

IN THE PRIVY COUNCIL

No. 9 of 1973

ON APPEAL
FROM THE SUPREME COURT OF NEW SOUTH WALES
EQUITY DIVISION

BETWEEN :

HOWARD SMITH LIMITED

Appellant
(13th Defendant)

- and -

AMPOL PETROLEUM LIMITED

Respondent
Plaintiff

R.W. MILLER (HOLDINGS) LIMITED

(1st) Defendant

ARCHIBALD N. TAYLOR

(2nd) Defendant

SIR EMIL HERBERT PETER ABELLES

(3rd) Defendant

ELIZABETH MILLER

(4th) Defendant

ROBERT I. NICHOLL

(5th) Defendant

EVAN DUFF CAMERON

(6th) Defendant

KENNETH B. ANDERSON

(7th) Defendant

WILLIAM A. CONWAY

(8th) Defendant

PETER J. DUNCAN

(9th) Defendant

ALAN V. BALHORN

(10th) Defendant

F.M. MURPHY (a male)

(11th) Defendant

C.J. WATT (a male)

(12th) Defendant

SECURITY SHARE SERVICES (UK) LIMITED

(14th) Defendant

INSTITUTE OF ADVANCED
LEGAL STUDIES

RESPONDENTS

- 4 JAN 1975

25 RUSSELL SQUARE

RECORD OF PROCEEDINGS

VOLUME V

Linklaters & Paines,
Barrington House,
59-67 Gresham Street,
London, EC2V 7JA.
Solicitors for the Appellant

Clifford-Turner & Company,
11 Old Jewry,
London, EC2R 8DS

Solicitors for Ampol Petroleum Ltd.

APPENDIX "H"

Exhibit KK

R.W. MILLER (HOLDINGS) LIMITEDSUMMARY OF ASSET BACKING

	<u>30th June 1971</u>		<u>31st December 1971</u>	
	Net Tangible assets	Asset backing per share	Net Tangible assets	Asset backing per share
	<u>£000</u>	<u>£</u>	<u>£000</u>	<u>£</u>
Net Assets				
Per				
Accounts	15,816	1.76	16,282	1.81
<u>Add reval-</u> <u>uation per</u> <u>Appendix F</u>	<u>17,660</u>		<u>17,621</u>	
	33,476	3.71	33,903	3.77
<u>Less value</u> <u>of coal</u> <u>reserves</u>	<u>10,797</u>		<u>10,667</u>	
Value including coal reserves	22,679	2.52	23,236	2.53
<u>Add write</u> <u>down of</u> <u>coal min-</u> <u>ing assets</u>	<u>933</u>		<u>914</u>	
Adjusted Value in- cluding coal interests at book value	<u>23,612</u>	<u>2.62</u>	<u>24,150</u>	<u>2.68</u>

Report of Cooper
Brothers & Co.
of their review
of financial
position for
R.W. Miller
(Holdings) Ltd.21st June
1972.
(continued)

Plaintiffs
Exhibits

Exhibit LL

Three letters
R.W. Miller
(Holdings) Ltd.
to The Sydney
Stock Exchange

26th March
1972.

1406.
Plaintiffs Exhibits

Exhibit LL

Three letters R.W. Miller (Holdings) Ltd.
to The Sydney Stock Exchange dated
26th March 1971, 13th October 1971 and
28th December 1971

26th March, 1971

The Secretary,
Sydney Stock Exchange Limited,
20 O'Connell Street,
SYDNEY. N.S.W. 2000

10

Dear Sir,

The Directors have to-day declared an interim ordinary dividend of 5% being ~~80.05¢~~ per share on the issued ordinary capital of the company payable on 30th April 1971.

Duly completed transfers received by the company up to 5 p.m. on 16th April 1971 will be registered before entitlements to the dividend are determined.

Turnover for the six months ending 31st December 1970, has been affected by the continuing slackness of the Japanese Market for coal. It is now quite apparent that the replacement of the declining domestic sales of coal with export sales will be subject to greater influences than originally anticipated. Currently the Japanese Steel Mills have reduced production with a consequent steadying of coal imports from Australia and the export market is not likely to become buoyant during the balance of this financial year.

20

30

The other activities of the company have continued to expand and despite the reduction of coal revenue, overall sales have increased by 5.4%, as compared with the previous corresponding period. This increase in activity, particularly in the hotel and catering sections, has of necessity been accompanied by inevitable preliminary expenses and development costs, so that the true benefits of the increased sales cannot reflect immediately.

40

Despite the healthy increase in turnover the overall pre-tax profit of the R.W. Miller Group for the six months ended 31st December 1970 is lower by 11.6% as compared with the previous corresponding period and this trend will remain a feature of trading until the expanded activities of the past two years bear fruit during the next year and succeeding financial periods.

Exhibit LL

Three letters
R.W. Miller
(Holdings) Ltd.
to The Sydney
Stock Exchange

26th March
1971.

(continued)

10

Yours faithfully,
R.W. MILLER (HOLDINGS) LIMITED

SecretaryExhibit LL

(Continued)

Exhibit LL

Three letters
R.W. Miller
(Holdings) Ltd.
to The Sydney
Stock Exchange

13th October
1971.

13 October 1971

20

The Secretary,
Sydney Stock Exchange,
20 O'Connell Street,
SYDNEY. N.S.W. 2000

Dear Sir,

The Directors have to-day decided to recommend a final ordinary dividend of 3% being £0.03 per share on the issued ordinary capital of the Company payable on 19th November 1971.

30

Duly completed transfers received by the Company up to 5 p.m. on 3rd November 1971 will be registered before entitlements to the dividend are determined.

Together with the interim dividend of 5% being £0.05 per share, the distribution for the year ended 30th June 1971 is 8% being £0.08 per share (last year 12% being £0.12 per share).

Plaintiffs
Exhibits

1408.

Exhibit LL

Three letters
R.W. Miller
(Holdings) Ltd.
to The Sydney
Stock Exchange

13th October
1971.
(Continued)

Consolidated audited Preliminary
Statement of Profit of the R.W. Miller Group
for the year ended 30th June 1971 is as follows:-

	<u>Year Ended</u>		
	<u>30/6/71</u>	<u>30/6/70</u>	
(a) Consolidated net Profit, after depreciation and tax, and excluding (e) below	948,821	1,225,743	10
(b) Provision for Depreciation and Amortisation	879,411	722,428	
(c) Provision for Current and Future Income Tax	394,382	799,404	
(d) Net loss attributable to outside shareholders and brought to account in (a) above	16,690	33,352	20
(e) Capital Profits excluded from (a) above	14,199	220,000	

ANNUAL MEETING:

The Annual Meeting of the Company will be held in the Conference Room at Millers Oceanic Hotel, Arden & Carr Streets, Coogee, N.S.W. on 19th November 1971 at 3.00 p.m. 30

Printed Accounts and Report are expected to be available about 4th November 1971.

As predicted in the interim report the declining profit trend continued into the latter part of the 1970/71 fiscal year. Whilst sales and revenue for the financial year ended 30th June 1971 showed an increase of 4.96% as compared with the previous financial year, profit margins were seriously affected by the following factors: 40

1. Substantially increased costs and overhead.
2. Reduced export sales to Japan following the Japanese Steel Mill's decision to cut back imports of Australian soft coking coal. These cut backs proved more severe than originally anticipated
3. Lower coal production, mainly attributable to industrial disputes in the mining and associated industries.
4. Reduced income from shipping operations due to industrial action by certain unions.

Exhibit LL

Three letters
R.W. Miller
(Holdings) Ltd.
to The Sydney
Stock Exchange

13th October
1971.

(continued)

FUTURE:

The major operating divisions have budgetted for increased sales and profits in the current financial year and trading results for the first quarter are in excess of these estimates.

Subject to unforeseen circumstances, the Board is of the opinion that 1971/72 will evidence the wisdom of our past and current investment in long term capital projects and that the profits expected therefrom in current and future years will justify such investments and provide a handsome contribution to the future prosperity of the Company.

SHIPPING:

On 31st August 1971 the Company took delivery of the 66,000 ton tanker M.T. "Amanda Miller". The delivery of this tanker was delayed following the unfortunate fire in April 1970. However, the vessel is now operating under a long term charter to a consortium of oil companies operating in Australia. The introduction of this vessel to the Australian Coast has fulfilled a long term objective of the Company and the benefit of this tanker's operations will be reflected in the trading results for year ending 30th June 1972 and subsequent years.

Plaintiffs
Exhibits

1410.

Exhibit LL

FINANCE:

Three letters
R.W. Miller
(Holdings) Ltd.
to The Sydney
Stock Exchange

13th October
1971.

(continued)

To assist in financing the operation of the M.T. "Amanda Miller" the Company successfully negotiated a long term loan of U.S.\$8.3 million from Hambros Bank Limited, London. Proceeds of this loan, which was arranged through Australian Finance and Investment Co. Ltd., Sydney, were received in September 1971.

Negotiations are also progressing for long term finance to cover the construction and subsequent operation of the sister-ship to the "Amanda Miller" now under construction at Evans Deakin's Shipyard in Queensland. This 66,000 ton vessel will be named the M.T. "Robert Miller" and is due to be commissioned during the first quarter of 1973. 10

HOTELS:

Hotel trading during the year was up to expectations and increased sales contained increased costs of operation. 20

The company has continued its plan of development in this area. Modernisation of hotels through improved atmosphere and customer amenities, together with a new concept of drive-in "Bottle Stops" has continued into the current year. This, in conjunction with our advancement into the general field of catering, provides a suitable basis for continuing expansion.

The Board has decided that the Company will be actively involved in the future operation of Taverns in the Sydney area. As a prototype the Bexley North Hotel Lounge and Saloon Bar has been converted to a Tavern style operation and trading results of that hotel, since conversion, have vindicated this move. 30

The Licensing Court has approved our application for a Tavern Licence at the new St. James building complex and negotiations for the Metropole Tavern, designed to replace the popular hotel of that name, together with an additional two Tavern Licences in the city area are being progressed. 40

COAL MARKETING:

In keeping with our established practise we are continually appraising all overseas markets for Australian coal. It is our firm belief that New South Wales coals will play a major role in Australia's future exports and will justify our recent developments in this field of operations.

Exhibit LL

Three letters
R.W. Miller
(Holdings) Ltd.
to The Sydney
Stock Exchange
13th October
1971.
(continued)

FREEHOLD PROPERTY:

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The Board is very much aware of the valuable freehold property owned by the Group and the comparatively low book values in relation to existing market values of such property. All freeholder property is now being valued independently to obtain a more accurate appraisal of this substantial appreciation in value of our assets.

Yours faithfully,
R.W. MILLER (HOLDINGS) LIMITED

20

Secretary

Exhibit LL

(Continued)

December 23rd, 1971

The Secretary
Sydney Stock Exchange Limited
20 O'Connell Street,
SYDNEY. 2000 N.S.W.

30

Dear Sir,

We hereby confirm our telex message of to-day reading as follows:

"It was announced by the Company's Chairman, Mr. A.N. Taylor, in his Chairman's Report contained in the Company's 1971 Annual

Exhibit LL

Three letters
R.W. Miller
(Holdings) Ltd.
to The Sydney
Stock Exchange
23rd December
1971.

Plaintiffs

1412.

Exhibits
Exhibit LL

Three letters
R.W. Miller
(Holdings) Ltd.
to The Sydney
Stock Exchange

23rd December
1971.

(continued)

Report that the Board had arranged for an independent valuation to be made of the Group's freehold properties.

At a meeting of the Board of Directors held on 23/12/71 the valuation of all hotel properties, valued on a walk-in walkout basis, was considered and the Directors announce that this valuation is \$5,025,795 in excess of book values, effectively increasing the asset backing of the Company's shares by 55.8 cents per share.

10

Valuation of the Group's other properties is not yet completed.. However, it is already apparent that the valuation, when completed, will further increase the effective asset backing per share.

In view of rumours and articles appearing in certain newspapers, allied with the sudden increase in the price of the Company's shares, the Directors believe it to be in the interest of all shareholders to make this announcement on the valuations completed at this stage.

20

The Board is anxious to prevent undue speculation in the Company's shares. Therefore, the Directors state that one offer has been made to a major shareholder to which no response has been given and another party has approached that shareholder."

Yours faithfully,
R.W. MILLER (HOLDINGS) LIMITED

30

Secretary

Plaintiffs

Exhibits

Exhibit MM

Interragatories
4 and 5 of R.W.
Miller (Holdings)
Ltd. and the
answers thereto
undated

Plaintiffs Exhibits

Exhibit MM

Interragatories 4 and 5 of R.W. Miller
(Holdings) Ltd. and the answers thereto
undated

4A Does the first Defendant admit that at all relevant times it was subject to the Rules, Regulations, By-Laws and Official List requirements of The Sydney Stock Exchange

Limited and the Australian Associated Stock Exchange and in particular to the requirements specified in Clauses (11), (a) and (b) of Section 3 of the Requirements for Retention of Membership of the Official List and Official Quotation of Securities, a true copy of which Clauses is annexure of hereto?

Exhibit III

Interragatories
4 and 5 of R.W.
Miller (Holdings)
Ltd. and the
answers thereto

undated

- 10 B The first defendant admits that at all relevant times it was subject to the rules, regulations, by-laws and official list requirements of the Sydney Stock Exchange Limited and the Australian Associated Stock Exchange but otherwise aforesaid, no.
- 20 5A Does the first Defendant admit that on or about the 6th July 1972 the shares of the First Defendant were suspended from trading by The Sydney Stock Exchange Limited, by virtue of an alleged breach by the first Defendant of certain of the Official List Requirements of The Sydney Stock Exchange Limited and/or of The Australian Associated Stock Exchanges?
- B The first defendant admits that on or about the 6th July, 1972, its shares were suspended that otherwise does not make the admission.

Plaintiffs
Exhibits

1414.

Plaintiffs Exhibits

Exhibit NN

Exhibit NN

Interrogatories set by Ampol Petroleum Ltd. to Howard Smith Ltd. and the answers thereto together with exhibits A, B, C, D, E, F, G, H, I and J and verifying affidavit

31st August
1972.

Interrogatories set by Ampol Petroleum Ltd. to Howard Smith Ltd. and the answers thereto together with exhibits A, B, C, D, E, F, G, H, I and J. 31st August 1972.

IN THE SUPREME COURT
OF NEW SOUTH WALES
EQUITY DIVISION

)
1240 of 1972
)

AMPOL PETROLEUM LIMITED
Plaintiff

10

R.W. MILLER (HOLDINGS)
LIMITED AND ORS.
Defendants

R.W. MILLER (HOLDINGS)
LIMITED
Cross Claimant

AMPOL PETROLEUM LIMITED
AND ORS.
Cross Defendants

VERIFIED STATEMENT IN ANSWER BY THIRTEENTH
DEFENDANT TO INTERROGATORIES OF PLAINTIFF

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The thirteenth defendant answers the plaintiff's interrogatories specified in notice filed 23rd August, 1972 as follows:

1.A. At what meeting of directors, if any, of the company was it decided to make a proposal for a take-over offer of Millers?

(a) When was such meeting? 30

(b) Identify the minutes of such meeting?

1.B. Yes, at a meeting held on 21st June, 1972. Relevant Minutes are annexed hereto and marked "A".

2.A.

Prior to the sending of the letter of 22nd June, 1972 to Millers, did anyone on the company's behalf have any communications or discussions with any person on behalf of Millers relative to the company making or proposing or notifying a take-over bid for Millers?

(a) If so:-

(i) When, where and with whom did such communications or discussions take place?

(ii) What was the substance of each such communication or discussion?

(iii) If any such communications were in writing, identify the same.

Exhibit NN

Interrogatories set by Ampol Petroleum Ltd. to Howard Smith Ltd. and the answers thereto together with exhibits A, B, C, D, E, F, G, H, I and J and verifying affidavit

31st August
1972.

(continued)

10

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2.B.

Yes.

(a)(i)

On 16th June 1972, a meeting took place between W. Howard Smith (Chairman of Howard Smith), N.T. Griffin (General Manager of Howard Smith), J.G. Evans (Deputy General Manager of Howard Smith) and A.N. Taylor (Chairman of Miller) and D. Koch (General Manager of Miller). This meeting was held at the office of Miller, 19 Bridge Street, Sydney.

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(a)(ii)(aa)

The representatives of Howard Smith inquired as to whether Miller would consider the sale of Miller's tanker fleet to Howard Smith. The answer to this inquiry was in

Exhibit NN

Interrogatories
set by Ampol
Petroleum Ltd.
to Howard Smith
Ltd. and the
answers thereto
together with
exhibits A,B,C,
D,E,F,G,H, I and
J and verifying
affidavit

31st August
1972.
(continued)

in the negative. The Howard Smith representatives then inquired whether Miller would be interested in a take-over bid, higher than the Ampol bid, for Miller's capital on the footing that Howard Smith, would, if such a higher bid were successful, do its best to maintain Miller as a going concern. The Miller representatives indicated that such a higher bid would be attractive, explaining that they had received information which, according to them, Ampol would neither confirm nor deny that if the Ampol take-over bid were successful Ampol would sell off Miller's coal and hotel interests. The Miller representatives also said they regarded it as their duty to seek a higher offer than Ampol's offer.

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20

(a)(ii)(bb)

On the afternoon of 16th June 1972, Mr. Aston a member of the firm of Barkell and Peacock, Solicitors who was acting on behalf of Miller, called at Howard Smith's office and had a conversation with the said N.T. Griffin, Mr. C. Mifflin (Chief Accountant of Howard Smith) and Mr. T. Maxwell (Secretary of Howard Smith). Mr. Aston said that a higher take-over offer by Howard Smith would have a good chance of success as Bulkships would be likely to accept it. Mr. Aston said that Sir Peter Abeles was a very shrewd businessman and would be anxious to take the highest price that he could get for

30

40

Exhibits

Exhibit NN

Interrogatories set by Ampol Petroleum Ltd. to Howard Smith Ltd. and the answers thereto together with exhibits A, B, C, D, E, F, G, H, I and J and verifying affidavit

31st August 1972.

(continued)

Bulkships shares in the capital of Miller. Mr. Aston said that he would arrange for Howard Smith to be provided with figures that were being prepared by Cooper Bros. and would arrange a conference with representatives of Miller.

10 (a)(ii)(cc) On the 19th and 20th June, 1972, the said Mr. Mifflin and the said Mr. Maxwell visited Miller's office where they had a conference with the said Mr. Aston, the said Mr. Koch, Mr. H. Ellis Jones (Secretary of Miller) Mr. W. Conway (Legal Officer of Miller) and Mr. F. Murphy (Executive Assistant to the Managing Director of Miller).

20

The Miller representatives gave information in answer to inquiries by the Howard Smith representatives on a number of aspects of Miller's business undertakings. At the second of these two conferences a representative of Cooper Bros. was present in addition to the other persons above mentioned. Such representative of Cooper Bros. provided the Howard Smith representatives with a partly compiled financial report concerning Miller's activities.

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40 At each of the conferences respectively held on 19th and 20th June 1972, certain documents were supplied by the Miller representative to the Howard Smith representative. These documents which were in typescript are annexed hereto and marked

Plaintiffs
Exhibits

1418.

Exhibit NN

Interrogatories
set by Ampol
Petroleum Ltd.
to Howard Smith
Ltd. and the
answers thereto
together with
exhibits A, B, C,
D, E, F, G, H, I and
J and verifying
affidavit

31st August
1972.
(continued)

respectively "B", "C", "D",
"E", "F", "G", "H", "I",
"J".

3.A.

Prior to the sending of the
letter of 22nd June, 1972
to Millers, did the company
have available at any time
any document or documents
or the contents of any docu-
ment relating to the valuation 10
of Millers' assets and/or
shares?

(a) If so:-

(i) When, where, by whom
and to whom was
any such document or
documents or the
contents of the same
made available?

(ii) Identify each such 20
document.

4.A.

Prior to the sending of the
letter of 22nd June, 1972 to
Millers, was any information
furnished to the company by
any person relating to the
valuation of the assets
and/or shares of Millers?

(a) If so:-

(i) When, where, by whom 30
and to whom was any
such information
furnished?

(ii) What was the informa-
tion so furnished?

3. & 4.B.

Yes, Howard Smith had available
a report prepared by Cooper
Bros. concerning the value of
Miller shares. Such report
was produced on discovery
and marked "3". The said

report was received by on or about 21st June 1972, from Cooper Bros. Save for this report and for the documents mentioned in the answer to interrogatory number 2, Howard Smith had no documents or information of the kind respectively referred to in interrogatory numbers 3 and 4.

Exhibit NN

Interrogatories set by Amcol Petroleum Ltd. to Howard Smith Ltd. and the answers thereto together with exhibits A, B, C, D, E, F, G, H, I and J and verifying affidavit

31st August
1972.
(continued)

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5.A. Prior to the sending of the letter of 22nd June, 1972 to Millers, did any person acting or purporting to act on behalf of Millers procure, encourage or attempt to procure and encourage the Company to make its proposed take-over offer?

20

(a) If so:-

(i) When, where, by whom and to whom was such procurement or encouragement or attempt made?

5.B. Save as appears from the answer to interrogatory number 2, no.

30

6.A. Immediately prior to the sending of the aforesaid letter of 22nd June, 1972 what did the company consider was the asset backing value of each of the shares of Millers?

6.B. Howard Smith had no concluded views as to the asset backing value of each of the shares in Miller but had regard, (inter alia), to various estimates as to such asset backing value, such estimates then being before Howard Smith.

40

Plaintiffs
Exhibits

1420.

Exhibit NN	7.A.	When, by whom and with whose authority was the letter of 22nd June, 1972 to Millers prepared and delivered?	
Interrogatories set by Ampol Petroleum Ltd. to Howard Smith Ltd. and the answers thereto together with exhibits A,B,C, D,E,F,G,H, I and J and verifying affidavit	7.B.	The said letter was prepared and delivered by Mr. T. Maxwell, Secretary of Howard Smith on 22nd June 1972, pursuant to a decision made by the Directors of Howard Smith at a meeting held on 21st June 1972.	10
31st August 1972. (continued)	8.A.	Prior to such delivery, did anyone in the company notify or advise any person on behalf of Millers of the contents or proposed contents of such letter? (a) If so:- (i) When, where, by whom and to whom was such notification or advice given?	20
	8.B.	No.	
	9.A.	When, where, and by whom was the company first advised of the meeting or proposed meeting of Millers held on 23rd June, 1972?	
	9.B.	Howard Smith was not advised of the said meeting in advance thereof. To the best of recollection and belief Miller at no time advised Howard Smith that such a meeting had been held.	30
	10.A.	When, where, by whom, to whom and in what manner was the letter of 22nd June, 1972 delivered to any person on behalf of Millers?	40

- 10.B. See answer to question 7. The letter was delivered by hand, by Mr. Maxwell, to Mr. Koch (General Manager of Miller at Miller's office).
- 11.A. When, where, by whom, to whom and in what manner was the letter of Millers acknowledging receipt of your letter of 22nd June, 1972 delivered?
- 11.B. To the best of recollection and belief the said letter of Millers was delivered by messenger to the office of Howard Smith on 22nd June 1972.
- 12.A. When, where, in what manner and by whom did the company first become aware of the draft Part C statement or the contents thereof relating to the Plaintiff's take-over offer for the shares in Millers?
- 12.B. Howard Smith did not at any time become aware of any draft Part C statement or the contents thereof relating to the Plaintiff's take-over offer in Miller.
- 13.A. When, where, in what manner and by whom did the company first become aware of the letter dated 27th June, 1972 from Millers to its shareholders?
- 13.B. On or shortly after 27th June 1972, Miller sent to Howard Smith, and Howard Smith received, a copy of the Part C statement that was produced on discovery by Howard Smith and marked "5". The said Part

Exhibit NN

Interrogatories
set by Ampol
Petroleum Ltd.
to Howard Smith
Ltd. and the
answers thereto
together with
exhibits A,B,C,
D,E,F,G,H, I and
J and verifying
affidavit

31st August
1972.
(continued)

Plaintiffs
Exhibits

1422.

Exhibit NN

Interrogatories
set by Ampol
Petroleum Ltd.
to Howard Smith
Ltd. and the
answers thereto
together with
exhibits A,B,C,
D,E,F,G,H, I and
J and verifying
affidavit

31st August
1972.
(continued)

C statement was delivered by messenger to the office of Howard Smith.

14.A.

When, by whom and in what manner did the company become aware of the deliberations of the Board meeting of Millers of 23rd June, 1972 relative to the reaction to the proposed take-over offer to be made by the company? 10

14.B.

Howard Smith did not at any time become aware of the deliberations of any board meeting of Miller held on 23rd June 1972, save to the extent that such deliberations were revealed in the Part C statement referred to in the answer to interrogatory number 13. 20

15.A.

When and in what circumstances did the company or any person on its behalf first become aware of the joint statement of Ampol and Bulkships on 27th June, 1972?

15.B.

At about 12.30 p.m. on 27th June 1972, Sir Ian Potter, Chairman of Bulkships, telephoned the Chairman of Howard Smith and stated that Ampol and Bulkships would be acting jointly in relation to any take-over offer by Howard Smith for Miller Shares and would be rejecting any such offer. 30

16.A.

Did any person on behalf of the company have any discussion or discussions with any person acting or purporting to act on behalf of Millers relative to such joint statement? 40

(a) If so:-

Exhibit NN

(i) When, where and with whom did any such discussion or discussions take place?

Interrogatories set by Ampol Petroleum Ltd. to Howard Smith Ltd. and the answers thereto together with exhibits A, B, C, D, E, F, G, H, I and J and verifying affidavit

(ii) What was the substance of each such discussion?

31st August
1972.
(continued)

10 16.B.

There were many infrequent informal conversations between officers of Howard Smith and Miller respectively, deploring the joint statement. These conversations were so numerous as to be incapable of particularization. There was no formal meeting or discussion.

20 17.A.

What was the effect of such joint statement upon the proposed take-over offer of Miller's shares notified by the company in its letter of 22nd June, 1972.

17.B.

None.

18.A.

Did the directors of the company hold any meetings whereat the joint statement and its effects were discussed?

30

(a) If so:-

(i) When and where was each such meeting held?

(ii) What was the substance of the discussions at each such meeting?

Plaintiffs
Exhibits

1424.

Exhibit NN

Interrogatories
set by Ampol
Petroleum Ltd.
to Howard Smith
Ltd. and the
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together with
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D,E,F,G,H, I and
J and verifying
affidavit

31st August
1972.
(continued)

19.A.

(iii) Identify the minutes
of any such meeting.

Was there any meeting or
meetings of directors of the
Company whereat the proposed
letter of application for
4,500,000 shares in Millers,
the letter of proposal to
Millers, both dated 6th July
1972, and the proposed written
agreement or Deed with
Millers was discussed? 10

(a) If so:-

(i) When and where was
any such meeting or
meetings held?

(ii) What was the sub-
stance of the
discussions at each
such meeting? 20

(iii) Identify the minutes
of any such meeting.

18. & 19.B.

A meeting of the directors of
Howard Smith was held on 6th
July 1972. The substance of
the business transacted at
such meeting is explained in
the copy minute hereto annexed
and marked "A".

Such meeting was preceded by
informal discussions between
individual directors of Howard
Smith held on 5th July 1972.
At those informal discussions
there emerged a consensus
of opinion that the acquisi-
tion by Howard Smith of
4,500,000 shares in Miller
would be in Howard Smith's
interests. 40

At the said meeting of directors held on 6th July 1972 the Secretary of Howard Smith produced to the directors the relevant documents for signature and the same were signed.

Exhibit NN

Interrogatories set by Ampol Petroleum Ltd. to Howard Smith Ltd. and the answers thereto together with exhibits A, B, C, D, E, F, G, H, I and J and verifying affidavit

10 20.A. Immediately prior to the 6th July, 1972 what did the Company consider was the asset backing value of each share in Millers?

20 20.B. Howard Smith had no concluded view as to the asset backing value of each of the shares in Miller but had regard, (inter alia), to various estimates as to such asset backing value, such estimates then being before Howard Smith.

31st August
1972.
(continued)

21.A. How did the Company consider the asset value backing of each share in Millers would be affected by the proposed allotment of 4,500,000 shares?

21.B. Howard Smith did not consider this question.

30 22.A. On or prior to 6th July, 1972 did anyone on behalf of the Company have any discussions with any person acting or purporting to act on behalf of Millers relative to the proposal for the allotment of 4,500,000 Miller shares and the proposed written agreement or Deed?

(a) If so:-

40 (i) Where, when, with whom did any such

Plaintiffs
Exhibits

1426.

Exhibit NN

Interrogatories
set by Ampol
Petroleum Ltd.
to Howard Smith
Ltd. and the
answers thereto
together with
exhibits A, B, C,
D, E, F, G, H, I and
J and verifying
affidavit

31st August
1972.
(continued)

22.B.

discussion take
place?

(ii) What was the sub-
stance of each such
discussion?

Yes, the said Mr. Koch
(General Manager of Millers),
on 30th June 1972, spoke to
the Deputy General Manager of
Howard Smith, Mr. J.G. Evans
and suggested that Miller's
board might consider a
placement of shares to Howard
Smith. On 4th July 1972,
the Chairman of Howard
Smith telephoned the Chairman
of Miller and asked him to
call at Howard Smith's
office for a discussion.
This discussion took place.
The Chairman of Miller and
Mr. Koch represented Miller
and the Chairman of Howard
Smith, its General Manager,
the Deputy General Manager
and the said Mr. Maxwell
(Secretary of Howard Smith)
represented Howard Smith.

10

20

At this meeting the Chairman
of Howard Smith referred to
the telephone message that had
been received concerning the
possibility of a placement
being favourably considered
by the Miller board. The
Chairman of Miller said he
thought his board would agree
to a placement to Howard
Smith. Reference was made
by Howard Smith represen-
tatives to the possibility
of a placement of three
million shares in Miller at
a price of \$2.00 per share.
During a meeting, held at
the offices of Howard Smith
on the 5th July 1972, Mr.
Maxwell was called to take a

30

40

10 telephone call from Mr. Conway, Legal Officer of Miller. In this conversation, Mr. Conway told Mr. Maxwell that Miller could justify a placement of shares for a total price of \$10 million. Mr. Maxwell then told Mr. Conway that the Howard Smith board had already decided to apply for 4½ million at a price of \$2.30 per share.

Exhibit NN

Interrogatories set by Ampol Petroleum Ltd. to Howard Smith Ltd. and the answers thereto together with exhibits A, B, C, D, E, F, G, H, I and J and verifying affidavit

31st August
1972.

(continued)

20 On the evening of the 5th July 1972, Mr. Maxwell informed representatives of Miller that Howard Smith would require that the parties enter into a deed relative to the proposed allotment and that Messrs. Allen Allen & Hemsley would prepare the deed. Later in the evening of the 5th July 1972 Mr. J.R. Kerrigan of Allen Allen & Hemsley had a telephone conversation with Mr. Conway in which the drawing of the deed was discussed.

30 23.A.

When, by whom and upon whose instructions were both letters of 6th July, 1972 to Millers and the proposed written agreement or Deed prepared?

23.B.

40 The documents were prepared on the 6th July 1972 upon instructions of the board of Howard Smith. They were drafted by Mr. Maxwell and settled by Messrs. Allen Allen & Hemsley.

24.A.

When, by whom and in what manner was the Company made aware of the financial problems (if any) of Millers and the extent of the same?

Plaintiffs
Exhibits

1428.

- Exhibit NN 24.B. Howard Smith had many months prior to July 1972 heard, through trade rumours, of liquidity problems being experienced by Miller. Additionally, at the meetings of the 16th, 19th and 20th June, referred to above, and in the discussions between Howard Smith and Miller representatives on the 4th July referred to above, Howard Smith was made aware of the existence of certain financial problems faced by Miller in recent years. Further, in a telephone conversation between the said Mr. Koch and the said Mr. Maxwell on or about the 22nd June 1972, Mr. Koch told Mr. Maxwell of Miller's needs and efforts to raise finance. 10
- Interrogatories set by Ampol Petroleum Ltd. to Howard Smith Ltd. and the answers thereto together with exhibits A,B,C, D,E,F,G,H, I and J and verifying affidavit
31st August 1972.
(continued) 20
- 25.A. When, at what time, by whom, to whom, and by what means were the 2 letters of 6th July, 1972 and the proposed written agreement or Deed with Millers delivered to the office of Millers? 30
- 25.B. On the 6th July 1972 at about 10 a.m. Mr. Maxwell handed the documents to Mr. Conway at the office of Miller.
- 26.A. Prior to such delivery, did any representative of the Company advise or notify any representative of Millers of the contents of the aforesaid letters and agreement or Deed? 40
- (a) If so:-

(i) When, by whom, to whom and by what means was such advice or notification given?

Exhibit NN

Interrogatories set by Ampol Petroleum Ltd. to Howard Smith Ltd. and the answers thereto together with exhibits A, B, C, D, E, F, G, H, I and J verifying affidavit

31st August, 1972.
(continued)

26.B. Yes.

(a)(i) On the 5th July 1972, orally by Mr. Maxwell to Mr. Conway and other Miller executives.

10 27.A. When was the cheque in favour of Millers for the sum of \$1,035,000.00 drawn and when where, how, to whom and by whom was such cheque delivered to Millers?

20 27.B. On the morning of 6th July 1972, a cheque was drawn and it was delivered to Miller by Mr. Maxwell to Mr. Conway at Millers office personally on the same morning.

28.A. At any time did any person on behalf of the Company have discussions with any person on behalf of Millers relative to the legality and/or validity of the proposed allotment of 4,500,000 shares?

(a) If so:-

30 (i) When, where and with whom was each such discussion?

(ii) What was the substance of each such discussion?

28.B. Yes.

(a)(i) On or about the 4th July 1972 at the office of Howard Smith between Messrs. Koch and Taylor on the part of Miller

Plaintiffs
Exhibits

1430.

Exhibit NN

Interrogatories
set by Ampol
Petroleum Ltd.
to Howard Smith
Ltd. and the
answers thereto
together with
exhibits A,B,C,
D,E,F,G,H, I and
J and verifying
affidavit

31st August
1972.
(continued)

and Messrs. Howard Smith,
Trotter, Griffin Evans and
Maxwell on behalf of Howard
Smith.

- (ii) That the allotment would be valid.
- 29.A. At any time did any person on behalf of the Company have discussions with any person on behalf of Millers relative to the possible delisting or suspension from trading of the shares in Millers and/or the Company? 10
- (a) If so:-
- (i) When, where and with whom was each such discussion. 10
- (ii) What was the substance of each such discussion? 20
- 29.B. Yes.
- (a)(i) On or about the 4th July 1972 at the office of Howard Smith between Messrs. Koch and Taylor on the part of Miller and Messrs. Howard Smith, Trotter, Griffin Evans and Maxwell on behalf of Howard Smith.
- (ii) That there was a risk that the shares in Miller would be delisted, but that there was no real risk that the shares in Howard Smith would be delisted. 30
- 30.A. At any time did any person on behalf of the Company have discussions with any person on behalf of Millers relative to the effect of the proposed 40

1431.

Plaintiffs
Exhibits

allotment of 4,500,000 shares
in

Exhibit NN

Interrogatories
set by Ampol
Petroleum Ltd.
to Howard Smith
Ltd. and the
answers thereto
together with
exhibits A,B,C,
D,E,F,G,H, I and
J and verifying
affidavit

(a) If so:-

(i) When, where and with
whom was each such
discussion?

(ii) What was the sub-
stance of each such
discussion?

10

30.B.

Yes.

31st August
1972.

(continued)

(a)(i)

On or about the 4th July
1972 at the office of Howard
Smith between Messrs. Koch
and Taylor on the part of
Miller and Messrs. Howard-
Smith, Trotter, Griffin,
Evans and Maxwell on behalf
of Howard Smith.

20

(ii)

That the financial position
of Miller would be substan-
tially improved by the
allotment.

31.A.

At any time prior to 6th
July, 1972 did any person on
behalf of the Company have
any discussions with any
person on behalf of Millers
relative to the intentions of
Howard Smith in respect of
the likelihood of the recon-
stitution of the Board of
Millers should the company's
proposed take-over offer of
Miller's shares be successful?

30

(a) If so:-

(i) When, where and with
whom did each such
discussion take place?

Plaintiffs
Exhibits

1432.

Exhibit NN

Interrogatories
set by Ampol
Petroleum Ltd.
to Howard Smith
Ltd. and the
answers thereto
together with
exhibits A, B, C,
D, E, F, G, H, I and
J and verifying
affidavit

31st August
1972.
(continued)

(ii) What was the sub-
stance of each such
discussion?

31.B.

On the afternoon of the
5th July 1972, Mr. Maxwell
read to certain representatives
of Miller (Messrs. Conway
and other executives) the
proposed text of the letter
which was ultimately sent on 10
the 6th July 1972, and which
to some extent deals with
this matter.

Save as aforesaid the answer
to this question is in the
negative.

32.A.

On or immediately prior to
the 6th July, 1972, did the
Company or any person on its
behalf believe that the 20
proposed allotment of
4,500,000 shares in Millers
would reduce the proportion
of the shareholding in
Millers by the Plaintiff and
Bulkships?

32.B.

Yes.

33.A.

On or immediately prior to
6th July, 1972 did the 30
Company or any person on its
behalf believe that the
proposed allotment of
4,500,000 shares would have
the effect of defeating the
take-over offer made by the
Plaintiff and/or facilitating
and/or ensuring the success
of the proposed take-over offer
to be made by Howard Smith?

33.B.

Howard Smith believed that 40
the proposed allotment would
facilitate the success of
its proposed take-over offer.

Otherwise, the answer to this question is in the negative.

Exhibit NN

Interrogatories set by Ampol Petroleum Ltd. to Howard Smith Ltd. and the answers thereto together with exhibits A, B, C, D, E, F, G, H, I and J and verifying affidavit

31st August 1972.
(continued)

34.A.

On or prior to 6th July, 1972 did any person on behalf of the Company have discussions with any person on behalf of Millers relative to the financial capability of or arrangements made or to be made by Howard Smith and/or to service Howard Smith's take-over offer?

(a) If so:-

(i) When, where and with whom did any discussion take place?

(ii) What was the substance of each such discussion?

34.B.

No, except that in a general way in the discussions referred to above it was made clear to Miller that finance was no problem as far as Howard Smith was concerned.

35.A.

When, at what time, where, by whom and to whom was the Share Certificate relating to the allotment by Millers of 4,500,000 delivered to the Company?

35.B.

At noon on the 6th July 1972, the share certificate was delivered to the said Mr. Maxwell by the said Mr. Conway at Millers office in exchange for Howard Smith's said cheque.

Plaintiffs
Exhibits

1434.

Exhibit NN	36.A.	When was the Company or any person on its behalf first made aware of the meeting of directors of Millers to be held on 6th July, 1972?	
<u>Interrogatories set by Ampol Petroleum Ltd. to Howard Smith Ltd. and the answers thereto together with exhibits A,B,C, D,E,F,G,H, I and J and verifying affidavit</u>	36.B.	On the 4th July 1972.	
	37.A.	In what manner, and by whom was the Company or any such person made so aware and to whom was such communication made?	10
31st August 1972. (continued)	37.B.	At the meeting of the 4th July 1972 between representatives of Miller and Howard Smith referred to above it was orally stated by Mr. Taylor that a meeting of the Miller board would be held on the 6th July, 1972.	
	38.A.	When, in what manner and by whom was the Company or any person its behalf made aware that the resolutions pertaining to the allotment of the 4,500,000 shares and the execution of the written agreement had been passed at the meeting of directors of Millers on 6th July, 1972?	20
	38.B.	At noon on the 6th July 1972, orally by the said Mr. Conway to the said Mr. Maxwell.	30
	39.A.	To whom was such communication made?	
	39.B.	Mr. Maxwell.	
	40A.	Does the Company admit the existence and accuracy of a typed memorandum dated 5th July 1972 (being Annexure A.)	

- 40.B. Howard Smith admits the existence of the memorandum but does not admit its accuracy.
- 41.A. When, by whom and on whose instructions was Annexure A prepared?
- 41.B. On the 5th July 1972 by Mr. Maxwell of his own motion.
- 10 42.A. To whom was Annexure A presented, shown or distributed?
- 42.B. To an informal gathering of certain directors and executives of Howard Smith which took place on the 5th July 1972.
- 20 43.A. Was Annexure A considered at any meeting of Directors of the Company and if so, when and where was such meeting held?
- (a) If not, who on behalf of the Company considered Annexure "A".
- 30 43.B. To an informal gathering of certain directors and executives of Howard Smith which took place on the 5th July 1972. The directors and executives of the board meeting were W. Howard Smith (Chairman of Howard Smith) W.J. Trotter (Director) N.T. Griffin (General Manager) J.G. Evans (Deputy General Manager) and T. Maxwell (Secretary).
- 40 44.A. On or prior to 5th July, 1972, did any representative of the Company have any discussions or communications with any

Exhibit NN

Interrogatories
set by Ampol
Petroleum Ltd.
to Howard Smith
Ltd. and the
answers thereto
together with
exhibits A, B, C,
D, E, F, G, H, I and
J and verifying
affidavit

31st August
1972.

(continued)

Plaintiffs
Exhibits

1436.

Exhibit NN

Interrogatories
set by Ampol
Petroleum Ltd.
to Howard Smith
Ltd. and the
answers thereto
together with
exhibits A, B, C,
D, E, F, G, H, I and
J and verifying
affidavit

31st August
1972.
(continued)

Directors or officers of
Millers relative to the
contents of Annexure A?

(a) If so:-

(i) When, where, by whom
and with whom did
any such discussion
take place?

(ii) What was the sub-
stance of each such
discussion?

10

44.B.

There were no discussions or
communications relevant to
the contents of Annexure "A",
although there were discussions
or communications relevant to
matters which are referred to
in Annexure "A".

45.A.

Was any representative of
the Company shown a copy of
the Report of Cooper Brothers
and Co. dated 21st June, 1972
relative to the Millers'
assets and shares?

20

(a) If so:-

(i) Who saw or was shown
this document, when
and by whom was it
shown or made
available.

30

45.B.

Yes.

(a)(i)

The Secretary, the said Mr.
Howard Smith and Mr. Trotter
a director of Howard Smith
and the General Manager and
Chief Accountant of Howard
Smith were shown this
document on or about the 22nd
June 1972.

46.A.

Does the Company admit the existence and accuracy of the following documents:-

- (a) Memorandum to General Manager of the Company dated 20th June, 1972 (Annexure B).
- (b) Company Review of Howard Smith compiled and published by the Sydney Stock Exchange Limited Research and Statistical Bureau, S183 (Annexure C.)

Exhibit NN

Interrogatories set by Ampol Petroleum Ltd. to Howard Smith Ltd. and the answers thereto together with exhibits A, B, C, D, E, F, G, H, I and J and verifying affidavit

31st August
1972.

(continued)

10

46.B.

Howard Smith admits the existence of these documents, but does not admit their accuracy.

47.A.

Does the Company admit the receipt and/or despatch of the following documents on or about the date which each such document bears:-

- (a) Receipt of letter dated 7th July, 1972 from the Sydney Stock Exchange Limited addressed to the Company (Annexure D).
- (b) Receipt of letter dated 11th July, 1972 from the Stock Exchange of Melbourne Limited addressed to the Company (Annexure E).
- (c) Receipt of letter dated 11th July, 1972 from the Sydney Stock Exchange Limited addressed to the Company (Annexure F).
- (d) Despatch of letter dated 12th July, 1972 from the Company to the Chairman,

20

30

40

Plaintiffs
Exhibits

1438.

Exhibit NN

Interrogatories
set by Ampol
Petroleum Ltd.
to Howard Smith
Ltd. and the
answers thereto
together with
exhibits A,B,C,
D,E,F,G,H, I and
J and verifying
affidavit

31st August
1972.
(continued)

Sydney Stock Exchange
Limited (Annexure G).

- (e) Receipt of letter dated 12th July, 1972 from the Sydney Stock Exchange Limited addressed to the Company (Annexure H).
- (f) Despatch of letter dated 22nd June, 1972 from the Company to the Chairman of Directors of Millers (Annexure J). 10
- (g) Receipt of letter dated 22nd June, 1972 from the Chairman of Directors of Millers to the Company (Annexure K).
- (h) Despatch of:-
 - (i) Letter of application from the Company to Millers dated 6th July, 1972 (Annexure L). 20
 - (ii) Letter re proposal for allotment from the Company to Millers dated 6th July, 1972 (Annexure M).
 - (iii) Document headed Deed of Undertaking dated 6th July, 1972 (Annexure N). 30
- (i) Despatch of 10th Schedule, Part A statement to Millers and accompanying documents dated 18th July, 1972. (Annexure O).

47.B.

Yes.

- 48.A. Does the Company admit that on and prior to 6th July, 1972 it was aware or believed that in the circumstances then existing, the allotment to the Company by Millers of 4,500,000 shares in its capital would constitute a breach by Millers of the Official Listing Requirements and expose that latter company's shares to the risk of being delisted or suspended from trading on the Associated Stock Exchanges?
- 10
- 48.B. Howard Smith admits that on and prior to the date in question it thought there was a risk that the Miller shares would be delisted if the allotment was made.
- 20
- 49.A. If it was so aware or did so believe, then for what reasons and purposes did the Company proceed with its application for the allotment?
- 49.B. In order to obtain the shares.

Exhibit NN

Interrogatories
set by Ampol
Petroleum Ltd.
to Howard Smith
Ltd. and the
answers thereto
together with
exhibits A, B, C,
D, E, F, G, H, I and
J and verifying
affidavit

31st August
1972.

(continued)

J.R.Kerrigan
Solicitor for thirteenth
defendant

Filed: 1st day of September, 1972

AFFIDAVIT

Verifying answers to interrogatories 31st
August 1972.

On the 31st day of August, 1972.
I Thomas Maxwell of 43 Carrington Road,
Wahroonga, New South Wales, Secretary of
Howard Smith Limited, the Thirteenth Defendant
say on oath:-

1. I am the Secretary of the Thirteenth Defendant and am authorised to make this affidavit on its behalf.
2. The answers comprised in 2(a)(i)(ii)(aa), 5, 6, 9, 11, 13, 14, 15, 16, 17, 20, 21, 22, 29, 32, 33, 34, 44, 46, 48, 49 of the within Answer to Interrogatories of the thirteenth defendant are true to the best of my knowledge information and belief, such Answers being based on my enquiries of officers of the thirteenth defendant.
3. The answers comprised in 1, 2, 2(a)(ii)(bb)(cc), 3, 4, 7, 8, 10, 12, 18, 19, 22, 23, 24, 25, 26, 27, 28, 30, 31, 35, 37, 38, 39, 40, 41, 42, 43, 45, 47, are within my own knowledge true.

SWORN at Sydney }
before me: }

A Justice of the Peace

EXHIBIT 'A'

To Answers to Interrogatories of 31st
August 1972 set by Ampol Petroleum Ltd.
to Howard Smith Ltd.

to answers to
interrogatories
of 31st August
1972 set by
Ampol Petroleum
Ltd. to Howard
Smith Ltd.

HOWARD SMITH LIMITED

Minutes of Directors' Meeting Wednesday
21st June, 1972.

PRESENT: Mr. W. Howard-Smith in the Chair
Mr. W.J. Trotter

Mr. H.G. Thornthwaite and
Dr. R.W. Harman were absent
with consent.

10

IN ATTENDANCE: General Manager, Secretary and
Chief Accountant.

R.W. MILLER (HOLDINGS) LIMITED

It was resolved that as soon as the necessary
documentation can be prepared an offer
should be made to acquire all of the issued
shares of R.W. Miller (Holdings) Limited.
The offer will be on the alternative bases
of -

20

two ordinary \$1.00 shares of Howard Smith
Limited issued as fully paid plus \$6.00
in cash for every five shares of R.W.
Miller (Holdings) Limited.

OR \$2.50 in cash for each share of R.W.
Miller (Holdings) Limited.

It was decided that a letter be forwarded
tomorrow morning, 22nd June, to the Chairman
of Directors of R.W. Miller (Holdings) Limited
informing him of the Company's intention.

30

The Chairman will obtain the concurrence of
Mr. H.G. Thornthwaite who is in England, by
telephone tonight, and will speak to Dr. R.W.
Harman who is at present in hospital, as
soon as his condition permits.

SIGNED AS A CORRECT RECORD

W. Howard Smith
Chairman

11th July 1972

Plaintiffs
Exhibits

1442.

Exhibit 'A'

HOWARD SMITH LIMITED

to answers to
interrogatories
of 31st August
1972 set by
Ampol Petroleum
Ltd. to Howard
Smith Ltd.
(continued)

Minutes of Directors' Meeting Thursday
6th July, 1972.

PRESENT: Mr. W. Howard-Smith in the Chair
Mr. W.J. Trotter

Mr. H.G. Thornthwaite and
Dr. R.W. Harman were absent with
consent.

IN ATTENDANCE: General Manager and Secretary

R.W. MILLER (HOLDINGS) LIMITED.

10

It was resolved that an application should be
lodged for the issue of 4,500,000 ordinary \$1
shares in the capital of R.W. Miller (Holdings)
Limited at a premium of \$1.30 per share.
Payment is to be made as follows :

23 cents being 10 cents capital and 13
cents premium per share on application
and the balance of \$2.07 being 90 cents
capital and \$1.17 premium per share on
30th September, 1972, or earlier at the
option of Howard Smith Limited.

20

It was resolved that the common seal of the
Company should be affixed to the application
and this was accordingly done.

A deed between Howard Smith Limited and
R.W. Miller (Holdings) Limited relating to
the above-mentioned share issue was tabled.
It was resolved that the common seal of the
Company be affixed to the deed and this was
accordingly done.

30

SIGNED AS A CORRECT RECORD

W. Howard Smith

Chairman

11th July 1972

This is the Annexure marked 'A' referred to in
the Affidavit of Thomas Maxwell.

EXHIBIT "B"

to answers to interrogatories of 31st August 1972

Plaintiffs Exhibits Exhibit "B"

20 June 1972 to answers to interrogatories of 31st August 1972 set by Ampol Petroleum Ltd. to Howard Smith Ltd.

M.T. "AMANDA MILLER"

1151 / 1171

Estimated operating costs included in the Time Charter Party

			price
690 400 @	Seagoing Wages	600,000 .	1515
179,000 }	Insurance including P & I	200,000 .	666
51,850 }	Victualling	40,000 .	121
38,790 }	Stores	100,000 .	303
94,850 }	Radio Officers Salary, A.W.A. Hire, Traffic	30,000 .	91
73,770 @	Other Disbursements	50,000 .	152
327,725	General repairs and annual overhaul	300,000 .	909
	Affiliation Fees	10,000 .	30
	Head Office expenses	35,000 .	106
		<u>1,365,000</u>	<u>4136</u>

1,8460
1504.145
864 2 15
2368.360

D.P.R.C.F. (14 1/4%)

1310,000

ESCALATION:

- (1) Seagoing wages and insurances escalate as and when they occur. 1% on 9 800,000
- (2) All other costs (amounting to \$565,000 per annum) escalate in accordance with the quarterly variations of the Consumer Price Index

23547570
330 7177

Does this exclude: -
Port Costs
Bunkers

65 TON fuel oil
4.5 T oil

all costs
of operation
YES
YES

(15.36%)
PROF. 15% on
\$ 10114.
DEPN. 6 1/4% on
10-5M
10-1M

60602
1545300 = 4683
631,250
656250 = 1913
3565750
\$ 2547610
10750
P.P.

1444.

EXHIBIT "C"

to answers to interrogatories
of 31st August 1972

19/10/72

Plaintiffs
Exhibits

12/11/72

R.W. MILLER GROUP

Exhibit "C"
to answers to
interrogatories
of 31st August
1972 set by
Ampol Petroleum
Ltd. to Howard
Smith Ltd.

PROFIT FORECAST FOR TWELVE MONTHS ENDING
30TH JUNE 1972

Coal Operations		\$ 156,334
Shipping "		2,034,535
Hotel "		1,169,537
Sundry "	Camps 77. Junks 10.	64,695
		<u>\$3,425,101</u>

Less Administrative Expenses being excess of Expendi over Income	(cont'd)	<u>1,315,188</u>
Forecast Profit (Before Tax)		<u><u>\$2,109,913</u></u>

Income to
R.W. Miller
\$400,000
income

Jan 1973 40%

Tax = 844,000
Net = 1,266,000

This is a
pre-
figure

This is the Annexure marked "C" referred to in the Affidavit of
Thomas Maxwell

11/11/72

EXHIBIT "D"

to answers to interrogatories of 31st August 1972

R.W. MULLER GROUP

DETAILS OF FIXED ASSETS

AS AT 31ST DECEMBER, 1971

Plaintiffs Ex Exhibits

Exhibit "D"

to answers to interrogatories of 31st August 1972 set by Ampol Petroleum Ltd. to Howard Smith Ltd.

COST \$

FREEHOLD LAND & BUILDINGS

Engineering Works - Balmain		181,203
Residences ← <i>also Miller mansions</i>		165,328
Hastings - Victoria		3,516
Carrington Export Coal Depot	5 acres	192,124
Wallsend Borehole Colliery		10,546
Northern Colliery		39,177
Maitland Colliery		1,507
Millfield Colliery		49,050
Wharf - Balmain	22,725	
less provision for depreciation	<u>1,704</u>	21,021
Colliery Development etc.	414,577	
less amounts written off	<u>99,344</u>	

315,233
978,705

SUB TOTAL - COAL & SHIPPING

Wine & Spirit Warehouse <i>Howard Smith</i>	40,356
Hotel Freehold Properties	9,737,521
Hotel Development Sites <i>Rollingway</i>	350,261 ^⑤
Other Properties	<u>61,013</u>

10,189,151
\$11,167,856

TOTAL

9 Freehold premises with *key*
 5 mortgages
 7 hotels
 21

Income arrangements - Howard Smith
Part of income (motel) sites
Howard Smith
Howard Smith
Howard Smith

[Handwritten signature]

EXHIBIT "E"

to answers to interrogatories
of 31st August 1972

Plaintiffs
Exhibits

Exhibit "E"

to answers to
interrogatories
of 31st August
1972 set by
Ampol Petroleum
Ltd. to Howard
Smith
BOOK VALUE
Ltd.

LEASEHOLD LAND & BUILDINGS:

	COST	WRITTEN OFF	BOOK VALUE
Hexham Coal Loader	238,104	238,104	-
Blackwattle Bay Wharf	153,510	149,127	4,383
Blackwattle Bay Silos	-	-	-
Office Improvements	58,246	46,545	11,701
Wagon Repair Shop	3,755	3,755	-
Wallsend Colliery	35,505	35,505	-
Melbourne Coal Depot	22,254	14,352	7,902
Maitland Colliery	4,022	2,933	1,089
Northern Colliery	24,539	24,539	-
<u>Sub total - Coal & Shipping</u>	<u>539,935</u>	<u>514,860</u>	<u>25,075</u>
Grand Hotel - Wollongong	55,000	-	55,000
<u>Total</u>	<u>\$594,935</u>	<u>514,860</u>	<u>80,075</u>

PLANT, MACHINERY ETC.

