
TRANSCRIPT OF PROCEEDINGS

S ECI 2020 02990

SUPREME COURT OF VICTORIA

COMMERCIAL COURT

MELBOURNE

THURSDAY 29 APRIL 2021

(4th day of hearing)

BEFORE THE HONOURABLE ASSOCIATE JUSTICE MATTHEWS

IN THE MATTER OF IPO WEALTH HOLDINGS NO.2 PTY LTD (ACN 620 610 157) (IN PROVISIONAL LIQUIDATION)

PUBLIC EXAMINATION

MS N.L. PAPALEO appeared on behalf of the Plaintiffs.

EXAMINEE MAWHINNEY was not represented by Counsel.

Transcribed from the official recording by
AUSCRIPT AUSTRALASIA PTY LIMITED
Tel: 03 9672 5601 | Email: vic.clientservices@auscript.com.au
Web: auscript.com

1 MS PAPAEO: If the Court pleases, I appear for the plaintiffs
2 in that matter.

3 HER HONOUR: Thank you, Ms Papaleo.

4 MS PAPAEO: Thank you, Your Honour.

5 HER HONOUR: Mr Mawhinney, I see that you're present. Can you
6 hear and see me and also Ms Papaleo?

7 MR MAWHINNEY: Yes, I can, Your Honour.

8 HER HONOUR: All right. Thank you. All right, then. All
9 right. This a resumption of the examination.

10 Ms Papaleo, what are we doing today, please?

11 MS PAPAEO: Your Honour, there's a couple of things that we
12 need to do if Your Honour pleases. There are some issues
13 in relation to the production of documents by
14 Mr Mawhinney, which - in respect of which Your Honour
15 will have seen an email from Mr Mawhinney indicating that
16 he now objects to their production. And then there are
17 some fairly limited questions that I would seek to put to
18 Mr Mawhinney in aid of the broader examination.

19 HER HONOUR: All right, then. Thank you. I have - I'm aware
20 that there was an email sent to my associate about it and
21 I've been given a copy of that email, but I have not yet
22 read it because I didn't know what the status of matters
23 was as between the parties.

24 It seems to me that matters of - emails of substance
25 like this, that there are matters that I really could be
26 taken to in open court rather than dealt with through
27 correspondence with my associate. I don't mind that it
28 was sent to my associate, but it should - but in terms of
29 me dealing with it, I think it's better that I deal with
30 it in open court. So is there an objection to production
31 of certain documents, are there, Mr Mawhinney?

1 MR MAWHINNEY: Yes, there is, Your Honour.

2 HER HONOUR: And which - if I go to my orders made on 23 March,
3 which - so paragraph 9 dealt with the production of
4 documents. Which category - which documents is it that
5 are now objected to?

6 MR MAWHINNEY: Your Honour, I don't have the benefit of the
7 orders in front of me. However, if my memory serves me
8 correct, it is order 9(a) which I believe refers to
9 journal reports in Eleuthera Group Proprietary Limited
10 relating to a range of - sorry - Eleuthera Group
11 Proprietary Limited and a Sunseeker Trust relating to, I
12 believe, about 43 separate transactions. Is that
13 correct?

14 HER HONOUR: Well, it's - I don't - Mr Mawhinney, it might be
15 helpful if you get - I don't mind you having a copy of
16 your email in front of you.

17 MR MAWHINNEY: Sure. Do you mind if I open it up?

18 HER HONOUR: No. So if you want to pull that up. And you can
19 also pull up a copy of the orders. I think that that - I
20 mean - - -

21 MR MAWHINNEY: Sure.

22 HER HONOUR: - - - when you're wanting to make submissions
23 about this sort of thing I don't mind you having those
24 documents in front of you. I think that it is better for
25 you if you do.

26 MR MAWHINNEY: Thank you.

27 MS PAPALEO: Your Honour, I can ask my instructor to provide
28 Mr Mawhinney with a copy of the orders if that would
29 assist.

30 HER HONOUR: Thank you.

31 MR MAWHINNEY: Okay. Your Honour, I have the orders in front

1 of me now.

2 HER HONOUR: Yes. So which - just looking through that,
3 Mr Mawhinney, are you able to confirm that it is category
4 A?

5 MR MAWHINNEY: Yes, it is 9(a).

6 HER HONOUR: Are there any others?

7 MR MAWHINNEY: No, it was only 9(a), Your Honour.

8 HER HONOUR: Right. Thank you. All right. Has this objection
9 been raised with the plaintiff?

10 MS PAPAEO: Only by way of the email this morning that's sent
11 to the court, Your Honour.

12 HER HONOUR: Well, before I get Mr Mawhinney to go into that in
13 any detail, can I just have an indication please,
14 Ms Papaleo, whether the liquidators continue to press for
15 those documents or whether they've accepted
16 Mr Mawhinney's objection?

17 MS PAPAEO: They do press for the documents, Your Honour.

18 HER HONOUR: Right. Thank you. All right then. Mr Mawhinney,
19 can you just please explain to me the nature of the
20 objection?

21 MR MAWHINNEY: Certainly, Your Honour. The order seeks a copy
22 historical edits to journal entries in the books of
23 Eleuthera Group and the Sunseeker Trust. Firstly, both
24 of those companies are not the companies that the
25 liquidators are appointed to. Secondly, historical
26 amendments in line with normal bookkeeping practices to
27 reconcile transactions back to source documents in those
28 two companies are the business of those companies and not
29 the business of the companies that are the subject to the
30 examination.

31 And thirdly, the liquidators would appear to be

1 seeking that information such that they can cherry pick
2 transactions and historical recording of those
3 transactions to suit whichever narrative they would like
4 that narrative to be when we have provided the final
5 reconciled transaction summaries to the liquidators
6 already and they therefore have the benefit and full
7 knowledge of how those transactions have been recorded in
8 line with the source documents.

9 And so I submit, Your Honour, that any historical
10 amendments in the books of two companies that aren't
11 subject to liquidation and part of the examination are of
12 no relevance for the purposes of the liquidators carrying
13 out their duties.

14 HER HONOUR: All right. Thank you. Ms Papaleo.

15 MS PAPALEO: Yes, Your Honour. First of all, we would say that
16 as these orders - before these orders were pronounced
17 Your Honour went through these orders with Mr Mawhinney
18 and he indicated on several occasions that he understood
19 their terms and that time for objection was then.
20 Subsequently, he has indicated to us - there has been
21 significant email correspondence between him and the
22 liquidators and there has been no objection and, in fact,
23 he has indicated that he would be providing various
24 documents.

25 In relation to the particular documents that we are
26 seeking, Your Honour may recall that there was a letter
27 from Carey Olsen to my instructors. Carey Olsen acts on
28 behalf of 101 Investments. That letter contended in
29 relation to the satisfaction of the purchase price at the
30 Accloud shares that payments had been made by Eleuthera
31 Group and Sunseeker and those payments had satisfied the

1 purchase price of the Accloud shares.

2 Now, we seek journal reports in relation to each of
3 those payments. They're relevant to the company's
4 examinable affairs because what we have seen is view
5 statements which are documents that record that
6 particular edits have been made to these transactions in
7 Xero but the view statements do not disclose what the
8 edits were.

9 Now, Mr Mawhinney has provided, we consider, a
10 number of explanations to the liquidators about how the
11 Accloud shares were paid for and so the manner in which
12 these transactions have been characterised historically
13 is extremely important to the determination of the
14 question of who is entitled to and who paid for the
15 Accloud shares. In those circumstances, the documents
16 are relevant to the company's examinable affairs and the
17 liquidators press for their production.

18 HER HONOUR: And these are Accloud shares that were to be held
19 by the IPO Wealth Group, aren't they?

20 MS PAPALEO: That's correct, Your Honour.

21 HER HONOUR: Yes.

22 MR MAWHINNEY: It's actually the opposite, Your Honour. It's
23 shares that were paid for by some 300 investors in
24 the Mayfair Group that are the rightful property of 101
25 Investments Limited and the liquidators are presently
26 withholding those shares which really should be for the
27 benefit of some 300 investors outside of the IPO Wealth
28 Holdings Group and the liquidators are seeking
29 information to do with the historical recording of those
30 transactions as opposed to relying upon the bank
31 statements which very clearly show that the payments were

1 made for those shares.

2 HER HONOUR: Well, I thought I saw documents early in the
3 examination that recorded the Accloud shares as an asset
4 of one of the IPO Wealth entities.

5 MS PAPAEO: You did, Your Honour. They were documents
6 provided to Vasco Trustees that represented that the
7 Accloud shares were an asset of the IPO Wealth Group and
8 that's at the very matter that is subject of - one of the
9 subjects of the examination and of a legal proceeding -
10 two legal proceedings that have been brought as between
11 the liquidators and 101 Investments. We say that they're
12 an asset of the IPO Wealth Group and that Mr Mawhinney
13 has caused them to be transferred out.

14 HER HONOUR: All right. Thank you. I understand that. Does
15 anyone want to say anything further?

16 MR MAWHINNEY: I do, Your Honour. The whole reason that these
17 companies were put into liquidation, or the primary
18 reason, was because the liquidators had alleged that
19 those shares had been transferred to the BBI company, 101
20 Investments Limited. Clearly, that hasn't happened.
21 However, the liquidators and the IPO Wealth Group has had
22 the benefit of some 40m dollars in cash which has
23 acquired those shares. However, the liquidators are
24 refusing to transfer them.

25 I act for some 300 investors and I'm here today, as
26 I have been over the past six days of examination, to
27 ensure that those shares are rightly transferred to the
28 company that paid for them so that they can be there for
29 the benefit of some 300 and something investors that
30 invested over 130m dollars with the group.

31 HER HONOUR: Well - all right. Thank you, Mr Mawhinney.

1 Ms Papaleo, did you want to say anything further?

2 MS PAPALEO: No, Your Honour.

3 HER HONOUR: All right.

4 (RULING FOLLOWS)

1 MS PAPAleo: Thank you, Your Honour.

2 HER HONOUR: Is that understood, Mr Mawhinney?

3 MR MAWHINNEY: It's understood. I'll produce the documents and
4 it will highlight the fact that they were paid for
5 by Mayfair Investments.

6 HER HONOUR: All right then. When will they be produced by,
7 Mr Mawhinney?

8 MR MAWHINNEY: May I have them to you by close of business
9 Tuesday?

10 HER HONOUR: Yes. So Tuesday. That will be the - let me just
11 get the date. I think that's - is that 4 May? I think
12 it is.

13 MS PAPAleo: I think it is, Your Honour, but there are some
14 other documents that we say Mr Mawhinney has not produced
15 to when he ought to have. So perhaps we ought to set the
16 date at the end in case he wants more time.

17 HER HONOUR: Yes. Yes, all right. Good thinking, Ms Papaleo.
18 Yes, all right then. Now where?

19 MS PAPAleo: Your Honour, that deals with 9(a). In relation to
20 paragraph 9(a), (c) and (d), Mr Mawhinney has provided my
21 instructors or liquidators directly - I don't recall -
22 with links to various - - -

23 HER HONOUR: Which categories?

24 MS PAPAleo: 9(b), (c) and (d).

25 HER HONOUR: Yes. Thank you. Right. Has given links. Yes.

26 MS PAPAleo: He's given links last night and in those
27 circumstances we haven't yet had an opportunity to review
28 all of the documents, so we'll have to reserve our
29 position in respect of whether he's complied and I just
30 wanted to indicate that to the court.

31 MR MAWHINNEY: Sorry, Ms Papaleo, do you mind clarifying which

1 sections you just referred to that I provided last night?

2 MS PAPAleo: Certainly. It was 9(b), (c) and (d), I believe.

3 MR MAWHINNEY: No, that's incorrect. That was provided close
4 to a week ago.

5 MS PAPAleo: I'm sorry. It was 9(h) you provided last night.

6 MR MAWHINNEY: 9(h)(i) and 9(h)(ii).

7 MS PAPAleo: In any event, Your Honour, in relation to all of
8 those documents, 9(b), 9(c), 9(d), 9(h)(i) and 9(h)(ii),
9 the documents were provided late and the liquidators have
10 not yet finalised their review of them and in those
11 circumstances we may need to return to Your Honour at
12 some point to deal with those.

13 MR MAWHINNEY: I press the documents were previously provided
14 to the liquidators, Your Honour.

15 HER HONOUR: Thank you, Mr Mawhinney. Yes, Ms Papaleo.

16 MS PAPAleo: Your Honour, there is also an issue in relation to
17 the order that Your Honour made on 1 March.

18 HER HONOUR: I'll just need to get that order in front of me.

19 MS PAPAleo: Yes, Your Honour.

20 HER HONOUR: All right. Yes, I have that in front of me.

21 MS PAPAleo: Thank you, Your Honour. There is paragraph 4(I),
22 I think Your Honour will see there, which required
23 Mr Mawhinney to provide any financial records of
24 Eleuthera Group which referred to or evidenced it being
25 the beneficial owner of shares in Liven.

