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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 TUESDAY 28 SEPTEMBER 2010

AT 9.05AM

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THE COMMISSIONER: Mr Makucha, you're still under your oath?  
---Thank you.

<PAUL MAKUCHA, on former oath

[9.06am]

10 MR PAYNE: Mr Makucha, yesterday, I asked you some questions about intellectual property advice and you told me you had received certain advice from Griffith Hack, Patent Attorneys. Do you remember that?---We spoke about Griffith Hack.

20 Mr Makucha, you have a document in front of you, can you please put it away. I'm not asking you about a document as yet?---No, it's just that I need to, it's the Trademarks Act, '95 under Section 20, gives the owner of a registered trademark the exclusive right to use the mark or authorise others to do so. The exclusive right is limited to use in relation to the goods and or services in respect of which the trademark is registered, which generally means that the owner of the registered mark in respect of for example, confectionary products cannot prevent use of the same mark in respect of for example, hats and scarves.

THE COMMISSIONER: Mr Makucha, you are making speeches again. Nobody asked you about this. You're not entitled to, to make speeches of that kind in the witness box?---Thank you for that.

Please put that, please put that document away and do not look at it unless you are asked to.

30 MR PAYNE: Mr Makucha, the document I want to show you is one dated 3 June, 2009 to you from a Ms Scheepers and a Ms Parkes from Griffith Hack?---Ah hmm.

That's a document you received on or about the date it bears, 3 June, 2009, Mr Makucha?---I cannot remember whether it was or wasn't, but if it says it is, it is. I can't remember every document.

I suggest - - -?---Can I read it?

40 Please read it?---It says, discussed - - -

THE COMMISSIONER: No, read it to yourself?---I have read it.

MR PAYNE: I suggest to you that it was clear to you, Mr Makucha, in June 2009 that you were advised by Griffith Hack that the logo and trademark and the Sydney Water, that you were then exploring the possibility of registering would be objected to by Sydney Water as on examination those marks are identical and arguably registered in respect of similar goods and

services?---They may be objected to. However, I bring to your attention bundle A around 85, letter dated 29 October, '09, on Sydney Water letterhead that Sydney Water via its agent, Harvey, state to use, they would use their best endeavours to facilitate the registration of trademarks 1317577, 1317578 (not transcribable) by Harvey, Property Asset Manager. The asset, a definition for asset in Strouds (not transcribable)

THE COMMISSIONER: Listen, Mr Makucha, you are making speeches again?---Forgive me but can we have that letter around 85?

10

No?---Commissioner - - - -

You have got a barrister who you've retained to represent you. He will argue your case. It's not for you to argue your case in the witness box?---I know the documents better than anyone else, probably better than anyone in the whole world.

Proceed, Mr Payne, proceed?---And I have a desire to ensure that the truth comes to the fore of the or to the - - -

20

You have a barrister retained for that express purpose?---Commissioner - - -

It's not for you, that's not how the system works, Mr Makucha?  
---Commissioner - - -

You can't argue it yourself and have a barrister to argue it as well?  
---Commissioner, the barrister has not had enough time to prepare.

I will not allow this to occur, Mr Makucha. Proceed, Mr Payne.

30

MR PAYNE: I want to suggest to you, Mr Makucha, that you were informed in terms by Griffith Hack on 3 June that if objections were raised by Sydney Water that you will need to obtain consent from Sydney Water Corporation to the use and registration of trademarks filed in your name. Do you agree?

THE COMMISSIONER: Well, Mr Payne, the document speaks for itself.

MR PAYNE: Yes, Commissioner, I tender that document.

40

THE COMMISSIONER: Yes. The letter from Griffith Hack to Mr Makucha of 3 June, 2009 is Exhibit P175.

**#EXHIBIT P175 - LETTER FROM GRIFFITH HACK TO MR  
MAKUCHA DATED 3 JUNE 2009**

THE WITNESS: Excuse me, can I have a loan of a writing implement.

THE COMMISSIONER: You don't need it?---To mark this - - -

You don't need it?---Don't get angry with me, Commissioner. I haven't done anything wrong.

10 MR PAYNE: Mr Makucha, you can give that document back, I want to show you another document. I want to suggest to you that you had a telephone conversation with Ms Tara Parkes of Griffith Hack on or about 5 June, 2009 about the letter that I had just showed you, do you agree?---I may have, I'm not disputing it. I had several conversations.

I want to suggest to you that you told her during that conversation that you didn't want any information or any letters about what the examiner might do, do you agree?---No, I don't.

20 I want to suggest to you that you told Ms Parkes on that day that you didn't want anything included about what the examination investigation might do, do you agree?---No.

I want to suggest to you that you told her that the current mark does not include any water and therefore we don't need to refer to it. Do you agree? ---I chose to keep my discovery as secret.

THE COMMISSIONER: That's not the, that's not an answer to the question. Do you mind putting the question again, Mr Payne.

30 MR PAYNE: Do you suggest, do you accept that you said to Ms Parkes on 5 June, 2009 that the current mark does not include any water and therefore we don't need to refer to it?---I'm sure that class 32 missing - - -

THE COMMISSIONER: Did you say that to Ms Scheepers or not?---What I said two years ago is a long time to - - -

Did you say it or not or can't you remember?---Well, I want to be totally - - -

40 Well, be - - - ?--- - - - truthful to Commission. In a conversation with that lady there is no doubt that I had discussions which were in the context of class 32 and so forth.

What is your answer to the question?---Did I or did I not?

Did you tell Ms Scheepers that the current mark does not include any water - - -?---Yes, yes, I did.

- - - and therefore we don't need to refer to it? And the answer is yes, is it?

---I did.

That took such a long time, Mr Makucha. It really is - - -?---I need to understand.

If you could answer, if you could answer the question we would get along so much better?---I'm sorry, Commissioner, but I feel I'm in an inquisition. I read the newspaper this morning and I'm accused of fraud so - - -

10 Proceed, Mr Payne.

MR PAYNE: Mr Makucha, did you say to Ms Parkes whatever FB Rice instructions were, you don't care?---Where do you take that out of, in this, well, where is it? I need to read it in context.

It's the third line down in the second complete paragraph of Mr Parkes' file note?---My proposed instructions didn't include the water so they didn't need to refer, whatever FB Rice's instructions were I don't care but FB Rice were Sydney Water's patent attorneys who overlooked the registration of  
20 32.

Did you tell Ms Parkes that whatever FB Rice's instructions were you didn't care?---I can't agree to that because the word instructions is ambiguous in that location because I don't know who the instructions in relation to FB Rice referred to. Is it, I had no dealings, I've never spoken to FB Rice in my life.

To orient you look down the page to the sixth line which commences "I explained". Do you agree that Ms Parkes explained to you on 5 June, 2009  
30 that the examiner from IP Australia cross-searches classes of an application and therefore although water the goods is not included the examiner may search related classes?---I see something like that.

Do you agree that she gave you that advice on that day?---This is not an advice this is a discussion, this isn't, this is not advice it is a contemporaneous note.

Do you agree she told you words to that effect on that day?---No, we had a discussion which included both subjects.  
40

And you agree that amongst the subjects discussed she told you words to the effect that I've just read to you?---That's not an advice.

Do you agree that she said words to that effect to you on that day?---May have.

Do you agree that she then gave you a few examples in her letter of 3 June?  
---She may have.

Do you agree that you interrupted her and said that you didn't need all that and wanted to keep it simple, you didn't need lawyers using diversionary tactics?---Yeah, I'm in great fear of lawyers as a general proposition because - - -

Is it true that you said that, Mr Makucha, yes or no?---Said what?

10 You didn't need all that and wanted to keep it simple, you don't need lawyers using diversionary tactics. Is that what you said?---I may have or words to that effect or dissimilar, who knows.

20 And then just to orient you go to the fourth last line in this file note. Did you say to Ms Parkes on that day that, "We will deal with whatever happens on examination then and we will argue it, you didn't want to enter into statements as to what might or might not be done." You said you don't know whether he'd get up tomorrow or not and Ms Parkes told you that she agreed that the examination of trademarks was very subjective. Did a conversation to that effect take place?---I believe it may have.

I want to suggest to you, Mr Makucha, that in this conversation you made it clear to Ms Parkes that you were not interested in receiving advice about Sydney Water's rights on examination of these trademark applications you proposed to make. Do you agree with me?---That's not correct.

I tender that document, Commissioner.

THE COMMISSIONER: It's the file note from Ms Parkes is it?

30 MR PAYNE: From Ms Parkes, yes. She is TXP, you can see that from P175.

THE COMMISSIONER: TKP.

MR PAYNE: TKP I'm terribly sorry.

THE COMMISSIONER: Yes. The file note from Ms Parkes dated 5 June, 2009 is Exhibit 176.

40 **#EXHIBIT P176 - FILE NOTE OF MS PARKES DATED 5 JUNE 2009**

THE WITNESS: Mr Payne, the, the section I read from you about the - - -

THE COMMISSIONER: Are you making speeches again, Mr Makucha?  
---No.

MR PAYNE: Mr Makucha, can I show you another document please?  
---I'm just giving you information.

THE COMMISSIONER: We don't want information from you except that which you're asked to give.

MR PAYNE: Mr Makucha, to orient you look at the third complete paragraph, I'm going to ask you questions about that.

10 THE COMMISSIONER: This is another file note is it, Mr Payne?

MR PAYNE: Another file note of Ms Parkes, yes. Do you agree with me that you had a telephone conversation with Ms Parkes on or about 12 June, 2009 wherein she told you she couldn't provide you with a letter regarding goodwill that you wanted?---We had a discussion in their boardroom where I produced to her an example in relation to goodwill because I had attended the Georgetown University in Washington DC on - - -

20 THE COMMISSIONER: Did you say that to her or not is the question?  
---The question being?

MR PAYNE: The question being did she tell you that she could not provide you with a letter regarding goodwill that you wanted?---Which letter?

You wanted a letter regarding goodwill and its assignment from Griffith Hack didn't you?---Carry on. What else?

30 Do you agree with me?---You haven't made the total statement. The total statement in relation to what I wanted was this. I wanted a letter which confirmed that the assignment of intellectual property is not complete if the goodwill is not assigned with it. That's the point.

And I want to suggest to you that Ms Parkes told you on 12 June that she could not provide you with such a letter. Do you agree?---I believe so.

And then look down at the fourth complete paragraph and the fifth line of it?---Ah hmm.

40 A sentence commencing, Therefore. Do you see that?---Therefore Sydney Water may very well have significant goodwill attached to their trademark in respect of the water. That's right.

Yes. Do you agree with me that Ms Parkes said to you words to that effect on about 12 June, 2009?---No. I'm the fellow that came up with it.

THE COMMISSIONER: Did you say this to her?---That's right.

MR PAYNE: You told Ms Parkes that Sydney Water may very well have significant goodwill attached to their trademark in respect of water did you?---That's right. The class 32. That's right. And you can't assign intellectual property correctly, the assignment of intellectual property is imperfect if you don't assign the goodwill. And I got thrown out of Spruson & Ferguson when I told them that. And they said, Paul, are you saying that thousands of assignment we've done are improper? I said, That's right. Because you wouldn't pay the ad valorem stamp duty. That's why they don't do it.

10

Mr Makucha, I'm going to put to you something that I suggest Ms Parkes said to you for your comment. You can tell me whether she said it, she didn't or you don't remember. I'm going to suggest to you, and to orient you it's the top of this fourth paragraph, that she said on the subject of goodwill, the reason that she couldn't provide the letter that you wanted at the moment, was because that Griffith Hack did not know what goodwill is attached to his two trademarks applications he proposes to make at this time. I suggest to you that she explained that this is because we are agreed that Sydney Water water supply and the goods water is not currently included in the two prior registrations and that she told you therefore Sydney Water may very well have significant goodwill attached to their trademark, their existing trademark in respect of water. Do you agree?---No.

20

Commissioner, I tender that file note.

THE COMMISSIONER: Yes. The file note of Ms Parkes of 12 June is Exhibit 177.

30 **#EXHIBIT 177 - FILE NOTE OF MS PARKES DATED 12 JUNE 2009**

THE WITNESS: What weight, Mr Payne, what weight does a file note (not transcribable) have?

THE COMMISSIONER: Mr Makucha, it's not for you to ask questions, please?---I'm trying to be an understanding witness.

40 MR PAYNE: Can Mr Makucha be shown again, Exhibit P127 that we finished on yesterday.

And turn to open if you would, again using the numbers in red at the top right hand corner, Mr Makucha, to P534?---I have it.

That was a letter you drafted and gave to Mr Harvey and invited him to sign wasn't it?---Let me read it. I can't remember because I don't have a typewriter with that typeface. I don't use a computer for typing. All I use a computer for is doing research. So I would not have typed it.

Did you - - -?---I may, I may have carried it to Harvey but I certainly didn't and that letter would be upon the advice of either the accountants Gina Malacco and Hall Chadwick or including Stafford.

Do you have a recollection of receiving any advice from any person including Mr Malacco or Mr Stafford that caused you to dictate this letter?  
---I didn't dictate it. I might have carried it but I didn't dictate it.

- 10 Do you have any recollection of any conversation with any person including Mr Malacco or Mr Stafford about this letter?---I don't deny that it is possible however I have no particular memory of it because somewhere there is another letter which, and I'll tell you the number, and it states that Sydney Water can have an exclusivity agreement for the payment of 100,000 and that letter was on 21<sup>st</sup> of the 9<sup>th</sup>, '09 and it's signed - - -

Mr Makucha, you're reading from a document again that I haven't given you. Please put it away?---No, it's some notes I brought with me.

- 20 THE COMMISSIONER: Can you please give those notes to Mr, can you take those notes away and give them to Mr Gordon. You're not - - -?---Are my notes arrested?

Give those notes to your counsel. You are now allowed to read notes while you give evidence so that you prepare your answers in advance?---That's not right. The reason for those notes, Commissioner, is that yesterday in the afternoon late counsel assisting the Commission refused to bring to the notice of the Commissioner that there were three or four confirmations in writing signed by Harvey.

30

Mr Makucha, be quiet, you have not been asked this question. You are making another speech?---About the 10 million.

MR PAYNE: Mr Makucha, please turn over to P535 in that bundle. That's a letter from Hall Chadwick to the Managing Director of Sydney Water, attention Mr Harvey and also to you?---Correct.

You see that on or about the date it bears 10 June?---I signed it on the 30<sup>th</sup>.

- 40 So you think you must've seen it later do you?---Well, I make no quarrel with the possibility that I saw it on the 10<sup>th</sup> or soon thereafter and I probably gave it to you Harvey soon thereafter too. However I can't remember when or why there is a difference between the dates.

Thank you. Thank you. Can I just ask you about on page P535, 5(c). This is in a context where what is said is the transaction in relation to the joint venture of companies will include the following. And then 5, The assignments of 49% of the various goodwill related to intellectual property

currently owned or to be developed by Mr Makucha which is to be registered by Griffith Hack et cetera including but not limited to, the first one is the LPG powered desalinated plant on the ship. The second one is nuclear powered desalination plant. The third one is what I want to ask you about. Bottled water commercial methodology and intellectual property of that concept of the use of Sydney Water for the production of bottled water under that Sydney Water brand trademark as has been created by Mr Makucha?---Yep.

10 I want to understand what it is that you told Hall Chadwick in relation to this. I want to suggest to you that what is there set out is using the existing Sydney Water logo and brand and that the intellectual property that you're there talking about is the idea that that can be used for an in-class namely bottled water?---You're talking about 5 under where it says 4, 10 million benefits to Sydney Water Corporation?

No, no, I'm talking about 5(c)?---On page 535?

20 Correct?---He confirmed the 10 million as stated there. I gave to - - -

I'm not asking you about the \$10 million, Mr Makucha, I'm asking you about 5(c) and what you told Hall Chadwick was involved in this concept there referred to?---What do you mean by concept, counsel?

30 The intellectual property that you told Hall Chadwick you had, was it, was the concept of the use of the existing Sydney Water brand trademark and it being applied to another category, namely class 32?---No. It, it, its asserting Makucha's rights to the intellectual property in relation to class 32 which would only permit protection to Sydney Water brand by virtue of the discovery of Makucha in the registration and Makucha is the first to file.

And is that what you meant by the concept, was it?---Well, the concept is, is defined in many documents that you've presented to this Commission and - - -

THE COMMISSIONER: You were asked if that was meant by your concept, the answer is yes or no?---Amongst, yes, amongst other features.

