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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION CHARITY

Reference: Operation E10/0035

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 24 FEBRUARY 2011

AT 2.20PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

MR ALEXIS: Commissioner, can I start this afternoon by tendering separately the original vouchers that were shown to Dr Pavlakis during the course of his examination. Firstly, those bearing dates 16 February, 2009.

THE COMMISSIONER: That's 54 isn't it? It's Exhibit 54 as I, according to my notes.

MR ALEXIS: Yes.

10 THE COMMISSIONER: That's the next exhibit on my list. If that's wrong it will be changed later.

MR ALEXIS: And so - - -

THE COMMISSIONER: Yes, so Exhibit 54 A to E respectively are five non-order vouchers all dated 16 February 2008. Is that correct Mr Alexis?

20 **#EXHIBIT 54 – NON-ORDER VOUCHERS DATED 16 FEBRUARY 2009**

MR ALEXIS: Yes, thank you. Commissioner, and the next tender is those bearing the dates adjacent to Ms Lazarus's signature of 29 May 2009.

THE COMMISSIONER: These are originals are they?

MR ALEXIS: They are, yes.

30 THE COMMISSIONER: The other lot are obviously – Exhibit 55 and these are several, are nine, 55 A to I, I think respectively original non-order vouchers dated 29 May 2009.

**#EXHIBIT 55 – NON- ORDER VOUCHERS DATED 29 MAY 2009**

40 MR ALEXIS: Thank you Commissioner. Commissioner, We now wish to call evidence from Mr Verners Pleiksna. I can see him on a screen on a laptop computer sitting on the bar table and we now see the image up on the large screen and it's –

THE COMMISSIONER: It's the solicitor I think.

MR ALEXIS: I'm sorry, I'm being told it's the solicitor – could I perhaps ask the person that we're looking at on the screen to speak and identify themselves having and we can then establish some dialogue. Hello, can you hear us?

MR SIMS: Yes, I can hear you.

MR ALEXIS: Thank you. Now, Commissioner, we wish to call Mr Pleiksna, could I ask you sir to identify yourself please.

MR SIMS: Yes, my name is Sims, S-I-M-S I'm Mr Pleiksna's solicitor and I seek leave to appear on his behalf.

10 MR ALEXIS: Thank you.

THE COMMISSIONER: Yes, this is the Commissioner speaking, is that Mr Sims, I didn't quite hear that, is it S-I-M-S.

MR SIMS: S-I-M-S.

THE COMMISSIONER: S-I-M-S. Yes Mr Sims, you have leave.

MR SIMS: I'll stand up shortly and my client will sit in this seat because  
20 you can only see one of us at a time, I'll just make an application on my client's behalf for a Section 38 Declaration under the ICAC Act.

THE COMMISSIONER: Yes, then client, that's Mr Vern Pleiksna is it?

MR SIMS: That's correct.

THE COMMISSIONER: Well, pursuant to Section 38 of the Independent  
Commission Against Corruption Act I declare that all answers given by Mr  
Vern Pleiksna and all documents and things produced by him during the  
30 course of his evidence of this public inquiry are to be regarded as having been given or produced on objection and accordingly, there is no need for him to make objection in respect of any particular answer given or document or thing produced.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT  
COMMISSION AGAINST CORRUPTION ACT I DECLARE THAT  
ALL ANSWERS GIVEN BY MR VERN PLEIKSNA AND ALL  
DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE  
40 COURSE OF HIS EVIDENCE OF THIS PUBLIC INQUIRY ARE TO  
BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON  
OBJECTION AND ACCORDINGLY, THERE IS NO NEED FOR  
HIM TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR  
ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Now I think the next step will be for Mr Pleiksna to appear on the screen and he will be sworn in. Now, Mr Pleiksna, do you

want to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR PLEIKSNA: I affirm the truth of the evidence.

THE COMMISSIONER: Yes. I will ask my associate to read the affirmation to you.

THE COMMISSIONER: I'm sorry, I didn't hear the answer?---Yes, I do.

Yes, thank you.

MR ALEXIS: Thank you, sir. Could you please state your full name?  
---Full name is Verners Pleiksna.

10

And what's your current occupation, sir?---Marketing Director for a company called Inter Medical Pty Limited.

Thank you. And is it the case that in relation to the matters that the Commission is inquiring into you've provided a written statement of evidence dated 7 October, 2010?---Yes.

Have you had occasion to read that statement recently, sir?---I did at the time, yes.

20

Thank you. But have you had occasion to read that statement recently?---I believe I looked through it morning when I was alerted to the fact that there'd be some (not transcribable) points raised again.

At the time you gave the statement should we understand that the contents were true and correct to the best of your ability?---Yes, to the best of my knowledge they are true and correct.

30

Thank you. I'm just going to tender your statement to the Commissioner, Mr Pleiksna, if you could just stand by.

THE COMMISSIONER: Yes.

MR ALEXIS: Yes, thank you, Commissioner, I tender Mr Pleiksna's statement of 7 October, 2010.

THE COMMISSIONER: Mr Pleiksna's statement of 7 October, 2010 will be Exhibit 56.

40

**#EXHIBIT 56 - STATEMENT OF MR PLEIKSNA**

MR ALEXIS: Now, Mr Pleiksna, you've told us a moment ago that you're a Director of Inter Medical Pty Limited. Should we understand that company was one incorporated on about 6 June, 2009?---I think that's about the correct date, yes.

Thank you. Now, you are a Director of that company I think with your son David, is that so?---That's so.

And a third Director by the name of Cameron Parry, that's P-A-R-R-Y, is that so?---That's correct.

Thank you. And should we understand that that company Inter Medical Pty Limited has conducted business from about the date of incorporation in June 2009?---Yes.

10

Thank you. Can I just ask you a question or two about another company, a company known as MedexTest Corporation. Should we understand that you were a director of that company?---Yes, previously.

You've resigned your directorship I think in about June, 2009. Is that so? ---That's correct. Yes.

And were you a director of that company in May of 2009?---Yes, I would have been still a director, yes.

20

All right. And should we understand that your son, David and Mr Parry were also involved in MedexTest Corporation at the time?---Yes.

In May of 2009? Is that so?---That's correct.

Thank you. Now in relation to MedexTest Corporation and the other company Inter Medical have both conducted business in the suburb of Thornleigh in Western Australia?---That has been the address until just a week ago, yes.

30

But in May and June, 2009, is that where we should understand each of the companies carried on their business?---Yes, they operated from there.

Now Mr Johel Neiron is a gentleman I gather is known to you?---Yep, he is, definitely, yes.

And should we understand that he, that is Mr Neiron, has any involvement in the two companies we've discussed, the Inter Medical company or the MedexTest Corporation company?---He has no involvement with Inter Medical whatsoever. But he was a major shareholder in Medex. He still is as far as I know.

40

We just need to distinguish I think between the Medex company to which you are referring?---MedexTest Corporation.

Yes. And - - -?---A primary shareholder and I think the CEO.

All right. Now is it the case that both you and Mr Neiron were directors of Medex Screen (AustralAsia) Pty Limited?---Yes, that's correct.

And you resigned from that company as a director, should we understand in about May or perhaps June of 2009?---Either May or early June.

And did that follow what might be in neutral terms described as a disagreement between you and Mr Neiron?---Yes, over a number of issues and also so there would be no conflict of interest in the future.

10

All right. So we should understand that in the result of that disagreement you and Mr Neiron ended your commercial relationship with one another. Is that so?---It actually ended in early, very early 2009. It was the last time that I recollect ever speaking to him.

20

All right. Thank you. Now if the system is working properly for us, Mr Pleiksna, you should have available to you some documents that have been sent over to you in anticipation of you being asked some questions about them. The first document I wish to go to is an email dated 4 May, 2009, pardon me, dealing with some travel arrangements. Could you locate that email, please?---Yes. I have a copy of it here now.

30

Right. Just bear with us Mr Pleiksna, we're looking for a copy so that the Commissioner is able to follow your evidence. Well, Mr Pleiksna, we're still looking for another copy, I might just ask you a couple of questions, we may be able to get through this reasonably quickly. Should we understand that you sent an email to Ms Sandra Lazarus on 4 May, 2009 dealing with the subject of some flight arrangements between Perth and Sydney that were in place later that month?---Yes.

40

Thank you. And, Commissioner, could I show you a copy of the email that is being identified and apologies for not having that available earlier. And attached to the email is what is described as a flight itinerary for both you and your son, is that so?---Yeah, that's correct.

And is this a true copy of the email that you sent on that occasion with the itinerary?---I believe it to be, yes.

Thank you. Now, should we understand from the proposed itinerary that you were planning to travel from Perth to Sydney on 6 May returning on 8 May?---That's correct.

And while you were in Sydney you were proposing to see a number of professors and we can identify them I think from the fourth line of your email, the first one is a Professor Balmrid, do you see that?---I see that.

For the transcript that's B-A-L-M-R-I-D. From what hospital was Professor Balmrid being seen at?---I don't know. I had nothing to do with her whatsoever and she was mooted as being somebody that we should talk to.

All right. Now, the next name is a Gil Burton. What hospital were you looking to see Dr Burton at?---We were, I understand that we were going to meet him at the North Shore Hospital in Sydney.

10 Thank you. And there's also a reference to either Professor or a Doctor Gillett and Carmalt, where were you proposing to see either or both of those persons?---Well, whenever they would make themselves available, they were attached to one of the clinical trials, I hadn't spoken to either of them every before.

All right. Now, just looking at the email after the reference to those names, a couple of lines down, do you see that you've said the, words to this effect, "We are there to conclude what you started for us." Do you see that?---Yes.

20 And can you just explain to us what that's a reference to?---Well, I think it's to do with the whole process of clinical trials because up to that period of time we'd had no, well, very little direct contact with any of the parties involved because that was the domain of Johel Neiron but because we were not getting information or it was not coming out clear to us we felt that we were duty bound to at least make the investigation as to what really was happening.

30 I see. And if you just go back up the email to the second line, you there seem to be either asking or suggesting to Ms Lazarus that under no circumstances at this point are you to let slip to Johel, that's a reference to Mr Neiron is it?---Correct.

Or Mr Harradine, that the, that's his co-director, isn't it?---Co-director, yes.

Yeah, that we are meeting with you?---That's correct.

40 Now, is there, let me withdraw that, was there a particular reason in May of 2009 why it was important for you that Mr Neiron wasn't aware that you were meeting with Ms Lazarus?---Well, two things, one they were not directors of MedexTest Corporation so that was privileged information and B, we were very unhappy to say the least about the transparency of all the information relating to clinical trials and we needed to somehow or other do some due diligence without flagging what we were really doing.

Thank you.

THE COMMISSIONER: This is the Commissioner. I don't understand what this had to do with your company as May, 2009. Could you explain that please?---Yeah. In May, 2009 I was the director of MedexTest

Corporation and I was simultaneously still a director of Medex Screen (AustralAsia). And Medex Screen (AustralAsia) had commissioned three of those trials, so therefore I did have a duty of care as a director for those companies to work out what in fact was happening, because with Neiron, he'd really abandoned the company two years, almost two years earlier and we virtually had no connection. And all we got were some letters coming in from other parties asking us questions to which we had no idea. So this was really like an investigatory trip to find out what, how the land really lied.

- 10 If Mr Neiron had abandoned the company two years before, why would he be interested in this?---But he was still a director of the company and he was the one that said that only he was going to do anything with clinical trials. And here we were being asked by some of these parties to address matters which we were, were relative to the company that he was still a CEO of.

Who asked you?---Well it was important for us to know (not transcribable)

- 20 Who asked you please?---These trials were really happening because we'd had letters from, from memory one or two of the hospitals about the conduct of these trials. We had no dealings with them, it was very difficult to actually know anything.

What, what gave vice to the sudden visit in May?---Well because, because earlier that year, 2009, we'd had letters coming from hospitals and doctors at which those two clinical trials were still being conducted as far as knew, were being finalised. And they were being addressed to us to attend.

What hospitals?---Sorry?

- 30 Communications from what hospitals?---I'd have to refer to my (not transcribable) but I feel it was from, a doctor from St Vincent's Hospital and I think also the Concord Hospital.

Was it Strathfield?---At Strathfield, yes, Strathfield, Concord, yes.

