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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION MAGNUS

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 30 MARCH, 2010

AT 5.00PM

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

MS RONALDS: Commissioner, I'm pleased to announce that Mr O'Brien is with us from Ireland and he can see whoever's at this camera and he can see you and we can see him.

ASSISTANT COMMISSIONER: Can you hear us, Mr O'Brien?

MR O'BRIEN: Yes, I can hear you fine.

10 ASSISTANT COMMISSIONER: All right. You're giving evidence at this public inquiry. You're obliged to answer all of the questions put to you, however, you can seek a declaration under our Act that your answers can't be used against you in future proceedings.

MS RONALDS: I understand he'd like a declaration. I'm not sure if it operates from here to there but we'll just - - -

20 ASSISTANT COMMISSIONER: I have jurisdiction over Ireland. Pursuant to section 38 of the Independent Commission Against Corruption Act I declare that all answers given by this witness and all documents and things produced by him during the course of today's hearing are to be regarded as having been given or produced on objection and accordingly there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

30 **I HAVE JURISDICTION OVER IRELAND. PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF TODAY'S HEARING ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

ASSISTANT COMMISSIONER: Now, I think - - -

40 MS RONALDS: The court associate will now administer the affirmation.

ASSISTANT COMMISSIONER: Yes.

MS RONALDS: And I've explained to Mr O'Brien what will happen. So just bear with us, Mr O'Brien.

MS RONALDS: Now, Mr O'Brien, my name is Ronalds and I'm counsel assisting the Commission in this inquiry and I'm just going to ask you some questions, all right? Can you hear me all right?---Yeah. And (not transcribable) you're starting to break up a little bit.

10 All right. I'll slow down from my usual pace. Now, Mr O'Brien, you currently reside in Ireland. Is that correct?---That's correct, yes.

But you did live in Australia?---That's correct, yes, I lived in Mount Druitt for about 11 years.

Right. And when did you leave Australia to return to Ireland?---About October 2009.

20 And while you were living in Australia is it correct that at some stage you had a business called O'Brien Civil Pty Limited?---That's correct, yes.

And what did that business do?---That business was a small civil company. When we started our first (not transcribable) we used machines, excavators and plant hire, we used to do hire, we used to hire our machines to different people, Councils and different (not transcribable). We started out with the Burwood Council on a plant hire.

30 So you started with Burwood Council?---Yes. Started with Burwood Council, we were there for approximately probably somewhere between eight, eight years or nine years or so and we started up with machine hire doing hourly rates for one machine. We were there for about (not transcribable) worked for probably three or four years and we started getting into a bit of contractor work just doing some concreting (not transcribable) footpaths and stuff like that so, yeah. And then we moved on, we, we started, the company started to go into (not transcribable) doing other jobs and we had other machines so basically that was the work that we done (not transcribable) and we put (not transcribable) restorations as well but we priced on our work, we priced work around Sydney and in Canberra as well and we have (not transcribable) that we don't, we don't (not transcribable) anything underneath the ground (not transcribable).

40 Right. And by mid 2007 did you have a regular contract with Burwood Council?---It was more of a verbal handshake and we still had the machine hire and we (not transcribable) again 2007 we were, we were pricing some jobs for them and this was with small jobs (not transcribable) footpath restoration something that they hadn't time to do themselves we'd price it and stuff like that and we were doing that, yeah.

And did you work regularly with the same group of people from the depot?

---Yes, yes, when I done the machine hire I drove the machine myself. We, we worked the same hours as the Council guys so I was on a crew and I used to park my machine down the depot yard. So I used to start at the same time as them and finish the same time so I was kind of, kind of (not transcribable) as one of the crew (not transcribable) in the yard at the time for, for the last year and then, yeah, I, I (not transcribable) Council's (not transcribable).

Right. And who was in the team? Did you work with Mr Steve Child?

10 ---That's correct, yes, I worked with Steve Child, yes.

And did you work with Mr Joe Giangrosso?---That's correct, yes, and Joe was our, was our foreman, yeah.

Now do you recall an occasion when you went and worked on a driveway on a Saturday in September, 2007?---Yes, I do. Yes, I do.