	COST	DEPRECIATION PROVISION	BOOK VALUE
Colliery Plant etc.	7,936,492	2,436,577	5,499,915
Colliery Road Transport	275,759	256,288	19,471
Coal Wagons	94,754	86,574	8,180
Coal Depot Road Transport	422,003	367,814	54,189
M.V.'s "Lisa Miller" & "Rickie Miller"	747,035	166,950	580,085
Carrington Depot Plant	109,070	26,950	82,120
M.T.'s "Millers McArthur" & "R.W. Miller"	2,196,202	1,600,793	595,409
Engineering Plant etc.	233,277	114,952	118,325
M.T. "Robert Miller"	812,594	-	812,594
M.T. "Amanda Miller"	7,578,868	227,164	7,351,704
Coal Depots N.S.W. Vic. & S.A.	572,789	538,599	34,190
Furniture, Fittings etc.	112,183	53,081	59,102
Motor Cars	125,851	87,970	37,881
Amenities etc.	44,129	25,385	18,744
<u>Sub total - Coal & Shipping</u>	<u>21,261,006</u>	<u>5,939,097</u>	<u>15,271,909</u>
Hotels	3,929,001	1,569,476	2,259,525
	<u>\$25,090,007</u>	<u>7,508,573</u>	<u>17,531,434</u>

Interim Commission
\$ 1.5 M
\$ 8 M
1949
75%
Kearney
Thompson

Coal Depots - 15M
1949
1949

EXHIBIT "F"

to answers to interrogatories
of 31st August 1972

R.W. MILLER GROUP

1448.

Plaintiffs
Exhibits

Exhibit "F"

to answers to
interrogatories
of 31st August
1972 set by
Ampol Petroleum
Ltd. to Howard
Smith Ltd.

MAJOR ADDITIONS TO, AND SALES OF,
FIXED ASSETS SINCE 31st DECEMBER, 1971

Cost

\$

Additions

M.T. "Amanda Miller"	2,958,391
M.T. "Robert Miller"	<u>2,020,740</u>
	<u>\$4,979,131</u>

Sales

	<u>Sale Price</u>	<u>Book Value</u>
	\$	\$
Balmain Residence	32,000	24,597
William Hotel	205,000	210,483
Bexley North Hotel	940,000	446,861
Albion Hotel	500,000	320,377
Manly Vale Hotel	975,000	873,305
Richmond Hotel	158,200	149,523
Palm Beach Residence	<u>50,000</u>	<u>55,373</u>
	<u>\$2,860,200</u>	<u>\$2,080,519</u>

This is the Annexure marked "F" referred to in the Affidavit of
Thomas Maxwell

[Handwritten signatures and notes]

EXHIBIT 'G'

TO ANSWERS TO INTERROGATORIES OF 31st AUGUST 1972
of Thomas Maxwell

to answers to
interrogatories
of 31st August
1972 set by
Ampol Petroleum
Ltd. to Howard
Smith Ltd.
(continued)

R.W. MILLER GROUPDetails of Borrowing as at 16th June 1972

30 June	<u>SECURED</u>		
'71	<u>Bank of New South Wales</u>		§
,112	Term Loan Account	8½%	1,711,112
4932,381	Maximum Overdraft Limit	7½%	1,873,000
10	<u>Hambros Bank Limited</u>		
	Secured by Mortgage on	7	
	M.T. "Amanda Miller"		6,633,855
	<u>Davis & Penney Pty. Limited</u>		
	Secured by Mortgage on		
	Hotel Development Site		7,700
260,440	<u>City Mutual Life Assurance Society Limited</u>	8½	
	Secured by Mortgage on		
	North St. Marys Hotel		230,400
	<u>Tricontinental Corporation Ltd.</u>	8	
20	Secured by Mortgage on		
	two hotel properties		1,750,000
	<u>Mitsui & Co. Limited</u>	7½	
	Secured by Mortgage on		
	El Rancho Hotel		900,000
165,020	<u>UNSECURED</u>	Bank holds 5/6	
		other hotels	
	Sundry short term borrowings		891,900
+071,083			
140,036		X	<u>§13,997,967</u>

NOTE:

X 30 Arrangements will possibly be finalised in June 1972 to borrow a further §3,000,000 to discharge some short term borrowings, and to meet stage progress payments on construction of M.T. "Robert Miller".

from C'wealth Super Board - 15 years 9%
(To pay C'wealth Govt. in part)

This statement does not include undebtedness to Govt.

At present date §6.25 million (up to 75% steel fabrication) - a/c Robt. Miller

Still to go - Launch §1.85 m.

Dely. §1.85 m.

Hambros §M 7.4 - available hand-over of vessel 4% over B/rate.

Plaintiffs
Exhibits
Exhibit 'H'
to answers to
interrogatories
of 31st August
1972 set by
Ampol Petroleum
Ltd. to Howard
Smith Ltd.
(continued)

EXHIBIT 'H'TO ANSWERS TO INTERROGATORIES OF 31st AUGUST 1972R.W. MILLER GROUP

DEFERRED LOANS DUE TO SUBSIDIARY COMPANIES
as at 31st May, 1972

		§	
Eastern Suburbs Leagues Club Ltd.	8½%	1,919,912	mortgage
Other Loans	8-9½%	<u>796,573</u>	
<u>Total of Principal Due</u>		<u>§2,716,485</u>	

NOTE

10

- (1) Loan to Eastern Suburbs Leagues Club Ltd.
reducible by principal repayments of
§150,000 per annum.

Balance of Principal outstanding repayable
in October 1977.

This is the Annexure marked 'H' referred to
in the Affidavit of Thomas Maxwell.

EXHIBIT 'I'R.W. MILLER GROUPSCHEDULE OF FREEHOLD HOTEL PROPERTIES AS AT 30TH AUGUST 1971

	Since Sold		<u>Land & Buildings</u>		Plant Furniture & Fittings at Deprec. Value	Total Book Value	Independent Valuation	
			Independent Valuation	Book Value			Basis	
	500000	Albion	247,500	244,734	27,401	272,135	450,000	500
10		Allawah	240,000	413,718	33,857	447,575	375,000	325
	940000	Bexley North	532,000	276,921	160,150	437,071	725,000	940
		Blacktown	502,000	357,734	116,688	474,472	600,000	
		Brighton M	910,000	908,101	139,021	1,047,122	1,400,000	
		El Rancho M	1,100,000	740,705	227,198	967,903	1,350,000	
		Engadine	300,000	243,422	33,894	277,316	390,000	390
		Fairfield	481,500	338,947	55,394	394,341	640,000	
		Family	475,000	313,285	65,909	384,194	975,000	
		Highway	486,000	304,187	48,100	352,287	580,000	
		Kingswood	180,000	157,861	13,950	171,811	250,000	280
20	975000	Manly Vale	900,000	667,103	193,644	860,747	850,000	900
		Marayong	261,500	199,298	30,740	230,038	290,000	
		Mount Druitt	236,500	135,942	40,357	176,299	480,000	
		Narwas	505,000	196,838	63,878	260,716	625,000	
		North St. Marys M	537,000	398,537	162,088	560,617	600,000	
		Oak Flats	300,000	242,053	95,110	337,163	400,000	
		Oceanic Coogee	838,000	744,827	181,655	926,482	950,000	
		Prospect	407,000	482,152	80,740	482,892	500,000	
		Riverwood	495,000	407,248	40,050	447,298	600,000	
		Sefton	352,000	292,965	58,930	351,895	500,000	
30		Sundowner (Punchbowl)	676,000	402,386	70,221	472,607	800,000	
		Sylvania M	1,550,000	849,213	139,968	989,181	1,550,000	
		Hume	539,000	326,573	29,365	355,938	800,000	
		Merryfield	130,000	81,714	3,347	85,061	160,000	
		Oxford	150,000	144,288	17,224	161,512	120,000	
		Rose, Shamrock Thistle	160,000	175,070	9,460	184,530	142,000	
	205000	William	185,000	188,946	18,711	207,657	205,000	
	158200	Richmond	100,000	139,553	2,340	141,893	125,000	
	(29)		<u>13,868,000</u>	<u>10,299,371</u>	<u>2,159,382</u>	<u>12,458,753</u>	<u>17,522,000</u>	
		<u>Development Land</u>						
40		Wollongong Land	250,000	143,478	-	143,478	250,000	
		Warriswood Land	242,500	114,800	-	114,800	242,500	
		Dapto Land	60,000	38,180	-	38,180	60,000	
		Kambla Grange Land	70,000	39,368	-	39,368	72,000	
		Cambridge Park Land	18,000	5,265	-	5,265	18,000	
			<u>640,500</u>	<u>341,091</u>	<u>-</u>	<u>341,091</u>	<u>642,500</u>	
		Total Hotel Properties	<u>14,508,500</u>	<u>10,640,462</u>	<u>2,159,382</u>	<u>12,799,844</u>	<u>18,164,500</u>	

This is the Annexure marked 'I' referred to in the Affidavit of Thomas Maxwell.

Plaintiffs
Exhibits
Exhibit 'I'
to answers to
interrogatories
of 31st August
1972. set by
Ampol Petroleum
Ltd. to Howard
Smith Ltd.
(continued)

1452.

EXHIBIT 'J'

TO ANSWERS TO INTERROGATORIES OF 31st AUGUST 1972

R.W. MILLER GROUP

Details of Borrowing as at 16th June, 1972

Plaintiffs
Exhibits
Exhibit 'J'
to the answers to
interrogatories
of 31st August
1972 set by
Ampol Petroleum
Ltd. to Howard
Smith Ltd.
(continued)

SECURED

£

Bank of New South Wales

Term Loan Account	8½	1,711,112
Maximum Overdraft Limit	7½%	1,873,000

Hambros Bank Limited

10	Secured by Mortgage on M.T. "AMANDA MILLER"	7%	6,633,855
----	--	----	-----------

Davis & Penney Pty. Limited

Secured by Mortgage on Hotel Development Site		7,700
--	--	-------

City Mutual Life Assurance Society Limited

Secured by Mortgage on North St. Marys Hotel	8½	230,400
---	----	---------

Tricontinental Corporation Ltd.

20	Secured by Mortgage on two hotel properties	8½% Bills 12 mths.	1,750,000
----	--	-----------------------	-----------

Mitsui & Co. Limited

Secured by Mortgage on El Rancho Hotel	7½%	900,000
---	-----	---------

UNSECURED

Sundry short term borrowings		891,900
------------------------------	--	---------

£13,997,967

NOTE

30 Arrangements will possibly be finalised in June 1972 to borrow a further £3,000,000 to discharge some short term borrowings, and to meet stage progress payments on construction of M.T. "Robert Miller". C'wealth Superannuation Board
This is the Annexure marked 'J' referred to in the Affidavit of Thomas Maxwell

Plaintiffs
Exhibits

This is the annexure marked A referred to in interrogatory 40A at page 1434 of the answers to interrogatories of 31st August 1972 set by Ampol Petroleum Ltd. to Howard Smith Ltd.
(continued)

THIS IS THE ANNEXURE MARKED A REFERRED TO IN THE INTERROGATORY 40A AT PAGE OF THE ANSWERS TO INTERROGATORIES OF 31st AUGUST 1972

5th July, 1972

R.W. MILLER (HOLDINGS) LTD.

On 24th May, Ampol Petroleum lodged a Notice of Intention to make a takeover offer for all of the shares of R.W. Miller (Holdings) Ltd. of \$2.27 cash.

Howard Smith Limited on 22nd June, informed R.W. Miller that it intended making a takeover offer for all of Millers 9,000,786 \$1 shares.

10

On 27th June Ampol and Bulkships, who together control 54.9% of Millers capital announced that they would act jointly in relation to the future operations of Millers and would not accept the Howard Smith bid.

Howard Smith is now considering applying to the Miller Board for an allotment of 3,000,000 shares at a price of \$2 per share which would give Howard Smith 25% in the enlarged capital of Miller. Howard Smith's application would be subject to the Miller Board entering into a contract which would provide that :-

20

1. The allotment would be made on 6th July, 1972.
2. Howard Smith would proceed with its offer to acquire all the shares of Millers, unless a new bid is made by Ampol or some other party.
3. Millers would agree not to allot any further shares until Howard Smith withdrew its bid.
4. Millers would not dispose of any assets, enter into any financial commitments or enter into any contracts until Howard Smith declares its offer to be unconditional or withdrew its offer.
5. Millers will not declare or pay any dividend

30

or bonus or make any other distribution of its profits or assets until Howard Smith declares its offer to be unconditional or withdraws its offer.

The terms of the placement would be either -

(a) 10 cents per share payable on application with the balance of \$1.90 representing capital and premium to be paid on a date to be fixed or at the discretion of the Miller Board, or

(b) \$2.00 per share payable in full on application.

If the placement is made the following would be the position - SUBJECT TO THE AMPOL/BULKSHIPS shareholding remaining as indicated :-

	<u>Shares</u>	<u>%</u>
AMPOL	2,681,641	22.35
BULKSHIPS	2,500,000	20.83
MINORITY	3,819,145	31.82
20 HOWARD SMITH	<u>3,000,000</u>	<u>25.00</u>
	<u>12,000,786</u>	<u>100%</u>

and Howard Smith would require acceptances from minority shareholders to the extent of something over 3,000,390 shares to give it control.

30 Once Howard Smith received the placement it would be committed to acquiring sufficient of the minority shares to protect its allotment. Ampol could increase its bid and so force Howard Smith up - but if at any time the going became too tough, Howard Smith could itself accept the Ampol revised bid. If on the other hand Ampol restricted its new bid to shareholders other than Howard Smith, we could use the same tactics and direct our revised bid to the minority shareholders only. The contest between Howard Smith and Ampol would then be confined to the minority shares.

40 Another possibility which has to be faced is that when a share placement is made Bulkships may try to buy sufficient shares - 819,000 - in the market to effectively prevent us from getting the 50% + holding.

Plaintiffs
Exhibits

This is the annexure marked A referred to in interrogatory 40A at page 1434 of the answers to interrogatories of 31st August 1972 set by Ampol Petroleum Ltd. to Howard Smith Ltd.
(continued)

Plaintiffs
Exhibits

1455.

This is the annexure marked A referred to in interrogatory 40A at page 1434 of the answers to interrogatories of 31st August 1972 set by Ampol Petroleum Ltd. to Howard Smith Ltd.
(continued)

The Miller Board will meet on Thursday morning 6th July and Mr. Taylor wants a letter from us before the Board applying for the shares and, to place him and his colleagues in a better position to deal with the enquiries he has made over the past weeks of Ampol.

This is the annexure B referred to in interrogatory 46A at page 1437 of the answers to interrogatories of 31st August 1972 set by Ampol Petroleum Ltd. to Howard Smith Ltd.
(continued)

THIS IS THE ANNEXURE B REFERRED TO IN INTERROGATORY 46A AT PAGE 1437 OF THE ANSWERS TO INTERROGATORIES OF 31st AUGUST 1972

20/6/1972

10

Memo General Manager.

Discussions were held with Millers executives on 19th and 20th June to investigate the value of their company as a takeover proposition. The Board members present were most co-operative and supplied us with all information requested without demur. The charter and Term Loan conditions applying to the 2 Large Crude Tankers were most enlightening.

We have also had the benefit of an independent valuation and profit projection prepared by Mr. John Goddard of Cooper Bros. & Co. which supports our opinion that Millers is attractive within a price range \$2/50 to \$3/00 per R.W. Miller ordinary \$1.00 share. 20

Millers "before tax" profit for 1972 is estimated \$2,109,000 an increase of \$763,000 over the 1971 all time low of \$1,343,000 before tax. The increase is principally due to the inclusion this year of 10 months trading for Amanda Miller. Based on a final estimated cost of \$10.5 m. this vessel has an annual cash flow of around \$2.2 m. dollars (i.e. 20.72% on actual cost) made up \$1,551,000 capital charge and \$631,000 depreciation. For the vessels 10 months trading profit estimate has been calculated as follows :- 30

1456.

Earning $\frac{10}{12}$ of \$2.2	=	1,830,000
Less Dpn. $\frac{10}{12}$ of \$631,000	=	<u>530,000</u>
		1,300,000
Less Hambros Bank Int. 10 months		<u>420,000</u>
Est. net (before tax)		<u>\$ 880,000</u>

Plaintiffs
Exhibits

This is the annexure B referred to in interrogatory 46A at page 1437 of the answers to interrogatories of 31st August 1972 set by Ampol Petroleum Ltd. to Howard Smith Ltd.
(continued)

10 By the time "Robert Miller" commences operations in August 1973 Millers will have a Loan indebtedness of around \$21 million dollars to be repaid out of cash flows from the two vessels as follows :-

Amanda Miller	\$2,182,000	per annum
Robert Miller	<u>\$2,368,000</u>	per annum
	<u>\$4,550,000</u>	per annum

20 Less deduction of loan interest and tax at that time Millers financial structure will be fairly heavily geared in that asset values will total \$44.3 m. which will have been partly financed to the extent of \$21.4 million out of Loan Funds.

The cash flow on the two ships alone is sufficient to repay the loans over a 10 year period prescribed.

In determining the price and method of payment in making a takeover offer, the company has to choose between two extremes.

30 (1) Making full use of our share premium by maximising the H.S.Ltd. share content in an exchange of H.S. shares for Millers shares. Whilst this would reduce the cash pay-out, H.S. issued capital would increase substantially with a possible build-up of large single shareholdings which would be regarded unfavourably.

40 (2) Paying outright cash, similar to Ampol, for all the issued shares of Miller; at \$2.50 per share this would cost \$22,501,965. This would it is felt, result in too heavy a loan "gearing" ratio, which when coupled with Millers borrowings would inhibit our ability to seek further loan funds for future development.

Plaintiffs
Exhibits

This is the annexure B referred to in interrogatory 46A at page 1437 of the answers to interrogatories of 31st August 1972 set by Ampol Petroleum Ltd. to Howard Smith Ltd.
(continued)

It is considered the company could go mid-way between these two extremes and proposal "B" on the attached statement of varying proposals might be regarded as reasonable. The proposal envisages the sale of say 500,000 B.H.P. shares (or slightly less) to reduce the loan content and a lower alternative outright cash offer is suggested.

The proposal is to

(a) offer $\frac{2}{5}$ H.S.Ltd. share =	1.52	
plus in cash	<u>1.30</u>	10
	<u>2.82</u>	

for each Miller share or alternatively -

(b) The sum of \$2.50 for each Miller share.

The Company's cash requirements under either alternative may be expressed as follows :-

(A) Assuming all Miller shareholders take cash

9,000,786 shares @ 2/50 ea = \$22,500,000

Less sale 500,000 B.H.P. @ 14.

14.00 7,000,000

Cash required \$15,500,000

20

(B) Assuming all Miller shareholders take share offer

9,000,786 shares @ 1/30 ea = 11,700,000

Less Sale 500,000 B.H.P. = 7,000,000

Cash required 4,700,000

Plus issue of 3,600,314 H.S.Ltd. ordinary shares increasing H.S. paid capital by 25.28% and 15% dividend commitment by \$540,046.

(C) Assuming Millers shareholders are equally divided on acceptance of either cash or share + cash offer the position would be as follows :-

30

Cash requirement \$10.1 million

Share issue 1,800,157 i.e. 12.64% increase in H.S. capital

Dividend commitment @ 15% \$270,003

1458.

As interest on Loan Raising is allowable as tax deduction, Trading Income would have to be channelled from Millers to H.S.Ltd. to offset this charge.

10 Immediately our offer is announced we should approach 3 Brokers, . Wares Potters & Goodes for independent quotes on cost of floating private term debenture issue. I understand Goode is very competitive in this field. Later when requirements are known, we can approach our Bankers for bridging finance until the issue is finalised, this taking usually 6/8 weeks.

The London based Merchant Bankers appear to be a bit expensive for finance which H.S. could easily acquire from Australian institutions.

Sgd.

Plaintiffs
Exhibits

This is the annexure B referred to in interrogatory 46A at page 1437 of the answers to interrogatories of 31st August 1972 set by Ampol Petroleum Ltd. to Howard Smith Ltd.
(continued)

COMPARISON OF VARIOUS METHODS OF FINANCING(A) 1 H.S.LTD. SHARE + \$8.75 CASH
FOR EVERY 5 MILLERS

1/5 = .76	1 @ Val. 3.80 = 3.80
Cash <u>1.75</u>	Cash <u>8.75</u>
<u>2.51</u>	<u>12.55</u>

+ 5 = Value per Miller 2.51 p. share

COMPANY COST

Share issue	1,800,157
Cash Cost	15,751,376
Share Premium	<u>5,040,440</u>
	<u>\$22,591,973</u>

+ 9,000,786 = \$2.51 per Miller share

Outright Cash Purchase AT 2.50 \$22,501,9651 H.S.LTD + 10.00 CASH
FOR EVERY 5 MILLERS

1/5 = .76	1 @ Val. 3.80 = 3.80
Cash <u>2.00</u>	Cash <u>10.00</u>
<u>2.76</u>	<u>13.80</u>

+ 5 Millers = 2.76 per share

Share issue	1,800,157
Cash Cost	18,001,572
Share Premium	<u>5,040,440</u>
	<u>24,842,169</u>

= 2.76 per share

Outright Cash Purchase AT 2.75 24,752,161(B) 2 H.S.LTD. SHARES + 6.50 CASH
FOR EVERY 5 MILLERS

2/5 = 1.52	2 @ 3.80 = 7.60
Cash <u>1.30</u>	Cash <u>6.50</u>
<u>2.82</u>	<u>14.10</u>

+ 5 = \$2.82 per Millers

COMPANY COST

Share issue	3,600,314
Cash Cost	11,701,022
Share Premium	<u>10,080,879</u>
	<u>\$25,382,215</u>

M. Capital + 9,000,786 = \$2.82 per M. share

Outright Cash AT 2.50 \$22,501,9652 H.S.LTD. + 7.50 CASH
FOR EVERY 5 MILLERS

2/5 = 1.52	2 @ 3.80 = 7.60
Cash <u>1.50</u>	Cash <u>7.50</u>
<u>3.02</u>	<u>15.10</u>

+ 5 = 3.02 per Miller

Share issue	3,600,314
Cash Cost	13,501,179
Share Premium	<u>10,080,879</u>
	<u>27,182,372</u>

= \$3.02 per M. share

(C) 3 H.S. SHARES + 2.75 Cash
FOR EVERY 5 MILLERS

3/5 = 2.28	3 @ 3.80 = 11.40
Cash <u>.55</u>	Cash <u>2.75</u>
<u>2.83</u>	<u>14.15</u>

+ 5 = 2.83 per Miller

Share issue	5,400,471
Cash Cost	4,950,432
Share Premium	<u>15,121,319</u>
	<u>25,472,222</u>

+ 9,000,786 = 2.83 per M. Share

3 H.S. LTD. + 3.75
FOR EVERY 5 MILLERS

3/5 = 2.28	3 @ 3.80 = 11.40
Cash <u>.75</u>	Cash <u>3.75</u>
<u>3.03</u>	<u>15.15</u>

+ 5 = 3.03 per M. share

Share issue	5,400,471
Cash cost	6,750,589
Share Premium	<u>15,121,319</u>
	<u>27,272,379</u>

= \$3.03 per share

(A) Increases H.S. Share Capital by 1,800,157 = 12.64%	Divd. 15% = 270,023
(B) " " " " 3,600,314 = 25.28%	" " = 540,046
(C) " " " " 5,400,471 = 37.93%	" " = 810,069

Plaintiffs
Exhibits
This is the
annexure B
referred to in
interrogatory
46A at page 1437
of the answers to
interrogatories
of 31st August
1972 set by
Ampol Petroleum
Ltd. to Howard
Smith Ltd.
(continued)

EXHIBIT 00

INTERROGATORIES SET BY THE PLAINTIFF AMPOL
 PETROLEUM LIMITED FOR THE SECOND DEFENDANT
 ARCHIBALD NORMAN TAYLOR AND HIS ANSWERS
 THERETO DATED 5th SEPTEMBER 1972.

Interrogatories
 set by the
 Plaintiff Ampol
 Petroleum Ltd.
 for the 2nd
 Defendant
 Archibald Norman
 Taylor and his
 answers thereto
 5th September
 1972

IN THE SUPREME COURT OF NEW SOUTH WALES
 EQUITY DIVISION

	AMPOL PETROLEUM LIMITED	Plaintiff
10	R.W. MILLER (HOLDINGS) LIMITED & OTHERS	Defendants
	R.W. MILLER (HOLDINGS) LIMITED	Cross Claimant
	AMPOL PETROLEUM LIMITED, BULKSHIPS LIMITED AND EMIL HERBERT PETER ABELES	Cross Defendants

VERIFIED STATEMENT IN ANSWER BY SECOND DEFENDANT
 TO INTERROGATORIES OF PLAINTIFF

20 The second defendant answers the plaintiff's
 interrogatories specified in notice filed 23rd
 August, 1972 as follows :

1 A. Prior to the receipt of the letter of
 22nd June, 1972 from Howard Smith, did you have
 any communications or conversations with Howard
 Smith or any other Director of Millers relative
 to Howard Smith or any other company (other
 than the Plaintiff) making or notifying a take-
 over bid for Millers?

30 (a) If so :-

- (i) When, where and with whom did such
 communications or conversations take
 place?
- (ii) What was the substance of each such
 conversation or communication?
- (iii) If any such communications were in
 writing, identify the same.

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B. Yes.

(A)
(a) 16th June, 1972 at 19 Bridge Street, Sydney
with Mr. W. Howard Smith, Mr. Griffin and
Captain J. Evans.

(ii) There was discussion of an offer by Howard
Smith Limited to purchase the tankers owned
by R.W. Miller (Holdings) Limited; a rejection;
a possible takeover offer for Millers by
Howard Smith; the question whether Ampol
Petroleum Limited and Bulkships Limited
were working together in the Ampol takeover
offer.

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(iii) No writing.

(B)(a)

(i) On 20th June, 1972 in Melbourne with Mr.
Balhorn.

(ii) That a counter offer might be made by
Howard Smith.

(iii) No writing.

20

2A. After the 24th May, 1972 and prior to 22nd
June, 1972 did you or any person on your
behalf have any conversations or communications
with any other company or companies (other
than the Plaintiff) relative to any such
company or companies making or notifying a
takeover bid for Millers?

(a) If so :-

(i) When, where and with what company or companies
did such communications or conversations
take place?

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(ii) What was the substance of each such conversation
or communication?

(iii) If any such communications were in writing,
identify the same.

B. Not otherwise than as stated in answer to
question 1.

3A. On or prior to 22nd June, 1972, did you or any
person on your behalf make available or cause

to be made available to Howard Smith any document or documents or the contents of same relating to the valuation of the Millers assets and/or shares?

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(a) If so:-

(i) When, where, by whom and to whom on behalf of Howard Smith was any such document or documents or the contents of same made available?

10 (ii) Identify each such document.

B. Yes. See reply to question 4.

4 A. On or prior to 22nd June, 1972 did you or any person on your behalf furnish any information to Howard Smith relating to the valuation of the Millers assets and/or shares?

(a) If so :-

(i) When, where, by whom and to whom on behalf of Howard Smith was any such information furnished?

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(ii) What was the information so furnished?

B. Yes. I have been informed that on 19th June, 1972 oral information was given by Messrs. Koch, Walker, Murphy and Ellis-Jones as to the financial position of the Miller group of companies in reply to questions from Messrs. Maxwell and Mifflin and again on 20th June 1972 by the same gentlemen together with a representative of Cooper Brothers & Co. to the same gentlemen. On 20th June 1972 there were supplied in writing copy charter party for M.T. Amanda Miller, particulars of existing and proposed loans, statement of amounts of valuations of hotel properties, details of hotels sold since valuations were made and copy draft statement prepared by Cooper Bros.

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40 5 A. On or prior to 22nd June, 1972 did you or any person on your behalf procure, encourage or attempt to procure and encourage Howard Smith

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- to make its proposed takeover offer?
- (a) If so :-
- (i) When, where, by whom and to whom on behalf of Howard Smith was such procurement or encouragement or attempt made?
- B. Not otherwise than by the discussion referred to in answer 1 above.
- 6 A. When was the letter of 22nd June, 1972 from Howard Smith received by you or anyone on your behalf? 10
- (a) State the time, place and manner of receipt.
- B. On 22nd June, 1972 at 19 Bridge Street, Sydney by hand at a time unknown but prior to 11 a.m.
- 7 A. When did you first advise any other Director of Millers of the existence of the said letter of 22nd June, 1972 from Howard Smith?
- (a) Specify the date and time when and the Directors to whom such advice was given. 20
- B. On 22nd June, 1972 to P.J. Duncan by telex 11.10 a.m. to K.B. Anderson during the afternoon, to Lady Miller in the morning, to R.I. Nicholl in the morning, to Sir Peter Abeles through his office in the morning, to E.D. Cameron in the afternoon, to F.M. Murphy and W.A. Conway in the morning.
- 8 A. Prior to 22nd June, 1972 did you advise any other Director of Millers of the proposed take-over offer to be made by Howard Smith? 30
- (a) If so :-
- (i) When and to whom was such advice given?
- B. No.
- 9 A. Were you or was anyone on your behalf aware of the contents of the said letter of 22nd June, 1972 from Howard Smith prior

to the receipt of the same?

(a) If so :-

(i) When and how did you or anyone on your behalf become so aware?

(ii) Who on your behalf became so aware?

B. No.

10 A. When and by whom was the Board meeting of Millers of 23rd June, 1972 convened?

B. By me on 20th June, 1972.

10 11 A. Was an agenda for such meeting prepared and if so, when and by whom and when and to whom was such agenda despatched?

B. Yes, on 22nd June, 1972 by the Secretary. The Agenda was handed to Directors on 23rd June, 1972.

12 A. When did you first receive notice of the Board meeting of Millers to be held on 23rd June, 1972?

B. 20th June, 1972.

20 13 A. On what date and at what time did you dictate your reply as Chairman of Millers to Howard Smith acknowledging receipt of its said letter of 22nd June, 1972?

B. 22nd June, 1972 in the afternoon.

14 A. When and on whose instructions was the draft Part C statement presented to the Millers' Board of Directors on 23rd June, 1972 prepared?

30 B. Over a period probably between 2nd and 22nd June, 1972 on my instructions.

15 A. Prior to the preparation of the aforesaid Part C statement, did you discuss with any other Director of Millers or with Howard Smith the contents of the said document?

(a) If so :-

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- (i) When and with whom did these discussions take place?
- (ii) What was the substance of each such discussion?
- B. Yes.
- (a) (i) At a meeting of the Board on 9th June, 1972.
- (ii) That the offer was inadequate.
- 16 A. Was a draft of the letter dated 27th June, 1972 from Millers to its shareholders presented to the Board of Directors of Millers at the meeting of 23rd June, 1972? 10
- (a) If so :-
- (i) When and on whose instructions was such draft prepared for presentation at the said Board meeting?
- (b) If not presented:-
- (i) When and on whose instructions was the said letter dated 27th June, 1972 from Millers to its shareholders prepared? 20
- B. Yes.
- (a) (i) The draft was prepared on my instructions between 2nd and 22nd June, 1972.
- (b) Does not apply.
- 17 A. After the Board meeting of 23rd and prior to 27th June, 1972 did you discuss the contents of the said letter of 27th June, 1972 from Millers to its shareholders with any other Director of Millers and/or with any representative of Howard Smith? 30
- (a) If so :-
- (i) When, where and with whom did any such discussion or discussions take place?

(ii) What was the substance of each such discussion?

B. No.

18 A. Did you have any discussions with any other Director of Millers concerning the proposed non-recommendation of the Plaintiff's takeover offer prior to the Board meeting of Millers on 23rd June, 1972?

10 (a) If so :-

(i) When, where and with whom did any such discussion take place?

(ii) What was the substance of each such discussion.

B. Yes.

(a) (i) At a meeting of the Board of Directors on 9th June, 1972 and at various times between 2nd and 22nd June with Messrs. Murphy and Conway at 19 Bridge Street.

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(ii) The reasons for and against the recommendation of the takeover offer.

19 A. When did you first become aware of the joint statement made by the Chairman of the Plaintiff and the Chairman of Bulkships Limited on 27th June, 1972?

B. 28th June, 1972.

30 20 A. Did you discuss with any other Director of Millers or with Howard Smith the contents of the said joint statement?

(a) If so :-

(i) When, where and with whom did you have such discussion or discussions?

(ii) What was the substance of each such discussion?

B. Yes.

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(a) (i) On 28th June, 1972 on the telephone with Mr. Cameron. On 28th June with Messrs. Murphy and Conway at 19 Bridge Street. Probably on 28th June to the best of my recollection I telephoned Mr. Duncan in Tokyo and also Mr. Nicholl. With Mr. Anderson on 1st July, 1972.

(ii) The unfairness of the combination of Ampol and Bulkships seeking to acquire the tankers owned by Millers cheaply and for their own purposes and contrary to the interests of other shareholders and whether Howard Smith would now go ahead with its proposed takeover offer. In addition, with Mr. Cameron, discussed the question of forming a committee of two to consider with Ampol and Bulkships and to try and clarify their intentions with regard to the future of Millers.

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20

21 A. Is it admitted that between 27th June, 1972 and 6th July, 1972 you had one or more discussions with Howard Smith relative to the effect of the said joint announcement of the Plaintiff upon the proposed takeover offer of Howard Smith?

(a) If so :-

30

(i) When and where did each such discussion take place

(ii) What was the substance of each such discussion?

B. Yes.

(a) (i) 4th July, 1972 at Howard Smith's office.

(ii) Mr. Howard Smith renewed his offer for the purchase of the tankers; this was again refused; Howard Smith then proposed to apply for an issue of three million shares in the capital of R.W. Miller (Holdings) Limited

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at \$2 per share and I indicated that I felt the Board could not accept such an application.

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- 22 A. Between the 27th June, 1972 and 6th July, 1972 did you have any discussions with any other Director of Millers relative to the effect of the said joint announcement upon the proposed takeover offer by Howard Smith?
- 10 (a) If so :-
- (i) When and with whom did each such discussion take place?
- (ii) What was the substance of each such discussion?
- B. (a) (i) & (ii) Yes. See the answer to question 20.
- 23 A. When and on whose instructions was the Board meeting of Millers of 6th July, 1972 convened?
- 20 B. On 3rd July, 1972 on my instructions.
- 24 A. Did you or anyone on your behalf advise Howard Smith of the proposed Board meeting of Millers to be held on 6th July, 1972?
- (a) If so :-
- (i) When, by whom and to whom on behalf of Howard Smith was such advice given?
- B. Yes.
- 30 (a) On 4th July, 1972 by Koch to Howard Smith.
- 25 A. When were you first advised of the Board meeting of Millers to be held on 6th July, 1972?
- B. 3rd July, 1972.

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- 26 A. When, where and by whom was the agenda for the Board meeting of Millers to be held on 6th July, 1972 prepared?
- B. 3rd July, 1972 at 19 Bridge Street, Sydney by the Secretary.
- 27 A. When was such agenda despatched to the Directors of Millers?
- B. 3rd July, 1972 except to Mr. Balhorn who I am informed obtained his copy on the morning of 6th July. 10
- 28 A. When did you first receive notice of such Board meeting of 6th July, 1972?
- B. 3rd July, 1972.
- 29 A. Prior to 6th July, 1972 was there any discussion by you with any other Director of Millers and/or with Howard Smith as to the proposed Agenda for the Board meeting of Millers on 6th July, 1972?
- (a) If so :-
- (i) When, where and with whom did each such discussion take place? 20
- (ii) What was the substance of each such discussion?
- B. No.
- 30 A. Did you notify and instruct the Solicitor Mr. John Aston to attend the said Board meeting of the 6th July, 1972?
- (a) If so :-
- (i) When did you so notify or instruct the said John Aston? 30
- (b) What if any instructions did you give to the said John Aston in relation to his attendance at this said meeting?
- B. Yes.
- (a) (i) 5th July, 1972.

(b) No specific instructions.

31 A. Did you notify and instruct the Defendant Conway of the proposed Board meeting of Millers to be held on 6th July, 1972?

(a) If so :-

(i) When did you so notify the Defendant Conway?

(ii) What was the substance of the notification and instructions given to the said Defendant Conway?

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B. Yes.

(a) (i) 5th July, 1972.

(b) No specific instructions.

32 A. Did you instruct the General Manager of Millers Mr. Koch to attend the said Board meeting of the 6th July, 1972?

(a) If so :-

(i) When did you so instruct the said Mr. Koch?

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(ii) What instructions did you give to the said Mr. Koch?

(iii) What materials, information and reports did you require the said Mr. Koch to prepare and/or bring to the said Board meeting?

B. No.

33 A. Prior to the Board meeting of 6th July, 1972 did you instruct the said John Aston and/or the Defendant Conway to consider and advise on the legality of a proposed allotment of shares to Howard Smith to be discussed at the meeting of the Board of Millers on that date?

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(a) If so :-

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(i) When and where did you give such instructions to one or both of these persons?

B. No.

34 A. Did you have any notice or knowledge of the proposed written Agreement prepared on behalf of Howard Smith prior to the commencement of the meeting of Directors of Millers held on 6th July, 1972?

(a) If so, when and by what means did you first obtain such notice or knowledge?

B. Yes.

(a) At approximately 9.40 a.m. on 6th July, 1972 the agreement was delivered to my office.

35 A. Prior to the aforesaid meeting of Directors of Millers on 6th July, 1972 did you have any discussions or communications with Howard Smith or anyone on its behalf relative to the preparation and/or terms of the said proposed written Agreement? 20

(a) If so :-

(i) When, where and with whom on behalf of Howard Smith did you have such discussions?

(ii) What was the substance of such discussions?

B. No.

36 A. At what time on 6th July, 1972 did you first receive the letter of application and the letter proposing the allotment both dated 6th July, 1972 from Howard Smith together with the proposed written Agreement? 30

B. At approximately 9.40 a.m. I received the letter proposing the allotment and the proposed written agreement. I received the letter of application at approximately 12.15.

- 37 A. How were such aforesaid letters and the proposed written Agreement received by you and from whom?
- B. The first two documents were received by me from Mr. Conway who had received them from Mr. Maxwell. The letter of application was received by Mr. Conway from Mr. Maxwell.
- 10 38 A. When and at what time and from whom did you receive the cheque for \$1,035,000.00 drawn by or on behalf of Howard Smith?
- B. At approximately 12.15 p.m. on 6th July the cheque was received by Mr. Conway at 19 Bridge Street, Sydney from Mr. Maxwell.
- 20 39 A. Prior to the commencement of the said Directors meeting on 6th July, 1972, did you discuss with any other Director of Millers or with Howard Smith or anyone on its behalf or with any other person whatsoever matters relevant to the exclusion of Sir Peter Abeles from fully participating in the discussion on the proposed allotment and/or from voting on the same?
- (a) If so :-
- (i) When, where and with what person or persons did such discussions take place?
- (ii) What was the substance of each such discussion?
- B. Yes.
- 30 On 5th July, 1972 at 19 Bridge Street, Sydney I discussed with Messrs. Aston and Conway the company's legal advisers, whether, bearing in mind Abeles conflict of interest by reason of his directorship of Bulkships Limited and his personal interest in T.N.T. and the joint announcement by Ampol and Bulkships, he was disqualified from participating in the discussion and vote in respect of any proposal for allotment of shares to Howard Smith which could
- 40 arise from any application which might be made by Howard Smith. I was advised by

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Aston to ask Abeles to disqualify himself in the first instance and in the event of his refusal so to do to rule him ineligible. This advice was confirmed by Mr. Conway. Subsequently on the same day and the same place I discussed the same question with Mr. Nicholl, a Director of the company who is also a Solicitor and received the same advice.

- 40 A. Prior to the Board meeting of Millers on 6th July, 1972 did you have any discussions with any other Director of Millers and/or with Howard Smith or any other person concerning the legality or validity of the proposed allotment of 4,500,000 shares to Howard Smith? 10
- (a) If so :-
- (i) When, where and with whom did any such discussion take place?
- (ii) What was the substance of any such discussion. 20
- B. No except as below :
- (a) (i) In the Board room of Millers at lunchtime on 5th July there was a discussion between Messrs. Conway and Nicholl in my presence.
- (ii) That there was no difficulty in making an allotment of shares having regard to the company's financial needs provided that the price was adequate and the amount raised was not excessive. The intention to apply for 4,500,000 shares was not known until approximately 2.30 p.m. on 5th July after the discussion was over. 30
- 41 A. Prior to the meeting of the Board of Directors of Millers on 6th July, 1972, did you discuss with any other Director of Millers and/or with Howard Smith and/or with any other person, matters concerning the possibility of the Millers shares being delisted or suspended from trading following 40

the proposed allotment of 4,500,000 shares to Howard Smith?

(a) If so :-

(i) When, where and with whom did any such discussion take place?

(ii) What was the substance of any such discussion?

B. No.

10 42 A. Prior to the Board meeting of Millers on 6th July, 1972 did you discuss with any other Director of Millers and/or with Howard Smith and/or any other person the effect of a proposal to allot 4,500,000 shares to Howard Smith on the financial position of Millers?

(a) If so :-

(i) When, where and with whom did any such discussion take place?

20 (ii) What was the substance of any such discussion?

B. No.

43 A. Prior to the commencement of the said Board meeting of the 6th July, 1972, did you cause or instruct to be prepared :-

(i) Share certificate in respect of the 4,500,000 shares to be allotted to Howard Smith;

30 (ii) Register entry form in respect of the alleged 4,500,000 shares to be allotted to Howard Smith;

(iii) Letter from Millers to Security Share Services Pty. Limited (hereinafter called "Security Services") dated 6th July, 1972?

B. (i) Yes.
(ii) Yes.
(iii) No.

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- 44 A. If so, when, where and by whom were such document or documents prepared?
- B. The documents were all prepared on 6th July, 1972 at 19 Bridge Street, Sydney by Messrs. Ellis-Jones and Murphy.
- 45 A. If not, then at what time and at what place and by whom were such document or documents prepared?
- B. Does not apply.
- 46 A. Was Abeles prevented at the Board meeting on 6th July, 1972 from fully participating in discussions of the said resolution for the allotment of the said 4,500,000 shares to Howard Smith and of the said resolution for execution by Millers of the said agreement? 10
- B. No.
- 47 A. If so, specify the facts and matters relied upon by you as Chairman of the Board of Millers on 6th July, 1972 as proper justification for the exclusion of Abeles from fully participating in the said discussions. 20
- B. Does not apply.
- 48 A. Specify the facts and matters relied upon by you as Chairman of the Board of Millers on 6th July 1972 as proper justification for the exclusion of Abeles from voting on the said resolutions.
- B. I was aware that Abeles had on behalf of Bulkships Ltd. offered \$2.40 per share for the shares in R.W. Miller (Holdings) Limited held by Romanda Pty. Limited. I was aware that at or about the time that Ampol made its offer for shares held by Romanda Pty. Limited Abeles withdrew his offer. To my knowledge Abeles was of the view that the Ampol offer was inadequate. Notwithstanding these facts Abeles joined in supporting the Ampol offer of \$2.27 per share notwithstanding that this was below the true value of the shares of R.W. Miller 30 40

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10 (Holdings) Limited. I was aware that Abeles had large direct and indirect personal interests in Thomas Nationwide Transport Limited which in turn had a one third interest in Bulkships Limited. I was also aware that Abeles was a Director of Bulkships Limited. It was my belief that Bulkships Limited and Ampol Petroleum Limited were intending to act detrimentally to the interests of R.W. Miller (Holdings) Limited as a whole by selling off the colliery and hotel interests to pay for the acquisition of the shares and by splitting between them the tanker interests of R.W. Miller (Holdings) Limited to the advantage of Ampol Petroleum and Bulkships. I had received legal advice from Messrs. Aston and Conway that in view of these matters there was a clear conflict of interest so far as Abeles was concerned and as a matter of commercial morality and practice I concurred in this view. As suggested by the company's legal advisers I invited Abeles to disqualify himself in the first instance. On a previous occasion on 31st May, 1971 Abeles had, in a discussion on taverns, of his own accord disqualified himself from discussing or voting upon the subject on view of his interests as a Director of Thomas Nationwide Transport Limited and I.C.D. Limited. I disqualified him from voting when he failed to avail himself of the opportunity to disclaim his rights to vote.

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30

49 A. Specify what (if any) Articles of Association of Millers are relied upon by you as proper justification for the exclusion of Abeles from voting on the said resolutions.

40 B. I did not rely on the Articles, but on the Common Law.

50 A. (a) What precisely are the facts and circumstances relied upon by you in support of your allegation that the Plaintiff, Bulkships Limited and Abeles were on the 6th July, 1972, acting in concert?

(b) Is it alleged that such "acting in

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concert" was pursuant to some agreement or arrangement?

(c) If so, was such agreement or arrangement express or implied?

(d) If implied, what acts, facts and circumstances are relied upon?

(e) If express, was the same oral or in writing or partly oral and partly in writing?

(f) If in writing or partly in writing, what document or documents are relied upon and where may these be inspected? 10

(g) If oral or partly oral when, where and between whom on behalf of the Plaintiff, Bulkships Limited and Abeles was such agreement or arrangement arrived at? Please specify the substance of any such agreement or arrangement.

B . (a) Through 1971 Abeles, acting on his own (i) and/or on behalf of Bulkships Limited held numerous discussions with representatives of Ampol, the precise details of which are not known to me relating to : 20

i. The acquisition of shares in Millers by Ampol and/or Bulkships.

ii. The disposal of assets of Millers.

iii. The running/sharing and/or splitting up of the tanker interests owned by, or to be acquired by, Millers.

(ii) The joint announcement made by Bulkships and Ampol 27th June, 1972. 30

(iii) The discussions and negotiations which led to the preparation of the document headed "Heads of Agreement" reached between Ampol Petroleum Ltd. and Bulkships Limited on the _____ day of _____ 1972.

(iv) An offer by Abeles to acquire shares from Romanda Pty. Limited at \$2.40 per share and withdrawal of that offer at or about the time of the offer made by Ampol for the said Shares. 40

(b-g) As to these I have no knowledge.

51 A. As at the commencement of the Board meeting of the 6th July, 1972 did you consider that Millers had financial problems?

(a) If so, for how long did you consider that such financial problems existed and what in your view was the nature and cause of such financial problems?

B. Yes.

10

(a) Since approximately 1968. Under-capitalisation, insufficient working capital for development and expansion and a borrowing structure which involved the company in giving as security for short term loans all of its assets thereby disabling it from obtaining appropriate long term finance; the fire to the Amanda Miller; trading conditions in the coal trade; tying up large amounts of capital in tanker construction during the construction period.

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52 A. Did you consider that the purported allotment of 4,500,000 shares to Howard Smith would ease the financial problems of Millers?

(a) If so, how did you consider that such allotment would ease these problems?

B. Yes.

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(a) By the injection of additional equity capital removing the need to rely on expensive short term borrowings.

53 A. Prior to the meeting of Directors of 6th July, 1972 did you at any time discuss with any other Director, employee or agent of Millers or with a representative of Howard Smith, any method other than an allotment of shares to Howard Smith which could possibly be adopted to ease the financial problems of Millers?

40 (a) If so :-

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(i) When, where and with whom did each
such discussion take place?

(ii) What was the substance of each such
discussion

B. Yes.

(a) I discussed with Mr. Cameron whether he
(i) knew of any source whence the company
could borrow six million dollars and he
gave me a negative answer.

(ii) I enquired from Lady Miller whether
Romanda Pty. Limited would be prepared to
advance moneys realised from the sale of
shares in Millers and she declined

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(iii) Abeles stated that neither Bulk-
ships nor T.N.T. could or would guarantee
any loan to the company.

(iv) At a Board Meeting on 5th April, 1972
the question of an issue of shares to the
company's shareholders was raised and
discussed but it was thought that such a
share issue was not feasible.

20

54 A. Prior to the meeting of Directors of
Millers on 6th July, 1972 did you consider
the possibility of making an allotment of
shares in Millers to any person or
corporation other than to Howard Smith?

(a) If so, did you have any discussions with
any other Director, employee or agent of
Millers or any shareholders of Millers
or with a representative of Howard Smith
or with any other person in regard to
such possibility?

30

(b) If so :-

(i) When, where and with whom did each
or any such discussion take place?

(ii) What was the substance of each such
discussion.

B. Yes.

(a)&(b) See answer to question 53 above.

- 55 A. Prior to the meeting of Directors of Millers of 6th July, 1972 did you consider the possibility of making an allotment of shares in Millers to the existing shareholders of Millers?
- (a) If so, did you have any discussion with any other Director, employee or agent of Millers or with any shareholders of Millers in regard to such possibility?
- 10 (b) If so :-
- (i) When, where and with whom did each of any such discussions take place?
- (ii) What was the substance of each such discussion?
- B. Yes.
- (a)&(b) See answer to question 53 above.
- 20 56 A. For what reasons did you decide against making an issue of 4,500,000 shares in Millers available to existing shareholders of Millers?
- B. I was of the opinion that an attempt at issuing 4.5 million shares at a premium of 130% to existing shareholders would fail.
- 30 57 A. Do you admit that at the time that you voted upon the resolution for the allotment to Howard Smith of 4,500,000 shares in the capital of Millers, you were aware that such allotment constituted a breach of the Official Listing Requirements of the Associated Stock Exchanges Limited?
- B. Yes.
- 58 A. If you admit that you were so aware, for what reason or reasons did you decide to vote in favour of the said allotment?
- B. I considered the allotment to be in the best interests of all the shareholders of the company and I was advised that it was not likely that any steps would be taken against the company by the Stock Exchange.

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Plaintiff Ampol
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(continued)

- 59 A. Prior to the meeting of Directors of Millers on 6th July, 1972, did you have any discussions with any other Director or shareholder of Millers wherein consideration was given to seeking assistance from any shareholder of Millers either by way of allotment of shares or otherwise, for the purpose of easing the financial problems of Millers?
- (a) If so :- 10
- (i) When, where and with whom did any such discussion take place?
- (ii) What was the substance of any such discussion?
- (b) If no such discussions took place, for what reasons did you not initiate any such discussions?
- B. See answer to question 53 above.
- 60 A. Specify the purpose or purposes for which you voted in favour of :- 20
- (a) The purported resolution for the allotment of the said 4,500,000 shares to Howard Smith;
- (b) The purported resolution for the execution by Millers of the agreement with Howard Smith;
- (c) The purported resolution for the affixing of the seal of Millers to the said Share Certificate.
- B. To secure and promote the company's financial structure and stability and to allow shareholders who wished to sell an opportunity to obtain a higher price than \$2.27. 30
- 61 A. At what time, on what date and in what manner was the letter of application from Howard Smith dated 6th July, 1972 delivered to or received by you?

(a) Please specify by whom such letter of application was delivered and received.

B. See answers to questions 36 and 37.

62 A. At the time of voting upon the resolution for the aforesaid allotment, did you consider the rights of all shareholders of Millers?

(a) If so, what were the rights of all shareholders which you took into consideration?

10 (b) If not, in respect of which shareholders did you give consideration in so voting and what rights of such shareholders did you take into consideration?

B. Yes.

(a) All the rights and interests of the shareholders.

20 63 A. Do you admit that the sealing of the Share Certificate and delivery of same forthwith to Howard Smith on 6th July, 1972 was contrary to the normal practice adopted by Millers in allotting shares?

B. Yes.

64 A. As at the commencement of the Board Meeting of 6th July, 1972 what was your belief as to the assets backing value of each of the shares in the capital of Millers?

B. Between \$2.55 and \$3.71.

30 65 A. On the 6th July, 1972 did you believe that the assets backing value of each of the shares in the capital of Millers would be reduced by virtue of the allotment to Howard Smith of 4,500,000 shares in such capital?

(a) If so, to what value did you believe each such share would be reduced?

B. Yes.

(a) I had no value in mind. I believed the reduction in assets backing would only

Interrogatories
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Plaintiff Ampol
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(continued)

be marginal but that this was secondary
to securing the financial position and
security of the company.

66 A. At the commencement of the meeting of
Directors of Millers on 6th July, 1972
did you believe that the constitution of
the Board of Directors of Millers was
likely to be altered in the near future
by virtue of the shareholding of the
Plaintiff and Bulkships Limited?

10

B. Yes.

67 A. As at the commencement of the meeting
of the Board of Directors of Millers on
6th July, 1972 did you believe that your
own position on such Board of Directors
was likely to be jeopardised in the near
future by virtue of the shareholding of
the Plaintiff and Bulkships Limited?

B. No.

68 A. Prior to the meeting of Directors of
Millers on 6th July, 1972, did you have
any discussions with any other Director
of Millers or with Howard Smith or with
any other person as to the likelihood of
the Board of Directors of Millers being
reconstituted or altered in the near future
by virtue of the shareholding of the
Plaintiff and Bulkships Limited?

20

(a) If so, when, where and with whom were
any such discussions held?

30

(b) What were the substance of any such
discussions?

B. Yes.

(a) Sometime between 23rd and 27th June
Abeles telephoned me and told me that
he had an agreement with Ampol and
required me to obtain the resignations
of Messrs. Nicholl, Anderson & Duncan.
Following this I spoke to the three
Directors who each indicated that they
would not resign at this time. On 5th
July, 1972 Abeles telephoned me and

40

enquired about the resignations required by him. At the meeting with Howard Smith on 4th July Mr. Howard Smith told me that there will be Board changes if the Howard Smith offer was successful.

Interrogatories set by the Plaintiff Ampol Petroleum Ltd.

for the 2nd Defendant Archibald Norman Taylor and his answers thereto

5th September 1972

(continued)

10 69 A. Prior to the meeting of Directors of Millers on 6th July, 1972, did you have any discussions with Howard Smith as to the likelihood of that company seeking to reconstitute or alter in any way the constitution of the Board of Directors of Millers in the event that Howard Smith should be allotted 4,500,000 shares in the capital of Millers?

(a) If so :-

(i) When, where and with whom were any such discussions held?

20 (ii) What were the substance of any such discussions?

B. See answer to question 68 above.

70 A. On the 6th July, 1972 did you believe that the allotment of 4,500,000 shares to Howard Smith in the capital of Millers would have the effect of reducing the proportion of the shares in the capital of Millers held by each of the Plaintiff and Bulkships?

30 (a) If so, to what extent did you believe that the proportion of the shares in the capital of Millers held by each of the Plaintiff and Bulkships would be reduced?

B. Yes.

(a) I did not make any calculations.

40 71 A. On the 6th July, 1972 did you believe that the allotment to Howard Smith of 4,500,000 shares in the capital of Millers would have or probably have the purpose of defeating the takeover offer made by the Plaintiff?

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Interrogatories
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(continued)

- B. I believed that the allotment would probably defeat the offer by the Plaintiff to take over at a price of \$2.27 per share.
- 72 A. On the 6th July, 1972 did you believe that the allotment to Howard Smith of 4,500,000 shares in the capital of Millers would have the effect or probable effect of facilitating and ensuring the success of the proposed takeover offer to be made by Howard Smith?
- B. I believed that the allotment would probably facilitate the making of an offer by Howard Smith at \$2.50. Whether the shareholders would accept this offer was something about which I had no belief. 10
- 73 A. What were your reasons for refusing the request by Abeles to have legal representation during the course of the meeting of the Board of Directors on 6th July, 1972?
- B. The company's legal advisers had informed me that the law was quite clear and I did not consider there was any obligation on me to permit persons other than the company's legal advisers to be present. 20
- 74 A. Prior to the purported allotment of the shares to Howard Smith on 6th July, 1972, did you or anyone on your behalf seek or obtain information or make enquiries from Howard Smith as to its financial capability and/or as to arrangements made by it for the shares to be allotted to it and/or its capability and arrangements made to service its proposed takeover offer? 30
- (a) If so :-
- (i) When, where, by whom and from whom was such information sought or obtained?
- (ii) If any such information was sought or obtained or supplied in writing, identify each such writing.
- (iii) What was the substance of any such information sought and/or obtained? 40
- B. No.

