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## **1. Improper payment by Domi to Jakobek**

1. Domi should be criticized for giving Jakobek an improper \$25,000 payment in recognition for Jakobek having moved the Jakobek Amendment, which gave MFP the room to negotiate a more lucrative five-year lease deal.<sup>1</sup>

2. There is no evidence that anyone at MFP knew that Domi gave or intended to give an improper payment to Jakobek. Unfortunately, Wolfraim was the only MFP witness who testified after the evidence about the improper payment was called.

3. Nevertheless, as will be explained below, MFP failed to adequately supervise Domi and failed to provide him with any training on how to act ethically. Had MFP provided such training, it is possible that Domi would not have provided the improper payment to Jakobek.

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<sup>1</sup> See Chapter 19, parts 5, 6.

## 2. MFP policies

4. MFP had corporate policies in place pertaining to conflict of interest, code of conduct, donations and sponsorship, and expense reports.<sup>2</sup> MFP and its employees repeatedly violated these policies when dealing with the City. Domi's extravagant entertainment expenses and his method of filling out expense reports breached MFP's code of conduct policy, the conflict of interest policy, and expense report policy.

5. MFP was a member of the CFLA and followed the CFLA Code of Ethics.<sup>3</sup> MFP violated its obligations under the CFLA Code of Ethics on numerous occasions in its dealings with the City:

- a. MFP did not conduct its activities with integrity and professionalism when it lavishly entertained City Councillors, Andrew and Liczyk;
- b. MFP contracted out of the promises made in its bid and thus did not adhere to the specific terms of its funding commitments;
- c. MFP both obtained an unfair advantage through unethical means and withheld vital information for an intelligent business decision by failing to provide written proposals, pricing information, or any information for both the extension of the lease terms from 3 to 5 years and the July 2000 lease rewrites; and
- d. MFP failed to disclose all of the relevant terms of the lease transaction which may have affected the City's decision.

6. As set out in Chapter 4, MFP was subject to special considerations for leasing with government.<sup>4</sup> MFP took no meaningful steps to make itself or its staff aware of the relevant City policies.<sup>5</sup>

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<sup>2</sup> COT043625, 18:3:20; COT043629, 6:2:193; COT043626, 6:2:191

<sup>3</sup> COT043600 at COT043604, 6:2:188; Payne 01/09/2003 at 42-43.

7. MFP also failed to discharge its duties and obligations with respect to its client, the City, which was inexperienced with leasing transactions.<sup>6</sup> MFP promoted itself as a trusted leasing partner for the City, yet it consistently failed to:

- a. discharge its duty to educate the City about leasing;<sup>7</sup> and
- b. act in the best interests of the City, and to take the City's interests into account.<sup>8</sup>

8. Throughout its relationship with the City, MFP either behaved as if its only obligations to the City were found within the strict terms of the contracts or actively misled the City about its options and their implications.

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<sup>4</sup> Ashbourne 12/17/2002 at 47.

<sup>5</sup> Ashbourne 12/17/2002 at 48-49; Payne 01/14/2003 at 91-92.

<sup>6</sup> See Chapter 4.

<sup>7</sup> Wolfram 01/07/2003 at 77-78.

<sup>8</sup> Payne 01/14/2003 at 114-116; Wilkinson 09/18/2003 at 174-175; Ashbourne 12/17/2002 at 24-25.

### 3. MFP and Domi

9. MFP must be held accountable for Domi's shortcomings and mistakes. MFP, and Payne in particular, sought out a hungry and entrepreneurial salesperson.<sup>9</sup> MFP hired Domi because he was a hunter, and then encouraged him to land the City leasing deal through several unethical and unscrupulous actions and omissions.<sup>10</sup> MFP:

- a. hired Domi despite his lack of education or experience in sales, finance, leasing, information technology, or asset management;<sup>11</sup>
- b. advised Domi to develop inappropriate personal relationships with key decision makers by engaging in aggressive and improper entertaining;
- c. failed to provide Domi with the policies or training related to MFP's policies and procedures;<sup>12</sup>
- d. failed to train and supervise Domi appropriately with respect leasing and sales;<sup>13</sup>
- e. expected and encouraged Domi to use his connections to Paul Godfrey, Rob Godfrey, Danson, and Nigro to develop relationships at the City;<sup>14</sup>
- f. expected and rewarded his approach, which was that his "entire effort" was his expenses;<sup>15</sup>
- g. paid him enormous commissions that were entirely unrelated to any contribution which he admitted to making; and

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<sup>9</sup> Ashbourne 12/17/2002 at 40-41; COT041622 at COT041781, 5:1:84.

<sup>10</sup> Payne 01/09/2003 at 93-94.

<sup>11</sup> Domi 01/22/2003 at 51-52.

<sup>12</sup> Domi 01/27/2003 at 154-155; Rollock Affidavit, para. 23, 06/09/2003 at 210.

<sup>13</sup> Wolfraim 01/07/2003 at 126-127; Domi 01/30/2003 at 136-137; Domi 02/10/2003 at 11-12; Payne 01/09/2003 at 97; Rollock Affidavit, para. 13, 06/09/2003 at 206.

<sup>14</sup> Payne 01/09/2003 at 90-91.

<sup>15</sup> Domi 01/28/2003 at 22; Domi 01/29/2003 at 83, 85, 86; Domi 02/10/2003 at 95, 185.

- h. hired Nigro either to help Domi build improper relationships with the City's key decision makers, or to reward Nigro for his past assistance to Domi in building such inappropriate relationships.

#### 4. MFP and building relationships

10. MFP proudly billed itself as a “relationship company”, which encouraged close personal contact between its sales representatives and the City’s key decision makers. In order to build these relationships, MFP went to great lengths to compromise the objectivity of City staff. From unlimited expense accounts to private jets, MFP aggressively pursued the City’s leasing business. All of these efforts were designed to create a climate of trust and reliance in which City staff would no longer be in a position to objectively assess MFP’s bid.

11. MFP should be criticized for encouraging Domi to establish improper relationships with City staff, particularly the City’s key decision makers, by taking a very aggressive approach to entertaining.<sup>16</sup> MFP:

- a. gave Domi a limitless expense account;<sup>17</sup>
- b. approved clearly inappropriate and extravagant expenses;<sup>18</sup>
- c. approved 213 expense reports from Domi that he claimed related to the City;
- d. approved expenses for Domi that were double the expected amount without questions;<sup>19</sup>
- e. paid for two private chartered flights within two weeks;<sup>20</sup>
- f. gave Domi no training on how to use his expense account ethically;<sup>21</sup>

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<sup>16</sup> Domi 02/10/2003 at 10.

<sup>17</sup> Domi 01/27/2003 at 167; Domi 02/10/2003 at 133; Payne 01/09/2003 at 100-101; Flanagan 02/19/2002 at 64.

<sup>18</sup> Domi 01/27/2003 at 169-170.

<sup>19</sup> Wolfraim 12/19/2002 at 102-103.

<sup>20</sup> Wolfraim 12/19/2002 at 108; COT026006, 6:1:45; COT042267, 6:1:46; COT042269, 6:1:148; COT042270, 6:1:149; COT042271, 6:1:150; COT042272, 6:1:151; COT025617, 11:1:8; COT042273, 6:1:152.

- g. provided no meaningful oversight of Domi's use of the expense account;<sup>22</sup>
  - h. overlooked Domi's non-compliance with MFP's expense report policy, including that he expensed meals so long as he thought business during the meal, and had Pessione complete his expense reports on his behalf;<sup>23</sup>
  - i. permitted Domi to hold himself out as a "Regional Sales Manager" when he was no such thing;<sup>24</sup>
  - j. showed great support, often financial, for mayoral events, including golf tournament sponsorship and Mayor Lastman's ball;<sup>25</sup> and
  - k. permitted Domi to use his MFP expense account to inappropriately entertain individuals who were well-connected to the City, particularly Nigro, Danson, and Rob Godfrey.<sup>26</sup>
12. The Commissioner should criticize MFP for its overly aggressive sales philosophy and its approach toward entertainment expense accounts. Domi repeatedly used his expense account to curry favour with the City's key decision makers.