And did you know whose driveway it was?---Yes. It was Pat Romano's.

20 And before the day you went there had you ever met Mr Romano?---No, I didn't know, I knew of Pat Romano, but I didn't actually have met him, no.

And before you went to that address had you ever been to that address before?---No, I had not.

Right?---No, I've never been to that address before.

30 And do you remember, do you recall how it was that you went there that day? Who asked you to go?---There was, I had my truck and I had my excavator on the back of my truck. We, we left the, we probably got there about 7.30 or so, around that time. I took my machine down off the back of my truck. We had another truck there then. When I got there I put my hammer on the, the first thing we done was we (not transcribable) the footpath and the second thing we done then is I put the hammer on my excavator and I hammered out the concrete, the old concrete. The next stage is (not transcribable) I put the concrete on my machine, we backed up the truck and I loaded (not transcribable) the concrete. And I changed my (not transcribable) and put it on my (not transcribable)

40 I'm sorry, we've just got a little feedback problem?---Yeah, that's okay. And we put on my (not transcribable) and my (not transcribable) and we excavated down to our, our concrete depth.

Mr O'Brien, if I can - - -?---And (not transcribable) down that extra 20 metres (not transcribable) so that we could get a proper depth for our concrete.

Mr O'Brien, if I could just stop you for a moment. If I could ask you to speak a bit slower because it's - - -?---Sorry, I didn't hear that.

If I could ask you to speak a little slower?---Okay.

10 Because it's breaking up a little bit?---We got our excavation level to where we want it to be. When we finished doing that we swept up all along the driveway. I packed up all my machines and Joe Giangrasso and I got into the truck and we went back to the Burwood Council depot and we tipped the load. And then we came back and my job was finished then, 'cause I did the excavation only, not the driveway. So I put my machine on the back of the truck and I went home.

And do you remember what time you left?---It was about 11.30 or so, about that.

20 Right. And if I could go back a step, who organised with you to go on that day to do the work you've just described?---Joe Giangrasso asked me to, to, would I go to dig out this driveway for Pat Romano.

And - - -?---And Pat Romano was the, the boss at that time and we said, yes, no worries, we'll do this, do this job for him, yeah, we'll do the job.

30 And did you understand that it was a separate contract for O'Brien Civil to perform?---Yes. Yes. We, well we, we didn't have a contract. It was just a favour for the boss, just to do his driveway. It was just something I was asked to do and did I expect to get paid, and they said no, we didn't expect to get paid. And as a contractor, we just did a little favour for the boss, hopefully we'll get some more work.

And who do you say was in charge of the work on the day? Were you?
---No, I was not in charge. I was in charge maybe of doing the excavation. But Steve and Joe, Steve and Joe, the two of them, they're experienced concreters and, and they were looking after the job.

40 All right. And did, had you spoken to Steve Child about going to do the work before you got there on the day?---Yeah. I spoke to Joe and I spoke to Steve and I, I asked them what had to be done and what time (not transcribable) We had to do a little job (not transcribable) pretty straight forward. So yeah, it was (not transcribable)

And, but it was your understanding that you were not being paid by Mr Romano?---That is correct. Yep, yep. That is correct.

All right. And now, I want to show you a document and it's a letter that was written by Mr Romano. You see this document? Can you see that?---Yeah.

And you've read that before?---I read that when it was shown to me (not transcribable)

Yes. And if I could see, there's some numbered paragraphs? Paragraphs with numbers on them?---I didn't hear that, can you say that again.

You can see in the letter there's some paragraphs with some numbers of them? Do you see that? 1, 2 - - -?---Oh, yes. Paragraph with some numbers.

10

You see paragraph one, O'Brien Civil Pty Limited were engaged - - -?
---Yes, I see that.

You see where it says, were engaged to construct the said driveway? Do you see that?---Yeah. The driveway (not transcribable)

No, number 1?---Yeah, O'Brien Civil Pty engaged to construct the driveway, yes.

20

Now, is that correct in your view?---No. No. No. Well, that, that sounds like our company was to look after the driveway and price the job and do the job. That's not actually how it happened.

Right. And the only work you did really was the excavation work?---That's correct, yes. We did the excavation only. That's correct.