Interrogatories
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Plaintiff Ampol
Petroleum Ltd.
for the 2nd
Defendant
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(continued)

- 75 A. When, at what time and by whom was the letter dated 6th July, 1972 from Millers to the Manager of the fourteenth Defendant and the enclosed Register entry form prepared?
- B. On 6th July at approximately 12.15 p.m. by Mr. Murphy.
- 10 76 A. Do you admit that the preparation of the Register entry form in the offices of Millers in relation to the purported allotment to Howard Smith of 4,500,000 shares was contrary to the normal practice adopted by Millers in relation to other share placements or allotments?
- B. Yes.
- 77 A. When, at what time and by whom was the said letter dated 6th July, 1972 and enclosed Register entry form delivered to the fourteenth Defendant at its offices?
- 20 B. On 6th July, 1972 at approximately 12.45 pm by Messrs. Murphy and High.
- 78 A. When, at what time, where, by whom and to whom was the Share Certificate relating to the allotment to Howard Smith of 4,500,000 shares in the capital of Millers, delivered to Howard Smith?
- B. On 6th July, 1972 at approximately 12.25 pm in the company's offices at 19 Bridge Street, Sydney by Mr. Murphy to Mr. Maxwell.
- 30 79 A. When, at what time, by whom and on whose instructions were the letters dated 3rd July, 1972 and addressed respectively to the Chairman of Directors of the Plaintiff and to the Chairman of Directors of Bulkships Limited prepared?
- B. On 3rd July, 1972 by myself in conjunction with members of my Executive Committee and on my instructions.
- 40 80 A. Prior to the preparation of the aforesaid letters, did you have any discussions concerning the contents of the same with any

Plaintiffs
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Interrogatories
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(continued)

other Director of Millers, and/or Howard
Smith and/or any other person?

(a) If so :-

(i) When, where and with whom did any
such discussions take place?

(ii) What was the substance of any such
discussions?

B. Yes.

(a) On 3rd July, 1972 at the company's
offices at 19 Bridge Street Sydney with
the Management Executive Committee.

10

81 A. When by whom and for what purpose were
instructions given to Cooper Brothers and
Co. for the preparation of the report
dated 21st June, 1972?

B. For the purpose of evaluating the Ampol
offer instructions were given by Messrs.
Barkell & Peacock between 27th May,
and 21st June, 1972.

82 A. Prior to the giving of instructions for
the preparation of the aforesaid report,
did you have any discussions with other
Directors of Millers and/or with Howard
Smith and/or with any other person relative
to the obtaining of such report?

20

(a) If so :-

(i) When, where and with whom did any
such discussions take place?

(ii) What was the substance of any such
discussions?

30

B. No.

83 A. When, by whom and on whose instructions
was the letter dated 6th June, 1972 from
the Chairman of Directors of Millers to
the Chairman of Directors of the Plaintiff
prepared?

B. On 6th June, 1972 by myself and the Management
Executive Committee.

- 84 A. Prior to the preparation of such letter, did you have any discussions with any other Directors of Millers and/or Howard Smith and/or any other person relative to the preparation of the same?
- (a) If so :-
- (i) When, where and with whom did any such discussion take place?
- (ii) What was the substance of any such discussions?
- 10
- B. With members of the Executive Committee at the company's offices.
- 85 A. When, by whom and on whose instructions was the letter dated 14th June, 1972 from Millers to the shareholders of Millers prepared?
- B. On 9th June, 1972 by the Board of Directors.
- 86 A. Prior to the preparation of the said letter, did you have any discussions with any other Directors of Millers and/or Howard Smith and/or any other person relative to the preparation of the same?
- 20
- (a) If so :-
- (i) When, where and with whom were any such discussions held?
- (ii) What was the substance of any such discussions?
- B. No.
- 87 A. On or prior to the 12th May, 1972 when the agreement between the Plaintiff and Romanda Pty. Limited for the purchase by the Plaintiff of that company's shares in the capital of Millers was signed, did you approve or indicate your approval as to the reasonableness of the purchase price of \$2.25 per share therein provided for?
- 30
- (a) If not :-

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Interrogatories
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Plaintiff Ampol
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(continued)

- (i) Did you object or express your objections to such purchase price as being an insufficient price?
- (b) If so, when, where and to whom did you express such objection and what was the substance of the same?
- B. No.
- (a) Yes.
- (b) At the Board Meeting of Romanda Pty. Limited 9 Bligh Street, Sydney in May, 1972 on the ground that the price was inadequate and there was no assurance of similar offer to all shareholders. 10
- 88 A. Do you admit that as at the commencement of the meeting of the Directors of Millers on 6th July, 1972, there was no urgent and immediate need to raise \$10,350,000.00 or other similar amount in order to enable Millers to continue its operations? 20
- B. No.
- 89 A. Do you admit that at the commencement of the meeting of Directors of Millers on 6th July, 1972, the financial position of Millers had improved on the position that existed some 12 months or so ago?
- (a) If not, what facts and matters do you say indicated that there had been no such improvement or that there had been a deterioration? 30
- B. No.
- (a) The company was still suffering from a lack of working capital and was dependent on expensive short term borrowings. Because the company's assets were all mortgaged the company was unable to obtain proper long term finance. The company had large short-term commitments which it could not be sure of meeting. Because of the forced sale of income producing assets 40

1490.

the company's growth was being retarded. The company did not have sufficient funds for projected expansion.

(Sgd)

Solicitor for the
Second Defendant

Plaintiffs
Exhibits

Exhibit 00

Interrogatories
set by the
Plaintiff Ampol
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Defendant
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5th September
1972
(continued)

FILED: 6th September, 1972.

AFFIDAVIT

10 ON Fifth day of September, 1972, I,
ARCHIBALD NORMAN TAYLOR of 2
Kellaway Avenue, North Ryde near
Sydney in the State of New South
Wales, Company Director, say on
oath :-

1. I am the Second Defendant herein.

20 2. The above answers to the
Interrogatories herein in so far as
they relate to my own activities and
beliefs are true.

3. The answers to Interrogatories
herein relating to the activities of

Plaintiffs
Exhibits

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Interrogatories
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(continued)

others are true to the best of my
belief.

SWORN at Sydney on the) (Sgd)
day and year first) A.N. TAYLOR
mentioned,

Before me,

Sgd.

J.P.



Plaintiffs Exhibits
Exhibit PP

IN THE SUPREME COURT }
OF NEW SOUTH WALES } 1240 of 1972
EQUITY DIVISION }

Plaintiffs Exhibits
 Exhibit PP
 Interrogatories set by the Plaintiff Ampol Petroleum Ltd. for the 5th Defendant Robert Jan Nicholl and his answers thereto
 6th September 1972

AMPOL PETROLEUM LIMITED

Plaintiff

R.W. MILLER (HOLDINGS)
LIMITED AND ORS.

Defendants

R.W. MILLER (HOLDINGS) LIMITED

Cross Claimant

AMPOL PETROLEUM LIMITED AND
ORS.

Cross Defendants

VERIFIED STATEMENT IN ANSWER BY THE FIFTH
DEFENDANT TO INTERROGATORIES OF
PLAINTIFF

The fifth defendant answers the plaintiff's interrogatories specified in notice filed 23rd day of August 1972 as follows:-

1. A Prior to the receipt of the letter of 22nd July 1972 from Howard Smith did you have any communications or conversations with Howard Smith or any other Director of Millers relative to Howard Smith or any other company (other than the Plaintiff) making or notifying a takeover bid for Millers?

(a) If so:-

- (i) when, where and with whom did such communications or conversations take place?
- (ii) what was the substance of each such conversation or communication?
- (iii) if any such communication were in writing, identify the same.

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Plaintiffs
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Interrogatories
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Plaintiff Ampol
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(continued)

- B. No on the understanding that the question should read "June" instead of July.
2. A. After the 24th May 1972 and prior to 22nd June 1972 did you or any person on your behalf have any conversations or communications with any other company or companies (other than the Plaintiff) relative to any such company or companies making or notifying a takeover bid for Millers?

10

(a) If so:-

(i) when, where and with what company or companies did such communications or conversations take place?

(ii) what was the substance of each such conversation or communication?

(iii) if any such communications were in writing, identify the same.

20

B. No.

3. A. On or prior to 22nd June, 1972, did you or any person on your behalf make available or cause to be made available to Howard Smith any document or documents or the contents of same relating to the valuation of the Millers assets and/or shares?

(a) If so:-

(i) when, where by whom and to whom on behalf of Howard Smith was any such document or documents or the contents of same made available?

(ii) Identify each such document.

B. No.

4. A. On or prior to 22nd June, 1972 did you or any person on your behalf furnish any information to Howard Smith relating to the valuation of the Millers assets and/or shares?

(a) If so:-

(i) when, where, by whom and to whom on behalf of Howard Smith was any such information furnished?

(ii) what was the information so furnished?

B. No.

10 5. A. On or prior to 22nd June, 1972 did you or any person on your behalf procure, encourage or attempt to procure and encourage Howard Smith to make its proposed take-over offer?

(a) If so:

(i) when, where by whom and to whom on behalf of Howard Smith was such procurement or encouragement or attempt made?

B. No.

6. A. Were you or was anyone on your behalf aware of the contents of the said letter of 22nd June 1972 from Howard Smith prior to the receipt of same?

20 (a) If so:-

(i) when and how did you or anyone on your behalf become so aware?

(ii) who on your behalf became so aware.

B. No.

7. A. When and by whom was the Board Meeting of Millers of 23rd June 1972 convened?

B. I do not know.

30 8. A. When did you first receive notice of the Board Meeting of Millers to be held on 23rd June 1972?

B. 20th June, 1972

9. A. When and on whose instructions was the draft Part C statement presented to the Millers' Board of Directors on 23rd June, 1972 prepared?

B. I do not know.

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
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10. A. Prior to the preparation of the aforesaid Part C statement, did you discuss with any other Director of Millers or with Howard Smith the contents of the said document?

(a) If so:-

(i) when and with whom did these discussions take place?

(ii) what was the substance of each such discussion?

10

B. Yes.

(a) (i) At a meeting of the Board
9th June, 1972.

(ii) That the offer was inadequate.

11. A. Was a draft of the letter dated 27th June, 1972 from Millers to its shareholders presented to the Board of Directors of Millers at the meeting of 23rd June, 1972?

(a) If so:-

(i) when and on whose instructions was such draft prepared for presentation at the said Board Meeting?

(b) If not presented:-

(i) when and on whose instructions was the said letter dated 27th June, 1972 from Millers to its shareholders prepared?

20

B. Yes.

(a) (i) I do not know.

(b) (i) Does not apply.

30

12. A. After the Board Meeting of 23rd June, 1972 and prior to 27th June, 1972 did you discuss the contents of the said letter of 27th June, 1972 from Millers to its shareholders with any other Director of Millers and/or with any representative of Howard Smith?

(a) If so:-

(i) when, where and with whom did any such discussion or discussions take place?

(ii) what was the substance of each such discussion?

B. No.

13. A. Did you have any discussion with any other Director of Millers concerning the proposed non-recommendation of the Plaintiff's takeover offer prior to the Board Meeting of Millers on 23rd June, 1972?

Interrogatories
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(a) If so:-

(i) when, where and with whom did any such discussion take place?

(ii) what was the substance of each such discussion?

B. Yes.

(a) (i) With other Directors at the Board Meeting on 9th June, 1972

(ii) The sufficiency or otherwise of the offer made by Ampol.

20

14. A. When did you first become aware of the joint statement made by the Chairman of the Plaintiff and the Chairman of Bulkships Limited on 27th June 1972?

B. 28th June, 1972.

15 A. Did you discuss with any other Director of Millers or with Howard Smith the contents of the said joint Statement?

(a) If so:-

(i) when, where and with whom did you have such discussion or discussions?

(ii) what was the substance of each such discussion?

B. Yes.

Interrogatories
set by the
Plaintiff Ampol
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for the 5th
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(continued)

(a) (i) On the telephone 28th June, 1972
with Mr. Taylor?

(ii) The likelihood of Howard Smith
proceeding with its offer and
the position in which a small
shareholder will find himself
as a result of the combination
of Ampol and Bulkships.

16. A. Is it admitted that between 27th June
1972 and 6th July, 1972 you had one or
more discussions with Howard Smith
relative to the effect of the said joint
announcement of the Plaintiff upon the
proposed takeover offer of Howard Smith? 10

(a) If so:-

(i) when and where did each such discus-
sion take place?

(ii) what was the substance of each such
discoussion?

B. No. 20

17 A. Between the 27th June, 1972 and 6th July,
1972 did you have any discussions with
any other Director of Millers relative to
the effect of the said joint announcement
upon the proposed takeover offer by
Howard Smith?

(a) If so:-

(i) when and with whom did each such
discussion take place?

(ii) what was the substance of each such
discussion? 30

B. (a) Yes, see reply to 15.

18. A. When and on whose instructions was the
Board Meeting of Millers of 6th July 1972
convened?

B. I do not know.

19. A. Did you or anyone on your behalf advise Howard Smith of the proposed Board Meeting of Millers to be held on 6th July 1972?

(a) If so:-

(i) when, by whom and to whom on behalf of Howard Smith was such advice given?

B. No.

20 A. When were you first advised of the Board Meeting of Millers to be held on 6th July 1972.

B. 3rd July 1972.

21. A. When did you first receive notice of such Board Meeting of 6th July 1972?

B. 3rd July 1972.

22. A. Prior to 6th July 1972 was there any discussion by you with any other Director of Millers and/or with Howard Smith as to the proposed Agenda for the Board Meeting of Millers on 6th July 1972?

20 (a) If so:-

(i) when, where and with whom did each such discussion take place?

(ii) what was the substance of each such discussion?

B. No.

23. A. Did you instruct the General Manager of Millers, Mr. Koch to attend the said Board Meeting of 6th July 1972?

(a) If so:-

(i) When did you so instruct the said Mr. Koch?

(ii) What instructions did you give to the said Mr. Koch?

(iii) What materials, information and reports did you require the said Mr. Koch to prepare and/or bring to the said Board Meeting?

Interrogatories
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B. No.

24. A. Did you have any notice or knowledge of the proposed written Agreement prepared on behalf of Howard Smith prior to the announcement of the Meeting of Directors held on 6th July 1972?

(a) If so:-

(i) by what means did you first obtain such notice or knowledge?

B. No.

10

25 A. Prior to the aforesaid meeting of Directors of Millers on 6th July 1972 did you have any discussion or communications with Howard Smith or anyone on its behalf relative to the preparation and/or terms of the said proposed written Agreement?

(a) If so:-

(i) When, where and with whom on behalf of Howard Smith did you have such discussion.

20

(ii) What was the substance of such discussions?

B. No.

26. A. Prior to the commencement of the said Directors meeting on 6th July, 1972 did you discuss with any other Director of Millers or with Howard Smith or anyone on its behalf or with any other person whatsoever matters relevant to the exclusion of Sir Peter Abeles from fully participating in the discussion on the proposed allotment and/or from voting on the same?

30

(a) If so:-

(i) When, where and with what person or persons did such discussions take place?

(ii) What was the substance of each such discussion?

B. No.

Plaintiffs
Exhibits

27. A. Prior to the Board Meeting of Millers on 6th July, 1972, did you have any discussions with any other Director of Millers and/or with Howard Smith or with any other person concerning the legality or validity of the proposed allotment of 4,500,000 shares to Howard Smith?

Exhibit PP

Interrogatories set by the Plaintiff Ampol Petroleum Ltd. for the 5th Defendant Robert Ian Nicholl and his answers thereto

10 (a) If so:-

(i) When, where and with whom did any such discussion take place?

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(ii) What was the substance of any such discussion?

B. Yes.

(a) (i) In the Board Room of Millers on 5th July, 1972, with Messrs. Taylor and Conway.

20

(ii) I referred to the decisions in the Woodside Burmah case and Hogg v. Campthorn and the financial problems of the Company. The discussion was to the effect that in the light of the legal principles and the Company's financial

30

Plaintiffs
Exhibits
Exhibit PP

Interrogatories set by
the Plaintiff
Ampol Petro-
leum Ltd. for
the 5th Defen-
dant Robert
Ian Nicholl
and his
answers
thereto

6th September
1972

situation an issue could
be made provided the
price for the shares and
the size of the allotment
were fairly related to the
circumstances of the
Company

28. A. Prior to the Meeting of the Board of Directors of Millers on 6th July, 1972, did you discuss with any other Director of Millers and/or with Howard Smith and/or with any other person, matters concerning the possibility of the Millers shares being de-listed or suspended from trading following the proposed allotment of 4,500,000 shares to Howard Smith? 10
- (a) If so:- 20
- (i) When, where and with whom did any such discussions take place?
- (ii) What was the substance of any such discussion?
- B. No.
29. A. When, where and by whom was the Agenda for the Board meeting of Millers to be held on 6th July, 1972, prepared? 30
- B. I do not know.

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 5th
Defendant
Robert Ian
Nicholl and his
answers thereto

6th September
1972

30 A. When was such Agenda despatched to the
Directors of Millers?

B. I do not know.

10 31.A. Did you notify and instruct the Solicitor,
Mr. John Aston to attend the said Board
Meeting on 6th July 1972?

(a) If so:-

(i) When did you so notify or instruct the
said Mr. John Aston?

(ii) What, if any, instructions did you give
to the said Mr. John Aston in relation to
his attendance at the said meeting.

B. No.

20 32. A. Did you notify and instruct the Defendant
Conway of the proposed Board Meeting of
Millers to be held on 6th July 1972?

(a) If so:-

(i) When did you so notify the Defendant
Conway?

(ii) What was the substance of the noti-
fication and instructions (if any) given to
the said Defendant Conway?

B. No.

30 33.A. Prior to the Board Meeting of Millers of
6th July, 1972 did you instruct the said
John Aston and/or the said Defendant
Conway to consider and advise on the
legality of the proposed allotment of shares
to Howard Smith to be discussed at the
Meeting of the Board of Millers on that
date?

Exhibit PP

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 5th
Defendant
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1972

(a) If so:-

(i) When and where did you give such instructions to one or both of these persons?

(ii) What were the instructions so given to one or both of these persons?

B. No.

34. A Prior to the Meeting of the Board of Millers on 6th July 1972 did you discuss with any other Director of Millers and/or with Howard Smith and/or with any other person the effect of a proposal to allot 4,500,000 shares to Howard Smith on the financial position of Millers?

10

(a) If so:-

(i) When, where and with whom did any such discussions take place?

(ii) What was the substance of any such discussions?

B. No.

20

35 A. Prior to the commencement of the said Board Meeting on 6th July did you cause or instruct to be prepared:

(i) Share Certificate in respect of 4,500,000 shares to be allotted to Howard Smith;

(ii) Register Entry Form in respect of the alleged 4,500,000 shares to be allotted to Howard Smith;

(iii) Letter from Millers to Security Share Services Pty. Limited dated 6th July, 1972

30

B. No.

36 A. If so, when, where and by whom was such document or documents prepared?

B. I do not know.

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 5th
Defendant
Robert Ian
Nicholl and his
answers thereto
6th September
1972

37 A. If not, then at what time and at what place and by whom was such document or documents, prepared?

B. I do not know.

38 A. Was Abeles prevented at the Board Meeting on 6th July 1972 from fully participating in discussions of the said Resolution for the allotment of the said 4,500,000 shares to Howard Smith and of the said Resolution for execution by Millers of the said Agreement?

10

B. No.

39 A. (a) What precisely are the facts and circumstances relied upon by you in support of the allegation that the Plaintiff, Bulkships and Abeles were on the 6th July 1972 acting in concert.

(b) Is it alleged that such "acting in concert" was pursuant to some agreement or arrangement?

20

(c) If so, was such agreement or arrangement expressed or implied?

(d) If implied, what acts, facts and circumstances are relied upon?

(e) If expressed, was the same oral or in writing or partly oral or partly in writing?

(f) If in writing or partly in writing, what document or documents are relied upon and where may these be inspected?

30

(g) If oral or partly oral, what, where and between whom on the behalf of the Plaintiff, Bulkships Limited and Abeles was such agreement or arrangement arrived at? Please specify the substance of any such agreement or arrangement.

B. (a) I. Through 1971 Abeles, acting on his own and/or on behalf of Bulkships Limited held numerous discussions with representatives of Ampol, the precise details of which are not known to me relating to:

Plaintiffs
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Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 5th
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Robert Ian
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(continued)

i. The acquisition of shares in
Millers by Ampol and/or Bulkships.

ii. The disposal of assets of
Millers.

iii. The running/sharing and/or
splitting up of the tanker inter-
ests owned by, or to be acquired
by Millers.

II The joint announcement made by
Bulkships. and Ampol 22nd June 1972. 10

III The discussions and negotiations
which led to the preparation of the
document headed "Heads of Agreement"
reached between Ampol Petroleum Ltd.
and Bulkships Ltd. on the day of
1972.

IV An offer by Abeles to acquire
shares from Romanda Pty. Limited at
\$2.40 per share and withdrawal of that
offer at or about the time of the
offer made by Ampol for the said
shares. 20

(b)-(g) As to these I have no knowledge.

40 A. As at the commencement of the Board
Meeting of 6th July 1972 did you consider
that Millers had financial problems?

(a) If so for how long did you consider
that such financial problems existed
and what in your view, was the nature
and cause of such financial problems.

(b) Did you consider that the purported
allotment of 4,500,000 shares to Howard
Smith would ease the financial problems
of Millers. 30

(c) If so, how did you consider that
such allotment would ease these problems?

B. Yes.

(a) Since 1968 the Company had been
suffering a chronic shortage of
funds. The Company's capital
structure was ill-balanced in
that the ratio between equity 40

Exhibit PP

10 funds and loan funds was incorrect and in relation to loan funds all the borrowings were short term borrowings requiring expensive security and precluding the Company from raising money on more equitable long term bases. The shortage of capital prevented the Company from entering into income earning ventures There was a lengthy period in respect of the construction of the Company's tankers when moneys paid by way of progress payments did not yield any return.

Interrogatories met by the Plaintiff Ampol Petroleum Ltd for the 5th Defendant Robert Ian Nicholl and his answers thereto 6th September 1972

(b) Yes.

(continued)

20 (c) The Company would be able to meet its commitments and would be able to reorganise its capital structure more efficiently and would be relieved of any concern regarding the repayments of short term loans and would be able to borrow long term funds for financing Company's activities.

30 41 A. Prior to the Meeting of Directors of 6th July 1972 did you at any time discuss with any other Director, employee or agent of Millers or with any representative of Howard Smith, any method other than the allotment of shares to Howard Smith, which could possibly be adopted to ease the financial problems of Millers?

(a) If so:-

(i) When, where and with whom did any such discussion take place?

(ii) What was the substance of any such discussion?

40 B. I raised the subject of a share issue at a Board Meeting held on 5th April 1972 but the matter was not pursued.

Exhibit PP

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.

for the 5th
Defendant
Robert Ian
Nicholl and
his answers
thereto

6th September
1972

(continued)

42 A. Prior to the Meeting of Directors of Millers on 6th July 1972, did you consider the possibility of making an allotment of shares in Millers to any person or corporation other than to Howard Smith?

(a) If so, did you have any discussions with any other Director, employee or agent of Millers or any shareholders of Millers or with a representative of Howard Smith or with any other person in regard to such possibility? 10

(b) If so, when, where and with whom did each or any such discussion take place?

(c) What was the substance of each such discussion?

B. Yes, see reply to question 41.

43 A. Prior to the Meeting of Directors of Millers on 6th July 1972 did you consider the possibility of making an allotment of shares in Millers to the existing shareholders of Millers? 20

(a) If so, did you have any discussion with any other Director, employee or agent of Millers or with any shareholders of Millers in regard to such possibility?

(b) If so, when, where and with whom did each or such discussion take place?

(c) What was the substance of each such discussion? 30

B. See replies to questions 41 and 42. I was of the opinion that an attempt to raise capital by an issue to shareholders would fail and that there was no prospect of an outside allotment at any worthwhile premium.

44 A. For what reasons did you decide against making an issue of 4,500,000 shares in Millers available to existing shareholders of Millers? 40

B. See answer to question 43.

45 A. Do you admit that at the time you voted upon the Resolution for the allotment to Howard Smith of 4,500,000 shares in the capital of Millers you were aware that such allotment constituted a breach of the Official Listing Requirements of the Associated Stock Exchange Limited?

Interrogatories set by the Plaintiff Ampol Petroleum Ltd. for the 5th Defendant Robert Ian Nicholl and his answers thereto

B. Yes.

10 46 A. If you admit that you were so aware, for what reason or reasons did you decide to vote in favour of the said allotment.

6th September 1972

(continued)

B. I considered that the allotment was in the best interests of the shareholders of the Company and balancing the possible risk of action by the Stock Exchange against the advantages to the Company I was of the opinion that the allotment was justified.

20 47 A. Prior to the Meeting of Directors of Millers of 6th July 1972 did you have any discussions with any other Director or shareholders of Millers wherein consideration was given to seeking assistance from any shareholder of Millers either by way of allotment of shares or otherwise for the purpose of easing the financial problems of Millers?

(a) If so:-

30 (i) When, where and with whom did any such discussion take place?

(ii) What was the substance of any such discussion?

(b) If no such discussions took place, for what reasons did you not initiate any such discussions?

B. See answers to questions 41, 42 and 43.

48.A Specify the purpose or purposes for which you voted in favour of:-

40 (a) The purported Resolution for the allotment of the said 4,500,000 shares to Howard Smith;

Interrogatories
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Plaintiff Ampol
Petroleum Ltd.
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Defendant
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1972
(continued)

- (b) The purported Resolution for the execution by Millers of the Agreement with Howard Smith;
- (c) The purported Resolution for the affixing of the Seal of Millers to the said Share Certificate;
- B. In order to improve the Company's financial structure and stability and to secure its financial future in the sense mentioned in answer to question 40 and to give to those shareholders who wished to sell an opportunity to gain a higher price than \$2.27. 10
- 49 A. At the time of voting upon the Resolution for the aforesaid allotment, did you consider the rights of all shareholders of Millers.
- (a) If so, what were the rights of all shareholders that you took into consideration. 20
- (b) If not, in respect of which shareholders did you give consideration in so voting and what rights of such shareholders did you take into consideration?
- B. Yes.
- (a) All the rights and interests of the shareholders.
- 50 A Do you admit that the sealing of the Share Certificate and delivery of same forthwith to Howard Smith on 6th July 1972 was contrary to the normal practice adopted by Millers in allotting shares? 30
- B. Not aware of normal practice.
- 51 A. As at the commencement of the Board Meeting of the 6th July 1972, what was your belief as to the assets backing value of each of the shares in the capital of Millers?
- B. In the range of \$2.70 - \$3.20 depending on the value to be assigned to the Company's coal interests. 40

52 A. On the 6th July, 1972 did you believe that the assets backing value of each of the shares in the capital of Millers would be reduced by virtue of the allotment to Howard Smith of 4,500,000 in such capital?

(a) If so, to what value did you believe each such share would be reduced?

B. Yes.

(a) I believed the reduction in asset backing would only be marginal but believed this was secondary to our prime consideration.

Exhibit PP

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 5th
Defendant
Robert Ian
Nicholl and
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thereto

6th September
1972

(continued)

52 A. At the commencement of the meeting of Millers of 6th July, 1972, did you believe that the constitution of the Board of Directors of Millers was likely to be altered in the near future by virtue of the shareholding of the Plaintiff and Bulkships Limited?

B. Yes.

54 A. As at the commencement of the Meeting of the Board of Millers on 6th July, 1972 did you believe that your own position on such Board of Directors was likely to be jeopardised in the near future by virtue of the shareholding of the Plaintiff and Bulkships Limited?

B. There was no question of my position being jeopardised I knew that Abeles had made a demand for my resignation to Taylor but I was staying on the Board so long as the shareholders who had elected me in the General Meeting wanted me there.

55 A. Prior to the Meeting of Directors of Millers on 6th July, 1972 did you have any discussion with any other Director of Millers or with Howard Smith or with any other person as to the likelihood of the Board of Directors of Millers being reconstituted or altered in the near future by virtue of the shareholding of the Plaintiff and Bulkships Limited?

10

20

30

40

Plaintiffs
Exhibits
Exhibit PP

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Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 5th
Defendant
Robert Ian
Nicholl and
his answers
thereto

6th September
1972

(continued)

- (a) If so, when, where and with whom were any such discussions held?
- (b) What was the substances of any such discussions?
- B. Yes.
- (b) Some time prior to 6th July 1972 Mr. Taylor informed me of the demand by Abeles that I resign from the Board and I informed him that I was appointed by the shareholders and if I was removed I would be removed by the shareholders. 10
- 56 A. Prior to the Meeting of Directors of Millers on 6th July, did you have any discussions with Howard Smith as to the likelihood of that company seeking to reconstitute or alter in any way, the constitution of the Board of Directors of Millers in the event that Howard Smith should be allotted 4,500,000 shares in the capital of Millers? 20
- (a) If so:-
- (i) When, where and with whom were any such discussions held?
- (ii) What was the substance of any such discussions?
- B. No.
- 57 A. On 6th July, 1972, did you believe that the allotment of 4,500,000 shares to Howard Smith in the capital of Millers would have the effect of reducing the proportion of shares in the capital of Millers held by each of the Plaintiff and Bulkships Limited. 30
- (a) If so, to what extent did you believe that the proportion of the shares in the capital of Millers held by each of the Plaintiff and Bulkships Limited would be reduced?
- B. Yes. 40

(a) I had no belief on the matter because I made no calculations.

58 A. On the 6th July 1972, did you believe that the allotment to Howard Smith of 4,500,000 shares in the capital of Millers would have or probably have the purpose of defeating the takeover offer made by the Plaintiff?

Interrogatories set by the Plaintiff Ampol Petroleum Ltd. for the 5th Defendant Robert Ian Nicholl and his answers thereto

10 B. My purpose was not to defeat the takeover offer but to improve the Company's financial security and standing and I did believe that it would have the additional effect of preventing a takeover at the price of \$ 2.27 which the unanimous Board of Directors considered inadequate.

6th September 1972

(continued)

20 59 A. On the 6th July, 1972, did you believe that the allotment to Howard Smith of 4,500,000 shares in the capital of Millers would have the effect or probable effect of facilitating and ensuring the success of the proposed takeover offer to be made by Howard Smith.

B. I believed that it would facilitate the making of an offer of \$2.50 by Howard Smith.

30 60 A. Prior to the purported allotment of the shares to Howard Smith on 6th July 1972 did you or anyone on your behalf seek or obtain information or make enquiries from Howard Smith as to its financial capability and/or as to the arrangements made by it for the payment of the balance of the purchase price for the shares to be allotted to it or as to its capability and arrangements made to service its proposed takeover offer?

(a) If so:-

(i) From whom was any such information sought or obtained?

40 (ii) If any such information sought or obtained was furnished in writing, identify any such writing;

Exhibit PP

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 5th
Defendant
Robert Ian
Nicholl and
his answers
thereto

6th September
1972

(continued)

(iii) What was the substance of any such
information sought and/or
obtained?

B. No.

61 A. When, at what time and by whom was the
letter dated 6th July 1972 from Millers
to the Manager of the Fourteenth Defendant
and the enclosed Register Entry Form
prepared?

B. I do not know.

10

62 A. Do you admit that the preparation of the
Register Entry Form in the offices of
Millers in relation to the purported
allotment to Howard Smith of 4,500,000
shares was contrary to the normal prac-
tice adopted by Millers in relation to
other share placements or allotments?

B. Not aware of normal practice.

63.A. When, at what time and by whom was the
said letter dated 6th July 1972 and
enclosed Register Entry Form delivered
to the Fourteenth Defendant at its office?

20

B. I do not know.

64 A. When, at what time, where, by whom and to
whom was the share certificate relating
to the allotment to Howard Smith of
4,500,000 shares in the capital of
Millers delivered to Howard Smith?

B. I do not know.

65 A. When, at what time, by whom and on whose
instructions were the letters dated
3rd July 1972 and addressed respectively
to the Chairman of Directors of the
Plaintiff and to the Chairman of
Directors of Bulkships Limited prepared?

30

B. I do not know.

66.A Prior to the preparation of the afore-
said letters, did you have any discus-
sions concerning the contents of the same
with any other Director of Millers and/or
Howard Smith and/or any other person.

40

B. No.

67 A. (a) If so:-

(i) When, where and with whom did any such discussions take place?

(ii) What was the substance of any such discussions?

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 5th
Defendant
Robert Ian
Nicholl and
his answers
thereto

B. Does not apply.

10

68 A. When, by whom and for what purpose were instructions given to Cooper Brothers and Co. for the preparation of the Report dated 21st June, 1972.

6th September
1972

(continued)

B. I do not know.

69 A. Prior to the giving of instructions for the preparation of the aforesaid Report, did you have any discussions with any other Director of Millers and/or with Howard Smith and/or with any other person relative to the obtaining of such Report?

20

(a) If so:-

(i) When, where and with whom did any such discussions take place?

(ii) What was the substance of any such discussions?

B. No.

70 A. When, by whom and on whose instructions was the letter dated 6th June, 1972 from the Chairman of Directors of Millers to the Chairman of Directors of the Plaintiff prepared?

30

B. I do not know.

71 A. Prior to the preparation of such letter, did you have any discussions with any other Director of Millers and/or with Howard Smith and/or with any other person relative to the preparation of the same?

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 5th
Defendant
Robert Ian^m
Nicholl and
his answers
thereto

6th September
1972

(continued)

(a) If so:-

(i) When, where and with whom did any
such discussions take place?

(ii) What was the substance of any such
discussions?

B. No.

72 A. When, by whom and on whose instructions
was the letter dated 14th June 1972 from
Millers to the shareholders of Millers
prepared?

10

B. On 9th June, 1972 by the Board of
Directors.

73 A. Prior to the preparation of the said
letter, did you have any discussions
with any other Director of Millers and/or
with Howard Smith and/or any other person
relative to the preparation of the same?

(a) If so:-

(i) When, where and with whom were any
such discussions held?

20

(ii) What was the substance of any such
discussions?

B. No.

74 A. Do you admit that as the commencement
of the Meeting of Directors of Millers
on 6th July 1972, there was no urgent
and immediate need to raise 10,350,000
dollars or other similar amount in order
to enable Millers to continue its opera-
tions?

30

B. No. See also 76 (a)

75 A. Do you admit that at the commencement of
the Meeting of Directors of Millers on
6th July 1972 the financial position of
Millers had improved on the position
that existed some twelve months or so
ago?

(a) If not, what facts and matters do you say indicated that there had been no such improvement or that there had been a deterioration?

Interrogatories set by the Plaintiff Ampol Petroleum Ltd. for the 5th Defendant Robert Ian Nicholl and his answers thereto

6th September 1972

(continued)

B. No.

(a) The Company was still faced with the obligation to repay large sums of money in respect of short term loans; there was no available source of funds for these repayments and no assets upon which further borrowings could be charged; there was no source of funds for the expansion of the Company's activities and the Company's financial structure was in serious jeopardy.

10

(Sgd.)

Solicitor for the Fifth Defendant

20 FILED:

6th day of September 1972

AFFIDAVIT

ON 6th September 1972 I ROBERT IAN NICHOLL of 1 Tottenham Avenue, North Balgowlah in the State of New South Wales, Solicitor, say on oath:

1. I am the fifth named Defendant

2. Such answers as relate to my own activities are true:

30 answers relating to the activities of others I believe to be true

SWORN at Sydney on the day and year first abovementioned)
Before me:) Sgd. R. Nicholl

(Sgd.)

A Justice of the Peace

Plaintiffs
Exhibits
Exhibit QQ
Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 10th
Defendant
Alan Vardy
Balhorn and
his answers
thereto

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Plaintiffs Exhibits
Exhibit QQ

Interrogatories set by the Plaintiff
Ampol Petroleum Ltd. for the 10th
Defendant Alan Vardy Balhorn and his
answers thereto 4th September 1972

4th September
1972

(continued)

IN THE SUPREME COURT)
OF NEW SOUTH WALES) 1240 of 1972
EQUITY DIVISION)

AMPOL PETROLEUM LIMITED

Plaintiff

10

R.W. MILLER (HOLDINGS) LIMITED AND OTHERS
Defendants

R.W. MILLER (HOLDINGS) LIMITED

Cross Claimant

AMPOL PETROLEUM LIMITED, BULKSHIPS LIMITED
and EMIL HERBERT PETER ABELES

Cross Defendants

VERIFIED STATEMENT IN ANSWER BY THE TENTH DEFENDANT
TO INTERROGATORIES of PLAINTIFF

The Defendant ALAN VARDY BALHORN answers the
Plaintiff's interrogatories specified in
Notice filed on 23rd August 1972 as follows:-

20

1 A. Prior to the receipt of the letter of
22nd June, 1972 from Howard Smith did you
have any communication or conversations
with Howard Smith or any other Director
of Millers relative to Howard Smith or any
other company (other than the Plaintiff)
making or notifying a takeover bid for
Millers?

30

(a) If so:-

(i) When, where and with whom did such
communications or conversations take
place?

(ii) What was the substance of each such
conversation or communication?

(iii) if any such communications were in
writing, identify the same.

B. Yes.

(a) (i) in Melbourne
On 20th June.
Mr. Taylor.

(ii) That Howard Smith might make an offer.

(iii) Does not apply.

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 10th
Defendant
Alan Vardy
Balhorn and
his answers
thereto

4th September
1972

(continued)

10 2 A. After the 24th May, 1972 and prior to
22nd June, 1972 did you or any person on
your behalf have any conversations or
communications with any other company or
companies (other than the Plaintiff)
relative to any such company or companies
making or notifying a takeover bid for
Millers?

(a) If so:-

(i) When, where and with what company or
companies did such communications or
conversations take place?

20 (ii) What was the substance of each such
conversation or communication?

(iii) if any such communications were in
writing identify the same.

B. No.

30 3 A. On or prior to 22nd June, 1972, did you
or any person on your behalf make
available or cause to be made available
to Howard Smith any document or documents
or the contents of same relating to the
valuation of the Millers assets and/or
shares?

(a) If so:-

(i) When, where by whom and to whom on
behalf of Howard Smith was any such document
or documents or the contents of same made
available?

(ii) Identify each such document.

B. No.

Exhibit QQ

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 10th
Defendant Alan
Vardy Balhorn and
his answers thereto
4th September
1972
(continued)

4 A. On or prior to 22nd June, 1972 did you or any person on your behalf furnish any information to Howard Smith relating to the valuation of the Millers assets and/or shares?

(a) If so:-

(i) When, where, by whom and to whom on behalf of Howard Smith was any such information furnished?

(ii) What was the information so furnished?

10

B. No.

5 A. On or prior to 22nd June, 1972 did you or any person on your behalf procure, encourage or attempt to procure and encourage Howard Smith to make its proposed take-over offer?

(a) If so:-

(i) When, where by whom and to whom on behalf of Howard Smith was such procurement or encouragement or attempt made?

B. No.

20

6 A. Prior to 22nd June, 1972 did you advise any other Director of Millers of the proposed take-over offer to be made by Howard Smith?

(a) If so:-

(i) When and to whom was such advice given?

B. Yes.

(a) On or about 21/6/72 Duncan telephoned me from Tokyo and I told him of the possibility of such a move.

30

7 A. Were you or was anyone on your behalf aware of the contents of the said letter of 22nd June, 1972 from Howard Smith prior to the receipt of the same?

(a) If so:-

(i) When and how did you or anyone on your behalf become so aware?

(ii) Who on your behalf became so aware?

B. No.

8 A. When and by whom was the Board Meeting of Millers of 23rd June 1972 convened?

B. I do not know.

10 9 A. Was an Agenda for such meeting prepared and if so, when and by whom and when and to whom was such Agenda despatched?

B. Yes. I do not know. The agenda was handed to me on 23/6/72.

10 A. When did you first receive notice of the Board meeting of Millers to be held on 23rd June, 1972?

B. Either 21/6/72 or 22/6/72.

20 11 A. When and on whose instructions was the draft Part C statement presented to the Millers' Board of Directors on 23rd June, 1972 prepared?

B. I do not know when, but it was prepared on instructions given by Miller Board on 9/6/72.

12 A Prior to the preparation of the aforesaid Part C statement, did you discuss with any other Director of Millers or with Howard Smith the contents of the said document?

(a) If so:-

30 (i) When and with whom did these discussions take place?

(ii) What was the substance of each such discussion?

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 10th
Defendant Alan
Vardy Balhorn
and his answers
thereto

4th September
1972

(continued)

Plaintiffs
Exhibits
Exhibit QQ

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Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 10th
Defendant Alan
Vardy Balhorn
and his answers
thereto

4th September
1972

(continued)

B. Yes.

(a) (i) At Miller Board meeting
9/6/72.

(ii) The content of Part C statement.

13 A. Was a draft of the letter dated 27th June,
1972 from Millers to its shareholders
presented to the Board of Directors of
Millers at the meeting of 23rd June, 1972?

(a) If so:-

(i) When and on whose instructions was
such draft prepared for presentation at
the said Board Meeting?

10

(b) If not presented:-

(i) When and on whose instructions was
the said letter dated 27th June, 1972
from Millers to its shareholders prepared?

B. Yes.

(a) (i) I do not know.

(b) Does not apply.

14 A After the Board Meeting of 23rd June 1972 20
and prior to 27th June, 1972 did you dis-
cuss the contents of the said letter of
27th June, 1972 from Millers to its share-
holders with any other Director of
Millers and/or with any representative of
Howard Smith?

(a) If so:-

(i) When, where and with whom did any
such discussion or discussions take place?

(ii) What was the substance of each such 30
discussion?

B. I have no recollection of doing so.

15 A Did you have any discussions with any other
Director of Millers concerning the
proposed non-recommendation of the
Plaintiff's takeover offer prior to the
Board Meeting of Millers on 23rd June 1972?

(a) If so:-

(i) When, where and with whom did any such discussion take place?

(ii) What was the substance of each such discussion?

B. I have no recollection of doing so, other than at Board Meeting held 9 June, 1972.

10

16 A. When did you first become aware of the joint statement made by the Chairman of the Plaintiff and the Chairman of Bulkships Limited on 27th June, 1972?

B. 28/6/72.

17 A. Did you discuss with any other Director of Millers or with Howard Smith the contents of the said joint statement?

(a) If so:-

(i) When, where and with whom did you have such discussion or discussions?

20

(ii) What was the substance of each such discussion?

B. I have no recollection of doing so.

18 A. Is it admitted that between 27th June, 1972 and 6th July, 1972 you had one or more discussions with Howard Smith relative to the effect of the said joint announcement of the Plaintiff upon the proposed takeover offer of Howard Smith?

(a) If so:-

30

(i) When and where did each such discussion take place?

(ii) What was the substance of each such discussion?

B. No.

Plaintiffs
Exhibits

1523

Exhibit QQ

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 10th
Defendant
Alan Vardy
Balhorn and
his answers
thereto

4th September
1972

(continued)

19 A. Between the 27th June, 1972 and 6th July, 1972 did you have any discussions with any other Director of Millers relative to the effect of the said joint announcement upon the proposed takeover offer by Howard Smith?

(a) If so:-

(i) When and with whom did each such discussion take place?

(ii) What was the substance of each such discussion?

10

B. I cannot recall.

20 A When and on whose instructions was the Board Meeting of Millers of 6th July, 1972 convened?

B. I do not know.

21 A Did you or anyone on your behalf advise Howard Smith of the proposed Board Meeting of Millers to be held on 6th July, 1972?

(a) If so:-

(i) When, by whom and to whom on behalf of Howard Smith was such advice given?

20

B. No.

22 A. When were you first advised of the Board Meeting of Millers to be held on 6th July, 1972?

B. 4/7/72 or 5/7/72

- 23 A. When, where and by whom was the Agenda for the Board Meeting of Millers to be held on 6th July 1972 prepared?
- B. I do not know.
- 24 A. When was such Agenda despatched to the Directors of Millers?
- B. I do not know.
- 25 A. When did you first receive notice of such Board Meeting of 6th July, 1972?
- 10 B. See answer to question 22.
- 26 A. Prior to 6th July, 1972 was there any discussion by you with any other Director of Miller and/or with Howard Smith as to the proposed Agenda for the Board Meeting of Millers on 6th July, 1972?
- (a) If so:-
- (i) When, where and with whom did each such discussion take place?
- 20 (ii) What was the substance of each such discussion?
- B. No.
- 27 A. Did you notify and instruct the Solicitor, Mr. John Aston, to attend the said Board Meeting of the 6th July, 1972?
- (a) If so:-
- (i) When did you so notify or instruct the said John Aston?
- (b) What if any instructions did you give to the said John Aston in relation to his attendance at this said meeting?
- 30 B. No.
- 28 A. Did you notify and instruct the Defendant Conway of the proposed Board Meeting of Millers to be held on 6th July 1972?

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 10th
Defendant
Alan Vardy
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(continued)

Exhibit QQ

(a) If so:-

Interrogatories
set by the
Plaintiff Ampol
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(i) When did you so notify the
Defendant Conway?

(ii) What was the substance of the
notification and instructions given to
the said Defendant Conway?

B. No.

29 A. Did you instruct the General Manager of
Millers, Mr. Koch to attend the said
Board Meeting of the 6th July, 1972?

10

4th September
1972

(continued)

(a) If so:-

(i) When did you so instruct the said
Mr. Koch?

(ii) What instructions did you give to
the said Mr. Koch?

(iii) What materials, information and
reports did you require the said Mr. Koch
to prepare and/or bring to the said Board
Meeting?

B. No.

20

30 A. Prior to the Board Meeting of 6th July,
1972 did you instruct the said John
Aston and/or the Defendant Conway to
consider and advise on the legality of
a proposed allotment of shares to
Howard Smith to be discussed at the
meeting of the Board of Millers on that
date?

(a) If so:-

(i) When and where did you give such
instructions to one or both of these
persons?

30

B. No.

31 A. Did you have any notice or knowledge of
the proposed written Agreement prepared
on behalf of Howard Smith prior to the
commencement of the Meeting of Directors
of Millers held on 6th July, 1972?

(a) If so:-

(i) When and by what means did you first obtain such notice or knowledge?

B. No except to the extent that the agreement was mentioned in Howard Smith letter of 6/7/72.

10 32 A. Prior to the aforesaid meeting of Directors of Millers on 6th July, 1972 did you have any discussions or communications with Howard Smith or anyone on its behalf relative to the preparation and/or terms of the said proposed written Agreement?

Interrogatories
set by the
Plaintiff Ampol
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(continued)

(a) If so:-

(i) When, where and with whom on behalf of Howard Smith did you have such discussions?

(ii) What was the substance of such discussions?

20 B. No.

30 33 A. Prior to the commencement of the said Directors meeting on 6th July, 1972 did you discuss with any other Director of Millers or with Howard Smith or anyone on its behalf or with any other person whatsoever matters relevant to the exclusion of Sir Peter Abeles from fully participating in the discussion on the proposed allotment and/or from voting on the same?

(a) If so:-

(i) When, where and with what person or persons did such discussions take place?

(ii) What was the substance of each such discussion?

B. To my recollection I did not.

Exhibit QQ

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 10th
Defendant
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(continued)

34 A. Prior to the Board Meeting of Millers on 6th July, 1972 did you have any discussions with any other Director of Millers and/or with Howard Smith or with any other person concerning the legality or validity of the proposed allotment of 4,500,000 shares to Howard Smith?

(a) If so:-

(i) When, where and with whom did any such discussion take place?

10

(ii) What was the substance of any such discussion?

B. Yes.

(a) (i) With Conway on 5th and 6th July, 1972 both

(ii) On 5th Conway stated in general terms that an allotment of shares is proper if the Directors made it in the interests of the shareholders as a whole and that whilst the Exchange might suspend the shares it was unlikely to de-list. He repeated the same general advice on 6th July.

20

35 A. Prior to the Meeting of the Board of Directors of Millers on 6th July, 1972 did you discuss with any other Director of Millers and/or with Howard Smith and/or with any other person, matters concerning the possibility of the Millers shares being delisted or suspended from trading following the proposed allotment of 4,500,000 shares to Howard Smith?

30

(a) If so:-

(i) When, where and with whom did any such discussion take place?

(ii) What was the substance of any such discussion?

B. See answer to question 34.

36 A. Prior to the Board Meeting of Millers on 6th July, 1972 did you discuss with any other Director of Millers and/or with Howard Smith and/or with any other person the effect of a proposal to allot 4,500,000 shares to Howard Smith on the financial position of Millers?

(a) If so:-

10 (i) When, where and with whom did any such discussion take place?

(ii) What was the substance of any such discussion?

B. No.

37 A. Prior to the commencement of the said Board Meeting of the 6th July, 1972 did you cause or instruct to be prepared:-

(i) Share Certificate in respect of the 4,500,000 shares to be allotted to Howard Smith;

20 (ii) Register Entry Form in respect of the alleged 4,500,000 shares to be allotted to Howard Smith;

(iii) Letter from Millers to Security Share Services Pty. Limited (hereinafter called "Security Services") dated 6th July 1972?

B. No.

38 A. If so, when, where and by whom were such document or documents prepared.

30 B. I do not know.

39 A. If not, then at what time and at what place and by whom were such document or documents prepared?

B. I do not know.

40 A. Was Abeles prevented at the Board Meeting on 6th July, 1972 from fully participating in discussions of the said resolution for the allotment of the said 4,500,000 shares to Howard Smith and of the said resolution for execution by Millers of the said agreement?

40

Plaintiffs
Exhibits

Exhibit QQ

B. No.

Interrogatories set by the Plaintiff Ampol Petroleum Ltd. for the 10th Defendant Alan Vardy Balhorn and his answers thereto

4th September 1972

(continued)

- 41 A. (a) What precisely are the facts and circumstances relied upon by you in support of your allegation that the Plaintiff, Bulkships Limited and Abeles were on the 6th July, 1972, acting in concert?
- (b) Is it alleged that such "acting in concert" was pursuant to some agreement or arrangement? 10
- (c) If so, was such agreement or arrangement express or implied?
- (d) If implied, what acts, facts and circumstances are relied upon?
- (e) If express, was the same oral or in writing or partly oral and partly in writing?
- (f) If in writing or partly in writing, what document or documents are relied upon and where may these be inspected? 20
- (g) If oral or partly oral when, where and between whom on behalf of the Plaintiff, Bulkships Limited and Abeles was such agreement or arrangement arrived at? Please specify the substance of any such agreement or arrangement.
- B. (a) The announcement of the Plaintiff and Bulkships Limited made the 27/6/72.
- (b) Yes. 30
- (c) Express.
- (d) This does not apply.
- (e) The announcement above referred to was notified to the Australian Associate Stock Exchange and to that extent is in writing.
- (f) See reply to (e)
- (g) I do not know.

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1972

(continued)

42 A. As at the commencement of the Board Meeting of the 6th July, 1972 did you consider that Millers had financial problems?

(a) If so, for how long did you consider that such financial problems existed and what in your view was the nature and cause of such financial problems

B. Yes.

10

(a) I was aware of the existence of the problem since my appointment as an alternate director on 31/5/71. Reliance on uncertain short-term finance, falling off in coal sales, major set back in earnings caused by delay in commissioning of M.T. Amanda Miller an ever present problem of liquidity.

20

43 A Did you consider that the purported allotment of 4,500,000 shares to Howard Smith would ease the financial problems of Millers?

(a) If so, how did you consider that such allotment would ease these problems?

B. Yes.

(a) By removing the need to rely on expensive short term borrowing and providing funds for implementation of sound plans for further development.

30

44 A. Prior to the meeting of Directors of 6th July, 1972 did you at any time discuss with any other Director, employee or agent of Millers or with a representative of Howard Smith, any method other than an allotment of shares to Howard Smith which could possibly be adopted to ease the financial problems of Millers?

(a) If so:-

40

(i) When, where and with whom did each such discussion take place?

(ii) What was the substance of each such discussion?

B. No.

Plaintiffs
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Plaintiff Ampol
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(continued)

45 A. Prior to the meeting of Directors of Millers on 6th July, 1972 did you consider the possibility of making an allotment of shares in Millers to any person or corporation other than to Howard Smith?

(a) If so, did you have any discussions with any other Director, employee or agent of Millers or any shareholders of Millers or with a representative of Howard Smith or with any other person in regard to such possibility? 10

(b) If so:-

(i) When, where and with whom did each or any such discussion take place?

(ii) What was the substance of each such discussion?

B. I did not consider it possible to make a successful allotment and therefore gave no consideration to it. 20

46 A. Prior to the meeting of Directors of Millers of 6th July, 1972 did you consider the possibility of making an allotment of shares in Millers to the existing shareholders of Millers?

(a) If so, did you have any discussion with any other Director, employee or agent of Millers or with any shareholders of Millers in regard to such possibility? 30

(b) If so:-

(i) When, where and with whom did each of any such discussions take place?

(ii) What was the substance of each such discussion?

B. See answer to question 45.

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 10th
Defendant
Alan Vardy
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(continued)

47 A. For what reasons did you decide against making an issue of 4,500,000 shares in Millers available to existing shareholders of Millers?

B. Such a proposal was not made to the Board but if it had been it would in my view have been impossible to make such allotment at a price as high as \$2.30 per share.

10 48 A. Do you admit that at the time that you voted upon the resolution for the allotment to Howard Smith of 4,500,000 shares in the capital of Millers, you were aware that such allotment constituted a breach of the Official Listing Requirements of the Associated Stock Exchanges Limited?

20 49 A. If you admit that you were so aware, for what reason or reasons did you decide to vote in favour of the said allotment?

B. Because I considered that it was in the best interests of all the shareholders of the Company and because I considered that the risk of suspension was far outweighed by the advantages referred to in answer to Question 43.

30 50 A. Prior to the meeting of Directors of Millers on 6th July, 1972, did you have any discussions with any other Director or shareholder of Millers wherein consideration was given to seeking assistance from any shareholder of Millers either by way of allotment of shares or otherwise, for the purpose of easing the financial problems of Millers?

(a) If so:-

(i) When, where and with whom did any such discussion take place?

40 (ii) What was the substance of any such discussion?

(b) If no such discussion took place, for what reasons did you not initiate any such discussions?

Plaintiffs
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(continued)

B. No.

(b) There had been no indication that such assistance would be forthcoming.

51 A. Specify the purpose or purposes for which you voted in favour of:-

(a) The purported resolution for the allotment of the said 4,500,000 shares to Howard Smith;

(b) The purported resolution for the execution by Millers of the agreement with Howard Smith;

10

(c) The purported resolution for the affixing of the seal of Millers to the said Share Certificate.

B. (a) (b) and (c)

To remedy the parlous financial situation of Millers which threatened the efficient working and future prospects and prosperity of the Company.

20

52 A. At the time of voting upon the resolution for the aforesaid allotment, did you consider the rights of all shareholders of Millers?

(a) If so, what were the rights of all shareholders which you took into consideration?

(b) If not, in respect of which shareholders did you give consideration in so voting and what rights of such shareholders did you take into consideration?

30

B. Yes.

(a) All their rights.

(b) Not applicable.

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Plaintiff Ampol
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(continued)

53 A. Do you admit that the sealing of the Share Certificate and delivery of same forthwith to Howard Smith on 6th July, 1972 was contrary to the normal practice adopted by Millers in allotting shares?

B. I do not know the usual practice.

10

54 A. As at the commencement of the Board Meeting of 6th July, 1972 what was your belief as to the assets backing value of each of the shares in the capital of Millers?

B. Between £2.00 and £3.00 plus dependant upon what value should be placed on coal assets on which no definite figure could be placed by Millers or valuers.

20

55 A. On the 6th July 1972 did you believe that the assets backing value of each of the shares in the capital of Millers would be reduced by virtue of the allotment to Howard Smith of 4,500,000 shares in such capital?

(a) If so, to what value did you believe each such share would be reduced?

B. Yes.

(a) I did not make any calculations but I did not believe it to be substantial.

30

56 A. At the commencement of the meeting of Directors of Millers on 6th July, 1972 did you believe that the constitution of the Board of Directors of Millers was likely to be altered in the near future by virtue of the shareholding of the Plaintiff and Bulkships Limited?

