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PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

Reference: Operation E09/350

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY, 27 JUNE, 2012

AT 10.17AM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Mr Strickland. Mr Poller, you're still under the oath you took previously and the section 38 order continues to apply to you.

THE SECTION 38 ORDER STILL APPLIES

<GREGORY MARK POLLER, on former affirmation [10.17am]

10

MR STRICKLAND: Commissioner, I'm going to tender 15 separate documents. There is a tender list, I'm doing that for expedition sake.

THE COMMISSIONER: Yes, thank you.

MR STRICKLAND: So I tender 15 documents, in the index they're listed P1 to 15.

20 THE COMMISSIONER: Yes.

MR STRICKLAND: Either now or shortly I'll provide each of the interested parties a copy of the tender list. It's been done I'm told and I tender, I tender the documents.

THE COMMISSIONER: Well, the documents described in the list described as Poller tender list will be exhibits with the numbers indicated on the list. These documents will form part of Exhibit 3. That is all documents prefaced by the letter P will form part of document 3, Exhibit 3 I mean.

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**#EXHIBIT P1 - REMITTANCE ADVICES REGARDING CHEQUES
3073, 3074 & 3075**

**#EXHIBIT P2 - CHEQUES AND BUTTS X 3 DATED 4 JANUARY
2008 (ALL BUTTS SAY "CHUBB") 3226: \$9,000; 3227: \$9,000; 3228:
\$4,000**

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**#EXHIBIT P3 - PURCHASE ORDERS REGARDING CHEQUES
3226, 3227 & 3228**

**#EXHIBIT P4 - CHEQUE BUTT AND CHEQUE 32115 - CASH
\$9,000 (BUTT "SUPPLIER CHUBB" DATED 18 JANUARY 2009**

#EXHIBIT P5 - CHEQUE BUTTS AND CHEQUES 3240 & 3242 DATED 15 FEBRUARY 2008 IN THE AMOUNT OF \$5,000 EACH SIGNED BY MR POLLER AND MR DIEKMAN; CASHED BY MR DIEKMAN

#EXHIBIT P6 - CHEQUE 3400 AND BUTT TO “CHUBB”; CHEQUE WAS CASHED BY CHRIS HODGES

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#EXHIBIT P7 - CHEQUES 3558, 3559 & BUTTS DATED 19 MARCH 2009 & 24 MARCH 2009

#EXHIBIT P8 - CHEQUE BUTT 3622 DATED 27 MAY 2009 – “CHUBB ART GALLERY”

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#EXHIBIT P9 - CHEQUE BUTT & CHEQUE 3672 DATED 8 JULY 2009, SCI INVOICE AND REMITTANCE ADVICE PLUS KINGS LEDGER DATED JULY 2009 – JUNE 2010

#EXHIBIT P10 - CHEQUE 3806 AND BUTT DATED 21 DECEMBER 2009 IN THE AMOUNT OF \$9,650.30. THE BUTT SAYS “CHUBB JOB NO” BUT CHEQUE WAS CASH, SIGNED BY DIEKMAN AND MARINUCCI

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#EXHIBIT P11 - PURCHASE ORDER TO CHUBB “STOCK AS PER QUOTE” DATED 22 DECEMBER 2009

#EXHIBIT P12 - DOCUMENTS RELEVANT TO HUSKICS ACCOUNT FOR LOCK WORK

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#EXHIBIT P13 - DOCUMENTS RELEVANT TO CREARY CAR PURCHASE

#EXHIBIT P14 - RECORDS REGARDING ACCOUNT CREATED BY MR POLLER TO RECORD DIRECTORS PAYMENTS TO CONSULTANTS

#EXHIBIT P15 - KINGS RECORD SHOWING “CHUBB” ACCOUNT CREATED BY MR POLLER HAD BEEN GIVEN A NAME CHANGE

MR STRICKLAND: Mr Poller, I want to, I want to ask you some questions about some answers you gave yesterday and I'll just - I'll read them slowly to you and the answers. I just want to ask you some questions about them. You were asked about what was said at one of these two meetings about when you said your understanding of the request for cash and you said this, your understanding of what was said to you was that they needed some cash to pay - this is page 545 line 20, "They needed some cash to pay - I'm not
10 too sure about the contractor part but for consultants, they needed to have some money to pay a gift to a consultant." That's what you said yesterday. And then I asked you at 545 line 42 "And what was said at that meeting about this subject?" You said, "At that meeting Charlie addressed Peter and myself and said something to the effect that for Kings to remain visible, we had to provide gifts to consultants and other key players." Did either Mr Roche or Mr Diekman elaborate on what they meant by the phrase "for Kings to remain visible"?---Not that I can recall.

And what did you understand that meant?---I, I understood that to mean in,
20 in that area of marketing, networking, that sort of side of the business we had to be known by ones in that area of the business.

THE COMMISSIONER: Did you mean that, and please correct me if I'm wrong, that by the word visible the person who used it was denoting the or referring to the ability of Kings to compete with other contractors in the marketplace?---That, that would be my understanding.

So it was a marketing technique?---Yes.

30 MR STRICKLAND: Now, at the office, at the Kings office when you were the finance manager was the name Daniel Paul mentioned often?---No, not often.

But it was mentioned from time to time?---From time to time.

Including by Mr Diekman and Mr Roche?---That I can't recall.

Did you see Mr Paul at Kings' offices?---Occasionally, yes.

40 And what was he doing at Kings' offices when you observed him there?
---They would, he would have normally meetings with Peter and Charlie, sometimes talks with Charlie and that, that's about all I can - - -

Did you ever attend those meetings?---No. There was, there was one meeting that I was called into but that was it.

And that's with Mr Paul?---With Mr Paul, yeah.

And what do you recall about that particular meeting?---I was asked to just come in and to write a, write, write a, a cheque but I can't recall if it was, if it was written or not.

THE COMMISSIONER: Sorry, you can't recall?---If, if I completed and wrote that cheque out. I just have a, a very vague recollection of coming in to write out a cheque.

10 And what happened to the cheque that you wrote out?---I don't know.

Well, what did you do with it once you'd written on it?---I'm not sure if it was, I'm not sure if I, I completed it.

Why wouldn't you complete it?---Because it wasn't needed or necessary or
- - -

You were called in to complete a cheque and before you could write it out there's a possibility that you were told you don't need it?---Possible.

20 That doesn't make sense to me. Does it make sense to you?---Yes.

Can you explain how, how you could, how someone could call you into a meeting to sign a cheque, you sit down and before you sign it they say no, it's not necessary?---I went, I was called into the meeting. I think Charlie said I need to have a cheque written out for Mr Paul.

So in favour of Mr Paul?---Yeah.

30 Or cash?---I, I'm not, I can't remember, I can't recall that but the follow on from that I do not remember if I can, if I completed the cheque or not.

Well, if you were asked to do it why wouldn't you complete it?---It could have been, it could have been withdrawn, I'm not sure. My recollection is not very strong, yeah.

40 MR STRICKLAND: Can I just ask, when you say your recollection is not strong, do I understand it that you can - and tell me if this is correct or not, you can definitely recall it happening but the precise circumstances in which it happened and exactly what happened your memory is vague, is that correct?---That would be correct. I remember it was the board room, there were two doors on the board room, I think I came, I just remember going in there after being called and I don't remember from there.

So, I understand. But from your memory it definitely happened but exactly what happened you're not sure. Is that right?---That's correct.

And likewise when I asked you yesterday about whether Mr Paul's name was mentioned in the context of gifts for consultants, you said you remembered that happening but it was a very vague recollection?---Yes.

Is it the case that you definitely remember it happening but exactly what was said was vague, is that right?---No, I can't be sure.

10 You can't be sure of what?---I'm not sure if my memory has come about by, by emails and things like that or if something was said. That's what I can't be sure about.

THE COMMISSIONER: To pay Mr Paul, to draw a cheque in favour of Mr Paul would be unusual, wouldn't it?---I don't know if that was in the name of Mr Paul or it was cash?

Just answer the question, please?---I, I - -

How many times have you done that?---Oh, I never have.

20 Have you ever seen a cheque in his favour?---No, I haven't.

So it would be unusual?---In that case, yes.

What could there, what could possible give rise to the need for Kings to prepare a cheque for Mr Paul in his favour?---I don't know of anything.

Yes, Mr Strickland?

30 MR STRICKLAND: Have you, do you recall ever previously saying that you had a definite memory of Mr Paul's being mentioned in the context of gifts to consultants?---Yes. I don't know if I said, I don't know if it was a definite memory but I, I did.