And you didn't, you didn't stay for the concrete pour and the rest of the work?---No, no, no. I didn't stay, I was, what we done was, we just excavated the driveway, we, we prepared the ground. That's all we did.

30

We take the, we take the concrete away and, and (not transcribable) our excavation. We do, our company does do concrete and stuff like that, but we, we sub it out. I don't do it myself. I mean, I don't do any concrete, we just generally sub it out. And Joe, Joe and Steve have done jobs for me before. And, no, I had nothing to do with the concrete.

And do you see number 2, O'Brien Civil were also contracted to submit all relevant applications and fees to Council. Now is that correct?---No, no, that's not correct. And I was unaware of any, any paperwork going to the Council or any fees.

40

And did anyone ever ask you to do that before the Saturday?---No, no one asked me. No.

And did anyone ever ask you afterwards whether you'd done that?---No, no.

And, and you didn't do it. Is that correct?---That's correct, yeah.

Right. And, now if I can show you a certificate. You see this is a certificate of insurance?---That's correct. Yep.

And this is for O'Brien Civil Pty Limited?---Yes.

You didn't give Mr Romano a copy of this document did you?---No. No, I didn't.

10 And you didn't ever discuss this document with him did you?---No.

And you didn't authorise him, you didn't tell him he could put that in to Canada Bay Council on your behalf?---No. No.

And I'll show you a second document and you'll see this is a worker's compensation coverage certificate. Do you see that?---Yep.

And you didn't give this to Mr Romano either did you?---No, I did not.

20 And you didn't ever authorise him to give this document to Canada Bay Council did you?---No, I did not.

You were never paid any money for the work you did on Mr Romano's driveway were you?---No, I was not, no.

And do you remember Mr Romano having lunch with Mr Romano and others at il Buco?---That's correct, correct, yes.

30 And what did you understand the lunch was for?---My understanding that the lunch was a kind of a, a thank you note for, for basically digging, digging out his driveway. And, yeah, that's what the lunch was for. That's what I understood the lunch was for.

And was that the only time you can remember having lunch with Mr Romano?---Yes, that's the only time.

Right?---That's the only time.

40 Thank you. I have no other questions but I understand some others may. No? Just wait a moment, just wait a moment, Mr O'Brien, okay?---That's fine. Okay.

MR BLAKE: Mr O'Brien, my name is - - -?---Hello.

Hello, Mr O'Brien, my name is Garth Blake and I'm - - -?---Hello, how are you?

Hello. I'm counsel for Mr Romano?---You're breaking up a bit, I can't quite hear you.

I'm Mr Romano's barrister?---Right, yes, okay.

You told counsel assisting that O'Brien Civil as well as doing plant hire also constructed footpaths for Burwood Council?---Yes.

And that was happening in 2007?---Yes, yes, yes.

10 And when you did footpath jobs O'Brien Civil was taking responsibility for the entire job. Is that correct?---That's correct. They were priced jobs, you know, on (not transcribable) and driveways, we did some reconstruction of (not transcribable), we did price the excavation, the preparation and then the pouring of the concrete and the, if there was some (not transcribable) clay we, we would do that, yes, that's correct.

And you didn't pour the concrete yourself you got the concrete brought in and poured as part of the job?---Yes, I got subcontractors to (not transcribable) the, the concrete (not transcribable), that's correct, yes.

20 Yes. And on the, I think the 17th, sorry, 15th or 17th. Sorry, I'm sorry to confuse you. The 17 September, sorry, 15 September, 2007 you said you went to Mr Romano's place?---That's correct, yes.

And who else was there on that occasion?---Steve Child, Joe Giangrosso and one other guy Ammer.

Thank you. And you said you arrived about 7.30am. Is that correct?---Yes, yes, there or about or so, yes.

30 And shortly after you arrived and started working you met Mr Romano didn't you?---That's correct, yes.

Who came and introduced himself to you?---Yes, that's correct.

I think you said you have not previously met him?---That's correct. That's correct.

40 And you said your role was that the excavation work and the packing up was completed about 11.30. Is that your recollection?---I think we were (not transcribable) 11.30 I didn't say we were finished at 11.30.