- 40 So you had queries from Strathfield and St Vincent's, so why did you go and want to see Royal North Shore?---Well we were told that, that Dr Gillett was involved in one of those trials. We went to see him as a result of the letter that we received on 6 May claiming that there'd been a pilot trial done, conducted through Sandra Lazarus for cervical cancer.

And just explain to me please, had the dispute between you and Mr Neiron already commenced at that stage?---I'm sorry, I missed that last bit, please (not transcribable)

The, by May, 2009 were you already in dispute with Mr Neiron?---Yes, earlier.

When did that start?---Start of the clinical trials or - - -

No, the dispute?---Almost a year before that because he was not furnishing us with any of the reports whatsoever and forbade us in having anything at all to do with clinical trials.

When did the dispute with Mr Neiron start?---Probably 2007 to early 2008.

10 That's between you and him?---Yeah, and also other people that were in the company at the time.

Yes, thank you?---Just that there was just no feedback on any of the clinical trials. We're not allowed to know anything. So obviously when we've started getting letters addressed to a company that he was no longer attending to, we are duty bound in a first of all draw his attention to the fact that he should reply. Then it was evident that there was no reply and then we replied to make sure that the companies that they're referring to, which I think was MedexTest Global, which is another company set up by Mr Neiron in the UK were not to be addressed to us for that particular company.  
20

How did you get copies of these letters from Strathfield Hospital and St Vincent?---They were addressed to either Medex Screen or MedexTest Corporation. And the postal address for that was our address.

MR ALEXIS: Mr Pleiksna, could you look at the itinerary on the third page of the email that we've just been speaking of and what's your recollection as to whether or not the flight details we see there in terms of departure were, was in fact the flight that you took from Perth to Sydney?---Well I haven't checked them against the actual ticket, but as far as I know there was no  
30 cancellation of those dates. We just went on the dates that were scheduled.

Is your memory that you've arrived in Sydney at about 7 minutes or 5 minutes past 7.00 or thereabouts on 6 May? In other words you arrived in the evening?---Yes, it was in the evening.

And you left I gather in the evening on Friday, 8 May, to go back to Perth? ---Yes, the last flight out, yes.

40 All right. Now I just need to ask you a very important question. Before you left Perth according to the itinerary at about quarter to 1.00 Perth time had you received any letter or document from the Royal North Shore Hospital or from a Dr Burton, one of the doctors that you were proposing to see?---I can't say with clarity that I did. I have no, no recollection of getting it. But I do have a recollection of when we went to see Dr Gil Burton we actually had a coffee at that time in our possession because that's what I referred to in our discussions.

Yes. All right. Well I'll come to that. Now having arrived in Sydney where in terms of hospitals do you remember going first?---I think the first place we went to visit was the Strathfield, Concord Hospital.

And what was the next hospital after that?---After that, I'm not quite sure of the sequence, I think it was, I think it was St Vincent's hospital.

And - - -?---And either day, I'm not sure without reference to my diary, the following day we went to see Dr Gil Burton.

10

All right?---But from memory I don't think we did all three in one day.

All right. Now apart from you and your son, David, did anyone else accompany you with the meetings with the doctors at each of those hospitals you've identified?---Yes, the first hospital, Concord, David and I actually arrived there earlier and we wanted (not transcribable) talk to the CEO there privately so that we could ask questions that could be circumspect and not implicating Ms Lazarus in any way at that time, but will give us some clarity of where things were. But then she was invited to join us afterwards and there was nothing in that conversation that we could determine that said that they were unhappy with either the work that she'd done or as to the conduct of the, the monies.

20

Well I'm just asking you who attended with you and you've identified Ms Lazarus?---It was just David and myself and then at, at Concord Hospital it was I think the CEO, I think his name was Mr Ridley.

All right. Now when you refer to Ms Lazarus, we know of at least three in this inquiry. Can you identify the Christian name or the first name of the Ms Lazarus you're referring to?---Well Sandra Lazarus was the only one we had any direct dealings with.

30

All right. And did she, that is Sandra Lazarus go to the other hospitals with you?---Yes, she came with us to St Vincent's Hospital as well. And we couldn't actually see the CEO. I'd made a phone call to try and make the appointment ahead, as I recollect to see the, I think it's Mr Jonathan Anderson. And he explained he was very busy, he couldn't see us, but that, then I asked about the conduct of the trial and again he said (not transcribable) they didn't want to using very colloquial terms, sign off on that one, not because of any conduct on the part of Ms Lazarus, but that the results of the trial weren't adequate for their purposes of the disease specific to it or the diagnosis of, of prostate cancer, sorry.

40

Now, when you saw Dr Burton apart from your son who else was at that meeting?---Sandra Lazarus was there as well.

Was Michelle her sister there at any time during the meeting?---As far as I know I don't think I've ever met the lady, I've never met Michelle.

All right?---I just know I heard the name, yeah.

Commissioner, can I tender the email that's been the subject of those questions from Mr Pleiksna to Ms Lazarus of 4 May, 2009?

THE COMMISSIONER: Yes. The email from Mr Pleiksna to Sandra Lazarus of 4 May, 2009 will be Exhibit 57.

10

**#EXHIBIT 57 - EMAIL FROM MR PLEIKSNA DATED 4 MAY 2009**

MR ALEXIS: Thank you. Now, Mr Pleiksna, I want to ask you some things about your meeting with Dr Burton. Can you recall to mind where it was that you met with him?---Well, I believe his office was at the North Shore Hospital.

20

And at the commencement of the meeting did you provide a business card and from what you could see did your son also provide a business card to Dr Burton?---Yes, that (not transcribable) for us to do is to introduce ourselves, yeah.

All right. Now, could I just step through some subject matters of discussion and if you could let us know whether this accords with your recollection or not. It's been suggested that during this meeting you indicated to Dr Burton that you and your son were from Perth and there was discussion about a patent from a Dr Alex Kanevski. Do you recall that?---I don't recollect that, no, now that you put it there, yeah.

30

What - - -?---It may have happened but I just have no recollection that we were specifically talking about that because our function was to find out about the test and whether it was valid and as the letter suggested that would be an idea to look at a further trial.

But may we take it that you would've told him that you were from Perth and you'd flown over for a meeting?---Well, I'm sure that would've been the case, yes, (not transcribable) the business cards.

40

In May of 2009 were you aware of a patent from a Dr Kanevski?---Yes.

And did that something to do with the Medex device?---Because he is the patent holder for the Medex test device.

And at the time, that is, in May 2009 did you or one of your companies have a licence in relation to that patent?---(not transcribable). Well, I believe we did, yes, by virtue of Medex Screen which assigned its rights to MedexTest Corporation.

All right. And do you recall there was some discussion - and Commissioner, on page 426 of the transcript from about line 15. Sir, was there discussion about you running your own trials in relation to breast cancer?---I, I can't say (not transcribable) whether we did or we didn't, it may, I was mainly concerned about his letter and where we go from there.

All right.

10 THE COMMISSIONER: Were you running your own trials on breast cancer?---No, we hadn't, we hadn't, we hadn't, there were no trials commissioned by Inter Medical, only by Medex Screen.

And did you have the capacity to conduct trials?---Not in ourselves only if there was something that was (not transcribable) for which we could find a sponsor. Without a sponsor we couldn't do at trial.

And did you have the equipment?---Yes, equipment we had.

20 What equipment was that?---It was the Medex test devices.

And did your company have the rights to those devices alone or is that the company of which Mr Neiron was also a director? I'm a bit confused as to who the parties were to all of this?---Okay. Well, in May 2009 both him and I were, were still directors of the two companies and the stock had actually transferred in ownership from Medex Screen (AustralAsia) to MedexTest Corporation so the MedexTest Corporation had the scope and the capacity to supply the needed clinical trials as far as the equipment was concerned.

30 And were you both directors of that company?---At that point, yes.

And at the present moment?---I have resigned from Medex Screen and MedexTest Corporation almost, almost two years ago.

So what was your interest then in tests involving the Medex device as at May 2009?---Sorry, could you repeat that again please I didn't quite get that.

40 Yes. What was your interest in May 2009 in conducting further tests with the Medex device?---Well, that was always a recommendation on all the trials done that they have a bigger sample size before they would give an opportunity of, as it were, you know, bringing (not transcribable) to the actual technology. So that was always on the cards that bigger sample sizes would be needed.

I understand that. What I'm trying to work out is having regard to the fact that you were (not transcribable) dispute with Mr Neiron at the time and you

were on the brink of terminating your relationship with the company what interest did you have in proceeding with tests involving that device?---Well, I hadn't resigned from the company that was put on the (not transcribable) by Mr Johel Neiron but in the end I voluntarily resigned because we could see there's be a conflict of interest in all of that.

10 In June?---In June, in June I had no, after the incorporation of Inter Medical we had to buy fresh stock of our own from Medex Israel because at that point in time I no longer had any stock either under Medex Screen or under MedexTest Corporation. I could no longer use that device at that point.

I understand that, Mr Pleiksna. I'm just trying to work out what was your interest at the time of this meeting in conducting further trials with the Medex system and in considering the validity of the tests that had taken place having regard to the particular circumstances you were in?---But if there were ever going to be a big uptake of this by the medical profession it required further, further clinical trials and we were always aware that should we find sponsors that a clinical trial would be very useful for us and the progress of the company.

20

And (not transcribable) registered your present company?---No, that didn't happen till June.

That is your present company was only registered in June?---That is correct.

I see.

MR ALEXIS: 16 June, 2009 was the evidence.

30 THE COMMISSIONER: All right. Thank you.

MR ALEXIS: Just coming back to the discussion with Dr Burton. It's been suggested that you had indicated to him that you'd been running your own trials on breast and also possibly some work on bowel, ovary and gastro and that you'd got some screening results of 80 to 85 per cent. Do you have a recollection of discussing that with Dr Burton?---I can't say that I have that exact recollection, it may have been in passing that reference was made to other clinical trials which there were, there was one in hospital still being conducted which had been started in 2007 and the breast cancer trials and the (not transcribable) trials which at that time we thought there was no problems with the (not transcribable) were still alive and well so it's true that there were clinical trials there. And also we've been told by some of the other doctors that were looking at trials in other areas if this machine was proven to be effective in those areas of test.

40

Now, can I also suggest to you for your consideration that there was discussion about statistics and false positives and false negatives in terms of

the screening of patients, do you recall a discussion about that subject?---  
Relative to the cervical cancer pilot trial?

Well, without any specific reference to that but just generally I'm suggesting for your consideration?---Well, I would have only been referring to the (not transcribable) anyway to the, the letter that was there regarding the cervical cancer one because we hadn't directly commissioned that, this is something that Sandra Lazarus had said she'd arranged herself at that point but it was a pilot trial only and the outcome of it was that that the letter  
10 was suggesting that for, even though the preliminary results were good for them to be really valid in terms of medical uptake a much larger population study of symptomatic patients would have to be taken up and that's as far as I know all we discussed.

Was there a discussion about who would own the data that was produced through the conduct of a clinical trial?---Well, if it was in May it would have belonged to the MedexTest Corporation Pty Limited, they commissioned that.

20 But my question is whether or not you could recall the discussion including reference to the question of ownership, was that discussed or not?---I, I don't recollect discussing it in that sort of fine detail at that point.

Do you recall there being discussion about the need for a plan to be prepared and that Ms Lazarus was to put together a full ethics application? ---I think there was some ongoing recommendations made as a result of that letter but I'm not familiar with what they were.

30 And do you recall any reference, sorry, I'm on page 427, do you recall any reference by Dr Burton to a Dr Sue Valmadre and a Dr Greg Gard, other gynaecologists within, within his department?---I have no recollection of those names at all.

All right. Now, do you recall discussing with him the question of finances and that those arrangements had to be transparent and independent of the results?---If we got to that point?

I beg your pardon?---No, I don't think we got to that point of discussion.

40 Right.

THE COMMISSIONER: Do you have a, an independent recollection of this discuss, Mr Pleiksna? Do you know what I mean?---We, we went there to try and ascertain whether or not this cervical cancer trial had validity because we were not sure of how it would stack up and the, the general feeling was that it was a very encouraging pilot study and it should be moved forward but at that point of time there were no further plans made for that to happen.

