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## TRANSCRIPT OF PROCEEDINGS

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**THE HONOURABLE MARGARET WHITE AO, Commissioner**

**MR JC BELL QC, Counsel Assisting**

**MR T PINCUS, Counsel Assisting**

**IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950**

**COMMISSIONS OF INQUIRY ORDER (No.1) 2013**

**QUEENSLAND RACING COMMISSION OF INQUIRY**

**BRISBANE**

**10.02 AM, FRIDAY, 20 SEPTEMBER 2013**

**Continued from 19.9.13**

**DAY 3**

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**THE COMMISSION RESUMED**

**[10.02 am]**

**ROBERT GEOFFREY BENTLEY, CONTINUING**

5

**EXAMINATION BY MR BELL**

10 COMMISSIONER WHITE: Morning, ladies and gentlemen.

MR WILSON: Commissioner, could I raise – I’m sorry. Could I raise two matters  
- - -

15 COMMISSIONER WHITE: You certainly may, Mr Wilson.

MR WILSON: - - - before counsel assisting resumes, that go to the fairness of the  
process that was adopted yesterday and is presumably going to continue to be  
adopted. We know that there are literally tens of hundreds of thousands of  
20 documents that the commission has obtained, and we now know from yesterday and  
from the bundles that were shown to Mr Bentley that some, but certainly not all, of  
those documents have been annexed to statements or made available by Racing  
Queensland. And indeed, we received another 2,000 plus documents on Wednesday  
evening from Racing Queensland and presumably there are more bundles of  
25 documents that are going to be shown to Mr Bentley over the coming days.

The point we raise, Commissioner, is this: those instructing me have written to the  
commission on a number of occasions from late June asking whether you,  
Commissioner, wished those who I represent to deal with particular documents or  
30 particular questions. And we’ve repeated that on a number of occasions since. We  
were told that we would not be given that information before public hearings and  
those assisting you, Commissioner, have chosen not to interview any of the eight  
individuals that I appear for. Yesterday a number of documents were put to Mr  
Bentley; we’re now up to volume 3 of folders of documents that counsel assisting  
35 wish to ask him about.

A number of the documents Mr Bentley was asked about, first, he had never seen  
before, secondly, they were not his documents, and thirdly, he was not given any  
proper opportunity to consider them other than to read them in the witness box and  
40 so determine whether the document was received or sent in a certain context that  
may be apparent from other documents that were not shown to him. An obvious  
example, Commissioner, of that is the file note of Mr Grace that he was shown  
yesterday of the 8<sup>th</sup> of October 2008, tab 56 in volume 3, where he was asked about  
the final line, “Role – me, not Tony Hanmer.” If an inquiry had been of Mr Grace,  
45 as my solicitor has done this morning, it would have been easily confirmed that the  
“me” referred to there was Mr Grace and not Mr Bentley.

5 The way in which this is approached is, it is submitted, unfair to Mr Bentley and it's counterproductive to the task of this commission if it wants considered and properly informed evidence. We raise these matters because there's no statement from Mr Grace, no statement from Mr McIlwain and no statement from anybody at Racing New South Wales, yet Mr Bentley is asked about documents that those persons wrote. We respectfully submit that Mr Bentley should be given the opportunity, over the weekend at least, to see the documents that counsel assisting intends to put to him.

10 Obviously, the task of distilling the relevant documents has already been done, and it would, we submit, be only fair to Mr Bentley to be given that opportunity to review the documents, rather than it being done whilst he's in the witness box. The second matter we raise, Commissioner, is the same as the first but as it applies to the witnesses that follow. We respectfully submit that the Commission should supply  
15 bundles of documents that they intend to put to Mr Hanmer and Mr Ludwig, who so far are the only two witnesses that have been identified as being definitely going to be called.

20 COMMISSIONER WHITE: Thanks, Mr Wilson. Mr Bell, would you like to respond to Mr Wilson's application, please.

MR BELL: Commissioner, we oppose the application for us to provide each witness in advance with our arrangement of the documents that we're going to show the witness. The reason we do it is because, firstly, this is an investigation. This is a  
25 public hearing where people's credibility is being tested and it's the arrangement of the documents, and not the documents themselves, that really is the focus of the complaint by our learned friend, because the documents that I show to Mr Bentley, for example, are documents that he will be left with, with his lawyers.

30 And as the commission intends, as we've said repeatedly to his legal representatives, we make an open invitation for him to go away and consider them, talk to Mr Grace and everybody else, and please provide any relevant further information, statements or anything else that he wishes to do. Hence, the point is that we have no objection whatsoever – and in fact, we encourage Mr Bentley's legal representatives, as we do  
35 Mr Ludwig's, as we do Mr Hanmer's – taking away the documents, preparing whatever they want to prepare and please submit it to the commission for further consideration and even, if they wish, take a week off, contemplate and then come back later and apply to submit statements about all of them.

40 But what we don't what to do is flag in advance the whole of the examination that I intend to make by giving them the sequence of the documents, which really is the whole reason for the investigation. We are investigating here whether the things that Mr Bentley says, for example, in his statement should be accepted and it's right that we test him and the other witnesses too about the task. We do it openly. We show  
45 him the document and we encourage him to go away and give us more about the document if he wishes.

But it would be wrong, we respectfully submit, to accept the submission that it's unfair that he be asked to comment about documents arranged in the sequence in which we have – in which we intend to put them to him. So in the end, our submission is that there's no unfairness with the examination method in this inquiry.  
5 It is inquisitorial. We offer Mr Bentley and the others who our learned friend Mr Wilson represents to come back whenever they wish after consideration with lawyers and provide further evidence from anybody they want about these issues. There's nothing unfair about that.

10 COMMISSIONER WHITE: Thanks, Mr Bell. Anything you wish to respond to, Mr Wilson?

MR WILSON: Two matters, Commissioner: the first is we don't ask that the commission identify the sequence of documents; we simply ask that the documents  
15 that are going to be shown to a witness be provided in advance. The Commissioner's – sorry – the counsel assisting's own statement that the witnesses ought have the opportunity to go away and think about the documents and put in additional evidence is the very point we're making. The process that's been undertaken is putting the cart before the horse, in the sense that they're being asked, in cross-examination in a  
20 public session, to comment about documents they've never seen before, and yet we're told we should go away and think about them and put in submissions about them when you, Commissioner, may form a view about the responses that are given in public evidence.

25 COMMISSIONER WHITE: Thanks, Mr Wilson. As I am sure all the lawyers here appreciate, this is an inquisitorial inquiry and not litigation, with all the rules that have grown up around litigation. The issue primarily is what is fair if an adverse finding is to be made. As I discern the underlying theme of your submission, Mr  
30 Wilson, it is that the methodology chosen by counsel assisting is fundamentally unfair. That could only be prefaced, I suppose, with the understanding that in some way the opportunity to be heard with respect to an adverse finding that might be made arising out of that questioning of any particular witness would be compromised in some way. That, I think, is a misconception or perhaps a misunderstanding of the process that the commission is undertaking here.

35 In my view, the issue of fairness insofar as it relates to this inquiry is not compromised by the method, but the benefits that the commission sees in approaching a witness with documents fresh, shall we say, seems to me not to be a matter which compromises that essential fairness which we all understand must be  
40 accorded to all witnesses who might have an adverse finding made against them. For the time being, Mr Wilson, I'm proposing to permit counsel to continue in the way in which he's indicated he wishes to continue. If Mr Bentley or any other of your clients or any other witnesses who wish to have a few moments to consider the document, rather than feel that they have to respond immediately, that, of course, can  
45 happen – not that it will be stood down – the commission would be stood down, but that they can take the time they need.

5 The invitation has always been there to put in supplementary statements, and that is urged by me that that should occur after an opportunity to take advice from the lawyers and to see them perhaps in a different flavour than the way in which counsel assisting might seek to put it. This isn't final submissions, of course; these are simply supplementary statements or observations or, indeed, a request that a witness be called who might clarify a matter, a witness that hasn't already been identified as being called. So it's an ongoing process. For the time being, I'm content that the method chosen sufficiently accords Mr Bentley and any other witnesses the fairness that they're entitled to.

10

MR WILSON: If it please the commission. Can we invite the commission through those assisting to speak to Mr Grace?

15

COMMISSIONER WHITE: Yes, thank you. I'm sure Mr Bell will take that to heart.

MR BELL: In a moment, Mr Bentley, what your counsel has said occurred overnight in speaking to Mr Grace is something that identifies the fact that his diary note was a record of you and he, as it's been confirmed, I understand, that he was referring to you meaning Mr Grace rather than you being Mr Bentley. And you see, Mr Bentley, the point of the questions is not so much answered by that proposition indeed. What it tends to indicate that you – you Mr Bentley, were instructing him, Mr Grace, to do something in which you had a conflict. How could you instruct the lawyer for Queensland Racing to go and negotiate or talk to Tatts?---Would you give me the file note again, please?

25

Yes, of course. The file note is at tab 56, please?---Isn't that a printed one of that?

30

UNIDENTIFIED SPEAKER: [indistinct]

WITNESS: Yes, I can – I've read that.

MR BELL: Okay. Now, I'll tell you my point. That's a contemporaneous, one thinks, diary note of Mr Grace's who is the solicitor – is he, for QRL, Queensland Racing?---Yes.

35

That's thoroughbred racing, isn't it?---Yes.

40

Okay. So he couldn't talk for harness racing, could he?---No.

And he couldn't talk for greyhound racing, could he?---No.

Okay. So what happens here is the chairman of Queensland Racing is instructing the solicitor for Queensland Racing to go and talk to UNiTAB or Tatts, isn't?---No. I don't see that as my instructing Mr Grace.

45

5 Okay?---I see me gathering a little bit of history to know exactly what my position would be. And I have a position of conflict. I wouldn't be going to talk to Tatts and I wasn't instructing him to go and talk to Tatts. As far as I can see from that note – that note says Tony Hanmer go and talk to Tatts.

Where does it say that? Show me where it says that, Mr Bentley?---Not me. Not me. Tony Hanmer. Tony Hanmer.

10 “Role – me – not Tony Hanmer”?---Meaning – I – I believe that, that - - -

No, it says not Tony Hanmer, Mr Bentley?---I believe the intent of that – that conversation was to gather information from our solicitor – what was his history of the PPA and if there's a renegotiation with UNiTAB. Of course I couldn't do it. I'd have a conflict. And I'm not instructing him to do it.

15 Mr Bentley, I don't know what you're talking about. Talk about what I want you to focus on. Your lawyers raised overnight with Mr Grace his diary note, correct?---Yes.

20 They told you about that didn't they?---Yes.

Before sitting down in that chair?---Yes.

25 Okay. Now, let's talk about it. They raised – to correct me from yesterday what the diary note was intended to record you as saying, didn't they? T what they said to the Commissioner?---That's correct.

30 And it says, “role – me – not Tony Hanmer”. Not Tony Hanmer indicates it's not to be him. Don't you agree?---Well, I – I would much prefer Mr Grace to – to interpret that here in this court.

Well. Okay - - -?---Okay. Rather than me - - -

35 But you were there, weren't you, at the meeting?--- - - - try and – me and try and second guess. You're asking me to second guess exactly what – what he means.

Okay. What did happen at the meeting?---I can't remember the meeting and I can't remember the phone call.

40 Well, I know you can't?---Exactly.

45 Why can't you remember the meeting?---Because I have so many meetings and so many phone calls. I mean, this is over a five year period – this is 2008. How do you expect me to remember?

Well, I'll tell you how I expect you to remember. This is the part you say is the big conflict. You don't get involved in this. Look at the top of it, the heading PPA – what's that?---Product and Program Agreement.

5 Yeah. That's your area?---Sure it's – I – it's always forefront in my mind as far as the conflict is concerned - - -

Okay. So why are you talking to him?---But, I mean, you're asking me to remember a conversation in 2008 to clarify. I'm saying to you, I'd much prefer Mr Grace to tell  
10 the Commissioner what that was about. More than happy.

Let me ask you an easier question. What are you talking to Mr Grace about UNiTAB and the PPA at all for, at that time?---It's part of the racing industry. I mean, as I explained to you yesterday it's, as far as I'm concerned, a conflict is when  
15 you make a decision. Being involved in a decision or influencing a decision.

Okay. What about this for a decision: if problem renegotiate with UNiTAB – Tattersalls?---Counsellor – Counsellor, I can't add any more to what I've just said. I'll be more than happy for Mr Grace to front the commission and he can explain it.  
20 Because his notes.

Okay. You see, this occasion that this diary note seems to record is one where you say you can't remember being there?---Exactly right.

25 Okay. But that's convenient for you to say that because you see, you would deny – you did deny yesterday that you had anything at all to do with this area?---I think I've said to you on numerous occasions, it's decision-making of the conflict – or influencing.

30 Did you have any other part at that time in relation to that issue either for Racing Queensland or for Tatts? “No. I had no discussion at all.” I mean, if you could also – that could be confirmed by David Grace?---Yes.

Okay. But you did have a discussion with David Grace about that topic?---Yeah, but  
35 it was no decision-making. I might have said – no, I don't remember taking part in any – any part of a decision-making with the product and program agreement and I think that's fairly clear.

40 You know, I was very careful yesterday to ensure that you were saying it wasn't just decision-making. You didn't engage in deliberations. Do you remember me asking you that?---Deliberations to influence a decision, I think, yes.

Yes. So how do you define the two – you do have discussions. Just let me get it clear again - - -?---You're asking me to - - -  
45

Wait a second. Just let me get it clear from you again, on oath. How do you discern between discussions relating to decision-making and other discussions on this topic,

Mr Bentley?---Well, a decision-making is actually when you're physically going to make a decision or influence a decision. The way I read that without having Mr Grace here is to say that I was enquiring about the product and program agreement. I'm very well aware of the product and program agreement. I mean, I think it's quite natural to find out from him what is his opinion about it.

So you think that's the way to manage a conflict?---Yes, I do.

Okay. Would you consider yourself to have influence within Racing Queensland and before that, Queensland Racing, at that time, with board members and with the executive?---Are you saying influence?

Yes, influence?---I'm a chairman of the board.

Yeah, that's right?---Obviously.

You're a powerful part of the make-up of those two bodies, weren't you?---Yes.

So if for example, you discussed what position you thought might be right as between Tatts and Queensland Racing on an issue, they'd listen to you wouldn't they?---Yes. And that would be a conflict.

And what's that mean? What do you mean by that?---Well, that's influencing a decision.

I think what you're meaning to say to me is, "I wouldn't discuss it"?---No.

When you said, "that would be a conflict", you mean, "I was careful not to discuss it?---I'd be involved – I would be careful not to be involved in decision – where a decision was going to be made.

I see. Okay. So let's start again then. Because we've got to get this straight. We're not going to run away from it. Let me get this straight. In 2008, Mr Bentley, an issue arose, didn't it, relating to Race Fields Legislation?---Yes.

Did you play any role at all in relation to that on behalf of Queensland Racing?---Oh, look I would've been involved in discussions in it with the Australian Racing Board, yes.

Okay. At the Australian Racing Board. What about anywhere else?---I would've reported back to our board at what was going on, yes.

Okay. And what did – what was the Australian Racing Board part – so I understand what part you say you did play?---I did – I was certainly not a part of decision-making. It was a part of information gathering. There was a lot of discussion over quite a long period of time about Race Fields Legislation.



5 You see, Mr Bentley, the funny thing is that when you're the chairman of the board and you bring information to the board, are you not seeking to provide them with relevant information for the purpose of decision-making?---I think they're entitled to know what was going on. I mean, that was a normal part.

That's not my question. My question was: when the chairman comes with information to the board and gives it to the board, he gives it so that they are empowered with information for the purpose of making decisions. That's the whole point of it, isn't it?---Yeah, well depending what information that you're bringing forward. I mean, this is just general information at that stage.

No - - -?---I mean, that's not a decision about who's going to be charged what.

15 No. No. You've discerned what's relevant information. You wouldn't tell them about the ice creams you bought in Melbourne when you were down there. You'd tell them about relevant things that happened. Of course. Wouldn't you? This is silly?---Course - absolutely.

20 Okay. Let's not talk silly. Now, Mr Bentley, overnight your lawyers clarified that Mr Grace says where it says "role - me - not Tony Hanmer", it was a reference to "role - David Grace - not Tony Hanmer"?--- Commissioner, I feel I've answered that question. I'm more than happy for David Grace to be brought before the commission.

25 COMMISSIONER: I understand that. I think, Mr Bentley, Mr Bell is saying this is the clarification that has been obtained by Mr Wilson and Mr Rogers from Mr Grace as to the meaning that he intended to capture in those five words in the last line. So - - -?--- Commissioner, I didn't speak to - - -

30 No, your lawyers did. And so this is the information that's been conveyed through them to the commission. Now, Mr Bell may ask you a question about that. You don't have to comment yet.

35 MR BELL: See what's clear now we're told, even though Mr Grace has been overseas and we haven't talked to him about this. What's clear now, it seems, is that his note of the discussion is "Role: if there's a problem, renegotiate with UNiTAB, Tattersalls. Role: David Grace, not Tony Hanmer." You see that? That's what it seems to be now, you see?--- It seems to be Tony - it seems to be, from what you're just saying there and clarifying that David Grace was going to do the negotiation.

40 Correct?--- Is that correct?

Correct?--- Yeah, well that's - - -

45 That's what David Grace has told your lawyers. Now, let's think about that. When that decision was made to tell Mr Grace, "It's you, not Tony"; who made that decision?--- I'm not with you. Who originally sought the advice?

No. No?--- Well, would you explain, please?

5 Yeah, I – sure, I will. This is what the diary noted Mr Grace says. “If a problem” – or it says, “If problem, renegotiate with UNiTAB Tattersalls. Role – David Grace, not Tony Hanmer.” Now my question to you is, because it’s your discussion you apparently had. Who made that decision that the renegotiation, if it was necessary, would be done by David Grace and not Tony Hanmer, the chairman of Product Co? Could you tell me, please?--- I’d say – I’d say David Grace is giving that advice.

10 Okay. We’ll leave it at that. I wanted to take you this morning first to the Product and Program Agreement. In the Product and Program Agreement – we talked about it yesterday but I didn’t show it to you to remind you about it. When did you last look at it?--- I’ve got no idea.

15 Okay?--- Not recently anyway.

20 Okay. But you had a view about its application in relation to the \$500,000 a month that started to be charged in 2008; didn’t you?--- I – I had a view about the – about the contract being – being a firm contract, and the clauses were correct. The money – no, not the money. No, the actual clause of the contract.

25 Okay. Yesterday, you said you had a view which was firm and didn’t change that the contract, the Product and Program Agreement, provided that Tatts was entitled to deduct these sums; remember that?--- Yes.

Okay. And you got that view from McIlwain?--- Yes.

30 Now, have a look at the Product and Program Agreement, please. And I’ll show you something. If you turn to page 6, on the bottom of the page you’ll see about three quarters of the way down “Third Party Charge”. Do you see that there, please?--- Yes.

35 Okay. It says, “means the amount of any fee payable or other consideration given by Tatts to obtain the equivalent of Australian Racing Product; see that?--- Yes.

To obtain. Now, there’s never been any difficulty obtaining racing information; has there? For Tatts?--- No.

40 The difficulty that might arise is if Queensland Racing couldn’t give it any more to Tatts; you see that?--- Yes.

Okay. That situation never arose. You know that; don’t you?--- No.

45 Well, did it arise?--- I – I’m quite – sorry, I’m not following you – exactly where you’re going here. Would you ask the question again?--- Yeah, sure. Have a look at the definition of third party charge. It says third party charge means the amount of

any fee payable or other consideration given by Tatts to obtain the equivalent of the Australian Racing Product; do you see that?--- Yes, I see that.

5 Okay. Now, it's not legal, it's a question of fact. Meaning what happened in 2008 that made the information difficult for Tatts to get?--- Well, it made it difficult that Tatts, under that clause - - -

Yeah?--- Had to pay the race fields legislation to New South Wales.

10 What for?--- [indistinct] New South Wales.

What for?--- For the Race Product.

15 For Race Product. They didn't pay New South Wales Racing for Race Product, you know that?--- What did they pay it for?

For using it?--- Well, yes.

20 Pretty simply different; isn't it?--- One and the – well, I would've thought it was one and the same.

Well, try this then. You can buy a car; can't you?--- Yes.

25 But you can't use it unless it's registered on the road, you know?--- Correct.

So you pay the Government some money to register it. That's different from buying the car; isn't it?--- Yes.

30 Okay. Well here, they're buying the information. But to use it they've got to get a licence?--- Yes.

Same thing. It's not complicated?--- No.

35 Okay. Did you think that at the time in 2008?--- No, I didn't. I have always understood that if Tatts have to source the product from somewhere else; right? Then we'd be – deduction off the product fee.

You know what - - -?--- I've always thought that.

40 You know what, Mr Bentley, that's right at the heart of it. Now you tell me how it was that it came into the chairman of Queensland Racing's head that they had to pay New South Wales to obtain the information?--- As I said to you before, Commissioner, I always thought that that was a legal, binding contract.