Yes?---We had our excavation and (not transcribable) concrete put into the back of our truck, in, in the back of the truck and the truck, we went to the Council tip and came back. I think I would finish about 11.30, about that time, could've been quarter to 12.00 something like that.

Yes. And about that time there was a lunchbreak?---Yeah, (not transcribable) before that we had a lunchbreak, yes. We just had a, we had a coffee, yes.

And Mr Romano provided some food and drink as part of the lunch?

---That's correct, yes.

Yes?---We had a coffee.

Yes. And a barbecue as well, a steak and a sausage and roll?---No, no, I wasn't there for the barbecue, that might've been, I think the, the guys doing the concrete had the barbecue later on, I, I wasn't there for the barbecue.

10

Yes. I suggest you're mistaken about that and you were there at the lunch barbecue?---(not transcribable).

Did you hear my question?---(not transcribable). Hello.

Hello. I thought you were sneezing and turning away when I was asking you a question?---Yes, I was (not transcribable).

20

Yes, my pleasure. I suggest you're mistaken in your recollection that you were not present during the barbecue at lunchtime, in fact you were there? ---No, I wasn't there, no, no, no, I don't think I was because I finished about 11.30 as well. (not transcribable) the day.

On that day the 15 September you also took part of the lunch, in the lunch? ---Yeah. No, I went for lunch not that day and another day after that (not transcribable) lunch.

30

No, I'm just talking about the lunch on 15 September, the day you did the excavation?---Yeah. No, I was not at the barbecue that day.

So you disagree with my suggestion. Is that correct?---Sorry?

You disagree with my suggestion that you were present?---Yeah, yeah, I don't, I finished at 11.30, I don't remember a barbecue that day but we did have a coffee (not transcribable).

40

And I suggest you can't clearly recall what happened at lunchtime on that day. Do you agree with that?---No, no. Yeah, no, not lunchtime. I, I, I know I wasn't there at lunchtime.

Right. And this job - - ?---I was first to go, I was first to go off the job.

So you say you were forced to go off the job?---No, first.

First, sorry?---F-I-R-S-T.

Sorry, my - - ?---(not transcribable) excavation was finished.

Yes?---(not transcribable) and we went with the truck and (not transcribable) the truck we came back but we all (not transcribable) to meet there around because I had nothing to do with the concrete so I was the first man to leave the job, I was the first to go home.

And, Mr O'Brien, this job was like the other footpath jobs that you'd done for the Council that O'Brien Civil was taking responsibility for the whole job. Do you agree with that?---Yes, yes, the job we take full responsibility, yes. But when, when we price them all the (not transcribable) excavator
10 (not transcribable) footpath for Burwood Council on hourly hire. That's what I, I (not transcribable) price for the footpath, footpath. Only the, only the jobs that we had priced within our contract to do the excavation and do the concrete.

And your understanding on 15 September, 2007 is that this job would be the same as the other jobs where you constructed footpaths with O'Brien Civil taking responsibility?---No, no, that's not right. This job was (not transcribable) excavate as a favour, there was no, no contract, there was no paperwork, there was only - I was asked (not transcribable) do Pat
20 Romano's driveway on a Saturday morning and that's what I done. It was done personally myself with my own machine and truck and we went down, we dug out the driveway, Joe and Steve were there and they were doing the concrete and I just had, had nothing else to do with it. I just done the bare excavation only. So I done no calculations, I done no pricing of the job, I did not go to the job before and look at it to price it, I didn't do any of that which we would have to do if it was our own priced job. We just went straight (not transcribable), I knew what I had to do, Joe told me what I had to do, it wasn't a very big job but I just went down to (not transcribable) and left. That was all my job duties for that day.

30 Just hang on, Mr O'Brien, we've lost the picture?---Okay.

Just hang on Mr O'Brien, I think we've got voice but we don't have your picture?---All right. (not transcribable)

Just hang on Mr O'Brien, we've got some technical problems at this end.

ASSISTANT COMMISSIONER: Are you happy to continue without the video, just using the audio link or would you prefer to wait?
40

MR BLAKE: Well, I'm happy to wait.

ASSISTANT COMMISSIONER: All right.