26 HER HONOUR: Yes.

27 MS PAPAleo: Your Honour, on 12 March, Mr Mawhinney informed my
28 instructors that he would provide those records by
29 15 March. He didn't. Rather, yesterday, he provided a
30 redacted balance sheet for Eleuthera for a three-year
31 period and he provided nothing else. So I would like to

1 say two things in that respect, Your Honour. First of
2 all, there must be documents that sit behind that balance
3 sheet that relate to the terms of the order and,
4 secondly, Mr Mawhinney is not entitled to provide
5 redacted documents and ought to be ordered by Your Honour
6 to provide an unredacted version.

7 HER HONOUR: Thank you. Mr Mawhinney, did you want to say
8 something about that?

9 MR MAWHINNEY: Your Honour, I do. This is an abuse of process.
10 The liquidators have full knowledge that those shares are
11 beneficially owned by Eleuthera Group. It states that on
12 the ASIC register. These shares were not paid for by the
13 IPO Wealth Holdings Group. The founder and CEO of Liven
14 Proprietary Limited has written to the liquidators and
15 advised them that the shares are the property and
16 beneficially owned by Eleuthera Group Proprietary
17 Limited. They have a share certificate to confirm that
18 that is in fact the case.

19 The order that I've been asked to comply with is to
20 provide any financial records of Eleuthera Group which
21 refer to Eleuthera owning 244,325 Liven shares. I've
22 provided a balance sheet in good faith for the last three
23 financial years which very clearly show that Eleuthera
24 Group is the owner of those shares, in addition to all of
25 the information that the liquidators already have.

26 The order specifically says 'any financial records'.
27 It doesn't state 'all financial records' and, therefore,
28 given that copious amounts of information which very
29 clearly show that Eleuthera is the beneficial owner of
30 those shares, has already been provided. I complied with
31 the orders by providing a document which is very clearly

1 set out without obviously disclosing other information
2 which is not relevant to the purposes of the examination
3 so that the liquidators, again, in good faith, had yet
4 again further information in relation to the transaction
5 that very clearly has Eleuthera Group as the owner of
6 those shares.

7 HER HONOUR: All right. Thank you. Ms Papaleo.

8 MS PAPALEO: Yes, Your Honour. The terms of the order is in
9 the broadest of terms, 'any documents which refer to or
10 evidence'. Mr Mawhinney, of course, doesn't get to
11 isolate the documents that he wishes to provide in
12 accordance with the order. It captures all of the
13 documents that exist that refer to or evidence Eleuthera
14 Group being a beneficial owner of shares in Liven and
15 he's required to produce - it seems clear to me from - or
16 I infer at least from what he's said that there are
17 additional documents that he hasn't provided and so, in
18 my submission, he ought to be required to produce those
19 documents and all of them in an unredacted form.

20 MR MAWHINNEY: Your Honour - - -

21 HER HONOUR: Just a moment, please, Mr Mawhinney. Ms Papaleo,
22 can you remind me how the Liven shares fit in, please? I
23 know I've heard about them but I just can't remember
24 quite how they fit in.

25 MS PAPALEO: Yes, Your Honour. There's a dispute about who's
26 paid for them and who's entitled to them. Mr Mawhinney
27 says that Eleuthera Group is the beneficial owner of them
28 and the liquidators believe them to be an asset of the
29 IPO Wealth Group.

30 HER HONOUR: Right. Thank you. Mr Mawhinney, you wanted to
31 say something further.

1 MR MAWHINNEY: Yes, thank you, Your Honour. The Liven shares -
2 sorry. The orders under the requirement to produce
3 documents, the document that I provided was based off the
4 report that I needed to run in order to provide that
5 report in good faith. There are no other documents that
6 exist. It seems that the liquidators are seeking that I
7 go and run reports out of an accounting package and many
8 variations of reports, which there could be literally
9 thousands, given that there are many different reporting
10 functions in Xero.

11 I provided the balance sheet in good faith, as I
12 said, so that we could yet again verify that Eleuthera
13 Group owns those shares. I don't understand why the
14 liquidators are continuing to use their powers to
15 ascertain information when it's very clear - including
16 the founder of the company itself writing to them to say
17 that they do not own those shares.

18 HER HONOUR: Well, the order talks about financial records,
19 Mr Mawhinney. It doesn't refer specifically to
20 documents. I mean, documents would be a subset of that.

21 MR MAWHINNEY: Sorry, Your Honour. It does at paragraph 4 -
22 order 4 - to produce the following documents to the
23 plaintiff's solicitors. There are no other documents and
24 I wrote to the liquidators to advise them of that.

25 HER HONOUR: But in terms of the order it says 'any financial
26 records of Eleuthera Group which refer to or evidence'.

27 MR MAWHINNEY: I understand that - - -

28 HER HONOUR: And the documents, Mr Mawhinney, is defined very
29 broadly, in any event, and includes computer records.

30 MR MAWHINNEY: I understand, Your Honour. However, the
31 production of those reports - as I said, there could be

1 literally thousands of reports that are run from Xero
2 that record the ownership of those shares. If there were
3 specific documents, hard copy or soft copy, that were,
4 say, circulated via email, then I would gladly have
5 provided those, however, there aren't. It is also
6 recorded in our cloud-based accounting system.

7 HER HONOUR: Right. Thank you. Ms Papaleo, this issue of what
8 to extract from an accounting system does arise from time
9 to time in various proceedings. It seems to me from what
10 you were saying is that - and I would need some guidance
11 as to how to phrase an order if what has to be done is
12 the generation of reports. But is it the case that what
13 you're looking for are any source documents in respect of
14 the Eleuthera Group being the beneficial owner of those
15 shares and an unredacted copy of the document that you've
16 been given?

17 MS PAPALEO: Your Honour, I think rather than source documents
18 it's probably more documents that show how they've been
19 accounted for within the records. The liquidators, I
20 think, are particularly interested in things like ledgers
21 and journal reports, so it's more targeted, I think,
22 although they'll correct me if I'm wrong about this, to
23 the manner in which they have been referred to
24 historically.

25 So perhaps it would assist if we could provide a
26 proposed further order that that makes it clear the types
27 of documents that we're looking for in the event that
28 that assists in limiting the scope of the order, if
29 possible. Of course, our primary position would likely
30 be that we're entitled to all of the documents so that we
31 can work out an accurate picture but if we're able to

1 confine it in some sensible way we'll endeavour to do so.

2 HER HONOUR: Well, I think that that does need to be done

3 because if Mr Mawhinney is right about how you get those

4 records out of the accounting and it's by running various

5 reports, then I think that some guidance needs to be

6 given for that both so that it's clear what it is that he

7 has to provide - because he shouldn't be in a position of

8 being in breach of the order by it not being sufficiently

9 clear what it is that he has to provide.

10 MS PAPAEO: I'll speak to my instructors during a break,

11 Your Honour.

12 HER HONOUR: I would appreciate that. I don't know enough

13 about how the accounting system works to be of any use in

14 trying to frame that. I would expect that the

15 liquidators themselves would probably have the best idea.

16 MS PAPAEO: I think you and I would both like to make that

17 their problem, Your Honour.

18 HER HONOUR: Yes.

19 MS PAPAEO: And I will do so.

20 HER HONOUR: Yes. So I think we should park that for the time

21 being until you're able to get some further instructions.

22 MS PAPAEO: Certainly, Your Honour. There's only one

23 remaining issue in respect of procedural matters,

24 Your Honour, and that is that in the 23 March orders as

25 well Your Honour deal with transcript and Mr Mawhinney

26 signing the transcript.

27 HER HONOUR: Yes.

28 MS PAPAEO: Your Honour, my instructors served copies of the

29 transcript upon - or provided Mr Mawhinney with copies of

30 the transcript to be signed in accordance with the

31 court's order. About a month later, Mr Mawhinney

1 informed my instructors that he did not have access to a
2 printer to print and sign the transcript and he asked for
3 a hard copy. On the next day, which was Monday, my
4 instructors sent him a hard copy of the transcript and we
5 still haven't received a signed copy back from
6 Mr Mawhinney, so I wanted to raise that and ask
7 Your Honour for - - -

8 HER HONOUR: When was that provided to Mr Mawhinney?

9 MS PAPAEO: The electronic copy was provided on the - - -

10 HER HONOUR: Or the print copy?

11 MS PAPAEO: Print copy was provided on - - -

12 MR MAWHINNEY: Monday.

13 MS PAPAEO: - - - 26 - Monday.

14 HER HONOUR: Right. Thank you.

15 MS PAPAEO: Although, can I just note - sorry, Your Honour -
16 we were ordered to provide it to him by email.

17 HER HONOUR: Yes, I think that's how it had been done
18 previously, and I think - look, I can't recall, but my
19 usual practice is to ask the examinee whether they would
20 prefer to receive it by email or in hard copy, but having
21 now asked for the hard copy and that being provided, then
22 at the very latest that needs to be returned within 14
23 days from when the hard copy was received.

24 MR MAWHINNEY: That's my understanding.

25 HER HONOUR: Well, I can't quite understand why it took so long
26 to request a hard copy, Mr Mawhinney.

27 MR MAWHINNEY: Yes, I'll clarify that, Your Honour. I wrote -
28 you may recall I wrote to the court a couple of weeks ago
29 advising that I was of the understanding that the
30 liquidators hadn't complied with the order relating to
31 the production of the transcript. I hadn't genuinely

1 seen the email. The liquidators subsequently wrote back
2 and referred me to the email, which I subsequently found.
3 It was buried in my many email. So my apologies. I
4 overlooked that. The liquidators then provided me with a
5 soft copy of that and where I'm presently located, I
6 don't have access to a printer.

7 so the liquidators kindly provided us a hard copy of
8 Monday and I haven't had an opportunity to review the
9 documents and I understand that I have 14 days from
10 Monday to return the documents signed, which I intend to
11 do, subject to there being no clarifications required to
12 the transcript.

13 HER HONOUR: Right. Well, Mr Mawhinney, there was - I don't
14 understand why you would say the liquidators have
15 breached the order regarding the transcript - - -

16 MR MAWHINNEY: No, well (indistinct)

17 HER HONOUR: Whether they'd provide it - whether they'd already
18 provided it to you by email or not, they can't provide it
19 until they get it and sometimes it takes a period of time
20 for them to get it. In any event, there was no time set
21 down for when it had to be provided to you. So - - -

22 MR MAWHINNEY: Yes, but - my apologies, Your Honour, as I said
23 it was an email that went astray. The transcript was
24 sent to me, I acknowledge that. I believe I replied to
25 the court and so I believe we've now clarified that, and
26 I will execute a copy of the document subject to their
27 being no amendments required.

28 HER HONOUR: All right. Thank you. Is that sufficient,
29 Ms Papaleo?

30 MS PAPALEO: Yes, Your Honour.

31 HER HONOUR: Thank you. Right. Is there anything else that we

1 need to deal with or - and - - -

2 MS PAPALEO: Just one final thing, Your Honour. We'll put

3 together a form of order in the terms that Your Honour -

4 that we've discussed this morning and I would seek to

5 include the ordinary wording and circumstances where -

6 that says, 'Take note that you may be liable for

7 imprisonment, et cetera, in the event that you breach the

8 court order' because there has been - there is some

9 concern about - on the liquidator's part about

10 Mr Mawhinney's compliance with the orders and they would

11 like to be able to take additional steps if necessary in

12 the event that there is continued non-compliance.

13 HER HONOUR: All right. Well, you can provide a - some

14 suggested wording and I'll decide whether I include it.

15 MS PAPALEO: Thank you, Your Honour.

16 HER HONOUR: Now, we're you proposing to examine Mr Mawhinney

17 this morning?

18 MS PAPALEO: Yes, Your Honour.

19 HER HONOUR: All right. Are you ready to commence that now?

20 MS PAPALEO: Yes, Your Honour.

21 HER HONOUR: Yes, all right then. Mr Mawhinney, are you ready

22 for - I'll have you re-sworn, do you prefer to take the

23 oath on the Bible or make an affirmation?

24 MR MAWHINNEY: It will need to be an affirmation.

25 HER HONOUR: Thank you - you don't have a have a Bible there

26 for a - to - - -

27 MR MAWHINNEY: An oath then is fine, thanks.

28 HER HONOUR: All right. Thank you. Mr Associate, could you

29 administer the oath, please.

30 ASSOCIATE: Yes, Your Honour. Let me just get the proper text

31 up.

1 <JAMES PETER MAWHINNEY, affirmed and examined:

2 HER HONOUR: Right. Thank you. Mr Mawhinney, I've previously
3 read out to you on a number of occasions the opening
4 remarks that I usually make at an examination. Do you
5 need me to go through that again or are you happy with a
6 synopsis of them?---No, that's okay, Your Honour, I'm
7 (indistinct)

8 All right. The main thing that I'd like to remind you of,
9 Mr Mawhinney, is - I'll just do this in very brief terms.
10 You've giving sworn evidence and you must tell the truth.
11 You may be able to object to answering questions on the
12 grounds of legal, professional privilege. If you want to
13 make that objection, you need to state it and give the
14 reasons for it and then importantly, if you want to claim
15 the privilege against self-incrimination, then you need
16 to say the word privilege before each answer. Claiming
17 that privilege will protect you from the answers being
18 given - that you give being used in criminal proceedings
19 or proceedings for the imposition of the penalty but will
20 not prevent their use in civil proceedings. Do you
21 understand that, Mr Mawhinney?

