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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION SIREN

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 20 SEPTEMBER 2010

AT 2.20PM

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

THE COMMISSIONER: Yes, Mr Payne.

MR GLEESON: Commissioner, just before we start, may I give an indication?

THE COMMISSIONER: I beg your pardon, yes.

MR GLEESON: And the indication is that as currently minded I intend to ask no questions.

10

THE COMMISSIONER: Yes, thank you. Mr Stevenson?

MR STEVENSON: You also sought an indication from me, no more than two hours and very likely less.

THE COMMISSIONER: Well, if you have two hours you'll be using up what, part of Mr Gordon's, if Mr Gordon was going to take time - - -

20

MR STEVENSON: I'll be as brief as I can. Commissioner.

THE COMMISSIONER: I understand, we'll just see where we are. I'll do my best to give the two hours.

MR STEVENSON: Thank you, Commissioner.

<EDWARD KENNEITH HARVEY, on former oath [2.20pm]

MR PAYNE: Mr Harvey, we were just finishing on a document at P374 which was the last page in that letter from Hall Chadwick?---Yes.

And just so we're clear, and I think perhaps you say this - - -

10 THE COMMISSIONER: Sorry, Mr Payne, I beg your pardon, I forgot to ask Mr McIlwaine.

MR McILWAIN: No, my position remains the same, there's no questions.

THE COMMISSIONER: No questions.

20 MR PAYNE: Sorry, Commissioner. So page 374, just to finish off on that and that, you say in a face to face meeting with Mr Makucha, you said that providing the costs in relation to progressing the joint venture, I'm happy for Sydney Water to cover these costs, I take it when you signed this acknowledgment of the Hall Chadwick letter that was your authority or that was your authorisation if you like for Mr Makucha to expend the costs and you were undertaking on behalf of Sydney Water to meet those costs of Hall Chadwick?---I just need to, I'll run through the document again.

Yes?---Yes, I believe that was the situation.

Yes, okay. Can I ask you then to turn over to the document at page 375 at the top right-hand corner - - -?---Yes.

30 - - - which is referred to in paragraph 94 of your statement. That was a request by Mr Makucha for you again, taking you up on this, this engagement with Hall Chadwick and then go over the page to P376 if you would, I'm sorry, that's the document at - - -?---Okay.

- - - paragraph 94 that you deal with, that was a letter given to you by Mr Makucha in the last week of March 2009 as you say in paragraph 92? ---Yes.

40 It's the last of those documents?---Yes.

You'll see there Mr Makucha is confirming with you about land at Kurnell for various uses. Do you see that?---Yes.

That was no part of your authority to negotiate with him about that matter, was it?---No, it wasn't.

Did you tell him that?---I believe I said that land is part of the desalination plant and there's another, other, the desalination team are looking after all aspects of that.

And what did he say to you about that?---I can't recall.

10 Just look over the page at P377 if you would. Mr Makucha's telling you there that he proposes to order a custom built in Korea or Japan a water tanker of about 500,000, I'm not quite sure what's been written in by hand there, can you help me?---I think its DWT.

Which means?---Basically the tonnage I think.

So a very large ship?---Yeah.

20 And he's telling you he proposes to order a custom built one in Korea or Japan. Is that something that you had discussed with him prior to this time?---I think there would have been the general caveat of saying look, we can't do that until there's an approval in place.

But he's telling you here that he proposes to order one, do you remember telling him anything about that proposal?---I can't apart from those I've just indicated, I certainly wouldn't have given him an okay to do that.

In relation to paragraph 7, Mr Makucha's telling you he's identified an alternate drinking water source in Alaska. Do you see that?---Yes.

That was something you discussed at or about this time?---That's correct.

30 And you purported to enter into an agreement with Mr Makucha and his companies about that subject matter at the end of 2009, didn't you?---That's right, yes.

And that wasn't expressed to be subject to any agreement by the Sydney Water Board was it, that agreement?---It would have been, it was all part of the one deal, one arrangement, yes.

40 You signed it at a time separate to the time you signed the Business Implementation and Confidentiality Agreement, do you agree?---I did sign that, yes.

And you signed it at a time separate to that large agreement, do you agree? ---No, I, I can't recall doing that. The only time I would have signed anything was that major one in December.

Well, we'll come to that then, Mr Harvey?---Okay.

The sixth payment that you authorised was one made to Hall Chadwick of \$29,700 and you'll see that at P378, if you'll turn over to that page?---Yes.

That was, you're giving effect to the agreement that you had made with Mr Makucha that we talked about shortly before?---That's correct.

That you would arrange for payment of these accountancy fees although you knew Hall Chadwick are acting solely for Mr Makucha not, not for Sydney Water or for you?---Well, I do say for both Makucha and Sydney Water.

10

I see. Did you think Hall Chadwick were acting for Sydney Water did you? ---I think, as part of the joint venture, yes.

As part of a joint venture which had not yet been created?---That's correct, yes.

20

You expected Hall Chadwick to give you advice, did you, in Sydney Water's interests?---It was, the Hall Chadwick advice was putting together the, predominantly the executive summary and the basic accounting advice, so it would have been, it wasn't specifically for Sydney Water but it was certainly for both Makucha and Sydney Water in terms of how this arrangement would, would be structured and ah, and ultimately ah, accounting for providing that executive summary and the basic costs and benefits.

30

Just so we're clear, Mr Harvey, you understood that Hall Chadwick, do you say, were also acting for Sydney Water as well as Mr Makucha? Is that what you say?---That was my, that's the way I thought, but I think certainly the, us being, Sydney Water being responsible for the payments and, yeah, I saw it as joint advice.

Did you think Hall Chadwick had an obligation to look after the interests of Sydney Water in these negotiations with Mr Makucha?---It crossed my mind.

40

Did you ever say to anybody from Hall Chadwick, look, I'm terribly sorry, I don't understand, for example, the tax treatment that people have been talking about, can you please explain it to me so I can take it back to Sydney Water?---No, I didn't. Ah, I would have ah, once, I suppose I was rely upon getting the, the executive summary and the detailed analysis before any real examination could be ah, could be ah, undertaken.

And so you let Mr Makucha do what he said he wanted to do with, with Hall Chadwick without subjecting that to examination on the basis that you were waiting for some sort of executive summary?---That's correct.

Although you agreed to pay for that work?---That's correct.

THE COMMISSIONER: Were you authorised by Sydney Water to agree on their behalf to retain Hall Chadwick?---Ah, probably not.

And were you, I assume from that that you acknowledge that you weren't authorised by Sydney Water to agree to pay their fees?---That's correct.

MR PAYNE: Indeed if you look at paragraph 99 of your statement, Mr Harvey, I want to suggest to you at the time you authorised this payment, as you say in subparagraph A- - -?---Mmm.

10

- - -you knew the work done by Hall Chadwick benefited Mr Makucha and not then benefit Sydney Water. Correct?---I think that's, that's correct, yes.

THE COMMISSIONER: I beg your pardon?---That's correct.

MR PAYNE: And you knew it was no part of your authority to authorise or arrange payment relating to either Mr Makucha or to any potential business venture with Mr Makucha. Correct?---That's correct.

20

THE COMMISSIONER: Were you surprised to get an invoice from Hall Chadwick?---Well, it had been discussed in terms of ah, ah, with Mr Makucha and, and he presented me previously with that proposal from, from Hall Chadwick, which on the face of it- - -

What was discussed with Mr Makucha?---Ah, I think what I was requesting was a fee proposal from Hall Chadwick to provide some of that accounting advice which the joint venture would need to progress the approval process.

30

But Mr, I just don't understand this, Mr Harvey. The joint venture did not then exist, on your evidence?---No, no. It was, obviously it was discussions, negotiations going on to the point where it could be entered into.

But on what basis then do you agree to pay Hall Chadwick's fees for a joint venture that does not yet exist, on your evidence?---I saw it as basically gathering that information and advice to support the proposals.

Mr Makucha told you he was retaining Hall Chadwick- - -?---That's correct.

40

- - -and they were going to charge- - -?---Yes.

And did you discuss with him how they were going to be paid?---Yes.

What was the discussion?---Ah, I think certainly Mr Makucha indicated that he didn't have the funds to pay them directly, would Sydney Water pay for it.

And what did you say?---I said on the basis that it looks like a reasonable proposition, I'm prepared to do that, yes.

Mr Harvey, I have to say that that is inexplicable behaviour, as far as I'm concerned. What is your explanation for doing that without authority?

