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TRANSCRIPT OF PROCEEDINGS

O/N H-641441

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

10.28 AM, TUESDAY, 9 FEBRUARY 2016

Continued from 2.2.16

DAY 2

MR P. KULEVSKI appears for the liquidators

MR M.J. STEVENS appears for Mr Nicodemou

MR S. HEDGE appears for Mr Castrisos

MR O'LOUGHLIN appears for Mr Bart

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THE REGISTRAR: Yes, Mr Kulevski, what's happening this morning?

MR KULEVSKI: Registrar, my anticipation is that we shall finish with Mr Nicodemou within, say, an hour or an hour and a half.

5

THE REGISTRAR: Yes.

MR KULEVSKI: And then we will call Mr Castrisos, who should take the balance of the day and possibly spill over.

10

THE REGISTRAR: All right.

MR KULEVSKI: Perhaps, Registrar, before we call back Mr Nicodemou, if we could – we've received some communications from your staff, so perhaps if we could just confirm some dates, because we understand that some dates have been unexpectedly taken away from us, and we haven't had the new dates confirmed.

15

THE REGISTRAR: Just let me have a look. Yes. Something has come up in the beginning of March, I think, that has - - -

20

MR KULEVSKI: Yes.

THE REGISTRAR: Not only myself but all the other registrars offline for a couple of days or possibly even longer, Mr Kulevski. What's the next date for this ongoing examination?

25

MR KULEVSKI: So it would be 16 February, next Tuesday the next one.

THE REGISTRAR: That's good. That's confirmed. Yes.

30

MR KULEVSKI: Yes. Then we understand 15 March was taken away.

THE REGISTRAR: Yes.

MR KULEVSKI: And potentially replaced with 12 April, but we haven't had any confirmation of that.

35

THE REGISTRAR: Let me see what else is there.

MR KULEVSKI: So then the next day is 22 March.

40

THE REGISTRAR: Well, 22 March is fine.

MR KULEVSKI: Yes.

45

THE REGISTRAR: That's okay. So is the next date in April not a suitable date for you, Mr Kulevski?

5 MR KULEVSKI: No, it's not that it's not suitable. It just has not been confirmed by your staff as being available.

THE REGISTRAR: I see. All right. Well, let me tell you what I can also do. Just give me a moment. At the moment, Mr Kulevski, if you wanted an earlier date, 5 April is currently available. But let me just check something.

10 MR KULEVSKI: Can I could raise something with with you while you're checking.

THE REGISTRAR: Yes.

15 MR KULEVSKI: So after Mr Castrisos, next week we will be with Mr Johnson. And then we will have Mr Parker and Mr Bart, who are in many respects the witnesses that will take the most time and have produced the most documents.

20 THE REGISTRAR: Yes.

MR KULEVSKI: They are very keen to sort of lock in their dates. So what I was going to suggest to you, Registrar, is in order to facilitate their availability and the court's processes – that we shall require one further day, and then that will, we think at this stage, wrap up everyone without needing to adjourn generally for six months afterwards.

THE REGISTRAR: I see. All right. At the moment, just to confirm – so today is the 9th. We're proceeding today.

30 MR KULEVSKI: Yes.

THE REGISTRAR: 16 February is confirmed.

35 MR KULEVSKI: Yes.

THE REGISTRAR: If you wanted additional time, Mr Kulevski, I could give you the afternoon of the 23rd at the moment, 23 February, if that was something that you wanted to schedule

40 MR KULEVSKI: We think, given what we've already told the witnesses about when they would be expected, that it's probably better to keep 16 February, 22 March, which is locked in, we understand.

45 THE REGISTRAR: Yes. Yes, 22 March is good.

MR KULEVSKI: And then your staff have checked with us whether we're available on 12 April. If we could confirm that, we would be grateful. So it was suggested to us that the - - -

5 THE REGISTRAR: Yes. I'm just checking another thing that – I have another commitment that has come up. I'm just double-checking that date has not been ticked. No, that's all right. That's from 16 May. All right. So that what was the date in April?

10 MR KULEVSKI: So we were told 23 February had been moved to the – sorry – 15 March had been moved to 12 April.

THE REGISTRAR: Well, let me lock that in now, Mr Kulevski, so there's no doubt about it. So – all right. 12 April is confirmed now, Mr Kulevski.

15 MR KULEVSKI: Thank you, Registrar. Perhaps then if we could accede to your offer for 5 April, then that would neatly tie everything up.

20 THE REGISTRAR: So the full day on the 5th you require as well, Mr Kulevski.

MR KULEVSKI: Yes. So the dates we've just been shifting around are the three dates we had anyway, but just been moved around by the court, and then the one additional day. If we could inquire as the 5th, I would be most grateful.

25 THE REGISTRAR: I have it listed on 7 April. Is that no longer – no. Sorry. I'm reading the wrong – beg your pardon. I'm reading from the wrong screen. Yes. 5 April. I will just – and that, you say, should be sufficient time, Mr Kulevski, to conclude everything.

30 MR KULEVSKI: We hope. It depends on how quickly the main witnesses get through their documents, Registrar, and if after what they say any of the present witnesses need to be recalled. But as you can appreciate, we're moving very quickly through a vast array of documents, sort of culled them as it is.

35 THE REGISTRAR: All right. Well, on those two dates, Mr Kulevski, 5 April and 12 April, I've scheduled this ongoing examination from 10.15 to 4.15.

MR KULEVSKI: May it please the court.

40 THE REGISTRAR: So you have now four dates, 16 February, 22 March, 12 April and 5 April.

MR KULEVSKI: Thank you, Registrar.

45 THE REGISTRAR: Any other housekeeping things, Mr Kulevski, at this stage?

MR KULEVSKI: No. No. Thank you, Registrar. If we could recall Mr Nicodemou, please.

THE REGISTRAR: All right. Is he represented this morning?

5

MR KULEVSKI: I haven't seen my opponent, but I understand he's outside.

THE REGISTRAR: Right. Okay. Mr Kulevski, the other thing administratively I need to do is – I will take the usual lunch break, which is what we did the last time.

10

MR KULEVSKI: Yes.

THE REGISTRAR: Say from about 1 to 2.15.

15

MR KULEVSKI: Yes.

THE REGISTRAR: But at 3.30 I need to go off the bench for about half an hour to deal with another court-related matter. But I can give you another half an hour beyond that, if necessary.

20

MR KULEVSKI: Unfortunately, Registrar – thank you, but that's unsuitable for me, because I have a longstanding commitment to deal with a matter from the Victorian Court of Appeal at 4.20.

25

THE REGISTRAR: All right. Okay.

MR KULEVSKI: So perhaps - - -

30

THE REGISTRAR: We may have to pull up stumps a bit earlier then, if that's the case.

MR KULEVSKI: At 3.30, yes. Yes. Thank you, Registrar.

35

THE REGISTRAR: All right. Okay. Yes. Where's Mr Nicodemou? Yes, Mr Nicodemou, you're back in court. I need to give – take the oath or the affirmation as you did the last time.

MR NICODEMOU: Okay.

40

<COSTA ANDREW NICODEMOU, SWORN

[10.36 am]

45

THE REGISTRAR: Thank you. Take a seat.

MR M.J. STEVENS: If it please the court, my name is Stevens. I appear instructed by Somerset Ryckmans in the interest of the witness, Mr Nicodemou.

THE REGISTRAR: Yes. Thank you, Mr Stevens.

MR KULEVSKI: Mr Nicodemou, you were here last week for examination, and I think at the time I had gone through the relevant steps that take place. You
5 understand, and you remember what I indicated before?---Yes, I do.

If there's anything of issue and you think it may lead you to be liable for a civil penalty or a criminal matter, then you need to say the word "privilege" before. That doesn't protect you if what you say turns out to be false later on?---Okay.
10

But you're represented by Mr Stevens today anyway, so he will raise any necessary objection, and I will deal with it accordingly?---Okay. Thank you.

Mr Kulevski, can we continue?
15

MR KULEVSKI: Thank you. Registrar, perhaps if my instructors could hand Mr Nicodemou back his folder of documents.

THE REGISTRAR: Yes.
20

MR KULEVSKI: His folders of documents.

THE REGISTRAR: Was that marked previously? I think it was, wasn't it.

25 MR KULEVSKI: Yes.

THE REGISTRAR: Yes.

MR KULEVSKI: 2A, 2B and 2C, Registrar.
30

THE REGISTRAR: Yes. All right. And just to confirm, I think there was a report which we said was – the became exhibit number 3, wasn't it.

MR KULEVSKI: Yes, Registrar.
35

THE REGISTRAR: Or MFI number 3.

MR KULEVSKI: Yes, Registrar.

40 THE REGISTRAR: All right. Thank you.

<EXAMINATION BY MR KULEVSKI

[10.37 am]

45 MR KULEVSKI: So, Mr Nicodemou, we went through the substance of the examination last week. We will just take you through some of the balance of the

documents, and as I – you weren't here, but I told the registrar we hope not to keep you for much longer than an hour or an hour and a half today?---Okay.

5 Mr Nicodemou, could I take you please to volume 1 of that folder and ask you to turn to tab 61?---Yes.

Excuse me, Registrar. Just get a copy for my friend.

10 THE REGISTRAR: Yes.

MR KULEVSKI: If I could ask you to read that document to yourself, Mr Nicodemou?---Yes.

15 If I could take you to point 2. Now, this document was sent to you by Mr Bart, was it not?---Yes.

20 Did you check – independently assess the matters in the document, or did you accept the figures at face value as you indicated last week?---Subsequently there were valuations that were provided, from memory, for each category of asset or a basis on which they were valued, which was annexed to the report.

You didn't independently check those valuations, though, did you?---No.

25 And was it actually – you see that in point 2 it says “We are seeking an external valuation or at least a validation of our methodology”. Do you recall which of those two options was chosen?---I believe a valuation, from memory.

30 So an actual valuation was conducted?---I thought it was a valuation that was obtained.

35 And you had no reason to doubt or not doubt the fact that the net book value of the inventory had been reduced significantly from 8.8 million to 3 million, did you?---One of the assumptions in the report was that we accepted those figures that were provided.

Yes. So like on every other figure, you've just accepted the assumption. Is that correct?---Yes.

40 And basically your evidence is still, correct, isn't it not, that effectively your task was principally mathematical, in the sense that the figures came in and you put them out?---Yes.

45 Yes. In relation to – if I could ask you to take your attention to point 3. The trading loss liquidation scenario – the liquidator would lose at least \$2 million trying to run the business down and would probably charge \$1 million in fees. Did you check those assumptions at all?---No, I didn't.

And you hadn't – did you have any basis for thinking that such a large projection was in any way justified?---I don't think in the analysis that I undertook – I don't think we actually put those figures in. I think we made a comment that in the context of a liquidator running such a business there would be costs associated with that. But
5 I don't think we – from memory, I don't think we actually said they're going to be – we quantified that.

I understand. Thank you very much, Mr Nicodemou. If I could then ask you to turn to tab 62?---Yes.
10

So that's an email – if I could ask you just read that email to yourself and the attachment?---Sorry. Did you refer to an attachment?

Yes. It's under the same tab. You will see that there's two attachments, the document – and we've separated them. As your firm has provided them to us, and we've separated them by the red insert?---Yes.
15

Now, these are the extraordinary items essentially as they – extraordinary transactions essentially as they appeared in your final report, are they not?---Yes.
20

And both the description of the transactions and their justifications or their notes were provided to you by Mr Johnson, were they not?---Yes.

And you had no occasion to independently assess whether any of the notes were correct, did you?---No.
25

And that's because it wasn't part of the scope of your project, either financially or instructions. That's correct, isn't it?---Yes.

So you have no way of knowing whether any of these justifications you received for the – or the description of the extraordinary transactions were, in fact, correct or justified, do you?---No.
30

Thank you, Mr Nicodemou. If I could then just ask you to turn to a slightly different version of that document behind tab 63. If I could ask you to turn to the second attachment, behind the second red insert?---Yes.
35

Could I ask whose handwriting that is on that document if you know the answer to that?---I don't.
40

Is it your handwriting?---I don't believe so.

Thank you. So, Mr Nicodemou, if I could just you to skip forward then to tab 85, please. I will try and get through this reasonably quickly?---Yes.
45

Could I ask you to please, if you're able to, first tell me whether – is that your file note?---No. That's Robert Garofano's.

Yes. Now, could you – can I take your attention to point 2 on that page where it says, “sale of business”. Which employees would be taken – is that how you understand that to read?---Yes.

- 5 And then is the next line, “assume the value of employee liabilities” being taken across is 60 per cent of liability will be taken on and 40 per cent of the liability will remain with BTT?---Yes.

- 10 And that’s dated 23 May. Do you know if you were present on that – either that attendance or that phone call with Penny and Mr Garofano?---No, I – I believe it was a phone call and, no, I wasn’t present.

- 15 Now, did Mr Garofano speak to you about any communications he – as a general rule, did he speak to you when he had communications with a client?---Generally, he would have updated me on a regular basis - - -

Yes?--- - - - as the matter progressed.

- 20 And did you understand at this point that the client was considering a sale of the business to actually be a transfer of the business from the current Bruck entity to the new entity that would be controlled by the same management and would just take 60 per cent of the employees?---Yes. It was one of the options that they were considering.

- 25 Yes. So it wasn’t really a sale per se in that sense, was it? It was more of a restructure where the transaction would involve the current business – the best bits of the current business being taken across to the new business?---I believe it was a still a sale, but purchasing certain assets.

- 30 Yes. And the heavy redundancies being left in the existing business; is that correct?---Some – some employees being left in – in the existing business.

And then perhaps the last line:

- 35 *The liability with BT for accrued rent will be left with BTT and purchaser will have low rate.*

- 40 Could you please explain what that means to us, if you’re able to?---No, I don’t know what that – I don’t know what the second line means. Liabilities – there’s – the landlord under the lease was an unsecured creditor. And that – that liability was not transferred, as I understood it, under the arrangement. But I – I’m not what that second line

- 45 But the landlord was, as we discussed last week, a related party; was it not?---Yes. Yes.

Thank you. If I could then ask you please to take the second of those folders. If I could ask you to turn to the first tab, tab 91. Perhaps, if you could help me with the cover sheet. This seems to be a, sort of, off setup. It seems to be from Mr Garofano to Mr Garofano's Hotmail account, copied to same account from which Mr Garofano has sent the email; is that correct?---Yes.

Could you explain why that may have occurred, if you know. Is that some sort of firm practice or - - -?---No, I - I - I'm - I'm only guessing, but I assume he may have been on leave for a day or two. And at the time, it was - the system that we were running did not permit a log-in outside. I - I - I can only assume that he was doing some work either on the weekend or whilst he was on leave.

I understand. Perhaps, if we could then take the attachment behind the red insert. And this seems to be a further analysis of what we will call the new option 3, does it not?---I don't quite understand the question.

Perhaps, I will ask you this first. I withdraw the question. Is - who prepared this document?---I - I'm not sure. It doesn't have - it doesn't have any reference or file reference on there, so - - -

Was it a document prepared by BRI Ferrier or was it a document prepared by the client?---I - I suspect it was prepared by - by Robert, but I - I'm not certain.

I understand. Now, we discussed last week, did we not - or you gave evidence last week, I should say - I apologise - that Mr Bart never really considered either options 1, sell the business of BTT as a going concern, 2, wind down the operations of BTT - I withdraw that, sorry. With - you gave evidence last week, did you not, Mr Nicodemou, that Mr Bart had effectively ruled out any options, other than the transfer of part of BTT's business to a related entity of BTT - is that not correct?---I - I'm not sure what he ruled out or - or did otherwise.

But you did - you gave evidence last week, did you not, that he didn't think any other option would be viable?---He thought that option - buying part of the business was a viable option, but I don't know if he didn't think any of the other options were viable or what else he was thinking. I don't know.

Well, did we - did you not give evidence last week that the option you've described as the viable option was the only viable option because that was the only option that the landlord would give consent to operate the premises - - -?---Yes.

- - - on?---Yes. I did.

Yes. So even at this stage is that not correct that Mr Bart was communicating to you that he thought that the option discussed here was the most viable option moving forward?---Yes.

And ultimately it would be his decision to make, wouldn't it, because he was the one both providing the funds and in ultimate control of the group?---Yes.

5 If I could take you to the third page, and to the second dot point on that page you will see the following words:

In the event that the company undertakes a sale of business it is expected that BTT will endeavour to utilise income received from W and C...

10 And could you remind the court of what W and C are?---I believe they were the earlier abbreviations of the earlier structure that was potentially going purchase the business.