40 MR PAYNE: Thank you. Please turn over to P540. That's a letter Mr Malacco wrote to the managing director of Sydney Water that was apparently acknowledged by you on 11 June, 2009, do you agree?---Yeah, and acknowledged by Harvey on the 30<sup>th</sup>.

And - - -?---Of, of the tenth month which is, which means that - - -

THE COMMISSIONER: Mr Makucha, you were not asked about that. You are making another speech?---It's the letter, Commissioner.

You were asked about your own signature, that's all?---That's - - -

Please confine your replies to the questions.

MR PAYNE: You told Mr Malacco prior to this time did you that you were going to work to recognise the value of underlying goodwill and intellectual property in the sum of \$1 billion to \$2 billion?---I understated it but that's correct, its \$5 billion worth there.

10 And this further benefits that you're talking about, was that to do with the bottled water proposal or these, or these other proposals that ultimately made their way into the Business Implementation Agreement?---No, that's not, the, the value of the bottled water is rather a small component of that. The, the larger components are the goodwill which is missing off the Sydney Water balance sheet, the value of the intellectual property including the class 32 which is missing plus the 44 business modules which I created so that they would have in-house outdoor advertising clients.

20 Mr Makucha, I want to show you another document?---Ah hmm. Yes, this is my diary notes, they're out of my diary, it's my own handwriting.

That's your handwriting?---Yeah.

And it's a note you made on or about 22 June, 2009, is it?---That's right.

Can I ask you about the three entries at the bottom of the page. The first entry, help me with it, this is Paul Makucha, that's you?---Yeah.

30 Said to EH, that's Mr Harvey?---That's right.

"Please would you state in writing what he wants to see in the fee proposals." Next dot point, "Ed Harvey said no, he would not execute the IP," correct?---That's right.

And the third one, "PM said to EH PM can and will file the IP himself? ---That's right.

40 That was a conversation you had with Mr Harvey on this day saying that you can and will file applications for a trademark in respect of class 32 yourself?---That's right.

I suggest to you you never explained to Mr Harvey that in order to make such application you would need the consent of Sydney Water, do you agree?---That's not correct.

I suggest to you - - -?---Are you here to - - -

I suggest to you that you - - -?--- - - - to prosecute this matter on commercial grounds?

Mr Makucha, I've had to speak to you several times this morning about confining your answers to the questions and not making speeches?---I don't want to make - - -

And if you persist in doing so I will have to warn you about being in contempt of the Commission. I'm going to adjourn for five minutes.  
10 Mr Gordon, I think it's time for you to explain the law of contempt to Mr Makucha?---I have the book by Aldridge.

### **SHORT ADJOURNMENT**

**[9.35am]**

MR GORDON: Commissioner, I thank you for the break and through me Mr Makucha wishes to apologise to the court for the interruption.

20 THE COMMISSIONER: Yes, that apology is accepted?---Thank you.

MR PAYNE: Mr Makucha, I just want to put some propositions to you for your - - -?---Do you want this back?

No, no, I'm going to ask you about this document. I want to suggest to you at the time of this conversation with Mr Harvey - - -?---Ah hmm.

- - - you understood that you needed the informed consent of Sydney Water to making any application for trademarks in your own name. Do you  
30 agree?---No.

I want to suggest to you that you had been given advice by Griffith Hack that if objections were raised to your application you needed consent from Sydney Water. Do you agree?---It is so stated in their letter.

And you understood that on 22 June, 2009?---I would have.

And I want to suggest to you that you never explained to Mr Harvey that  
40 the, the execution of IP you were seeking for him would have the effect that you would or may become the owner of the Sydney Water logo and trademark in respect of class 32. Do you agree?---At no time have I attempted in any way to become the owner solely of class 32 and the Sydney Water trademark. It has been a proposal that the ownership of the intellectual property, which rests with class 32 and Sydney Water be shared 50/50, between Sydney Water Corporation and Makucha or whichever entity benefits were purchased.

Does it follow Mr Makucha, that you never explained to Mr Harvey that the effect of any consent he gave you would be that at least until just joint venture was embarked upon you would be the sole owner or a company associated with you would be the sole owner of the logo and trademarks as they related to class 32 if the application was successful?---Mr Harvey understood at all material times and, and accepted that Sydney Water was protected by the option agreement for the 50 per cent.

10 And so the answer to my question, did you ever explain to him clearly that a possible effect of his consent or that you or company associated with you would be the sole owner of the Sydney Water logo and trademark prior to the entry into any joint venture agreement?---I took the view Mr Harvey had his own legal advice and it's confirmed in my notes there, GM, GM means General Manager.

And just so we're clear Mr Makucha - - -?---Harvey was getting the General Manager to - - -

20 THE COMMISSIONER: So your answer is no?---I'm sorry? Yeah, that's - - -

MR PAYNE: You never explained it to him because you thought he was getting his own advice. Is that what you say?---That's right. Yeah.

30 THE COMMISSIONER: GM is in the note there is it?---It is, yeah. It's in the, in the paragraph starting bullet point GM supposed to meet Harvey at 9.00am. From the times that Harvey told GM, fee proposals are not to be signed by Ed Harvey. I told Harvey don't, I want the fee proposals to be signed by HC and GM, I prefer them on the basis that - - -

What is HC?---I can't remember.

MR PAYNE: I suggest to you - - -?---It'll come to me.

I suggest to you it's Hall Chadwick, Mr Makucha. Do you agree?---Maybe, yeah.

And the GM is Gino Malacco. Do you agree?---Yeah. Yep, you're right.

40 So just in fairness to you, GM, GM - - -?---Yeah, no, that, thank you.

- - - doesn't mean general manager, does it?---No, no, no, that's correct.

Commissioner, I tender this note.

THE COMMISSIONER: Diary note of Mr Makucha of 22 June, 2009 is Exhibit P178.

**#EXHIBIT P178 - DIARY NOTE OF MR MAKUCHA DATED 26 JUNE 2009**

MR PAYNE: Mr Makucha in that large bundle can you go over to page P556 please. That's an invoice from you to the managing director of Sydney Water attention Mr Harvey and Mr Malacco dated 26 June, 2009, do you agree?---Correct.

10

I suggest to you prior to sending this invoice you had a conversation with Mr Harvey and you said I require more funds, I propose that I sell Sydney Water the security air-conditioned building and guard house buildings on the property. Is it possible you could buy those buildings for \$6,000? Is that acceptable? Do you agree that you said words to that effect to Mr Harvey?---No, I don't.

20

And I suggest to you Mr Harvey said to you on the face of it that seems a reasonable amount, please give me an invoice. Do you recollect him saying something like that to you?---Yeah, I think what he said to me was after I had come up with the belief that my best position was to sell all the buildings on the property to Sydney Water I asked him whether they wanted to buy that as well and he said okay. Mr Harvey has a valuer's degree so it, at no time did I think that Harvey was incapable of making value judgments.

30

Thank you. Was it agreed between you and Mr Harvey that these buildings would also be sold to, I withdraw that. Was it agreed between you and Mr Harvey that these buildings would be sold so the joint venture vehicle Sydney Water P Pty Limited?---If it was so desired by Sydney Water but they would, they would have the first right of refusal because Harvey told me that Sydney Water used many thousands of temporary buildings and this was a particularly special building because they were designed by Telstra with high security protocols and air conditioning and this sort of thing and they were excellent, they were used for telemetry and so forth.

40

So just to be clear, it was agreed between you and Mr Harvey was it that these buildings would be sold to Sydney Water P on the understanding that if and when the joint venture went ahead they could be used for the joint venture. Is that the agreement?---Maybe, yeah, unless Sydney Water used them prior.

And you agree that at this time Sydney Water P was a company owned and controlled by you pending any joint venture agreement?---Yes, but there is an option agreement, a valid option agreement which permits Sydney Water to take 50 per cent or whatever it is, 49 per cent at any time which still hasn't been exercised.

Thank you. And was it the case that this \$6,000 would be refunded to Sydney Water upon execution of the joint venture agreement, was that part of the deal with Mr Harvey?---If required, yes, if required by Sydney Water but Sydney Water being the big brother in the agreement, I at all times informed Harvey that the, the outline of the agreement was the outline, however the fine tuning of it would be done a goodwill basis of good faith for both parties and that's reflected in, the sentiments are reflected in the agreement but we would have to accommodate each other's requirements and desires and whatever.

10

So we should understand, should we, Mr Makucha, on page 556 where it says further to verbal agreement of 25 June, the day before, that all the matters you've just talked about were discussed between you and Mr Harvey prior to you sending this invoice?---That's not what I said. What I'm trying to indicate to you is the length and breadth of discussions which had transpired with, between Harvey and myself and they were embodied in the items which were to be included in a Confidentiality Agreement which hadn't been started because it, because the complexity of the matter, it took a fair bit to understand how it should be done.

20

Do you agree with me that this invoice on the face of it says nothing about any joint venture agreement, any sale to Sydney Water P or any right to reimbursement in Sydney Water of this \$6,000?---I take your point, but I couldn't, I couldn't attach all the verbiage to every bit of correspondence, all the background to everything. I mean, I took Harvey to be a man of position, authority and standing, who had a property asset, as a property asset manager, had a position number 28944. I believed that that reflected this delegation.

30

And just so we're clear Mr Makucha, to the extent that this invoice doesn't reflect the matters you've just told me about, is that because - - -?---It states his property asset position a number of times.

But it doesn't state any of the matters concerning Sydney Water P, the joint venture agreement or any recoupment by Sydney Water does it?---I think, I think that all the invoices were covered by the statement in a prior letter and so forth. And I rely on that.

40

And the reason that that wasn't spelled out clearly in this invoice was it, was because you and Mr Harvey agreed it would better not to refer to those matters and what he had to send to Sydney Water's accounts?---That is not true, correct or proper of you to assert.

You disagree with me?---Vehemently.

Thank you. Turn over if you would to page 559. That's an invoice from you to the Managing Director of Sydney Water Corporation, attention Mr Harvey and Mr Malacco, dated 23 July, 2009?---Correct.

And it says, it is for six months of consultancy services designs for outdoor advertising, feasibility studies and construction and long term rentals for Outdoor Advertising. Also the various approvals?---Ah hmm.

Mr Makucha, at this time you had done no work for Sydney Water in outdoor advertising entitling you to the payment of any money had you?  
---That's totally untrue and improper of you to suggest and incorrect, because I had found the, the two locations and I took them to Harvey. One  
10 being on the corner of O'Riordan Street and Gardeners Road and other being on South Dowling Street. So how can you say that?

Can Mr Makucha please be shown Exhibit P130? Keep that book open at the page 559. And I'll ask you to look at Exhibit P130. Please take a moment to look at that Exhibit, Mr Makucha?---I know, they're photocopies out of my diary. I know what they are. I know what's in here.

I want to suggest to you that under a notice from this Commission requiring production of all material concerning work you did for Sydney Water in  
20 relation to Outdoor Advertising, this material and the book being your catalogue, which I'll take you to in a moment are the only things that you produced. Do you agree?---No, that's not true because I produced to the Commission what I had in my possession. I told them that they could obtain other items from Medina and whatever. Now, I will listen to your further question.

Do you agree with me Mr Makucha, that this is the only material you produced to the Commission concerning outdoor advertising work you say you had done for Sydney Water?---No, that's not right. Because what you  
30 fail to grasp and understand is that the 44 business modules which are contained in the signed flowchart had, I had constructed using the brand of Sydney Water businesses around each one of those. And those businesses would be the in-house advertisers in relation to various sites. Harvey was asked and it is so confirmed in writing to give me the priorities of which product was going to be advertised because due to the fact that there was a shortage of advertising dollars in the commercial marketplace out there, I came up with the, the methodology where we would be assured at all times of advertising revenue.

Mr Makucha, I want to suggest to you that the only material you produced to the Commission in relation to a notice which called for all work including designs carried out by you on behalf of Sydney Water as a consultant for outdoor advertising, feasibility studies, construction and long term rental agreements for outdoor advertising was this material in Exhibit P130 and the book Exhibit P140 being your catalogue from 1993?---No, I think, I think bundle A has in the back of it a very large flowchart. Now, I was quizzed by a man sitting up there where Mr Bentley, well, I delivered the items to Agent Bentley, Agent Grainger and this man who refused to give  
40

me his name but works for the Commission. And he sought to examine me and ask me where's the contracts and this sort of thing and he didn't quite understand what I sought to explain and he said to me, Well, you want to be careful because if you don't explain to me you'll have trouble in the Commission. And I, and I nicknamed him Snapper because he was a very snapper person and I said to him, Well, I think that Snapper's in gaol isn't he?

10 And I want to suggest to you, Mr Makucha, that by 23 July, 2009 the only material that you had prepared in relation to outdoor advertising and given to Sydney Water was what's contained at P130?---It was an ongoing matter, creativity, Mr Payne, is not something that comes to you in one minute and in here I need to find the site on the corner - - -

So, Mr Makucha, is the answer to my question yes?---Can I just, can I just, no. Can I just refresh myself here, I need to look at something.

20 THE COMMISSIONER: Mr Payne, I think we should, the notice to produce should be tendered.

MR PAYNE: Yes, Commissioner. I tender the notice to attend and produce documents, Commissioner.

THE COMMISSIONER: Yes. The notice to Mr Makucha to produce documents relating to outdoor advertising is Exhibit 179.

30 **#EXHIBIT P179 - NOTICE TO PRODUCE SERVED ON MR MAKUCHA**

MR PAYNE: Yes, item 8, I was reading from and may I ask questions of Mr Makucha, Commissioner.

THE COMMISSIONER: Yes.

40 MR PAYNE: Mr Makucha, just so we're clear I'm suggesting to you that the only work you produced and gave to Sydney Water concerning outdoor advertising before the date of this invoice at P559 is what's contained in Exhibit P30. Do you agree?---No.

THE COMMISSIONER: As I understand it, Mr Payne, the material in fact given to the Commission was only imputed or comprised rather only Exhibit P150 and the other - - -

MR PAYNE: Yes, 130, Commissioner, yes.

THE COMMISSIONER: 130. And the other book of photographs - - -

MR PAYNE: Which is Exhibit P140, yes.

THE COMMISSIONER: Yes. And did the Commission in fact receive anything else?

MR PAYNE: There was other material but this was identified on my instructions by Mr Makucha as being the material responding to paragraph 8.

10

THE COMMISSIONER: And who is it identified to?

MR PAYNE: Mr Grainger.

MR GORDON: Commissioner, I think in relation to the flowchart that Mr Makucha referred to they might be Exhibits P125 and 126.

THE COMMISSIONER: Thank you.

20 MR PAYNE: I see. Thank you. Can Exhibits P125 and 126 be retrieved. We'll get the correct number. I do recollect those two documents. 135 and 136, I'm terribly sorry.

MR GORDON: My apologies.

THE COMMISSIONER: Were Exhibits 135 and 136 also identified by Mr Makucha?

30 MR PAYNE: On my instructions no in relation to this matter but I'll give him an opportunity now to explain what, if anything, they have to do with outdoor advertising. Are these the flowchart documents you referred to in your answer a moment or two ago, Mr Makucha?---These are not the ones because the ones I referred to you have and they're signed by Harvey so can I have those and you can have yours that are unsigned?

Other than the signature are these - - -?---No, they weren't.

Are these the documents you referred to?

40 THE COMMISSIONER: Can you answer Mr Payne's question please? ---I'm sorry?

Could you answer Mr Payne's question. He said are these the, are the documents you have the same other than the signature or you're not able to say?---I'm not able to say unless he provides me.

MR PAYNE: All right, Mr Makucha?---Can I have, can I have a look at one of those please that counsel, my counsel gave you just one minute ago on the express belief that you would return them to me. Please.

Mr Makucha, I thought you told me that these weren't the documents you were referring to?---Excuse me, I didn't say that at all. I want to have a look at them because I need to clarify to the Commissioner.

10 You want to look at the document, the copies that Mr Gordon gave me. Is that what you're asking?---That's right. That's,. that's correct.

I see. I'll hand those copies. They're misdescribed as P125 and 126 at the top?

MR GORDON: The error in the description is mine.

THE COMMISSIONER: I beg your pardon?

20 MR GORDON: The error in the description is mine.

THE COMMISSIONER: These are the copies of Exhibits 135 and 136?

MR GORDON: Correct. I think these may be original documents as against photocopies.

THE COMMISSIONER: Right.