B. I had no belief one way or the other.

40

57 A. As at the commencement of the meeting of the Board of Directors of Millers on 6th July, 1972 did you believe that your own position on such Board of Directors was likely to be jeopardised in the near future by virtue of the shareholding of the Plaintiff and Bulkships Limited?

B. See answer to Question 56.

Exhibit QQ

Interrogatories
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Plaintiff Ampol
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(continued)

58 A. Prior to the meeting of Directors of Millers on 6th July, 1972, did you have any discussions with any other Director of Millers or with Howard Smith or with any other person as to the likelihood of the Board of Directors of Millers being reconstituted or altered in the near future by virtue of the shareholding of the Plaintiff and Bulkships Limited?

(a) If so, when, where and with whom were any such discussions held? 10

(b) What were the substance of any such discussions?

B. No.

59 A. Prior to the meeting of Directors of Millers on 6th July, 1972, did you have any discussion with Howard Smith as to the likelihood of that company seeking to reconstitute or alter in any way the constitution of the Board of Directors of Millers in the event that Howard Smith should be allotted 4,500,000 shares in the capital of Millers? 20

(a) If so:-

(i) When, where and with whom were any such discussions held?

(ii) What were the substance of any such discussions?

B. No.

60 A. On the 6th July, 1972 did you believe that the allotment of 4,500,000 shares to Howard Smith in the capital of Millers would have the effect of reducing the proportion of the shares in the capital of Millers held by each of the Plaintiff and Bulkships? 30

(a) If so, to what extent did you believe that the proportion of the shares in the capital of Millers held by each of the Plaintiff and Bulkships would be reduced? 40

B. Yes.

(a) I was not aware of the exact proportion of each party's holdings.

Interrogatories
set by the
Plaintiff Ampol
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61 A. On the 6th July, 1972 did you believe that the allotment to Howard Smith of 4,500,000 shares in the capital of Millers would have or probably have the purpose of defeating the take-over offer made by the Plaintiff?

10 B. I had no such purpose and I do not believe anyone else had that purpose.

4th September
1972

62 A. On the 6th July, 1972 did you believe that the allotment to Howard Smith of 4,500,000 shares in the capital of Millers would have the effect or probable effect of facilitating and ensuring the success of the proposed take-over offer to be made by Howard Smith?

(continued)

20 B. I believed the allotment would have the probable effect of Howard Smith making an offer in the sum of £2.50.

30 63 A. Prior to the purported allotment of the shares to Howard Smith on 6th July 1972, did you or anyone on your behalf seek or obtain information or make enquiries from Howard Smith as to its financial capability and/or as to arrangements made by it for the payment of the balance of the purchase price for the shares to be allotted to it and/or its capability and arrangements made to service its proposed take-over offer?

(a) If so:-

(i) When, where, by whom and from whom was such information sought or obtained?

(ii) If any such information was sought or obtained or supplied in writing, identify each such writing.

(iii) What was the substance of any such information sought and/or obtained?

B. No.

Exhibit QQ

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set by the
Plaintiff Ampol
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(continued)

- 64 A. When , at what time and by whom was the letter dated 6th July, 1972 from Millers to the Manager of the fourteenth Defendant and the enclosed Register entry form prepared?
- B. I do not know.
- 65 A. Do you admit that the preparation of the Register entry form in the offices of Millers in relation to the purported allotment to Howard Smith of 4,500,000 shares was contrary to the normal practice adopted by Millers in relation to other share placements or allotments? 10
- B. I do not know what the normal practice is.
- 66 A. When, at what time and by whom was the said letter dated 6th July, 1972 and enclosed Register entry form delivered to the fourteenth Defendant at its offices? 20
- B. I do not know.
- 67 A. When, at what time, where and by whom and to whom was the Share Certificate relating to the allotment to Howard Smith of 4,500,000 shares in the capital of Millers, delivered to Howard Smith?
- B. I do not know.
- 68 A. When, at what time, by whom and on whose instructions were the letters dated 3rd July, 1972 and addressed respectively to the Chairman of Directors of the Plaintiff and to the Chairman of Directors of Bulkships Limited prepared? 30
- B. I do not know.
- 69 A. Prior to the preparation of the afore-said letters, did you have any discussions concerning the contents of the same with any other Director of Millers, and/or Howard Smith and/or any other person? 40

(a) If so:-

(i) When, where and with whom did any such discussions take place?

(ii) What was the substance of any such discussions?

B. No

70 A. When, by whom and for what purpose were instructions given to Cooper Brothers and Co. for the preparation of the report dated 21st June, 1972?

10

B. When and by whom I do not know. By reason of the Ampol bid.

71 A. Prior to the giving of instructions for the preparation of the aforesaid report, did you have any discussions with other Directors of Millers and/or with Howard Smith and/or with any other person relative to the obtaining of such report?

(a) If so:-

20

(i) When, where and with whom did any such discussions take place?

(ii) What was the substance of any such discussions?

B. No

72 A. When, by whom and on whose instructions was the letter dated 6th June, 1972 from the Chairman of Directors of Millers to the Chairman of the Plaintiff prepared?

B. I do not know.

30

73 A. Prior to the preparation of the said letter, did you have any discussions with any other Directors of Millers and/or Howard Smith and/or any other person relative to the preparation of the same?

Interrogatories
set by the
Plaintiff Ampol
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(continued)

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(continued)

(a) If so:-

(i) When, where and with whom were any such discussions held?

(ii) What was the substance of any such discussions?

B. No.

74 A. When, by whom and on whose instructions was the letter dated the 14th June, 1972 from Millers to the shareholders of Millers prepared?

10

B. Miller Board on 9/6/72.

75 A. Prior to the preparation of the said letter, did you have any discussions with any other Directors of Millers and/or Howard Smith and/or any other person relative to the preparation of the same?

(a) If so:-

(i) When, where and with whom were any such discussions held?

(ii) What was the substance of any such discussions?

20

B. No.

76 A. Do you admit that as at the commencement of the meeting of the Directors of Millers on 6th July, 1972 there was no urgent and immediate need to raise £10,350,000.00 or other similar amount in order to enable Millers to continue its operations?

B. No.

77 A. Do you admit that at the commencement of the meeting of Directors of Millers on 6th July 1972 the financial position of Millers had improved on the position that existed some 12 months or so ago?

30

(a) If not, what facts and matters do you say indicated that there had been no such improvement or that there had been a deterioration?

- B. No.
- (a) Lack of working capital and dependence on expensive short term borrowings.
- 78 A. Prior to or during the meeting of the Board of Directors of Millers on 23rd June, 1972 did you have any discussions with or receive instructions from Duncan relative to the said meeting?
- (a) If so:-
- 10 (i) When, at what time and by what means did you have any such discussions and/or receive any such instructions?
- (b) What was the substance of any such discussions and what (if any) instructions did you receive from Duncan?
- B. Howard Smith bid mentioned briefly to Duncan during general business discussion by phone to Tokyo on 22/6/72.
- 20 (a) Duncan asked me to inform him of any Board decision arising from the offer. He did not give any instructions.
- 79 A. Prior to or during the meeting of the Directors of Millers on 6th July 1972, did you have any discussions with Duncan and/or with any other Director of Millers and/or Howard Smith and/or with any other person concerning such meeting and/or the possibility or likelihood of Millers' shares being delisted or suspended from trading in the event of the allotment of shares to Howard Smith being made (excluding such discussions as took place at and is recorded in the Minutes of the said Meeting?)
- 30 (a) If so:-
- (i) When, at what time, by what means and with whom did you have any such discussions?
- (ii) What (if any) instructions did you receive from Duncan?
- 40 (iii) What was the substance of any such discussions?
- B. Yes.

Interrogatories set by the Plaintiff Ampol Petroleum Ltd. for the 10th Defendant Alan Vardy Balhorn and his answers thereto

4th September 1972

(continued)

1540(a).

Plaintiffs
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(a) Spoke to Duncan in Tokyo on 5th and 6th July 1972 by phone to discuss possibilities should Howard Smith make a formal proposal.

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It was premature to attempt serious or detailed consideration. See also answer to Question 34.

4th September
1972
(continued)

- 80 A. When were you first advised of the proposed allotment of shares to Howard Smith?
(a) At what time, on what date, by whom and in what manner were you so advised?
B. Shortly before 10 a.m. on 6/7/72 in Taylor's office I was shown Howard Smith's letter. 10
- 81 A. When were you first advised of the existence of the letter of 22 June 1972 from Howard Smith to the Chairman of Directors of Millers?
B. First sighted in press reports about 22.6.72.
- 82 A. By whom and in what manner were you so advised?
B. First sighted in press reports about 22/6/72.
- 83 A. Prior to the 23rd June, 1972, were you advised of the proposed take-over offer to be made by Howard Smith? 20
(a) If so :-
(i) When, where, by whom and in what manner were you so advised?
(ii) What was the substance of such advice?
B. See answer to Question 1.

(Sgd)
Solicitor for the Tenth Defendant

FILED: 6th September 1972.

AFFIDAVIT

ON 4th day of September 1972 I ALAN VARDY BALHORN of 7 Erilyn Court, Vermont, Victoria say on oath 30

- 1. I am the Tenth Defendant herein
- 2. The above answers to the Interrogatories herein insofar as they relate to my own activities and beliefs are true.
- 3. The answers to Interrogatories herein relating to the activities of others are true to the best of my belief.

SWORN at Sydney on the)
day and year first)
mentioned)
Before me:

40

.....
A Justice of the Peace

Plaintiffs Exhibits

Plaintiffs Exhibits

Exhibit RR

Exhibit RR

Interrogatories set by the Plaintiff Ampol Petroleum Ltd. for the 7th Defendant Kenneth Barton Anderson and his answers thereto 5th September 1972.

Interrogatories set by the Plaintiff Ampol Petroleum Ltd. for the 7th Defendant Kenneth Barton Anderson and his answers thereto

5th September 1972.

IN THE SUPREME COURT)
OF NEW SOUTH WALES)
EQUITY DIVISION)

1240 of 1972

10

AMPOL PETROLEUM LIMITED
Plaintiff

R.W. MILLER (HOLDINGS)
LIMITED AND ORS.
Defendants

R.W. MILLER (HOLDINGS)
LIMITED Cross Claimant

AMPOL PETROLEUM LIMITED
AND ORS.
Cross Defendants

20

VERIFIED STATEMENT IN ANSWER BY THE
SEVENTH DEFENDANT TO INTERROGATORIES
OF PLAINTIFF

The seventh defendant answers the plaintiff's interrogatories specified in notice filed 23rd day of August 1972 as follows:-

30

1.A. Prior to the receipt of the letter of 22nd June 1972 from Howard Smith, did you have any communications or conversations with Howard Smith or any other Director of Millers relative to Howard Smith or any other company (other than the Plaintiff) making or notifying a takeover bid for Millers?

(a) If so:-

(i) When, where and with whom did such communications or conversations take place?

Plaintiffs
Exhibits

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Exhibit RR
Interrogatories
set by the
Plaintiff Ampol
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(continued)

- (ii) What was the substance of each such conversation or communication?
- (iii) If any such communications were in writing, identify the same.
- B. No.
- 2.A. After the 24th May, 1972 and prior to 22nd June, 1972 did you or any person on your behalf have any conversations or communications with any other company or companies (other than the Plaintiff) relative to any such company or companies making or notifying a take-over bid for Millers? 10
- (a) If so:-
- (i) When, where and with what company or companies did such communications or conversations take place?
- (ii) What was the substance of each such conversation or communication?
- (iii) If any such communications were in writing identify the same. 20
- B. No.
- 3.A. On or prior to 22nd June, 1972, did you or any person on your behalf make available or cause to be made available to Howard Smith any document or documents or the contents of same relating to the valuation of the Millers assets and/or shares?
- (a) If so:-
- (i) When, where by whom and to whom on behalf of Howard Smith was any such document or documents or the contents of same made available? 30
- (ii) Identify each such document.
- B. No.

- 4.A. On or prior to 22nd June, 1972 did you or any person on your behalf furnish any information to Howard Smith relating to the valuation of the Millers assets and/or shares?
- (a) If so:-
- (i) When, where, by whom and to whom on behalf of Howard Smith was any such information furnished?
- 10 (ii) What was the information so furnished?
- B. No.
- 5.A. On or prior to 22nd June, 1972 did you or any person on your behalf procure, encourage or attempt to procure and encourage Howard Smith to make its proposed take-over offer?
- (a) If so:-
- 20 (i) When, where by whom and to whom on behalf of Howard Smith was such procurement or encouragement or attempt made?
- B. No.
- 6.A. Prior to 22nd June, 1972 did you advise any other Director of Millers of the proposed take-over offer to be made by Howard Smith?
- (a) If so:-
- 30 (i) When and to whom was such advice given?
- B. No.
- 7.A. Were you or was anyone on your behalf aware of the contents of the said letter of 22nd June, 1972 from Howard Smith prior to the receipt of the same?

Exhibit RR
Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 7th
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Kenneth Barton
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Plaintiffs
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Interrogatories
set by the
Plaintiff Ampol
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(continued)

(a) If so:-

(i) When and how did you or anyone on
your behalf become so aware?

(ii) Who on your behalf became so aware?

B. No.

8.A. When and by whom was the Board meeting
of Millers of 23rd June, 1972 convened?

B. I do not know.

9.A. Was an Agenda for such meeting prepared
and if so, when and by whom and when
and to whom was such Agenda despatched?

10

B. I do not know.

10.A. When did you first receive notice of
the Board meeting of Millers to be held
on 23rd June, 1972?

B. After my return to Sydney on about 30th
June, 1972.

11.A. When and on whose instructions was the
draft Part C statement presented to the
Millers' Board of Directors on 23rd June,
1972 prepared?

20

B. I do not know.

12.A. Prior to the preparation of the afore-
said Part C statement, did you discuss
with any other Director of Millers or
with Howard Smith the contents of the
said document?

(a) If so:-

(i) When and with whom did these
discussions take place?

30

(ii) What was the substance of each
such discussion?

B. No.

- 13.A. Was a draft of the letter dated 27th June, 1972 from Millers to its shareholders presented to the Board of Directors of Millers at the meeting of 23rd June, 1972?
- (a) If so:-
- (i) When on whose instructions was such draft prepared for presentation at the said Board Meeting?
- 10 (b) If not presented:-
- (i) When and on whose instructions was the said letter dated 27th June, 1972 from Millers to its shareholders prepared?
- B. I do not know.
- 14.A. After the Board Meeting of 23rd June, 1972 and prior to 27th June, 1972 did you discuss the contents of the said letter of 27th June, 1972 from Millers to its shareholders with any other Director of Millers and/or with any representative of Howard Smith?
- 20 (a) If so:-
- (i) When, where and with whom did any such discussion or discussions take place?
- (ii) What was the substance of each such discussion?
- B. No.
- 30 15.A. Did you have any discussions with any other Director of Millers concerning the proposed non-recommendation of the Plaintiff's takeover offer prior to the Board meeting of Millers on 23rd June, 1972?
- (a) If so:-

Exhibit RR

Interrogatories
set by the
Plaintiff Ampol
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(continued)

(i) When, where and with whom did any
such discussion take place?

(ii) What was the substance of each
such discussion?

B. My recollection does not enable me to
answer.

16.A. When did you first become aware of the
joint statement made by the Chairman
of the Plaintiff and the Chairman of
Bulkships Limited on 27th June, 1972?

10

B. Approximately 28th June, 1972.

17.A. Did you discuss with any other
Director of Millers or with Howard Smith
the contents of the said joint
statement?

(a) If so:-

(i) When, where and with whom did you
have such discussion or discussions?

(ii) What was the substance of each
such discussion?

20

B. Yes.

(a) (i) On about 1st July 1972 with
Mr. Taylor by telephone.

(ii) What effect, if any, the joint
statement would have on the take-
over offer by Howard Smith and
the fact that this might preclude
shareholders from accepting the
higher offer made by Howard Smith.

30

18.A. Is it admitted that between 27th June,
1972 and 6th July, 1972 you had one or
more discussions with Howard Smith
relative to the effect of the said
joint announcement of the Plaintiff
upon the proposed takeover offer of
Howard Smith?

(a) If so:-

(i) When and where did each such discussion take place?

(ii) What was the substance of each such discussion?

B. No.

19.A. Between the 27th June, 1972 and 6th July, 1972 did you have any discussions with any other Director of Millers relative to the effect of the said joint announcement upon the proposed takeover offer by Howard Smith?

10

(a) If so:-

(i) When and with whom did each such discussion take place?

(ii) What was the substance of each such discussion?

B. Yes.

(a) (i) With A.N. Taylor between the 1st July 1972 and 6th July 1972.

20

(ii) Similar conversation to that summarised in answer to question 17(a)(ii).

20.A. When and on whose instructions was the Board Meeting of Millers of 6th July, 1972 convened?

B. I do not know.

21.A. Did you or anyone on your behalf advise Howard Smith of the proposed Board Meeting of Millers to be held on 6th July, 1972?

(a) If so:-

(i) When, by whom and to whom on behalf of Howard Smith was such advice given?

B. No.

Exhibit RR

Interrogatories set by the Plaintiff Ampol Petroleum Ltd. for the 7th Defendant Kenneth Barton Anderson and his answers thereto

5th September 1972.

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Plaintiffs
Exhibits

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set by the
Plaintiff Ampol
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for the 7th
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1972.
(continued)

22.A. When were you first advised of the Board Meeting of Millers to be held on 6th July, 1972?

B. On 3rd July 1972 verbally.

23.A. When, where and by whom was the Agenda for the Board Meeting Of Millers to be held on 6th July, 1972 prepared?

B. I do not know.

24.A. When was such Agenda despatched to the Directors of Millers?

B. I do not know.

25.A. When did you first receive notice of such Board Meeting of 6th July, 1972?

B. 4th July, 1972 written notice.

26.A. Prior to 6th July, 1972 was there any discussion by you with any other Director of Millers and/or with Howard Smith as to the proposed Agenda for the Board Meeting of Millers on 6th July, 1972?

(a) If so:-

(i) When, where and with whom did each such discussion take place?

(ii) What was the substance of each such discussion?

B. No.

27.A. Did you notify and instruct the Solicitor, Mr. John Aston, to attend the said Board Meeting of the 6th July, 1972?

(a) If so:-

(i) When did you so notify or instruct the said John Aston?

10

20

30

(b) What if any instructions did you give to the said John Aston in relation to his attendance at this said meeting?

Exhibit RR
Interrogatories
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Plaintiff Ampol
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B. No.

28.A. Did you notify and instruct the Defendant Conway of the proposed Board Meeting of Millers to be held on 6th July, 1972?

10 (a) If so:-

(i) When did you so notify the Defendant Conway?

5th October
1972.
(continued)

(ii) What was the substance of the notification and instructions given to the said Defendant Conway?

B. No.

29.A. Did you instruct the General Manager of Millers, Mr. Koch, to attend the said Board Meeting of the 6th July, 1972?

20 (a) If so:-

(i) When did you so instruct the said Mr. Koch?

(ii) What instructions did you give to the said Mr. Koch?

(iii) What materials, information and reports did you require the said Mr. Koch to prepare and/or bring to the said Board Meeting?

B. No.

30 30.A. Prior to the Board Meeting of 6th July, 1972 did you instruct the said John Aston and/or the Defendant Conway to consider and advise on the legality of a proposed allotment of shares to Howard Smith to be discussed at the meeting of the Board of Millers on that date?

Plaintiffs
Exhibits

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Plaintiff Ampol
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(a) If so:-

(i) When and where did you give such instructions to one or both of these persons?

B. No.

31.A. Did you have any notice or knowledge of the proposed written Agreement prepared on behalf of Howard Smith prior to the commencement of the Meeting of Directors of Millers held on 6th July, 1972?

10

(a) If so:-

(i) When and by what means did you first obtain such notice or knowledge?

B. No.

32.A. Prior to the aforesaid meeting of Directors of Millers on 6th July, 1972 did you have any discussions or communications with Howard Smith or anyone on its behalf relative to the preparation and/or terms of the said proposed written Agreement?

20

(a) If so:-

(i) When, where and with whom on behalf of Howard Smith did you have such discussions?

(ii) What was the substance of such discussions?

B. No.

33.A. Prior to the commencement of the said Directors meeting on 6th July, 1972 did you discuss with any other Director of Millers or with Howard Smith or anyone on its behalf or with any other person whatsoever matters relevant to the exclusion of Sir Peter Abeles from fully participating in the discussion on the proposed allotment and/or from voting on the same?

30

(a) If so:-

Exhibit RR

(i) When, where and with what person or persons did such discussions take place?

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Plaintiff Ampol
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(ii) What was the substance of each such discussion?

for the 7th
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B. No.

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10

34.A. Prior to the Board Meeting of Millers on 6th July, 1972 did you have any discussions with any other Director of Millers and/or with Howard Smith or with any other person concerning the legality or validity of the proposed allotment of 4,500,000 shares to Howard Smith?

5th September
1972.

(continued)

(a) If so:-

(i) When, where and with whom did any such discussion take place?

20

(ii) What was the substance of any such discussion?

B. No.

30

35.A. Prior to the Meeting of the Board of Directors of Millers on 6th July, 1972 did you discuss with any other Director of Millers and/or with Howard Smith and/or with any other person, matters concerning the possibility of the Millers shares being delisted or suspended from trading following the proposed allotment of 4,500,000 shares to Howard Smith?

(a) If so:-

(i) When, where and with whom did any such discussion take place?

(ii) What was the substance of any such discussion?

B. No.

Plaintiffs
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Interrogatories
set by the
Plaintiff Ampol
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(continued)

36.A. Prior to the Board Meeting of Millers on 6th July, 1972 did you discuss with any other Director of Millers and/or with Howard Smith and/or with any other person the effect of a proposal to allot 4,500,000 shares to Howard Smith on the financial position of Millers?

(a) If so:-

(i) When, where and with whom did any such discussion take place?

10

(ii) What was the substance of any such discussion?

B. No.

37.A. Prior to the commencement of the said Board Meeting of the 6th July, 1972 did you cause or instruct to be prepared:-

(i) Share Certificate in respect of the 4,500,000 shares to be allotted to Howard Smith;

(ii) Register Entry Form in respect of the alleged 4,500,000 shares to be allotted to Howard Smith;

20

(iii) Letter from Millers to Security Share Services Pty. Limited (hereinafter called "Security Services") dated 6th July, 1972?

B. No.

38.A. If so, when, where and by whom were such document or documents prepared.

B. I do not know.

30

39.A. If not, then at what time and at what place and by whom were such document or documents prepared?

B. I do not know.

40.A. Was Abeles prevented at the Board Meeting on 6th July, 1972 from fully participating in discussions of the said resolution for the allotment of the said 4,500,000 shares to Howard Smith and of the said resolution for execution by Millers of the said agreement?

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set by the
Plaintiff Ampol
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B. No.

10 41.A. (a) What precisely are the facts and circumstances relied upon by you in support of your allegation that the Plaintiff, Bulkships Limited and Abeles were on the 6th July, 1972, acting in concert?

5th September
1972.
(continued)

(b) Is it alleged that such "acting in concert" was pursuant to some agreement or arrangement?

(c) If so, was such agreement or arrangement express or implied?

20 (d) If implied, what acts, facts and circumstances are relied upon?

(e) If express, was the same oral or in writing or partly oral and partly in writing?

(f) If in writing or partly in writing, what document or documents are relied upon and where may these be inspected?

30 (g) If oral or partly oral when, where and between whom on behalf of the Plaintiff, Bulkships Limited and Abeles was such agreement or arrangement arrived at? Please specify the substance of any such agreement or arrangement.

B. (a) I. Through 1971 Abeles, acting on his own and/or on behalf of Bulkships Limited held numerous discussions with representatives of Ampol, the precise details of which are not known to me relating to:-

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- (i) The acquisition of shares in Millers by Ampol and/or Bulkships.
- (ii) The disposal of assets of Millers.
- (iii) The running/sharing and/or splitting up of the tanker interests owned by, or to be acquired by Millers.

5th September
1972.
(continued)

II. The joint announcement made by Bulkships and Ampol 27th June, 1972. 10

III. The discussions and negotiations which lead to the preparation of the document headed "Heads of Agreement" reached between Ampol Petroleum Ltd. and Bulkships Pty. Limited on the day of 1972.

IV. An offer by Abeles to acquire shares from Romanda Pty. Limited at \$2.40 per share and withdrawal of that offer at or about the time of the offer made by Ampol for the said shares. 20

(b) - (g) As to these I have no knowledge.

42.A. As at the commencement of the Board Meeting of the 6th July, 1972 did you consider that Millers had financial problems? 30

(a) If so, for how long did you consider that such financial problems existed and what in your view was the nature and cause of such financial problems?

B. Yes.

(a) The Company was under capitalised and by reason of this fact was obliged to resort to loan funds which were only short term loans at high 40

interest rates. The whole of the Company's assets served as security for these loan funds and the Company was unable to re-organise its loan structure. Because of these financial problems the Company was unable to proceed with necessary expansion of its facilities. Progress payments on tanker construction required large sums to be set aside without returning income for lengthy periods of time particularly in relation to payments made on the Amanda Miller both before and after the fire.

Exhibit RR
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(continued)

10

43.A. Did you consider that the purported allotment of 4,500,000 shares to Howard Smith would ease the financial problems of Millers?

20

(a) If so, how did you consider that such allotment would ease these problems?

B. Yes.

30

(a) The infusion of additional equity capital would serve to relieve the shortage of cash and enable the Company to re-organise its financial structure, provide further capital for development and relieve the pressure in relation to the repayment of short term loans.

44.A. Prior to the meeting of Directors of 6th July, 1972 did you at any time discuss with any other Director, employee or agent of Millers or with a representative of Howard Smith, any method other than an allotment of shares to Howard Smith which could possibly be adopted to ease the financial problems of Millers?

40

(a) If so:-

(i) When, where and with whom did each such discussion take place?

Plaintiffs
Exhibits

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Exhibit RR
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Plaintiff Ampol
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(continued)

(ii) What was the substance of each such discussion?

B. Yes.

(a) I participated in a meeting of the Board in April 1972 when there were discussions about the possibility of a share issue but I felt this was not a feasible solution.

45.A. Prior to the meeting of Directors of Millers on 6th July, 1972 did you consider the possibility of making an allotment of shares in Millers to any person or corporation other than to Howard Smith? 10

(a) If so, did you have any discussions with any other Director, employee or agent of Millers or any shareholders of Millers or with a representative of Howard Smith or with any other person in regard to such possibility?

(b) If so:- 20

(i) When, where and with whom did each or any such discussion take place?

(ii) What was the substance of each such discussion?

B. See answer to Question 44.

46.A. Prior to the meeting of Directors of Millers of 6th July, 1972 did you consider the possibility of making an allotment of shares in Millers to the existing shareholders of Millers? 30

(a) If so; did you have any discussion with any other Director, employee or agent of Millers or with any shareholders of Millers in regard to such possibility?

(b) If so:-

(i) When, where and with whom did each of any such discussions take place?

(ii) What was the substance of each such discussion?

Exhibit RR

Interrogatories set by the Plaintiff Ampol Petroleum Ltd. for the 7th Defendant Kenneth Barton Anderson and his answers thereto

B. No. Because I did not think it feasible.

47.A. For what reasons did you decide against making an issue of 4,500,000 shares in Millers available to existing shareholders of Millers?

B. See answer to Question 46.

5th September 1972.

(continued)

10

48.A. Do you admit that at the time that you voted upon the resolution for the allotment to Howard Smith of 4,500,000 shares in the capital of Millers, you were aware that such allotment constituted a breach of the Official Listing Requirements of the Associated Stock Exchanges Limited?

B. Yes.

20

49.A. If you admit that you were so aware, for what reason or reasons did you decide to vote in favour of the said allotment?

B. I was of the opinion that the interests of the shareholders required that the allotment should be made and further the opinion was expressed by the Company's legal advisers at the Board meeting of 6th July, 1972 that it was unlikely that the Stock Exchanges would take any action even if the allotment were made.

30

50.A. Prior to the meeting of Directors of Millers on 6th July, 1972, did you have any discussions with any other Director (sic) of shareholder of Millers wherein consideration was given to seeking assistance from any shareholder of Millers either by way of allotment of shares or otherwise, for the purpose of easing the financial problems of Millers?

40

(a) If so:-

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set by the
Plaintiff Ampol
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for the 7th
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(continued)

- (i) When, where and with whom did any such discussion take place?
- (ii) What was the substance of any such discussion?
- (b) If no such discussion took place, for what reasons did you not initiate any such discussions?

B. No.

51.A. Specify the purpose or purposes for which you voted in favour of:-

10

(a) The purported resolution for the allotment of the said 4,500,000 shares to Howard Smith;

(b) The purported resolution for the execution by Millers of the agreement with Howard Smith;

(c) The purported resolution for the affixing of the seal of Millers to the said Share Certificate.

B. To remedy the financial difficulties of the Company referred to in answer to Questions 42 and 43 and generally to secure the financial future and stability of the Company and to give shareholders an opportunity of receiving an offer of a price higher than the inadequate Ampol offer.

20

52.A. At the time of voting upon the resolution for the aforesaid allotment, did you consider the rights of all shareholders of Millers?

30

(a) If so, what were the rights of all shareholders which you took into consideration?

(b) If not, in respect of which shareholders did you give consideration in so voting and what rights of such shareholders did you take into consideration?

B. Yes.

Exhibit RR

(a) All the rights of shareholder.

Interrogatories
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Plaintiff Ampol
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53.A. Do you admit that the sealing of the Share Certificate and delivery of same forthwith to Howard Smith on 6th July, 1972 was contrary to the normal practice adopted by Millers in allotting shares?

B. Not aware of normal practice.

5th September
1972.

10 54.A. As at the commencement of the Board Meeting of 6th July, 1972 what was your belief as to the assets backing value of each of the shares in the capital of Millers?

(continued)

20 B. I was aware that the auditors had placed a value of \$3.71 per share but I was aware that this value was dependent on the ultimate realisation of the Company's coal interests which were extremely suspect and in my belief the true asset backing was probably substantially less.

55.A. On the 6th July, 1972 did you believe that the assets backing value of each of the shares in the capital of Millers would be reduced by virtue of the allotment to Howard Smith of 4,500,000 shares in such capital?

30 (a) If so, to what value did you believe each such share would be reduced?

B. Yes.

(a) I had no belief as to any specific amount but I considered that it would be small.

56.A. At the commencement of the meeting of Directors of Millers on 6th July, 1972 did you believe that the constitution of the Board of Directors of Millers was likely to be altered in the near future

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(continued)

by virtue of the shareholding of the
Plaintiff and Bulkships Limited?

B. Yes.

57.A. As at the commencement of the
meeting of the Board of Directors of
Millers on 6th July, 1972 did you
believe that your own position on such
Board of Directors was likely to be
jeopardised in the near future by
virtue of the shareholding of the
Plaintiff and Bulkships Limited?

10

B. See answer to Question 58(a).

58.A. Prior to the meeting of Directors of
Millers on 6th July, 1972, did you have
any discussions with any other Director
of Millers or with Howard Smith or
with any other person as to the likeli-
hood of the Board of Directors of
Millers being reconstituted or altered
in the near future by virtue of the
shareholding of the Plaintiff and
Bulkships Limited?

20

(a) If so, when, where and with whom
were any such discussions held?

(b) What were the substance of any
such discussions?

B. Yes.

(a) Sometime after 23rd June and before
6th July Mr. Taylor told me that he
had been required by Abeles to
obtain my resignation and I told
him that I was appointed by the
shareholders and would not resign
except at their request.

30

59.A. Prior to the meeting of Directors of
Millers on 6th July, 1972, did you have
any discussion with Howard Smith as to
the likelihood of that company seeking
to reconstitute or alter in any way the
constitution of the Board of Directors

40

of Millers in the event that Howard Smith should be allotted 4,500,000 shares in the capital of Millers?

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set by the
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(a) If so:-

(i) When, where and with whom were any such discussions held?

(ii) What were the substance of any such discussions?

B. No.

5th September
1972.

10 60.A. On the 6th July, 1972 did you believe that the allotment of 4,500,000 shares to Howard Smith in the capital of Millers would have the effect of reducing the proportion of the shares in the capital of Millers held by each of the Plaintiff and Bulkships?

(continued)

20 (a) If so, to what extent did you believe that the proportion of the shares in the capital of Millers held by each of the Plaintiff and Bulkships would be reduced?

B. Yes.

(a) I did not calculate the extent and had no belief.

30 61.A. On the 6th July, 1972 did you believe that the allotment to Howard Smith of 4,500,000 shares in the capital of Millers would have or probably have the purpose of defeating the take-over offer made by the Plaintiff?

B. This was not my purpose in voting for the allotment and at the time of voting had no belief on this matter.

62.A. On the 6th July, 1972 did you believe that the allotment to Howard Smith of 4,500,000 shares in the capital of Millers would have the effect or probable effect of facilitating and

Plaintiffs
Exhibits

1562.

Exhibit RR
Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 7th
Defendant
Kenneth Barton
Anderson and
his answers
thereto
5th September
1972.
(continued)

- ensuring the success of the proposed
take-over offer to be made by Howard
Smith?
- B. I believed that it would enable an offer
to be made by Howard Smith at \$2.50.
- 63.A. Prior to the purported allotment of the
shares to Howard Smith on 6th July,
1972, did you or anyone on your behalf
seek or obtain information or make
enquiries from Howard Smith as to its
financial capability and/or as to
arrangements made by it for the payment
of the balance of the purchase price
for the shares to be allotted to it
and/or its capability and arrangements
made to service its proposed take-over
offer? 10
- (a) If so:-
- (i) When, where, by whom and from whom
was such information sought or obtained? 20
- (ii) If any such information was sought
or obtained or supplied in writing
identify each such writing.
- (iii) What was the substance of any
such information sought and/or
obtained?
- B. No.
- 64.A. When, at what time and by whom was the
letter dated 6th July, 1972 from
Millers to the Manager of the fourteenth
Defendant and the enclosed Register
entry form prepared? 30
- B. I do not know.
- 65.A. Do you admit that the preparation of the
Register entry form in the offices of
Millers in relation to the purported
allotment to Howard Smith of 4,500,000
shares was contrary to the normal
practice adopted by Millers in relation
to other share placements or allotments? 40

B. Not aware of normal practice.

Exhibit RR

66.A. When, at what time and by whom was the said letter dated 6th July, 1972 and enclosed Register entry form delivered to the fourteenth Defendant at its offices?

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 7th
Defendant

B. I do not know.

Kenneth Barton
Anderson and
his answers
thereto

10 67.A. When, at what time, where by and by whom and to whom was the Share Certificate relating to the allotment to Howard Smith of 4,500,000 shares in the capital of Millers, delivered to Howard Smith?

5th September
1972.
(continued)

B. I do not know.

20 68.A. When, at what time, by whom and on whose instructions were the letters dated 3rd July, 1972 and addressed respectively to the Chairman of Directors of the Plaintiff and to the Chairman of Directors of Bulkships Limited prepared?

B. I do not know.

69.A. Prior to the preparation of the aforesaid letters, did you have any discussions concerning the contents of the same with any other Director of Millers, and/or Howard Smith and/or any other person?

(a) If so:-

30 (i) When, where and with whom did any such discussions take place?

(ii) What was the substance of any such discussions?

B. No.

70.A. When, by whom and for what purpose were instructions given to Cooper Brothers and Co. for the preparation of the report dated 21st June, 1972?

Plaintiffs
Exhibits

1564.

Exhibit RR

Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 7th
Defendant
Kenneth Barton
Anderson and
his answers
thereto

5th September
1972.
(continued)

B. I do not know.

71.A. Prior to the giving of instructions for the preparation of the aforesaid report, did you have any discussions with other Directors of Millers and/or with Howard Smith and/or with any other person relative to the obtaining of such report?

(a) If so:-

(i) When, where and with whom did any such discussions take place? 10

(ii) What was the substance of any such discussions?

B. No.

72.A. When, by whom and on whose instructions was the letter dated 6th June, 1972 from the Chairman of Directors of Millers to the Chairman of the Plaintiff prepared?

B. I do not know. 20

73.A. Prior to the preparation of such letter, did you have any discussions with any other Directors of Millers and/or Howard Smith and/or any other person relative to the preparation of the same?

(a) If so:-

(i) When, where and with whom did any such discussion take place?

(ii) What was the substance of any such discussions? 30

B. No.

74.A. When, by whom and on whose instructions was the letter dated 14th June, 1972 from Millers to the shareholders of Millers prepared?

B. I do not know.

75.A. Prior to the preparation of the said letter, did you have any discussions with any other Directors of Millers and/or Howard Smith and/or any other person relative to the preparation of the same?

(a) If so:-

(i) When, where and with whom were any such discussions held?

10

(ii) What was the substance of any such discussions?

Exhibit RR
Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 7th
Defendant
Kenneth Barton
Anderson and
his answers
thereto

5th September
1972.
(continued)

B. No.

76.A. Do you admit that as at the commencement of the meeting of the Directors of Millers on 6th July, 1972, there was no urgent and immediate need to raise \$10,350,000.00 or other similar amount in order to enable Millers to continue its operations?

20

B. No.

77.A. Do you admit that at the commencement of the meeting of Directors of Millers on 6th July, 1972, the financial position of Millers had improved on the position that existing some 12 months or so ago?

30

(a) If not, what facts and matters do you say indicated that there had been no such improvement or that there had been a deterioration?

B. No.

(a) The Company was faced with short term loan repayments in excess of ten million dollars and no assured source of finance.

78.A. Prior to the 23rd June, 1972 did you have any discussions with or give instructions to the Defendant Conway as

Plaintiffs
Exhibits

1566.

Exhibit RR
Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 7th
Defendant
Kenneth Barton
Anderson and
his answers
thereto
5th September
1972.
(continued)

to how he should vote in relation to
the draft Part C Statement discussed
and approved at the meeting of
Directors of Millers held on the 23rd
June, 1972?

(a) If so:-

(i) When, where and by what means did
such discussions take place?

(ii) What were the instructions given
and the substance of any such
discussions?

10

B. No.

79.A. When were you first advised of the
existence of the letter of the 22nd
June 1972 from Howard Smith to the
Chairman of Directors of Millers?

B. I can't remember.

80.A. By whom and in what manner were you so
advised?

B. I can't remember but I did read
reference to it in the Press.

20

81.A. Prior to the 23rd June, 1972 were you
advised of the proposed take-over offer
to be made by Howard Smith?

(a) If so:-

(i) When, where, by whom and in what
manner were you so advised?

(ii) What was the substance of such
advice?

B. No.

30

1567.

Plaintiffs
Exhibits

82.A. When were you first advised of the proposed allotment of shares to Howard Smith?

(a) At what time, on what date, by whom and in what manner were you so advised.

B. At the Board Meeting of Millers on 6th July, 1972.

Exhibit RR
Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 7th
Defendant
Kenneth Barton
Anderson and
his answers
thereto
5th September
1972.
(continued)

Solicitor for the Seventh Defendant

FILED 6th September, 1972.

Plaintiffs
Exhibits

AFFIDAVIT

Exhibit RR
Interrogatories
set by the
Plaintiff Ampol
Petroleum Ltd.
for the 7th
Defendant
Kenneth Barton
Anderson and
his answers
thereto
5th September
1972.
(continued)

ON Fifth September 1972 I KENNETH BARTON
ANDERSON of 21 Kuroki Street, Fenshurst,
in the State of New South Wales, Company
Director say on oath:

1. I am the Seventh Defendant.
2. The above answers to the interrogatories herein in so far as they relate to my own activities and believes are true.
3. The answers to interrogatories herein relating to the activities of others are true to the best of my belief.

SWORN at Sydney on the day)
and year first mentioned)
Before me:)

A Justice of the Peace.

1569.

Plaintiffs Exhibits

Plaintiffs Exhibits

Exhibit SS

Exhibit SS

Charter Rate Calculations for the M.T. "Amanda Miller" dated 5th June 1972.

Charter rate Calculations for the M.T. "Amanda Miller"

5th June 1972

5th June 1972.

M.T. "AMANDA MILLER"

BASE CHARTER RATE CALCULATIONS

Capital Investment \$10,100,000

Estimated Operating Expenditure:- P.A.

10	Seagoing Wages & Salaries (incl. P.R.T.)	\$ 600,000
	Insurances (incl. P & I)	200,000
	Other Non-Voyage Expenditure:-	
	Victualling	40,000
	Stores	100,000
	Radio Officers Salary,	
	A.W.A. Hire & Traffic	30,000
	Other Disbursements	50,000
20	General Repairs & Annual Overhaul	300,000
	Affiliation Fees (C.S.O.A. etc)	10,000
	Head Office Expenses	35,000
		<u>565,000</u>
		\$1,365,000
	Depreciation (6 $\frac{1}{2}$ % p.a.)	<u>631.250</u>
		\$1,996,250
30	Profit before taxation, representing 15.36% on Capital Investment	<u>1,551,250</u>
		<u>\$3,547,500</u>

Base Charter Rate = \$3,547,500 + 330 Operating Days = \$10,750 per day

Profit before taxation (as above)	\$1,551,250
Less Taxation (@47 $\frac{1}{2}$ %)	<u>736,850</u>
<u>Profit after tax</u>	<u>\$ 814,400</u>

Plaintiffs
Exhibits

1570.

Exhibit SS
Charter rate
Calculations
for the M.T.
"Amanda Miller"
5th June
1972.
(continued)

Interest on borrowed money was not shown separately, due to the rate being subject to six-monthly fluctuations:-

1st Payment (10 $\frac{1}{4}$ % p.a.)	£361,855
2nd Payment (7% p.a.)	<u>232,185</u>
	<u>£594,040</u>

Comparison to estimated pre-tax trading results to 29/4/72:-

Estimated for eight months operations (8/12 of £1,551,250)	£1,034,166	10
Actual	£ 952,749	

Based on Original Charter of £10,750 per day, annual profit is estimated to be:-

Charter Income:-

330 days @ £10,750 per day	£3,547,500
----------------------------	------------

Less Expenditure:-

Operating Costs	£1,365,000	
Depreciation	631,250	
Direct Interest	<u>594,040</u>	
	<u>£2,590,290</u>	20
Profit before Taxation	957,210	
Taxation @ 47 $\frac{1}{2}$ %	<u>454,675</u>	
<u>Profit after taxation</u>	<u>£ 502,535</u>	

The charter rate has increased in accordance with the escalation clause to its present figure of £10,889 per day.

Plaintiffs Exhibits

Exhibit TF

Handwritten notes of Leonard Dean Koch,
General Manager of R.W. Miller (Holdings)
Ltd. dated 6th July 1972.

Financial Position as at 30/6/72

Balance owing to A.S.B. @ 28/5/72
\$8,013,915

10	Paid - 29/5/72 \$1,000,000	Property			
	2/6/72 750,000	realiza-			
	26/6/72 1,000,000	tion			
	30/6/72 3,000,000	Tricon-			
		tinental			
	<u>2,263,915</u>	Bank			
		N.S.W.		\$8,013,915	

Short Term Borrowings

	At Call				
	Due 14/8/72 - Bills		\$	406,900	
	" 2/9/72 - Deposit			500,000	
	" 28/9/72 - Bills			285,000	
20	" 27/10/72 - "			1,000,000	
	" 27/12/72 - "			1,000,000	
	" 17/1/73 - Deposit			1,100,000	
	" 16/2/73 - Bills			200,000	
	" 2/3/73 - "			500,000	
	" 22/6/73 - "			500,000	
	" 30/6/73 - Bank			250,000	
		N.S.W.			
		Loan		<u>4,200,000</u>	
					\$9,941,900

30 Expiring Feb. '73 -

\$ 800,000

\$10,741,900

Plaintiffs
Exhibits

Exhibit TF

Handwritten
notes of Howard
Dean Koch,
General Manager
of R.W. Miller
(Holdings) Ltd.

6th July
1972

Plaintiffs
Exhibits

1572.

Exhibit TT

Security Held

Handwritten
notes of Leonard
Dean Koch,
General Manager
of R.W. Miller
(Holdings) Ltd.

Tricontinental - \$3,100,000 Bills (89 $\frac{7}{8}$)
1st Mortgage - 9 Hotels
valued @ \$6 m. approx.

" - \$1,750,000 Bills (89 $\frac{7}{8}$)
1st Mortgage - 2 Hotels
valued @ \$2 m. approx.

6th July
1972.
(continued)

Bank N.S.W. - \$4,200,000 Bills Fully
secured. Floating charge
plus all deeds to sundry
property. 10

Mitsui & Co. - \$800,000 (8 $\frac{1}{4}$ %) 1st Mortgage -
1 Hotel.
~~Higher-interest~~
~~rates. -- Right to~~
~~refuse-reliever.~~

Plaintiffs
Exhibits

Plaintiffs Exhibits

Exhibit UU

Exhibit UU

Handwritten
notes of Thomas
Maxwell
Secretary of
Howard Smith
Ltd.

Handwritten notes of Thomas Maxwell Secretary
of Howard Smith Ltd. dated 4th July 1972

Binding Contract between Howard Smith Ltd. and
R.W. Miller (Holdings) Ltd. providing that -

4th July
1972.

Smith agrees to proceed with its offer to
acquire all of the issued shares of Millers. 20

Miller agrees to allot Smith 3,000,000 shares
at price of \$2.00 per share, payable

(i) 10 cents per share on application.

(ii) \$1.90 per share only when holders
of not less than 3,001,000 shares
accept Smith's offer (or lesser
percentage at option of Smith)

Miller agrees not to allot any further shares
without consent of Smiths or until Smith
shall notify Miller that its offer has been
withdrawn. 30

Miller agrees not to dispose of any of its
assets etc., until Smith shall notify Miller
that its offer has been withdrawn or has been
declared unconditional.

SHARE PLACEMENT

Miller capital	9,000,786
+ placement	3,000,000
	<u>12,000,786</u>

50% = 6,000,393

AMPOL	2,600,000	21.7
BULKSHIPS	2,500,000	20.8
MINORITY	<u>3,900,786</u>	<u>32.5</u>
	9,000,786	75.0
10 PLACEMENT	3,000,000	25.0
	<u>12,000,786</u>	<u>100%</u>

Exhibit UU

Handwritten
notes of Thomas
Maxwell
Secretary of
Howard Smith
Ltd.

4th July
1972.

(continued)

CONSEQUENCES

- (1) H. Smith pay \$6,000,000 more than originally intended but a minimum of 50% shareholding would give HS a corresponding interest in this sum.
- (2) If unsuccessful H.S. would own 3,000,000 shares paid to 10c each = \$300,000 - but Ampol offer would have lapsed. H.S. would have shareholding, as would Ampol, Bulkships and minority shareholders.

Plaintiffs
Exhibits

1574

Plaintiffs Exhibits

Exhibit WW

Exhibit WW

Minutes of
meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
dated 9th
June 1972

Minutes of meeting of Directors of R.W.
Miller (Holdings) Ltd. dated 9th June 1972.

R.W. MILLER (HOLDINGS) LIMITED

MINUTES OF MEETING OF DIRECTORS OF R.W. MILLER
(HOLDINGS) LIMITED HELD IN THE BOARD ROOM,
"SCOTTISH HOUSE", 19 BRIDGE STREET, SYDNEY,
AT 9 A.M. ON FRIDAY, JUNE 9TH, 1972.

PRESENT:

Mr. A.N. Taylor	Chairman	10
Lady Miller		
Mr. R.I. Nicholl		
Sir Peter Abeles		
Mr. E.D. Cameron		
Mr. A.V. Balhorn	Alternate Director for Mr. P.J. Duncan	
Mr. W.A. Conway	Alternate Director for Mr. K.B. Anderson	

IN ATTENDANCE:

Mr. L.D. Koch	General Manager	20
Mr. H.V. Ellis-Jones	Secretary	
Miss M.J. Hill		

APOLOGY FOR NON-ATTENDANCE:

The Chairman tendered an apology for non-attendance on behalf of Mr. K.B. Anderson who was absent on holidays in Queensland and announced that Mr. W.A. Conway was acting as Alternate Director for Mr. Anderson.

CONFIRMATION OF MINUTES OF PREVIOUS DIRECTORS'
MEETING:

30

The Minutes of the Meeting of Directors held on June 1st, 1972, were tabled, confirmed by the Meeting and signed by the Chairman as a true record of the proceedings thereat.

CONFIRMATION OF MINUTES OF SHARE TRANSFER
COMMITTEE MEETINGS:

The minutes of Meetings of the Share Transfer Committee held on the following dates were confirmed:

1972: May 19th
 " 26th
 " 31st

Exhibit A
Minutes of
meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
dated 9th
June 1972
(continued)

10 BUSINESS ARISING FROM MINUTES OF PREVIOUS
DIRECTORS' MEETING:

MERCHANT BANKS ETC:

The Chairman reported to the Board that he had interviewed Mr. David Nicol of ORD-B.T. Co. Limited and subsequently Ord-B.T. Co. Limited had submitted a proposal that they be retained by the Company to act as advisers in the take-over offer by Ampol Petroleum Limited. The proposal was not acceptable to the Company and accordingly would be declined.

20 The Chairman also reported that Mr. John Sweeney, Stockbroker, had been interviewed in company with Mr. R. Austen of Austen & Butta Limited.

30 Mr. Sweeney was acting on behalf of Development Finance Corporation Limited who were interested in acting as a Merchant Bank for the Company, whilst Mr. Austen showed interest in acquiring the Group's collieries or, alternatively, in participating with the Miller Group on a joint venture basis.

In addition, approaches had been made by Sir Reginald Reed, Chairman of James Patrick & Co. Pty.Ltd., and also by Brambles Ltd. concerning the possibility of counter take-over offers being made against the Ampol bid.

The approach by Brambles Ltd. had not been made by them at Board level and the Chairman commented that James Patrick & Co. Pty.Ltd. and Brambles Ltd. could be acting in concert.

Plaintiffs
Exhibits

1576.

Exhibit WW

Minutes of
meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
dated 9th
June 1972
(continued)

TARIFF BOARD REPORT ON SHIPBUILDING:

Mr. L.D. Koch reported that Mr. L.B. Glover, the Company's consultant on shipbuilding, was studying and working on the Tariff Board Report at Government level and the Board would be advised of the effect of the Report on the Company.

It was clear that some benefit would be gained by the Company as a Commonwealth subsidy would be paid on modifications to M.T. "Robert Miller". 10

M.T. "AMANDA MILLER":

The Board was informed that a meeting had been arranged between the Australian Shipbuilding Board, Broken Hill Proprietary Co. Ltd. and the Company to discuss settlement of our claim for late delivery of M.T. "Amanda Miller" and it was possible that the claim could be settled by mutual agreement and without resorting to arbitration.

Mr. R.I. Nicholl was invited to attend as one of the Company's representatives. 20

M.V. "RICKIE MILLER":

The Chairman reported that Mr. Ross Cribb of Thomas Nationwide Transport Limited had been contacted concerning the employment of M.V. "Rickie Miller". Mr. Cribb had advised that at the present time he was unable to assist in placing the vessel in service.

CATERING:

A report on catering services at the Sydney Showground was considered by the Board and it was agreed that Lady Miller would contact the Chairman at a later date. 30

ADJOURNMENT OF MEETING:

At this point the Meeting adjourned for morning tea and Sir Peter Abeles joined the meeting during the adjournment.

TAVERNS:

Exhibit WW

Mr. L.D. Koch reported that the Metropole Tavern was proceeding smoothly. However, the St. James tavern was running behind schedule, whilst progress on the T.N.T. Tavern was held up due to discussions on the proposed rental and police objections to the proposed drive-in bottle department in the tavern.

Minutes of
meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
dated 9th
June 1972
(continued)

10 The Chairman stated that the T.N.T. Tavern would require a drive-in bottle department as an adjunct to make the tavern a viable proposition.

Sir Peter Abeles requested that the Company give an answer within six weeks as to whether it was interested in the T.N.T. Tavern, to enable the site construction to be planned.

LETTER TO SHAREHOLDERS:

20 The Board considered draft of letter proposed to be sent to all shareholders of R.W. Miller (Holdings) Limited prior to the despatch of the Company's Part C statement, advising shareholders to take full advantage of the period of one month during which Ampol's take-over offer remained open for their acceptance.

30 The Board agreed with a minor amendment to the letter suggested by Sir Peter Abeles and it was resolved that the letter be printed and mailed to shareholders as soon as possible.

PART C STATEMENT:

The Part C statement to be furnished by the Company in reply to the take-over offer by Ampol Petroleum Limited was discussed by the Board.

Both Mr. E.D. Cameron and Sir Peter Abeles were not in favour of including the report in course of preparation by Cooper Bros. & Co. in the statement. Sir Peter Abeles

Plaintiffs
Exhibits

1578.

Exhibit WW
Minutes of
meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
dated 9th
June 1972
(continued)

considered that the cash consideration offered by Ampol was the main consideration and the Board's recommendation would be made on this basis.

Mr. E.D. Cameron also commented that the Group's results could be estimated fairly closely at this stage and the future dividend policy could also be considered, as both these factors could be included in the Part C Statement.

10

NEXT BOARD MEETING:

It was decided that the next Board Meeting would be held at 9 a.m. on Monday, June 26th, 1972, to consider the Part C Statement prepared in draft form.

CONFIRMED:

CHAIRMAN:

1579.

1st Defendants Exhibits

1st Defendants
Exhibits

Exhibit "MHL"

Exhibit MHL

Letter Hambros Bank Ltd. to R.W. Miller
(Holdings) Ltd. dated 1st June 1972 enclosing
Commitment letter also dated 1st June 1972

Letter Hambros
Bank Ltd. to
R.W. Miller
(Holdings) Ltd.
1st June 1972
enclosing
commitment
letter also
dated 1st June
1972.

Hambros Bank Limited
41 Bishopsgate,
London, EC2P 2AA

Our Reference TRSP/MH/LF 1st June, 1972

10 R.W. Miller & Co. Pty. Ltd.
19, Bridge Street
SYDNEY
Australia

Dear Sirs,

Re.: Finance of M/T "ROBERT MILLER".

20 Further to our telex of 25th May we take
pleasure in sending you enclosed the formal
Commitment Letter outlining the terms and
conditions for a loan of US \$8,800,000, -
granted jointly by Security Pacific National
Bank, Midland and International Banks Ltd,
Lloyds and Bolsa International Bank Ltd. and
ourselves in respect of the above mentioned
vessel.

On receipt of your acceptance of our terms
and conditions we will contact our lawyers,
Messrs. Norton, Rose, Botterell & Roche
instructing them in conjunction with Messrs.
Allan, Allan & Hemsley, Sydney to draw up the
Financial Agreement and arrange the security
documents on our behalf. All legal costs in
this connection will of course be charged in
full to you.

Yours faithfully,
For and on behalf of
HAMBROS BANK LIMITED

Encl.

1st Defendants
Exhibits

1580.

Exhibit MHL

Exhibit MHL (continued)

Commitment
letter Hambros
Bank Ltd. to
R.W. Miller
(Holdings) Ltd.

Commitment letter Hambros Bank Ltd. to
R.W. Miller (Holdings) Ltd. dated 1st June
1972.

1st June
1972
(continued)

Hambros Bank Limited
41, Bishopsgate,
London, EC2P 2AA

Our reference TRSP/MH/EP 1st June 1972

R.W. Miller & Co. Pty. Ltd.
19 Bridge Street
SYDNEY
Australia

10

Dear Sirs,

We refer to correspondence and discussions in connection with your request for finance of the vessel M/T "Robert Miller", a tanker of abt. 66,000 dwt. to be delivered from Evans Deakin Industries Ltd., Brisbane on or about 15th March 1973 at a final cost price to you of A \$ 12.329.000, -, i.e. abt. US \$ 14.600.000, 20
-. A contract to build the vessel has been entered into between the yard and the Commonwealth of Australia and a separate contract to purchase and to sell the vessel has been entered into between yourselves and the Commonwealth. A firm letter of Commitment to charter the vessel from delivery has been signed by Shell, the terms of which will be embodied in a formal time charter party.