I'm just trying to find out how, about your memory of the discussion. Do you, do you have a clear memory of it or are you, do you have, does your memory depend upon how you've refreshed your memory from the letter? ---I don't think there was very much more, there were some pleasantries exchanged, I don't recollect anything much more deep and meaningful other than him saying that he was very pleased with it and that, you know, together with a Pap smear this could become, could become quite a definitive test.

10

So are you saying that your only memory is of discussing what was in the letter?---I, I don't think we could refer to that as the only memory, no.

MR ALEXIS: Mr Pleiksna, can you recall to mind and describe as best you can Professor Burton please?---Oh, dear. He was, he was quite, we were a little bit apprehensive going there at first but he put us at ease very quickly, he seemed to, he, he seemed to know Sandra and was aware of what was happening.

20 THE COMMISSIONER: Did he call her Sandra?---I can't recollect that, sir.

Did, was she referred to as Sandra during that meeting or can't you remember?---Well, we referred to her as Sandra because she was the only one we, we ever knew prior to that.

Right. But I'm talking about at the meeting, was her name - - -?---I think so. If we, if we referred to Sandra it would have been as Sandra, yes.

30 I'm trying to find out whether at the meeting you have a memory of her name being mentioned out aloud in front of Professor Burton as Sandra? ---I'm sorry, I'm not quite sure what the question, you mean by Dr Gil Burton or by ourselves?

Anybody?---We, we always referred to her as Sandra, yes.

40 Are you saying you would have, that doesn't necessarily mean that you remember having done so I'm, you know, I'm just trying to find out whether you have a memory of this or whether you're working out that you must have done it?---Well, if you, if you ask me specifically I can't actually say yes, we did but I, I would fail to see how we could talk to her, you know, for 20, 20, 25 minutes, we (not transcribable) were referring to it and referring to her research without mentioning her name.

I see.

MR ALEXIS: Mr Pleiksna, approximately how tall are you?---About five seven.

And was Professor Burton taller than you or shorter than you, what can you tell us about his height?---He was sitting at his desk.

Well, when you met him and you shook hands as I assume you did - - -?  
---Yeah.

- - - was he taller than you or shorter than you?---I, my impression is, is that he was about the same height as myself.

10

All right. And was he solidly built or slightly built?---Medium build.

And what colour do you recall his hair to be?---I'm not sure.

Did he wear glasses or not?---I don't remember him wearing glasses at our, at our meeting.

20

All right. Now, when as best your recollection allows you to tell us, did you receive the letter of 6 May, 2009 which should be one of the documents that we've provided to you and it should have a page 277 in the top right-hand corner which for our purposes, sir, is a reference to Exhibit 1. Do you have that letter?---I have it here, now, yes.

Thank you. As best your recollection allows you, when did you first receive that letter in connection with the events we're discussing?---I think from memory that was faxed through to us before the actual document finally arrived by mail at the Post Office Box 186.

30

So by reference to the Post Office Box on the letter you have a recollection of receiving this letter in the post, do you?---Yes, I'm, I'm almost certain there that the original came to us.

All right. But presumably you wouldn't have seen that until after you returned to Perth because you left at about midday on the 6<sup>th</sup> and you didn't get back until the 8<sup>th</sup>, the evening of the 8<sup>th</sup> and we should understand I suppose that Australia Post doesn't work that quick?---No. I think the, I would have acted on perhaps a PDF copy that was sent to us around about the same day or whenever.

40

A PDF copy sent where?---To, to my email address at the time.

Well, I would like you to be as precise as you can about this Mr Pleiksna, do you have a memory of receiving this letter by way of a PDF attachment to an email or is your memory that you received it by fax or, or what is your memory, sir?---No, I'm, I'm sure, certain it wasn't by fax but I think we did get this as a, as an email and then the original came later on.

And where were you when you received the email with the PDF attachment of this letter?---I really, I really don't know at this point in time.

Is it a possible scenario that you were provided with a copy of this letter when you were in Sydney by Ms Lazarus?---Again I have to say I can't be certain on that point, sir.

THE COMMISSIONER: All right.

10 MR ALEXIS: Can I suggest that you didn't receive the letter from Ms Lazarus whether by post or email or by hand from her until after you'd met with Professor Burton?---That's possible, yes.

See, what I want to suggest is that when you spoke with Professor Burton you spoke prospectively about the idea of at some future point in time being involved in clinical trials using the Medex device as a screening test for cervical cancer but the subject matter of any pilot study was something that you learnt of latter when you were provided by Ms Lazarus with this letter. What do you say to that?---I cannot remember the exact order of events  
20 there, my recollection is that we went there with a letter in hand and I actually refer to that letter in the office of Mr Gil Burton or Dr Gil Burton.

See Mr Pleiksna this is very important because some evidence has been given in this inquiry which suggests that Dr Burton had not seen and had not been involved in any pilot test involving ten patients as is detailed in this letter by or before 6 May 2009. Do you understand that suggestion?---I do now, yes.

30 And what follows, of course, from that suggestion is that if that be correct that it would be quite wrong to say that the subject matter or the content of this matter was discussed Professor Burton during the meeting. Do you follow?---That's not how I recall it, I do recall that we did speak about the content of the letter because it was quite encouraging for us to see that sort high sensitivity coming out of that test.

And by that do you mean the results that showed according to the letter at least, that eight out of ten or 80 per cent were patients correctly diagnosed with the device?---That would be a good results, yes, on symptomatic  
40 patients.

All right.

THE COMMISSIONER: Can I just ask you about that. Do you know anything about the number of patients required for a reliable pilot test of the Medex device?---Normally, it depends, I think, keep in mind I'm not an medical person but as I understand it, there can be small numbers like 30 up to may be 100. Once they get beyond 100 that is more as conceived as being a fairly good indicator however, as in this case, what they really want

to do had some symptomatic and asymptomatic patients so that you can determine a bit more accurate because the smaller the sample sizes they don't allow you to draw those conclusions.

So your understanding on the pilot test that had already been carried out, how many patients had been tested?---I wasn't sure of that one because we did not commission that actual cervical cancer trial.

10 Well, was the number of patients discussed at the meeting with Professor Burton that we were subjected to this pilot trial?---Well, all I could refer was the letter which said that the sensitivity for the ten positively diagnosed patients, (not transcribable) was ten at least.

So you had no independent memory of the discussion, you are relying on what's in the letter?---I would have relied on the letter because I had no other basis for it.

20 You didn't ask Professor Burton, I thought that's what you were going there for?---We did but I received what I thought was his letter and (not transcribable) the letter and he spoke to the letter then I assumed what was in the letter was correct.

Weren't you interested to find out how many patients had been tested?---We hadn't commissioned this trial, we did an independent one done by Sandra -  
- -

My question was whether you were interested in the number of patients tested in the pilot trial?---Well, I took it to be ten as per the letter.

30 Well, ten is a lot less than the 30 you've mentioned as a minimum?---It would appear to, as I understand it these were symptomatic patients so that's different from just asymptomatic.

MR ALEXIS: Mr Pleiksna, the other document that's been sent to you is a letter dated 12 June with page number 288 and 289 in the top right hand corner. Do you have that?---I do now.

40 Thank you. And again, that's a reference to where that letter is found in Exhibit 1. Can you tell us from whom you received that letter?---That letter was signed by Dr Kenneth Vaux and it was for supply by Sandra Lazarus.

You never spoke to Dr Vaux, as how we understand it should be pronounced, you never spoke to that doctor did you?---Not at the time, I subsequently did check with him since that period when doubts started coming about the whole matter.

And what sort of doubt are you referring to?---Well, because St Vincent's Hospital had declined to publish the report and Sandra Lazarus had said,

well look whilst that's their prerogative the test results belong to Sydney University and provided they can get another doctor that would go through and do the analysis it would still be a valid report.

Now, this may be unimportant sir, how should we understand a letter being sent to Inter Medical when the company hadn't been incorporated as at 12 June 2009?---I don't know I thought the (not transcribable) incorporated was fixed already.

10 I thought you told me it was incorporated on 16.---It could be, I'm not quite certain of the date.

Did you, yes, you told me Inter Medical was incorporated on 16 June 2009, had you asked Ms Lazarus to obtain this report for your company?---Only the reports themselves, yes, we had no other.

Now the other document that has been provided to you is an email of 21 November 2009 and Commissioner I'm referring to the folder which comprises Exhibit 39 and Mr Pleiksna, if you could look at the email of 21  
20 November 2009 and I wish to ask you some questions about that and the document attached to it. Do you follow? Do you have that sir?---Yes, I have thank you.

Thank you. Do you have that Commissioner?

THE COMMISSIONER: That's the first page is it?

MR ALEXIS: It's the first page in the bundle which is Exhibit 39 and I  
30 wish to go to that and the document immediately after it.

THE COMMISSIONER: Yes.

MR ALEXIS: Now appreciating that this is an email from your son, should we understand that the email nonetheless was sent to you by way of copy together with the attachment?---I would have to say that I have no recollection of actually getting that email I checked through our server and it didn't come through on our company server so I don't have a recollection. What I do have a recollection is of speaking about the general content and David was asked by Sandra to give a quote for a draft of what would be of  
40 interest to a potential sponsor and he drew up that draft copy for that purpose.

And so if with that explanation we go to the document which is attached to the email and if we could refer just for convenience to the numbering in the bottom right hand corner of each page. If come through to page 2 you'll see what seems to be an index to the corporate sponsorship program for 2010 year, do you see that?---Yes.

And does the reference there in section 5, you see the heading What Clinical Trials Are Complete To Date?---Ah hmm.

And What Are The Findings. Do you see that?---Yes.

10 And should we understand that what is set out in section 5 of this document reflects the corporate knowledge that Inter Medical had of clinical trials that had been conducted up to the date of the document which in its draft form was 21 November, 2009. Is that so?---I'm just reading that. I must admit I have not had a chance to go it, because it's a new document and I haven't had a chance to see it before coming to the city today in full.

Well - - ?---I'm just looking through, some of those, yeah, have been actually done and published. Ones relating to Concord Hospital, Royal North Shore, they were the ones which at that point of time, I think we were still believing to have been valid trials.

20 And if you come through to page 14, again in the bottom right hand corner and you'll see the detail concerning the Royal North Shore Hospital?---Yep.

And in relation to the trial summary under 5.6 and the researchers conclusion, which is set out there in italic script, should we understand as best you can say that that came from Dr Burton's letter that we've discussed of 6 May, 2009, that information I mean?---I would think so because that's all we could ever say as result of that.

Well that's all you had isn't it?---That's right.

30 And similarly in 5.7 which refers to a prostate cancer study again do we see the reference to trial summary and the researchers conclusions set out in italic script as being taken from Dr Vaux's letter of 12 June, 2009 that we've just referred to?---Yes, the summation there it says 75 per cent, yes.

So should we understand that as at November, 2009 the only knowledge you had of clinical trials being conducted at the Royal North Shore Hospital as far as Ms Lazarus had informed you about were the two that are referred to on page 14 of this draft document. Is that so?---Sorry, can you repeat that again, please. I'm getting a bit, trying to read all this in a short space.

40 Yes. My suggestion to you is that as at November, 2009 the only knowledge you had of clinical trials that had been conducted at the Royal North Shore Hospital were those two referred to on page 14 of this draft document?---Yes. It was based on those two there.

And you had no other knowledge about the conduct of any other trails at Royal North Shore?---No, not at all.

And should we understand that because there's no reference to the Royal Hospital for Women you had no knowledge of any trial being conducted using the Medex device on cervical cancer patients at the Royal Hospital for Women as at October, I'll withdraw that, I'm sorry, November, 2009?---No. We weren't involved in anything like that.

Yes, thank you Mr Pleiksna. That's all I wanted to ask.

10 THE COMMISSIONER: Mr Pleiksna, it's the Commissioner again. I just want to ask you, well firstly my, my memory which may be wrong of what you said about the conversation with Dr Burton was that you discussed generally the trials that had already taken place and didn't, and there was no commitment in relation to further trials. Do I understand that your evidence to be that (not transcribable) correct?---Yes, that's correct. If we were it would be dependent on us having sponsors and we never had sponsors.

20 So does that mean that the discussion with Professor Burton, you only discussed really the, the pilot trial that had already taken place?---Yes. And, and taking on board the recommendation made there that it, because it was a good outcome initially, it needed to have a bigger trial. We would have liked to have had a bigger trial but we didn't have the, the necessary ability to conduct one at that point.