---I, I really can't explain, sir. I was- - -

You weren't yourself at the time?---I certainly wasn't. As I you know, indicated before, I was certainly with hindsight I was having depression. And I think the worry of where it was going was enough to cause me concern, so I really just, that's the only way I can explain it.

10

Yes, thank you.

MR PAYNE: Can I ask you to turn to page P390. And this is in relation to the seventh payment you authorised to interests associated with Mr Makucha, in this case to Hall Chadwick in the sum of \$22,000. P390, at the top right hand side. Do you see that invoice?---Yes, I do.

For \$22,000?---Yes.

20 Which you've signed in the box in the middle of the page?---Yes.

And again, I take it that you knew at the time that the work done by Hall Chadwick, that you were agreeing to pay for benefitted Mr Makucha and did not benefit Sydney Water?---In this case, yes. Yeah. It was predominantly for Makucha Group Companies, yes.

30 And just taking everything that you've said to me into account, Mr Harvey, what was there about the tax position of the Makucha Group Companies had anything to do with this joint venture?---It was the proposition of the, the tax losses of \$10 million in tax losses being a benefit to Sydney Water.

And other than being told by Mr Makucha that such losses were available to be transferred to some joint venture if one was ever created, did anyone ever tell you to explain to you how that might be?---I think there was some advice, I'm not, from Hall Chadwick about how that would take place.

40 I suggest to you that you never received advice from Hall Chadwick that those tax losses could ever be used. Do you agree?---I can remember some discussion or dialogue about some tax situation. I really can't recall.

And you can't be any more precise than some discussion about some tax situation. Is that what you say?---I thought I saw some, some advice from Hall Chadwick about initial advice about how things could be structured.

I suggest to you there was never advice that losses in Makucha Group Companies could be transferred to any joint venture. Do you agree with that proposition?---I, I was advised that it was possible by Paul. And

without that further advice, I, I wouldn't be in a position to, certainly, I had the impression it was possible.

Because that was what Mr Makucha had told you?---That's correct.

Not what anything that any accountant or anybody else told you. Correct?
---Yeah, again, I can't, I'm trying to think of what advice I saw from Hall Chadwick. I, I really, there was some, some correspondence that, it's, it's 12, 18 months ago, I can't - - -

10

I suggest to you the only \$10 million benefit that was ever spoken about in advice from Hall Chadwick was to the effect that after there were profits of a certain amount by reason of redeemable preference shares that may or may not be issued, that it may be possible to stream some part of the first \$10 million profit that the joint venture made to Sydney Water. Does that ring a bell with you?---Yep.

And that's what they were talking about. Nothing to do with any tax benefit. Correct?---Okay.

20

You accept what I'm putting to you?---Oh, I can accept that, yes.

Just in relation to this document P390. In addition to believing that it had benefitted Mr Makucha and not Sydney Water, you knew didn't you that you weren't authorised to have this invoice paid to Mr Makucha didn't you?---Yes.

THE COMMISSIONER: Do you know why Hall Chadwick sent it to you?---So I could pay it.

30

But why, why to you? Why were you liable to pay Hall Chadwick?---I had agreed to pay Paul Chadwick for some of these costs associated with the joint venture.

But these are for the Makucha Group Companies, this invoice?---Well, that's so it was clear, I'd imagine that was cleared that as part of the proposal which was being developed. So it was a clear statement from an accountant as to the tax situation of the Makucha companies.

40

MR PAYNE: Well, let's just test that for a moment. The fees amount in this invoice, Mr Harvey, it says, "Fees covering professional services on account of accounting and taxation returns for the Makucha group companies." Do you see that?---Yes.

It doesn't say anything about a joint venture, does it?---No, but I, in terms of the Makucha companies which would be involved in the joint venture.

And it's because Mr Makucha told you, did he, that there was some tax benefit that you didn't understand involved in this that you agreed to pay. Is that what you say?---I, I was obviously of the opinion at the time that they were, it would have assisted in the terms of the documentation.

And that understanding you, you achieved through something Mr Makucha told you, nothing that anybody else told you. Correct?---Yes, that's correct.

10 THE COMMISSIONER: Nothing that Mr Malacco told you?---Only Mr Makucha, not, who- - -

Mr Malacco?---Oh- - -

The accountant. Oh, Malacco. Um- - -

Sorry, have I got his name wrong?

MR PAYNE: Malacco.

20 THE COMMISSIONER: Malacco.

MR PAYNE: I think, Your Honour?---Again I had barely, only had very few detailed conversations with, with Mr Malacco, so it would have been, if there's anything it was generally in correspondence or like Mr Makucha had relayed to me.

30 THE COMMISSIONER: So Mr Malacco said nothing to you that led you to believe that this advice was for the joint venture?---Not specifically, no. I can't recall.

Did he tell you that this advice concerned the tax losses?---In terms of reading the, yeah, Mr Makucha would have given me this invoice.

Mr Malacco I'm asking about?---Oh, he didn't speak to me about this invoice, it was provided through Mr Makucha.

40 Did you tell Mr Malacco that he could send you the invoice?---I think I would have indicated to Paul Makucha that it was okay for Hall Chadwick to send, send me the tax invoice.

MR PAYNE: Mr Harvey, can I ask you about your statement at paragraphs 105 to 111, which is under the heading, Makucha Commences Residence at the Hilton?---Yes.

In particular it seems from the conversation that you've set out there that in March or April 2009 Mr Makucha was still living in the shipping container at Baxter Street, Mascot?---Yes.

And that he said to you he needs to move to the city for various reasons and he's going to live in a hotel. You ask him, "How are you going to fund that?" And he says, "I need to have access to the \$25,000 that I paid into court", you remember as part of the September 2007 arrangements that I've asked you questions about this morning?---That's correct.

You agree?---Yes.

10 And in effect you did agree to release that money to him, didn't you?
---That's correct.

The only conversation you set out is in the last subparagraph of 105 where you say, "When the joint venture proposal goes to the board we'll need to demonstrate you're off the site and that this joint venture arrangement will enable us to recover all the money we've expended on moving you over the years." Do you see that?---Yes.

20 Do you say that your agreement to release this sum of money was again part of the joint venture arrangement, you thought you'd get the money back, did you?---That's correct.

Did you at any time ever cause instructions to be given to any of the lawyers who were drawing up the agreements that you were negotiating to reflect that matter?---No, I didn't.

And in fact you never gave instructions to the lawyers drawing up documents which ultimately you signed at all, did you?---No, I didn't.

30 Because those lawyers were acting again for Mr Makucha and his interest, not for Sydney Water and not for you. Correct?---That's correct.

And you clearly understood that at the time?---Oh, I don't know whether I clearly understood it at the time, when I signed that document, I, I, I saw it as, you know, more of acknowledgement 'cause the document wasn't, wasn't complete, the executive summary hadn't been completed so it was, yeah, I, I, I, I, I didn't read the document at the time when I said, when I signed it, or got any advice.

40 We'll come back to that. I want to ask you about the document at P393, which is the last document I want to ask you about in this bundle. That's a letter on Sydney letter waterhead from, Sydney Water letterhead from you. Correct?---Yes.

MR PAYNE: On the 9th of April and it was designed to be lodged with the Supreme Court of New South Wales permitting the \$25,000 which had been lodged by Mr Makucha as security under the September 2007 agreement to be released to Mr Makucha, correct?---That's correct.

And the court made orders in those terms as you say on 15 April, 2009?
---With this document here I see it, it's not a signed - - -

All right. Well, I'll show you, if you're in any doubt I'll show you - - -?
---No, no, I can recall the letter, I just, I'm just making the point, that's all.

Well, have a look over at P395, you having raised the matter, Mr Harvey,
it's the document with the seal of the Supreme Court of New South Wales.
Somebody who is perhaps an associate to Justice Hoeben, the court orders
10 the sum of \$25,000 plus interest et cetera be returned immediately to
Mr Makucha. Do you see that?---Yes.

That was done on your authority and your authority alone?---That's correct.

You didn't discuss it with anybody else at Sydney Water?---No, I didn't.

And you didn't discuss it with Sparke Helmore, your solicitors on the
record?---(NO AUDIBLE REPLY)

20 And you knew you had no authority to release that money, didn't you?
---That's correct.

Can I then ask you, I want to ask you some questions on the subject of
intellectual property, you can close that bundle up and might Mr Harvey be
given P127 which is volume 2 of the exhibits to his statement.

THE COMMISSIONER: Mr Harvey, while that's being obtained can you
just explain to me the, you were the, you were, your title at Sydney Water is
property asset manager?---That's correct.

30 How many property asset managers are there?---There's only one.

And do you have a number of people who report to you?---At the time there
was facility managers and property management staff.

