't believe the intention was that it would never be paid. The comment – the proviso that was put on it was that if Bruck Textiles didn't have the cash flow because of other working capital requirements to pay the rent, that there wouldn't be an issue.

15 Do working capital requirements include paying dividends ultimately for the benefit of Mr Bart?---No, I don't believe that that would – that would be the case.

20 I see. And certainly it wasn't discussed with you why the rent obligation would need – or the lease would need to be backdated to 1 January 2012, is that correct?---Privilege. No. Other than the fact that obviously that's when the transaction occurred.

But that was not raised with you?---Privilege. I don't recall it being raised. No.

25 Did you at any time after these discussions took place ask what happened to the lease? Did you ever ask to – sorry, I withdraw that. Did you ever ask to see a copy of the lease?---Privilege. No.

30 Were you ever informed of whether the lease was executed?---Privilege. Look, I do recall in one of the board meetings I think that it was being finalised but I – I don't recall being told it had been executed.

If the fact that the lease was to be backdated some 16 months had been raised with you, would that have caused you some concern?---Privilege. Look, I – I – I would have had some concern with backdating a document, yes.

35 Thank you. Now, if I could take you back to your actual documents please, Mr Castrisos?

40 THE REGISTRAR: Does that mean this document has to be marked as well, Mr Kulevski?

MR KULEVSKI: Yes, please, Registrar.

45 THE REGISTRAR: Document headed Lease for – is this for property at that address, Mr Kulevski - - -

MR KULEVSKI: Yes.

THE REGISTRAR: - - - 791 Botany Road, Rosebery? That's the lease premises, is it?

5 MR KULEVSKI: That's – no, they're not the lease premises, Registrar. They're
- - -

THE REGISTRAR: I just want to give an identifier to this MFI, Mr Kulevski.
What's the lease premises?

10 MR KULEVSKI: I'm sorry, Registrar. I was discussing with my friend.

THE REGISTRAR: I just want to give an identifying address to this document for
the purposes of the MFI.

15 MR KULEVSKI: Yes, it's – well, the street – if you just – I think the best address
to use would be from the reference schedule even though it's a certificate of title
volume identifier.

20 THE REGISTRAR: Where is that?

MR KULEVSKI: That's on the reference schedule which is the second last page.
And you will see that the notices are to be sent to 19-81 Sisely Avenue, Wangaratta
which is actually the address of the premises.

25 THE REGISTRAR: Well, I will just refer to the certificate of title volume. That
might be the easiest and is that the one, Mr - - -

MR KULEVSKI: May it please, Registrar.

30 THE REGISTRAR: Yes. Volume 11398, Folio 709 referred to on page 23 of the
lease. So that will be the next MFI. I think that's number 7.

35 **MFI #7 LEASE FOR VOLUME 11398, FOLIO 709**

MR KULEVSKI: If that could – I apologise. It's already been given back to the
witness.

40 THE REGISTRAR: Yes.

45 MR KULEVSKI: Just out of fairness, Mr Castrisos, the lease was executed – if I
could take you four pages in, you see there that the document is dated as 24 May
2013. Is that correct?---Privilege. Yes.

You understood by reference to the schedule when I was asking you questions about backdating that what I was referring to was the backdating of the obligation to pay rent from 1 January 2012, is that correct?---Privilege. That's correct.

5 And so your answers were by reference to that understanding, is that correct?---Privilege. That's correct. Yes.

Yes. Thank you.

10 MR HEDGE: Registrar, that was at my request simply because the document is dated I understand my friend's questions, but the document itself hasn't been back-dated; it's the application.

THE REGISTRAR: Yes. All right. As long as that's clear.

15

MR KULEVSKI: Yes. But I'm indebted to my friend for that clarification.

20 So – that's fine. Just sitting there. Thank you, Mr Castrisos. So, if I could ask you to turn to tab 14 of the bundle, and you will see that's a financial report dated May 2012?---Privilege. Yes.

If I could direct you to – you see the numbers at the top right-hand corner. If I could direct you to page 438, 0-4-3-8?---Privilege. Yes.

25 If you – could I ask you to read the first dot point under Variances and Provisions?---Privilege. Yes, I've read it.

Could you – you see that – you see where the document says:

30 *This program assumes mill staffing will reduce from 195 personnel at the beginning of the budget period to 150 personnel by 30 June 2013.*

?---Privilege. Yes.

35 Could you explain why 45 jobs had – why there had to be a reduction of 45 jobs?---Privilege. I – my recollection for that year was that the volumes in the mill had reduced so that there were costs savings that were going to take place.

40 Now, do you recall how those 45 people were going to be removed from their jobs?---Privilege. Look, the majority of them were from just normal retirement or resignation, as I understand it. I don't believe they actually met that target because there had been some additional volumes added to the mill, so, I'm not sure they actually ended up having to meet that target, in any case.

45 I see. So, you were – you're telling the court, are you, that you were expecting at that time that reduction from 195 to 150 so that 25 per cent of the workforce were,

within one budget period, going to resign or retire; is that correct?---Privilege. That – look, that was their target, but it didn't occur. That's my recollection.

5 What was the basis for the expectation that 25 per cent of the workforce would voluntarily decide to resign or retire?---Privilege. There was a natural turnover, anyway, that occurred in the mill. Now, I don't know if that was based on previous years' experiences, but there was a natural sort of reduction that occurred if you didn't replace people.

10 Was there a habit of there – was there a pattern of there being a 25 per cent turnover in the workforce every 12 months?---Privilege. I don't recall the exact number for the turnover, but, look, it was – there was a reasonable number, yes.

15 If I could take you to the summary at the end of the document at number 13?---Is that tab 13?

No. Page 7 in the bottom right-hand corner. So, just the next – very next page?---Yes.

20 0440. Thank you. You see that the first open coloured point?---Yes.

See the reduction of mill staff to 150 by 30 June 2013 - - -?---Yes.

25 - - - from the current staffing compliment of 195 employees; you see that?---Yes.

This will be assisted by the introduction of a voluntary retirement scheme which is currently being finalised?---Yes.

30 Was that voluntary retirement scheme ever finalised?---Privilege. My understanding, there was an early retirement scheme that had been agreed which, I think, gave people an – some sort of incentive to retire.

35 What was that scheme?---Privilege. I don't recall the actual dollar benefit that was being offered to the employees.

40 So, when it says the introduction of a voluntary retirement scheme which is currently being finalised, did you understand that to mean, did you, an existing voluntary retirement scheme?---Privilege. I actually – my recollection was it was already in place, but obviously that indicates it hadn't been finalised, so I don't know if they were making changes to it. I don't recall.

45 You will accept, wouldn't you, that the ordinary meaning of the words, "This will be assisted by the introduction of a scheme which is currently being finalised", would tend to indicate that there wasn't one in place; is that correct?---Privilege. Yes, that's certainly what that suggests, but my recollection was there had been one. I don't know if they had changed it.

Did you ever see it?---Privilege. I don't recall.

Do you know whether you have a copy of any voluntary retirement scheme prior to this date?---Privilege. My recollection is that my – there may have been something presented to the board at an earlier date, but I don't recall the specifics.

I see. So, when you say that one was already in place you mean one had possibly been presented to the board earlier; is that correct?---Privilege. Yes, I have a recollection that that had occurred.

But you're not aware of one actually being executed or active, are you?---Privilege. There was definitely one active; I just can't recall the dates. I thought there was one before June 2013.

Do you recall the voluntary retirement scheme being discussed in this document ever being finalised?---Privilege. I don't recall.

If we look to the next dot point, The Successful Implementation of the Four-day Working Week for a Four-to-Five-Month Period During the First Half of the Budget Period, do you recall that being implemented?---Privilege. My recollection is that was rejected, I think.

What was – rejected by whom?---Privilege. That – I believe that needed to go to the employees for a vote, so, it was rejected by the employees.

Yes. I see. So, do you recall the details of the voluntary retirement scheme being spoken of here?---Privilege. I don't – I just don't recall.

Do you recall whether it included a financial incentive to the employees to leave?---Privilege. My understanding is it did include a financial incentive.

Do you recall the nature of it?---Privilege. No.

Do you recall it being over and above what they otherwise would have been entitled to in redundancy payments?---Privilege. I don't believe it was a redundancy; it was a retirement plan. So, they wouldn't – I don't believe they would have got redundancy. I think it was to supplement them taking an early retirement.

I see. At their initiative, you say?---Privilege. I believe they were discussing it with staff as an option.

So, the reasonable expectation was that, at this point, the 25 per cent of the workforce would decide to take voluntary retirement; is that correct?---Privilege. No, not all would take voluntary retirement. Some would be just normal resignations; people leaving their employer and moving on; and others would be from voluntary retirements.

So, you don't recall anything about how attractive or what – sorry. I withdraw that. You don't recall anything about what was going to be attractive or The employees in this voluntary retirement scheme?---Privilege. So, the benefit would have been – and I don't recall the number, but – that they would receive more money
5 than if they just normally retired, so it was an incentive for them to take early retirement.

Do you recall how much more money?---Privilege. No, I don't.

10 You would agree, wouldn't you, that this was a significant issue being discussed at the time?---Privilege. Yes, but it was an issue, I guess, that they had dealt with many times, so it wasn't an unusual issue to discuss.

15 Were you concerned at all at the time that the restructuring plan that was in – that was mooted and had already begun would affect the ability of the company to meet these retirement payments?---Privilege. No.

I see. If I can take you to volume 3, please, of that bundle that's before you. Registrar, I'm instructed that volume 3 of the three bundles was not marked, so
20 perhaps if it can be marked - - -

THE REGISTRAR: Should it be part of whatever – the third one - - -

25 MR KULEVSKI: It should be part of the other two bundles. Yes.

THE REGISTRAR: I'm just – can I have a look - - -

MR KULEVSKI: 4C. 4C I think it would be.

30 THE REGISTRAR: All right. Is that this slim folder, is it, Mr Kulevski?

MR KULEVSKI: Yes please, Registrar.

35 THE REGISTRAR: So this one – this examination bundle, volume 3 of 3. All right. That can be – I will speak to my assistant for one moment. That folder can be 4C, joining on to folders 4A and 4B on the last occasion.

MR KULEVSKI: Thank you.

40 Mr Castrisos, could I please ask you to turn to tab 133 in that folder. Now, that is an email chain and, to be fair to you, you were not included on that email chain but if I could ask you to read it in any event. Sorry, unless you were blind copied, but I will ask you that question?---Do you want me to read just the first bit, or all of it?

45 If you could read just the email from Mr Parker to Mr Johnson and then the response of Mr Johnson?---I've read it.

Now, the financial report we've just been discussing was dated May 2012. Was that correct?---Privilege. I'm going to take your word for it because I - - -

5 You don't recall. You can take my word for it?---I think it was May. Yes.

It was May 2012. Now, you will see that these emails also take place in May 2012. Is that correct?---Privilege. Yes.

10 And you will see that Mr Parker is asking Mr Johnson – now, could you please explain who Mr Johnson was?---Privilege. Mr Johnson is the CFO of Bruck.

Do you recall what his responsibilities were?---Privilege. He was responsible for the finance and admin department of Bruck Trading.

15 Was that a full-time job?---Privilege. Yes.

And so did Mr Johnson have an office somewhere in the building at Rosebery?---Privilege. That's correct.

20 And to your knowledge he was there what – 9 to 5, five days a week?---Privilege. Yes. That's my understanding.

Do you understand him to have other responsibilities in the organisation?---Privilege. No. It was primarily the finance and admin function, as I understand it.

25 Was it only for this company?---Privilege. I was only aware of his role within Bruck Group. I'm not sure if he actually did anything else for Phillip Bart.

30 I see. So when I ask you for this company – so you're only aware of his role in Bruck Group. Did he have a role for other companies in the Bruck Group apart from the company currently in liquidation?---Privilege. Yes. He would have looked after Bruck Properties, Bruck Group and obviously, later, the new sales and marketing business as well.

35 Did he regularly present at board meetings?---Privilege. Yes. He attended all the board meetings.

He attended all the board meetings in his capacity at CFO. Is that correct?---Privilege. Yes.

40 Do you recall what Mr Johnson's remuneration was for his role?---Privilege. I don't – I don't recall the exact number.

45 Do you recall, approximately, what the amount was?---Privilege. I think it was in the mid-100s.

Mid-100s. So he was being paid, approximately, what – \$150,000 a year. Is that correct?---Privilege. Yes, that’s what I recall.

5 Do you recall his wage ever being – or his salary ever being approved at board level?---Privilege. I don’t recall it being approved. No.

10 Do you recall what his prior experience had been?---Privilege. I recall that he has headed various finance roles and I know that he had been in a banking role as well. I just – I don’t recall the organisations.

I see. And so to your understanding, Mr Johnson was being paid approximately \$150,000 to be the full-time CFO of Bruck?---Privilege. Yes. That’s correct.

15 Thank you. So you will see there that Mr Parker is saying to Mr Johnson:

Phillip’s last day –

I take it that’s obviously Mr Bart. Is that correct?---Privilege. Yes.

20 Continuing:

Phillip’s last day is likely to be the 15th as he leaves on the 16th. He wants to see the budget.

25 Do you see that?---Privilege. Yes.

Now, if you go to Mr Johnson’s reply - - -?---Privilege. Yes.

- - - he says in the last sentence:

30 *If we go according to the above deadline, we can still present the plans for labour reductions over the budget year, which I will include as milestones in the budget tabled at the board.*

35 ?---Privilege. Yes.

40 Do you recall seeing the plan being discussed, there?---Privilege. I would have to have a look at the board pack but, normally, as part of the board pack there was actually a table month by month that had the total staff numbers so you could see when they were planning to reduce.

45 But you see, don’t you, from this email that something more significant is being discussed here. That a plan for labour reductions over the budget year needs to be completed?---Privilege. Yes. I don’t. Look, I don’t know what he means by plan, whether it was that document or they had another document.

Well, you see that he says just earlier:

The problem is, if we're going to change the labour standards based on our discussions this afternoon –

5 do you know what he's talking about there?---Privilege. Yes, I do understand what he's talking about.

10 And what does he mean by that?---Privilege. There was a standard cost that was loaded into the IT system so that they could track the work in progress and the final costing for the products that were manufactured and, typically, what would happen is that until you would finalise the budget, you couldn't load those in because the budget hadn't been formally approved. So once it was formally approved, they were loaded in. Now, once that happened, that could change budget because the dollar value you attached to the transfer between manufacturing and the other departments would be changed by that change to the standard. It didn't change the budget overall. It just moved things between different departments.

15 And who is the Ray that will need another week or so to fully complete this update?---Privilege. I don't know who Ray is.

20 So you see that Mr Johnson is saying that not only is a week going to be needed to complete the update but also the time will be needed to reprogram the model. Is that correct?---Privilege. That's correct. There was a fair bit of work involved. I did understand that.

25 So what were the plans then, for labour reduction over the budget year which were then presented to the board?---Privilege. It would have been in the manufacturing section of the budget and they would have details of the staff movements that they had budgeted through the year so it would go month by month.

30 And, at that point, was it being discussed at all that, as we discussed last time, there was a significant redundancy burden within Bruck?---Privilege. Typically, what happened was that where they had made plans for staff reductions there would be – and all you could do was make some assumptions because they weren't certain about it – but they would assume some reductions coming from normal resignations where there was no redundancies and then they would make an allowance for redundancy costs and they would factor that into the budget.

35 Do you recall what the allowance for redundancy costs were?---Privilege. Without looking at the document, I can't tell you what that number is – was for that year.

40 Thank you. Let's go to the next board paper, which is on 15 June at tab 28?---Is that volume 1, or - - -

45 Yes. Volume 1. I'm sorry?---Tab 28?

Sorry. Tab 28 is 21 September 2012?---Yes.

Just excuse me a moment. So if I could ask you – you see that that’s the minutes of the board meeting held on 15 June on the second page?---So I’m – sorry. I’m looking at the board meeting, 21 September 2012?

5 Yes, that’s correct. And then if I ask you to turn just one page over?---Yes.

That board paper – that board meeting papers include the minutes of the last meeting on 15 June?---Yes.

10 And, so, that would have been the meeting being spoken of in that prior email – is that correct? – that Mr Bart needed to have this before he left on the 16th?---Privilege. Yes.

15 So, if I could ask you to read those minutes to yourself. Just for your knowledge, I will only be asking you questions about page 3, but please feel free to read as much of the document as you need to to give yourself context?---I’ve read it.

Thank you. If I could take you to the heading Labour on page 3?---Yes.

20 You will see the dot point – sole dot point under that heading being, “Sandip stated that the plant labour reduction is 45 persons over the financial year”?---Privilege. Yes.

25 Who was Sandip?---Sandip – privilege. Sorry. Sandip is the plant operations manager, so he had control of the operations in the mill.

30 So, you see from the – or from the email chain between Mr Parker and Mr Johnson that the plan for the labour reduction is going to be presented at the next board meeting; do you recall that?---Privilege. Yes.

If we go according to the above deadline we can still present the plans for labour reductions over the budget year which I will include as milestones in the budget table that the board.

35 ?---Privilege. Yes.

And you see that that’s the milestone The board on that date?---Privilege. Yes.

40 Now, do you recall what the plan was for how those 45 persons were going to be reduced over the year?---Privilege. I don’t recall the specific detail of how many were going to be from normal resignation and how many they thought would be from early retirement. I would have to have a look at the board paper to refresh my memory.

45 And so you’re saying that you would have expected it to be in the board papers?---Privilege. Yes. It was either in the – it normally was actually in the – sometimes there were papers presented by each of the area managers, and other times

they talked to it, so I don't – I just don't recall whether in that meeting it was presented as a paper or he spoke to it.

5 Do you recall how these reductions were going to be paid for?---Privilege. They – again, without looking specifically at the board paper, the normal practice was whatever they assumed would be via early retirement or, alternatively, redundancy, they would make a provision within the budget.

10 I see. And there was no discussion at that time, was there, about whether any of the restructuring that had taken place within the group would affect the capacity to meet the obligations that would ensue from 45 people leaving; is that correct?---Privilege. Yes. Look, there was no concern because the budget that was put forward and the cash flow that was presented was sufficient to fund it.

15 But, still, not at this stage sufficient to pay rent; is that correct?---Privilege. Well, at this stage in mid-2012 the – obviously the lease was talked about in 2013, so they're obviously different dates.