Now this letter of 6 May at the meeting, you say you had a copy with you? ---I, I am sure I had a copy of the letter because my recollection was that I made reference to that letter.

30 And did Professor Burton have a copy of the letter at the meeting?---Well I don't know if he had a copy, but the copy I had, as I remember it, I turned around and just wanted to verify whether it was correct that the results were good and more or less where do we go from here if there is a going from here.

Did he acknowledge either expressly or implied at that meeting that he had written this letter?---We didn't question that at the time. I mean, we were invited to go there, made an appointment and we believed (not transcribable) he was the Dr Gil Burton that wrote the letter and particularly if we had it and we referred to it.

40 So I understand when you're saying he expressly refer to it, but did you discuss it in the terms of his letter?---Well that's all we had to go on. And we even questioned, you know, was he happy with the results and, well I don't know if he said happy, maybe (not transcribable) what the results were.

But did you say to - - -?---And (not transcribable) recommendations he made to look at a bigger trial if, if he had no concept of a pilot trial being done.

But when you were talking to him did you talk to him about your letter, in other words your "letter", did he know that you were talking to him about a letter that you thought he had written to you?---Well I don't know what people actually think, but the whole discussion was one that he had full knowledge of what we were talking about and that it was related to the letter.

10 I'm not asking you anything about what he thought at all. I'm asking you whether he would have realised from what you said that you were talking about a letter that he had written?---Well I can only assume from the discussion that, that he was aware of the letter, yes.

The letter that he had written?---Well the letter I had which he saw and I referred to.

And did you refer to it as the letter he had written?---I may not have said the letter that you have written.

20 But I presume you would have at least said your letter?---Yes, correct.

MR ALEXIS: And when you said earlier Mr Pleiksna that one of your purposes at this meeting was to verify what you'd read in this letter, can you tell me how you went about verifying that information?---Well by (not transcribable) the letter, by having an appointment and also by asking him how does he see it and whether or not he feels it has got merit for a larger study, as was indicated in the letter. And he made a comment, you know, a very favourable comment about it.

30 THE COMMISSIONER: Mr Pleiksna, I just want to ask you about one other topic. How did you come to send the email to Sandra Lazarus of 4 May, 2009? How, had you been in touch with her before?---Yes, we had some contact before.

What sort of contact?---Well, since Mr Neiron was no longer attending to his duties some of the matters requesting clinical trial action were addressed to me.

40 Sorry, some of the letters requesting clinical trial action?---Anything requiring clinical trial action such as the letters that had come from a couple of hospitals and things of that nature.

So are you talking about the letters from Strathfield and, and St Vincent's?  
---Yes.

Letters received in May 2008?---The, the earlier letter in January, late January and which I reassessed and then I commented on to Mr Neiron I think in about March which had still gone unattended apparently but I made

it clear that the, the things that they were referring to a site, making reference to certain clinical trials were not on sites that we were conducting, they were on sites of Mr Neiron.

When you received the letters of May 2009 from Strathfield Hospital and St Vincent's Hospital, did it strike you that anything was odd about them?  
---No, not at the time. What started ringing sort of bells I guess is what is the whole problem down there because we thought we'd addressed the, the matter of conduct. There was a lot of veiled - - -

10

Sorry, sorry to interrupt, if we leave that. Did the letters arrive at more or less the same time?---Well, what had happened was that we had a message, I can't remember whether it was verbal or in writing, that there were demands being made on the two hospitals to have money for clinical trials returned, Mr Neiron personally or - - -

20

I'm really asking you about the letters from Strathfield and St Vincent's about the clinical trials and the costs of the trials, do you know anything about that?---I don't know anything about the cost of the trials, it was all internal matters.

So what did you, what were the letters that you received that led you communicate with Sandra Lazarus?---Look, it goes some time, I, I, I can't honestly recollect when it started but it would have been earlier in which there was some overlap between Mr Neiron's instructions and things I had to attend to from a marketing perspective.

30

Well, tell us what, what subject? What was the subject of these - - -?  
---Things like documents and results from the clinical trials.

Did you, what did the hospital write to you about that?---No, the only three pieces of information I had from the hospital was, were, that I looked after was I'd say one regarding a website showing wrong clinical trial but they were not on our website, they were on Mr Neiron's website in the UK.

I'm trying to find out, Mr Pleiksna - - -?---Yes.

40

- - - what letters you received from the hospital which led you to communicate with Sandra Lazarus about them?---I can't, look, I'm sorry, I don't have that in front of me but the (not transcribable) to it was that there was sort of innuendos and remarks about the conduct of the trials, as we had not been involved with them initially David and I wanted to know what the true state of the whole thing was so - - -

So did you write to Sandra Lazarus about that?---I'm sorry.

Did you write to Sandra Lazarus about these innuendos?---There may have been some that were even sent by her to us, I'm not quite sure now.

However, we addressed the situation by making appointments to go and see these people and with Sandra with us so that we would see whether in fact she was involved with them and, and so on.

I mean did you write to Sandra Lazarus about these innuendos?---Probably, oh, look, I don't recollect whether we did directly or not, possibly not then because I was starting to have doubts about a lot of things.

10 So what did you communicate with her about before this email of 6 May, 4 May I beg your pardon?---Well, that (not transcribable) like marketing issues involving sponsorships, involving documents that had to be supplied and so forth because - - -

Supplied to who?---Well, to her for her so called clinical trials but these are documents that, that support the clinical trial applications.

Did you send any emails or did you write letters?---They would have gone by email.

20 Did she reply?---She, yeah, she would have (not transcribable) most of those.

Did you telephone her?---I have called her, yes, once or twice when she left messages.

And did you have a good relationship with her at that time?---Generally yes.

30 MR ALEXIS: Mr Pleiksna, if you have your statement handy you'll see that attached to the statement are a series of letters and could we just try and identify whether or not some of the letters are the letters to which you were referring in your answers to the questions from the Commissioner, do you have the letter from the Strathfield Breast Centre dated 9 January, 2009 which is the first letter attached to your statement?

MR SIMS: It's (not transcribable) Sims, we have a copy of his statement which doesn't have any of the attachments. I believe I have the documents you're referring to in a file but it's in a different room in the office, I can go and get that.

40 MR ALEXIS: If you would that would be helpful, thank you. Just while that's being done, Mr Pleiksna, can I ask whether or not you have been in communication with Sandra Lazarus at all either by telephone or by any other means over the last couple of weeks or months?---About, I'm not quite sure, about three or four weeks ago Sandra actually rang me and asked me had I been subpoenaed to attend, she mentioned that Johel Neiron has but I said I hadn't at that point of time and I, and then I, in fact I made the comment, I said in view of the investigations now I said you should check whether you have the legal right to even speak to me.

And was anything else discussed?---I've had no discussion with her since then.

Was anything else discussed during that conversation?---I don't think so.

Well, just try and recall it if you would?---I don't have a specific recollection, I was a bit anxious not to talk to her actually because, in view of the fact that there was an investigation going on I wanted to curtail the discussion.

Well, did you talk to her about the meeting you had with Professor Burton back in May 2009?---I don't recollect speaking about that at all.

All right. Now, I notice that Mr Sims has returned, hopefully with the letters we're looking for. Have you got available to you there the letter from the Strathfield Breast Clinic addressed to MedexTest Corporation dated 9 January, 2009?---Yes.

20 And is that one of the letters that you were referring to as having been received?---It's in January.

Was that a letter that prompted some communication with Ms Lazarus?---I don't remember specifically but I may have actually asked her what is this all about because whilst it's addressed to MedexTest Corporation and I was the director and so entitled to that communication, what they were complaining about was about the removal of something from our website and it wasn't our website, it was the website of the, Mr Neiron's global company.

30 Now, did you respond perhaps not directly to that letter but to the subject matter of the posting on the website in a letter of 9 March which, Commissioner, is the next letter in the attachments to the statement?---I did.

And is that, is it correct to understand that in that letter you responded by professing no knowledge of what was being referred to, that is to say registration of, or posting of that material on the website?---We have nothing to do with the Medex website.

40 Now, are there any other letters that you can point us to which led you to commence speaking with Ms Lazarus and ultimately meeting with her in Sydney in May 2009?---There's a letter from our lawyers instructing when, and I was advised I think by Ms Lazarus that Mr Johel wanted a refund of his monies and I was making it clear that no monies were to go back to Mr Johel pointing out that this was actually the two trials referred to were trials conducted, commissioned, rather, by Medex Screen (AustralAsia) and at that time I was still a director of that company and as Mr Johel wasn't around I thought I took the correct action.

But can you just explained what occurred between the events concerning this correspondence between you and Strathfield Breast Clinic and your letter to Ms Lazarus of 4 May where you speak about wanting to conclude what she started and to work closely with her. What occurred to lead you ultimately to say that on 4 May?---We were looking for some cooperation from her so we could have some face to face discussion about her involvement with all these trials. The suggestion that there was something still untoward about her conduct of the financial matters and then, and to actually go to the hospitals and find out what was the state of play with these clinical trials. We were getting reports and that's the only thing we knew.

Yes, thank you, Mr Pleiksna, that's all I wish to ask.

THE COMMISSIONER: Ms Soars?

MS SOARS: Thank you, Commissioner. Mr Pleiksna, my name is Julie Soars and I'm a barrister for Sandra Lazarus. I'm going to ask you a few questions if I may. Can I take you to paragraph 9 of your statement please, Mr Pleiksna?---Okay.

You've described the hasp in the paragraph, that's correct isn't it?---Hasp, yeah, that's the, the correct name for it, yes.

And in relation to results that might be stored on a laptop which is, on which the Medex software has been loaded how do you go about getting access to that sort of information that's already stored in relation to tests that have been carried out? For example, do you need a hasp to get access to that information?---Information always stays on the laptop and you need a hasp to open up the program.

Does it have to be the original hasp that you carried out the test with?---I believe not.

Can it be any hasp?---Yes.

And you have a good understanding of how this technology operates do you?---No, I can't say I am, I'm in the marketing not in the IT section. I have a very broad understanding only, yeah.

Have you accessed information on the laptop that relates to trials that have been carried out?---Never.

Never. Is there any documentation that you have in relation to how this hasp works in the context of the Medex test device?---Sorry, what was the question again, have I - - -

Yes. Is there any documentation in relation to how the hasp works in the context of the Medex test device?---Only as provided in our (not transcribable) behind Medex. It doesn't go into the whole intellectual property because we don't know that.

Does it cover the matters I asked you some questions about before in relation to accessing information?---I don't think so but for a definitive answer it would be better to refer to Mr Kanevsky or the programmers. I don't believe so, we've never used it for that purpose.

10

Can I take you to paragraph 12 of your statement please, Mr Pleiksna. Who is it that you understood carried out the training in relation to the Medex test device in Australia during the period 2008/2009?---Only authorised persons were Dr (not transcribable) I believe in early 2008 who was one of the authorised trainers from Medex in Israel. We also had a Dr Ivan De Souza who is a fully trained practitioner and who trains other doctors in the diagnosis.

THE COMMISSIONER: Ms Soars - - -?---Sorry?

20

Sorry, Mr Pleiksna, I was asking this myself. Paragraph 12 in your statement refers to a training course for operators. Do you know whether that training course concerns the interpretation of the test results or does it only relate to how to undertake the tests, do you know?---Yes, I do. That, the one day training course relates purely to operating the equipment itself and the two to three day course that follows on in the paragraph refers to medical practitioners who don't have to be trained on how to interpret the actual graphs.

30 Yes, thank you.

MS SOARS: And it's correct isn't it that some other people who weren't medical practitioners may have done the two to three day course, are you aware of that?---It's possible some of them could've stayed on and listened in to the further course, it wasn't forbidden but there would be no certificate issued for those people who weren't registered medical practitioners.

And are you aware which course Sandra Lazarus did or whether she did both?---I don't know. Johel Neiron handled all that.

40

THE COMMISSIONER: There's no evidence that she did a course.

MS SOARS: She hasn't been asked I don't think.

THE COMMISSIONER: No, I know, there's no evidence. Did she do a course, do you know?---Is that a question (not transcribable).

Yes, it is?---(not transcribable).

Yes. Well, no, I don't know but certainly it wasn't one of our trainers. The only person that would've trained her could've been Dr (not transcribable) when he was in Sydney, he visited from Israel to do a course and also Johel Neiron who (not transcribable) to be a fully qualified trainer.