MR BLAKE: It's a bit unsatisfactory just a voice, just somebody's voice.

ASSISTANT COMMISSIONER: Can you still us, Mr O'Brien?---No. I can see half of you and, and top one I can't, I can only see half a picture.

Okay. Just a minute, please?---Ah hmm.

Actually, I think we might take a short adjournment. It might be easier to fix if everybody's not standing around looking at them. So we'll take a short adjournment.

SHORT ADJOURNMENT

[5.32pm]

10

ASSISTANT COMMISSIONER: Yes. Thank you. Please be seated. Yes, Mr Blake.

MR BLAKE: You're not in the picture, Deputy Commissioner.

ASSISTANT COMMISSIONER: Look, I, that's all right.

MR BLAKE: Mr O'Brien, I think you told counsel assisting that Mr
20 Giangrasso had done concreting work for you before 15 September, 2007.
Was that your evidence?---Can you say that again, I only barely heard (not transcribable).

I think you told counsel assisting that Mr Giangrasso had done concreting work for O'Brien Civil before 15 September, 2007. Was that your evidence?---Yes. Joe has done some jobs before on weekends and stuff. Yep, that's correct.

So O'Brien Civil had done weekend jobs before using Council employees.
30 Is that correct?---Well, no. No, Joe, Joe had some jobs done for me on Saturday's. He worked for me the Saturday (not transcribable) small jobs. But Joe has (not transcribable) on Saturday's and stuff like that.

Yes. And this was a similar sort of arrangement wasn't it, that Mr Giangrasso was helping you do this job at Mr Romano's driveway?---No, it's not, no. It was actually the other way around. It was, Joe asked me to dig it out for the, for, for Pat. So Joe asked me would I be willing to (not transcribable) for Pat Romano. That's how this job went.

40 And just before you left you drove away in your truck with the excavator on the back. Is that correct?---That's correct. Yes.

Mr Romano gave you \$900 in cash didn't he?---No, he did not. No, he did not.

And you're quite sure about that?---No, a hundred per cent sure.

Yes. Well, I suggest you're mistaken. Your evidence is wrong and that Mr Romano gave you \$900 in cash before you left on that day?---No, he did not.

All right. Thank you. No further questions.

ASSISTANT COMMISSIONER: Thank you, Mr Blake.

10 MR BLAKE: No, I'll just, did Mr Child give you any money later for the driveway work?---No.

All right. Are you quite certain about that?---I, I understood that job, we done that job as a favour for the boss, hoping that he, he would forward some more work as, as what a contractor would do. It was only a small job and that's why he brought us to lunch to, to say thank you. I remember that very well. That was a hundred per cent what happened.

Right. Thank you, Mr O'Brien?---You're welcome.

20 ASSISTANT COMMISSIONER: Now, does anybody else want to ask any questions?

MS RONALDS: Mr O'Brien, it's Chris Ronalds again. You just told - - -?--Yes.

30 You just told Mr Blake about meeting Mr Romano. Do you remember how long you had, after you arrived at the house, before Mr Romano came out and met you?---I, I think we were there for a while. I think we, we were just (not transcribable) the concrete because Joe and Steve knew what we had to do, so (not transcribable) didn't want to do (not transcribable). So we were just up to breaking out the concrete and Pat came out. We were probably there for about an hour or so, half an hour or so, half an hour to an hour, like that.

Okay. And it wasn't quiet work what you were doing was it?---No, no. The first job, when I had my hammer (not transcribable) there was banging, yes.

40 All right. And so would it be your guess knowing the noise level that you would've, someone in the house could hear it?---Yes. Where the concrete (not transcribable) yes, you can hear it.

And concrete saws are noisy aren't they?---Yes, that's correct. Yes, they are very noisy, yeah.

I don't have any other questions. And I don't think anyone else does do they?

ASSISTANT COMMISSIONER: No. All right. Yes, look, thank you very much, Mr O'Brien for your evidence?---Okay.

Thank you. All right. We'll, we'll adjourn now until 10 o'clock tomorrow morning. Thank you.

AT 5.42PM THE MATTER WAS ADJOURNED ACCORDINGLY
[5.42PM]

10