22 MR MAWHINNEY: Yes, I do.

23 HER HONOUR: All right. Thank you. Yes, thank you,
24 Ms Papaleo.

25 MS PAPALEO: Thank you, Your Honour. Sorry, I'll just close my
26 email so it doesn't bother us. Mr Mawhinney, where are
27 you at the moment?---Objection. What's the relevance?

28 HER HONOUR: Well, Mr Mawhinney, we're giving - we're - this is
29 a virtual hearing. Are you in a room on your own?---I
30 am.

31 What access - what devices do you have access to you?---Only my

1 laptop. My phone's here for hotspotting purposes, but
2 it's actually out of reach.
3 Right. Thank you. And it is usual for somebody to give their
4 address when they're - as part of the - their
5 identification as a witness, Mr Mawhinney?---Address as
6 in location now or residential address or?
7 Your residential address?---73 McIntyres Road, Park Orchards,
8 Victoria.

9 Thank you. And where are you giving evidence from this
10 morning?---From Melbourne CBD.

11 Ms Papaleo, did you want to ask anything further in that
12 regard?

13 MS PAPALEO: Yes, thank you, Your Honour. (To witness) Where
14 precisely in Melbourne CBD,
15 Mr Mawhinney?---Privilege. May I understand the
16 relevance of the question?

17 HER HONOUR: Ms Papaleo?

18 MS PAPALEO: Your Honour, Mr Mawhinney's location is important
19 to the liquidators for any number of reasons. It's a -
20 they may wish to serve any documents on him at any point,
21 understand what his current movements are for reasons
22 that might relate to the company's examinable affairs.
23 There's no basis - there's no sustainable basis upon
24 which Mr Mawhinney can contend that that's an
25 objectionable question.

26 HER HONOUR: Mr Mawhinney, why do you say that it's
27 objectionable?---Your Honour, it's not to do with the
28 examinable affairs of the company. I've attended every
29 public examination that I've been asked to, I've provided
30 all the documents that I've been asked to and I consider
31 this to be a severe invasion of privacy every time we sit

1 down that I'm asked where I'm located. I've already told
2 you where I'm located, which is in Melbourne CBD.
3 Well, I see it as part of the manner in which the court
4 administers its own processes. This is a virtual
5 hearing. Where are you located, Mr Mawhinney?---I'm
6 located in my office, the same place that the liquidators
7 served documents on me on Monday.
8 And where is your office?---35 Collins Street, in Melbourne.
9 Thank you. Ms Papaleo.
10 MS PAPALEO: Thank you, Your Honour. (To witness) Have you got
11 a printer in your office, Mr Mawhinney?---Privilege. I
12 have two.
13 Yes. And how long have you been in
14 Melbourne?---Privilege. May I ask what the relevance -
15 and objection - may I ask what the relevance is?
16 Mr Mawhinney, if you'd like to object, you can object?---Yes.
17 Objection, Your Honour.
18 HER HONOUR: I'll allow the question?---May you restate the
19 question, Ms Papaleo?
20 MS PAPALEO: Certainly, Mr Mawhinney. How long have you been
21 in Melbourne for?---Privilege. Some 10 to 14 days, from
22 memory.
23 And did you leave Mission Beach to come to Melbourne, or were
24 you coming to Melbourne from another
25 location?---Privilege. I have been to a number of states
26 in the past month or so. Mission Beach was one of those
27 locations, yes.
28 And where was the location that you were in immediately prior
29 to Melbourne?---Privilege. Cairns Airport.
30 You say you were in Queensland, Mr Mawhinney?---Objection,
31 Your Honour. What - I - this is not to do with the

1 examinable affairs of the company, I'm afraid. This is a
2 - this is a complete abuse of process.

3 HER HONOUR: Mr Mawhinney, you are an officer of the companies.
4 Those companies are being - the liquidators were
5 appointed to those companies and carrying out
6 investigations in relation to those companies, that
7 clearly includes, based on the matters that have been
8 raised in these examinations, investigations in relation
9 to your conduct. These questions are related to the
10 examinable affairs of the company?---Yes. And I am here
11 to answer their questions relating to the examinable
12 affairs of the company. There's no - no disagreement
13 with that. However, this line of questioning is a
14 complete abuse of process.

15 Mr Mawhinney, I've directed you to answer the question?---May
16 you restate the question, Ms Papaleo?

17 MS PAPALEO: Certainly, Mr Mawhinney. Were you - you said that
18 you were located in Cairns Airport immediately prior to
19 coming to Melbourne. Does that mean you were - did you
20 exit Cairns Airport while you were in Queensland, or was
21 that a transit point?---Objection, Your Honour, that's a
22 different question to what was just asked. May I ask
23 what the line of questioning relates to, so that I can
24 just ascertain whether it is to do with the examinable
25 affairs of the company? The airport through which I
26 transited or didn't transit through has no relevance to
27 me giving evidence here today.

28 HER HONOUR: Well, if your objection is to that question,
29 Mr Mawhinney, I'll ask you the question that Ms Papaleo
30 asked you when you made the first objection. And that
31 is, were you - you said that you were at Cairns Airport.

1 Had you been in Queensland for a period of time prior to
2 that, or were you transiting through Cairns
3 Airport?---Privilege. I was in Queensland for a period
4 of time prior to that, yes.

5 Thank you.

6 MS PAPAEO: Where were you in Queensland?---Privilege. In
7 Cairns and in Mission Beach, and Brisbane.

8 And, sorry, that final one?---And Brisbane.

9 And Brisbane. And were you - had you travelled to Cairns
10 Airport from Mission Beach?---Privilege. Again,
11 Your Honour, my travel movements do not relate to the
12 examinable affairs of the company. This is a complete
13 abuse of process. And I - I'm unrepresented today, and I
14 should not be interrogated over my movements when I've
15 been present at every single examination and given
16 evidence in court.

17 HER HONOUR: Well, you're unrepresented today, Mr Mawhinney, at
18 your choice. I would - what I'm going to do - and I
19 would like to know a little bit more about how these
20 questions fit, Ms Papaleo. But my concern is that
21 normally I would do that outside the presence of the
22 witness, because the dialogue between bar and bench can
23 unduly influence the witness. So I would like to hear
24 further about that. (To witness) I'll, therefore -
25 Mr Mawhinney, I'll have my associate put you in the
26 waiting room.

27 MS PAPAEO: Your Honour - - -

28 HER HONOUR: Yes.

29 MS PAPAEO: - - - if it assists, I'm happy to leave that for
30 the moment, and then if I need to come back to it, I can
31 come back to it later on.

1 HER HONOUR: All right then. But it places the court in a
2 difficult position, Mr Mawhinney, because if you were
3 represented, then I wouldn't have any hesitation in
4 asking you to leave the courtroom while the objection was
5 being made, and the rationale for it and for the
6 questions was being explored. But it does make it
7 difficult when you are representing yourself. All right
8 then. Ms Papaleo, please continue.

9 MS PAPAEO: Thank you, Your Honour. Your Honour, my
10 instructor sent a series of documents to Your Honour this
11 morning. May I ask that we bring some of those documents
12 up. There is, first, an email that was sent at 10.22 am.

13 HER HONOUR: My associate will attend to this.

14 ASSOCIATE: I have that. Would you like me to share - - -

15 MS PAPAEO: Thank you, Your Honour.

16 ASSOCIATE: - - - (indistinct) on screen, Ms Papaleo?

17 MS PAPAEO: Yes, please, Mr Claire. It would be the first
18 one, which is titled Ownership of Bank Accounts.

19 ASSOCIATE: Can you see that on the screen now?

20 MS PAPAEO: Yes, thank you. Would you mind scrolling down a
21 little bit, to about the middle of the document. A
22 little bit - that's fine. Thank you. Mr Mawhinney, you
23 can see there that's a bank statement - an extract of a
24 bank statement for an account held by Online Investments
25 Proprietary Limited, which was the trustee of the
26 Sunseeker Trust, I think, at that time - at the relevant
27 time. That account number ends in five - 35405?---Do you
28 mind scrolling up, associate, so I can see the date of
29 the statement. I see. Thanks.

30 Thank you. And if you could scroll to the next page, please,
31 Mr Claire. Thank you. (To witness) That is the account

1 held by IPO Wealth Holdings, and it ends in 4824 - 74824;
2 that's correct?---I can see it.

3 Thank you, Mr Mawhinney. And this is the only account that was
4 held for the IPO; that's correct, isn't it?---Ms Papaleo,
5 and, Your Honour, may I ask why the balance of the pages
6 that make up the account statements haven't been
7 provided? It would show a record of the transactions,
8 including deposits and withdrawals.

9 Mr Mawhinney, we're not concerned with deposits and withdrawals
10 at the moment. All I want to do is make sure you have in
11 mind these bank account numbers, so that I can then take
12 you through some bank statements and discuss some
13 transactions with you?---Privilege. So it's the account
14 numbers that you're wanting me to - - -
15 Yes?--- - - - recall; is that correct?

16 Yes, that's all. All I'd like to do is put to you that this is
17 the account number for the IPO Wealth Holdings
18 Proprietary Limited bank account, the one ending
19 74824?---Right. And the previous one?

20 The previous was Online Investments as trustee of Sunseeker
21 Trust?---And the - - -

22 HER HONOUR: Do you want?---And the number being?

23 MS PAPALEO: That ended in 5405?---Right.

24 And the following page, if we may, Mr associate. (To witness)
25 You'll see there that's Eleuthera Group Proprietary
26 Limited and the account number is 12069?---I can see
27 that.

28 Thank you. In relation to the IPO Wealth Holdings Account, the
29 one that we've just looked at, ending in 4824, that's the
30 account, isn't it, that through which all of the
31 transactions were conducted for the IPO Wealth

1 Group?---Privilege. No, that's not correct.
2 Could you explain to me what the position is? There was
3 another account; that's correct?---Privilege. There were
4 a number of other accounts.
5 And what was the purpose of this account, the one ending in
6 4824?---Privilege. I believe that's the bank accounts
7 for IPO Wealth Holdings Proprietary Limited. I don't
8 have the benefit of the number in front of me, again, but
9 that - that bank account and the Eleuthera Group bank
10 account and, I believe, the Online Investments bank
11 account all made payments on behalf of the IPO Wealth
12 Holdings Group at various points.
13 Yes. Now, Mr Claire, could I please ask you to open the second
14 attachment to the email which is titled 1.56m dollars.
15 Thank you. Mr Mawhinney, you recall, don't you - and if
16 you don't we can go through it now - there was a letter
17 sent by Carey Olsen on behalf 101 Investments to Thomson
18 Geer setting out 101 Investments' explanation in relation
19 to the satisfaction of the purchase price under the share
20 sale agreement. You recall that letter?---Privilege.
21 There's been legal proceedings and various letters
22 written and served on the liquidators in relation to
23 those payments. Yes.
24 Mr Claire, it might actually assist if we go to the letter
25 first. That's the document that was attached to my
26 instructor's second email of today. I'm sorry, as my
27 instructor reminds me, it was directly sent to Dye & Co,
28 the liquidators. Thank you. And if I could ask you to
29 scroll down a little bit. So you'll see, Mr Mawhinney,
30 that was dated 24 December 2020. And if you scroll down
31 a little more and stop there. Thank you. You'll see

1 there's a heading, 'The transaction between our client',
2 being 101 Investments, 'and IPO 3 pursuant to the share
3 sale agreement'. 'As you would be aware, our client
4 entered into the SSA with OPO 3 to acquire 21 million
5 shares in Accloud to fund the said transaction. Our
6 client entered into a facility agreement with Eleuthera
7 Group. In this regard, we are instructed that the
8 acquisition of shares was for valuable consideration and
9 at a fair market price. They were paid for in full' -
10 underlined - 'in various tranches from June 2019
11 to November 2019'. And, Mr Claire, if you could scroll
12 just to the top of the next page, please. Thank you.
13 That table sets out payments that are alleged to have
14 been paid on behalf of - well, by the Sunseeker Trust and
15 Eleuthera to IPO Wealth Holdings in order to pay the
16 purchase price for the Accloud shares. And, Mr Claire,
17 if we could just scroll down to annexe A. Thank you.
18 Just stopping there for a moment. That sets out,
19 Mr Mawhinney, the payments broken down. Now, if we could
20 go back to the bank statement, Mr Claire. I'm sorry, the
21 1.565 million one. Thank you. And if I could ask you to
22 scroll down a little bit you will see some highlighted
23 numbers on the first page, I think. Thank you.
24 Mr Mawhinney, you will see there 18 July, \$400,000 - the
25 - the first transaction - \$400,000 was paid to IPO Wealth
26 Holdings by Sunseeker. You can see that?---Can you make
27 it a bit bigger, please?
28 So that's a transfer from the bank account ending in 5405,
29 which is the Sunseeker bank account, and it's the sum of
30 \$400,000 and the date is 18 July. You can see that?---Is
31 that a question or a statement, sorry?