30 MR PAYNE: Are they the - - -?---These are not the one. There are similar which have Harvey's signature on them up the top, up here and he put in more connecting lengths to Sydney Water Corporation and PMH.

Can I have that back please?---You can because these copies - - -

Please, Mr Makucha, give them back to me and I'll give them to Mr Gordon?---I gave Mr Gordon ones that had signatures on them and I'll have a copy in my bag.

40 No, Mr Makucha, I'll show you the last document which was - - -?---The problem here, Mr Payne, can I just clarify for you. This only has 36 business modules, the final version of that had 44 and it has, this is annexure 20 top left corner, the one that I was referred to as being the final one is going to be I think 20C.

I'll show you a document that's headed 20C which was produced, also produced to the Commission. If you can give those back to the officer. I don't have a copy of that, I'm sorry. That's a document said to be dated on the bottom I think 9 December is it, 2009?---15/02/10. It has 44 business modules in it.

Can we just identify it. Is that the one you're referring to, Mr Makucha?  
---Yeah, I am but it was executed by Harvey on 14 December in 2009.

10 I want to suggest to you then you say that's material concerning this outdoor advertising consultancy do you?---Each one of those business modules is a brand and the brand and the product are to be advertised or most of them are to be advertised such as Sydney Water Banking which has the Sydney Water tax paid bonds et cetera and drinking water and all manner of business ventures.

Mr Makucha, I want to suggest to you that when you produced material to the Commission you did not draw attention to 20C that's in front of you now as responding in any way to any matter concerning outdoor advertising, do you agree?---No, I, I, I did and the man who refused to give me his name, Agent Grainger knows the man, he was present - - -

20 Commissioner, I'll tender 20C, it's in a large book at the moment, I tender only those last two pages if the officer can retrieve that from Mr Makucha and we'll have some copies made.

THE COMMISSIONER: The diagram marked 20C - - -?---Flowchart.

Thank you. The flowchart marked 20C is Exhibit 180.

**#EXHIBIT P180 - FLOWCHART MARKED 20.C**

30 THE WITNESS: Can I take you to this, counsel?

MR PAYNE: No, no, Mr Makucha. I'll ask you some questions and your counsel will be given every opportunity to ask you anything that arises. Can I ask you about, have you still got P559 open in front of you, the outdoor advertising?---Yes, I do.

40 I want to suggest to you that as at that date, 23 July, 2009, other than what's contained in Exhibit P130, you had done none of the things described in that invoice, do you agree?---No, I don't.

And I want to suggest to you that the contents of Exhibit P130 to your knowledge would not have been in the Australian outdoor advertising market, would not have been, I withdraw that, I'll start again. I want to, I want you to comment on this proposition, namely that the contents of Exhibit P130 were only mock-ups and that in the ordinary course in outdoor advertising in Australia in 2009 a client would not be excepted to pay anything for them, do you agree?---I totally disagree and your expert witness, Mr Donaldson, provided you with clipart computer generated

photos and oddly enough I'm the man who came up with the initial concept and proposed it to the New South Wales government of having outdoor advertising on pedestrian overpasses and that was the result of three people getting killed one Saturday afternoon at Epping.

10 Mr Makucha, just looking at this invoice, do you agree with me that you, by 23 July, 2009 had not provided any designs for outdoor advertising other than that contained in Exhibit P130?---No, that's not true. I had discussions with Harvey and I wanted to put in aquarium around the central column on the ground floor, I wanted to put the Sydney Water logo and statement on the building and we had a discussion, he said he would need owner's consent and I said to him that normally in the long-term lease documents there's a clause which says that owner's consent will not be unreasonably withheld. At Parramatta I went around, I took a lot of photos of the various places and I had a lot of discussions with them and we have, we have demographics, we have traffic studies. Outdoor advertising, counsel, is totally related to traffic.

20 Mr Makucha, I'll ask you again, did you provide prior to 23 July, 2009 other than what's in Exhibit P130 any designs for outdoor advertising to Mr Harvey or anyone else at Sydney Water?---There's a design, sir.

That's part of Exhibit P130 you're showing me?---(not transcribable) it's a design.

So is the answer to my question other than P130 you didn't provide anything?---I did but I can't remember what they were because - - -

30 THE COMMISSIONER: And you haven't produced them?---I'm sorry?

And you have not produced them?---As of when, July?

As of now?---Yeah, I, there are others, I rely on the flowcharts and the, and the business modules so that - - -

40 I'm talking about designs, Mr Makucha. Are you saying that these flowcharts are outdoor advertising designs?---They are, they, they, what they provide is a business to operate on the basis of the brand value being the trademark and the product which then would need advertising. I asked Harvey - - -

All right. I only asked you if you said that Exhibit 180 is a design and you've said yes.

MR PAYNE: I suggest to you, Mr Makucha, that it is quite wrong to describe that flowchart as a design. Do you agree?---Where do you get your expertise from, counsel?

THE COMMISSIONER: That's not, just answer the question?---No, that's not correct.

MR PAYNE: Can I ask you about feasibility studies which are also the subject of this invoice at P559. I want to suggest to you that you provided no feasibility studies to Sydney Water prior to this date, 23 July, 2009 or at any time, do you agree?---Please describe to me what you believe to be the description of a feasibility study.

10 THE COMMISSIONER: It's your word, you know what it means?---I don't agree with that, counsel.

Other than P130 can you point me to any document which you say comprises a feasibility study prepared by you at any time in relation to outdoor advertising for Sydney Water?---Annexure 20C, sir.

So that a design for outdoor advertising and also a feasibility study is it in your mind?---That's right.

20 I see?---Because they have to sign, they have to sign the confidentiality agreement, you may not understand because you're not in that sort of business but that flowchart is worth many millions of dollars because I have a track record of designing and creating businesses where people don't see the value and I did that at Mascot, on two miles of frontage to Sydney Airport where we had vacant land opposite Sydney Airport, now it's worth a billion dollars and it's all by virtue of my designs. Little scribbles they start off as. You don't, you don't have architects drawing huge engineering designs is what you're expecting I think until you know the product et cetera and Harvey was asked and continues to be asked and that is so stated in documents to the Commission please give me the priority which - - -

30

THE COMMISSIONER: Mr Makucha, you're making a speech again? ---Well, this is a very serious part of the (not transcribable).

I'm not interested in how serious it is, your obligation is simply to answer the question?---I'm trying to do it very well, sir.

MR PAYNE: Mr Makucha, I suggest to you that you never produced anything meeting the description of a feasibility study for Sydney Water, do you agree?---I do not agree and will not agree to such wrongful assertions.

40

Do you agree with me - - -?---That's wicked.

Do you agree with me that it was quite misleading to say in this invoice on 23 July, 2009 that you were entitled to be paid \$18,000 inter alia for the preparation of feasibility studies for outdoor advertising?---What does inter alia mean, sir?

I'll ask it again. It was quite misleading for you to say on 23 July, 2009 that you or your company was entitled to be paid anything for a feasibility study because you hadn't actually done one, do you agree?---I do not agree that I was not entitled to be paid consulting fees. Mr Harvey and Sydney Water had agreed to pay fees to Makucha.

And Annexure 20C didn't even come into existence until December, this is back in July 2009?---Sorry?

10 Annexure 20C as you've pointed out didn't come into existence until December 2009, did it?---That's totally true.

And - - -?---It was an ongoing thing, on that invoice does it state by when the particular items of work have to be completed by?

20 You, you say to the Commission, do you, that all of these are payments in advance for work you had not then done?---Excuse me, I, I had completed a lot of work and each month there was \$1,200 worth of HP colour cartridges used in doing the research and Harvey and Sydney Water were provided with copies of all.

Mr Makucha, I want to suggest to you that that answer is untrue?---What answer?

That colour copies of anything meeting the description of a feasibility study was ever provided to Sydney Water. I suggest to you that is not correct? ---Mr Payne, you are trying to mislead the Commission.

30 THE COMMISSIONER: Mr Makucha, I won't have this?---Well, I'm sorry, I'm telling - - -

Just answer the question?---All right. Put me the question straight.

You have been given the question?---Please repeat it.

MR PAYNE: I want to suggest to you that you never provided colour, black and white - - -?---I don't agree and I, that is not correct or true.

40 THE COMMISSIONER: Mr Makucha, this document which is Exhibit P180 is headed 50/50 Sydney Water Structure Between SWC and PMH after all share acquisitions by a parent company?---That's right.

This document sets out the proposed company structure involved in the contemplated joint venture doesn't it?---No, it goes beyond that, Commissioner.

Where does it go beyond that?---If you go to module 7, module 7 on the second tier of the - - -

Yes?---We have the bottling company.

Yes?---Now that bottling company is the water.

I understand what a bottling company is?---(not transcribable) I wrote the definition.

10 Don't tell me what to do, Mr Makucha. Just deal with the question?---I am.  
Number 9 is Sydney Water (not transcribable)

I know. You're not answering the question?---I am.

You're not?---I am.

I do not regard this as an answer to the question?---Excuse me, Sydney Water - - -

20 I do not regard it as an answer to the question - - -?---Sydney Water - - -

If you're not prepared to answer the question - - -?---I am.

- - - we'll move on to the next question?---Excuse me, I will not agree with the Commissioner that I am, I am trying to explain that each one of these businesses based on the trademark and the brand value of Sydney Water were going to do advertising on a particular location.

Yes, Mr Payne.

30 MR PAYNE: Just to be clear, Mr Makucha, about this invoice - - -?---  
Excuse me, Commissioner, can we just clarify - - -

THE COMMISSIONER: No. You've given your answer. Mr Gordon, if Mr Gordon wants to re-examine and ask you questions about this, he's welcome to. You've given me your answer and I'm now asking Mr Payne to proceed and I'm asking you to wait for Mr Payne's question and to answer it?---Can I just ask you a question?

40 No. Proceed please.

MR PAYNE: Mr Makucha, so we're clear about this invoice at P559, do you say that at the time you had issued this invoice you had provided any feasibility studies, whatever, to Sydney Water?---Location of O'Riordan Street and Gardeners Road. And also on South Dowling Street where the Pump House is. I'm the man that nominated those to be appropriate sites for multiple reasons. They, Harvey wasn't aware of that.

And do you say that's a feasibility study is it? You telling Mr Harvey something not recorded in writing?---Mr Harvey confirmed it.

Do you tell the Commission that that was a feasibility study, some mention you made of various sites to Mr Harvey that you didn't record in writing?--- Well, a feasibility study in my mind - - -

THE COMMISSIONER: Is your answer yes or is it no?---I say I did advise Harvey of the sites and that is a part of a feasibility study.

10

Can I ask you about the next one, construction. You're invoicing Sydney Water here for - - -?---No construction has occurred.

No construction had occurred. No construction ever occurred did it?---No construction occurred because Harvey didn't tell me which priority they wanted for which product, because you have to construct and design these things based upon the product.

20

Mr Makucha, will you agree with me that to have issued an invoice to Sydney Water for amongst other things construction of outdoor advertising on 23 July, 2009, was quite misleading?---It was neither deceptive nor was it misleading or was it dishonest.

Because it had never happened and to this day has never happened. Correct?---What are you talking about? Are you talking about one singular - - -

30

Construction?---No. Just explain to me, are you talking about taking out one of those words or are you talking about the whole - - -

I'm talking about you sending an account to Sydney Water for construction of outdoor advertising which hadn't happened had it?---To the best of my knowledge they haven't constructed anything. I don't know.

And it was - - -?---I don't know what happens there.

40

And it was quite misleading of you to say to Sydney Water in this invoice that you were entitled to be paid amongst other things for construction of outdoor advertising because none had taken place. Do you agree?---Excuse me, the construction would occur by Sydney Water and subcontractors. I don't have the right to go on their land and start building things without their approval.

THE COMMISSIONER: You're not answering the question, but I think that we, we will not press it because there is no point in asking you questions when you continually refuse to answer them or evade them? ---Excuse me - - -

Give answers which are not responsive?---Excuse me - - -

And if you continue to do it, your conduct in doing this Mr Makucha, I must warn you does not reflect well in your credibility. And you do your case no benefit by taking this approach?---Commissioner, can I explain - - -

No, you can't, you have wasted an inordinate amount of time in your irrelevant non-responsive statements?---If everyone was able to create things it wouldn't be so valuable. And if everyone could see creativity - - -

10

You are persisting Mr Makucha, despite - - -Forgive me.

- - - my requests put to you - - -?---Forgive me.

- - - in reasonable terms not to make non-responsive statements continuously or at all, but you're nevertheless persist on doing it. You keep saying forgive me. I don't really know what, whether you think you're achieving anything. The only that you're achieving is giving an impression that does not (not transcribable) to the credit of your case or yourself?---I've given my answers to your counsel. Is there any other answers you require, counsel.

20

MR PAYNE: Mr Makucha - - -

MR GORDON: I don't whether I can persuade you to a five minute break.

THE COMMISSIONER: Yes.

30 **SHORT ADJOURNMENT**

**[10.27am]**

MR GORDON: Commissioner, I again thank you for the break. I've explained the requirements of the inquiry to Mr Makucha.

THE COMMISSIONER: Thank you, Mr Gordon.

MR GORDON: He will try and comply.

40 THE WITNESS: Thank you, Commissioner.

MR PAYNE: Mr Makucha, just a few final questions about this document at P159. You see there that part of the invoice relates to long term rental agreements for outdoor advertising. I want to suggest to you that you never had any role in negotiating or providing any rental agreement at all let alone a long term one for outdoor advertising to Sydney Water. Do you agree?  
---No.

To the extent you were involved in such negotiations you have produced nothing to the Commission about that topic. Do you agree?---No.

In relation to the notice to the Commissioner you say do you that there are, there is evidence of your negotiating long term rental agreements on behalf of Sydney Water in that material do you?---I had the discussions with Harvey about the long term agreements as reflected in the annexure 20C diagrams and whatever.

10 I see. Well, let's just go directly to that just to finish this topic in relation to P559. I'll give you back a photocopy of Exhibit P180 which is annexure 20C. Does the Commissioner have one? Give one to Mr Makucha. First of all, Mr Makucha, I want to suggest to you that it is quite misleading to describe this document as a feasibility study in relation to outdoor advertising. Do you agree?---Wrong.

I want to suggest to you it is quite misleading to describe this document as anything to do with long term rental agreements for outdoor advertising. Do you agree?---I don't.

20

Can you point to any part of this diagram where the topic of long term rental agreements for outdoor advertising is recorded?---I cannot.

I want to suggest to you that in any event this is a diagram of a structure between Sydney Water Corporation and you and companies associated with you after all share acquisitions had taken place by Sydney Water. Do you agree?---There was a proposal which Sydney Water had to avail themselves of if they were so desirous after the confidentiality agreement was signed and the outdoor advertising was to be divulged after the confidentiality agreement was executed as it was on 3 December.

30

So is what you are saying that any of these matters concerning outdoor advertising would be divulged to Sydney Water after it had signed the Confidentiality and Business Implementation Agreement. Is that what you say?---That's right.

So when you are sent an invoice back at P559 for \$18,000 that was for work you say you would only disclose to Sydney Water Corporation after it entered the Confidentiality and Business Implementation Agreement. Is that correct?---The final disclosure would be after the confidentiality agreement.

40

And so you were being paid for work you say you were doing but were not going to disclose to Sydney Water until after they entered into the Confidentiality and Business Implementation Agreement. Is that right?  
---Correct.

I'm sorry, I missed that?---Correct. It is so clearly stated in the volumes of the agreement.

Mr Makucha, I have to put this to you. To have submitted this invoice at P559 for payment of \$18,000 in circumstances where you would only disclose any work you had done to Sydney Water after they entered the confidentiality agreement was quite misleading. Do you agree?---I do not and cannot and will not.

- 10 This invoice says nothing about the services you describe there being contingent upon, or their disclosure to Sydney Water being contingent upon entering into a confidentiality agreement does it?---It was always understood at all material times by Harvey and Sydney Water Corporation that that was the agreement.

This invoice does not say anything about it being contingent upon a confidentiality agreement does it?---The, the invoice says what Harvey and Sydney Water wanted on it. They gave me a draft on what they wanted.

- 20 And it's the position isn't it that you knew that none of the services described in this invoice would be disclosed to anyone within Sydney Water until a confidentiality agreement was signed?---Correct.

And you knew that Mr Harvey would have to submit this invoice to others within Sydney Water for payment?---Don't know what happened to the invoice. The first time I saw an invoice with these stamps is when it was produced by the Commission here on 15 June this year. I, I have no understanding as to the methodology of commerce inside Sydney Water Corporation.