45 Yeah, okay.

5 COMMISSIONER: Don't worry about the legally binding contract part of it. Mr Bell was asking you about what are really straightforward English words which non-lawyers can understand pretty clearly. So just to sort of – just think about what the words mean. I think that's the – that's the line of questioning. I'm sorry, Mr Bell, to intervene.

MR BELL: No, thank you.

10 COMMISSIONER: I don't want Mr Bentley to be troubled by the fact that he's not a lawyer, for example. And there are an awful lot of lawyers here?--- Yeah.

So we're just using ordinary English language.

15 MR BELL: So you know my simple example was trying to make that clear. To procure or buy or to get somebody to supply you with a car, you go into the car salesman, you pay for it?--- I understand – I stand – understand that analogy.

Okay. But to use it, you've got to get a licence?--- Yes.

20 Okay. What's – do you see any difference with the situation that arose in racing in Australia in 2008?--- I didn't turn my mind to that.

25 You should have; shouldn't you? It was costing 500,000 a month?--- Well, as I say – I mean, I have a conflict, being a director of Tatts. I hadn't turned my mind to it. I always understood - - -

You don't have a conflict?--- I always understood that that was the case.

30 You don't have a conflict in thinking about the agreement. That conflict – you're allowed to think about it. You told me that yourself. You're even allowed to talk about it?--- Well the answer to your question, Commissioner – sorry, counsellor, I haven't turned my mind to it. I believe that that was the situation.

35 Pretty poor performance for the chairman, I suggest to you. For the chairman not to think about it; don't you agree?--- The way you put it, yes.

40 But you know what? That's not straightforward. Because I think you did think about it. That's what I'm suggesting to you. You thought about it a lot?--- Well, I reject that.

45 Okay, let's have a look. Could Mr Bentley have the folder he had last night, please. And open that, tab 61. I'll just show you what this is, Mr Bentley. This is a letter from Mr Tuttle to the board of what was once called Queensland Thoroughbred Racing Board, meaning the board of Queensland Racing by this time, and to some executives of Queensland Racing on the 23<sup>rd</sup> of October 2008. You see that?---Yeah. Am I looking at – looking at that letter? Yeah.

That email?---Yes.

Okay?---I've read that letter. Yes.

5 Now, do you recall receiving that one?---No. I don't.

Okay. Do you recall the topics being raised in about October 2008 by the government with Queensland Racing for feedback about proposed race fields legislation being brought in in the state?---Vaguely, yes.

10

Okay. In particular, what Tuttle says in number 7 is, "Need to consider what, if any, role Product Co has in relation to the implementation of the legislation." See that?---Yes.

15 Was that a topic on your mind at any time that you can recall now?---I – I considered this to be a Product Company issue - - -

Yes?--- - - - as – as you've pointed out to me just five minutes ago.

20 Yeah. So does that mean you didn't think about it?---I – I left this to – to Tony Hanmer and Malcolm Tuttle.

Okay. So this part of the important business which involved the financial position of Queensland Racing was a part that you didn't involve yourself with?---I didn't  
25 involve myself with these – any negotiations where – where Tatts might become involved.

Okay. Well, that qualified answer's difficult for me to deal with, because I've got to keep coming back and defining what you mean. See, I tried very hard yesterday to  
30 define it, but I'm losing. Let me ask you this: the question there in number 7 says, "Need to consider what, if any, role Product Co would" – that means not Product Co's decision, somebody else's decision about what they would do. Do you see the point?---Yes.

35 Okay. Now, that was somebody else's decision; whose was it?---That'd be Product Company.

No. No, no. No. "Need to consider what, if any, role Product Co has in relation to"  
40 - - -?---This – this is Malcolm Tuttle's email.

Yeah. To the board of directors of Queensland Racing - - -?---To the board - - -

- - - meaning you as chairman?---Yeah. I don't – I don't recall – I don't recall seeing this.

45

Okay. I know. But there it is, and it's one of the documents that's kept by Queensland Racing, then Racing Queensland, in the records, and I'm looking at it

and asking you about it, because it just didn't come out of the air?---As I said, I can't recall it. Yeah.

5 Well, let's talk about it now, the substance of it. You see, the board – meaning you as chairman – had a question put before you by the chief executive officer which was the subject of a meeting he'd had with the government. And number 7 was what role will Product Co play? See that?---Yes.

10 Okay. Now, do you recall thinking about that?---As I say, I can't recall the email. I can recall the general - - -

Okay?--- - - - the gist of the thing.

15 Well, talk about it. Number 7 – just talk about that topic. What can you remember?---Well, it would have always been considered as a Product Company role, and I think that's why that is there. You'd have to ask Mr Tuttle. He wrote the - - -

20 Okay. Do you mind going to 271, please. Have you got 271? The – there's an email from Tuttle to Mr Grace?---Yes.

Have you got that? It's dated 29 October 2008 at 3.47 pm. See that?---Yes.

25 Now, if I just ask you to read the first couple of – the first paragraph – “Following our discussion” – just read that one and I'll ask you something about it?---Yes.

30 Well, what he's recording to Mr Grace is that the board of Queensland Racing had a teleconference, and what they did was they made some points and the points are number 1 and number 2. You see that?---Yes.

Okay. Do you recall now, after reading that, that that was something you talked about with your board?---Sorry. I don't recall that.

35 Okay. Do you recall at your board that you resolved to have Queensland Racing go to its solicitor to get legal advice?---No. I don't – I – I don't – I don't recall that - - -

Now, that's amazing, isn't it?--- - - - and if – if they did I – no. I don't. No.

40 That's amazing, isn't it, that what would happen is the CEO would go to the lawyer of Queensland Racing and record in it that the board had said something in a telephone conference and you didn't know about it and - - -?---Well, in this case - - -

- - - you didn't know that he was going to go to the lawyer to get advice?---In this case I did not know.

45 Okay. Just look down a little bit in that, please. You'll see a paragraph says, “In the meantime it is important that we understand the implications that exist as a result of

existing agreements, in particular the Product and Program Agreement, and also agreements with RISA.” See that one?---Yes.

5 That was something, surely, that you can recall discussing at the board a couple of days earlier when Tuttle was present on the telephone?---No. I can’t.

Okay. Did you know ever that Queensland Racing had resolved to go to Mr Grace for advice about these topics?---Yes, after the fact.

10 Now, are you sure about that?---As sure - - -

After the fact – are you sure about?---I’m – I know you’re – you’re – yes. I am reasonably sure that was correct.

15 Reasonably is not really good - - -?---Yes

If you’re not sure, say “I’m not sure”?---Okay. I’m not – I’m not sure.

20 Okay. Because you see, it’s dangerous. There’s other documents going to come that seem to indicate you were there with Mr Grace talking about the topics in this email?---I – I can’t remember. I seem to remember that Malcolm Tuttle had told me, right, that – and that was – I think at the same time as I sent that email to McIlwain.

25 Okay. Well, let’s have a look. See the heading “Background”? See that?---Yep.

Okay. The second paragraph, about the third line down, says, “UNiTAB, as a result of Product and Program Agreement, passes these costs on to Product Co and in turn the codes of racing, including QRL, refer to PP Agreement 10.2(c). We need to confirm that UNiTAB is entitled to do this. I suspect that clause 7.4(f) confirms this without doubt, but would like to be certain”?---Yes.

30

See that?---Yes.

35 Is that something you knew Tuttle was going to ask Grace?---No.

Are you sure?---Okay. I’ll say I’m not sure, but - - -

Okay?--- - - - I’m almost sure.

40 Okay. And then in the - - -?---I mean you’re testing my memory back - - -

I know?--- - - - to 2008.

45 I know I am?---It’s very, very difficult but my – if you ask me here what my recollection was, I will tell you that that – he told me after event, because I was quite surprised that he’d been to Grace.

5 Yep. Look, I'll be straight with you too. The point here is, you see, when you say, "I don't remember," you seem to say it in relation to areas that are pretty sticky to you. So it's a good way not to answer questions about it. That's one option; the other option is you don't have a memory. But you see how – what I'm thinking?---Yeah.

Okay. Good?---Some things I can remember. Yeah, definitely.

10 Okay. But where this is looking a bit sticky, because – what I mean by "sticky" is you've said, "This is a conflict area; I don't go here," but the documents are tending to indicate you did go there, you see. That's why I'm - - -?---Yep.

15 - - - thinking when you say, "I don't remember," you don't want to remember. See how clear I'm trying to be with you?---Yes. I do.

Good. Okay. So then you see in the next paragraph, "The intention of the draft Queensland bill," and then he talks about that, and then in the next paragraph, which is in bold, "In addition we need to discuss and consider the relationship between UNiTAB, Product Co and RISA and the requirement agreement to provide racing information etcetera." That doesn't help you remember anything?---No. It doesn't.

Okay?---I – I don't remember this particular situation.

25 Okay?---What I do – I was certainly aware of it and I'm certainly aware after the fact, I'm pretty sure of that, that – that Tuttle had been to see Mr Grace about it.

30 Okay. And you see the other thing I'm really interested in is your having the boundary around this area where you don't go. That's the point you've made to me many times, right?---Yes.

And this is right at the heart of it, isn't it?---Yes. It sure is.

35 Okay. Sure right at the heart. Let's turn over to 62, please. You see that squiggly writing there?---Yes.

That's Mr Grace's, and I'll just show you the first page first. It says – see the people who he spoke to and conferred with? One's Tuttle and the other's you. See that? Got that?---Yes.

40 And that's on the 31<sup>st</sup> of October '08. You see that in the top right-hand corner?---Yes.

45 And unless he made this up afterwards, it looks like a pretty contemporaneous record of you being there with him; do you accept that?--- Yeah, I accept that David Grace wouldn't make up things.

Okay?--- He's - - -



Now, turn over a few pages and you will see where he has typed up for the commission what the notes – just what the notes record so that we don't struggle with the handwriting. Now, I'll let you read that so that you have an opportunity to refresh your memory before I ask you anything about it.

5

COMMISSIONER: You might like to sit down while - - -

MR BELL: Yes, thank you.

10 COMMISSIONER: - - - Mr Bentley – yeah, takes his time to read that, Mr Bell.

WITNESS: Yes.

COMMISSIONER: You've read on the back as well? It goes over the page.

15

WITNESS: Yes.

MR BELL: Okay. So do you have anything to say about that?--- I – what I said before, I don't recall that particular meeting. It is an important meeting, I accept that. But I – if you – as I said to you before when you asked me was I there, I would've said I was almost sure I wasn't. But I can't argue with the fact that I was there.

20

Okay. You see, the big point about it is not so much that you can't remember, but more that why would you be there with all you've told me on oath yesterday? Why would you be there?--- Well, there was nothing – I mean, that's an information meeting to find out what's going on. I don't think there's any decisions being made.

25

Okay. So - - -?--- David Grace was so particular about this particular issue with me. And I'd asked him at different times to make sure that I don't stick my nose where it shouldn't be. And that's what surprised me about this, being part of a conflict.

30

I think the point is that it's your conflict, not his; you see? He's the lawyer, he does what he's told. And you're the guy with the conflict who needs to make the judgment because you held the two positions, not him. His position was to give good legal advice, which I contend he did do; you see?--- Yes.

35

Okay. So this is – this email – this diary note, if it's right, puts you there with Grace, providing him with constructions for legal advice about the very question of the relationship between Tatts and Queensland Racing; doesn't it?--- It appears so, yes.

40

Yeah. Indeed, when I look at the third page of the typed up diary note at the bottom, it seems to be that whoever was talking there was talking about the very questions at hand. Namely, was Tatts entitled to deduct this sum as a third party charge or not. See where it says NSW imposes a charge on UNiTAB to give? Do you see that?

45

COMMISSIONER: That's at the – that's at the end of the last –

MR BELL: Last - - -

COMMISSIONER: Last typescript page, Mr Bentley?--- NSW, yes.

5 Yes. See you say – it says NSW imposes a charge on UNiTAB to give. Question 1, 7.5F and 9.5, effect – obligation. Question 2, 7.5C and 10.2D, supply of information for a non-wagering operator. This deal with licence of copyright, billed in to authority; you see that?--- Yes.

10 That's the – that's the topic?--- Yes.

That's the topic at hand; isn't it?--- Yes, it is.

15 Okay. And then going back a little, if I start at the very beginning of the diary note – and I won't stay with this document long, don't worry. Because I know you say you don't remember it. It says you are a director of Tattersalls, not UNiTAB. Now, I'm sure that's not Grace and it's not Tuttle, because they weren't directors of - - -?--- Yes.

20 - - - Tattersalls; were they? That was you?--- I'm not denying, now I've seen it, that I was there. I mean - - -

25 Yeah, okay. Well, it looks like you're giving him the instructions too; aren't you? You are a director of Tattersalls. You are not a director of TABQ in 1999?--- No.

You see that? But that's from you. You're telling him that?--- It's not a party to finalisation.

30 Not a party to finalisation of PPA. That happened in '99?--- That's correct.

So it wouldn't be Tuttle and it wouldn't be Grace?--- No.

It might be you?--- No.

35 Because you were a director at that time of Tatts, you see. And he was asking you, I suggest, did you have anything to do with finalising the PPA when you were with Tatts?--- No.

40 And you were saying no; you see that?--- That's correct, yes.

That'd be right; wouldn't it?--- That's correct.

45 And then one, engagement – letter of priorities, determine. And then racing information, free supply of information; you see that?--- Yeah, gentleman's agreement.

Yeah. And then two, agreement intended to provide certainty at the time – at time, I should say. Required because product supply was based on a handshake. Now, that sounds like somebody who knew the history of it; you know? Doesn't it?--- Yes.

5 That'd be you?--- Yes.

Okay. So what happens, Mr Bentley, is if we accept the diary note in preference to your memory, you were at a meeting with Mr Grace seeking advice about the impact of the race fields legislation on the relationship between Tatts and Queensland  
10 Racing?--- Yeah, that's possible. Yes.

There's no way to escape it; is there?--- Yeah. No.

Okay. And in fact, when I think about it, you couldn't have been acting for Product  
15 Co because you weren't a director of it?--- That's correct.

Okay. And one thing is for sure, you weren't acting for Harness because you had nothing to do with them?--- No.

20 And you weren't acting for Greyhound because you had nothing to do with them?--- That's correct.

Okay. So one thing is for sure: you couldn't set up a negotiation for Harness with Tatts as to how to solve this problem; could you?--- No.  
25

Okay. You know you told the Commissioner yesterday about an email that came out in the press; remember that one? You remembered it well?--- Oh, the email from Dick McIlwain. I sent to Dick McIlwain.

30 Dick McIlwain, yeah?--- Yes. Yes, I do.

And you sent it to her?--- I remember that, yes.

I think it's the next document. Let's have a look at 63, please. You tell me if it's the  
35 next document?--- That's the next document.

Is that it?--- Yes.

Okay?--- Yes, I wrote that email.  
40

Okay. Now, what's interesting about it for the Commission is to ask you who authorised you to write that email, please?--- Nobody, I wrote it.

Yeah. Okay. But what it says is "Tatts" – I'm leaving Dick's name out. "Tatt's,  
45 Queensland Racing's lawyer will contact you." You see that?--- Yes.

Okay. Who decided that would happen?--- I said – I would've decided that would've happened.

5 Exactly. Did you consult the board of Queensland Racing for that to happen?---  
Possibly not.

Okay. Let me ask you another thing. David Grace had obviously given you legal  
advice in the conference on the Friday, the one we just referred to with the diary  
note. Because you were saying in here, you see, to Tatts, "unintended outcome of".  
10 See that?---My – my recollection - - -

You don't have a recollection, do you?---No. My recollection of this particular  
situation was what I said to you before that, I mean, that Malcolm had told me on the  
Friday exactly what I've said that's there.

15 I know that's your recollection but now we know with the diary note you were  
actually there with Grace. You didn't need to listen to Tuttle?---Is that – when was  
the meeting?

20 Let's have a look. It was on the 31<sup>st</sup> and this is on the Saturday the 1<sup>st</sup>, you see, the  
next day. You were writing from your home email on Saturday to your friend, Dick,  
who was at Tatts – who was the Tatts man?---Yes.

25 Okay. So on Saturday after receiving what might be styled at least privileged  
information from the lawyer of Queensland Racing about the way the agreement  
works, you were tipping off Tatts as to what that advice was, weren't you?---Oh, I  
wouldn't say I was tipping him – tipping him off.

30 Okay. You tell me what it was. You tell me what it was?---I mean, I'm just saying  
there is a problem with 7.5 and 10.2. Malcolm will – Malcolm will discuss it with  
you.

The big question is; problem for whom - - -?---Problem for Tatts.

35 That's the big question. Hey?---And a problem from both sides, I see.

No, no, no. Problem for the person who was going to cop the impact of the charges  
from New South Wales. That's the person who had the problem and you had a foot  
in each camp, you see. And what you were doing was – you had received legal  
40 advice from Queensland Racing's lawyer and on Saturday morning you wrote to  
Tatts and told them what it was and said, "I'm going to bring it over to you on  
Monday"?---Bring what over?

45 The advice - - -?---No, I – no, I - - -

You're sending Grace over on Monday to talk about it?---Yeah. I thought that was  
reasonable, yeah. Because I wanted to stay out of it.

Did you ask the board?---Pardon?

Did you ask the board?---No.

5 Why not?---I don't know why I didn't ask them but that's what I – I admit that I did that, yes.

Right. Did you ask Harness because it would affect their rights?---No.

10 Did you ask Greyhound because it would affect their rights?---No.

Why not?---Didn't cross my mind at the time.

That's not very good, is it?---Well, I'm answering against myself, no.

15 I wanted to ask you in the last paragraph of that email, "Malcolm Tuttle is handling the issue for Queensland Racing". I note in particular with emphasis, Queensland Racing, not Product Co. Is that a slip of the fingers on the email?---Well, Malcolm's the CEO of Queensland Racing.

20 You're right. He was?---And – and I guess there was probably a fairly blurred situation there with the executive staff.

25 No, no, no, no. You've made clear to me all day – no blur. Its Product Co's issue, not mine?---Yeah, well it is a Product Company issue.

Okay. Well, let's have another look at your email because you were so clear about the conflict. "Malcolm Tuttle is handling the issue for Queensland Racing". See that?---Yes.

30 Not right, is it? Something's not right. Your conflict statements all the time or this email – one or the other?---Well, the email is correct and I – I admit that I sent that – that email.

35 Because it was a big issue for Queensland Racing, wasn't it?---It was a big issue, yes.

40 And it was a big issue for Tatts too, wasn't it?---Well, it would – would have been if it went – went through – through to the end, yes.

If you'd listened to Grace's legal advice it would've been a big problem for Tatts?---Yeah. But that – but that's something I shouldn't be making a decision on.

45 No. I know. I know?---But you didn't.

Well, I don't accept that. You see, Mr Bentley, I – that just doesn't follow. From this email alone – why are you making a decision to disclose to Tatts where you have

a conflict, Queensland Racing's legal advice that it got in relation to what's turned out to be at least during the relevant period of this inquiry, \$90 million. That's big, even for you, isn't it?---It's a lot of money.

5 Even for you it's a lot of money. It's serious?---Yep.

Well, it's got to be treated seriously, don't you think?---What you're saying is I shared the legal advice with McIlwain?

10 Yes, I – yes, I - - -?---All I did was advise him that those were the clauses that were the problem. I haven't seen the legal advice and I still haven't to this day seen the legal advice.

Well, we'll see about that in a minute?---Okay.

15

But let's stay with this. You'd heard it?---I've heard the – yes.

You heard it in Mr Grace's room when you were talking to him with Tuttle?---I'm not so sure that he gave that advice then. I don't know.

20

Well, what are you saying here? Come on, let's have a look at the email, "to be an unintended outcome of the Race Fields Legislation as it relates to clause 7.5 (d) and 10.2 (c)", which you wrote on the Saturday. You had a pretty good idea?---There was – there was legal advice. I don't know when he did the legal advice but I think he – he – he flagged there was problems with 7.5 and 10.2 in his opinion. Is that correct?

25

I don't know what you're talking about. I'll tell you what I'm talking about. That in your head when you typed the keyboard here, you had a pretty good idea on that Saturday morning that there was something he'd told you that you styled unintended outcome?---Yeah, well I – I always accepted that the product and program agreement as being correct. David Grace said – I think that he said there's going to be a problem with 10.2 or 7.5. I emailed Dick. I didn't see any – any problem with that.

30

35 No. I know you didn't. Don't get me wrong. I know you didn't?---No.

Reflecting back now, do you see it was a problem?---Well, the way you're putting it, you could say it was a problem, yes.

40 Well forget about me. Forget about me. You judge?---But I – at the time my – my own situation at the time, I didn't think that was a problem. I thought that it was just a matter of saying, hey there's a problem here. Malcolm will be handling it. I can't handle it because I've got – I've got a conflict.