So approximately how many people reported to you?---About ten.

And who did you report to?---Mr Gary Inberg.

40 And who did he report to?---Latterly Mr Paul Freeman who was general
manager of the Asset Management Division.

All right. Thank you.

MR PAYNE: Do you that second volume there in front of you, Mr Harvey?
---Yes, I do, yeah.

Can you open up to P408 in that document. That's a letter from Mr Makucha addressed to the Managing Director of Sydney Water but apparently handed to you on or about the date it bears?---Ah hmm.

You agree?---Yes.

You say in paragraph 113 at that time and at all times thereafter you don't recall paying particular attention to the structure of ownership of the trademark set out in that letter, do you see that?---That's correct.

10

Is that because you didn't understand the steps involved in registration of a trademark and what its consequences might be for Sydney Water if someone other than Sydney Water registered that trade mark?---Yeah, I didn't understand all the consequences.

It was never part of your function with any of the roles that you'd performed right throughout your career to be involved with trademarks, their registration, their defence, et cetera?---(NO AUDIBLE REPLY)

20

You agree with me and so when you read in this letter, in the fourth paragraph, Mr Makucha confirming with you that he was going to register the trademark logo Sydney Water, will be to Sydney Water Corporation then Makucha Sydney Water will at the same time be given a licence et cetera, they're not matters that you understood at the time?---No.

And again I suggest to you there were people with a responsibility for intellectual property matters within Sydney Water to your knowledge?---To my knowledge, I wasn't sure there would have been, I'd imagine.

30

But there would have been no difficulty about asking for advice about this matter, that you didn't understand yet you chose not to?---(NO AUDIBLE REPLY)

You're nodding, you agree?---Yes.

And the reason for that was it that you were sufficiently concerned about what Mr Makucha was then putting to you that you wanted as soon as possible to have some sort of proposal that you could present to the board and - - -?---That's correct.

40

- - - and try and save your job. Is that what you say?---Yeah.

Because just on a cursory reading of this I suggest to you you must've been alarmed to read that Mr Makucha was proposing to deal with intellectual property of Sydney Water in any way?---Yeah. I think what I was, it was a proposal to engage a, you know, like someone to do that role, so, yeah, I think certainly the alarm bells were ringing.

Yes?---Excuse me Commissioner, I just need another break. Sorry.

THE COMMISSIONER: Yes. We'll adjourn for five minutes.

SHORT ADJOURNMENT

[2.45pm]

THE COMMISSIONER: Mr Payne.

10

MR PAYNE: Thank you, Commissioner. I think as you've agreed with me, Mr Harvey, you had no authority to deal with any trademark issue on behalf of Sydney Water did you?---(NO AUDIBLE REPLY)

And yet, look over at page P410. You wrote to Mr Makucha on 8 April and confirmed that Sydney Water will be responsible for payment of the agreed fee once my approval of proposed engagement is provided. Now you're talking there about Spruson & Ferguson, well known patent attorneys. Correct?---That's correct.

20

So you were agreeing to pay for what they were going to do on Mr Makucha's behalf. Correct?---That's correct.

And did you have any real understanding of what it is that they were being asked to do and what consequences there may be for Sydney Water if they did it?---Not at that stage 'cause I was actually asking for a proposal, I think.

30

I think as you agreed with me earlier, so far as they were involved in having trademarks registered, you had no real understanding of what that meant for Sydney Water and its rights did you?---No.

If you can then turn over in that bundle to P416. That's one of a number of invoices that Hall Chadwick sent you. That this one dated 1 May, 2009, you deal with a paragraph 177 (a) of your statement. If you just want to check that?---Yes.

40

And the Hall Chadwick invoice for \$1,925 dated 1 May, 2009 was the ninth payment that you authorised Sydney Water to pay on behalf of, to interests associated with Mr Makucha. Correct?---That's correct.

And again just so we're clear, you knew that you had no authority to authorise that payment at the time that you did it?---That's correct.

And but for your intervention Sydney Water had no obligation whatever to pay that sum?---That's correct.

If you can turn over to page 420 in that bundle.

MR MAKUCHA: Excuse me what paragraph are we up to, counsel?

THE COMMISSIONER: Did somebody say something?

MR GORDON: Commissioner, I apologise my client did ask the question. But he probably did, sir, because I myself asked whether he had heard what paragraph we were on. It's my, my ultimate fault.

10 MR PAYNE: So for Mr Gordon's benefit, I've gone to P420 in the bundle.

MR GORDON: Thank you.

MR PAYNE: Which is back in the statement, I jumped forward to show Mr Harvey the invoice that he paid. It was received earlier and paid later, just for my friends assistance.

MR GORDON: Thank you very much.

20 MR PAYNE: So we're dealing here at paragraph 1-1-8 of your statement, Mr Harvey, just to orient you?---1-1-8.

1-1-8. And the document there referred to at P4-2-0?---Yes.

Mr Makucha gave you this document on or about 1 May, 2009?---Yes.

Can we just look at it for a moment. This purports to summarise does it some structure advice from Mr Malacco of Hall Chadwick which Mr Makucha had received?---That's right.

30 Was it explained to you at the time?---Not by Hall Chadwick. I think Mr Makucha would've gone through it in general terms.

Did you have a sufficient understanding of corporations law matters to understand the structure that was then being proposed?---No, I did not. No, I did not.

40 You did not. Thank you. Did you have a sufficient understanding of any intellectual property issues to understand the references to a signing and licensing trademarks that you'll see throughout the document?---No, I did not.

Did you have any understanding of Sydney Water's ultimate rights to control these subsidiaries which were yet to be incorporated?---No, I did not. I saw this as purely, I suppose an indicative diagram which was what I'd been asking for. So yeah, it was a start in the development of the whole proposal.

Can I just draw your attention to the two sentences at the conclusion of this document after the diagram. The above structure agreed by Ed Harvey and Paul Makucha, do you see that?---Yes.

Do you tell the Commissioner that it was agreed at that time?---I can't recall. I haven't signed, I don't see it as being signed. I can't, I think my general comments would've been, well, this is part of the overall joint venture arrangement which needs to be further documented.

10

And the next sentence, these companies will be incorporated upon Sydney Water (Ed Harvey), as least in these diagrams you'd come to, you become the embodiment of Sydney Water. Is that right?---Well, my name's there. I don't know whether embodiment - - -

Well, you're the only person though, Ed Harvey and Paul Makucha sign off the agreed structure/advice. Do you see that?---Yes.

20 And there's no reference there is there to anyone at Sydney Water other than you signing off the agreed structure?---Not on that, not there, no.

Do you tell the Commissioner that nevertheless when this was discussed with Mr Makucha, you said something to him about your lack of authority do you?---No, not lack of authority, but the overall, again going back, it needs the overall approval of the Sydney Water board.

And you recollect such a conversation about this document do you?---Not specifically about this document. But many times I'd raised that.

30 See Mr Harvey, I want to put something to you for your comment. I want to suggest to you that you had no real understanding of this structure at all did you?---I think it was ongoing development of trying to understand how it would mesh in. That's why I was looking for that advice from an accountant as to how it could possible fit together. So, at this point in time it was obviously just work in progress trying to develop the, the full documentation which would be required for approval.

40 You'd caused Sydney Water to pay something in excess of \$45,000 to these accountants by this point hadn't you?---Yes.

And yet you didn't have the, the first inkling did you of how it was that Sydney Water would be involved in this proposed joint venture did you? ---Well, apart from this documentation.

And I think to be fair to you, you've agreed with me that, about critical matters in this documentation you just didn't understand?---No, that's right.

Can you look further in this document, just dealing with intellectual property issues a little further. Page 4-4-2. That's a letter addressed to Sydney Water Corporation, attention Ed Harvey, from a patent and trademark attorney firm, Davies, Collison Cave. Do you see that?---Yes.

That was given to you by hand by Mr Makucha, wasn't it?---I believe so.

10 And here you will see that Mr Makucha has asked that they write to you, the joint venture, they had a conflict relating to Pepsi and Nestle. Do you see that?---Yes.

And from then they say this. "Mr Makucha has also advised he has other innovations in the fields of computer-related technologies, automated methadone cubicles, diabetic scanning module units." Do you see that?---Yes.

Did you see that at the time?---Ah, I imagine so, yes.

20 Did you ever say to Mr Makucha that, listen, Mr Makucha, Sydney Water just isn't interested in all these ideas you're coming up with outside of this bottling plant?---I can't recall whether I commented at all on that.