- 30 Prior to issuing this invoice I want to suggest to you that you had a conversation with Mr Harvey and I'll read it to you for your comment, Mr Makucha. I suggest to you that in early July 2009 you said to Mr Harvey, "I have quantified what expenses I have," and Mr Harvey said, "What are those, Paul?" You said, "This list totalling approximately \$25,000 including accommodation, meals, medical, dental, car parking, fines and other things." Mr Harvey said to you, "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 you could provide me with advice on site suitability, site design and estimated rentals." 40 You said, "That would be fine. I know what sites you have in Botany." Mr Harvey said, "I'll give you a list of the sites we're looking, you can inspect and provide them for me," and Mr Harvey said to you, "I think \$18,000 would be a suitable fee." A conversation to that effect took place?---I agree with that.

And as you said, he told you what this invoice was to say. You knew though, didn't you, that the services here described were never going to be

conducted or disclosed to Sydney Water until they had signed the Business Implementation and Confidentiality Agreement?---No, until they signed a confidentiality agreement. At that point in time the Confidentiality Agreement would be signed it appeared imminently but then after they tried to shaft me to convert my discovery of class 32 then I decided that it was going to take a little hard work to do a very complete confidentiality agreement which complies with the definitions by High Court Justice Gummow, it should comply and it should have descriptions of what the confidences are and so forth and what the secret business methods are.

10

Mr Makucha, I thought you'd, you'd, you'd told me earlier today, correct me if I'm wrong, that you'd decided in that handwritten file note I showed you of Mr Harvey on 22 June - - -?---All right.

- - - so prior to this time - - -?---Yeah.

- - - that he was being wicked and trying to shaft you at that point, I thought that was what you said to me?---That's right and that's confirmed by some of the letters that they wrote, where he tried to assert that I was working for Sydney Water.

20

So by 23 July when you sent this invoice you had understood that the Confidentiality Agreement as you've called it would contain a number of substantive provisions requiring the payment of large sums of money by Sydney Water to you in order to get the benefit of the joint venture proposal?---As the document shows, sir.

And that was your state of mind when you sent this invoice on 23 July?---I don't understand the link, are you talking about mens rea or something?

30

No, I'm not talking about mens rea, I'm talking about what you understood at a, at a point in time?---I can't remember what I understood. I have tried at all times to document everything very well and I rely on all the written correspondence and advice to me from lawyers, accountants and Harvey.

Mr Makucha, I want to suggest to you that this invoice at P559 was misleading to your knowledge in that at least it said nothing about any joint venture proposal and the benefits, sorry, and the goods and services there set out only being provided after a confidentiality agreement was signed. Do you agree?---At no time was it my intention to mislead anyone in anyway in any writings and at no time did I believe that if there was a query that Harvey did not have the capacity to bring it to my attention and it could be resolved.

40

Well, you knew, didn't you, that Mr, Mr Harvey couldn't just pay your expenses, you'd asked him about that he'd come up with this idea about an outdoor advertising consultancy, you agree?---No, that's not quite right because if you go back to the first letters written to Sydney Water about

essential elements and terms there is payment of money there. In March, in correspondence in March, about March 11, 12, 13, states payments of money - - -

Mr - - -?--- - - - and also - - -

Yes?--- - - - in relation to ah, um, consideration.

10 Mr Makucha, I want to suggest to you that this invoice at P559 was misleading to your knowledge to obtain the payment of \$18,000. Do you agree?---I do not.

Turn over if you would to P560. That's another invoice sent by you a month later, Monday, 3 August, 2009 to Sydney Water managing director, attention Mr Harvey?---That's correct.

20 Whilst it's a little difficult to read it appears to be in the same form as the one I've just shown you at P5 - - -?---I have no quarrel with that and the other afterwards.

- - - 59?---They are invoices that I sent and - - -

Thank you, that's, that's helpful and they're all in the same terms for, I think, seven months?---That's a part of that group of invoices.

30 I'll show you each in fairness to you just so, the Commissioner is to understand is he that in terms of designs, feasibility studies and long-term agreements for outdoor advertising you had in mind the document not then created but created in December 2009 being Exhibit 180 which is this Annexure 20C document?---Amongst other things, however, the Confidentiality Agreement, Harvey supplied a generic form and copy of it is in bundle A at about that time.

40 Mr Makucha, it was always the position wasn't it in relation to outdoor advertising that anything meeting the description of a feasibility study, long-term rental agreement or design was only going to be revealed by you to Sydney Water once that was signed, correct?---The final designs, yeah, because, so they couldn't steal it, because the New South Wales government stole my designs for the pedestrian overpasses.

THE COMMISSIONER: Mr Makucha, you are making speeches again and - - -?---Forgive me.

- - - making gratuitous remarks?---Well, forgive me.

MR PAYNE: Well, any designs at all, other than that small bundle I showed you, Exhibit P30, other than that you didn't produce anything and show it to Sydney Water, did you?---We had a lot of discussions about a lot

of outdoor and what they wanted and how it would, this group of companies, if you want me I can explain it to you otherwise I will - - -

I want to know whether you produced anything meeting the description of a design to Sydney Water at any time - - -?---Yes, I did.

In writing?---It was recorded on paper or whatever. If you attend the patent office in Washington DC you can have a look at the, the patent application for the light bulb. It's a very small drawing, about this big that's just - - -

10

Mr, Mr Makucha, please, leave light bulbs out of it. I'm asking you about any written work you did about design for Sydney Water and I'm suggesting to you - - -?---I told you I have.

And I want to suggest to you that none such has been produced to this Commission in response to a notice, do you agree?---I do not agree.

20

You say it's in that material, do you?---Amongst other things there is that material, however, a man like me who's creative sits down with fellows like Harvey or whatever and sketches on bits of paper and asks them at all times, I used to visit Harvey with a suitcase this big full of papers and documents and go through them and ask him what he wanted and I'd sit there and show him or design or whatever so I think it's unfair of you.

Just so we're clear, Mr Makucha, I'm suggesting to you that other than Exhibit P130 you produced no designs for outdoor advertising for Sydney Water at any time, do you agree?---I do not.

30

THE COMMISSIONER: Mr Payne, that, these questions have already been put to Mr Makucha.

MR PAYNE: Yes.

THE COMMISSIONER: I don't see the point in going through the same questions in relation to each invoice.

MR PAYNE: Yes, yes, Commissioner.

40

THE COMMISSIONER: I don't think Mr Makucha's got anything new to say on any of these invoices.

MR PAYNE: I'll move on, Commissioner. I think in fairness to you when I started asking you about this invoice you said the position that you'd told me about the first invoice was the same throughout. So the questions that I'm asking you and your answers would be the same throughout?---No, that's not right because the purchase of, there's an invoice there for the purchase of the documents in relation to the Makucha Group.

I do, I do want to ask you about that. That's, that's to one side?---All right.

Can you then please turn over in that, you can return that document, Exhibit P180 if you wouldn't mind. Can you then turn over in the documents to P562. Is that a document, although it's dated 4 February, 2010, I'd ask you to assume that the evidence before this Commission as the correct date as 4 September, '09 and that's an automatic numbering error when it was printed out. Is that a document you saw in or about September, 2009?---Yeah. That's a copy of an email that Harvey sent to Gino Malacco in relation to a business case proposal. And Harvey also sent Malacco the, the file so that if Malacco wanted to make any changes, he could actually change this document rather than to have to reproduce it.

Can I ask you about P563 and in particular the point 2.3.3. You see there that Mr Harvey is asking for an explanation of the Sydney Water trademark concept to include water?---I see two structures processes. I see 2.3.3 dot point 4, please explain Sydney Water trademark concept to include water in the proposal. That's right.

20 And so far as you understand it, no explanation was given to Mr Harvey about that matter was it?---I think it was. I think it was provided by Gino Malacco.

Were you present when it was provided?---I think it was provided in writing.

I see. Can we go over then to, can the witness be shown Exhibit P157. You had a meeting with Mr Stafford on that day?---I did.

30 And, excuse me one moment, Mr Stafford told you on 17 August, 2009 at the first meeting between you didn't he, he insisted that Mr Harvey produce a relevant instrument of delegation prior to the joint venture proposal going any further didn't he?---He wanted some further, he felt that it was wise that Harvey confirm in writing that he was able to bind Sydney Water.

THE COMMISSIONER: No, that's not what the note says. The note says, insisted that EH produce relevant instrument of delegation?---He didn't. He agreed and that's how the confirmation of September 9 by Harvey on Sydney Water letterhead emerged, where Harvey says I can, that he confirms that he has the delegated authority to bind Sydney Water in any negotiations et cetera.

40 MR PAYNE: But Mr Stafford told on the 17<sup>th</sup> that he didn't want something from Mr Harvey, from the agent asserting his own authority, he told you he wanted the relevant instrument of delegation?---I don't agree. That's what this says.

I see. So you have a clear recollection of this meeting with Mr Stafford do you?---It's not unclear.

And you say on your oath that Mr Stafford gave you legal advice that it would be fine for you to rely on an agent asserting, namely Mr Harvey, asserting his own authority. Is that what you say you were told?---I didn't have a conversation in those terms where words such as agent, asserting authority were used. It was in simply layman's speak, excuse me, where it was considered to be prudent that we had a confirmation where Harvey  
10 confirmed that he had the authority.

I want to suggest to you Mr Makucha, that you were told in terms by Mr Stafford, he insisted that Mr Harvey produce an instrument of delegation. Do you agree?---That's not right.

You did understand at the time there was a difference between Mr Harvey asserting he had authority and an instrument of delegation didn't you?---I never understood what the instrument of delegation ever meant and no one ever showed one to me or demanded one to be shown. And the first that I  
20 heard it was in an affidavit produced by Sydney Water's lawyers, Mallesons, which I got in February of this year. And may I say to you that that - - -

MR PAYNE: I'd really rather you didn't Mr Makucha. Just attend to my questions. I want to suggest to you that you were told not only on this occasion but on subsequent occasions by Mr Stafford that it was essential that an instrument of delegation be produced prior to any agreement being entered into signed by Mr Harvey. Do you agree?---It was always agreed, but Harvey and Stafford admitted that in this very room a couple of days  
30 ago or yesterday. But he always believed that Harvey had the authority to sign the confidentiality agreement.

I want to suggest to you, Mr Makucha, that when this topic of authority and producing evidence from somebody else other than Mr Harvey of Mr Harvey's authority was raised with you by Mr Stafford. You responded in a very aggressive manner. Do you agree?---I don't.

Do you agree that upon it being raised on one occasion you accused Mr Stafford of disloyalty and that he should be acting for Champion Lawyers who were apparently engaged in some litigation against you at the time?  
40 ---I'll tell you what I accused Stafford of.

Well, do you agree with me that that happened or not, first of all?---I did. And I'll tell you why, because Stafford - - -

I don't want to know why Mr Makucha?---Well, I think it's important you know. Can I just give you two words? (not transcribable)

THE COMMISSIONER: I don't, Mr Gordon can ask you that and then you'll be given the opportunity if he thinks it's desirable?---It's about a false affidavit. Just remind me.

MR PAYNE: Yes, you can return Exhibit P157 if you would, Mr Makucha. You raised this question of authority. Might Mr Makucha be shown Exhibit P131. That's a letter dated 4 September, 2009 addressed to you signed by Mr Harvey?---Correct.

10 Did you see it on or about the date it bears?---I have no quarrel with that.

And in relation to the second and third paragraphs. It was your understanding at this time that he was saying he had authority to negotiate on behalf of Sydney Water in order to assist you in preparing a formal submission to Sydney Water?---This isn't the letter I referred to about Harvey confirming - - -

THE COMMISSIONER: Do you mind answering the question Mr Makucha?---Can you just take me to the paragraph you're relying on?

20

It's the second paragraph. Please read it to yourself first of all?---I have (not transcribable)

THE COMMISSIONER: And the third paragraph.

MR PAYNE: And read the third paragraph while you're there?---That's right. Yep. That's consistent with my understanding.

30 So - - -?---Before 16 June, Harvey stated in a conference in the, at Sydney Water that he had the authority to bind Sydney Water in the confidentiality agreement, however he did not have the authority to bind Sydney Water for the building of the bottling plant and so forth because that would have to be approved by the board.

Mr Makucha, this document says nothing about authority to bind Sydney Water to do anything does it?---Well, does it or doesn't it? I wish to confirm that I have and since the inception of the project authority - - -

40 Authority to negotiate not to bind Sydney Water?---We have another letter here.

One at a time. You see this on or about the date it bears?---Ah hmm.

This was consistent with your understanding of the limits of Mr Harvey's authority wasn't it?---No, Mr Harvey had authority to enter into a confidentiality agreement, confidentiality agreement as per the legal definitions as something that Mr Harvey had no problem with because it

means that he will not steal Sydney, he binds Sydney Water into agreeing not to steal my intellectual property or business methods.

You understood on 4 September, 2009 that Sydney Water would only enter into any legally binding agreement once necessary senior management and board approvals were obtained. Do you agree?---The letter is as it sits.

10 And that's any legally binding agreement, Mr Makucha, including as you've characterised it a confidentiality agreement. Do you agree?---True.  
Correct.

Well, when you read this letter I suggest to you you well understood that that was what Mr Harvey was saying to you?---Please don't say, tell me what I understood.

You can tell me whether you agree or disagree?---I disagree.

20 I take it from that answer you disagree. You can give that letter back. Please turn over to P566. That's a letter dated 10 September, 2009 again addressed to you?---Correct.

How did this letter come about, Mr Makucha?---This letter came about at the behest of Makucha asking Harvey to confirm simply that he had the delegation to bind Sydney Water.

It doesn't say that does it, Mr Makucha?---Well, the lawyers were happy to have this letter.

30 Mr Makucha, I suggest to you - - -?---What it says.

I suggest to you that the relevant lawyer Mr Stafford had already advised you that you needed to see the delegated authority in relation to Mr Harvey not a document from Mr Harvey. That's correct isn't it?---Counsel, this letter satisfied Mr Harvey, Mr Stafford. And this letter states and I read verbatim, "I wish to confirm that I" - - -

THE COMMISSIONER: You don't have to read it, I can read.

40 MR PAYNE: Was this language about a delegated authority in dealing with you on this project dictated by you, Mr Makucha?---No, no I asked Harvey to confirm in writing that he had the appropriate delegation to deal in this matter. Finished. And this is the letter that came back.

You agree with me that this letter says nothing about any ability on Mr Harvey's part to bind Sydney Water to anything?---What it says is, "I wish to confirm that I have the appropriate delegated authority to act on behalf of Sydney Water in dealing with you on this project."

I suggest to you that that's entirely consistent with what he told you earlier namely that he could negotiate with you but not bind anyone. Do you agree?---Well, I think you should ask my lawyers that. I'm not a lawyer and I've been guided by my lawyers.

Well, I suggested to you that your lawyers gave you advice in terms before and after this day that you needed to see a delegated authority and you've denied that. Correct?---Why didn't the lawyers write to Harvey and say give us a copy of your delegation, mate? There's the telephone number.

10

Well, let's take that up right now, Mr Makucha. Can Exhibits P169 and P170 be shown to Mr Makucha. Look at the document at P169 first of all, Mr Makucha. Do you have it?---Let me just, yeah, I have it now, yeah.

It's draft 16 of 28 October, 2009 so it's a month and a half after this letter that we're looking at. You see that?---Yeah. Well, that's got, this has got my stick-on numbering so it must've been my - - -

Thank you. So this is your copy that we're looking at P169?---Must be. It has the numbers on.

20

Go over to your sticker 214 which is page 11. You see there Mr Stafford had drafted that Sydney Water agrees at the time of signing this agreement to provide Makucha with a copy of the authority from its board of directors evidencing the grant of such delegated authority for the key employee, you knew that was Mr Harvey, to sign the agreement and other agreements as contemplated on behalf of Sydney Water. You see that?---I see 8.12 but isn't this the clause that Stafford inserted by stealth and didn't tell me about?

30

No?---I think it did, it is.

This is a clause that was marked up and you crossed out, Mr Makucha. Correct?---That's right, yes, it is.

40

You were told by your lawyers that what you needed was to see the delegated authority from the board of directors weren't you?---Well, I explained to Stafford that my belief was that a confidentiality agreement is something that Harvey had the authority to sign and we were only binding Sydney Water in a confidentiality agreement. At no time was it sought to be alluded that Sydney Water were bound to enter into any of those JVs unless they wanted to however what they couldn't do was they could not use that information without acknowledging my rights to it and if they wanted to use it then there was the asking price.