Right. And have you since reflected on that answer?---Yes, I have.

40 And what reflections have you had since then?---That I can't recall anything definite with his name being mentioned in regard to those payments except the, the emails where that were shown even the other day where his name appeared on a list. So I'm not 100 per cent sure if- - -

THE COMMISSIONER: Mr Poller- - -

MR LLOYD: Let him finish. As I understand it he was about to finish.

THE COMMISSIONER: He'd finished, you'd finished, hadn't you?
---I'd finished.

Mr Poller, I'd like you think very carefully about this question before you answer it. Do you have any misgivings about giving evidence that would implicate Mr Paul?---No, I don't.

All right.

MR STRICKLAND: And you say you've reconsidered some previous answers. Have you talked to anyone about reconsidering?---No, I haven't.

10 Did you ever express any concern to anyone at Kings about the practice of giving gifts to key players and consultants?---Yes, I did.

And who did you express that concern to?---Firstly it was, or expressing a concern was only one and that was to John Marinucci.

Yes. Were you going to add anything or- -?---Well, I, I mentioned to him that what did he feel about the, the cheques that were written for cash that went to pay gifts to consultants. He, I seen John as more corporate-wise, not so technical.

20

THE COMMISSIONER: Sorry, I didn't hear.

MR STRICKLAND: Corporate wise?---Corporate wise more than myself more than technical. His, his thought was basically the directors bare the responsibility. We have to abide by what they say and they will be held to account. The key issue I was concerned about was the tax issues involved with those cheques.

30 THE COMMISSIONER: What do you mean?---That there was an uncertainty about the tax deductibility of giving gifts. Something that would be able to be clarified by our tax accountants but because the situation of them being hidden the tax accountants wouldn't get to see them or review them. And I, and I – after a while I realised there were GST problems with those entries as well.

MR STRICKLAND: What about the ethical or legal implication of giving gifts to consultants did that concern you as well?---No.

40 THE COMMISSIONER: Why is that?---I didn't consider the practice of giving gifts as anything illegal or immoral.

Money?---Even, even, it starts to feel a little bit bad but I don't see, I couldn't see it was illegal or, or something.

If you pay a government or any – a government official or any representative of a company money privately, cash, so that it can be concealed in order to ensure that that person puts work your company's way, you think that – you didn't think that there was anything wrong with

that did you?---No, the way I seen it was that this system of giving gifts was something that was being done out there. I haven't got much idea about it, but I understood that that's the way business operated. And I didn't know -
- -

That's the way Kings business operated?---Well through my limited scope I thought beyond that, but - - -

10 (not transcribable) everybody in the security industry operates that way?---I really don't know.

Well I'm not asking you what you, what you mean when you said that you thought that was the way the business operated?---I thought in general at this level of business.

Why did you think that money was required to be in cash?---I'm not, I wasn't aware of what took place after the cash so - - -

20 I asked you what you thought. When you were asked to write out a cash cheque or a cheque that you knew was going to be converted into cash so it was to barer, why did you think it was necessary to do that instead of drawing a cheque in favour of the payee, a crossed cheque?---I think that was due to the hidden nature of the whole thing.

And why did it have to be hidden?---Because it was a bad business practice.

Why was it a bad business practice?---I guess it's one of those things people do and don't talk about. That's the way I understood it.

30 What's bad about it?---That it looks like someone is gaining a favour or winning a favour through wrong means.

That was what was happening wasn't it?---Yes.

Yes, Mr Strickland?

MR STRICKLAND: You said you had a conversation with John Marinucci?---Yes.

40 That was, was that after he became the finance manager?---Yes.

And was that whilst you had retired temporarily to your home or was it after you returned?---It was when I returned.

So we're talking about 2010, something- - ?---Yes.

And did Mr Diekman tell you that the giving of gifts to key players and consultants was common practice in the security industry?---That's what he said.

And did he say that at one of those two meetings that you've given evidence about?---Yes, yes, he told, he said that on the very first meeting.

10 What did he say?---Well, after saying that to remain visible we need to provide these gifts, he mentioned that it was a common practice.

And did he say which companies followed that practice?---He didn't mention any companies.

Did he ever?---No.

Did he ever give examples of the common practice outside Kings?---No.

20 And were you aware of any companies that followed the common practice? ---No. The only things that came my way when people wanted to sell something to the business they offered different sort of gifts, incentives or, or whatever.

To Kings?---Well, to, to me as the finance manager at the time. For an example like a car, they offered me to drive their sporty car around for the week 'cause we were sort of entering into a negotiation stage to buy some new cars for the fleet.

30 Apart from that conversation with Mr Marinucci did you raise your concerns with anyone else about the practice of giving gifts to consultants and key players?---No. I had raised the, the issue with Peter and Charlie on the basis of the, the entries, the tax entries being incorrect and I wanted to fix those.

But that was more, you raised that in the context of making sure these false accounting records were reconciled. Is that right?---Correct, corrected.

40 THE COMMISSIONER: Mr Poller, I understand your evidence to be that you knew that the cash cheques were going to consultants and key players and I presume, please correct me if I'm wrong, that the large proportion of it was going to consultants?---Yes.

And you don't, you don't know which, no one told you which consultants were going to be the recipients of these cheques, of the money?---I was, I was told from time to time.

And who were the recipients about whom you were told?---I don't recall. May I clarify something?

Yes?---I know it sounds funny, maybe untruthful, but I took not much note in that side of the business because to me the marketing sales and that area of giving gifts and so forth lived in another world to, to where I was.

But from time to time we've seen entries of various types being made in the Kings records that connect the payments to particular jobs. You've seen those?---Yes.

And some of those records are in your handwriting?---Yes.

10

So does that, do those records reflect the jobs in respect of which the payments were made?---I believe so. And where I would have wrote, there was I think a few times where I wrote actual, a destination.

Yes?---Where that destination is I would say that would be based on what I was told.

So Art Gallery?---Art Gallery.

20

Yes, Mr Strickland.

MR STRICKLAND: I just want to ask you some questions about the practice of paying suppliers, contractors and the like. When Kings paid a supplier, I'm talking about a genuine supplier, is it the case that Kings paid that supplier by either a crossed cheque in the name of that supplier or by electronic bank transfer to the supplier's bank account?---I would say 99 per cent by electronic, no maybe 90 per cent by electronic with the rest being cheques.

30

So you mean - - -?---Crossed cheques.

I understand that. Does that mean zero per cent cash?---I can't recall any, anyone having, getting paid in cash from - - -

And that's the same with the, I've talked about suppliers, do you give the answer in relation to contractors or subcontractors, that is where Kings subcontracted work to company X, was it the same percentage, 90 per cent electronic, 10 per cent cheque?---Yes, it would have to be something of that nature. We always tried to pay electronically. That was our total aim.

40

THE COMMISSIONER: Would you ever pay by cheques?---It was quite rare. That's, when I say 90, what I'm trying to convey is - - -

Yes, I understand?--- - - - it was rare.

Yes.

MR STRICKLAND: Now you gave evidence yesterday about a system of false accounting or false accounting records. Before you signed the cash cheque, I'm talking about the – before you signed the cash cheque had you taken any steps in simPRO or anywhere else to create the false invoice and purchase order or did you do that after signing the cheque?---It would happen both ways that either I would have been instructed to, you know to prepare a cheque for a certain amount. I would ask then for the paperwork which would mean a PO would have to be created and converted in an invoice in simPRO, exported to MYOB and then paid as a cheque from,
10 from MYOB and using the cheque book. This also did occur the other way where I was requested a cheque and provided the cheque and then asked for the paperwork afterwards.

Now was it your job to reconcile the information in the accounting record with the cheques and the cheque butts?---Yes.

Or not the cheques, the cheque butts?---Yes, through the bank, yes.

Now was there ever an occasion when Mr Roche or Mr Diekman instructed
20 you to draw a cash cheque when you did not do so?---I can't recall any.

And did they instruct you – when they instructed you to draw a cash cheque was it always by email or was it sometimes by email followed verbally or was it sometimes just verbal?---It would be a mixture of all sorts.

So on occasions you would receive an email asking for – to draw a cash cheque or to get cash. Is that right?---Yes.

And then would Mr Diekman or Mr Roche come to your office and actually
30 stand by while you drew out the cheque and you signed it and they signed it?---Sometimes, yes.