Do you remember the date when this doctor from Israel came?---I'm not sure but I think it would've been about late 2007.

10 Thank you?---Maybe early 2008 but I think late 2007.

MS SOARS: I apologise if I'm a bit show with this, Commissioner, we only received this late last night and I'm just trying to deal with it so my apologies. Could I take you to paragraph 23, Mr Pleiksna?---Yes, I have it.

20 You talk in the first sentence about your understanding from discussions with Johel Neiron that he had the exclusive distribution rights for Australian and the Asia Pacific region. Was it Johel Neiron who had those rights or his company?---Well, I don't know, he never tabled an actual document but when finally the company was to be incorporated he then produced a document which suggested that he had (not transcribable) Medex test I think AustralAsia or something earlier.

THE COMMISSIONER: Is this relevant this sort of - - -?---But he had the rights to do this and then he had signed to Medex (Screen) Australasia Pty Limited but Medex (Screen) Australasia became the actual owners of those proprietary rights to market.

30 MS SOARS: And you're saying that occurred in some time in 2008?---No, no, that would have happened very early in the piece, 2004/2005.

Sorry, the assignment of the rights to Medex (Screen) Australasia, when did that occur?---In either late 2004 or early 2005.

Did you ever make inquiries - - -

THE COMMISSIONER: No, I'm sorry, you'll have to explain to me why this relevant?

40 MS SOARS: The problem is well, I'll indicate to the witness where I'm going but that's fine.

THE COMMISSIONER: Well, you better tell me, I don't know why it's relevant.

MS SOARS: Because we understand that there is an issue in the David Pleiksna has informed us that inquires were made and that Medex (Screen) Limited in Israel said that Mr Neiron didn't have rights.

THE COMMISSIONER: That's got nothing to do with this inquiry.

MS SOARS: It's relevant to his credit in my (not transcribable)

THE COMMISSIONER: I will not allow it.

MS SOARS: Okay.

10 THE COMMISSIONER: This Commission has enough issues to investigate.

MS SOARS: Can I take you to paragraph 19 of your statement please Mr Pleiksna.

THE COMMISSIONER: What paragraph please?

MS SOARS: 19.---Yes.

20 You refer to your family members providing funds in that paragraph. Is that correct?---That's correct.

By was I by way of loan?

THE COMMISSIONER: What is the relevance of this now?

MS SOARS: It was put to Mr Neiron that this occurred and he gave a number of answers going around in relation to (not transcribable) - - -

30 THE COMMISSIONER: I think let's stick to the point Ms Soars I do not accept that this is relevant. You say that there were loans, I'm really - - -

MS SOARS: He's actually denied that there were loans.

THE COMMISSIONER: I beg your pardon? He said over and over again that there were loans.

MS SOARS: I'll check with Counsel Assisting but I - - -

40 MS FURNESS: It's certainly my recollection - - -

THE COMMISSIONER: I beg your pardon?

MS FURNESS: It's certainly my recollection.

THE COMMISSIONER: He said over and over again and I will, you do not have to - that is my ruling. Try he, he distinguishes between investors and

loans and you said there no investors but there were loans. Mr Stitt took him up on that.

MS SOARS: Yes, thank you Commissioner.

THE COMMISSIONER: And whether there were loans or not loans he always said there were loans. Who the loans were made by is not a relevant factor.

10 MS SOARS: Thanks Commissioner. Can I take you to paragraph 68 of your statement please Mr Pleiksna. Is it the case that during 2008 you left the clinical trial arrangements as between Johel Neiron and Sandra Lazarus to Johel Neiron?---It was always Johel Neiron's domain. We didn't even come into it until early 2009. He was handling matters pertinent to the clinical trials.

And is it correct that there was a written agreement between Medex (Screen) Australasia and Sandra Lazarus in relation to the clinical trials to which you were signatory – are you aware of any such agreement?---I don't  
20 have any agreement between them and her personally.

That's all I'm asking you about. Was there a written agreement that you signed?---Involving her personally, no.

Involving anyone else related to her?---No.

Thank you.

30 So that would be false to suggest that there was such an agreement - - -

THE COMMISSIONER: Well she said no. It's not a jury.

MS SOARS: Thank you Commissioner. I take it I don't need to then ask him about whether he stored the agreement for Mr Neiron.

THE COMMISSIONER: You can ask him that. He said there's no agreement.

40 MS SOARS: I know, I'm just taking further in terms of. So, any suggestion that you stored a copy of that agreement for Mr Neiron at some point in time is not correct. Is that right?---I've never seen such an agreement'

Thank you.

THE COMMISSIONER: Were there papers which you stored – Medex which were stored with you at some point in time in the offices that you occupied?---I've done a collection of (not transcribable)

Yes please. Did you reply?---I'd say no, was that a question for me?

Yes.---Would you mind repeating that question please.

Certainly. At any point in time in your relationship with Mr Neiron did he store any documents on behalf, were there documents stored in offices occupied by you which belonged to the Medex group?---They were all on the company server but Mr Neiron was not connected to the server.

10

But were there hard copies?---There were some hard, he'd have some things.

Which were stored in your premises?---Well, the companies premises.

Yes, that's what I mean.---Yes.

Your companies?---(not transcribable)

20 You were both directors so?---(not transcribable)

You were quite right Mr Neiron, Mr Pleiksna. It's company of which both you and Mr Neiron are directors. He has (not transcribable) - - -?---(not transcribable) from a tool kit there.

Yes.

30 MS SOARS: Can I take you to paragraph 159 of your statement please Mr Pleiksna. Could you just read that to yourself.---Can I just read that, quickly.

Yes.---Yes I have (not transcribable)

Are you aware that Dr Gil Burton is from Royal North Shore Hospital? ---Well, that's where the meeting, well that's where the letter came from I presume that's where he was.

40 Well, in the light of that paragraph 159 it's not correct is it because you were aware that Sandra Lazarus was engaged in research at Royal North Hospital because - - -

MS FURNESS: I object, that's not what this paragraph says at all.

THE COMMISSIONER: No, one doesn't follow, doesn't follow. Well put the question in a different way but it doesn't follow from paragraph 159 or from, sorry, he doesn't follow from paragraph 159 together with the fact that Mr Neiron met Dr Burton at Royal North Shore Hospital.

MS SOARS: Thank you, Commissioner. I'll ask it in a different way. You're not suggesting by paragraph 159 that you weren't aware of the clinical trials that Sandra Lazarus was carrying out in relation to Dr Gil Burton are you?---Only to the extent of the letter.

Yes.---I had no other documents relating to that.

Yes. And you've also referred to a letter you've received from Dr Vaux dated 12 June 2009 I think a copy has been provided to you of this letter.

10 ---Yes.

And you're aware, aren't you, that Dr Vaux is from Royal North Shore Hospital?---(not transcribable)

THE COMMISSIONER: Yes, that's letter, the authenticity of that letter is in dispute so that'd have to

MS SOARS: There is a question over whether Dr Vaux signed that letter, are you aware of that Mr Pleiksna?---Yes.

20

You gave evidence before, didn't you, that you had another conversation with Dr Vaux?---I had a conversation afterwards when this thing wasn't dying down peacefully and I asked him if this was a result that I had, is that your signature. And his comment to me was, he said, well, I think so. (not transcribable) well it looks like mine and he just left it at that. He didn't say any more so it didn't answer the question and threw a little bit of doubt and in fact after that we stopped using that clinical trial in the web site and things because we felt it wasn't a very good answer and didn't give us encouragement to think that it was all squeaky clean so to speak.

30

When did that conversation take place?---Well obviously after 4 June, I seem to recollect there was some time after when were trying to piece together what the documents really were.

Can you give an approximate date, was in the same year, 2009 or later?---I think it might been in 2010 because there was some on-going sort of question marks about these things. I thought I'd better ring the person up who signed the letter at that point as I said to him, I didn't really have any grounds for doubting on the documents that we had but and he didn't deny that it wasn't his report he just said it wasn't sure if it was his signature.

40

THE COMMISSIONER: Did he have the letter in front of him when you spoke to him?---No, I wasn't there, it was a phone call.

So how did he know what you were talking about?---Well I referred him to the letter.

Did he, that's what I say, did he have the letter in front of him?---Again, I would presume so because otherwise why would he say, well I don't know. I'm not sure. I mean - - -

Where did he - - -?---It wasn't, it wasn't an inquisition on my part. I just want to get an idea because up til that point I thought it was valid.

10 Can you, look what did you say to him? I mean did you - - -?---I asked him in general terms if there'd been some, you know, undercurrents about the conduct of this trial and so on. Was there anything about Sandra and more particularly is the letter a letter that you signed or not. And then (not transcribable)

(not transcribable) the letter - - -?--- - - - he made the point, well I thought it was a very unusual answer, that's why it sticks in my mind, he said, well I think this so.

20 Well I'm - - -?---But I said, but and he just left it at that, so we never got any further resolution to that.

What, what I find curious, Mr Pleiksna, is how Dr Vaux knew about the letter and what is signature looked like without having the letter in front of him?---But I don't know that he didn't have the letter in front of him. But he (not transcribable)

Well (not transcribable) he just happened to have the - - -?--- - - - what I'm talking about regarding the prostate cancer research.

30 Did he ask you to wait while he went to look for the letter?---I don't remember actually asking that. I think he may have actually had it on hand or nearby.

He just happened to have it nearby?---Oh, look I don't know. I've never met the man before. I've never spoken to him and as I said, I had no, I had no doubt to, you know, to start an interrogation process, or you know, he virtually said, yes, he knew the letter we're referring to regarding the prostate cancer trial and I was just trying to verify all that was actually coming from North Sydney or not.

40 So this is a letter, what is the date of the letter?

MS SOARS: (not transcribable)

THE COMMISSIONER: 2000 and - - -

MS SOARS: 9.

THE COMMISSIONER: So you phoned him about six months later, seven months later, as I understand your evidence?---Yep. I won't say exactly what time, but it would've been (not transcribable) because we were still trying to work out piece by piece what was there because nobody was actually making any outright allegation or anything.

So you phone him several months later?---Yes, several months later, correct.

10 Out of the blue? I mean you didn't warn him that you were going to phone him?---No. I just rang up the hospital and asked for the man.

And you were put through to him and coincidentally he just happens to have the letter in front of him?---Well I don't know if he had the letter in front of him, but I referred to the, I introduced myself obviously so he knew who I was. And the prostate cancer trial that had been conducted there using Medex tests and then referred to the date on the letter and the results.

20 Yes, thank you?---So he commented on that, so, and then (not transcribable) know does, did this really come through his desk and that's all he would say to me. And it sort of left a very unusual mark (not transcribable) until this inquiry, you know, came further again.

Yes, Ms Soars.

MS SOARS: Commissioner, I have provided to counsel assisting a small bundle of documents which I understand Mr Pleiksna has. Do you have an email, a bundle commencing with an email of 8 February, 2010 which relates to the return of some Medex laptops and other documents?

30 THE COMMISSIONER: Do you have a copy?---I have now.

MS SOARS: Have you had a chance to have a look through that Mr Pleiksna?--- (not transcribable) yes.

40 All right. And is it the case that you recall that my, my client, Sandra Lazarus returned some Medex test devices and three laptops and two TENS machines as referred to in the letter at page 5 of that bundle to your offices. Is that correct, some time in September 2009 or shortly before?---They finished up at my accountants office. (not transcribable) the grapevine, but I did find one to (not transcribable) active research or something like that. And it finished up there. I received a call from my accountant and then we had to identify what they were and then send them on to Q Legal because we knew that Johel was wanting those back.

So is that correct that those, those items were sent on to Mr Dundo of Q Legal on about 2 September, 2009 as per the letter at page 5?---Well, David did the physical posting. But I presume that's correct on 8 February.

THE COMMISSIONER: Mr Pleiksna, do you know whether the computer, the laptops were in working order?---I have no idea. I didn't check them at all.

MS SOARS: Commissioner, could I tender that, that bundle? Is it convenient?---I'm sorry, let me just go back on that. We verified that the items were there, like four units and three laptops and two TENS machines. But that's all that we did. We didn't do anything else. We just packed it and sent it on.

10

THE COMMISSIONER: Yes, thank you.

MR ALEXIS: Can I just say Commissioner, that this may be more about a submission in due course, but absent any proof of the four, sorry, three laptops were used in course of the clinical trials (not transcribable) we will understand (not transcribable) anyway.

