

ASIC-IN-CONFIDENCE

Investigation into Project Enola

July 2,
Wednesday, 2 ~~March~~ 2014 at 10.12am

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

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

Also present: Mr David Stack

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

.02/07/2014

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1 MR TITTERTON: It's 2 July 2014 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, John Kukulovski,
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
13 issued pursuant to section 19 of the ASIC Act,
14 barcoded with ASIC barcode S02408183, has been
15 served on you, I take it. Can you just identify
16 that, sir?
17 MR KUKULOVSKI: Yes, it has.
18 MR TITTERTON: Sir, that notice disclosed that this
19 examination relates to an investigation into the
20 performance of your duties in relation to the
21 conduct of six named corporations in the period
22 from 10 September 2009 to 31 January 2014 and in
23 relation to some liquidations in which you were a
24 co-liquidator with Trent Andrew Devine,
25 D-E-V-I-N-E, of two companies from November 2011
26 to May 2013?
27 MR KUKULOVSKI: Yes.
28 MR TITTERTON: Do you understand that, sir?

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1 MR KUKULOVSKI: Yes.

2 MR TITTERTON: Thank you. Mr Kouper, K-O-U-P-E-R,
3 and Mr Johnson 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
19 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
26 present point in time, you do not consider that
27 there's any reason why you cannot act for
28 Mr Kukulovski today?

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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. Mr Kukulovski, a record
8 will be made of this examination and the record
9 will be put in writing. If it is put in
10 writing - when it is put in writing you may make
11 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
15 it's put in writing I'll ask you or another staff
16 member will ask you to read it, correct it, sign
17 it and return it to us.

18 Sir, under section 21(3) of the ASIC Act you
19 must answer all questions put to you by myself or
20 any other investigator that are relevant to the
21 matters we're discussing today.

22 I now need to inform you about two types of
23 privilege you can claim. One is what we lawyers
24 call legal professional privilege and the other
25 is the privilege against self-incrimination and
26 exposure to a penalty.

27 In relation to the first, legal professional
28 privilege, you can assume that I will not

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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
10 liquidation. Again, I'm not entitled to know the
11 content of the advice, I don't wish to know it,
12 but it may be relevant for me to know whether or
13 in fact you obtained legal advice.

14 Just to reiterate that, you're not obliged
15 to answer a question to the extent that the
16 answer would disclose information that's covered
17 by a valid claim of legal professional privilege.
18 If you do make that claim, certainly be guided by
19 Mr Stack. You may need to provide us with
20 sufficient information to allow us to make an
21 informed decision about whether that claim can be
22 supported. Do you understand that, sir.

23 MR KUKULOVSKI: Yes.

24 MR TITTERTON: For today's purposes the more
25 important privilege I need to warn you about or
26 remind you of is that provided by section 68 of
27 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
7 the imposition of a non-monetary penalty. Those
8 proceedings are specified in section 1349 of the
9 Corporations Act and examples include court or
10 administrative proceedings to ban a person from
11 managing a corporation or from providing
12 financial services.

13 If you wish to claim the benefit of
14 section 68 of the ASIC Act for an answer to a
15 question that might tend to incriminate you or
16 expose you to a penalty, it will be sufficient if
17 you say the word "privilege" before giving the
18 answer. You cannot make a blanket claim for
19 privilege for all answers and if you wish to
20 claim the privilege, you must do so for each
21 answer. Do you understand that, sir?

22 MR KUKULOVSKI: Yes, I do.

23 MR TITTERTON: Would you like to read section 68 of
24 the ASIC Act or section 1349 of the Corporations
25 Act or take any further advice from Mr Stack?

26 MR KUKULOVSKI: No, that's fine for now.

27 MR TITTERTON: Thank you. Under section 22 of the
28 ASIC Act, I can and I will make confidentiality