Or would you go into their office?---I can't recall, it was mainly I was in the accounts area.

I'm just trying to understand the process. You'd get an email which was like a primer to you, is that right, to write, get ready to draw a cash cheque, is that right?---That could be or it could be verbal.

40 Okay. On either basis when they came to you and you actually signed the cheque did they give you some information about what the cash cheque was for?---I would know that it's a gift cheque, sometimes they would let me know who it was and other times not.

THE COMMISSIONER: And sometimes they would tell you in respect of what contract it was?---Possibly, yes. That, when the purchase order is, has been made and converted into an invoice in simPRO that, that in itself assigns it to a job.

Yes, I understand that but a choice has to be made as to the job to which it is to be assigned?---Yes.

How do you make that choice?---They, they would make that choice by, when they entered the - or should I say Peter who did that side of it, he would, he would, he would make the choice and enter it.

Peter Roche?---Peter Roche would enter it into the job.

10

But if you take the cheque butt, the cheque butt, for example the cheque butts which say Art Gallery - - -?---Yes.

- - - in your handwriting - - -?---Yes.

- - - why would you write Art Gallery in the cheque butt?---(No Audible Reply)

I mean, who would tell you that - - -?---I would have been told by whoever requested that cheque - - -

20

That it was for the Art Gallery?--- - - - it was for the Art Gallery.

MR STRICKLAND: So when you said that sometimes Mr Diekman or Mr Roche would let you know who the cash was for, did they then go on to say anything about why they were giving cash to that person or for what that person was doing in exchange for getting the cash?---No.

So - - -?---Except I knew they were, they were for gifts.

30

Because of your previous conversations?---That's all.

Because of previous conversations?---Yes.

Now, did they - - -

THE COMMISSIONER: Because this was just a procedure that was being followed?---That's right.

MR STRICKLAND: When they gave you - when they let you know who, who the cash was for from time to time did the, did the same name pop up more than once or twice or was it a new name every time?

40

THE COMMISSIONER: Or can't you remember?---I can't really remember that.

MR STRICKLAND: Do you remember the name Mark Eschbank being mentioned in that context?---No.

Or Mr La Greca?---No.

Christopher La Greca?---No.

You just don't remember the names, is that right?---I, I - no, I didn't, I don't, I really didn't know the names until this inquiry.

10 THE COMMISSIONER: They meant nothing to you?---No.

Until the inquiry started?---That's right.

MR STRICKLAND: The only name you say you have a memory of, some memory of, is Mr Paul, is that right?---Yes.

But did you ever draw a cash cheque without instruction from Mr Diekman or Mr Roche?---For payment of, of - - -

20 Yes, in relation - - -

THE COMMISSIONER: For payment of consultants or other key players?

MR STRICKLAND: Gifts?---No.

It was always upon an instruction from them?---Absolutely.

30 Were there occasions when you were sent an email for cash for a certain amount but when one of them came around to see you the, they asked for a different amount?---Kings operates very dynamically like that so things can change very quickly so that can be a possibility, very likely.

And I'm talking about specifically in relation to cash, the gifts for- -?--- That could, yes, exactly in that, in that situation as well things could- - -

40 Did you ever provide a blank cheque to Mr Roche or Diekman – and by blank cheque I mean where you signed it and perhaps wrote, "Pay in Cash", but left the amount, that is the amount of the cheque, both in number and in word blank?---I can't recall any specific situations, it would have definitely happened, I, I have vague memory on having a, writing out a cheque so, but I, I don't have any memory of it being in connection with the cheques that were for those gifts.

I'll just ask you a little bit about Mr Diekman and Mr Roche's role in the company. What, what was Mr, I'm talking about when you were finance manager, what was Mr Roche's title or position?---He was managing director.

And was he a hands-on managing director?---Yes, he was.

And what do you mean by that?---He would be involved with the operations, he, the staff, every, every aspect of the business he, he was organising and ah, ah, readjusting and trying to make it more efficient, making it run more streamlined and, and fulfilling the needs of all the clients.

So was he a competent managing director in your experience?---Yes.

10 And did he appear to know the details of the business?---Yes.

Now, what about Mr Diekman, how, what was his role in the company?
---Mr Diekman or Charlie, he, he, he was very different to Peter, he, he wasn't very organised but he was, from our point of view he was great with people, he would network, he would make connections and bring in business for the company, but to get him to do anything with paperwork or even get information out of him was very difficult.

20 What kind of information did you try to get out of him which was difficult to get out of him?---Well, just, just even his, his credit card, just finding out what, what he, what, what his expenditures were on his credit card was, was ah, sorry, was, was very difficult.

I want to take you through some of the documents, please. Excuse me one moment. Sorry, excuse me for just one moment. I'll just look for my index. Got it. Could you, could the witness please be shown Exhibit D28. I think I showed you that yesterday. I apologise.

30 THE COMMISSIONER: Yes, that's right.

MR STRICKLAND: I beg your pardon. Could you look at Poller, Poller document 2, please.

THE COMMISSIONER: And that's P2.

MR STRICKLAND: That's P2, thank you. That should have the numbers 99 through to 105. Is that right? Have you got that?---Yes.

40 And can you just go to page 100. Is that your signature on the cheque?
---Yes.

And your writing, please pay cash?---Yes.

And you just go to the back of the cheque.

THE COMMISSIONER: That's at the bottom is it?

MR STRICKLAND: The bottom, thank you. None of that is your writing is it?---No.

Can you tell who you gave that cheque to?---I couldn't, I can't recall it y the looks of what the bank wrote there.

THE COMMISSIONER: It seems to – I beg your pardon?---It seems what the bank wrote there it was taken by Mr Diekman.

10 And the cheque was signed I think by Mr Diekman and yourself. Is that right?---That's correct.

Now the fact that he signed it does that tell you anything about who asked you to sign it?---Yes. Normally that would be, without being totally certain that would be most likely Charlie who asked me to produce the cheque and sign it, but he signed with me.

MR STRICKLAND: Now if you could just, I don't want to ask about them
20 each – sorry, if you just go through each of the cheques and the cheque butts, that's cheque 3227, 3228, the one I've just shown you, 3226. There are three of them. Is the fact that – did you write the name Chubb Security next to payee on the cheque butt?---Yes.

And does that indicate to you that these were cash cheques for gifts to key players and consultants?---That does indicate that to me.

Now I'll ask you this and just in the chance that you can recall it, but do you recall what these, do you remember if Mr Diekman said anything to you about where these three cheques, cash cheques were going?---No.

30 Okay. Thank you. Now if I just take you to – excuse me, one moment, sorry. If you just go to P3 please. Excuse me. Just go to page 174 there's an amount of \$9,000.

THE COMMISSIONER: Sorry, 174? Oh yes, 174.

MR STRICKLAND: Page 174 at the top.

THE COMMISSIONER: Did you find that, Mr Poller?---Yes, I have that.

40 MR STRICKLAND: Does that relate to cheque 3226 in P2?---The, the amounts are the same.

Yes?---It may do so.

So if you wanted to reconcile this purchase, I'm sorry, this tax invoice with, with a cheque, let's just assume it was a cash cheque, how would you do so? What, what information is contained that would allow you to reconcile it?

THE COMMISSIONER: So what information is contained?

MR STRICKLAND: What, what information - how would you know what, whether this tax invoice related to a genuine job or whether it related to a cash cheque for a gift?---That was a, a little bit of a, a problem I guess, since there was another real account called Chubb Security.

10 THE COMMISSIONER: These are to Chubb Electronic Security?---So at one point, I can't recall exactly when, I created a new account called Chubb Electronic Security and then I put all these entries into that account, the entries that were - - -

For cash?---Yes, for cash.

The false entries?---The false ones.

MR STRICKLAND: Excuse me, Mr Commissioner. Can I take to P4 please. I'm now referring you to cheque 3215, again is that your writing on the cheque butt?---Yes, it is.

And your signature on the cheque?---Yes.

And referenced with the fact that you've got a cash cheque where Chubb Supplier is the payee, does that, does that indicate to you that that was cash for a gift for a consultant or key player?---Yeah, yes, it does.

Thank you. And Mr Diekman's signature is also on that cheque, is that correct?---Yes, it is.

30 Now, if you go to P5.

THE COMMISSIONER: Are you dealing with the cheques at 108 and following?

MR STRICKLAND: Yes, I think that's P5, it should be P5.

THE COMMISSIONER: Sorry, before you do that, Mr Strickland, I'll just ask you about the cheque for \$5,000 at 109 and the cheque butt for \$5,000 at 40 108, are they not related then?