***a) Domi and Andrew***

13. As discussed in Chapters 5 and 21, Domi used his expense account and his connections to do personal favours for Andrew and to build trust with Andrew. MFP and Domi should be criticized because Domi:

- a. wined, dined, and entertained Andrew in a wholly inappropriate fashion;<sup>27</sup>

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<sup>21</sup> Domi 01/27/2003 at 167.

<sup>22</sup> Payne 01/14/2003 at 17; Rollock 06/10/2004 at 8-10.

<sup>23</sup> Domi 01/27/2003 at 155-160, 172-173; Pessione 02/13/2003 at 98.

<sup>24</sup> Payne 01/09/2003 at 112-113; Domi 01/23/2003 at 41-46.

<sup>25</sup> Payne 01/09/2003 at 70-71; COT029074, 2:2.1:166; COT029075, 14:2:11.

<sup>26</sup> Domi 01/29/2003 at 114-115; Domi 01/28/2003 at 55-59; Payne 01/10/2003 at 72.

<sup>27</sup> Domi 01/30/2003 at 44-45, 186-187.



- b. paid Andrew's Harbour Sixty Steakhouse bill for a meal or a drink that he did not even share with him;<sup>28</sup>
- c. arranged for Andrew to meet with Paul Godfrey with respect to Andrew's desire to be Commissioner of Corporate Services;<sup>29</sup>
- d. gave Andrew a \$700 Cartier pen as a Christmas gift;<sup>30</sup>
- e. placed 112 phone calls from his cellular phone to the three numbers listed in his address book for Andrew.<sup>31</sup>

**b) Domi and Liczyk**

14. Domi used his expense account and his charm to establish a personal relationship with Liczyk that crossed professional boundaries. For example, Domi attended Liczyk's fortieth birthday party at her home.<sup>32</sup> MFP and Domi should be criticized because Domi:

- a. wined, dined, and entertained Liczyk;<sup>33</sup>
- b. flew Liczyk on a private jet to Ottawa to watch a hockey game, although she did pay for a portion of the event;<sup>34</sup>
- c. recommended a hairdresser and set up an appointment for Liczyk;<sup>35</sup>
- d. invited Liczyk to go to Hawaii for a MFP sales meeting;<sup>36</sup>

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<sup>28</sup> Andrew Affidavit, para.53, 09/24/2003 at 32.

<sup>29</sup> Andrew Affidavit, para.54, 09/24/2003 at 32-33.

<sup>30</sup> COT052989 at COT053011, 6:3:57; COT025919, 11:1:13; Andrew Affidavit, paras.55-56, 09/24/2003 at 34.

<sup>31</sup> Domi 02/11/2003 at 116.

<sup>32</sup> Domi 01/27/2003 at 40.

<sup>33</sup> Domi 01/29/2003 at 142-143, 158-159; Domi 01/23/2003 at 152-153.

<sup>34</sup> COT042276, 63:20:9; COT042278, 63:20:9a; Liczyk 11/06/2003 at 15-16.

<sup>35</sup> Domi 01/23/2003 at 161-162; COT013249, 63:7:26; Domi 02/10/2003 at 116-117.

<sup>36</sup> Payne 01/09/2003 at 121, 125.

- e. placed 216 calls to Liczyk between March 8, 1999 and October 4, 2002;<sup>37</sup> and
- f. called Liczyk at home at 12:45 a.m. and then 1:11 a.m., the second call lasting for over an hour.<sup>38</sup>

**c) *Domi and Jakobek***

15. As discussed in Chapter 5 and 18, Domi developed an inappropriate relationship with Jakobek, a City Councillor. MFP and Domi should be criticized because Domi:

- a. wine, dined, and entertained Jakobek;<sup>39</sup>
- b. flew Jakobek on a private jet to Philadelphia to watch a playoff game less than one month before the City issued its RFQ at a cost of well over \$7,000;<sup>40</sup>
- c. placed 135 calls to Jakobek and had at least 76 conversations with Jakobek between March 15, 1999 and October 12, 2000;<sup>41</sup> and
- d. placed 70 calls to Jakobek and had at least 33 conversations with Jakobek between October 10, 2000 and September 11, 2002.