Mr Makucha, you know don't you that upon signing the Business Implementation and Confidentiality Agreement you were asserting that Sydney Water owed you many hundreds of thousands if not millions of

dollars. Correct?---You started your cross-examination point with “you know”.

THE COMMISSIONER: Just answer the question?---I don't know what it is I'm supposed to know. Can you give me the specific point?

MR PAYNE: You knew didn't you by this time in October that this confidentiality agreement you keep calling it was going to involve the payment of large sums of money by Sydney Water to you and companies associated with you. Do you agree?---I do. On the confidentiality agreement it's stated clearly on the front.

Yes. Understand. This agreement was going to result in Sydney Water making payments to you of hundreds of thousands if not millions of dollars if it was agreed to by Sydney Water. Correct?---Which part of the agreement are we talking about? The - - -

THE COMMISSIONER: You know, Mr Makucha, you know the answer to this question, why don't you give the answer frankly? You've said that you know these papers better than any other person, why do you want to know what part of the agreement it is, you know very well what part it is?---I'd like to withdraw that statement. Which question, what question can I - - -

MR PAYNE: You knew didn't you that any Business Implementation and Confidentiality Agreement to be signed in the future which is what this is a draft of was likely to involve the payment of many hundreds of thousands if not millions of dollars by Sydney Water to you and companies associated with you. Do you agree?---Correct. However can I just, I agree with that but you see - - -

THE COMMISSIONER: That's enough.

MR PAYNE: Thank you, thank you.

THE COMMISSIONER: That's enough, Mr Makucha?---The implementation part was only put on at that draft.

Knowing that, Mr Makucha, I suggest to you you knew that Mr Stafford your lawyer had drafted this agreement in terms so that people could be assured that Mr Harvey had the delegated authority from its board of directors and that a document not signed Mr Harvey asserting that was necessary. Do you agree?---Harvey continues to, until he went on to sick leave from Sydney Water have the delegated authority to sign that because his business card states - - -

THE COMMISSIONER: It's not the question, Mr Makucha. Please answer the question?---I will. Repeat the question.

MR PAYNE: You were given legal advice by Mr Stafford weren't you at the time of this draft that in order for this agreement to be binding you needed to sight a copy of Mr Harvey's authority from the board of directors. Correct?---Which draft are you talking about 17 or 15 because these two have - - -

I'm looking at, I'm looking at 16, which has got the, as you put it, the Makucha numbering system, page 214 where you have crossed out the end of clause 8.12. Do you see that?---I do.

10

You crossed it out because despite - - -?---That's correct.

- - - despite being given that advice - - -?---That's right.

- - - you thought that you could deal with just Mr Harvey and then make assertions later about his authority. Correct?---Not true. That was to permit Harvey to sign the confidentiality agreement. He agreed with that.

20

But you knew that the confidentiality agreement was going to involve the payment of perhaps millions of dollars by Sydney Water didn't you?---Not, not, not per se.

THE COMMISSIONER: You've just agreed with that?---Hold on, I have to take that back because I've now understood what, what you meant, because I've got a few things happening here. The confidentiality - - -

You're taking it back because you've suddenly realised the implications? ---No, no. The confidentiality, there were two agreements, there were two parts to this thing. Can I explain, Commissioner?

30

No.

MR PAYNE: No. Mr - - -?---The confidentiality agreement is when - - -

THE COMMISSIONER: Just be quiet Mr Makucha and wait for the next question, please.

MR PAYNE: Mr Makucha, close P169 and open P170 to the same spot, clause 8.12 on page 11?---P?

40

The Exhibit number is P170. It's draft 17 - - -?---I have it.

- - - of what's now called in your hand, the business implementation agreement and confidentiality agreement. Do you see that?---I do.

Look at clause 8.12 on page 11?---I do.

The words we've just seen you crossed out are bracketed. I suggest to you that Mr Stafford gave you advice that this clause should stay in the agreement. Do you agree?---I can't agree and I can't disagree because there were 24 drafts to this agreement.

You were the one who made the decision to cross this out weren't you Mr Makucha?---I admit it. I admit it.

10 And that was because wasn't it, you knew that Mr Harvey didn't have any copy of authority from a board of directors evidence in the grant of the delegated authority didn't you?---No, not true.

Why did you cross it, why did you cross it our Mr Makucha?---I explained that a moment ago and I'll explain again. The reason being so that Harvey could execute a binding confidentiality agreement, which would give me some order of protection about trade secrets, intellectual property that I had disclosed.

20 THE COMMISSIONER: Mr Makucha, this was much more than a confidentiality agreement and that was recognised because the name changed to a business implementation agreement and confidentiality agreement?---Well, the first word was confidentiality agreement and implementation agreement. That's, that's how - - -

You knew that whatever came first this agreement required the authority of the Sydney Water board didn't you?---No.

30 Why did you cross those words out then?---To allow Harvey to bind Sydney Water on the basis of confidentiality. And that, no, no more.

Do you, do you - - ?---No more.

Are you, are you sitting there saying that you deny that the agreement in question that is, this document draft 17 was more than a confidentiality agreement?---No. It was a very comprehensive confidentiality agreement in the terms of Chief, not Chief, High Court Justice (not transcribable)

40 I didn't ask you to mention to any authority of the High Court. I asked you whether you are denying that the agreement which, the proposed agreement draft 17, is more than a mere confidentiality agreement?---No, it's a very comprehensive confidentiality - - -

You don't deny that? You admit that it is more?---What I said was - - -

Do you admit that it is more?---I said it's a very comprehensive confidentiality - - -

Do you deny that it is a mere confidentiality agreement?---I do not. There is a - - -

And do you, do you admit that, do you now retreat from your admission that by virtue of this draft, number 17, it was proposed that Sydney Water end up paying hundreds of thousands and perhaps millions of dollars to company, to you and companies controlled by you?---I don't disagree with that at all.

10 So why did you want the provision in the contract requiring the production of a delegation, production of authority by the board to the agreement to be deleted?---I'll explain it to you.

Good?---I'm so happy you have arrived at this point. This is indeed my happiest moment in this Commission. And the reason is I have never trusted any of the directors at Sydney Water's board. And that, unless I had a confidentiality agreement signed by at least one of their executives, they were going to steal everything.

20 That's not an answer, Mr Makucha?---Well, I - - -

It's not an answer - - -?---Excuse me - - -

Because the agreement, because the agreement - - -?---I'll tell you what my answer is.

No, no, you're making a speech again. The agreement contains more than a confidentiality agreement and you admitted that?---I said it's a comprehensive one.

30 No, no, you admitted that it requires Sydney Water to pay hundreds of thousands of dollars if not millions of dollars to your entities. Now once you wanted Sydney Water to agree to that, why did you delete the reference to the board?---Commissioner, can I explain to you that it was not an agreement that they would proceed with the matters, the business deals. However, in the event that they wanted to, there was a protocol which reflected as per the High Court decision how a business venture could proceed. And also my main concern was that class 32, the water missing, was something which was very embarrassing to Sydney Water and I think  
40 that's been confirmed by the - - -

Don't make speeches?---My answer is I did not trust the board to get hold of the proposal. I wanted at least a confidentiality agreement stating that it bound Sydney Water, executed by middle ranking executive Harvey. And then it could go anywhere.

MR PAYNE: So is the position Mr Makucha, that you deliberately set out to get an agreement signed by Mr Harvey in circumstances where so far as

you knew it, the board knew nothing about the proposal where Sydney Water would be committed to pay hundreds of thousands if not millions of dollars to you and your associated companies?---How should I answer your question?

Is that, is that what you set out to do?---There are multiple, I'm not going to answer that in those terms. If you could break it up, I'll answer yes or no and - - -

10 You didn't, you didn't trust the Sydney Water board?---Correct.

So I take it - - -?---Correct.

- - - that you took steps to make sure that they knew nothing about this joint venture agreement you were negotiating with Mr Harvey?---My belief is that Harvey mentioned to me that Nathan Rees, the Premier at the time didn't like the idea of bottled water because it had some sort of implications. So from that, I have the belief that Harvey was well connected with directors, politicians, et cetera.

20

Is the answer to my question that you tried to keep this from, this joint venture proposal from the Sydney Water board, yes or no?---No.

If that's right what was the problem about sighting Mr Harvey's delegated authority from the board?---None.

Why did you cross it out?---Because I wanted to get the, the confidentiality agreement signed ASAP and then it could go to all those board meetings and everything and they wouldn't be able to steal the ideas.

30

So you wanted to bind Sydney Water without the board knowing about what Mr Harvey was signing them up to. Correct?---On the basis, only on the basis that confidence and what that is required in relation to equity law.

You wanted, you wanted to sign up Mr Harvey so as to bind Sydney Water to pay your company potentially many millions of dollars without the board knowing about it. Correct?---That is not correct so stop twisting the question. What I have said was that I wanted a confidentiality agreement which confirmed that Sydney Water would not try and steal, convert or detain the ideas in, in relation to all the business methods, plus class 32.

40

Just a few more questions on this question of authority. I suggest to you you were present in Mr Malacco's office on 10 September with Mr Harvey and heard Mr Harvey say words to the effect that he had authority to negotiate with you but not to bind Sydney Water. Do you agree?---He didn't have the authority to bind Sydney Water in the final agreement, that's totally correct, but he did have authority to bind Sydney Water in that Confidentiality Agreement.

He never said to you that he had authority to bind Sydney Water to pay any money at all to you, did he?---Were you there?

I'm making, I'm putting a proposition - - ?---Are you telling me what was said.

I'm putting the proposition for your comment.

10 THE COMMISSIONER: Yes or no?---No.

MR PAYNE: He never told you that, did he?---What's that? Repeat the question because I've, I want to be precise on this point.

Mr Harvey - - ?---I might have given you the wrong answer.

Mr Harvey never told you did he that he had any authority at all to bind Sydney Water to pay you or companies associated with you any money as part of any Confidentiality and Business Implementation Agreement?

20 ---That's a nonsense because we had already agreed that he had the authority in his signings on at least 100 documents.

Have a look at P606 in that bundle in front of you, you can return those drafts of the agreement to the court officer. That's a letter dated 7 October, 2009 to you from Mr Harvey, do you agree?---Correct.

The second complete paragraph, Mr Harvey confirms that it's the intention of Sydney Water to enter a legally binding agreement in respect of the project once the necessary senior management and board approvals are  
30 obtained, correct?---That's what the letter says.

You knew didn't you that Mr Harvey had no authority to enter into any legally binding agreement with you in respect of the project, correct?---He had all the authority that the law requires to sign the Confidentiality Agreement, otherwise he wouldn't have sent us a copy of the generic or Stafford a copy of the Sydney Water in-house Confidentiality Agreement.

You knew didn't you that he was telling you he had no authority to enter into any legally binding agreement in respect of the project, that's what it  
40 says doesn't it?---It does not. That's not what it says at all. You're a lawyer.

You, you had, you took steps to cross that paragraph out, didn't you?  
---Which paragraph?

The paragraph I've just taken you to, I wish to confirm it's the intention of Sydney Water. You didn't want that paragraph to be contained in this letter did you?---I can't remember, there's a lot of documents in this matter.

Have a look over at P607?---Yeah.

It's crossed out. I want to suggest to you it was crossed out at your insistence to Mr Harvey, do you agree?---Well, how is it that there are two letters signed by Harvey?

10 THE COMMISSIONER: Do you agree or not?---Just let me read, I wish to confirm, yeah, I'll tell you why that's crossed out, because Harvey was - - -

Did you agree or not?---What's - - -

Do you agree or not?---Agree to what?

MR PAYNE: That you insisted on it being deleted from the letter?---Yeah, I did.

20 That was because you didn't want there to be anything interfering with the paper trail you were creating about Mr Harvey and this authority you say he had to bind Sydney Water to pay you large sums of money, correct?---No, I didn't want Sydney Water or Harvey at a later point in time stating that they had created a paper trail by this letter that they would seek to rely on so that Harvey had an escape route saying that he didn't have the authority as, contrary to the fact that he did always state that he had the authority and we relied upon that. If he didn't, if he did not believe that he was doing the right thing why did he remove it?

30 You got legal advice though from Mr Stafford about this very matter, namely that you should see the instrument of delegation, didn't you?  
---That's not quite right, sometimes Mr Stafford, three days a week Mr Stafford returns back to his work drunk after lunch so he's a bit hard to please.

THE COMMISSIONER: Mr Makucha, you better be careful?---Why?

That is not a responsive question?---It's the truth.

40 I'm not interested in whether it's true or not true. That was a grossly malicious statement that you made. It was not responsive and you are not free to make comments like that here?---I'm not trying to be malicious. On that, on that grounds I'll, I'll withdraw it.

I will adjourn again for - - -?---I'll withdraw it.

- - - ten minutes and Mr Gordon, I suggest - - -

**SHORT ADJOURNMENT**

**[11.25am]**

MR GORDON: Commissioner, again I thank you for break. I've explained the position to Mr Makucha who I think now does understand and will not make gratuitous comments again. Extremely apologises.

MR PAYNE: Mr Makucha, can you open page P608 in the bundle please.

10 THE COMMISSIONER: Mr Payne, I've been turning over in my mind what to do as a result of Mr Makucha's last comment.

MR PAYNE: Yes, Commissioner.

20 THE COMMISSIONER: And I think that what I will do is that I will issue a suppression order now preventing any publication of Mr Makucha's statement concerning Mr Stafford's sobriety pending the arrival, until tomorrow and the Commission will inform Mr Stafford and Mr Gleeson of Mr Makucha's comments and invite them to make submissions to the Commission tomorrow as to what steps should be taken in this regard.

**ISSUE A SUPPRESSION ORDER NOW PREVENTING ANY PUBLICATION OF MR MAKUCHA'S STATEMENT CONCERNING MR STAFFORD'S SOBRIETY PENDING THE ARRIVAL, UNTIL TOMORROW AND THE COMMISSION WILL INFORM MR STAFFORD AND MR GLEESON OF MR MAKUCHA'S COMMENTS AND INVITE THEM TO MAKE SUBMISSIONS TO THE COMMISSION TOMORROW AS TO WHAT STEPS SHOULD BE TAKEN IN THIS REGARD.**

30

MR PAYNE: Yes, thank you, Commissioner. I'll make sure that Mr Gleeson is informed of the Commissioner's order and that proposed course. Mr Makucha, can you open the bundle at P608 please?---I have it.

That's the final version of these drafts or these letters. All those signed by Mr Harvey have crossing out on them that I was showing you which were dated 7 October, 2009?---I have the 129 tab at 2009 in front of me.

40 And that is a final version which appears without the paragraph which was crossed out in P607. Correct?---I don't know, is it? It looks like it.

And you were seeking such a letter from Mr Harvey weren't you for use in your Sydney Water P's application for registration of trademarks. Correct? ---I wanted certainty that Sydney Water Corporation were not going to be in any way mischievous or do anything in relation to the work in the registration.

And so far as you were aware at this time the board of Sydney Water knew nothing about this registration did they?---I don't know.

And you certainly had never explained to Mr Harvey what role if any his consent would play, his consent would play in the applications that you were making on behalf of Sydney Water P did you?---I believe he had his own advisors.

10 So the answer to my question is you didn't advise him because he believed he had his own advisors. Is that correct?---Correct.

Can I just show you quickly Exhibit P158. That's a bundle of documents addressed to Eakin McCaffery Cox from IP Australia which you've seen before I take it?---I have. I have.

Yes, thank you. And can I draw your attention to the handwritten documents which I think are the fourth and fifth last pages in that bundle. Do you have those?---I do.

20 That's the document I asked you about yesterday which was written by Mr Harvey on the Griffith Hack document that we went through at some length, do you agree?---Correct.

And you caused this to be forwarded by Eakin McCaffery Cox as evidence of Sydney Water's consent to you application for the Sydney Water trademark and logo being applied to class 32, do you agree?---I provided to Stafford at Eakin McCaffery Cox, what they did with it was their professional view.

30 You provided it because they asked for evidence of Sydney Water's consent, correct?---No, I provided it to Stafford as being support for my assertion that I had the right to first file registration.

And you, you, you provided it to Mr Stafford knowing that he would provide it to IP Australia as evidence of Sydney Water's consent to Sydney Water P making the application, do you agree?---I didn't know that at the time.

40 When did you first learn that Mr Stafford was providing this material to IP Australia as evidence of Sydney Water's consent to Sydney Water P's application?---In this Commission hearing room.