And they stood for?---I don't remember exactly what they - - -

15 Was it wages age - - -?---I think it was – no. I don't think so. I'm not sure. It's probably in an earlier version in some correspondence.

So:

20 *...income received from W and C for hire charges to satisfy the liabilities incurred by the balance of BTT's labour force. However, in the event that BTT is placed into liquidation after the sale of the business W and C the government department will only be required to assist with 40 per cent of the company's*
25 *employee entitlement liability as opposed to almost, if not, 100 per cent.*

?---Yes.

30 Could you please explain what that means to the court?---I don't quite understand the earlier part, but in terms of the last couple of lines I think what – what it means is that under this sale the shortfall to employees is 40 per cent as opposed to 100 per cent if the whole business was to go into liquidation.

35 So is it true that what the note is suggesting is that the government will have to pay for 40 per cent of employee redundancy liabilities instead of 100 per cent; is that correct?---Yes.

40 And when it says “assist with the liability” what the note is conveying, is it not, is that the transfer of the – or the sale of the business to related parties with the same management will end up with the business being viable on an ongoing basis and with only 40 per cent of the liabilities being left in the old business; is that correct?---I don't believe that's what that point says.

45 Well, what does it say then?---I believe it's – it's talking about what the likely shortfall is in terms of employee entitlements. If, for example, the employee entitlements were \$100 there would be a potential claim, or a shortfall in entitlements to the value of about \$40.

So haven't we established on a number of occasions that the only way this business is going to be sold is to a related party with the same management?---Potentially, yes. Yes.

- 5 And so doesn't the note say that the effective advantage of that structure is that the government only has to assist with 40 per cent of the liabilities instead of the assumed 100 per cent if the business goes under?---Yes.

- 10 So the transaction that has been contemplated – the transfer – the sale of the business to related parties with the same management has been put in place to alleviate an inflexible EBA; is that not correct?---Could you explain that further?

- 15 So we discussed last – you gave evidence last week, did you not, that the prime driving consideration for this was the inflexible enterprise bargaining agreement?---Yes. Yes.

- 20 And so therefore what the note is indicating, is it not, is that the advantage of the sale of the business to a related entity with the same management is that the business can continue as a viable entity while avoiding only 40 per cent of the employee entitlements as opposed to 100 per cent if it is no longer viable?---Yes.

Thank you. If I could ask you to turn to tab 100, please, Mr Nicodemou?---Yes.

- 25 Did Mr Garofano tend to as a general rule copy you on all emails he sent to the client?---Predominantly the more important emails or – yes. But in terms of exchanging with some of the staff to gather information I wouldn't have been on all those emails.

- 30 And is that principally because of the costs constraints in this matter?---Not only cost constraints, but also – there wasn't a requirement for me to see that level detail.

- 35 So there's not practice at the firm where people who aren't directors or partners, to use a general expression, are required to get a partner or director to sign off before they send emails - - -?---Not - - -

- - - to the client?---Not on every email. No.

- 40 All right. And who's – who makes the judgement as to what requires a director to sign off? Obviously the person sending the email?---Yes. Unless the partner or director specifically requests that of – of that particular staff member.

Yes. Thank you. If I could ask you to take the substantive part of the email below a third of the page:

- 45 *Hi Ron. It is my understanding the infantry matrix you've provided relates to a working paper that had been internally prepared by BTT based on a valuation model provided for another entity in the past.*

Do you see that?---Yes.

Are you aware of what they were talking about at the time?---I think ultimately they did get a valuation, or it was our suggestion that they get a valuation, but I believe
5 what they did was they had a valuation for some other entity and there was a basis of which stock, for example, was valued based on its nature. So for example, if it was incomplete stock they would throw a ballpark figure at it of five cents in the dollar or 10 cents in the dollar, or something like that.

10 Right. Is this another entity in the same industry is it, or - - -?---I don't know. I think it was another entity in the group, from memory.

That also manufactured clothes and - - -?---Possibly.

15 - - - such material?---I'm not 100 per cent certain on that.

I understand. Thank you. If I could then ask you please to turn through to 110 – tab 110?---Yes.

20 Now, is – Ms Rizita Angles: is she Mr Bruck's PA?---Mr Bart's.

Mr Bart's PA, sorry?---Yes.

And you will see that the email says:
25

Please see report with various amendments. Let's discuss in the morning.

?---Yes.

30 If I could ask you to turn to that report. Now, that's a draft of your report, is it not?---Yes.

And you understood that the tracking – the Microsoft Word tracking, are they changes made by Mr Bart?---I don't know if it's Mr Bart, but someone from his
35 organisation.

And so it's not tracking obviously of BRI Ferrier, is it?---No.

And you will note the document is still called preliminary review of restructuring
40 options. That's correct, isn't it?---Yes.

And the reason why it's called the preliminary review of restructuring options is because what you were asked to do was figure out the best way to restructure the current business so that it could continue forward in what was told to you was a
45 viable way; is that correct?---No. What we were asked to do was assess the four options that were discussed and how that impacted on the different category of creditors.

Yes. I understand. And we discussed last week, did we not, that truly the one restructure was the sale of part of the business to the related party with the same management; is that not correct?---Yes.

5 Yes. Because the others aren't restructuring, are they?---No.

Thank you. And if I could take you to the executive summary. If you see in the second paragraph it says Mark Foy's. Now, Mark Foy's is a company further up in the group, also controlled by Mr Bart; is that not correct?---I believe so.

10

Now:

Mark Foy's has made it clear to the board –

15 now, could you tell us who was on the board at this time?---I couldn't. I know that Mr Bart was on the board, and also - - -

Mr Parker?---Mr Parker. I couldn't tell you who else was on the board.

20 So effectively the email is saying a company controlled by Mr Bart has made it clear to the board, who has as a member of it Mr Bart; is that correct?---Yes.

So:

25 *Mark Foy's has made it clear to the board that, subject to a budget demonstrating that the business can return to solid profitability that it enjoyed in the past in the very short-term, then BTT can rely on ongoing support from its shareholder and related companies.*

30 Now, its shareholder – Mark Foy's shareholder is ultimately Mr Bart; is that not correct?---Yes.

Entirely so?---I haven't conducted a company search to say that, but I understand he controls that entity.

35

But you knew at the time, did you not, that Mr Bart – whatever the various companies were, they all ended up with Mr Bart being the sole shareholder once it got to the top of the group; is that not correct?---I don't know if he's the sole shareholder, but I know he had controlling interests in those entities.

40

Yes, thank you. And so when it says that BTT can rely on ongoing support from its shareholder and related companies, ultimately that was a decision for Mr Bart alone, wasn't it?---What one, that – yes, yes.

45 And so really, I mean, it's a – the addition to your report or the amendment to your report is framed in a complicated way, but really, isn't it just saying that Mr Bart has made clear to the board, on which Mr Bart is a member, that BTT, controlled by Mr

Bart, can rely on ongoing support from Mr Bart and companies controlled by Mr Bart only on this basis? Isn't that a fair reading?---Not to the context that those various entities that you referred to have their own board structures and management. I don't know how they make decisions. If he is a shareholder of an entity, or a
5 majority shareholder, but he has appointed five board members, for example, and those board members vote however they want to vote to discharge their obligations, that may not be the case. But if he controls those boards or, for example, he's the sole director of those companies, well, then, yes.

10 And when you say controls those boards, how do you mean controls those boards?---By virtue of the fact that he is the – well, there isn't a board; he's a sole director of those entities.

Now, see one of the first occasions in the next paragraph, it says:

15 *The board of BTT has asked BRI Ferrier to provide financial advice in relation to BTTs restructure options.*

20 "Restructure" has been crossed out. Was it explained to you why "restructure" was crossed out?---Not that I recall, no.

Were you at some time told that the reason why "restructure" – that these papers were no longer going to be presented as a restructure is because GEERS or FEG would look unfavourably on the use of those words in discussing the various
25 options?---No.

You were never told that?---Not that I recall, no.

30 Why did you choose to start removing the word "restructure" or the word "restructuring" from your documents?---They were amendments that were put through by the client. I didn't see an issue with the amendments, and we accepted them.

35 If I could then ask you to turn to tab 113. Now, you will see that on the front page the word "restructuring" is circled?---Yes.

And that's the word that ultimately goes, is it not, from the cover?---Yes.

40 So I'm going to ask you the question again: was any justification provided to you as to why the word "restructuring" was constantly being removed from your draft reports?---Not that I recall

So then perhaps if we turn through to tab 117, and that's an email from Mr Garofano to Mr Bart copied to you; is that correct?---Yes.

45 And to Mr Johnson, I apologise?---Yes.

And so did you understand at this point that Mr Bart was making the ultimate decisions on the changes that were being made to the report?---I know that the draft reports were being sent to Mr Bart, but also other employees of the company. I know that he was involved in reviewing or making changes, but I don't know which changes he made as opposed to someone else.

Thank you. I understand. Now, perhaps if we go back to the – so go behind the attachment to that document, the colour attachment behind the red tab?---Yes.

And if I could ask you to turn to the second substantive page headed Background, 8676 in the top right-hand corner?---Yes.

And if I could ask you to go down to the seventh – I won't call it a dot point – wedge point?---Yes.

And you will see the change there that, due to various factors, which – we discussed last week, did we not, that those factors, if they were important at all, were nowhere near as important as the inflexible EBA?---Yes.

You gave that evidence last – that's correct, isn't it?---Yes.

And so you will see the phrase:

BTT needs to –

“restructure” is crossed out, and it's changed to –

rethink its operations in order to revive its profitability.

?---Yes.

Now, was that change made by you or - - -?---No.

- - - by someone at the client?---Someone at the client.

And were you at that stage informed that “restructure” was a dirty word to be using in this report?---No.

And then if I could ask you to turn to tab 119, a further draft of the report. Do you have that?---Yes.

Could I ask you to turn to the fifth page. In the top right-hand corner you should have the number 8744?---Yes.

And you will see that the first wedge point on that page, the comment is made:

A review of BTTs –

then a grammatical error –

the restructure –

5 crossed out –

options –

and changed to –

10

identified for BTT moving forward.

Is that correct?---Yes.

15 And is that a change made by the client or made by you?---I believe it's the client.

And still at this point, are you being told why the word "restructure" is conveniently being taken out of your draft wherever it appears?---No, not that I recall. A lot of the changes were made between Robert and the client, and ultimately he would come and see me and say, "Well, we need –" well, they've suggested a number of changes to the report.

20

I understand. So it was never discussed with you, was it, why the word "restructure" was disappearing from the report?---No.

25

No. But we've discussed, have we not, that the restructure was really the only viable alternative, given the considerations about consent for the lease only be given to a related party; is that correct?---Yes.

30 Yes. If I could ask you – any of the highlighted changes in here, the yellow mark-ups: are they mark-ups representing changes by the client?---I believe so, but I'm not sure who highlighted those changes, reason being some things are crossed out and then some things are highlighted, so I'm not sure why there's two different amendments.

35

Is it possible that what happened is that the changes were made by the client in terms of the tracking and then Mr Garofano highlighted some of the options, some of the changes and some of the documents – some of the other parts that might need to be discussed?---Yes, that is possible. Yes.

40

Is that a practice that prevailed on the matter?---Not necessarily. But it could have been.

45 The only reason I ask is in my experience – and these are just my experience, so I'm asking if there's an experience on your matter – it tends to be officious types like accountants and lawyers that do the highlighting of the documents. Clients don't

generally tend to go to that level of detail. Would that have been true in this case?---It may have been, yes.

If I could ask you to turn to tab 123?---Yes.

5

Now, that's a file note for this client, is it not?---It is.

Dated 2 June?---Yes.

10 And is the file notes of a meeting, is it not, and it's taken by Mr Garofano?---Yes.

Now, the attendees – who's MB? Or is that "meeting", "MTG"?---That's meeting with - - -

15 Yes. So meeting - - -?---CN.

You? Is that you?---Philip Bart and Mark Ryckmans.

Mark Ryckman is who?---He's a solicitor.

20

Who was he the solicitor for at that meeting?---During the course of this work there were a number of items that we raised in terms of the second part of the report, some of the extraordinary transactions. In the report we suggested that Mr Bart should actually go and seek some legal advice on some of those.

25

For the company. That's correct, is it not?---Yes.

Mr Ryckman was not there for Mr Bart personally; he was there for BTT, wasn't he?---I introduced the two of them, and that was the meeting to introduce them. I don't know what happened subsequent to that meeting, if he was retained by the company or Mr Bart personally.

30

But he was there to provide advice on what the company should do?---No. He was there to – Mr Bart wanted to talk to an insolvency solicitor about some of the transactions, given that we had said in our report that he should seek legal advice on them.

35

And just for completeness, Mr Ryckmans is the solicitor representing you today. Is that correct?---Yes. Yes.

40

Could you please read out – so obviously – sorry. Just for completeness again. This is a meeting – this file note is accurate. You were present at this meeting?---Yes, I was.

45 Could you please read out the second dot point, if you're able to, please, read out to the court?---Sorry. "MR, Mark Ryckmans."

Yes?---“Doesn’t” - - -

“Believe”? Is that “believe”?---“Believe” – possible – “it” - - -

5 “Likely”? Is that correct?---I’m not sure.

“Mr Ryckmans does not believe it likely a liquidator would be”?---“Funded”.

Yes?---“To” - - -

10 “Reverse”?---Yes.

“Transactions”?---Yes.

15 “Of the sale of business”?---Yes.

“In December ’13”?---Yes.

20 So that was advice you received at the meeting, wasn’t it, that you don’t have to worry about the transactions because it’s unlikely a liquidator would ever investigate them?---At that meeting that we arranged, I ran through some of the items that we discussed, and I believe that Mr Bart should obtain some legal advice on them.

25 Yes?---At a high level I believe that’s something that Mark said.

The advice at the meeting was “Don’t have to worry about the transactions in any event, because it’s unlikely a liquidator would be funded to investigate them”. Is that correct?---That would be one of the impediments of those transactions, yes.

30 So impediments to the transactions being investigated?---Sorry. Yes.

Yes. And then the next line: it says “budget meeting in two weeks with” – is that “Rob” or “board”?---I assume it’s “board”.

35 MR O’LOUGHLIN: Registrar, I just have a concern here that we’re waiving privilege of the client.

MR KULEVSKI: I don’t know what’s happening here. I don’t know - - -

40 MR O’LOUGHLIN: Of Mr Bart.

THE REGISTRAR: Who at the bar table is addressing me for – on behalf of this examinee? I don’t appreciate – who are you?

45 MR O’LOUGHLIN: I act for Mr Bart in these matters. And I’m concerned that some of the matters that are coming out here is advice to Mr Bart.

THE REGISTRAR: Sorry. You are who? I didn't get your name.

MR O'LOUGHLIN: Mr O'Loughlin.

5 THE REGISTRAR: Yes.

MR O'LOUGHLIN: And I just want to put on the record that there's concerns here that this is a waiver of Mr Bart's – of advice to Mr Bart, not to the company.

10 MR KULEVSKI: This is extraordinary, Registrar. Has there been any evidence or any justification presented by my friend, whoever he is, for the fact that Mr Bart had a retainer with Mr Ryckmans in a personal capacity during this meeting?

MR O'LOUGHLIN: I'm just raising the concern that there may be a privilege issue.
15 We have not inspected these documents today. Mr Nicodemou's evidence is that the advice was being provided to Mr Bart.

MR KULEVSKI: Could I ask that the witness be excused for this

20 THE REGISTRAR: Mr Nicodemou, you might just step outside and take a seat.

<THE WITNESS WITHDREW

[11.20 am]

25

THE REGISTRAR: Yes.

MR O'LOUGHLIN: Registrar, I apologise if there has been any, you know, speaking out of order, but I just want to ensure that there is no waiver of any
30 privilege that belongs to Mr Bart.

THE REGISTRAR: The line of questioning from Mr Kulevski – was it going down that path, Mr Kulevski?

35 MR KULEVSKI: For a start, Registrar, before even get to that, my friend presents no evidence that at any point – and he acts for Mr Bart. So if anyone is to know whether this was personal advice provided by Mr Bart – to Mr Bart, it should be him. Now, no privilege has been claimed on this document by Mr Ryckmans.

40 MR O'LOUGHLIN: Well, it's not Mr Ryckmans' privilege to claim.

MR KULEVSKI: He's the solicitor.

MR O'LOUGHLIN: That's the client's privilege.
45

MR KULEVSKI: And who's the client? The client is the company in liquidation.