Subject to the correctness of the position outlined above, we are pleased in principle to offer you part finance in respect of the above-mentioned vessel on the terms and conditions set out below which terms and conditions will be embodied in a formal loan agreement to be entered into with you. Our offer is made on behalf of and finance will be provided by the following banks:-

30

Security Pacific National Bank
Midland and International Banks Ltd.
Lloyds and Bolsa International Bank Ltd.
Hambros Bank Ltd.

Exhibit MHI
Commitment
letter Hambros
Bank Ltd. to
R.W. Miller
(Holdings) Ltd.

(hereinafter referred to as "the Banks")

The Banks have in principle agreed to grant you a loan of US \$ 8.800.000 i.e. 60% of the final cost price of the vessel, as from delivery of the vessel, on the following terms and conditions:-

1st June
1972.
(continued)

10

Security:

- (i) a first priority mortgage on the vessel in accordance with the standard Australian mortgage form for the amount of the loan;
- (ii) an assignment of insurances on the vessel and her appurtenances;
- (iii) an assignment by way of charge of all charter hires, freights and other earnings of the vessel (current and future) such assignment to be made operative at our discretion at any time during the currency of the loan. In case the assignment is made operative, we shall be entitled to notify the charterer(s) of such assignment in such terms as we may think fit, but we shall endeavour to inform you prior to such notification being given;
- (iv) an unconditional guarantee from your parent company, R. W. Miller (Holdings) Ltd. for the amount of the loan plus interest thereon in terms satisfactory to the Banks.

20

30

40

The insurances on the vessel at anyone time during the currency of the loan are subject to our approval and should include cover expressed in US Dollars in an amount of not less than the loan thereon plus 10%. Charter hire, freights and other earnings of the vessel should be paid to our bank or to Hambro

1st Defendants
Exhibits

1582.

Exhibit MHI
Commitment
letter Hambros
Bank Ltd. to
R.W. Miller
(Holdings) Ltd.
1st June
1972.
(continued)

American Bank & Trust Company, 25 Broad Street,
New York, N.Y. 10004, for your account, or to
such other bank or banks as may be agreed
between us from time to time.

If the freights etc. are paid in Australian
Dollars, payment should be made for your
account to Bank of New South Wales, Melbourne.

It is our intention to make the assignment of
charter hire etc. operative as from delivery
of the vessel. It is further our intention
to operate a service-of-loan account on which
we will set off from the monthly freight pay-
ments received 1/6th of the instalment and
interest falling due every six months. The
balance left after the set-off will be at your
free disposal.

10

The loan shall be repaid by 9 equal half-
yearly instalments of 1/16th of the amount of
the loan, the first instalment payable six
months after delivery of the vessel and by a
final instalment of 7/16ths of the amount of
the loan, payable five years after such delivery.
We will nevertheless be pleased to consider
sympathetically in the light of conditions
then ruling any request from you at that time
for an extension of the loan beyond such five
year period.

20

We reserve the right to make the loan available
by way of Promissory Notes, Acceptance Credit
or direct loan from time to time at our
option, and also reserve the right to bring
in participants to whom we may transfer in
whole or in part our rights in the loan and
the securities therefor. You express your
willingness to issue such participation
certificate or other documents as we may require
in this respect. It is understood that such
documents will not in any way add to the obliga-
tions and costs to be assumed by you, except
only for the legal expenses and out-of pocket
expenses involved, such as printing. Further-
more, we would like to keep open the possibility
of making the facility available in any other
convertible European Currency to be agreed
with you.

30

40

Charges on the loan to be as follows:-

Exhibit MHL

- 10 a) Interest on the outstanding amount of the loan will be charged at the rate of $1\frac{1}{4}\%$ p.a. over the European interbank lending rate ruling two working days before the day the loan is paid out or the interest rate changed. This interest rate will be fixed for short periods, at our option, normally for six months, and interest will be paid at the end of such period. If the loan is made available on a revolving acceptance basis, interest is payable at the time of acceptance, whereas for direct loan or Promissory Notes interest is payable in arrear. If the facility is made available in any other currency than US Dollars, debit interest to be charged at $1\frac{1}{4}\%$ over the relative current market rate. The interest will be calculated on an exact number of days over a 360 day year basis.
- 20

Commitment
letter Hambros
Bank Ltd. to
R.W. Miller
(Holdings) Ltd.
1st June
1972.
(continued)

- b) A non-returnable commitment commission of $\frac{3}{4}\%$ flat of US \$ 8.800.000,- payable within 14 days of your acceptance of the terms and conditions.

30 Notwithstanding the foregoing, you may (upon not less than one month's previous written notice to expire on any interest payment date) repay in advance the whole of or part of the loan (plus accrued interest). Partial repayment should normally be made in complete instalments, and it is essential that the Banks should have the final decision on which instalments are to be repaid first.

40 In the event of 50% or more of the issued shares of R.W. Miller & Co. Pty. Ltd. and/or R. W. Miller (Holdings) Ltd. being acquired by another company the Banks reserve the right to either renegotiate the terms of the loan or ask for full repayment.

Any money payable by you under this agreement shall be repaid free of all deductions in respect of any taxes of whatsoever nature which might be levied in Australia in connection with the loan and interest thereon or the security therefor.

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Exhibit MHL
Commitment
letter Hambros
Bank Ltd. to
R.W. Miller
(Holdings) Ltd.
1st June
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(continued)

Possible changes in the financing of the vessel and in the main terms of that finance as well as any registration of charges on the vessel are subject to our prior consent. We shall require to be satisfied that the security for (and in the event of default the repayment of) possible further finance accepted or to be accepted by us is clearly expressed in the relevant documentation to rank behind the security for our loan and in particular that any right of early repayment of the whole of or part of the said finance is subject to our approval.

10

We request you kindly to send us your Annual Reports as soon as these are audited and accepted. In addition we request you kindly to undertake within one month prior to the expiry of each year's insurance policies to inform us how you intend to cover the next year's insurances.

20

Our commitment to advance and your agreement to take up the loan shall expire on 15th March 1974.

The terms of this letter are conditional upon:-

(i) our approval of the terms and documentation including securities in respect of any further finance to be arranged regarding this vessel;

(ii) your obtaining to our satisfaction before payout of the loan and before delivery of the ship all Australian, British and other consents (valid then and at the time the loan is to be made) necessary for the building of the vessel and the finance as set out in this letter, including an exchange transfer approval from the Australian Central Bank;

30

(iii) your acceptance of this offer by not later than 30th June 1972.

40

Our agreement shall be subject to English law and the borrower submit to the jurisdiction of English courts, but we reserve the right to proceed in the courts of any other country.

Exhibit MH1
Commitment letter Hambros Bank Ltd. to R.W. Miller (Holdings) Ltd.

If you are in agreement with the terms of this letter, kindly indicate your acceptance by signing and returning to us the enclosed copy of this letter.

1st June 1972.
(continued)

10

Yours faithfully,
For and on behalf of
HAMBROS BANK LIMITED

1st Defendants Exhibits

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Exhibit MH2

Exhibit MH2

Deed of Charge between R.W. Miller (Holdings) Ltd. R.W. Miller & Co. Pty. Ltd. and Tricontinental Corporation Ltd. and others dated 30th June 1972.

Deed of Charge between R.W. Miller (Holdings) Ltd. R.W. Miller & Co. Pty. Ltd. and Tricontinental Corporation Ltd. and others

20

THIS DEED made the Thirtieth day of June 1972 BETWEEN R.W. MILLER (HOLDINGS) LIMITED the registered office of which is situate at 19 Bridge Street, Sydney in the State of New South Wales (hereinafter called "the Borrower") of the first part, the Companies set out in the Schedule hereto the registered offices of which are situate at 19 Bridge Street, Sydney (hereinafter called "the Mortgagors") of the second part R.W. MILLER & CO. PTY. LIMITED the registered office of which is situate at 19 Bridge Street, Sydney in the said State (hereinafter called "the Guarantor") of the third part and TRICONTINENTAL CORPORATION LIMITED the registered office of which is situate at 460 Bourke Street, Melbourne in the State of Victoria (hereinafter called "the Company") of the fourth part

30th June 1972.

30

WHEREAS each of the Mortgagors is the registered proprietor free of all encumbrances other than those set out in the said Schedule opposite the name of such Mortgagor of the

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between R.W.
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nental
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and others

30th June
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(continued)

freehold title with vacant possession of the land set out opposite the name of such Mortgagor in the said Schedule upon which or some part of which land is erected the hotel and premises known and licenced as the name of the hotel set out opposite the name of such Mortgagor in the said Schedule, and

WHEREAS the Borrower the Mortgagor and the Guarantor have requested the Company to make available to the Borrower certain discounting facilities for the amounts and subject to the terms and conditions hereinafter mentioned subject to the Mortgagors depositing with the Company the muniments deeds and certificates of title for the lands mentioned in the said Schedule and to the Borrower the Guarantor and the Mortgagors entering into these presents which the Borrower the Mortgagors and the Guarantor have agreed to do,

10

NOW THIS DEED WITNESSETH and it is hereby agreed and declared between the parties hereto as follows:-

20

1. Subject to the Mortgagors making the deposit as hereinafter provided and subject to the Borrower the Mortgagors and the Guarantor in all respects complying with their respective obligations herein contained the Company shall make available a discounting facility to the Borrower in the manner and for the amount and subject to the terms and conditions as follows:-

30

(a) On the date hereof the Company shall draw Bills of Exchange (hereinafter called "bills") upon the Borrower payable to the Company or its order of face values in multiples of \$50,000.00 totalling \$3,100,000.00 expressed to mature as follows:-

(i) as to bills to the aggregate face value of \$1,000,000.00 - in 90 days.

40

(ii) as to bills to the aggregate face value of \$1,000,000.00 - in 120 days, and

(iii) as to bills to the aggregate face value of \$1,100,000.00 - in 180 days.

and shall deliver the said bills to the Borrower.

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nental
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and others

10 (b) Upon the Company delivering the said bills to the Borrower as aforesaid the Borrower shall forthwith accept the said bills and return same to the Company at the Company's Sydney office together with such evidence as to the validity of the manner of such acceptance as the Company may reasonably require.

30th June
1972.
(continued)

20 (c) Upon the Company receiving from the Borrower the said bills accepted as aforesaid together with such evidence as aforesaid to the satisfaction of the Company as may be required by the Company the Company shall pay to the Borrower by cheque the face value of each of the said bills less a discount calculated on the said face value at the rate of 8.7 per centum per annum for the term of each such bill.

30 (d) If on or prior to ten clear working days before the maturity of any of the said bills or of any further bills drawn under this sub-clause (d) (the said bills and any said further bills being in this sub-clause called "the original bills") the Borrower gives to the Company notice that it desires to renew the said original bill then the following provisions shall apply:-

40 (i) The Company shall draw a bill (hereinafter called "the new bill") upon the Borrower payable to the Company or its order of a face value equal to that of the said original bill expressed to mature at the expiration of a period to be nominated by the Company (not being a period expiring later than either the expiration of 180 days from the date of the maturity of the

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and others
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(continued)

said original bill or the
expiration of one year from the
date hereof (whichever is the
sooner) and shall deliver the new
bill to the Borrower,

- (ii) Upon the Company delivering the
new bill to the Borrower as
aforesaid the Borrower shall
forthwith accept the new bill
and return same to the Company
at the Company's Sydney office
together with such evidence as
to the validity of the manner of
such acceptance as the Company
may reasonably require, and 10
- (iii) Subject to the Company receiving
the new bill from the Borrower
accepted as aforesaid together
with such evidence as aforesaid
satisfactory to the Company as
may be reasonably required by
the Company and subject to the
Borrower having paid all moneys
due and payable on or in respect
of the said original bill the
Company shall on the date of such
receipt or on the date of the
maturity of the said original
bill (whichever last occurs)
pay to the Borrower by cheque
the face value of the new bill
less a discount calculated on
the said face value at the rate
of 9.75 per centum per annum
(or such lesser rate as may be
nominated by the Company) for
the term of the new bill. 20 30

PROVIDED THAT no new bill shall be expressed
to mature after the expiration of one year
from the date hereof and the Company shall
not be required by this Agreement to give
any discounting facility to the Borrower
thereafter. 40

- (e) All stamp duty and other taxes or duties
(other than income tax) payable on or in
respect of bills drawn hereunder shall be

paid by the Borrower, and if paid by the Company, shall be payable by the Borrower to the Company on demand.

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nental
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and others

- 10 (f) If any moneys become payable by the Borrower to the Company in respect of this facility on or under or in respect of any bill drawn under these presents or if the liability of the Borrower to the Company for such moneys becomes merged in any judgment or order the Borrower shall pay to the Company on demand interest on such moneys or the amount of such judgment or order (as the case may be) at the rate of 9.95 per centum per annum.

30th June
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(continued)

- 20 (g) It is agreed that the state of the Borrower's the Guarantor's and the Mortgagors' accounts business, affairs and financial position (including, without affecting the generality of the foregoing, liquidity, cash flow, profitability, portfolio, ability to meet bills drawn under this facility and its other commitments) and their respective other arrangements for obtaining credit or giving security (all of which are hereinafter included within the designation "position" where used in respect of the Borrower or the Guarantor or the Mortgagors) are material to the granting and continuance of the facility hereby granted AND the Borrower and the Guarantor and the Mortgagors agree from time to time on the request of the Company to supply in writing such particulars of their respective positions as the Company requires, and also agree to advise the Company in writing of any material adverse change in their respective positions or of any proposal or decision to change their respective arrangements for obtaining credit or giving security.
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- 40

- (h) The Company may at its option refuse to renew any bills pursuant to sub-clause (d) of this clause without notice:

- (i) if any change occurs in the respective positions of the Borrower or of the Guarantor or

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(continued)

of the Mortgagors which in the
Company's opinion adversely
affects in a material way the
Borrower's financial stability
or that of the Guarantor or the
Mortgagors or the Borrower's
ability to meet bills drawn or
which might be drawn under this
facility.

(ii) if the Borrower defaults in
payment of any bill drawn under
this facility or under any other
facility granted by the Company
to the Borrower or of any other
moneys payable in respect of
this facility or under these
presentments or under any such
other facility. 10

(iii) if the Borrower or the Guarantor
or the Mortgagors go into
liquidation, or if a court order
is made or a resolution is
passed for the winding up of
the Borrower or the Guarantor
or the Mortgagors or if the
Borrower or the Guarantor or the
Mortgagors become insolvent or
unable to pay its or their debts
or if an official manager of the
Borrower or the Guarantor or
the Mortgagors is appointed, or
if the Borrower or the Guarantor
or the Mortgagors enter into any
deed or scheme or arrangement
or composition with its or
their creditors, or if any change
of control (as hereinafter
defined) of the Borrower occurs
or if any change occurs in the
directors of the Borrower or the
Guarantor or of the Mortgagors
or any of them or if execution
is levied against the Borrower
or the Guarantor or the Mortga-
gors or any of them in excess of
\$10,000 and is not stayed or
satisfied within seven days, or 20
30
40

- (iv) if the Borrower the Guarantor or the Mortgagors default in the payment performance or observance of any of the moneys covenants and conditions on their respective parts to be paid performed and observed herein contained, or
- (v) if for any reason (including but without affecting the generality of the foregoing, unavailability of funds, or governmental, legislative or Reserve Bank action prohibition direction or embargo) not within the Company's control the Company is prevented or hindered from making this facility available or the provision of this facility is made more onerous than at the date hereof

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(continued)

PROVIDED THAT the interpretation of each of the matters mentioned in the immediately above mentioned paragraphs (i) to (iv) shall not be limited or restrained by reference to or inference drawn from any of the other matters mentioned in these paragraphs.

In this sub-clause the following provisions shall apply

- (A) "Change of Control" shall be deemed to have occurred on the date upon which the Borrower becomes controlled by any other corporation or Group other than the corporation or Group which at the date hereof controls the Borrower.
- (B) If a corporation (herein called "the Controller") has any of the undermentioned forms of control over or holding of capital in another corporation (herein called "the Controlled") namely:

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- (i) The composition of the board of directors of the Controlled is controlled by the Controller within the meaning of Sub-Section 6(2) of the Companies Act 1961, of the State of New South Wales,
- (ii) The Controller controls more than 20 per cent of the voting power of the Controlled, 10
- (iii) The Controller holds more than 20 per cent of the issued share capital of the Controlled (excluding any part thereof which carried no right to participate beyond a specified amount in the distribution of either profits or capital), 20
- (iv) The Controller holds more than 20 per cent of the issued share capital of the Controlled,
- (v) The Controller holds shares entitling it to receive more than 20 per cent of all dividends declared by the Controlled, 30

then the Controlled shall be deemed to be controlled by the Controller for the purposes of this Deed.

- (C) A Corporation shall be deemed to be controlled by another corporation if the first mentioned corporation is controlled by a corporation which is controlled by that other corporation.
- (D) In determining whether one corporation is controlled by another corporation any share held or power exercisable - 40

(i) by any person as a trustee or nominee for that other corporation; or

(ii) by a trustee or nominee for a corporation which is controlled by that other corporation shall be treated as held or exercisable by that other corporation.

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(continued)

(E) Where pursuant to an arrangement between two or more corporations one or more of them acquire a quantity of shares or voting powers which if aggregated with the shares or voting powers held or exercisable by all such corporations and if held by a single corporation would constitute such single corporation the Controller of the Company then such two or more corporations shall for the purposes of this Agreement be deemed to be a Group.

(i) the Company may in its absolute discretion discount negotiate endorse transfer or assign absolutely or by way of security any of the said bills to any person as it sees fit,

(j) The Borrower shall on the day provided in the said bills make prompt payment of the respective amounts thereof, and

(k) the Borrower shall remain primarily liable at all times for the payment of the respective amounts of the said bills and such liability and the covenants of the Borrower herein shall not be affected or prejudiced by the negotiation acceptance or any other dealing or endorsement of any of the said bills by the Company the Borrower or any other person from time to time or by the failure of the Company or any other person to duly present for payment or give notice of dishonour or otherwise to carry out any other

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(continued)

- requirement prescribed by law relating to the procedures for payment negotiation or dishonour of the said bills.
- (1) that without affecting the liability of the Borrower to the Company on under or in respect of any bill drawn hereunder the Borrower shall indemnify and keep indemnified the Company against all liability moneys payments damages costs fees and expenses suffered or incurred by the Company or which the Company pays or is or becomes liable to pay on under or in respect of any bill drawn hereunder whether (without affecting the generality of the foregoing) the same is suffered incurred or paid or is liable to be paid by the Company as payee endorser or otherwise arising out of or in connection therewith or in relation to any action suit or proceedings whether in law or in equity brought by or against the Company in respect of any of the said bills. 10
2. (a) The Guarantor and the Mortgagors hereby guarantee to the Company the payment to the Company of all moneys which at any time and from time to time are or become due and payable by the Borrower to the Company pursuant to these presents or under or on or in respect of any bill drawn pursuant to these presents and further will indemnify and keep indemnified the Company against all loss of such moneys as aforesaid and all liability costs charges legal expenses loss and damage and expenses whatsoever which the Company may incur by reason of any default on the part of the Borrower in promptly paying on the day therein provided the amount of any bill drawn pursuant to these presents or by reason of the Company having accepted endorsed negotiated transferred or disposed of or assigned any such bill or by reason of any default of the Borrower in paying such moneys as aforesaid (all of which moneys liability costs charges legal expenses loss and damage and expenses whatsoever are hereinafter called "the Moneys Hereby 30 40

Guaranteed").

Exhibit MH2

- (b) This Guarantee shall be a continuing guarantee for the whole of the Moneys Hereby Guaranteed without limit.
- (c) If the Guarantor and the Mortgagor do not immediately pay the Moneys Hereby Guaranteed when demanded by the Company pursuant to this Guarantee the Guarantor and the Mortgagors shall pay interest on such moneys at the rate of 9.95 per centum per annum calculated from the date of such demand until such moneys have been paid or satisfied. In the event of the liability of the Guarantor and the Mortgagors under this Guarantee becoming merged in any judgment or order the Guarantor and the Mortgagors will pay interest on the amount for the time being owing under such judgment or order at the aforesaid rate.

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- (d) This Guarantee shall be in addition to, independent of and shall not affect or be affected by or merge in any other or further Security now or hereafter held or taken by the Company.
- (e) Until the Company has at any time received the whole of the Moneys Hereby Guaranteed and all the liability of the Guarantor and the Mortgagors pursuant to this Guarantee has been discharged:

- (i) All payments compositions and dividends from time to time received by the Company from the Borrower or the estate of the Borrower or in the liquidation or official management of the Borrower and all moneys which the Company may receive in respect of any collateral or other Security for the Moneys Hereby Guaranteed or any part thereby shall be applied as payments in gross and shall not be deemed to reduce the Moneys

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(continued)

Hereby Guaranteed by more than
the amount actually received
by the Company after deduction
of the costs and expenses of
and incidental to obtaining
payment thereof.

(ii)

The Guarantor and the Mortgagors
shall not be entitled on any
grounds whatsoever to claim the
benefit of any Security now or
hereafter held by the Company
for the payment of the Moneys
Hereby Guaranteed or any part
thereof, and

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(iii)

In the event of the Borrower or
any person who may be jointly
indebted with the Borrower to
the Company or who may be a co-
guarantor with the Guarantor and
the Mortgagors or who may be
liable under any Security now
or hereafter held by the
Company as security for the
Moneys Hereby Guaranteed or any
part thereof being wound up
placed under official management
under Part IX of the Companies
Act 1961 of the State of New
South Wales or any other
corresponding legislation of the
said State or any other State
or Territory of Australia or
any other place having a
Receiver appointed or entering
into a composition or scheme of
arrangement or dying or assigning
his estate for the benefit of
his creditors or entering into
an arrangement with his
creditors or being adjudicated
bankrupt the Guarantor and the
Mortgagors shall not be entitled
either directly or indirectly
to prove or claim in or receive
the benefit of any payment or
dividend out of the said winding
up official management

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receivership composition scheme
estate assignment arrangement
or bankruptcy in competition
with the Company or so as to
diminish any dividend or payment
which but for such proof claim
or receipt the Company would
be entitled to receive out of
such winding up official manage-
ment receivership composition
scheme estate assignment
arrangement or bankruptcy.

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(continued)

- 10
- (f) If any payment assurance or security made to or received by the Company is or is liable to be avoided under the laws relating to bankruptcy the winding up of companies or any other law whatsoever the Company shall be entitled to recover from the Guarantor and the Mortgagors to the
- 20
- full extent of this Guarantee as if such payment assurance or security had never been made and notwithstanding any release discharge by settlement or agreement which may have been given or made in consequence of such payment assurance or security being made or being agreed to be made. Any such release discharge settlement or agreement shall be void and of no effect if such payment
- 30
- assurance or security is or becomes void and thereupon or thereafter the Company may exercise all its rights under this Guarantee as if such release discharge settlement or agreement had not been made.

- (g) This Guarantee shall continue to be binding upon the Guarantor and the Mortgagors notwithstanding:

- 40
- (i) That the Moneys Hereby Guaranteed or any part thereof are now or may become owing by the Borrower to the Company either alone or in conjunction with any other person, and

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(continued)

- (ii) That any amendment or alteration is made to the Memorandum and Articles of Association or other constituting document of the Borrower.
- (h) This Guarantee shall not be affected or discharged by:
- (i) the payment at any time hereafter of a part of any of the Moneys Hereby Guaranteed or any settlement of account in respect of such part. 10
- (ii) the winding up liquidation amalgamation or reconstruction of the Guarantor or the Mortgagors or the Borrower or notice thereof and irrespective of whether the same occurs at the instigation of the Company.
- (iii) the Company taking any collateral or other security for the Moneys Hereby Guaranteed or any part thereof. 20
- (iv) the loss defectiveness release or variation of any collateral or other security for the Moneys Hereby Guaranteed or any part thereof or the release of any property from such security or the Company neglecting or failing to recover the Moneys Hereby Guaranteed by the realization of any collateral or other security or otherwise or by any other laches or mistakes by the Company. 30
- (v) any release indulgence time or other consideration granted or shown by the Company to the Borrower or the Guarantor or the Mortgagors or to any other person or any arrangement or composition made by the Company 40

with the Borrower or any other person.

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nental
Corporation Ltd.
and others

10

- (vi) any alteration or variation in the relationship contracts terms or trading amount of advances credit or accommodation or other arrangements between the Company and the Borrower whether or not the Guarantor or the Mortgagors have agreed to or have notice of the same.

30th June
1972.

(continued)

- (vii) The Company refusing further credit accommodation or facilities to the Borrower.

- (viii) any receipt by the Company from or out of the winding up official management receivership composition scheme of arrangement estate assignment or bankruptcy of the Borrower or any person who may be jointly indebted with the Borrower or of a co-guarantor or from the Borrower or any other person whatsoever or

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- (ix) any matter or thing which under the law relating to sureties would but for this provision have the effect of releasing the Guarantor or the Mortgagors from this Guarantee or of discharging this Guarantee.

30

- (i) The Company shall not be concerned to inquire as to the objects or powers of the Borrower or as to the power or authority of any person acting as or purporting to be a director or other officer servant or agent of the Borrower and shall be entitled to assume that all persons acting or purporting to act for or on behalf of the Borrower are duly authorised to do so and the Borrower shall be deemed bound by their acts notwithstanding any want or excess or power or authority or any other defect irregularity or invalidity whatsoever.

40

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& Co. Pty. Ltd.
and Triconti-
nental
Corporation Ltd.
and others
30th June
1972.
(continued)

- (j) This Guarantee shall bind all persons who actually sign the same as guarantors notwithstanding that any other person or persons named herein as the Guarantor and the Mortgagors or intended to guarantee the Moneys Hereby Guaranteed or any part thereof refuse or fail so to do.
- (k) The Guarantor and the Mortgagors hereby waive all rights of suretyship inconsistent with the provisions of this Guarantee. 10
- (l) For the consideration aforesaid and as a separate and independent agreement the Guarantor and the Mortgagors agree with the Company that if the Moneys Hereby Guaranteed are not wholly recoverable from the Guarantor and the Mortgagors under the guarantee hereinbefore contained by reason of any legal disability or incapacity whatsoever of or on the part of the Borrower or by reason of any other law fact or circumstance whatsoever and whether known to the Company or not the Guarantor and the Mortgagors shall indemnify and keep indemnified the Company at all times hereafter against all loss or damage which the Company may suffer or incur by reason of such disability incapacity law fact or circumstance or by reason of the Company being unable to recover payment of the Moneys Hereby Secured. 20 30
- (m) This Guarantee is irrevocable by the Guarantor and the Mortgagors.
- (n) A statement in writing (whether contained in a demand or otherwise) signed by any person authorised as herein provided to sign notices or demands by the Company stating the amount of the Moneys Hereby Guaranteed at the date mentioned in such statement shall be prima facie evidence that such amount is so due and payable and of all the other matters therein set forth without it being necessary to produce any books or vouchers to verify the same. 40

3. Each of the Mortgagors shall within 7 clear days after receiving same from the Company or its Solicitor at their own expense make and execute to the Company and deliver to the Company's solicitors in Sydney a valid and registerable first legal mortgage in fee simple of the lands and hereditaments and of the hotel and premises erected thereon or on some part thereof set out in the said Schedule opposite the name of such Mortgagor as security for the payment by the Borrower the Guarantor and the Mortgagors to the Company of the Moneys Hereby Guaranteed. Such Mortgage shall be in such form and contain such covenants and conditions as the Company's Solicitors may reasonably require including all usual provisions included by such solicitors in Mortgages of a similar nature prepared by them and if appropriate, in their opinion, including the personal covenant of the Mortgagors and a clause excluding the provisions of any present or future Moratorium legislation and also the covenants provisions and conditions set out in the insert sheets annexed hereto marked "A". Until the said Mortgages shall be executed and duly and properly registered the said lands shall be security for and be charged with the payment of the Moneys Hereby Guaranteed to the Company.

4. The Mortgagors shall on the date hereof deposit with the Company the muniments deeds and certificates of title for the lands referred to in the said Schedule as security for the payment by the Guarantor and the Mortgagors to the Company of the Moneys Hereby Guaranteed.

5. The Mortgagors acknowledge and agree that the Company shall at all times be entitled to protect its interest under this Deed by lodging and registering a Caveat against the titles to the lands referred to in the said Schedule.

6. The Mortgagors irrevocably appoint and authorise the Company its successors and assigns and any Director or Secretary of the Company for the time being or such person in New South Wales as is duly authorised so to do by the Company or by any one or more of

Exhibit MH2
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between R.W.
Miller (Holdings)
Ltd. R.W. Miller
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mental
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and others
30th June
1972.
(continued)

Exhibit MH2
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nental
Corporation Ltd.
and others

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(continued)

such officers to be jointly and severally its true and lawful Attorney or Attorneys at any time with or without notice to the Borrower the Guarantor or the Mortgagors to do all acts and things and to execute all instruments and documents which under Clause 8 hereof ought to be done by the Mortgagors and to execute certify complete and register such Mortgages and all matters of and incidental thereto.

1C

7. (a) In pursuance of the agreements contained in these presents the Mortgagors and the Borrower respectively HEREBY CHARGE all and singular the plant, equipment, furniture, furnishings and stock-in-trade both present and future whatsoever and wheresoever situate of and pertaining to the respective Hotels set out opposite the name of the Mortgagors and the Borrower in the said Schedule AND IT IS AGREED AND DECLARED that the charge hereby created shall operate as a fixed charge as regards all plant, equipment, furniture and furnishings and shall operate as a floating security only as regards the said stock-in-trade but so that the respective Mortgagors and the Borrower shall not be at liberty to create any Mortgage or charge in priority to or pari passu with this security except with the prior consent in writing of the Company.

20

30

(b) If the Mortgagors and the Borrower or any one or more of them shall fail to pay to the Company all monies payable and to become payable by the respective Mortgagors and the Borrower to the Company pursuant to these presents as and when such monies become due and payable from time to time pursuant to these presents the Company shall be entitled without any notice to the Mortgagors and the Borrower or any one or more of them to exercise the rights and powers set out and contained in the document annexed hereto and marked with the letter "B" and in the application of that document to these presents the term "Borrower" shall include the

40

Mortgagors and the Borrower and each of them and the word "Lender" shall include the Company.

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nental
Corporation Ltd.
and others

8. The Borrowers the Guarantor and the Mortgagors shall execute and do all such further documents assurances acts and things as the company or its solicitors may reasonable require for more perfectly assuring to the Company the said Mortgages and the said Charge and the full benefit of these presents.

10

30th June

1972.

(continued)

9. These presents shall be governed by and construed in accordance with the laws of the State of New South Wales and the rights and remedies of the parties hereunder shall be determined in accordance with such laws. Each party hereto submits itself to the jurisdiction of the Courts of the State of New South Wales in respect of the interpretation and enforcement of the provisions hereof and hereby waives and agrees not to assert as a defence in any such suit action or proceeding that it is not subject thereto or that such suit action or proceeding may not be brought or is not maintainable in such Courts or that these presents may not be enforced in or by such Courts.

20

10. Any notice to be given to or demand to be made upon the Guarantor Borrower and/or the Mortgagors by or on behalf of the Company shall be duly given if in writing and signed by any director manager secretary deputy or assistant secretary employee or agent of the Company or the solicitors of the Company and may be delivered to the Secretary or any director of the party to which it is to be given or made upon or left at or posted in an envelope or wrapper addressed to the such party at its registered office or at its address set out herein or at its usual place of business last known to the person signing such notice or demand. Such notice or demand if posted as aforesaid shall be deemed to have been received by the party to which it is to be given or made at the expiration of twenty-four hours after the time when the said envelope or wrapper containing the same was posted as

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nental
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and others
30th June
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(continued)

aforesaid notwithstanding that such envelope or wrapper is not in fact delivered to or received by such party. The production of any receipt of the Post Office for the posting by any means of such notice or demand shall be conclusive proof of posting. A Notice given to or demand made on any of the Borrower the Guarantor or the Mortgagors shall constitute notice to or a demand upon all of them.

11. The Borrower the Guarantor and the Mortgagors agree to pay to the Company or its solicitors all the Company's legal costs and expenses of and incidental to any negotiation in respect of the facility hereby granted the preparation execution stamping and registration of these presents and of the said Mortgages and of all other documents entered into pursuant to these presents or the said Mortgage and any investigation of the Mortgagors' title to the lands set out in the said Schedule and all stamp duties and other taxes respectively payable thereon or in respect thereof or on or in respect of the said facility. 10

12. The Company's Solicitors are
- in Melbourne, Messrs. Pavey Wilson Cohen & Carter, and
- in Sydney, Messrs. Smithers Warren & Tobias. 20

13. IT IS HEREBY EXPRESSLY AGREED AND DECLARED that upon payment to the Company of the amount of money set opposite to any of the hotels named hereunder and the giving to the Company of notice in writing that the Mortgagor the owner of such hotel desires such hotel to be released as hereinafter provided the Company shall procure the discharge of the registered legal mortgage over such hotel and the return of the deeds relating thereto to the person entitled thereto and shall indemnify and keep indemnified the Borrower, the Guarantor and the Mortgagors against all liability under such of the bills as the Borrower shall nominate totalling the amount of money paid to the Company as aforesaid. The hotels and the amounts as abovementioned are as follows:- 30 40

Sylvania Hotel	£800,000.
Highway Hotel	300,000.
Fairfield Hotel	350,000.
Sefton Hotel	300,000.
Hume Hotel	400,000.
Riverwood Hotel	350,000.
Oak Flats Hotel	200,000.
Marayong Hotel	150,000.
Mount Druitt Inn	250,000.

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nental
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and others

10 PROVIDED THAT the Company shall not at any
time thereafter be under any obligation to
renew pursuant to Clause 1(d) hereof any of
the said bills nominated as aforesaid.

30th June
1972.
(continued)

14. In this Deed whether hereinbefore or
hereafter occurring the following expressions
shall have the following meanings respectively
except to the extent that such interpretation
shall be excluded by or be repugnant to the
context -

- 20 (a) a reference to any party hereto means
such party and its
- (b) a reference to a number of the parties
hereto shall mean such parties and each
and any of them,
- (c) any obligations covenants agreements or
conditions herein entered into by two or
more of the parties hereto shall bind
them and any two or greater number of them
(as the case may be) jointly and each of
30 them severally,
- (d) "this Guarantee" means the covenants and
agreements contained in Clause 2 hereof
and includes all indemnities Hereby given,
- (e) "the Moneys Hereby Guaranteed" has the
meaning ascribed by Clause 2(a) hereof,
- (f) "Security" includes personal security
guarantee and any security for money
whether or not giving a charge on
property.

1st Defendants
Exhibits

1606.

Exhibit MH2
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nental
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30th June
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(continued)

- (g) Words importing persons shall include corporations,
- (h) Words importing the singular number shall include the plural number and vice versa,
- (i) Words importing any gender shall include the other genders.

IN WITNESS WHEREOF the parties hereto have executed these presents and day and year first hereinbefore written.

THE COMMON SEAL of)
 R.W. MILLER)
 (HOLDINGS) Limited)
 was hereunto affixed)
 by authority of the)
 Board of Directors in)
 the presence of:-)

10

Director.

Secretary.

THE COMMON SEAL of)
 CUMBERLAND COUNTY)
 FREEHOLDS PTY.)
 LIMITED was hereunto)
 affixed by authority)
 of the Board of)
 Directors in the)
 presence of:-)

20

Director.

Secretary.

THE COMMON SEAL of)
PHILLIP FREEHOLDS PTY)
LIMITED was hereunto)
affixed by authority)
of the Board of)
Directors in the)
presence of:-)

Director.

Secretary.

Exhibit MH2
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Miller (Holdings)
Ltd. R.W. Miller
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and Triconti-
mental
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and others

30th June
1972.
(continued)

10

THE COMMON SEAL of)
N.S.W. COUNTRY)
HOTELS PTY. LIMITED)
was hereunto affixed)
by authority of the)
Board of Directors in)
the presence of:-)

Director.

Secretary.

20

THE COMMON SEAL of)
WINTERSLOE INVEST-)
MENTS PTY. LIMITED)
was hereunto affixed)
by authority of the)
Board of Directors)
in the presence of:-)

Director.

Secretary.

30

THE COMMON SEAL of)
WOODVILLE PTY.)
LIMITED was hereunto)
affixed by authority)
of the Board of)
Directors in the)
presence of:-)

Director.

Secretary.

1st Defendants
Exhibits

1608.

Exhibit MH2
Deed of Charge
between R.W.
Miller (Holdings)
Ltd. R.W. Miller
& Co. Pty. Ltd.
and Triconti-
nental
Corporation Ltd.
and others

THE COMMON SEAL of)
MOWBRAY PTY. LIMITED)
was hereunto affixed)
by authority of the)
Board of Directors in)
the presence of:-)

Director.

Secretary.

30th June
1972.
(continued)

THE COMMON SEAL of)
SYLVANIA DEVELOPMENTS)
PTY. LIMITED was)
hereunto affixed by)
authority of the)
Board of Directors)
in the presence of:-)

10

Director.

Secretary.

THE COMMON SEAL of)
SHIPWRIGHTS ARMS)
HOTEL PTY. LIMITED)
was hereunto affixed)
by authority of the)
Board of Directors)
in the presence of:-)

20

Director.

Secretary.

THE COMMON SEAL of)
R.W. MILLER & CO.)
PTY. LIMITED was)
hereunto affixed by)
authority of the)
Board of Directors)
in the presence of:-)

Director.

30

Secretary.

SIGNED SEALED AND)
 DELIVERED in the)
 State of New South)
 Wales for and on)
 behalf of)
 TRICONTINENTAL)
 CORPORATION LIMITED)
 by its Attorney under)
 Power FREDERICK)
 CHARLES KEMPSON)
 KENNETH MORGAN in)
 the presence of:-)

Exhibit MH2
 Deed of Charge
 between R.W.
 Miller (Holdings)
 Ltd. R.W. Miller
 & Co. Pty. Ltd.
 and Triconti-
 nental
 Corporation Ltd.
 and others
 30th June
 1972.
 (continued)

Exhibit MH2

Deed of Charge
between R.W.
Miller (Holdings)
Ltd. R.W. Miller
& Co. Pty. Ltd.
and Triconti-
nental
Corporation Ltd.
and others

30th June
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(continued)

S C H E D U L E

MORTGAGOR COMPANY	HOTEL	TITLES	ENCUMBRANCES
<p><u>Sylvania Developments Limited</u></p>	<p>Sylvania</p>	<p>Volume 9830 Folio 69 Volume 9830 Folio 70 Volume 9830 Folio 68</p>	<p>As to Certificate of Title Vol. <u>9830 Fol. 70</u> K777989 Encumbrance to Tooheys Limited K869705 Lease to Sydney County Council M273122 Lease. M331202 Lease. As to Certificate of Title Vol. <u>9830 Fol. 69</u> Reservations in Crown Grant. Covenant created by Transfer G351633 H627599 Lease. Easement for drainage created by Transfers H917470 and H917471. J945627 Lease. M331202 Lease. As to Certificate of Title Vol. <u>9830 Fol. 68</u> Reservations in Crown Grant.</p>

Exhibit MH2

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Miller (Holdings)
Ltd. R.W. Miller
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nental
Corporation Ltd.
and others

30th June
1972.

(continued)

MORTGAGOR COMPANY	HOTEL	TITLES	ENCUMBRANCES
<u>Phillip Freeholds Pty. Limited</u>	Highway	Volume 7342 Folio 148	Covenant contained in Transfer G664518 K769268 Encumbrance to Tooheys Limited.
<u>Wintersloe Invesments Pty. Limited</u>	Fairfield	Volume 5681 Folio 6 Volume 5681 Folio 7 Volume 6754 Folio 76 Volume 4971 Folio 30	K782355 Encumbrance to Tooheys Limited As to Certificate of Title <u>Volume 6754 Folio 76</u> H798407 Dedication as highway. As to Certificate of Title <u>Volume 4971 Folio 30</u> C886814 Dedication as highway.

1st Defendants
Exhibits

1612.

Exhibit MH2

Deed of Charge
between R.W.
Miller (Holdings)
Ltd. R.W. Miller
& Co. Pty. Ltd.
and Triconti-
nental
Corporation Ltd.
and others

30th June
1972.
(continued)

MORTGAGOR COMPANY	HOTEL	TITLES	ENCUMBRANCES
<u>Mowbray Pty. Limited</u>	Sefton	Volume 3760 Folio 164 Volume 3688 Folio 151 Volume 6328 Folio 177 Volume 6323 Folio 24 Volume 6323 Folio 25 Volume 455 Folio 131 Volume 6841 Folio 65 Volume 7816 Folio 157 Volume 6770 Folio 133	K769138 Encumbrance to Tooheys Limited <u>As to Certificate of Title</u> <u>Volume 6323 Folio 25</u> Covenant contained in Transfer F413367.
<u>Cumberland County</u> <u>Freeholds Pty.</u> <u>Limited</u>	Hume	Volume 6112 Folio 181 Volume 4510 Folio 233 Volume 10398 Folio 225	Reservations of all mines of gold and of silver. Unregistered Encumbrance to Tooheys Limited protected by Caveat K911092.

MORTGAGOR COMPANY	HOTEL	TITLES	ENCUMBRANCES
<u>R.W. Miller (Holdings) Limited</u>	Riverwood	Volume 11621 Folio 132	K769273 Encumbrance to Tooheys Limited.
<u>Shipwrights Arms Hotel Pty. Limited</u>	Oak Flats	Volume 10469 Folio 247	Reservations and conditions if any contained in Crown Grant. K769272 Encumbrance to Tooheys Limited.
<u>N.S.W. Country Hotels Pty. Limited</u>	Marayong	Volume 7922 Folio 196 Volume 6243 Folio 198	K769269 Encumbrance to Tooheys Limited. <u>As to Certificate of Title Volume 6243 Folio 198</u> Exception and reservation contained in Transfer 543607.

Exhibit MH2

Deed of Charge
between R.W.
Miller (Holdings)
Ltd. R.W. Miller
& Co. Pty. Ltd.
and Triconti-
ental
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and others

30th June
1972
(continued)

Exhibit MH2

Deed of Charge
between R.W.
Miller (Holdings)
Ltd. R.W. Miller
& Co. Pty. Ltd.
and Triconti-
nental
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and others

30th June
1972.
(continued)

MORTGAGOR COMPANY	HOTEL	TITLES	ENCUMBRANCES
<u>Woodville Pty. Limited</u>	Mount Druitt Inn	Volume 8447 Folio 20	K768137 Encumbrance to Tooheys Limited.

THIS and the preceding four pages comprise the Schedule referred to in a Deed of Charge made the 30th June, 1972 BETWEEN R.W. MILLER (HOLDINGS) LIMITED, the Companies referred to herein, R.W. MILLER & CO. PTY. LIMITED and TRICONTINENTAL CORPORATION LIMITED.

.....

1st Defendants Exhibits

EXHIBIT M.H.2. (continued)

Exhibit M.H.2.

ANNEXURE 'A' TO DEED OF CHARGE BETWEEN R.W. MILLER (HOLDINGS) LTD. R.W. MILLER & CO. PTY LTD. AND TRICONTINENTAL CORPORATION LTD. OF 30th JUNE 1972.

Annexure A to Deed of Charge between R.W. Miller (Holdings) Ltd. R.W. Miller & Co. Pty. Ltd. and Tricontinental Corporation Ltd. and others dated 30th June 1972

10 THIS and the succeeding pages contain the annexure marked "A" referred to in a Deed of Charge made the 30th June 1972 between R.W. MILLER (HOLDINGS) LIMITED, the Companies referred to in the Schedule thereto, R.W. MILLER & CO. PTY. LIMITED and TRICONTINENTAL CORPORATION LIMITED.

Undated

Sgd.

20 Upon which is erected the Hotel AND for the consideration aforesaid the Mortgagor DOTH HEREBY COVENANT with the Company its successors and assigns: FIRSTLY THAT the Mortgagor will pay to the Company all monies payable and to become payable by the Mortgagor to the Company pursuant to the Principal Deed and the Bills of Exchange therein referred to as and when such monies become due and payable from time to time by the Mortgagor to the Company thereunder. Any default by the Mortgagor in the observance and performance of the covenants provisions and conditions on its part to be observed and performed under the Principal Deed shall be deemed default hereunder and shall entitle the Company to exercise its rights upon default hereinafter contained and the Company shall be entitled to recover pursuant to these presents any amounts which are outstanding from time to time from the Mortgagor to the Company pursuant to the covenants provisions and conditions of the Principal Deed.

40 SECONDLY THAT the Mortgagor will pay interest on the said sum of as provided in the Principal Deed

THIRDLY THAT the Mortgagor will insure in the full insurable value in an Insurance Company approved by the said Company and

Exhibit M.H.2.
Annexure A to
Deed of Charge
between R.W.
Miller (Holdings)
Ltd. R.W.Miller
& Co. Pty. Ltd.
and Tricontinental
Corporation Ltd.
and others
dated 30th June
1972
Undated
(continued)

that in the event of loss the sum recoverable on account of such insurance shall be applicable either in or towards repair or rebuilding or in or towards repayment of the Mortgage Debt at the option of the Company.

FOURTHLY THAT the Mortgagor will during the continuance of this security whether the Company its successors or assigns shall or shall not have entered upon and taken possession of the said mortgaged property pay all rates taxes charges outgoings and assessments (including any land property tax) that may now or at any time be or become payable or chargeable or be assessed or become due upon or in respect of the said mortgaged property or any part thereof under or in pursuance of the provisions of any Statute Act or Ordinance of the said State or any Regulation thereunder now in force or that may come into operation during the continuance of this security. And will at all time indemnify and keep indemnified the Company its successors or assigns from the payment of such rates taxes charges outgoings and assessments and every or any part thereof and from all claims and demands in respect thereof. 10 20

FIFTHLY THAT in case the Mortgagor shall at any time fail to keep the said mortgaged property in good tenantable repair order and condition or to pay such rent rates charges outgoings and assessments as aforesaid it shall be lawful for but not obligatory upon the Company its successors or assigns to effect and maintain such repairs and order and to pay such rent rates taxes charges outgoings and assessments as the case may be and all moneys or payments so expended or made shall be repayable by the Mortgagor upon demand and be deemed principal moneys secured by this security and shall carry interest until repayment at the rate aforesaid. 30

SIXTHLY AND THAT the Mortgagor will if so required by any Licensing Municipal Health Civic or other competent authority do all such work repairs painting and alterations (structural or otherwise) to the demised premises as the Company or such authority shall require. And if the Mortgagor shall omit so to do the Company may do so and recover the expense from the Mortgagor as moneys payable 40

immediately under and secured by these presents

Exhibit M.H.2.
Annexure A to
Deed of Charge
between R.W.
Miller (Holdings)
Ltd. R.W.Miller
& Co.Pty. Ltd.
and Tricontinen-
tal Corporation
Ltd. and others
dated 30th June
1972

SEVENTHLY AND it is hereby agreed without prejudice
to any covenant herein contained or to the
exercise of any other powers and remedies con-
tained or given to the Company that if by any
judgment decree order vote or other cause the
existence of the said Hotel premises as a licensed
Hotel shall become limited to any term then if
such term shall be shorter than the unexpired
10 period herein fixed for redemption the amount
due to the Company by the Mortgagor at the date
of such judgment decree order vote or other
cause shall become payable by equal monthly
instalments extending over the term limited by
such judgment decree order vote or other cause
together with interest at the rate aforesaid on the
amount unpaid the first of such instalments and
interest to be paid on the first day of the month
next succeeding the date of such judgment decree
20 order vote or other cause.

Undated
(continued)

EIGHTHLY THAT in addition to all costs and expenses
which the Mortgagor may be liable at Law or in
Equity to pay in respect of this Security or other-
wise in relation thereto the Mortgagor will upon
demand pay all costs and expenses incurred by the
Company its successors or assigns in consequence
of any default in payment of any principal interest
or other moneys covered by this security all of
which costs and expenses shall from the time of
30 payment or expenditure thereof respectively until
repaid to the Company its successors or assigns
by the Mortgagor be deemed principal money covered
by this security and shall carry interest accord-
ingly.

NINTHLY THAT upon default being made in payment at
the respective times and in the manner hereinbefore
mentioned of the monies hereby secured or any part
thereof or of all and every sum or sums of money due
by the Mortgagor to the Company its successors or
40 assigns as aforesaid or of the interest thereon or
any part thereof or upon default being made in the
observance or performance of any of the covenants
herein contained or implied by the Real Property
Act 1900 or the Conveyancing Act 1919 or if the
Mortgagor shall execute any further assignment of
or security over the premises hereby encumbered
or any part thereof or transfer the said premises
or any part thereof to any other person or corporation

Exhibit M.H.2.
Annexure A to
Deed of Charge
between R.W.
Miller (Holdings)
Ltd. R.W.Miller
& Co.Pty. Ltd.
and Tricontinen-
tal Corporation
Ltd. and others
dated 30th June
1972

Undated

(continued)

without the previous written consent of the Company
or shall become bankrupt or shall have committed
or hereafter commit an act of bankruptcy or shall
compound with his creditors or shall threaten to
take steps to become bankrupt or if execution be
issued against him or his property or if the
Mortgagor being a corporation shall be ordered to
be wound up or go into voluntary liquidation or
if the Mortgagor or the holder for the time being
of the License shall be convicted of any offence
under the then existing Liquor Licensing Gaming
and Betting Pure Food or Public Health Acts or
of any offence a conviction for which may either
alone or in conjunction with one or more convic-
tions of a similar or different offence render the
License of the said Hotel liable to cancellation
the Company its successors or assigns Attorney or
Attorneys shall immediately be at liberty to
exercise any of the powers of a Mortgagee under
the Real Property Act 1900 the Conveyancing Act
1919 or any Act amending the same and as
between the Mortgagor and the Mortgagors
executors administrators or assigns and the
Registrar-General or his Deputy and all persons
whomsoever dealing with or accepting title
under the Company its successors or assigns it
shall be lawful for and the Company its successors
and assigns Attorney or Attorneys is hereby
authorised to enter into possession and
management of the said mortgaged property or any
part thereof and the receipt of the rents and
profits thereof and to make any Lease or Leases
thereof or of any part thereof either with or
without the option of purchase for such period
or periods upon such terms and conditions as the
Company shall think fit and to accept surrenders
and make concessions to or compromise with
tenants upon terms or gratuitously and to
exercise any of the powers of sale entry distress
ejectment and every other power vested in
Mortgagees under the Real Property Act 1900
the Conveyancing Act 1919 or any amendment thereof
or substitution therefor in respect of the
property hereby mortgaged and every part thereof
immediately upon or at any time after default as
hereinbefore mentioned without the necessity of
giving the Mortgagor or the Mortgagor's executors
administrators or assigns any notice or notices
whatsoever as required by the said Act or otherwise
previously to exercising any of such powers and
that it shall not be necessary to prove to the

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Registrar-General or his Deputy that any such default has been made or continues or that the exercise of any such powers as aforesaid was necessary or required and that upon tender for registration of any instrument under the said Act duly executed by the Company its successors or assigns Attorney or Attorneys it shall not be necessary for the Registrar-General or his Deputy to enquire whether any default has been made or continues or whether the power of sale or any other power that may have been exercised as aforesaid has arisen or been properly exercised or into any other matter or thing whatsoever.

Exhibit M.H.2.
Annexure A to
Deed of Charge
between R.W.
Miller(Holdings)
Ltd. R.W.Miller
& Co.Pty. Ltd.
and Tricontinen-
tal Corporation
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TENTHLY THAT upon sale or lease as aforesaid the mortgaged property or any part thereof may be sold or leased together with other land under mortgage from the Mortgagor to the Company whether under the Real Property Act 1900 aforesaid or under the general law by one contract and at one price or at one rent or in any other manner that the Company its successors or assigns may deem expedient.

ELEVENTHLY THAT upon the sale under the power of sale hereinbefore contained the Company its successors or assigns shall be at liberty to allow a purchaser any time for payment of the whole or any part of the purchase money with or without interest and either with or without security therefor.

TWELFTHLY THAT in applying the purchase money towards satisfaction of the moneys for the time being owing on the security hereof the Mortgagor or the Mortgagor's executors administrators or assigns shall be credited only with so much of the said moneys available for that purpose as shall be received in cash by the Company its successors or assigns such credit to date from the time of such receipt and all purchase money left outstanding on credit or otherwise shall until actually received by the Company its successors or assigns in cash be deemed a continuing unsatisfied part of the principal moneys hereby secured and carry interest accordingly provided that any interest paid by the Purchaser shall

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be set off pro tanto against the interest
hereby secured.

THIRTEENTHLY AND the Mortgagor hereby irrevocably
appoints the Company its General Manager and
Secretary for the time being and each of
them the Mortgagor's Attorneys and Attorney
with full power for the Mortgagor and on the
Mortgagor's behalf immediately on or at any
time after default in payment of the moneys
hereby secured or breach or non-performance
of any of the covenants herein contained
and without giving the Mortgagor or the
Mortgagor's executors administrators or
assigns any notice whatever to lease the
whole or any part of the mortgaged property
either with or without the option of purchase
for such period or periods upon such terms
and conditions as the Company shall think
fit without any eviction or interruption by
the Mortgagor or any person whomsoever and
to accept surrenders and make concessions
to or compromise with tenants upon terms or
gratuitously and otherwise with respect
to such tenancies to have all the powers of
an absolute owner.

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FOURTEENTHLY AND the Mortgagor hereby expressly
declares that the Company its successors
and assigns notwithstanding anything in the
Real Property Act 1900 or any amendment thereof
expressed or implied to the contrary shall
have and exercise the same rights of tacking
and consolidating this present security to
and with any other securities given by the
Mortgagor and now or at any time hereafter
during the continuance of the security held
by the Company as the Company its successors
or assigns would have had if this security
and the other securities given by the Mortgagor
had all of them been legal Mortgages of the
Properties held under the general law.

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SIXTEENTHLY THAT the Company its successors
or assigns shall so long as any moneys shall
remain due and owing on this security have
and retain possession of the said Certificate
of Title and of any Title Deeds to be hereafter
issued in substitution therefor.

NINETEENTHLY THAT the Mortgagor or other the Licensee for the time being of the said Hotel on default being made in payment of the moneys hereby secured or any part thereof on the day and time hereinbefore appointed for payment as aforesaid or upon breach of any of the covenants conditions and provisions herein contained at the request of the Company its successors or assigns or its General Manager Secretary or other Officer transfer the Publican's License held in connection with the said Hotel and premises to such person as the Mortgagee Company its successors or assigns or its Manager or Secretary may appoint and for the purpose of transferring such License will appear personally if required at any Licensing Court or before any Magistrate and consent to and by all lawful means facilitate the transfer of such License to any person so appointed as aforesaid.

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TWENTIETHLY AND that the Mortgagor shall not nor will transfer the said land or the Hotel and premises erected thereon for any term of years or shorter term or transfer the same or allow any person or persons to obtain or hold a Publican's License for the said Hotel and premises except he she or they be first approved of in writing by the Company its successors or assigns

TWENTY-FIRSTLY AND that the Mortgagor will keep the said Hotel open as an Hotel or Public House and conduct the said premises in a proper and orderly manner and will not do or omit or permit any act or thing which would render the License thereof liable to be forfeited refused or suspended And that the Mortgagor or the Licensee for the time being of the said Hotel premises will at all times during the said term within seventy-two hours of the receipt by the Mortgagor of any summons or notification hereinafter referred to give written notice to the Company of every summons and conviction against the Mortgagor or affecting the Hotel premises or the Owner Lessee or Licensee thereof under the Liquor Act Gaming and Betting Act Public Health Act Pure Foods Act or any other Statute affecting the Lessee or the Licensee of the licensed premises and also of any notification received

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by the Mortgagor from the Licensing Inspector of the District wherein the said premises are for the time being situate or the Licenses Reduction Board or any other Board or Authority under the Liquor Act of 1912 or any Act or Acts amending the same or from the owner and will not without the written consent of the Company transfer to any person the License of the said Hotel and will do all acts matters and things necessary for keeping such License on foot.

