

**ASIC-IN-CONFIDENCE**

1 A. Privilege. Yes.

2 Q. He was the sole former director. Now, volume 1,  
3 page 41. You can pass back the search, thanks.

4 I'm showing you document EN0.0056.0001.0041.

5 This is the deed of indemnity that I referred to

6 before. It's dated 9 November 2011, so the day

7 of your appointment, and I'll just ask Mr Johnson

8 to show it to you. Thanks. Sorry, I just need

9 to read that. I just need to correct the

10 barcode. It's EN0.0056.0001.0039. You'll see

11 the cover deed guaranteeing an indemnity,

12 Mr Hanna's a partner, and I just want you to go

13 through to page 4 and 5 of the document. You'll

14 see it appears to have been signed by Mr Hanna

15 and it says at least as of this date had not been

16 executed by - signed by either you or Mr Devine.

17 Do you remember this document, sir?

18 A. Privilege. I don't, no.

19 Q. Do you remember any discussions with

20 Mr Henderson, or anybody else for that matter,

21 about fees for this job?

22 A. Privilege. No.

23 Q. You've told us you never met Mr Hanna; correct?

24 A. Privilege. No.

25 Q. I would be correct in saying that - do you

26 remember seeing this document before?

27 A. Privilege. Look, I see - I see lots of

28 guarantees of indemnity but, yes, I don't recall

1           seeing this one.

2           Q.   All right. It would be correct then that you -  
3               well, in this document **Mr** Hanna apparently  
4               provides the indemnity, if you go to clause **4.1**,  
5               up to **\$50,000**?

6           A.   Privilege. Yes.

7           Q.   Was there any - when you're forced - when you  
8               don't get money upfront and you have to rely on  
9               indemnities of directors, is there any, I don't  
10              know, formula about the amount of indemnity  
11              that's requested?

12          A.   Privilege. For myself, I just sort of generally  
13               try and see what's involved in the appointment.  
14               I generally only would - again, for myself -  
15               would only think of what work may be involved in  
16               the voluntary administration period and just  
17               normally, generally put it into a figure that's  
18               less than the work that we're doing.

19          Q.   Is \$50,000 a particularly large amount or, you  
20               know --

21          A.   Oh - privilege - I --

22          Q.   I know it depends, but --

23          A.   Again, I don't know. Without having carriage of  
24               the job and not knowing what actually was done  
25               day to day, I don't know what was - what was  
26               actually going to be required in this job.

27          Q.   No. And I mean if this --

28          A.   It's not a big figure, though. It's not a - it's

1 not excessive or anything like that, I guess.

2 Q. All right. You hadn't seen it, you weren't  
3 involved in its drafting or the selection of the  
4 amount. Do you know who was?

5 A. Privilege. No, I wasn't but the only person  
6 that --

7 Q. You assume it was Mr Henderson, do you?

8 A. Yes, it would have been, yes.

9 Q. Thanks. You can pass that back. I'd like to  
10 take you to the same volume, page  
11 EN0.0056.0001.0475. This is a document dated  
12 8 April 2011. It's addressed to Peter Wright,  
13 the former director, and you'll see it's an offer  
14 of a monthly tenancy over some premises.

15 A. Yes.

16 Q. Okay? I want you to go to the second page,  
17 EN0.0056.0001.0476 and you'll see there's a  
18 statement:

19 *I accept the terms and conditions set*  
20 *out in this letter.*

21 Apparently signed by Peter Wright. Do you see  
22 that, on 12 April 2011?

23 A. Privilege. Yes.

24 Q. Have you ever seen this document before?

25 A. Privilege. (Audio cuts out).

26 Q. Okay. That's the five-minute warning bell. I'll  
27 just try and finish a few questions about this  
28 document.

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- 1 A. Yes, sure.
- 2 Q. Mr Wright, according to our records and according  
3 to your search, ceased to be a director on  
4 8 April. Looking at this document now, can you  
5 provide any explanation of it, ie, by which  
6 I mean why would Mr Wright be signing this  
7 document and/or is this something - this is on  
8 your file. I mean I appreciate some staff member  
9 would have seen this.
- 10 A. Mmm-hmm.
- 11 Q. What does this say to you?
- 12 A. Privilege. Looking at it now, he's clearly a  
13 director still.
- 14 Q. Yes. You'd want to talk to - at the very least  
15 you'd want to be talking to Mr Wright; is that  
16 correct?
- 17 A. Privilege. (Audio cuts out).
- 18 Q. Yes, fair enough, okay. Did you ever talk to  
19 Mr Wright?
- 20 A. Privilege. No.
- 21 Q. Do you recall anyone ever bringing this sort of  
22 issue to your attention?
- 23 A. Privilege. No.
- 24 Q. Can we go to volume 2, please, at page 24,  
25 EN0.0056.0002.0024.
- 26 MR STACK: Return that document?
- 27 THE EXAMINEE: Do you want this back?
- 28 MR TITTERTON: Q. Oh, cheers. Sorry. Sorry,

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1           ENO.0056.0001.0217. (Audio cuts out). This is a  
2           letter to Sam Henderson by Peter Wright. Just  
3           have a read of it for me.