1 It's a question, Mr Mawhinney?---I can see that, yes.
2 Thank you, Mr Mawhinney. And then the following transaction on
3 the same day is the transfer of \$400,000 from IPO Wealth
4 Holdings to Eleuthera Group. You can see that?---Yes.
5 Thank you. And if we could scroll down, please, Mr Claire, to
6 the next highlighted payment just there. Mr Mawhinney,
7 that's 8 August, \$280,000 being paid to IPO Wealth
8 Holdings by Sunseeker. You can see that? You agree with
9 that?---Yes.
10 And then on 8 August, the same day, a couple of transactions
11 later, \$280,000 was transferred out from IPO Wealth
12 Holdings to Eleuthera Group. You agree with that?---Yes.
13 Mr Claire, if we could just go to the next page, please. Thank
14 you, Mr Claire. You will see two lots of \$30,000 being
15 paid IPO Wealth Holdings by Sunseeker and then
16 immediately afterwards being paid out to Eleuthera. You
17 can see that?---Yes.
18 And then further down, please, Mr Claire. Thank you. There's
19 19 August, \$40,000 being transferred into IPO Wealth
20 Holdings by Sunseeker and then immediately afterwards out
21 again to Eleuthera Group. You can see that?---Yes.
22 And then further down, please, Mr Claire. Just pausing there.
23 Thank you. On 28 August there are two deposits into the
24 IPO Wealth Holdings account by Sunseeker, \$35,000 and
25 \$150,000, and then two transactions immediately
26 afterwards on the same day out from IPO Wealth Holdings
27 to Eleuthera, \$35,000 and \$150,000?---Ms Papaleo, could
28 I - - -
29 Is that correct?---It is correct. You asked me earlier about
30 the three bank accounts and I explained that all three of
31 those bank accounts were used to make payments on behalf

1 of the IPO Wealth Holdings Group. I understand, in light
2 of the questioning, that I think it's important to note
3 that Eleuthera Group Proprietary Limited made millions of
4 dollars in payments on behalf of various IPO Wealth
5 Holdings entities.

6 Mr Mawhinney, you can see those transactions there? That was
7 my question?---Correct. Yes.

8 Thank you. Mr Clare, can you scroll down to the next page,
9 please. Thank you. And then there's two final
10 transactions that I want to take you to in this document.
11 4 September \$100,000 being paid to the IPO Wealth Group
12 by Sunseeker and immediately going out to Eleuthera and
13 \$500,000 being paid by Sunseeker to the IPO Wealth
14 Holdings and immediately going out again to Eleuthera and
15 each of those transactions occurred on the same day;
16 isn't that correct?---Yes, it appears to be.

17 Thank you, Mr Mawhinney. Now, I can take you to the letter
18 from Carey Olsen if you would like but each of these
19 transactions, these payments by Sunseeker Holdings, to
20 the IPO Wealth Group are listed in annexure A - or annexe
21 A to the Carey Olsen letter which means that 101
22 Investments has essentially asserted - well, has asserted
23 that Sunseeker Holdings contributed these funds to IPO
24 Wealth Holdings in partial satisfaction of the purchase
25 price payable under the Accloud share sale agreement in
26 circumstances where that money - or this portion of that
27 money went - did go to IPO Wealth Holdings and then
28 immediately left IPO Wealth Holdings and went to
29 Eleuthera. In those circumstances, could you please
30 explain to the court how you can sustain your contention
31 - or how this - the contention could be sustained that

1 those funds were used to pay the purchase price under the
2 Accloud share sale agreement?---Privilege. It was very
3 simple. The payments into the IPO Wealth Holdings Group
4 were to satisfy the payment for those Accloud shares.
5 What IPO Wealth Holdings decided to do with the funds
6 thereafter is a separate transaction. As I mentioned a
7 moment ago, Eleuthera Group Proprietary Limited was paid
8 a copious amount of expenses, including made investments,
9 on behalf of IPO Wealth Holdings Group, and it seems to
10 be a point the liquidators have continued to miss.
11 Eleuthera Group made significant payments, and I'd
12 suggest that some of those transactions there, that the
13 funds were then used to makes payments on the
14 (indistinct) on behalf of the IPO Wealth Holdings Group.
15 So the payments to the chefs was satisfied by the money
16 being paid in - from the Sunseeker bank account, as
17 you've rightly pointed out there.

18 It's the case isn't it, Mr Mawhinney, that the share sale
19 agreement was not signed until after each of these
20 payments were made?---Privilege. The share sale
21 agreement was signed on 4 October 2019, I believe.

22 That's correct, Your - Mr Mawhinney. And as you'll see on the
23 screen there, the final payment that we've just gone to,
24 the \$500,000, that was paid on 5 September. So that's a
25 month prior to the execution of the share sale agreement;
26 isn't that correct?---Privilege. Yes.

27 And in those circumstances, how can it be contended that these
28 payments were made in satisfaction of a sum that was
29 owing under the share sale agreement?---Privilege. The
30 Accloud transactions had been contemplated since late
31 2018 and our accounting firm and myself had taken steps

1 towards facilitating the transaction, including preparing
2 the necessary documents, incorporating the BBI based
3 company and holding structure, in accordance with the tax
4 advice that was provided. And we began making payments,
5 as is the case with our standard practices. We would
6 insert in instances, make payments, and subsequent to
7 those payments prepare documentation to ensure that those
8 payments are adequately recorded in line with the
9 transaction that took place.

10 And it's your contention, is it - or it's your evidence,

11 Mr Mawhinney, that this money went into this bank account
12 being paid to the IPO Wealth Fund and then that money was
13 paid to Eleuthera so that Eleuthera could make payments
14 on behalf of the IPO Wealth Fund - in relation to the IPO
15 Wealth Fund?---Privilege. Your first part of your
16 statement was incorrect. It's not on behalf of the IPO
17 Wealth Fund. The balance of your statement was correct,
18 however.

19 Could you explain to me what you - could you explain to me what
20 your position is in response to my statement?---Yeah,
21 privilege. There were no payments made directly by
22 Eleuthera, other - or Sunseeker - other than IPO Wealth
23 Holdings Pty Ltd to the IPO Wealth Fund. The IPO Wealth
24 Fund operates separately to the IPO Wealth Holdings
25 Group, which was the point of clarification there,
26 Ms Papaleo. The second part of your statement, however,
27 was correct. The Eleuthera Group - online investments as
28 trustee for the Sunseeker trust did make payments on
29 behalf of the IPO Wealth Holdings Group and many of them
30 and for various different amounts.

31 And out of these sums of money that were paid?---Privilege. I

1 don't have the benefit of the information (indistinct) I
2 can't answer your question, sorry.

3 Can I ask, Mr Mawhinney, what was the process in place for
4 authorising payments of this nature? For example, let's
5 take the \$100,000 on 4 September?---Privilege. I
6 arranged the transaction myself if I recall correctly.
7 I'm sorry, Mr Mawhinney, could you say that again? I didn't
8 quite catch it?---Privilege. I made the payment myself
9 if I recall correctly.

10 Is that the case for each of the payments that we have just
11 gone through?---Privilege. I can't recall because I
12 don't have the banking records in front of me.

13 Were there other people who were authorised to make these
14 payments?---Privilege. Yes, there was.

15 Could you identify those people for me, please?---Sorry, you
16 just cut out.

17 I'm sorry, Mr Mawhinney, could you identify those individuals
18 for me, please?---Privilege. It was Ms Lydia Lee.
19 Ms Lydia Lee?---Yes.

20 And if - was Ms Lee authorised to authorise or to affect these
21 payments without reference to you or was she required to
22 go through a process before she could approve these
23 payments or cause these payments to be made?---Privilege.
24 All payments had to be authorised by me.

25 So you authorised all of these payments even if Ms Lee caused
26 them to be made?---Privilege. That's correct.

27 I think I will go, Your Honour, to the third document that was
28 attached to the 10.22 am email, if Mr Claire doesn't
29 mind. Thank you.

30 HER HONOUR: The document?

31 MS PAPAEO: That is the correct document, Your Honour, thank

1 you.

2 HER HONOUR: Thank you.

3 MS PAPAEO: Your Honour - could I just ask you, Mr Claire, to
4 scroll to p.2 of that statement.

5 HER HONOUR: Did you want Mr Mawhinney to note the account
6 number at the top?

7 MS PAPAEO: Yes, please, thank you, Your Honour.

8 HER HONOUR: Go back to the first page, Mr Claire.

9 MS PAPAEO: Actually just this page, this PDF is actually made
10 up of a number of bank statements, so I might just
11 clarify it on each page if Mr Claire doesn't mind
12 accommodating that. Thank you. So this bank statement,
13 Mr Mawhinney, that is IPO Wealth Holdings, that's
14 correct, up the top right there 74824?---I'll have to
15 trust you on that, Ms Papaleo, I can't recall the number
16 exactly off the top of my - - -

17 Would you like me to take you back to the previous
18 documents - - -?---(Indistinct)

19 - - - or are you happy to - - -?---No, I'm happy - I'm happy to
20 proceed.

21 - - - take my word for it? Thank you. Mr Claire, could you
22 please scroll down just to the highlighted numbers, thank
23 you. You'll see there, Mr Mawhinney, on 5 September, the
24 first highlighted payment is the payment from Sunseeker
25 of \$500,000 to IPO Wealth Holdings; you can see
26 that?---Yes, I can.

27 Got the notation of fee next to it. Thank you. Now this is -
28 I'll just remind you, this is one of the transactions
29 that 101 Investments says constitutes a payment for the
30 Accloud shares. And then in - if we could just turn our
31 attention to the second transaction there. That is

1 5 September, same day, IPO Wealth Holdings pays \$500,000
2 to Eleuthera. Now, if we could scroll to p.3, please,
3 Mr Claire. Thank you. (To witness) You'll see up the
4 top there, Mr Mawhinney, that is No.12069. Again, you
5 can take my word for it that this is Eleuthera Group's
6 bank statement?---Yes.

7 Thank you. Now, you'll see there that 5 Sept \$500,000 sum
8 coming in from IPO Wealth Holdings, can you see that
9 highlighted there, Mr Mawhinney?---Privilege. Yes, I
10 can.

11 Thank you. Now, if you could just scroll down slowly through
12 that bank statement, Mr Claire, thank you. Just pausing
13 when the \$500,000 gets to the top. There's fine. Sorry,
14 one row up, Mr Claire, I'm sorry. Thank you. (To
15 witness) You'll see, Mr Mawhinney, that the balance of
16 the bank account on 4 September was \$45,000-odd and then
17 500,000 was put in, so it was \$545,000. And, Mr Claire,
18 if we could just scroll to the next page. A little
19 further down, please. Keep going, keep going. Pausing
20 there is fine, thank you. You'll see there, they're all
21 dated 5 September so it's not terribly helpful,
22 Mr Mawhinney, I'm sorry, but if you go down the page, the
23 amount in the bank's account decreases until we get to
24 the sum of \$501,000. It's about two thirds or three
25 quarters of the way down the statements.

26 HER HONOUR: I see - - -

27 MS PAPAleo: Where Mr Claire has got his cursor helpfully.

28 HER HONOUR: Can you see that, Mr Mawhinney?---Just, yes.

29 You see that there's a balance there of \$501,237.96?---Yes, I
30 can.

31 Yes.

1 MS PAPAEO: Thank you. Thank you, Your Honour. Thank you,
2 Mr Claire. (To witness) So by this time, which is, I
3 think, if we could just check the date.

4 HER HONOUR: 5 September.

5 MS PAPAEO: Thank you, Your Honour. So 5 September. So that
6 \$45,000 that was there previously is now out of the
7 account. And if we could just scroll - just - I'm sorry,
8 just bear with me one moment if you don't mind,
9 Your Honour, I just want to find my version. Okay.
10 Thank you, Your Honour. Just looking at the \$501,000
11 figure, Mr Mawhinney, you'll see that the next
12 transaction on the same day was the sum of \$5,000 for a
13 payment to Google?---Yes.

14 What was that transaction, do you recall?---No, I don't.

15 What do you expect it would be, in the event that this \$5,000
16 sum is paid by Eleuthera? What's it likely to have
17 been?---Privilege. Google advertising.

18 And do you recall in respect of which group of
19 companies?---Privilege. No, I don't.

20 And if we look to the following transaction, Mr Mawhinney, that
21 is \$5,500 to Andersons Real Estate trust account. Can
22 you see that one?---Objection, Your Honour. I'm being
23 asked about transactions which aren't to do with
24 transactions of the IPO Wealth Holdings Group. I'm open
25 to Ms Papaleo explaining why she considers them to be
26 relevant, but this is a bank statement of a company that
27 isn't the IPO Wealth Holdings Group.

28 HER HONOUR: Well, Mr Mawhinney, I think Ms Papaleo has taken
29 you through the monies that came into this account. As
30 far as I understand, they came in from the IPO Wealth
31 Group. Is that correct, Ms Papaleo?