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TWENTY-THIRDLY THAT the Mortgagor will at all necessary times apply for a License or renewal thereof for the said Hotel and will at least fourteen days prior to the date of the first Licensing Court at which such application could be made execute and deliver to the Company two signed forms of such application and duly lodge duplicate originals at the proper offices of the Licensing Court and Licensing Inspector respectively and will not withdraw revoke or oppose such application and will appear at the proper Court and time for the hearing of such application and do the Mortgagor's best to make it succeed and upon its being granted will lodge the Certificate and pay the necessary fee at the Public Treasury or other proper office and take up the License or renewal issued. And if, in the opinion of the Company the Mortgagor shall be in danger of failing to carry out this Clause the Company may take all necessary steps in its own or in the Mortgagor's name to carry out this Clause and the expense of so doing shall be recoverable under these presents as if they were further advances hereunder.

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TWENTY-FOURTHLY THAT for the purpose of enabling the Company more completely at any moment to obtain the benefit of this security it shall be lawful for the Company its successors or assigns or its employees agents or servants at any time or times hereafter subject to any default under any of the covenants conditions or provisions herein contained having been made or not and without giving any previous notice to the Mortgagor of its intention in that behalf to enter upon and take possession of the said Hotel and premises or any part or parts thereof and if necessary to break open the outer and inner

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doors and the windows of the said Hotel and premises in order to obtain admission for that purpose and to retain possession of all or any of the said premises during so long as it or they shall think fit and to seize and take possession (if necessary by force) of the License of the said Hotel and to forcibly eject the Mortgagor or any person or persons from the said Hotel without being responsible for any loss or damage which may arise thereby to the Mortgagor or any other person or persons

TWENTY-FIFTHLY THAT any Promissory Notes bills or cheques or other securities now or hereafter to be held by the Company its successors or assigns shall not either at Law or in Equity be claimed to be merged in the covenant for payment hereinbefore contained but such Promissory Notes Bills or Cheques or any other securities may be sued upon notwithstanding such covenant or anything hereinbefore contained and that notwithstanding that all moneys at any time due hereunder may have been released as hereinbefore provided these presents shall be and continue to be a continuing security for all moneys for the time being owing by the Mortgagor to the Company its successors or assigns notwithstanding any settlement of account or other matter or thing whatsoever anything herein contained to the contrary notwithstanding

TWENTY-SIXTHLY AND the Mortgagor hereby irrevocably appoints the Company its successors or assigns and its General Manager and Secretary for the time being the Mortgagor's true and lawful attorney and attorneys to transfer or cause to be transferred the Publican's License or Licenses to any person or persons whomsoever and to apply for a Certificate of Renewal or for renewal of the said License or Licenses or any duplicate or new License and to sign all notices transfers applications and documents for the purpose of such transfer renewal removal duplicate or new License in the Mortgagor's name or in the name of any person or persons in whose name the said License or Licenses for the time being shall stand and to appear before any Licensing Court or Magistrate and employ a Solicitor or any such Application to consent thereto or apply therefor and to receive all Licenses Certificates and other documents and

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to give valid receipts for same and to pay all fees therefor or connected therewith either to the proper Licensing Authority or to the Colonial Treasurer or to any other person whomsoever and generally to do and perform all such further acts matters and things as shall be necessary or expedient to enable the Company its successors or assigns or its General Manager Secretary or other person to obtain the renewal of any License or any new or duplicate License or the transfer or removal of any License for the said Hotel then existing and in force and to make any other applications under the provisions of the Licensing Act for the time being in force in the said State of New South Wales and to do whatever the Licensee for the time being of the Hotel could do and in the Mortgagor's name or in the name of the person in whose name the said License or Licenses of the said Hotel shall then be to carry on and conduct the business of the said Hotel and to serve in the name of the Licensee thereof to customers all beers spirits wines and liquors under and by virtue of the License for the time being granted to the said Hotel AND the Mortgagor doth hereby ratify allow and confirm and agree to ratify allow and confirm all and whatsoever the said Attorney or Attorneys or his or their Agent or Agents or any of them shall lawfully do or cause to be done under or by virtue of these presents.

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TWENTY-SEVENTHLY provided always and it is hereby agreed and declared that upon any Lease or sale made under the aforesaid powers the Lessee or purchaser shall not be bound or concerned to see or inquire whether such Lease or Sale is consistent with these presents nor be affected by notice that such Lease or sale is made in breach hereof

TWENTY-EIGHTHLY THAT the provisions of Section 106 Sub-Sections 1, 5, 6, 7 and 8 Section 107 Sub-Section 1 and Section III of the "Conveyancing Act 1919" are hereby negatived.

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TWENTY-NINTHLY IT is hereby agreed that whenever the words "the Mortgagor" are used or referred to herein such words or reference shall be held to extend to and include the executors administrators and assigns of the Mortgagor or

person claiming under him and whenever the words "the Company" are used or referred to therein such words or reference shall be held to extend and to include the successors and assigns of the Company. And the word "Sub-Lessee" shall extend to and include the Sub-Lessee or tenant of the Mortgagor and other the tenant or occupier of the said Hotel Premises and the holder of the License thereof and any one or more of them. And the word "License" shall extend to and include the License under the Liquor Act for the time being of the said Hotel premises mentioned herein, And the words "Manager" or "Secretary" shall include Acting Manager or Acting Secretary. And the words importing the masculine gender or singular number shall include females or the plural and the words "Person" and "Sequestration" shall include Company and Winding-up and where the Mortgagors are or become more than one all the Mortgagor's covenants shall be read as joint and several covenants and where such covenants can only be fulfilled by one individual Mortgagor the other Mortgagor or Mortgagors shall be deemed separately or jointly and severally to warrant such fulfilment unless by the context such meaning shall be excluded.

THIRTIETHLY THESE presents are collateral to the Principal Deed of even date herewith

THIRTY-SECONDLY AND IT IS HEREBY AGREED AND DECLARED that any proclamation order regulation or moratorium limiting postponing negating abridging or in anywise affecting the rights remedies and powers of Mortgagees now made or hereafter to be made by under or in pursuance of any Act of the Commonwealth of Australia or of the State of New South Wales now or hereafter passed shall not apply to this security or to the principal interest or other moneys hereby secured and shall not affect prejudice or abridge any of the rights remedies and powers of the Company statutory or otherwise and in particular and without limiting the generality of the foregoing provision it is agreed as a condition of this mortgage that the provisions of the Moratorium Act 1932 and of any Act amending the same are expressly excluded from this mortgage

* with full power for the Mortgagor and on its behalf immediately or at any time after default

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in payment of the moneys hereby secured or
performance of any of the covenants herein
contained

THIRTY-THIRDLY AND the Mortgagor DOTH HEREBY
COVENANT with the Company that if the Mortgagor
shall purchase lease or otherwise acquire any
land or premises adjoining or adjacent to the
land hereby mortgaged whether contiguous thereto
or not and if such land or premises or any
part thereof shall be used in any way in connection 10
with the said Hotel whether included in the
licensed premises thereof or not the Mortgagor
will at his own cost and expense whenever called
upon by the Company so to do execute in favour of
the Company over such land or premises so acquired
or over the Mortgagor's estate or interest
therein a mortgage in similar terms to this
mortgage to secure the amount then owing here-
under repayable in the manner and with interest
as set out herein upon similar terms and 20
conditions to those herein contained so far
as the same shall be applicable AND FURTHER
that in the event of the Mortgagor acquiring
any easement licence or other benefit whether
or not the same shall be or be capable of being
annexed or appurtenant to the land hereby
mortgaged and which shall be used or exercised
for the purpose of or in connection with the
said Hotel the Mortgagor shall at his own
cost and expense whenever called upon by the 30
Company so to do execute such assignment or
other assurance in favour of the Company as the
Company may require to enable such easement
licence or other benefit to be continued to be
used or exercised for the purpose of or in
connection with the said Hotel or otherwise for
the purpose for which the same was acquired.

MEMORANDUM OF ENCUMBRANCES, ETC. HEREINBEFORE
REFERRED TO:

IN WITNESS whereof the Mortgagor hath hereunto
subscribed name 40



1627.
1st Defendants Exhibits
EXHIBIT M.H.2. (continued)

ANNEXURE B TO DEED OF CHARGE BETWEEN R.W. MILLER
(HOLDINGS) LTD. R.W. MILLER & CO. PTY. LTD AND
TRICONTINENTAL CORPORATION LTD. AND OTHERS
DATED 30th JUNE 1972

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10 This is the annexure marked "B" referred to in
Deed of Charge made between R.W. Miller
(Holdings) Limited of the one part, the Companies
set out in the Schedule thereto of the second
part, R.W. Miller & Co. Pty. Limited of the
third part and Tricontinental Corporation Ltd.
of the fourth part.

20 3. THAT at any time and from time to time after
any monies become payable by the Borrower to
the Lender pursuant to the preceding clause
the Lender or its State Manager or State
Secretary for N.S.W. for the time being or
other authorised officer of the Lender may
appoint in writing any person to be a receiver
30 or receiver and manager (hereinafter called
"receiver") of the mortgaged premises and
remove any such receiver and appoint another in
his place and fix the remuneration of any such
receiver at a rate not exceeding ten per centum
of the gross amount of all moneys received by
him: PROVIDED ALWAYS that every such receiver
shall be the agent of the Borrower and the
Borrower alone shall be responsible for his
acts and defaults and such receiver so appoin-
ted shall without any consent on the part of
30 the Borrower have in addition to the powers
conferred upon a receiver appointed under the
provisions of Section 115 of the Conveyancing
Acts 1919-1962 the following powers namely:-

(a) To take possession of collect and get in
the whole of or any part of the mortgaged
premises.

40 (b) To lease in the name of the Borrower or
otherwise the whole or any part of the mortgaged
premises which are leasable from year to year or
for any term of years or for any term less than
a year at such rent and upon such terms and
conditions as to such receiver may seem expedient.

(c) To carry on or concur in carrying on the

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business of the Borrower and to make and effect all repairs purchases and insurances and to do all acts which the Borrower might do in the ordinary conduct of its business for the protection or improvement of the mortgaged premises or any of them or for obtaining income or returns therefrom.

(d) To borrow from any source or sources (including the Lender) any money which may be required for any of the purposes mentioned in the preceding sub-clause (c) hereof and in the name of the Borrower or otherwise to secure any moneys so borrowed by mortgage or charge over the mortgaged premises or any part thereof and so that such mortgage or charge may rank in priority to or pari passu with or after the charge hereby created and so that all moneys borrowed by the receiver under this power shall be deemed to have been borrowed by the Borrower upon the security of these presents and shall bear interest accordingly and shall become part of the moneys hereby secured and no person company or corporation lending money to the receiver shall be bound or entitled to enquire as to the necessity or propriety of any such borrowing or be responsible for the misapplication or non-application of any moneys so borrowed.

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(e) To sell the Borrower's business and assets as a going concern.

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(f) To sell or concur in selling all or any of the mortgaged premises either by public auction or private treaty or tender for cash or on credit and upon such other terms and conditions as such receiver may consider expedient and by deed or other instrument in the name and on behalf of the Borrower or otherwise convey and assure the same to the Purchaser.

(g) To sever fixtures belonging to the Borrower and sell them under the aforesaid power of sale apart from any other part of the mortgaged premises.

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(h) To employ managers solicitors accountants officers agents auctioneers workmen clerks servants and others for all or any of the purposes aforesaid at such salaries or remuneration as the receiver shall think fit.

- (i) To make any arrangement or compromise which such receiver shall think expedient in the interests of the Lender.
- (j) To give receipts for all moneys and other assets which may come to the hands of such receiver in exercise of any power hereby conferred and such receipts shall be sufficient discharges therefor and any person paying or handing over such moneys or other assets shall not be concerned to see to the application thereof.
- (k) To carry out and enforce specific performance of or otherwise obtain the benefit of all contracts entered into or held by the Borrower or entered into in exercise of the powers or authorities hereby conferred.
- (l) To make debtors bankrupt and to wind up companies and to do all things in connection with any bankruptcy or winding up which the receiver shall think necessary for the recovery or protection of the mortgaged premises or any part thereof or for the security of the Lender AND ALSO to appoint any person whether an officer of the Lender or not as a proxy in any bankruptcy or winding up.
- (m) To take proceedings at law or in equity or in bankruptcy in the name of the Borrower or otherwise for all or any of the purposes aforesaid.
- (n) To do all things necessary to perform or observe any of the covenants on the part of the Borrower herein contained.
- (o) To do all such other acts and things without limitation as such receiver shall think expedient in the interests of the Lender.

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4. THAT notwithstanding a receiver may or may not have been appointed as aforesaid it shall be lawful for but not obligatory on the Lender at any time after default by the Borrower in the payment of any moneys hereby secured or in the observance or performance of any covenant or agreement on the part of the Borrower herein or in any security collateral hereto contained and without giving any notice to exercise all or any of the powers authorities and discretions

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conferred on a receiver as aforesaid.

5. THAT all moneys received by any such receiver or by the Lender under or by virtue of these presents shall be applied in manner following namely :-

(a) In payment of all rents rates and taxes and other outgoings.

(b) In keeping down all annual sums or other payments (if any) and the interest on all principal sums (if any) having priority to the charge hereby created. 10

(c) In payment of all costs charges and expenses and outgoings properly incurred in or incidental to the exercise or performance or attempted exercise or performance of any of the powers or authorities hereby conferred.

(d) In payment to the receiver of a commission at the rate agreed upon with the Lender but not exceeding ten per cent on the gross amount of all moneys received by him or at such lower rate as shall be specified in his appointment. 20

(e) In payment to the Lender of the moneys hereby secured. The surplus (if any) shall belong to the Borrower but such surplus shall not carry interest and the receiver or the Lender shall be at liberty to pay the same to the credit of the Borrower's bank account and shall thereupon be under no further liability in respect thereof.

6. THAT the Lender or any officer of the Lender shall be at liberty at any time to complete in favour of the Lender or any appointee of the Lender or any purchaser under the powers hereby given all instruments of whatsoever nature executed by or on behalf of the Borrower in blank and deposited with the Lender as collateral security to these presents and to sign or execute the same as the attorney irrevocable of the Borrower under the power of attorney hereinafter contained. 30 40

7. THAT upon the exercise of any power or authority herein contained or implied no person dealing with the Lender or any receiver appointed as aforesaid or any attorney hereinafter

appointed shall be bound to inquire whether any default has been made by the Borrower hereunder or whether any money remains owing on the security of these presents or otherwise as to the propriety or regularity of the exercise of such power or authority and notwithstanding any impropriety or irregularity therein such exercise shall as far as regards the safety and protection of such person be deemed to be valid and effectual and the remedy of the Borrower in respect of any impropriety or irregularity therein shall be in damages only.

8. THAT in the event of any loss or damage by fire the Lender alone shall have full power to make enforce and compromise every claim in respect of every insurance and to sue for recover receive and give discharges for all insurance moneys whether the policy be in the name of the Lender or of the Borrower or any of them and whether the same shall or shall not cover other property as well as the mortgaged premises or part thereof and every such policy and the insurance moneys payable thereunder shall be held by the Lender as further security for the moneys hereby secured.

9. THAT in applying the purchase money to arise from any sale by the Lender or the receiver hereunder towards satisfaction of the moneys hereby secured the Borrower shall be credited with only such of the said moneys available for that purpose as shall be actually received in cash by the Lender such credit to date from the time of such receipt.

10. THAT a statement in writing signed by the manager secretary accountant or other duly authorised officer of the Lender of the amount due or owing upon or secured by this mortgage at the date mentioned in such statement shall be prima facie evidence that such amount is due or owing or secured.

11. THAT it shall be lawful for the manager or any officer of the Lender or any person authorised by or on behalf of the Lender to enter upon any of the mortgaged premises at all reasonable times to inspect the state and condition thereof and to inspect and take

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copies of or extracts from all books of account vouchers and other documents relating in any way to the business transactions of the Borrower.

12. THAT the Lender by its manager or any officer of the Lender or any person authorised by or on behalf of the Lender shall be at liberty to attend all meetings of the Borrower and to speak at all such meetings on all matters which may be discussed thereat and the Borrower covenants with the Lender that the Borrower will immediately when called upon by the Lender so amend its articles of association as to give the said manager or other officer or person full and lawful authority to attend the same meetings and to speak thereat.

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13. THAT neither the taking of this security nor anything herein contained shall be held to merge discharge postpone or lessen or otherwise prejudice any other security now held or hereafter taken by the Lender for payment of any of the moneys hereby secured or affect any claim or demand which the Lender now has or may hereafter have against any other person whomsoever as surety or otherwise nor shall any other security now held or hereafter taken by the Lender abate or prejudice the powers and provisions herein contained and these presents shall be a continuing security notwithstanding any settlement of account or other matter or thing whatsoever until a final discharge hereof shall have been given to the Borrower.

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14. THAT all things which under or by virtue of this security or of the covenants or agreements herein contained the Lender is empowered to do or the Borrower ought to do may be done by any attorney of the Borrower appointed for such purposes or any of them either in the name of the Lender or of the Borrower or of such attorney AND the Borrower for the consideration aforesaid hereby irrevocably appoints the Lender and the person for the time being or from time to time being the manager or acting manager or secretary or acting secretary for the State of New South Wales respectively of the Lender and the assigns of the Lender severally the attorney of

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the Borrower for the purposes aforesaid with full power for all or any of such purposes to appoint a substitute and including in this power of attorney full power for the attorney if he shall in his discretion think fit so to do to demand sue for recover seize and get in all book debts present and future owing to the Borrower for the time being.

10 15. THAT the powers conferred on a mortgagee by the Conveyancing Acts 1919-1962 shall be in augmentation of the powers herein mentioned and shall be exercisable by the Lender immediately or at any time after default by the Borrower hereunder without any notice or expiration of time under the said Act being necessary AND all other provisions of the said Act shall be deemed to be negatived or varied only so far as they are inconsistent with the terms and provisions herein
20 expressed BUT the Borrower shall not be entitled to exercise the power of basing conferred by Section 106 of the Conveyancing Act 1919-1962 and sub-sections 5, 6, 7 and 8 of that Section shall not apply to any lease by the Lender hereunder.

30 ~~16. THAT the Borrower so far as it has power so to do hereby authorises the Lender and the person for the time being or from time to time being the manager or acting manager or secretary or acting secretary for the State of New South Wales respectively of the Lender and any receiver appointed hereunder in trust for the Lender and the assigns of the Lender jointly and severally at any time after the moneys hereby secured become payable to make calls on the members of the Borrower in respect of the uncalled capital hereby charged and with power to control the making thereof and power to veto transfers of shares and to sue in the name of the Borrower or otherwise for the recovery of moneys due or becoming due in respect of
40 calls and to give valid receipts for such moneys AND the provisions contained in the Articles of Association of the Borrower in regard to calls shall mutatis mutandis apply to calls made under this authority shall be exercisable to the exclusion of the powers of the directors of the Borrower and shall be assignable.~~

50 17. THAT any notice to be given to the Lender hereunder shall be deemed to be duly given if the same be in writing and signed by any officer of the Lender or by its Solicitors or otherwise on behalf of the Lender and be left at or sent through the post office addressed to the Borrower at the registered office or the place of business of the Borrower last known as such to the Lender or its manager or acting manager or secretary or acting secretary for the State of New South Wales respectively or be affixed to some part of the land hereby charged or some building

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Annexure B to
Deed of Charge
between R.W.
Miller (Holdings)
Ltd. R.W. Miller
& Co. Pty. Ltd.
and Tricontinental Corporation
Ltd. and others
dated 30th June
1972

Undated
(continued)

1st Defendants Exhibits

Exhibit M.H.5.

EXHIBIT M.H.5.

Interrogatories set by the 1st Defendant R.W. Miller (Holdings) Ltd. for the Plaintiff Ampol Petroleum Ltd., the answers thereto, Notice to answer interrogatories and the exhibits A, B and C thereto.
1st September 1972

INTERROGATORIES SET BY THE 1ST DEFENDANT R.W. MILLER (HOLDINGS) LTD. FOR THE PLAINTIFF AMPOL PETROLEUM LTD., THE ANSWERS THERETO NOTICE TO ANSWER INTERROGATORIES AND THE EXHIBITS A, B AND C ANNEXED THERETO.

IN THE SUPREME COURT OF NEW SOUTH WALES

EQUITY DIVISION

1240 of 1972

AMPOL PETROLEUM LIMITED Plaintiff

R.W. MILLER (HOLDINGS) LIMITED & OTHERS Defendants 10

R.W. MILLER (HOLDINGS) LIMITED Cross Claimant

AMPOL PETROLEUM LIMITED, BULKSHIPS LIMITED AND EMIL HERBERT PETER ABELES Cross Defendants

VERIFIED STATEMENT IN ANSWER BY PLAINTIFF TO INTERROGATORIES OF FIRST DEFENDANT

The Plaintiff Ampol Petroleum Limited answers the first Defendant's interrogatories specified in Notice filed on 22nd August, 1972, as follows:- 20

1A. On or about 14th January 1972 did Ampol Petroleum Limited cause to be brought into existence the document headed "Proposal for acquisition of shares" a copy whereof is hereunto annexed and marked with the letter "A".

1B. Yes

2A. If the answer to question 1 is in the affirmative who prepared the said document on behalf of Ampol Petroleum Limited. 30

2B. Mr. W.M. Leonard

3A. On or about 14th January 1972 did Ampol Petroleum Limited cause to be brought into existence a document "Proposal for acquisition of

shares - Addendum" a copy whereof is hereunto annexed and marked with the letter "B".

3B. Yes.

4A. If the answer to question 3 is in the affirmative who wrote the said document.

4B. Mr. W.M. Leonard prepared the document.

5A. Was Ampol Petroleum Limited aware :-

a. on 1st December, 1971;

b. on 1st May, 1972;

10 c. on 24th May 1972 that at all times since 26th April, 1971;-

(a) Emil Herbert Peter Abeles (hereinafter called "Abeles") was a director of R.W. Miller (Holdings) Limited.

(b) Abeles was a director of Bulkships Limited

(c) Thomas Nationwide Transport Limited owned one third of the issued capital of Bulkships Limited

20 (d) Abeles had a substantial beneficial interest directly and indirectly in Thomas Nationwide Transport Limited.

5B. (a) Yes.

(b) Yes.

(c) The Plaintiff believed so.

(d) No.

30 6A. Did Ampol Petroleum Limited have any discussions with Abeles prior to 6th July 1972 regarding the possible acquisition jointly or severally by Bulkships Limited and Ampol Petroleum Limited of shares in R.W. Miller (Holdings) Limited not already owned by one or other of them.

6B. Yes.

Exhibit M.H.5.

Interrogatories set by the 1st Defendant R.W. Miller (Holdings) Ltd. for the Plaintiff Ampol Petroleum Ltd., the answers thereto, Notice to answer interrogatories and the exhibits A, B and C thereto
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7A. If the answer to question 6 is in the affirmative :-

- (a) When was such discussion or if more than one each of such discussions held;
- (b) In relation to such discussion or if more than one each of such discussions who, on behalf of Ampol Petroleum Limited, attended the discussion;
- (c) At such discussion or if more than one at each of such discussions what was the substance of the discussion concerning the acquisition of shares in R.W. Miller (Holdings) Limited.

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7B. (a) There were a number of discussions over the period from early May 1971 up to the end of June, 1972.

(b) The said discussions took place on some occasions with Messrs. Leonard or Harris or both or with Messrs. Somerville and Emmett.

20

(c) The substance of these discussions was as follows :

Originally Abeles expressed hope that Ampol Petroleum Limited and Thomas Nationwide Transport Limited could work out a formula to acquire R.W. Miller (Holdings) Limited. Later discussions were had regarding the various offers that had been made for Lady Miller's shares. Abeles stated that he would not take-over Millers because of a promise he had made to the late Sir Roderick Miller. However Abeles would support Ampol Petroleum Limited if it made a take-over offer, subject to certain terms and conditions.

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Early in 1972 Abeles advised what offers had been made for Lady Miller's shares. Abeles advised that Lady Miller had stated she would not sell to Abeles or Tocheys. Discussions then centred around the value of Millers assets. Abeles advised that he believed Lady Miller would sell her

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shares for \$1.75 or \$1.85. Leonard agreed that if Ampol Petroleum Limited bought Lady Miller's shares, then it should immediately make an offer to the other shareholders. Abeles suggested the maximum Ampol should pay for Lady Miller's shares should be \$2.00, but that Ampol should be able to purchase for less.

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Later Leonard advised that Ampol Petroleum Limited had offered \$1.85 per share to Lady Miller. Abeles hinted that he might be making an offer also.

Some days later Abeles asked Leonard whether, if he (Abeles) acquired Lady Miller's shares, Ampol Petroleum Limited would still be interested in talking to him. Leonard stated that he did not think so.

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In February Abeles advised that he had indicated to Mr. Nicholl Snr., that he would be prepared to recommend to the Bulkships Limited Board acceptance of any offer at \$2.40 per share from Lady Miller. Some days later Abeles said that he had an indication from the Bulkships Limited Board that he could accept an offer of up to \$2.50 for Lady Miller's shares. Both agreed that it would be a pity to get into a take-over battle. Both agreed not to proceed further until they discussed whether or not arrangements could be made in respect of acquisition.

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Later Abeles said that whoever acquired Lady Miller's shares should wait some months before making an offer to the rest of the shareholders. Leonard felt that the offer should be made forthwith. Abeles felt that there would be merit in Ampol Petroleum Limited offering \$2.15.

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In or about April 1972 Abeles stated that he was going to inform Nicholl Snr. that Bulkships Limited was "not a buyer at any price."

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Some time in May 1972, discussions were had as to how Ampol Petroleum Limited should proceed to acquire Lady Miller's shares.

Late in June 1972 discussions relating to necessity for joint offer to be made in the future by Ampol and Bulkships to acquire shares other than those already acquired, in Millers. Nothing concluded.

8A. In or about December 1971 did Ampol Petroleum Limited and Abeles hold any discussions concerning shares in R.W. Miller (Holdings) Limited. 10

8B. Yes.

9A. If the answer to question 8 is in the affirmative what was the substance of such discussion.

9B. See 7B (c) (ii) above.

10A. Did Abeles undertake in or about December, 1971 that if Ampol Petroleum Limited made an offer for the acquisition of shares in R.W. Miller (Holdings) Limited then owned by Lady Elizabeth Miller and such offer was accepted and Ampol Petroleum Limited made a subsequent offer to other shareholders of R.W. Miller (Holdings) Limited for their shares then Bulkships Limited would support such offer on condition that Ampol Petroleum Limited would arrange for Bulkships Limited a 60% to 70% interest in the tankers then owned by R.W. Miller (Holdings) Limited. 20 30

10B. Abeles gave no such undertaking to Ampol.

11A. Did Ampol Petroleum Limited and Abeles hold discussions concerning shares in R.W. Miller (Holdings) Limited on or about 6th January 1972.

11B. Yes.

12A. If the answer to question 11 is in the affirmative what was the substance of the discussion.

12B. See 7B (c) (iii) above. 40

- 13A. Did Abeles, acting on behalf of Bulkships Limited, on or about 6th January 1972 inform Ampol Petroleum Limited that Bulkships Limited would acquire 50% of the assets other than tankers of R.W. Miller (Holdings) Limited and would require a 60% interest in the tankers in the event of a takeover of R.W. Miller (Holdings) Limited by Ampol Petroleum Limited.
- 10 13B. No save and except that Abeles advised that in the event that Ampol wished to buy the shares owned by Bulkships Limited in R.W. Miller (Holdings) Limited, Bulkships Limited desired 60% of the equity in the tankers and 50% equity in the other assets of Millers.
- 14A. Did Abeles on or about 6th January, 1972 inform Ampol Petroleum Limited that Bulkships Limited was prepared to enter into a legally binding agreement concerning the division of shares and assets of R.W. Miller (Holdings) Limited between Bulkships Limited and Ampol Petroleum Limited following upon a successful bid by Ampol Petroleum Limited for the shares in R.W. Miller (Holdings) Limited.
- 20
- 14B. No.
- 15A. Did Abeles in 1972 inform Ampol Petroleum Limited that Bellambi Coal was a potential buyer for the colliery interests of R.W. Miller (Holdings) Limited.
- 30 15B. No. But Abeles did indicate Bellambi Coal could be a potential buyer.
- 16A. Did Ampol Petroleum Limited cause to be prepared "Heads of Agreement" of the agreement reached between Ampol Petroleum Limited and Bulkships Limited in 1972.
- 16B. Ampol caused the document "Heads of Agreement" to be prepared but such document did not represent any agreement reached between Ampol Petroleum Limited and Bulkships Limited in 1972.
- 40
- 17A. Was the document hereunto annexed and marked with the letter "C" prepared at the instructions of Ampol Petroleum Limited or jointly on the

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 Interrogatories set by the 1st Defendant R.W. Miller (Holdings) Ltd. for the Plaintiff Ampol Petroleum Ltd., the answers thereto, Notice to answer interrogatories and the exhibits A, B and C thereto (continued)
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instructions of Ampol Petroleum Limited and
Bulkships Limited.

17B. The document was prepared on the instructions
of Ampol Petroleum Limited alone.

18A. Does the said document Annexure "C" correctly
set out the matters discussed between Ampol
Petroleum Limited and Bulkships Limited concerning
R.W. Miller (Holdings) Limited.

18B. No.

19A. Did Abeles represent Bulkships Limited in the 10
negotiations leading to the document Annexure "C"

19B. There were no negotiations which led to the
document Annexure "C".

20A. If the answer to question 19 is in the
negative who represented Bulkships Limited.

20B. Not applicable.

21A. Who represented Ampol Petroleum Limited in
the negotiations leading to the document Annexure
"C".

21B. Not applicable. 20

22A. When and where were the negotiations held
which led to the document Annexure "C".

22B. Not applicable.

23A. Did: (a) Ampol Petroleum Limited;
(b) Bulkships Limited;
ever do anything pursuant to the heads of agreement.

23B. No.

24A. If the answer to question 23 is in the
affirmative:-

(a) What was done; 30

(b) by whom was it done;

(c) when was it done.

24B. Not applicable.

25A. Did Ampol Petroleum Limited make its takeover offer for the shares in R.W. Miller (Holdings) Limited pursuant to an agreement with Bulkships Limited.

25B. No.

26A. Was the agreement between Ampol Petroleum Limited and Bulkships Limited embodied in the said document herunto annexed marked "C" rescinded at any time.

10 26B. The document marked "C" embodied no agreement between Ampol Petroleum Limited and Bulkships.

27A. If the answer to question 26 is in the affirmative who on behalf of Ampol Petroleum Limited and who on behalf of Bulkships Limited agreed to a rescission and when.

27B. Not applicable.

20 28A. What was the substance of the discussions between Mr. W.M. Leonard on behalf of Ampol Petroleum Limited and Sir Ian Potter on behalf of Bulkships Limited on or about 27th June, 1972 concerning shares in R.W. Miller (Holdings) Limited.

28B. There were no discussions between Mr. W.M. Leonard and Sir Ian Potter on or about the 27th June, 1972 concerning shares in R.W. Miller (Holdings) Limited.

29A. Where did the said discussions take place.

29B. Not applicable.

30 30A. Prior to 27th June, 1972 were there any discussions between Ampol Petroleum Limited and Bulkships Limited relating to the takeover by Ampol Petroleum Limited for R.W. Miller (Holdings) Limited shares.

30B. See 7B above. There were other discussions in May and June, 1972.

31A. If the answer to question 30 is in the affirmative:-

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- (a) when did such discussion or if more than one such discussions take place;
- (b) where did such discussion or if more than one such discussions take place;
- (c) between whom on behalf of Ampol Petroleum Limited and Bulkships Limited respectively did such discussion or if more than one such discussions take place;
- (d) what was the substance of such discussion or if more than one of such discussions. 10

31B. (a) See 30B. above.

(b) By telephone.

(c) Between Messrs. Somervaille and Millar;
 Messrs. Leonard and Abeles;

(d) In May, 1972 Millar advised that Bulkships would not accept an offer for its shares in R.W. Miller (Holdings) Limited unless there was a legal contract first entered into relating to a joint venture by both companies. Later in the day, Millar rang and said that Abeles wanted nothing further to do with take-overs because of the Ansett affair and if and when Ampol Petroleum Limited made a bid for Bulkship's shares in R.W. Miller (Holdings) Limited shares, Bulkships Limited would consider it. In June, 1972 Abeles advised that the Board of R.W. Miller (Holdings) Limited had rejected Ampol Petroleum Limited offer. 20

32A. Have Ampol Petroleum Limited and Bulkships Limited had any discussions relating to the disposal following upon a possible successful takeover of the shares in R.W. Miller (Holdings) Limited of the following interests :- 30

- (a) the hotel interests;
- (b) the colliery interests;
- (c) the tanker interests;

of R.W. Miller (Holdings) Limited.

32B. (a) Yes.

(b) Yes.

(c) Yes.

33A. If the answer to the foregoing questions is in the affirmative :-

(a) when was each of such discussions held;

(b) where was each of such discussions held;

(c) between whom on behalf of Ampol Petroleum Limited and Bulkships Limited respectively was each of such discussions held;

(d) what was the substance of each of such discussions.

33B. (a) There were a number of discussions from December, 1971 to late June, 1972.

(b) At a number of places in Sydney. Some were telephone discussions.

(c) Between Messrs. Leonard, Harris, Somervaille, Emmett, Millar and Abeles or some of them.

(d) In December, 1971 Abeles said all assets of R.W. Miller (Holdings) Limited other than the tankers could be sold. He indicated that there were possible buyers for the collieries and hotels. He further indicated that he wished 60% equity in the tankers. Later Abeles said he would be interested in purchasing 60% interest in the tankers and 50% interest in the other assets. Leonard said that there would be merits in retaining the other assets but Abeles said that Bulkships Limited was not so interested although liquidation could take 2 years. Abeles said that Tooheys was interested in the hotels. Leonard said that Ampol might be interested in a 50/50 deal in the tankers but that he felt that his Board would probably not

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accept a 40% interest. Abeles indicated that Belambi Coal could be a potential buyer for the colliery interests. Later Leonard advised Abeles that the 60/40 arrangement with the tankers was unacceptable.

Again later Leonard indicated that there was no use having further discussions because a 60/40 interest was unacceptable to Ampol Petroleum Limited. In or about March, 1972 there was further discussion as to whether a 60/40 interest in the tankers would be acceptable to Ampol Petroleum Limited. No agreement was reached. 10

Late in June Abeles emphasised that Bulkships Limited wanted 60% of the tankers. No agreement was reached.

34A. Has Ampol Petroleum Limited held discussions with anyone concerning the disposal of any of the assets of R.W. Miller (Holdings) Limited following upon a possible successful takeover of the shares in R.W. Miller (Holdings) Limited. 20

34B. Yes.

35A. If the answer to question 34 is in the affirmative :-

- (a) when;
- (b) where;
- (c) between whom on behalf of Ampol Petroleum Limited and with whom were such discussions held; 30
- (d) what was the substance of each of such discussions.

35B. (a) (i) Some time in November 1971.

(ii) Early June 1972.

(b) (i) In Sydney

(ii) In Sydney

(c) (i) Mr. Alce of Tooheys Limited and Mr. A.E. Harris.

- (ii) Mr. Ejiri of Mitsui and Co. and Mr. W.M. Leonard. Exhibit M.H.5.
- (d) (i) Mr. Alce stated that Tooheys Limited could be interested in making a bid in respect of the R.W. Miller (Holdings) Limited hotel interests if Ampol Petroleum Limited acquired a controlling interest in R.W. Miller (Holdings) Limited. Interrogatories set by the 1st Defendant R.W. Miller (Holdings) Ltd. for the Plaintiff Ampol Petroleum Ltd., the answers thereto, Notice to answer interrogatories and the exhibits A, B and C thereto (continued) 1st September 1972
- (ii) Mr. Ejiri stated that when Ampol Petroleum Limited controlled R.W. Miller (Holdings) Limited, Mitsui and Co would be interested in a joint "deal" in reference to the R.W. Miller (Holdings) Limited coal interests even though the coal itself had a reputation in Japan of being of poor quality. There was further discussion as to the past and present management of R.W. Miller (Holdings) Limited and other matters. In reply to a question by Mr. Ejiri as to whether Ampol Petroleum Limited would be interested in such a "deal" Mr. Leonard stated that it was not Ampol Petroleum's intention to dispose of any of the R.W. Miller (Holdings) Limited assets if Ampol could see some profit out of them. During this discussion Mr. Leonard queried the shareholding of the Defendant Duncan and was told by Mr. Ejiri that Duncan "will do as Mitsui tells him" and that this Defendant and his father before him were "virtually employees of Mitsui."

36A. Did Ampol Petroleum Limited prior to the making of its takeover offer make an estimate of the net assets value of shares in R.W. Miller (Holdings) Limited.

36B. Yes.

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37A. If the answer to question 36 is in the affirmative :-
 (a) when was such estimate or if more than one such estimates made;
 (b) by whom was such estimate or if more than one each of such estimates made;
 (c) what was the estimated value or if more than one each of the estimated values.

37B. (a) Between 19/1/72 and 24/1/72.

(b) Mr. N. Malone

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(c) \$2.05 per share.

38A. Did Ampol Petroleum Limited make known to Bulkships Limited its calculations of the estimated value of the net assets backing of shares in R.W. Miller (Holdings) Limited.

38B. No.

39A. Since January, 1972 did Ampol Petroleum Limited make arrangements to borrow any money for the purpose of the acquisition of shares in R.W. Miller (Holdings) Limited.

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39B. Yes.

40A. Has Ampol Petroleum Limited made arrangements for the borrowing of money for the purpose of financing the takeover offer of shares in R.W. Miller (Holdings) Limited made by it in May, 1972.

40B. Yes.

41A. If the answer to either or both questions 39 and 40 is in the affirmative :-

(a) who is the lender;

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(b) on what terms is such finance provided;

(c) from what source is Ampol Petroleum Limited intending to repay the moneys so borrowed.

41B. Bank of New South Wales.

(b) & (c) The Plaintiff objects to answer these interrogatories, on the ground that the same do not relate to any matter in question between the Plaintiff and the First Defendant.

42A. In relation to paragraph 6 of the Statement of Claim is it alleged that the claim of the eighth Defendant :

- (a) to be;
- 10 (b) to act;
- (c) to vote;

as an alternate director of R.W. Miller (Holdings) Limited appointed by Anderson pursuant to the Articles of Association of R.W. Miller (Holdings) Limited is unjustified.

42B. The Plaintiff does not know whether or not the eighth Defendant's (Conway's) claims or any of them are unjustified.

- 20 43A. If the answer to question 42 is in the affirmative what are the facts and circumstances relied upon by the Plaintiff for the assertion that such claim or claims is or are unjustified.

43B. See 42B above.

44A. In relation to paragraph 7 of the Statement of Claim does the Plaintiff allege that the claim of the tenth Defendant :-

- (a) to be;
- (b) to act;
- 30 (c) to vote;

as an alternate director of R.W. Miller (Holdings) Limited appointed by Duncan pursuant to the said Articles is unjustified.

44B. The Plaintiff does not know whether or not the tenth Defendant's (Balhorn's) claims or any of them are unjustified.

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45A. If the answer to question 44 is in the affirmative what are the facts and circumstances relied upon by the Plaintiff for the assertion that such claim or claims is or are unjustified.

45B. See 44B above.

46A. In relation to paragraph 19 of the Statement of Claim was the alleged approval of Bulkships Limited :-

(a) express or implied or partly express or partly implied;

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(b) if express or partly express was it oral or partly oral and/or in writing or partly in writing;

(c) if oral:

(i) who gave it;

(ii) to whom was it given;

(iii) what were its terms.

(d) if in writing or partly in writing please specify the document or documents;

(e) if implied or partly implied what are the facts and circumstances alleged to give rise to the implied approval.

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46B. (a) Express

(b) Oral

(c) (i) Sir Ian Potter on behalf of Bulkships Limited.

(ii) Mr. A.E. Harris on behalf of the Plaintiff.

(iii) Approval to the public announcement in paragraph 19 of the Statement of Claim in the terms therein set out.

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(d) Not applicable

(e) Not applicable.

47A. In relation to paragraph 22(a) of the Statement of Claim what are the facts and circumstances relied on to support the allegation that each of the Defendants had the purpose alleged.

47B. The Plaintiff relies upon the following facts and circumstances in relation to each Defendant.

- 10 (i) The facts and matters set out in the whole of the Statement of Claim herein;
- (ii) The fact that as at the 6th July, 1972, the first Defendant had no urgent and immediate need to raise £10,350,000.00 or other similar sum and that indeed its financial position had improved during the preceding 12 months.
- 20 (iii) The fact that the predominant motive for the purported allotment and the execution of the Deed of Undertaking with the thirteenth Defendant was not the first Defendant's need to raise finance;
- (iv) The haste and speed which accompanied the purported allotment, the execution of the said Deed, the sealing and issue to the thirteenth Defendant of the Share Certificate on the 6th July, 1972;
- 30 (v) The secrecy preceding the announcement by Taylor on the 6th July, 1972 to the Board of Directors of the letters of application and of proposal of that date and of the said Deed of Undertaking from the thirteenth Defendant, notwithstanding the apparent prior knowledge of the same enjoyed by at least Taylor, Balhorn, Conway, Koch, Nicholl and Anderson.
- 40 (vi) The lack of opportunity of full discussion and debate given to the Board of Directors of the first Defendant on the 6th July, 1972 concerning the resolution for the purported allotment and the execution of the said Deed.
- (vii) The refusal of Taylor to adjourn the said meeting to enable Abeles to obtain

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legal representation.

- (viii) The facts and matters as disclosed by the minutes of the Meeting of Directors of the first Defendant and the partial transcript of that meeting held on the 6th July, 1972.
- (ix) The departure by the first Defendant from its normal practice in processing a share allotment by utilization of the services of the fourteenth Defendant, in that the share registry entry form relating to the purported allotment was prepared in the offices of the first Defendant, the Share Certificate was so prepared and sealed in such offices and issued forthwith and directly to the thirteenth Defendant and the completed registry entry form was then forthwith delivered by personal courier to the fourteenth Defendant with instructions for the immediate entry into the branch share register kept by the Defendant. 10
- (x) Letters from the Chairman of Directors of the first Defendant to the Plaintiff, Bulkships Limited and the Stock Exchanges; public announcements made by the first Defendant both before and after the purported allotment etc; discussions by and between representatives of the first Defendant and the thirteenth Defendant; prior to and on the 6th July, 1972; the furnishing of information to the thirteenth Defendant by representatives of the first Defendant. 20
- (xi) Such other facts and matters as may appear from the answers to interrogatories to be filed and served by all the Defendants interrogated and as may be adduced in evidence at the hearing. 30
- 48A. In relation to paragraph 22(b) of the Statement of Claim what are the facts and circumstances relied on to support the allegation that each of the Defendants had the purpose alleged. 40

48B. See 47B above.

49A. In relation to paragraph 22(c) of the Statement of Claim what are the facts and circumstances relied on to support the allegation that each of the Defendants had the purpose alleged.

49B. See 47B above.

10 50A. In relation to paragraph 22(d) of the Statement of Claim what are the facts and circumstances relied on to support the allegation that in the case of each particular Defendant he did not vote bona fide in the interests of R.W. Miller (Holdings) Limited as a whole.

50B. See 47B above.

51A. In relation to paragraph 22(e) of the Statement of Claim what are the facts and circumstances relied upon to support the allegation that the allotment was not made in the interests of R.W. Miller (Holdings) Limited as a whole.

20 51B. See 47B above.

52A. In relation to the alleged statement by Howard Smith Limited :-

- (a) was the alleged statement express or implied or partly express and partly implied;
- (b) if express or partly express was it oral or in writing or partly oral and partly in writing;
- 30 (c) if oral or partly oral when, where and by whom on behalf of Howard Smith and to whom was it made;
- (d) if in writing or partly in writing please specify the document or documents;
- (e) if implied or partly implied what are the facts and circumstances giving rise to the alleged implication.

52B. (a) Partly express and partly implied;

(b) Partly oral and partly in writing;

Exhibit M.H.5.
Interrogatories set by the 1st Defendant R.W. Miller (Holdings) Ltd. for the Plaintiff Ampol Petroleum Ltd., the answers thereto, Notice to answer interrogatories and the exhibits A, B and C thereto
(continued)
1st September 1972

Exhibit M.H.5.
Interrogatories
set by the 1st
Defendant R.W.
Miller (Holdings)
Ltd. for the
Plaintiff Ampol
Petroleum Ltd.,
the answers
thereto, Notice
to answer
interrogatories
and the exhibits
A, B and C
thereto
(continued)
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- (c) This is not known, but it is believed to have been made by Mr. Howard Smith on behalf of the thirteenth Defendant to Mr. Taylor and/or other Directors of R.W. Miller (Holdings) Limited between 27th June, 1972 and 6th July, 1972.
- (d) Letter dated 6th July, 1972 from the Chairman of Directors of the thirteenth Defendant to the Chairman of Directors of the first Defendant. 10
- (e) The Plaintiff also relies upon the memorandum discovered by the thirteenth Defendant dated 5th July, 1972 and the implications arising therefrom; the Deed of Undertaking dated 6th July, 1972 and implications arising therefrom; the minutes of the Meeting of Directors of the first Defendant of 6th July, 1972 and the partial transcript thereof and the implications arising therefrom and such other facts and matters as may appear from answers to interrogatories to be filed and served by all the Defendants interrogated and upon the evidence that may be adduced at the hearing. 20

53A. In relation to paragraph 23 of the Statement of Claim what are the facts and circumstances relied upon to support the allegation in relation to each of the Defendants who voted in favour of the resolution that he voted only for the reason alleged. 30

53B. See 47B above.

54A. In relation to paragraph 23(a) to (c) inclusive please specify in relation to each of the Defendants referred to what are the facts and circumstances relied upon to support the allegation that his purpose was as alleged. 40

54B. See 47B above.

55A. In relation to paragraph 23(d) of the Statement of Claim in relation to each of the said Defendants please specify in what respect

itis alleged that he did not vote bona fide in the interests of R.W. Miller (Holdings) Limited as a whole.

55B. See 47B above.

56A. In relation to paragraph 23(e) of the Statement of Claim please specify in what respect it is alleged that the agreement was not made bona fide in the interests of R.W. Miller (Holdings) Limited as a whole.

10 56B. See 47B above.

57A. In relation to paragraph 24 of the Statement of Claim :-

- (a) were the alleged instructions express or implied or partly express and partly implied;
- (b) if express or partly express were the instructions in writing or partly in writing and/or oral or partly oral and/or partly implied;
- 20 (c) if in writing or partly in writing please specify the writing or writings;
- (d) if oral or partly oral when where and by whom were the instructions given and what were the terms thereof;
- (e) if implied or partly implied what are the facts and circumstances relied upon as constituting the alleged implied instructions;
- 30 (f) what are the facts and circumstances relied upon for the allegation that Balhorn was not acting independently.
- (g) what are the facts and circumstances relied upon for the allegation that Balhorn failed to use his own independent judgment and fiduciary power in the interests of R.W. Miller (Holdings) Limited as a whole.

57B. (a), (b), (c), (d) and (e).

The Plaintiff does not know and is therefore

Exhibit M.H.5.
Interrogatories set by the 1st Defendant R.W. Miller (Holdings) Ltd. for the Plaintiff Ampol Petroleum Ltd. the answers thereto, Notice to answer interrogatories and the exhibits A, B and C thereto
(continued)
1st September 1972

Exhibit M.H.5.
 Interrogatories
 set by the 1st
 Defendant R.W.
 Miller (Holdings)
 Ltd. for the
 Plaintiff Ampol
 Petroleum Ltd.
 the answers
 thereto, Notice
 to answer
 interrogatories
 and the exhibits
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unable to answer these questions at this stage; save and except that the Plaintiff relies upon the matters which appear from the Minutes of the Meeting of Directors of the first Defendant and from the partial transcript of such meeting held on the 6th July, 1972; and further relies upon the answers to interrogatories to be filed and served by all the Defendants interrogated and upon the evidence to be adduced at the hearing.

10

(f) and (g).

The matters set out in the whole of the Statement of Claim; and those matters which appear from the aforesaid Minutes of the Meeting of Directors and from the partial transcript of such meeting held on the 6th July, 1972; the matters set out in 47B above; the answers to interrogatories to be filed and served by all the Defendants interrogated; and upon the evidence to be adduced at the hearing.

20

58A. As to paragraph 25 of the Statement of Claim :-

- (a) what are the facts and circumstances relied upon for the allegation that Abeles was :-
- (i) without any proper justification;
 - (ii) contrary to the articles of association prevented from doing the matters referred to.
- (b) in what respect is it claimed that Abeles was prevented from fully participating in discussion of the resolution;
- (c) what would Abeles have said had he not been allegedly prevented from participating in the discussion referred to as alleged;
- (d) how would Abeles have voted had he not been prevented from voting as alleged.

30

58B. (a) (i) The matters set out in the whole of the Statement of Claim; the Articles of Association of the

40

first Defendant; the matters set out in 47B above; the matters which appear from the aforesaid Minutes of the Meeting of Directors and from the partial transcript of such Meeting held on the 6th July, 1972; the fact that there was no moral or legal justification for such prevention.

Exhibit M.H.5.
Interrogatories set by the 1st Defendant R.W. Miller(Holdings) Ltd. for the Plaintiff Ampol Petroleum Ltd. the answers thereto, Notice to answer interrogatories and the exhibits A, B and C thereto
(continued)
1st September 1972

- 10 (ii) The alleged prevention was contrary to Article 97 of the Articles of Association of R.W. Miller (Holdings) Limited.
- (b) Taylor ruled that Abeles was not entitled to take part in the debate or to vote on the subject; ultimately granted Abeles claim to have legal representation but stated that he "may seek legal advice elsewhere"; refused Abeles' request to adjourn the meeting whilst he sought legal advice elsewhere; permitted the meeting and the discussions to continue whilst Abeles left the room to seek legal advice; and refused Abeles the right to vote on the resolutions.
- 20 (c) The Plaintiff does not know this.
- (d) The Plaintiff does not know this.

30 (Sgd) C.R. Emmett
Plaintiff's Solicitor

FILED: 1st September, 1972.

Exhibit M.H.5.
Interrogatories
set by the 1st
Defendant R.W.
Miller (Holdings)
Ltd. for the
Plaintiff Ampol
Petroleum Ltd.
the answers
thereto, Notice
to answer
interrogatories
and the exhibits
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AFFIDAVIT.

ON the 1st September, 1972, I, ROLLO
MALCOLM BINSTED of 53 Horace Street, St. Ives
in the State of New South Wales, Company
Secretary say on oath :-

1. I am the General Secretary of the
Plaintiff and am authorised to make this
affidavit on its behalf.
2. The answers comprised in 1B to 58B
inclusive of the within Answers to
Interrogatories of the Plaintiff are true
to the best of my knowledge, information and
belief, such Answers being based on my
perusal of the correspondence, records and
files kept by the Plaintiff and from enquiries
of officers of the Plaintiff.

10

SWORN at Sydney before me :-

Sgd. W. Buttron J.P.

A Justice of the Peace in
and for the State of New
South Wales.

20

Sgd. R.M. Binsted.



1657.

1st Defendants Exhibits
Exhibit MH5 - (continued)

Notice to answer Interrogatories
Delivered to the Plaintiff Ampol Petroleum
Ltd. by the 1st Defendant R.W. Miller
(Holdings) Ltd. 22nd August 1972.

Exhibit MH5

Notice to
answer
Interrogatories
Delivered to
the Plaintiff
Ampol Petroleum
Ltd. by the
1st Defendant
R.W. Miller
(Holdings) Ltd.
22nd August 1972

IN THE SUPREME COURT)
OF NEW SOUTH WALES }
EQUITY DIVISION }

1240 of 1972

AMPOL PETROLEUM LIMITED
Plaintiff

10

R.W. MILLER (HOLDINGS) LIMITED &
OTHERS Defendants

R.W. MILLER (HOLDINGS) LIMITED
Cross Claimant

AMPOL PETROLEUM LIMITED, BULKSHIPS
LIMITED and EMIL HERBERT PETER ABELES
Cross Defendants

NOTICE TO ANSWER INTERROGATORIES DELIVERED
TO THE PLAINTIFF BY THE FIRST DEFENDANT

20

Pursuant to the Order of the Honourable Mr.
Justice Street made 18th July, 1972 the Plaintiff/
Cross Defendant Ampol Petroleum Limited is required
to answer Interrogatories numbered 1 to 58 and
verify its answers on or before 29th August, 1972.

INTERROGATORIES

30

1. On or about 14th January, 1972 did Ampol
Petroleum Limited cause to be brought into
existence the document headed "Proposal for
acquisition of shares" a copy whereof is hereunto
annexed and marked with the letter "A".

2. If the answer to question 1 is in the affirma-
tive who prepared the said document on behalf of
Ampol Petroleum Limited.

3. On or about 14th January, 1972 did Ampol
Petroleum Limited cause to be brought into
existence a document "Proposal for acquisition of
shares - Addendum" a copy whereof is hereunto
annexed and marked with the letter "B".

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4. If the answer to question 3 is in the affirmative who wrote the said document.

5. Was Ampol Petroleum aware:-

- a. on 1st December, 1971;
- b. on 1st May, 1972;
- c. on 24th May, 1972 that at all times since 26th April, 1971:-
 - (a) Emil Herbert Peter Abeles (hereinafter called "Abeles") was a director of R.W. Miller (Holdings) Limited. 10
 - (b) Abeles was a director of Bulkships Limited
 - (c) Thomas Nationwide Transport Limited owned one third of the issued capital of Bulkships Limited
 - (d) Abeles had a substantial beneficial interest directly and indirectly in Thomas Nationwide Transport Limited.

6. Did Ampol Petroleum Limited have any discussions with Abeles prior to 6th July, 1972 regarding the possible acquisition jointly or severally by Bulkships Limited and Ampol Petroleum Limited of shares in R.W. Miller (Holdings) Limited not already owned by one or other of them. 20

7. If the answer to question 6 is in the affirmative:-

- (a) when was such discussion or if more than one each of such discussions held;
- (b) in relation to such discussion or if more than one each of such discussions who, on behalf of Ampol Petroleum Limited, attended the discussion; 30
- (c) at such discussion or if more than one at each of such discussions what was the substance of the discussion concerning the acquisition of shares in R.W. Miller (Holdings) Limited.

8. In or about December, 1971 did Ampol Petroleum Limited and Abeles hold any discussions concerning shares in R.W. Miller (Holdings) Limited.

9. If the answer to question 8 is in the affirmative what was the substance of such discussion.

Exhibit MH5

10. Did Abeles undertake in or about December, 1971 that if Ampol Petroleum Limited made an offer for the acquisition of shares in R.W. Miller (Holdings) Limited then owned by Lady Elizabeth Miller and such offer was accepted and Ampol Petroleum Limited made a subsequent offer to other shareholders of R.W. Miller (Holdings) Limited for their shares then Bulkships Limited would support such offer on condition that Ampol Petroleum Limited would arrange for Bulkships Limited a 60% to 70% interest in the tankers then owned by R.W. Miller (Holdings) Limited.