20 So, to your understanding, there was no obligation to pay rent at this point and you made decisions based on that fact, didn't you?---Privilege. I wasn't aware of any obligation to pay rent at this point, no.

25 Yes. Thank you. You see the next heading immediately beneath Labour of Comments by Chairman?---Yes.

I take it that that's Mr Bart?---Privilege. That's correct.

And you see that the first dot point says"

30 *Labour inflexibility is the problem. Flexibility to manage labour is key to a successful business.*

35 Leaving aside the postcard references, did you understand what the chairman meant by that?---Privilege. Yes.

40 And what was that?---Privilege. There were requirements within the EBA to give notice with regard to ship changes and I think there may have also been some restrictions on how you could move staff around the mill, and he had concerns about the impact that had on the mill.

45 And so what was the problem he was discussing? When he says "labour inflexibility is the problem", what was the effect of the problem?---Privilege. He – he's preference was to have a multi-skilled labour force so that you could have – so for example if you had department A and you had a requirement for four people there but that could fluctuate so, you know, one day it might be four, one day it might be three. You would – you would want to be able to move people around. Also if – if –

if you were trying to manage the peaks and troughs in – in the production, then obviously having some flexibility with the days worked would be beneficial.

5 And to your knowledge as discussed by the chairman, he didn't believe that the company had that flexibility, did he?---Privilege. No.

And to your knowledge, in your time as a director, was that flexibility ever achieved?---Privilege. No, I don't – I don't – I don't believe it was. No.

10 Did the chairman continue to lament about the lack of flexibility in the workforce?---Privilege. Yes, it was a concern of his.

That he raised with you before this time as well, is that correct?---Privilege. Yes.

15 Repeatedly?---Privilege. Yes, he – he raised it on a number of occasions.

And in what sort of – to the best of your recollection, what were the essence or the effect of the words that he would raise with you?---Privilege. I – I think he felt that going forward - - -

20 Just to the best of your recollection, do you recall what he may have said to you rather than what he felt?---Privilege. I don't – look, I don't – I don't recall the specifics what he said but – but, you know, clearly it – it had to do with the fact that to make it more efficient, you – you needed some flexibility.

25 And had he raised with you a concern about potential redundancy obligations at any time?---Privilege. He – he had – he had raised concerns about the cost of redundancy, yes.

30 From when?---Privilege. I don't recall the dates.

Was it years before this or after this?---Privilege. It was years before this I think.

35 And was it a constant concern of his that he would express to you?---Privilege. He – he raised it – certainly raised it on a number of occasions but it wasn't a constant message to me, no.

But he raised it on a number of occasions?---Privilege. Yes.

40 Did he have – did he at any time offer a solution as to the problem?---Privilege. They worked on a number of solutions.

45 When you say “they”, you mean?---Sorry. Privilege. The – Phillip and – and the management - - -

Who else was the management?---Privilege. So that would be the CEO and the finance people. Generally, that's who I – aware of because they – they were in the

board meeting. But they – they got the change to the EBA to incorporate the grandfather clause which meant any new starts didn't – didn't have access to the redundancy provisions from the – the old EBA and they also – my recollection is had an early retirement scheme in place.

5

And you said to your understanding that solved the redundancy problem, did it?---Privilege. Look, it – it – it – from my perspective, there was going to be a – a core number of staff required in the mill and they were managing it via natural attrition and the other – other plans that they had in place.

10

So to your understanding, just to make it absolutely clear in case this goes further, it was never your understanding that the company wouldn't have the money to pay its redundancy obligations. Is that correct?---Privilege. No. Based on the plans they had, no. They had no issue.

15

And it was never raised with you that it was an issue that it wouldn't be able to afford its redundancy obligations. Is that correct?---Privilege. That's correct.

By anyone, not just Mr Bart. Is that correct?---Privilege. That's correct.

20

So it may seem a bit repetitive but just for fairness to you, sir, no one ever raised with you at Bruck – either in your capacity on the board or informally – that Bruck would be – was at risk of being unable to pay its redundancy obligations. Is that correct?---Privilege. You're talking about at this time or - - -

25

At this time?---Privilege. No.

So you say it was raised with you at a later time?

30 MR HEDGE: Can you specify the time for the transcript?

MR KULEVSKI: Sorry. The time we're referring to is at the time of this – the minutes of this board meeting at 15 June 2012?---Privilege. Was it raised at a later time while I was - - -

35

Well, first, Mr Hedge just asked me to clarify that your earlier answer, no, you understood that referred to 15 June 2012?---Privilege. That's correct.

Yes?---Yes.

40

Was it raised with you at a later time?---Privilege. Whilst I was on the board, it wasn't raised with me.

45 So it was never raised with you whilst you were on the board. And when did you cease to be on the board again?---Privilege. In April 2014.

And when was it raised with you then? Well, sorry, you say whilst you were on the board, it wasn't raised with you. I take it from your answer that it was raised with you at some point in time. Is that correct?---Privilege. I later had lunch with – with Phillip Bart and I think it was in June 2014 and at that point, he had received his
5 advice from BRI Ferrier and obviously at that point I think there was an issue about whether they would be able to fund the redundancies.

Do you recall what was said?---Privilege. I don't – I don't recall the specifics of what he said other than that at the time, he had indicated to me that - - -
10

When you say at the time, you mean at lunch? Is that what - - -?---At the lunch. Sorry. That he had received this advice. He didn't go into the specifics of it other than the fact that he was still waiting on the – the budgets which obviously was a key thing for him to consider and that – that if – but again, I don't remember the specifics
15 but – but what I took from it was that if he wasn't happy with the budgets, then he was going to look at those other options.

I see. So he expressed, did he – I'm not seeking to put words in your mouth but was he surprised about the advice he received from BRI Ferrier, was he?---Privilege. I – I – look, I – I had – he had obviously got the advice so I – I don't believe he was – he didn't talk to me in a surprised fashion, no.
20

I see. So did he discuss at all that he wasn't really aware of the problem until he had gotten the advice? Is that what you're saying?---Privilege. I – I don't recall
25 discussing that matter with him.

Okay. So right up until April 2014, no one had said to you there would be any risk of making redundancy payments. Is that correct?---Privilege. That's correct.

30 And then two months later, you have lunch - - -

MR HEDGE: Sorry, Registrar, it's only a clarification. My friend said no "risk of making redundancy payments". I think he meant being able to meet redundancy payments.
35

MR KULEVSKI: Yes. Being able to meet – thank you, Mr Hedge. Being able to meet your redundancy payments. Is that correct?---Privilege. That's correct. So nothing had been said up to April 2014.

40 So while – the whole you were a director, no one had said to you there was a risk that the company would not meet its redundancy obligations as and when they fell due. Is that correct?---Privilege. That's correct, yes.

45 But then that concern is raised with you in June at a lunch, is it?---Privilege. Yes.

And at that point, you have no formal or informal role with the company, do you?---Privilege. I have no informal or – or - - -

Yes?--- - - - formal role with - - -

So you're just meeting for lunch as colleagues or friends or - - -?---Privilege. He – he – after I resigned, he – he invited me to lunch as a thank you.

5

I see. And this was that lunch, was it?---Privilege. Yes.

Okay. So Mr Bart is discussing with you what's going on at Bruck at the lunch in conversation. Is that correct?---Privilege. Yes.

10

And so what was he saying to you? That he had received some advice from BRI Ferrier?---Privilege. Yes.

15 And what did he say about the advice he had received?---Privilege. Again, I don't – I don't recall the specifics but he clearly had outlined some formal restructuring options and I – I don't recall him talking about the specifics of those options but, you know, I mean I understood it – it would involve some sort of insolvency based on what he said.

20 I see. And to your knowledge, these were ideas that BRI Ferrier had come up with?---Privilege. Yes, that was my understanding.

And your understanding based on what Mr Bart had told you?---Privilege. Correct.

25 And what had he said to give you that understanding?---Privilege. Look, just based on the – on the fact that – that he had got independent advice and he didn't specifically say they were Ferrier's ideas but I assumed that given that they were a professional organisation, that it was their view.

30 I see. Now, had – did you ever read the BRI Ferrier report?---Privilege. Yes, he – he sent – after the lunch, he sent it to me via Emma.

35 Why was he sending it to you?---Privilege. He – he asked me to have a read of it and I – I – think he was just looking for – for some comment.

40 Did you give him any comment?---Privilege. I – I emailed him back and I had looked specifically at the comments that Ferriers had made relating to the recovery actions and specifically in relation to the time that I was on the board and I just said that they were fairly definitive in – in their response and I think I used the term that I – I couldn't fault the logic that they had prepared and present to him.

I see. Now, had that logic ever been presented to you while you were on the board?---Privilege. No.

45 So the options that you read in the BRI Ferrier report, had either Mr Bart or Mr Parker ever presented those options to you?---Privilege. No.

And when you left in April, two months earlier, did you have any cause to think that the company might be going into liquidation?---Privilege. At – at the meeting I had with Phillip Bart in April he had raised concerns about the performance of the business, and he had indicated at that meeting that he was getting some advice.

5

I see. Now, during your time as a director, at that point, did you see any figures that would indicate that there would be an immanent need to go into liquidation?---Privilege. No.

10 Were you surprised when the company went into liquidation so soon after you had resigned?---Privilege. Yes.

And what was the basis of your surprise?---Privilege. That the – the last board meeting I had been at, the company was profitable, the cashflow was found, and they had plans in place to transfer some additional manufacturing from AWM to Wangaratta, which I thought was positive. And I think – from my recollection, I think the profit for the first six months of that financial year were going to be in excess of \$2 million.

20 Yes, I see. Now, were you worried at all when the company did go into liquidation about what had happened while you were a director?---Privilege. I guess, on reflection, you always have some concern, given that that's the eventual outcome, but I had no concerns on – on what, you know, I had done, my time on the board.

25 Now, did you raise your concerns with Mr Bart or did you – I withdraw that. Did you raise with Mr Bart the question as how did this so quickly go pear-shaped, if effect?---Privilege. I – I did ask what had happened, and as I understood it, it was a revenue issue, and I think a lot of it had to do with the fact that defence orders had dropped off and there was – there were some concerns about the – the lack of certainty as to, you know, how they would, I guess, be delivered to the – the mill over the next 12 months.

30 So this all happened in a very short period of time, did it?---Privilege. That's – that's my understanding of – from – from what I was told.

35

By Mr Bart?---Privilege. Yes.

Did you have cause to consider, at that point, that there were any other reasons why the company went into liquidation?---Privilege. No.

40

Were you surprised when the business was sold to a related party of Mr Bart? Sorry. I withdraw that. Were you surprised when the business was sold to a related party controlled by Mr Bart?---Privilege. It – it – no. It didn't surprise me.

45 Why didn't it surprise you?---Privilege. Because I – to be honest, I – I – I think if there was going to be a formal restructure that – that he was likely to be someone interested in buying the – the business.

But it wasn't sold by a liquidator, was it?---Privilege. At the time – look, I subsequently know that, but at the time I didn't know that.

5 So you know now that it was sold prior to the company being placed in liquidation; is that correct?---Privilege. Yes. I do know that.

Did that concern you when you found that out?---Privilege. Yes.

10 Why did it concern you?---Privilege. I – I think – I think it would have been better that it would have been independent.

And why is that?---Privilege. I think it's just a more transparent process.

15 And did you raise with Mr Bart any of these concerns?---Privilege. I think when we had the lunch I – I may have said that it – I didn't think it was a good option, but to be fair to him, he – I don't think he felt it was a great option either.

20 So what was the reason he gave you?---Privilege. At that time he hadn't – he actually hadn't made his mind up. At that time he had said to me that he was waiting on the budgets, and he – he – he seemed to be, I guess, waiting to see what – what the next 12 months in terms of the budgets were looking like before he was going to make any decision on what – what the best course of action was.

25 But he didn't wait that long, did he?---Privilege. I – I don't know. I don't know the exact dates, but it – obviously, it was in – within a month, I think.

30 Within a month. Yes. So what happened in that month?---Privilege. As I understand it, the – the delivery of the budgets were immanent, so I – I guess it wasn't – wasn't long before he – he had his information.

So he, to your knowledge, was waiting on someone else to complete some budget, was he?---Privilege. That's my understanding.

35 In your experience, had he not – had he ever previously not had his finger on the pulse like that before?---Privilege. I – I know the budget process takes some time, so I am sure that he – he has probably seen some drafts. But, look, I'm – I'm – I'm speculating. I don't know. He didn't explain to me what the process was. I would imagine it was no different to, you know, previous processes as well, that they start pretty early on and it takes them a few months to get it done.

40 Now, given the gravity of this matter, you would accept the fact that we're all here doing this means that there's some gravity to the matter, wouldn't you?---Privilege. Yes. I understand that.

45 And that the performance of the directors of the company is going to be scrutinised; that's correct, isn't it?---Privilege. Yes.

Are you concerned that the reason why the business was sold was in order to escape some of the redundancy payments that were - - -

5 MR HEDGE: Registrar, I object to the question because, frankly, I don't really understand it, and particularly at the time this transaction took place my client was not a director. So I'm not really sure what the question is. Is he being asked to speculate what - - -

10 MR KULEVSKI: I will do it - - -

MR HEDGE: - - - he thinks Mr Bart - - -

MR KULEVSKI: I withdraw it.

15 MR HEDGE: - - - might have thought - - -

MR KULEVSKI: I withdraw it.

20 MR HEDGE: - - - after this lunch?

MR KULEVSKI: I withdraw it. I withdraw it.

THE REGISTRAR: Yes, Mr Kulevski.

25 MR KULEVSKI: Are you concerned that you weren't told all the information that you required to be a director while you were a director?---Privilege. Look, obviously, between the November board meeting and the April meeting where there clearly had been some issues with performance of the business, I was concerned that - that I wasn't made aware of it earlier.

30 And what raised your concern?---Privilege. When I actually had the meeting in April.

35 And who was that meeting with? The board meeting, you mean, or do you mean a separate meeting?---Privilege. I - I just - I had a - a meeting with Phillip Bart.

40 And so what was said to you at that meeting?---Privilege. He - he said to me that performance of the business was of concern to him. I think he also indicated he had put some money into the business. He was waiting on some budgets to be presented to him, and that he wanted to review his options and he was getting some advice.

Now, did you raise with him, "Why haven't you raised this with me before, Phil?"?---Privilege. I don't recall if I specifically said that to him.

45 Did you express any surprise to him?---Privilege. Yes. I was surprised.

So what did you say?---Privilege. That I was surprised that there had been such a deterioration.

5 Did you ask him to explain the deterioration?---Privilege. Yes. I believe I did.

And what – do you recall if he responded?---Privilege. It – he explained that there were concerns with the revenue, that – as I recall it, it largely had to do with the – with Defence, and there had been a – a significant I guess decline in what they expected the revenue to be for that financial year.

10 Did he explain to you how he had formed that change of opinion between November and April?---Privilege. I – I believe it was on the basis of orders that had come in in that first period after the new year.

15 I see. Now, at that point did that give you cause to concern – cause for any concern about previous dividends that had been paid or previous payments that had been made?---Privilege. Look, at – at the time, obviously, we – we had – the board had made decisions based on what was presented at the time, so I didn't immediately have concerns that anything that had been presented to me was incorrect and that it wasn't based on – on – on the facts at the time.

20 Didn't you – it's correct, isn't it, that you chose to resign because you were concerned that you might not be getting the full picture and it was time to leave?---Privilege. I – the meeting had – had started with Phillip indicating to me that this was his issue and his business, and he asked me whether I wanted to stay on the board. On that basis, I agreed that I was going to resign.

25 When you say – what was – what was the issue? The deterioration. Is that -- --?---The deterioration in the business.

30 And at any point did Mr Bart explain to you that he was going to sell the business to a related party?---Privilege. No. But I – I walked away from that meeting with the clear impression that a formal restructuring was – was a – an option that was possible.

35 I see. And by restructuring – formal restructuring, you understood that to mean, didn't you, selling part of the business to a related party?---Privilege. I had assumed that was going to be an option. Yes.

40 Yes. And so in the lingo being used, that's considered a restructure, is it? Between you and Mr Bart?---Privilege. I didn't – I don't know if I would use the term restructure, but I'm just trying to explain to you what was said and what my impression of what was said to me.

45 Okay. So perhaps just to be fair to you, what gave you cause to consider that one option was a sale of part of the business to a related party?---Privilege. It was clear from what Phillip Bart said to me that he – he wanted to see a way forward with the

business and the two options were that he was either going to continue to support the business based on the budgets he got and, if not, then the question was whether he would continue to fund it in its current form. But I had no doubt that he would – he would continue some involvement with that business.

5

And if the business meant selling the business to another company that was considered what you understood, was it?---Privilege. Yes. I would understand that that was the case.

10 Okay. Thank you. So you were left at the end of that lunch with the firm impression that, come what may, Mr Bart would be, in future, somehow involved in that business. Is that correct?---Privilege. So this this lunch was in June, not April?

15 Yes?---Yes. I left that lunch believing that he would be involved in the business in some way.

20 Thank you. My friend is right. There's something I was going to raise with you. No disrespect, Mr Kulevski. You did jump between the, sort of, April meeting and the June meeting. Can we just, sort of, clarify the timeline so you have a meeting in April, do you?---Privilege. Yes.

And what's the nature of that meeting? Is that a lunch or is that a - - -?---Privilege. It was just a coffee – a brief – I think we met for an hour.

25 I see. So what was the last board meeting that you attended?---Privilege. It was in November 2013.

30 Okay. So November 2013 was your last board meeting?---Privilege. Yes. That's correct.

And so what formal or informal involvement did you have other than continuing as a director, practically, with the company between November and April?---Privilege. I didn't have any further involvement.

35 You were not sent any documents?---Privilege. No.

And you didn't have any discussions with Mr Bart or Mr Parker?---Privilege. No. I understood Phillip Bart was actually overseas in early 2014.

40 Okay. So what was the position as at the November board meeting. Was it that the company was going fine?---Privilege. Yes.

45 And what was your understanding of the profitability of the company at that point?---Privilege. I think, for the first six months of 2013/14, the business was going to have a net profit before tax in excess of 2 million. The budgets had been approved and it was profitable. They did have some further staff reductions planned

but they were funded – fully funded – and they were progressing with the integration of AWM onto the Wangaratta site.

5 And either at that board meeting, or prior to it, was there any concern raised with you, by anybody, that this business was in trouble?---Privilege. No.