MR STRICKLAND: 108 and 109 is cheque 3240.

THE COMMISSIONER: Yes.

MR STRICKLAND: And then 110 and 111 is cheque 3242.

THE COMMISSIONER: Sorry, I didn't realise that that is P5.

MR STRICKLAND: That's P5, yes.

So in relation to both those cheques for \$5,000 each are your signatures on both cheques and your writing on both cheque butts?---Yes.

And again it's the reference to Chubb and it being two cash cheques indicate that these were, to your understanding, cash cheques for key players and consultants?---Yes.

10

Could the witness please be shown D39. This is an email entitled Marketing Budget. And you've seen this before?---Yes.

And what was your understanding of this email and, and, or what do you understand this email was asking you and Peter to do?---This is Charlie's, from my understanding this is Charlie's request that he had paid out money from his own personal account and that, to, if I could use that same term, the key, key players and that he would, he wanted reimbursement for that.

20

When you say to key players, do you mean gifts, is that what you mean? ---Gifts.

Is that what you understand, what did you understand by the words, "I have paid for a number of opportunities?"---That's, that's why I drew that.

THE COMMISSIONER: What are the opportunities, did you know?---No.

What did you understand it to be?---Um- - -

30

Gifts?---Ah, gifts for, yeah, gifts to further the interests of the, the, the business.

MR STRICKLAND: And the very first line he says, "We need to credit all ACG invoices." Do you know what that refers to?---I, I don't recall with any certainty but it would have been, far as I know, a request to credit invoices that we had on our system.

And by credit do you mean- - -

40

THE COMMISSIONER: Write-off?

MR STRICKLAND: Write-off?---So, yeah, write-off, reverse them out.

THE COMMISSIONER: Sorry, write-off?---Write off.

A debt owed by Kings, sorry, by, a debt, to write off a debt owed by ACG? ---On, on the reading, yes, it seems that way.

Who are ACG?---I, I don't recall. I have since, since looked them up and they're a similar security company as Kings.

So did you know what circumstances they would become debtors of Kings?
---I don't know.

MR STRICKLAND: Do you know what the reference at the end of the email, "You can buy me a pool", do you know what that meant?---I think that was Charlie's humour.

10

Saying I paid 47 and a half thousand dollars cash and if you give me a pool we'll call it quits. Is that something like that?---Something of that nature.

Was there any follow-up meeting after this email, did you have any follow-up email, meeting with Mr Diekman or Mr Roche after you received this email?---I, I did, more in the respect of a worksheet that I produced to record some of these differences.

20

Well after you received this email you decided to prepare a worksheet. Is that right?

THE COMMISSIONER: Is that a spreadsheet?---A spreadsheet.

MR STRICKLAND: Right?---I do, I believe that prior to this I – due to the two directors feeling that there was a bit of unbalance between what they were providing for the company - - -

30

THE COMMISSIONER: As between the two of them?---Between the two of them I started preparing a worksheet that put on things that they felt they've, that they've spent for and things - - -

Personally?---Yes, out of their own personal monies and also items that were just fair that they maybe should pay for. And then also included in that were money that they paid out of their own account for what I understood was opportunities or things of, to help put – make Kings visible.

MR STRICKLAND: And you're talking about the gifts - - -?---Yeah.

40

- - - to key players, consultants?---Yes.

Right. So I take – is it true to say that you wanted to create this separate spreadsheet because you did not want to record these things in the company accounts?---That was generally through the Chubb invoice system. This was a separate item that needed to be addressed separately.

I understand. Excuse me. Just bear with me. You had a – you kept - each director had their own separate general ledger account didn't they?---Yes, they did.

Mr Roche's was – you kept it under the heading 3501 and Mr Diekman 3502. Is that right?---That is correct.

What kind of entries were recorded in those two directors accounts?
---Dividends.

Right?---And also payments, loans and also payments that they may take which were of a personal nature.

10

Right.

THE COMMISSIONER: Would those be taken – regarded as loans by the company to them?---Well the tax accountant would work out at the end of the year what exactly was dividend and what was loan and so forth.

I understand that, but what I mean is, excuse me, I understand that Mr Diekman at least from time to time withdrew cash from the company to your knowledge, by way of cash cheques?---As, yes, cash cheques.

20

For his boat or whatever?---He may have.

You seem doubtful?---Like as cash, as a cash cheque?

Yes. You seem doubtful?---I don't, yeah, I don't recall cash cheques.

For his boat?---Not that I can recall.

Do you know what I mean?---Well, I think I do.

30

What I'm asking about is did Mr Diekman ever come to you and say I want to spend some money on my boat, can you provide me a cash cheque for that?---I don't recall.

That happening?---No, I have no recollection of that being ever asked.

Right. But I really am asking about other way - were there other ways in which Mr Diekman or Mr Roche drew cash out of the company?---Through their, through the payroll, through their payments weekly and via dividends and, and a small amount of expenses that they would pay. Otherwise, no.

40

But dividends would be payable at specific times of the year wouldn't they, collectively? Do you understand what I mean?---Normally we would get a request after discussions with PDY and then we would release a certain amount.

Yeah, once they'd seen how much money was in the kitty from profits?
---Exactly.

Those are obviously dividends which are being paid out after discussion with the tax accountant?---Yes.

But were there other payments that were taken out by one or other or both of them which later were set off against the dividends that each received or did that not happen?---Taking it out like as a cash payment I, I wouldn't be a hundred per cent sure but I cannot remember any being that way.

10 All right. Yes, thank you.

MR STRICKLAND: I want to show you two ledger accounts please. The first is for Mr Diekman which goes from pages 77 through to 80 and the second goes - let me just show you this first one for Mr Diekman first, pages 79, they're not (not transcribable) 68 to 80, just have a look at that. Do you, do you recognise that document?---Yes.

And what is it?---It's the general ledger for the specific account Diekman 2-3-5-0-2.

20

I tender that.

THE COMMISSIONER: Yes. The detail from the general ledger account of Mr Diekman from 1 July, 2006 to 30 June, 2006 is P16.

MR STRICKLAND: I think you said it was 30 June - the last date is 30 June, 2007.

30

THE COMMISSIONER: Sorry, that's correct.

So where do you see dividends on this account, Mr Poller? Can you recognise those?

MR STRICKLAND: I'm sorry, Mr Commissioner, it should have - the dates, it should have it should be this bundle contains details from 1 June, 2006 - sorry, the financial year 2007 to financial year 2010/11. It contains information from all those bundles.

40

THE COMMISSIONER: Right, thank you. The description of the document should be that articulated by Mr Strickland.

**#EXHIBIT P16 - KINGS SECURITY GROUP GENERAL LEDGER
DETAIL FOR 1/07/2006-30/06/2007-,1/07/2007-30/06/2008-, 1/07/2008-
30/6/2009, 1/07/2009-30/06/2010, 1/07/2010-30/06/2011**

MR STRICKLAND: Could we just start at page 79. So if I can just understand how the system worked, the first entry GJ000139, that GJ relates to general journal, is that right?---That's right.

And so there's an expense claim and Mr Diekman is credited \$160, is that right?---Yes.

So can you just explain that, please?---I'm just refreshing my - - -

10 THE COMMISSIONER: Are you asking about the particular nature of it or
- - -

MR STRICKLAND: That's right. I just want to understand why is that - what are the circumstances in which you would have been credited with that payment? I can, I can assume things but I'll let you - - -?---Yeah, that's all right.

Look, I'll come back to that, okay, if you're having difficulty with that I - - - ?---I was, I was just trying to - sorry.

20

It's okay, no, I'll come back to that. I'll just, I started you with a difficult one. Let's just do the next one, 4038, 31 August, '08 Oxa Painting, debit 2,000. Do you see that?---Mmm.

You've got to answer verbally?---Yes.

Now so is that a case where it appears Mr Diekman has purchased a painting using Kings' account but it - and - but it's for his personal use and he's been debited \$2,000, is that, is that right?---Yes.

30

You, are you, do you need some time to look at this document?---Ah - - -

If you do, just say so?---Just, sorry, just let me, let me think. It was, it was a liability account - - -

Mr Commissioner, this - to be fair to this witness, he has not been shown this document before and I, and I wonder if we could take an early morning tea?

40 THE COMMISSIONER: Yes. We'll adjourn for 10 minutes.

SHORT ADJOURNMENT

[11.21am]

MR STRICKLAND: Have you had a chance to look at this document?
---Yes.