MR O'LOUGHLIN: Well, the concern that had led me to come up and voice the objection is Mr Nicodemou's evidence that it was advice to Mr Bart.

5 MR KULEVSKI: Well, it's not – first, it's not what he said, and secondly, if anyone is to know and prepared to warrant to this court that this was advice to Mr Bart, it would be Mr Bart's solicitor.

THE REGISTRAR: Mr Stevens, did you want to say something?

10 MR STEVENS: Well, I was just going to say that, as I understood Mr Nicodemou's evidence – and it's being transcribed – as I understood, he said that the company ought – this is the client, as my friend has named it, which is BTT, as I understand it – was advised that in respect of these transactions they should get legal advice, the company should receive legal advice. Now, I don't know whether there was a co-
15 extensive instruction coming from Mr Bart at the time. Mr Nicodemou had suggested that they get legal advice in respect of these transactions. And that was to the company, as I understand it, to the client as he has named it. Now, it may be that this is one – and I'm – as a friend of the court – nothing to do with Mr Nicodemou. It may be that this is one of those difficult hybrid situations where at the time these
20 discussions are taking place - - -

MR KULEVSKI: Well, there's no evidence for this.

MR STEVENS: Well - - -
25

THE REGISTRAR: I will just hear the submission, Mr Kulevski.

MR STEVENS: It's only – I'm just a friend of the court. I'm not making a submission for or against it. There may be a situation where the two entities or two
30 people or two things are being advised simultaneously. I can't say. Mr Nicodemou I don't think can say what occurred, as in who was retained to do what, other than the identification that he gave was that somebody ought to give advice to the company, that is, BTT, in respect of these transactions. What then transpires in the meeting may be something that is related to that. It may be unrelated to that. It may be
35 indeed a privileged communication that ought not to come out, or it may not be a privileged – it might in fact be the company's privilege, therefore it's for my friend to waive. It's not Mr Bart's privilege that is being

THE REGISTRAR: Was Mr Bart present at these meetings?
40

MR STEVENS: Well, apparently according to this file note he was at this meeting.

THE REGISTRAR: Right.

45 MR STEVENS: So there were three people present apart from the author of the document, which I understood to be Mr Garofano, and that is Mr Nicodemou, Mr

Bart and Mark Ryckmans, according to the file note. That hasn't been explored by my friend as to who else may have been present. I don't know.

5 MR KULEVSKI: Which I was getting to, Registrar. But in any event, Mr Nicodemou was there in the capacity of acting for the company. Mr Ryckmans has emailed us to say that any privilege attaching to the document belongs to Bruck Textiles. And my friend should know that, because Mr Ryckmans is instructing

10 MR O'LOUGHLIN: Well, I don't know every communication that has passed between my friend's solicitors and Mr Nicodemou's solicitors, and that is a rather presumptuous thing to say. But I am not aware that there is any conflict in the sense that, as I understood it, Mr Ryckmans was there to advise the company, and that's how it was put to me.

15 MR KULEVSKI: Okay. So this is the summary, Registrar. Mr Ryckmans is there for the company, according to my knowledge. My friend is here instructed by Mr Ryckmans for an examinee personally, who was at the meeting. And I'm allowed to ask him any questions about a meeting he was present at. If supposedly this is legal advice for Mr Bart personally, why would Mr Nicodemou and Mr Garofano be there
20 in their capacity as accountants for the business.

THE REGISTRAR: Sorry. Wasn't it just Mr Bart, Mr Nicodemou and Mr Ryckmans that was present – was there - - -

25 MR KULEVSKI: Mr Garofano is the author of the file note.

THE REGISTRAR: But he wasn't physically present, was he?

30 MR KULEVSKI: No, he was there.

THE REGISTRAR: He was there. All right.

MR KULEVSKI: I mean, how else could he have authored the file note.

35 THE REGISTRAR: I see. He's the – okay. Because I don't have the benefit of the file note in front of me.

MR KULEVSKI: I'm sorry. Sorry.

40 THE REGISTRAR: I think your only copy went to Mr Stevens, but it's all right. I think I've been following it as best I can.

MR KULEVSKI: So Mr Garofano is the author of the file note – was also at the meeting.

45 THE REGISTRAR: Yes.

MR KULEVSKI: So what we have is – I’m allowed to ask him about anything that took place in that open meeting in circumstances where there is not a hint of a suggestion that the privilege, to the extent there was any, belonged to anyone but the company. Mr Ryckmans, who was the solicitor there, asserts that he was acting for
5 the company, and no one has any evidence that anything else is happening.

THE REGISTRAR: Is anything – Mr Bart was present, but he was present in what capacity?

10 MR KULEVSKI: Well, that’s the constant - - -

THE REGISTRAR: Apart from a bystander.

MR KULEVSKI: Apart from the fact that he owns everything in this group.
15

THE REGISTRAR: Yes.

MR KULEVSKI: He was present in the capacity that it was his business interests being affected because he’s effectively the controlling mind and will of this
20 company.

THE REGISTRAR: Your assertion – your submission, Mr Kulevski, is that any discussion there relates to the company’s privilege, and that’s being waived or that’s something that’s already within the - - -
25

MR KULEVSKI: It’s – that’s my privilege.

THE REGISTRAR: It’s your privilege, yes, for Brook Textiles Technology in liquidation. But has there been anything that has been led so far or has been adduced
30 so far from Mr Nicodemou which suggests that Mr Bart’s privilege has been - - -

MR KULEVSKI: Well, I didn’t think so. We have an interloper coming up to the bench in the middle of the – to the bar table in the middle of the examination suggesting some generalised concern when nothing has come up, with no evidence
35 whatsoever to back up any waiver of privilege.

THE REGISTRAR: What do you say, Mr O’Loughlin? Has there been anything that has arisen apart from your, I guess, concern that privilege – legal professional privilege on behalf of Mr Bart may be infringed at this stage?
40

MR O’LOUGHLIN: The reason that this note came into existence was because of concerns raised by Mr Nicodemou that legal advice needs to be given to Mr Bart in respect of a number of these transactions. How else would it be that these transactions, these extraordinary transactions that potentially would be called back by
45 a liquidator could possibly affect the company after it had gone into liquidation. This is clearly advice to Mr Bart by a lawyer that is not advice that - - -

MR KULEVSKI: He's giving that from the bar table, that evidence, and I will hold him to that. He said it's clearly advice to Mr Bart in his personal – I just want that on the record.

5 MR O'LOUGHLIN: That's my submission. That's my submission. It's advice to Mr Bart.

MR KULEVSKI: It's his submission based on what evidence?

10 MR O'LOUGHLIN: On the evidence of Mr Nicodemou. If we go back over the record, we could bottom out the issue.

MR KULEVSKI: Where Mr Ryckmans, the solicitor who was there, has advised us that the retainer was with the company and there was no privilege other than that in
15 the company. I don't really know what the collusion here is, as well, but - - -

MR O'LOUGHLIN: Registrar, I'm just here to ensure that no advice that was given to our client is waived in the circumstances. There were concerns that I had that that might have been the case during that interaction earlier. I've come up. I've voiced
20 those concerns. And, you know – and I've given my submissions in respect of why I think that that matter – that that file note contains advice that potentially belongs to Mr Bart or at least a joint privilege.

MR KULEVSKI: Does he have an application, Registrar?
25

MR O'LOUGHLIN: I haven't seen the document before, so how can I give an application?

MR KULEVSKI: Well, does he – does he want to stop the examination? Does he
30 have an application?

MR O'LOUGHLIN: Excuse me, Registrar.

THE REGISTRAR: Mr Kulevski, what I'm going to do is – I gather that you all
35 want to have a bit of a discussion at the bar table, which I don't - - -

MR KULEVSKI: I don't want to have any discussion. I just want to continue with the examination.

40 THE REGISTRAR: Well, I'm going to go off the bench for five minutes or 10 minutes and see if you all can work through what you need to do, and then I will rule on anything. Is there any – is that file note available, so I can read it?

MR KULEVSKI: Yes, if I - - -
45

MR STEVENS: give him this one?

MR KULEVSKI: Yes, if he could have that one, if that's possible.

THE REGISTRAR: I will take that off the bench, and I will have a look.

5 MR STEVENS: Sorry, I didn't mean to use the third person. Registrar, I have a copy

THE REGISTRAR: Yes, all right.

10 MR STEVENS: It's open at the tab.

THE REGISTRAR: How many pages is this file note? I don't - - -

MR STEVENS: It's only two pages long, but - - -
15

THE REGISTRAR: Why don't you just retrieve – just extract those two - - -

MR STEVENS: I can.

20 THE REGISTRAR: - - - so I don't have to carry a big bundle off the bench.

MR STEVENS: It's not my document to muck around with, but there we go.

THE REGISTRAR: I will take that off the bench and I will read it as best I can. I
25 will make a copy and return that. But I will go off the bench now, and you let me know whether you can resolve it or whether or not this question – if there is going to be any objection to it, any formal objection, whether or not that has to happen now or whether you can move on to another point so we don't waste the time, Mr Kulevski.

30 MR KULEVSKI: I understand that, Registrar.

THE REGISTRAR: Let's see if we can do that.

35 **ADJOURNED** [11.30 am]

RESUMED [11.52 am]

40

MR KULEVSKI: Thank you, Registrar, for that – I'm sorry.

THE REGISTRAR: Yes, Mr Kulevski.

45 MR KULEVSKI: Thank you, Registrar, for that indulgence. I've had some discussions with my friend. My friend has indicated to me – and I will let him express them. My friend has indicated to me that he considers that there may be a

joint privilege in this file note of Mr Bart and the company, and if he expresses his concerns in that way, then I won't pursue the file note any further today.

THE REGISTRAR: All right. Okay.

5

MR O'LOUGHLIN: Correct, Registrar. Thank you to my friend here. So, yes, I – having considered the file note, I accept the proposition that there was advice provided to the company contained in that note, but I also maintain that there is advice provided to Mr Bart contained in that file note.

10

THE REGISTRAR: Is that – have you seen the file note, Mr O'Loughlin?

MR O'LOUGHLIN: I have. I have, Registrar.

15 THE REGISTRAR: All right. So is it – this is a file note by Mr Ryckmans, isn't it?

MR O'LOUGHLIN: No.

THE REGISTRAR: Who's the - - -

20

MR KULEVSKI: No, it's Mr Garofano

THE REGISTRAR: Sorry, Mr Garofano. So are you able to tell from these specific paragraphs, Mr O'Loughlin – not necessarily right now, but at some point – which ones you say relate to Mr Bart and which ones do not relate to Mr Bart?

25

MR O'LOUGHLIN: I will need instructions on that, Registrar.

MR KULEVSKI: But, sorry, Registrar, to interrupt. Perhaps on the basis that Mr O'Loughlin is allowed to complete his statement, and I've agreed not to pursue it today, perhaps that's as far – I apologise, Registrar – as we can go - - -

30

THE REGISTRAR: Sure. I mean - - -

35 MR KULEVSKI: - - - today on that.

THE REGISTRAR: - - - what I'm saying is if ultimately this is – this objection is pressed, then what I would require is for the parties to – well, Mr O'Loughlin, essentially, to identify which of these specific paragraphs he says there is a privilege claim by Mr Bart, because that's how it would then have to be adjudicated. But that's not a question we need to deal with now.

40

MR KULEVSKI: Yes. I understand that, Registrar, yes.

45 THE REGISTRAR: But I think that's – I'm just foreshadowing to you that's what I would expect - - -

MR KULEVSKI: Yes, yes, I understand.

THE REGISTRAR: - - - the parties to do.

5 MR KULEVSKI: Perhaps if Mr – in accordance with our arrangement, if Mr O’Loughlin can - - -

MR O’LOUGHLIN: Yes. So following that, there is advice to the company, except – contained in that note, except that there is advice to Bart, except that there’s a
10 common interest in that advice. Our client can’t assert that that privilege is against the company, but can assert that as against the rest of the world, and does that in these circumstances.

THE REGISTRAR: So how do we - - -
15

MR KULEVSKI: In those circumstances, Registrar, I won’t pursue the note any further today.

THE REGISTRAR: Yes.
20

MR KULEVSKI: And Mr Nicodemou may need to be recalled at a later date. I don’t know the answer to that yet, but Mr O’Loughlin has expressed his concerns that - - -

25 THE REGISTRAR: All right.

MR KULEVSKI: - - - there’s a joint – that his – sorry, not his concerns – his submission that there’s a joint privilege and that there’s a common interest privilege, and on that basis I won’t pursue the file note any further today with Mr Nicodemou.
30

THE REGISTRAR: All right. Well, that resolves it for now.

MR O’LOUGHLIN: If it pleases the court.

35 THE REGISTRAR: Thank you, Mr O’Loughlin. Mr Nicodemou – you still have more questions for him, presumably.

MR KULEVSKI: Not many, Registrar.

40 THE REGISTRAR: All right. Well, we will have – we will have Mr Nicodemou - - -

MR KULEVSKI: Thank you.

45 THE REGISTRAR: - - - brought back in, please.

MR KULEVSKI: Thank you.

<EXAMINATION-IN-CHIEF BY MR KULEVSKI

5

THE REGISTRAR: Yes. Come back into the witness box, Mr Nicodemou. We will just continue – you’re still on the oath that you took earlier?---Yes.

10 All right. Yes, Mr Kulevski.

MR KULEVSKI: Mr Nicodemou, you weren’t here for that conversation, but I won’t be taking you through that file note any further today. I may return to it at some later point in time. I apologise for that. I’m not saying that I will require you
15 to – or that the court will require you to return at a future time. It’s just that we won’t be progressing that file note any further today?---Okay.

So if I could please ask you to turn to tab 125?---Yes.

20 Now, if I could ask you to turn to the cover page. These are your amendments to the document, are they?---That’s my comment on the front page.

So it says:

25 *Rob, some further amendments.*

?---This is my handwriting.

Continuing:

30

I’ll call you tomorrow to discuss.

?---Yes.

35 And so they’re your amendments in the document?---Yes, they are.

Now, the document has been changed to Financial Review Of Options rather than Restructuring Options; that’s correct, isn’t it?---Yes.

40 And it’s dated 3 June?---Yes.

Do you recall when the decision was made to change – to delete the word “restructuring”?---There were earlier versions which we discussed a bit earlier where amendments were made by the client - - -

45

Yes?--- - - - which we accepted.

And you say that that wasn't – the reason for that wasn't discussed with you?---I remember having a conversation, a telephone conversation, with Mr Bart where he ran through some of the changes, but I – he didn't give a justification for why certain changes were made.

5

I understand?---But I do remember having a telephone conversation with him about it.

10 Sorry, I hate to be facetious, but what was the purpose of the telephone conversation if he didn't explain why the changes were made?---I think – well, it was to run through a whole host of comments, changes in the report, as you've seen earlier, but I can't specifically remember to what extent the title change from Restructuring to Financial Options was discussed. But I don't recall him giving any specific justification as to why he changed it.

15

I see. Now, if I can ask you to turn to tab 126?---Yes.

20 If I could ask you to turn to the beginning of the email, the bottom half of the page, who is – it's an email from Mr Garofano. Who is Ask BRIF?---That was an internal technical portal where staff could ask questions and the technical officer, for example, would respond to them and put them into a – like, a database of questions on different technical issues.

25 I see. And who is the person that compiles the answers?---Peter Sheppard.

And who is Mr Sheppard – what are Mr Sheppard's qualifications?---He is an insolvency practitioner with a number of years experience.

30 And he's employed by BRI Ferrier, is he?---Was until recently.

But he was at the time of this email?---Yes.

35 Yes. Now, if I could ask you to just read through the beginning of the email and the answer – sorry, the question from Mr Garofano and the response?---Yes.

Had the client communicated to you at this point a concern that this sale not be viewed as a restructure?---Not that I recall. No.

40 Well, Mr Garofano was asking advice on what FEG would consider a restructure, was he not?---Yes.

45 And he was asking for that advice, to your knowledge, because he wanted to be certain that whatever option was chosen by the company would involve in FEG paying employee liabilities rather than the company; is that not correct?---Sorry. Could you repeat that question?

Yes. Of course. He was asking for that advice because the client wanted to ensure that FEG would pay for any employee liabilities rather than the company or anybody else. That's correct, is it not?---I suspect he wanted to confirm that employees in that scenario would be entitled to entitlements being paid, yes, or be eligible.

5

At that point you were aware of the concern from the client that FEG would not pay if this was considered a restructure, were you not?---Perhaps. Yes.