16. Domi should be rebuked for testifying under oath that Jakobek was not on the flight to Philadelphia.<sup>42</sup> As discussed in Chapter 18, Jakobek later admitted that he was

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<sup>37</sup> COT084378, 98:2:12.

<sup>38</sup> Domi 02/11/2003 at 158-159.

<sup>39</sup> Payne 01/10/2003 at 49, 54.

<sup>40</sup> See COT042272, 6:1:151, the flight invoice for \$6420; COT025617, 11:1:8, the receipt for the tickets totalling \$607.50 (likely in U.S. funds); and COT025655, 11:1:9, the invoice for the limousine in Philadelphia \$389 (likely in U.S. funds). The face value of these invoices and receipts is \$7416.50, which excludes any exchange rate.

<sup>41</sup> COT061285, 99:1:76; Domi 02/11/2003 at 45.

<sup>42</sup> Domi 02/12/2003 at 178, 182-183; Domi Affidavit, para. 8, 04/19/2004 at 181.

on the flight.<sup>43</sup> Domi's evidence regarding Philadelphia was argumentative, evasive, and unhelpful.<sup>44</sup> Domi's evidence was also untruthful on a number of essential issues. Domi testified that Jakobek was not on the flight because he and Jakobek had previously agreed to mislead the Commission.<sup>45</sup> Domi should be criticized for misleading the Inquiry.

17. Similarly, former senior MFP employee Payne should be criticized for abetting Domi in his efforts to mislead the Commission. Payne personally approved the expense for the flight to Philadelphia.<sup>46</sup> Payne testified that at no time did she ask, nor did Domi tell her, who would be on the plane.<sup>47</sup> Payne maintained that even after the flights to Montreal and Philadelphia, she did not ask Domi who attended the games.<sup>48</sup> The Commissioner should reject Payne's evidence on this point. It is inconceivable that Domi would not have talked to Payne about the people he was taking on such an expensive flight, particularly given that his "entire effort was his expenses".

18. Finally, Domi should be criticized for expanding the network of individuals with whom he tried to establish an inappropriate relationship after June 11, 1999, beyond these three "key decision makers". After that date, he also entertained Bulko, Viinamae, Leggieri, and Marks at various times.<sup>49</sup> He should be criticized for pursuing inappropriate relationships as a way to enable MFP to write lease terms to its advantage.<sup>50</sup>

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<sup>43</sup> Jakobek 05/14/2003 at 30.

<sup>44</sup> Domi 04/20/2004 at 71-72.

<sup>45</sup> See Chapter 18, part 4.

<sup>46</sup> Payne 01/10/2003 at 57.

<sup>47</sup> Payne 01/10/2003 at 61.

<sup>48</sup> Payne 01/10/2003 at 66-68.

<sup>49</sup> Domi 01/23/2003 at 193-194.

<sup>50</sup> Domi 01/23/2003 at 199.

## 5. The blackout period

19. MFP should be criticized for being willfully blind to Domi's numerous contacts with City staff during the blackout period. MFP knew that it was inappropriate to entertain City employees during the blackout period.<sup>51</sup> Domi admitted that he knew MFP was prohibited from contacting the City during the blackout period.<sup>52</sup> MFP and Domi should be criticized because:

- a. Domi placed five calls to Andrew's home or cell number between June 12 and July 27, 1999;<sup>53</sup>
- b. Domi had 14 telephone conversations with Jakobek during the period between the date MFP submitted its bid and the date that Jakobek moved his amendment to the P&F Report recommending that MFP be awarded the contract;
- c. Domi failed to recognize the inappropriateness of these contacts;<sup>54</sup> and
- d. MFP failed to supervise and inform Domi that such contacts were inappropriate.