And are you more familiar with its contents now?---Yes, I am.

So if I can just take the one that I was asking about on 31 August, '06, Oxa painting, 2000, what's the – what actually happened that made you record or that caused that entry to be recorded?---In the liability account a debit is a decrease to – of the debt of Kings therefore increases the debt of the person which is Diekman. Thereby most things in the debit column are for personal items and most things in the credit column is for payments provided or things owed.

10

In relation to – I'm just using this as an example, in relation to my question the 31 August, '06 debit of \$2,000 does it appear to be the case that Mr Diekman purchased a painting and then that – he purchases that from a Kings account and then that gets debited against his own personal directors account. Is that what appears to have happened?---Yes.

And if you just – to give you another example, if you go to page 63.

THE COMMISSIONER: 63?

20

MR STRICKLAND: 63, they're not sequential, P16 is organised, anyway they're not sequential.

THE COMMISSIONER: It doesn't matter.

MR STRICKLAND: You can ignore for the purposes of sequence the numbers on the top right hand corner. It's the fifth page of P16. Have you got that?---(No Audible Reply)

30

And if I can just take you down to the entry 25, sorry 21,808, Charlie Diekman without the N, \$30,504.16 and the next entry 25,808 AJ Newman credit \$30,000. Do you see that?---Yes.

Do you recall that related to a car that Mr Diekman purchased? Do you remember Mr Diekman buying a car?---I can't recall. I remember his wife had a car, it might have been a payout for a lease or something that they took over or - - -

40

Okay. But in any event on 21 August, '08 some – Mr Diekman or his wife spend 30,504 of Kings money. Is that right?---It would look that way, yes.

And then four days later it appears they pay \$30,000 of that back to Kings which is why it's credited?---It would appear that way, yes.

And that's how this account worked is it?---Correct.

Okay. So, okay. Let me just, I'll take you to another example in Mr Roche's – if just have a look at this document and this is the general ledger

for Mr Roche. And again Mr Commissioner, they're not – the pages are not numbered sequentially but rather they are ordered chronologically. So they are, it's the general ledger for Roche from 1 July, from financially 2006, 2007 to financially 2010, 2011. Do you recognise that as the general ledger for account 3501 being Mr Roche's account?---Yes.

I tender that.

10 THE COMMISSIONER: So this, this runs – this is detail from Mr Roche's general ledger account with Kings for the period from 21 August, 2006 and 19 May, 2011 and so that will be P16. Sorry 17 is it, I beg your pardon, P17, yes.

#EXHIBIT P17 - GENERAL LEDGER DETAILS FOR FINANCIAL YEAR 1/07/2006 – 30/06/2007, 1/07/2007-30/06/2008, 1/07/2008-30/06/2009, 1/07/2008-30/06/2009, 1/07/2009-30/06/2010, 1/07/2009-30/06/2010, 1/07/2010-20/6/2011

20

MR STRICKLAND: So if I can, if I can just take you to page 73, page 73 of this account, 73, please. Just go to 30/11/09.

THE COMMISSIONER: Do you have it?---(No Audible Reply)

Do you have it, Mr Poller?---Yes.

What date is it, sorry?

30 MR STRICKLAND: 30/11/2009. And you can see a debit of \$50,000? ---Yes.

Now, is it the case that from time to time the company loaned money to directors?---I know Peter took a loan. I can't recall any other loans of any significance.

Does that, from your memory was that \$50,000 a loan?---Possibly.

40 Okay. But in any event, it's, it's some amount of money that Mr Roche took out of the company- -?---Yes.

- - -which you've recorded?---Yes.

For his personal use?---Yes.

And then if you go to page 74, on 7/6/2010 and then later on 21/6/2010, you can see the entries, "Peter Roche LO", and then "Peter Roche Loan Re", \$10,000 each. Do you see that?---Yes.

Does that suggest he's paid on, on those two dates, \$10,000 each in relation to a loan repayment, that is repaying Kings for the loan?---It would, it would seem so, yes. I think he made some payments to his made.

Okay. And therefore that gets credited to his personal director's account?
---Yes.

10 Okay. So is it correct to say this, that every, on every occasion that Mr Roche or Mr Diekman took money out of the company for their personal use, a boat or a loan or a car or whatever, that is recorded in this general ledger?---I worked diligently to make sure, yeah, to have that happen.

So the answer's yes?---Yes.

And if they repaid some of the money by loan repayment or paying back for the car, then that credit is also recorded in the ledger in their, for their personal account?---Yes.

20 So if Mr Diekman said, I want to borrow money for my boat, that gets recorded here?---Yes.

If he repays that money, that gets recorded here?---Yes.

THE COMMISSIONER: So what happens if the company pays him money for his boat?---(No Audible Reply)

Do you recall that ever happening?---Um- - -

30 Have you ever been told about it?---No.

There is no such entry in this ledger account?---As far as I, I'm not aware of any that I've- - -

But had there been, had Mr Diekman come to you and said, I have spent \$10,000 on maintaining my boat, and because the boat is used for the company it has to be repaid to me by the company and had that been agreed to by Mr Roche, that would have appeared in this account?---No. In that, in that case that would then be an expense to the company- - -

40 Yes---?- - -and would possibly go into, since the boat was considered like a marketing area or that sort of networking sort of thing by, by Charlie, I imagine if, if that was the case I would have put it into marketing, but I- - -

But you, but he would have paid it- - -?---I don't remember anything.

Assuming that he had actually paid the money out himself so that he would have to be reimbursed by Kings would it appear in this account?---Possibly and why - - -

But it could also possibly appear in a marketing account?---Sorry, I was just thinking about the actual journal entries if you don't mind.

10 Sure?---I could go possibly two ways. If, if I, if I was probably pushed for time I would be, would debit the expense and credit the bank and if, if I wasn't - - -

Where would it go in the ledger?--- - - - I would probably debit this account here and then credit from this account.

But if you, if you debited it as an expense under what ledger account would it appear?---It would, it would, for a, for a boat it would have to appear in the, in the marketing area.

20 And did that ever happen?---Not that I'm aware of.

Yes, thank you.

MR STRICKLAND: If you just to P17 again. You mentioned journals. The reference GJ refers to general journal, is that correct?---Correct.

What does CD refer to?---Cash disbursement.

30 Right. So if I could just take page 79 - I'm sorry, I beg your pardon, page 62 as an example, the first entry which says "CD Roche Visa"?---Sorry, 62 did you say?

Yes, page 62?---All right. Okay.

Do you have that?---Yes, I have.

40 The second page. If you could just explain that to us, "CD 31 July, '07 P Roche Visa C \$32". What does that, what actually happened that caused that account, that entry to be recorded?---He would have spent something on his credit card of a personal nature.

THE COMMISSIONER: But why is it reflected in this ledger account? ---Because that's where I put all their personal expenses.

I do understand that but this is, this is - so it's an expense that is seen in Mr Roche's personal Visa credit account or company Visa credit account? ---Company Visa account.

I see. So this is, these entries are taken from the company credit account of Mr Roche?---Yes.

And the same for Mr Diekman where you see similar entries in his ledger account?---Yes.

Yes.

10 MR STRICKLAND: He's given a company credit card for example?---Yes.

He goes out to the movies and spends \$32, something like that?---Yes.

You or someone in the finance department sees the actual credit card statement, it shows that it went to a personal expense and therefore it gets, it gets entered into this personal director's account, is that right?---Yes.

Now, what does PJ stand for?---Purchases journal.

20 All right. And so let's just - again, I'm sticking on page 62, if you down to the entry of 1/5/2008 there are two entries, one for 880, another for 4,400 where it's got "Purchase PDY". Do you know what that refers to?---Oh, without total - I'm, I'm fairly sure - - -

Yeah?--- - - - that would be expenses that he incurred for his own personal tax.

THE COMMISSIONER: So what does P - - -?---Tax preparation, sorry.

30 What does PDY stand for, do you know?---It's the accounting company, PDY Partners.

I see.

MR STRICKLAND: So in other words Mr Roche using company money has paid his accountant to prepare his tax, that's right?---Yes.

And then that is again recorded in his personal director's account?---That's right.

40 And entered into a purchase journal?---Yes, that's right.

Because every entry in these, in this general ledger is also entered separately in different journals of the company accounts, is that right?---That's how it works, yes.

Thank you. So if I can get back to this director's equity spread - I'm sorry, it's a director's spreadsheet, is that right?---That's right.