45 I got it. Well now - - -?---That's in simple form.

5 Now, you're sitting here in 2013 and we're in an inquiry and you've had time to reflect on this and you're looking at that email – please reflect and tell me, what do you think about your conduct in deciding there, without talking to the board, that Grace, the lawyer for Queensland Racing should go and talk to Tatts about what he thought about the agreement? What do you think about that?---Well, I'm still of the same opinion. I didn't think that – that necessarily was a problem.

10 Okay. And you see – I showed you yesterday your statement in the front of what they – what you style the code of conduct. And part of the code of conduct was to be transparent. When you write on Saturday from your private email, which has a server in the UK to your good friend at Tatts, Dick – do you think that's transparent from Queensland Racing?---Yeah, I worked every day of the week for Racing Queensland.

15 I'm sure you did?---And there was – and the UK has no – no consequence. The UK email address is because I couldn't get AU and I wanted the crossmore because it was the name of the property that I owned.

20 I knew that. I knew that. But anyway, it's not very transparent, it it?---I – I don't see that. Even sitting here now I don't see that as being correct. However, the way you've put it here at the Commission, I can see things should have been done a lot better and, I mean, maybe I should've stayed a little bit further away than I have.

25 Stayed away a little bit further. Do you mean that, really, after this – a little bit further?---Well, I don't see that I made any – any decisions. Right. Apart from advising Dick, okay there's a problem. Let's try – we need to solve it. Racing Queensland's got the problem too. They need to solve it. Malcolm will talk to you about it.

30 Beautifully stated. Beautifully stated. I totally accept what you just said. “We got a problem. We got to sort it out”. That's exactly as it was?---And Racing Queensland – what about the second part? The Racing Queensland also has a problem.

35 Yeah, absolutely. Absolutely. And what you were going to do was - - -?---And Malcolm was going to handle it.

40 What you were going to do was put your cards on the table, you personally not with your board – put your cards on the table with Dick?---But advising that, that's going to come. I mean I was making – making sure that he would take Malcolm's phone call – that he would discuss the matter with Malcolm.

45 Yeah, okay. I got it. Can you recall now what the unintended outcome statement you made was meant to refer to, please? Where you said there, “an unintended outcome”. What did that mean to capture?---Well, what I always understood, as I've told you before, of those clauses where – were in the contract – the unintended outcome is - - -

Yeah?--- - - - was possibly a problem with those two – two clauses.

In what way? In what way?---Well, maybe – I mean, they – they’re challengeable.

5 Okay. Meaning it’s uncertain whether or not Tatts could charge?---Yes.

Okay. Beautiful. That’s beautiful. What did you do about that in the next 12 months?---Nothing. Nothing.

10 Sorry. I didn’t quite hear that. What did you do in the next 12 months about that uncertainty, Mr Bentley?---That – that was a matter that went to Product Company for discussion because it affected the three codes.

15 Back over to Product Company?---Went over to Product Company for a resolution because, as you said before, I can’t make decisions for thoroughbred – for harness and greyhounds.

20 Okay. So let’s see what happens after that. Would you go to 65, please, Mr Bentley? Divider 65?---Yes.

Okay. Now, this is an email from the CEO of Racing Queensland?---Yeah.

25 Of Queensland Racing I should say – on the Monday after you had emailed Dick on Saturday and he’s writing to the solicitor for Queensland Racing, David Grace, and the subject is Dick McIlwain Tatts. See that?---Yes.

30 Okay. And he says, “David, can you please call me re Dick McIlwain. I’ve left a message on your voicemail. My understanding is that we may be able to sort this out with an initial call and follow-up letter.” Did you know about that?---No.

You didn’t know about that part?---No. Because if - - -

35 But you expected that to happen, didn’t you?---I expected them to sort it out. Yes. Well, I think that’s what it says in – in the email.

You expected them to sort it out. Who do you mean, “them”?---David, Mal and Dick McIlwain.

40 Okay. I see. Right. Because of the uncertainty that you now knew existed in relation to the Product and Program clauses?---Yeah. The – well, there was a query about it.

45 Because the query was David Grace had explained that in his view, they couldn’t charge the deduction. Tatts couldn’t charge it?---I’m not – not – not sure that that – that was what Malcolm Tuttle meant. No. I’m not sure about that.



Well, forget about Malcolm. I'm - - -?---I – I don't know whether – I don't know whether David told me - - -

5 Forget about Malcolm. I'm talking about David Grace?---I don't remember David Grace ever saying emphatically, right, because I haven't seen the advice.

We'll see?---The – the final advice.

10 We'll see?---Okay.

Now – so what happens is for some reason, one reason or another, Malcolm writes to the solicitor for Queensland Racing and says, “Can you please call me re Dick. I've left a message. My understanding is” – “My understanding is” Where would he get that from?

15 “We may be able to sort this out.” Where would he get that from?---He certainly didn't get it from me.

Oh, come on, Mr Bentley. Come on, Mr Bentley?---I'm – I'm telling - - -

20 “My understanding is we may able to” – where would he get that from?---Well, you'd – you'd have to ask Malcolm Tuttle that. I mean he didn't get - - -

No. I'm asking you?--- - - - I handed over to Malcolm - - -

25 I'm asking you. Where did he get that from, Mr Bentley?---He didn't get it from me. Didn't get it from me.

Dick's your friend. You've been on the board with Dick for years at Tatts?---That's correct.

30 Okay?---Yeah.

Where's it likely to come from?---I – I don't know. I'm telling you now my understanding is – that's Malcolm's words. That's - - -

35 Yeah. You can't remember anything about this part, can you?---No. I can't remember.

40 Okay. So don't deny it. You just can't remember, can you?---After – after the letter, I left that to Malcolm and Product Company to handle completely.

Anyway on Monday, one thing is for sure: Mal has got an understanding that “we may be able to sort this out with Tatts”?---Well, I don't know where - - -

45 For some reason, he's got that understanding?---Well, I - - -

Where would he get that from?---I've got no idea and - - -

Okay?--- - - - you'd have to ask him that.

Did you talk to Dick about this on the weekend?---No. Not to my knowledge. No.

5 Did you talk to him about it on Monday morning even?---No. I don't – not – I don't think – no. Not after the – I sent the email and that was it, I think.

All right. Did you ever talk to him about it ever again? Now, come on. Think about that seriously?---I'm just trying to think back. There has been a few discussions  
10 prior to this about – about this I think might have come from a long time ago.

Forget about prior to; you know I'm talking about subsequent to?---I – I – look, okay. I don't know because I don't know.

15 Okay. Try this: after you apparently went to the meeting and came to understand there was an unintended outcome, did you ever talk to Dick about it?---I may have spoken to him about it at the next board meeting. I – I don't know. Just – not in the  
- - -

20 And what was said? What was said?--- - - - not in the board meeting.

Pretty important stuff – what was said at the Tatts board meeting by you about the unintended outcome?---Nothing. I – I – I would have had a casual – maybe had a casual conversation with Dick.

25 About the \$500,000 a month impact on Queensland Racing?---If it – if there was discussion at Tatts it would be in a Tatts board minutes.

30 It just beggars belief, you see, Mr Bentley - - -?---Beg your pardon?

- - - that – it beggars belief, Mr Bentley, that you are telling the truth about this, you see?---Well, I consider I am.

35 Well, you might consider it, but I'm telling you the documents aren't stacking up too well against you. Because it seems when the CEO says, "My understanding is that we may be able to sort this out," he obviously has spoken to somebody about that. His chairman, maybe?---No.

40 Who knew very well the situation with Dick?---No. He - - -

Okay. So anyway, one thing is for sure: you knew they were going to have a discussion and you thought they were going to sort it out?---I would have expected them to have a discussion.

45 And you thought they were going to sort it out?---No. I expected them to have a discussion and get on – see what was going to be done. It was handed over to Product Company. After that time it was handed straight to Product Company, to Mr

- Hanmer's board, to handle. All right. I had no more involvement with it. Sure, I probably had a discussion with Dick at a different time; I don't know. I can't remember the discussion, but it's possible I've had a discussion with him. But the – the issue went straight to Product Company, because it affects the three codes.
- 5 If you don't mind going back, please, to 64?---Yes. Which – which do you want me to read?
- 10 Just the typed-up part which is behind the handwriting part, because the handwriting part of Mr Grace's is hard to read?---Yeah. I've read it.
- Did you know anything about what Tuttle was doing on the Monday in respect of talking to Mr Grace?---No.
- 15 Okay. Did you know what happened between Mr Grace and Mr McIlwain on the Monday?---No.
- Did you know they had a conversation?---No. I don't know whether they did or not.
- 20 Did they sort it out?---I don't know.
- Okay. Did you talk to Mr Grace about what you'd asked him to do – go and speak to Dick?---No. I may have – may have said that.
- 25 Okay? What did he say?---But I – I've sent – I've sent Dick an email that he's going to contact you or something like that. I may have said that. Mal's handling it.
- What did he say? Do you remember?---No. I don't.
- 30 Okay. Anyway - - -?---I'm – I'm not sure I had – had the conversation. I - - -
- Okay?--- - - - but it's likely I've possibly did. I don't know.
- Okay. The document behind divider 66, please. You see the – Mr Grace's writing?---Yes.
- 35 It seems to be 3.35 pm on the Monday, the 3<sup>rd</sup> of November. See that?---Yep.
- 40 And then you go over to the typed-up version it might help. He's talking to Dick here. See that? I'll let you read that and then I'll ask you a question about it?---I don't – didn't have any part of that.
- Did either of them report back to you what the discussion was that occurred?---No. No.
- 45 Okay?---Not to my recollection. No.

5 Would you turn over to the next one, please, 67. This is a letter in draft that was not sent, but the final one I'll show you in a minute. But this is a letter from Grace to Dick and he says, you see, in the beginning of the second paragraph, "Following our conversation today" – and he dates it 3<sup>rd</sup> of November. So clearly, they had a conversation, if this is right. You see what I mean?---Mmm.

Okay. I'll let you read it?---Yes. I've read that.

10 Okay. Did it come to your notice that anything like that was going to be conceded by Tatts?---No.

Did the board of Tatts ever discuss that they were going to make that concession?---No.

15 Did the lawyer for Queensland Racing or the CEO ever report back to its chairman, namely, you, that something had come out of the meeting?---It's possible, but I can't – I can't recall.

20 Well, do you recall this: the - - -?---Because at the time – at the time I mean I turned this over to Product Company. To the best of my knowledge - - -

Okay?--- - - - I didn't have anything – actually, I would have probably been aware of some of this, but I mean I didn't take part in it.

25 Okay. Well, let me ask you this, then: did you report to the board of Queensland Racing that, in fact, all this had occurred? You'd been to see the lawyer; you'd instructed the lawyer to go and talk to Tatts, that they had had a talk and that something might or had come out of it. Did you report that to Queensland Racing?---I don't know.

30 Okay. It'd be important to report it to Harness too, of course, wouldn't it, because they're going to be affected?---Yeah. They would – I think they would have been reported through Product Company, not through Racing Queensland.

35 Okay. Well, we'll see. That means that you must have reported this to Mr Hanmer?---I would have reported to – in a – in a – reported what?

40 The fact that you had been to see Mr Grace and he didn't – he advised you that there was an unforeseen outcome and that you had instructed Grace to go and see Tatts about it – that. That's what I was asking you about?---I think that's probably correct, but as I said, I don't – I know David Grace was [indistinct] but I do not recall going to see him.

45 We're going to – I'm going to take you to show you what Mr Hanmer did in a minute. Then, please, if you don't mind turning over to 68. I'll let you read that because it seems to record – it's Dick recording what he recalls of the conversation with Grace and Tuttle?--- Yes.

Okay. Now, that looks like an outcome; would you think? Dick thinks he's pulled it off, pulled the deal off. Would you think he's saying that?--- I think that's what he's saying, yes.

5 Yeah, okay. And isn't it interesting he says, "They also said that the legislation only refers to charging for using the product, not supplying race fields. Eerie, hey?" What do you think he means by that? Do you think he could mean that this could be bad for Tatts? Eerie?--- Yeah, I guess he could. Yes.

10 Okay. And he goes on to say, "I encouraged them to get legislation approved."?--- Yes.

Yeah. So Tatts is helping Queensland Racing; you see that?--- Yes.

15 Yeah. So they're working together?--- Yes.

Yeah, okay. Did they work together?--- As far as I know.

20 Yeah. Well, you'd be the one to know because you had a foot in each camp. So you tell us - - -?--- Oh, not - - -

Did they work together?--- Not necessarily. I tend – this would be handled exclusively by Dick and his crew.

25 Yes?--- And Malcolm and Tony, I understood, were handling this. I don't believe I had a hand in this.

30 What it looks like is Dick was encouraging Queensland Racing to get the government to bring in legislation for race fields; doesn't it?--- Yes, it does.

Yeah. Because, you see, that might placate the problem?--- I can't say what Dick – what Dick was thinking but it would probably placate the problem. And I know at the time he was keen to get race fields. I think everybody was keen to get the legislation through.

35 Yeah, that's right.

40 COMMISSIONER: Mr Bentley, could I ask you – can you tell me who Anne Tucker is or was?--- Anne Tucker is the – well, she was the legal counsel for UNiTAB.

Thank you?--- She's now the legal counsel for Tatts Group, the whole group.

45 But she was then – she was then the - - -?--- Just – just for UNiTAB, the subsidiary.

MR BELL: Mr Bentley, if you turn over to 69, please. This is an invoice from UNiTAB for 6 November 2008; do you see that?--- Yes.

And you see they charge for race fields legislation deduction for New South Wales, \$433,000 for thoroughbreds?--- Yes.

5 You see that? That's – that must've concerned you?--- I haven't – haven't – wouldn't have seen that invoice, haven't seen it.

No, the information?--- But - - -

10 The information must've concerned you?--- Yeah. It was a problem.

Was it serious enough concern to take action to clarify whether Grace was right?--- And I'll go back to what I said before.

15 Yeah?--- At this stage, it had been turned over to Product Company.

I see. How did that happen? Just tell me that. How did that happen?--- I said I have a conflict, you handle it through Product Company.

20 Okay?--- Or Racing Queensland, Tony. But I don't – I don't have a part of it.

Okay. And is that – have you kept those records somewhere so we can find them, please? Because it's really important; you see. You've got public money under your control so it's important that you have things transparent; you see? Now, where's the transparent document so I can look at that, please?--- To say - - -

25 I beg your pardon?--- To – to say - - -

Record that you passed it over to Product Co?--- I don't think there would be.

30 Okay?--- I'd just like to mention to you – I mean, we're not talking about public money. We're talking about racing industry money.

Yes, that's right. And who's money is that?--- It belongs to the participants of the industry.

35 Correct. Not you?--- No.

40 And therefore do you feel that that responsibility is a heavy one to do the right thing by them?--- Absolutely. And I've always - - -

Okay?--- I've always adopted that attitude.

45 Okay. Does that involve too getting legal advice about the rights for them, what they're entitled to?--- Product Company or the board without me was entitled to go and get advice if they so wished; right? It was not forthcoming.

But what's incredible, I respectfully submit to you, Mr Bentley, is that you knew there was uncertainty at the least about the meaning of the agreement?--- Yes.

5 And over the next year or so, you knew nothing was done about it?--- Correct.

So if I ask you to look at 70, please. Document behind 70. Have you got that?--- Yes.

10 Okay. This is Queensland Racing Board Minute of 7 November 2008; you see that?--- Yes.

15 And then if you turn over to page 5, under race fields legislation the chairman declared that he had a – has a conflict and removed himself from any decision or discussions on this item?--- Yeah.

Why did you do that?--- Because of conflict of interest.

20 In relation to the update and draft bill and regulations on race field information? And that David Grace would be engaged to provide advice as required? Did you have a conflict on that?--- Yeah, I – well, I didn't have a part of that.

Did you have a conflict on that?--- I removed myself from that because of the fact there was a conflict.

25 Okay. Where's the part, could you show me please, where you told the board what had happened so far?--- I can't, it's not there.

30 No. Because these are the minutes, you see. You correct these minutes as chairman; don't you?--- I don't correct them. What, do you say that I correct them?

You do, yes?--- Yeah, I go through - - -

35 I do say that?--- Make sure that they're correct and they also – right? Then they present them to the board.

That's right. And then when it's all done and dusted, you decide and you sign them off?--- I sign them off after the board sign them off.

Yeah?--- Yes.

40 Yeah. So what I see here is you declaring this conflict. And the board noted the update and draft bill, and that David Grace would be engaged to provide advice as required; you see that?--- Yes.

45 Did you tell them he had already been asked to provide advice?--- I can't – don't know that at all. I don't know whether he did or he didn't. And I don't know

whether I would've said anything at all. But all I can say is that at this point in time, I was not taking part in the discussions.

5 Was it something to do with the fact that the deal had been done with Tatts that you weren't now taking part possibly?--- No.

Possibly?--- No.

10 Are you sure?--- Not even possibly, no. No.

We'll encourage the government to bring in the legislation in Queensland and then the problem will go away?--- I certainly encouraged the government to bring in race fields legislation.

15 Yeah, you did?--- Most definitely.

Yeah, you did?--- It was - - -

20 Yes?--- It was terribly important to get it in. I don't know for sure. But I mean, the side effects of relieving Tatts of any obligation – I mean, it wasn't an issue and it wasn't a concern for me at the time.

Now, it was an issue. We know it's an issue?--- Yeah, it was an issue.

25 You've already said you knew it was an issue?--- Yeah, but it wasn't part of what – the reason that I was pushing hard for race fields legislation to come into Queensland.

30 Well, from what we've seen, it was Dick's approach to it?--- Well, that's Dick's approach. My approach was because no one else was paying. We needed the money.

35 Yeah, that's right. Anyway, let's see what happens. So you declare the conflict and they decide, "Why don't we get David Grace to provide advice?" You see that? So you would have known that they had resolved that, even though you didn't participate in the decision, because - - -?---Yes.

- - - these are the minutes you sign off?---That's right. Correct.

40 Beautiful?---Yeah.

45 Let's turn over – 72. What happens after that, you see, is that Mr Grace, the solicitor for Queensland Racing, writes to the chief operations manager, Mr Tuttle, on the 10<sup>th</sup> of November attaching a draft letter. See that?---Mmm.

Okay. And then if you turn over to 73, you'll see that draft letter. See that?---Yes. Yes.



Did you know anything about that?---I possibly would have known about it, but I didn't participate in it.

5 Then was it satisfactory to you as chairman that - - -?---Look – excuse me.

Yes?---Some things were – came across my table. Other things didn't, but generally I was – I was up to speed on what was going on. Yes.

10 Yeah. And then if you turn over to 71, you see Tuttle writes to Mr Grace and says, “Okay to go.” See that?---Mmm.

Did he check with you that that was fine to go?---No.

15 That's unusual but, isn't it?---No. I don't think it's unusual in this case.

Pretty important decision but, wasn't it?---No. But I don't think it's important in this case that I should – that I should be making a decision of what they should do

20 Were any board members of Queensland Racing involved in the decision – “Okay to go”?---I don't know.

Okay?---But I – I certainly wasn't.

25 And then if you go to the next one at 74, you'll see that, in fact, what happens is that Mr Grace has the letter sent to Dick. See that?---Is that an email from Ysabella Chambers?

Yes?---It's very blurred; I can't read it.

30 Yeah. She's at Cooper Grace and Ward and it's a letter to Dick, and then if you go one more page to 75 you'll see the letter in final form?---I would have been aware of that, but not – not actually had the letter in my hand.

35 I note it's 11.30, Commissioner.

COMMISSIONER WHITE: Is that a convenient time - - -

MR BELL: Yes. Thank you.

40 COMMISSIONER WHITE: - - - to pause? We'll take a break, then, for 15 minutes, ladies and gentlemen. Adjourn.

45 **THE COMMISSION ADJOURNED** **[11.30 am]**

**THE COMMISSION RESUMED** **[11.52 am]**

**ROBERT GEOFFREY BENTLEY, CONTINUING**

**[11.52 am]**

**EXAMINATION-IN-CHIEF BY MR BELL**

**[11.52 am]**

5

MR BELL: The document at divider 76, please, Mr Bentley. You will recall that we were talking before the break about the fact that Queensland Racing had resolved to retain Mr Grace to get legal advice. Do you recall that?---Yes.

10

And I ask you to look at 76 because it would seem that on this page is a copy of an email he sends back to Mr Tuttle on the 11<sup>th</sup> of November, subject: PPA and amendments to the Racing Bill: “Mal, attach a draft of the opinion letter I have prepared and ask that you consider it for making sure that all questions you raised are answered and that the underlying history facts are correct.” That’s what seems to happen. See that?---Yes.