10 And Mr Garofano was asking for advice on what FEG would consider to be a restructure, isn't that correct?---Yes.

15 And you were aware, weren't you, that's why the client was removing the word "restructure" whenever it appeared in your documents?---No. No. That's not correct. There was a lot of question that were asked between staff, for example, of the client and Mr Garofano. A lot of correspondence that went between the two of them. We were asked – we were not – we were never specifically asked that question, nor were we ever, for example – we were never explained the changes that were made by the client. They amended the report two or three occasions. They asked us different technical questions, and I think that's one of them.

20

This is the only example we have in the material where either you or Mr Garofano asks for technical advice on a part of the transaction; is that correct?---I'm not sure.

25 Do you recall any other instance where technical advice was requested by either you or Mr Garofano?---Well, it was in terms of the transactions – the extra on the transactions as well.

30 But you never checked those, did you?---We never checked the transactions, but we were asked to provide a view as to how we would look at them if, for example, we were liquidator of the company.

That's right, but this is an instance where you needed further advice yourself; is that not correct?---Further advice for myself?

35 Both you and Mr Garofano required further advice. This was not advice that was in your range of knowledge what FEG would consider a restructure?---No. It wasn't. No.

40 And that's why you asked for internal technical advice; is that not correct?---That's why – yes. Robert asked for that. Yes.

And the point of this advice, is it not, is to ask for advice on what FEG would consider to be a restructure?---Yes.

45 And the reason for that advice is that if FEG considers it a restructure it won't pay; isn't that correct?---Yes.

And the client wanted to ensure that FEG would pay for the employee liabilities that were left in the old Bruck company?---I believe so. Yes.

Thank you. If I could ask you to turn to the next tab, tab 127?---Yes.

5

That tab is – that email is dated 4 June 2014. Do you see that?---Yes.

And that's an email forwarded from Mr Bart to you; is that correct?---Yes.

10 And it's forwarding an email from Mr Parker to Mr Bart, which in turn is an email to Mr Parker from Rick Catanzariti, a partner of DLA Piper; is that correct?---Yes.

And that advice was originally emailed to Mr Parker on this email on 2 June two days earlier; is that correct?---Yes.

15

Now, do you recall – I would ask you to have a look at the attachment to that email. Do you recall – before I ask you to read through it, do you recall seeing that advice at the time?---I do now. Yes. If I could ask you to just read that to you quietly – to yourself quietly?---Yes. I've read that.

20

Now, this is advice from DLA Piper about what's called the GEER scheme; is that correct?---Yes.

25 Now, were you aware at the time – I know it's mentioned in point 1 of the email, but were you aware at the time that it was now called FEG rather than GEERS based on that previous technical advice you had received the day before?---Am I – sorry – am I aware now?

30 Were you aware then when you were reading this that it was now called FEG not GEERS?---I can't remember. I can't recall that.

Do you recall reading at the time the technical advice from Mr Shepherd that Mr Garofano received?---I do. Yes.

35 Could I suggest that at this point the phrases GEERS and FEG are being used interchangeably - - -?---Yes.

- - - between you and the client and Mr Garofano?---Yes.

40 Now, if I could take you to paragraph 11 of the advice?---Yes,.

Now, this advice is in the context only of one of the options, is it not: employees who transfer across to the new Bruck entity? The whole point of this advice was in relation to option 3, wasn't it?

45

MR STEVENS: I think I have to object on the basis that this is not commissioned by this witness. So the point of the advice cannot be answered by him. It's - - -

MR KULEVSKI: I accept that.

MR STEVENS: Thank you.

5 MR KULEVSKI: I accept that. Thank you to my friend.

If I could turn you to paragraph 8, and you see the first line, “In my view” that’s Mr Catanzariti’s view - - -?---Sorry. There’s – I’m missing a page.

10 MR STEVENS: Yes. There was a page missing.

MR KULEVSKI: Sorry. There’s not in mine. It’s not double sided on yours?
Perhaps - - -

15 THE REGISTRAR: Perhaps you can share your copy, Mr Kulevski and - - -

MR KULEVSKI: Well, I have to read off it as well, but if my friend could approach – if I could - - -

20 MR STEVENS: Yes.

MR KULEVSKI: - - - get leave to approach - - -

25 THE REGISTRAR: Both of you - - -

MR KULEVSKI: - - - the witness with my friend.

THE REGISTRAR: I will grant you both leave to approach and read it alongside Mr Nicodemou.

30 MR STEVENS: Thank you.

THE REGISTRAR: That’s probably the easiest way to deal with it.

35 MR KULEVSKI: Sorry. The first page is double sided, Registrar, and it doesn’t appear to have come out. So I will let Mr – for a start I will let Mr Nicodemou and my friend that to themselves. I’m sure someone at Henry Davis York in the photocopying department is going to be wrapped over the knuckles for that.

40 THE WITNESS: Yes.

MR KULEVSKI: Perhaps Mr Catchpoole will sort of triple carefully supervise all internal work in the future.

45 So if I could turn you to paragraph 8. Do you see that the first sentence on it reads:

In my view, employees who are moved to the new Bruck entity will not be eligible for any payments under the Act.

?---Yes.

5

So you were discussing – you received this advice, did you not, in the context where option 3 was being discussed?---I do now. I didn't recall receiving it, but yes. I - - -

10 You don't recall receiving it at the time?---I – I don't recall receiving, but, yes, I've obviously received it. I do remember that email – the earlier email that we discussed, but I don't remember this.

So you remember Mr Garofano's - - -?---Yes.

15 - - - email from Mr Shepherd?---Yes.

But you don't recall reading this at the time?---I'm sure I would have, but I don't recall.

20 Okay. Thank you. I will just go back, Registrar, because we will go to the page now that Mr Nicodemou does have a copy of.

So if I could take you to paragraph 11 you will see that it says that:

25 *In my view, the key issue will therefore be whether the secretary takes the view that the insolvency caused the employment of the relevant employees to end, or whether in fact the secretary forms the view that the employment ended due to a business restructure.*

30 ?---Yes.

So solicitors were giving advice at that time, were they not, that in order for FEG to pay it was crucial that the employment was terminated due to an insolvency as opposed to due to a business restructure; is that correct?

35

MR STEVENS: Well, I object on this basis: is that the advice given is not the advice Mr Nicodemou had sought. Mr Nicodemou - - -

40 MR KULEVSKI: I accept that. I withdraw the question.

THE REGISTRAR: Yes.

45 MR KULEVSKI: Did you understand the advice at the time to be that FEG would not pay if there was a business restructure, but would pay if the employees were terminated as a result of an insolvency?---Now reading this, yes, I do.

And therefore was it not being discussed with you at the time or, to your knowledge, Mr Garofano, by the client, that it was absolutely crucial that the report that was being prepared by BRI Ferrier not be presented as a restructure option?---Possibly. Possibly, yes.

5

Do you recall being told that by the client?---I don't recall that, but on reading this, it appears that - - -

10 And, surely, at the time, after receiving Mr Garofano's advice from Mr - sorry, I withdraw that. Surely, at the time, after receiving from Mr Garofano the advice that had been provided by Shepherd and then reading this advice, you understood, did you not, that the client did not want this to be presented as a business restructure?

15 MR STEVENS: Well, I object on this basis - is that this witness said that he doesn't recall reading this at the time. I thought that was his evidence.

THE REGISTRAR: Was that the evidence of Mr Nicodemou?

20 MR KULEVSKI: The evidence was he would have read it at the time.

MR STEVENS: But he doesn't recall reading it, so how can there to that question - it can't be answered, having known that at the time - - -

25 MR KULEVSKI: I'm sorry. I will ask the question again.

Do you recall reading this document at the time?---Not - not the letter, no. No.

But you do recall reading Mr Shepherd's advice?---Yes.

30 Yes. Thanks. Thank you. At the time, do you recall that it was absolutely imperative that the word restructure not appear anywhere in your report?---No. I don't recall that it was imperative, but I do remember it was taken out of the report - or requested by the - the client that it was taken out.

35 And after seeing Mr Shepherd's advice, you understood, didn't you, why it was being taken out of the report?---Yes. Now it seems pretty - pretty clear now.

40 And you understood at the time?---I may have. I don't know. It was - it was two years ago. But - yes.

Is it not the case that you understood that in order for this transition of the business to a related entity with the same management to be successful, the client needed to avoid the punitive EBA. That's correct, isn't it?---Yes.

45 And the only way it could avoid the punitive EBA is if the Commission, be it through FEG or GEERS or whatever it was being called, picked up the tab for the employees that were being left in the old company. That's correct, isn't it?---I would

say that if the company didn't have to meet those obligations, as opposed to who paid them.

5 And the only way the company wasn't going to meet those obligations is either it went insolvent entirely or parts of the business were sold and what was left behind was made insolvent. Isn't that correct?---I – I – I – sorry, I – I don't quite follow the – the question.

10 I'm sorry?---If you could just repeat it, please.

Who else was going to pay for the entitlements other than the Commonwealth?---No one.

15 Exactly. So one way or another, in order for this business on your assumption to be effectively transferred to the related party with the same effective management, the Commonwealth would be required to pay for some of the redundancy entitlements. Isn't that correct?---Not necessarily so, because if the FEG or – or – or GEERS scheme did not exist, those entitlements would not be met in the context of a liquidation. Because that scheme is available, there is potential for those employees
20 to make an application to that scheme.

But, surely, it would cause much less public consternation if the Commonwealth paid for those entitlements rather than the employees being left - - -?---Yes. Yes.

25 - - - without any payments? And so you understood at the time, did you not, that it was in the client's interest to fashion a transition of the business where FEG would consider paying those entitlements?---Yes.

30 Thank you. I have no further questions for Mr Nicodemou at this stage - - -

THE REGISTRAR: Yes.

MR KULEVSKI: - - - Registrar.

35 THE REGISTRAR: Mr Stevens, did you want any re-examination of Mr – sorry, Mr Nicodemou - - -

MR STEVENS: Mr Nicodemou - - -

40 THE REGISTRAR: - - - before you go - - -

MR STEVENS: Just briefly.

45 THE REGISTRAR: I think you still had some questions.

MR STEVENS: You were asked some questions just a few moments ago about fashioning a restructure. Were you asked to fashion a restructure?---No.

That wasn't part of your brief?---No.

Your brief, I think you gave evidence, was to - - -

5 MR KULEVSKI: I think I said fashion the transition, but that's okay.

MR STEVENS: Sorry.

10 MR KULEVSKI: It makes no difference.

MR STEVENS: I didn't take a good note.

You gave evidence on this occasion and previously that your brief was to make certain assumptions about the company's accounts and the values of their
15 assets?---Yes.

And that you were asked to give advice as to what occurs in a financial sense if the steps that had been presented were undertaken?---Yes.

20 Was any part of your brief to consider – sorry, to give advice as to which of those options ought to take place?---Yes. Yes.

Okay. And - - -?---So - - -

25 Have you got something that arises?

MR KULEVSKI: I think the answer is no.

30 MR STEVENS: In what sense do you say that you were given the – you were asked to give advice?---In the report, we were asked in the context of the shareholder removing support, under each of the options, which has the least impact to the various categories of creditors.

35 Okay. So it's – in other words, it's the financial outcome?---Yes.

Okay?---And on that basis, we were asked what would be in the better interest in – in – in this set of circumstances, and that's where we said, well, if all these things play out, based on those assumptions, this is the – the least impact.

40 Okay. Now, in respect of the answers, you were asked some questions about the role of GEERS, which is G-E-E-R-S, as opposed to FEG, which F-E-G, using both those terms interchangeably, you were asked some questions about what impact that would have. If I – sorry. Is it correct to say that your evidence was that the financial impact was the same regardless of those schemes?---Yes.

45 And you weren't asked - - -

MR KULEVSKI: Well, I object to that. Look - - -

MR STEVENS:

5 MR KULEVSKI: The evidence was that without FEG, no one would pay, but with FEG, the employees that were left behind - - -

MR STEVENS: No. Financial come to the company.

10 MR KULEVSKI: Financial – sorry

MR STEVENS: Yes. So – that – I was talking in respect of the company.

MR KULEVSKI: Okay. Sorry.
15

MR STEVENS: So I make that clear.

MR KULEVSKI:

20 MR STEVENS: This is the – this is the company you were advising, which was BTT?---Yes.

Yes. The financial outcome – in other words, the modelling that produced the results at the end of your report would be no different if it – if FEG or GEERS existed or
25 not?---I think there were some – some minor changes from the transition from GEERS to FEG.

Right?---But I'm – I'm not sure – I – they're not material, but I – I – I'm not sure what they are.
30

Okay. So let's assume that there isn't – that there is a scheme in place?---Yes.

Did that scheme or its – the existence of a scheme impact the financial modelling that you produced – the results of which you produced at the end?---No.
35

So it was the same whether they existed or not?---Yes.

Okay. So this is outside of the scope of your work, so to speak, in that you were asked to make these assumptions and this was the impact?---Yes.
40

If an independent – in this case, the Commonwealth – party would meet those obligations that otherwise exist, that didn't affect your modelling?---No.

Thank you.
45

THE REGISTRAR: Anything arising, Mr Kulevski?

MR KULEVSKI: No. That's

THE REGISTRAR: All right. Are we adjourning Mr Nicodemou's summons generally or not?

5

MR KULEVSKI: Yes, Registrar, given the interaction that happened with my friend.

THE REGISTRAR: All right.

10

MR STEVENS: not this friend.

THE REGISTRAR: The other friend, yes.

15

MR KULEVSKI: No. Sorry. My friend who I uncharitably characterise as the interloper.

THE REGISTRAR: Yes. All right. Well, Mr Interloper is still in the back of the court, so - - -

20

MR:

THE REGISTRAR: Yes. Mr Nicodemou, we need to adjourn your summons generally again. Whether or not you need to come back again will be something which will be mutually agreed upon, as to time. So you are free to go for the time being.

25

THE WITNESS: Okay. Thank you.

30

THE REGISTRAR: So I adjourn your summons generally.

THE WITNESS: Thank you.

35

<THE WITNESS WITHDREW

[12.20 pm]

MR STEVENS: May I be excused, Registrar?

40

THE REGISTRAR: Yes. Thank you, Mr Stevens, for your assistance.

MR KULEVSKI: Registrar, is it of any assistance to you to begin now for only 15 minutes or would it be better to - - -

45

THE REGISTRAR: I think what we might do is we might take the lunch break now and I will just check with my court officer. Mr Kulevski, what I was thinking was if

we take the adjournment now and then we come back, say, at 1.30 and then we continue on to 3.30?

MR KULEVSKI: May it please the court.

5

THE REGISTRAR: Just one more examinee for the day; is that correct?

MR KULEVSKI: Yes, Registrar.

10 THE REGISTRAR: Mr Castrisos; is that right?

MR KULEVSKI: Yes, Castrisos.

15 THE REGISTRAR: And I think Mr Hedge is appearing for him. Is Mr Hedge here?

COURT OFFICER: Yes. Outside the court.

20 THE REGISTRAR: All right. Do we need them just to come in to tell them this or not?

MR KULEVSKI: We would be – if you're comfortable with it, Registrar, I'm happy to communicate that information

25 THE REGISTRAR: All right. Well, I will adjourn now for the lunch break and we will resume at 1.30 and we will continue to 3.30. My offer remains, Mr Kulevski. If you want to continue beyond that for an additional half an hour, that suits me - - -

30 MR KULEVSKI: I'm afraid I'm unable to.

THE REGISTRAR: - - - but if you have other matters, that's fine.

MR KULEVSKI: I'm sorry, Registrar. Thank you.

35 THE REGISTRAR: All right. Well, we will temporarily – we will adjourn for the lunch break.

40 **ADJOURNED** **[12.21 pm]**

RESUMED **[1.51 pm]**

45 THE REGISTRAR: Yes, Mr Kulevski. Ready to continue with Mr Castrisos?

MR KULEVSKI: Yes, Registrar please.

THE REGISTRAR: Yes.

MR KULEVSKI: May Mr Castrisos please be called.

5 THE REGISTRAR: Yes. Mr Castrisos, you just need to come into the witness box and swear an oath. Yes.

MR HEDGE: Registrar, Hedge is my name. I appear for the examinee - - -

10 THE REGISTRAR: Yes, Mr Hedge.

MR HEDGE: - - - Mr Castrisos.

15 THE REGISTRAR: Yes. Mr Castrisos, you just need to take the oath – either an oath or an affirmation.

<JAMES VICTOR CASTRISOS, SWORN

[1.51 pm]

20

THE REGISTRAR: All right, please take a seat, sir. Just you will need to speak into the microphone which has the red light?---Yes.