10 Was there any concern raised with you that the business was in medium-term trouble?---Privilege. No, but the business obviously had its issues but there were plans in place. I think the most significant one from my perspective was the fact that they were merging AWM into the Wangaratta facility.

15 I see. So then, at no time in your involvement as a director of this company attending board meetings, has anyone prior to November or even up to November, said anything to you about this business not going on as a going concern. Is that correct?---Privilege. No. I had no concerns and, in fact, Phillip Bart had indicated that he would continue to fund the business.

How recently?---Privilege. He mentioned that in the November 2013 board meeting.

20 I see. So you leave for Christmas thinking everything is going fine. Is that correct?---Privilege. That's correct.

25 And so the next involvement you have is that you get invited to a coffee, is it, in April?---Privilege. Correct.

Did you set up the invitation or were you invited?---Privilege. Phillip Bart invited me.

30 Okay. So Mr Bart invites you to a coffee and you have that coffee. Do you recall where and when it was?---Privilege. I believe it was on 28 April and it was a coffee shop near his office.

35 I see. You catch up, you sit down. What's said to you – what's the first thing said to you about a change in the appreciation of the future of the business?---Privilege. It goes back to what I said earlier that he said he had concerns with the business. The key things I took out of it were concerns about the revenue. He had had to put some money in and he was waiting on the budgets to come but – but obviously he was concerned about the outlook.

40 Now, I put it to you that you must have been very shocked at this point in time?---Privilege. I was surprised. Yes.

45 And so what did you say to him to indicate that surprise, if anything?---Privilege. I asked him what had happened in regard to the revenue and he gave some explanation with regard to the defence but because he was still going through the budget process and I had the sense that he was still trying to get a handle on what the size of the problem was, it wasn't a detailed discussion.

So is it fair to say this. In November, no problem that you're aware of. Is that correct?---Privilege. That's correct.

5 And no problem that you're aware of prior to that time in the ongoing profitability of the business?---Privilege. That's correct.

You were first apprised of any potential profitability problem in April of 2014?---Privilege. That's correct.

10 But you're not, in substance, told what the nature of that problem is. Is that correct?---Privilege. Other than the fact that it was clearly a revenue problem which, in itself, was – I mean, that was going to be the problem. If there's no revenue problem, there wasn't going to be an issue and that my understanding is that they were trying to get some sense of what the outlook was, so to put some numbers
15 around it and – and give those to Phillip Bart.

But you weren't told specifics about the revenue problem, were you?---Privilege. No. I didn't know the quantum. No.

20 I see. And at that same coffee, it's indicated to you that it's probably best for you that you resign. Is that correct?---Privilege. He – yes. He said that it was his issue, his problem to deal with and didn't use the term best for me to resign but, I guess, that's the essence of it.

25 Didn't he ask you to stay on and didn't you want to resign? Isn't that the correct course of events?---Privilege. No. I – my recollection is that I had agreed that I was going to resign, effective immediately. He then subsequently – and I sent him the resignation letters. He then subsequently sent me an email saying can you stay on for two weeks. Now, the issue I had with that was that I clearly wasn't going to stay
30 on the board beyond those two weeks anyway and I didn't see the point of staying on, particularly given the fact that the last board meeting I had attending was November 2013, in any case.

35 Weren't you concerned about resigning immediately when such a large bombshell had just been dropped on you?---Privilege. Look, that certainly had an influence on me, in terms of my decision.

40 When you say influence – you're saying it wasn't a concern to resign, in fact, it was a motivation to resign. Is that correct?---Privilege. Look, there was no doubt I was concerned that the last board meeting I had was in November 2013 and then there was obviously five months before our next meeting and then I'm made aware of an issue. Yes. I did have concerns with that.

45 Now, did you have a concern about immediately resigning without getting to the bottom of it?---Privilege. My understanding of the process they were going to go through was that it was going to take some time for them to get to the bottom of the size of the problem and what – what was going to happen. The fact that we had

agreed that I was going to resign – I didn't see the point of staying on for two to three weeks. Particularly, given I hadn't, I guess, had any involvement for the last few months.

5 I see. So, certainly at that point you understood, did you, that you were resigning because this was a problem they were attempting to fix and that this will take quite some time and that's not something you were prepared to be a part of. Is that correct?---Privilege. I – a couple of issues there. (1) there had been four or five
10 months since the last board meeting. I actually didn't have the time, myself, to commit to it, and it had already been agreed that I was going to resign.

I see. And so did Mr Bart, at that meeting, say that he intended to continue to fund the company?---Privilege. At that point, he was continuing to fund the company.
15 Yes.

I see. So then what is your next involvement with Bruck or with Mr
Bart?---Privilege. We then had lunch in June.

20 Okay. So what happened at that June lunch?---Privilege. At the June lunch he indicated to me that, I think, GE Capital had pulled the funding in May and he had put the money in to pay them out, that they - - -

He had put the money in to pay out GE?---Privilege. Yes.

25 Did he indicate to you in April that there was a risk that GE would put out in May?---Privilege. No.

I see. Please – sorry – sorry to interrupt you. Please continue?---Privilege. He – he
30 also indicated that the budgets were close to being finalised and that he got his independent advice.

From?---From BRI Ferrier I believe.

I see?---And he – he clearly indicated to me that he had not made up his mind as to
35 what was going to happen because he was waiting on those budgets.

And who was preparing the budgets?---Privilege. I – I – I presume it was – was the management team that was presenting it to him.

40 So he had made it clear to you, did he, that he hadn't made up his mind about the options that BRI Ferrier had presented? Is that correct?---Privilege. That's correct.

I see. And so did you become aware of when Mr Bart did make up his
45 mind?---Privilege. I – I think I became aware – I had gone overseas in July and when I came back, I saw the press for – for – as a result of the liquidation of Bruck
- - -

I see?--- - - - Textiles.

And then did you have further occasion to speak to either Mr Bart or Mr Parker?---Privilege. I then didn't speak to Phillip Bart until later that year.

5

Did the topic of Bruck come up?---Privilege. Yes, it did.

When did you speak to him?---Privilege. I think – in fact, I think it was actually early 2015 I spoke to him. I had received a letter from the liquidator and I just asked him what was happening with the liquidation and the investigation.

10

And what did he say?---Privilege. He – he indicated that they were investigating the affairs. I think he indicated there was funding being provided for the investigation.

Well, that's certainly true?---He didn't – he didn't specify exactly what they were investigating but, you know, I – well, sorry, he – he indicated they were investigating the transaction. I would say that was the case.

15

Which transaction is that?---Privilege. That – that final transaction that occurred in – I believe it was July it occurred.

20

Do you mean the sale before the liquidation?---Privilege. Yes. Yes.

Did you discuss with him that sale? It must have come as a shock to you that that had occurred?---Privilege. I don't recall in that conversation specifically going through the detail. Look, I – I think at the time I just asked him where – where everything was at with it.

25

Did you ever receive a justification from Mr Bart as to why that sale took place before the liquidation?---Privilege. No, I don't recall him giving me an explanation.

30

What about anybody else? Mr Parker or anybody else?---Privilege. No.

So you were unaware at all times as to why that sale took place before the liquidation?---Privilege. I – no, I – I had no – had no discussions about the timing of that transaction.

35

Or the nature of it after it had occurred?---Privilege. I don't recall having conversations with them about it, no.

40

Fair enough. But you said earlier that you would have thought the better way to go – I don't want to put words in your mouth – was a transparent process. Is that correct?---Privilege. I just think if – if it had involved an independent party, it would have avoided some – some – obviously some concerns about the transaction.

45

Yes. And if you had still been a director, would that have been the course you would have advised?---Privilege. Look, that's I – that's hypothetical. I – you know, I can't

– I don't – I don't have all the facts as to what occurred leading up to that final moment so it's – I'm reluctant to give opinion on something I wasn't involved in.

5 You didn't have very many facts at all though, did you, between the November board meeting and your final resignation, did you?---Privilege. No, I didn't have a lot of the facts. No.

10 And surely you were – I mean, given the context, Mr Castrisos, surely you were concerned about this bombshell that had been dropped on you in April?---Privilege. Yes. I was concerned about it, correct.

15 And so what steps did you take to investigate it further after that point?---Privilege. Look, there – there was – there was – there was not a lot I could do once I resigned and I – I didn't want to get into a situation where, given I had been a previous director, that I was involved in any of those - - -

Yes?--- - - - decisions because that wasn't my – I wasn't involved in the process.

20 And surely one of the reasons motivating you to resign was that you were concerned about what was going on in the future of the company. Is that correct?---Privilege. Look, I – I certainly had concerns about what the future was for the company, yes.

25 And you were concerned about how a seemingly profitable company on your watch had suddenly become so unprofitable, liquidation was being considered. Is that correct?---Privilege. That – that was a concern of mine, yes.

30 And you were told by Mr Bart words to the effect – and please correct me if I'm wrong – “Jim, why don't you resign? This is my problem and my issue to deal with.”?---Privilege. I mean, that was the gist of – of what was discussed; that he – he – he saw it as his issue to deal with. Yes.

35 Were you concerned at that point that what was really being suggested was that it was best that there was no longer an independent director on the board?---Privilege. He – he didn't say that to me.

Is that the conclusion you or a suspicion you drew from the conversation?---Privilege. It wasn't my first thought, no.

40 So it's become a thought? You are under oath, Mr Castrisos.

MR HEDGE: You don't need to say that.

45 THE WITNESS: Privilege. Look, I – you know, I – I – I certainly had concerns with the transaction and – and what happened in those final months. As to whether that was his intention, I – I don't know. I really don't know.

MR KULEVSKI: And your concerns were based on what?---Privilege. You know, I mean, everything we've talked about up to now. The fact that – that – that it was a shock to me, that – that there had been period of time that expired from the last board meeting where I wasn't aware of the facts and I guess the course of action that – that
5 – that eventuated.

Yes. No. Thank you. Thank you for that. If we could go back to some of the documents please? If I could ask you to turn to tab 47 in the first bundle? Before that – I'm sorry, Mr Castrisos – before that, if I could you to turn to tab 33? That's
10 an email from Mr Bart to you?---Yes.

Now, you see there that Mr Bart has said to you:

We just were approved –
15
sorry, just for the purpose of the transcript, I'm reading it accurately with grammatical errors:

We just were approved for a clean technology grant for around 2 mil which will essentially pay for the AWM move integration.
20

Is that correct?---Privilege. Yes, that's – that's correct.

Do you remember on what basis you had applied for that clean technology grant?---Privilege. Look, I can't recall the – the – the specific details. It had
25 something I think to do with the emissions from the – the plant.

Now, would you accept, wouldn't you, from your knowledge that you were only going to get a clean technology grant if you showed that you were going to use it for
30 some sort of investment in energy efficient capital or equipment or processes. Is that correct?---Privilege. I think – I think – I think it had already been spent; that money. Like, they had already made the improvement. So you're obviously indicating that it had been misdirected – this funding – but it - - -

I'm not indicating - - -?---No.

- - - anything yet but it's funny that that would be the first thing comes into your mind. But let's pursue that line then. Why is the \$2 million essentially paying for the AWM move and integration?---Privilege. I – I think Phillip was just saying that
40 in terms of the money coming in for the – the company's accounts. The fact was that the clean technology grant monies were spent to actually get approval for that grant. And they were obviously funded by the company. So it - - -

What - - -?--- - - - was I guess like a reimbursement as I understand it.
45

I see. So what was the basis for the application for the clean technology grant? Do you recall? What were you going to do that deserved the \$2 million?---Privilege. I –

look, I – I don't recall – as I say, I don't recall the specifics but it – but it was improvements to the plant.

5 Right. But when he says the \$2 million will essentially pay for the AWM move and integration, you would accept, wouldn't you, that that wasn't a basis for a clean technology grant, wouldn't you?---Privilege. No, I don't – I don't think that's correct to say that. I think what he was saying there that the – the – the – the grant had – had been approved. The money was coming in. They – it's not to say they weren't spending it on the necessary technology improvement. What he's saying is
10 that the money is coming into the company's accounts and it would assist with some other things that they're doing as well. And he's looking at it at I guess a holistic point of view that this is the funds that were going to be available for the company.

15 I see. So you're suggesting, are you, that at some point somewhere around \$2 million had already been spent on things that would justify its clean technology grant and this \$2 million was a reimbursement for that, that would be applied to a different area?---Privilege. So, that – it was either reimbursement or the moneys were going to spent, but he – the money was going to come out of the company's accounts to fund that cost, and the government was supporting that initiative.

20 I see. But it's certainly true, isn't it, that the AWM move and integration was not something that would justify a clean technology grant in and of itself; is that correct?---Privilege. I don't believe that was the case, no.

25 Thank you. And by – sorry. Just to be absolutely clear, when you say you don't believe it was the case, you mean that move – you're not disagreeing with me; you're agreeing with me, aren't you?---Privilege. Yes, I'm saying I don't believe the AWM move and integration had anything to do with clean technology.

30 Perfect. Thank you very much. So, then, if I could ask you, then, to turn back to – sorry – turn forward to tab 47. Just excuse me for a moment. Now, if I could ask you to turn to the number 389 in the top right-hand corner which – so, just for your benefit, these are the minutes of the board meeting held on 21 September 2012?---Yes.

35 And, then, following that is the board papers for that month; is that correct?---Sorry. Can you just repeat that?

40 So, standard course, this is the board meeting of 8 February; is that correct?---That's – privilege – that's correct.

At the beginning, minutes of the most previous meeting?---Privilege. That's correct.

45 So, there had been no board meeting, had there, between September 2012 and February 2013?---Privilege. That's correct.

Right. How many board meetings, on average, did you have a year while you were a director?---Privilege. Early on they would be anywhere from six to eight, but in the later years it – I think it was around once every quarter.

5 And was any explanation given as to why the amount had been reduced?---Privilege. No.

And did you have – were you habitually sent any documents in between board meetings?---Privilege. Sometimes I was sent financials. I just can't recall how often they were sent.

10

Were you – did you discuss the business regularly between board meetings?---Privilege. Sometimes we caught up, but normally it was conducted within the board meeting.

15

Right. I see. So, you were apprising yourself of the business towards the end on average, say, every quarter?---Privilege. Yes.

In essence. Thank you. So, then, we have the board papers after that. If I could ask you to turn to – for that meeting. Could I ask you to turn to page 389 in the top right-hand corner?---Yes.

20

And just read the heading that says Group Restructure Five?---I've read that.

Was there any discussion at that board meeting about how this restructure might affect the company's ability to meet its obligations, including redundancy payments?---Privilege. I think it was put up as a strategy going for and detail was to be presented at a later date, but essentially it was seen as a positive to bring in those companies underneath the group. There was also some discussion about AWMs manufacturing coming into Wangaratta as well, and I saw that as a positive.

25

30

Okay. Thank you for that. If I could ask you to turn to the next volume. Just excuse me for a moment, please, Mr Castrisos. Now, if I could ask you to turn to tab 52. Could you read that email to yourself, please – or that chain, I should say, to yourself?---Yes, I've read it.

35

Now, you will see that that email is being sent in your capacity as a director of the Telum Group; is that correct?---Yes.

You tell me what's going on here?---Privilege. The Bruck had a lot of second stocks owned and it largely had to do with the industrial rigger that's used by Yakka and King Gee and it had been - - -

40

Sorry. Just interrupt you. Yakka and King Gee are not manufactured by Bruck, are they, or they were?---Privilege. They – Bruck supplied Yakka and King Gee the blue industrial fabric that you would see in workwear.

45

I see. And where was that manufactured?---Privilege. At Wangaratta.

By who?---Privilege. By Bruck.

5 So, Bruck actually manufactured the King Gee products; is that what you're saying?---Privilege. Yes, but the fabric, not the actual garment. So, the fabric would go to King Gee and King Gee would get that fabric made into a garment to sell.

10 Would cut it and make it into a garment, yes?---Privilege. That's correct.

Yes, I understand. So, what's going on here?---Privilege. So, what had occurred over many years was that there had been a lot of stock that Yakka and King Gee had rejected. It could be for a variety of reasons. It could have been off shade or there's some other defect with the fabric and they are unable to sell that fabric, so Bruck
15 were going to convert that fabric into workwear to try and sell it so they could reduce the amount of obsolete stock they had. So, Phillip had flagged that at the board meeting, and then obviously had then realised that Telum was a potential customer for that garment in our capacity as labour hire company in the construction industry that required personal protective clothing.

20 So, in this email you're acting in your capacity as a director of Telum or as a director of Bruck?---Privilege. He's writing to me in my capacity as director for Telum.

I see. So, what process had been put in place to deal with any potential conflict that
25 arose between your purchases from Bruck on behalf of Telum when you were director of both companies?---Privilege. I had made it clear that we would just pay whatever the market rate is that they desired.

30 Made it clear how?---Privilege. I think I had spoken to Phillip about the fact that, you know, obviously we're buying those garments already, and as long as it was in line with what our expectations were, then we were fine to consider purchasing from them.

35 Had it been raised at either the board of Telum or the board of Bruck?---Privilege. Yes. I raised it with the board of Telum and it was raised with the board at Bruck.

And where's the notes recording the raising with the board of Bruck?---Privilege. I don't know if it was noted in the minutes, but - - -

40 I see. If I could turn you to page – to tab 56, please?---Yes.

This is an email just to Mr Bart, not copied to anybody else or the board. Says:

45 *Hi Phillip. Attached is the winter order for our New South Wales projects. Our Queensland office has enough stock to cover their winter issue and we will order for them once they have run down their stocks. I will separately send you the average annual usage for all our offices.*

Can you tell me what's going on there?---Privilege. They – they – they had given us the prices and - - -

5 Who had given – what is the nature of the agreement?---Privilege. This – this stock was stock that they couldn't sell, and - - -

How did you know that?---Because that's what Phillip Bart had told me.

10 I see?---Privilege. So they had asked if we could help by acquiring some of those – some of the stock, because they were trying to build a business of selling this protective clothing. And all we were doing was letting them know what our usage was, and so that it was a – an avenue for them to – to sell.

15 Where had you previously been acquiring these sort of products for Telum?---Privilege. We normally just bought from local industrial clothing suppliers, so depending on where our office was.

20 And why was this a preferable arrangement for Telum?---Privilege. Because (1) I guess we wanted to – to try and assist where we could; and - - -

You wanted to assist Bruck?---Privilege. Yes.

25 I see. Yes?---And (2) if – if we could buy it in bulk then there were going to be some cost savings potentially for us.