You knew, didn't you, that there was absolutely no chance that the board of Sydney Water would get involved with anybody in the fields there set out, automated methadone cubicles, diabetic scanning and computer-related technologies, did you?---I can't completely agree but I think certainly there was, there was the potential of some of those of having been workable.

30 Can you point to any conversation you have ever had with somebody within Sydney Water or any piece of paper within Sydney Water which would lead you to believe that Sydney Water might, as any sort of possibility, be interested in investing in automated methadone cubicles?---No.

Because you knew that that was never going to happen, didn't you, Mr Harvey?---Oh, I can't say, it was one of those way-out ideas which may have had potential further down the track. I, that's, you know, at the time, I think certainly looking back in hindsight it's, it's, it's easy to be critical, but ah, I think at the time I didn't see it was being completely unworkable.

40 Well, to describe the idea that Sydney Water was going to invest in automated methadone cubicles is way out, it polite, isn't it, Mr Harvey. You knew it was never going to happen?---Well, I can't say it was never going to happen.

THE COMMISSIONER: Has Sydney Water done anything like that ever?
---Not to my knowledge, no.

It really has absolutely nothing to do with Sydney Water's functions, does it?---(NO AUDIBLE REPLY)

Absolutely nothing?---Not, not under current scenarios, no, but I suppose we're looking at, looking into the future.

Well, this has nothing to do with the supply or control of water or sewerage, does it?---Not specifically no.

10 In fact it's difficult to think of anything that's further removed?---Mmm. But at this time, these were Mr Makucha's ideas, other innovations that weren't necessarily part of the joint venture.

Mr Makucha hadn't hypnotised you, had he?---Not that I- - -

Well, you could think for yourself, couldn't you?---I think so.

20 But you must have realised that this provision of methadone cubicles was something utterly foreign to Sydney Water's functions?---Yeah, they were seen as ideas, Commissioner.

MR PAYNE: Mr Harvey, please turn over to page, to P452 in this exhibit, which is P127. And you deal there with a letter that Mr Makucha gave you on or about the 12 May, 2009- - -?---Yeah.

- - -which is dealt with at paragraph 127 of your statement?---That's right. Yes. What was it, the, sorry, again?

30 452 is the top right-hand corner of the document?---I've got that one, yes, and the- - -

And it's page, it's paragraph 127 of your statement?---127. Yes, I've got that.

And as you've got that opened, that document included that three new companies had been registered, Sydney Water P Pty Limited, Sydney Water M Pty Limited and Sydney Water L Pty Limited, and certificates of registration with ASIC were attached to the letter. Correct?---Yes.

40 You must have been alarmed to see that companies had been incorporated with Sydney Water in the title without the knowledge of anybody from Sydney Water other than you?---Well, I certainly wasn't aware that it had progressed to that stage at this point of time because again, yeah, it certainly did surprise me that it had actually happened.

Did you say something to Mr Makucha about it?---I think so, yeah, I said it took me by surprise.

Did you tell him not to do it?---I think if it had already happened I can't, I previously said I can't recall him saying not to do it but I, I thought all of these would have taken place subsequent to all the necessary approvals by the board.

Who did you think the shareholders in these three Sydney Water companies were, Mr Harvey?---I didn't know.

10 You didn't know. Who did you think the, your shareholder was, Sydney Water Corporation, who owns the sole share in that corporation?---The state of New South Wales.

Did the state of New South Wales directly or indirectly own these three companies to your knowledge?---I don't know.

Well, you know that they didn't, don't you, they knew nothing about this proposal, correct?---That's correct, yes.

20 And Sydney Water other than you knew nothing about this proposal, correct?---That's correct, that's correct.

So you had permitted Mr Makucha to create these three companies with Sydney Water in the title and what, you decided to keep it from everybody within Sydney Water?---That's correct.

30 Mr Harvey, I need to put this to you, you knew by this time that whatever you took to the Sydney Water board, once you'd done this and registered these or permitted the registration of these companies using Sydney Water, Sydney Water was never going to deal with Mr Makucha, were they?
---Well, I don't know for sure. I had obviously concerns but I don't know.

How do you think that Mr Inberg would have reacted if you had told him on or about the day this letter bears, 12 May, 2009, by the way, I have permitted three companies to be incorporated with the words Sydney Water in the title and regrettably we don't own any shares, how do you think he would have reacted?---I'm sure he would have been furious.

40 And that would have been the end of your career with Sydney Water, correct?---That's correct, that's correct.

It is inconceivable, isn't it, that you having permitted this to happen and Mr Makucha being the person who has done it, that so far as you understood it that Sydney Water would have anything to do with Mr Makucha after this point. Do you agree?---I don't, I can't answer that, I don't know.

You still thought that you'd be permitted to make a presentation and explain to them that you were offering a very valuable opportunity for them to invest in companies which Mr Makucha had set up with Sydney Water in

the name, do you?---I really don't know what I was thinking at the time. It was, there was a slim hope I was hanging onto that the, that the opportunities would look, look, be worth further investigation.

But this opportunity to invest in a company with Sydney Water in the name, surely you recognised that Sydney Water would never agree to that?---I can't say I, I can't say that.

10 Let me ask you about the trademark details which are also annexed to this letter. In relation to these, you are told, aren't you, in paragraph 8, if you go to P453 it is recorded as Mr Makucha says, this letter confirms the following, that at 10.10am on 12 May Mr Harvey confirmed that on Wednesday the 13th Mr Makucha will be able to collect a letter confirming the trademark registration Sydney Water to Sydney Water Corporation and then the assignment of this trademark and associated goodwill to the JV company Sydney Water P Pty Limited, do you see that?---Yes.

20 So you were involving yourself in the creation and assignment of intellectual property you knew belonged to Sydney Water, correct?---It looks that way.

And you were involving yourself in the assignment of that intellectual property belonging to Sydney Water not really understanding what it is you were doing. Is that right?---That's correct.

Paragraph 9, "Also in a telephone call I advised Mr Ed Harvey that I was seeking to convince Mr Hazan", he's one of the patent attorneys that Mr Makucha was speaking to, as you understand it?---Yes.

30 And he was trying to convince Mr, that Sydney Water owned all of the water and its associated goodwill, even though at this time there is no Sydney Water branded bottled water sold on supermarket shelves. That relates to this idea that Sydney Water would fund this joint venture company to engage in speculative litigation against Pepsico and companies of that sort, as you understood it?---Yeah.

40 And that's something that was discussed with you by Mr Makucha right through this 2009 period before you signed the business implementation agreement?---Yep.

Agreed?---Agreed.

Paragraph 13. The three companies, the three new ones, have a single director at this time and a single shareholder. That was Mr Makucha, was it?---I believe so, yes.

Sydney Water will become a shareholder and appoint its director by advising Hall Chadwick of the details to be added. Did you understand you were the person to give that advice?---No.

You thought you'd go to the board and say, here are these companies I've permitted Mr Makucha to incorporate and usually the board have an opportunity on the payment of money to become directors and shareholders. Is that how you thought it would work?---That's right.

- 10 Go over the page to P454, please. You see there paragraph 17, Mr Harvey agreed that it was important to register the trademark Sydney Water and the goodwill immediately. What did you base that agreement on, Mr Harvey?
---I can't recall. At the time I think that was, yeah, I recall can't, can't shed light on that.

- To be fair to you, do you remember saying anything about this topic?
---I think certainly the issue of goodwill and evaluation of the goodwill was an important factor in, in this joint venture, but the goodwill hadn't really been built into the intellectual property or the assets of Sydney Water, so it
20 was, I can't recall whether I said, you know, that I gave specific instructions along those lines.

Paragraph 18. Just have a look at that. Is this something you told Mr Makucha, did you agree with him that the joint venture company directors will negotiate on behalf of the joint venture to maximise and unlock hidden value currently obtained illegally for free. Is that something that you said to him?---No, they're not my words.

- 30 When you read this did you remonstrate with Mr Makucha that he had misrepresented what it is that you'd said?---The concept of unlocking hiding values had, had been proposed and I agreed in principal to it but um, so this is all part of the, you know, detailing how the arrangements would work, so it's, negotiation was part of ongoing negotiations of how once the joint venture was established, how to maximise and unlock those hidden values.

- Have a look at P461 if you would, in the bundle. And you address this at paragraph 128 of your statement. This is a document you prepared, did you, on Sydney Water letterhead, or was it prepared for you?---I think it was prepared in consultation with Mr Makucha.
40

He told you what to write?---Along those lines, yes.

You didn't have the faintest idea about this trademark registration and what was involved, did you?---I'd have to agree with that.