25 Just for the record, can you state your full name?---James Victor Castrisos.

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

And your current residential address?---Is 35 William Street, Roseville.

30 All right. You're represented by Mr Hedge, so no doubt he will make any objections if he thinks relevant. But I will just indicate to you, Mr Castrisos, that if you think there's any questions which may make you liable for a civil penalty or a criminal proceeding, you just need to say the word "privilege" before you answer, and then go ahead to answer. Anything you then say will not – cannot be used against you in any
35 of those proceedings. The only exception to that is if your answer was false; do you understand?---Yes.

All right. Mr Kulevski.

40

<EXAMINATION-IN-CHIEF BY MR KULEVSKI

[1.52 pm]

45 MR KULEVSKI: Thank you, Registrar.

Mr Castrisos, could you please – you've mentioned that you're a company director. Do you have any other profession at the moment?---No.

How long have you been a company – principally a company director for?---Privilege. I've been a company director for approximately 15 years.

15 15 years. And what companies have you been a director of?---Privilege. I've been a director of a group known as Telum. There's a number of companies within that group. Some private companies. Also Machin & Ewen, Aldridge Capital, Marine Equipment International, and currently, New Firm Proprietary Limited.

10 And what does Telum do?---Privilege. Telum is a labour hire company, and it provides labour to the construction sector.

To the construction sector. I see. And so how does that operate? Does it operate as sort of providing sort of employment solutions to the construction sector, or - - -

15 MR HEDGE: Registrar, could I object. I don't understand how questions in relation to other companies of which my client is a director are relevant to the examinable affairs of this company.

20 THE REGISTRAR: Are you just getting some - - -

MR HEDGE: We have limited time.

25 THE REGISTRAR: Are you just trying to get some background, are you, Mr Kulevski?

MR KULEVSKI: Well, not only that, but - - -

30 THE REGISTRAR: Are you trying to establish the experience of the – of Mr Castrisos, is it?

35 MR KULEVSKI: A number of things. Both those things that you – Registrar, you identified. And since Mr Hedge is taking this approach – because we don't have limited time at the moment – but if Mr Hedge is taking this approach, well, then, I will go out of my normal order and I will establish the relevance of it. Were you director - - -

40 MR HEDGE: Registrar, if I could say, questions relating to Mr Castrisos' experience, etcetera, are, of course, perfectly sensible. All I'm saying is detail of a whole range of other companies does seem to be outside the range.

MR KULEVSKI: Well, that's what I'm - - -

45 MR HEDGE: I'm not sure what Mr Kulevski says about taking this approach. All we're trying to do is be efficient.

THE REGISTRAR: All right. Let's progress as efficiently as you can, Mr Kulevski.

MR KULEVSKI: Were you director of Telum at the time you were also a director of Bruck?---Privilege. Yes.

5 Did you involve yourself in dealings for Telum by purchasing items from Bruck?---Privilege. Yes.

I will come back to Telum later, Registrar, now that I've established the connection with the examinable affairs - - -

10 THE REGISTRAR: Yes.

MR KULEVSKI: - - - of Bruck.

15 Do you have a – what is your professional training, if any, Mr Castrisos?---Privilege. I'm a chartered accountant. I've done a Bachelor of Economics, and I worked for Arthur Andersen for 10 years, and then for Boral, and then I company work - - -

Sorry – I'm sorry, for Boral, did you say?---Boral.

20 Yes. In-house, is that – as an accountant?---Privilege. Yes.

Yes?---And then I worked for Allen Capital. And I'm currently working in family businesses.

25 Your own family businesses, do you mean, or - - -?---Privilege. Yes.

And when did you first have anything to do with any of the Bruck group of companies?---Privilege. When I was working for Allen Capital, Allen Capital was employed to consult to Bruck in relation to some restructuring work.

30 Do you recall when that was?---Privilege. I think it was around 2000, 2001.

And had you met Mr Phillip Bart before that time?---Privilege. No.

35 Had you met Mr Parker before that – Mr Geoffrey Parker before that time?---Privilege. No.

And so were you a director of Allen, did you say, at the time, or - - -?---Privilege. I was – I was a paid employee of Allen Capital. I wasn't a director.

40 And you got to know Mr – you got to know the Bruck group of companies through that role, did you?---Privilege. Yes.

45 And which Bruck entity were you advising on?---Privilege. Bruck Trading Proprietary Limited.

I see. And do you remember what the task was for Bruck Trading at the time?---Privilege. The company was facing some financial difficulty, and we assisted them with just restructuring the company in terms of its financial performance. It involved looking at cost reduction and just some changes internally to improve their financial performance.

And what was Bruck Trading's principal source of business at that time?---Privilege. It was a textile mill supplying fabric to a multitude of different customers.

And what were the financial difficulties?---Privilege. It had acquired a business from National Textiles and had expanded rapidly, and as a result there was financial difficulties associated with cash flow, and that was made worse by the fact that they expanded the mill too quickly.

I see. Perhaps if I could just take a break at this point in time, Registrar, just to have Mr Castrisos – this wasn't done, but have him provided with the documents that he has produced, and a copy for my friend, if such exists.

THE REGISTRAR: Yes.

MR KULEVSKI: Sorry, that should have been done to start with.

THE REGISTRAR: Is it comprising of, what, three folders, or just two?

MR KULEVSKI: Two folders.

THE REGISTRAR: All right. Well, those two folders at the relevant time, I think they're going to become 4A and 4B – MFI, for Mr Castrisos. Mr Hedge can get a copy.

MR HEDGE: Thank you, Registrar.

THE REGISTRAR: And those two folders can become MFI4A and MFI4B.

MFI #4A FOLDER PRODUCED BY MR CASTRISOS

MFI #4B FOLDER PRODUCED BY MR CASTRISOS

MR KULEVSKI: Thank you. And before we continue, Mr Castrisos, these are the documents produced by you in answer to the summons for examination; is that correct?---Privilege.

Summons for production, sorry?---I haven't had a look at them, but I presume they're the documents - - -

Well, by all means, take your time. Well, if my friend has no objection, these are the documents that Mr Castrisos produced last - - -

5 MR HEDGE: Registrar, if my friend says that they are the documents we produced, we accept that, of course.

THE WITNESS: Yes. Yes, that's fine.

10 MR KULEVSKI: Yes. Did you supervise the production of these documents, Mr Castrisos?---Privilege. Yes.

And how – were these documents that were being kept at your house, or were they on your computer, or how did the document retrieval process take place?---Privilege. The board papers were in storage, and the emails were on our computer system.
15

When you say your computer system, what does that mean?---The computer - - -

Your home computer system, or - - -?---Privilege. The computer system at Telum.

20 I see. I see. So at the time at which you answered this summons, you were still a director at Telum; is that correct?---Privilege. Yes.

And are you still?---Privilege. Yes.

25 Yes. I see. I see. Thank you very much. And the board papers were in your personal storage, were they?---Privilege. They were in Telum's storage unit.

I understand. Thank you very much. And who was responsible for getting the documents from storage?---Privilege. I went to get them.
30

And who was responsible for pulling the emails off your email system?---Privilege. I was.

35 Thank you. Thank you. Thank you very much. So, I'm terribly sorry, you said that – to interrupt you, you said – so you worked at Allen Consulting – Allen Capital, did you say?---Privilege. Allen Capital.

And that's how you came across Bruck, and we said that they had had some problems because they had acquired National Textile and had some cash flow issues as a result; is that correct?---Privilege. Yes.
40

And so what was the restructure that took place to correct those problems?---Privilege. Essentially, it was looking at the cost base to restructure the mill, which involved a reduction in staff.
45

I see. So this happened in 2001?---Privilege. Yes.

So when you say it involved the reduction of staff, how did that occur?---Privilege. Some of it was done – the majority of it was done by, I guess, what you would call natural attrition, where people leave the organisation and they're not replaced, and there was some redundancies.

5

I see. And who paid for those redundancies?---Privilege. Bruck Trading.

And at the time, were you the person at Allen Capital responsible for conduct of the matter?---Privilege. There was a team of us working on it. It was led by Peter Allen, who was the principal of Allen Capital, myself, and another member of staff, Alan Campbell.

10

I see. And who was providing instructions from the client?---Sorry, privilege. It was Joseph Brender and Alan Williamson, who was the CEO at the time.

15

I see. And was Mr Bart providing any instructions?---Privilege. He wasn't a shareholder. He wasn't involved with the business at the time.

20

So who were – who were the board at that time, do you know?---Privilege. There was Joseph Brender, Sam Moss, Brian – I can't remember his second name, but he was external. There was another member; I just can't place them.

Thank you. Sorry to stretch you back that far. Is this the only matter in regard to one of the Bruck Group that you worked on while you were at Allen Capital?---Privilege. Yes. We worked on it for 18 months, and then the job was finished and that was it.

25

And then what was your next involvement with any of the Bruck Group?---Privilege. I left Allen Capital in 2004, and Alan Williamson was the CEO still, and he asked me if I would come onto the board, and it was on the basis of my prior knowledge of the business.

30

I see. And did you accept that offer?---Privilege. Yes.

And when did you become a board member?---Privilege. I think it was in September 2004.

35

And so take your time, but what if – how many companies within the Bruck group have you been a member of the board of?---Privilege. I think it's three.

And do you recall which of those companies you're - - -?---Privilege. Bruck Trading, Bruck – do you mind if I have a look at the - - -

40

Please take your time?---There's Bruck Textiles Proprietary Limited, Bruck Group Proprietary Limited and Bruck Textiles Technologies.

45

Thank you. Now, do you recall approximately when you became a director of each of those companies?---Privilege. I can't recall the exact dates.

So the answer you gave me earlier was – what? September 2004?---Privilege. Yes. That was for Bruck Trading, which was the main trading entity at the time.

5 And at the time at which you took that appointment as a director, do you recall who else was on the board?---Privilege. Philip Bart and Alan Williamson.

10 So at what point, to your knowledge, did Mr Bart become involved?---Privilege. It was sometime after, obviously, 2001 and two – before 2004. So I don't recall when he actually acquired shares in the business.

Do you have a qualification as a registered liquidator, Mr Castrisos?---Privilege. I used to, but I've let that registration go.

15 And would it be fair to say that you were a registered liquidator somewhere between 1994 and 2008, to your recollection?---Privilege. That sounds right. I just don't remember when I actually notified ASIC that I wasn't going to keep that registration.

20 I understand. So at the time at which you took the appointment at Bruck, you were a registered liquidator?---Privilege. Yes.

Thank you. And do you recall who the management team was at Bruck Trading Proprietary Limited when you became a director?---Privilege. Alan Williamson was the CEO. The CFO: they had a number of them, but I think it was Patrick McDuling. They had – Sandip Rajan was involved in quality. I can't remember all
25 the people down in the mill. But – look, they've had a number of different manager. I just don't remember all their names, to be honest.

30 I understand. I understand. Do you recall how – approximately how many employees were employed at that time?---Privilege. Look, I think at the time that I commenced I think there around 450.

And was it a profitable business at the time at which you became a director?---Privilege. Yes. Yes.

35 And so I take it that – sorry. I will ask you. I withdraw that. Did you develop a working relationship with Mr Bart over this period?---Privilege. Yes.

40 And did you develop a friendship with Mr Bart over this period?---Privilege. We didn't socialise together, but you know, obviously I had a good working relationship with him. I would consider he was a friend.

And did you – when did you resign any directorships to do with the Bruck companies?---Privilege. 30 April 2014.

45 And how many companies were you a director of at that time?---Privilege. Three.

Those same three?---Privilege. Yes.

MR HEDGE: I assume you mean – merely for the transcript – directors of Bruck companies, because of course Mr Castrisos is also the director of other companies.

MR KULEVSKI: Yes. Sorry. I apologise to my friend. Yes.

5

The same three Bruck companies that you - -?---Privilege. Yes.

Had become a member of. And before we go through the documents, why did you resign at that time?---Privilege. I had a meeting with Philip Bart on 28 April, and he raised the issue of whether I wanted to stay on the board, and we agreed that I wouldn't continue in my role as a director.

10

Prior to that meeting, had it been your intention to stay on the board?---Privilege. No.

15

And so when you say Mr Bart raised the issue – how did that come about, given that it was no longer your intention to stay on the board?---Privilege. I had – we hadn't had a board meeting since November 2013, and he contact me to organise a meeting, and he actually raised it with me. I had been thinking of resigning from the board after the November meeting, mainly because I didn't want to continue any external directorships. I had my own businesses to be concerned with, and it was the only one I had, and the fact that he raised it was, I guess, the catalyst for me to say, yes, I wanted to resign.

20

Did he give you any reasons as to why he was raising the issue?---Privilege. He did say that – in that meeting that this – the business was facing some tough times and that he felt that it was his business and his responsibility to deal with those issues.

25

And what did you – did you get any further explanation of what that meant?---Privilege. He talked about the fact that revenue had declined. It, from what I can recall, had been driven by a decline in the defence business. He was waiting on budgets to be presented, and he was going to get some external advice on what other options might be available.

30

But did you at all – was it all communicated to you or a reason given to you as why deteriorating financial circumstances would mean that you should no longer be a director?---Privilege. I think he just felt that it was, you know, his business and his responsibility. I didn't quiz him as to why he thought that. And that – on that basis he felt that I wouldn't want to stay on the board.

35

40

And was the fact that you were involved in other businesses the only reason you didn't yourself want to stay on the board?---Privilege. The – look, there were a number of reasons that contributed to it. The other issue was that there had been a restructure of the group and there was also plans to bring in other businesses under that group structure from Australian Weaving, and I didn't have an understanding of those businesses. There was obviously going to be a number of other trading entities within the group, and I didn't want to continue to be involved.

45

I see. Was there anything immediate that precipitated your decision to no longer be involved as a director?---Privilege. No.

5 Could I suggest to you that it was you that suggested to Mr Bart that you no longer wanted to be a director. Is that – before he suggested it to you. Would you agree with that?---Privilege. No.

10 And could I suggest to you that Mr Bart wanted you to stay on for a while and you disagreed?---Privilege. He sent me an email after I issued the resignation letters and asked me to stay for two weeks. I didn't see the point of it. I understood from our meeting that we had agreed I was going to resign at that point, not in two weeks' time.

15 And did he give you a reason as to why he needed you to stay for an extra two weeks?---Privilege. He wanted me to be part of the assessment of the strategies or options that he was going to be looking at going forward.

20 And after being a director for so long, why did you not agree to do that for two more weeks?---Privilege. It did – just didn't seem to make sense to me to stay on for another two weeks, given that we had agreed that I was going to resign. It didn't – they weren't strategies that I were going to be involved in in terms of implementation. And as I said, it just didn't make any sense.

25 But Mr Bart said to you, I presume, that he needed some help for two more weeks. Was there no part of you that wanted to accommodate him after having been a director for so long?---Privilege. Yes, I thought about it, but as I say, I just didn't see the point of staying on, given we had agreed that I wasn't going to continue in that role.

30 Before we go into them in some detail on another day – were you aware of what the restructuring options were at that time?---Privilege. No. He clearly was looking at the budget and waiting for those to be finalised. He was going to consider his options, and I – he didn't run through any of those options with me, but I walked away from that meeting thinking that some of the options he was going to consider
35 would be formal restructuring options.

And did he at that meeting discuss with you any particular restructure that he favoured?---Privilege. No.

40 And – so was this the first time that he had mentioned any restructuring plan to you for the company?---Privilege. Yes.

So you had no idea of what the restructure might be before that?---Privilege. No.

45 I see. And how did he describe the restructure to you at the meeting?---Privilege. He talked generally about the fact that he was having to put significant funds into the business, that he – I don't know if he got any draft budgets, but he was waiting to see

what the budgets were saying going forward – and that he would be needing to look at other options that I took to mean some sort of formal insolvency.

I see. But you say that he didn't discuss those options with you in any
5 detail?---Privilege. No.

And in the time in which you were a director of Bruck, did you understand Mr Bart or any of – I withdraw that. At the time at which you were a director of any of the three Bruck entities, did you understand Mr Bart to have ultimate control over those
10 companies?---Privilege. Yes.

And why is that?---Privilege. I guess just the way he conducted himself, and when he talked about what was going to happen within the group, I guess that he had the ultimate say.
15

And was there any occasion upon which you and Mr Bart disagreed as to a decision to be made about any of the entities?---Privilege. Not that I can recall.