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<sup>51</sup> Payne 01/14/2003 at 210-211; Wolfraim 01/09/2003 at 39-40.

<sup>52</sup> Domi 01/30/2003 at 65, 76-77.

<sup>53</sup> Domi 02/11/2003 at 119.

<sup>54</sup> Domi 02/11/2003 at 123-125.

## 6. The MLA

20. MFP's actions in writing the MLA are discussed in Chapter 9. After winning the bid, MFP created a culture of confidence between City staff and MFP. MFP wanted City staff to believe that MFP was a partner, consulting with the City to further the City's best interests, not a corporate predator whose only obligations to the City were found in the four corners of the contracts.

21. MFP drafted the MLA specifically to resile from the terms in its bid without legal consequences.<sup>55</sup> MFP even began drafting the MLA prior to being awarded the contract with a view to resiling from the promises in its bid.<sup>56</sup> Specifically, MFP should be criticized because it:

- a. resisted treating the RFQ or MFP bid as the basis for the contractual document;<sup>57</sup>
- b. had internal documents that showed a premeditated and standard practice to avoid being bound by its bid;<sup>58</sup> and
- c. defined "equipment" to its own advantage as everything listed in an Equipment Schedule, and ensured that the options applied only to "equipment", not "units".<sup>59</sup>

22. MFP resiled from the commitments it made to the City in its bid.<sup>60</sup> The following commitments were either contradicted by the MLA or simply excluded:

- a. lease rate factors and clause 1.1.17;

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<sup>55</sup> Wolfram 09/28/2004 at 132; COT080060, 18:3:36; COT083836 at COT083837, 18:3:14.

<sup>56</sup> COT027541, exhibit 3 to Harle Affidavit; Harle Affidavit, para.19, 11/24/2003 at 11-12; Stevens 02/17/2003 at 59-60; COT042142 at COT042158, 11:3:7.

<sup>57</sup> Wilkinson Affidavit, para.58, 09/16/2003 at 61-62.

<sup>58</sup> COT080060, 18:3:36; COT083836 at COT083827, 18:3:14.

- b. MFP's promise to provide the City with free asset management services disappeared from the MLA;<sup>61</sup>
  - c. MFP's promise of free pick up and delivery of equipment<sup>62</sup> was turned on its head in the MLA, which imposed the entire cost on the City;<sup>63</sup>
  - d. MFP's promise of the right to upgrade products at any time during the lease term<sup>64</sup> disappeared from the MLA;<sup>65</sup> and
  - e. MFP agreed that the City could delay a lease payment into the following year at prime,<sup>66</sup> but the MLA imposed an interest rate of 24%.<sup>67</sup>
23. Despite its position as the City's trusted leasing partner, there were no communications between MFP and the City with respect to MFP's desire to depart from its response to the RFQ. MFP failed to discharge its responsibility to discuss the change of terms or the corollary additional costs with anyone at the City.<sup>68</sup>

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<sup>59</sup> COT012140 at COT012140, 63:8:34; COT080176 at COT080182, 61:1:Report; Kerr 09/11/2003 at 33-34.

<sup>60</sup> Wilkinson 09/22/2003 at 184.

<sup>61</sup> COT072876 at COT072902, 62:4:9.

<sup>62</sup> COT072876 at COT072902, 62:4:9.

<sup>63</sup> COT012140 at COT012142, 63:8:34.

<sup>64</sup> COT072876 at COT072884, 62:4:9; COT072876 at COT072887, 62:4:9.

<sup>65</sup> Wilkinson 09/23/2003 at 29; COT012140 at COT012144, 63:8:34.

<sup>66</sup> COT072876 at COT072890, 62:4:9.

<sup>67</sup> COT012140 at COT012145, 63:8:34

<sup>68</sup> Wilkinson 09/23/2003 at 12-13, 20; Wilkinson 09/22/2003 at 222-223.