15

And then you can see Malcolm asks somebody at Queensland Racing to fax it to him, above that. Would you turn over the page to 77. I’m sorry, 78, please. And you see in 78 on the 17<sup>th</sup> of November, Tuttle writes back to Mr Grace, “I’ve reviewed the draft that was the subject of our meeting this morning and the subject of the couple of matters raised this morning and have no further comments and look forward to receiving the final opinion as soon as possible.” All done. And then please if you go to 79, Mr Grace sends on the 18<sup>th</sup> of November, as an attachment to an email the advice, it would seem. And he records, after attaching it, “Further to our discussions recently, we now enclose the letter of opinion which we are happy to discuss with you and/or the chairman of Product Co. The original is in the post.” Do you see that?---Yes.

25

30 And then if I ask you to go to 80, please?---80?

80. And this is a document that is an advice from Mr Grace to Queensland Racing dated the 18<sup>th</sup> of November 2008. See that?---Yes.

35

And you knew that Mr Grace had been retained to provide advice on these topics because that was something at that board meeting I showed you. Did you know that it was received at some point?---I would’ve accepted it – I know it would’ve been received.

40

Okay. And did it come to your notice? In other words, what I mean to be precise, did you look at the paper that the advice was written on?---No.

Did you ever look at the paper?---No. And I don’t think so – not even til today.

45

Okay. Let’s have a look at it together now. In the first sentence he says, “We refer to our meetings, 31 October and 4<sup>th</sup> of November.” Well, we know that you were at the one on 31 October. And then the part that’s important, if I ask you turn over to

5 page 4 looking at the top of the page. I should say it's all important but the part to focus on is on page 4. You'll see the third new paragraph. He commences, "You ask as to whether the provision by Racing New South Wales of Australian racing product to UNiTAB for a fee pursuant to the New South Wales legislation, entitles UNiTAB pursuant to clause 10.2 (c) of the PPA to deduct the amount paid to Racing New South Wales from the amount of the product fee payable under clause 10.1 to Product Co". That's him framing the question that was asked. Do you see that?---Yes.

10 And that's with reference, you'll recall to one of two meetings – you were at the first it would seem. And then he gives what I suggest is his answer, "On the basis that the New South Wales legislation poses a charge for the publication of information and not the supply of information. In our view, that amount payable is not for the obtaining of the Australian racing product or the procuring of it as provided in the  
15 definition of third party charge in clause 1.1 of PPA." See that?---Yes.

And then, if you look to the next page, 5, you'll see he has there, observations – discussions. See that part?---Mm mm.

20 Okay. Just coming down a bit and then I'll take you back up to an important part of it. You'll see the last paragraph of the page commences, dealing with those. Do you see that?---Yes.

25 I want you to go a few – to the one before that says, "We have looked at some cases" and then just before that, the last sentence in the prior paragraph, it says, "Hence they are not deductible from the amount of the product fee payable under clause 10.1 by reason of anything provided in clause 10.2"?---Yeah.

30 Okay. Now, it seems on looking at it now that Mr Grace was advising that Tatts were not entitled, under the agreement, to deduct the fee?---That's correct on this wording.

35 And then if I look up a bit further, observations/discussion, you see what he records is – which is interesting – he says, "In discussions, the question as to whether an argument that a charge for the right to use or publish information, obtained at a cost – obtained or procured or supplied may be seen as somewhat of semantics. That concern would arise because no party would commercially obtain, procure or have supply of information which did not carry with it the right to use it". See that point?---Yes.

40 Clearly enough that point's been raised with him in discussions. That's the point he's making. And underneath that you'll see – I'll show you. He deals with it – deals with the proposition that, that's just semantics to make that distinction. Do you know what I mean?---Yes.

45 And then a few paragraphs down – if you jump one paragraph it says, "We understand that it is the intent of parliament that the financial arrangements within

5 wagering be restructured to provide a benefit to industry through payments raised by the control body pursuant to the amended legislation. Accordingly, it is quite proper that these charges be collected without deduction. Our charge, imposed under the statute which alters the way the industry is funded by transferring a part of the wagering turnover to the industry control bodies for the benefit of the industry it serves.” See that?---Yes.

10 It’s pretty logical, don’t you think? Sitting there now - - -?---Yeah. Yes. It’s a logical argument, yes.

15 And then if you go back to the prior page it’s quite interesting, I respectfully suggest to you Mr Bentley, for you to look at the part just above the heading, summary. Do you see that? Just above there?---Mm mm.

20 Look up two paragraphs. It commences, “Amendments to the legislation do not authorise Queensland Racing to impose a charge on the supply of information. Instead, Queensland Racing does not supply Australian racing product to other bodies rather, from what you have instructed us, RISA supplies the information.” See that part?---Yes.

25 That was right, wasn’t it?---Yes.

30 Okay. And then the next paragraph, “The charge is a new charge and not one dealt with by the PPA.” See that part?---Yes.

35 I think that’s right too because you recall nobody in 99 thought that this might happen back then. And then in the last paragraph just above summary, “However, any fee paid by UNiTAB to RISA would in our opinion, be deductible from the amount payable as the product fee as legitimately falling within the definition of a third party charge.” Now, clearly it seems to be right. Is the fact that – are you able to comment on that?---I’m finished reading. Yes.

40 And the interesting thing is that the fee for supply to RISA is small, paid by Tatts; isn’t it. It’s not a big charge?--- I’m not sure.

45 Okay. So what appears to be the case at least is that Queensland Racing receives advice from its solicitor on the 18<sup>th</sup> of November 2008 that Tatts aren’t entitled to make the deduction. Would you agree with that?--- On this advice, yes.

Okay. Did the substance of the advice, not the pages but the substance, come to your notice at any time after this?--- Only to the fact that there was the argument about it that just – Tatts and Racing Queensland or Product Company was in dispute with it, yes. And that they were – and the board was – the board, less me, was discussing it. What they were going to do about it.

Was in dispute. Does that mean that your understanding was that they were having a dispute as to the proper construction?--- Well, I feel that this is a dispute. This – this is what I call a dispute.

5 Well this here, you see, is an advice to one side. The other side, we don't know what they say; do we?--- I think previously – I mean, they've always said and my understanding was that – I mean, it was hard and fast in the Product and Program Agreement.

10 Okay. Well, maybe if they had this advice they might've changed their mind?--- Well, that's possible. But I didn't give it to them.

Why not?--- I – well, I didn't take part in any of this. This was the - - -

15 Well, you did?--- This was done with the board without me.

But earlier, you did authorise Mr Grace to explain it to Dick. Why not give him the advice?--- I think I was – I was – yeah, I did that to David Grace.

20 Yeah, you did. Yeah?--- No, I don't think – I think I asked – didn't I ask Malcolm to contact Dick or Dick to contact Malcolm? I didn't - - -

No, my point is that you said to Dick, "Dick, Mr Grace is going to come and tell you about unforeseen outcomes."?--- Yes.

25 So my point is you must've said to David, "Go and tell Dick about the unforeseen outcomes." That's my point, you see?--- Yeah, I would've said - - -

Okay?--- Have a – have a chat about it; right?

30 Yeah. Now, why not give him this too?--- Because I don't think that would be right to do that. And I didn't have it in my possession to give it to him.

35 Okay. Well, it wouldn't be hard to get it. And you wouldn't be involved in a decision?--- Well, I dispute that. I mean, I wouldn't knowingly go and ask something like this from a fellow director, knowing that I have a conflict with it.

Why not? What's the conflict there?--- The conflict is – I mean, they're setting about trying to sort out a problem. I mean, I shouldn't - - -

40 No, no, no?--- Be influencing the problem.

45 No, that's not right. You've got your company that you're the chairman of as distinct from the company where you are a director, meaning Tatts. The company where you're chairman has an advice already. And it says, "Tatts can't charge this deduction." Now, there's no conflict for you to say to Tatts, "We have legal advice that says you can't charge it."?--- Well, I chose to say to them – to stay right out of it.

Sorry?--- I chose to stay right out of this.

Well, that was wrong; wasn't it? Don't you accept that now?--- I don't consider it was. I consider it was right to stay out of it.

5

Okay. So anyway, it did come to your notice that Mr Grace had advised that they ought not be charging the fee; don't you think? Was that right?--- I – I – it did come to my notice. I was told – that's what I was told.

10 Okay?--- Pretty well word for word what you've just said.

Now, having learnt that, did you keep an eye on what was happening about it as chairman?--- No, it was turned over to Product Company to sort it out. Or put it this way: the rest of the board of Racing Queensland to sort it out through Product

15 Company.

Well, that's right. And also Harness and Greyhound as they had an interest, I suspect?--- I don't know what the – what the story is. Whether Harness and Greyhound were alerted to it or not.

20

No, but they had an interest; didn't they?--- Absolutely.

So for some time after this, you must've seen the invoices keep coming in with deductions?--- I don't – I don't go that far in the organisation to see those particular invoices, no.

25

Okay. But did you keep an eye on the figures, the revenue coming in?--- Yes, I would be watching. And I'd see that it was going down but specifically I didn't see the invoices.

30

Okay. Could you turn to 227, please. This is a summary of the invoices for the period which this inquiry is investigating in relation to the charges by way of third party charge that Tatts made on Queensland Racing, and then on Racing Queensland. And you see it's a lot; isn't it?--- Yes.

35

91 million-odd?--- Yes.

Significant and - - -?--- Significant.

40 - - - it must've been the case that the chairman of Queensland Racing saw the impact of this happening?--- Yeah, that's why I knew there was an impact.

Yes, exactly. And because revenue was important, of course, to the chairman?--- Yes.

45

It was in your mind that Tatts were making this charge?--- I knew that Tatts were making this charge, yes.

Okay. So I think I'm clear, Mr Bentley, that your position on this and what happened after that was it was handed over to Product Co?--- Yes, Product Company. Yes.

5 Okay. And the chairman of it was Mr Hanmer?--- Correct.

And Mr Hanmer was somebody you spoke to often?--- Regularly.

10 And he had been made chairman of Product Co because, of course, you had the conflict and couldn't be on it?--- That's correct.

Okay. Now, would you go over to 81, please?--- Yes.

15 When Mr Hanmer, you say, took over, what happened at the next meeting after – next meeting of Product Co and it being prepared for the directors. Shara Murray had included on the draft minutes that David Grace was going to attend. And Mr Hanmer intervened and stopped that note being made and had it deleted. You can see that; can't you?--- I can see that.

20 Okay. And what he says is, "We will have allowed substantial review of his advice, and to that end I think we need to discuss at board level that advice. David Grace's note is quite clear and doesn't need amplification. If the directors feel that this needs to take place, it should occur after the initial board discussion." You see that?--- Yes.

25 Okay. And then if you go to 82, please, you'll see Ms Murray, the lawyer within Queensland Racing, complies with the chairman - - -?--- Yes.

30 - - - of Product Co. "I will amend and forward to the directors." See that?--- Yes.

And then if you turn over the next page, something unusual happens. I respectfully submit to you, Mr Bentley, you may recall something about this. Mr Tuttle, who's been involved in this question, writes to Ms Murray and Mr Hanmer and says, "I have advised David to attend at 10.30. Shara, please confirm with David and advise him who is to be in attendance once you know." You see that?--- Yes.

35 And if you turn back to the last email, you'll see that Mr Tuttle had been included where Mr Hanmer had said, "Don't have Grace come along." You see that?--- Yes.

40 So he's intervening, even though the chairman's directed that he not be there; you see that?--- Yes.

45 And then 84, please, this is Mr Hanmer, the CEO: "Malcolm, just for absolute clarity, David Grace will NOT be attending the Product Co" - - -?---Yes.

- - - "board meeting. I need to have the authority from the board to spend the costs of David Grace attending. I do not have that authority and I am in breach of my

5 covenants as a director. I want the board to discuss this issue after reading the material, and if at that time they consider it necessary to get clarification from David Grace or anyone else, we will pass a resolution to that end. The other directors are all sound in mind, wind and limb and can read David Grace's advice without the need for explanation." Did you know about that?---No.

10 Okay. And then if you turn over to the next one, Tuttle: "Tony, I believe it is important that Product Co should be fully informed in respect of this issue and that David Grace, as the lawyer who has provided the initial opinion, is well-placed to provide any clarity in respect of legal matters of this opinion – of his opinion. Notwithstanding, I respect that as the chair of Product Co, it is your call." See that?---Yes.

15 Well, it would be good, wouldn't it, if all the board members got a clear picture about what Grace was saying. Would you agree?---?---I can't speak for Tony, but if I was doing it I would like to have David Grace.

20 Yeah. And then in – the next one, please, is 86. Tony writes, "Malcolm, I agree. The directors do not – do need to be fully informed, but there has to be a process. David's note is quite explicit. It is a very serious issue." Do you agree that he was right about that?---Yes.

25 Okay. And then I'm skipping a few lines. The third line from the comma: "I'm obliged to not only keep directors informed but also to give them adequate time for discussion. What I propose is that we have an in-camera meeting of the board of Product Co before we open it up for discussion to guests. I have to detect the mood and respect the views of my fellow board members." And then I was going to ask you to go down to the second last paragraph: "On the question of whether David should attend the QR board meeting, this must be a decision for Bob, as chairman." 30 That's funny. Why would he say that? That's crazy?---I don't know why he'd say that; it wouldn't be my decision.

35 Well, it's crazy, isn't it?---Well, I can't – I can't comment. He – he - - -  
From what you've been telling us, it's crazy, isn't it?--- - - - he said that. Right. I've - - -

Yeah. But you've talked to him that this is his area?---Yes.

40 Okay. That's crazy stuff, isn't it?---Well, I'm not going to comment whether it's crazy or not, but - - -

45 Well, you think it is now reflecting back on it, don't you?---I – I can't comment on what he's actually saying.

Well, I'm asking you to comment. Comment on it?---And it wouldn't be my decision.



I know that. I'm asking you to look at what Hanmer's said about that: that it was your decision, after you tell me you'd told him that it wasn't yours. It was somebody else's, namely, his. Now, if he wrote that, that doesn't make sense either to your evidence - - -?---The sentence – the sentence doesn't make sense.

5

No. Or we don't accept what you say earlier. That would make sense then?---As I said, that sentence doesn't make sense to me.

Let me put it to you squarely, so you understand what I'm saying. "On the question of whether David should attend the QR" – that's a different board; that's Queensland Racing – "Queensland Racing board meeting, this must be a decision for Bob" – that means you – "as chairman. As he is conflicted, I certainly don't want to even broach the subject of Product Co and its outcomes at any time with him. I will leave it to you to approach him." What is that? What do you think of that?---I don't know. I haven't got an answer.

15

Doesn't make sense but, does it?---No. It doesn't

But I'll tell you what, it looks like a setup for a – what you might call a catch-22. You can't get involved and decide to bring David Grace along to Queensland Racing, because you've got a conflict, and he's not going to tell you. So it's sort of stalemates. Do you see what I mean – if we run with Hanmer's logic?---Yeah – yep – logic.

20

And then could I ask you to go to 87, please. This is from Mr Tuttle to Mr Hanmer, and Ccs Murray: "Thanks, Tony. Bob has declared a conflict in respect of this issue and quite rightfully does not wish to be involved, and as such I will not compromise his position and seek his views as to whether David should attend the QRL board meeting to comprehensively brief the QRL board. That is why I sought your view. As per your instruction, I will advise David he is not required to attend the Product Co." So nobody's getting it at the moment?---No.

25

30

Nobody gets David, you see. Terrible, isn't it? Don't you think?---Yes.

Yep. And then over to 88, please. This is Tony writing to Mr Tuttle again: "Malcolm, all the Queensland Racing directors except Conflict Bob will have been at the Product Co meeting that day before when this whole matter will have been exercised, so I am a bit lost as to why David will be needed so soon after the initial discussion. Re David Grace, as I said in my second paragraph below, I have already spoken to him and we agreed he would not attend Product Co." He's pretty keen for him not to come, isn't he, by the look of those emails?---[indistinct].

35

40

Yeah. And you're not going to have him when you're there?---What did you say?

You're not going to have him when you're at a board meeting, are you, talking about this?---No. I don't think there was any reason for him to come to the board meeting for any other purpose.

45

No. That wasn't my question. I said you're not going to attend any board meeting of Queensland Racing when David Grace comes along to explain his advice, are you?---No.

5 Yeah. And he doesn't want him there at Product Co either. See that?---Well, that's what he's saying.

Would you go to – at 90, please, Mr Bentley. I'm sorry – not 90. 89 I should show you. It's only the first paragraph, but you read as much as you wish?---I don't  
10 understand the meaning of what I'm reading.

No. Just the first paragraph. What is – what Tony's doing is telling Bill Andrews, who's a lawyer who's also on the board of Queensland Racing and Product Co, about this push by the executive Tuttle to have Grace come along: "I mentioned this  
15 Product Co issue when we chatted on Friday. If you start at the bottom and work up, you will get the correct chronology. There was fair bit of pushback but not surprisingly, my last note stopped that." Okay?---Yes.

So that's what's happening, and then if I ask you to go to 90, please, you'll see, even  
20 though nobody's suggesting you did attend, that this was a board minute of Product Co – of Queensland Race Product Co of the 4<sup>th</sup> of December 2008, which is the first occasion when the advice coming from Grace was available to anybody. And firstly you'll note that – you'll see that Mr Lambert, in the second paragraph under  
"Apologies", wasn't present and provided his proxy to Mr Hanmer. Go that?---Yes.

25 And then Mr Lette – I think Mr Lette was a lawyer too, wasn't he?---Mmm.

He wasn't there either. And then if I get you to turn over the page, please, you'll see  
30 under "2.1 Race Fields Legislation", at least the minute records that "The board agreed that it was discussed at some length whether the role of Queensland Racing Product Company should continue. It was unanimously agreed that the benefits of the existing arrangements outweighed any alternatives, and Product Co will continue." See that?---Yes.

35 Did you come to know of that decision?---Don't really know what that one's about, counsellor.

Well, I'll tell you what it's about. You see, what it's about is that Product Co, after  
40 this time, took up the role of chasing the corporate bookmakers for their licence fees?---Oh, right. Yeah.

Remember that? What – that was one of the - - -?---Yes. They did. Yes.

45 That was one of the big issues where you thought it was important to keep Shara Murray on in 2011, didn't you?---That's correct.

Because she had to chase them and she knew how to do it?---Yes.

Okay. And then in “2.2 Letter from David Grace: Mr Hanmer updated the meeting on advice he had sought from alternative legal practitioners and the racing office, and on the letter received from Cooper Grace and Ward. This letter, already previously circulated to all members, addressed to Queensland Racing, is code-specific; however, its contents were noted by the board.” See that?---Yes.

And did Queensland Racing have other legal practitioners it would retain to give advice to it?--- David Grace was the one that was giving the main advice for a while. Clayton Utz at one particular period.

I think that was a bit later, when Mr Dunphy came; wasn't it?--- Yeah, I can't think – offhand I can't think of anybody.

Okay?--- There may have been.

Anyway, there might have been a different lawyer for Product Co. Maybe that's what he's talking about?--- No, I wouldn't think so.

Okay?--- Although I don't recall having a separate lawyer for Product Company because Racing Queensland were carrying all the costs.

Yep. Okay. Okay. So then, if I ask you please to go to the next one which is at 91. You'll see these are minutes of Queensland Racing, which is a meeting that occurred the next day; you see that?--- Yes.

And Michael Lambert's not there?--- Yes.

And then if you go over to page 3 in 2.3, Queensland Race Product Co meeting. “The chairman offered to exit the meeting if there was any conflicting matters. Queensland Race Product Co chairman stated that this was a report for noting the Queensland Race Product Co minutes to be included in the Queensland Racing Limited minutes. Mr Hanmer updated the board re Queensland Race Product Co meeting held on 4<sup>th</sup> December 2008. The board noted above.” Now, that would seem that Hanmer's updating people, including you - - -?--- Yes.

- - - about what happened at that meeting yesterday, the 4<sup>th</sup>; doesn't it?--- Yes.

Okay. Do you recall that?--- No.

Do you recall if he updated by informing the meeting that Queensland Race Product Co had other legal practitioner's views that it had discussed on the big question?--- Yes, I think I do. Yes.

Okay. Tell us about that?--- I can't tell you about it - - -

Oh, okay?--- But I do remember that particular thing now you jogged my memory, yes.

Okay. [indistinct]?--- But I don't know who they were or what - - -

Okay?--- Yep.

5 But the substance of it was, was it, that Mr Hanmer was looking around and got  
some other legal advice; did he? Something like that?--- I don't know whether it  
was – he was quoting legal advice from UNiTAB. But I think at that particular time  
he did say he – there was other – trying to reconstruct and remember, I – it's a bit  
difficult. I mean, I think that he was saying at that time that there was other advice to  
10 the contrary.

Yeah?--- Something – words to that effect.

15 Yeah?--- But I don't remember who it was or what it was.

It's a funny reaction, would you think, that he would be looking for alternative  
advice from Mr Grace's advice, who obviously Queensland Racing paid good money  
for and went to a lot of trouble to get. Had a number of conferences, had Mr  
McIlwain talk to him. Why would he get alternative advice?--- I don't know where  
20 the alternative advice - - -

No, I know you don't know where. But why would he?--- I – you'd have to ask Mr  
Hanmer that question.