20

THE COMMISSIONER: No, I think that's right. But to save time we'll admit it as a, as an Exhibit. Exhibit 58 is a bundle of documents relating to the delivery of Medex equipment including three laptops.

**#EXHIBIT 58 - BUNDLE OF DOCUMENTS RELATING TO THE DELIVERY OF MEDEX EQUIPMENT INCLUDING 3 LAPTOPS**

MS SOARS: Thank you, Commissioner.

30

THE COMMISSIONER: Do you have further questions, Ms Soars?

MS SOARS: I do, just a couple and I'm sorry, I'm trying to find the paragraph reference so I can take the witness to it and ask him in relation to that paragraph. Can I take you to paragraph 111 of your statement please, Mr Pleiksna?---Yes, I have that.

Is it the case that you, you ever discussed with Sandra Lazarus the trials proposed to be carried out at the Royal Hospital for Women?---They were all conducted with Mr Neiron.

40

So is it the case you don't have any knowledge of what might have occurred because it wasn't dealt with by you?---But then (not transcribable) had never got going, but I took no notice of it. I just thought something (not transcribable) in writing and I'm not aware of anything other than there was a proposal to do it and those were the details.

And when you say physically in writing are you talking about some sort of report on the tests that have been carried out. Is that what you're talking about?---A copy of anything. I mean, you know, we're here in Western

Australia, 3,000 miles away, we didn't know what was happening down there.

And so I take it that Mr Neiron never told you that he'd notified the Royal Hospital for Women that the trial wouldn't be proceeding at some point because he'd withdrawn financial assistance?---I don't know about that instance, no.

10 You mentioned that you were in dispute with Mr Neiron during the course, I think, 2008, part of 2008 and 2009. That's correct isn't it?---Yes.

And you, I think said in your evidence the last time you spoke to him was in early 2009. Is that correct?---That's the last time I seem to have recollections of speaking with him, yes.

Did you or as far as you're aware, David, ever speak to him about who might have the rights to the intellectual property and other rights relating to clinical trials?---Well I don't know if I've had such a discussion or not.

20 You don't know if, you never had any discussion with Mr Neiron about that?---No. The only thing I did receive was some months later an email not signed by him, not even (not transcribable) with his name, purporting that the intellectual property is not anybody else's but Sydvet's and I can't even tell you who it was or where it came from, it was just a letter out of the blue, it's the only thing.

Commissioner, I just need to take some instructions but subject to that I think I'm done. Thank you, Commissioner, no further questions.

30 THE COMMISSIONER: Yes, thank you. Just a moment, please. Mr Hogan?

MR HOGAN: Good afternoon, Mr Pleiksna, my name's Hogan. I represent Michelle and Jessica Lazarus and I wish to ask you a couple of questions just in relation to marketing and the document which counsel assisting showed you which is in a folder, that's Exhibit 39 but it's, a email is the first document dated 21 November, 2009 attaching the corporate sponsorship programme for MedexTest clinical trials calendar year 2010, do you have that?---Yes, I do.

40 And I think you said that you hadn't had an opportunity to, to look at the sponsorship programme in any detail but I'll just ask you about the email, the first page. Have you had an opportunity to read that email and I appreciate it's from your son, David?---I didn't write it and I shall repeat again that it was not, not even to be found on any of our servers so it looks like I've never had it but I don't deny the fact that there was a discussion broadly about preparing some kind of document that might help sponsors,

potential sponsors understand that the needs of Medex were and how they could perhaps get some benefit out of it.

Right. And from the third paragraph of the letter addressed, it's really asking Michelle and you'll see from the email address [michellelazarus@nsctahshealth.nsw.gov](mailto:michellelazarus@nsctahshealth.nsw.gov) it is clear is it not that Ms - - -

THE COMMISSIONER: What, what paragraph, what paragraph?

10 MR HOGAN: Paragraph 3 of the first document which is Exhibit 39, that's a folder of material.

THE COMMISSIONER: You're asking, you're asking Mr Pleiksna something about - - -

MR HOGAN: An email of 21 November, 2009 which counsel assisting asked some questions about?---Yes.

20 And the third paragraph is I suggest or I'm going to ask Mr Pleiksna that it is clear that Michelle Lazarus has been engaged in some way - - -

THE COMMISSIONER: This is a matter for submissions. It's not his letter.

MR HOGAN: All right.

THE COMMISSIONER: He hasn't read it, he didn't write it, I'm not helped by that.

30 MR HOGAN: Yes, thank you, sir.

Were you aware of David Pleiksna having dealings with Michelle Lazarus to do marketing-type activities in late 2009, November 2009 or not?---The only thing I'm aware of was that Michelle was purportedly the, the expert on sponsorships, she apparently by virtue of her well, alleged contact with her work as a marketing executive could perhaps get us in touch with people like, like Coca-Cola or other parties for sponsorship purposes but, I'm, I'm almost certain that neither David nor I have actually ever met the lady or had any ongoing dealings.

40

All right. I want to suggest to you that in fact you had a telephone conversation with Michelle Lazarus where you told her that David would be contacting her about marketing?---Well, he may have been, this goes back some time because that's an area I didn't really have much dealings with and I would have likely passed along to David anything to do with that.

Certainly and that's what I'm suggesting is that you, that was the extent of the conversation is that you will be contacted by David and that's it and I'm

asking you whether that could have happened, I think you've conceded that possibility?---That's possible, I don't know.

All right. And finally, paragraph 77 of your statement where you state, do you have that in front of you, Mr Pleiksna?---Yes, thank you.

Page 19, "I do not believe that I ever met Sandra Lazarus' other sister Jessica Lazarus, nor am I aware of any involvement Sandra Lazarus' sister Michelle Lazarus may have had with any of the proposed clinical research trials to be conducted within New South Wales on behalf of Medex Screen (AustralAsia) Pty Limited your, your recollection is that David Pleiksna told you something to the effect of that, that Michelle Lazarus had a flair for marketing and was, had some expertise in that area and that be of assistance in marketing of the Medex test unit, is that fair enough?---That was our understanding, that she may have been useful for sponsorship purposes.

And, and that she had been working in marketing of the Medex test unit for some time?---That I don't know of, I don't know what she's been doing.

20 Yes, thank you, Mr Pleiksna.

THE COMMISSIONER: Yes, thank you. Ms Furness?

MS FURNESS: Thank you, Commissioner.

Mr Pleiksna, my name is Furness and I appear for, among others, Dr Vaux and Dr Burton. Do you still have your statement in front of you, Mr Pleiksna?---Statement or the letter?

30 The statement?---Yes.

Now, when you made this statement in October 2010 did you have any notes that you had made in relation to the conversation that you say you had with Dr Vaux?---I may have, I'm not sure but they weren't part of the documents submitted if, if they were. I think I, I think I may have made an annotation in either my diary or somewhere else.

Did you have regard to that annotation when you were making your statement to the Independent Commission Against Corruption?---I didn't refer to it specifically, no.

Did you read it prior to making this statement?---No.

Now, in this statement you refer to Dr Vaux beginning in paragraph 155, do you see that?---Yes, I have it now.

And in the first sentence of that paragraph you begin with, "Prior to this interview," do you see that?---Yes.

What interview are you referring to?---I think it's the ICAC interview?

THE COMMISSIONER: I beg your pardon?---I believe the ICAC interview by the inspector.

MS FURNESS: And do you remember now when that took place?---No, September maybe, sometime, October.

10 So the statement's dated 7 October, Dr Vaux, does that, sorry, Mr Pleiksna, does that assist you in determining when you spoke to the ICAC investigators?---It would have been some time before that.

Weeks or months?---I'm not sure, maybe a month.

So it's the case that you haven't spoken to Dr Vaux prior to September or October 2010, is that right?

THE COMMISSIONER: Well, other than the conversation.

20 MS FURNESS: Well, no, that's not what the witness' evidence is so far.

THE COMMISSIONER: All right?---I'm sorry, could you put that questions to me again, please?

MS FURNESS: Certainly, Mr Pleiksna. Is it the case then that prior to September or October 2010, that is the time at which you spoke to the investigators, you had not spoken to Dr Vaux?

30 THE COMMISSIONER: I'm not sure if that's fair, Ms Furness?---I'm not quite sure - - -

Just a moment, please?---Yes, sorry. Say it again.

His answer in 155 is qualified. His statement in 155 is qualified.

MS FURNESS: Well, with respect, Commissioner, the witness can, has that paragraph in front of him and he can answer whether or not prior to the date  
- - -

40 THE COMMISSIONER: And if you put to him, are you putting the question to him by reference to 155?

MS FURNESS: I am, Commissioner.

THE COMMISSIONER: Well, then you've got to say to him that he's, he hasn't had a previous conversation with Dr Vaux relating to those matters.

MS FURNESS: Mr Pleiksna, I'll put the question to you again. Is it the case that prior to September or October 2010, that is, when you spoke to the ICAC investigators you had not previously had a conversation with Dr Vaux concerning his supervision or knowledge of any clinical trials undertaken at North Shore Hospital concerning Medex?---Really I'm not quite sure, it may be in the intervening period the interview and the actual statement being made but I did speak with Dr Ken Vaux, who I believed to be Dr Ken Vaux but I wanted at that time to just clarify whether such a trial was valid or not.

10

Had you spoken to Dr Vaux in order to clarify whether the trial was valid or not prior to signing this statement?---I can't be quite sure what that means now to be perfectly honest.

Well, it's the case isn't it, Mr Pleiksna, that you don't refer in your statement, that is, in paragraphs 155, 156 or 157 to that conversation with Dr Vaux?---I'm not sure I can add much more to that.

20 THE COMMISSIONER: Well, you haven't?---That timing of it I'm not, not sure and it, it might seem a bit obvious, ambiguous but my understanding prior to the interview, the first interview hadn't spoken but then I think subsequent to that I had before signing the actual statement.

MS FURNESS: Well, look at paragraph 157, Mr Pleiksna. You refer in that paragraph to a belief that you had that the letter apparently signed by Dr Vaux was a genuine document authored and signed by him, do you see that?---Yes.

30 Now, you've given evidence this afternoon that you as a result of the conversation you say you had with Dr Vaux had doubt about its authenticity. Now, do you remember giving that evidence?---Yeah, a bit of doubt in mind, yeah, that's true.

And that doubt is inconsistent with what you've stated in paragraph 157 isn't it?---I'm not sure that it is. I'm referring to the original letter which was written some time before that and making the point that at that time I believed it to be true and correct.

40 THE COMMISSIONER: Well, it seems from the - - -?---And I still haven't had any refutation from the hospital or from Dr Kenneth Vaux in any way either so I'm still left in the air.

Mr Pleiksna, aren't you saying in your statement that you believe, that you believed that the letter was a genuine document and still believe that?---(not transcribable), yes.

You couldn't have really signed the statement knowing that you had doubts about the letter without saying that could you?---I think I'm referring to that I believed at the time of the letter being written it was true and correct.

Why didn't you say that since then I've realised my belief was wrong?  
---But I hadn't been asked to say that, you know, I'm only referring to the statement made at the time. And at the time that's what we believed.

10 MR FURNESS: Well, Mr Pleiksna, you were asked when you spoke to Dr Vaux, remember being asked that question by the Commissioner?---Yes.

And you said, Several months later, that is, several months after the date of the letter in June 2009. Do you remember that?---Yes.

Now that would put the timing of your conversation with him well before you spoke to the ICAC wouldn't it?---It could've been. As I said I wasn't sure of those dates.

20 Well, the difference between June 2009 and October 2010 is many months isn't it?---It's many months, I agree with you, again, I'm really confused on the actual timing but we were not going to act until we had written instructions from some sources either refuting or agreeing, you know, to take further action because really until the inquiry we had no way of getting into some of this information.

So was it the case, Mr Pleiksna, that you now believe that you spoke to Dr Vaux before you signed your statement in October 2010 or after?---I'm, I'm not sure, I'm a bit confused on it (not transcribable) I can't say yay or nay.

30 Had you spoken to him before you signed the statement paragraph 157 certainly doesn't represent your current view does it?---I'd agree with that, yes. But I think this might've happened in the intervening period.

Well, intervening between what two dates?---Between the inquiry and the actual signing of this document.