Is that what, is that what you refer to it as, a director's spreadsheet?---
Director's equity account or spreadsheet.

So if I can just, if we can just go back to Exhibit D39 again. And as I understand it, having received this email you said to yourself, well, I'm going to make a record of when Mr Diekman pays money from his personal account for gifts to consultants and key players. Correct?---Correct.

10 Because that will have to be reflected ultimately in what money Kings pays back to him. Is that right?---Yes.

So if he spent let's say 47 and a half thousand dollars on those gifts, because that had a value to the business, namely to keep it visible, that should be recorded somewhere so that he could be repaid. Is that right?---Ah, yes.

But none of those payments for the gifts to consultants was ever recorded in any of the company journals or accounts, was it?---(No Audible Reply)

20 Because that's why you kept a separate directors equity spreadsheet?---Yes, except the Chubb false invoices.

I see.

THE COMMISSIONER: Those were, those were credited to a ledger account- - -?---Yes.

- - -which was inherently false but nevertheless- - -?---Right.

30 - - -stood?---Yes.

MR STRICKLAND: My question, I want to rephrase my question. None of the cash payments from Mr Diekman's personal account- - -?---Yes.

- - -which is, this is what he said here, he's paid himself for the 47 and a half thousand dollars. Correct?---Mmm.

Is that, you've got to, can't say mmm?---Yes, yes, that's right.

40 So that, and we'll just take 47 and a half thousand dollars, his payments from his personal account are then recorded into the director's equity spreadsheet. Is that right?---That's correct.

With a view to repaying Mr King, Mr Diekman that amount or part of that amount. Correct?---Um- - -

That's why you create the account, the spreadsheet, isn't it?---The actual main reason that the spreadsheet was created was to make a balance between both Peter and Charlie- - -

Yeah---?- -so that they, one didn't feel like, I suppose for the sake of tensions and, and peace between the directors, that one didn't feel like that they were paying out of their own personal funds for these items and the other one feeling it was unbalanced in some way.

Yes, but ultimately that balance is going to be reflected in them receiving either a repayment from Kings or some credit. Isn't that right? That's what the- - -

10

THE COMMISSIONER: Well, I thought it was used for dividends so that you would take, in calculating the dividends payable to each of them you would deduct from the dividends payable amounts in the balance in the spreadsheet?---Oh, in, once, once this was going to come to a close, a conclusion, in their personal accounts, to be able to, because towards the end I think ah, if I remember correctly I'm pretty sure that Charlie's spreadsheet entries were much, his money he paid out ah, was much higher than- - -

20

Than, than Peter's?---Than Peter's. So there was this big imbalance between the two of them. To be able to rectify that, I did take some payments, one I wanted maybe between the two of them that they made some payments across to each other and then that would fix it up. Peter wasn't in the position, I remember he didn't have cash at that stage so the other way was that we paid- - -

30

Well it would be Charlie you had to pay. Sorry, no you're quite right. I beg your pardon. So Peter was not in a financial position to pay the imbalance on the spreadsheet?---That's right. So the way that could be resolved is that a, a dividend would be paid to both of them or from that account and then that would be viewed as part of the dividend which – or the overall loan dividend sort of account that, that there was.

Yes, so the balance would be taken care of by issuing a differential dividend so that Charlie would get more dividend than Peter and he'd get more to the extent of the amount that, that he paid out over the amount that Peter paid out?---Something of that nature.

40

Yes. So the only record of – and how would you record that? Would that be in the spreadsheet? Would there be a reference to the dividend in the spreadsheet?---If I can remember when we balanced it off and I've had, I've tried to recall how that operated and I can't with any great certainty, what I can remember is that a large – a payment was – so dividends would have to leave both equally so that there was an equalising of their accounts in MYOB, in the ledger so they're not becoming unbalanced there. And then Peter would have to then pay Charlie - - -

Out of the dividend?--- - - -out of the dividend he received.

I see?---Now I can't remember if that payment went straight over to Charlie directly from the books or basically he received it in his hand and then paid it across.

So in other words the general ledger would show an equal payment of dividends to each of them?--- Yes.

10 But what would in fact happen an increased dividend would be paid to Peter, sorry, no, I'll start that again. But what in fact would happen is that Peter would use part of the equal dividend he received to pay back Charlie?
---Yes.

Yes. Thank you.

MR STRICKLAND: And it's the case isn't it, if we just focus on the directors equity spreadsheet for the forty seven and a half thousand dollars?
---Yes.

20 That none of those particular payments that Mr Diekman made from his private account to Robert H or Dan P, Cam C et cetera, none of those individual payments were reflected in any company account were they?
---Of these ones?

Yes?---No.

No?---I don't think any - - -

30 THE COMMISSIONER: You agree with what Mr Strickland said?---I agree.

MR STRICKLAND: Can I suggest one of the reasons for that is because you wanted to conceal those payments?---Generally the reason of that spreadsheet wasn't for concealing but to equalise - - -

THE COMMISSIONER: No, that's not – we understand that. That's clear?---Okay. I just couldn't, sorry - - -

40 The question is whether – the fact that the items, the detail mentioned in D39 didn't appear in the books and was dealt with in the way you've described was part of the way in which these payments as reflected in D39 were concealed. Instead of showing that the amounts - - -?---No.

MR STRICKLAND: Mr Poller, can I just suggest this, see when, when Mr Diekman pays anything else from his personal account from a company record he goes from his company, he pays for his boat - - -

THE COMMISSIONER: A painting.

MR STRICKLAND: - - - tax records or – sorry?

THE COMMISSIONER: A painting.

MR STRICKLAND: Or a painting, it all gets reflected in the personal accounts, in the business accounts as we've just gone through. Correct?
---Yes.

10 But when he pays from his personal account for business related opportunities, gifts to consultants, if they were honest and above board there'd be no reason not to, to include each of those items in the company accounts would there?---I agree.

So all I'm suggesting to you is the reason they were not included in the company accounts was to conceal those payments.

THE COMMISSIONER: Conceal the detail of it, conceal the true purpose of them to whom they were paid?---(No Audible Reply)

20

When I say to whom they were paid, consultants and important players?
---No. Could I explain?

Yes.

MR STRICKLAND: Yes, please?---I don't think it was, and especially not Charlie, it was organised to some great extent I think he had to probably make payments and sometimes he would basically make the payments out of his own money from what I understand. Not, not necessarily for the sake of concealing it but for convenience.

30

THE COMMISSIONER: Yes, but even then had it all been above board you would have recorded repayment to Charlie Diekman because, in relation to - of say \$15,000 for Robert H but that never, you never see that in the books?---Yeah. If there was an invoice and, and a job done I would imagine it would go through, it would, it would go through the books.

MR STRICKLAND: Mr Poller, let's just, let's just use Robert H as an example. Let's say that Robert H had provided some above-board marketing advice for Kings, just assume that?---Okay.

40

He had prepared some documents and he had - marketing documents which Kings used for marketing its company, just assume that will you. And then Mr Diekman pays for that out of his personal account. That's an expense, that is a legitimate business expense to Kings isn't it?---Yes.

Which Mr Diekman has happened to pay for for whatever reason out of his personal account?---Yes.

Do you agree with that? And there would be no doubt in that circumstance that that expense of - that legitimate expense of \$15,000 would be recorded in one of the journals, in the company records together with the fact that Mr King, Mr Diekman had paid for it and then when the company had repaid Mr King for that \$15,000 that would also be recorded in that account. You'd agree with that?---That would be the normal proper way.

10 Yeah. But the reason why these payments were not recorded in the company accounts was because it was known that they, these payments were not for a legitimate, legitimate legal purpose, do you agree with that? ---No.

Then why weren't they recorded in the company accounts?---Well, I won't doubt that the, the purpose is as, as we can see is not correct, is wrong.

What do you mean not correct?---Is wrong.

20 What do you mean wrong?---Well, from what, my understanding of all these is that they're payments of gifts and now I've come to understand complete, I hope, hopefully in a more complete way that these are, these are not acceptable, that they're illegal.

THE COMMISSIONER: Yes, but why weren't they recorded, you were going to explain why they weren't recorded?---Yeah. Okay. I, I understand that basically that the reason why they weren't recorded down is that they made these payments out of their own account or Charlie did because of convenience and maybe - because the other option was to pay to use the cheque.