25 I know. But when you were at the meeting of Queensland Racing and you heard  
about it - - -?--- Didn't - - -

30 What did you do?--- I was at the meeting there. I was allowed to stay in the meeting  
to listen on the updated race fields.

Yeah, yeah?--- But I did – I wasn't participating so I didn't ask questions.

35 No, I know. What did you think about it, that the man's going around getting other  
advice rather than Mr Grayson's?--- I don't know what I thought about it at the time,  
it was five years ago. But - - -

I tell you what - - -?--- It didn't ring any bells at the time. I mean, it was a  
discussion.

40 I'll tell you the obvious conclusion, and that is that he wasn't satisfied with it. You  
only go and get other ones if you're not satisfied with the first one?--- I don't know  
whether he went out and got another one or he had access to another one. I don't  
know. I just vaguely remember that particular conversation.

45 Let me give you an idea of what I'm talking about. If somebody who's not a lawyer  
gets a lawyer's advice and he reads it. And then he goes and asks another lawyer,

“What do you think about this proposition?” He only does it, doesn’t he, if he’s not confident that the first advice was right?--- I think you could draw that conclusion.

5 Or he doesn’t like it?--- Not necessarily he doesn’t like it. Second opinion is always valuable.

Okay. Well, let me tell you what you said about Mr Grace, recorded in the minutes of Queensland Racing some time earlier. “The chair advised that Queensland Racing had contacted the most respected, professional and competent corporate lawyer.”  
10 That’s Mr Grace you’re referring to?--- Yes.

You thought that of him at the time; didn’t you?--- Yes.

15 Yeah. So you know that your board, but not with you on it, and somebody from Harness and Greyhounds was hearing other legal advice too when they were sitting in Product Co?--- Well, I – I’d say yes, I was – I was there. I cannot recall the conversation. Yes, I do believe that Mr Hanmer did say that, that he had other opinion. Now whether it was a written opinion or a verbal opinion, I’m not sure.

20 Okay. Now, would you turn to 92, please. Now, this document – just to help me understand this document or the form of it, I should say. I know you haven’t read it. It’s got on it, “File note, confidential.” It’s Queensland Racing. And if you turn over the page, you’ll see the author’s signed it at the bottom. And it’s Malcolm Tuttle who’s the author. And it’s in the records of what were Queensland Racing’s records.  
25 And that’s an odd thing I’d respectfully suggest to you, Mr Bentley, that he would keep a file note. Why would he do that?--- Malcolm kept file notes at different times.

30 Did he?--- Yes.

Okay?--- It wasn’t an unusual thing. Malcolm did have file notes, yes.

35 Okay. Let’s have a look at what he’s recording, please. In the first paragraph on Wednesday, 19 November. “I met with Tony Hanmer at the Sofitel Hotel in Brisbane at 7.30 am to discuss advice that had been received from David Grace.” You see that?--- Yes.

40 Second paragraph, “A copy of that advice is attached to this file note and was provided to Mr Hanmer. Bearing in mind the advice from David was worthy of further consideration due the nature of the advice, I formed the view that as Product Co had a meeting scheduled for the 4<sup>th</sup> of December on Thursday, it would be appropriate to have David present to explain his opinion and be in a position to answer any questions. I also attached to this file note – there’s a copy of an email exchange between myself, Tony Hanmer, Shara Murray in relation to the Product Co  
45 meeting. The nature of the exchange relates in part to the presence of David Grace. On Friday the 21<sup>st</sup> of November, Tony Hanmer emailed myself and Shara Murray stating that David will not be attending the meeting. In response, at 11.40 am I

5 pointed out that in my view Product Co should be fully informed in respect of the issue, and David Grace as the advising lawyer was well placed to provide clarity in respect of the legal nature. Notwithstanding, given Tony Hanmer's position as chairman, I advised David Grace he would not be required to attend. On the morning of the meeting, I spoke to Tony Hanmer, as secretary and chairman at approximately 8.30 am. And it was Tony Hanmer's view that David Grace's opinion was rather poor, and that he had spoken to Mr Bob Lette. And that there were two other opinions that were in conflict with David Grace's opinion. I am uncertain as to whether these opinions were produced at the meeting as the meeting was a directors only meeting at the request of Tony Hanmer." You see that?--- Yes.

15 And then in the next paragraph, "In addition, during our discussion on December 4, Tony Hanmer outlined the opinion he had received was that it was reasonable to interchange the items supply and use in the Product and Program Agreement as, in effect, they had the same meaning. Then I raised concerns with Tony at this point in time as legislation was due to be passed in parliament later that day. And the legislation was built around the use of information and not the supply of information. And I further pointed out that racing information was supplied to UNiTAB by RISA, and that in my view the use of that information for the purpose of race wagering would be treated separately to the supply of racing information. He did not share my view, but did not want to continue the conversation." Why would he think that note? Do you think it looks like he was concerned that it might come down on his head one day for not doing something about it? Could that be the reason; would you think?--- Perhaps you'd have to ask Malcolm why he kept it.

25 Yeah, okay. Did this file note come to your attention?--- No, I haven't seen it.

Did Malcolm ever mention this tension to you, his chairman?---Yes. He did.

30 Okay. What did he say?---I just said well – Tony and I are in a bit of – a bit of a difference of opinion on this Product Company. I said we just have to sort it out. I mean – words to that effect.

35 Okay?---I know – I don't know exactly what I said.

Understood. But you as chairman, would you recommend any ways to sort it out?---No. Not in this issue.

40 Well, why wouldn't you say to them, "Why don't we get Mr Grace's advice and get it tested by a QC," or something like that?---Well, I didn't.

No. I know you didn't?---Yeah.

45 But why wouldn't you say that?---Well, I – I – I didn't. I – I wanted to stay away from this.

But even a fair chairman performing fairly would try and find a solution to this very, very important issue, wouldn't he?---Well, I didn't.

5 I know you didn't, but I'm asking you don't you now agree, reflecting back, that it might have been sensible to say, "Holy smokes, we're being charged \$500,000 a month and we've got the CEO and his chairman disputing about the legal advice we've got from the most respected lawyer in Brisbane"?---I expected them to sort it out between themselves.

10 You know what it tends to indicate, Mr Bentley, as one option that one might grab as the conclusion? That you didn't want to sort it out. You were happy with the way it lay at that time?---I wouldn't accept that.

15 I know you wouldn't, but why wouldn't somebody conclude that? This is ridiculous, what's going on here, I suggest to you. Ridiculous, don't you agree? Seriously, don't you agree?---Seeing it – seeing it in black and white, yes.

20 It's so ridiculous, you see, at the end of the day we are all going to be making submissions about this stuff and how ridiculous it seems to be at this time. If you can offer any advice that makes sense of it or any evidence or any submissions, we need them?---Okay.

25 And you understood I've put that to you because I really need your help on this?---Yes.

You're an experienced businessman and chairman. You know what corporate governance is about and the lovely CEO says, "I've got a problem here. This advice is really important; help me, Chairman," and you do nothing?---Oh, I don't know whether he said that – help me, Chairman.

30 That's the substance of it but, isn't it?---No. I don't think so.

Okay. What was the substance?---No. I – I don't think so. Malcolm said look - - -

35 You tell me what the substance was. I don't want to be lost; you tell me the substance?---I probably did – look, the conversation would have gone along the lines of - - -

40 Yeah. Go?--- - - - Malcolm would have – would have said look, I'm having a bit of a problem with Tony on this Product Company advice.

45 Right?---I said will you need any help? He said no. You – you've got a conflict. Stay out of it. Something – I'm not saying that's what I said or what he said, but it would have – the conversation would have gone approximately along those lines.

It's time I asked you what you meant when – what you understood him to mean when he said or when you said, “I've got a conflict” in relation to sorting out the problem between the chairman - - -?---Oh no, no. I've got a - - -

5 Sorry?--- - - - conflict on this issue.

No, no. What I'm asking you, Mr Bentley – we're going to focus on it, you see. When the CEO says to you or you say to him, “I have a conflict on that issue,” when all he's talking about is sorting out the difference between Hanmer and him on the important issue at hand, how does the conflict thing have anything to do with sorting  
10 it out?---Well, I wanted to keep right away from the issue.

Is that all you've got?---That's all.

15 Seriously, is that the reason?---That's the reason. I have a conflict in this issue and I wanted to stay from it.

It's just unbelievable, Mr Bentley. It really is unbelievable, that answer, honestly. I'm suggesting to you you know that's unbelievable?---No.

20 This is a \$500,000 a month issue. Give us a break, please. Give me a better answer than that?---I haven't got another answer for you, counsellor.

I didn't think so. I just wanted to ask you to go back, please, to the document at 91, please, Mr Bentley. Remember this was the board meeting of the 5<sup>th</sup> of December  
25 2008?---Yes.

Okay. And if I ask you, please, to go over to page 4 of it, looking at the top, at 3.5 there's a heading “Re-election of Directors Under Queensland Racing Constitution”.  
30 Do you see that part?---Yes. I see that.

Would you mind reading that, please?---That's correct.

Well, what was happening was there was a constitutional requirement for two of the  
35 directors to rotate off the board?---That's correct.

And it was the case, wasn't it, that they could sit for re-election if they wished?---Yes.

40 One did and one didn't, as it turned out in the end?---That's correct.

Andrews did and Lambert went off?---That's correct.

Okay. We'll come back to that, but one thing is for sure: that you played a role in  
45 that, didn't you? That was who should go off?---In the end, yes. I had to make the decision.



- 5 Okay. Well, we'll come back to that. So would you go – yes. Would you mind going to 272, please. On the 5<sup>th</sup> of December, Mr Grace writes to Mr Tuttle about media release race information legislation, it would seem. You see he says, “I note the passage of the legislation and would be pleased to assist in checking or preparing supporting – support documentation to ensure that the processes applied or adopted are in accordance with law. Have you had any reply from Tatts? We look forward to catching up.” See that? Looks like Grace was still the lawyer who would act for Queensland Racing going forward?---Yes.
- 10 Okay. And did you know what that was about, that - - -?---No.  
- - - Grace was writing?---I haven't seen that before. No.
- 15 Okay. And then – I'm sorry to hold you up, Mr Bentley – 95, please, and Malcolm writes back to Grace – no – start again. Malcolm writes back to Grace on the 8<sup>th</sup> of December saying, “Nothing from Tatts so far.” See that?---Yes.  
And did you know what he was waiting for?---No.
- 20 Did he talk to you about this?---No.  
Did anybody at Tatts talk to you about their response to some request from - - -?---No.
- 25 - - - Mal? Okay. And then would you go to 96, please. I'll just let you read this email so I can ask you something about it. This is Lambert to Hanmer. Michael Lambert was a director, wasn't he?---Yes.  
And we've heard about Hanmer. 11 December 2008?---Yes. That – that's - - -
- 30 Spot on, isn't it?---That's an argument between Tony and Lambert.  
Well, I know, but - - -?---Yeah.
- 35 - - - he's spot on - - -?---Yes.  
- - - Mr Lambert, isn't he?---Yes.  
Right on the button, isn't it?---Yes.
- 40 Let's talk about it?---He was a very good director.  
Beg your pardon?---He was a very good director.
- 45 I'm sorry?---He was a very good director.

5 Yes. And just looking at it, he's saying to Mr Hanmer, "I was and am stunned by your reaction to the issue I raised. I thought I was clear in the way I raised the matter, but the ferocity of your reaction must mean I failed in this regard. First, I'm not concerned with how the Grace letter arose or the motivation of Mal." Did they ever report what that was about to you?---No. Not that I can recall.

10 "Second, I agree with your layperson interpretation and assessment of the issue." That tends to indicate that Hanmer was not agreeing with Grace's view on the law. Don't you reckon?---Well, that's - - -

Yeah?--- - - - reading it – yes.

15 "Third, I have no problem with how you have handled the matter, at least up to the time of our phone conversation diatribe. My sole issue is to ensure that we and QR" – meaning Queensland Racing – "are not exposed in respect of our duties under the corporations law. The matter has arisen – the matter that has arisen is not a run of the mill matter but has a potential financial impact of 10 million per annum, would have a major impact on Tatts and exposes Bob to a potential major conflict of issue – interest issue. My suggestion to avoid these potential problems is simply to get 20 senior counsel's advice. I see this as an insurance policy at the modest cost of, say, \$5,000. I also think I am entitled to raise such a matter and not to subject – not to subject to an emotional dump." He's right about all that, isn't he?---That's what he's written to Michael. Yes – self-explanatory.

25 I know, but you agree that he's right about that, isn't he?---Well, I – that's his email. I mean between – between two directors – yeah.

I don't want to hear about - - -?---I don't know what - - -

30 - - - it being an email. I know that part, you know?---I don't know what went on, but the – the – the facts - - -

No, no. Let me ask you the question again - - -?--- - - - the facts of it – the facts in it - - -

35 - - - so we're both clear. Because I've got to give you a chance to answer it; you see? He's right about that; isn't he? It would be a good insurance policy to get a senior counsel's advice?--- Yes.

40 Did you get a senior counsel's advice?--- No.

The only reason, I suggest to you, to get a senior counsel's advice might be if you doubted Grace. Because you already had advice that they couldn't charge it?--- But are you saying I should've?

45

Yeah, I am. Yeah, I am?--- No, I don't – I mean, this is an issue for Product Company and the directors of Product Company. This is not an issue for me at this stage to handle the situation.

5 Mr Chairman, as you once were, looking at this email. If you had learnt of these events, surely you would've done something?--- If I was in a position to do it and I didn't consider I had a conflict, I would've done something about it.

10 But don't you think Lambert is right there in saying to Hanmer, "You – this is a very important issue. Don't emotionally dump on me about how it's arisen."?--- Yeah.

"Let's just deal with it." He's right; isn't he?--- Yes.

15 Yeah. Somebody should've done something about this; don't you think?--- Yes.

And then 98, please?--- Yes, I've read it.

20 You've read it. Pretty incredible, isn't it; don't you think?--- I would – it's a spat between directors over a fairly major issue. I mean, Tony is there suggesting that he'll get further advice; correct? Am I correct in saying that?

He said what, sorry?--- Isn't Tony suggesting there - - -

25 I think Tony – what Tony's saying is it's too expensive?--- I thought he said – I thought he – well, he said so I would suggest that we go to Jackson to provide our [indistinct] and divide our costs at 20 – 52,000 if you are.

Well - - -?--- Bearing in mind I haven't seen this.

30 No, no. I know. I know. What I'm doing, you see, is showing you what happened because you had a – what you call a conflict on this issue. And I'm trying to show you so that you can comment on it. What happened with Mr Hanmer dealing with this major issue? And in particular, you see, it also might be that somebody might conclude at the end of the inquiry that you were being kept up to date by Mr Hanmer  
35 or Mr Tuttle. That's why I must show you this; you see?--- Yes.

Because – because you had a conflict, people might think that you had an interest in Tatts doing well out of this, as it did; see? That's why we're doing it?--- Okay.

40 So on the 14<sup>th</sup> of December on Sunday, Tony writes to Lambert. And in the third line, "The Grace letter was briefed without any involvement of Product Co or any reference to Product Co." Was that true?--- I - - -

45 Well, you remember. We looked back at the - - -?--- Yeah, I - - -

Yeah?--- You've got me at the meeting, I guess it would've been.

Yeah?--- Yes.

What happened was you recall that the retainer was by Queensland Racing?--- Yes.

5 Yeah. And he's taking the point that Product Co haven't got any agreement – any advice?--- No.

That's what he's saying; isn't it?--- That's what he's saying, yes.

10 That means that the paper's got a name on the top left hand corner - - -?--- That's correct.

- - - that says Queensland Racing?--- Yep.

15 So he's saying, "We don't look at it." Don't you think that's what he's saying?--- No, I didn't read it that way. No.

Okay. "Product Co, if we all rushed off and sought advice on every issue, we would enjoy anarchy." He's talking about the issue at hand, the 500,000 a month issue.

20 Holy smokes. I ask you to comment on that, please, Mr Bentley?--- Just – where's that?

Yeah, that's the one line paragraph, the second paragraph. "Product Co, if we all rushed off and sought advice on every issue, we would enjoy anarchy."?--- I believe  
25 he's generalising there saying every issue.

Yeah. Well, this issue deserved it?--- Yeah, but every issue – that's what he's saying.

30 And then if I ask you to jump a paragraph. "So we are now looking at four people who all concur. I circulated the letter from Cooper Grace and Ward to all Product Co directors on the 1<sup>st</sup> of December again with no dissent. At the Product" – I just don't get all this, Mr Bentley. I've got to share it with you. When you have a very  
35 respected lawyer's advice, who was retained by Queensland Racing and says they can't deduct the 500 a month which is happening right now. And we're talking about this rubbish. Do you get it?--- Product Company and the directors without me should've been capable of handling this themselves.

Exactly. Exactly?--- They didn't need me to handle it.

40 No?--- They should've been able to handle it.

But the word was getting back to you surely?--- I – look. I knew that there was an issue there, definitely.

45 Anyway, it's amazing to me, you see – and I ask you to comment – that Hanmer, who's in advertising, would say, "We are now looking at four people who concur."

That's amazing; don't you think? He means Grace is one who's the other way but the other four are this way?--- I – I take it that four people concur might be the other directors of Product Company.

5 Yeah, exactly?--- Bob Lette and Kerry Watson.

Yeah, exactly?--- So I feel that you should be putting those questions to them.

Okay. Well, I will. Don't worry.

10

COMMISSIONER: Mr Bell.

MR BELL: Yes.

15 COMMISSIONER: I'd just like to ask Mr Bentley a question. I know that it's probably interrupting your train but I can't keep silent any longer. Now, I know this is – you're not involved in this letter. And you explained very carefully that you weren't involved in anything. Would you be able to arrive at an explanation as to why Mr Hanmer was so rejecting advice that would bring \$10 million a year into the  
20 coffers of the racing co that he represented? Together with Greyhounds and - - -?--- Commissioner, Mr Hanmer's very protective of his position with Product Company. I can't – I think he genuinely believed in the fact that – I mean – that the Product and Program Agreement was strong. I think that he also spoke to people at UNiTAB. I don't know exactly what he did.

25

It just seems a very odd position to take, as though he just doesn't want the money?--- Certainly.

30 He doesn't want any possibility of the money ever coming to Queensland Racing?--- From my discussions with him subsequent to this, and I asked him about it, he said he believed that – I mean – that we weren't entitled – we weren't entitled to it.

35 MR BELL: But is he entitled to do that when he's got a lawyer's advice, Mr Bentley; would you think?--- I just said subsequently. That's since we're not – no longer directors of Racing Queensland.

I didn't listen closely enough. Subsequently, what did he say?--- Subsequently – I mean, he said on this issue he always believed that Racing Queensland weren't entitled to it and he felt that he'd done the right thing.

40

No, I got you the first time. Here's my point back to you to comment, please. Is he entitled to do that as a director, when he's an advertising guy with experience, to reject the lawyer who's retained for the job who says, "On the 500,000 a month, they can't deduct it." Is he entitled to do that?--- As a director – I mean, he needs to take  
45 a balanced decision. I mean, whether it's balanced or not – I mean, those are the decisions that – you'd have to ask him.

Yeah, okay. Well, one thing for sure is you took legal advice a lot during all this period - - -?--- Yes.

- - - for Queensland Racing; didn't you?--- I did.

5

Let's have a look at how much because I've got it just there. And while we're passing 97, divider 97. If you go to the second page, I'll tell you where these documents come from in a sec. On the second page, it's got the number at the bottom of the page, you see it says "Queensland Racing" and gives a client number billings for 67 as at March '10. So these are figures from Mr Grace. And what he recalls - what his records show is for the financial year '6/7, \$290,000 was the amount billed for legal fees; you see that?--- Yes.

10

And then in '7/8, 166,000. Am I going too fast?--- No.

15

Okay. 2009, 273,000. And then in '10, what happened was there was the negotiation of a retainer for \$240,000 a year, but not to include litigation you'll recall?--- Yes.

20

So my point really is only this: that retaining Mr Grace to do legal work was something that you at least thought was sensible?--- Yes, I did.

And continued to think was sensible?--- I do.

25

And the board of Queensland Racing, which included Mr Hanmer, would appreciate that a lot of money was spent with Mr Grace over the years?--- Correct.

And that means on lawyers getting legal advice. So there was no adversity to spending money on lawyers if it was an important issue?--- Correct.

30

Okay. Is this a convenient time, Commissioner?

COMMISSIONER: It is, Mr Bell. Thank you. We'll resume, ladies and gentlemen, Mr Bentley, at 2.15. Thank you.

35

**THE COMMISSION ADJOURNED**

**[12.57 pm]**

40

**THE COMMISSION RESUMED**

**[2.15 pm]**

**ROBERT GEOFFREY BENTLEY, CONTINUING**

45

**EXAMINATION BY MR BELL**

COMMISSIONER WHITE: Thanks, Mr Bell.