Notice to
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1st Defendant
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(continued)

22nd August 1972

11. Did Ampol Petroleum Limited and Abeles hold discussions concerning shares in R.W. Miller (Holdings) Limited on or about 6th January, 1972.

12. If the answer to question 11 is in the affirmative what was the substance of the discussion.

20 13. Did Abeles, acting on behalf of Bulkships Limited, on or about 6th January, 1972 inform Ampol Petroleum Limited that Bulkships Limited would acquire 50% of the assets other than tankers of R.W. Miller (Holdings) Limited and would require a 60% interest in the tankers in the event of a takeover of R.W. Miller (Holdings) Limited by Ampol Petroleum Limited.

30 14. Did Abeles on or about 6th January, 1972 inform Ampol Petroleum Limited that Bulkships Limited was prepared to enter into a legally binding agreement concerning the division of shares and assets of R.W. Miller (Holdings) Limited between Bulkships Limited and Ampol Petroleum Limited following upon a successful bid by Ampol Petroleum Limited for the shares in R.W. Miller (Holdings) Limited.

40 15. Did Abeles in 1972 inform Ampol Petroleum Limited that Bellambi Coal was a potential buyer for the colliery interests of R.W. Miller (Holdings) Limited.

16. Did Ampol Petroleum Limited cause to be prepared "Heads of Agreement" of the agreement reached between Ampol Petroleum Limited and Bulkships Limited in 1972.

Exhibit MH5

 Notice to
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 (continued)
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17. Was the document hereunto annexed and marked with the letter "C" prepared at the instructions of Ampol Petroleum Limited or jointly on the instructions of Ampol Petroleum Limited and Bulkships Limited.

18. Does the said document Annexure "C" correctly set out the matters discussed between Ampol Petroleum Limited and Bulkships Limited concerning R.W. Miller (Holdings) Limited.

19. Did Abeles represent Bulkships Limited in the negotiations leading to the document Annexure "C". 10

20. If the answer to question 19 is in the negative who represented Bulkships Limited.

21. Who represented Ampol Petroleum Limited in the negotiations leading to the document Annexure "C".

22. When and where were the negotiations held which led to the document Annexure "C".

23. Did: (a) Ampol Petroleum Limited;
 (b) Bulkships Limited; ever do anything pursuant to the heads of agreement. 20

24. If the answer to question 23 is in the affirmative:-

- (a) what was done;
- (b) by whom was it done;
- (c) when was it done.

25. Did Ampol Petroleum Limited make its takeover offer for the shares in R.W. Miller (Holdings) Limited pursuant to an agreement with Bulkships Limited.

26. Was the agreement between Ampol Petroleum Limited and Bulkships Limited embodied in the said document hereunto annexed marked "C" rescinded at any time. 30

27. If the answer to question 26 is in the affirmative who on behalf of Ampol Petroleum Limited and who on behalf of Bulkships Limited agreed to a rescission and when.

28. What was the substance of the discussions

between Ampol Petroleum Limited and Sir Ian Potter on behalf of Bulkships Limited on or about 27th June, 1972 concerning shares in R.W. Miller (Holdings) Limited.

Exhibit MH5

Notice to answer Interrogatories Delivered to Plaintiff Ampol Petroleum Ltd. by the 1st Defendant R.W. Miller (Holdings) Ltd. (continued)
22nd August 1972

29. Where did the said discussions take place.

30. Prior to 27th June, 1972 were there any discussions between Ampol Petroleum Limited and Bulkships Limited relating to the takeover by Ampol Petroleum Limited for R.W. Miller (Holdings) Limited shares.

10

31. If the answer to question 30 is in the affirmative:-

- (a) when did such discussion or if more than one such discussions take place;
- (b) where did such discussion or if more than one such discussions take place;
- (c) between whom on behalf of Ampol Petroleum Limited and Bulkships Limited respectively did such discussion or if more than one such discussions take place;
- (d) what was the substance of such discussion or if more than one of such discussions.

20

32. Have Ampol Petroleum Limited and Bulkships Limited had any discussions relating to the disposal following upon a possible successful takeover of the shares in R.W. Miller (Holdings) Limited of the following interests:-

- (a) the hotel interests;
- (b) the colliery interests;
- (c) the tanker interests;

30

of R.W. Miller (Holdings) Limited.

33. If the answer to the foregoing question is in the affirmative:-

- (a) when was each of such discussions held;
- (b) where was each of such discussions held;
- (c) between whom on behalf of Ampol Petroleum

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Limited and Bulkships Limited respectively
 was each of such discussions held;

(d) what was the substance of each of such
 discussions.

34. Has Ampol Petroleum Limited held discussions
 with anyone concerning the disposal of any of the
 assets of R.W. Miller (Holdings) Limited following
 upon a possible successful takeover of the shares
 in R.W. Miller (Holdings) Limited.

35. If the answer to question 34 is in the
 affirmative:-

10

- (a) when;
- (b) where;
- (c) between whom on behalf of Ampol Petroleum
 Limited and with whom were such discussions
 held;
- (d) what was the substance of each of such
 discussions.

36. Did Ampol Petroleum Limited prior to the making
 of its takeover offer make an estimate of the net
 assets value of shares in R.W. Miller (Holdings)
 Limited.

20

37. If the answer to question 36 is in the
 affirmative:-

- (a) when was such estimate or if more than one
 such estimates made;
- (b) by whom was such estimate or if more than one
 each of such estimates made;
- (c) what was the estimated value or if more than
 one each of the estimated values.

30

38. Did Ampol Petroleum Limited make known to
 Bulkships Limited its calculations of the estimated
 value of the net assets backing of shares in R.W.
 Miller (Holdings) Limited.

39. Did Ampol Petroleum Limited make arrangements
 to borrow any money for the purpose of the acquisition
 of shares in R.W. Miller (Holdings) Limited.

40. Has Ampol Petroleum Limited made arrangements
 for the borrowing of money for the purpose of

financing the takeover offer of shares in R.W. Miller (Holdings) Limited made by it in May, 1972.

Exhibit ME5

41. If the answer to either or both questions 39 and 40 is in the affirmative:-

Notice to answer Interrogatories Delivered to Plaintiff Ampol Petroleum Ltd. by the 1st Defendant R.W. Miller (Holdings) Ltd. (continued)

- (a) who is the lender;
- (b) on what terms is such finance provided;
- (c) from what source is Ampol Petroleum Limited intending to repay the moneys so borrowed.

10 42. In relation to paragraph 6 of the Statement of Claim is it alleged that the claim of the eighth Defendant:-

22nd August 1972

- (a) to be;
- (b) to act;
- (c) to vote;

as an alternate director of R.W. Miller (Holdings) Limited appointed by Anderson pursuant to the Articles of Association of R.W. Miller (Holdings) Limited is unjustified.

20 43. If the answer to question 42 is in the affirmative what are the facts and circumstances relied upon by the Plaintiff for the assertion that such claim or claims is or are unjustified.

44. In relation to paragraph 7 of the Statement of Claim does the Plaintiff allege that the claim of the tenth Defendant:-

- (a) to be;
- (b) to act;
- (c) to vote;

30 as an alternate director of R.W. Miller (Holdings) Limited appointed by Duncan pursuant to the said Articles is unjustified.

45. If the answer to question 44 is in the affirmative what are the facts and circumstances relied upon by the Plaintiff for the assertion that such claim or claims is or are unjustified.

46. In relation to paragraph 19 of the Statement of Claim was the alleged approval of Bulkships Limited:-

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- (a) express or implied or partly express and partly implied;
- (b) if express or partly express was it oral or partly oral and/or in writing or partly in writing;
- (c) if oral:
 - (i) who gave it;
 - (ii) to whom was it given;
 - (iii) what were its terms.
- (d) if in writing or partly in writing please specify the document or documents; 10
- (e) if implied or partly implied what are the facts and circumstances alleged to give rise to the implied approval.

47. In relation to paragraph 22(a) of the Statement of Claim what are the facts and circumstances relied on to support the allegation that each of the Defendants had the purpose alleged.

48. In relation to paragraph 22(b) of the Statement of Claim what are the facts and circumstances relied on to support the allegation that each of the Defendants had the purpose alleged. 20

49. In relation to paragraph 22(c) of the Statement of Claim what are the facts and circumstances relied on to support the allegation that each of the Defendants had the purpose alleged.

50. In relation to paragraph 22(d) of the Statement of Claim what are the facts and circumstances relied on to support the allegation that in the case of each particular Defendant he did not vote bona fide in the interests of R.W. Miller (Holdings) Limited as a whole. 30

51. In relation to paragraph 22(e) of the Statement of Claim what are the facts and circumstances relied upon to support the allegation that the allotment was not made in the interests of R.W. Miller (Holdings) Limited as a whole.

52. In relation to the alleged statement by Howard Smith Limited:-

- (a) was the alleged statement express or implied or partly express and partly implied;
- (b) if express or partly express was it oral or in writing or partly oral and partly in writing;
- (c) if oral or partly oral when, where and by whom on behalf of Howard Smith and to whom was it made;
- (d) if in writing or partly in writing please specify the document or documents;
- (e) if implied or partly implied what are the facts and circumstances giving rise to the alleged implication.

Exhibit MH5

Notice to answer Interrogatories delivered to Plaintiff Ampol Petroleum Ltd. by the 1st Defendant R.W. Miller (Holdings) Ltd. (continued)
22nd August 1972

10

20

53. In relation to paragraph 23 of the Statement of Claim what are the facts and circumstances relied upon to support the allegation in relation to each of the Defendants who voted in favour of the resolution that he voted only for the reason alleged.

54. In relation to paragraph 23(a) to (c) inclusive please specify in relation to each of the Defendants referred to what are the facts and circumstances relied upon to support the allegation that his purpose was as alleged.

30

55. In relation to paragraph 23(d) of the Statement of Claim in relation to each of the said Defendants please specify in what respect it is alleged that he did not vote bona fide in the interests of R.W. Miller (Holdings) Limited as a whole.

56. In relation to paragraph 23(e) of the Statement of Claim please specify in what respect it is alleged that the agreement was not made bona fide in the interests of R.W. Miller (Holdings) Limited as a whole.

57. In relation to paragraph 24 of the Statement of Claim:-

- (a) were the alleged instructions express or

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 Ltd. by the
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 22nd August 1972

- implied or partly express and partly implied;
- (b) if express or partly express were the instructions in writing or partly in writing and/or oral or partly oral and/or partly implied;
 - (c) if in writing or partly in writing please specify the writing or writings;
 - (d) if oral or partly oral when where and by whom were the instructions given and what were the terms thereof;
 - (e) if implied or partly implied what are the facts and circumstances relied upon as constituting the alleged implied instructions; 10
 - (f) what are the facts and circumstances relied upon for the allegation that Balhorn was not acting independently;
 - (g) what are the facts and circumstances relied upon for the allegation that Balhorn failed to use his own independent judgment and fiduciary power in the interests of R.W. Miller (Holdings) Limited as a whole. 20

58. As to paragraph 25 of the Statement of Claim:-

- (a) what are the facts and circumstances relied upon for the allegation that Abeles was:-
 - (i) without any proper justification;
 - (ii) contrary to the articles of association prevented from doing the matters referred to;
- (b) in what respect is it claimed that Abeles was prevented from fully participating in discussion of the resolution; 30
- (c) what would Abeles have said had he not been allegedly prevented from participating in the discussion referred to as alleged;
- (d) how would Abeles have voted had he not been prevented from voting as alleged.

(Signed) JOHN CAMERON
 Solicitor for the Defendant,
 R.W. Miller (Holdings) Limited

1667.

1st Defendants Exhibits

Exhibit MH5 (continued)

Annexure A to Notice to answer interrogatories delivered to the Plaintiff Ampol Petroleum Ltd. by the 1st Defendant R.W. Miller (Holdings)Ltd. dated 14th January 1972

January 14, 1972

STRICTLY CONFIDENTIAL

PROPOSAL FOR ACQUISITION OF SHARES

Exhibit MH5

Annexure A to Notice to answer interrogatories delivered to the Plaintiff Ampol Petroleum Ltd. by the 1st Defendant R.W. Miller (Holdings) Ltd. 14th January 1972

10 HISTORY

For some considerable time, Ampol has been aware of the value to it of the R.W. Miller tanker fleet.

Under the Government's Maritime Tanker Policy, the "Amanda Miller" and the "Robert Miller" (now under construction), rank in priority for usage on the Australian coast immediately after the "P.J. Adams". Whilst the existing policy remains, they have guaranteed usage at very profitable rates.

20 The "Amanda Miller" currently is under charter to an oil industry consortium (excluding Shell and Ampol) for a 3 year term. The second tanker, under construction, Shell wishes to charter exclusively.

Prior to his death, tentative discussions took place with Sir Roderick Miller, reference pooling of our combined tanker fleets to gain the maximum financial benefits for each party. His death shortly after these discussions prevented any finality.

30 Sir Peter Abeles, Managing Director of T.N.T., and a very large and valuable customer to Ampol for some 20 years, acquired on behalf of his Company, a 25% interest in R.W. Miller & Co. It was his intention to make a takeover offer to the rest of the shareholders, but this did not receive the support of Sir Roderick Miller, who took successful defensive action. T.N.T. were then "locked in" with their 25% interest. Subsequently, T.N.T. transferred their shares to Bulkships Limited. This Company is owned one-third each by T.N.T.,
40 Adelaide Steamship Co. Limited and McIlwraith McEachern Ltd.

Exhibit MH5
 —
 Annexure A to
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 Ltd. by the
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 (continued)

Over the last 12 months or so, Sir Peter Abeles has had two or three discussions with me regarding the possibility of Bulkships and Ampol Petroleum acquiring the balance of the shares in R.W. Miller, on some mutually agreed plan. Bulkships' interests too, are primarily in the tankers. We expressed interest and said that we would be willing to progress such an idea when the opportunity presented itself.

Early in December, Sir Peter Abeles informed me that 10
 Shell were interested in the tankers and had made an approach to Lady Miller to acquire a half interest in these vessels. At about the same time, we learned from another source that H.C. Sleight had made an offer to purchase Lady Miller's 26% interest in the Company, and this was conveyed to Abeles.

He informed us that Lady Miller had been prevaricating but he felt now that she was willing to sell her shares for cash and he believed that if Ampol and Bulkships were going to do anything, they should move fast. 20

He undertook that if Ampol made an offer for her shares and was successful, and then made an offer to the rest of the shareholders, he would undertake to support the offer, in consideration of Bulkships acquiring a 60-70% interest in the tankers. He made the point that he wanted a majority interest to reveal the tanker company as a subsidiary of his Company. 30

On being questioned as to why he could not acquire Lady Miller's shares himself, and then complete the takeover of the Company, Abeles replied that, under no circumstances, would Lady Miller sell the shares to him, or to any Company with which he was connected. Also, he would honour a promise he gave to Sir Roderick before his death, that in return for being appointed to the Board of R.W. Miller, he would not make any further attempts to take over the Company. 40

Subsequently, we confirmed from another source the fact that Lady Miller would not sell her shares to him.

On Friday, December 17, we were approached by

Mr. Parker (a partner in Abbott Tout Creer & Wilkinson), who is the advisor to Lady Miller.

Parker stated that, on his advice, Lady Miller had decided to sell her shares. There had been approaches already to Lady Miller to buy her shares, one of whom was H.C.Sleigh, through John Darling & Company.

10 If Ampol were interested in the acquisition of her shares, and provided the price was right, then she would prefer to sell to Ampol.

She would prefer cash.

We advised that we were definitely interested in looking at the possibility of making an offer and he suggested that we should do so about mid January or a little later.

He also added that no other offer would be accepted until such time as we made ours, if it were done within that time.

20 A brief discussion occurred in respect of the possibility of Lady Miller reinvesting some of this cash with Ampol with a debenture as security.

30 On January 6, Sir Peter Abeles had a further discussion with us. He confirmed that if Ampol were still interested in acquiring, first Lady Miller's shares, and then the balance, he, on behalf of Bulkships, would be willing to acquire 50% of the assets other than the tankers (and put up the equivalent amount of cash), but he would want a 60% interest in the tankers. He reiterated that Bulkships really wanted 100% and he had had great difficulty in convincing the Chairman of Bulkships, Sir Ian Potter, to release 40% equity to us, and he felt that was as far as he could go.

He was prepared to enter into legal agreements before we made the bid, putting into effect, these arrangements.

40 He added that the tankers were really the only interest to him and that, over a period of years, his Company's attitude to their 50% ownership of other assets, would be to dispose of them and ultimately liquidate the Company. He believed this could be done at a handsome profit.

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He believed that Lady Miller's shares could be bought for \$1.75 per share, and was of the opinion that we should follow on immediately with a similar takeover offer to other shareholders.

He indicated also that if Bulkships were to sell their 25% interest to us, then they would want the price they paid for them - i.e. \$1.87 per share.

Abeles also advised that the other bidder for Lady Miller's shares was a Sydney firm, Industrial Estates Limited, who have made an unconditional offer to buy Lady Miller's shares at \$1.70 per share.

10

Prior to this discussion (on December 22), we had preliminary discussions with Messrs. Johnston, Abercrombie, Traxton and Paynter of J.B. Were (reference, the financing of the purchase of the Company), and these discussions were continued on January 10, 1972, in Sydney with Messrs. Johnston and Traxton.

Discussions centred round the best means of our achieving our objective, and there seemed to be two avenues open to us:

20

- (1) To buy the shares held by Lady Miller first and then negotiate with Bulkships, or alternatively
- (2) Negotiate with Abeles and enter into a binding arrangement between Bulkships and Ampol, and then make an offer to Lady Miller and the rest of the shareholders.

It was found that (2) above was impracticable because, under the new Companies Act, any agreement entered into prior to an offer, would be a material contract and would have to be divulged. In that event, it was clear Lady Miller would not accept our offer because of her antipathy towards Abeles. The impracticability has been subsequently confirmed by legal opinion.

30

It seems clear therefore, that if we wish to pursue the matter, we must first acquire Lady Miller's shares and, at some later date, acquire the remainder of the Capital, with or without a prior agreement with Bulkships.

40

Finally, a discussion was held with the Bank of New South Wales in which cash flows were presented - these are attached as Attachment (1) - and will be discussed under the Financial Section.

It is enough to say, at this stage, that the Bank will give us stand-by credit arrangements if required, to finance the purchase of Lady Miller's shares.

FINANCIAL

10 Attachment (2) is the Consolidated Balance Sheet of R.W. Miller Holdings Limited and Subsidiary Companies at June 30, 1971, which shows a net asset value of \$16,262,000, representing \$1.81 per share.

We have updated this balance sheet from information we have acquired, and is summarised hereunder:

Fixed Assets

20	: Freehold and Leasehold Property (mainly Hotels) \$18,000,000 (These assets were revalued after the balance sheet and announced by the Board of R.W. Miller just before Christmas. We have confirmation of this valuation because Mr. Clubb, before he joined Ampol, did the valuation).
30	: Ships, Plant, etc. \$ 3,000,000 (We have written this asset down substantially because it is primarily the coal interests, which we have estimated will probably not produce more than this amount).
	: Tanker \$10,000,000
	Total Fixed Assets <u>\$31,000,000</u>
	Investments and Loans \$ 3,000,000
	Current Assets <u>\$ 6,000,000</u>
	\$40,000,000

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B/F	\$40,000,000
<u>Less:</u>	
<u>Liabilities</u>	
: Long Term Liabilities	\$10,000,000
: Current Liabilities	<u>\$12,000,000</u>
	<u>\$22,000,000</u>
<u>NET ASSET VALUE</u>	<u>\$18,000,000</u>
<u>OR APPROXIMATELY</u>	<u>\$2.00 PER SHARE</u>

In addition to these assets, there is another tanker currently under construction worth between \$10 and \$11 million when completed, and for which finance we believe has been arranged under similar terms for the first tanker, i.e. a loan of 75-80% of the total value, for 5 years. 10

It must be emphasized, of course, there has been no access to the books of R.W. Miller and it is an assessment based on some known facts and information gleaned from various sources, and cross-checked.

In regard to Hotels, Tooheys Limited have an exclusive franchise to supply bulk beer, but spirits and bottled beer are specifically excluded. Millers have a liquor agency which supplies these products. 20

We know from discussions with the Assistant General Manager of Tooheys, that they are anxious to make a further deal in respect of these hotels to cover all supplies, and possibly the acquisition of some sites.

In respect of the coal interests, we have been very conservative and written this down heavily, but believe, in time, we could sell these interests at a price higher than our estimates, as Sir Peter Abeles informs us that Bellambi Coal is a potential buyer. The coal interests consist of collieries, colliers and a road distribution system. 30

AMPOL GROUP
PROJECTION OF CASH BALANCES AND OVERDRAFT AVAILABILITY
JANUARY 1972 TO DECEMBER 1972

	£'000's				O/D LIMIT £	O/D AVAILABLE £
	AMPOL £	AMPOLEX £	GROUP £	GROUP £		
<u>Est. Balance</u>						
End January 1972	(6,362)	353	(6,009)	7,000	991	
February 1972	(6,699)	2,338	(4,361)	7,000	2,639	
March 1972	(7,186)	4,649	(2,537)	7,000	4,463	
April, 1972	(8,799)	4,813	(3,986)	7,000	3,014	
May, 1972	(10,003)	4,959	(5,044)	7,000	1,956	
June 1972	(7,279)	3,805	(3,474)	7,000	3,526	
July 1972	(6,115)	3,944	(2,171)	7,000	4,829	
August 1972	(8,274)	4,067	(4,207)	7,000	2,793	
September 1972	(6,922)	4,165	(2,757)	7,000	4,243	
October 1972	(7,034)	4,357	(2,677)	7,000	4,323	
November 1972	(6,364)	4,522	(1,842)	7,000	5,158	
December 1972	(6,429)	3,446	(2,983)	5,500	2,517	

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NOTES:

1. Ampolex has \$5.4 million invested in short term money market - Available to Group at end of February, 1972.
2. Overdraft availability of \$7 million made up of -
 - (i) \$5 million Bank of New South Wales - reduces to \$3.5 million in December 1972 - Refer letter from Bank of New South Wales dated 21st October, 1971. 10
 - (ii) Natinal Bank of Australasia \$2 million - reviewed annually.
3. Term loan drawdowns included in Ampol balance of \$9.5 million - refer letters of Bank of New South Wales 21st October, 1971 and 10th November, 1971.

AMPOL PETROLEUM LIMITED AND SUBSIDIARIESANNEXURE "A"
(continued)

	1971/72	1972/73	1973/74	1974/75	1975/76
A. STATISTICS					
Wapet Production - Bbls. (000)	16,104	15,403	13,832	12,301	11,017
- B.P.C.D.	44,000	42,200	37,800	33,700	30,100
Refinery Production - Bbls. (000)	13,199	14,438	17,532	18,600	19,796
- B.P.C.D.	36,062	39,554	48,032	50,959	54,088
Imports, etc. Ext. Purchases - Bbls. (000)	2,200	360	360	360	360
- B.P.C.D.	6,010	986	986	986	984
Crude Input - Bbls. (000)	14,204	15,759	18,964	20,045	21,265
- B.P.C.D.	38,809	43,176	51,955	54,919	58,101
B. SALES GALLONAGE (000)					
Motor Spirit	262,500	279,320	298,000	317,650	338,200
Kerosenes	18,880	20,350	21,890	23,675	25,850
Distillate	101,800	109,900	117,050	124,300	132,050
Black Oils	100,200	110,260	113,250	116,800	120,550
Detergent/Solvent	1,730	1,812	1,893	1,985	2,082
Lubes	7,180	7,491	7,782	8,089	8,406
Avtur	31,840	34,340	37,690	40,503	45,380
Gases	17,750	20,900	21,380	21,875	22,400
TOTAL	541,880	584,373	618,935	654,877	694,918
Equivalent Bbls. (000)	15,842	16,696	17,684	18,711	19,855
C. TURNOVER \$000					
	171,857	181,565	195,397	207,184	221,019
D. GROUP PROFITS \$000					
	\$	\$	\$	\$	\$
OPERATIONS - Cost	(16,117)	(18,744)	(21,128)	(23,944)	(25,962)
REFINERY - Cost	(45,833)	(49,572)	(51,961)	(55,050)	(56,386)
MARKETING - Net Revenue	77,836	83,059	90,951	99,625	107,439
PROCESS DEAL	(1,190)	(1,160)	(1,160)	(1,160)	(1,160)
STOCK USAGE ADJUSTMENT	778	1,973	2,360	2,514	4,139
(Difference between Production and Sales Demand)					
PROFIT 3 OPERATING DIVISIONS	15,474	15,556	19,062	21,985	28,070
Ampol Exploration Limited	4,071	4,396	3,887	3,503	3,104
Royalty to Ampol	647	619	556	495	443
Security Share Services	3	7	15	29	32
Yellow Cabs	496	520	546	573	601
A.L.O.R. Dividend	206	206	206	206	206
Sundry Income	-	-	-	-	-
TOTAL DIVISIONAL PROFITS	20,897	21,304	24,272	26,791	32,456

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(continued)

ANNEXURE "A"

(continued)

	1971/72	1972/73	1973/74	1974/75	1975/76
B/F	20,897	21,304	24,272	26,791	32,456
Less: Head Office Administration Expenses	2,694	2,878	3,118	3,310	3,445
Finance Charges	4,552	4,721	4,784	4,910	5,031
Inter Company Elimination	200	200	200	200	200
	<u>7,446</u>	<u>7,799</u>	<u>8,102</u>	<u>8,420</u>	<u>8,676</u>
<u>GROUP PROFIT PRIOR TAX</u>	13,451	13,505	16,170	18,371	23,780
Tax Provision - Current	5,613	5,853	7,372	8,785	11,031
- Future	<u>246</u>	<u>220</u>	<u>195</u>	<u>175</u>	<u>155</u>
- Total	5,859 (43.56)	6,073 (44.97)	7,567 (46.80)	8,960 (48.77)	11,186 (47.04)
	<u>7,592</u>	<u>7,432</u>	<u>8,603</u>	<u>9,411</u>	<u>12,594</u>
<u>GROUP PROFIT AFTER TAX</u>	1,093	1,072	949	758	496
Minority Interest					
<u>NET PROFIT FROM TRADING AVAIL-</u> <u>ABLE TO AMPOL PETROLEUM LTD.</u>	6,499	6,360	7,654	8,653	12,098
Other Items	(125)	-	-	-	-

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ANNEXURE "A"

(continued)

AMPOL PETROLEUM LIMITED AND SUBSIDIARIESINCOME YEARS ENDED 30TH SEPTEMBER, 1972 - 1976

	1972	1973	1974	1975	1976	5 Years 1972-1976
Funds as at 1st October	(1,718)	2,653	(11,310)	(20,555)	(26,352)	(1,718)
<u>Plus: Cash Generated from Profit</u>						
: Budget Profit After Tax	6,374	6,360	7,654	8,653	12,098	41,139
: Minority Interests	1,093	1,072	949	758	496	4,368
: Taxation Provision	5,859	6,073	7,567	8,960	11,186	39,645
: Depreciation	9,861	10,396	11,005	11,459	11,921	54,642
	23,187	23,901	27,175	29,830	35,701	139,794
<u>Cash from Other Sources</u>						
: 1971 Debenture Issue (Balance)	184	-	-	-	-	184
: Sale of Darlington/Walkley	1,180	-	-	-	-	1,180
: Sale of Ship "54" Machinery	1,341	-	-	-	-	1,341
: Bank Loans (O/D and Term)	15,000	1,500	-	-	-	16,500
: Chase-N.B.A. Tanker Loan	5,071	895	-	-	-	5,966
: Customers' Loan Repayments	621	600	600	600	600	3,021
<u>FUNDS AVAILABLE</u>	44,866	29,549	16,465	9,875	9,949	166,268
<u>Application of Funds</u>						
: Taxation - Previous Year	3,560	5,613	5,853	7,372	8,785	31,183
: Dividends	6,830	6,830	6,830	6,830	6,830	34,150
: Working Capital	10,906	500	500	500	500	12,906
: Redemptions - L.T. Borrowings	3,558	4,265	5,206	3,679	11,570	28,278
: Repayments - Bank Finance	-	2,715	3,529	4,529	1,529	12,302
: Repayments - Chase-N.B.A. New Tanker	-	-	1,000	1,000	1,000	3,000
: Investments (Ampol Property/ Ampol Mining)	1,212	700	700	700	700	4,012
: Capital Expenditure (incl. Ampol Expl.)	10,034	18,374	12,692	10,907	11,799	63,806
: Ship "54" Payments to A.S.B.	4,848	1,119	-	-	-	5,967
: Ship "54" Machine Contract Payments	705	243	210	210	163	1,531
: Customer Loans	560	500	500	500	500	2,560
<u>FUNDS APPLIED FOR YEAR</u>	42,213	40,859	37,020	36,227	43,376	199,695
<u>SURPLUS (SHORTAGE) CUMULATIVE</u>	2,653	(11,310)	(20,555)	(26,352)	(33,427)	(33,427)

January 5, 1972

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ANNEXURE "A" (continued)

5 YEAR CAPITAL BUDGET

\$ 000's

DIVISION	71/72	72/73	73/74	74/75	75/76
OPERATIONS	551	1,000	1,000	1,000	1,000
REFINERY	1,152	8,240	2,560	1,225	1,800
MARKETING	1,500	5,500	6,000	6,000	6,000
YELLOW CARS	531	550	550	550	550
HEAD OFFICE	266	300	300	300	300
<u>*SUB TOTAL</u>	<u>8,000</u>	<u>15,590</u>	<u>10,410</u>	<u>9,075</u>	<u>9,650</u>
10 AMPOL EXPLORATION	3,489	2,784	2,282	1,832	2,149
AMPOL PROPERTY	1,000	500	500	500	500
AMPOL MINING	212	200	200	200	200
<u>TOTAL</u>	<u>8,701</u>	<u>19,074</u>	<u>13,392</u>	<u>11,607</u>	<u>12,499</u>
*DEPRECIATION GENERATION Prior Ampol Exploration	8,216	9,700	10,400	10,875	11,300

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NOTE

- 20 1. New Tanker Finance is not included.
2. 1972/73 Refinery includes \$5,920 for Arabian Crude.

January 5, 1972.

(continued)

R.W. MILLER (HOLDINGS) LIMITED and its SUBSIDIARY COMPANIES

CONSOLIDATED BALANCE SHEET AT 30TH JUNE, 1971

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<u>1970</u> £		<u>1970</u> £		<u>1970</u> £	
	AUTHORISED CAPITAL OF R.W. MILLER (HOLDINGS) LIMITED				FIXED ASSETS:
	15,000,000 Ordinary Shares of \$1 each	\$15,000,000		11,869,489	FREEHOLD AND LEASEHOLD PROPERTY (at cost) 12,373,225
9,000,786	ISSUED CAPITAL: 9,000,786 Ordinary Shares of \$1 each fully paid	9,000,786			Less - Amortisation and amounts written off 593,643
	RESERVES & UNAPPROPRIATED PROFITS:				11,779,582
580,495	Share Premium Reserve	580,495			SHIPS, PLANT, MACHINERY AND DEVELOPMENT, MOTOR VEHICLES, FURNITURE, FIXTURES, CARS ETC. (at cost) 14,198,666
51,610	General Reserve	51,610		5,831,312	Less - Provision for Depreciation and amounts written off 6,911,715
2,009,138	Capital Profits Reserve	2,103,844		3,967,033	TANKERS UNDER CONSTRUCTION: Progress Payments and Costs to date 6,174,220
175,000	Reserve for Insurance Claims	175,000			PLANT AND MACHINERY (at Directors' 1969 Valuation) 285,000
3,766,779	Unappropriated Profits	3,915,030			Less - Provision for Depreciation and amounts written off 96,204
15,583,808		15,826,765			188,796
9,087	Less - Goodwill on Consolidation	9,087		213,002	TOTAL FIXED ASSETS 25,429,549
15,574,721	SHARE CAPITAL & RESERVES	15,817,678		21,880,836	
348,090	INTERESTS OF OUTSIDE SHAREHOLDERS IN SUBSIDIARY COMPANY	443,900			INVESTMENTS AND LOANS:
15,922,811		16,261,578			INVESTMENTS:
	LONG TERM LIABILITIES - Secured:				In Companies listed on Prescribed Stock Exchanges (at cost) 398
405,460	Secured by Mortgages on Freehold Properties etc.	260,440		1,452	(Market Value \$408) 398
640,000	MORTGAGE DEBENTURE STOCK	-			In Other Companies (at cost) 1,535
	BANK OF NEW SOUTH WALES: TERM LOAN ACCOUNT	1,711,112			DEFERRED LOANS 3,696,000
1,045,460		1,971,552			Less - Provision for Doubtful Debts 150,000
233,600	DEFERRED INCOME TAX	379,500		3,933,040	3,546,000
	CURRENT LIABILITIES & PROVISIONS:			3,934,890	3,547,933
4,692,782	Trade Creditors	4,647,253		49,638	CURRENT ASSETS:
492,855	Other Creditors	930,607			Cash on Hand 55,868
3,833,086	Short Term Loans	4,071,083			Trade Debtors 2,123,334
3,725,642	Bank of New South Wales (Secured Net Balance)	4,932,381			Less - Provision for Doubtful Debts 170,491
	Australia & New Zealand Banking Group Limited	7,864		3,563,215	1,952,843
75,020	Mortgages (Secured)	165,020		745,852	Other Debtors 866,556
	PROVISIONS:				2,819,399
679,286	Income Tax	420,918			Stock on Hand and Work in Progress (at the lowest of cost, realisable value and market value) 2,385,142
912,248	Other Provisions	932,496		1,412,737	Payments in Advance 669,065
630,055	Final Dividend	270,024		520,970	Future Income Tax Benefits resulting from past losses 63,000
14,940,974		16,377,646			CASH AT BANK AND ON DEPOSIT:
				16,610	Cash at Bank 2,224
				18,097	Short Term Deposits 18,096
				6,327,110	6,012,794
32,142,845	Notes numbered 1 to 7 form part of these Accounts	\$34,990,276		32,142,845	\$34,990,276

1679(a).

Not used

1680.

ANNEXURE "B"

Exhibit MH5

Exhibit MH5

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PROPOSAL FOR ACQUISITION OF SHARES

ADDENDUM

Yesterday, January 13, Messrs. Harris and Leonard met
Lady Miller and Mr. Wilkinson of Abbott Tout Creer & 10
Wilkinson.

Mr. Wilkinson was substituting for Mr. Parker, who
had taken ill.

Lady Miller said that she had made up her mind to
sell and her asking price was £2.25 per share.

We countered (subject to Board approval) with £1.85
per share.

We were handed a list of shareholders and their
ownership and told that these were Clubs, friends
and relatives, whom Lady Miller controlled. She
would acquire these shares from the owners and the
successful bidder would purchase the lot from her.
They total 3,315,741. Attachment (3) lists these.

20

Lady Miller and Wilkinson advised that there was now
only one other bidder, H.C. Sleigh Limited. Their
offer had been £1.75 per share but they had been
informed that morning that the price was unacceptable
and the asking price was £2.25 per share. They asked
for the opportunity of reconsidering their bid, which
was given. They proposed submitting a new bid
immediately after our interview.

30

In fact, we were let out one door of Abbott Tout
Creer & Wilkinson's office whilst the Sleigh group
came in another.

Our reception was warm and friendly and it is
possible that we may be told the amount of Sleigh's
second bid.

We believe that she would prefer to do business with
us if our offer is, say, equal to Sleighs.

Lady Miller indicated that she was leaving for Fiji on the 18th and wished to finalise the matter forthwith.

RECOMMENDATION

The Executive Directors are unanimous that we make an offer to purchase the shares.

10 It is very difficult to place a price on them because some hard bargaining lies ahead. It is possible that we could purchase them at a figure equivalent to half the difference between our bids, i.e. \$2.05 per share, which is slightly in excess of our estimate of the net asset value, but well below the Miller Board's estimate.

It is emphasized that, in our opinion, our estimates of the worth of the assets is conservative. It does not allow, of course, for the intangible benefits that will flow from the strong position we will have in the Australian tanker market. Obviously, Sleigh recognises this too.

20 We have verified that the profits on the tanker now operating is at the rate of \$0.9 million per annum, after interest and after tax. The Company's present equity in this tanker is probably about \$3 million, showing a return of about 30%. On total cost, after charging interest, it is 9%.

The second tanker, now under construction, will produce the same rate of profit.

30 Shell have already presented to the Miller Board a firm offer to charter this vessel exclusively for 5 years.

With these additional profits, it is reasonable to anticipate that the dividend can be restored to 10%.

The diversification fits in with our existing Company philosophy - i.e. tankers and real estate.

We believe the acquisition will have a beneficial impact on the image of our Company, and improve our profits and our share values.

The acquisition is supported by the Bank of New South Wales and J.B. Were & Son, who agree it is a

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 (continued)

good investment for Ampol. The Bank add that R.W. Miller & Co. has sound assets, but has been badly managed.

We have been advised legally, that as Lady Miller's shares are held on the Canberra register, they can be acquired and not constitute a takeover offer, which would be the case under the new Company legislation of New South Wales and Victoria. The Canberra Act has not yet been proclaimed, but could happen shortly.

10

Wilkinson and Lady Miller confirmed our legal advice and hence, another reason why she wishes to finalise the matter promptly.

If \$2.05 per share was insufficient to acquire her shares and beat off the Sleigh bid, then we, the Executive Directors, believe it would be regrettable if we lost the opportunity because of 10 or 15¢ per share.

Of course, we may do better than \$2.05 per share, but Management may need authority in excess of this to clinch the deal.

20

The acquisition of Lady Miller's shares, we regard as the first step in acquiring control of the Company. It may take several months before we could move to the second stage and would involve further discussions with Sir Peter Abeles.

In the event of us proceeding to acquire the balance of the shares other than Bulkships, at \$2.05 per share, the total investment would be approximately \$13.8 million -- i.e. approximately \$7 million over and above Lady Miller's interests.

30

J.B. Were have indicated they could finance this on a long term basis, probably by means of a debenture issue.

1683.
ANNEXURE "B"

(continued)

ATTACHMENT 3

Exhibit MH5

R.W. MILLER (HOLDINGS) LIMITED AS AT DECEMBER, 1971

		<u>Shares</u>	<u>%</u>	
	<u>A. MILLER FAMILY</u>			
	Romanda Pty. Ltd.	2,144,871		Annexure B to Notice to answer interrogatories delivered to the Plaintiff Ampol Petroleum Ltd. by the 1st Defendant R.W. Miller (Holdings) Ltd. 22nd August 1972 (continued)
	Estate of Sir R.W. Miller	1,200		
	Lady Elizabeth Miller	57,360		
	R.W. Miller & Co.	5,000		
	Mrs. G. Frazer	12,000		
10	Rellim Pty. Ltd.	<u>35,000</u>		
		2,255,431	25.1	
	<u>B. RELATIVES & FRIENDS</u>			
	Bank of N.S.W. Nominees Pty. Ltd. (Clubs)	945,370		
	Norman R. Rogers	30,000		
	John J. Brown	14,000		
	K.O. Pitt	12,000		
	W.J. Dunlop	13,000		
	Dr. G.S. Cottee	12,000		
20	Wentworthville Leagues Club	10,000		
	W. Gardner	5,000		
	K. Harrison	5,200		
	A.A., C.J. & V. Lockley	440		
	Bradshaw Holdings Pty. Ltd.	4,000		
	W.J. Bradshaw	4,800		
	B. Charles	1,000		
	R. Miller	1,200		
	Marcus Miller	1,200		
	Iris Miller	<u>100</u>		
30	H. Ford	1,060,310	11.8	
	<u>C. DUNCAN FAMILY</u>			
	Ardry Holdings Pty. Ltd.	210,000		
	Wintersun Holdings Pty. Ltd.	200,000		
	P.J. Duncan	<u>6,000</u>		
		416,000	4.6	
	<u>D. BULKSHIPS LIMITED</u>	2,257,100	25.1	
	<u>E. OTHERS</u>			
	National Nominees Limited	30,600		
	Associated Nominees Pty. Ltd.	25,000		
40	Loani Pty. Ltd.	23,000		
	Scandrett Investments Pty. Ltd.	20,000		
	Judavphil Pty. Ltd.	17,800		
	Unilever Pension Trust Pty. Ltd.	17,100		
	Australian Inv. & Devel. Ltd.	15,000		

Exhibit MH5

Annexure B to
Notice to
answer
interrogatories
delivered to
the Plaintiff
Ampol Petroleum
Ltd. by the
1st Defendant
R.W. Miller
(Holdings) Ltd.
22nd August 1972
(continued)

	<u>ATTACHMENT 3</u> (continued)	
Miss H.C. Moore	15,000	
David Fowler	14,300	
Paul Merrill Pty. Ltd.	14,000	
Gedclin Pty. Ltd.	14,000	
Ernest Pardy	13,700	
Manly Hotels Pty. Ltd.	12,000	
James Holyman Pty. Ltd.	10,000	
Pactolus Estates Pty. Ltd.	10,000	10
Alexander G. Slater	10,000	
Southern Cross Prov.Noms.Pty. Ltd.	<u>10,000</u>	
	<u>271,500</u>	3.0
<u>BALANCE HOLDINGS</u> less than 10,000	<u>2,740,445</u>	<u>30.4</u>

TOTAL SHARES ISSUED 9,000,786 100.0

Exhibit MH5

Annexure C to
Notice to
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delivered to
the Plaintiff
Ampol Petroleum
Ltd. by the
1st Defendant
R.W. Miller
(Holdings) Ltd.
22nd August 1972

Exhibit MH5 (continued)

Annexure C to Notice to answer
interrogatories delivered to the
Plaintiff Ampol Petroleum Ltd. by the
1st Defendant R.W. Miller (Holdings) Ltd. 20
22nd August 1972.

HEADS OF AGREEMENT REACHED BETWEEN AMPOL PETROLEUM
LIMITED ("AMPOL") AND BULK SHIPS PTY. LIMITED ("BULK
SHIPS") ON THE DAY OF 1972

RECITALS

A. Romanda Pty. Limited (herein called "Romanda")
is the registered holder and beneficial owner of
2,144,871 ordinary shares of \$1.00 each (herein
called "the Romanda shares") in the capital of
R.W. Miller (Holdings) Limited (herein called "the
Company") 30

B. Bulk Ships has represented to Ampol that it is
the registered holder and beneficial owner of
ordinary shares in the capital of the Company (herein
called "the Bulk Ship shares") and has no relevant
interest (within the meaning of Section 6A of the
Companies Act as amended by the Companies Amendment
Act 1971) in any other Miller shares.

C. Ampol has represented to Bulk Ships that it has no relevant interest in any Miller shares.

D. Ampol and Bulk Ships are desirous of jointly acquiring control of the Company.

E. In these heads of agreement "Millers shares" means shares in the capital of the Company.

IT IS AGREED as follows:-

10 1. (a) Ampol shall forthwith enter into negotiations with Romanda with a view to acquiring the Romanda shares on the best terms available and Bulk Ships shall give all assistance and take all steps in its power to assist in the negotiations.

(b) Ampol shall use its best endeavours to effect the purchase of the Romanda shares for a purchase price of \$2.11 per share or such other price as shall be agreed between Ampol and Bulk Ships such price to be payable in cash on completion of the purchase

20 2. (a) As soon as practicable after completion of the purchase of the Romanda shares Ampol shall make offers to acquire all other Miller shares for a price equal to the price paid by Ampol to Romanda for the Romanda shares.

(b) Such offers shall be conditional upon acceptance being received in respect of not less than 90% of the total number of Miller shares for which offers are made.

30 (c) Ampol shall retain the right to waive such condition but shall not declare the offers free of such condition without prior consultation with Bulk Ships.

(d) Bulk Ships shall accept the offer made to it in respect of all of the Bulk Ship shares.

3. (a) As soon as practicable after such offers shall have closed after becoming unconditional Ampol shall sell to Bulk Ships and Bulk Ships shall buy one half of the total number of Miller shares in which Ampol then has a relevant interest (hereinafter referred to as "the Ampol shares")

40 (b) The total purchase price to be paid by Bulk Ships to Ampol for such sale and purchase shall be one half of the aggregate of:-

(i) the total purchase price payable by Ampol for the Ampol shares

(ii) All legal expenses and costs incurred or payable by Ampol in respect of the acquisition of the Ampol shares and

Exhibit MH5

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22nd August 1972
(continued)

Exhibit MH5

Annexure C to
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R.W. Miller
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22nd August 1972
(continued)

(iii) all stamp duties and other imposts payable by Ampol in respect of the transfer of any Ampol shares to Ampol and/or to Bulk Ships

4. (a) After completion of the said sale and purchase from Ampol to Bulk Ships the parties shall consult together to assess the value and worth of the assets of the Company with a view to determining whether it would be in the best interests of the Company and the parties to cause the Company to dispose of any of its assets and if so to consider the terms upon which any such assets should be disposed of. 10

(b) No asset of the Company shall be disposed of unless it shall have first been offered to each of the parties hereto on terms not less favourable both as to price and otherwise than the terms on which it is to be disposed elsewhere and each party has rejected such offer.

5. (a) After completion of the said sale and purchase the parties shall procure that Bulk Ships shall be appointed by the Company to operate and manage the shipping interests of the Company PROVIDED HOWEVER that except with the prior approval of Ampol:- 20

(i) no charter part or chartering arrangement shall be entered into in respect of any ship or vessel owned by the Company

(ii) no industrial arrangements or agreements with respect to rates of pay or conditions of service of any seaman employed by the Company shall be entered into

(iii) no insurance arrangements in respect of the shipping operations shall be made by the Company 30

(b) It is intended by the parties that ultimately Ampol and Bulk Ships will each have an undivided one half interest in the shipping operations of the Company and all ships and vessels owned by the Company to the intent that neither Ampol or Bulk Ships shall either directly or indirectly receive any greater share of the profits of the shipping operations or obtain any additional advantage over the other in connection with the management and operations of the shipping operations. 40

6. The parties contemplate that the provisions of clauses 4 and 5 hereof will be embodied in a formal agreement between the parties as soon as practicable after completion of the sale and purchase referred to in clause 3.

SIGNED for and on behalf
of AMPOL PETROLEUM LIMITED

SIGNED for and on behalf
of BULK SHIPS PTY. LIMITED

1687.

1st Defendants Exhibits

EXHIBIT M.H.6.

PROPOSAL BY AMPOL PETROLEUM LTD. FOR ACQUISITION OF SHARES OF R.W. MILLER (HOLDINGS) LTD. DATED 14th JANUARY, 1972 AND THE ADDENDUM THERETO.

January 14, 1972

STRICTLY CONFIDENTIAL

PROPOSAL FOR ACQUISITION OF SHARES

HISTORY

10 For some considerable time, Ampol has been aware of the value to it of the R.W. Miller tanker fleet.

Under the Government's Maritime Tanker Policy, the "Amanda Miller" and the "Robert Miller" (now under construction), rank in priority for usage on the Australian coast immediately after the "P.J. Adams". Whilst the existing policy remains, they have guaranteed usage at very profitable rates.

20 The "Amanda Miller" currently is under charter to an oil industry consortium (excluding Shell and Ampol) for a 3 year term. The second tanker, under construction, Shell wishes to charter exclusively.

Prior to his death, tentative discussions took place with Sir Roderick Miller, reference pooling of our combined tanker fleets to gain the maximum financial benefits for each party. His death shortly after these discussions prevented any finality.

30 Sir Peter Abeles, Managing Director of T.N.T., and a very large and valuable customer to Ampol for some 20 years, acquired on behalf of his Company, a 25% interest in R.W. Miller & Co. It was his intention to make a takeover offer to the rest of the shareholders, but this did not receive the support of Sir Roderick Miller, who took successful defensive action. T.N.T. were then "locked in" with their 25% interest.

Subsequently, T.N.T. transferred their shares to

Exhibit M.H.6.

Proposal by Ampol Petroleum Ltd. for acquisition of shares of R.W. Miller (Holdings) Ltd. 14th January 1972 and the Addendum thereto.

Exhibit M.H.6.
 Proposal by
 Ampol Petroleum
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 (continued)

Bulkships Limited. This Company is owned one-third each by T.N.T., Adelaide Steamship Co. Limited and McIlwraith McEachern Ltd.

Over the last 12 months or so, Sir Peter Abeles has had two or three discussions with me regarding the possibility of Bulkships and Ampol Petroleum acquiring the balance of the shares in R.W. Miller, on some mutually agreed plan. Bulkships' interests too, are primarily in the tankers. We expressed interest and said that we would be willing to progress such an idea when the opportunity presented itself. 10

Early in December, Sir Peter Abeles informed me that Shell were interested in the tankers and had made an approach to Lady Miller to acquire a half interest in these vessels. At about the same time, we learned from another source that H.C. Sleigh had made an offer to purchase Lady Miller's 26% interest in the Company, and this was conveyed to Abeles.

He informed us that Lady Miller had been prevaricating but he felt now that she was willing to sell her shares for cash and he believed that if Ampol and Bulkships were going to do anything, they should move fast. 20

He undertook that if Ampol made an offer for her shares and was successful, and then made an offer to the rest of the shareholders, he would undertake to support the offer, in consideration of Bulkships acquiring a 60-70% interest in the tankers. He made the point that he wanted a majority interest to reveal the tanker company as a subsidiary of his Company. 30

On being questioned as to why he could not acquire Lady Miller's shares himself, and then complete the takeover of the Company, Abeles replied that, under no circumstances, would Lady Miller sell the shares to him, or to any Company with which he was connected. Also, he would honour a promise he gave to Sir Roderick before his death, that in return for being appointed to the Board of R.W. Miller, he would not make any further attempts to take over the Company. 40

Subsequently, we confirmed from another source

the fact that Lady Miller would not sell her shares to him.

On Friday, December 17, we were approached by Mr. Parker (a partner in Abbott Tout Creer & Wilkinson), who is the advisor to Lady Miller.

10 Parker stated that, on his advice, Lady Miller had decided to sell her shares. There had been approaches already to Lady Miller to buy her shares, one of whom was H.C. Sleight, through John Darling & Company.

If Ampol were interested in the acquisition of her shares, and provided the price was right, then she would prefer to sell to Ampol.

She would prefer cash.

We advised that we were definitely interested in looking at the possibility of making an offer and he suggested that we should do so about mid January or a little later.

20 He also added that no other offer would be accepted until such time as we made ours, if it were done within that time.

A brief discussion occurred in respect of the possibility of Lady Miller reinvesting some of this cash with Ampol with a debenture as security.

30 On January 6, Sir Peter Abeles had a further discussion with us. He confirmed that if Ampol were still interested in acquiring, first Lady Miller's shares, and then the balance, he, on behalf of Bulkships, would be willing to acquire 50% of the assets other than the tankers (and put up the equivalent amount of cash), but he would want a 60% interest in the tankers. He reiterated that Bulkships really wanted 100% and he had had great difficulty in convincing the Chairman of Bulkships, Sir Ian Potter, to release 40% equity to us, and he felt that was as far as he could go.

40 He was prepared to enter into legal agreements before we made the bid, putting into effect, these arrangements.

Exhibit M.H.6.

Proposal by
Ampol Petroleum
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Miller (Holdings)
Ltd. 14th
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thereto
(continued)

Exhibit M.H.6.
 Proposal by
 Ampol Petroleum
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 Ltd. 14th
 January 1972 and
 the Addendum
 thereto
 (continued)

He added that the tankers were really the only interest to him and that, over a period of years, his Company's attitude to their 50% ownership of other assets, would be to dispose of them and ultimately liquidate the Company. He believed this could be done at a handsome profit.

He believed that Lady Miller's shares could be bought for £1.75 per share, and was of the opinion that we should follow on immediately with a similar takeover offer to other shareholders.

10

He indicated also that if Bulkships were to sell their 25% interest to us, then they would want the price they paid for them - i.e. £1.87 per share.

Abeles also advised that the other bidder for Lady Miller's shares was a Sydney firm, Industrial Estates Limited, who have made an unconditional offer to buy Lady Miller's shares at £1.70 per share.

20

Prior to this discussion (on December 22), we had preliminary discussions with Messrs. Johnston, Abercrombie, Traxton and Paynter of J.B. Were (reference, the financing of the purchase of the Company), and these discussions were continued on January 10, 1972, in Sydney with Messrs. Johnston and Traxton.

Discussions centred round the best means of our achieving our objective, and there seemed to be two avenues open to us:

30

- (1) To buy the shares held by Lady Miller first and then negotiate with Bulkships, or alternatively
- (2) Negotiate with Abeles and enter into a binding arrangement between Bulkships and Ampol, and then make an offer to Lady Miller and the rest of the shareholders.

It was found that (2) above was impracticable because, under the new Companies Act, any agreement entered into prior to an offer, would be a material contract and would have to be

40

divulged. In that event, it was clear Lady Miller would not accept our offer because of her antipathy towards Abeles.

The impracticability has been subsequently confirmed by legal opinion.

10 It seems clear therefore, that if we wish to pursue the matter, we must first acquire Lady Miller's shares and, at some later date, acquire the remainder of the Capital, with or without a prior agreement with Bulkships.

Finally a discussion was held with the Bank of New South Wales in which cash flows were presented - these are attached as Attachment (1) - and will be discussed under the Financial Section.

It is enough to say, at this stage, that the Bank will give us stand-by credit arrangements if required, to finance the purchase of Lady Miller's shares.

20 FINANCIAL

Attachment (2) is the Consolidated Balance Sheet of R.W. Miller Holdings Limited and Subsidiary Companies at June 30, 1971, which shows a net asset value of \$16,262,000, representing \$1.81 per share.

We have updated this balance sheet from information we have acquired, and is summarised hereunder:

Fixed Assets

30 Freehold and Leaschold Property
(mainly Hotels) \$18,000,000

(These assets were revalued after the balance sheet and announced by the Board of R.W. Miller just before Christmas. We have confirmation of this valuation because Mr. Clubb, before he joined Ampol, did the valuation).

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Ships, Plant, etc.....	¥ 3,000,000	
(We have written this asset down substantially because it is primarily the coal interests, which we have estimated will probably not produce more than this amount).		
Tanker.....	<u>¥10,000,000</u>	
Total Fixed Assets.....		¥31,000,000
Investments and Loans.....		¥ 3,000,000
Current Assets.....		<u>¥ 6,000,000</u>
		¥40,000,000
<u>Less:</u>		
<u>Liabilities</u>		
Long Term Liabilities.....	¥10,000,000	
Current Liabilities.....	<u>¥12,000,000</u>	
		<u>¥22,000,000</u>
<u>NET ASSET VALUE</u>		<u>¥18,000,000</u>
		<u>¥2.00 PER SHARE</u>

In addition to these assets, there is another tanker currently under construction worth between ¥10 and ¥11 million when completed, and for which finance we believe has been arranged under similar terms for the first tanker, i.e. a loan of 75-80% of the total value, for 5 years. 20

It must be emphasized, of course, there has been no access to the books of R.W. Miller and it is an assessment based on some known facts and information gleaned from various sources, and cross-checked.

In regard to Hotels, Tooheys Limited have an exclusive franchise to supply bulk beer, but spirits and bottled beer are specifically 30

1693.

excluded. Millers have a liquor agency which supplies these products.

We know from discussions with the Assistant General Manager of Tooheys, that they are anxious to make a further deal in respect of these hotels to cover all supplies, and possibly the acquisition of some sites.

In respect of the coal interests, we have been very conservative and written this down heavily, but believe, in time, we could sell these interests at a price higher than our estimates, as Sir Peter Abeles informs us that Bellambi Coal is a potential buyer. The coal interests consist of collieries, colliers and a road distribution system.