And you appointed in a letterhead, To whom it may concern, so it was a, it was a, something that could be used by Mr Makucha with anyone he chose, you appointed him to instruct selected lawyers to register all classes of

water by way of amendments to the following existing trademarks. Do you see that?---Yes.

And it says here, "The proposed licence holder is a joint venture company of Sydney Water named Sydney Water P Pty Limited. Do you see?---Yes.

That company had one director and shareholder at the time, namely Mr Makucha. Correct?---That's correct.

10 Mr Harvey, how, consistent with your obligations to Sydney Water, could you have done this?---I don't know.

THE COMMISSIONER: Where was this letter typed, Mr Harvey?
---I would have typed it.

Where?---Where?

Yeah?---At this time at, at Parramatta, 1 Smith Street, Parramatta.

20 At Sydney Water's premises?---That's correct.

Where did you get the wording from?---Ah, I think from Mr Makucha.

Did you write it down?---There may have been a draft or I can't recall, but certainly there was some discussion.

Did he give you a, did he sometimes give you drafts?---That's right, yes.

30 That you had to put on Sydney Water letterhead?---That's correct.

Is that because he knew you weren't capable of writing it yourself?---That would be right, yes.

Was this one of them?---I believe so, yes.

Do you understand what this document means at page 451, 461?---Ah, not completely, no.

40 MR PAYNE: Turn over if you would to page 466. I've almost finished asking you the questions I want to ask you about intellectual property, Mr Harvey.

THE COMMISSIONER: What did you do with the drafts?---The, I, most cases they would be still on my files.

Where are your files?---Sydney Water. I haven't had access to them since I've ah, since I've left.

Were they on blank paper?---Yeah, probably would have been, yes.

Were sometimes drafts given to you on Mr Makucha's letterhead?---
Sometimes on letterhead, sometimes just written out.

MR PAYNE: Please turn over to P466 in the top right-hand corner?---Yes.

That's a document Mr Makucha provided you, as you say in paragraph 129
of your statement. If you want to check that?---That's right.

10

That's a letter from Mallesons Stephen Jaques saying to Mr Makucha, "If
we are to represent you in relation to registration of a brand name for your
proposed joint venture, we would need to receive confirmation from Sydney
Water itself that it's happy for us to do so." Do you see that?---That's
correct.

You must have been alarmed by that?---I think at the same time Mr
Makucha had spoken to a number of legal firms.

20

But here was Mallesons actually asking for Sydney Water itself, the to
whom it may concern letter wasn't good enough for them, as you
understood it?---Oh, well, I'm not quite sure what letter they, Mr Makucha
would have provided to Mallesons.

Weren't you worried that by approaching Sydney Water's lawyers like this
that the whole thing might come to light?---Oh, certainly when I saw that,
that was a concern, yes.

30

Did you tell Mr Makucha that, what are you doing approaching Sydney
Water's lawyers, they're going to find out that I'm involved in this and that
Sydney Water knows nothing about it?---I can't recall whether I spoke to
Mr Makucha about it, 'cause it was a number of, as I said, a number of, he
was seeking submissions from a number of lawyers.

Did you ever tell Mr Makucha that you were the only person within Sydney
Water that knew anything about this joint venture proposal?---Yes, I told
that, yes.

40

THE COMMISSIONER: When did you tell him?---I can't recall.

At what stage did you tell him?---I think it came up certainly in the (not
transcribable) Paul had concerns about, about who in Sydney Water was
known and I assured him I'd kept the whole matter confidential.

Well, I really would like to know when this happened?---Oh- - -

Try and, try and place it by reference to- - -

Yeah. It probably would have been October/November/December of 2009.

And before then?---I think we'd always discussed the confidentiality.

10 Okay. Just describe how these discussions would go? What would be said when you discussed the confidentiality?---I think along the lines Mr Makucha was saying, look, I need some assurances that this is confidential because I've had previous matters which have, where organisations have taken his ideas and exploited them or he hasn't been able to capitalise on them because of, so that was the general thrust that Paul was always concerned about confidentiality until we - - -

Well, did he explain what confidentiality meant?---In terms of not anyone else knowing about, anyone else in Sydney Water or - - -

Was that, was that expressly mentioned?---I believe so, yes.

20 What, that he, he said no one else at Sydney Water must know about this? ---I think that that's what I, that's what was my impression that it needed to be kept confidential.

Is this a matter of an impression by you or was this was something that was actually said?---Oh, I think it'd been said on a number of occasions, I believe.

30 What expressly said?---Along those lines, I think as I said before, he always said I'm concerned that someone will take these ideas and I'll miss out on the deal. So therefore we need to keep this confidential until the appropriate approvals are put in place and the deal is done.

But in that description you mentioned that he was concerned that someone would take, would take - - -?---Take his ideas.

Yes?---That's right.

He didn't tell you where this someone might be?---No.

Who it would be?---No.

40 Well, why do you say it was at Sydney Water?---Well, it could've been any, any, you know, if I had mentioned it to someone external, look, I think that was the general concern that Mr Makucha had that - - -

I understand that he had a general concern that you should not tell anybody whether at Sydney, well, not tell anybody generally about the, about your negotiations was it?---That's correct. Yes. Mainly the ideas, the ideas that Mr Makucha had which he was trying to combine into the joint venture, that

those details were kept confidential until it was to a point where he was sure that his rights were protected.

10 Mr Harvey, you have at times said that Mr, or that you understood Mr Makucha to be saying that you shouldn't tell anybody at Sydney Water. At other times you've said that Mr Makucha said you shouldn't tell anybody generally. I really want to know what you specifically remember as to what he said or the gist of it. I'm not asking for the exact words, but the gist of it?---The best way I can put it the gist of it was that I'm concerned that other people will get hold of my ideas and I won't be able to gain any financial advantage.

That doesn't help, no, I understand that. If that's what he said, that's what he said. But why is it that you said that he, your impression was that he didn't want you to tell anyone at Sydney Water about these ideas? Was it simply an impression that you drew from the general, the general words that he expressed or did he express particular words?---I think it was concerns. He said that he trusted me and he didn't trust others.

20 Did you ever discuss talking to Inberg with Mr Makucha?---Once or twice.

And what, what was said about that?---This was probably more in the earlier stages which we touched on before, previously that Mr Makucha just wanted to deal with me. He didn't want other people, like Gary Inberg involved.

Yes. But what did he say to you about that?---I want to deal with, one on one with you.

30 Did he mention Mr Inberg's name?---No, he wouldn't have.

So how did you know that he didn't want you to talk to Mr Inberg if he didn't mention his name?---Well I think it was right across the board, just keep it confidential until we've got the necessary approvals. There would've, obviously a point where, that it was clear that all the documentation was in place where there was no disputing whose ideas they were.

40 Yes, Mr Payne.

MR PAYNE: Are you at P494 Mr Harvey? Tell me when you're there?
---Yes.

That's a letter addressed to Mr Makucha and to the Managing Director of Sydney Water Corporation Limited, attention you?---Yes.

It was given to you by hand by Mr Makucha was it on or about the date it bears?---Yes.

Can I ask you about that? What Hall Chadwick are saying in paragraph 1, Mr Ed Harvey confirmed to Mr Makucha that SWC was happy to accept the \$10 million benefit. Is that, you're talking about the tax benefit there are you?---That's correct. Yes.

10 You told Mr Makucha that Sydney Water Corporation was happy to involve itself in some sort of lost trafficking scheme with Mr Makucha's companies did you?---I think the words would've been more along the line, I'm happy on the face of it to do that, to put a recommendation along those lines.

I see. That's not what it says here is it?---No, it's not what it says there.

Did you ever remonstrate with Mr Makucha that he had misrepresented your position to Hall Chadwick?---I don't think so.

Because it did represent your position didn't it?---I beg your pardon?

20 It did represent your position. You were telling Mr Makucha weren't you that you had considered the matter and were happy to accept the benefit even though you didn't understand what it was?---I think I was saying I was happy. I don't, I don't know whether I ever said that Sydney Water was happy because I hadn't discussed it with anyone else in Sydney Water. So -
- -

THE COMMISSIONER: But, did Mr Makucha not think that you were representing Sydney Water?---I'd imagine he would, yes.

30 From what you've said to him did he think that? Should he have thought that?---I think all I can say is that the number of times I said to him this is subject to board approval.

You've told, you've said that you agreed to, that Sydney Water would make various payments to Hall Chadwick at least and perhaps others haven't you?---That's right.

And not only did you say that, you actually arranged that didn't you?
---That's correct.