30 Yes, sorry, just repeat your, repeat your answer?---To use the, to use the, the, the cheque, dummy cheque, false cheque, false invoice with the dummy cheque and they could take the money out of the company that way. I do think overall it was done out of convenience.

Mr Poller, if you take Mr Strickland's example- - -?---Yes.

40 - - -with Robert H and a notional advice that he'd given legitimate services, that would be an expense of the company. Not so?---Yes.

Even though paid for by Mr Diekman personally but reimbursed by the company to him- - -?---Yes.

- - -that would be an expense of the company and it would be an expense incurred in the course of earning income?---Correct.

And you would be very keen to show it in the books- - -?---Yes.

--because you would properly reduce the profit--?---Yes.

--and you would end up paying less tax?---Correct.

But you didn't do it with these?---No. Oh, okay, I do understand what, yes, I understand that.

10 And the reason why you didn't do it I suggest, well, when I say you, let me
put it neutrally, the reason why Kings didn't do it in the case of these items
in D39 was although it would have resulted in less tax being paid had they
been properly recorded, it was too dangerous to record them because it was
understood that it was wrong?---It, it definitely was ah, understood that it
was, it was wrong in the sense it was bad business practice from my point of
view but the, I guess, I guess there were other entries there too which just
throws me a little bit in the sense that Charlie used the company car,
occasionally he'd just jump in a car if it was, you know, in there, if we had
the spare car he'd be using that all the time. At one stage after a lot of
talking we, we got the directors or, you know, requested and they agreed to
20 go off having their own cars and go to a car allowance. Both of them agreed
to that and we did that and, and Peter got himself a car, but Charlie never
ever got a car for himself and he just kept on using the company cars that
were available.

For private, for private purposes?---For, for his own, yeah, for, for going,
for, for both business and private. That, that being the case, the way I sort
of looked after that was, that's, and probably one of the biggest reasons why
the spreadsheet was created at the start is to record this indifference where
Charlie was getting something extra out of the company and Peter didn't
and he started, Peter was starting to follow what the company, the company
30 was, where the company was going in that regard but Charlie was
procrastinating on getting a car and wasn't following that, therefore to make
it fair, that's where that started. I think--

I think we, I really do understand that one of the purposes was to make it
fair, that's why the spreadsheet was created?---Yeah. When--

What I'm getting at is, why wasn't the detail recorded so that the company
would pay less tax?---Yeah, yeah, I, I agree with what you mentioned before
about the, the less tax and the--

40

Yeah?---It would have been, if, if they were--

Legitimate expenses?---Legitimate expenses, we, we would have put,
Charlie would have asked for reimbursement straight from the company.

Yes, but it was done this way just to, for fairness as between Charlie and
Peter, number one reason, but also a reason is that he didn't want to show
what these amounts were really for?---Well, I agree.

Yes, Mr Strickland?

MR STRICKLAND: And where is the director's equity spreadsheet?
---It would have been on my drive and possibly on the main drive when I passed it over to John, and also on an email.

10 THE COMMISSIONER: I understand that it's not on the, on the drive that you passed over?---I've come to understand that, sir.

So where do you think it is?---I don't know.

MR STRICKLAND: Did you ever print off a copy or copies?---I think I did when we were going over the balancing of them.

When you say when we, who do you mean by we?---Charlie, Peter and Charlie and, separately.

20 THE COMMISSIONER: Did they each have a copy of the spreadsheet personally?---Yes. Or at least, well by email.

Yes?---And I think I also took a hardcopy one time because it took more than one visit to resolve it.

Well I can only say that the Commission through its forensic experts has been unable to find the spreadsheets on the computers. And so do you know why?---I don't.

30 MR STRICKLAND: Have you had any – have you ever attempted to find a copy either on your computer or a hardcopy of it?---Yes, I have.

Without success?---Without success.

And have you, have you ever asked Charlie Diekman and Peter Roche about whether they can find a copy of it?---No.

40 Have you ever had any discussion since you were first asked questions by the Commission some time ago, have you ever asked, have you ever spoken to Mr Diekman or Roche about this spreadsheet?---No, I haven't.

Have you spoken with them – either of them at all about the subject matter of this inquiry?---No, I haven't.

Have you been in contact with them – when's the last time you were in contact with them, either of them?---When, when I left and finalised my details and that was mainly with the new accountant.

Okay. Do you remember the date that you left?---It was at the end of June.

2011?---Yes.

And had you, had you had any discussions with Mr Roche or Mr Diekman about the subject matter of this inquiry, that is cash payments?

THE COMMISSIONER: Since you left.

10 MR STRICKLAND: Since you left?---Since I left, no.

Okay. Well what about before you left?

THE COMMISSIONER: He has given evidence about that.

MR STRICKLAND: That's right. I beg your pardon?

THE COMMISSIONER: He has given evidence about that. You've told us about that. Have you got anything else to say?---No.

20 MR STRICKLAND: Could you have a look at please Poller 6.

THE COMMISSIONER: P6.

MR STRICKLAND: P6. Now I just want to ask you about cheque 3400 for 4,998.80. That's your, is your signature on – excuse me, I'm sorry. I meant 3401, I beg your pardon, which is on page 118. Is that your signature and writing on 3401?---No.

30 THE COMMISSIONER: I think it's 119.

MR STRICKLAND: It's page 119. Sorry, did I – page 119 cheque 3401? ---I'm looking at that. It's my writing, please pay cash, cash and the amount written out there.

Okay?---And the, and the, yeah, the amount numeral and alpha.

Okay. Now that's, is it the fact that it was for cash and the payee was Chubb does that indicate to you that was a payment for consultants or payments for gifts?---Yeah, it looks that way to me.

40 Now do you recall now why it was for that particular amount?---No.

THE COMMISSIONER: Why is it, do you know why it's marked cancel? Is it marked, is that what I read cancel on page 117, cheque butt?---It is cancel. I can't recall why.

MR STRICKLAND: But then you've written, you've actually written on another, on the cheque butt 3401 the same payee and the same amount?--- That's right and, and I can see the words recorded as 3400.

THE COMMISSIONER: All right. So it looks as if it was entered twice by mistake?---It would look that way, yes.

10 MR STRICKLAND: Could the witness please be shown D43. Now, that's a, that's an email from Mr Diekman to Mr Roche copied to you, "Please credit my account." Did you understand - is that something that you did, credit, credit his account?---I, I think this would possibly be referring to the director's equity spreadsheet.

Well, I think if you just go to - look at P16 please and if you go to page 63 you'll see that P63 and 64 which is - there's no, there is no entry at all after 5 November, 2008 where you have credited either \$4,000 or \$10,000 or \$14,000 to Mr Diekman's account, that is the general ledger account, do you agree with that?---Correct.

20 So that would indicate or if you had done any crediting it would have been to this director's equity spreadsheet account?---Yes.

And that's because you understood that - is that because you understood that these two payments related to what?---Money that they - well, I'm not too sure about the \$4,000 but \$10,000 it's clear there that I would understand by that writing that it was cash paid out.

For gifts for consultants?---For gifts, yeah.

30 Okay. And do you know, can you - do you know anything about the \$4,000 cash to CDPR, why that amount should be credited to his account?---No. There's a slight recollection I have of - no, I won't - it's best not to say, I don't know.

You don't know?---No.

40 If you didn't know - were there occasions when you got an email asking you to do something or you were copied into an email asking you to do something and you didn't, you didn't know what was meant did you then go around to Mr Diekman or Mr Roche and ask them what they meant?---Oh, I would, yes.

Could the witness please be shown Exhibit R11 and 12 and 18 and 20. I want to ask you about the cheques together and I'm asking you about cheque 3532 and 3533, first, if you can just look at the actual cheques themselves which are the second page of R11 and the second page of R12 and do you recognise your signature on those cheques?---Yes.

And is that your writing?---Yes.

And you've written, have you written on the respective cheque butts?
---Yes.

And I can, I can, if you accept from me that these, the date of the cheque is before Mr Diekman went to an international security conference in Las Vegas which was in March 2009. Does that sound right to you?---I, yeah, I accept that.

10

And do you know, do you recall the circumstances in which you wrote these two cheques?---Not, not clearly, but I would have been asked to write out cheques for the travel.

And is, is, does Mr Diekman's signature also appear on those cheques?
---Yes.

20

And do you recall what he said about, you've written there, "Pay Vegas conference." Do you recall, is that, did you write that because he told you that's what the cheques were for?---Yes.

You wouldn't have written that out of your own, off your own bat?---No.

Do you recall why two cheques for \$10,000 each was written rather than one cheque for \$20,000?---No.