By inquiry you mean the first time you were contacted by the investigators?---Since September when the ICAC contacted me.

40 And you didn't alter your statement to reflect the conversation you had, is that right?---That's what I said prior to the inquiry, that's why I was trying to pinpoint some sort of time there.

After the first draft of the statement and before you signed?---I, I can't say, I just don't know.

The telephone conversation you say you had with Dr Vaux was, I take it, on a normal television, a normal telephone not like the system in place here where you could see him, is that right?---That's correct.

You didn't send him a copy of the letter before you had the telephone conversation with him?---I didn't.

10 You were not aware of what document, if any, he had in front of him while he was having the telephone conversation with you?---It's possible it wasn't but I'm finding it hard to believe because you referred to some specific signatures on specific documents on specific days so - - -

You don't know what he had in front of him do you?---No, it's quite true I don't know.

20 And in fact as a result of that conversation you had sufficient doubt as to the authenticity of that letter that you no longer used it in your marketing activities, is that right?---We decided (not transcribable) it would be better perhaps just to cut that one out even though in writing I've had nothing from that day.

No, but you were sufficiently concerned by your conversation to have doubt about its authenticity?---Not the, no, not the conversation but his response to the conversation, I thought well, maybe that's putting questions in, in, in mind I don't want to perpetuate.

Doubt about the words he used to you during that conversation?---I didn't catch that.

30 Doubt about the words he used to you during that conversation?---But he, he wouldn't acknowledge or, or disavow whether it was his signature on the letter.

Now, in relation to your meeting with Dr Burton, Mr Pleiksna, you refer to that in paragraph 152 of your statement, do you have that?---Yes.

Did you make notes during that meeting?---No, I didn't.

40 So is it the case that the first occasion on which you had reason to recall that conversation was during the making of this statement in September/October 2010?---I think David and I might've perhaps discussed about whether such a study was feasible but it didn't go anywhere from there other than the original discussions.

But the first occasion on which you had to recall your conversation with Dr Burton at that meeting was during the course of preparing this statement wasn't it?---Probably was, yes.

And when you prepared this statement you had in front of you the letter purportedly signed by Dr Burton didn't you?---Yes, we supplied all that documentation.

I'm sorry, did you say "we supplied"?--Yes, we supplied all that documentation when it was requested.

10 So during the course of preparing this statement you had that letter dated 6 May in front of you?---At some point I would've had it, yes.

So you had regard to that letter when preparing your statement?---Yes, I would have.

Now, you gave evidence that your trip to Sydney in May 2009 was a two-day trip, that's right?---Yes. Well, yeah, parts of three days, 6<sup>th</sup> 'til the 8<sup>th</sup>.

20 The first day you visited Strathfield Private Hospital and St Vincent's?  
---Yes.

And at each location you had discussion with doctors?---Not necessarily, in fact we spoke with the CEOs, that was at Strathfield and also at St Vincent's.

And at each location you had conversations about clinical trials?---The conduct of the trials and the conduct of Sandra Lazarus.

30 And those conversations at each location included discussions about the numbers of patients involved in the trials?---I'm not sure we made any specific reference, we just took it that they were being done as seemingly on the, I think it was on the ARTG register.

And the results of each trial was discussed?---Yeah, the, well, the one we were particularly interested in was St Vincent's, why they were not backing the trial and the CEO there, Mr Jonathan Ansell was saying that it didn't stand up because of, didn't feel, didn't feel they had enough merit in them to continue them on.

40 Now, you've given - - -?---I remember at Concord Hospital with Mr Ridley whether we specifically talked about the actual numbers, we just assumed that everything there was in fact as it should have been.

You've given evidence that your best recollection is that you received a copy of the letter purportedly signed by Dr Burton as an email attachment on your telephone, is that right?---No, not on my telephone.

On your laptop computer?---Either on mine or on David's, yes.

Did you receive that email attachment before you entered the meeting with Dr Burton?---I'm pretty certain that, yes.

THE COMMISSIONER: You had you had a hard copy, Mr Pleiksna?  
---Yes, that's right.

Where did you have it printed out?---I'm not a, not a 100 per cent certain, it would have been either on David's computer or our server computer.

10 But where did you get it printed from?---How do you mean?

You had the hard copy, you've received it, you've received the - - -?  
---Yeah, before leaving on our trip.

MS FURNESS: Well, the evidence you gave earlier, Mr Pleiksna, was that you hadn't received the letter prior to leaving Perth and that your recollection was you received it as a PDF attached to an email either en route or after arriving in Sydney. Now, is that correct?---No, no, that's not what I meant to say if that's the case. What I, what I said was we would  
20 have had at least a copy, a PDF copy printed out and then the original followed later, it may well have come after we got back from Sydney.

Well, you did say that the original came later but you also said you received it by email. Is that not correct?---I believe that's what's happened, yes.

But you say the email arrived before you left Perth?---Yes, it's pinning down to hours and dates and minutes, I'm not sure, I think so. In any event, we definitely had a copy when we went to Dr Gil Burton otherwise we would have no basis for any discussions or why we should even see him  
30 because he was unknown to me prior to that period of time.

Did the copy you have apparently contain a signature?---It does.

No, did it? I understand the one you've attached to your statement does, I'm asking you whether the copy you had on the day of the meeting apparently had a signature?---Well, that's the only copy I had with his signature on it.

Did you discuss the letter with Ms Sandra Lazarus before you went into the meeting with Dr Burton?---I think we may have, yes, she was aware of the results because she was sort of quite pleased with them.  
40

So she indicated to you prior to the meeting her pleasure with the results, is that right?---I believe that's what happened, yes.

And did she also discuss with you the expanding of the trial from a pilot study to a larger study involving 200 patients?---I don't remember if that

was discussed with her. It was a suggestion of Dr Gil Burton if that is the Dr Gil Burton that we thought we were meeting.

But you don't remember prior to entering that meeting having the discussion about the expansion of the pilot study into a trial involving 200 patients?---I don't remember specifically such a discussion, no.

10 But you may well have had it with her prior to that meeting?---Well, I think she was aware of what the results were, whether there was a discussion or not I can't recall.

Now, you've said the meeting was at Royal North Shore Hospital?---That's where we went, yes.

Do you remember whether it was in a public or private part of that hospital? ---I don't know what the difference is to be honest, it was the first time I've ever been there.

20 And was it the case that you followed Ms Lazarus to the location of the meeting?---Yes, we wouldn't, we wouldn't have known how to get there otherwise.

Do you remember whether there was a name on the door indicating it was Dr Burton's office you were attending?---I can't be certain to be honest.

30 Do you remember whether there was anything you could observe and did observe in the room that indicated it belonged to Dr Gil Burton?---Other than a business card I can't, I can't say I wasn't specifically looking for him, yeah.

Were you given a business card?---I'm sure I have one somewhere in my files, yes.

You may have one, Mr Pleiksna, but were you given one at that meeting? ---Yes, that's where I got the details, yes.

And you were given it by the person who you thought was Dr Burton, is that right?---I got it from somewhere, I can't remember who passed it to me.

40 You were asked to describe Dr Burton and you did so earlier, Mr Pleiksna. I wish to ask you what age you thought Dr Burton was approximately? ---It's probably not very complimentary, I, I, I thought he was in his mid-fifties.

Thank you. Now, in paragraph 152 of your statement you set out your discussion with Dr Burton as you recollected it in October 2010. Do you see that?---Sorry, where is this? At 152?

152?---Thank you.

Now, can I suggest to you, Mr Pleiksna, that the information that you set out in that paragraph that you say was provided by Dr Burton may well have been provided to you by Ms Lazarus either during or before or indeed after that meeting?---Whether it was before or after I know it was discussed while he, while that person was there.

10 But it is the case, isn't it, that either during, before or after Ms Lazarus indicated to you that the trial in her view should be expanded from a pilot to a larger study involving 200 patients?---Well, after it would have been by consensus because as I said I don't think, I don't recollect absolutely but I seem to think that she was familiar with the results and certainly the, the patient number was put forward by Dr Gil Burton.

20 THE COMMISSIONER: Mr Pleiksna, I, my impression of what you said when you were being asked by Mr Alexis was that at the meeting you discussed the pilot study but you did not go on to discuss in any depth any further commitment. Now, I'm not saying that is the words you used but that's my understanding of what you were conveying, please correct me if I'm wrong?---There was certainly no further commitment because we had no basis upon which to do that, it was a idea that it would be nice to do if we could but that larger study was discussed with him present and him in fact suggesting the 200 to 400 range.

So did you tell him you weren't in a position to do that?---No, he was just saying that (not transcribable) results it would be great to do and if we had found a sponsor we would have gone ahead with it.

30 I'm simply asking whether you responded when he referred to the larger study by saying you weren't get in a position to do that?---Well, we would have been pleased with that comment, assuming the person (not transcribable)

Do you mind answering the question?---(not transcribable) indicated.

The question is did you respond by saying we are not in a position to do that yet?---I don't recollect ever saying that, no.

40 MS FURNESS: Mr Pleiksna, can I suggest to you that you assumed that Mr Burton indicated what you state in paragraph 152 because of what was in the letter, that is the letter that was purportedly signed by him and written to you?---No, I don't think that's quite correct. That was the suggestion to go to a larger study and we were interested to see whether that was possible. But we certainly didn't make any commitment to do that. And had we had a sponsor, yes, we would have gone ahead with it.

Can I suggest to you Mr Pleiksna, that in the period between this meeting in May, 2009 and October, 2010 your recollection as to what was said and by whom is no longer clear?---Not with the clarity that perhaps you're requesting, no.

Well not with the clarity you've suggested in paragraph 152, Mr Pleiksna? ---I don't agree with that, but you know, I don't know all the specific answers to your questions, no.

10 THE COMMISSIONER: You're saying you have a clear memory that Dr Burton said that the trial should be expanded to a larger study involving 200 patients?---He recommended it. Recommended based on the study that, to make it valid for medical acceptance it would require a larger patient study and also symptomatic and asymptomatic patients that it would find a better result with a larger study group. And that was discussed. But in terms of commitments and any other details, we didn't have enough time to, to get those points together. The objective was to find out what was the outcome of it and based on that would there be further study that should or could be done.

20

MS FURNESS: Now you hadn't met Dr Burton prior to this meeting had you?---No.

And you haven't met his since. Is that right?---No, correct.

And you haven't subsequently spoken to him. Is that right Mr Pleiksna, you haven't subsequently spoken to him?---I think, I, no I don't think I have, yes.

30 And prior to this meeting you hadn't spoken to him?---No.

Thank you. Thank you, Commissioner.

THE COMMISSIONER: Thank you. Mr, is Mr Sims there?

MR SIMS: Sorry, Commissioner?

THE COMMISSIONER: Do you wish to ask any questions, Mr Sims?

40 MR SIMS: Perhaps just one. Early on in your evidence Mr Pleiksna, you were asked by the Commissioner, I think something along the lines of why were you still interested in the results of these clinical trials given that the relationship with Mr Neiron was almost coming to an end. Perhaps you can explain other interest in the results the trial transitioned and how the rights to the Medex test went from the company of which you and Mr Neiron were directors to Inter Medical, which you and David and (not transcribable) are directors?---Do you want me to elaborate on that or - - -

Yes?---The, the transition was once we had resigned we were still going to put in the, the technology and wanting to make sure they don't get out into the hands of people because they (not transcribable) that it would actually do what it was designed to do. And so therefore we had, had to get a new contract to even buy and sell this equipment simply because Mr Neiron's agreement and I the director of either of those two companies previously, that's the Medex Screen and the MedexTest, were not made aware that his contract with them had lapsed over two years, two years prior to that, so about two and a half years ago (not transcribable)

10

And so when you set up Inter Medical what steps did you take in relation to those rights?---Well then we, we travelled to Medex Israel and ascertained from the signatories on this so called document that he showed us some years ago and they said they never existed. There was no such agreement and any other verbal agreement they had had expired a long time back.

And so you negotiated new rights for your new company, Inter Medical, with the whole group of the intellectual property in Israel. Is that correct?  
---That's correct.

20

THE COMMISSIONER: Now where did, was the question of the rights of the parties part of the litigation?---We had no litigation between them.

Well I thought that the, were you (not transcribable) disputes with Mr Neiron and his company?---Oh, well, we had a difference of opinion which we just, they took the machines back or the equipment back and, and they fired me, if you want to put it bluntly.