40 So Mr Makucha thought that at least to that extent you were acting on behalf of Sydney Water, I presume. Is that right?---I'd imagine so, yes.

Yes.

MR PAYNE: And just in paragraphs 2 and paragraph 4, there's a reference to preparation of all necessary documents for a legally binding heads of agreement. Do you see that?---That's right.

And then paragraph 4, Mr Makucha advised that Mr Harvey confirmed on behalf of Sydney Water Corporation that the execution of the legally binding heads of agreement by Friday, 26 June, was acceptable. Do you see that?---Yes, if it was delivered up. Yes.

Had you told Mr Makucha that?---I think that this was a target date.

For execution of a legally binding heads of agreement?---Yeah, I can't recall what I said to Mr Makucha at the time.

10

THE COMMISSIONER: Did you confirm that? Did you confirm what paragraph 4 says you confirmed?---I think at, at the time I said, well we haven't got the documentation. And this was, you know, and I hadn't seen any documentation at that point in time.

Mr Harvey, can you actually remember this or are you reconstructing it?---I can't specifically remember the, the circumstances back in May, 2009.

20

Why, why did Hall Chadwick, how did you get this document?---It would've been hand delivered by Paul Makucha.

But if that's right, Hall Chadwick must've actually given it to Mr Makucha?---That's correct. Yes.

But it's addressed to the Managing Director of Sydney Water?---That's right. But that was the standard way in which I received this correspondence.

30

Why would Hall Chadwick write a letter to the Managing Director of Sydney Water and not posit it to the Managing Director of Sydney Water? ---I don't know. I don't know.

Were you not, were - - -?---It was intended, it was intended for me, I think that's, was the, it's to my attention.

40

Well, I don't understand why a firm of chartered accountants addresses a letter to the managing director of Sydney Water and hands it to somebody else to give to you who's not the managing director, can you explain that? I mean, did that not, well, can you explain that?---I think that was the way that Mr Makucha wanted correspondence to be forwarded to me.

Why?---I don't know why, that was his - - -

Well, I mean that was perfectly acceptable to you?---Well, it wasn't unacceptable, I think it was, he would like to come out with any correspondence and discuss it.

So you thought that it was acceptable for you to receive letters addressed to the managing director of Sydney Water and open them and deal with them even though the managing director of Sydney Water never got them? You thought that was acceptable did you?---That was fairly standard practice.

I know it was standard practice, that's not my question?---Not just on this matter but other matters like it's, typically if it was made to attention to a person that was the person who got the letter.

10 Yes, I'm sure once it had arrived at the institution concerned. Was it standard practice for the person to hand the document to an individual in Sydney Water even though it was addressed to someone else, that is the person sending the letter would do that? Would it, it may not be clear what I'm asking so I'll try again. Was it standard practice at Sydney Water for someone writing to Sydney Water to address the letter to a senior officer or official of Sydney Water, mark it for the attention of a particular individual and then hand it to the individual by hand so that it actually never went through the ordinary channels whereby correspondence was received by the department or agency concerned?---Yeah, it's, it's - - -

20

Was that standard, was that standard practice?---No, it wasn't standard practice but it occurred.

It occurred generally?---Oh, it occurred on a number of occasions.

With Mr Makucha only or with other people?---With other people, yes. I can recall having similar correspondence directed, you know, I think it's like a lot of organisations, I'm not saying Sydney Water is, but we address all correspondence to the general manager or the managing director but the mailroom will look, if it's made attention to a specific person that's where the correspondence will go to.

30

No, of course that's the case but I'm not talking about correspondence that's distributed by the mailroom, I'm talking about correspondence that's distributed by the author. Have you ever known of circumstances where the author of a letter hand delivers it to some subordinate person to whose attention it is marked even though the letter itself is addressed to a more senior person?---I've had circumstances like that. If it was urgent that someone wanted to get documentation - - -

40

If it was urgent?---Yes.

Was this, was this urgent?---I think in Mr Makucha's mind it was, that he wanted to keep it (not transcribable).

Mr Harvey, I suggest to you that this was done deliberately to your knowledge to ensure that this correspondence never met the eyes of the

managing director. Isn't that how, isn't that what happened?---No, it certainly wasn't my intention to do it that way.

Did you not say then to Mr Makucha you must not address letters to the managing director and then give them to me, if you want to write to the managing director you'd better make sure that its addressed to him properly and goes through the mailroom?---Well, I think Mr Makucha wanted it to come directly to me and by making it to my attention that's, you would, and handing it to me that was ensuring - - -

10

I understand he wanted it to go, I understand that he wanted it to come directly to you but why address it to the managing director?---I don't know.

You understand that that has sinister implications and sinister for you too because the inference is that you knew what was going on and you were a party to it. What do you say about that?---Well, I, in terms of this correspondence - - -

20

Yes?--- - - - being a sinister act, certainly I wasn't, I didn't see it as being a sinister act that was - - -

You knew that the managing director would be interested in this, weren't you? You knew that didn't you?---Ultimately once the - - -

No, no, now, while it was happening, while you were dealing with Sydney Water's intellectual property. Are you suggesting the managing director wouldn't be interested in that?---I'm sorry, I didn't mean.

30

Well, wouldn't the managing director be interested in that?---Yes.

And you didn't want the managing director to get it, did you? You were scared of your job?---That's correct.

But you knew that Mr Makucha was sending the letters to the managing director and so a whole aura was being created, a paper trail which showed that the man, which seemed to suggest that letters were being written to the managing director but the managing director would never see them. You knew that, didn't you?---That's correct.

40

MR PAYNE: Have a look at P507, Mr Harvey. This is the eighth payment that you authorise, again it was one that you knew you had no authority to authorise, correct?---That's correct.

It was designed this way in combination between you and Mr Makucha because you thought that describing the goods acquired or to be acquired in this way would provide something credible which could be put forth to your accounts department as a reason to transfer money to Mr Makucha through his company, correct?---That's correct.

And when you said in paragraph 149 of your statement, describing what was to be done in this way would provide something credible you were searching for something credible to hide the fact that there were in fact no goods or services provided by Mr Makucha for which he was entitled to be paid, correct?---Well, we were receiving a tangible asset.

How were you receiving that?---How?

10 Yeah, did you take possession of these items?---They were on our land.

I see. So although you had no access to this land and you had taken no step to enforce the September 2007 writ of possession that you had you regarded these things as valuable and, and you say do you that you thought Sydney Water was getting real value for this, this property?---I believed so, yes.

Well, if that's right, why didn't you actually go through the proper channels and obtain authorisation? You knew you had no authorisation to, to make this payment or have this payment made, didn't you?---Yeah, I, I, I was
20 dealing in assets and I believed I could do this transaction. I think subsequently looking at delegations I didn't.

Well, have a look at paragraph 151 of your statement, Mr Harvey. This is what we're talking about here. You say the creation of this invoice was not a genuine acquisition of improvements by Sydney Water but was in the nature of a contrivance designed by myself and Mr Makucha, correct?
---That's my, that's my statement, yes.

And that's the truth, isn't it?---It certainly was a contrivance but I, at the
30 back of my mind it was something tangent, it was a contrivance to, to provide some funds to Mr Makucha.

To which he was not entitled, correct?---Correct.

And that's what you agreed, that you would contrive something to provide him with funds to which he wasn't entitled, correct?---Correct.

THE COMMISSIONER: So you thereby misled your accounts department, didn't you?---That's correct.
40

So that payment would be made when payment was not due.

MR PAYNE: Turn over to P515 please, Mr Harvey. It's a letter that you wrote on 26 May, 2009 on Sydney Water letterhead to the Hilton Hotels of Australia. Do you see that?---Yes.

Now Mr Makucha has moved out of the shipping container into the Hilton Hotel as far as you understand it?---That's correct.

And you write in order to provide comfort to the Hilton Hotel that money is coming from Sydney for Mr Makucha and please don't evict him?---That's correct.

Did you write this letter or was it dictated for you?---I'm sure I wrote the letter along the lines which was suggested by Mr Makucha.

Suggested to you by Mr Makucha?---That's correct.

10

And again, why was it any of Sydney Water's business even given this potential joint venture, whether or not Mr Makucha stayed in this hotel? ---Mr Makucha was basically looking to make that conditions out at Baxter Road weren't conducive to research and you know, putting documentation together and that he was looking for alternative accommodation. This came as a surprise to me I think that it was a way of you know, keeping the, Mr Makucha occupied on the joint venture.

20

And so again, this is, this is you arranging payments and other letters on behalf of Sydney Water treating the joint venture as if it was already something which had been approved is it?---Yeah, it was on my assumption it would be approved, yes.