MR BELL: Could Mr Bentley see the document behind divider 93, please.

5 Before lunch we were talking about legal fees, you recall, Mr Bentley?---Yes.

And in particular, we were talking about the fees that were expended with the Cooper Grace and Ward giving legal advice. Remember that?---Yes.

10 Having a look at this document, it's an email from you to Mr Grace of the 7<sup>th</sup> of December 2008. I'll let you read it, please?---Yes.

This was an email from you to him, seeking some advice?---That's correct.

15 Okay. The first question involved whether – “To nominate for a position as chair or committee, is there a process or is it on the day?” You see that one?---Yes.

And then 2: “Can a director nominate for the position himself and have a valid nomination, provided it is seconded?” That was your second question?---Yes.

20

And third was “Can the term of office be extended beyond the annual meeting without an election or can it be extended by agreement”?---Yes.

25 And number 4 was “In the case of a chair being elected, that is the situation and the chair would only stand down of his own free will or under statutory conditions under the Corps Act.” You recall asking those questions of Mr Grace?---I do – do remember asking those questions. Yes.

30 Okay. And then if you go to 94, please - - -?---Could I just interrupt.

Yes, of course?---I think that was to do with the ARB, not with Racing Queensland.

Right. Just go to 94, then, please. This seems to be his advice back to you about the ARB?---Yes.

35

And that was a question about – relevant to you, because you were interested in your position at ARB?---That's correct.

40 Did this have anything to do with QRL?---No. It didn't.

So why then did it pay the legal fees?---Because – because I am a member – member. I go to the ARB as a member for Queensland.

45 Yeah?---I needed to know what the situation was – I mean if I, as a member from Queensland, stood for the ARB.

When you said, “No. It didn't,” what did you mean?---Oh, it was a mistake, sir.

Okay. Let's turn over to 95 and see – bear with me – 100. You'll see a few through and you'll see the account comes to Queensland Racing?---Yes.

5 And so your point is, is it, that that was a fair charge for Queensland Racing, because you were its representative on Australian Racing?---Yes.

And as chairman? Was that necessary for - - -?---No. I was on the committee.

10 Beg your pardon?---I was – I was a board member.

You were - - -?---Yes.

- - - but you were asking him about you coming chairman, you see?---That's correct.

15 Was that necessary for Queensland Racing?---I think it had – holds certain advantages, yes.

20 But wasn't that really your personal interest?---No. I don't consider it was. It was – I was only ever on the Australian Racing Board and – and as a board director from Queensland, you're only on the Australian Racing Board if you are a – a director of the control body of a state.

25 I know that's a precondition, but it's not necessary for you personally as chairman to be on it, is it – the Australian Racing Board – to being on it?---The chairman is always on – on it. I - - -

Okay. So what was the necessity for the advice then?---Because I intended to – to stand for chairman.

30 Yeah, exactly. So was that essential for Queensland Racing's business?---I think it holds certain advantages. Yes.

Does it hold any advantages for you?---Not really. No.

35 But it was your ambition to become chairman?---Yes. It'd be fair to say that, sir.

But Queensland Racing paid for that?---Paid for that advice?

40 Yeah?---As far as I know, yes.

I wanted to ask you about one other piece of advice that you sought. If you go to 101, please, while we're talking about legal fees. The first page, you can see, it's advice from Clayton Utz?---Yes.

45 It's styled, "Discussion about potential restructuring issues"; you see that?---Yes. I do.



And then I'll give you a chance to just breeze through it?---It's a fairly big document.

Sorry?---It's a fairly big document.

5 That's why I don't want you to read it all. I said breeze through - - -?---Okay. Okay.

- - - you see, to remind you that it was something that was obtained from Mr Dunphy generally about Queensland – Racing Queensland?---Yes.

10 Just have a look at the start, then, in 1.1: “We have been asked to provide advice to the chair” – which is you, of course. You see that?---Yes.

You've got the page where I am?---I've got the page; I'm just looking for the date.

15 Yeah. Okay. I've got the date somewhere. The date is, I'll tell you – July 11 it was, in fact?---July - - -

But I can't see the date on the document?---Thank you.

20 So in 1.1 under “Overview and Purpose: We have been asked to provide advice to the chair of Racing Queensland in respect of the extent of the state's power to legislatively alter the existence or stature of Racing Queensland” - - -

COMMISSIONER WHITE: Structure.

25

MR BELL: - - - “structure of Racing Queensland.” You see that?---Yes.

And the advice is concerned with the situation for Racing Queensland should the government change?---That's correct.

30

And if the government changed by a election, it might legislate to change Racing Queensland as the control body?---I think that - - -

35 In some way?--- - - - that is the purpose of me going to – to Barry – Barry Dunphy to find out what was the situation.

And you were exploring the powers a new government – not a Labor government – might have that would impact on Racing Queensland?---That's correct.

40 If, for example, the people of Queensland elected a new government – say, an LNP government – what interest would it be of yours that that government might wish to change something legally?---It was more – if I remember the advice that I asked for, it's what is the board's position if there's a – if there's a change of government?

That was - - -

45

In relation to them bringing in legislation?---More – more – excuse me. More so what was the board’s position if the government wished to dump the board? Do they have the legislative power to do it?

5 Yeah?---That – that was roughly what I wanted.

But why would you investigate that? I’m thinking, Mr Bentley, if the people of Queensland elect a new government and that government goes to bring in new legislation, which presumably it’s entitled to do, why would you care or what interest  
10 would you have in maintaining a position against that?---Well, as it turned out, we didn’t maintain a position against it. But we at least needed to know what was the situation if there was a change of government – what would – and what could they do? Certainly we asked that question. The board asked me to – to check that out.

15 I got all that, but why?---Well, we needed to know. I mean - - -

But I don’t - - -?--- - - - come day – come day one, what happens? Do you sit there like a wood duck waiting for something to happen? No. We wanted to know did we  
20 have the power to stay there or should we be making a transitional period now?

I’ve got it now. I think the point is this, isn’t it: that if the government of the day doesn’t want Mr Bentley and others to stay as directors of the control body, Mr Bentley and the others want to find out if there’s a lawful way to achieve that by the  
25 government?---Yes.

So why would that be in Queensland Racing’s interest – or Racing Queensland’s interest?---Well, we – well, we – we took a decision we considered it was.

I know but you see, that’s your interest, you see. If the government of the day  
30 doesn’t want you any longer and it brings in legislation to get rid of you, that’s just your personal interest wanting to stay there, isn’t it?---Well, also we have obligations under the Corporations Act to know exactly as directors of a – of a company limited by guarantee what the situation is.

35 You see - - -?---I mean had – had – if we would just walk out – so if the – if the board walked out en masse, I mean wouldn’t we breach the corporations law?

I’m not talking about walking out; I’m talking about the new legislation that comes  
40 in. So are you?---No. I - - -

Yes, you are?---I’m sorry to – to - - -

I’ll read it to you again?--- - - - to – yeah.

45 “We’ve been asked to provide advice to the chair, to Mr Bentley, in respect of the extent of the state’s power to legislatively alter the existence or structure of Racing Queensland.” Isn’t that about legislation coming in?---Yes.

Okay. That's what you're asking, see?---Yeah – asking what our position is.

Yeah. That's right?---Yeah.

5 If the government wants to bring in legislation – so what you're seeking to find out is whether or not you're able to stay if a new government comes in who doesn't want you in there?---That's correct.

10 Yeah. Well, what's that - - -?---Or what we should do – do about it. I mean we needed to know exactly what the situation where – we were under the impression that being a company limited by guarantee, the government could not remove us. That was the impression that we were under, and I think that it's partly right, from the advice that we got from Mr Dunphy. However, he also said governments can do anything and you'd be silly to resist, or words to that effect.

15 That's right. I've got it. But it seems odd with respect to you, Mr Bentley, for this reason: in 2002, the reason you became a member of the board then was because the government wanted you to be one?---No. I don't think the government wanted me specifically to be there. No.

20 Okay. Let's go up to 2006. In 2006, when the new constitution came for Queensland Racing, you advanced a position that your term be for what was defined as the initial term under that constitution. You would be the first chairman?---That's correct.

25 The government decided that, because they were the ones to approve the constitution?---That's correct.

30 And when the legislation came in in 2010, again they first had discussions with you and others about the constitution for Racing Queensland - - -?---That's correct.

- - - and who would be the directors and for how long?---That's correct.

35 Okay. So don't you reckon they had – the government of the day had something to do with you being chairman?---Yes. They – they would have - - -

Okay?--- - - - under that scenario.

40 Yes. Now, if the people of Queensland didn't want that government, they wanted a new government, why would you be fighting the new government as to who they then wanted?---I didn't say that we were going to fight the government. What I - - -

45 Okay. Why were you interested to find out what their power was?---Because we're a company unlimited by guarantee under the Corporations Act and we wanted to know what our position was and I don't think that's unreasonable.

It seems like somebody wanting to stay in power despite what the government of the day want?---I can assure you I didn't want to stay in power.

5 Anyway?---What I wanted at the time, counsellor, was an orderly transition and we wanted to know what the position was.

Did you really want an ordinary transition, Mr Bentley?---I consider I did, yes.

10 Why did you release the CEO on the day after the election?---They had a – they had a contract and the contract said - - -

15 But you had a discretion for giving them seven days to stay there and do the transfer over, didn't you?---And there was a period of seven days and I took a considered opinion that, I mean, if they were going to go they may as well go now and get on – let's get the thing restructured and move on.

You did. That's right. So you lost him the first day after the election, didn't you?---Yes, we did.

20 And in fact the only reason he could leave at all on the terms that he did with the pay out because you entered – you offered a new agreement to him in August of the year before?---Yes. Yes, and to three others we considered necessary to hold them for that period of time.

25 And they all left on the Monday?---Left – they left on the Monday, yes.

And you exercised the discretion you had that you put in place with the new terms of employment to let them go?---Yes. I – I agreed to them to – after discussion, yes.

30 That wasn't very much in line with a smooth transition to the government regime, was it?---Well, I took advice on the board and with the intentions of the government and their intentions to scrap the control body and I think there was enough media speculation and said that, I mean, the board would go as well as the executives. The contracts were put in place. That is definitely correct.

35 We're going to come back to that. Don't worry. But I want to ask you this. Please answer my question. Why would you give away those seven days for the company to have at least seven days to get somebody in place to take over the CEO, the legal officer, the head of integrity – the director of integrity, product developments  
40 director – why wouldn't you give them seven days, Mr Bentley?---Well, I – after – after discussing it with him and looking at the situation I considered, I mean, that – that – that they could go and we could get on and restructure quickly. I mean, having people hanging around who want to go is not a really good – good thing.

45 Seven days, Mr Bentley. You're the only one with the discretion. Why would you exercise it? Not give Shara Reid seven days to get a new lawyer in and talk to the new lawyer. Seven days to get a CEO in place. It doesn't make sense, Mr

Bentley?---It was – it was plenty – well, as far as I was concerned it does make sense. We had plenty of back up there at the time.

5 Okay. We'll come back to that and see whether you did have back up. 103 please, Mr Bentley. It's informative, if you don't mind, to read the email at the bottom of the page from Mr Hanmer to Mr Lambert of the 14<sup>th</sup> of December before you read the one at the top of the page at the 18<sup>th</sup> of December, please?---Yes. I've read it.

10 Sorry?---I've read it.

Okay. You've read the one at the bottom?---Yes.

It goes over the page, please?---Oh, sorry. There's nothing over the page.

15 Okay. I'm sorry. I better check that because mine goes over the page. Okay. Sorry? Could I see it, please? Okay. That's called a trick.

COMMISSIONER WHITE: To see if we're still awake after lunch.

20 MR BELL: I'm going to show you this copy, Mr Bentley and I'll get them replaced as soon as possible. The one at the bottom of the page that I was referring to, I'd ask you to reconsider first. I think you've looked at it already in earlier - - -

25 COMMISSIONER WHITE: Mr Bell, just before you do that, Ms [indistinct] alerted me to the fact that the email of the 14<sup>th</sup> of December, 12.45, which is what's the – miss at the bottom is actually in full at number 98. So if it is necessary for the other people in the courtroom to have a look at it, they can go to tab 98, those that are looking, and we'll put it up on the screen.

30 MR BELL: I think what the Commissioner says is correct, Mr Bentley. Do you recall looking earlier at the bottom one - - -

35 COMMISSIONER WHITE: It was the cranky – the cranky email?---Oh, yes, I did. Yes, yes.

MR BELL: But the side that you'd see it in context, I wanted you to refresh your memory about it and then look at the top one, please. What it is, is Mr Hanmer telling Mr Kelly of the Office of Racing about Lambert's conduct, isn't it?---Yes, it is.

40 Was that the right thing to do, in your judgment, as a chairman?---I can't – well, if you're asking me my judgment on someone else's attitude?

45 I'm asking you your judgment?---Well, I didn't know it – I don't think that I knew that, that was going to the office of government. I knew he was having a dispute with Lambert but I'm not so sure I knew about this.

No. I know that. But I'm asking for your judgment now because you're a very experienced chairman. Is that the right thing to do to go and tell the government about a board dispute?---Well, he's chairman of Product Company. He's acting – acting for Product Company. He's not acting for Racing Queensland.

5

Okay. So I'll ask you again – give you one more go. In your judgment, as a very experienced chairman, is that the right thing to do – to go and tell the government Office of Racing about an internal dispute between directors?---I think you're very, very hard to ask me that question. I mean to criticise a fellow director in the – in the box. I mean, had I – myself do it – I wouldn't do it.

10

Okay. You wouldn't do it in sending it to the government?---No.

15

Okay. So you think that, that was the wrong thing to do?---Well, I think I've said that.

Okay. Okay. I'll just get you to pass that back now, please. And I'll have that replaced in all the bundles as soon as I can. Do you remember from school days the word dobbing?---Yes.

20

Do you think that he was dobbing to the Office of Racing?---Well, [indistinct] I mean, I think that if you want to use that word. It's not on – not one of my words.

25

Okay. Would you mind going to 105 please, Mr Bentley. You might remember that we talked about this email earlier that you had written to Mr Kelly yourself?---Yes.

On the 3<sup>rd</sup> of January 2010?---Yes.

30

And just to put it in context you will recall that what had occurred was a journalist [indistinct] Sinclair wrote in the Sunday Mail about conflict of interest that you had?---Yes.

35

And in particular at the second half of that page you address that question to Kelly who was in the Office of Racing?---Yes.

40

And I just wanted you to go again now after we've been through some documents – about half way down the page you say, "There has been extreme care taken to ensure that any conflict or perceived conflict has been taken into consideration and the appropriate action taken." Reflecting back, was that accurate?---I think so. In my case, it was.

Okay?---I did as much as I thought – thought was reasonable.

45

After all the documents we've looked at and the evidence you've given, you stay with that; do you? Extreme care has been taken?--- Oh, I think extreme care might be a little – little exaggerated.

- Okay. What about no care? How does that fit?--- No, I don't – don't accept that.
- What care was taken?--- Well, I think I've demonstrated in this particular issue I stayed right away from it. And I told you, I don't - - -
- 5 I don't think you have at all, Mr Bentley?--- I haven't been at any Product Company meetings. I didn't take part in any Product Company decisions where it affected Tatts.
- 10 Didn't you?--- No.
- 106, please. You know we're talking about conflict, that very moment just then?--- Yes.
- 15 Okay. If you look at the bottom email on this page and turn over the page, please. You'll see it's a line of emails, and it starts at the foot of the third page from Myles Foreman - - -?--- Yes.
- - - of RISA to Shara Murray; you see that?--- Yes.
- 20 QRL nominated agreements - - -?--- Yes.
- - - 2007?--- Mmhmm.
- 25 And if you go over the page further, you'll see what he, the CEO of RISA, says to Ms Murray. Further to our conversation earlier today, I confirm the 2007 deed of release specifies the Product and Program Agreement between UNiTAB and QRL as a nominated arrangement as defined in clause 1.1 of the participation agreement. This then means that under the RISA participation agreement schedule 6 clause 2A ceases on the opt out date, which is defined as five calendar days after the effective dated, which is defined the 1<sup>st</sup> December 2003; okay?--- Yes.
- 30 You became involved in this issue; didn't you?--- Excuse me, counsellor. RISA is a different thing from wagering.
- 35 I know what RISA is?--- Yes.
- But you became involved in this issue; didn't you?--- I don't know whether I became involved. I mean, I've certainly been informed of what's going on. I'm not on RISA. Malcolm's on RISA.
- 40 No, no. I'll show you how you became involved. But do you remember becoming involved?--- No, I don't.
- 45 Okay. Well turn back, please. And you see Foreman – I've just shown you Foreman writes to Murray. And then you see at the top of that page Murray writes to Malcolm Tuttle and Carter; see that?--- Can we start on one of five and give me the - - -

Sorry, go right over to five of five, the very back page?--- Five of five?

Yep?--- All right.

5 And then four of five, that's the one to Shara from Mr Foreman?--- Yes.

And then you turn over the page to three of five. At the top you'll see that Shara sends the letter she gets from Foreman on to Tuttle and Carter?--- Yes.

10 You see that? And then if you go back to two of five, and then over to one of five - - -?--- I've only got one – two of five, yes.

Yep. And then you go back to one of five to see the start of the email. It's halfway down the page of one of five. It's from Tuttle to Shara Murray and Mr Hanmer.

15 He's cc'd with Mr Carter; see that?--- Yes.

Okay. And then if you look at it, Mr Tuttle writes to Shara in the first paragraph about the issue at hand. "Further to conversations yesterday, it appears Myles is now confirming that the PPA, meaning the Product Program Agreement, is a negotiated agreement" - - -

20

COMMISSIONER: Nominated.

25 MR BELL: "nominated agreement, notwithstanding the earlier advice. It appears on the face that this means that other PRAs cannot charge for the exchange of racing information for a period of three months. From our point of view, New South Wales should not have been charging UNiTAB for information for September, October, November." See that?--- Yes.

30 So you'll accept, won't you, that what this involves is Tatts' business with Queensland Racing?--- Oh, I'm certainly aware of it. But I'm not – there's nowhere in there I'm making any decisions.

35 Well, go up the top and let's see. And on the 14<sup>th</sup>, you'll see Malcolm Tuttle sends it to you on your private email; see that?--- Yes, I - - -

And then at the top, you - - -?--- Yes.

40 - - - write back?--- But that's – but that's not making decisions. That is information on contracts going backwards and forwards. I mean, that's not a conflict in my opinion.

45 Okay. It's okay to get involved in matters involving Tatts, RISA, in relation to money that's been charged on by Tatts to Queensland RAcIng?--- As far as I'm concerned – and I'll repeat this again. As far as I'm concerned – I mean, the conflict as I see it was making decisions or influencing decisions. The flow of information was to the benefit of both parties.



Let's have a look about that. Look at the bottom of the page again. "Our point of view, New South Wales should not have been charging UNiTAB for information for September, October, November." See that?--- Yes.

5 Right. Now, the only way it becomes relevant to Queensland Racing is because Tatts on charges it by deduction; doesn't it?--- Yes.

Okay. How is that not part of the fertile ground for conflict for you?--- Well, I don't – you asked me, I don't consider it is.

10

Okay. 107, please, Mr Bentley. This is an email from you to Mr Tuttle, copying Shara Murray. New South Wales on repayment. "I do not consider I have a conflict on this issue. Advise and I will butt out."?--- Yes.

15 So are you asking the executive to judge? You are asking the executive to judge?--- Yes, I am. I'm asking do you consider I have a conflict.

Were you in doubt?--- Possibly I was in doubt.

20 How could that be?--- Well, I think everybody has doubt. I mean, I don't think anybody knows everything.

Well, you weren't in much doubt when you wrote to Mr Kelly about how much extreme care you took. Extreme care means if there's doubt, I won't get involved in it?--- Yeah, well that's the way I felt about it at the time. That's the way I considered it at the time.

Well, that's what I'm saying. You understand what I'm saying to you; don't you?--- I mean, this is very easy when you – when you've got heaps of paperwork for me to put forward in front of you. But at that time, that's what I considered.

30

Yeah. My point - -?--- But I wouldn't say – I think extreme care was a bit over. But certainly care.

35 Yeah. But anyway, here you're in doubt about whether or not you ought be involved in this area. So you asked the people below you whether or not they thought you were?--- Well, I don't think there's anything wrong with asking somebody – I mean – what their position is if you're a little bit confused. Just – not confused but unsure, yeah.

40

You see, your position really was difficult to judge on this conflict question all the time; wasn't it?--- It was reasonably difficult. Mainly because – I mean, in most cases – I mean, decisions were being made for the benefit of both companies.

45 Yes, I understand that. And then to 108 please, Mr Bentley?--- Could I just refer back to that email?

Yes, of course?--- Second last – or the paragraph at the start. “This particular problem should be handled by Malcolm on behalf of Queensland Racing.”

5 Yes, that’s right. That’s a decision you made; isn’t it?--- Yes.

Yeah. You made a decision about who should - - -?--- For Malcolm – yes.