1 MS PAPAleo: It is, Your Honour. And also, Mr Mawhinney's
2 given evidence before that the Eleuthera Group was the
3 treasury entity for the IPO Wealth Group. In those
4 circumstances, its bank statements are critical to the
5 examinable affairs of the companies.

6 HER HONOUR: Well, Mr Mawhinney, it seems to me that what is
7 being done here is that that \$500,000 having come from
8 IPO Wealth, Ms Papaleo is now seeking to see what became
9 of that \$500,000 once it came into the Eleuthera
10 account?---(Indistinct) understand.

11 That being the case, it's part of the examinable affairs of the
12 company?---Understood.

13 Thank you. So please answer the question.

14 MS PAPAleo: Thank you, Your Honour. I think my question, just
15 to remind you, Mr Mawhinney, was can you see there that
16 \$5,500 transaction payment to Andersons Real Estate trust
17 account?---Yes, I can.

18 Do you recall what payments were being made - for what purpose
19 payments were being made to the Andersons Real Estate
20 trust account?---Privilege. Deposits on real estate in
21 Mission Beach.

22 So that related to the Mayfair Group; is that the - the Mayfair
23 101 Group; is that correct, Mr Mawhinney?---Privilege.
24 Broadly speaking, yes.

25 And so, that's not a payment that was associated with the IPO
26 Wealth Group?---Privilege - - -

27 Correct?---Not at all.

28 I'm sorry. Could you explain what you mean? Is it your
29 evidence that that payment has no connection to the IPO
30 Wealth Group?---Privilege. That's correct.

31 Thank you. Could I ask you about the following one, Tropical

1 Endeavours, \$7,500?---Privilege. To the best of my
2 knowledge, that was another deposit on a property in
3 Mission Beach.
4 So again, no connection to the IPO Wealth Group?---No, none
5 whatsoever.
6 Thank you. The following transaction is a payment to Inga
7 Tamminga of almost \$8,000. Can you see that one there,
8 Mr Mawhinney?---Yes, I can.
9 Could you explain to the court what that transaction related
10 to?---It was, off the top of my head, either expense
11 reimbursement or wage payment, if I recall correctly.
12 Thank you, Mr Mawhinney. And Inga did work for the IPO Wealth
13 Group; that's correct, isn't it?---Privilege. She worked
14 for the Mayfair Group, of which the IPO Wealth Group was
15 part of at that point in time.
16 Did she do any direct work for the IPO Wealth Group?---She's my
17 executive assistant, so, yes.
18 She's your sister as well; is that correct?---That's correct.
19 The following payment, Mr Mawhinney - we might need to start
20 scrolling down a little, Mr Claire. Thank you. (To
21 witness) The following payment is \$9,500 to Andersons
22 Real Estate trust account. Again, that's related to
23 Mission Beach, I assume?---Privilege. That's correct.
24 And no connection to the IPO Wealth Group?---Privilege. No.
25 The payment was made on behalf of the trust that that
26 property sat in.
27 And so, that means it's no connection to the IPO Wealth Group;
28 is that correct?---Privilege. That's correct.
29 Thank you. And then the Google payment of \$10,000: do you
30 recall what that related to?---Privilege. Google
31 advertising. I cannot recall, because I am not across

1 that level of detail with the Google advertising, which
2 business or businesses that advertising related to. It
3 may have been the IPO Wealth Holdings Group. It may have
4 been the other entities within the Group.

5 Who was it who was authorised to effect these transactions,
6 Mr Mawhinney?---Privilege. It was me.

7 And you alone?---Privilege. The financial controller at the
8 time, Ms Lydia Lee, I can't recall if she had access to
9 the ANZ corporate banking at the time. It was in and
10 around this time. However, as I said, I just can't
11 recall whether or not - albeit, I made the final
12 authorisation, whether or not she set these payments up
13 to be released.

14 And - but even if she was making the - if she was approving
15 these payments, she was doing so after having checked
16 with you; is that correct?---Privilege. Yes, that's
17 correct. Every time.

18 Mr Mawhinney, isn't it correct that - I might come back to that
19 one actually. Could we just go - could you have a look
20 at - - -

21 HER HONOUR: Actually, before you do that, Ms Papaleo - can you
22 hear me?

23 MS PAPALEO: Yes, Your Honour.

24 HER HONOUR: All right. My screen has gone blank, and I think
25 the only way I can fix it is to restart. Can I stand the
26 matter down for five minutes or so, just so that I can
27 restart my computer?

28 MS PAPALEO: Of course, Your Honour.

29 HER HONOUR: Or I could - actually, let's take a bit longer,
30 just to give Mr Mawhinney a break.

31 MS PAPALEO: Certainly, Your Honour.

1 HER HONOUR: We'll resume at 12, if you don't mind.
2 MS PAPALEO: Certainly, Your Honour. Thank you.
3 HER HONOUR: Mr Mawhinney, is that all right with you? Hang
4 on, I'll come back?---Yes, thank you.
5 There, all by itself. It's fixed itself.
6 ASSOCIATE: I did just stop sharing the screen just now,
7 Your Honour. Perhaps, that's something to do with it.
8 HER HONOUR: Yes, I could see the screen before. Look, I would
9 normally pause around now to give a break to the witness
10 anyway. So I'll resume at 12, if that's convenient to
11 Mr Mawhinney and to yourself, Ms Papaleo.
12 MS PAPALEO: Thank you, Your Honour.
13 WITNESS: Yes, thank you.
14 HER HONOUR: All right. Thank you. Mr associate, please put
15 me into the waiting room.
16 ASSOCIATE: Yes, Your Honour.
17 <(THE WITNESS WITHDREW)

1 (Short adjournment)

2 <JAMES PETER MAWHINNEY, recalled and examined:

3 HER HONOUR: Are we ready to resume, Ms Papaleo?

4 MS PAPAEO: Yes, Your Honour.

5 HER HONOUR: Mr Mawhinney?---Yes, Your Honour. Thank you.

6 Thank you. All right. I think you were going to pull up

7 another document or something, Ms Papaleo?

8 MS PAPAEO: I think we were still dealing with the bank

9 statement. If Mr Claire - it's the one that is called -

10 sorry - I think it's the one called \$80,000; is that

11 correct?

12 ASSOCIATE: That's the document, is it, Mr Papaleo -

13 Ms Papaleo?

14 MS PAPAEO: Yes, thank you. And if you wouldn't mind

15 scrolling to, I think, p.6 of the PDF, down to the

16 5 September transactions, if you wouldn't mind. Thank

17 you. Actually, just up a little bit. Just one moment,

18 if you don't mind. Sorry, I might have actually asked

19 you to go to the wrong document. Let me just check.

20 Would you mind just scrolling up to p.5. Yes, thank you.

21 My instructor is better at navigating these than I am.

22 And just a little bit further up, if you wouldn't mind,

23 Mr Claire. Onto the previous page. Thank you. That's

24 where we were. So I think I asked you, Mr Mawhinney,

25 about that \$10,000 payment to Google on 5 September at

26 the bottom there. You can see that one?---Yes, I can.

27 Was that a payment for advertising as well?---Privilege. Yes,

28 I believe it was.

29 Thank you. And over the page, Mr Claire, please. Thank you.

30 The third one from the top is 12 and a half thousand

31 dollars and it's in real estate trust account. Would

1 that have been in relation to Mission Beach?---Privilege.

2 Yes.

3 Thank you. And then the following one, transfer-wise, what was

4 that?---Privilege. That's a payment to a FX conversation

5 service provider for what I expect will be an

6 international currency payment.

7 Do you recall what that currency payment related to?---No, I

8 don't.

9 Would it have been the Mayfair Group given that that was

10 international - there were international elements

11 to Mayfair and weren't to IPO Wealth Group?---I'm - I'm

12 not going to guess. However, I am confident it would be

13 for Mayfair business purposes.

14 Thank you. And then Pinnacle Advisory Group is the following

15 one?---Sorry, Ms Papaleo, if I could just clarify your

16 previous point. You said in relation to Mayfair Group.

17 What do you mean by Mayfair Group?

18 I mean Mayfair 101 in that instance?---Is that inclusive of the

19 IPO Wealth Holdings Group, or exclusive?

20 Well, perhaps I'll say in relation to the Mission Beach

21 development?---Privilege. Well, no, we would not be

22 transferring funds overseas to do with Mission Beach.

23 And what - so what would you be transferring funds overseas to

24 deal with?---Privilege. An investment which the Mayfair

25 101 Group was making at the time. I don't know what that

26 investment was or what the expense related to. However,

27 when you do refer to Mayfair 101 Group, at the time of

28 this and prior to the liquidators' appointment the IPO

29 Wealth Holdings Group was part of the Mayfair 101 Group.

30 It wasn't an external group.

31 Yes. So you're saying Mayfair 101, the company, as distinct

1 from the group?---Privilege. No, I'm referring to the
2 group. You - your - your statement earlier suggested
3 that that payment was specifically to do with Mayfair
4 101, the company, or something excluding the IPO Wealth
5 Holdings Group, which I can't - I - I don't know if that
6 was the case because it could well have been a payment on
7 behalf of one of the SPVs of IPO Wealth Holdings, which
8 was often the case, there's - payments were made from
9 Eleuthera.

10 Okay. Thank you, Mr Mawhinney. Sorry to have been imprecise.

11 Can I ask you - a few transactions down there's \$91,300
12 to CapitalRoad services?---Yes, I can see that.

13 That - do you recall what that transaction related
14 to?---Privilege. I believe it was an investment that
15 the Mayfair Group was making in CapitalRoad at the time.

16 What's CapitalRoad?---Privilege. They're a software service
17 provided to the investment management industry.

18 Software services provided to the investment management
19 industry?---Yes.

20 And who were they providing services to?---Privilege. If I
21 recall correctly, this was in line with an investment
22 agreement that we had to the company called Octo Wealth.

23 Yes. And what were they providing you advice
24 about?---Privilege. It wasn't in relation to advice. It
25 was an investment that we made. I just can't recall the
26 detail of it at the time, but there are a number of
27 payments made to them.

28 And do you recall what services they were providing you with in
29 relation to Octo?---Privilege. No, I don't. As I said,
30 I don't believe it was services. Just because it says
31 'service' with a company name doesn't mean it was a

1 service provided to Mayfair 101 or Octo. I just can't
2 recall the nature of the transaction.

3 Okay. Thank you. And a few lines up there's a \$33,000 payment
4 to Switzer Financial Group. I'm sorry. Excuse me.

5 Could you please explain to me what you recall of - what
6 you know of that payment?---Privilege. I believe it was
7 a payment to, as the name suggests, Switzer Financial
8 Group for services that they provided.

9 I'm sorry.

10 HER HONOUR: Ms Papaleo, do you want me to stand down for a
11 short period?

12 MS PAPAEO: If you don't mind. I might need a glass of water.

13 HER HONOUR: All right then. Thank you.

14 <(THE WITNESS WITHDREW)

1 (Short adjournment)

2 <JAMES PETER MAWHINNEY, recalled and examined:

3 HER HONOUR: Sorry. Mr Mawhinney, can you hear and see me

4 MR MAWHINNEY: Yes, I can, Your Honour.

5 HER HONOUR: Thank you. Ms Papaleo, please resume when you're
6 ready.

7 MS PAPAEO: Thank you, Your Honour. I'm sorry about that.

8 Mr Mawhinney, I would like to just ask Mr Claire to go
9 back to p.2 of the PDF, if I may. And a little bit
10 further down, if you wouldn't mind. Thank you,
11 Mr Claire. Sorry, just one moment. I might be in the
12 wrong document again. I'm sorry, Your Honour, just one
13 moment if you don't mind.

14 HER HONOUR: That's all right.

15 MS PAPAEO: Just find the email. I think it is - yes, I'm
16 sorry. Mr Claire, is that the \$80,000. Yes. It should
17 be - it's p.2 on my PDF but it's p.1 on yours, I'm sorry.

18 ASSOCIATE: Not a problem.

19 MS PAPAEO: Thank you. Yes, perfect. Mr Mawhinney, you can
20 see there, can you, that on 5 September \$500,000 comes
21 into the IPO Wealth Holdings account - sorry - the
22 Sunseeker account from an account number ending in
23 7492?---Do you mind just scrolling up so I can see which
24 bank statement this is?

25 So that's for the one ending in 5405 which is the Sunseeker
26 bank account?---Yes.

27 So there's \$500,000 there that's paid in by an account in the
28 name - paid in from an account with the number ending
29 7492?---Yes.

30 Do you recognise that as a bank account held by

31 M101?---Privilege. When you say M101, who are you

1 referring to?

2 A corporate entity related to Mission Beach?---Privilege. I

3 don't recognise the bank account number, however - - -

4 No - - -?---However, I won't guess, but I expect that that

5 money flowed in from the unsecured no issuing entity,

6 M101 Holdings Pty Ltd, which is the one that I referenced

7 those 300 some investors effectively funded. I'd be

8 happy to verify that for the court.

9 Well, let's assume that that money came in from M101 Holdings,

10 it's the position then - actually, let me start again. I

11 withdraw that, Your Honour. (To witness) It's the case,

12 isn't it, Mr Mawhinney, that IPO Wealth Group didn't do

13 any advertising after 30 June 2019?---Privilege. No,

14 that's incorrect.