## 7. The Oracle transaction

24. Putting the Oracle ELA on lease was a costly mistake for the City that benefited MFP. MFP knowingly profited at the City's expense and knowingly exploited Viinamae's lack of knowledge and sophistication about leasing. MFP said nothing to the City about the disadvantages of placing software, or maintenance of that software, on lease. MFP should be criticized because it:

- a. failed to advise the City that it was unusual to put software on lease because it had no residual value at the end of the lease;<sup>69</sup>
- b. failed to advise the City of the financial hazards of putting the entire Oracle contract on lease;<sup>70</sup>
- c. failed to advise Viinamae, with whom Wilkinson had participated in numerous meetings that made clear her limited leasing knowledge, of the advantages and disadvantages of leasing the Oracle contract;<sup>71</sup>
- d. failed to advise the City that it was prepaying to MFP five years worth of maintenance and support fees, which were only due to Oracle on an annual basis;
- e. placed software maintenance agreements on lease and collected lease payments on maintenance fees from the City years before MFP had to pay the fees to Oracle;<sup>72</sup>
- f. failed to advise the City that there was no benefit to be obtained by placing future support on lease;<sup>73</sup> and

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<sup>69</sup> Currie 09/02/2003 at 62-63.

<sup>70</sup> Wilkinson 09/16/2003 at 258-261.

<sup>71</sup> Wilkinson 09/16/2003 at 258-261.

<sup>72</sup> Wong 08/05/2003 at 73; Wolfram 12/19/2002 at 94.

- g. profited from the Oracle leasing transaction by taking the money advanced to it up front and re-investing it in the amount of almost \$600,000.<sup>74</sup>

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<sup>73</sup> Griffith 08/06/2003 at 188.

<sup>74</sup> Flanagan 02/20/2003 at 41-42.



**8. The *modus operandi* for the change from 3 to 5 years and the lease rewrites**

25. MFP engaged in deliberate and calculated deception in order to extend the lease terms from 3 to 5 years and to rewrite the leases. In order to accomplish these bait and switches, MFP and Domi:

- a. provided no paper trail, but instead met with the City to discuss broad concepts and ideas;
- b. committed nothing to writing, confirmed nothing in writing, and erased or discarded any written examples previously provided;
- c. provided no quote and did not disclose the actual cost of the transaction;
- d. personally delivered the lease documents to the City; and
- e. provided no covering letter to identify the fact that the contract was being forwarded to the City for its review and execution, let alone any description of the contract.

## 9. The change from 3 to 5 years

26. The City's view of the evidence related to the change from 3 to 5 year lease terms is set out in Chapter 10. MFP's substitution of 5 year leases for the 3 year leases the City tendered was a pure bait and switch. MFP acted in bad faith. MFP:

- a. acknowledged that it could only profit from the City transaction if it "enhanced" the deal it had already committed to in the response to the RFQ;<sup>75</sup>
- b. acknowledged that 5 year lease terms rarely, if ever, make sense for a lessee;<sup>76</sup> and
- c. prepared two documents containing calculations for lease scenarios with 36 month, 48 month, and 60 month lease terms prior to being awarded the City tender.<sup>77</sup>

27. All of this is evidence that MFP had no intention of being bound by the terms of its response to the RFQ. In fact, MFP had a standard operating practice of ensuring that it would never have to honour its bids.<sup>78</sup>

28. The Commissioner should criticize MFP's role in extending the lease terms from 3 to 5 years. MFP engaged in behaviour that was unethical. Having promised to act as the City's leasing partner, MFP then resiled from its commitments, misled the City by act and omission, failed to provide meaningful information or advice, and generally took advantage of the City's lack of leasing expertise. MFP acted as a corporate predator, not a leasing partner. MFP:

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<sup>75</sup> Wolfraim 09/28/2004 at 94, 97-98.

<sup>76</sup> Wolfraim 09/28/2004 at 90-91.

<sup>77</sup> COT026737, 18:3:35; COT026739, 18:3:35.