And what was Telum's interest in assisting Bruck?---Privilege. I – I – Phillip had asked if we could – could – you know, if – if the prices were competitive, if we could purchase off them.

30 So it arose because of the personal relationship you had with Phillip?---Privilege. I – I guess it – it did. I mean, I – if I didn't know Phillip, I don't think he would have called me or asked me about it.

35 And you wanted to assist Bruck as best you could; is that correct?---Privilege. I knew this – this obsolete stuff was a problem, so I – if – if we could assist we – we were willing to do it.

40 Okay. Thank you. If you could go to tab 55, please. It's an email from Ron Johnson to you of 17 March 2013; is that correct?---Yes.

Could you please read that?---I've read it. Sorry. I've – I've read it.

45 Okay. Thank you. Now, that email is effectively seeking a retrospective approval of a prior transaction; is that correct?---Privilege. It – it – yes, it is.

So at that point you were being asked to sign up to some resolutions?---Privilege. Yes.

And they were effectively approving something that had already occurred some 15 months earlier; is that correct?---Privilege. So the – the Bruck Properties, the sale, my – my recollection was that there was an approval by the board to the restructure in late 2011, and essentially they were getting this – the resolution signed at this point.

5
10 So why did it take 15 months to get – if there was already approval, to get a resolution signed?---Privilege. I – I don't know. I don't know why it took them that long.

10 Did you have any concern at that time about resolving to do something that had already occurred 15 months earlier?---Privilege. I had asked the question as to why, but it was explained to me that it had been approved, you know, earlier, and the transaction had actually occurred, and this was just tidying up the company minutes and the secretarial side of it.

15 I see. So you asked why it was being done now. Who did you ask that to?---Privilege. I believe I asked Ron at the board meeting.

20 And you were told it's just reflecting something that the board had previously approved?---Privilege. Yes.

Is that something that you were a part of?---Privilege. Yes. That – that – that was at that meeting in late 2011 where there was in-principle agreement to it.

25 Right. So you're being told that 15 months later, this – these resolutions are being signed just to tidy up the minutes; is that correct?---Privilege. That was my understanding. Yes.

30 Is that what you were told?---Privilege. I don't recall exactly what I was told, but I – that – that's my recollection of why they were doing it.

Okay. Now – see, once again, we've got an asset leaving Bruck, right, with no cash movement; is that correct?---Privilege. So this is the transaction where the – the shares were sold by Bruck Textiles to Bruck Group. It created a loan account, and then that loan account was offset by those dividend – dividends - - -

Yes?--- - - - that are noted there.

40 So what was the merit for the company of selling an asset but having no cash come to it? Forget about the group for a second. What was the merits for this – the company of which you were a director of – of having a significant asset levered, but having no cash come in to replace it?---Privilege. It – it was really looked at in the context of the – of the group restructure, and there were sufficient – there was sufficient capital in Bruck Textiles to allow for that restructure to occur. The benefits to Bruck Textiles were seen in the context of the overall benefit for the group in terms of the improvements to the way the business would operate.

And what were those improvements?---They were associated with making sure that there was some structure in place in terms of the management of those businesses, and that's – that's – was the logic between the split between manufacturing and sales and marketing, and that there was a proper return on the rental – on the property.

5

So let's assume that the – as you indicated earlier – that you agreed that the book value was a fair market value of \$8 million; is that correct?---Privilege. Yes.

10 So it was thought at the time that Bruck, this company getting rid of that \$8 million, would get at least \$8 million worth of benefit from changes in the group; is that correct?---Privilege. I – I don't think it was looked at that way, there – that there was going to be an \$8 million benefit - - -

Okay. So - - -?--- - - - from the restructure.

15

20 Why is Bruck then giving away an \$8 million asset and getting no cash or anything noticeable in return?---Privilege. It got – it got a loan account in return, and then it was determined that the capital structure of that entity was too high, and from a shareholder perspective, obviously, you've – you – you – you've got to have some consideration of the capital and the business. There's no point having it over-capitalised, and that's why there – there was the declaration, the dividend and the capital reduction.

25 What was the nature of the loan account that was created?---Well, when the asset was sold, if it wasn't paid for there was a loan that existed between the two entities.

I see. What were the terms of repayment for that loan?---Privilege. The – the fact that the dividend and the capital reduction were occurring straight away I don't think warranted the – the loan agreement being put in place.

30

Okay. I see. So the consideration for selling \$8 million worth – shares worth – that control \$8 million worth of property is that you get a loan account put in place. So - - -?---Privilege. Yes.

35 You can't pay me the \$8 million the shares are worth, so I will loan you the \$8 million; is that correct?---Privilege. Could you ask that question again?

So - - -?---I'm not sure I understand the question.

40 No payment was actually received for the shares worth – on the assumption they're worth \$8 million; is that correct? Except for in the form of a loan account?---Privilege. There was – there was no cash payment, as I understand it. There was a loan account created - - -

45 So that was the consideration; is that correct, for the contract? I - - -?---Privilege. There was – there was – I – look, I haven't seen a – a contract. We discussed that before.

I see. Okay?--- But – but there was \$8 million in consideration and there was a loan created as a result of that.

5 So surely, so that it matches up, you sell something worth \$8 million. You're expecting \$8 million back in some form, one way or another. Is that correct?---Privilege. If there wasn't – yes.

10 Okay. And so, initially that \$8 million was represented by them owing you 100 per cent of the purchase price. Is that correct?---Privilege. That's correct.

Okay. So how was that 100 per cent loan for the value of the purchase price repaid?---Privilege. So you're talking about the \$8 million – how was that repaid?

15 Well, you sold something worth \$8 million. The company in liquidation sold something worth \$8 million. What I'm asking you is – I might be stupid but just in lay persons terms, what it got for the property it offloaded for \$8 million?---Privilege. So the loan was offset by those – those dividends being declared and the capital reduction. That's my understanding of the transaction.

20 So if we just take the steps through. I sell shares worth \$8 million. The \$8 million coming back to me, at least in the first instance, is by 100 per cent loan for the purchase price. Is that correct?---Privilege. Yes.

25 So, at this point, I've gotten rid of an asset worth \$8 million and someone has agreed to pay me \$8 million. Is that correct? And who is the company that has agreed to pay Bruck for that \$8 million?---Privilege. Bruck Group.

30 Okay. So how was that obligation discharged?---Privilege. My understanding is it was discharged when those – those – the dividend and the capital reduction were approved and the amounts were offset.

35 Okay. So what dividend? From whom to whom?---Privilege. The Bruck Textiles dividend to Bruck Group and the capital reduction from Bruck Textiles to Bruck Group.

40 Okay. So what money or what benefit did Bruck Textiles receive for having sold, effectively, the right to operate the factory or the premises on which they operated?---Privilege. The \$8 million loan. I can't answer any other way. That's – that's - - -

Which was never paid back?---Privilege. It was offset.

Offset by what?---Privilege. By the dividend and the capital reduction.

45 Who did the dividend go to?---Privilege. The dividend went from Bruck Textiles to Bruck Group and it offset the loan. So Bruck Group didn't require it to pay it. It offset it against what it owed Bruck Textiles.

But Bruck Textiles never actually received anything, did it?---Privilege. It received the loan.

5 Which was never paid back?---Privilege. I don't know what other way to answer it. The loan was created. There were dividends declared. A capital reduction and they were offset. That's – that's how I understand the transaction.

10 And then, at some point, Bruck Textiles got itself into a situation where it was agreeing to pay \$700,000 a year plus GST rent for a property it had previously owned. Is that correct?---Privilege. There was – Bruck Properties was always a separate company with – that owned that property and, as a result, there probably should have been rent paid earlier but that's what happened. That was – once the sale occurred, they – they put in place the rent – the lease.

15 But Bruck Textiles owned the shares in Bruck Property prior to this, did it not?---Privilege. That's correct. Yes.

20 So Bruck Textiles, in effect, own Bruck Property and control the terms under which it occupied the premises?---Privilege. I guess, indirectly it did. There was a separate board, obviously.

25 And then we came to a situation where Bruck sold those shares – Bruck Textiles, but received no cash for the sale of those shares. Is that correct?---Privilege. There was no cash, as I understand, that was transferred between entities. I wasn't made aware of any cash transfer.

30 And then Bruck Textiles assumed an obligation, at some point, to pay the rent at \$700,000 plus GST a year?---Privilege. There was an obligation to pay the rent. Yes.

35 Yes. So could you not see from the position of a director of Bruck Textiles that it sold an asset worth \$8 million, acquired, subsequently, a liability to pay \$700,000 plus GST a year but didn't seem to have any money coming in to help fund that liability. Isn't that correct?---Privilege. That's not how I saw the transaction. There was a transaction that occurred that created the loan so there was consideration. And then the decision was made that the capital structure of Bruck Textiles would – would – well, there was a dividend paid, sorry, of 6 million and that there would be a capital reduction 2 million and that would offset that loan.

40 What was the justification for those transactions?---Privilege. Which transaction are you talking about?

45 What you've described as, together, the offsetting transactions?---Privilege. Bruck Textiles had significant capital, based well in excess of what its requirements were at the time in terms of its size and it was seen as reasonable to – to declare that dividend. There was sufficient retained earnings to make the capital reduction.

And, at this point, you didn't know – or you didn't think that Bruck Textiles had assumed a liability to pay \$700,000 rent a year?---Privilege. I didn't know the exact number but the intention was that there would be rent paid.

5 At some point?---Privilege. Yes.

But you didn't think that obligation had arisen from 1 January 2012, did you?---Privilege. Well, no. I – there was no lease in place at that point.

10 And so if you had known that it was considered that there had been an existing obligation to pay rent from 1 January 2012, would you have approved these transactions?---Privilege. I was – I supported the group restructure from October 2011 and that was the intention that they would set up this group and there would be some rental payable and it would be reflected in Bruck Textiles.

15 But did the amounts make sense if Bruck Textiles already owed in excess of \$1 million for rent?---Privilege. I had no problem with the amounts they were talking about. No.

20 Okay. And you have no concerns in light of what subsequently happened to Bruck of the amounts then being discussed?---Privilege. I don't have any concerns with that transaction. No.

25 THE REGISTRAR: Is this a convenient time, Mr Kulevski? Or are you going to move to another point?

MR KULEVSKI: No. This is a convenient time. Yes. Thank you. We should be – I apologise – about another half an hour. That would be it. Thank you.

30 THE REGISTRAR: All right. Yes. What we will do, Mr Kulevski is we will take the break now. In the meantime, we will ask Mr Castrisos not to speak to anyone about his evidence. We will resume at 2.15.

35 MR KULEVSKI: Thank you.

ADJOURNED [12.44 pm]

40 **RESUMED** [2.22 pm]

THE REGISTRAR: Yes. Mr Kulevski, we can continue?

45 MR KULEVSKI: Yes. Thank you, Registrar.

THE REGISTRAR: Yes. Before. Thank you. Yes.

MR KULEVSKI: Mr Castrisos, could I please ask you to turn to tab 129 of volume 3. It's the first tab of that third volume?---The third volume?

Yes. The first tab of the third volume?---Yes, I've got it.

5

Could I ask you to read that circulating resolution, please?---Privilege. "That the company pays an Dividend of - - -"

Sorry?---Sorry.

10

I'm terribly - - -?---You - - -

Just to yourself?---Okay.

15 Yes. Sorry?---All right. No, I'm fine. Yes.

Is that your signature in – above your name?---Privilege. Yes.

20 And did you sign it on or about the date that Mr Parker is recorded signing it as 19 March 2013?---Privilege. Yes, around that date.

Yes. Could you explain what that dividend – the rationale behind the payment of that dividend?---Privilege. That was a dividend just out of the retained earnings of the company.

25

And why is the circulating resolution dated March 2013 being used to authorise the payment of a dividend effective 2 January 2012?---Privilege. They – and I'm not sure of the reason, but they tended to use circulating resolutions for some of these resolutions even though they were discussed at the board meeting.

30

I see. Probably more directly, I'm wondering why a resolution dated March 2013 is referring to a transaction on 2 January 2012. Why wasn't the resolution passed at that time?---Privilege. My understanding is that at the board meeting prior to that it was discussed and agreed, but they then just follow it up with a circulating resolution.

35

Did you check that before you signed?---I believe I did.

40 So, you somehow made yourself comfortable, did you, that the board meeting prior to 2 January 2012 had authorised that payment?---Privilege. Correct.

Could you tell us how you made yourself so comfortable?---Privilege. It would have been from my recollection.

45 So, at the time someone raised with you, "Did you remember we discussed this – we approved this at the board meeting before", and you said, "Yes, I recall that."

Something like that?---Privilege. I was at that board meeting, so I would have recalled that it - - -

5 No. That's – sorry. Sorry. I will say that again. At the time this was sent around, you asked someone, did you, “Why are we signing this?” and they said to you, “Remember we approved at that board meeting in 2011?” and you said, “Yes, I recall that.” Was it something along those lines?---Privilege. They either sent me a note with it or there would have been some explanation on where they would come with it.

10 I see. And did you raise any questions as to why this transaction had not been regularised in a resolution 18 months earlier – sorry. I'm terribly sorry. 15 months earlier?---Privilege. No. I'm not sure why.

15 Now, tell me, please, Mr Castrisos, if it had been approved at a board meeting – so, authorised at a board meeting – why would a circulating resolution be required?---Privilege. I'm not sure if it relates to this one, but there had been an error, I think, in a previous one where they had referred to a frank dividend, and it was actually unfranked. I'm not sure if this is the actual dividend that they're referring to here, but there certainly was – I do recall there was an issue with one of those resolutions.

20 But that's not this resolution, is it, because it doesn't refer to itself as correcting an error, does it?---Privilege. No, it doesn't appear to be, but it – my recollection is there was one and I know it was \$2 million.

25 Okay. Let's assume it's not this one just for the purposes of assumption. Why would a resolution – circulating resolution be required if the board had already authorised the payment 16 months earlier?---Privilege. Possibly to correct that error, but I don't recall if this is the specific resolution, but there certainly was one where there was an error.

30 There were other circulating resolutions referring to transactions that occurred over 12 months earlier, were there not?---Privilege. There was obviously that one that related to the Bruck Properties - - -

35 Yes?--- - - - transaction, yes.

40 So, why are circulating resolutions required if the board has already approved it some time earlier?---Privilege. My understanding is that they had changed – they got a secretary or company to assist them with just managing their own ongoing company secretarial obligations, so I'm not sure if out of that review that they had realised that they had to correct some of the documentation. I'm not sure, but I know there was a change to it.

45 So, I don't understand that. So, if the board resolves something at a meeting why is a subsequent resolution needed to confirm the same resolution?---Privilege. I presume

it was for clarity, that there must have been an issue, but I – look, to be honest, I don't recall on this specific one.

5 Well, do you recall on any of them? For instance, the Bruck Properties one?---Privilege. It – as I mentioned before, that had been agreed in late 2011, so, as far as I was concerned, the board had approved it, but obviously they felt that there needed to be that resolution just, I guess, to clarify the – and I don't know if that came out of the review by the secretarial firm or not. I'm not sure.

10 So, are you saying there was no resolution in 2011 of the board?---Privilege. No, I'm saying there was agreement of the board, that, in principle, that restructure would go ahead.

15 So, really, we're going circular. There was an agreement and there was a resolution, but, yet, there's a subsequent resolution 15 months later, and all I'm really asking for is one justification as to why a second resolution would be needed?---Privilege. I can't answer that question. All I know is at the 2011 board meeting it was agreed.

20 So, why do you sign these documents if you don't understand why they're required?---Privilege. Because it's just clarifying what was agreed.

25 But how is it clarifying if it's just saying the same thing?---Privilege. I can't answer why they felt they needed to have a separate document, but it was just clarifying what I thought was agreed.

So, was it your practice, then, just to do whatever they – was just to sign whatever they put in front of you?---Privilege. No.

30 So, what was your reason for signing the document?---Privilege. It was just clarifying what had been agreed.

35 What was - - -?---I can't answer it any other way than to say that it was – it had been agreed. There was nothing wrong with these documents. They were documenting down what had been agreed.

What was unclear before?---Privilege. I was speculating as to why they put it forward – that had been reviewed. You will have to ask, I guess, the company secretary to get clarity on that.

40 Okay. So, what was your reason for signing?---Privilege. Because I was asked to sign, and it was – it wasn't inconsistent with what had been agreed.

45 So, that's what we're going back to. You signed it because you were asked to sign it, and you didn't think it was inconsistent with what had earlier been agreed, did you?---No, it wasn't inconsistent.

Yes. So, you didn't think - - -

MR HEDGE: Registrar, could I just interrupt to ask my friend to actually read the first part of it where the resolution he's talking about does, in fact, use the word "ratify" which is a legal term. It's not a matter for the witness to debate, but, in all fairness this resolution does, in fact, say "ratify" something.

5

THE REGISTRAR: Mr Kulevski, does that - - -

MR KULEVSKI: It does absolutely nothing because the words used are "hereby resolve, confirm and ratify", so, they are three potentially inconsistent statements, but, really, I'm just asking the witness why he signed the document.

10

THE REGISTRAR: Are you asking why this witness ratified this?

MR KULEVSKI: No, I'm not asking - - -

15

THE REGISTRAR: No?

MR KULEVSKI: I'm asking him why he signed the document.

20 THE REGISTRAR: All right. Proceed on that basis, then, Mr Kulevski.

MR KULEVSKI: Because I'm not – I never suggested to him that it was a ratification.

25 THE REGISTRAR: Okay.

MR KULEVSKI: A ratification would tend to imply that an unauthorised act had been earlier done which now needed ratification. The witness is telling me it had already been agreed.

30

Well, given what Mr Hedge has said, is that what happened, is it? Was the earlier transaction 15 months earlier unauthorised and you were now ratifying it?---Privilege. That's not my understanding, no.

35 No. Right. So, you say that it had earlier been agreed, and someone asked you to sign the document and you signed it, so, what I'm asking you is what was your reason for signing it over and above someone telling you to?---Privilege. I signed it because I was given an explanation; I just can't recall what the issue was - - -

40 Right?--- - - - but it was consistent with what had been agreed.

So, what was the explanation given to you as to why the subsequent circular resolution in Bruck Properties was – with respect to Bruck Properties was required?---Privilege. Again, I believe it was for clarity on that transaction, but it had clearly been agreed.

45

So, your understanding of these – of the circular resolutions is they do no more than re-state what had earlier been agreed by the board; is that correct?---Privilege. Generally, that's the way I saw them, yes.