You say you didn't know prior to this inquiry that this document had been forwarded by Mr Stafford to IP Australia for that purpose?---I had no proof.

Were you given a copy of the application letter that Mr Stafford made to IP Australia?---I had.

And so you knew that this document had been provided by him to IP Australia?---Not true or correct, it wasn't attached.

Not, not true or correct, I see. So just go to the last document if you would in that bundle dated 26 of Australia to IP Australia from Michael Stafford, that identifies the handwritten note dated 20 May, 2009. Do you say you, you didn't know that this handwritten note that I've just shown you was provided to IP Australia in August 2009 until this Commission?---Excuse me, I'm just trying to have a look at the date on this letter, I'm trying to understand, this letter by, initialled by Stafford is dated 26 August.

Correct?---The handwritten letter by Harvey, Stafford's letter is dated 26 August, Harvey's letter is dated 20 May.

That's right and you'll find that on the second page of the handwritten document I just showed you, Mr Harvey's signature and 20 May, 2009? ---Yes, I know, I've just read it, yeah, I've got it here.

So - - -?---What, what is your conclusion?

No, my question for you, Mr Makucha, is did you know on or about 26 August, 2009 that this handwritten note that we've just looked at had been sent by Mr Stafford to IP Australia as part of the application by Sydney Water P?---I did not know, I don't know what was sent because I paid them \$5,000 in cash to do the registration, they accepted it and they issued a trust account receipt and Stafford told me that they had someone down at his firm who knew a lot about intellectual property.

You had been told - - -?---Do you want me to explain or will I incur the wrath of the Commissioner?

No, I don't want you to explain, I'll put a proposition to you for your agreement or disagreement. You had been told by Griffith Hack some months before this that in order to have any possibility of success in an application made by you for this trademark and logo you would need to show evidence of the consent of Sydney Water, correct?---I don't think that's essentially what it says.

I want to suggest to you that was essentially what you were told by Griffith Hack, do you agree?---I don't.

I want to suggest to you that you provided the material including this handwritten material I've just shown you to Mr Stafford knowing that it was going to be used as evidence of consent by Sydney Water to Sydney Water P's trademark applications, do you agree?---I never needed anyone's consent because I'm the, the, the person who discovered it and I have the right to file it first, end of story. I was just being a good citizen and this is where it's got me.

I suggest to you, Mr Makucha, that you knew because you had been told by Griffith Hack that you needed Sydney Water's consent to have any possibility of succeeding with the Sydney Water P application, do you agree?---I do not.

THE COMMISSIONER: Did you, did you actually believe, Mr Makucha, that you have the right to use the mark Sydney Water?---Only in class 32.

10 Yes, in, in relation to class 32?---(NO AUDIBLE REPLY)

You're nodding your head, I take it that means yes?---I say to you, Commissioner, that at all material times I have had the true belief that I have acted - - -

No, I just wanted to know whether you, it's such a simple question, you could easily, and your answer is yes?---Yes.

20 And you, you believe this despite the fact that you knew that Sydney Water as a, as a, as a mark, as a logo, as a trade name, was known for many years ubiquitously in New South Wales, is that right?---Commissioner, I, I - - -

Is that yes or no?---I, I, yes. I relied on the law as I had read - - -

Yes - - -?--- - - - in a textbook purchased in 2008, July.

But you thought that you could appropriate to your own advantage the mark and logo of a extremely well-established corporation for yourself?  
---Appropriate is an offensive word to me, Commissioner, because I - - -

30 I'm not interested in your comment, just tell me, appropriate is a perfectly appropriate word, you, please answer my question. You thought that you could use to your own benefit Sydney Water's logo and mark which you well knew had been established for very many years, is that right?---I knew I could be the first to file class 32, that was within my legal rights.

40 That's not the question, that's not an answer to my question. You thought, you are telling me, that you were entitled to use the mark and logo of Sydney Water which you knew to be well-established for many years in New South Wales for your own benefit. Is that right?---I have given my answer.

What is it?---My answer is that the court - - -

Is it yes or no?---Well, I can't, I can't agree with you because - - -

I'm not asking you for your agreement, I'm, because I have asked you a question?---I understand that.

I have not expressed any view to you, I've asked you a question - - -?---I understand.

- - - for which the answer is either yes or no and you well know that - - -?  
---Commissioner - - -

- - - and you're avoiding answering - - -?---I'm not.

10 - - - my question. You are evading the question?---I am not, please don't get irate.

Well, answer it?---Please don't get irate, irate with - - -

Well, answer the question. It's a simple question, I have put it to you about three or four times now and (not transcribable)?---And that question was far reaching and with all due respect to the Commissioner - - -

20 All right - - -?--- - - - can I please answer your question.

- - - I have no, if you will not answer the question I am - - -?---I will, just clearly state it and I'll give you the answer now.

No?---Please.

Mr Payne, please proceed.

30 MR PAYNE: Mr Makucha, please turn, please return Exhibit P158?  
---Excuse me, I want to go back to that question.

THE COMMISSIONER: No, you've had your chance, Mr Gordon can ask you that question if he wishes, I am not asking you again. It's too painful.

MR PAYNE: Please return Exhibit 158 if you have it and open the big book to Exhibit, to page number P623, please. Tell me when you're there. You have it, Mr Makucha?---I have it.

40 I haven't taken you to each of the individual consultancy services about outdoor advertising because as you agreed with me earlier that the answer was the same save this \$55,000 and that's the one I want to take you, take up with you now. This is an invoice sent by you on 16 November, 2009 addressed to the managing director of Sydney Water Corporation attention Mr Harvey and clear copied to Mr Malacco?---Counsel, there are three classes of invoices, one is for the purchase of the documents, two are the consulting ones and three is the purchase of buildings.

I accept that Mr Makucha. And just so we're clear I'm not going to ask you about the other ones in the Outdoor Advertising class other than this,

because this spans both Outdoor Advertising and the purchase of documents?---Yes, yes, yes. Just for the sake of clarity, and also counsel, these invoices and the transactions are a part of the total negotiation agreement and they should be seen as that too.

I understand you saying that and I'm going to take you up about just that and give you an opportunity to address my questions on that topic, Mr Makucha?---Thank you. Thank you.

10 So far as the Outdoor Advertising part, if I can put it that way that this is concerned, which is paragraph 2. I think as you agree with me, we've just said then, that should be seen as part of the overall joint venture arrangement as you understood it?---All these transactions are a part of the same thing.

I see. And the questions and answers that we had about the first of the Outdoor Advertising answers, you tell the Commissioner this is in the same category, namely that these services will be supplied or that the proceeds if you like would be fully revealed to Sydney Water after the confidentiality  
20 agreement is signed. Correct?---Apart, apart from paragraph 4 it states 50,000 for the Makucha Group records from 1985.

I understand Mr Makucha. And that's what I want to take you up on. So as far as Outdoor Advertising, we can put it to one side. We've dealt with that. In relation - - -?---I don't know why Harvey included paragraph 2 there, which has the narrative.

THE COMMISSIONER: Harvey did it, but it's your invoice?---Harvey told me what to write.

30 MR PAYNE: And it's your evidence is it that although you well knew that this was all part of the overall joint venture proposal, Mr Harvey was dictating to you its contents and the absence of a reference to joint venture is something he told you to do?---That's right. Everything to do with my reaction with or business with Sydney Water apart from them trying to evict me from 111 Baxter Road, is all linked to the joint venture.

40 And I don't want to go over it, Mr Makucha, but I put some questions to you the effect of which is that this invoice, like all the others dealing with Outdoor Advertising was quite misleading in that it didn't refer to the joint venture and I think you've denied that?---I have.

Can I ask you then about the Makucha Group records, which is paragraph 4. Can we go straight to that?---I am.

I want to suggest to you that in November, 2009 you had a conversation with Mr Harvey to this effect, and I'll read it to you in slabs and you can tell me whether you agree or disagree or don't recall. I suggest to you that you

contacted Mr Harvey and said words to the effect, "Ed, I've got a problem. I've got a creditor chasing me for money. They're taking bankruptcy proceedings against me. I need some funds to get rid of them." Do you agree that you said words to that effect to Mr Harvey?---What part of the conversation?

THE COMMISSIONER: At any time?---I agree.

MR PAYNE: You do?---I agree.

10

You agree. And that Mr Harvey said to you, "What's that all about, Paul? I'm not sure I can help you out." And you replied, "The thing is, Ed, there will be really bad consequences for the joint venture proposal if they bankrupt me. The accountants and lawyers are telling me that there will be issues about whether we can still use the \$10 million tax losses. And obviously if we can't then the whole deal will fall over. Look what they say in these documents, it's in everyone's interest that I can make this go away. The creditors want over \$100,000, but the lawyers reckon I can make this go away with a payment of \$50,000 to the creditors and then the lawyers will want \$5,000 in fees, so I need \$55,000"?---That's more or less accurate.

20

And that Mr Harvey said to you, "That's a lot of money, Paul. I'm not sure. I'll see what I can do. If we put in another invoice then it might go through because the previous invoices were accepted. But it's a question of whether or not it gets through accounts payable. I could put it to them, but they might reject it. We'll see"?---He never said that. Because I, I would not have been a party to such a conversation and neither would I have been a party to such a transaction.

30 THE COMMISSIONER: Mr Payne, I think it would be appropriate to put those words in sections again to see whether Mr Makucha agrees with any of them.

MR PAYNE: Yes. I'll read it to you bit by bit, Mr Makucha. I suggest to you Mr Harvey said, I withdraw that. You'd agree with me words to the effect that, there'd be bad consequences for the joint venture if you're bankrupted and you finish by saying you need \$55,000. You thought that that was - - -?---And what I said was, a part of what you say is correct, but I need to add there that it would evaporate the tax losses in the Makucha Group because of the continuity - - -

40

You're quite right, Mr Makucha. That's part of the conversation I put to you and you agreed with me?---Yeah, that was in there. Yeah.

I understand. I want to suggest to you Mr Harvey replied, "That's a lot of money, Paul." Do you agree with that?---I don't have a problem with it.

Meaning that it's more than likely he did say that?---I don't have a problem with that.

He then said, "I'm not sure but I'll see what I can do"?---No. I think what he said was, "Well, we'll have to help you because the \$10 million benefit to Sydney Water benefit to Sydney Water is very valuable".

I see. And do you remember him saying anything else to you?---Only conversation which led to the generation of this invoice.

10

And I want to suggest to you that he also said, "If we put in another invoice then it might go through because the previous invoices were accepted". Do you agree that he may have said, that he said words to that affect?---I do not agree with you at all.

The next part, that it's a question of whether or not it gets through accounts payable. Do you agree that he said that?---I do not agree that I ever heard that being said by him.

20

"I can put it to them, but they might reject it". Do you agree that he said that?---I do not agree ever having heard Harvey say that to Makucha.

Mr Makucha, what you told me you did remember was that Mr Harvey said something about he regarded the \$10 million tax benefit as being very valuable and for that reason he would see if he could assist you. Is that a fair summary?---That's correct. And it was to that end that the, the records of the Makucha Group were purchased.

30

Mr Makucha, just so we're clear, I want to suggest to you that by this time, November, 2009 Mr Malacco had made it completely clear to you that there is no way in which tax losses arising in your group of companies could ever be transferred to Sydney Water. Do you agree?---I do not agree and there are at least four letters that I can nominate in bundle A where Malacco wrote, stating that Sydney Water will get a benefit of 10 million.

40

I want to suggest to you that that \$10 million benefit was on the basis that if \$20 million in profits were earned, the first 10 million would be streamed by way of redeemable preference share to Sydney Water in Mr Malacco's structure. Do you agree?---I'm not a tax expert that's why I had Malacco. You have a tax background, I can't answer how they did it. Malacco did about four or five different methodologies.

Mr Makucha - - -?---What I'm, what I - - -

- - - to be fair to you, I want to suggest to you, I'm not suggesting that Mr Malacco didn't come up with a structure by way of redeemable preference shares to pay out of profits \$10 million if such profits were ever earned to Sydney Water. I am suggesting to you that he explained to you that this

idea that there was any tax benefit Sydney Water could get from the Makucha Group Companies was nonsense?---I totally dispute your statement and I rely on the documents which are in bundle A, which were signed by Gino Malacco and they were accepted by Harvey.

Just so we're clear, I've taken into account all of those documents. I want to suggest to you there is not a word in there about any tax loss in the Makucha Group being transferred to Sydney Water. Do you agree?---My understanding as best as I can recall was that by Sydney Water taking a 49  
10 per cent or 50 per cent shareholding in the Makucha Group of Companies, and the bottling business, the water business being commenced. That would give the, the incoming shareholder the right to the benefits of the company.

THE COMMISSIONER: The tax losses?---Yeah, that's right.

MR PAYNE: Just so we're clear, we can all read the documents. I want to suggest to you that you were never told that in writing and that you were told the contrary verbally by Mr Malacco. Do you agree?---No.

20 In relation then to this invoice if we can go back to P623?---Excuse me counsel, if I can just tell you this. I even asked Gino Malacco that to make the whole structure viable or lawful if I purchased a mini bottling plant from Karcher for \$500,000 then Sydney Water would be able to have access to the benefits and his answer was yes. That's why I was going to Germany.

On that answer, Mr Makucha, I want to suggest to you again that the benefits Mr Malacco was talking about had nothing to do with using accumulated tax losses from your companies because all of that sort of tax planning went out with the bottom of the harbour in the seventies. Do you  
30 agree?---I don't agree and I understand that your curriculum vitae states that you operate in the area of tax.

Thank you, you don't agree, that's good enough. Can we then look at this invoice I was taking you to P623?---I have it.

Do you agree with me that this invoice on its face in referring to these Makucha group records and making no reference to the joint venture or any potential benefit to Sydney Water is misleading?---I do not.

40 Do you agree with me that this invoice is really a device agreed by you and Mr Harvey to ensure that you could pay money to your creditors who were then chasing you?---I do not.

Do you agree that these records you're talking about in paragraph 4 had been given to you, given by you to Mr Harvey on 13 March, 2009 many months prior to this date?---That's not correct. These records are 685 file boxes in a 40 foot shipping container as were returned to me by Richard Gromlin and Westpac. That is the records of the whole of the Makucha

Group from the very first days when they were incorporated by Cooper & Lybrand that did all my accounting work and did all the audits.

Mr Malacco was your tax advisor at this time in November 2009?---He was.

Did you ask him about what value if any these Makucha Group records would be to Sydney Water Corporation in 2009 so far as tax losses were concerned?---They would provide the - - -

10 THE COMMISSIONER: Did you Mr Malacco, that's the question?  
---Malacco. Yes.

Yes. And he gave you advice?---I, I received advice that they were of benefit because the records of all these companies if there was ever a question and considering that there was \$20 million worth of tax losses and I've got some in there apart from that it was prudent to state or to have possession of all the records.

20 MR PAYNE: Do you say on your oath you asked Mr Malacco at about this time in November 2009 whether these Makucha Group records would be somehow useful to Sydney Water in obtaining some sort of tax benefit?  
---That would be the documentary evidence to confirm and support the, the accounting which created the tax losses.

Do you say you spoke to Mr Malacco about that topic at about this time?---I do.

30 Mr Makucha, I regret to say I suggest to you that that answer is untrue?---I don't agree with you and cannot agree with you because I spoke to Mr Malacco about many matters and I talked to him maybe seven, eight times a week.

I suggest to you that it was clear to your knowledge that these Makucha Group records could not possibly be worth \$50,000 to Sydney Water in November 2009. Do you agree?---I do not agree and they were worth more. That was very cheap because to have all the documentary evidence to support the taxation positions where someone was going to get a \$10 million benefit is - - -

40 Yes, thank you, Mr Makucha. Can you then please turn over to 630 in the bundle. This is an invoice you sent to the Managing Director of Sydney Water Corporation, attention Mr Harvey, cc Mr Malacco and Mr Stafford concerning a payment of one of the fees said to be owing under the Confidentiality and Business Implementation Agreement. Do you agree?  
---There were letters over a period of 12 months in relation to the exclusivity fee for a guarantee, a part-payment, a payment which would confirm consideration as the payment of the records and so forth does for the joint venture and the confidentiality agreement that a sum of money be

paid to Makucha for the exclusivity which Makucha would guarantee that I would not deal with any other party in relation to any of the Makucha Group of companies.