15 There was advertising done, are you saying, by the IPO Wealth

16 Group after 30 June 2019?---Privilege. The IPO Wealth

17 Group, if you include IPO Wealth Pty Ltd in that group,

18 continued to advertise and continued to accept investment

19 after 30 June 2019.

20 Until when?---I don't recall what date.

21 And Mission Beach advertising was being conducted after 30 June

22 2019; is that correct?---Privilege. There was no

23 advertising for Mission Beach.

24 None whatsoever?---Privilege. Not for investment purposes.

25 No, never.

26 No, but for - in relation to the development?---Privilege.

27 There was promotional activities of the group for the

28 development. That was only, I believe, from

29 late September onwards.

30 So are you saying that there was no advertising being conducted

31 in relation to Mission Beach before September

1 2019?---Privilege. Correct. Dunk - Dunk Island was
2 settled on 23 September 2019. It was only after that
3 date that we made any public awareness of the Mission
4 Beach and Dunk Island project.

5 Mr Mawhinney, we've gone through most of the payments and
6 you've conceded that the majority of them related to
7 Mission Beach, the majority that we have gone through at
8 least. And as we've just seen, the money has come in
9 from M101, come into Sunseeker from M101 and it's ended
10 up going out in relation to Mission Beach payments. So
11 isn't it the case - or is the case that the true
12 character of that flow of funds concerned payments
13 relating to Mission Beach rather than being payments made
14 in satisfaction of the Accloud share sale
15 agreement?---Privilege. Absolutely not.

16 Did the IPO Wealth Fund receive any funds after 1 July
17 2019?---Privilege. The IPO Wealth Fund received several
18 loan repayments and interest payments over the course of
19 2019 and even into 2020. The loan repayments were some
20 seven and a half million dollars if I recall correctly.

21 Did it receive any new investments?---Privilege. Are you
22 referring to the IPO Wealth Fund or the IPO Wealth
23 Holdings Group?

24 The IPO Wealth Fund?---Privilege. Yes, I believe the IPO
25 Wealth Fund continued to onboard investors throughout the
26 second half of 2019 and potentially into 2020. I'm not
27 so certain on 2020, but certainly the second half of
28 2019.

29 When you say onboard do you mean that the investors paid
30 money?---Privilege. That's correct.

31 And do you know what - do you have a ball park figure in your

1 mind about what sum of money was paid by investors into
2 the IPO Wealth Fund after the commencement of the 2020
3 financial year?---Privilege. No, I wouldn't be able to
4 guess.

5 Was it something like \$10,000? Was it something like a million
6 dollars?---Privilege. I'd expect that it would be well
7 over a million dollars.

8 Thank you. Mr Claire, could I ask you to go down to p.6 of
9 that document. It's the bottom of p.6 I'd like, I'm
10 sorry. No, I think I've done this again. I think it's
11 the 1.565 million document. I'm sorry. Is that one
12 seven pages. I'm sorry. It's the \$80,000 page, and I've
13 forgotten that we have a different page. So it's
14 probably - the bottom of p.5 of that document. Yes,
15 thank you. Mr Mawhinney, can you see there - could you
16 scroll, actually, Mr Claire, to the top of that page.
17 Thank you. So you'll see, Mr Mawhinney, that we are in
18 the Eleuthera account ending in 12069. And if you could
19 scroll down, Mr Claire, to the highlighted figure. (To
20 witness) You'll see there that there's a transfer to an
21 account ending in 4824, which you'll recall is the IPO
22 Wealth Holdings account. So that's a payment, from
23 Eleuthera to IPO Wealth Holdings, of \$80,000. So what we
24 have and what we've seen, Mr Mawhinney, leaving aside all
25 of the individual payments, is that on 5 December, there
26 was a payment of \$500,000 by Sunseeker to IPO Wealth
27 Holdings. And on 6 September - just bear with me for one
28 moment. On 6 September, there was a payment, by
29 Eleuthera to IPO Wealth Holdings, of \$80,000. One
30 moment. And what we've seen - I'm sorry, my instructor
31 reminds me that I've left out a step. I'll put it this

1 way to you, Mr Mawhinney. On 5 September 2019, Sunseeker
2 paid \$500,000 to IPO Wealth Holdings. On the same day,
3 IPO Wealth Holdings paid \$500,000 to Eleuthera.
4 Eleuthera spent most of that money. By 6 September,
5 you'll see on the screen there, Eleuthera spent most of
6 that \$500,000 on expenses, including Mission Beach
7 expenses. And then on 6 September, Eleuthera paid
8 \$80,000 to IPO Wealth Holdings. So of that \$500,000,
9 which came from Sunseeker, to IPO Wealth Holdings, to
10 Eleuthera, Eleuthera spent a proportion of it on expenses
11 relating to Mission Beach, and then paid \$80,000 to IPO
12 Wealth Holdings. Have you followed that?---Yes.

13 Thank you. And now, if I could ask you, Mr Claire, to return
14 to the letter, which was the attachment to the second
15 email. Thank you. And right there, that's perfect. If
16 I could ask you to scroll down a little bit, down to
17 5 September in that first set of transactions. Thank
18 you, there's perfect. You'll see there, Mr Mawhinney,
19 that there's a payment of \$500,000, on 5 September 2019,
20 from Sunseeker to IPO Wealth Holdings. So that's that
21 first payment of \$500,000, which we've seen in the bank
22 statements, from Sunseeker to IPO Wealth Holdings, which,
23 by this letter, 101 Investments contends that Sunseeker
24 paid to IPO Wealth Holdings in satisfaction of the
25 purchase price under the Accloud share sale agreement.
26 You've seen that, that \$500,000 payment?---I can see
27 that, yes.

28 Thank you. And then the - if you could just scroll down a
29 little bit more, Mr Claire. Thank you, just there's
30 fine. You'll see there No.37, Mr Mawhinney, can you see
31 that?---Yes, I can see that.

1 You'll see on 6 September 2019 this letter claims that
2 Eleuthera paid to IPO Wealth Holdings the sum of \$80,000
3 in satisfaction of the Accloud share sale
4 agreement?---Yes, I can see that.
5 So this letter contends in relation to those two payments that
6 Sunseeker and Eleuthera together paid \$580,000 to IPO
7 Wealth Holdings in satisfaction of the purchase price
8 under the Accloud share sale agreement; that's correct,
9 isn't it? You'd agree that that's a
10 correct - - -?---Yes.
11 - - - interpretation of the letter?---Correct.
12 But the transactions that we've just been through show that
13 there was only ever the sum of \$500,000 and the \$80,000
14 was a payment made by Eleuthera to IPO Wealth Holdings
15 out of the \$500,000 that originally came out of Sunseeker
16 Holdings - Sunseeker; isn't that correct?---If the
17 transactions are looked at in isolation, then yes, that's
18 correct.
19 How could it otherwise be the case?---What IPO Wealth Holdings
20 chose to do with the money after it received it from
21 Sunseeker was IPO Wealth Holdings business. It was
22 separate to what we're referring to here as the payments
23 for the Accloud shares.
24 Well, the money was there, Mr Mawhinney. There was the sum of
25 \$500,000 and we've tracked through where those funds
26 went. So it isn't accurate - there's no way of re-
27 characterising these transactions to credibly say that
28 there was a sum of \$580,000 actually paid to IPO Wealth
29 Holdings, is there?---I disagree. The bank transfers
30 show that there was money paid into the IPO Wealth
31 Holdings Group in that amount.

1 The bank transactions show that there was only ever an actual
2 sum of \$500,000. The fact that payments are - might be
3 made to us doesn't change the amount of dollars that were
4 actually there in the first place. The funds just went
5 in a circle, didn't they?---If you look at the
6 transactions in isolation, then yes, you're correct.

7 Thank you, Mr Mawhinney. Mr Mawhinney - we can leave that
8 document, I think, Mr Claire. There's just - I don't
9 need any more of those - any of those documents. Thank
10 you, Mr Claire.

11 ASSOCIATE: Thank you.

12 MS PAPAEO: Mr Mawhinney, you recall, don't you, that -
13 actually, Your Honour, might I just have five minutes. I
14 have one more topic to discuss with Mr Mawhinney and I
15 expect it to be quite short. But I'd just like to get
16 some instructions before that, if Your Honour doesn't
17 mind.

18 HER HONOUR: Yes, that's fine. Thank you. I'll stand down for
19 five minutes. Please let my associate know when you're
20 ready to resume.

21 MS PAPAEO: Thank you, Your Honour.

22 HER HONOUR: Put me in the waiting room, please, Mr Associate.

23 <(THE WITNESS WITHDREW)

1 (Short adjournment)

2 <JAMES PETER MAWHINNEY, recalled and examined:

3 HER HONOUR: Yes. Thank you, Ms Papaleo.

4 MS PAPALEO: Thank you, Your Honour. Mr Mawhinney, I just want
5 to ask you a couple of questions about Mayfair 101
6 Limited, and the convertible note agreement between it
7 and Accloud Switzerland. Do you recall that
8 document?---Privilege. Yes, I do.

9 I'll try to - I prefer to do this without taking you to any
10 documents, just to make it easier. But let me know if
11 you'd like to see anything. We discussed this at an
12 earlier examination. The agreement provided that Mayfair
13 101 Limited would lend Accloud a maximum US\$2.5m. And
14 upon conversion, under that agreement, Mayfair 101 would
15 acquire the rights to slightly more than three million
16 Accloud PLC shares. Do you agree that that's - accords
17 with your recollection of the terms of the
18 agreement?---Privilege. The agreement was that the
19 shares - sorry, the convertible note would be converted
20 at 50P a share, and that has subsequently been converted
21 at around three million shares.

22 Thank you, Mr Mawhinney. And it's the case, isn't it, that IPO
23 3 leant Mayfair 101 Limited the money to lend to Accloud;
24 is that correct?---Privilege. I can't recall whether it
25 was IPO Wealth 3 or IPO Wealth Holdings, as in SPV 1. I
26 don't know - if I had the benefit of the agreement, I'd
27 be able to confirm.

28 Well, it's the case, I think, that there's loan agreement
29 between IPO 3 - let's assume it's IPO 3
30 and - - -?---Privilege. I'd prefer not assume. Could we
31 bring up the agreement, please?

1 There isn't any written loan agreement providing for the
2 funding by IPO 3 of Mayfair 101's obligations under the
3 convertible note agreement?---Privilege. Do you mind
4 bringing up the agreement, please?

5 Mr Mawhinney, your evidence in this examination has been that
6 you don't believe there is a loan agreement between IPO 3
7 and Mayfair 101, which deals with IPO 3's funding
8 of Mayfair 101's obligations under the convertible note
9 agreement with Accloud Switzerland. That's been your
10 evidence to date in this examination. Your evidence has
11 been that you don't believe that there is a written loan
12 agreement?---Privilege. I recall that that is the case,
13 yes. That being said, if we're talking about the
14 investment agreement, I would like to see a copy.

15 There convertible note agreement?---Correct.

16 I don't intend to ask you any questions specifically related to
17 the convertible agreement. Would you still like to bring
18 it up? I'm happy - - -?---No, that's - that's okay.
19 Understood.

20 Thank you. What I'd like to ask you about is the agreement
21 between IPO 3 and Mayfair 101, which saw IPO 3
22 lending Mayfair 101 the money to lend to Accloud. As
23 we've discussed just now, there was no written loan
24 agreement between IPO 3 and Mayfair 101. And as a
25 consequence of that, one of the consequences of that was
26 there was no provision for interest to be paid to IPO 3
27 by Mayfair 101. And you told us last year, that the
28 capacity of Mayfair 101 to repay the debt to IPO 3 is -
29 or was - subject to Accloud being in a position to fulfil
30 its obligations back to Mayfair 101. Do you recall doing
31 that?---Privilege. No. That doesn't sound like evidence

1 I would've given.

2 Well, it was on the transcript, Mr Mawhinney. So you can trust
3 me that that's evidence that you did
4 give?---Yes. May - - -

5 And - - -?---May I just clarify that, Ms Papaleo. It's not a
6 matter of Accloud satisfying its obligations back
7 to Mayfair 101 Limited. Accloud is the underlying
8 investment. It would be the realisation of the
9 investment that would be required, amongst other
10 alternatives, to satisfy the debt that we've acknowledged
11 between Mayfair 101 Limited and IPO Wealth No.3.

12 Sure. Okay. Even if we take that version of events, the
13 capacity of Mayfair 101 to repay the debt is contingent
14 upon it realising funds from its investment in
15 Accloud?---Privilege. No, that's not the case.

16 What is the case then?---Privilege. Mayfair 101 Limited's
17 capacity to repay the debt to IPO Wealth Holdings No.3
18 Proprietary Limited is a function of Mayfair 101 Limited
19 receiving payment for the facility agreement that it has
20 with 101 Investments Limited.

21 Okay. So fine, if we want to shift to that position then. Now
22 you're saying that - - -?---I'm sorry. There's - there's
23 no shifting, Ms Papaleo. The documentation we've
24 provided the liquidators clearly specifies this.