Who should handle it?--- Yes.

10 Yeah?--- Not me.

Yes, that’s right. “We only need to confirm Queensland Racing’s position as a participant in the RISA agreement, and confirm that the Product and Program Agreement is a nominated arrangement with UNiTAB. And our agent for receipt of funds is Product Co.” See that?--- Yes.

Yeah. And at the bottom, “The entry of Product Co has complicated the issue, and it is not necessary.”?--- That’s right.

20 You’re giving some instructions to Tuttle; are you?--- No, I’m giving – as far as I can see, I can give – that’s my opinion. And I don’t see - - -

Yeah, exactly?--- I don’t see it as a conflict.

25 When a chairman gives his opinion to a CEO, he normally takes account of it in what he’s going to do?--- Yeah, but this is the flow of information. This is not - - -

I agree. I agree?--- Right.

30 We’re at one on that?--- And this no way of – and this in no way affects Tattersall’s or Racing Queensland. It is procedural matters.

So we were going to go over to 108, please?--- Thank you. Page?

35 108, you’ll see, is 6 February 2009. Board meeting of Queensland Racing?--- Yes.

And then if you go over to page 7, please. Race information legislation resolutions. Resolutions executed by the chairman?--- Mmhmm.

40 That’s you; isn’t it?--- Yes.

Okay. Do you recall what those resolutions were?--- No.

45 Okay. In any event, that was participating; wasn’t it?--- Yeah, the resolutions. Yes. The - - -

Okay?--- We've been participating from the point of view. I would imagine those resolutions would've been drafted, finished and agreed to. I don't know whether I'd be involved in the actual agreements.

5 Yes. It doesn't seem to suggest that you withdrew?---No. I said I don't know.

Well, it doesn't, but what you do - - -?---Well, it would – it would usually be marked - - -

10 Yes, exactly. So just turn over the page to 8, please. Board succession. I will just let you read that.

MR WILSON: Commissioner, I'm not sure if we've got another incomplete document. The passage that Mr Bell just took Mr Bentley to says "See attachment  
15 B". The document we've got finishes with attachment A.

MR BELL: Mine does too. We've asked Clayton Utz whether there is one, and the one we've been delivered doesn't have it.

20 COMMISSIONER WHITE: Yes. Not all of the board attachments actually were given to us by Clayton Utz.

MR WILSON: Oh, I see. I'm sorry.

25 COMMISSIONER WHITE: Mr Wilson, I – there's an attempt to locate them all. They didn't seem to be attached to the minutes in a regular way so I think that there are some - - -

MR WILSON: Yes.  
30

MR BELL: Section 10, you were looking at board succession. I'll let you read that?---Yes. I think that that reflects what I remember.

35 And in the last paragraph, Hanmer advised the rest of the board that Lambert had agreed something, which is recorded there. Do you see that?---Yes.

Indeed, that became a topic of contention between them, didn't it, as to whether he had indicated that agreement to Hanmer?---It did. It did.

40 And they – there was a bit of fighting about whether or not he did?---Yes. There was. Well, not fighting, but there was disagreement. Yes.

Disagreement. In the end, you solved it?---Yes.

45 You tapped Lambert on the shoulder, he had to leave, didn't you?---I did.

Yes?---What I'd like to add, if you wouldn't mind, is that that - - -

Is that he could have sat for re-election?---No. Could I – could I add something to that?

5 Yes. Of course?---We had a meeting at – I think it was the Powerhouse Hotel with the clubs, and that statement by Hanmer that – about Lambert leaving, wouldn't want to stay on if Palm Meadows wasn't going ahead, was said to me right there and at that particular time.

10 Who by?---By Tony Hanmer, but prior to this. That's what he told me at that particular meeting.

Yes. And after that time, the two of them were giving you a different version as to what he agreed to?---That's correct.

15 And that required you to make the decision and so you said Lambert, it's you?---That's correct.

20 Okay. Now, I just want to ask you something about 109, please, Mr Bentley. This was to Shara Murray on the 15<sup>th</sup> of February. I'll just let you read it?---Yeah. I need to be jogged a little bit.

I'll tell you - - -?---I'm not disputing it.

25 No, no. I understand. I'll assist you with it. Now that Bill is cleared, is referring to Bill Ludwig?---Correct.

And Bill Ludwig being cleared was a reference to a proxy issue that arose?---Yes.

30 And we're going to talk about that more in a moment. And you say – and a state election is close, possibly called Tuesday. We need to consider our options. If the Labor government is returned then we might seek to have the vote reinstated. See that?---Yes.

35 And what had occurred was in 2008 a lot of trouble was gone to to put to vote a change in the constitution of Queensland Racing?---Correct.

40 That change involved two things: one, getting rid of the independent recruitment agent deciding upon a short-list of potential directors from applicants; and two, extending the term of the present directors into the future?---I remember the second part.

45 Okay. And then we'll go over to 111, please. This was a meeting at which nobody suggests you were at, but it's a meeting where I'd like to see whether the information in the document jogs your memory, please. Firstly, if you go to page 3, under the heading 2.13 Product and Program Agreement?---I vaguely remember the content , but I wasn't – I'm sure I wasn't at the meeting. I'm sure I wasn't in any product company meetings.

Now, what Hanmer is saying is this: Lambert and Andrews noted advice from Grace if correct raised fundamental issues that needed to be formally resolved by the senior counsellors advised who were obtaining advice from government with its intention of the Product and Program Agreement. You can see that?---Yes.

5

The chairman expressed his concerns and noted that the company should meet with UNiTAB to seek a variation of the agreement in order to reflect the legal position at hand and the commercial intention of supply and use when the agreement was first drafted. Do you see that?---I saw that.

10

Do you want to comment on that?---I don't recall a discussion on that bit. I certainly remember the first paragraph and, I think, the third one that they were going to go to the Office of Racing and get some advice. I remember that. That - - -

15

Do you know what they were going to ask the Office of Racing? I'll tell you – which they did ask the Office of Racing. What was the intention of the government in 1999?---Yes. That jogs my memory now. Yes. That's right. What was the intent?

20

In the hope – sorry, you go on?---What was the intent, is that right?

25

Yeah. You see, not being a lawyer, Mr Grace would have told you if you asked him that question, the intent comes from the words in the document, you see? That's where we get it from in law. To go back and ask somebody subjectively, "What did you, on one side of the equation, intend?" It doesn't make sense to us as lawyers, you see. I'm just telling you that?---Right. Okay. Excuse me.

30

But anyway, what happened was Hanmer, it was resolved by that board that Hanmer would correspond with Mike Kelly to ask him that question. Do you see that?---That appears.

35

Yeah. But it's a funny question, do you think, just asking you now to comment, Mr Bentley, on the one side we have a public company owned by shareholders such as you, which is called Tatts, and on the other side, we have the control body that represents the stakeholders of Queensland in racing. Do you see what I mean?---Yeah. Well, that's where if you've got a conflict, you've got to handle it.

That's exactly - - -?--- I mean, this is product company business.

40

Yes. I understand that you say it's product company business. Anyway, if I ask you now, please, to go over to 112, and this is important, please, because it would seem that Mr Grace was at this meeting. Although it would seem he did not discuss his advice that he – we've talked about a lot, he did record a number of things that were discussed. And I'm particularly interested in 4 when you get to it, number 4. But

45

you read it all if you wish?---Yes.

The second last dot point seems to suggest that Mr Grace advised Product Co something, don't you think? Let me read it and make it really plain?---Here in a letter advised the Queensland - - -

5 Discussions were revolved around directors' duties. I, meaning Grace, advised that  
having given a letter of advice to Queensland Racing and that matter had not been  
taken into the board of Product Co, and the board of Product Co haven't been aware  
of our views on the interpretation of the Act and its interaction with the Product and  
Program Agreement. The board would be unwise to ignore the advice because  
10 auditors looking at the accounts may, if they became aware of the advice, query the  
director's treatment of the contractual arrangements. It was therefore necessary to  
address the issue and if it was not intended to take an adversarial role with UNiTAB  
then to consider whether the existing agreements should be changed in order to  
remove any ambiguity that may exist as a result of the 2008 amendments to the  
15 Racing Act?---Yes.

Pretty sensible, wouldn't you think?---Yes.

20 Do you know why Hanmer, for example, didn't take that advice?---No.

But looking at it now, if he had mentioned to you that Grace had said that, what  
would you have said to him? There's no conflict there you see?---No.

25 What would you have said to him?---Get the – get the advice.

So he's on his own a little bit, isn't he, if he doesn't take that advice from Mr  
Grace?---Appears so.

30 Wouldn't you think?---It appears so.

Yeah. Because you see, it's bad enough, wouldn't you think, Mr Bentley, to have  
advice before you or at least in your head that suggested that you ought not be  
allowing Tatts to deduct \$500,000 a month – that's bad enough – and to do nothing  
about it. But then on top of it, to have your legal adviser coming along to the  
35 meeting and say, "Hey, this is really, really not the right thing to do. You've got to  
do something about it and address it," that's double bad, wouldn't you say?---Yes.

40 And what did they resolve? Let's have a look at the last dot point: "It was agreed  
that a letter would be written with a view to seeing if Queensland Government's  
view of the arrangement was intended to be the same as was thought by some of the  
directors, namely, that commercially the amounts of these costs should be deductible  
by UNiTAB." Smokes, that's funny stuff?---This is – these are the decisions of – of  
a board that – that I am not on. Okay?

45 No. That's what you say?---That's what I'm saying.

But you soon became very aware, didn't you, that Mr Andrews and Mr Lambert didn't accept that position at all?---I don't know about Mr Andrews but I certainly know about Mr Lambert.

5 Well, you didn't know that Mr Andrews was taking a vigorous position about Mr Hanmer's dead - - -?---I don't remember Mr Andrews at the time taking a vigorous position.

Okay?---I certainly remember Mr Lambert.

10

Well in fact, you're right. That's a diversion. Mr Lambert – you knew Mr Lambert didn't agree with this position?---Yes.

15 Did he tell you that he didn't agree with it?---I – Michael was very careful to make sure that it – to keep the separation from Product Company from myself. He may have; I don't know.

Mr Hanmer tell you about it?---Yes. He did.

20 He told you that Mr Lambert, at least, was agitating for action that he didn't want to take?---No. I don't think he used – particularly used those words.

25 I'll tell you what he did use and I'll show you in a minute in an email to you: "Kill off the advice." "Kill off the advice." He included you in an email about Mr Grace's written advice and used the word, "Kill off", or to that effect. Do you remember that?---No.

Okay?---But no doubt it – if you say it's there. I don't remember –

30 I'll show you?--- - - - actually remember that.

35 I won't let you down. Would you go to 113, please. On the third page under section "Directors" – I'll start again. "Section 2: Directors. 2.1: Product Co Meeting Update. The chairman offered to retire from the meeting for this item; however, Mr Hanmer as chair of Product Co advised board members that there was no conflict of interest in the chairman remaining present for the Product Co board meeting update"?---Yes, read.

40 So it would sound like there was a report done to the board, which you were on, about what had occurred at Product Co?---Well, I don't know what – I don't remember the report.

Beg your pardon?---I don't remember the report.

45 No. I know you don't remember?---But I'm – but I'm – I'm not doubting that that – that's what happened.

I understand. But in particular, part of the report would have involved Product and Program Agreement and the resolution where they were going to go and ask the government about whether they had intended back in 1999 for this to happen or not?---As I say, I can't remember that and – and if you could show that to me.

5

Look, I've just shown you. You see where he says, "Update – this was noted by the board". Presumably what Mr Hanmer does is say, "At the Product Co meeting yesterday, what happened was we discussed seven issues. One of the issue" – we'll look back at the – "was Product and Program Agreement. The board resolved that the chairman correspond with Mike Kelly of the Office of Racing in relation to this matter. The chairman is to seek the view of the government in relation to the commercial intent of the agreement when first drafted." See that?---Yeah.

10

So that's likely that that came into your head too, you see. So you were kept up to date with what was happening - - -?---Yes.

15

- - - in Product Co?---Yes.

Okay. Would you mind having a look at the document behind 114, please, Mr Bentley?---Yes.

20

This is Mr Hanmer's attempt to ask Mr Kelly of the Office of Racing the right question. You see what I mean? That's what he's doing, isn't it? We just talked about the resolutions to write to the government, and this is his attempt to write to the government with the right question?---Well, you'd have to ask – ask him that question.

25

Okay. Well, I can tell you this is the letter he wrote to Mike Kelly of the Office of Racing?---Yes. But you'd have to ask him the question of his intent.

30

Here's the question I want to ask you. Just have a look how silly it is, how wrong it is and ill-advised it is. Have a look in the third paragraph: "In the light of this longstanding agreement" – with reference to the Product and Program Agreement – "and the recent legislation passed by the Queensland Government" – got nothing to do with that – "we're worried about the New South Wales legislation causing it." You see? You remember that? See what I mean? It's just silly, isn't it?---It's wrong. Yes. The wrong – wrong government.

35

Yeah. Wrong question, but Hanmer's not the guy to be dealing with this, is he?---Well - - -

40

Hanmer's an advertising guy?---He has been dealing with this for ages. He's vice-chairman of the board.

Yeah?---He'd been there for a while.

45

But hey - - -?---I mean that's – that's a decision - - -



That's a funny letter to draft, wouldn't you think, of \$500,000 a month is ticking, ticking, ticking, and this guy's writing this?---Yeah. But if – in all due respects, counsellor, if this money was so easy to – easy to collect, how come in the last 20 months the current board hasn't collected it?

5

Well, I'm going to be asking that question after this, I can tell you. I agree with you, but I'm asking you why it wasn't collected, because you were there for five - - -?---I - - -

10 Just wait. You were there for five years - - -?---Yes.

- - - and \$91 million was not collected. You explain that part first?---I – I don't – I don't – I don't know about the – where the \$91 million comes from.

15 You just looked back at the summary. I showed it to you?---Yeah.

Every invoice is in there if you want to see it?---Would you repeat the question, please.

20 Yes. \$91 million was not collected and you didn't do anything about it?---I think I told you right from the beginning that I believe, in myself and the advice that I'd got from Tatts, that those clauses were correct.

Yes?---I erred on – by not getting other advice. I - - -

25

No. You didn't. You got Mr Grace's advice, man?---No, no. I didn't get Mr Grace's advice.

30 Oh, come on, Mr Bentley. You were at the meeting when he explained it to you?---I haven't seen that advice. I didn't ask for the advice because I considered that I was conflicted. Now, I've said that on – on numerous occasions.

35 That's a joke, Mr Bentley. You were at the meeting when he explained it and you wrote to Tatts saying, "This is an unexpected outcome"?---Yes. The two clauses. Yes.

God, Mr Bentley – honestly?---Well, I - - -

40 Seriously?---You asked me a question; I've given you the answer.

This is such a big thing and you're treating it as if it's a game?---I'm not - - -

It's not a game?---I've never treated Racing Queensland as a game.

45 Forget about Racing Queensland. \$91 million for one person or the other - - -?---And I come back to thinking if it was so easy to collect and it was so right, this advice, how come it hasn't been collected now?

Well, I'm asking too. I agree with you, but why didn't you collect it? Because you're the one answering at the moment?---I'm -- I'm answering the question exactly as I answered it before.

5 Okay?---I considered that the Product and Program Agreement clauses were intact and correct. I asked -- I must admit I asked the CEO of Tatts. I understood that he had advice to that effect.

10 Yeah. Okay?---I've since asked advice of Tatts on -- on it, and they said yes. It's definitely correct. Now - - -

Okay?--- - - - okay. I -- I take your point that I should have probably put my foot down and got advice. Yes.

15 Okay. Let me tell you the way I'll be promoting on that answer to the commissioner to write the report about this: "Mr Bentley, as chairman, knew that legal advice had been obtained from the person who he said was a very respected corporate lawyer about this question, and he knew that advice amounted to the fact that Tatts were not entitled at law to charge it. However, he accepted the advice from Tatts that it was deductable." That's what I'm going to tell her to write - - -?---You're -- in due respect -- in - - -

20 - - - if you don't give some other answer. I can't understand this?---Yeah. In -- in due respect, how do we -- how do we know that the -- it hasn't been tested?

25 I'm not saying it - - -?---The advice hasn't been tested.

I'm not saying -- I'm not being the judge. I'm saying why didn't you test it?---I didn't -- I didn't get the -- I didn't get the advice.

30 Okay, Mr Bentley. Honestly, that is so silly, when you were there when he explained it to you. You've agreed with that. I don't understand your answer?---Well, you asked me a question; I gave you the answer that I -- that I consider is -- is - - -

35 Well, I don't understand it. Do you want to try again?---No. I don't want to try again.

40 "I didn't get advice"?---I've answered it so many times now. I'm not going to change it.

I know. It's pretty important; that's why I keep asking you, because I'm not getting any sense out of your answers, you see. Would you mind going to 115, please?---Yes. I've read that.

45 Yeah. This is a funny one, I thought. Do you think it's funny that Mr Kelly's giving him, Mr Hanmer, this position draft? Do you think that's funny? Is that odd?---It's difficult for me to answer on somebody else's emails.

Did you have a relationship yourself with Mr Kelly like this?---Oh, not – no. Not – not – yeah, I spoke to Kelly on – on lots of occasions. Yes.

5 No, no. No. That’s different. That’s different?---Yeah. No, no. I did. Yeah. Hey?  
I know you spoke to him?---On this particular issue, no.

10 On any issue, did he write you things in draft so you could tick it before he wrote it to you?---Not that I can recall.

What would you think of it if he did? The government whining to you, as the chairman, and saying, “Is this okay for you”?---I can’t recall – I can’t recall receiving anything in draft.

15 See, one view of it is - - -?---Most of the letters I got from Mr Kelly were official letters.

20 One view of this here, you see, is that Kelly’s asking Hanmer, “Is that the way you want me to say it so you can show other people?” You know what I mean? That’s how some person might see it?---I know what – I know what you’re saying and I know how you’re interpreting it, but I - - -

25 Well, how do you interpret it? You tell me?---It’s very, very hard to interpret somebody else’s email and the intent of what they want to do.

Okay. “Draft and my response to your fax. Just wanted to make sure it answers the question asked?” Do you see that? That’s up the top?---Right.

30 Yeah. It says, “Tony, draft and my” – do you see that part?---Yeah. Well, this is correspondence between Kelly and Hanmer. I - - -

Yeah?---I don’t know what – I don’t know what the overall meaning of the whole thing is.

35 Let me ask you to look at a little other part. At the last two lines of the second paragraph which is the first paragraph of the draft, “I would recommend Queensland Race Product Co obtains its own legal advice on the issues you have raised”?---Mmm.

40 Good idea?---Yep.

Anyway, did it ever, to your knowledge, Product Co, get its own legal advice on the issue?---I don’t know. Well – no. I don’t know.

45 Well, what does that mean, “No. I don’t know”? What’s that mean?---No. No. I don’t think so. I’m not sure.

Yeah. No. I think you know they didn't. You do know they didn't because if you did know they did, you'd know about it?---I said I'm not sure. I don't know whether they did. I mean, I don't know whether they did get advice or not.

5 Okay. Just turn over to 116, please. This is from Tony to Mike, "Dear Mike, thank you for your draft and speedy response. Can we just hold this for a couple of days while I make a couple of calls?" Do you know anything about that?---No.

10 Okay. And then 273 document, please. Mike writes back to Tony, "Will do. Let me know when to send it". Do you see that?---Yes.

Okay. Do you know anything about that?---No.

15 And then if you don't mind going over to 117, please. This is the final letter that eventually seems to have been sent on the 28<sup>th</sup> of May to Product Co chairman?---Yes.

20 Did that letter come to your attention at any time when you were chairman?---I can't say it did. This is the first time I think I've read that one.

Okay. But in any event, you can see in the first paragraph the government's recommendation is that Product Co get legal advice - - -?---Yes.

- - - can't you?---Yep.

25 It says that. Did anybody tell you that the government had said, "Get legal advice, Product Co"?---No.

30 Have you got any explanation why Hanmer and the Product Co board would not get legal advice?---No. But they've been free to get legal advice if they wished.

118, please.

35 COMMISSIONER WHITE: Mr Bentley, could I ask you, who funded Product Co because it was really, in a sense, just a collector? It was - - -?---Yeah. It was like a letterbox, your Honour.

Yes. So if - - -?---Fees came in in bulk according to the product of - - -

40 And then they were distributed according to the code agreement?---That's correct.

Yes. I understand that. So that if Product Co had wished to get legal advice, where would its funding have come from?---They would've had to sought funding from Racing Queensland.

45 Was it generally the case - as I see Mr Grace goes to their meetings. Was it generally the case that Cooper Grace Ward was available to Product Co - - -?---Yes.

- - - to give advice, if they wanted it?---Yes. And Racing Queensland would've picked up the bill.