Can I take you forward and I just want to sum up about these payments that you have authorised to this date before we get to the Outdoor Advertising question. All of these payments that you deal with in your statement in respect of each of them you didn't have authority and you knew you didn't have authority. Correct?---That's correct.

30

And you did so knowing that Mr Makucha was not entitled to be paid those monies by Sydney Water?---Correct.

THE COMMISSIONER: And you thereby mislead the accounts department?---That's correct.

So that money, so that Makucha would be paid?---That's correct.

40

And the other people who claimed money under the invoices would be paid?---That's correct.

When nothing was really owing to them by Sydney Water because you weren't authorised to deal - - -?---That's right. Yep.

MR PAYNE: Can I take you now to the topic of Outdoor Advertising and the payments that you had made to Mr Makucha and his interests on that topic. And perhaps if you go to P559 in the bundle I've given you. And you deal with this topic at paragraph 194 of your statement, just for your information. You there set out in paragraph 194 a conversation with Mr

Makucha and it seems that Mr Makucha had quantified expenses of \$25,000 for accommodation, meals, medical, dental and car parking fines, which you deal with on, at paragraph 194?---Yes.

And then you say, the only way I can provide you with funds is by way of a consultancy. Sydney Water is looking at leasing out suitable land for Outdoor Advertising. I know your background in this field, so could you provide me with advice on site suitability, site design and estimated rentals. You were the one who came up with this idea about Outdoor Advertising.
10 Is that right?---That's correct.

And that again was a contrivance to ensure that Mr Makucha was paid money that you believed he was not entitled to by Sydney Water?---At, certainly when I commenced this I was anticipating that Paul Makucha would actually provide me with some real consulting advice.

Well let's just have a look at what you say in your statement first of all. Have a look at paragraph 197 and that's dealing with this invoice at P559. You say as at 23 July, 2009, do you agree with me, that's the date of the
20 invoice, P559?---That's correct.

Mr Makucha had not provided me or Sydney Water with any of the consultancy services described in the invoice nor did Mr Makucha do so after that day. Correct?---Yeah. There was some very minor information, that's all.

Well, can I show you this document, please. And I'll ask you to assume that this bundle of documents was identified by Mr Makucha as being the material related to Outdoor Advertising produced to this Commission under
30 a compulsory notice. I'd ask you to make that assumption. Do you understand that, Mr Harvey?---Yes.

Have you ever seen this document or any of them before?---I think so. Not that I've seen it in its entirety.

But when you say, when you said to me a moment ago very little was provided eventually. Is this what you had in mind?---That's correct, yeah. I think there was some other sketches of another site at Gardeners Road and South Dowling Street, but very conceptual, I was after a much, much more
40 specific information which would enable us to, some of these were linked obviously, Mr Makucha's tact was that we could use some of these Outdoor Advertising sites to promote the joint venture products.

Commissioner, I tender that bundle of documents.

THE COMMISSIONER: Well, what do I call it, Mr Payne?

MR PAYNE: Bundle of material concerning Outdoor Advertising produced by Mr Makucha.

THE COMMISSIONER: Exhibit P130 is the bundle of material concerning Outdoor Advertising produced by Mr Makucha.

**#EXHIBIT P130 - BUNDLE OF MATERIAL CONCERNING
OUTDOOR ADVERTISING PRODUCED BY MR MAKUCHA**

10

MR PAYNE: And Mr Harvey, just to take this forward, if I can you take you to 199 of your statement?---Yes.

Where you say the facts outlined in paragraphs, I think that should be 197 shouldn't it rather than 97?---I think so, yes.

20 The facts I was full aware of when I received the invoice from Mr Makucha. You knew from the discussions you had on each occasions he requested funds about Outdoor Advertising. There was no agreement of 1 July, 2009 that ever existed. Correct?---Well, that had been the agreed start date but certainly there was no great levels.

There was no consultancy agreement with you about Outdoor Advertising dated 1 July, 2009?---No, no specific written document. I, we'd discussed it. That's all. And in terms of what, when I saw the scope and I think I provided Mr Makucha with a list of some of the properties that we were looking at.

30 Well, just looking at your paragraph 119, you agree with me don't you - - -

THE COMMISSIONER: 199.

MR PAYNE: 199, yes, thank you, Commissioner. No agreement of 1 July, 2009 ever existed in relation to Outdoor Advertising did it?---No written agreement.

40 Well no agreement full stop?---We, well, I think certainly we'd agreed to, it was the basis of the services which I'd be looking for for Outdoor Advertising.

THE COMMISSIONER: Are you saying that you only agreed with Mr Makucha that he would provide Outdoor Advertising and Sydney Water would pay for it?---That's correct. Yes.

You did come to such an agreement with Mr Makucha?---That's correct. Yes.

So what's the explanation for what you've written in paragraph 199? What you've agreed to? Or you say that no agreement ever existed?---Well, a written agreement, you know, this statement, you know, certainly I, I initially did this back six months ago or whatever and scanned through it quickly on, on Friday. So - - -

When did you sign this agreement?---On the 17th. But it was on the basis of a document which I had prepared back in March, I think with Mallesons.

10 Are you saying that this differs from that?---I don't know whether it differs from it but I think, what I'm saying, I think my, in my mind, the more correct word would be no written agreement ever existed.

MR PAYNE: Well, let's just look at paragraph 197 for a moment, Mr Harvey. And you've got 559 open in front of you. "As at 23 July, 2009, the date of this invoice, Mr Makucha had not provided me or Sydney Water with any of the consultancy services described in this invoice, nor did Mr Makucha do so after that date." Now, that's true, isn't it?---Oh, apart from these, apart from that, yes, but nothing of substance, that's right.

20

Yeah. And you would not, assuming you even had authority, which you accept that you didn't, you would never paid \$18,000, let alone over \$100,000 for that bundle of papers I've shown you, Exhibit P130? No, no, I agree, that's right.

You wouldn't pay anything for that, would you?---A nominal amount maybe.

30 And I want to suggest to you, in relation to each of the invoices for outdoor advertising, the position is the same, namely that none of the services described in those invoices were ever provided, with the exception of that little bundle of papers, P130. Do you agree?---That's correct.

So you've authorised payment on each occasion in relation to outdoor advertising, and just see if you can agree with me, the 23 July, 2009, the 3 August, 2009, the 1 September, 2009, the 1 October, 2009, the 1 November, 2009 and two on the 3 December, 2009, each in the amount of \$18,000. Do you agree?---I agree.

40 And on each occasion you had no authority from Sydney Water to authorise those payment?---That's correct.

No services were ever provided to Sydney Water by Mr Makucha in relation to outdoor advertising, other than that small bundle of documents that I showed you?---That's correct.

You agree with me that so far as you were concerned, your genuine view is that if anything would be paid for that bundle, P130, it could be a nominal

amount, not \$18,000 and certainly not over \$100,000 which you authorised be paid in respect of outdoor advertising to Mr Makucha. Do you agree?
---I agree.

Can we then discuss the subject of these letters of authority that you gave, Mr Harvey. Please look at P566. That's a letter you wrote to Mr Makucha care of Hall Chadwick where he was having his correspondence addressed at that time?---Yes.

10 Did you write that yourself or was it dictated to you?---I think Mr Makucha requested something along the lines, there was a number of drafts I understand, but it was the combination of my words and Paul's and then- - -

I see. Can I show you this document then. That's a document signed by you dated the 4 September, 2009, again addressed to Mr Makucha at Hall Chadwick Accountants.

20 Yes. And the third paragraph I want to draw your attention to. You've written, "It is the intention of Sydney Water to enter into a legally binding agreement in respect of the project once the necessary senior management and board approvals are obtained." Do you see that?---That's correct.

You won't find that in the document at P566. I'd just like to ask you why?
---My recollection is, at the request of Mr Makucha, this document was modified. You recall Mr Makucha asking you to take those words out about the necessary senior management and board approvals, do you?---That's correct.

30 What did he say to you?---I can't recall exactly, but I think it was along the lines that will make Hall Chadwick edgy, can we be a bit more specific.

Will make who edgy?---Hall Chadwick, the accountants.

And you agreed with him that it would be undesirable to let Hall Chadwick know this matter, did you?---No, 'cause I think I, I'd, I'd spent that out previously?

40 THE COMMISSIONER: To whom?---At a meeting with Hall Chadwick where they were asking about how, how long approval would take, and I said, "Well, that depends on documentation and, then it goes to the board for approval.

And when was that meeting?---I don't know the specific date, but it was in September sometime I believe.

September of 2009?---That's correct.