25 Mr Mawhinney, if that was correct, then the capacity of Mayfair
26 101 to repay the debt to IPO 3 would be contingent upon
27 101 fulfilling its obligations back to Mayfair 101; is
28 that correct?---That's correct. Which is different from
29 the position you mentioned earlier about Accloud.

30 That's fine. But the position is still that at the time you
31 entered - you caused IPO 3 to lend money to Mayfair 101,

1 in your mind, repayment of that debt was contingent upon
2 future events to occur?---Privilege. That's correct
3 Thank you. And you caused IPO 3 to lend money to Mayfair 101
4 without ensuring that there was a written loan agreement
5 in place; that's correct?---Privilege. There was not a
6 written loan agreement in place at the time, no.
7 And you caused IPO 3 to lend money to Mayfair 101 without
8 ensuring that there was any security for that
9 loan?---Privilege. As I said, there was no - as you
10 referred to, there was no documentation in place.
11 And so there wasn't any security in place for that
12 loan?---That's correct, because there is no loan - sorry
13 - there is no loan documentation therefore there could
14 not possibly be any security over it.
15 Thank you. And at the time it was your view, as we've just
16 talked about the capacity of Mayfair 101 to repay the
17 loan to IPO 3 was contingent upon the capacity of 101
18 Investments, you say, to repay Mayfair 101?---Privilege.
19 Correct.
20 Could you identify the benefit, for the court, that you
21 believed the investors and the IPO Wealth Group would
22 obtain from funding Mayfair 101's loan to
23 Accloud?---Privilege. Absolutely. If the shares were to
24 remain in Mayfair 101 Limited, the UK holding company,
25 there's a lower capital gains tax or company tax rate in
26 the United Kingdom than there is in Australia. And on
27 that basis alone, it was more tax effective to hold that
28 investment in the English company instead of the
29 Australian SPV.
30 Is that the only benefit that you can identify to the investors
31 and the IPO Wealth Group from funding that

1 investment?---Privilege. I would need to have a think
2 about what I recall. I just can't recall any other
3 benefit immediately off the top of my head, but it was a
4 very considered transaction at the time.

5 But you can't think of any other benefit that the investors
6 might have enjoyed now?---Privilege. The investors
7 weren't entitled to anything beyond repayment of their
8 moneys and their interest rate.

9 And what's your - what's the point that you're trying to
10 convey, Mr Mawhinney?---Privilege. You're suggesting
11 that there should be some benefit beyond that.

12 I'm asking what your view was of the benefit to the investors
13 at the time that you caused IPO 3 to lend Mayfair 101 the
14 money to lend to Accloud?---Privilege. The obligation of
15 the IPO Wealth Holdings Group is back to the IPO Wealth
16 Fund. The IPO Wealth Fund has the direct obligations to
17 investors to make sure that they receive their capital
18 back and the interest that they're owed. The decision of
19 IPO Wealth Holdings No.3 to advance funds to pay
20 for Mayfair 101 Limited's investment in Accloud PLC is a
21 matter for Mayfair 101 Limited and IPO Wealth Holdings
22 No.3.

23 Bear with me for a moment, Mr Mawhinney, if you don't mind.

24 HER HONOUR: Mr Mawhinney, for the IPO Wealth investors to
25 benefit from this transaction, any benefits in respect of
26 the holding of the shares in a UK based company, that you
27 described were for tax reasons, would need to flow back
28 to - through to the IPO Wealth Group. How did those
29 benefits flow back through to the IPO Wealth
30 Group?---Yeah. Privilege. It's a fair question. The
31 investment structure that the Mayfair Group operates is

1 obviously tax conscious, as it should be, and that
2 includes holding shares in the likes of UK companies,
3 such that as and when that investment becomes realised,
4 that the benefit would be there for the group, to
5 strengthen the group's balance sheet, to improve its
6 capacity to repay investors.

7 But how does that specifically benefit the IPO Wealth
8 investors, Mr Mawhinney - - -?---Privilege - - -
9 - - - when the way that it's being funded is through an
10 unwritten loan agreement with no security and no
11 interest?---Privilege. Your Honour, we've acknowledged
12 the debt to the liquidators at the - at this time when
13 they were appointed. So we very much acknowledged that
14 that money is rightfully owed back to the IPO Wealth
15 Fund, therefore for the benefit of IPO Wealth Fund
16 investors.

17 Yes, but if the money's made - if the loan is made without
18 security and without the payment of interest, all that is
19 ultimately repayable under that loan is the capital
20 amount. How does the benefit of any - anything - how
21 does anything else flow back to the benefit of the IPO
22 Wealth investors?---There's many ways that additional
23 benefit can flow back to IPO Wealth's investors. If the
24 transactions was to succeed and we realised the asset, it
25 would put us in a position where we could, if we needed
26 to, inject funds into the IPO Wealth Holdings Group on an
27 equity or debt basis to strengthen its capacity to repay
28 the fund.

29 All right.

30 MS PAPAEO: When you say - sorry, Your Honour, I thought you
31 were finished.

1 HER HONOUR: I've finished, thank you.

2 MS PAPAEO: When you say 'we', Mr Mawhinney, 'we could inject
3 funds' you mean Mayfair 101 Limited?---Privilege. It
4 could be Mayfair 101 Limited or, in fact, any
5 other Mayfair Group entity that holds cash or other
6 assets that it could inject into the IPO Wealth Holdings
7 Group.

8 HER HONOUR: But beyond the - - -

9 MS PAPAEO: Yes.

10 HER HONOUR: Beyond the repayment of the loan amount, pursuant
11 to this unwritten loan agreement, there's no obligation
12 to do - or the - for the borrower to do anything other
13 than repay that loan amount, is there?---Privilege.
14 That's correct. This investment - - -

15 MS PAPAEO: (Indistinct)?--- - - - yeah, this investment sat
16 within a pool of other assets. So it wasn't solely
17 contingent upon this asset being realised.

18 HER HONOUR: No, but don't - they're not assets owned by any
19 IPO Wealth entity, are they?---Privilege. The asset
20 that's owned by the IPO Wealth Holdings entity is the
21 entitlement to repayment for the amount that it advanced
22 to the English company.

23 Yes. So the capital amount?---Privilege. That's correct.

24 Yes. So the benefit for this transaction to investors in the
25 IPO Wealth Group, in terms of a benefit that would be in
26 some way enforceable, is the repayment of the
27 capital?---Privilege. That's correct and at the time
28 when the group was fully operational, as I said, if the
29 asset was realised that would strengthen our capacity to
30 top up if we needed to, which we didn't believe we needed
31 to at the time, any other investments in what was a pool

1 of investments in the IPO Wealth Holdings Group. And
2 this - this was all in accordance with the funds offered
3 document.

4 MS PAPALEO: But you're suggesting, Mr Mawhinney, that Mayfair
5 101 would have been in a position if it had chosen to, to
6 top up investments or do - take other positive steps that
7 would benefit the IPO Wealth Fund investors?---Privilege.
8 That's correct. Based on - if we look at that investment
9 in isolation, Mayfair 101 Limited would become the entity
10 that's in a capacity to do that. And it would do so on a
11 basis that it would be in a fair better tax position than
12 it would have had the asset been held in Australia.

13 And so the tax benefit you referred to before, that's not a
14 benefit that would have been enjoyed by the investors in
15 the IPO Wealth Group, is it? That's a tax benefit that
16 would have been enjoyed by Mayfair 101 which you now say
17 could have theoretically have paid money back to the IPO
18 Wealth Group had it chosen to, without obligation to do
19 so?---Privilege. The IPO Wealth Fund investors
20 subscribed to a product that provided for a return of
21 capital and a target rate of return. That target rate of
22 return was capped, therefore any taxation benefits were
23 really the business of the - of the Mayfair 101 Group and
24 the IPO Wealth Holdings Group as well, to ensure that it
25 managed its assets appropriately.

26 HER HONOUR: That's a very indirect form of benefit for the IPO
27 Wealth Group though, isn't it, Mr Mawhinney? It's both
28 contingent upon 101 choosing to put in additional funds
29 and it's - as I said before, the only direct benefit of
30 the transaction is to get the money back that was loaned
31 in the first place?---Privilege. Your Honour, at the

1 time the IPO Wealth Holdings Group balance sheet had a
2 very strong net asset position and we were of the view
3 that structuring the transaction in this way was
4 compliant in accordance with the funds offer document and
5 was commercial and made sense to strengthen over all the
6 groups balance sheet. Should, from a risk management
7 perspective, it need to effectively top up, which at the
8 time it didn't need to, the assets or the cash to enable
9 us to repay the fund.

10 Yes, I don't have anything further on that, Ms Papaleo. I'm
11 not sure if you want to take it any further or not?

12 MS PAPALEO: No, I think we've got enough, Your Honour.

13 Mr Mawhinney, you recently caused Mayfair 101 to sell
14 50,000 Accloud shares; is that correct?---Privilege. No,
15 that's not correct.

16 Has Mayfair 101 sold any Accloud shares?---Privilege. No, it
17 hasn't.

18 Sorry, 101 Investments. You recently caused 101 Investments -
19 because the shares ultimately ended up with 101
20 Investments; is that correct?---Yes, they were allocated
21 to 101 Investments where (indistinct).

22 And you recently caused 101 Investments to sell 50,000 Accloud
23 shares; is that correct?---Privilege. 101 Investments
24 Limited themselves sold \$50,000 worth of Accloud shares.
25 Were you involved in any consultations with the director of 101
26 Investments in relation to that sale?---Privilege. Yes,
27 I was.

28 By email or other form of - - -?---Privilege. If I recall
29 correctly, it was by email and phone, but predominantly
30 email.

31 Your Honour, we'll seek an order for production of the

1 communications between Mr Mawhinney and 101 Investments
2 in relation to that sale.

3 WITNESS: Yes. Your Honour, that information was provided in
4 the last round of documentation. The previous order was
5 all communication between myself, Graham Cook and
6 Nicholas Cook. It is captured within that documentation
7 that's already been provided to the - to the liquidators.

8 HER HONOUR: Yes.

9 MS PAPAEO: Your Honour, I'll check the order and confirm if
10 we need anything outside of that.

11 HER HONOUR: Yes, thank you.

12 MS PAPAEO: Have you provided those communications - those
13 particular communications, Mr Mawhinney, in compliance
14 with that - the order that you say applies?---Privilege.
15 I said I did, and I have, yes. That was provided at
16 least a week or two ago.

17 Are you aware of what happened to the - sorry.

18 HER HONOUR: Sorry. Can I just interrupt for a moment. Wasn't
19 - the order - paragraph F of the orders referred to
20 communications between Mr Mawhinney and Nicholas Cook
21 and/or Graham Cook regarding the transfer or intended
22 transfer of shares in Accloud to 101 Investments. I
23 thought you were just asking, Ms Papaleo, about 101
24 Investments selling shares in Accloud.

25 MS PAPAEO: That's correct, Your Honour. So it sounds like
26 the order doesn't capture what we - - -

27 HER HONOUR: No. Unless it's - - -

28 MS PAPAEO: - - - require.

29 HER HONOUR: - - - somewhere else.

30 WITNESS: I'm happy to check my email records but I believe I
31 captured the information when I provided all

1 communication but I'm happy to double-check that if you
2 like.

3 HER HONOUR: Thank you.

4 MS PAPALEO: Mr Mawhinney, are you aware of what happened to
5 the sale proceeds from those shares?---Privilege.

6 Vaguely, yes.

7 What are you - what do you know?---Privilege. They were paid
8 into one of our Australian bank accounts and that was
9 paid effectively by 101 Investments Limited repaying its
10 Eleuthera facility.

11 Now, when you say 'our bank accounts', what do you
12 mean?---Privilege. The group's bank accounts.

13 Which particular bank account?---Privilege. I can't recall.

14 Which company was it paid to?---Privilege. What was the
15 question?

16 Which company was it paid to?---Privilege. I can't recall.

17 Was it paid to Mayfair 101?---Privilege. I can't recall.

18 But the funds are now within your control; that's

19 correct?---Privilege. The funds were paid to one of our
20 Australian bank accounts and I can't recall which bank
21 account that was or which company it was paid into.

22 So the funds are now within your control. That's correct,
23 isn't it?---Privilege. I've answered the question.

24 HER HONOUR: No, you haven't, Mr Mawhinney, or it's not
25 sufficiently clear. By being paid into one of the
26 group's Australian bank accounts, are they bank accounts
27 that you control?---Privilege. Yes, the bank accounts
28 are, yes.

29 Right. Thank you.

30 MS PAPALEO: Thank you, Your Honour. Why haven't you remitted
31 the sale proceeds to IPO 3 to repay the loan,

1 Mr Mawhinney?---Privilege. Because it's not required
2 under the facility agreement between Mayfair 101 Limited
3 and 101 Investments Limited.