5 Okay. Thank you. If I could ask you to turn to tab 58, please, in volume 2 – or is it – yes, volume 2. It's an email chain between you and Mr Johnson. I might ask you to read that to yourself?---I've read it.

10 Could I ask again – similar to my earlier questions – why this approval was being sought, once again, after the transaction?---Privilege. It – I can't answer it any other way than to say that it was agreed at the end of 2011, and that resolution, as I understand it, was to clarify the transaction.

15 But this is a different transaction, isn't it? Sorry. This is a different approval. I withdraw that. You're now seeking subsequent approval from a third party, aren't you?---Privilege. They were required, as I understand it, to get Approval for the dividend and the capital reduction.

20 But that's after it had already occurred, is that not right?---Privilege. No. The capital reduction and the dividend, I think, occurred after this day.

After 20 March 2013?---Privilege. That's my recollection.

25 Which dividend and capital reduction are you talking about?---Privilege. The one that involved a – I think, a \$6 million dividend and a \$2 million capital reduction.

30 Sorry. I'm just confused. Does this not also refer back to the dividends and the reduction of 2 January 2012 to offset the supposed sale of the shares?---Privilege. I believe those – that dividend and capital reduction occurred in 2013.

Yes. So, if you go back to the beginning of the chain – sorry – on the following page, I've attached some resolutions that cover the sale of Bruck Properties by Bruck Textiles to Bruck Group?---Yes.

35 And, so, the resolutions are backdated – sorry – the resolutions are attached in March 2013?---Privilege. Yes. So, my understanding of the transaction is that the transfer of the shares occurred 1 January 2012 and the dividend and the capital reduction occurred in March 2013.

40 So, starting at the beginning, where is the explanation in this email as to why the resolution is finally required for something effective 1 January 2012?---Privilege. Are you talking about the property – the share sale?

45 Yes. Yes?---Privilege. There's no explanation in that email, as I can tell, but I must have had a conversation with them.

Right. But you don't recall the contents of that conversation?---Privilege. No.

Okay. Thank you. Do you recall what GE's attitude to this was?---Privilege. I didn't attend the meetings, but they gave written approval, so I presume - - -

5 What was the explanation given to GE as to what was required?---Privilege. As I understand it, they explained the group restructure.

10 And the reason why they approved it, was it not, because it's, in effect, their security over the group; that's correct, is it not?---Privilege. I didn't attend the meeting, so I can't comment as to what their thinking was.

If – sorry. I didn't mean to interrupt you?---That was it.

15 If you turn to tab 65, please. You will see that Mr Johnson is sending you the written confirmation?---Privilege. Yes.

And it says:

20 *It has taken a bit of time because GE wants to have everything cleared with their solicitors to ensure that the transaction didn't affect their current security.*

?---Privilege. Yes.

25 And that security was over the group generally, wasn't it, which is why it wouldn't affect it?---Privilege. That's – yes, that's my understanding.

30 Yes. Okay. Now, were you, then, given an explanation – I can't recall – I apologise – exactly the words you used, but you said that at your coffee with Mr Bart in April he said that GE had pulled the financing agreement, did you say, or withdrawn the financing agreement a month earlier?---Privilege. No. That was in the – at lunch in June.

In June. And he – they removed it in May, did you say, a month earlier?---Privilege. Yes, that's what he said.

35 And was an explanation given to you as why GE pulled their finance?---Privilege. He – I believe he indicated that GE had taken the view that they didn't want to continue to fund the textile industry in Australia.

40 So, you say it was a, sort of – it wasn't Bruck specific, it was an industry reason, was it?---Privilege. That's my understanding, yes.

Your understanding based on what Mr Bart said to you or - - -?---Privilege. Correct.

45 Yes. Thank you. Might ask you to turn to tab 130 in volume 3, please. So, this gives the clarity to the email. If I could ask you to read that resolution to yourself, please?---I've read it.

So, did you sign that document on or about 18 April 2013?---Privilege. Yes.

So, you will see that, contrary to what you told me earlier, this resolution was with respect to transactions all of which had already happened; is that
5 correct?---Privilege. The way I interpret this is that the share sale happened on 1 January - - -

Yes?--- - - - and the dividend and the capital reduction happened on 8 March - - -

10 Yes?--- - - - 2013.

Yes?---I think that - - -

And when did you sign it?---I think that's what I said previously.
15

No, you said that the – it was – it had anticipated dividend, you said to me earlier. When did you sign this? 18 April 2013?---I – privilege. Okay. So, you're saying there's a 10-day difference there between the capital reduction and the - - -

20 There's a one month and 10 day difference?---Sorry. One month and 10 days. Privilege. Yes. Well, obviously that's when I signed it.

So, at that point in time – well, that's also when Mr Bart appears to have signed it; is that not correct?---Privilege. Yes.
25

So, at that time what we're doing via circular – what the company is doing via circular resolution is agreeing and approving the sale of Bruck Properties to Bruck Group effective from 1 January 2012; is that correct?---Privilege. Correct.

30 And, then, what – and, then, resolving to agree to what you called, for argument's sake, the off-setting transactions to the loan account; is that correct?---Privilege. That's correct.

35 So, why is this all being done after the event in respect of all three?---Privilege. I can't give you a full explanation on that; all I can say is that the transaction, as it sits there, was agreed by the board.

And you – sorry. Is this the agreement or is it reflecting some prior agreement?---Privilege. It – the structure of this deal was agreed in late 2011. As I
40 understand it, the shared transfer occurred 1 January, and the dividend and the capital reduction occurred March 2013.

45 So, are you saying that it was anticipated in 2011 that the loan of transaction that was being created as consideration for the sale of the shares would always be offset, in your words, by these transactions?---Privilege. As I understand it, yes, because – and that was, I think, what was contained in the Ernst & Young report as well.

So, the loan was never – it was never actually going to be a loan that would be repaid in any real sense; is that correct?---Privilege. I don't think it was envisaged that there would be a cash payment to repay that loan; it was always envisaged that there would be a dividend and capital reduction and that would offset the loan.

5

I see. Now, it was noted, it says in the resolution, that the reduction is fair and reasonable to the company's members as a whole?---Privilege. Yes.

10 Could you explain why it was; what was the rationale you had when you signed that resolution?---Privilege. It – obviously, the restructure had been put forward by the members, and it was - - -

And who were the members?---Privilege. At the time the member, I think, was Mark Foy's, if you go back to 2011.

15

And, ultimately, owned by Mr Bart; is that correct?---Privilege. That's correct. Yes.

Okay. And:

20

...does not materially prejudice the company's ability to pay its creditors.

And you believed that at the time, did you?---Privilege. Yes.

25 And no one explained to you – did you – sorry. I withdraw that. Did you have any reason to think at that time that in less than 15 months later this company would be in liquidation?---Privilege. No. I had no expectation that was - - -

30 And no one raised with you any doubts about the continued viability of the business?---Privilege. No.

And none of the financial reports you had seen raised any concern about the financial viability of the business, did they?---Privilege. No.

35 Do you accept now that if these capital reductions had not been made over the previous few years, that the company would have been in a position to meet all its obligations?---Privilege.

40 MR HEDGE: Your Honour – withdraw that, Registrar. I think I understand what my friend is trying to ask, but he might clarify at what timeframe. Again, I think he's asking him to speculate about the time of liquidation when my client was not a director. He really needs to clarify the time that he's talking about.

THE REGISTRAR: Can you enlighten on that issue, Mr Kulevski? Thank you.

45

MR KULEVSKI: What was the position of the company at your final board meeting in November? You said that it was profitable?---Privilege. Yes.

But you said by somewhat over \$2 million; am I right in saying that?---Privilege. My – my recollection is that in the three or four years prior to that period the – the cumulative profits were close to six or seven million, and in the last six months leading into December 2013, the profit was in excess of two million.

5

Now, did you ever see any hard figures about the financial position of the company when you resigned in April?---Privilege. No.

10 So is it fair to say that the last figures you were going off were those from November?---Privilege. Yes.

And you had no updated information?---Privilege. No.

15 And Mr Bart didn't provide you any specifics?---Privilege. No.

Do you recall reading the BRI Ferrier report?---Privilege. Yes.

Did you – so you read that in June, did you not?---Privilege. Yes.

20 And at that point, given what was contained in the BRI Ferrier report, did you have cause to think that if the capital reductions had not been made over the previous three years the so-called problems identified in the BRI Ferrier report wouldn't exist?---Privilege. No. Because I think it was a group-wide issue with regard to revenue. I mean, if the revenue was an issue, it was going to affect the group.

25

The revenue of what?---Privilege. The revenue of the – of the group, which – which affected, specifically, Bruck Trading through the volume that was going through the mill, and obviously the sales and marketing business.

30 But, really, that's just Bruck Textiles, isn't it?---Privilege. Bruck Textiles at – if you're talking about April, Bruck Textiles was the manufacturing business.

I see?---So obviously it was – it was being affected by any – any downgrade in revenue expectations in the other businesses.

35

And please remind me what the other business were?---Privilege. It was supplying – at that point it was supplying, as I understand it, the sales and marketing business.

40 For the manufacturing that Bruck Textiles did, right?---No, no. Not all of it went there. Privilege. Wilson's was being supplied, and – and also AWM.

Not much of this makes sense, does it?---Privilege.

45 MR HEDGE: Registrar, I object to that question. I mean, what does it mean?

THE REGISTRAR: Not much of what makes sense, Mr - - -

MR KULEVSKI: Any of it, Registrar, but we will get there in time.

This - - -?---Privilege. I – I can't comment on that. I mean, it's – it's – it's – I don't
what your – your question is.

5

These capital reductions were being made to fund dividends that ultimately Mr Bart
would profit from; is that not correct?---Privilege. No. The – the – the – essentially
what was happening with the restructure was that the business was being split into
three areas. The – those three areas would be appropriately capitalised, and this
10 facilitated that.

Well, seems to have been a bang-up job done of that, because the three businesses
were split, were split into a property, what you say a manufacturing, and a marketing
and sales; is that correct?---Privilege. Yes.

15

The property never got rent for its sole asset, did it?---Privilege. As – as I – I
mentioned before, for the six months after I'm not aware that rent was paid, but it – it
possibly could have been. I can't answer that question.

20 I see. I see. Would it surprise you to learn that no rent was ever paid?---Privilege. I
can't comment. I don't – I – as I said, I – no comments were made to me.

And the valuation was done on the basis of going concern of the property that rent
would be paid. Is that correct?---Privilege. Yes.

25

And we have dividends being paid, franked or unfranked, including to the value of
\$6 million dollars on 8 March 2013. Who ultimately benefits from that
dividend?---Privilege. It – it was to facilitate the group restructure, so it went back to
Bruck Group, and my understanding is that that capital was then employed for the –
30 for the other entities that were being established out of the group restructure.

Okay. How was that capital employed then? If it went away from Bruck Textiles
and then Bruck Textiles goes into liquidation a year later, where was the capital
being employed?---Privilege. My understanding is that those moneys were then lent
35 back in this case to Bruck Properties.

To do what?---To capitalise that company.

40 With what – for what purpose?---Privilege. It – because it now had an asset of \$8
million.

So Bruck Textiles owns shares in a property from which it operates its factory; is
that correct? Originally?---Privilege. Prior to 1 January 2012, that's correct.

45 Sells those shares on the valuation of a going concern where rent will be paid; that
correct?---Privilege. That's correct.

No rent gets paid. I'm asking you to assume that. No rent gets paid. The lease is backdated, you've seen. The obligation in the lease to pay rent is backdated 16 months. You saw that. Yes?---Privilege. Yes.

5 So the asset worth \$8 million leaves Bruck Textiles, and you say somehow the \$8 million was then used to capitalise Bruck Property; is that what you say?---Privilege. My understanding is that Bruck Group lent that money to Bruck Properties.

10 To purchase the shares?---Privilege. That's what – that's what was explained to me.

Okay. So Bruck Textiles has lost an asset supposedly worth 8 million. It has gone to Bruck Property, and Bruck Property was lent that 8 million from somewhere else within the group. That's the – is that what the offsetting transaction has been, in your understanding?---Privilege. My understanding is it all stayed within the Bruck Group, that 8 million.

So how was Bruck Property capitalised?---Privilege. I understand it was capitalised by a loan from Bruck Group.

20 I'm really having trouble following these transactions. Sale of the shares worth supposedly \$8 million upon the land upon which the factory is conducted. Yes?---Privilege. Yes.

25 Originally recognised as being consideration for which is a loan to Bruck Textiles – owing to Bruck Textiles for the full value?---Privilege. Correct.

30 Then we enter into, some 16 months later, what I call offsetting transactions of a capital reduction payment of \$2 million to be made to Bruck Group Proprietary Limited, and an unfranked dividend of \$6 million be paid to Bruck Group Proprietary Limited; is that correct?---Privilege. Correct.

So there's \$8 million being given to Bruck Group Proprietary Limited; is that right?---Privilege. Correct.

35 And what does Bruck Group do with that \$8 million?---Privilege. The – the way it was explained to me is that money was lent to Bruck Properties, but you have to check with the CFO as to whether that's what happened, but that's what was explained to me.

40 Okay. And so how does that benefit, at all, Bruck Textiles, the company of which you were a director?---Privilege. The actual loan from Bruck Group to Bruck Properties has nothing to do with Bruck Textiles. This transaction, as I explained, was – was seen within the context of the group restructure.

45 Okay. But you accept that as a company director, you have obligations to each company of which you are a director. Do you accept that?---Privilege. Correct.

So if Bruck Textiles sold \$8 million worth of shares and then had the loan cancelled, what benefit did Bruck Textiles get from this transaction?---Privilege. Bruck Textiles got consideration for the property and then the dividend and the capital reduction were to realign the capital structure and – and that was to address the proposal that was put forward by the members.

So you see that we're using words here that actually need to have content like realign the capital structure and things such as that nature which, with due respect – I'm not being critical – are slogans that actually need some content. What I'm wondering is by selling its shares worth \$8 million according to the company, what benefit did Bruck Textiles get? Simple question. You're a director, you sign off on the transaction. What benefit - - -

MR HEDGE: Registrar, the witness has answered the question. The fact my friend asked it 27 times in a different way and he doesn't like the answer, he can take that and do what he wants with it but the fact is the witness has answered it. He's given his view, he's given his opinion for what it's worth on the accounting transactions. What more can he say? With all due respect, we have sat here for a very long time where the same questions have been asked again and again and again.

MR KULEVSKI: That's not true, Registrar. You would have seen the two separate answers being given recently which is to realign the capital structure and because the members had proposed it. But neither of those are answers. I want to know how it benefited – it's a simple question. Normally when I sell my house, someone says how did you benefit? Well, there's X million dollars sitting in my bank. All I simply want to know is how this company benefited - - -

THE REGISTRAR: Congratulations, Mr - - -

MR HEDGE: Yes.

MR KULEVSKI: Well - - -

THE REGISTRAR: Sorry. Keep going.

MR HEDGE: It's a solvent company and they're dealing with the members is really the answer but it's – you know - - -

MR KULEVSKI: Well - - -

MR HEDGE: - - - it's a legal question. It's a legal - - -

MR KULEVSKI: - - - perfect.

MR HEDGE: - - - question.

MR KULEVSKI: Perfect. He's giving answers for the witness now.

MR HEDGE: Let's move on.

MR KULEVSKI: But it's the answer to one question. How did the company benefit from the transaction?

5

THE REGISTRAR: I will allow the question just – but I think we need to – you seem to be revisiting the same area again and again, Mr Kulevski. I think you should move on but I will allow that question.

10 MR KULEVSKI: How did the company benefit from this transaction?---Privilege. I've answered it before. The – the company sold the property for \$8 million. It got consideration for that. Then there was a separate transaction that dealt with the dividend and the capital reduction and that was done at – on the request of the members and we - - -

15

But that's what I'm - - -?--- - - - and as directors addressed the issues that we had to in that – with that request.

20 But you told me earlier that it never got the consideration for that because the loan transaction was cancelled?---Privilege. I didn't say the loan – you're using that terminology.

25

Okay. Please tell - - -?---I'm saying – I'm saying the dividend and the capital reduction offset the loan. You're – you're using – you're using the language to suggest there was no consideration.

30 No, no, no. I accept that the consideration was the loan transaction but you said it was offset so what benefit did Bruck Textiles receive?---Privilege. I've answered that question. It got - - -

35

Well - - -?--- - - - consideration for the property.

My friend is right. That will be taken up at a later time. I mean, every fair opportunity has been given.

40

MR HEDGE: Registrar, that's uncalled for. He's asked the question. Really, can we just move on.

45 MR KULEVSKI: He raised it. He said you can take it up at a later time and I'm saying I will take it up at a later time. He issued the invitation to treat.

THE REGISTRAR: Can you move on to the next topic that's relevant, Mr Kulevski?

MR KULEVSKI: Yes.

THE REGISTRAR: I don't think I need to hear counsel and solicitors, you know, bantering at the bar table.

MR HEDGE: Agree, Registrar.

5

MR KULEVSKI: Just proving a point. Tab 81 please, sir. Could you read that email to yourself please?---I've read it.

10 So this was the email you were talking about that described the possibility of the lease transaction to you?---Privilege. Yes.

15 Do you see there under heading 1 that you were notified that the lease – the obligation to lease might be timed from the time that the reorganisation was effected i.e. 1 January 2012?---Privilege. Yes, I can see that.

And there's a question mark afterwards?---Privilege. Yes.

20 So you did know that it was the intention to backdate the obligation to lease, didn't you?---Privilege. It – it – it – it obviously has been sent to me, yes.

But what, are you saying that you didn't understand it or didn't recall it or --?---Privilege. I didn't recall it.

25 There's a question mark which would tend to indicate they're asking your view on it. Is that not correct?---Privilege. My understanding is this was going to be discussed at the board meeting.

And was it discussed at the board meeting?---Privilege. Yes.

30 And so therefore was the intention to backdate the obligation in the lease all those months discussed at the board meeting?---Privilege. I don't recall. I believe what we discussed was that it was to be done on commercial terms. I don't – I don't recall discussing the commencement date.

35 So you saw the commencement date of the obligation in this email and to your knowledge, you didn't raise an issue with it and you never discussed it again with anyone?---Privilege. I don't recall if we discussed it.

Now, moving further down:

40

So as to not stress Bruck during its time of restructuring the transplanted of AWM, Bruck Properties should lend the rental back paid back to Bruck Textiles until the major cash out lays and restructuring are completed.