Look, we're just going forward then to P606 in this bundle.

THE COMMISSIONER: Are you tendering this too?

MR PAYNE: I'm sorry, I should tender that. I'm sorry. Thank you, Commissioner, yeah.

THE COMMISSIONER: The letter from Mr Harvey to Mr Makucha of the 4 September, 2009, is P131.

10

MR PAYNE: Mr Harvey, just if you go to P606 and it seems that this paragraph that you dropped out of the September authority letter has made its way back into the October authority leader. Do you see that?---
- - - Yes.

What were the circumstances in which that occurred?

THE COMMISSIONER: What page was that, please, Mr Payne?

20 MR PAYNE: Sorry, P 606, Commissioner.

Thank you?---I'm not, I'm not sure. I really can't recall the circumstances behind this letter. Ah- - -

THE COMMISSIONER: Did you draft this letter yourself or did you follow a draft prepared by Mr Makucha?---I can't recall specifically but I, you know, generally I would, typically Mr Makucha would ask, ask me whether I could provide a certain letter for a certain reason, he might send me some guide, some, along these lines. I would produce a document, give
30 it to him and see whether it was okay.

Right. I don't understand the third last paragraph of that letter. Can you just, it says something, can you explain that "Do you wish to confirm the receipt of a draft confidentiality agreement?"---That's right.

"I look forward to the submission of a final draft?---That's correct.

"I arrange for comments to be provided on the final draft." Does that mean
- - -?---I will.
40

I will arrange?---That's correct, yes.

And did you arrange for comments to be provided?---Um, I don't think so, no.

And who were you going to arrange that with?---Well, there would have been comments from myself and depending on the agreement, it may have been in my mind to get some legal advice.

Yeah.

MR PAYNE: I'll just finish this question of authority. Turn over to 607, so it's another draft of the letter that I showed you at P606, and again you've crossed out, "I wish to confirm the intention", et cetera, that paragraph?--- Yes.

10 And you deal with that at paragraph 246 of your statement. You say you took a pen and crossed that out and that was at Mr Makucha's request as he told you that that paragraph would only confuse the lawyers?---Yep.

You accepted that explanation, did you?---That's correct, yes.

So that you provided two letters of authority but both drafts had that paragraph in it and at Mr Makucha's request you've taken that paragraph out on two occasions?---That's my recollection, yes.

20 And just to take up the Commissioner's question, because we're going directly to it, this draft confidentiality agreement, draft 10, that's the draft of the agreement which is the business implementation and confidentiality agreement. Correct?---That's right, yes.

That's a document in two volumes covering a multitude of issues, many of which we've covered in the questions I've asked you today. Correct? ---That's correct.

30 It wasn't just a confidentiality agreement of the, of what I might describe as the usual kind, a few pages requiring some matter be kept confidential, correct?---(NO AUDIBLE REPLY)

You're nodding, you agree?---I, I, agree, yes. It developed, I'm not quite sure what was actually in draft 10, there was many versions of this document produced in that run up, October, November, December.

40 Yes. So it's at least the tenth draft and you knew that at least it contained many of the matters that we've discussed today for example, the nuclear powered desalination plant, Sydney Water bank, Sydney Water bonds?---To be honest I don't know how, what was actually in draft 10.

Did you, did you read it?---I can't recall. I, as I said, I don't know how big a document it was. It certainly wasn't the size of the final, the final draft I don't believe.

Well, let's go straight to that, that's at - - -

THE COMMISSIONER: Mr Payne, before you do, can you just please establish with Mr Harvey which of these documents, which authority letters were sent and which were retained as drafts because that's not clear to me.

MR PAYNE: Well, just turn over to 608 please.

THE COMMISSIONER: Well, they start at 606.

10 MR PAYNE: Yeah. Starting at 606, that's your original draft?

THE COMMISSIONER: Is that the first one?

MR PAYNE: That's the original draft.

THE COMMISSIONER: Well, that's 7 October but there is the, there are the, the letters of September, there are two letters in September.

MR PAYNE: The two letters in September, the - - -

20 THE COMMISSIONER: Were they sent?

MR PAYNE: The second of which was provided to the lawyers.

THE COMMISSIONER: What happened to the first?

**#EXHIBIT P131 - LETTER FROM MR HARVEY TO MR
MAKUCHA DATED 4 SEPTEMBER 2009**

30

MR PAYNE: Well, have you got P131 there in front of you, the letter of 4 September, Mr Harvey?---Sorry, the?

The single page I handed you, 4 September, 2009 which is the - - -?---Yes.

- - - original letter where they wish to confirm et cetera it's the intention to enter, legally binding, as you understand it, this document was handed to Mr Makucha but it went no further, correct?---Yeah, I don't know where it went.

40

As far as you know the document that we discussed at P566 was the letter that actually Mr Makucha was given and was then provided by him to the accountants and the lawyers as you understood it, 566?---I'm assuming so, I don't know for certain but - - -

THE COMMISSIONER: What happened to the letter which is, of 4 September which is P131? Did you show it to Mr Makucha?---I'm sure I did, yes.

You - - -?---I'm fairly sure I did otherwise, look, I don't know where this, if this document was on my file typically if I, if I made amendments I would generally note what amendments I'd made.

Well, the document of 4, P131 is no, has no amendments and its signed by you. Would you sign a draft?---Would I sign a draft?

10 A draft letter, yes?---No, if it, if I was issuing it it would have, as a final it wouldn't - - -

You'd sign it?---I'd sign it, yes.

So this being a letter which has no amendments and is signed by you, should we take, we should take that as a letter that you either sent or gave to Mr - - -?---Makucha.

- - - Makucha?---That's correct, yes.

20 And did you address letters to him at Hall Chadwick normally?---That was his request latterly or since, after September when he was essentially using I understand the offices of - - -

All right?--- - - - Hall Chadwick or Staffords to conduct some of his businesses but this was his, now his registered office I believe.

30 And the letter at page 606, did you send that Mr Makucha? I see the notes, its noted copy?---That would be a file copy so, yes, I'd imagine it was because the reference there - - -

Do you sign your file copies?---It will have been a copy of what I, what I'd sent.

Do you sign the copies you keep in your file?---This would have been a photocopy I'd imagine?---I see.

Yeah.

40 MR PAYNE: And just to - - -

THE COMMISSIONER: Sorry, go on, Mr - - -

MR PAYNE: Just to complete that picture, you've signed all three documents, 606, 607 and 608, correct?---Yes.

Including 607 where you actually cross this paragraph out, that's signed as well?---Yes.

So, and just to direct your attention to paragraph 247 - - -?---Yes.

- - - of your statement, you say as a result of your discussions with Mr Makucha referred to in paragraph, that should be 245 above shouldn't it - - -?---Yes, yes, correct

- - - rather, that 5 is rogue, "I provided Mr Makucha a final version of the letter dated 29 October, 2009," which I suggest to you is the document at P608?---Yes.

10

THE COMMISSIONER: And the document at 607, did you give that Mr Makucha or send it to him and did you, or not?---It's my understanding I did give it to him, yes.

I beg your pardon?---My understanding is I did give it to him.

And then at what stage did you delete the second paragraph? After you had given it to him or before?---After I, I think he must have made the comment, that's the only reason why I would have - - -

20

And did he hand it back to you?---I don't know whether he handed it back to me and said can you amend, amend that paragraph or (not transcribable)

So did you delete that, did you, is that your, is that your line that we're looking at?---I believe so, yes.

And did you then go back and rewrite the letter?---That's correct, yes.

30

MR PAYNE: And just P608 is dated 29 October, so some weeks later after these drafts of the 7th. Is that what you're saying?---That's right, yes.

THE COMMISSIONER: Mr Payne, is that a convenient time?

MR PAYNE: Yes, just for the - - -

THE COMMISSIONER: We can go on if you wish.

40

MR PAYNE: No, for planning purposes I plan to sit down in under a half an hour, perhaps overnight if I can shorten night I'll let you know in the morning, Commissioner.

THE COMMISSIONER: Yes. Yes. Now, Mr Gordon, you're at perfect liberty to change your mind if you want to ask any questions.

MR GORDON: May I consider that overnight, please?

THE COMMISSIONER: Yes. I think that in fairness to you Mr Stevenson should go first.

MR STEVENSON: Thank you.

THE COMMISSIONER: And then you'll be called on and then Mr McIlwaine. Yes. The Commission will adjourn till 10.00am.

THE WITNESS STOOD DOWN [4.06pm]

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AT 4.06pm THE MATTER WAS ADJOURNED ACCORDINGLY [4.06pm]