<sup>78</sup> COT080060, 18:3:36; COT083836 at COT083827, 18:3:14.

- a. ensured that the MLA governed the transaction to the exclusion of its response to the 1999 RFQ;<sup>79</sup>
- b. engaged in a “divide and conquer” approach to City staff, purposely meeting with I&T and Finance separately;<sup>80</sup>
- c. failed to provide any specific pricing information to allow the City to analyze MFP’s proposal for 5 year leases;<sup>81</sup>
- d. never provided a meaningful written proposal on 5 year leases before it presented contract documents for the City to sign;<sup>82</sup>
- e. began drafting 5 year lease terms one day after the September 21, 1999 meeting with the City, in which Wilkinson agreed that no conclusion was reached and no instructions were provided;<sup>83</sup>
- f. presented contract documents to the City for signature without receiving any instructions from anyone at the City to do so;<sup>84</sup>
- g. proposed 5 year lease terms that, when measured against MFP’s response to the RFQ, provided the most expensive way for the City to obtain any supposed flexibility; and
- h. provided lease rate factors for 5 year lease terms only upon request by the City after the first equipment schedule had already been signed.<sup>85</sup>

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<sup>79</sup> Wolfraim 09/28/2004 at 132; COT080060, 18:3:36; COT083836 at COT083837, 18:3:14.

<sup>80</sup> Liczyk 11/13/2003 at 70, 76; Liczyk 11/17/2003 at 182.

<sup>81</sup> Wolfraim 09/28/2004 at 111; Liczyk 11/17/2003 at 212;

<sup>82</sup> Wolfraim 09/28/2004 at 107-108.

<sup>83</sup> Wilkinson Affidavit, para. 73, 09/16/2003 at 69.

<sup>84</sup> Wilkinson Affidavit, paras. 67, 76, 09/16/2003 at 66, 70-71; Wilkinson 09/16/2003 at 244; Wilkinson 09/22/2003 at 167.

<sup>85</sup> COT024971, 99:1:33; Liczyk 11/17/2003 at 207; Wilkinson Affidavit, para.86, 09/16/2003 at 76.

## 10. The lease rewrites

29. The lease rewrites are discussed in Chapter 15. The rewrites are a third striking example of how MFP manipulated the shortcomings in the City's processes. Internal MFP documents indicated that by January 2000, only four months after writing its first lease with the City, MFP was planning to rewrite the leases.<sup>86</sup> The lease rewrites were entirely to MFP's financial benefit and to the detriment of the City. The benefits to MFP included:

- a. an additional \$2,527,354 (exclusive of taxes) in payment obligations for the City; and
- b. a common termination date of March 31, 2005, which increased the already extended 60 month lease terms to 63 and 66 month lease terms.<sup>87</sup>

30. MFP churned the leases to its sole advantage. The lease rewrites were unnecessary and detrimental for the City. MFP should be criticized because it:

- a. intentionally obfuscated the issues so as to confuse asset management, cost allocation, and refresh strategies with "logically grouping the assets";<sup>88</sup>
- b. induced the City to believe it was creating a reporting system, not rewriting the lease schedules;<sup>89</sup>
- c. failed to discharge its obligation as the City's leasing partner to inform it of the cost of any changes to existing leases;<sup>90</sup>
- d. failed to disclose the 2.5 million dollar cost of the lease rewrites;<sup>91</sup>

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<sup>86</sup> COT083591, 98:1:3.

<sup>87</sup> COT080176 at COT080190, 61:1:Report.