So there had never been any disagreement that you can recall about any cause of action that Mr Bart wanted to take?---Privilege. Look, there was debate about issues, but there was – you know, ultimately, I guess, in the end there was usually agreement.
20

And not to be facetious, but did that agreement result from the fact that Mr Bart wanted to do it so it got done?---Privilege. Look, you know, obviously he was the ultimate shareholder, so I guess, you know, we took that into account when we were looking at issues, and obviously we had to be mindful of what the shareholder wishes were.
25

Now, the three companies you were a director of: did they have common management?---Privilege. The – so Bruck Trading – so in the final stages Bruck Trading, I think, had the – just testing my memory here, but I think it had the manufacturing, and then the sales and marketing was split off. They would have had separate executive teams at the every end. But prior to that it was essentially the
30 same management team.
35

And were the boards common?---Privilege. Yes.

And who were the other members of the board towards the end?---Privilege. It was Geoff Parker, Philip Bart and obviously myself up to the point I resigned.
40

And was Mr Parker also – was he an executive director?---Privilege. He was the CEO.

45 Yes?---Yes.

So you were a non-executive director. Is that correct?---Privilege. Yes.

Mr Parker was the executive director?---Privilege. Yes.

And Mr Bart wasn't management per se but was the ultimate shareholder and the controlling mind and will of the companies, was he?---Privilege. Yes. And he was
5 the nominated chairman.

Yes. Understand. So only from your understanding or what you've witnessed, how could you characterise the relationship you saw between Mr Parker and Mr Bart?---Privilege. I thought it was a very good working relationship. They seemed
10 to get on well.

Of any significant issues that arose during your time as director of the three companies, was there a predominant – was there predominantly a person who would come up with ideas for future directions of the business?---Privilege. Look, it tended
15 to come from Philip Bart. And look, I didn't see how they worked outside the board meetings, but I presume Geoff had some involvement in that as well.

And without wishing to be disrespectful at all, but did you see that from your experience – that Mr Parker would execute Mr Bart's ideas rather than execute ideas of his own in particular?---Privilege. I can't comment on that, because I didn't see
20 them outside the board, to be honest. I mean, I don't know in private meetings whether that was the case.

Were you ever responsible for formulating any strategy for any of the companies?---Privilege. Look, the – the – the strategies tended to be developed by
25 the other executive directors. So when Alan Williamson was there it was by Alan and Philip Bart. They obviously had more day-to-day involvement and I guess a deeper knowledge of the business and the markets. And after Alan Williamson left, then Geoff Parker was more involved. So I – I certainly didn't take the lead role in
30 developing the strategies.

I understand. Your job was effectively, was it – I mean, please tell me if I'm wrong – to be sort of an independent sort of thinker on these matters; is that correct?---Privilege. Yes.
35

And did you have any textiles experience before taking the job at Alan Capital for Bruck?---Privilege. No.

But I imagine you had a very business experience as an accountant previously?---Privilege. Yes.
40

And were there any particular industries you worked on – you worked in in a speciality while you were an accountant?---Privilege. I – look, I had a lot of experience in construction. One of our other businesses is a manufacturing business,
45 so I have knowledge of manufacturing, and I also did a lot of healthcare.

I understand. Thank you so much. If I could ask you to please go to volume 1 of the documents you've produced. Now, if I could ask you to turn to the second tab, please, which is a double sided flowchart you've provided. Yes?---Yes.

5 Have you had a chance to have a look at that?---Yes.

Do you recall when that may have come into existence?---Privilege. There was documents produced in two thousand – late 2011 about a restructure of the group to create a new tax consolidated group with Bruck Group as the holding company and
10 then the operating entities sitting underneath it.

And do you recall who produced this document?---Privilege. It was produced by the CFO Ron Johnson as I recall.

15 I see. Thank you. And we will come back to that document because I think it appears in another form in a board paper, but if I could ask you to turn to tab 3. And could you tell me – I will just open – ask it generally open-ended why this document is responsive to the summons for examination?---Privilege. It was a business that Bruck was looking at acquiring. They never progressed with it, but it was tabled at a
20 board meeting for the period that you requested the information.

I see. So it was a – and do you recall the discussions around the acquisition – the potential acquisition of this business?---Privilege. It was – it was – it never progressed. It was just tabled as an opportunity that the company was looking at.
25

And was the company generally looking at opportunities at that – sorry – I withdraw that. Do you remember when this was?---Privilege. I think it was early 2012.

I see. And was the company generally looking for opportunities in early
30 2012?---Privilege. Yes. It looked – it looked at a number of opportunities. So it wasn't unusual for it to be tabled.

And what was the nature of opportunities that the company was looking for: to expand or something else?---Privilege. Yes. It was – it was to – I guess to – look,
35 the industry was undergoing consolidation and where there are opportunities to acquire well-priced assets and – and accommodate them within the mill at Wangaratta then they – they – they looked – obviously looked at those opportunities.

At this point in time who were Bruck's major competitors?---Privilege. Look, there wasn't really any major textile mills in Australia left, so they didn't have a lot of
40 competitors. They had some of these smaller ones, and they were, I guess, in niche areas. So I think in this case it was associated with blinds.

And what were was the most significant competitor for Bruck at a time at which a
45 competitor existed? Sorry. That was very poorly worded, Registrar, and I apologise. I withdraw that.

Had there been in your time as a director any major Australian competitors of Bruck?---Privilege. There were some – in different sectors there were competitors. Sometimes it was imported products. So probably the most significant was imported product, and it was imported product that came through wholesalers.

5

I see?---Yes.

And during your time there were no other major Australian weaving mills like Bruck?---Privilege. I think Bradmill was around, and there were some – a few others, but they – they – they – they obviously towards the end there weren't operating.

10

Did Bradmill have any involvement with Mr Bart?---Privilege. I – I don't believe so.

15

I see. If I could then please ask you to turn to tab 5?---Yes.

20

Now, Mr Castrisos, the only fair way to do this is to give you – and I apologise for the time, but to give you a chance to read through this document at your leisure. Can I just first ask though, because it's not on a letterhead I understand this – and please tell me if you understand different – to be an engagement letter from Ernst & Young addressed to Mr Johnson; is that correct?---Privilege. No. I believe this is the advice provided - - -

25

This is the advice?--- - - - by Ernst & Young.

And is it from Ernst & Young?---Privilege. Yes.

30

And is David Vigolo and executive director of – was he at the time an executive director of taxation at Ernst & Young?---Privilege. I can't answer that because I didn't have direct involvement, but I – look, I had no reason to doubt it.

I see. And was this given to you as part of a board paper or something, or - - -?---Privilege. Yes. It was tabled at a board meeting in I think late 2011.

35

Thank you. I might just give you an opportunity to read that advice, Mr Castrisos?---Privilege. Look, I – I'm familiar with it, so I don't know - - -

You're familiar with it? Okay?---Yes. Yes. So if you want to - - -

40

If you don't want to read it that's fine. So it's dated 14 October 2011, and it's an advice to deal with, it says, associate income tax and stamp duty – a stepped plan and associated income tax and stamp duty implications arising from the restructure of Bruck Textiles Group; is that correct?---Privilege. Yes.

45

And who developed this – when was this restructuring plan that the advice is about developed?---Privilege. Look, the first I think that it was raised with the board was either 2009 or 2010, and it had been presented to the board by Philip Bart and I think

Alan Williamson as well had had some involvement with it. And it was done on the basis that Philip Bart wanted to establish a group structure to eventually hold all of his textile assets.

5 And was – and, sorry, I will just divert to say: when did Mr Williamson cease being involved with the Bruck companies?---Privilege. He – I think he finished up early 2012.

10 And do you recall Mr Williamson giving a reason as to why he finished up?---Privilege. I might just have to ask for advice on this. He finished up and terminated, but it's subject to confidentiality.

Could I just have a short adjournment please, Registrar, for five minutes?

15 THE REGISTRAR: Yes. All right. I will go off temporarily. Just let my officer know.

20 **ADJOURNED** [2.26 pm]

RESUMED [2.35 pm]

25 THE REGISTRAR: Yes, Mr Kulevski.

MR KULEVSKI: Thank you, Registrar.

30 Mr Castrisos, we might just leave off that topic, maybe for good, maybe just till next time. Thank you.?---Thank you.

And so the restructuring plan was put forward by Mr Williamson and Mr Bart, was it?---Privilege. Yes.

35 And what did you understand the restructuring plan at the time it was first raised to be?---Privilege. It was to establish, I guess, a number of business units. One was manufacturing, one was sales and marketing. And they were going to also have property, which was to own the – the – the mill underneath Bruck Group.

40 And what was the justification for this?---Privilege. It was to have management focused on – particularly, the two operating entities – manufacturing and sales and marketing – with a view to improving the performance of the businesses, particularly profitability and working capital management.

45 And how was it suggested that those improvements could possibly result from such a split?---Privilege. It – it really had to do with the fact that when the businesses were together, I think there was a sense that the manufacturing was dominating, I guess,

how – how the mill was run, in terms of production. So if – I guess you could say it was – it was supply-driven as opposed to demand-driven. And what that means is that instead of a sales and marketing group, I guess, driving what's produced, manufacturing was. So your conflict there is that manufacturers produce – prefer to
5 produce long runs and – and the – and the sales and marketing probably shorter runs.

And who was determining what the manufacturing strategy would be?---Privilege.
So – so in – in – what – what do you mean by the manufacturing strategy?

10 Well, prior to the breakup – and you say manufacturing preferred one approach and sales and marketing preferred another approach?---Yes.

Who was determining what manufacturing?---Privilege. So that – look, that was done very much on an operational level. So the – the management within the mill.
15 So it would be the mill manager and the planner. They would be the ones that were determining what was produced. And – and, ultimately, what they want to do is reduce the number of changes to the runs and just get – get as much efficiency out of the mill as possible, so that the risk you run is that you're going to produce stock that you can't sell.

20 And who was determining what the sales and marketing strategy at that point would be?---Privilege. That was led by the sales team. And they had a national sales manager and – and state-based people.

25 And if there was a dispute between the two of them before the restructure, who would resolve that dispute?---Privilege. Look, I think it largely went back to the CEO to resolve it.

And so therefore how would that change once they were split up?---Privilege. Well,
30 I think ultimately what they needed to do was split who was running those businesses, and that's what the – that's ultimately what they wanted to do by – by this restructure.

Sorry. Just to go back, perhaps. I don't understand. Those two arms of the business,
35 on one side, manufacturing and one side, sales and marketing, were already being controlled by two different groups of people, were they not?---Privilege. Yes, they were, but obviously they worked together. But, yes, ultimately, they were different people.

40 And, ultimately, Mr Parker would resolve any differences between them, would he not?---Privilege. I mean, at the time, it was Alan Williamson, but - - -

Sorry, I apologise?---Yes. Yes, it was – he would have ultimately

45 And so if the business units were split, would they have a common person to answer to?---Privilege. Look, I think ultimately, they were going to have a CEO for the group, and they would still have answered to that CEO.

So, in practical terms, if there was a dispute between the strategy of sales and marketing on the one hand and manufacturing on the other, it wouldn't be resolved in any different way, would it?---Privilege. Probably not.

- 5 No. I see. Okay. So you see that the restructure is – there are five dot points identified that Ernst & Young is saying, we've been advised by you that these are the commercial objectives of the restructure. Do you see that?---Privilege. Yes.

So if I could take you to the first dot point. It says:

10

Allow Bruck Group to reward executives based solely on the performance of the stand alone company, be that via payments, equity or both.

- 15 Could you explain what that means, please?---Privilege. That – I – what they wanted to do was to report the profit separately and reward them based on their performance.

And reward the profit separately of what?---Privilege. Of – of the manufacturing and the sales and marketing.

- 20 And how would the profit be calculated separately?---Privilege. Well, they – they were going to be separate entities, so you would – you would prepare separate accounts.

- 25 But weren't they really two sides of the one business?---Privilege. Yes, they were both part of the one business, but when you split them, they would be two separate businesses, so you could report them separately.

- 30 I understand. So therefore how would you determine the profit of each one – we will start with manufacturing. How would you determine the profit of manufacturing separately to the involvement of sales and marketing?---Privilege. Are you talking after the restructure or – or before the restructure?

I'm talking after now?---After the restructure?

- 35 Yes?---Privilege. So after – after the restructure - - -

- 40 I apologise. Sorry. That was not clear. I withdraw that. What I'm suggesting is what was the commercial objective, as it was explained, for the purposes of this advice?---Privilege. So I think – I think the objective was to have two separate entities. To have them – have executives within those entities accountable for the performance of those entities and to reward them accordingly.

- 45 I see. And which companies therefore in the – how was it suggested that the different companies would have different executive management – at what level?---Privilege. So they would have – they have got a mill manager, and they had a national sales manager. So they would have headed up those two companies.

I see. Ultimately, responsible to the same person or persons they had always been responsible to, though. Is that not correct?---Privilege. I – I presume so.

5 And what about – and I genuinely – I mean, obviously, we want to know the answer to this. What about such a restructure would make it any easier to identify the performance of each of those individuals either both before and after the restructure?---Privilege. Well, they were separate entities then. So you had to – you would be reporting them separately. So I guess if you’ve got – if you’ve a – a separate company structure, then it would be easier. The logic is that it would be
10 easier to identify the performance.

And, you know, you’re correct in the sense – the logic – is it ideal – easier to identify the performance if they truly were two separate businesses, two separate companies, but in truth, they were two aspects of the one overall business, were they
15 not?---Privilege. Yes, you could certainly argue that point, yes.

And so who would manufacturing sell to?---Privilege. So – so – so the mill was manufacturing not only for – I guess this intended new – new structure here, but also for Wilson Fabric, which was another entity, which – which did homeware, so they
20 did curtains and – and the like - - -

And that was a related company?---That was a related company.

So manufacturing would effectively sell to sales and marketing, wouldn’t they?---Privilege. Yes.
25

And sales and marketing would then sell to the third – to the external third parties. Is that correct?---Privilege. Yes.

30 And so – I think I’m just struggling to understand – if you could please explain to me how that – dividing the business in that way at all makes any significant difference in assessing the performance of any of the individuals involved in the business?---Privilege. I think it was just that it was far more transparent as to – as to who was responsible for what, that they were separate entities, and that you could
35 easily report and – and make them accountable for that performance.

Prior to the – so the objective is to make it more transparent. Is that the principle reason?---Privilege. I – I think it was also to set up a group structure, so that that other textile assets could also come in. And the – the strategy that was being
40 developed was that ultimately all of the manufacturing assets would be in manufacturing, and then you would have a number of sales and marketing divisions. So you would have, I guess, the – you would have Wilsons, Bruck’s traditional customers, which included Defence, and then there was also Australian Weaving. So I – I think ultimately that’s what they wanted to get to.
45

And so prior to the – sorry. At the time at which this is being mooted, does the – do the people that have responsibility for manufacturing for Bruck also have

responsibility for restructuring, for instance, Wilson?---Privilege. No. Wilson was run separately. I – I – when it was sold off, I didn't have any involvement, so I – I can't comment on who the management were, but it was – my understanding is it was run separately.

5

And do the people that have responsibility for sales also separate it between Wilson and Bruck in that sense?---(**) Privilege. Could you repeat that?

10 So we said that manufacturing Wilson and Bruck were separate. People had responsibility for manufacturing at Wilson was a separate person to the person that had a responsibility for manufacturing at Bruck; is that correct?---Privilege. So all of the manufacturing, right, for the different entities, right - - -

15 Yes?--- - - - was managed by the mill manager and they had different departments within, right, and they were based on process as - - -

Yes?--- - - - opposed to customer base. And then the sales and marketing had different teams.

20 I see?---Yes.

25 So once again, if you separate them how does it become any easier to assess the performance of the mill manager of Bruck before and after the restructure?---Look, it purely comes back to the fact that it's – it was more transparent that you got separate entities and he could hold them more accountable. That was the logic.

30 I think I probably just want to understand a little bit more about this transparency. Transparent how, in the sense that the mill manager before the restructure does a certain amount of a run, and after the restructure he does a certain amount of a run?---Privilege. Look, I understand what you're saying. I don't know what – how else to say it, but the fact you've got a separate entity and it's going to be reported separately and they're working for those – those entities are not accountable for that performance the logic was that that was going to be a more transparent approach as opposed to a company that's reporting on a consolidated basis perhaps under a
35 divisional alliance where – where it's not as transparent.

But there's no real commercial difference is there?---Privilege. Look, I – personally I think there is.