10 So is the answer to my question this is an invoice relating to a payment said to be owing under the Confidentiality and Business Implementation Agreement?---I need to just state how there were about four letters sent to, or given to Harvey in relation to the exclusivity fee and they changed with quantum. Now, the confidentiality agreement I can't, I can't just take my mind to where the exclusivity fee is recorded there but I'm sure it would be.

And Mr Harvey told you that he couldn't pay any invoice for \$100,000 didn't he?---No, he didn't. He signed, he signed a letter confirming the exclusivity as written by Hall Chadwick and Gino Malacco.

Please look over at the document at 646 if you would, Mr Makucha. That's a document written by Eakin McCaffery Cox to Mr Harvey which you saw on or about the date it bears 25 January, 2010?---Correct.

20 That was written at your instructions to try and set out the fees payable by Sydney Water Corporation as a result of Mr Harvey having signed the Business Implementation and Confidentiality Agreement on 3 December, 2009?---It was a summary of costs in relation to the implementation part of the confidentiality agreement. There are two parts to it, one is the confidentiality and if you want to take up any of the proposals being the IP and Makucha well, there's, there's, there's a set of starting prices.

30 Can we just look through it. These are all sums I suggest to you that you understood to be payable by Sydney Water Corporation upon Mr Harvey executing what you describe as a confidentiality agreement?---Not true, not correct. They were only payable if Sydney Water wanted to exercise the right of using those concepts or business systems.

In terms of - - -?---If they don't, if they don't use them they don't have to pay.

40 Is it your evidence to this Commission that so far as you understand it the Business Implementation and Confidentiality Agreement obliges Sydney Water to pay nothing to you and companies associated with you?---My belief is that the confidentiality agreement is an agreement whereby Sydney Water through Harvey have undertaken what to use or deal or convert or to obtain a benefit to any of the creations by Paul Makucha unless they pay Makucha.

Is the answer to my question, Mr Makucha, that you believe as you sit here that Sydney Water Corporation are not obliged to pay any sum of money whatever to you or companies associated with you unless they take up some opportunity described in the agreement?---That's right.

And so - - -?---Apart from the class 32 which I say I have the rights as the first, being the first person to file so if they want to, yeah.

So all of these payments set out in this letter - - -?---Ah hmm.

10 - - - you say were not as you understood it owing by Sydney Water to you or any company associated with you at any time?---They were only owing upon Sydney Water and its board wanting to take up these business proposals.

I want to give you every opportunity, Mr Makucha, is that a serious answer? ---It's my only answer, counsel.

20 And you have never asserted for example that under this agreement even though Sydney Water haven't taken anything up at all, that they were nevertheless obliged to pay you large sums of money to, for example, conduct litigation against Sydney Water Corporation?---Clause 13.3 sir, is based upon the Trade Practices Act of 1974, the Trade Practices Act is not based on the law of contract.

THE COMMISSIONER: Just answer the question please, Mr Makucha? ---Your question, sir.

30 MR PAYNE: You've made a claim in the Supreme Court of New South Wales that under clause 13.3 of the what you call the Confidentiality Agreement Sydney Water were obliged to pay you many hundreds of thousands of dollars, correct?---No, what that statement says, and you're being mischievous, counsel - - -

THE COMMISSIONER: No, I've told you before - - -?---Forgive me.

- - - I will not tolerate - - -?---Forgive me.

40 - - - these scurrilous comments that you continually make?---What that clause says is that in the event of a dispute between the parties Sydney Water accepts and acknowledges the fact that Makucha doesn't have the financial backing that they do and to conduct any dispute resolution, litigation whatever, Sydney Water will provide Makucha with an equal sum of money, that's what it says. It doesn't infer or intend that it would be just a carte blanche sum of money to be due. It's on the basis that if there is a dispute, and there is a dispute now, that's why I'm here.

MR PAYNE: Mr Makucha, I'm trying to give you every opportunity, I want to suggest to you that you well knew when you signed this confidential and business implementation agreement on 3 December, 2009 that its terms obliged Sydney Water to pay large sums of money to you and persons associated with you, do you agree?---Please, clarify what you're saying.

I want to suggest to you that you sued Sydney Water in the Supreme Court of New South Wales seeking over \$200,000 said to be payable under this Confidential and Business Implementation Agreement, do you agree?---I can't remember.

Let me help you. Here's the decision of Justice White in the Supreme Court of New South Wales and we'll have a look at that together?---Where, where is it that your statement is correct, what, what we did state - - -

10

Mr Makucha, Mr Makucha, please, I'll ask you some questions about it and you can answer them. I want to direct your attention to paragraph 1, the defendants, that's you and companies associated with you, do you agree? --- (NO AUDIBLE REPLY)

You agree?---It's his Honour's statement.

20 And it's true, isn't it, the defendants were you and companies associated with you, correct?---I don't want to have the ire of the Commissioner raised, he's been good to me, I, I just want to answer yes or no, it's, on the face of it the document is a decision by a judge of the Supreme Court.

Yeah, I understand that, I'm just asking you who the defendants are and they were you and companies associated with you, correct?---They're in paragraph 2.

Yes, and that's you and companies associated with you, you agree? ---Paragraph 2 speaks for it.

30 And paragraph 1 you sought orders that the plaintiff, Sydney Corporation, pay 25 plus 200 and a further \$25,000 per month for six months to meet various costs of yours including travel costs et cetera?---As it said.

That's what you sought?---The, the - - -

THE COMMISSIONER: Mr Payne, these costs, the cost of 25,000 and 200,000 don't appear to arise out of the agreement, do they?

40 MR PAYNE: If you go down to paragraph 3, your Honour, Commissioner, that was what was said at the time. Paragraph 3, the basis of the claim is clause 13.3 of this agreement, the Business and - - -

THE COMMISSIONER: Well, I don't understand the 200,000 in respect of costs estimated to be incurred in the proceedings?---Can I explain it to you?

No.

MR PAYNE: The claim, Commissioner, as I understand it was that 13.3 obliged Sydney Water to fund Mr Makucha in proceedings which Sydney Water had commenced to set aside this Business Implementation and Confidentiality Agreement so that the agreement itself created an obligation on Sydney Water to provide those funds and the question before Justice White was whether that was a reasonably arguable proposition.

THE COMMISSIONER: Yes, well, the judgment will speak for itself, won't it?

10

MR PAYNE: It does and I suppose all I want to ask you, Mr Makucha, about it - - -?---It's based on a level playing field concept.

You, you asserted didn't you in the Supreme Court of New South Wales that Sydney Water had to fund litigation it was conducting against you, correct?---It was asserted in the agreement and clauses 13.3 as, as drafted by Stafford of Eakin McCaffery Cox which caused me to assert it in the Supreme Court.

20 So you at least in part, this agreement was said to give rise to an obligation on Sydney Water to pay hundreds of thousands of dollars to you in relation to this litigation, correct?---It could be millions because they've spent millions so far.

So, just so we're clear, this, this - - -?---I don't have a quarrel with your concept.

30 And you knew at the time that Sydney Water would be under such an obligation having secured Mr Harvey's signature you say?---It's a trade practices principle of parties of the varying strengths.

And just to sum up before I tender this - - -?---Mr Harvey had advisors.

At the conclusion of this application his Honour Justice White found that there was no basis for the defendants, that is you and your companies, to dispute the validity of Sydney Water Corporation's, no arguable basis, to dispute the rescission of this agreement?---That hasn't been proven. I - - -

40 That was, that was his Honour's finding and there was - - -?---It wasn't, counsel, no its not.

THE COMMISSIONER: Mr Payne, the judgment must speak for itself.

MR PAYNE: Yes. I tender the judgment if the Commission please.

THE COMMISSIONER: The judgment of Justice White in the case of Sydney Water Corporation against Makucha is Exhibit P181.

**#EXHIBIT P181 - JUDGMENT OF MR WHITE IN SYDNEY  
WATER CORPORATION V MAKUCHA & ORS**

THE WITNESS: I advised Justice White - - -

THE COMMISSIONER: Mr Makucha, please.

10 MR PAYNE: I just want to put these - - -?---The attestation page was missing Harvey's signature.

THE COMMISSIONER: I've asked you to be, to be silent please until you're asked a question. You haven't asked a question?---There's a fraud involved, there's a fraud involved.

MR PAYNE: Mr Makucha, I want to put these propositions to you.

20 THE COMMISSIONER: Mr Gordon can re-examine if he wishes on this?  
---Can I just bring the point, its three words.

Yes?---Page 57 was the attestation page of Makucha that had the square sticker. They included in their affidavit as signed by Sesel a page where Harvey's signatures had been removed, expunged and they had put my signature at page 720 and that proved clearly that my own lawyers had behind my back without my consent, authority or knowledge, had supplied Mallesons, Sydney Water and others with copies of my agreement to shaft me.

30 Did you raise this before Justice White?---I told him that the, that Sydney Water did not come to the court with clean hands too.

Did you raise this before Justice White?---I did.

40 And what did his Honour decide?---His Honour eventually gave rise to an order that Sydney Water to produce a copy of their agreement that did not have Harvey's signature. Until this day they have not been able to produce that. And counsel assisting ICAC mislead this Commission by saying that they have. And then by recanting and saying that they had supplied a photocopy. To the best of my knowledge they - - -

A photocopy of what?---Of the agreement where Harvey's signature is missing.

Are you talking about the confidentiality and implementation agreement?  
---That's right.

But the agreement which has been tendered as an Exhibit in these proceedings, you haven't contended that that's not a true copy of the agreement?---I don't know which copy they rely on, but, however - - -

10 You've seen the agreement that's been tendered?---Yeah. But the case is the Commission through its agents has caused a blank copy to be given to the Commission which would be misleading and deceptive, because that seeks to infer that Harvey never signed it. However, the affidavit of Mr Sesel in relation to the hearing today states in paragraph 8 or thereabouts that they confirmed that at a meeting on 27 February or thereabouts, that Harvey had stated he had executed the agreement.

No one has suggested that Mr Harvey had not executed the confidentiality and implementation agreement have they?---They have.

Well, not before this Commission?---Well, there's a matter of fraud and untruthful - - -

20 Mr Makucha, it is not an issue that anyone's raised before this Commission. So what you've said is again gratuitous?---It's not gratuitous because the - - -

It's not responsive to anything before this Commission. Anyway, I've heard what you've had to say?---Who removed the signatures?

Mr Payne proceed.

30 MR PAYNE: Mr Makucha, I want to suggest to you that in relation to this business implementation and confidentiality agreement, you knew that Mr Harvey was purporting to commit Sydney Water to pay very large sums provided to the agreement, provided in the agreement to you or companies associated with you. Do you agree?---That's not correct. Only if they took up the, the offer.

Do you agree with me that you took active steps throughout 2009 to make sure that no copy of Mr Harvey's delegated authority was ever sought prior to the signing of this business implementation and confidentiality agreement?---That's not correct or true.

40 Do you agree with me that you took active steps to keep from anyone else within Sydney Water other than Mr Harvey these joint venture negotiations?---That's not true or correct.

Do you agree with me that the effect of the agreement Mr Harvey and you signed on 3 December, 2009 is that Sydney Water Corporation is obliged to provide capital for Sydney Water B in the sum of \$16 million upon which time it would acquire a 50 per cent interest on payment of a further \$10,000. So in other words \$16 million would be paid for a license for Sydney Water

to use its own name Sydney Water and associated logo?---I rely on the documents. I'm not an accountant and whatever the documents say, they say.

10 And I suggest to you that in having Mr Harvey alone sign this document without any instrument of delegation being sighted, you were attempting to create a paper trail to at least make it arguable subsequently that Sydney Water Corporation itself was bound to the agreement. Do you agree?---At all material times Harvey confirmed in writing and to other parties that he had the authority to sign the confidentiality agreement. I rely on, on that. And that is my position.

Excuse me one moment. I have nothing further for Mr Makucha, Commissioner.

THE COMMISSIONER: Yes, thank you. Mr Stevenson.

20 MR STEVENSON: Mr Makucha, you know I am the barrister for Sydney Water?---I do.

And we'll get through this very much quicker if you listen to my question, answer that question. You with me? Are you with me?---I'm sitting here, I'm listening. I'm waiting for your first question, Mr Stevenson. And I know you're a barrister.

You mentioned in your evidence Dr Peter Zeman?---I did.

30 You understood that he was an engineer appointed by, working for Sydney Water?---He's got a PhD in engineering.

My question was you understood he was an engineer? Yes?---Yep.

Employed by Sydney Water?---Yes.

And the only occasion upon which he spoke to you was in respect of the impact of the structures on the Baxter Road property on the main southern out force sewer under Baxter Road?---Not true.

40 And - - -?---We had another conversation in the foyer of headquarters of Sydney Water Corporation about why the Jewish people in Germany gave Einstein a hard time and he relocated to America.

And they are the only two subjects are they that you spoke to Dr Zeman about?---And, and the analysis of narcotics in the sewerage and also I spoke to him once about his daughter who had RSI or something and I told him the name of a doctor at East Gardens who specialised, there's been a few conversations.

Nothing about your proposed joint venture?---Correct. Well, I thought he knew because - - -

No, no. Nothing about - - -?--- - - -I saw - - -

- - -nothing about the proposed joint venture. Do you agree?---The narcotics were a part of that I had prior discussed with him.

10 Your purpose was to meet Mr Harvey in the foyer first at Bathurst Street and then at the Parramatta headquarters of Sydney Water?---That's correct.

And your purpose was to arrange to speak to a security guard named Marcus?---Correct. There's a photo if the Commissioner would like to see the photo of the foyer.

Mr Makucha, your purpose was to ask Marcus, who you understood to be a security officer to ring up to Mr Harvey and ask him - - -?---He was in charge of the front desk, that's correct.

20 - - - and ask him to come down to see you?---That's right.

And would you foreshadow to Mr Harvey that you were coming in to see him on those occasions?---There'd be things to be delivered like a suitcase with all the documents or whatever.

30 Well you turned up unannounced and asked the security guard, Marcus to call Mr Harvey down to see you?---No. Mr Harvey had indicated when I should come and if there was going to be a letter waiting or whether I needed to bring correspondence to, to Sydney Water Corporation.

And on that occasion - - -?---I never, I never arrived unannounced.

On those occasions you would ask Marcus, the security guard to call Mr Harvey down to see you in the foyer either at Bathurst Street or at Parramatta?---Marcus never worked at Parramatta. They have an American man who's in charge of security. His photo is here.

40 You would attend at either Bathurst Street or Parramatta and ask the security guard, whatever his name was, to call Mr Harvey down to see you?---The protocol was that I would go to the counter here - - -

Mr Makucha, you've been here for a whole day - - -?---I am required to explain.

No, no. Your obligation is to answer the questions you're asked. The question was you would attend either at Bathurst Street or Parramatta and speak to the security guard, whatever his name was and ask that security

guard to call Mr Harvey down to see you?---Correct. And they would give me an ID tag.

Mr Harvey, sorry, you said to Mr Harvey frequently didn't you something to this effect throughout 2009, "I have to have your assurance that you not speak to anyone about this", being your joint venture proposal. You don't agree?---Mr Stevenson, I - - -

You don't agree?---I never used that form of words, no.

10

You said to him, you said to Mr Harvey frequently didn't you throughout 2009, "This whole thing has to be kept strictly confidential."?---I agree that I said to Harvey and he agreed that he would keep it confidential so that the people at Sydney Water, the directors and whatever and others, couldn't steal my idea.

And you said frequently to Mr Harvey didn't you, "I've had people screw me over before and take my ideas."?---It's recorded in, in, in the public arena. That's true.

20

And you said to him frequently, "These ideas, these joint venture are mine, I'm not taking any chances."?---Words to that effect, yes.

This is a document you prepared?---Thank you. I think Stafford the lawyer probably instructed me to make that draft.

It's your handwriting?---It appears so.

30

You know it's your handwriting, Mr Makucha?---It changes from time to time.

And - - -?---I don't have a quarrel with you, yes.

And you say it was prepared do you at some point after the time you retained Mr Stafford?---Correct, yes.

So some time after end August '09?---Yes.

40

And you certainly, you write, "This letter confirms that Mr Ed Harvey number blank." See that?---Ah hmm.

That was a reference wasn't it to the book number that Mr Stafford had told you would confirm Mr Harvey's authority?---Mr Harvey - - -

So is that right?---He, he put in, no, that's not right. It, it, it was to put in that number which has property asset, employee number, 2-3 or whatever it is, 9-9-4 that Harvey used in the stamp.