4 Well, that's not relevant to the obligations that are owed
5 by Mayfair 101 and IPO 3, is it,

6 Mr Mawhinney?---Privilege. There's, as I said, an
7 acknowledgement of debt between Mayfair 101 Limited and
8 IPO 3. There's a facility agreement. I can't recall the
9 exact term of that facility agreement but it - from
10 memory, it was three to five years, no longer than that,
11 between Mayfair 101 Limited and 101 Investments Limited.

12 Mr Mawhinney, I'm sure you're aware that in circumstances where
13 there is no written loan agreement between a lender and a
14 borrower the law provides that the loan is repayable upon
15 demand. It's true that IPO 3 has demanded repayment of
16 the loan; isn't that correct?---Privilege. I can't
17 recall.

18 Let's assume that it has. In those circumstances, why is it
19 that you have not caused Mayfair 101 Limited to repay -
20 or to remit those sale proceeds to IPO 3 to satisfy the
21 amount owing under the agreement between IPO 3
22 and Mayfair 101?---Privilege. Because Mayfair 101
23 Limited hasn't received the benefit of those funds.

24 Mayfair 101 has received the benefit of those funds because it
25 - those funds enabled - the funds that were advanced by
26 IPO 3 to Mayfair 101 enabled Mayfair 101 to enter into
27 the convertible note agreement?---Privilege. No, I'm
28 referring to the benefit of the sale proceeds. Mayfair
29 101 Limited hasn't received the benefit of those
30 proceeds, therefore, it's unable to remit that payment.

31 Those two contentions have no relationship to each other,

1 Mr Mawhinney. Mayfair 101 owes IPO 3 a loan. That loan
2 is payable upon demand. The demand has been made. The
3 loan is therefore due and owing and, in those
4 circumstances, why haven't you caused Mayfair 101 to
5 remit the sale proceeds to IPO 3?---Because Mayfair 101
6 Limited didn't sell the shares. Privilege. It wasn't
7 their shares to sell.

8 Is it because IPO 3 is under the control of the liquidators,
9 Mr Mawhinney?---Privilege. No, it's not the case.

10 It's not the case that you'd rather Mayfair 101 have the money
11 than IPO 3 under - - -?---Privilege - - -

12 - - - the control of the liquidators?---No. Privilege. The
13 sale transaction was conducted in accordance with the
14 documentation that's in place and Mayfair 101 Limited has
15 actually never held directly any Accloud shares.

16 Your Honour, we would also ask for an order that - for the
17 production of bank statements showing the receipt of any
18 sale proceeds and any distribution of the sale proceeds.
19 We'll formulate an order in those terms and provide it to
20 the court. I think, subject to instructions - I think we
21 might be done, Your Honour.

22 HER HONOUR: Yes, (indistinct).

23 MS PAPALEO: Your Honour, there's one other order that we would
24 ask for and that is - there are some further examinees
25 coming up before Your Honour and we would ask for an
26 order that Mr Mawhinney not speak to those examinees
27 about the examination.

28 HER HONOUR: Yes. I don't think on any - on previous occasions
29 there haven't been any other examinations being conducted
30 or pending and so I don't think I made the usual order,
31 but it does seem appropriate that we - that that order be

1 made now. That order will need to identify the other
2 examinees, Ms Papaleo - - -

3 MS PAPALEO: Yes, Your Honour.

4 HER HONOUR: - - - or else it's not capable of being complied
5 with. Mr Mawhinney, the court has given leave to the
6 liquidators to issue summonses for examination to - I'm
7 sorry, I'm just going to grab hold of those so that I can
8 get the names. Yes. So there have been summonses for
9 examination issued to Ifigenia Emmanouilides - please
10 forgive my pronunciation - Omiros Emmanouilides and
11 Robert Cilia. Those examination - as I said, those
12 examination summonses have been issued and the
13 examinations are coming up. It's usual, Mr Mawhinney,
14 for me to make orders that examinees not be present
15 during the examination of other examinees, and for the
16 examinees not to communicate with each other about the
17 examinations or the content of their examinations or the
18 documents to which they have been taken or asked to
19 produce. Do you understand that?---Yes, I do,
20 Your Honour.

21 All right. So I'll make orders in that usual form. I'll make
22 that as a separate set of orders, Ms Papaleo, because
23 that should probably also - that then can be also served
24 on the other examinees.

25 MS PAPALEO: Thank you, Your Honour.

26 HER HONOUR: Because they need to know that they can't
27 communicate with Mr Mawhinney about it as well.

28 MS PAPALEO: Yes. That's (indistinct) - - -

29 HER HONOUR: I think those examinations: are they next week?

30 MS PAPALEO: I think they're on 10 and 11 of May, so the
31 following week.

1 HER HONOUR: Yes, that's right, they are too. Yes, thank you.
2 MS PAPAleo: Thank you, Your Honour.
3 HER HONOUR: So I'll make those orders. Are there any - apart
4 from the issues - production of documents, which I'll
5 need to see the form of order from you.
6 MS PAPAleo: Yes.
7 HER HONOUR: Are there any other orders sought? The usual
8 order is to transcript, I expect.
9 MS PAPAleo: Yes.
10 HER HONOUR: Do you want that - - -
11 MS PAPAleo: And - - -
12 HER HONOUR: Mr Mawhinney, do you want the transcript sent by
13 email or by mail?---By mail, please, Your Honour.
14 Where to?---This office address that they sent it to on Monday
15 too, thanks.
16 Is that the Melbourne office address?---That's right.
17 Yes. Are there any other orders sought, Ms Papaleo?
18 MS PAPAleo: There'll be one in relation to the previous
19 transcript and Mr Mawhinney's signing of that as well.
20 HER HONOUR: Yes. Although, I think that that can - that
21 order's in place. That's got to be provided within 14
22 days - - -
23 MS PAPAleo: Yes.
24 HER HONOUR: - - - of last Monday.
25 MS PAPAleo: Yes.
26 HER HONOUR: Is there any sunset order sought, or (indistinct)
27 the conclusion of the examination?
28 MS PAPAleo: No, we would seek a sunset order, Your Honour,
29 given the additional documents that we haven't yet
30 produced.
31 HER HONOUR: I think that that could have a shorter timeframe

1 on it now, though, couldn't it?

2 MS PAPALEO: Yes, I would've thought the three months
3 probably - - -

4 HER HONOUR: The three months, rather than the six months?

5 MS PAPALEO: Yes.

6 HER HONOUR: Mr Mawhinney, do you have anything to say about
7 that?---Yes, Your Honour. As I'm unrepresented, I'd
8 appreciate you maybe enlightening me as to, if the
9 liquidators were to make a further request for
10 examination, is - is there an affidavit or some other
11 document that the liquidators require to provide the
12 court, for the court to make a decision in relation to
13 that examination? And if so, I haven't been aware of any
14 - the liquidators providing any grounds prior to
15 examination. And I'm - obviously, now that we're some
16 seven days into what's been a very gruelling process and
17 copious amounts of documentation provided, some of which
18 had already been provided, wanting to satisfy myself that
19 this isn't going to be dragged on and on and on, which
20 has started to be the case. And I just wanted to
21 understand the court's process.

22 Well - - -?---Should I want to object to a summons.

23 Well, there won't be a summons, Mr Mawhinney. It would be -
24 the orders would be in the form that you've already seen,
25 which is that the liquidators have leave to apply to me,
26 that's usually done via email, for a resumption of the
27 examination within the period that I state in the orders.
28 It's up to me whether I require an affidavit in support
29 of that or not. My recollection is that, to date, I have
30 not required an affidavit. Generally speaking,
31 affidavits that are filed by the liquidator in order to

1 seek leave to issue summonses or, where required, for the
2 resumption of any examination, are confidential and not
3 available for inspection. And generally speaking, if an
4 examinee wants to see that affidavit, then they have to
5 make an application for that affidavit to be
6 produced?---So if I wanted to object in relation to the
7 further examination, say, for example, on the basis of
8 improper purpose, how would I go about that if I wouldn't
9 have the benefit of the reasoning behind the application?

10 Well, you would make an application to - that the - you would
11 make an application to see any affidavit, and that would
12 be dealt with prior to determining any application that
13 the examination not be resumed?---Okay. I understand.

14 Is there a timeframe in which I need to do that?

15 Well, it wouldn't be done where there was no resumption,
16 Mr Mawhinney. It would be done sometime after - it would
17 be done after you were notified that there was to be a
18 resumption of the examination?---Okay. So - so it would
19 be post-notification of the resumption. Is there a
20 timeframe that I would need to provide such an
21 application to the court after that?

22 The rules don't deal with it, but it would need to be made
23 prior to the resumed date?---Okay. Understood.

24 And on notice to the plaintiff. And so, it would - you know,
25 it would need to be made, you know, a few - that would
26 need to be made at least a few days prior?---Okay.

27 As I said, the rules don't cover it unless - although there are
28 general rules about how many days prior to a hearing a
29 summons has to be served?---Okay. Thank you, for that.

30 You can check the court rules for that.

31 MS PAPAEO: Your Honour.

1 HER HONOUR: Yes, Ms Papaleo.

2 MS PAPAleo: I'm sorry, I have neglected to ask one
3 question. May I just quickly do that?

4 HER HONOUR: Yes.

5 MS PAPAleo: Thank you. Mr Mawhinney, on 23 March, which I
6 think was the last examination date before today, you
7 were asked by Mr Galvin whether you were willing to cause
8 101 Investments and Mayfair 101 to assign their interest
9 in the \$3 million shares, the subject of the convertible
10 note agreement, for the benefit of the IPO Fund investors
11 and you said to him that you would come back to us on
12 that and he asked you what you planned to do in the
13 meantime that would inform your decision and you said you
14 would conduct an evaluation of whether assigning the
15 shares back would be in the best interests of the IPOs
16 unit holders or not. Did you conduct that
17 evaluation?---Yes, I wrote to the instructing solicitor
18 to confirm my decision.

19 And your decision was not to agree to cause 101 Investments
20 and Mayfair 101 to assign their interests
21 back?---Correct.

22 And what led you to form the view that saying no - that failing
23 to agree or refusing to cause 101 Investments and Mayfair
24 Limited to assign the shares back would be in the best
25 interests of IPOs unit holders?---Because we've already
26 acknowledged the debt outstanding and we intend to clear
27 the debt.

28 When do you intend to clear the debt?---When we realise certain
29 investments that the group still holds.

30 What investments are those?---I - there's a number of
31 investments that the group still holds. Amongst many

1 litigation rights, damages claims. We have a project, as
2 you know, in far north Queensland that we're continuing
3 to develop. Accloud shares, PayMate shares. I can't
4 recall any others off the top of my head, but there's a
5 number.

6 So are you saying that you form the view that it was in the
7 best interests of the investors in the IPO Wealth Fund to
8 wait for you to succeed in litigation and be paid damages
9 rather than having the shares transferred back?---No, I
10 didn't say that.

11 That is - - -?---No, you asked a question what assets the group
12 still holds and I provided you some examples.

13 And you gave evidence that you would be repaying the debt out
14 of those assets, some of which included litigation rights
15 in proceedings. So is it the case - isn't it the case
16 that you've just given evidence that you formed the view
17 that it was in the best interests for the investors in
18 the IPO Wealth Fund to be repaid out of the product of
19 litigation rather than having - and various other assets
20 which you've loosely described - rather than having the
21 Accloud shares transferred to them?---No, I didn't say
22 that, Ms Papaleo, you're twisting my words.

23 What are the other assets besides the litigation rights?---I
24 mentioned that the group holds various assets including
25 the Accloud shares, including PayMate shares, various
26 investments up in far north Queensland.

27 What are those?---Sorry?

28 What are those?---A significant real estate project which
29 you're well aware of.

30 Mission Beach or Dunk Island?---Privilege. Both.

31 HER HONOUR: Are there any other assets that you were referring

1 to, Mr Mawhinney?---Privilege. No, there's not,
2 Your Honour.

3 MS PAPALEO: Hasn't Dunk Island been repossessed?---Privilege.
4 It has at present, yes.

5 So it's the case, isn't it then, Mr Mawhinney, that you formed
6 the view that it would better for the investors of the
7 IPO Wealth Fund to receive their payment out of assets
8 including speculative litigation and repossessed property
9 than to have the Accloud shares transferred back to
10 them?---Privilege. The Accloud shares were never owned
11 by the IPO Wealth investors or the IPO Wealth Fund.

12 I have no further questions, Your Honour.

13 HER HONOUR: Right. Thank you. All right then, that concludes
14 the examination. The orders will be made once I've
15 received the draft order from Ms Papaleo or her
16 instructors. Ms Papaleo, can I ask that Mr Mawhinney be
17 included on that - on the email sending the draft orders
18 to the court?

19 MS PAPALEO: Of course, Your Honour.

20 HER HONOUR: Right. Thank you. All right then. Thank you for
21 your attending today, Mr Mawhinney, and for giving
22 evidence. I'll just remind you of the order that I
23 already indicated that I have made but would make and
24 made when I pronounced it and that is that the non-
25 communication order with the other examinees?---That's
26 understood.

27 All right then. Thank you. Mr Associate, please adjourn the
28 court.

29 (Witness excused.)

30 <(THE WITNESS WITHDREW)

31 ADJOURNED TO A DATE TO BE FIXED