40 And so what I'm asking is for you to explain what that commercial difference is. How does it make the running of the business any different?---Privilege. Look, if I – if it was – I guess, if I was looking at it and running it if I could be talking to a person that is clearly accountable for an area and it's a separate entity and it's all done at arm's length, then I think it would be easy to make them accountable for the
45 performance. I just think that as a rule would be easier.

I see. So before a restructure, if there had been a problem with manufacturing would there be a risk that someone would go and blow up the sales and marketing manager?---Privilege. Look, I can't comment about what was happening at that level. All I can say is the theory behind it I thought was reasonably sound.

5

I understand. I think I will just ask you one more time: what is the nature of the transparency that improves the operation of the business?---Privilege. Look, I – I guess I'm going to sound like I'm repeating myself, but I think the fact that they're separate entities and they report separately and they've got different management structures in place would be – would make it easier to, I guess, enforce some accountability among your management.

10

I see. We might come back to that at a later point. Who set the price or determined any – who set the price for the value of the goods produced by Bruck?---Privilege. It was done by the finance team.

15

And that would be the same before and after a restructure?---Privilege. Look, yes. I presume it would be.

And if there was a significant dispute either on manufacturing, price, sales or marketing who determined that dispute?---Privilege. Look, I think I'm talking hypotheticals here because this restructure didn't happen in 2011, so obviously - - -

20

No. I understand?--- - - - it wasn't implemented.

25

So what were the – that's what I'm saying: what were the commercial objectives to be understood by that restructure?---Look, I – to be honest, I don't think the board got to the point of talking about how disputes were going to be resolved.

Okay. Thank you?---Yes.

30

Thank you. So was there – the first dot point: did that ever – did that system ever come into place that the reward for executives was changed based on changes to any part of the Bruck Group?---Privilege. The restructure didn't occur in 2011 so, no, it didn't.

35

And this is not the restructure that occurred later, is it?---Privilege. I think the property restructure occurred mid-2013, and then the sales and marketing maybe late 2013.

40

Perhaps I should ask you a more general question you said you're familiar with this document. Are you?---Privilege. Yes.

Were any aspects at all of this document implemented as part of any restructure?---Privilege. Look, the – I can't comment on it because the final implementation of the restructure happened very late in 2013, and by which time I

45

think the last board meeting I was at was in November, so I can't – I really can't comment as to whether it was fully implemented.

5 So to make it clear, you had no involvement – I withdraw that – you had no substantial involvement in the restructure that ultimately occurred?---Privilege. Look, I – other than the fact that the actual transfer occurred in late 2013 I didn't have any involvement in how it was done day to day.

10 At the time at which this proposal was put forward did you consider Bruck to be a profitable company?---Privilege. Yes.

And had Mr Bart communicated to you whether he considered there were any problems with the company?---Privilege. No.

15 And had he communicated to you whether he considered there to be any particular challenges facing the company?---Privilege. Look, there were always, I guess, ongoing challenges in textiles with imports, but, you know, they were continuing to address them so there wasn't anything that I guess hadn't been dealt with in the past.

20 Did he identify any particularly significant challenge that was facing the company at this time?---Privilege. You mean in 2011?

25 Yes. Yes?---The – I guess the other challenge was the change to the government subsidies that were coming up. But, look, they continued to make the necessary adjustments to ensure that the performance was sound.

And what were those adjustments?---Privilege. They were continually looking at the cost structure and looking for new revenue lines.

30 And what were the subsidies at that time that the company was at risk of losing?---Privilege. I think it was referred to as SIPS , I think - - -

35 I see?--- - - - which was – I – look, I – it was a strategic – they had a – it was an acronym for a strategic investment plan.

At this point in time did you understand the enterprise bargaining agreement to be a significant challenge facing the company?---Privilege. It – look, every three or four years it came up. There were aspects of it that I think they were trying to change, and they were progressively dealing with it.

40 And had those changes been unsuccessful?---Privilege. Some of them had been, yes.

45 In 2011 was it being communicated to you that words to the effect of the fact that the company faced a punitive EBA?---Privilege. I don't – I don't recall that comment. No.

Was there communicated to you at any time in 2011 by anyone at Bruck that the significant redundancy obligations of the company were a challenge for the company?---Privilege. Yes. It was a challenge, and they had over the years dealt with that by – by, I guess, just again – it's not a great term, but natural attrition of staff where people left they didn't replace them.

And in 2011 was it being discussed that natural attrition wouldn't take care of that problem?---Privilege. There was always discussion about whether there was a need for forced redundancies, but they had managed up to that point largely from just natural attrition.

And – sorry – probably to repeat my question more clearly, in 2011 was it at all being suggested that natural attrition would no longer be sufficient?---Privilege. No. I don't recall that being said.

So this particular proposed restructure to your understanding or knowledge had nothing to do with avoiding – sorry – I withdraw that. This potential restructure to your understanding or knowledge had nothing to do with the challenges faced with the enterprise bargaining agreement?---Privilege. No.

If we move to the second dot point:

Allow the Bruck textiles group to form a tax consolidated group without the need to include Tolric Proprietary Limited and Mark Foy's Proprietary Limited within the tax consolidate group for commercial reasons.

Did you understand what those commercial reasons were?---Privilege. No. I don't know what that refers to, that comment.

So you don't know why Tolric and Mark Foy's needed to be excluded from the consolidated group?---Privilege. No.

Did you know at the time?---Privilege. No.

Thank you. Dot point 4 provides the ground work for all Bart Group textile interests to be housed within the Mark Foy's Group and ultimately seek significant production and sale synergies. Do you understand what those production and sales synergies would be?---Privilege. Yes. That related to Australian Weaving, which had a manufacturing facility in Tasmania, and ultimately I think the view was that it would be best that that was housed at Wangaratta and there be some synergies from that. And then obviously if – if the sales and marketing was also integrated, then there may be some benefits, but I think it had more to do with the manufacturing.

I see. I'm a little un-reconstructed. I hear the word synergies a lot and I tend to focus on what it actually means. Usually the word itself is enough of a charm for most people, but do we know what production and sales synergies in practical terms may have resulted from this?---Privilege. Look, the – the majority of them were to

come through to improve volume, and the fact that you're not duplicating infrastructure and other utility costs by having two facilities.

5 Thank you. And just to the last dot point it says "aid with estate planning" – so we will just break that up – and then it says "long term professional management". Estate planning. I've never seen that phrase used in the context of other than an individual. Could you explain to me what they meant by "estate planning" for a group of corporations?---Privilege. I – I don't know. To be honest, I think that was a private matter for Philip.

10 I see?---I'm – I'm not sure why it was put in there, but – but certainly when I read it we didn't discuss it as a board. I assumed it was a private matter.

15 Okay. And so on the two things – and, sorry, I should ask you for completeness: did you understand what "long term professional management" meant?---Privilege. No. Look, I assume what it meant was, I guess, for his own personal – you know, how the business was managed going forward, I guess, if he stepped back. I'm not sure.

20 And so the two thing that you didn't understand at the time – and I'm not being critical. I'm just seeking an answer. Two things you didn't understand at the time why Tolric and Mark Foy's needed to be excluded for commercial reasons and the estate planning issue did you ask anyone what they meant?---Privilege. No. I don't think I did.

25 And is there any particular reason why given that this had been presented to you as a board member you didn't want to satisfy yourself as to what these significant commercial objectives were?---Privilege. Because I – I just focused on what the benefits were for the – the companies within Bruck, not the shareholders or beyond.

30 I see. But wouldn't you have wanted to know, for instance, what the commercial reasons were for how Bruck would be organised within the tax consolidated group?---Privilege. Yes. I certainly understood that reason.

35 So what were the commercial reasons?---Privilege. Well, when you're part of a tax consolidated group there's benefits for tax reporting and the movement of – in terms of intercompany sales and a whole lot of things that – that are of benefit.

40 But what were the benefits?---Privilege. I guess it simplifies your tax compliance in the - - -

Yes. But what - - -?--- - - - end ultimately.

- - - were the tax benefits?---Privilege. I – look, I can't quantify them.

45 Not in terms of money – number, but what were the actual benefits for taxation reasons that would accrue from this reorganisation?---Privilege. It allows you to

lodge one tax return and to report on a single entity basis so you're not doing – you haven't got multiple compliance issues.

5 The ultimate shareholder at this time was an Australian company in any event, wasn't it? The ultimate – sorry – holding company was an Australian company, was it not?---Privilege. My understanding is it was, yes.

10 So why would a restructure have changed your ability to form a consolidated group for tax purposes?---Privilege. I think, actually, this restructure created the consolidation – the tax consolidation group.

15 Sorry, I will probably – I will rephrase the question. Prior to this suggested restructure, the ultimate holding company of all these companies was an Australian company, was it not?---Privilege. Yes.

So even prior to any suggested restructure, there was no impediment to a consolidated tax group, was there?---Privilege. I can't say. Look, I don't recall whether there was an issue in doing it that way or not.

20 So are you aware that in terms of consolidation, there are two principal benefits that one gets from operating a consolidated group: first, the ability to operate a consolidated group; and secondly, benefits that come from operating a consolidated group. And there was no impediment to the first already in this case; is that correct?---Privilege. Look, I can't answer that question. I don't know. I know at
25 one point there might have been a small shareholding that was separate from – so it didn't have an ultimate holding company.

I see?---Yes.

30 And so did you – so to go back to the original question, did you at all understand the commercial reasons for why the company you would – it would be beneficial for the company of which you were a director, or any of the companies of which you were a director in the Bruck Group to need to include Tolric and Mark Foy's within that consolidated group?---Privilege. As I said, I don't know about Tolric and Mark
35 Foy's. I understand what the benefit was to Bruck Textiles Group, but I don't know what the benefit necessarily was to Mark Foy's and Tolric. I had no involvement in those companies.

40 Sorry, if we reread the sentences:

...allow the Bruck Textiles Group to form a tax consolidated group without the need to include Tolric and Mark Foy's within the tax consolidated group for commercial reasons.

45 ?---Privilege. And I don't understand what the commercial reasons were. I had no involvement with Tolric or Mark Foy's.

But aren't they commercial reasons for Bruck as well not to have Tolric and Mark Foy's in the group?---Privilege. Look, I don't understand the question. I was just looking at it from a Bruck Group perspective. I didn't deal with Tolric or Mark Foy's.

5

Now, and, sorry, perhaps we're going around the mulberry bush, but, sir, what I'm suggesting is that what it was saying is it would be for the commercial reasons of Bruck Textiles Group to not have Tolric and Mark Foy's in the group, and what I'm asking is what were the commercial reasons for Bruck by not having those companies in the group?---Privilege. I don't know.

10

And you didn't ask anyone at the time?---Privilege. I don't recall asking that. Not in the terms – not in the way that you've put it.

15 Well, that's just what it says, isn't it?---

...allow the Bruck Textiles Group to form a tax consolidated group without the need to include Tolric and Mark Foy's within the tax consolidated group for commercial reasons.

20

Yes. For commercial reasons to the Bruck Textiles Group?---Privilege. I didn't ask the question.

Thank you. And did you ever ask any questions about the estate planning and long-term professional management?---Privilege. No.

25

Did you not want to know why that advice was being given to the chief financial officer of Bruck Textiles when it may have to do with Mr Bart personally?---Privilege. Because he was the major shareholder, I didn't think it was that unusual.

30

And so it wasn't unusual, was it, because certainly as a non-executive director, you considered the position of Mr Bart to be largely equated with the companies within the Bruck Group; that's correct, isn't it?---Privilege. Yes. Like, he was the ultimate – I guess he was the ultimate shareholder, yes.

35

And not that there's any shame in this, but principally the companies were being run for his benefit?---Privilege. Yes. I mean, ultimately he's the shareholder. It was – it was to his benefit.

40

And to your experience, there might be lively discussion about certain things, but if Mr Bart wanted something to happen, it would happen, wouldn't it?---Privilege. Look, he obviously had a – his views carried a lot of weight, yes.

Can you recall any time in your time as a director of any of the three companies where you substantively disagreed with Mr Bart?---Privilege. No, not substantially.

45

And so there was no substantive disagreement. Can you recall in your time as a director where any other director substantially disagreed with Mr Bart on any aspect of the business?---Privilege. Look, there was – you know, at different times there was robust discussion between, particularly, Alan Williamson and Phillip Bart about,
5 I guess, some operational issues, but they weren't – you know, they were – I guess I would say they were always resolved.

And did you recall an instance where they were resolved in Mr Williamson's favour over against the objections of Mr Bart?---Privilege. Look, I can't – I can't name one,
10 no.

Do you – would you recall many instances where they were resolved in Mr Bart's favour over the objections of Mr Williamson?---Privilege. Look, they're just – they weren't numerous, but, you know, I guess if there are issues – I can't name one, no.
15

No, but if there were – in your recollection, when there were disputes, were they generally resolved in Mr Bart's favour?---Privilege. Look, there weren't a lot of disputes, but I guess if there were disputes, then I guess he had influence in terms of, you know, how they were resolved, yes.
20

It's a bit more than influence, isn't it?---Privilege. Look, obviously he was the ultimate shareholder, so, you know, he has certainly got significant influence over what was happening there, and he – ultimately, I guess, his will would carry.

25 Thank you. At the time at which this restructure was being proposed, to your understanding, did Bruck Textiles seem like a long-term profitable business?---Privilege. Yes. I mean, it was obviously, like any other business, going to face its challenges, but I had no reason to doubt that it was a long-term business.

30 Thank you. Thanks very much. If I could for you to turn to tab 6, please. And I might ask you to read as much of that board paper – sorry, that minutes of the meeting of directors as you feel comfortable doing. Can I just quickly ask you, 791 Botany Road, Rosebery, is there a particular reason that meetings were held there?---Privilege. That was their office.
35

That was the office of Bruck in Sydney?---Privilege. Yes.

And that was the head office, was it?---Privilege. Yes.

40 Thank you?---I've read it.

Thank you. I wish to ask you some questions about – on the third page, under the other business heading Reorganisation?---Yes.

45 Now, was the rationale behind what's documented there the same as you've discussed in relation to the Ernst & Young advice?---Privilege. Yes.

And are you aware why – would you be aware why Mark Foy's, which was suggested in the Ernst & Young advice should not be interposed in the group, was now being interposed in the group?---Privilege. No, I don't know why Mark Foy's wasn't in the group.

5

So that had neither been explained to you nor did you seek information about it; is that correct?---Privilege. I don't recall.

Now, were you aware that there were EBA, enterprise bargaining agreement, negotiations going on at that stage?---Privilege. Yes.

10

And they were looking unsuccessful for the company in large, weren't they?---Privilege. I don't recall them saying they were going to be unsuccessful. I mean, the – I believe they were looking for some changes, but I don't recall them saying they were going to be unsuccessful.

15

I see. Now, if you look at the next paragraph under Reorganisation, so, the formation of the group was approved. Did that take place?---Privilege. It progressively took place through 2013.

20

And what about the payment of the dividend within the new tax group being discussed there – or being approved, I should say, there?---Privilege. I think that occurred in 2013 as well. It was a different amount, but I think it was – that's the same thing they're talking about.

25

Now, at the time at which this was approved, whatever occurred, what was the rationale for paying a – for approving a dividend of \$7 million?---Privilege. I – I don't – 7 million – I'm not sure if that relates to the – the – the restructure of Bruck Properties coming out from Bruck Trading and sitting under the Bruck Group. I don't – I would – I would – look, I would have to check the records to – to confirm what that – what that was.

30

So to make it clear, the directors are, in principle, approving something; is that correct?. So let's not focus on what may have happened after this. Let's focus on what was approved at that meeting. Shall we do that? So don't worry yourself for now about whether any of these things were implemented. Let's just focus on what occurred – what was being approved at the meeting?---Privilege. Yes, so I – my understanding of it was that the group structure that was referred to in the Ernst & Young report was in – was agreed to, in principle, at this meeting.

40

Yes. Well, what was also agreed to, in principle, was that there would be a payment of a dividend for \$7 million – for approximately, \$7 million. And do you recall what the rationale was for the payment of a dividend that large?---Privilege. I don't recall.

Is there anything in your records that would refresh your memory as to why the directors approved a dividend for 7 million – approximately, \$7 million?---Privilege. Look, there were significant retained earnings in the business at the time. So I don't

45

know if it – I – I just can't recall that far back as to whether that's what it related to or it had to do with the restructure.

5 Can I put it – can I put this, that you must have considered, as a director, that the business was sufficiently profitable to be able to afford to make a dividend payment of approximately \$7 million. Is that correct?---Privilege. Yes.

