Investigation into Project Enola

July W. Wednesday, 2 March 2014 at 10.12am

At Level 5, 100 Market Street, Sydney, NSW 2000

Mr Robert Titterton, Mr Joe Kouper and Mr Chris Johnson Before:

Also present: Mr David Stack

Private examination of Trajan John Kukulovski pursuant to section 19 of the ASIC Act

1	MR TITTERTON: It's <mark>2 July 2014</mark> and the time is
2	10.12am. My name is Robert Titterton and I'm a
3	staff member of the Australian Securities and
4	Investments Commission. This examination is
5	being conducted at the premises of ASIC at
6	100 Market Street, Sydney, following the giving
7	of a written notice to you, Mr Trajan,
8	T-R-A-J-A-N, <mark>John Kukulovski</mark> ,
9	K-U-K-U-L-O-V-S-K-I, under section 19 of the
10	Australian Securities and Investments Commission
11	Act. I'll refer to that Act as the ASIC Act.
12	A copy of a notice to you dated 10 June 2014
<mark>13</mark>	issued pursuant to section 19 of the ASIC Act,
14	barcoded with ASIC barcode S02408183, has been
<mark>15</mark>	served on you, I take it. Can you just identify
<mark>16</mark>	that, sir?
<mark>17</mark>	MR KUKULOVSKI: Yes, it has.
18	MR TITTERTON: Sir, that notice disclosed that this
19	examination relates to an investigation into the
<mark>20</mark>	performance of your duties in relation to the
<mark>21</mark>	conduct of six named corporations in the period
22	from <mark>10 September 2009</mark> to <mark>31 January 2014</mark> and in
<b>23</b>	relation to some liquidations in which you were a
<mark>24</mark>	co-liquidator with Trent Andrew Devine,
<mark>25</mark>	D-E-V-I-N-E, of two companies from November 2011
26	to <mark>May 2013?</mark>
27	MR KUKULOVSKI: Yes.
2 <mark>8</mark>	MR TITTERTON: Do you understand that, sir?

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1	MR KUKULOVSKI: Yes.
2	MR TITTERTON: Thank you. Mr Kouper, K-0-U-P-E-R,
3	and <mark>Mr Johnson</mark> are inspectors for the purposes of
4	conducting this examination today. They hold
5	delegations granted to them - we all hold
6	delegations granted to us under section 102 of
7	the ASIC Act. Mr Kukulovski, could you please
8	state your full name and business address,
9	please?
10	MR KUKULOVSKI: Trajan John Kukulovski, Level 4,
11	533 Little Lonsdale Street, Melbourne.
12	MR TITTERTON: Thank you. And you're represented by
13	a barrister today and I'll just ask your
14	barrister to identify himself and his chambers.
15	MR STACK: My name is David Stack. I'm a barrister
16	practising at Blackstone Chambers, Level 62,
17	19 Martin Place, Sydney.
18	MR TITTERTON: Mr Stack, are you aware if you act for
<mark>19</mark>	any other person or company that is referred to
20	in that notice I just identified?
21	MR STACK: I'm retained generally by
22	Jirsch Sutherland and I act for Mr Trent Devine
23	in addition to Mr Kukulovski.
24	MR TITTERTON: We have had discussions prior to this
25	examination today and I take it that at the
<mark>26</mark>	present point in time, you do not consider that
27	there's any reason why you cannot act for
28	Mr Kukulovski today?