45 Do you see that?---Privilege. Yes.

What did you understand by that?---Privilege. That – that subject to the – the cash flow requirements for Bruck, there would be no requirement to pay rental unless – unless they were in a position to do so.

5 So why in May 2013 are we issuing circular resolutions that reduce the assets of Bruck without any cash coming back to it if Bruck is at a time of stress during this restructuring?---Privilege. I – look, that – that – I think that – that language was – was not intended to suggest that there was a long term problem. It was a short term issue because of the restructuring costs.

10 I see. And do you recall how long this issue was due to last?---Privilege. My - - -

Predicted?---My recollection is that the cash flow was solid at that point and there were no issues.

15 Right. Okay. I understand. Why would Bruck Properties be registering a second ranked fixed and floating charge?---Privilege. My understanding is that that wasn't agreed and I – I don't believe GE granted approval as far as I'm concerned.

20 I see. But what was the – so you didn't agree that it should? Is that what you meant? Sorry, I - - -?---Privilege. No, I don't recall agreeing to that.

Do you know whether the other two directors agreed to it?---Privilege. I don't know.

25 But your recollection is that you didn't agree to it?---Privilege. I don't recall agreeing to it.

30 Sorry, what does that mean? Does that mean you don't recall whether you did or you didn't agree to it or that you recall not agreeing to it?---Privilege. I just don't recall that coming up at the board meeting, that - - -

I see?--- - - - that discussion.

35 I see. Now, topic 3, did that ever occur?---Privilege. I – I believe subsequent to the November board meeting, that AWM took some space but, you know, it happened I think subsequent to the November meeting.

40 Was a reasonable rental stream from subletting areas that became vacant ever developed?---Privilege. I – I – I – I can't answer that.

45 Okay. Why was it even suggested that a Phillip Bart related company should take a charge within the group? I don't understand that?---Privilege. I – I – I've – I guess I've answered the question about the second ranking fixed and floating charge. Well, the only reason would be if – if – I guess if he's lent money to the entity that he's entitled to ask for it.

But he's the ultimate shareholder of the whole group, is he not?---Privilege. Yes.

So what are the benefits for any Bruck entity of taking a charge within the group?---Privilege. For – for Bruck to – to - - -

5 For any entity to take a charge within the group?---Privilege. I can't answer, you know, what – what he did in terms of taking a charge. I - - -

10 Okay. But this was being sent to you in your capacity as a director. What did you understand the reasoning for it to be?---Privilege. I – I – I interpreted this as protecting the interests of Bruck Properties.

I see. Thank you. Could I ask you to turn to tab 87, please. It's the board papers for the 13 June meeting. Tab 87. If I could ask you to turn to page 2 of the internal numbering, but page 328 in the top right-hand corner?---Yes.

15 So if you see that under Financials it says:

PB explained to the board the contingency plan going forward, to improve profitability and cash flow.

20 And is it fair to say that, based on your evidence, that you didn't think there was a particular cash flow problem at that stage?---Privilege. No.

No, there wasn't a problem?---Privilege. No, there wasn't a problem.

25 "AWM and Wilson to pay promptly"?---Privilege. Yes.

So that means internal group transactions; that's correct, isn't it?---Privilege. Correct.

30 *Trading conditions in next six months difficult, but hopefully it's a transitional year.*

?---Privilege. Correct.

35 I suppose it was, in one sense. And then next:

We will take out 40 people.

40 ?---Privilege. Yes.

And what did you understand that to mean?---Privilege. That they were going to reduce the staff numbers by 40.

45 And how did you understand that was going to happen?---Privilege. They – they were, at this point, still preparing their budgets, and coming up with how that was going to occur. But it – again, would have been similar to how they approached it in

previous years, which was there was going to be – obviously, some – some resignations, but I think also in this case they were looking at some redundancies.

5 And how was – how were the redundancies going to be paid for?---Privilege. My recollection is when they finally completed the budget, they had an allowance for redundancies in there.

10 And there was – your understanding was that there was sufficient cash on hand to meet those obligations?---Privilege. Yes, there were, and Phillip Bart also indicated that he would provide funding where needed.

I see. So he said that at the board meeting, did he?---Privilege. Yes. In the November board meeting.

15 Thank you. So at 349 – I will take you forward, sorry, about 20 pages?---Yes.

20 If you go back to former page 7, why is there a further restructure being contemplated at this stage? I will let you read that to yourself?---Privilege. This – this – this restructure, I guess, was probably stage 2 of what was envisaged back in late 2011, where Phillip Bart was intending to bring all of his textile assets under the Bruck Group.

25 But this is dated 10 June 2013, do you see?---Privilege. Yes, but it – it was just an evolution of what was, I guess, outlined in 2011.

And what were the additional benefits of this evolution for Bruck Textiles?---Privilege. Specifically, for Bruck Textiles, it would mean that some additional manufacturing volume would be moved to the Wangaratta site.

30 And what would they be?---Privilege. They were – they were from the operations of AWM.

35 If I could ask you to turn to the very last page of that tab, which is a flow – well, sort of a company structure chart?---Yes.

See the reference to the company of which you were a director, Bruck Textiles Proprietary Limited?---Yes.

40 Could you explain to the court, please, why it's described therein as a labour hire company?---Privilege. I don't know why it was described. There wasn't any detailed discussion about it, and as far as I was concerned there was to be no change to its operation as – as a manufacturing entity.

45 You didn't ask as to why Bruck Textiles Proprietary Limited was being described as a labour hire company?---Privilege. At – at the time – and it was a brief discussion – there was some thought that they would have a casual labour force that would be available to manage peaks and troughs.

I see. And how were the permanent employees going to be dealt with, that already existed?---Privilege. My recollection is that they would be in Bruck Manufacturing and Bruck Textiles Proprietary Limited, so I believe they were changing the name, but Bruck Textiles would be a labour hire business that had a casual labour force.

5

Was that to segregate liabilities?---Privilege. No. I think it was just to add flexibility.

10 Flexibility. By flexibility, do we mean reducing permanent employees who have considerable redundancy entitlements?---Privilege. That – that wasn't specifically discussed. As I understood it, you would have a core group of people. I don't know what – there was no – no detailed discussion about what that might be. And that you would top that up with the casual labour force as required. You need to remember that, as part of this proposal, additional manufacturing was coming to the Wangaratta site, so there should have been additional job opportunities as part of that restructure.

15

20 So current employees and more?---Privilege. My understanding is that the labour numbers actually increased in the last six months. So yes, I – I – I think there were going to be some reductions, but it was – it was – the numbers, as I can recall, I think increased by 20 or 30 over the last six months because weaving had come in from AWM.

25 I see. If I could ask you to go back to volume 3, and tab 134, which is the last tab. So you see there's – and you're not on this email chain, to be fair to you, but I'm going to ask you some questions about whether these matters were raised with you. You see the email from Ron to Geoff on that front page, the one that starts "My understanding"?---Privilege. Yes.

30

Now, if we go to the – have you read that email?---Yes.

If I could take you to the response of Mr Parker up the – further up the page, you see that he says:

35

I've checked previously on what we pay under this scenario, as it was a method voiced by Jim and Phillip at one of our earlier board meetings, for removing people without redundancy.

?---Privilege. Yes.

40

Could you – do you have a recollection of what that was that was being discussed at the board meeting?---Privilege. Yes.

45

And what was that?---Privilege. There were – there were – I know it was a very small group of employees that had been on suitable duties because of work injuries that had reached that point where, I think, they were at retirement age and they were – it was unlikely that they were going to be able to return to their normal duties, and

they were getting legal advice as to whether they had to pay the redundancy, or they – they could ask them to retire.

5 And did you get the advice that indicated that it was not viable, and – the option was not viable, and redundancies would need to be paid?---Privilege. My understanding is that the legal advice was that if they were unable to return to their normal duties, then they didn't have to pay redundancy because the position wasn't redundant.

10 But what was the actually specific advice received in relation to the employees being considered?---Privilege. My understanding is they could terminate them, because they couldn't perform their duties.

And were they terminated, to your understanding?---Privilege. I – I don't recall.

15 And was it a regular concern of the management of Bruck Textiles to find ways of removing people from the workforce without having to pay redundancy entitlements?---Privilege. No. This – this – this specific issue came out of a oc health and safety report that had been tabled to the board where they had I think – and I think I think it was only two or three employees where there was an issue, and
20 it was highly unlikely they were going to return to their normal duties. So they were just addressing that. It was a minor issue.

Do you see that – through paragraphs – in the third paragraph it says “Peter”. Who's Peter?---Privilege. I – I – I believe Peter was the mill manager.

25 I see:

Peter believes, however, that we have no one that fits this criteria.

30 Do you see that?---Privilege. Yes. That's what I mean. It was a minor issue. I mean, I think they were saying that it didn't – it – this simply was brought up in relation to oc health and safety, not – not staff reduction.

35 But – so in respect of these people, the redundancies would have to be paid; is that correct?---Privilege. No. It was really to do with how they managed these injured workers. It – it was in that context.

40 Wasn't it in the context of removing people without redundancy? That's what the email says?---Privilege. No, they had – they people that were on suitable duties that obviously hadn't – had – well, it was unlikely they were going to get back to a point where they were working at their pre-injury duties and being productive, and they wanted to manage them – I – I presume, out of the business, if they weren't going to get to that point.

45 Thank you. If I could ask you just to turn back in that volume to 132?---Yes.

Do you recall that ASIC annual review date minutes of the meeting of the board of directors?---Privilege. I don't recall this minute – seeing this minute. I – I presume it was at the board meeting on 13 June, so it must have been tabled there.

5 That's what it says. Do you recall, for the purposes of section 347A of the Corporations Act, forming the view that there are reasonable grounds to believe that the company would be able to pay its debts as and when they become due and payable?---Privilege. I – look, I don't – I don't recall that specific document, but that was the normal process, yes.

10 Do you recall that that resolution was passed in June – at the board meeting in June 2013, even if you don't - - -?---Privilege. I believe it was, yes.

15 You believe it was. Okay. Thank you. And did you have any ground to think that that resolution was not correct?---Privilege. No. At the time the company was profitable, had significant net assets, and the outlook was positive.

20 Yes. No, you're absolutely right, Mr Castrisos. Absolutely right. If I could ask you please to turn to tab 90 in volume 2, and just to speed the process up if I could ask you to turn to the sort of – Mr Johnson's finance report, 226 in the top right-hand corner?---Yes.

25 If I could ask you to read that group restructure heading to yourself?---Yes. I've read it.

And the dot point just above Group Restructure says:

30 *As a direct result of the above, cash flow and the resultant borrowing facility become tighter, however remain within operational parameters. Very careful management within this area remains essential.*

Do you see that?---Privilege. Yes.

35 So my first question is: this is the first mention of other related entities taking a second ranking charge over Bruck Textiles. What was the benefit to Bruck Textiles of those charges?---Privilege. Sorry, I don't see where it says about the charge.

40 I'm sorry. I will refer you to that bit – sorry – yes. Sorry, the last dot point?---Privilege. My understanding was that at that point this is where Phillip Bart mentioned that he was going to provide funding where needed.

And he would be taking the charge, would he?---Privilege. Yes. That's my understanding.

45 Okay. And that's what it means when certain other companies, being the Tolric Group, taking out a second charge over Bruck Textile Technologies means?---Privilege. That was my understanding, yes.

Yes. Okay. And if cash flow is tighter, why is Bruck Textiles still paying cash dividends up the stream at this point in time?---Privilege. I don't – I don't recall what dividends were paid at this – at this point, but the cash flow as I recall was tight for certain periods, and Phillip had indicated that he would fund the business as
5 required, but the forecast going forward indicated that it was going to be profitable and cash flow positive.

I see. But this funding would not have been required if the earlier capital reductions had not been made; is that correct?---Privilege. They – they – those capital
10 reductions didn't – there was no cash involved, so I don't think it would have made a difference.

Thank you. Why is there further talk of restructuring in this context, as late as November 2013, if it just refers to an old plan?---Privilege. I think this is – this
15 document really was just to give an update to the board.

I see. I see. If I can ask you to turn to tab 91, please?---Yes.

That's an email from Mr Bart to you; is that correct?---Privilege. Yes.
20

So some information was coming to you in December 2013; is that right?---Privilege. Yes. This is the last email I got. Correct.

The last email you got. And this is in response, really, to a request from you about information about buying more products from Bruck; is that correct?--- Privilege. They – Phillip had been speaking to me about seeing if they could supply some of our clients, to build that work wear business.
25

Now if you see, in the email being sent to you, the statement is made by Mr Bart:
30

Headcounts are coming down not quite fast enough, but we should be on track by February, and there are some massive –

sorry, I apologise –
35

there are some projects underway that will massively influence both overhead costs as well as labour.

?--- Privilege. Yes.
40

What are the projects under way that will massively influence labour?--- Privilege. I – I – I understood that to be in relation to – to AWM coming into the mill.

But that's something that had been discussed for some time, isn't it?--- Privilege. Yes.
45

And he separately discussed further, in the email, you will see:

The total integration of AWM production at Wangaratta is now finalised and is bedding down nicely.

You see that, don't you?--- Privilege. Yes.

5

So what are the massive projects – can't be AWM. What are the projects underway that will massively influence overhead costs and labour?--- Privilege. I – I don't recall what he was talking about, and I didn't have a conversation specifically about this email.

10

Never asked?--- Privilege. No. I didn't speak to him after this.

Till April?--- Privilege. No.

15

Have you discussed with Mr Bart the evidence you're going to be giving today?--- Privilege. No.

Did you discuss the evidence that either of you might give once you found out that you would be required in court?---Privilege. No.

20

Thank you. So you don't know – you would accept, wouldn't you, that he can't have been referring to AWM, because that had already been bedded down?--- Privilege. I – my recollection, it hadn't been bedded down, but – but I don't know what he was referring to.

25

Right. So the total integration – sorry, had been finalised:

The total integration of AWM production at Wangaratta is now finalised –

30

You see that?---Privilege. Yes.

So you accept that earlier he can't be referring – if that one had already been finalised, can't be referring to some projects underway that will massively influence labour. That's correct, isn't it?---Privilege. I – look, I don't – I don't know what he was talking about in that email.

35

Did that email make you nervous?---Privilege. No. I thought there – I thought – I thought there were a lot of positives, and he was happy with the way that everything was progressing.

40

Don't you think, as a director, when you receive an email that says some projects are underway that will massively influence costs and labour that you might want to know a bit more about them?---Privilege. Look, there was no doubt there were issues discussed at November board meeting. I just don't recall them. So I – I didn't read this thinking that there were a lot of unanswered questions.

45

But you don't know what he was referring to either?---Privilege. I can't recall what he was referring to, no.

5 So you may have known what he was referring to at the time you received this email?---Privilege. I just don't recall.

10 Okay. But this is one of the most recent interactions you've had. Why are you having difficulty recalling that one?---Privilege. It's over two years ago. I just – I don't recall what projects were discussed, but there was no doubt after that November board meeting that I felt that the progress they were making and the restructuring they were undertaking was a positive for the business.

15 And that's the restructuring we discussed earlier where you understood that one way or another Mr Bart will continue to be involved in the business somehow; is that correct?---Privilege. Is that – you're talking about a meeting I had with him in April 2014?

20 Yes. But did you think that at the end of November, or just in April?---Privilege. The context of that discussion was solely around that April/May - - -

I understand. Thank you. That's helpful. Thank you. At this point of time when you read this, is it true that your understanding was Bruck Textiles in its current form was going well?---Privilege. Yes.

25 Yes. Thank you. If I could ask you to turn to tab 131 in volume 3?---Yes.

30 Now, you have not signed this resolution. Do you recall it being given to you for signing? Sorry. I withdraw that. The copy we have does not have your signature on it. Do you recall signing this document?---Privilege. No.

Do you recall seeing this document?---Privilege. No.

Would you mind just reading it to yourself, please?---I've read it.

35 So when I said to you earlier if liquidity is tight – cash flow is tight, why are we still paying dividends at this time, you will see there that there's an unfranked dividend of 723,000 to be paid on 20 December 2013 to Bruck Group?---Privilege. Correct.

40 Were you aware of this dividend being paid?---Privilege. I'm – I'm aware that it was proposed, yes.

45 Did you ever approve it?---Privilege. I – as I understand it, it was subject to approval from GE. And the dividend capital reduction was agreed by the board subject to approval.

Okay. So are you saying that the \$723,000 to be paid on 20 December 2013 instantly, as it turns out – if you see the date of the resolution, it's 20 December '13,

down the bottom. And it says that a total unfranked dividend – a nice Christmas present – of \$723,000 be paid on 20 December 2013 to Bruck Group Proprietary Limited, the sole shareholder of the company. Do you see that?---Privilege. Yes.

5 Did you agree to that?---Privilege. Subject to GE approval, yes, it was agreed.

Okay. So if you haven't signed this document, when did you agree to that?---Privilege. I believe it was agreed in November 2013.

10 At the board meeting, you say?---Privilege. Yes.

So if liquidity is tight, what's the justification for \$723,000 going up to Bruck Group?---Privilege. There was no cash transfer.

15 A total unfranked dividend, how was it going up?---Privilege. It was going to be in the form of a loan, as I understand it.

How was that loan documented?---Privilege. I – look, I can't answer it, because it was done after November. But, as I understand it, it was just going to be in the loan account. There was no cash transferred.

25 Once again, what's the benefit to Bruck Textiles at this point in its transition of paying a \$723,000 dividend to Bruck Group Proprietary Limited?---Privilege. It – it was, again, coming out of that restructure, and it was in the context of there was the transfer of – of net assets to Bruck – sorry, from Bruck Textiles to Bruck – sorry, from Bruck Textile Technologies, because it had changed its name, to Bruck Textiles, and then the dividend and the capital reduction were part of the restructure of the capital.

30 So a capital reduction payment also of eight point almost two million had been made to Bruck Group on that same day. Do you see that?---Yes.

So \$9 million goes out of Bruck Textiles; is that fair to say?---Privilege. Yes.

35 So all I'm really asking, again – we keep talking about restructure, but what is the benefit to Bruck Textiles of \$9 million going out of it in December 2013?---Privilege. It – it – again, it had to do with the capital restructure that – that was proposed by the shareholder.

40 By Mr Bart?---Privilege. Correct.

45 And at what point – did you at any point consider – he's proposing a restructure, but did you at any point ask yourself what is the benefit to Bruck Textiles for this?---Privilege. Yes. And I saw it in the context of the group restructure and the benefits to the business as a whole.