10 And no one had indicated to you any challenges in the imminent future for the business that would make such a large dividend payment uncommercial?---privilege. I'm not – I'm not actually sure that there was actually any cash that was paid, though.

15 I see. So when you approved – when you were part of the board that approved, in principle, approximately a \$7 million – and I'm going to call it \$7 million even though it's approximate, just for ease. Do you understand that? So when you approved as a director – well, first, I should ask you the question do – you didn't dissent from this in principle approval, did you, from recollection?---Privilege. No.

20 So when you, in principle, approved the payment of a \$7 million dividend, did you understand why that \$7 million dividend was being paid?---Privilege. Yes, I – I did. I just can't recall whether it relates to the restructure that was associated with Bruck Properties or if it was a separate dividend associated with the retained earnings that were held in the group at the time.

25 Why would the answer to that make a difference?---Privilege. Because you're asking what did it relate to, I think. Is that correct?

30 Well, I'm asking why you approved it, yes. So what did it relate to?---Privilege. I – look, I'm assuming from that wording that it related to the – the group restructure and if that's the case, then this didn't – this dividend didn't occur and it – and it was – I think it was actually implemented in 2013 when they finally did the restructure.

35 So let's not focus on what occurred after the meeting. Let's just focus on the meeting, if you wouldn't mind. And if there – if it – if it was about the restructure, as it indicates, why would the restructure justify a \$7 million dividend payment?---Privilege. So my – my recollection is – is that Bruck Properties was sitting underneath Bruck Trading. It was going to be sold to Bruck Group, effectively, which created the – and – and I think the consideration was around \$7 million. And at – and what was going to happen was that a dividend was going to be paid from Bruck Trading to Bruck Group and that was going to extinguish the – the figure.

45 So I take it from the answer to your questions so far that there was no restructure until some time in 2013; is that right?---Privilege. Yes.

If I could take you then – sorry, just back one tab – I'm sorry to do this – to the last page, which is a double-sided page of the Ernst & Young advice. Is that what you

understood as being the current structure, and then the proposed structure on that double-sided page?---Privilege. Yes, except textile stock liquidators – I don't think – I don't think they proceeded with that.

5 Sorry. So the current structure – is that accurate? That's obviously a statement of fact, right or wrong, at the time?---Privilege. Yes. That's – that's in 2011.

Yes. Yes. Yes. And then there's a proposed structure for the purposes of the board's consideration; is that correct?---Privilege. Yes.

10 Now, why was it proposed that Bruck Properties would be separated out?---Privilege. To – the – to create that tax consolidated group, and to have them all sitting under Bruck Group Proprietary Limited. It had to move from – from Bruck Textiles to sit under Bruck Group.

15 Sorry. What is it – to your understanding, the tax law justification – rationale for it?---The tax law?

20 Yes – or any – what was the – you said for tax reasons. So what was the tax reason for it being separated?---Privilege. It was – it was to have all of the identities sitting underneath the Bruck Group, which was the holding company for – for tax consolidation.

25 I'm terribly sorry. Could you repeat that answer?---Privilege. It was to have all the entities sitting underneath Bruck Group for the purpose of the tax consolidated group.

30 But Bruck Properties – the assets owned by Bruck Properties could have remained in Bruck Textiles, is that not correct, and that still would have achieved that outcome?---Privilege. I – look, I – I don't know if it – it would have still achieved the outcome. Possibly.

35 So what was Bruck Properties meant to own under the proposed structure?---Privilege. It was to – it owned the – the property at Wangaratta.

40 And why was it suggested that it would be a good commercial idea to separate the property out from the company that actually manufactured the textiles on the property?---Privilege. Well, it was just – the only difference was it was sitting underneath Bruck Textiles before and now it was going to sit underneath Bruck Group and that was just the preferred structure put forward.

But at some point, the company owned the land on which it operated on, did it not?---Privilege. I always understood that Bruck Properties owned the land.

45 So do – were you aware that at some point, the business had to sign a lease in relation to the land?---Privilege. Yes.

Now, why would – why did that lease become necessary if the business had always been separate from the owner of the land?---Privilege. I – I – I think the rationale there was to ensure that there was an appropriate return on the property and that that was factored into the manufacturing costs.

5

I see. So to your understanding, the business that was operating the textile mill never owned the land on which it was being operated?---Privilege. I – I don't believe it did, no.

10 And so prior to that point, to your understanding, the business had been getting free rent, had it?---Privilege. Yes.

I see. So some company owned the land, but that company was receiving no revenue; is that correct? I'm just trying to understand your
15 understanding?---Privilege. Yes.

I see. So at some point – and we will get to this. But at some point was it determined that the business, the textiles business – its costs were not being accurately represented because it wasn't paying for land that somebody else owned
20 and it was appropriate to sign a lease to represent those costs?---Privilege. Yes, that was the logic behind it.

And who presented that logic?---Privilege. It was Phillip Bart that presented it.

25 To the board; is that correct?---Privilege. Yes.

So your understanding was from 2004 when you became a director, the company that owned the property was separate – the Wangaratta property was separate to the business. Is that correct?---Privilege. Can you repeat that, sorry?
30

Sorry. Your understanding was that from 2004, that the company – in all your – sorry. I will start again. In all your time as a director of Bruck Textiles, you thought – or it was your understanding that the business did not own the land upon which it manufactured. Is that correct?---Privilege. My understanding was, yes, that Bruck
35 Properties owned the land.

I understand. Registrar, could I just have a minute, please, for - - -

THE REGISTRAR: Yes.
40

MR KULEVSKI: - - - some instructions? (**)

[PAUSE]

45 MR KULEVSKI: Thank you. Sorry for that. Thank you for that indulgence, Registrar.

So perhaps if we could move to tab 7, Mr Castrisos. Do you prefer Castrisos or Castrisos?---It's Castrisos.

5 Castrisos. Thank you. And perhaps if I could ask you to familiarise yourself with that board package. No, sorry, I should mention I won't be asking you about any questions after the first two pages, the CO report?---I'm okay

10 Thank you. Now, were you aware that, at that time when you received this, that the EBA was scheduled to be signed off by Fair Work Australia on 25 January?---Privilege. Look, I don't -- I have no reason to doubt that this is correct.

15 Was that something -- that issue something that was being discussed at the time?---Privilege. Yes, normally what happened at the board meetings is they would give us an update on where they were at with the EBA.

20 What were your understanding of the industrial issues at that time, given that the EBA was about to be signed off?---Privilege. Look, I can't recall the exact issues, but, you know, previously there had been issues relating to the redundancy provisions and grandfathering, which is -- which tended to be the major one. And then just getting some more flexibility into the EBA in terms of changing of shifts.

25 I see. So could you elaborate, if you're able to, a little on what the redundancy issues were?---Privilege. The redundancy provisions in the EBA were significant in terms of the number of weeks that the staff are entitled to, and what they were trying to do was grandfather the provisions, I think, so that new starts didn't receive those benefits.

30 And, I apologise, when you say they were trying to, do you mean the business?---Privilege. Yes.

And to your understanding, was that successful?---Privilege. Yes, I believe it was. I don't recall when they actually got it in, but I understand they got the grandfathering in.

35 Now, this EBA that was signed off on, did you understand that over time, Mr Bart became unhappy with it?---Privilege. Look, he was -- I think he had concerns with aspects of it, and it would probably be those two areas, the flexibility of it and - - -

40 So - - -?--- - - - the provisions.

I'm terribly sorry. Please finish your answer?---Privilege. And the provisions of the redundancy as well.

45 So did you understand that Mr Bart's principal concerns with the EBA were the large redundancy exposure; is that correct?---Privilege. Look, I think it was a concern of everyone's, to be honest, but I don't know if it was anything more than, also, the

flexibility, but it was – but those two issues, I think, were probably the more critical ones.

5 And in what way was the EBA inflexible?---Privilege. It was just the notice periods you had to give to change shifts, etcetera.

I see?---So I guess that's a common issue within a lot of EBAs.

10 Was there any discussion taking place at the time about any long-term problems for the business with this large redundancy payment exposure?---Privilege. Look, it obviously created challenges, I guess, with any downsizing that needed to occur. Having said that, through the years they seemed to manage to do it with not that much difficulty, I didn't believe.

15 And so was there – was there no – sorry – there was no suggestion at the time, was there, that Bruck Textiles couldn't afford to continue to operate in business without meeting – and meet redundancy obligations as and when they arose?---Privilege. I had no doubt. And every year they did budgets, if they felt that they needed to make provisions for redundancy, they would put it in the budgets.

20 Great. So as at December 2011, to your understanding, the continued funding of Bruck's redundancy obligations would not be a significant problem for -- --?---Privilege. No.

25 The next document is quite substantial, Registrar, so, given your commitment, it might be a convenient time.

30 THE REGISTRAR: Mr Kulevski, because – you told me you don't need to come back at 4. I can sit for another 10 minutes, if that assists you. But if you think that you're going to go into a much longer bracket of topic - - -

MR KULEVSKI: So you don't have to leave at 3.30?

35 THE REGISTRAR: No, I can – as I said, I can give you another 10 minutes.

MR KULEVSKI: Well, then, I will happily take it. Thank you, Registrar. I'm grateful to you.

40 So if I could ask you to turn to the next document behind tab 8, please, Mr Castrisos, which is the board pack of 20 December 2011?---Do you want me to read all of it, or - - -

If you could please read the first three pages, yes?---I've read it.

45 Now, could you please explain to us what the GE Revolver account was?---Privilege. It was the working capital finance that was provided by GE. It was linked to the level of debtors.

And who was responsible for managing that?---Privilege. The CFO.

And did you have any involvement at all in giving advice about the operation of the GE Revolver account?---Privilege. There really was no need to. It seemed to
5 operate within its covenants and had been in place for a long time.

Thank you. Now, on the fourth dot point of the forecast, you will see the phrase:

10 *Notwithstanding the above, the company will continue to be in a strong cash position for the remainder of the 2012 financial year.*

?---Privilege. Yes.

And to your understanding, if there were any looming redundancy payments that
15 would put the company in cash jeopardy, they would have been raised in that forecast, would they not?---Privilege. Yes.

And so your understanding continued to be, didn't it, that the employee – any issues with the EBA or employee entitlements were not at that point a significant hurdle to the long-term profitability of the business?---Privilege. Correct.
20

Thank you. Now, if I could ask you to just go further through that document, past the financial reports to what you will see on the document at the top that says 179, you will see two pages that talk about the Bruck Group restructure?---Yes.
25

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

Now, you will see that phase 1 goes some way to explaining the nature of the Bruck property sale. Do you agree?---Privilege. Yes.
30

Now, could you explain how that worked?---Privilege. So my understanding of it was that Bruck Properties was essentially transferred from BT, which was Bruck Trading, to Bruck Group for the market value of 8 million. And there was a loan created because of that acquisition and then a dividend paid, which in effect BT paid
35 to Bruck Group, and that offset that loan.

Right. So is it fair to say this is what happened: that BTT or Bruck Textiles, BT, as it's called there, transferred an asset for a loan asset?---Privilege. Yes.

40 And then it paid a dividend which extinguished the loan asset?---Privilege. Yes.

So what was the consideration for BTT or for BT?---Privilege. I think it was the creation of the loan account. It obviously had a value.

45 And how was this loan account to be repaid?---Privilege. By the payment of that dividend and extinguished it.

Would it ever receive any cash?---Privilege. No.

Were you concerned at that point that such a transaction might have an impact on the ability of BT to meet any future employee entitlements?---Privilege. No.

5

Effectively it's a capital reduction in BT, is it not?---Privilege. Correct, essentially.

And what benefit is BT getting for that capital reduction?---Privilege. I don't know if any company gets a benefit from a capital reduction.

10

So what was the justification for the capital reduction?---Privilege. I mean, it was – it had sufficient equity to allow for the capital reduction. So I guess it was a restructure of the capital base of that company.

15 And the restructure of the capital base of the company would quite obviously mean that it had less capital to meet any future obligations, did it not?---Privilege. I don't believe that was necessarily the test, because it didn't affect the cash flow, and far as I guess the board was concerned at that time, the company was solvent and able to pay its debts.

20

So this proposal occurred, did it not, a week after the enterprise bargaining agreement was submitted to the Fair Work commission in 2011?---Privilege. Look, I'm not sure. I mean, if it's – I can't confirm or deny the – you know, whether that's the date or not.

25

Was any aspect of the restructure that was being discussed discussed by reference to the fact that the EBA had recently been submitted?---Privilege. As far as I was concerned, there was no link between the two, and that wasn't discussed at the board meeting. It was – I think it was just a co-incidence it happened to occur at the same time.

30

So your understanding is it's a co-incidence?---Privilege. Yes. That's certainly my understanding.

35 But you would accept, wouldn't you, that the capital reduction that took place in BT meant that it had less capital to pay for any major payouts that would be required in the future. Isn't that correct?---Privilege. Obviously a capital reduction is going to lead to less capital.

40 Yes?---But for you to draw the conclusion that it can't meet its commitments – I don't think it's an accurate conclusion.

No, I'm not suggesting – sorry. I'm not suggesting that it wouldn't necessarily be able to make it's commitments; I'm suggesting that when there is less capital the commitments which it could meet in the future would by necessity be smaller?---Privilege. Obviously if the capital was reduced there's less capital available, and on that basis we agree.

45

And to your understanding, the reduction of the capital at that point that was being proposed had nothing to do with the fact the EBA had just been submitted to Fair Work Australia?---Privilege. Had nothing to do with it, no.

5 To your understanding?---Correct.

But you're unable to provide any other commercial rationalisation, are you, for why that capital reduction was necessary?---Privilege. Because it was part of this group restructure. I guess in the end there was a – there was capital employed across the
10 group that was coming out of Bruck Trading. So it was re-organisation not only of the structure but of the capital.

But which company held the liabilities?---Privilege. In terms of the trading liabilities?

15 In terms of employees?---Bruck Trading had the liability.

And that was the company whose capital was being reduced. Is that not correct?---Privilege. Yes.

20 And did any of the other companies hold any significant liabilities?---Privilege. Well, it was only Bruck Properties at the time, and no, I don't believe it had any significant liabilities.

25 In fact, it was Bruck Textiles that subsequently assumed a liability to Bruck Property, was it not, in the form of the lease?---Privilege. It then – yes, obviously it took the lease. Yes.

Which it prior to that point had not been paying?---Privilege. Yes, that's correct.

30 And its capital continued to be reduced over the period, did it not?---Privilege. The capital of Bruck Trading?

Bruck Textiles, yes?---Bruck Textiles. Privilege. Look, it obviously was envisaged
35 out of that restructure that the capital base was be reduced.

Yes. Just excuse me for a moment. What do you understand by the phrase "capital reduction" as we've been discussing it?---Privilege. So I know it says "dividend" there, but my understanding of the eventual transaction – you're talking about, I
40 guess, proposed transactions here.

Yes?---And then obviously the transactions occurred in 2013.

And we will get to the actual transactions, yes, but what's being proposed at that
45 point?---Look, at that point I'm not sure if was proposed to be a dividend out of retained earnings or part dividend, part capital reduction. But eventually I think there was a capital reduction component to it.

Registrar, I think it's 20 to and you need to go. That's probably as far as we can take it today.

5 THE REGISTRAR: Yes. Yes, I – is Mr Castrisos coming back on 16 February?

MR KULEVSKI: Yes.

THE REGISTRAR: Which is the next day.

10 MR KULEVSKI: Yes.

THE REGISTRAR: All right. Well, that's the next date, Mr Castrisos. You're going to continue examination.

15 MR KULEVSKI: You're available, Mr Castrisos, next – on the 16th?---Do you mind if I ask how long I will required for?

Certainly for the morning, potentially into the afternoon as well?---Right. Okay. I will be available.

20

Thank you. We appreciate that.

THE REGISTRAR: All right. Well, that's the date that it's adjourned to. In relation to Mr Nicodemou's affidavit – sorry – his summons, I also adjourn that generally. I don't think he was coming back on that date, was he, did we say?

25

MR KULEVSKI: No, no. All the others are adjourned generally. Thank you.

THE REGISTRAR: Right. That's – the documents which have been used today: I think they've been marked. So you just need to have your instructing solicitors retain that until the next date, Mr Kulevski.

30

MR KULEVSKI: Thank you very much, Registrar.

35 THE REGISTRAR: Nothing further. Court is adjourned.

MR KULEVSKI: Thank you.

40 <THE WITNESS WITHDREW

MATTER ADJOURNED at 3.41 pm UNTIL TUESDAY, 16 FEBRUARY 2016

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