1	MR STACK: No. I should say that I'm instructed by
2	Matthews Folbigg Solicitors. We've discussed
3	that issue and we presently hold the view that
4	there is no conflict that would prevent me from
5	appearing today.
6	MR TITTERTON: Thank you. I direct that this
7	examination be recorded. <mark>Mr Kukulovski</mark> , a record
8	will be made of this examination and the record
9	will be put in writing. If it is put in
<mark>10</mark>	writing - when it is put in writing you may make
<mark>11</mark>	a written request for a copy of the transcript
12	and it will be made available to you free of
13	charge, but subject to confidentiality conditions
14	that I will be imposing in relation to it. When
<mark>15</mark>	it's put in writing I'll ask you or another staff
<mark>16</mark>	member will ask you to read it, correct it, sign
<mark>17</mark>	it and return it to us.
18	Sir, under section 21(3) of the ASIC Act you
<mark>19</mark>	must answer all questions put to you by myself or
<mark>20</mark>	any other investigator that are relevant to the
<mark>21</mark>	matters we're discussing today.
<mark>22</mark>	I now need to inform you about two types of
<mark>23</mark>	privilege you can claim. One is what we lawyers
<mark>24</mark>	call legal professional privilege and the other
<mark>25</mark>	is the privilege against self-incrimination and
<mark>26</mark>	exposure to a penalty.
<mark>27</mark>	In relation to the first, legal professional
28	privilege, you can assume that I will not

1	intentionally and I do not propose to ask any
2	questions which will infringe upon your right to
3	claim legal professional privilege. I will not
4	be asking you and I'm not entitled to ask you
5	about the content of any advice Mr Stack has
6	given to you and I don't mean to do so
7	intentionally. I may ask you about legal advice
8	or the fact of obtaining legal advice by
9	Jirsch Sutherland or you during the course of the
<mark>10</mark>	liquidation. Again, I'm not entitled to know the
<mark>11</mark>	content of the advice, I don't wish to know it,
<mark>12</mark>	but it may be relevant for me to know whether or
<mark>13</mark>	in fact you obtained legal advice.
14	Just to reiterate that, you're not obliged
<mark>15</mark>	to answer a question to the extent that the
<mark>16</mark>	answer would disclose information that's covered
<mark>17</mark>	by a valid claim of legal professional privilege.
<mark>18</mark>	If you do make that claim, certainly be guided by
<mark>19</mark>	Mr Stack. You may need to provide us with
<mark>20</mark>	sufficient information to allow us to make an
<mark>21</mark>	informed decision about whether that claim can be
<mark>22</mark>	supported. Do you understand that, sir.
<mark>23</mark>	MR KUKULOVSKI: Yes.
<mark>24</mark>	MR TITTERTON: For today's purposes the more
<mark>25</mark>	important privilege I need to warn you about or
<mark>26</mark>	remind you of is that provided by section <mark>68</mark> of
<mark>27</mark>	the ASIC Act. Section 68 of the ASIC Act
28	provides that if a proper claim of privilege is

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1	made before making a statement, the statement
2	cannot be admitted against you in subsequent
3	criminal proceedings or proceedings to impose a
4	penalty, other than in proceedings in respect of
5	the falsity of the statement itself. This
6	section does not apply to certain proceedings for
<mark>7</mark>	the imposition of a non-monetary penalty. Those
8	proceedings are specified in s <mark>ection 1349 of the</mark>
9	Corporations Act and examples include court or
10	administrative proceedings to ban a person from
<mark>1 1</mark>	managing a corporation or from providing
12	financial services.
13	If you wish to claim the benefit of
14	section 6 <mark>8</mark> of the ASIC Act for an answer to a
<mark>15</mark>	question that might tend to incriminate you or
<mark>16</mark>	expose you to a penalty, it will be sufficient in
<mark>17</mark>	you say the word <mark>"privilege"</mark> before giving the
<mark>18</mark>	answer. You cannot make a blanket claim for
<mark>19</mark>	privilege for all answers and if you wish to
<mark>20</mark>	claim the privilege, you must do so for each
<mark>21</mark>	answer. Do you understand that, sir?
<mark>22</mark>	MR KUKULOVSKI: Yes, I do.
<mark>23</mark>	MR TITTERTON: Would you like to read section 68 of
24	the ASIC Act or section 1349 of the Corporations
<mark>25</mark>	Act or take any further advice from Mr Stack?
<mark>26</mark>	MR KUKULOVSKI: No, that's fine for now.
<mark>27</mark>	MR TITTERTON: Thank you. Under section 22 of the
<mark>28</mark>	ASIC Act, I can and I will make confidentiality