Did you ever, was that on your, was that your idea or was that as his instruction?---At his instruction.

30 Did he tell- - -

THE COMMISSIONER: We often see this?---Sorry?

We often see this happening?---Yes.

There are cheques for \$10,000 written out on the same day. Do you know why?---No. If it came to cash cheques, for cash purposes there's that FTRA report or whatever.

40

MR STRICKLAND: Financial Transaction Reports Act, is that what you - - -?---That's right. And of course the cash cheques which were named Chubb, I think it may have been discussed to, as part of the discussions that pursued that conversation to make sure that they were under 10,000 I think. But um- - -

THE COMMISSIONER: Who participated in that?---It was, it was at the second meeting with Peter, Charlie and myself, but at the same time it's for

amounts under 10,000 so I don't know why they ever went over, I'm not sure, I don't know.

MR STRICKLAND: In any event, they said to you that they believed that if the, if the cheque, if the amount was 10,000 or less then they wouldn't have to, Kings wouldn't have to comply with the Financial Transaction Reporting Act requirements. Is that, was that the nature of the discussion?---Yes, that the, a report wouldn't be issued or whatever.

10 By the way, if you just go to those cheques again, did you write the word, words, "Amex"?---Yes.

And why, why did you write the words, "Amex"?---'Cause Charlie instructed me.

And what did you understand, why did you understand he instructed you to write Amex?---My belief was that it was for travellers' cheques.

20 For whom or for what purpose?---For the purpose of the Vegas conference and the ones that they took along there.

And for the ones they took along there?---Yes.

Were any names mentioned to you?---No. The, well, I, I knew, I knew that ones that were involved were sometimes some employees went along and, and then other ones who were involved with it as well. The, the, I'm not sure if it was clients and consultants and a whole mixture of people that are in the networking community.

30 Did he mention the name Maurice Ciot, C-I-O-T?---I've never heard that name before.

If you just go to, if you could just be shown R18 and 20.

THE COMMISSIONER: Sorry, D18 and 20.

MR STRICKLAND: I'm sorry, R, R18 and 20.

40 THE COMMISSIONER: R, I beg your pardon.

MR STRICKLAND: I'm sorry, R18, I'm sorry, I beg your pardon. Yes, R18. Now that's a remittance advice, well they are two remittance advices for both those cheques. Is that right?---Yes.

And did you record those details in that remittance advice, that is that the cheques for Vegas conference and travel?---Yes.

Thank you. Could you be show, could you also have a look at R13 and 14? I beg your pardon just R13, I'm sorry. And again is that your writing on those two cheques and the two cheque butts?---Yes.

And is Mr Diekman's signature on those two cheques?---Yes.

And again you've written pay Amex Vega conference?---Yes.

10 Now I want you to assume that the Vegas conference, they returned from the Vegas conference in, Mr Diekman returned on 7 April, 2009. Do you accept that?---I accept that.

And do you know why you wrote out two cheques pay Amex a month after Mr Diekman returned from the Vegas conference?---No.

Did you regard it as odd that he was asking you to write two further cheques for \$20,000 for a conference that had already occurred and also to pay Amex?---No.

20 And why didn't you regard that as odd?---I suppose it's an area that I don't sort of get involved with, that networking side of things. The, the conference and I wasn't even sure when it, when it actually had taken place.

THE COMMISSIONER: So you're really saying you didn't think about it? ---I never really gave it much consideration. I do know that it was a cash strain on the company and something I wasn't totally happy about, but beyond that it was, I was told that it was a necessary item for the company to advance, make contacts and eventually they wanted to reward certain – because of the entertainment part of it I guess it was a reward for some of the sales guys as well as promoting some of the, the networking as well as they would be rewarded because it was an entertainment type of activity.

30 MR STRICKLAND: But assume you knew that Mr Diekman already returned from the conference, did it, did you know why it was necessary to write out the cheques to American Express for \$20,000?---No.

Did he tell you anything about the purpose of these two cheques, cash cheques?---Not that I can recall.

40 Did he say that they were – he needed them, excuse me, did he say he needed them to repay any gambling debts he had incurred?---Not that – I can't recall that being said.

Just have a look at R19 please. And did you record those two cheques in the remittance advices as reflected in those documents?---Yes.

Thank you. Could the witness - could you, I've finished with that, thank you. Could you look at P7 please. I want to ask you about cheques 3558 and 3559. Are they your signatures and writing on those two cheques?
---Yes. Ah - yes.

And who was the, who's the other signature?---Charlie. The, on cheque 3558 that could, could have been Peter's on opening up the cheque and the writing petty cash was someone else's. It might have been Lauren or Janet.

10 Okay. Now, do you see on both those cheques and the back of the cheque there is the name David McMicking?---Yes.

Do you recall giving him those cheques?---No, I can't recall.

So I've now shown you six cheques where, which have been recorded as the Vegas travel, is that right?---Yes.

And I think they total something in the order of 50,000 or a bit less than, before 40 to \$50,000?---Right.

20 Does that surprise you?

THE COMMISSIONER: For what year? Is it all for the same year?

MR STRICKLAND: All, all, all within - we're talking about February, March and May 2009?---I'm, it was - yeah. It was always a cash drain. In that way I sort of was resigned to not, to question it.

30 THE COMMISSIONER: Resigned to not question it?---Mmm. I had to, I accept that, you know, it was a, it was a money, you know sink where cash went out of the company.

MR STRICKLAND: Well, it's actually, it's a total of \$48,000 over those three months. Did you - from your knowledge of the actual expenses for Kings' employees including Mr Diekman to fly over there and stay at Las Vegas, that wouldn't have equalled \$48,000 would it?---If you're asking me now, yeah - oh, actually, I don't, I don't really know to tell you the truth.

40 THE COMMISSIONER: You've never been to Las Vegas?---I've never been.

MR STRICKLAND: In any event - - -?---(not transcribable) out of Australia.

- - - you never asked Mr Diekman or Roche why are you spending so much money, why is the company spending so much money for this trip?---No. I think there was a, there was some sort of meeting, it was, it was, it was different than all the other meetings, possibly brought up in a finance

meeting or something about - this is before the trips were ever started where they told me, oh, I think oh, I can't be a hundred per cent sure if it was Charlie but saying that we needed to attend the meetings and one, one, one of those things was is, is they, you know, wanted to sort of say well, this is what we're going to be doing as an expense, to be going to the conference in, in Las Vegas. I put a bit of resistance up for the cash reasons but beyond that, no.

10 But was there a discussion that - - -?---So I accepted it from point of time onwards.

Was there a, at that meeting or at any other meeting, was there a discussion that some of this cash payments going to the Vegas conference was part of the gifts to consultants or key players?---No, but I, I, I know that they, I don't know if it was shouting or took them or whatever the case was, but they were involved with different people, part of the, the networking circle.

THE COMMISSIONER: At Las Vegas?---To the Las Vegas conference.

20 Las Vegas.

MR STRICKLAND: Did you understand, and let me now ask not just about this 2009 conference, but any Las Vegas conference, you knew that Kings or Mr Diekman went to the Las Vegas conference several years while you were there?---Yes, there, there was a few times, three or something, I don't know.

30 And this system of paying cash cheques for the Vegas conference wasn't just in 2009, was it, it was in other years as well?---Yeah, there, there was, I'm sure.

40 So was it ever your understanding of any of the Vegas trips that Kings was, were giving gifts to consultants or key players in the form of paying for their air flight to Las Vegas or paying for their accommodation or paying for things while they got to Las Vegas?---I, I, I can't say with any ah, certainty. I know it went to, to, see, I really don't know, I'd be, I'd be just guessing at it. I know there was, you know, for their entertainment and everything like that, what they spent it on, I don't know. The, the, I, because, because of the, because of the way travel, because it was travel so forth I had requested from Mr, from Charlie Diekman for a log but Charlie wasn't very good at paperwork at the best of times and to create a log just didn't, didn't work out. I think I requested a few times, I think maybe even John had or something at one stage.

Could I ask you to turn to P8, please.

THE COMMISSIONER: Mr Strickland, I think this might- - -

MR STRICKLAND: Oh, yes, yes, thank you.

THE COMMISSIONER: If you don't mind.

MR STRICKLAND: Not at all.

THE COMMISSIONER: This will be a convenient time for me to adjourn.
We'll adjourn till 2.00pm.

10

LUNCHEON ADJOURNMENT

[12.43pm]