5 Yes. Because the other codes had a much more modest administration, didn't they?---Yes. That's correct.

And, in a sense, Cooper Grace Ward were the standing – the retained solicitors for really all the codes, in effect?---I don't know – I don't know whether it was a formal  
10 standing arrangement, but they were the solicitors we used - - -

Yes?--- - - - at the time.

And they had a retainer with you?---Yes.

15 Thank you. Thanks, Mr Bell.

MR BELL: Mr Bentley, this minute – if I ask you to look at, please – of Race Product Co which you were not at. It seems as if, by looking at 1.3, confirmation of  
20 minutes of the 5<sup>th</sup> of March 2009 Race Product Co meeting that there has been a change to the minutes requested. See there, delete - - -?---Yes.

Delete paragraph, “Mr Grace and Mr Andrews noted that they fundamentally agree with the advice provided by Grace and, as such, action should be taken against  
25 UNiTAB” and insert instead, “Mr Lambert and Mr Andrews noted advice from Mr Grace, if correct, raised fundamental issues that needed to be formally resolved either by a senior counsel's advice or obtaining advice from government with its intention of the Product and Program Agreement”. It seems like there was people getting  
30 careful about what was to be recorded as their position in the minutes, would you think?---Well, reading that, it appears to me that what was in the original minute wasn't correct and that possibly Lambert and Andrews wanted the correct thing put in.

Yeah. And my point - - -?---Is that - - -

35 Sorry?---Is that correct?

Yeah. That's correct. And my point was to add that that comes about because people think it's important what's being recorded in the minutes. They don't do it if  
40 it's just about the stamps or something, do they?---No. I think it's important.

And they must've seen it as important as to how they were being recorded, you see? Do you see that?---Yes.

45 Okay?---And Lambert and Andrews, I would've agreed that that was the correct word.

Yes. 119, please. It seems like he was writing back again to get a different version or more information, I should say?---More information and maybe clarification, but I can't answer what his intent was.

5 No. But the unusual thing about this is Mr Hanmer had asked Kelly to hold the initial draft of his letter. Do you remember that? I showed you?---You showed me that.

10 And then he gave him the go-ahead and he gave it, but then after the board meeting somebody must've said, "Hey, could we get another go at Mr Kelly about it" with this letter, you see? That seems to be what happened. Did you hear about that at the time?---No. As I said, I stayed right away from this.

15 Would you go to 120, please?---Am I correct in assuming that Grace is saying that he's given advice to Racing Queensland not Product Company? Is that - - -

20 No. Well, I think what he's doing is he's giving Mr Hanmer a draft of the letter to write to his fellow directions on Product Co. See, what his draft is he says - see there - - -?---Okay. Sorry. Yes. I see that.

25 He says, "Dear fellow directors". That's sort of an odd way to run business between directors, would you think? Getting a lawyer to draft a letter, how do you correspond with them?---With the situation with Racing Queensland and the way we had to operate because of the hostile environment, it wasn't unusual and I did it myself a couple of times to get David Grace to possibly take notes at the meeting, draft the minutes and make sure the minutes were correct - - -

30 Yeah. I understand that?--- - - - of what is happening because of the hostile environment we were working in.

No. I understand?---So I don't know whether that's any - I wouldn't place any significance on that at all.

35 Okay. Well, let me take you to what this is about, you see, because I understand yours - you get him to come in and be accurate about his recording of what happens in a contentious environment, like when Watson got the bullet - - -?---Yes, yes.

40 - - - at a board meeting. I understand that. This is different. This is not involving all the directors. This is the chairman saying to the lawyer, "Can you help me draft what I should say to my fellow directions, please?" See how different that is?---He's asking - yeah. He's asking them to write a - yes.

45 Yeah. He's asking Grace to help him write a letter saying, hey you know that legal advice. That wasn't legal advice to Product Co, that was to Queensland Racing?---Yeah.

So we should go and pay for it again and get the same advice from Mr Grace. You know, that's what he's saying, this odd stuff. Don't you think it's odd?---Look, I -- once again, I'm not going to -- I don't really think I can comment on that, I mean, I don't think that - - -

5

Well, certainly one thing is - - -?---I mean, knowing what I did myself I mean, I don't think that that's asking the lawyer to write something -- maybe, he saw that this is the best way to go. But I -- I can't answer for him.

10 You see, having the solicitors draft a letter in respect of dealings between directors is an odd way to run a board meeting or relations between directors on an important issue -- don't you reckon?---I think that -- that he considered this to be a very important issue and I guess it was a very -- certainly is a very important issue. And I think that he possibly -- but see, I'm second guessing what he was thinking.

15

I know you are. I know you are?---And I can't -- I really can't comment.

I know. You see, as I said to you earlier, it's important that I take you to these things because it might be open for somebody to conclude at the end that Hanmer was talking to you all the way through this about this and you were influencing him, you see. That's why I'm asking?---Okay.

20

Okay. Because you see at the moment I'm swimming around trying to find why Hanmer would be fighting against this advice so hard. And I see there standing a Tatts director behind him -- you. That's a reason. That's a reason, isn't it?---I -- well, it's a wrong -- well, I hate to tell you it's the wrong conclusion.

25

Yeah, well it might be. But somebody might conclude it you see and that's why I've got to test it with you?---Yes.

30

Okay. What other reason would he be carrying on like this about Grace's advice? Can you tell me?---No.

He'd been winning for the company that he's a chairman of, \$500,000 a month but he's fighting like hell not to face up to the advice he's got?---Yep. As I say, the \$500,000, I mean it hasn't been contested yet.

35

You'll see -- being charged all the time. I accept it - - -?---Yeah, but it hasn't been contested whether it's collectible or not.

40

Well, that's what Andrews and Lambert are saying, you see. We should test this. This is crazy stuff?---As I say, that was an issue for Product Company directors not for me.

45 Yeah. But maybe it did - - -?---That's why I stayed away from it.

I don't, you see, accept standing here that when you've got a board of directors that includes you – you can call it Queensland Racing at the moment. And then when you walk out the door and they have a tangle over this terribly important issue that next time you see them you don't talk about what's going on with this terribly  
5 important issue. I just don't get that?---I've never said at any stage I wasn't informed about what was going on.

Okay?---But I said that I wouldn't be taking part in any decision making.

10 Okay. Did you ever ask any questions – why is this decision being made not to do something about this and test it?---No. I didn't – I didn't ask questions. I didn't want to influence what the situation was at the time.

Well. Anyway, that's Mr Hanmer. Now, if you don't mind going to 121, please.  
15 That's where Mr Hanmer writes the letter that's just been drafted to his fellow directors. See that? He wrote it to Mr Ludwig on this occasion. But one was written to each of them?---Yes.

Do you think what he's saying to Mr Ludwig is, in substance, we don't have to  
20 worry and act upon Mr Grace's advice that we know about. Do you think that's what he's saying?---Could I read it again?

Yeah, sure?---Now, what he's saying is for – for – is for information. That the  
25 advice was given to QRL not Product Company.

Yeah?---And David Grace previously – didn't he say that to get advice for Product  
Company separately.

Yeah. But looking at it now as you sit there as an experience director – what would  
30 it matter if its got Queensland Racing up the top left hand corner or Product Co. I just don't get that because it's the same guy, the same cost?---Yes.

The same interests. They're just your agent, Product Co, for Queensland Racing and  
for the other two codes?---Counsellor, I agree with you.

35 Hey?---I agree with you.

Yeah. It's just funny stuff, isn't it?---Yeah. And often – I mean, advice has come in  
the wrong address at different times.

40 Anyway, 122 – just have a look at Mr Lambert's reaction to that which he cc's to Mr Andrews and writes back to Tony, "Tony, I refer to your email on the above matter. Whilst there is no client relationship between Product Co and GW, the issue still remains. I assume you will follow up with Mike Kelly as previously discussed and  
45 seek to obtain a definitive response to our query. I do not think there is any reasonable basis on which he can refuse to respond as all they're asking is what". And that's all I've got of the email?--- [indistinct]



Okay. And would you mind going over to the next one which is at 123, please?---That's from Michael Lambert, correct.

5 That's from Michael Lambert to – well, he cc's Andrews but it's directly written to Shara Murray and he writes to Andrews, Tuttle and Mr Hanmer?---Yes. I've read that.

10 Okay. So just the part I wanted you to focus on just for a second, please – what Lambert's saying is, "Accordingly, can this be put on the agenda for our meeting on the 26<sup>th</sup> of June with a copy of the previous Grace advice plus a brief covering note covering the background." See that?---Yes.

15 So he, Lambert, is agitating still to get that on the agenda, isn't he?---Yeah. He seems – he seems, in that correspondence, to be going along the Hanmer lines of getting something out of the government – some definitive - - -

He does – but he also wants the Grace advice back on the agenda. See that part?---He says that, yes, yes.

20 And Hanmer brings you into it again. Do you recall that?---No.

You see, what happens after this is Hanmer writes to you as well on an email. Turn over to 124. I'll let you read it. Firstly, note it's from Tony Hanmer?---Yes.

25 15 June 09 - - -?---A cc to me.

Beg your pardon?---CC to me.

30 Yeah. 6.22 to Shara and to the chairman of Queensland Racing, Bob Bentley. You read it?---I don't understand. I will need a copy of the minutes from the board of QR. I don't understand that.

35 Well, let's go on a little bit more of QR that killed this letter as far as QR was concerned in the first place?---I don't recall the letter – or is there a letter?

Well, the letter is the advice, you see, of Mr Grace's?---Oh, okay.

40 The really important one I've talked about for a day and a half – killed this letter?---Yeah, well I've – you can understand me asking the letter – I mean, it was advice, wasn't it?

Yeah. It was advice. "From memory, the letter was presented to the board", he means of QR, who noted it for further action.

45 COMMISSIONER WHITE: For no further action.

MR BELL: For no further action, I'm sorry. "I just needed to remind Michael of the date." See that?---Yeah. I don't remember it going to the board where I was.

5 No. But he's asking you about it you see, right there. There's no escaping it. He writes to you and says - - -?---I'm not trying to escape, counsellor. I'm just trying to understand what he's saying.

10 Okay, I'm sorry. You're right. My point is that he writes you an email when he's asked - - -?--- No, he's written it to Shara Murray and cc'd me.

Yeah. Yeah, exactly. You're the most powerful person in the company - - -?--- Yeah.

15 - - - of Queensland Racing. And Product Co is the agent who acts for it and the other two bodies - - -?--- Yes.

20 - - - who aren't as - aren't as large in terms of wagering revenue coming to them. And he includes you in saying something that must've alerted your attention now. A copy of the minute from the board of QR that killed this letter as far as QR were concerned in the first place?--- Well, I don't understand that.

No. Well, what it means, I'll tell you?--- I know what killed means and all that sort of thing.

25 Yeah, it means - - -?--- But I don't understand - - -

- - - get rid of it?--- Yeah, I don't understand where that letter is or the minute that QR killed. I don't remember seeing any minute for that or that being - - -

30 What about the message that he's giving? Did you ring him up and say "Hey, Tony" - - -?--- Oh, no.

"What are you doing?"?--- No.

35 Why didn't you ring him up? Why didn't you talk to him about this? What are you doing?--- I told you right from the beginning and I'll continue to tell you. I wanted to stay right away from this. It was starting to get nasty and it was starting to get very political so I stayed away from it.

40 Okay?--- I have a conflict.

45 But Tony didn't keep you away from it. He copied you in on it?--- No, Tony only copied me - and he didn't copy me things. I got information from Tony on the telephone. Of course he talked to me, so did the other board members - - -

Yeah, exactly?--- Talk to me from time to time. But I wasn't making any decisions.

5 Mr Bentley, can I ask you this: when the deputy chairman writes to the chairman of Queensland Racing and says, "Oh, we just need a copy of the minute from our board that killed this letter as far as Queensland Racing were concerned in the first place."?--- Cousellor, he's not writing to me. He's just informing me what he's done. He's written to Shara Murray.

Yeah, you're right. You're absolutely right. But he sent it to you too?--- Yeah, it's just information.

10 Yeah. We're not going to give any more information about - - -?--- And it - - -  
- - - your response to this, Mr Bentley?--- Well - - -

15 Did you do nothing about this?--- I - no, I don't think so. I don't know.

Okay. You see, I reckon you did?--- Well - - -

20 I reckon you knew that Hanmer was trying to kill this advice. Of course you knew it because you read this?--- Yeah, but - - -

And you let it happen; didn't you?--- I told you - - -

25 Clearly you let it happen?--- I told you I have a conflict of interest in this - in this issue.

Yeah, I know you do. I know. Don't talk about it?--- I stayed right away from it.

But you let it happen; didn't you?--- I stayed right away from it.

30 You let it happen?--- How did I let it happen? I mean, I - if I was interfering in this issue - I mean, I'd be accused of interfering and having a conflict.

I don't think so?--- Well, I thought so at the time.

35 I don't think so?--- And that was my - and that was my rationale.

40 Let me tell you something, Mr Bentley. Nobody's asking you to make a decision between your allegiance to Tatts and your allegiance to Queensland Racing. All this required of you as a responsible member of the board, let alone chairman, was to say, "What do you mean about killing off the advice? That's legal advice. You've got to do something about it."?--- Well, I didn't do it.

45 No, I know you didn't. But you see, the reason you didn't was you were preferring your interest at Tatts?--- No, I disagree with that.

Well, what was your reason?--- I always - - -

What was your reason?--- I was always careful at the time. I didn't want to get involved in this situation.

5 You see, if the reason I give isn't the reason; what is the reason?--- I told you I didn't want to get involved.

Yes, but why?--- Because why – as I told you before, because it would be a conflict of interest for me to get involved.

10 I see. A conflict of interest?--- I stayed out of it from the beginning and I intended to stay out of it until the end. Surely a board of four people can sort it out.

They couldn't?--- But why couldn't – why couldn't Lambert – Lambert and Andrews take it further?

15 Well, I think the reason was because you were against them?--- I wasn't against them. I didn't have a vote in it.

20 Yeah, you were. I think you were. I suggest you were?--- Well, I suggest I wasn't.

Okay. You did tap Lambert on the shoulder meaning it's you who's going; didn't you?--- Nothing to do with it.

25 You did but; didn't you?--- Yes.

Yeah. And with Andrews, in the end he brought litigation against you and Queensland Racing; didn't he?--- He did.

30 And he won?--- Yes.

Yeah?--- In some – in some instances he won, yes.

Well, he won twice?--- Yes.

35 With two judges; didn't he?--- Yes.

We're going to go through this. And what happened was during the time that he was trying to be re-elected, I suggest to you that you interfered with it; didn't you?--- No.

40 You did speak to Mr Wilson; didn't you?--- I spoke to Mr Wilson, yes.

Yeah, a number of times?--- I had an interview with Mr Wilson, yes.

45 We're going to talk about that?--- Yep.

So anyway, in the end when the Deputy Chairman wrote to you about this stuff, in particular his intent to do the same as he thought had been done at Queensland Racing to kill this letter. You didn't do anything?--- No.

5 Okay. Would you mind going to 125, please?

COMMISSIONER: You right, Mr Bentley? Do you need a break?--- No, I'm fine. Thank you, your Honour.

10 Are you sure?--- Yes. Yes, I've read it. It's much of the same.

MR BELL: Yeah, much of the same. Mr Hanmer's denying him even further discussion about this important issue; isn't he?--- Yes.

15 Do you know why he was doing that?--- No.

Okay. Would you mind going to 126, please. I'll just tell you a little bit and you tell me when you're ready to start reading. If you go to the second page, you'll see what it is is a memo titled "Product and Program Agreement and Race Fields

20 Legislation"?--- Yes.

And if you look at the back, it's from Mr Lambert, director. 23<sup>rd</sup> June 2009. You see at the last page of that divider? You see that?--- It's on page 3.

25 Yes. There's two pages in your sheets; is there?--- Three.

Three. I'd better have a look at it, then. Are you at 126?--- Yes.

30 COMMISSIONER: Just have a look at – it may be that we've got two run into one, Mr Bell.

MR BELL: Yes, okay. Let me have a look.

35 COMMISSIONER: I've got a bundle as well.

MR BELL: Is the memo at the back, please? Okay. Just have a look at the memo. I'll just show you what it is first, Mr Bentley. This is a memo – if you look over the page, right to the end, you see Michael Lambert, 23 June 2009?---Yes.

40 And then if you look at the heading of it one page back from his signature, Product and Program Agreement and Race Fields Legislation. Do you see that? And then he's got issue to "determine what course of action to follow in respect of the advice from Cooper Grace Ward that UNiTAB has not got a right to pass through to QR any fees that they incur in assessing Australian race fields information for the purpose of

45 wagering". Do you see that?---Yes.

5 Okay. And then he gives the background and then under Assessment he says, “It is considered highly advisable to resolve this matter, given that it raises issues of a substantial financial and strategic nature. To do nothing opens the board to the accusation that it acted to favour UNiTAB at the substantial cost of the industry and possibly leaves open the members of the board to legal action by members of the racing industry. At the same time, it is accepted that to reject the offsetting of race fields fees by UNiTAB against the Product and Program Agreement will raise a major issue with UNiTAB and adversely affect our relationship. The suggested next step is to undertake what has been commenced and obtain the advice of the government on its intention in regard to clause 10. Given the history” – etcetera. I’ll let you read it. Now, if you look back to the front, the first page there, please, you’ll see that what happened is Lambert sends that to you on the 23<sup>rd</sup> of June at 3.23 pm?---Yes.

15 And then you sent it to Renee Whitchurch?---Yes.

Who’s she?---She was a PA at the time.

20 Okay. Did you do anything else about it?---I can’t recall.

Okay. Certainly one thing is that at time it would seem that you appreciated that there was a serious issue, sufficiently serious that somebody was suggesting you wrote to the government for help?---I said to you, I was leaving the issue to be handled by the directors of Product Company.

25 No, no. I know that. But you knew there was a serious issue?---Yes. I knew it was an issue - - -

30 Yeah?--- - - - and a serious issue.

And would you mind going to 127, please?---[indistinct]. I’m sorry.

35 You see that email isn’t to you. It’s to Mr Tuttle from Mr Lambert seeking information about whether he got a response from the Office of Racing. Do you see that?---Yes.

Did you know that Lambert was hunting that reply during this period?---I couldn’t specifically – no. I couldn’t say that I knew - - -

40 Okay?--- - - - but I would’ve suspected he would. I mean, he was fairly diligent.

45 Okay. 128, please. Mal writes to Mr Kelly, “I understand you’ve been busy, however, is there any further update at this stage regarding our query on the race fields cost being offset against the product [indistinct]?”. Do you see that?---Yes.

And then if I ask you to go to 129 so you’ll see the whole picture. “Can you” – this is from Carol – this is from Mike Kelly to Carol Perrett, “Can you please prepare a

letter back to MT. I have discussed with DF and the old QOGR has nothing of interest on the issue. The QG was not part of the contractual negotiations so we would not have anything of any interest”. Do you see that?---Yes.

5 It seems like that was probably a dead end, would you think?---It appears that way.

COMMISSIONER WHITE: I take it that QG refers to Queensland Government. You might fairly say that.

10 MR BELL: And then if you don't mind going over to 132, please, Mr Bentley. Kelly writes back to Tuttle on the 6<sup>th</sup> of January '10, "Refer to the letter. You seek a government view in respect of an interpretation of the agreement's provisions covering the determination of consideration of the supply of Australian Racing Product, Queensland racing program. Unfortunately, I advise that this office,  
15 following exhaustive searches and our records inquiries [indistinct], including Office of Liquor and Gaming, is unable to provide you with any definitive view". So that was a dead end. Do you know whether Product Co took any action to obtain legal advice after this dead end came about?---No.

20 You mean, they didn't or you don't know?---No. I think I would know. I'd say no.

Okay. One thing is for sure just looking at the date of that letter, 6 January '10. Lambert and Andrews are gone then, aren't they?---Yes.

25 Yeah. Nobody left to agitate?---True.

And nothing happened?---Nothing.

30 Yeah. Nothing. So the situation was left, despite Mr Grace's advice, that the racing industry in Queensland kept losing in the order of \$500,000 a month?---If the legal advice is correct, then - - -

Yeah?---Yeah.

35 I'm only saying that to you. I accept that. But it was never tested, as you agree?---No. And you agree it hasn't been tested since.

40 And it hasn't been tested since. Commissioner, if that's a convenient time. I know it's early for the day, but I know Mr Bentley's been through a bit in the sense of I've asked him a lot of questions.

COMMISSIONER WHITE: Certainly. I don't see that there is - - -

45 MR BELL: Is it convenient to stop now?

COMMISSIONER WHITE: I think that you won't have any other reason in the room, Mr Bell, if you make that proposal and I'm sure Mr Bentley won't mind an early minute over.

5 WITNESS: Thank you.

COMMISSIONER WHITE: We'll resume on Monday at 10 o'clock, Mr Bentley, if you can be here then. All right. Thanks, ladies and gentlemen. We'll adjourn then.

10

**MATTER ADJOURNED at 3.47 pm UNTIL MONDAY, 23 SEPTEMBER 2013**