So how does – please explain to me, how does Bruck Textiles get anything close to \$9 million worth of benefit from the group restructure?---Privilege. I don't believe it was looked at that way, because that – that was part of the – a loan in the capital structure with each of the business units. And the benefit really was – was with the complete restructure occurring that manufacturing at Wangaratta would be bolstered by the – the AWM move.

So would accept with me that there's – would you accept that over the last – over the previous two and a half years very large sums of money in terms of dividends and capital restructures had gone out of Bruck Textiles; that's correct, isn't it?---Privilege. There was obviously a capital restructure but no cash left to group.

I see. But I said dividends and capital reductions. That's correct, isn't it?---Privilege. Correct. But those dividends weren't paid, is my recollection.

So what happened to them?---Privilege. I – I – you would have to check with the CFO, but I understand they were sitting in mine accounts.

Yes. So they were paid in cash, were they?---Privilege. No, they weren't paid in cash. That's my point.

Yes. Yes. And you say that it was never considered from the perspective – and any of these capital reductions or dividend payments, what the benefit directly would be to Bruck Textiles by these transactions?---Privilege. Yes, I – it was, but it was seen in the overall context of the group restructure.

Okay. So what is the identifiable benefit to Bruck Textiles?---Privilege. That – that they would end up with more volume on that site in Wangaratta, which was important to them.

I see. So did anyone undertake the inquiry of whether that more volume would equate to the millions of millions of millions of dollars that had gone out?---Privilege. That – that – those – those transactions were – were, and I've mentioned it before, that they were – they were done to facilitate the capital restructure across the other business units.

No, I understand that you say that. Facilitate capital restructure among other business units. But other business units means other companies, doesn't it?---Privilege. Correct.

So as a director of Bruck Textiles, what benefit was Bruck Textiles getting from these capital reductions and dividends going out of it?---Privilege. So that – those reductions were requested by the members of Bruck Textiles to facilitate the reduction in the capital to align it with the size of that business.

So the fair answer is, isn't it, sir, that you didn't consider the actual monetary or other benefit that would be coming back to Bruck Textiles. You just thought,

understandably, that it was fair that this was something Mr Bart wanted, so it's something that made sense in the context to agree with it?---Privilege. My understanding is that we went through those three points in that resolution, that it was fair and reasonable with the company members, it did not materially prejudice the company's ability to pay its creditors, and it is approved by the members.

Okay. So explain to me what your thinking was at the time as to why it was fair and reasonable to the company's members as a whole. Just one reason will do?---Privilege. Because the members wanted the capital within that entity reduced because the business was smaller.

So that's what Mr Bart wanted. Is that correct?---Privilege. As the ultimate shareholder, yes.

So that's the reason. As I said earlier. When you say you went through those three things, the reason is because Mr Bart wanted it. I'm not saying there's anything wrong with that, but the reason is because Mr Bart wanted it?---Privilege. In the context of that question, yes.

Yes. Okay. In the context of the second question, it does not materially prejudice the company's ability to pay its creditors, what was the reasoning underpinning that?---Privilege. The – there was cash flow forecasts and a clear indication from Philip Bart that if there was a requirement for any finance that he would provide it, and also these – these – these – this restructuring didn't – didn't result in any cash leaving the group.

I see. So is a fair summary then that you agreed to this resolution on the basis that Mr Bart wanted it for the benefit of the group and that you didn't have cash flow concerns because of the forecast and because of Mr Bart's undertaking to provide - - -

MR HEDGE: Registrar, could my friend ask a question rather than put a proposition to – because I do think Mr Castrisos has answered his view. Ask him what he's thought of course but rather than put it to him what he's putting.

MR KULEVSKI: I said is it fair to say. That's a question.

THE REGISTRAR: I will allow the question.

MR KULEVSKI: So is it fair to say that you agreed to this resolution on the basis that it's what Mr Bart wanted for the capital restructure of the business and because you understood from cash flow projections and Mr Bart's undertaking that he would continue to fund the business, that it wouldn't undermine the company's ability to pay its creditors?---Privilege. Yes. He – that's correct.

Thank you. Do you have any idea also – finally on that – why, yet again, this is another backdated document is agreed and approved with effect from the 1st –

backdated obligation I apologise with effect from 1 October 2013?---Privilege. No. I mean, I didn't sign the - - -

Yes. So - - -?--- - - - resolution. I – I can't comment.

5

- - - it can't have really been at the November board meeting. Is that correct?---Privilege. The – the – so my understanding is that in June, they agreed to set up the new sales and marketing division.

10 I see?---As at 1 October. And then they were going – they were just waiting on GE Capital approval.

Thank you. So if your earlier answer about the review about a company secretary coming in and tidying up the documents can't be accurate, can it, if these backdated obligations and circulating resolutions continued to occur months and months later. That's correct, isn't it?---Privilege. No, that's not correct because I was answering the question in regard to the – to the other resolutions that you asked me about. The – I – I can't comment on this one.

20 Okay. Thank you. I don't – excuse me a moment. If I could just finally take you to tab 112 please, Mr Castrisos? Sorry, this is the second last document I will take you to. This is the exchange between you and Mr Bart about whether you should stay on. You see that?---Yes.

25 You see that Mr Bart says:

Jim, could we hold off for a couple of days? I'm just swamped at the moment. I'd like to propose to timetable covering the next week or two that you could assist in the assessment of the various balance sheet strategies and then resign.

30

Do you know what those balance sheet strategies?---Privilege. No, because as I – as I understood it, he was – he was getting advice and that would cover those issues.

And then you see your response:

35

Hi, Phillip. I'm sorry but I can't agree to stay on the board.

Did you actually provide an explanation to him or did he understand why?---Privilege. I didn't speak to him. But that – but – but that response was because I – I had believed that we had agreed I would resign after the - - -

40

Yes?--- - - - meeting in – in April.

I understand. And you weren't prepared to commit the time to the strategies that were being pursued over the next month? Or sorry, I apologise. I withdraw. There was no point you thought in staying around for a week or two if the strategies were going to take some months to implement. Is that right?---Privilege. I – I think I gave

45

my explanation before that I had agreed so there was no point me staying on for two to three weeks. I clearly hadn't been involved extensively leading up to this and I did believe it was going to take more than two weeks.

5 Thank you. And if I finally take you to tab 122? You see that's the email where Mr Bart sends you the final draft of the BRI Ferrier report?---Privilege. Yes.

Your response is:

10 *I've had a read of the report and it seems pretty definitive on the possibility of recovery actions. I couldn't see anything to fault the logic.*

You were viewing that report through the prism, were you not, of whether anybody would be able to chase Mr Bart for any of the transactions that had been undertaken.
15 Is that correct?---Privilege. I – I – the – it's my recollection of the report it was – it was covering the possibility of recoveries in – in an extensive way and I just read it in, I guess, with knowledge of the transactions that occurred while I was a director so I just commented on it and – and that's my thoughts.

20 I see. Why were you particular focused on the recovery actions as opposed to the strategy for the future being therein outlined?---Because I – I – privilege. Because I didn't want to be in a position where – that was his decision as a director. I was no longer a director and I didn't want to comment on it.

25 Thank you. I understand. And when you said there are a couple of issues that may be worth considering, do you recall what they were?---Privilege. I think it was just to do with the transfer pricing that – that the manufacturing business was charging the – either businesses. Just that they were market value.

30 And you didn't think that they were in the report or - - -?---Privilege. No. I just – I just know that the standard costs when it was built up – sometimes, you know, they – they wouldn't necessarily go out and compare that to market prices but generally it was thought because manufacturing is – is expensive in Australia, that – that there was no issue there.

35 Thank you very much. Just excuse me a moment, Registrar. I have no further questions for this witness for now. Thank you, Registrar. Thank you, Mr Castrisos?---Thank you.

40 THE REGISTRAR: All right. Mr Hedge, anything arising?

MR HEDGE: No re-examination, Registrar. Thank you.

THE REGISTRAR: Are we just adjourning generally, Mr - - -

45 MR KULEVSKI: Yes, please, Registrar.

THE REGISTRAR: All right. Mr Castrisos, you're summons is adjourned generally which means that it has a life of six months. In that time at a mutually convenient time, you may be required to return for ongoing examination but for the time being, you're free to go. You're excused?---Thank you.

5

All right. Thank you.

<THE WITNESS WITHDREW

[3.41 pm]

10

THE REGISTRAR: Mr Kulevski, in the last half an hour that we have, do you wish to proceed with Mr Johnson?

15 MR KULEVSKI: Yes. I think it's worth at least starting just - - -

THE REGISTRAR: Yes.

MR KULEVSKI: - - - to save him some time

20

MR HEDGE: Excuse, Registrar. Thank you.

THE REGISTRAR: Thank you, Mr Hedge. You're excused.

25 MR KULEVSKI: Thank you.

THE REGISTRAR: Thank you.

MR KULEVSKI: Registrar, if I call Mr Johnson please?

30

THE REGISTRAR: Yes.

MR KULEVSKI: Mr Ronald Johnson.

35 THE REGISTRAR: Is Mr Johnson represented by a lawyer, do you know, Mr - - -

MR KULEVSKI: Mr Cook I think is being good enough to appear.

THE REGISTRAR: Yes.

40

MR COOK: Registrar, my name is Cook and I'm instructed by Polczynski Lawyers to appear on behalf of Mr Johnson - - -

THE REGISTRAR: Yes, Mr Cook.

45

MR COOK: - - - at the hearing. Whilst Mr Johnson is being called, Registrar, may I raise a matter with you? I notice that your direction for the last witness during

lunch was to give a direction not to communicate with the witness's solicitors during the lunch break.

THE REGISTRAR: No, not to discuss his evidence is what I said.

5

MR COOK: Yes, discuss his evidence.

THE REGISTRAR: Yes.

10 MR COOK: I'm just concerned that if you make that same direction in this matter, the next date that I understand that this matter is due to be heard is 22 March which is well over a month away from now.

THE REGISTRAR: Yes.

15

MR COOK: Mr Kulevski did warn me today that although he expected to start at lunch time today, that he wouldn't be able to finish with this witness because a bundle still has to be prepared. I just query whether there's any utility in using the last half hour and a question of fairness for Mr Johnson where if you make that direction, it effectively means that both my instructing solicitor and myself would have to be very careful about what we say to Mr Johnson and it puts him in a somewhat difficult position if he wants to seek advice between now and the date. Now, I don't for one minute suggest we waste court time and half an hour is still half hour but knowing the formalities that are going to go through and the warnings and all the rest, we're not really going to get much time out of this witness today. So, I mean, I suppose in the first instance and I haven't raised it with the Kulevski is what his attitude is to that concern and perhaps find out what he wants to do today.

20

THE REGISTRAR: Mr Kulevski, do you want to get some instructions and - - -

25

MR KULEVSKI: I will just take some instructions, Registrar.

THE REGISTRAR: Shall I go off the bench for a few minutes?

30 MR KULEVSKI: No, no, no. One minute Registrar, my submission is that the amount of time between the examination beginning and concluding makes no difference to the order you should make, whether it's a lunch break, one day, a week, a month or a year – or sorry, five months, witnesses aren't meant to discuss the content of their evidence with their solicitors.

35

THE REGISTRAR: You have no difficulty for Mr Johnson to discuss with his solicitor or for Mr Cook generally so long as it's not to do with the evidence, isn't it?

40 MR KULEVSKI: Well, it's – I have no difficulty with Mr Cook and his instructing solicitors discussing with Mr Johnson things that they are ethically permitted to discuss with him in the break.

45

MR COOK: Well, that leaves me in some uncertainty as to what that means as to “ethically”. The reality is, Registrar, that I appear with a limited brief, and that is to represent Mr Johnson in these examinations. The only thing we will discuss is the very matter that your direction would prohibit, and that is the evidence that he might
5 give in these proceedings and how he should expect questions to be put to him and how to deal with his evidence in the proceeding.

So the very reason that I raise this point is that what we’re going to have here is preliminary questions asked of this witness, and then my solicitor and I and then the
10 – are under an embargo for over a month to speak to our client about this very examination, which seems to be unnecessarily burdensome to him, in circumstances where we have been briefed on the basis that we thought that this matter was going to start at least by lunchtime, if not earlier, and there was some purpose in us being here today.

15 And I don’t criticise Mr Kulevski for this, but the half hour – 2 o’clock has turned out to be two and a bit – more or less two hours, and – you know, with this, then half an hour, an hour to go. It seems to me unfair to Mr Johnson to put him in a position where for the next six weeks he can’t really speak to his solicitors and seek advice
20 about his evidence in these proceedings.

THE REGISTRAR: Well, assuming that it started on the 12th of – sorry, on 22 March, which is the next court date, as I understand it, if Mr Johnson didn’t finish his evidence by that date, within that day, he will then have to come back on the next
25 court day, which is 5 April - - -

MR COOK: And I accept in those – but this application is predicated on the basis that we’ve got less than hour an hour of court time that would be lost if he were not called today, whereas obviously in any examination we’re going to have a full day. I
30 wouldn’t be expecting you not to proceed, because – case could never proceed that way. But if my learned friend insists on it, it puts my client in a situation where we’re not going to be able to talk to him for over six weeks.

THE REGISTRAR: Well, I think you can. You just are supposed to do so in a way
35 which doesn’t breach any ethical boundaries - - -

MR KULEVSKI: Yes.

THE REGISTRAR: - - - is the way Mr Kulevski puts it.
40

MR KULEVSKI: Yes. And, your Honour, there’s no – I’m sorry, Registrar. There’s absolutely no distinction between the amount of time. My friend was to – and he says we have started little bit late, and he’s correct. In advance of today, my friend was to give him advice about all the things he was to expect in the
45 examination and the nature of the questions that would be asked.

Now, once we've commenced the examination, it doesn't matter when it starts and when it's due to conclude; he would never be able to give his client advice or to speak about the nature of the evidence in any event. So even if there's a short break, a long break, an overnight break, a lunchtime break, the conversation he wants to have he could never have anyway, and if we don't start today what's the benefit of speaking to the client over the break anyway when there has been no evidence commenced, only to tell him the things he should have told him in advance to today, which is "This is the procedure that will be undergone and this how it's going to go."

5
10 So I don't really understand the nature of the application in the sense that a certain amount of time puts some sort of difficulty on his client. In essence, his application is if there was only a day or a lunch break, "Oh, it's totally acceptable not to speak to him to discuss the evidence" but if it's a longer period of time it's somehow onerous that he's not allowed to discuss the evidence with his client. I don't understand the basis of the application.

15
20 MR COOK: Let me make it clear so – in case I haven't already, Registrar. The direction that you made is one that is ordinarily made when a witness is under cross-examination. Strictly speaking, the witness is not under cross-examination, and this is public examination. This – the analogies of examination-in-chief and cross-examination - - -

THE REGISTRAR: Yes.

25 MR COOK: - - - are not applicable. I hadn't noticed that really been made before and I noticed that you made it and that suggests to me that – now, as my learned friend would be well aware of, courts are very cognisant of the difficulties that that really gives to the legal advisors and in circumstances where, for example, a witness is going to be under cross-examination overnight, judges often say, "Well, let's rather start the cross-examination tomorrow morning. There's only 10 minutes of court time", realising the impediment it creates for the lawyers.

30
35 In those circumstances, mindful of the little time that we have, I raised it with you as a matter of some concern. My learned friend is quite incorrect to say that there would be no entitlement to discuss the evidence that this witness might give. He's asked and can be asked about any of the examinable affairs of the company. So take a very simple thing; he comes and asks me, "Something happened in the company on a particular day. What do you think my exposure is as a result of my involvement in something that happened on a particular day?"

40
45 That is something – I don't know. My learned friend hasn't told me what he's going to ask him; would be part of his evidence that he's going to give. If the – my learned friend says, well, as long as I don't ethically discuss anything – or breach any ethical matter, doesn't assist me in understanding whether or not the direction is going to prevent me from giving advice on something that could be included in the examinable affairs of the company. I'm not trying to suggest that there's some principle that the time between the two periods is relevant. It's just, in the

circumstances where we've got 20 minutes before we start, do we really need to start now, or can it stop?

5 THE REGISTRAR: Well, I suppose one factor then, Mr Cook, that Mr Johnson has been here the whole day. I mean, basically in your submission I take it he doesn't feel aggrieved or prejudiced that he has been waiting the whole day, and will not give his evidence beyond – further today, basically.

10 MR COOK: Well, it is regrettable that we - - -

MR KULEVSKI: We did say after lunch.

15 MR COOK: We have been – well, we received notification yesterday, I understand, that it would be only after lunch. It's regrettable that the costs of counsel and the solicitors sitting here all day have been incurred, but that's not through any fault of Mr Johnson.

20 THE REGISTRAR: No, but the point is – again, it comes back to what Mr Kulevski said. If – let's say we start at – let's say we didn't start today, and time is ticking away now, with further legal argument, but assuming we started on the next court date – which is 22 March – let's assume for the moment Mr Johnson gives evidence – he's scheduled to continue on that day, isn't he, Mr Kulevski?

25 MR KULEVSKI: Yes. And, Registrar, I would like to point out that this summons was served in July last year, so any – all the reasons for the summons are in the summons, so if my friend wanted to give him any advice about questions about what's really in the examinable affairs of the company, they've had eight months to get ready for this. I – I just don't understand why we can't at least get some questions out in the next 25 minutes. It makes no difference to my friend's position.
30 He can't discuss things you're never allowed to discuss anyway.

THE REGISTRAR: Well, I mean, what I was trying to say as well was assuming that Mr Johnson started his evidence on 22 March, and he does that – he doesn't finish on 22 March, for whatever reason, how long do you anticipate the examination
35 would go for in any event, Mr Kulevski?

MR KULEVSKI: Hopefully a day, or slightly more than a day.

40 THE REGISTRAR: So you think it may even go into a second day?

MR KULEVSKI: It may.

THE REGISTRAR: So assuming that that happens, that means the next - - -

45 MR KULEVSKI: That depends entirely, I should say Registrar, on the witness' recollection of the financial reports and documents that he authored.

THE REGISTRAR: But potentially it does go into a second day. That means that it goes over to 5 April, so the embargo – as Mr Cook refers to it – if I was to direct that he not discuss that evidence, would apply in the intervening period, wouldn't it?