4           A.    Yes.

5           Q.    First of all, this letter is undated. I want you  
6           to just look at the third-last paragraph. It  
7           says:

8                     *I note your acknowledgment that all*  
9                     *staff have been terminated effective*  
10                    *close of business yesterday,*  
11                    *Wednesday, 9 November 2011.*

12           I'm going to assume that this letter is dated,  
13           therefore, 10 November 2011.

14           A.    Privilege. Yes.

15           Q.    And that is the day after your appointment.

16           A.    Privilege. Yes.

17           Q.    Again, we have a letter from Mr Wright - sorry,  
18           we have something purportedly signed by  
19           Mr Wright, going to your firm, addressed to the  
20           attention of Mr Henderson?

21           A.    Privilege. Yes.

22           Q.    Do you recall ever seeing this letter?

23           A.    Privilege. No.

24           Q.    Do you recall Mr Henderson bringing this to your  
25           attention?

26           A.    Privilege. No.

27           Q.    Or discussing Mr Wright and his concerns in any  
28           way with you?

29           A.    Privilege. No.

1 Q. Would you agree that this is something that you  
2 would have expected to have been brought to your  
3 attention as the administrator, or you would hope  
4 would be brought to your attention by one of your  
5 partners?

6 A. Privilege. Yes.

7 Q. Because it's something that cries out for a  
8 further reason to talk to Mr Wright, does it not?

9 A. Privilege. Yes.

10 Q. Because this company - and there is - sorry,  
11 somebody does do a search. It may not have come  
12 to your attention. There is a search on the  
13 file. We have a company with a similar name  
14 running a similar business (audio cuts out), the  
15 same director, in fact. This would be of concern  
16 to an administrator, wouldn't it?

17 A. Privilege. Yes.

18 MR TITTERTON: All right. The time is 12.31 and  
19 I need to change the discs, so I'm just going to  
20 adjourn this examination.

21 (Short adjournment)

22 MR TITTERTON: All right. The time is 12.37. We've  
23 just changed the tapes and this the continuation  
24 of the section 19 examination of  
25 Mr John Kukulovski.

26 Q. Now, Mr Kukulovski, I was asking you about that  
27 document which is EN0.0056.0001.0217 and you  
28 don't recall the letter being brought to your

1 attention or the content of the letter being  
2 brought to your attention at any stage?

3 A. Privilege. No.

4 Q. I want to show you EN0.0056.0002.0024. First of  
5 all, you'll see the date. It's 10 November 2011  
6 and it's a company search for **Titan Warehousing**  
7 **Pty Ltd.** That's the company identified in that  
8 letter from **Mr** Wright, the undated one, which  
9 I just took you to.

10 A. Yes.

11 Q. Do you see that?

12 A. Privilege. Yes.

13 Q. This comes of course from your file. The fact of  
14 this company with a similar name with in fact a  
15 similar director and indeed, if you look at the  
16 first page, the same accountants, **Ash Corporate**  
17 and Secretarial, who I want you to assume are  
18 **CAP**, it's been brought to somebody's attention  
19 because the firm - well, a staff member has got  
20 an undertaking to audit a search?

21 A. Privilege. Yes.

22 Q. Do you have any explanation of how that could  
23 have happened?

24 A. Privilege. Without - I'm just checking the date  
25 of when it was --

26 Q. At the top - the 10th. Oh, sorry.

27 A. Well, it's been done - privilege. Sorry. It's  
28 been probably done because of this letter.

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- 1 Q. Yes. No, I agree.
- 2 A. Yes.
- 3 Q. But you're the director - you're the liquidator,  
4 right, you didn't - you're the administrator at  
5 this point and didn't see the letter. You can  
6 assume from me that Mr Devine didn't see the  
7 letter either.
- 8 A. Mmm.
- 9 Q. Well, it's addressed to Mr Henderson. Presumably  
10 Mr Henderson saw the letter; is that one  
11 explanation?
- 12 A. Privilege. Well, it's addressed to him --
- 13 Q. Yes.
- 14 A. -- but I can - yes, I certainly haven't seen it.
- 15 Q. No, no, I understand that.
- 16 A. Yes. Yes.
- 17 Q. But would you agree with my suggestion that  
18 Mr Henderson told someone to get this search; do  
19 you think that's a likely possibility?
- 20 A. Privilege --
- 21 Q. Do you think that's what happened?
- 22 A. -- I don't know if that's what happened, but it  
23 certainly could be a likely possibility.
- 24 Q. Yes. Would you have expected him to have brought  
25 at least the contents, the facts in this, the  
26 alleged facts in this letter to your attention?
- 27 A. Privilege. Without reference to the creditors'  
28 report either, I mean it's something that he may