- e. failed to disclose that the 57 month extended common lease term was not the weighted average;<sup>92</sup>
- f. promised a huge commission in the amount of \$420,000 to Domi exclusively for the City lease rewrites;<sup>93</sup>
- g. rewrote the leases in the complete absence of an instruction from anyone at the City to do so;<sup>94</sup>
- h. assuming that someone at the City did give that direction, failed to identify the City employee(s) who allegedly gave the verbal instructions to proceed with the rewrites;<sup>95</sup>
- i. pushed the lease rewrites quickly through its systems for quarter end;<sup>96</sup>
- j. bypassed the CMO by taking the lease schedules directly to Liczyk for signature, thereby preempting any meaningful review of their terms;<sup>97</sup>
- k. personally delivered the lease documents to Liczyk knowing they were lengthy and that she could not possibly read all of the fine print;<sup>98</sup>
- l. misled the City as to the nature of the lease documents by calling them “administrative reorganizations”;<sup>99</sup> and

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<sup>88</sup> Wilkinson Affidavit, para. 103, 108, 09/16/2003 at 85-87.

<sup>89</sup> Viinamae 10/29/2003 at 103; Liczyk Affidavit, para. 223, 11/03/2003 at 86-87.

<sup>90</sup> Wilkinson Affidavit, para. 113, 09/16/2003 at 89.

<sup>91</sup> Wilkinson Affidavit, para. 113, 09/16/2003 at 89; Wolfram 09/27/2004 at 159.

<sup>92</sup> Wilkinson 09/23/2003 at 97-100; Wilkinson 09/18/2003 at 98.

<sup>93</sup> COT083591, 98:1:3; Flanagan 02/18/2003 at 125; Domi 04/21/2004 at 47-48.

<sup>94</sup> Liczyk Affidavit, para. 224, 11/03/2003 at 87; Liczyk 11/17/2003 at 112; Andrew Affidavit, para. 167, 09/24/2003 at 76; Viinamae 10/16/2003 at 186-190; Viinamae 10/21/2003 at 103; Viinamae 10/22/2003 at 56-58; Bulko 08/12/2003 at 158; Marks 08/14/2003 at 183; Leggieri 09/02/2003 at 135; Power 03/25/2003 at 6.

<sup>95</sup> Wilkinson Affidavit, para. 118-119, 09/16/2003 at 90-91; Domi 04/21/2004 at 26-27.

<sup>96</sup> COT027758, 99:1:38.

<sup>97</sup> Viinamae 10/22/2003 at 59; Leggieri 04/09/2003 at 81; Bulko 08/12/2003 at 167.

<sup>98</sup> Domi 04/21/2004 at 61-2.

- m. failed to attach a cover letter to identify the true nature and effect of the contractual documents to be signed.<sup>100</sup>
31. The lease rewrites cost the City over \$2.5 million and were of no benefit to the City whatsoever.<sup>101</sup> Instead, the lease rewrites:
- a. failed utterly to accomplish any of the City's goals with respect to asset management, cost allocation, and refresh strategies;
  - b. failed to group assets in a way that was of any benefit as an asset management or cost allocation tool;<sup>102</sup>
  - c. extended lease terms beyond the expected three year life of a computer asset;<sup>103</sup> and
  - d. left the City with old and outdated equipment that it would not reasonably want to keep beyond five years.<sup>104</sup>
32. All of the purported objectives could have been accomplished without rewriting the leases. The City could have added new equipment, removed extraneous equipment, generated reports that grouped assets by product type, and generated reports that allocated costs by department.<sup>105</sup> Moreover, all of the asset management benefits contemplated by the lease rewrites should have been provided by MFP at no cost, pursuant to the terms of their response to the RFQ.<sup>106</sup>

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<sup>99</sup> Liczyk 11/06/2003 at 75; Domi 04/21/2004 at 63.

<sup>100</sup> Wolfram 09/27/2004 at 242.

<sup>101</sup> COT080176 at COT080178, COT080196, 61:1:Report; Kerr 09/11/2003 at 87.

<sup>102</sup> Wolfram 09/27/2004 at 211.

<sup>103</sup> Kerr 09/11/2003 87.

<sup>104</sup> Wolfram 09/27/2004 at 188-189; Kerr 09/11/2003 at 88-89.

<sup>105</sup> COT080179 at COT080192, 61:1:Report.

<sup>106</sup> COT072876 at COT072882, 62:4:9; COT072876 at COT072822, 62:4:9.