

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2015 - 2016

Outcome 2 - Workplace Relations and Economic Strategy

Department of Employment Question No. EMSQ16-000258

Senator McKenzie provided in writing.

Question

Fair Entitlements Guarantee - Bruck Entitlements - public examination

I understand that on 2 February 2016 Mr Nicodemou, of BRI Ferrier, gave evidence at the Public Examination. At Estimates, Mr Henry Carr told the Committee that, "He was advising the managers of Bruck in respect of their options prior to the company entering into voluntary administration."

Would it be correct to say that Mr Nicodemou gave evidence to the effect that Bruck management had indicated that they wished to transfer the assets of the company but not the liability for the employee entitlements?

Was there any suggestion from the Public Examination that Bruck management had deliberately structured this transaction for the purpose of avoiding the company's obligation to pay the employees' entitlements?

Answer

In his examination on 9 February 2016, Mr Nicodemou gave evidence at line 28 of page 9 of the transcript (provided in response to Question No EMSQ16-000089) that the transaction between Bruck and Australian Textile Mills Pty Ltd (ATM) would involve the sale and purchase of certain assets of Bruck.

At pages 10, 11 and 12 of the 9 February transcript, counsel took Mr Nicodemou to a document which said that the liquidation of Bruck would require the Commonwealth 'to assist with 40 per cent of the company's employee entitlement liability as opposed to almost, if not, 100 per cent'.

During questioning on the meaning of this information at line 17 of page 12, Mr Nicodemou confirmed that the Bruck/ATM transaction would enable the business to avoid paying 40 per cent of its employee entitlement liabilities.

At pages 31 - 35, counsel took Mr Nicodemou through advice prepared by DLA Piper about the GEERS scheme as well as an advice prepared by a Mr Sheppard of BRI Ferrier. Mr Nicodemou confirmed at line 28 of page 34 that he read Mr Sheppard's advice around the time of the transaction. At line 45 of page 33 Mr Nicodemou confirmed that he understood the gist of this advice to be that the FEG scheme would pay employee entitlements in the event of insolvency.

At lines 25-27 of page 35, Mr Nicodemou confirmed his understanding at the time of the transaction that it was in the interests of Bruck to fashion a transition of the business where FEG would consider paying for employee entitlements.

Further, at page 69 of the transcript of his cross examination on 2 February 2016 (provided in response to Question No EMSQ16-000089) Mr Nicodemou gave the following evidence in response to questioning from counsel for the liquidator at lines 25 – 40:

Counsel: *And so this business would be viable but for those redundancy payments needing to be made?*

Nicodemou: *I don't know. I don't know.*

Counsel: *But that's what you were told?*

Nicodemou: *That's what I was told, yes.*

Counsel: *Yes. But you obviously weren't asked to check that, were you?*

Nicodemou: *No.*

Counsel: *So you were told the business would be viable but for the redundancy payments. "We need to find the way to transfer the business without having to make the redundancy payments." That's correct, isn't it?*

Nicodemou: *We need to find a – an alternative to the current circumstances.*

Counsel: *But surely you must, after what we've been through, accept my statement that what you were effectively being told is, "We need to find a way to transfer the parts of the business that we want to run the business without having to meet these large redundancy payments"?*

Nicodemou: *Yes.*