5 MR KULEVSKI: Yes. There's no practical content to the embargo, Registrar. You're not allowed to ever discuss the witness' evidence while he's in the middle of giving it. This – the direction you make is, in my experience, a standard direction made in all – in fact, I imagine – with no disrespect – you're working off the bench bible that every registrar uses, in the sense that you can't discuss the examination –
10 your evidence in the intervening period.

MR COOK: I'm not sure I agree with my learned friend about what you can and can't discuss, but there might be a practical way around it. I've received a note from my solicitor to say that all my learned friend wants to today confer about with – or to
15 examine this witness about is his income and personal taxes. If that matter is quarantined to that, then the embargo doesn't concern me at that Extent, but what has just fallen from my learned friend is that effectively the embargo will now operate from today until, it seems, to 5 April.

20 THE REGISTRAR: Well, until Mr - - -

MR COOK: He finishes, which - - -

THE REGISTRAR: - - - Johnson finishes his examination.

25 MR COOK: Yes.

THE REGISTRAR: Assuming it goes that far.

30 MR COOK: Yes.

THE REGISTRAR: If it doesn't go that far, well, it doesn't. But, Mr Kulevski, is there any way we can expedite the process and not waste what's left of the court time? I mean, are you able to get instructions about finding whatever examination
35 you're dealing with in the next 20 minutes?

MR KULEVSKI: Obviously something has been passed, without my knowledge, to Mr Cook. So I don't know what is, so - - -

40 THE REGISTRAR: I think what I want to do, gentlemen, is I'm going to – as I said five minutes ago – go off the bench and see if you all can discuss - - -

MR KULEVSKI: Thank you.

45 THE REGISTRAR: - - - this between yourselves, and see if you can work something out.

MR KULEVSKI: Thank you.

THE REGISTRAR: So I will temporarily adjourn.

5

ADJOURNED

[3.53 pm]

10

RESUMED

[3.59 pm]

MR KULEVSKI: Registrar, the agreement - - -

THE REGISTRAR: Yes, Kulevski.

15

MR KULEVSKI: I'm grateful to my learned friend, and to you, Registrar, for the indulgence. The agreement I've come to with my learned friend is that he is not permitted, subject to any objection he has in the next 20 minutes – 15 minutes – is not permitted to discuss with the witness anything that's covered today. But anything that's not reached today he's free to discuss.

20

THE REGISTRAR: Mr Cook?

MR COOK: I'm happy with that.

25

THE REGISTRAR: All right. Let's proceed with what's left of the day.

MR KULEVSKI: Thank you.

30

THE REGISTRAR: Mr Johnson, come forward, please.

MR KULEVSKI: Yes. Registrar, perhaps if my solicitors could take away – to leave some room for Mr Johnson's folders.

35

THE REGISTRAR: Yes. Just return to you whatever documents were looked at by the previous examinee.

40

<RONALD GEORGE JOHNSON, SWORN

[4.00 pm]

THE REGISTRAR: Yes, have a seat, sir. Now, and it essentially won't be more than a quarter of an hour, Mr Johnson, but I will just get you to state your full name?---Ronald George Johnson.

45

Your occupation?---Chartered accountant.

And your residential address?---100 Braeside Street in Wahroonga, New South Wales.

5 Right. Thank you. Mr Johnson, you're represented today by Mr Cook of counsel, as I understand it. You're here pursuant to a summons that has been issued under section 596A of the Corporations Act, and you no doubt have had this explained to you, but I will just reiterate it. If you think that there's any answer that you give that's going to either incriminate you or make you liable for a civil penalty, then you need to say the word "privilege" before you go on to answer the question. No doubt 10 if there is any issue that is to be objected to, Mr Cook will no doubt raise that with me. But other than that I think we better proceed?---Yes.

Yes. Mr Kulevski.

15 MR KULEVSKI: Thank you, Registrar.

<EXAMINATION BY MR KULEVSKI

[4.01 pm]

20

MR KULEVSKI: Mr Johnson, what is your current age?---Good question. 62.

Sorry, what is your age? 62?---Almost 62, yes.

25 And what is your present occupation?---Chartered accountant.

And where are you employed?---I'm a contractor with the Bruck Group of companies.

30 I see. And how long have you been a contractor with the Bruck Group of companies?---Since early 2009.

35 And what, if any – I assume from a chartered accountant – what, if any, were your university qualifications?---I have a legal bachelor of commerce and a bachelor of accounting.

Where from?---From the University of the Witwatersrand in Johannesburg.

40 That was my guess. But I thought I would let you answer it.

MR COOK: Sorry, your Honour, could I – can I just remind the witness to claim privilege and ensure – I think he has forgotten already your Honour's direction.

45 MR KULEVSKI: I think he's happy just proceeding as he is, Registrar.

THE REGISTRAR: Well, Mr Johnson, you're on notice about that, so – but from what I've heard so far, I don't think there's anything incriminating about going to a particular university, but who knows.

5 MR COOK: Well, the university he named, your Honour, I'm not so sure about that.

THE REGISTRAR: Yes. All right. Yes.

10 MR KULEVSKI: And what were your – what employment have you had from the time of leaving university until Bruck?---Privilege. Yes. A lot. Do you want me to go through everything or just the last few years?

Well, what was the most recent one prior to Bruck?---That was – I did – I had a
15 banking franchise for, I think, about three and a half years.

Which bank?---Bank – Bank of Queensland.

And before that?---Before that I was the CEO of a company called InfoChoice. It's a
20 small listed company on the ASX.

Had you ever had a role as a CFO in any company?---Not – well, I mean, I – I suppose back in South Africa I looked after the finances of a group of companies for a while and then became the CEO.
25

I see. And had you ever worked in either an audit – did you ever work in an audit capacity in an accounting firm?---Privilege. Yes, two accounting firms, Arthur Andersen, where I did my articles, and Alex, Aitken and Carter. I split my articles.

30 Now, have you ever taken any courses – sorry. Have you ever been a – I withdraw that. I apologise. You were a company officer of Bruck, were you not?---Privilege. Yes, I was company secretary of a few companies in the Bruck Group.

And was the company in liquidation, Bruck Textiles, one of them?---Privilege. Yes.
35

You're also the CFO of Bruck Textiles. Is that correct?---Privilege. Yes.

And had you ever taken any courses either during this period of employment or prior relating to your obligations as a company officer?---Privilege. I didn't feel the need
40 to take any courses, now.

No, but you haven't?---No.

And were you responsible for producing any documents pursuant to the orders for
45 production in these proceedings?---Privilege. Yes, I was asked to, obviously, produce financial – financially related documents.

And who asked you to do that?---Privilege. I'm not really sure I understand the question. Who asked me to do what, sorry, specifically?

5 Sorry. So did you receive any order to produce documents in these proceedings?---Privilege. Yes. I received an order to produce certain documents, yes.

10 Yes. And were you responsible for collating those documents?---Privilege. Yes, I was.

Did you have any assistance?---Privilege. Yes, I mean just the accountant giving me certain financial information. Other than that, I put it together myself.

15 And that's the accountant – which accountant, I'm sorry?---Privilege. Penelope Rogers. I think she just – she has access to our accounting system and just ran out a couple of reports.

And is she your – is she the in-house accountant at Bruck Group?---Privilege. Yes.

20 And what's the company?---Privilege. She looks after at the moment Australian Textile Mills and Bruck Textiles.

25 Now, when did you join any of – when did you begin – sorry. I withdraw that. When did you commence work with any of the Bruck Group of companies?---Privilege. When did I commence work, sorry?

Yes?---I don't understand the question. You mean when did I start with them?

30 Yes. When did you start working for any of the Bruck Group of companies?---Privilege. 2009.

The beginning or the end of 2009?---Privilege. I don't know, it was May/June, I think, of 2009.

35 Yes. Thank you. And which company was that, do you recall?---Privilege. I think at that stage it was called Bruck Textiles, yes.

40 And what was your role when you commenced work?---Privilege. I originally went in as financial controller. They had a CFO at that point. So I was financial controller.

45 And did you negotiate your employment contract in advance of commencing?---Privilege. Well, I was asked to come in and help out and – yes, negotiated a contract. I've forgotten exactly what the terms were, but, yes, we did.

Do you recall what your salary was?---Privilege. I think at that stage about 120,000, I think, or thereabouts.

I see. And what's your current salary?---Privilege. 230 is the contract amount which – per annum.

5 I see. And when you commenced work in 2009, you commenced as an employee, didn't you?---Privilege. I think originally I was an employee and then I contracted – contracted out.

10 I see. When did you begin to contract out?---It must have been pretty much after I joined. I think it was June/July, probably.

So you were only an employee, you say, for a month or two?---Privilege. Correct, yes.

15 And then what was the nature of the contracting relationship with the company that you formed?---Privilege. Basically the functions of a financial controller, producing reports, producing budgets, forecasts.

20 Who are the parties to the contract?---Privilege. I can't recall at that point. I'm not sure.

You don't recall who the parties were to your first – who were the parties to – so, have you subsequently negotiated further contracts?---Privilege. I think I signed a new contract – when was it – some time in 2012 or '13, I think.

25 And who were the parties to that contract?---One of our family companies. Privilege. One of our family companies. And – and ATM, I think, at this point, and BT.

30 Yes. I see. And would you consider that you work full time in the current role?---Privilege. Yes, I work mostly full time, yes.

35 Now, throughout your period with one of the Bruck Group of companies, have you had an office at Rosebery?---Privilege. Yes. Well, originally I had a part-time office. I was based – based down in Wangaratta at the mill.

I see. And so when did you move to – so you say – does that mean you had an office at Rosebery and a part-time office at Wangaratta?---Privilege. No. I had a full-time office at Wangaratta - - -

40 I see?--- - - - and a part-time office at Rosebery.

45 And when did you move full time to Rosebery?---Privilege. I don't really recall. I think when I moved into the CFO role I spent more time up here, but I still go down once or twice a month to the mill in Wangaratta.

I see. And you became the chief financial officer – remind the court – when?---Privilege. I'm not 100 per cent sure. I think it was some time towards –

think it was some time in – some time 2012, I think. I’m not sure when the original CFO actually left the business.

5 And I’m sorry to be sort of descending to mundane, but did you have an office at Rosebery that said “Ronald Johnson, Chief Financial Officer”, or - - -?---Privilege. No. I just had a desk.

10 In an open plan sort of set up?---No. It was in – it was sort of Couple of walls around it, but it was sort of almost open plan, yes.

I see?---But it – I didn’t have my name on the door.

15 No. But your title within the organisation was chief financial officer; is that correct?---Privilege. That’s correct, yes.

And were you the CFO for any other Bruck company?---Privilege. No, it was just Bruck – Bruck Textiles at that point.

20 I see. Did you have any role within the other Bruck company at that point?---Privilege. No.

25 I see. And so in 2013 and – so did you remain – I apologise, I withdraw that. Did you remain CFO until the time Bruck Textiles went into liquidation?---Privilege. That’s correct, yes.

And then how did – how did that role transition to the role you now have?---Privilege. It’s the same role, really.

30 I see. And how – with the fact – so the business was sold before Bruck Textiles went into liquidation; that’s correct?---Privilege. Sorry, what business are you talking about?

35 The business of Bruck Textiles was sold to a related entity the day before Bruck - - -?---Privilege.

- - - Textiles went into liquidation?---That’s my understand, yes.

40 When you say that’s your understanding, were you aware of that at the time?---Privilege. Yes.

Yes. And did you change your employment relationship from Bruck Textiles to that new – to the company to which the business had been sold?---Privilege. Yes. I think it – the new business just assumed all contracts.

45 I see?---One of those would be, obviously, my contract.

And so that happened, obviously, before Bruck Textiles went into liquidation; is that correct?---Privilege. Yes. I think it was the day before, probably.

Yes?---Yes.

5

Okay. And so did your salary remain the same in the transition?---Privilege. Exactly the same.

10 I see. And you said at that point it was – remind the court how much?---Privilege. I think it was two hundred and – I think I'm on 230,000, and have been for quite some time.

15 I see. Mr Johnson, you've produced some tax returns in answer to the order for production; have you not?---Privilege. Yes.

20 If I could ask the court to – one for the 2013 tax year, one for the 2014 tax year. I give a copy to my friend. If the witness could have a copy, please. Thank you. If I take you to the 2013 year, please, Mr Johnson. Now, do you need a moment to familiarise yourself with those documents?---No. I know, more or less, the tax returns.

Mr Johnson, you see there on page 2 of the 2013 tax return that you list your income as being \$20,500 a year; is that correct?---Privilege. Yes.

25 And then you don't list any deductions, so that the subtitle is 20,500?---Privilege. Yes.

30 And if could take you to the 2014 year. The same figures in that year?---Privilege. Yes.

35 Now, with the – I'm just wondering that – with an income of \$230,000 a year from Bruck, how it is that your tax returns disclose a \$20,500 income?---Privilege. Yes. It's the contract that I have with the Bruck Companies is with a family company, so that's what effectively the family company pays me, and my accountant handles the rest of the income.

40 So your – the family company deems the worth of your services for the purposes of the tax return as being 20,500 a year; is that correct?---Privilege. That's correct. That's what I draw, and that's for my accountant. She prepares all our tax returns.

I see. So a full time CFO position for the Bruck Textiles, for a man your age, is worth \$20,500 a year, is it?---Privilege. No, that's not correct.

45 MR COOK: Object – sorry, I object to the question on two grounds. First, it doesn't appear to be relevant to the examinable affairs of this company in liquidation and secondly, it calls for this witness to give an opinion as to the value of work of a

particular nature where he clearly doesn't have any expertise to express an opinion. But I think the first objection is sufficient for the question to be rejected with respect.

5 MR KULEVSKI: Well, Registrar, if I rephrase it in this way if my friend is concerned. I withdraw that. Will rephrase it in this way - - -

THE REGISTRAR: Yes.

10 MR KULEVSKI: - - - my friend's concerns will be answered. Mr Johnson, if you were being paid \$230,000 a year from Bruck for your role as a CFO, why is \$20,500 recorded on your income tax returns?---Privilege. Talk to my accountant. That's what she - basically the way she accounts for it. As I said to you the - the income goes into a family company. The contract is with a family company and Bruck and has been for years.

15 But you're responsible for your tax - - -?---And the family company produces tax returns every year and I draw a certain amount out of the family business and I provide services to the family business.

20 So you're responsible for your tax returns as well, not just your accountant. Isn't that correct?---That's correct.

So why is \$20,500 recorded?

25 MR COOK: I object. Sorry - - -

THE WITNESS: Privilege. Because that's what I draw out of the company.

30 MR COOK: I object. This is not - - -

THE REGISTRAR: Well, I think - I think - - -

MR COOK: - - - an examination of the tax - - -

35 THE REGISTRAR: - - - I think the question has been answered.

MR COOK: And it's not an examination into my client's tax affairs.

40 THE REGISTRAR: Yes.

MR COOK: This is a liquidation examination. It's got nothing to do with my client's private tax affairs, Registrar.

45 THE REGISTRAR: Mr Kulevski, how is this relevant?

MR KULEVSKI: Well, he says he's been paid \$230,000 from Bruck but I don't see any figures justifying - - -

MR COOK: Well - - -

MR KULEVSKI: - - - that, your Honour.

5 MR COOK: So - - -

MR KULEVSKI: Registrar.

10 THE REGISTRAR: Well, Registrar, that's the witness's evidence. It's a matter that no doubt can be verified by company records but to cross-examine the witness on the basis that he doesn't believe that he's been paid 230,000 based on a tax return is not a proper purpose for this examination at all and again, we are asking this witness matters that have nothing to do with the company of Bruck.

15 MR KULEVSKI: Well, firstly, Registrar, my friend said that what was happening here was cross-examination but that's inconsistent with his earlier submission that this was not cross-examination.

MR COOK: It's not supposed to be.
20

MR KULEVSKI: And he says that he works full time for Bruck, that he's got the role of the CFO and that he's being paid \$230,000 a year by the company in liquidation all relevant to the company but he's declared \$20,000 worth of income and I wish to know why.

25 MR COOK: Well, I've made my rejection, Registrar.

THE REGISTRAR: All right. Well, I think it's a relevant question. I will allow the question.
30

MR KULEVSKI: Thank you. So if you work full time, Mr Johnson, for Bruck and your role is CFO and you earn \$230,000 a year from Bruck, why have you declared \$20,500 on your tax return for those?---Privilege. Because that's the money that I drew from the company. The contract is between my family company and Bruck and that's - that's normal practise is you're a contractor. So the company earns the income, the company declares the income and I drew a certain amount from the company.
35

Registrar, thank you. Given the time, that's the answer I needed so thank you.
40

THE REGISTRAR: All right. Well, that concludes the examination for today. Mr Johnson, you would have heard earlier what was agreed to but I will make it - apparently I will make it clear to you now. What you have been asked questions about so far between now in the last quarter of an hour or so, that's not to be discussed with your lawyers. All right. But that doesn't stop you from asking any other questions which may arise based on the summons that you have been issued
45

with and essentially, you can, if you need to, speak to your lawyers about anything so long as it doesn't relate to what has arisen today?---Sure.

Okay?---Thank you.

5

MR COOK: Thank you, Registrar, for making that clear.

MR KULEVSKI: Thank you, Registrar. May it please.

10 THE REGISTRAR: All right. Mr Johnson, you're back before the court so I'm going to adjourn your summons to when we are back which should be the next date of 22 March 2016.

MR KULEVSKI: That's correct, isn't it?

15

MR COOK: Yes.

THE REGISTRAR: That's at 10.15. Presumably Mr Cook will be here. Will you be here, Mr Cook, on that date?

20

MR COOK: I will be here, Registrar.

THE REGISTRAR: All right. So you will continue your examination on that date.

25 MR KULEVSKI: May it please. Thank you, Registrar.

THE REGISTRAR: Any documents that you – you can step down, Mr Johnson.

30 <THE WITNESS WITHDREW

[4.18 pm]

THE REGISTRAR: Any documents that were marked as MFIs which are still in the custody of the court and I don't think there are any but - - -

35

MR KULEVSKI: No.

THE REGISTRAR: - - - my assistant will return them to your instructing solicitors.

40 MR KULEVSKI: Thank you, Registrar.

THE REGISTRAR: All right.

MR KULEVSKI: Thank you for your assistance.

45

THE REGISTRAR: I will speak to my assistant for a moment. We will adjourn.

MATTER ADJOURNED at 4.19 pm UNTIL TUESDAY, 22 MARCH 2016

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