And you were proposing this of course as a letter that Mr Harvey should engross on Sydney Water letterhead and sign?---I don't know what engross means but I wanted a letter in those terms to be issued to me to confirm that.

On Sydney letterhead signed by Harvey?---Well, of course binding Sydney Water.

10 And one thing you wanted him to say in that document was that he was authorised to enter into binding legal contracts on behalf of Sydney Water Corporation?---That's right.

And he refused to give you a letter in these terms didn't he?---I don't believe so, I believe that he gave a modified letter and I think that's validated by the letters in the bundle. A letter on 10 September where he confirms that he has the delegation. I don't know what date these drafts were done.

I tender that.

20 THE WITNESS: What date were these drafts received, do you know?

THE COMMISSIONER: Yes. Copy of a document headed to whom it may concern written by Mr Makucha is Exhibit P182.

**#EXHIBIT P182 - COPY OF A DOCUMENT HEADED TO WHOM IT MAY CONCERN BY MR HARVEY**

30 MR STEVENSON: Mr Harvey told you time and time again didn't he that it would be necessary for there to be senior management or board approval before there could be any agreement between Sydney Water Corporation and you that was binding on Sydney Water Corporation?---Mr Harvey stated on 16 July, 2009 at a meeting in the downstairs meeting area of Sydney Water that, that he could negotiate with Makucha the agreement for a joint venture of the bottled - - -

40 Mr Makucha, I'm going to interrupt you because you're not answering my question. He told you didn't he, do you agree or not, time and time again that it would be necessary for senior management to him and the board to approve - - -?---The building of the bottling plant would have to be done by the board, yes.

What I'm putting to you is something different as I think you know that what he told you time and time again was that it would be necessary for there to be senior management and board approval before any agreement between any entity associated with you and Sydney Water could be binding on Sydney Water?---Not true, not proper and not correct.

And you agree don't you that he told you that it will be necessary that there be board approval before any final agreement was signed, you said that this morning didn't you?---What are you referring to?

I'm referring to your evidence at 20 past 11.00 this morning, Mr Makucha?  
---In relation to what?

10 I'll put it to you again, Mr Makucha. Your evidence this morning was that you believed Harvey had to have board, sorry, that it was necessary for there to be board approval before any final agreement, your words, could be binding on Sydney Water?---You're being mischievous because the - - -

THE COMMISSIONER: Mr - - -?---If I say yes to that - - -

You can answer as you wish but I take very seriously your disparaging comments that are entirely unwarranted that you make to counsel?---Forgive me but I do - - -

20 No, I do not forgive you?---But I have the right don't I - - -

You do not have the right at all to make disparaging comments about counsel?---Well, how do I get counsel to - - -

Just answer the question. I will be the judge as to whether any question is improper not you, that is not your function and you have taken it upon yourself - - -?---I'm trying to help the Commission.

30 - - - to, you are in fact, you're contrary of help as your counsel no doubt Mr Gordon has explained to you several times this morning and you persist in this conduct and you're under warning now not to do it again?---Thank you. Can I help the Commission to understand the truth please?

You would help me if you would answer the question. Mr Stevenson, would you please put the question again.

40 MR STEVENSON: The transcript will reveal what you said, Mr Makucha. I want to ask you this question. So far as you were concerned the Confidentiality and Business Implementation Agreement executed on 3 December, 2009 was the final agreement in your mind?---On the footer of that agreement, on the front page it says final.

Yes, I know?---Of the Confidentiality and Implementation Agreement, yes.

All right. Now, you caused a search to be done did you of IP Australia in respect of Sydney Water's registered trademarks?---I did.

And that's how you say you found out that those trademarks were not registered in respect of class 32?---Correct.

On 11 August, 2010 you told the Chief Judge in Equity Justice Burgin this didn't you, "There will be an argument about the trademark" and that's the Sydney Water trademark, "because I am not stating that I own the trademark, what I am stating I own is", I think you left that word out, "the intellectual property for coming up with the fact that water class 32 is missing from the trademark."?---More or less that's true.

10

And that what you told her Honour was true?---I don't have a quarrel with that.

And that's the position isn't it you - - -?---I'm not a lawyer, I speak off the cuff, yes, that's right.

You don't assert, you didn't assert to her Honour and you don't assert to the Commissioner that you own the Sydney Water trademark do you?---No.

20

I want to put a proposition to you now, this is a proposition of law so just listen to it. I'm not going to ask you a legal question. Just listen to the proposition?---What's the difference between a proposition or law and a legal question?

Just listen to the question. Your discovery that the, your discovery as you would term it that the Sydney Water trademark was not registered in class 32 gave you no rights in respect of the trademark. That's the proposition. Now did any lawyer ever give you advice to that effect?---What do you mean by that. The answer is no.

30

Mr Stafford didn't give you that advice did he?---It was after the event. They agreed that's why they made the application.

I want to put another proposition to you that your discovery as you term it that the Sydney Water trademark was not registered in class 32 gave you no basis upon which to assert that you were the owner of the Sydney Water trademark?---In class 32 I have the basis and I assert my rights, I'm the first to file, that is my total answer.

40

What I'm putting to you is the proposition that the fact that you have discovered, to use your language, that they Sydney Water mark was not registered in class 32 gave you no basis to claim to be the owner of the trademark at all and my question is has anyone given you advice - - -

THE COMMISSIONER: Any lawyer.

MR STEVENSON: Has any lawyer given you advice to that effect?---No lawyer working on this matter has advised me that I'm wrong.

But Mr Stafford - - -

THE COMMISSIONER: That's not the question.

MR STEVENSON: You're answering no, no lawyer had given you that advice, is that right?---No, that's not right. Stafford gave, gave opinions.

10 If Mr Stafford had - - -?---And, and furthermore, Mr Stevenson, I met with Hack, Griffith Hack and others, other patent lawyers and they made their own investigations I believe which showed that Sydney Water was missing class 32 and the registration of FB Rice.

Do you say that - - -?---And if they thought that I was wrong - - -

20 Do you say that a trademark attorney or a lawyer gave you advice that the fact that the Sydney Water mark was not registered in class 32 meant that you could claim to be the owner of the Sydney Water mark?---There is much commentary on that proposition which can be obtained from the various law sites on the Internet.

Mr Makucha, I'm not asking - - -

THE COMMISSIONER: Mr, sorry, Mr Stevenson, Mr Makucha, this has question has been asked of you before and I understood your answer to be that no lawyer has given you that advice but, not orally or in writing but you understood certain textbooks to express opinions to that effect?---That's right, that's right.

30 And that's your answer to the question.

MR STEVENSON: If you had - - -?---You arrested my, my pages out of the, the textbook, I'd like to hand it up to you, Commissioner.

THE COMMISSIONER: No, thank you.

MR STEVENSON: If you'd received advice from Mr Stafford for example - - -?---It's very clear, sorry.

40 If you'd received, if you'd received advice from Mr Stafford for example that only a person claiming to be the owner of the Sydney Water trademark could apply to be registered as owner of that mark you would not have made the application would you?---That's not what the textbook says.

Because you knew you weren't, you knew that you weren't the owner? ---Your question is highly ambiguous and the hypotheses that you're seeking to create and the analogy, I can't answer. If you can simplify your question I'll try and answer it yes or no.

THE COMMISSIONER: Mr Stevenson, it's not (not transcribable).

MR STEVENSON: You've never claimed to be the owner of the trademark have you, the Sydney Water trademark?---I claim and I'll clearly state but again, I claim all the rights of the discovery made by Paul Makucha as a result of the labours of his mind in relation to the class 32 drinking water et cetera and all types of water that part of the trademark of Sydney Water is by virtue of Makucha being first to file his property and also I will give you a copy of the, the law.

What you've revealed there, can I suggest to you is the - - -?---I know what I've - - -

- - - is the fundamental misconception behind your role, your position here and that is - - -?---That's in your opinion, Mr Stevenson.

I'm putting it to you Mr Makucha?---Can I, can I give you the pages from the textbook so you can read them?

20

Your misconception is - - -?---It's very quick.

- - - that the fact that the Sydney Water trademark is not registered in class 32 means that you can register the same trademark in class 32, that's your misconception, isn't it?---It is. Commissioner, can I have those two pages to hand - - -

THE COMMISSIONER: No?---Please.

30 This is not a, this, the, the Commission, the issues that this Commission is investigating do not include the issue whether you have a right to the trademark Sydney Water as you contend?---I'm sorry, do not, do not contend? Do not include my contention.

This Commission is not trying the issue whether you have a trademark or not?---I see, but I am - - -

40 The Commission is, the Commission is trying the question, it's not trying anything, the Commission is investigating - - -?---Ah hmm.

- - - whether you've been guilty of corrupt conduct in misleading any person in a number of respects, one of which includes the trademark question?---I don't understand the difference, Commissioner, however, I think the answers I give about ownership - - -

Well, put it this way - - -?---I take your advice.

I'm not advising you?---Well, how should - - -

I'm not giving you any advice. If Mr Gordon thinks that it is important for this Commission to have the extracts from the text books to which you refer, he is at complete liberty to hand them up to the Commission in the, or provide them to in the course of his re-examination of you or examination of you, rather. And also in the course of making final submissions to the Commission?---Thank you.

10 So I do think that I should make it clear though that, because I realise that I may have misstated the position. The Commission is concerned in determining whether there has been corrupt conduct or not with matters concerning the rights to the Sydney Water trademark.

MR STEVENSON: I'll finish that subject briefly if I can now Mr Makucha. I suggested to you that the fundamental misconception under which you have been labouring is that the fact that the Sydney Water trademark was not registered meant, you thought - - -?---It is registered, but it's not registered in 32.

20 Yes. I'll put it more clearly. Your misconception is this, you believe, I think, that the fact that the Sydney Water trademark is not registered in class 32 - - -?---Ah hmm.

- - - means that you can register the Sydney Water trademark in class 32?  
---Well, had you have discovered you could have.

30 THE COMMISSIONER: Mr Stevenson, I really, with respect do not think that it's helpful to press that. Mr Makucha denies that he's under a misconception and he relies on some extracts from a text book for that.

MR STEVENSON: I impose upon your patience to ask one other question.

THE COMMISSIONER: Yes.

MR STEVENSON: You're, a series of questions, you're familiar with the Coca Cola trademark?---I know it.

40 You know it to be one of the most well recognised trademarks in the world?---It's worth \$68 billion in brand value.

Do you say that if it's the case that the Coca Cola trademark is not registered at IP Australia in relation to the category dealing with say motor cars, that you could register the Coca Cola trademark for motor cars and - - - ?---That's what the text book says.

- - - market a Coca Cola station wagon?---That's what the text book says. Coca Cola, Mr Stevenson, have a very large contingent of lawyers, who uphold and protect their intellectual property. They spend billions a year.

Now Mr Payne has asked you about the various invoices that you sent to Sydney Water. I want to ask you about one of them only and that's the invoice of 26 May, 2009 for \$19,500 being the one for the ablution block and the air conditioned - - -?---Which page?

THE COMMISSIONER: What page is it?

10 MR STEVENSON: It's page 507 in Exhibit P127. And see that's dated, do you have that?---I do.

26 May, 2009 is its date?---That's right.

Now if you go to page 509?---I'm all right.

That's a letter from the Hilton Hotel to Mr Harvey?---That's right.

20 Did you ask Mr (not transcribable) the author of that letter to writer to Mr Harvey about your hotel bill?---That's right.

And you suggested to him did you that he should send Mr Harvey a credit card authorisation to see whether Mr Harvey would sign that on behalf of Sydney Water to pay your hotel bill?---No. No, I, no, no.

Go to page 512?---5?

512. See it's an email from a Ms or Mr Verseki?---Verseki.

30 Verseki from the Hilton Hotel to Mr Harvey?---Ah hmm. Yep.

And you asked Mr Verseki to send this email to Mr Harvey seeking payment of your hotel bill?---I had asked Mr Harvey for advice as to when money would be coming in so I could pay the bill. I had provided Mr Harvey with copies of every accommodation invoice or the majority whether it was at the Sheridan, whether it was the Hilton or whether it was - - -

40 The question was did you ask him to send it and I think you've answered that. Look at paragraph 2. You see Mr Verseki says, "The reason why I attempted to get in touch with you is related to a stay of Mr Paul Makucha a guest of our hotel who has informed us that Sydney Water is going to settle the charges for his accommodation. Did you tell Mr Verseki that?---What I said was that the - - -

Did you tell Mr Verseki that?---No. What I said was I was waiting for monies to come in from Sydney Water and I, which would be used for the settlement of the account.

Mr Verseki says, "I was given your name", that's Mr Harvey's name, "and contact details by Mr Makucha who states you are the contact person representing Sydney Water to do with this issue." That's true isn't it you gave Mr Verseki Mr Harvey's details?---I did, I did otherwise he wouldn't have got it.

And just prior to that you had a conversation with Mr Harvey in these terms didn't you? You said to him, "I'm having issues with the Hilton Hotel about my bill being overdue and future payment." True?---True.

10

And you said, "Can you pay the Hilton for the next 30 to 60 days?---I can't remember that I said that however I said I need to know when the Sydney Water money was coming in so I could pay it.

And you said - - -?---Because I had been sitting there doing the research, I had the whole room set up with computers and big colour printers and whatever.

You said to Mr Harvey, "What can you do - - -?---That's right.

20

- - - about paying the hotel expenses"?---No, when will the money come in, that's what I asked.

"And that I can say to the Hilton that we will be making a payment to you that will cover the accommodation charges to you over the next 60 days." Is that correct?---The letter stands on its own feet, Mr Stevenson.

And you said, That's good, how can we do that"?---Whatever is stated there I don't go to a lot of trouble to dispute.

30

And he said to you, "I will need an invoice for some additional buildings on the premises."?---Yeah, they wanted to buy more building.

And you said, "I'll organise an invoice can you write to the Hilton"?  
---Yeah. And they still own all the buildings there, they purchased them.

THE COMMISSIONER: Mr Stevenson, will you be long?

MR STEVENSON: No, I'm not.

40

THE COMMISSIONER: Do you wish to continue?

MR STEVENSON: Would you mind?

THE COMMISSIONER: No.

MR STEVENSON: I'll be another minute or two only.

THE COMMISSIONER: Yes.

MR STEVENSON: And on the very day that you arranged for Mr Verseki to send his email to Mr Harvey, 26 May, 2009 you produced the invoice at page 507, number 6?---(not transcribable) page 514 where - - -

No, 507, I'm just putting that to you at the very same day that you got the Hilton to write to Mr Harvey - - -?---Which page?

10 You send the invoice at page 507?---Yeah.

And - - -?---I don't dispute sending Harvey (not transcribable).

And it was a device that you and Harvey had come up with so that Sydney Water could pay your hotel bills?---Excuse me, Mr Stevenson, that's not true. In my life, my commercial life, when I've been short of money I've sold Cartier watches, I've sold cars to whoever the most available buyer is. I wouldn't - - -

20 And then finally, Mr Makucha - - -?---I've sold, I used to buy and sell from a kid.

Mr Makucha, I haven't asked you a question?---It's not a device.

Right. And - - -?---The answer is no.

Your position is that you understood that Mr Harvey had no authority to sign the final agreement, you've agreed with that, haven't you?---Can you clarify what you mean by final agreement? I say that Harvey had authority  
30 at all material times to sign the Confidentiality and Implementation Agreement.

Well, I think you've agreed, you've answered those questions before. Can I show you finally these documents, this document and that's the Notice of Motion, isn't it, that you filed before Justice White on 16 February, 2010 and moved on before his Honour?---Sorry, I didn't hear the second part of what you're saying.

40 I'll ask you in two stages. This is a Notice of Motion or a copy of it - - -?  
---Yeah.

- - - that you filed in court before Justice White on 16 February, 2010?  
---That's correct.

And you asked Justice White to make the orders set forth in that Notice of Motion?---That's true.

And he refused to do so?---He did.

I tender that document.

THE COMMISSIONER: Yes, the Notice of Motion filed by Mr Makucha before Justice White is Exhibit 183?---I had a barrister file it, I was represented by a fellow by the name of Geoff McDonald.

Well, filed on behalf of Mr Makucha?---Correct.

10

**#EXHIBIT P183 - NOTICE OF MOTION FILED ON BEHALF OF MR MAKUCHA**

MR STEVENSON: I have no further questions for Mr Makucha.

THE COMMISSIONER: Yes, thank you. We will, we will adjourn until 2.00pm.

20

**LUNCHEON ADJOURNMENT**

**[1.06pm]**