30

But did you, you went to lawyers and they went to lawyers?---But I only, we needed legal advice on how to tread with all this because we didn't want to, didn't want to get involved with any conflict of interest.

The answer is yes I take it?---Yes, we did.

Right. And then you came to an agreement to resolve your differences?

---For the time being, yes.

40

And did that agreement involve the question of the rights to the Medex, to the intellectual property?---No, we subsequently found out that they had no rights, so it didn't exist for two and a half years.

I'm just asking whether the settlement had involved the intellectual rights or not?---There were no, there was nothing for him to transfer (not transcribable) he'd already lost any legal rights so - - -

Will you please answer the question?---Oh, okay. Maybe I don't understand it, sorry.

You said that there was, there was an agreement between you and Mr Neiron and his company which resolved the dispute. Is that right?---It had, it hadn't actually, I don't how to answer that legally. Can I ask Mr Sims on that question?

Oh, well, forget it. Forget it. I give up?---Oh, no, perhaps I can clarify.

It's all right. Don't worry.

10

MR SIMS: The legal dispute was simply over the return of the physical property. Is that correct Mr Pleiksna?---That's it. It hadn't gone further then that.

And you returned the physical property and you haven't had any correspondence?---Not since, yes. I'd rather have nothing to do with any of, anything to do with - - -

20

THE COMMISSIONER: Are you saying that Mr Neiron's company, was that, does not carry on any with regard to the Medex device?---(not transcribable) overseas, they have no idea. They, they collected all the devices so they still have considerable stock.

So if you have no intellectual, if you had all the intellectual rights why did you give back the devices?---Because when I resigned from the company, the property was the property of the company not mine.

I see. All right. Thank you. Mr Alexis.

30

MR SIMS: No further questions, thank you, Commissioner.

THE COMMISSIONER: Thank you. Mr Alexis.

MR ALEXIS: Just a few final questions. And I'm not intending to delay your lunch, Mr Pleiksna. But do you remember some questions were asked of you earlier in reference to paragraph 12 of your statement which dealt with the course of study that people undertake in order to operate the Medex device? Do you remember those questions?---I do.

40

And you referred in paragraph 12 and in answers to some of those questions to the longer course, that is the two to three day course designed for medical practitioners and that was one related to the interpretation of results as distinct from the operation of the machine?---That's correct.

Now, when you saw Dr Burton in May of 2009 did you have any understanding as to whether Dr Burton had undertaken any course of study for the interpretation of the information provided by the Medex device on a patient?---I'm not aware that he's done anything.

And in order to supervise a test in order to interpret results, in order ultimately to express an opinion on the results that he did in the letter, that is the eight out of ten or the 80 per cent, you'd accept wouldn't you that he'd have to undertake a course of study to be able to interpret the results properly?---If he was doing the interpretations, yes.

10 Well, you'd hardly expect a doctor to sign a letter confirming the results of a pilot test if they didn't interpret the resulting data themselves?---As I said, I'd never met Gil Burton, I don't know what, what he had done and I don't know whether he did any interpretations. I would think not but just (not transcribable) if I can, you can actually profile the technology to look say for not the whole range but just for some specific ranges and you could then have a reduced amount print out so that if you're looking say for example for gynaecological problems it'll just give you the gynaecological problems, not everything else.

20 You said in an answer just then that you hadn't met Dr Burton, what did you mean by that?---Not for any of the training I meant. Beforehand, are we talking about beforehand? I have no idea whether he's had training or not.

Yes. Now, I just want to ensure that you fully understand the importance of your evidence concerning this meeting. It's perhaps obvious to you because you've been asked so many questions about it but can I just draw your attention to a couple of things. Firstly, that at the Royal North Shore Hospital no ethical approval had been provided in relation to any clinical trial involving the Medex device whether a pilot study or a larger scale study, Firstly, did you have any understanding about ethical approval in May of 2009?---No.

30 If you can just accept from me that there was no clinical approval. And secondly, can I draw attention to some evidence that's been given by Dr Burton, namely, that he never saw the pilot study that's referred to in this letter. Now, if you can answer those two pieces of information. The third namely is evidence that he's never had any instruction on the interpretation of the information from the Medex device, do you follow?---Yes.

40 So you would understand from what I've just suggested to you that what you said in evidence this afternoon about your recollection of this conversation with Dr Burton raises a serious question as to whether or not Dr Burton despite having no ethical approval, despite having no instruction on interpretation of the information and having said in evidence that he never saw any pilot study nonetheless talking to you about that very subject matter. Now, having drawn all those things to your attention do you accept from me that your recollection as to the subject of speaking with him about the content of this letter is not a very accurate recollection of the meeting at all?---I will not agree with all those points.

Well, tell me what you agree with and tell me what you don't agree with?  
---As far as training is concerned he certainly had no training from Inter Medical but at the outset we had never commissioned, Inter Medical had never commissioned this clinic trial, a pilot trial, this was done really under the auspices of Sandra. We've never ever agreed or commissioned him to actually do the trial, we thought it was just something done internally by the University of Sydney with Sandra in conjunction with Dr Gil Burton.

10 But you were relying on the results of this weren't you?---We (not transcribable) the documents.

But how could you rely upon the content of this letter if you didn't know that the person who apparently signed it had done any course of study on the interpretation of the information provided by the test?---I can't answer that because prior to that Johel had trained some people and Dr (not transcribable) was there about a year and a half before. I don't know whether he's received training or not, that is true, I don't know.

20 All right. So you don't know whether he's trained, you've got no reason to doubt I gather what I've suggest to you as to the lack of any ethical approval and we've got Dr Burton's evidence that he did not ever see a pilot study. Now, do you accept from me that when confronted with those three propositions your recollection as to what was discussed at this meeting in content of the letter must be wrong?---No, I don't conclude that it was wrong but, you know, we have assumed a lot of things just in good faith believing (not transcribable) that point of time there's no need for us to, you know, to have sort of doubts we're now being crowded with.

30 Well, having drawn these things to your attention do you accept from me that perhaps you may well have assumed that the meeting discussed the letter in terms of its content because absent the content of that letter you've got no real recollection otherwise of what was discussed at the meeting?  
---But it wasn't a long meeting to start with so, and I can't give you more than what I've actually given you at this point of time.

40 Well, when I stepped you through the various subject matters you had difficulty recalling any of those didn't you?---What our prime objective, our prime objective was really to, we were excited about the outcome (not transcribable) and the possibility of maybe this being their, their, a forerunner of bigger trials, possibility only and the, the idea of whether it was valid or not hadn't been entered into our minds at that point - - -

THE COMMISSIONER: I don't understand - - -?--- - - - I simply assumed it was true.

Mr Pleiksna, I don't understand how you could be excited by the pilot study in the light of the fact that there was nobody qualified who could interpret it?---We didn't know that he wasn't qualified. As I said a lot of this was

done by Johel over two or three years down there and he had actually also (not transcribable) or trained a few people and, and done diagnoses.

So when you got a letter you thought - - -?---I don't know who else would've trained him but my understanding is it doesn't require the supervising doctor to necessarily to be the one trained it could be some other party has been trained.

10 MR ALEXIS: Now, Mr Pleiksna, it's clear isn't it that the arrangements to travel to Sydney as we see set out in the itinerary attached to the email were made well before you ever saw the letter from Dr Burton?---I can't remember the exact dates. Was it 12 May or something?

Well, the email is 4 May and it attaches an itinerary relating to arrangements for 6 May?---Yes.

20 So it's plain isn't it that those arrangements were made well before you received the letter from Dr Burton dated 6 May?---We would've been guided by Sandra as to the doctors that we need to see. I had no idea at that point of time who or even what (not transcribable).

No doubt that's so but the point is that you didn't receive the letter in the context of arrangements being made to travel because you didn't get the letter, on your evidence, according to, until you received it on your laptop at some point on 6 May?---That could've been. I mean there, there are other parties we could've (not transcribable) we didn't know where our (not transcribable) inquiry was going to lead us.

30 So you weren't going to see Dr Burton about the letter because you hadn't got it by the time you made the arrangements, is that so?---No, (not transcribable) arrangements, that's, that's correct, the letter only came through on the 6<sup>th</sup> two days later.

Can I just come to paragraph 152 of your statement please. Now, I just want to ask you to focus on some of the expressions you've used. Do you see in 152 on page 37 you say, "I can recall that we discussed" and these are the important words, "the content within the letter with Dr Burton." Do you see that?---Yes.

40 Now, what I want to suggest to you is that when you came to make this statement, I'll withdraw that, I'm sorry. Are they your words, Mr Pleiksna? "We discussed the content within the letter" is that what you told the investigator when you made this statement?---I think that's my words, yes.

Right. Well, what I want to suggest to you is this that when you came to make the statement you could recall very little about meeting Dr Burton and the meeting and in fact all you could remember by reference to the letter was what was in the letter which is why you sought to capture the content of

the discussion by reference to the letter and nothing else. Is that correct or not?---Not nothing else because we just, because this was not commissioned by us, this was not a bonus trial and I wasn't prepared for anything that I should actually ask other than the letter but the letter was, in our view, quite encouraging and that's the basis we approached it on and at the time there were no other deeper more meaningful questions to ask.

10 MR ALEXIS: Can I suggest for your consideration this proposition: that prior to the meeting Sandra Lazarus told you that there had been a pilot study involving ten cervical cancer patients, that the results of that were very positive and in light of that you were to see Dr Burton and discuss the prospect of a larger study, you had your meeting with Dr Burton and that you subsequently received the letter which confirm what Sandra Lazarus had told you before the meeting. What do you say to that?---It's a long statement. The first part, my recollection is that we had the letter at the time we were speaking with Dr Burton and we weren't going there with a view to just getting a bigger clinical trial study, that was, that was a suggestion, a recommendation made there because we were still wondering how we could do it and what would be involved (not transcribable) many other things, this  
20 was, that's why it not such an in-depth meeting there.

But, Mr Pleiksna, as I think we've already established, you didn't have the letter when the arrangements for the meeting were made so what was it that you were going to speak to Dr Burton about before you left Perth?---Well, with that content of the letter which I would have had prior to seeing Dr Burton.

Thank you, Mr Pleiksna.

30 THE COMMISSIONER: Mr Pleiksna, I'm sorry to prolong this but I, I gather from what you've just told Mr Alexis in the last series of questions that you identified the doctors you were to see on your trip to Sydney from information given to you by Sandra Lazarus?---That's correct.

And the purpose of your trip was to check to see whether the research you'd done at the various hospitals was bona fide and okay?---In a broad sense, yes, and also to try and resolve questions of any, that were still hanging around Ms Lazarus regarding the conduct of those trials but we had to be careful because we didn't have anything in writing - - -  
40

I know?--- - - - that would say that.

But you wanted to go to all the hospitals where she carried out tests to speak to the right - - -?---Well, the only ones we were aware of were the prostate at St Vincent's and with Strathfield Hospital and North Shore that we subsequently went to as well.

So Sandra Lazarus told you nothing about Royal Hospital for Women?---It may have been mentioned but it, it was never on our radar in any way at all. I don't know anything about that.

It never occurred to you that you should check at the Royal Hospital for Women?---No, there was no reason for us to do that.

No reason because she'd said nothing to you about tests carried out there?  
---I have no recollection of any tests being done there, no.

10

All right. Thank you. Mr Pleiksna, I'm sure you'll be pleased to know that this has come to an end?---Thank you. I was wondering when we'd get a sandbox break.

Yes. Thank you very much?---Thank you.

This, this now terminates?---Right (not transcribable).

20 **THE WITNESS EXCUSED**

**[5.03pm]**

THE COMMISSIONER: I think that Mr Alexis we start at 8 o'clock tomorrow morning.

30 MR ALEXIS: Well, I was going to suggest that. In fact, Commissioner, Ms Soars made a suggestion earlier last week, a very good suggestion that there ought to be a CPD on the conduct of inquiries before this Commission and one of the important topics of course is the need to be fit, having regard to the hours that the Commission sits in order to accommodate witness convenience and other issues. May I suggest we start at 10.00am tomorrow?

THE COMMISSIONER: Yes, it will be a pleasure. Yes, thank you.

**AT 5.03pm THE MATTER WAS ADJOURNED ACCORDINGLY**  
**[5.03pm]**