Exhibit M.H.6.

Proposal by
Ampol Petroleum
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(continued)

(continued)

Exhibit M.H.6.

AMPOL GROUP

Proposal by
Ampol Petroleum
Ltd. for
acquisition of
shares of R.W.
Miller (Holdings)
Ltd. 14th
January 1972 and
the Addendum
thereto
(continued)

PROJECTION OF CASH BALANCES AND OVERDRAFT
AVAILABILITY JANUARY 1972 TO DECEMBER 1972.

£'000's

	AMPOL	AMPOLEX	GROUP	O/D LIMIT	O/D AVAIL- ABLE	
	£	£	£	£	£	
<u>Est. Balance</u>						
End January 1972	(6,362)	353	(6,009)	7,000	991	10
February 1972	(6,699)	2,338	(4,361)	7,000	2,639	
March 1972	(7,186)	4,649	(2,537)	7,000	4,463	
April 1972	(8,799)	4,813	(3,986)	7,000	3,014	
May 1972	(10,003)	4,959	(5,044)	7,000	1,956	
June 1972	(7,279)	3,805	(3,474)	7,000	3,526	
July 1972	(6,115)	3,944	(2,171)	7,000	4,829	
Aug. 1972	(8,274)	4,067	(4,207)	7,000	2,793	
Sept. 1972	(6,922)	4,165	(2,757)	7,000	4,243	
Oct. 1972	(7,034)	4,357	(2,677)	7,000	4,323	
Nov. 1972	(6,364)	4,522	(1,842)	7,000	5,158	20
Dec. 1972	(6,429)	3,446	(2,983)	5,500	2,517	

NOTES:

1. Ampolex has £5.4 million invested in short term money market - Available to Group at end of February, 1972.

2. Overdraft availability of £7 million made up of -

(1) £5 million Bank of New South Wales - reduces to £3.5 million in December 1972 - Refer letter from Bank of New South Wales dated 21st October, 1971.

(ii) National Bank of Australasia £2 million - reviewed annually.

3. Term loan drawdowns included in Ampol balance of £9.5 million - refer letters of Bank of New South Wales 21st October, 1971 and 10th November, 1971.

January 5, 1972.

FIVE YEAR FORECAST

1971/72 - 1975/76

Proposal by Ampol Petroleum Ltd. for acquisition of shares of R.W. Miller (Holdings) Ltd. 14th January 1972 and the Addendum thereto (continued)

	1971/72	1972/73	1973/74	1974/75	1975/76
A. STATISTICS					
Wapet Production - Bbls. (000)	16,104	15,403	13,832	12,301	11,017
- B.P.C.D.	44,000	42,200	37,800	33,700	30,100
Refinery Production - Bbls. (000)	13,199	14,438	17,532	18,600	19,796
- B.P.C.D.	36,062	39,554	48,032	50,959	54,088
Imports, etc. Ext. Purchases - Bbls. (000)	2,200	360	360	360	360
- B.P.C.D.	6,010	986	986	986	984
Crude Input - Bbls. (000)	14,204	15,759	18,964	20,045	21,265
- B.P.C.D.	38,809	43,176	51,955	54,919	58,101
B. SALES GALLONAGE (000)					
Motor Spirit	262,500	279,320	298,000	317,650	338,200
Kerosenes	18,880	20,350	21,890	23,675	25,850
Distillate	101,800	109,900	117,050	124,300	132,050
Black Oils	100,200	110,260	113,250	116,800	120,550
Detergent/Solvent	1,730	1,812	1,893	1,985	2,082
Lubes	7,180	7,491	7,782	8,089	8,406
Avtur	31,840	34,340	37,690	40,503	45,380
Gases	17,750	20,900	21,380	21,875	22,400
TOTAL	541,880	584,373	618,935	654,877	694,918
Equivalent Bbls. (000)	15,482	16,696	17,684	18,711	19,855
C. TURNOVER \$000					
	171,857	181,565	195,397	207,184	221,019
D. GROUP PROFITS \$000					
	\$	\$	\$	\$	\$
OPERATIONS - Cost	(16,117)	(18,744)	(21,128)	(23,944)	(25,962)
REFINERY - Cost	(45,833)	(49,572)	(51,961)	(55,050)	(56,386)
MARKETING - Net Revenue	77,836	83,059	90,951	99,625	107,439
PROCESS DEAL	(1,190)	(1,160)	(1,160)	(1,160)	(1,160)
STOCK USAGE ADJUSTMENT (Difference between Production and Sales Demand)	778	1,973	2,360	2,514	4,139
PROFIT 3 OPERATING DIVISIONS	15,474	15,556	19,062	21,985	28,070
Ampol Exploration Limited	4,071	4,396	3,887	3,503	3,104
Royalty to Ampol	647	619	556	495	443
Security Share Services	3	7	15	29	32
Yellow Cabs	496	520	546	573	601
A.L.O.R. Dividend	206	206	206	206	206
Sundry Income	-	-	-	-	-
TOTAL DIVISIONAL PROFITS	20,897	21,304	24,272	26,791	32,456
Less: Head Office Administration Expenses	2,694	2,878	3,118	3,310	3,445
Finance Charges	4,552	4,721	4,784	4,910	5,031
Inter Company Elimination	200	200	200	200	200
	7,446	7,799	8,102	8,420	8,676
GROUP PROFIT PRIOR TAX	13,451	13,505	16,170	18,371	23,780
Tax Provision - Current	5,613	5,853	7,372	8,785	11,031
- Future	246	220	195	175	155
- Total	5,859 (43.56)	6,073 (44.97)	7,567 (46.80)	8,960 (48.77)	11,186 (47.04)
GROUP PROFIT AFTER TAX	7,592	7,432	8,603	9,411	12,594
Minority Interest	1,093	1,072	949	758	496
NET PROFIT FROM TRADING AVAILABLE TO AMPOL PETROLEUM LTD.	6,499	6,360	7,654	8,653	12,098
Other Items	(125)	-	-	-	-
NET PROFIT AVAILABLE AFTER OTHER ITEMS	\$6,374	\$6,360	\$7,654	\$8,653	\$12,098

AMPOL PETROLEUM LIMITED AND SUBSIDIARIES
PROJECTED CASH FLOW STATEMENT
INCOME YEARS ENDING 30TH SEPTEMBER, 1972 - 1976

Exhibit M.H.6.

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of shares
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Miller
(Holdings)
Ltd. 14th
January
1972 and the
Addendum
thereto
(continued)

	1972	1973	1974	1975	1976	5 years 1972-1976
Funds as at 1st October	(1,718)	2,653	(11,310)	(20,555)	(26,352)	(1,718)
<u>Plus: Cash Generated from Profit</u>						
: Budget Profit After Tax	6,374	6,360	7,654	8,653	12,098	41,139
: Minority Interests	1,093	1,072	949	758	496	4,368
: Taxation Provision	5,859	6,073	7,567	8,960	11,186	39,645
: Depreciation	9,861	10,396	11,005	11,459	11,921	54,642
	23,187	23,901	27,175	29,830	35,701	139,794
<u>Cash From Other Sources</u>						
: 1971 Debenture Issue (Balance)	184	-	-	-	-	184
: Sale of Darlington/Walkley	1,180	-	-	-	-	1,180
: Sale of Ship "54" Machinery	1,341	-	-	-	-	1,341
: Bank Loans (O/D and Term)	15,000	1,500	-	-	-	16,500
: Chase-N.B.A. Tanker Loan	5,071	895	-	-	-	5,966
: Customers' Loan Repayments	621	600	600	600	600	3,021
<u>FUNDS AVAILABLE</u>	44,866	29,549	16,465	9,875	9,949	166,268
<u>Application of Funds</u>						
: Taxation - Previous Year	3,560	5,613	5,853	7,372	8,785	31,183
: Dividends	6,830	6,830	6,830	6,830	6,830	34,150
: Working Capital	10,906	500	500	500	500	12,906
: Redemptions - L.T. Borrowings	3,558	4,265	5,206	3,679	11,570	28,278
: Repayments - Bank Finance	-	2,715	3,529	4,529	1,529	12,302
: Repayments - Chase-N.B.A. New Tanker	-	-	1,000	1,000	1,000	3,000
: Investments (Ampol Property/Ampol Mining)	1,212	700	700	700	700	4,012
: Capital Expenditure (incl. Ampol Expl)	10,034	18,374	12,692	10,907	11,799	63,806
: Ship "54" Payments to A.S.B.	4,848	1,119	-	-	-	5,967
: Ship "54" Machine Contract Payments	705	243	210	210	163	1,531
: Customer Loans	560	500	500	500	500	2,560
<u>FUNDS APPLIED FOR YEAR</u>	42,213	40,859	37,020	36,227	43,376	199,695
<u>SURPLUS (SHORTAGE) CUMULATIVE</u>	2,653	(11,310)	(20,555)	(26,352)	(33,427)	(33,427)

January 5, 1972

5 YEAR CAPITAL BUDGET

(\$000's)

Exhibit M.H.6.

Proposal by
Ampol Petroleum
Ltd. for
acquisition of
shares of R.W.
Miller(Holdings)
Ltd. 14th
January 1972
and the Addendum
thereto
(continued)

DIVISION	71/72	72/73	73/74	74/75	75/76
OPERATIONS	551	1,000	1,000	1,000	1,000
REFINERY	1,152	8,240	2,560	1,225	1,800
MARKETING	1,500	5,500	6,000	6,000	6,000
YELLOW CABS	531	550	550	550	550
HEAD OFFICE	266	300	300	300	300
<hr/>					
10 * SUB TOTAL	¥4,000	¥15,590	¥10,410	¥9,075	¥9,650
AMPOL EXPLORA- TION	3,489	2,784	2,282	1,832	2,149
AMPOL PROPERTY	1,000	500	500	500	500
AMPOL MINING	212	200	200	200	200
<hr/>					
<u>TOTAL</u>	¥8,701	¥19,074	¥13,392	¥11,607	¥12,499
<hr/>					
20 *DEPRECI- ATION GEN- ERATION Prior Ampol Explora- tion	¥9,216	¥9,700	¥10,400	¥10,875	¥11,300

NOTE 1. New Tanker Finance is not included.
2. 1972/73 Refinery includes ¥5,920 for
Arabian Crude.

January 5, 1972.

R.W. MILLER (HOLDINGS) LIMITED AND ITS SUBSIDIARY COMPANIES

Consolidated Balance Sheet at 30th June 1971

1970		1970	1970		1970
AUTHORISED CAPITAL OF R.W.MILLER (HOLDINGS) LIMITED:					
	15,000,000 Ordinary Shares of \$1 each	\$15,000,000		FIXED ASSETS:	
ISSUED CAPITAL:					
9,000,786	9,000,786 Ordinary Shares of \$1 each fully paid	9,000,786	11,869,489	FREEHOLD AND LEASEHOLD PROPERTY (at cost)	12,373,225
RESERVES & UNAPPROPRIATED PROFITS:					
580,495	Share Premium Reserve	580,495		Less-Amortisation and amounts written off	593,643
51,610	General Reserve	51,610			11,779,582
2,009,138	Capital Profits Reserve	2,103,844		SHIPS, PLANT, MACHINERY AND DEVELOPMENT, MOTOR VEHICLES, FURNITURE, FIXTURES, CARS ETC (at cost)	14,198,666
175,000	Reserve for Insurance Claims	175,000		Less-Provision for Depreciation and amounts written off	6,911,715
3,766,779	Unappropriated Profits	3,915,030			7,286,951
15,583,808		15,826,765	5,831,312	TANKERS UNDER CONSTRUCTION:	
9,087	Less - Goodwill on Consolidation	9,087		Progress Payments and Costs to date	6,174,220
15,574,721	SHARE CAPITAL & RESERVES	15,817,678	3,967,033	PLANT AND MACHINERY (at Directors' 1969 Valuation)	285,000
348,090	INTERESTS OF OUTSIDE SHAREHOLDERS IN SUBSIDIARY COMPANY	443,900		Less-Provision for Depreciation and amounts written off	96,204
15,922,811		16,261,578			188,796
LONG TERM LIABILITIES - Secured:					
405,460	Secured by Mortgages on Freehold Properties etc.	260,440	213,002	TOTAL FIXED ASSETS	25,429,549
640,000	MORTGAGE DEBENTURE STOCK	-	21,880,836	INVESTMENTS AND LOANS:	
BANK OF NEW SOUTH WALES:					
-	TERM LOAN ACCOUNT	1,711,112		INVESTMENTS:	
1,045,460		1,971,552		In Companies listed on Prescribed Stock Exchanges (at cost) (Market Value \$408)	398
233,600	DEFERRED INCOME TAX	379,500		In Other Companies (at cost)	1,535
CURRENT LIABILITIES & PROVISIONS:					
4,592,782	Trade Creditors	4,647,253	398	DEFERRED LOANS	3,696,000
492,855	Other Creditors	930,607	1,452	Less-Provision for Doubtful Debts	150,000
3,833,086	Short Term Loans	4,071,083			3,546,000
3,725,642	Bank of New South Wales (Secured Net Balance)	4,932,381	3,933,040	CURRENT ASSETS:	
-	Australia & New Zealand Banking Group Limited	7,864	3,934,890	Cash on Hand	55,868
75,020	Mortgages (Secured)	165,020	49,638	Trade Debtors	2,123,334
PROVISIONS:					
679,286	Income Tax	420,918	3,563,215	Less-Provision for Doubtful Debts	170,491
912,248	Other Provisions	932,496	745,852		1,952,843
630,055	Final Dividend	270,024		Other Debtors	866,556
14,940,974		16,377,646		Stock on Hand and Work in Progress (at the lowest of cost, realisable value and market value)	2,385,142
				Payments in Advance	669,065
				Future Income Tax Benefits resulting from past losses	63,000
				CASH AT BANK AND ON DEPOSIT:	
				Cash at Bank	2,224
				Short Term Deposits	18,096
					6,012,794
32,142,845	Notes numbered 1 to 7 form part of these Accounts.	\$34,990,276	\$32,142,845		\$4,990,276

EXHIBIT M.H.6. (continued)

ADDENDUM TO PROPOSAL BY AMPOL PETROLEUM LTD.
FOR ACQUISITION OF SHARES OF R.W. MILLER
(HOLDINGS) LTD. DATED 14th JANUARY 1972.

PROPOSAL FOR ACQUISITION OF SHARES

ADDENDUM

Yesterday, January 13, Messrs. Harris and Leonard met Lady Miller and Mr. Wilkinson of Abbott Tout Creer & Wilkinson.

- 10 Mr. Wilkinson was substituting for Mr. Parker, who had taken ill.

Lady Miller said that she had made up her mind to sell and her asking price was \$2.25 per share.

We countered (subject to Board approval) with \$1.85 per share.

- 20 We were handed a list of shareholders and their ownership and told that these were Clubs, friends and relatives, whom Lady Miller controlled. She would acquire these shares from the owners and the successful bidder would purchase the lot from her. They total 3,315,741. Attachment (3) lists these.

- 30 Lady Miller and Wilkinson advised that there was now only one other bidder, H.C. Sleigh Limited. Their offer had been \$1.75 per share but they had been informed that morning that the price was unacceptable and the asking price was \$2.25 per share. They asked for the opportunity of reconsidering their bid, which was given. They proposed submitting a new bid immediately after our interview.

In fact, we were let out one door of Abbott Tout Creer & Wilkinson's office whilst the Sleigh group came in another.

Our reception was warm and friendly and it is possible that we may be told the amount of Sleigh's second bid.

Exhibit M.H.6.

Addendum to
proposal by
Ampol
Petroleum Ltd.
for acquis-
ition of shares
of R.W. Miller
(Holdings) Ltd.
14th January 1972

Exhibit M.H.6.
Addendum to
proposal by
Ampol
Petroleum Ltd.
for acquis-
ition of shares
of R.W.Miller
(Holdings) Ltd.
14th January 1972
(continued)

We believe that she would prefer to do business with us if our offer is, say, equal to Sleights.

Lady Miller indicated that she was leaving for Fiji on the 18th and wished to finalise the matter forthwith.

RECOMMENDATION

The Executive Directors are unanimous that we make an offer to purchase the shares.

It is very difficult to place a price on them because some hard bargaining lies ahead. It is possible that we could purchase them at a figure equivalent to half the difference between our bids - i.e. \$2.05 per share, which is slightly in excess of our estimate of the net asset value, but well below the Miller Board's estimate.

10

It is emphasized that, in our opinion, our estimates of the worth of the assets is conservative. It does not allow, of course, for the intangible benefits that will flow from the strong position we will have in the Australian tanker market. Obviously, Sleight recognises this too.

20

We have verified that the profits on the tanker now operating is at the rate of \$9 million per annum, after interest and after tax. The Company's present equity in this tanker is probably about \$8 million, showing a return of about 30%. On total cost, after charging interest, it is 9%.

30

The second tanker, now under construction, will produce the same rate of profit.

Shell have already presented to the Miller Board a firm offer to charter this vessel exclusively for 5 years.

With these additional profits, it is reasonable to anticipate that the dividend can be restored to 10%.

The diversification fits in with our existing Company philosophy - i.e. tankers and real estate.

40

We believe the acquisition will have a beneficial impact on the image of our Company, and improve our profits and our share values.

The acquisition is supported by the Bank of New South Wales and J.B. Were & Son, who agree it is a good investment for Ampol. The Bank add that R.W. Miller & Co. has sound assets, but has been badly managed.

10 We have been advised legally, that as Lady Miller's shares are held on the Canberra register, they can be acquired and not constitute a takeover offer, which would be the case under the new Company legislation of New South Wales and Victoria. The Canberra Act has not yet been proclaimed, but could happen shortly.

Wilkinson and Lady Miller confirmed our legal advice and hence, another reason why she wishes to finalise the matter promptly.

20 If \$2.05 per share was insufficient to acquire her shares and beat off the Sleigh bid, then we, the Executive Directors, believe it would be regrettable if we lost the opportunity because of 10 or 15¢ per share.

Of course, we may do better than \$2.05 per share, but Management may need authority in excess of this to clinch the deal.

30 The acquisition of Lady Miller's shares, we regard as the first step in acquiring control of the Company. It may take several months before we could move to the second stage and would involve further discussions with Sir Peter Abeles.

In the event of us proceeding to acquire the balance of the shares other than Bulkships, at \$2.05 per share, the total investment would be approximately \$13.8 million - i.e. approximately \$7 million over and above Lady Miller's interests.

40 J.B. Were have indicated they could finance this on a long term basis, probably by means of a debenture issue.

Exhibit M.H.6.

Addendum to proposal by Ampol Petroleum Ltd. for acquisition of shares of R.W. Miller (Holdings) Ltd. 14th January 1972 (continued)

1st Defendants
Exhibits
Exhibit M.H.6.

ATTACHMENT 3.

Addendum to
proposal by
Ampol
Petroleum Ltd.
for acquis-
ition of shares
of R.W.Miller
(Holdings) Ltd.
14th January 1972
(continued)

R.W.MILLER (HOLDINGS) LIMITED AS AT DECEMBER 1971

	<u>Shares</u>	%
A. <u>MILLER FAMILY</u>		
Romanda Pty. Ltd.	2,144,871	
Estate of Sir R.W. Miller	1,200	
Lady Elizabeth Miller	57,360	
R.W. Miller & Co.	5,000	
Mrs. G. Frazer	12,000	
Rellim Pty. Ltd.	<u>35,000</u>	10
	<u>2,255,431</u>	25.1
B. <u>RELATIVES & FRIENDS</u>		
Bank of N.S.W. Nominees Pty. Ltd. (Clubs)	945,370	
Norman R. Rogers	30,000	
John J. Brown	14,000	
K.O. Pitt	12,000	
W.J. Dunlop	13,000	
Dr. G.S. Cottee	12,000	
Wentworthville Leagues Club	10,000	20
W. Gardner	5,000	
K. Harrison	5,200	
A.A., C.J. & V. Lockley	440	
Bradshaw Holdings Pty. Ltd.	4,000	

1703.

1st Defendants
exhibits
Exhibit M.H.6.
Addendum to
proposal by
Ampol
Petroleum Ltd.
for acquis-
ition of shares
of R.W.Miller
(Holdings) Ltd.
14th January 1972
(continued)

	<u>Shares</u>	%
W.J. Bradshaw	4,800	
B. Charles	1,000	
R. Miller	1,200	
Marcus Miller	1,200	
Iris Miller	100	
H. Ford		
	<hr/>	
	1,060,310	11.8
	<hr/>	

C. DUNCAN FAMILY

10	Ardry Holdings Pty. Ltd.	210,000	
	Wintersun Holdings Pty. Ltd.	200,000	
	P.J. Duncan	6,000	
		<hr/>	
		416,000	4.6
		<hr/>	

D. BULKSHIPS LIMITED

		2,257,100	25.1
		<hr/>	

E. OTHERS

	National Nominees Limited	30,600	
	Associated Nominees Pty. Ltd.	25,000	
	Loani Pty. Ltd.	23,000	
	Scandrett Investments Pty. Ltd.	20,000	
20	Judavphil Pty. Ltd.	17,800	
	Unilever Pension Trust Pty. Ltd.	17,100	
	Australian Inv. & Devel. Ltd.	15,000	

1704.

1st Defendants
Exhibits
Exhibit M.H.6.

Addendum to
proposal by
Ampol
Petroleum Ltd.
for acquis-
ition of shares
of R.W.Miller
(Holdings) Ltd.
14th January 1972
(continued)

	<u>Shares</u>	%
Miss H.C. Moore	15,000	
David Fowler	14,300	
Paul Merril Pty.Ltd.	14,000	
Gedclin Pty. Ltd.	14,000	
Ernest Pardy	13,700	
Manly Hotels Pty. Ltd.	12,000	
James Holyman Pty. Ltd.	10,000	
Pactolus Estates Pty. Ltd.	10,000	
Alexander G. Slater	10,000	10
Southern Cross Prov. Noms. Pty. Ltd.	10,000	
	<hr/>	
	271,500	3.0
	<hr/>	
<u>BALANCE HOLDINGS</u> less than 10,000	2,740,445	30.4
	<hr/>	
<u>TOTAL SHARES ISSUED</u>	9,000,786	100.0
	<hr/>	

Exhibit MH7

Heads of Agreement between Ampol Petroleum Limited and Bulk Ships Pty. Ltd. (undated)

HEADS OF AGREEMENT REACHED BETWEEN AMPOL PETROLEUM LIMITED ("AMPOL") AND BULK SHIPS PTY. LIMITED ("BULK SHIPS") ON THE DAY OF 1972

1st Defendants Exhibits Exhibit MH7

Heads of Agreement between Ampol Petroleum Limited and Bulkships Pty. Ltd. (undated)

RECITALS

10 A. Romanda Pty. Limited (herein called "Romanda") is the registered holder and beneficial owner of 2,144,871 ordinary shares of \$1.00 each (herein called "the Romanda shares") in the capital of R.W. Miller (Holdings) Limited (hereinafter "the Company")

20 B. Bulk Ships has represented to Ampol that it is the registered holder and beneficial owner of ordinary shares in the capital of the Company (herein called "the Bulk Ship shares") and has no relevant interest (within the meaning of Section 6A of the Companies Act as amended by the Companies Amendment Act 1971) in any other Miller shares.

C. Ampol has represented to Bulk Ships that it has no relevant interest in any Miller shares.

D. Ampol and Bulk Ships are desirous of jointly acquiring control of the Company.

E. In these heads of agreement "Millers shares" means shares in the capital of the Company.

IT IS AGREED as follows:-

30 1. (a) Ampol shall forthwith enter into negotiations with Romanda with a view to acquiring the Romanda shares on the best terms available and Bulk Ships shall give all assistance and take all steps in its power to assist in the negotiations.

(b) Ampol shall use its best endeavours to effect the purchase of the Romanda shares for a purchase price of \$2.11 per share or such other price as shall be agreed between Ampol and Bulk Ships such price to be payable in cash on completion of the purchase.

1st Defendants
Exhibits
Exhibit MH7

—
Heads of
Agreement
between Ampol
Petroleum
Limited and
Bulk Ships Pty.
Ltd. (undated)
(continued)

2. (a) As soon as practicable after completion of the purchase of the Romanda shares Ampol shall make offers to acquire all other Miller shares for a price equal to the price paid by Ampol to Romanda for the Romanda shares.

(b) Such offers shall be conditional upon acceptances being received in respect of not less than 90% of the total number of Miller shares for which offers are made.

(c) Ampol shall retain the right to waive such condition but shall not declare the offers free of such condition without prior consultation with Bulk Ships. 10

(d) Bulk Ships shall accept the offer made to it in respect of all of the Bulk Ship shares.

3. (a) As soon as practicable after such offers shall have closed after becoming unconditional Ampol shall sell to Bulk Ships and Bulk Ships shall buy one half of the total number of Miller shares in which Ampol then has a relevant interest (hereinafter 20 referred to as "the Ampol shares")

(b) The total purchase price to be paid by Bulk Ships to Ampol for such sale and purchase shall be one half of the aggregate of:-

(i) the total purchase price payable by Ampol for the Ampol shares

(ii) all legal expenses and costs incurred or payable by Ampol in respect of the acquisition of the Ampol shares and

(iii) all stamp duties and other imposts payable by Ampol in respect of the transfer of any Ampol shares to Ampol and/or to Bulk Ships 30

4. (a) After completion of the said sale and purchase from Ampol to Bulk Ships the parties shall consult together to assess the value and worth of the assets of the Company with a view to determining whether it would be in the best interests of the Company and the parties to cause the Company to dispose of any of its assets and if so to consider the terms upon which any such assets should be disposed of. 40

(b) No asset of the Company shall be disposed of unless it shall have first been offered to each of the parties hereto on terms not less favourable both as to price and otherwise than the terms on which it is to be disposed elsewhere and each party has rejected such offer.

10 5. (a) After completion of the said sale and purchase the parties shall procure that Bulk Ships shall be appointed by the Company to operate and manage the shipping interests of the Company PROVIDED HOWEVER that except with the prior approval of Ampol:-

(i) no charter part or chartering arrangement shall be entered into in respect of any ship or vessel owned by the Company

(ii) no industrial arrangements or agreements with respect to rates of pay or conditions of service of any seaman employed by the Company shall be entered into

20 (iii) no insurance arrangements in respect of the shipping operations shall be made by the Company

(b) It is intended by the parties that ultimately Ampol and Bulk Ships will each have an undivided one half interest in the shipping operations of the Company and all ships and vessels owned by the Company to the intent that neither Ampol or Bulk Ships shall either directly or indirectly receive any greater share of the profits of the shipping operations or obtain any additional advantage over the other in connection with the management and operations of the shipping operations.

30

6. The parties contemplate that the provisions of clauses 4 and 5 hereof will be embodied in a formal agreement between the parties as soon as practicable after completion of the sale and purchase referred to in clause 3.

SIGNED for and on behalf
of AMPOL PETROLEUM LIMITED

40 SIGNED for and on behalf
of BULK SHIPS PTY. LIMITED

1st Defendants
Exhibits
Exhibit MH10

Analysis of
cost of shares
(undated)

1st Defendants Exhibits
Exhibit MH10
"Chatterley"
Analysis of cost of shares (undated)

SHAREHOLDING & COST

	<u>Shares</u>	<u>Cost (£2.25)</u>	<u>£2.27</u>
Romanda Pty.Ltd.	2,144,871	4,825,960	4.9 m
Bulkships	2,257,100	5,078,475	5.12 "
Balance	<u>4,598,815</u>	<u>10,347,334</u>	10.43 "
	<u>9,000,786</u>	<u>£20,251,769</u>	2.45
Stamp Duty -			
60¢ per £100		120,000	.12
Other Costs		<u>10,000</u>	.01
<u>Total Cost</u> - 100%		<u>£20,381,769</u>	20.58
- Per Share ...		<u>£2.26</u>	

: 50% thereof would cost	£10,190,885	10.20
: Bank finance approved	£4,500,000	4.5
: Balance to be financed	£5,690,885	5.79

NET ASSET VALUE

1) As at 30th June, 1971	£16,261,578	inc. Min. Holders	£158,261,65
Per Share	<u>£1.807</u>		£1.76
2) As at 31st December, 1971, with addition of 6 months to 31st December Unappro- priated Profit (£276,000)	£16,537,578		
Per Share	<u>£1.837</u>		£1.80
3) <u>Updated</u>			
As per 30th June, 1970, Balance Sheet	£16,261,578		
<u>Add</u>			
: Unappropriated Profits 6 mths December 1971	£276,000		
: Revaluation Freehold	<u>6,220,418</u>	<u>£6,496,418</u>	
		<u>£22,757,996</u>	£2.50
Per Share -	<u>£2.53</u>		
<u>Less</u> write down assumed previously on Coal assets (from £7.3 million to £3 million)	<u>£4,286,951</u>		
		<u>£18,471,045</u>	
Per Share	<u>£2.05</u>		£1.75

10

20

30

1st Defendants Exhibits

Exhibit MH11

Notice to answer interrogatories set by the 1st Defendant R.W. Miller (Holdings) Ltd. for the 3rd Defendant Emil Herbert Peter Abeles annexures A, B and C thereto and the answers to such interrogatories dated 24th August 1972, 14th January 1972, annexure C being undated

1st Defendants Exhibits
Exhibit MH11

Notice to answer interrogatories set by the 1st Defendant R.W. Miller (Holdings) Ltd. for the 3rd Defendant Emil Herbert Peter Abeles annexures A, B and C thereto and the answers to such interrogatories dated 24th August 1972, 14th January 1972, annexure C being undated

10 IN THE SUPREME COURT)
OF NEW SOUTH WALES) 1240 of 1972.
EQUITY DIVISION)

AMPOL PETROLEUM LIMITED Plaintiff

R.W. MILLER (HOLDINGS) LIMITED & OTHERS Defendants

R.W. MILLER (HOLDINGS) LIMITED Cross Claimant

AMPOL PETROLEUM LIMITED, BULKSHIPS LIMITED and EMIL HERBERT PETER ABELES Cross Defendants

20 NOTICE TO ANSWER INTERROGATORIES DELIVERED TO THE THIRD NAMED CROSS DEFENDANT, EMIL HERBERT PETER ABELES BY THE FIRST DEFENDANT/CROSS CLAIMANT

Pursuant to the order of the Honourable Mr. Justice Street made 8th August 1972 the third named Cross Defendant is required to answer interrogatories numbered 1 to 69 and verify his answers on or before 30th August 1972.

30 INTERROGATORIES

1. On or about 14th January 1972 did Abeles cause to be brought into existence the document headed "Proposal for acquisition of shares" a copy whereof is hereunto annexed and marked with the letter "A".
2. Prior to the institution of this suit has Abeles seen the document, Annexure "A" hereto.
3. If the answer to question 2 is in the affirmative:-

1st Defendants
Exhibits

Exhibit MH11

Notice to
answer

Interrogatories
set by the 1st
Defendant

R.W. Miller
(Holdings) Ltd.
for the 3rd
Defendant Emil
Herbert Peter

Abeles
annexures A,
B and C thereto
and the answers
to such
interrogatories
dated 24th
August 1972,
14th January
1972,
annexure C
being undated
(continued)

- (a) when;
- (b) where;
- (c) in what circumstances

did Abeles see the document Annexure "A".

4. On or about 14th January, 1972 did Abeles cause to be brought into existence the document headed "Proposal for acquisition of shares -- addendum" a copy whereof is hereunto annexed and marked with the letter "B".

5. Prior to the institution of this suit has Abeles seen the document, Annexure "B" hereto.

10

6. If the answer to question 5 is in the affirmative:-

- (a) when;
- (b) where;
- (c) in what circumstances

did Abeles see the document Annexure "B".

7. Did Abeles have any discussions with Ampol Petroleum Limited regarding the possible acquisition jointly or severally by Bulkships Limited and Ampol Petroleum Limited of shares in R.W. Miller (Holdings) Limited not already owned by one or other of them.

20

8. If the answer to question 7 is in the affirmative:-

- (a) when was such discussion or if more than one each of such discussions held;
- (b) in relation to such discussion or if more than one each of such discussions who on behalf of Ampol Petroleum Limited attended the discussion;
- (c) at such discussion or if more than one at each of such discussions what was the substance of the discussion concerning the acquisition of shares in R.W. Miller (Holdings) Limited.

30

9. In or about December 1971 did Abeles have any discussions with Ampol Petroleum Limited concerning shares in R.W. Miller (Holdings) Limited.

10. If the answer to question 9 is in the affirmative:-

- (a) when exactly was such discussion held;
- (b) who on behalf of Ampol Petroleum Limited attended;
- (c) what was the substance of such discussion.

10 11. Did Abeles undertake in December 1971 that if Ampol Petroleum Limited made an offer for the acquisition of shares in R.W. Miller (Holdings) Limited then owned by Lady Elizabeth Miller and such offer was accepted and Ampol Petroleum Limited made a subsequent offer to other shareholders of R.W. Miller (Holdings) Limited for their shares then Bulkships Limited would support such offer on condition that Ampol Petroleum Limited would arrange for Bulkships Limited a 60% to 70% interest in the tankers then owned by R.W. Miller (Holdings) Limited.

12. Did Abeles hold discussions with Ampol Petroleum Limited concerning shares in R.W. Miller (Holdings) Limited on or about 6th January, 1972.

20 13. If the answer to question 12 is in the affirmative:-

- (a) where was such discussion held;
- (b) who on behalf of Ampol Petroleum Limited attended such discussion;
- (c) what was the substance of the discussion.

30 14. Did Abeles, acting on behalf of Bulkships Limited, on or about 6th January, 1972 inform Ampol Petroleum Limited that Bulkships Limited would acquire 50% of the assets other than tankers of R.W. Miller (Holdings) Limited and would require a 60% interest in the tankers in the event of a takeover of R.W. Miller (Holdings) Limited by Ampol Petroleum Limited.

40 15. Did Abeles on or about 6th January, 1972 inform Ampol Petroleum Limited that Bulkships Limited was prepared to enter into a legally binding agreement concerning the division of shares and assets of R.W. Miller (Holdings) Limited between Bulkships Limited and Ampol Petroleum Limited following upon a successful bid by Ampol Petroleum Limited for the shares in R.W. Miller (Holdings) Limited.

16. Did Abeles in 1972 inform Ampol Petroleum Limited that Bellambi Coal was a potential buyer

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for the colliery interests of R.W. Miller (Holdings) Limited.

17. Did Abeles cause to be prepared a document intituled "Heads of Agreement" of the agreement reached between Ampol Petroleum Limited and Bulkships Limited in 1972, a copy of which document is hereunto annexed and marked with the letter "C".

18. Was the document hereunto annexed and marked with the letter "C" prepared at the instructions of:-

- (a) Abeles and/or
- (b) Ampol Petroleum Limited and/or
- (c) Bulkships Limited.

10

19. Does the document Annexure "C" correctly set out the matters discussed between Abeles on behalf of Bulkships Limited and Ampol Petroleum Limited concerning R.W. Miller (Holdings) Limited.

20. Did Abeles represent Bulkships Limited in the negotiations leading to the document Annexure "C".

21. If the answer to question 20 is in the negative who represented Bulkships Limited in such negotiations.20

22. Who represented Ampol Petroleum Limited in the negotiations leading to the document Annexure "C".

23. When and where were the negotiations held which led to the preparation of the document Annexure "C".

24. Did:-

- (a) Ampol Petroleum Limited;
- (b) Bulkships Limited;

ever do anything pursuant to the heads of agreement.

25. If the answer to question 24 is in the affirmative:-

30

- (a) what was done;
- (b) by whom was it done;
- (c) when was it done.

26. Was the agreement between Ampol Petroleum Limited and Bulkships Limited embodied in the said document hereunto annexed and marked "C" rescinded at any time.

27. If the answer to question 26 is in the affirmative who on behalf of Ampol Petroleum Limited and who on behalf of Bulkships Limited agreed to a rescission and when and what were its terms.

28. Has Abeles had any discussions with Ampol Petroleum Limited relating to the disposal following upon a possible successful takeover of the shares in R.W. Miller (Holdings) Limited of the following interests:-

- (a) the hotel interests;
- (b) the colliery interests;
- (c) the tanker interests;

of R.W. Miller (Holdings) Limited.

29. If the answer to the foregoing question is in the affirmative:-

- (a) when was each of such discussions held;
- (b) where was each of such discussions held;
- (c) with whom on behalf of Ampol Petroleum Limited was each of such discussions held;
- (d) what was the substance of each of such discussions.

30. Has Abeles held discussions with anyone concerning the disposal of any of the assets of R.W. Miller (Holdings) Limited following upon a possible successful takeover by:-

- (a) Ampol Petroleum Limited and/or
- (b) Bulkships Limited and/or
- (c) any other person or company.

31. If the answer to question 30 is in the affirmative:-

- (a) when;
- (b) where;
- (c) with whom was such discussion held;
- (d) what was the substance of each of such discussions.

32. Did Abeles between 1st January, 1971 and 24th June, 1972 make any estimates or calculations of the value of shares in R.W. Miller (Holdings) Limited.

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33. If the answer to question 32 is in the affirmative:-

- (a) when was such estimate or if more than one such estimates made;
- (b) by whom was such estimate or if more than one each of such estimates made;
- (c) what was the estimated value or if more than one each of the estimated values.

34. Did Abeles make known to:-

- (a) Ampol Petroleum Limited;
- (b) anyone else;

10

his calculations of the estimated value of the shares in R.W. Miller (Holdings) Limited.

35. If the answer to question 34 is in the affirmative:-

- (a) when;
- (b) where;
- (c) to whom;
- (d) in what manner was this disclosure made and what were the terms thereof.

20

36. Did Abeles have any discussions with any person concerning the financing of the:-

- (a) acquisition by Ampol Petroleum Limited of the shares in R.W. Miller (Holdings) Limited from Romanda Pty. Limited;
- (b) the takeover offer made by Ampol Petroleum Limited for shares in R.W. Miller (Holdings) Limited.

37. If the answer to question 36 is in the affirmative:-

30

- (a) when;
- (b) where;
- (c) with whom were such discussions held;
- (d) what was the substance of such discussions.

38. Did Abeles make any offer to anyone for the acquisition of shares in R.W. Miller (Holdings) Limited in:-

- (i) 1971;
(ii) 1972

either (a) on his own behalf or (b) on behalf of anyone else.

39. If the answer to question 38 is in the affirmative:-

- 10 (a) when did Abeles make such offer or offers;
(b) where did Abeles make such offer or offers;
(c) to whom did Abeles make such offer or offers;
(d) on whose behalf did Abeles make such offer or offers;
(e) what was the offer or offers made by Abeles.

40. If the answer to question 38 is in the affirmative did Abeles withdraw such offer or offers.

41. If the answer to question 40 is in the affirmative:-

- 20 (a) when;
(b) where;
(c) by what means did Abeles withdraw or rescind such offer.

42. Did Abeles approve the issue of a statement on or about 27th June, 1972 as set forth in paragraph 19 of the Statement of Claim.

43. If the answer to question 42 is in the affirmative was the approval:-

- 30 (a) express or implied or partly express and partly implied;
(b) if express or partly express was it oral or partly oral and/or in writing or partly in writing;
(c) if oral:-
(i) to whom was it given;
(ii) what were its terms;
(d) if in writing or partly in writing please specify the document or documents;
(e) if implied or partly implied what are the facts and circumstances alleged to give rise to the implied approval.

44. Does Abeles claim that he was:-

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- (a) prevented from fully participating in the discussion of the resolution for the allotment of shares to Howard Smith Limited on 6th July 1972;
- (b) without proper justification and contrary to the articles of association excluded from voting on the said resolution.

45. If the answer to question 44(a) is in the affirmative what would Abeles have said had he not been allegedly prevented from participating in the discussion referred to. 10

46. If the answer to question 43(b) is in the affirmative how would Abeles have voted.

47. In relation to Bulkships Limited is Abeles a director of that company.

48. If the answer to question 47 is in the affirmative when was Abeles appointed a director of Bulkships Limited.

49. At all times since 1st January, 1971 has Thomas Nationwide Transport been the owner of 3,537,669 shares in Bulkships Limited. 20

50. As at 6th July 1972 was Abeles registered as the holder of 6,300 shares in Group No. 1, 6,475 shares in Group No. 4 and 39,500 shares in Group No.5 in the capital of Thomas Nationwide Transport Limited.

51. As at 6th July 1972 was P.A. Holdings Pty. Limited registered as the owner of 622,556 shares in Thomas Nationwide Transport Limited.

52. As at 6th July 1972 out of 10,000 issued ordinary shares in the capital of P.A. Holdings Pty. Limited did Abeles Holdings Pty. Limited own 9,997. 30

53. As at 6th July 1972 was Abeles the sole governing director of P.A. Holdings Pty. Limited.

54. As at 6th July 1972 in the capital of Abeles Holdings Pty. Limited:-

- (a) did Abeles hold all the issued A class shares;
- (b) did P.A. Holdings Pty. Limited own all the issued non cumulative preference shares;
- (c) out of the 9,887 B class ordinary shares did Abelex Investments Pty. Limited own 9,880 shares. 40

55. As at 6th July 1972 in the share capital of Abelex Investments Pty. Limited:-

- (a) did Abeles beneficially own:-
 (i) three;
 (ii) four;
 of the four issued "A" class shares;
- (b) did Abeles own 667 of the 2,167 issued B class shares;
- (c) did Abeles own 667 of the issued 1,167 C class shares;
- (d) of the issued share capital were the "A" class shares the only ones with voting rights.

Notice to answer interrogatories set by the 1st Defendant R.W. Miller (Holdings) Ltd. for the 3rd Defendant Emil Herbert Peter Abeles annexures A, B and C thereto and the answers dated 24th August 1972 14th January 1972, annexure C being undated (continued)

56. As at 6th July 1972 was Abeles in receipt of any remuneration reward payment or emolument from Thomas Nationwide Transport Limited.

57. If the answer to question 56 is in the affirmative what rewards emoluments or payments was Abeles receiving.

58. As at 6th July 1972 did Abeles have any options to take up shares in Thomas Nationwide Transport Limited.

59. If the answer to question 58 is in the affirmative in respect of how many shares and on what conditions can the options be exercised.

60. What interest does Abeles have:-

- (a) directly;
 (b) indirectly in the share capital of Thomas Nationwide Transport Limited.

61. Did Abeles abstain from voting on the resolution for the recommendation of the directors of R.W. Miller (Holdings) Limited on 10th August, 1972 on the takeover offer from Howard Smith Limited.

62. If the answer to question 59 is in the affirmative for what reason did Abeles so abstain.

63. Would Abeles have abstained from voting on the resolution for allotment of shares to Howard Smith on 6th July 1972.

10

20

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64. Was Abeles aware:-

- (a) from April 1971 until 31st December, 1971
- (b) in 1972

of the needs of R.W. Miller (Holdings) Limited for outside finance.

65. What was Abeles' belief:

- (a) from April 1971 until 31st December, 1971
- (b) in 1972

as to the liquidity position of R.W. Miller (Holdings) Limited. 10

66. Did Abeles:-

- (a) have any discussions with anyone;
- (b) make arrangements with anyone;
- (c) give introductions for R.W. Miller (Holdings) Limited to anyone

with a view to obtaining finance for R.W. Miller (Holdings) Limited:

- (i) in 1971;
- (ii) 1972.

67. If the answer to any part of question 66 is in the affirmative:- 20

- (a) when;
- (b) with whom or to whom

did Abeles have discussions, make arrangements or give introductions.

68. On 6th July 1972 did R.W. Miller (Holdings) Limited require additional funds.

69. Did:-

- (a) Abeles;
- (b) Bulkships Limited
 - (i) offer
 - (ii) refuse

to provide funds to R.W. Miller (Holdings) Limited in

- (a) 1971;
- (b) 1972.

DATED 24th day of August, 1972

(Signed) JOHN CAMERON
Solicitor for first named Defendant/
Cross Claimant

Exhibit MH11 (continued)

Annexure A to the Notice to answer interrogatories set by the 1st Defendant R.W. Miller (Holdings) Ltd. for the 3rd Defendant Emil Herbert Peter Abeles dated 14th January 1972

January 14, 1972.

STRICTLY CONFIDENTIAL

PROPOSAL FOR ACQUISITION OF SHARESHISTORY

10 For some considerable time, Ampol has been aware of the value to it of the R.W. Miller tanker fleet.

Under the Government's Maritime Tanker Policy, the "Amanda Miller" and the "Robert Miller" (now under construction), rank in priority for usage on the Australian coast immediately after the "P.J. Adams". Whilst the existing policy remains, they have guaranteed usage at very profitable rates.

20 The "Amanda Miller" currently is under charter to an oil industry consortium (excluding Shell and Ampol) for a 3 year term. The second tanker, under construction, Shell wishes to charter exclusively.

Prior to his death, tentative discussions took place with Sir Roderick Miller, reference pooling of our combined tanker fleets to gain the maximum financial benefits for each party. His death shortly after these discussions prevented any finality.

30 Sir Peter Abeles, Managing Director of T.N.T., and a very large and valuable customer to Ampol for some 20 years, acquired on behalf of his Company, a 25% interest in R.W. Miller & Co. It was his intention to make a takeover offer to the rest of the shareholders, but this did not receive the support of Sir Roderick Miller, who took successful defensive action. T.N.T. were then "locked in" with their 25% interest. Subsequently, T.N.T. transferred their shares to Bulkships Limited. This Company is owned one-third each by T.N.T., Adelaide Steamship Co. Limited and McIlwraith McEachern Ltd.

40 Over the last 12 months or so, Sir Peter Abeles has had two or three discussions with me regarding the

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possibility of Bulkships and Ampol Petroleum acquiring the balance of the shares in R.W. Miller, on some mutually agreed plan. Bulkships' interests too, are primarily in the tankers. We expressed interest and said that we would be willing to progress such an idea when the opportunity presented itself.

Early in December, Sir Peter Abeles informed me that Shell were interested in the tankers and had made an approach to Lady Miller to acquire a half interest in 10 these vessels. At about the same time, we learned from another source that H.C. Sleight had made an offer to purchase Lady Miller's 26% interest in the Company, and this was conveyed to Abeles.

He informed us that Lady Miller had been prevaricating but he felt now that she was willing to sell her shares for cash and he believed that if Ampol and Bulkships were going to do anything, they should move fast.

He undertook that if Ampol made an offer for her shares and was successful, and then made an offer to the rest of the shareholders, he would undertake to support the offer, in consideration of Bulkships acquiring a 60-70% interest in the tankers. He made the point that he wanted a majority interest to reveal the tanker company as a subsidiary of his Company. 20

On being questioned as to why he could not acquire Lady Miller's shares himself, and then complete the takeover of the Company, Abeles replied that, under no circumstances, would Lady Miller sell the shares to him, or to any Company with which he was connected. Also, he would honour a promise he gave to Sir Roderick before his death, that in return for being appointed to the Board of R.W. Miller, he would not make any further attempts to take over the Company. 30

Subsequently, we confirmed from another source the fact that Lady Miller would not sell her shares to him.

On Friday, December 17, we were approached by Mr. Parker (a partner in Abbott Tout Creer & Wilkinson), who is the advisor to Lady Miller. 40

Parker stated that, on his advice, Lady Miller had

decided to sell her shares. There had been approaches already to Lady Miller to buy her shares, one of whom was H.C. Sleigh, through John Darling & Company. If Ampol were interested in the acquisition of her shares, and provided the price was right, then she would prefer to sell to Ampol. She would prefer cash.

10 We advised that we were definitely interested in looking at the possibility of making an offer and he suggested that we should do so about mid January or a little later.

He also added that no other offer would be accepted until such time as we made ours, if it were done within that time.

A brief discussion occurred in respect of the possibility of Lady Miller reinvesting some of this cash with Ampol with a debenture as security.

20 On January 6, Sir Peter Abeles had a further discussion with us. He confirmed that if Ampol were still interested in acquiring, first Lady Miller's shares, and then the balance, he, on behalf of Bulkships, would be willing to acquire 50% of the assets other than the tankers (and put up the equivalent amount of cash), but he would want a 60% interest in the tankers. He reiterated that Bulkships really wanted 100% and he had had great difficulty in convincing the Chairman of Bulkships, Sir Ian Potter, to release 40% equity to us, and he
30 felt that was as far as he could go.

He was prepared to enter into legal agreements before we made the bid, putting into effect, these arrangements.

He added that the tankers were really the only interest to him and that, over a period of years, his Company's attitude to their 50% ownership of other assets, would be to dispose of them and ultimately liquidate the Company. He believed this could be done at a handsome profit.

40 He believed that Lady Miller's shares could be bought for \$1.75 per share, and was of the opinion that we should follow on immediately with a similar takeover offer to other shareholders.

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He indicated also that if Bulkships were to sell their 25% interest to us, then they would want the price they paid for them - i.e. \$1.87 per share.

Abeles also advised that the other bidder for Lady Miller's shares was a Sydney firm, Industrial Estates Limited, who have made an unconditional offer to buy Lady Miller's shares at \$1.70 per share.

Prior to this discussion (on December 22), we had preliminary discussions with Messrs. Johnston, Abercrombie, Traxton and Paynter of J.B. Were (reference, the financing of the purchase of the Company), and these discussions were continued on January 10, 1972, in Sydney with Messrs. Johnston and Traxton.

10

Discussions centred round the best means of our achieving our objective, and there seemed to be two avenues open to us:

(1) To buy the shares held by Lady Miller first and then negotiate with Bulkships,

or alternatively

20

(2) Negotiate with Abeles and enter into a binding arrangement between Bulkships and Ampol, and then make an offer to Lady Miller and the rest of the shareholders.

It was found that (2) above was impracticable because, under the new Companies Act, any agreement entered into prior to an offer, would be a material contract and would have to be divulged. In that event, it was clear Lady Miller would not accept our offer because of her antipathy towards Abeles.

30

The impracticability has been subsequently confirmed by legal opinion.

It seems clear therefore, that if we wish to pursue the matter, we must first acquire Lady Miller's shares and, at some later date, acquire the remainder of the Capital, with or without a prior agreement with Bulkships.

Finally, a discussion was held with the Bank of New South Wales in which cash flows were presented -

these are attached as Attachment (1) - and will be discussed under the Financial Section.

Exhibit MH11

It is enough to say, at this stage, that the Bank will give us stand-by credit arrangements if required, to finance the purchase of Lady Miller's shares.

Annexure A to the Notice to answer interrogatories set by the 1st Defendant R.W. Miller (Holdings) Ltd. for the 3rd Defendant Emil Herbert Peter Abeles 14th January 1972
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FINANCIAL

10 Attachment (2) is the Consolidated Balance Sheet of R.W. Miller Holdings Limited and Subsidiary Companies at June 30, 1971, which shows a net asset value of £16,262,000, representing £1.81 per share.

We have updated this balance sheet from information we have acquired, and is summarised hereunder:

Fixed Assets

20	: Freehold and Leasehold Property (mainly Hotels)	£18,000,000
	(These assets were revalued after the balance sheet and announced by the Board of R.W. Miller just before Christmas. We have confirmation of this valuation because Mr. Clubb, before he joined Ampol, did the valuation).	
30	: Ships, Plant, etc.	£ 3,000,000
	(We have written this asset down substantially because it is primarily the coal interests, which we have estimated will probably not produce more than this amount).	
	: Tanker	<u>£10,000,000</u>
	Total Fixed Assets	£31,000,000
	Investments and Loans	£ 3,000,000
	Current Assets	<u>£ 6,000,000</u>
		£40,000,000
	<u>Less:</u>	
	<u>Liabilities</u>	
40	: Long Term Liabilities	£10,000,000
	: Current Liabilities	<u>£12,000,000</u>
		<u>£22,000,000</u>
	<u>NET ASSET VALUE</u>	<u>£18,000,000</u>
	<u>OR APPROXIMATELY</u>	<u>£2.00 PER SHARE</u>

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In addition to these assets, there is another tanker currently under construction worth between \$10 and \$11 million when completed, and for which finance we believe has been arranged under similar terms for the first tanker, i.e. a loan of 75-80% of the total value, for 5 years.

It must be emphasized, of course, there has been no access to the books of R.W. Miller and it is an assessment based on some known facts and information gleaned from various sources, and cross-checked. 10

In regard to Hotels, Tooheys Limited have an exclusive franchise to supply bulk beer, but spirits and bottled beer are specifically excluded. Millers have a liquor agency which supplies these products.

We know from discussions with the Assistant General Manager of Tooheys, that they are anxious to make a further deal in respect of these hotels to cover all supplies, and possibly the acquisition of some sites.

In respect of the coal interests, we have been very conservative and written this down heavily, but believe, in time, we could sell these interests at a price higher than our estimates, as Sir Peter Abeles informs us that Bellambi Coal is a potential buyer. The coal interests consist of collieries, colliers and a road distribution system. 20

ATTACHMENT 1

AMPOL GROUP

PROJECTION OF CASH BALANCES AND OVERDRAFT AVAILABILITY
JANUARY 1972 TO DECEMBER 1972

£'000's

	AMPOL	AMPOLEX	GROUP	O/D	O/D
	£	£	£	LIMIT	AVAILABLE
<u>Est. Balance</u>					
End January 1972	(6,362)	353	(6,009)	7,000	991
February 1972	(6,699)	2,338	(4,361)	7,000	2,639
March 1972	(7,186)	4,649	(2,537)	7,000	4,463
April, 1972	(8,799)	4,813	(3,986)	7,000	3,014
May, 1972	(10,003)	4,959	(5,044)	7,000	1,956
June, 1972	(7,279)	3,805	(3,474)	7,000	3,526
July, 1972	(6,115)	3,944	(2,171)	7,000	4,829
August, 1972	(8,274)	4,067	(4,207)	7,000	2,793
September, 1972	(6,922)	4,165	(2,757)	7,000	4,243
October, 1972	(7,034)	4,357	(2,677)	7,000	4,323
November, 1972	(6,364)	4,522	(1,842)	7,000	5,158
December, 1972	(6,429)	3,446	(2,983)	5,500	2,517

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NOTES:

1. Ampolex has \$5.4 million invested in short term money market - Available to Group at end of February, 1972.
2. Overdraft availability of \$7 million made up of -
 - (i) \$5 million Bank of New South Wales - reduces to \$3.5 million in December 1972 - Refer letter from Bank of New South Wales dated 21st October, 1971.
 - (ii) National Bank of Australasia \$2 million - reviewed annually.
3. Term loan drawdowns included in Ampol balance of \$9.5 million - refer letters of Bank of New South Wales 21st October, 1971 and 10th November, 1971.

AMPOL PETROLEUM LIMITED AND SUBSIDIARIES

1971/1972 - 1975/1976

	1971/72	1972/73	1973/74	1974/75	1975/76
A. STATISTICS					
Wapet Production - Bbls. (000)	16,104	15,403	13,832	12,301	11,017
- B.P.C.D.	44,000	42,200	37,800	33,700	30,100
Refinery Production - Bbls. (000)	13,199	14,438	17,532	18,500	19,795
- B.P.C.D.	36,062	39,554	48,032	50,959	54,088
Imports, etc. Ex. Purchases					
- Bbls. (000)	2,200	360	360	360	360
- B.P.C.D.	6,010	986	986	986	984
Crude Input - Bbls. (000)	14,204	15,759	18,964	20,045	21,265
- B.P.C.D.	38,809	43,176	51,955	54,919	58,101
B. SALES GALLONAGE (000)					
Motor Spirit	262,500	279,320	298,000	317,650	338,200
Kerosenes	18,880	20,350	21,890	23,675	25,850
Distillate	101,800	109,900	117,050	124,300	132,050
Black Oils	100,200	110,260	113,250	116,800	120,550
Detergent/Solvent	1,730	1,812	1,893	1,985	2,082
Lubes	7,180	7,491	7,782	8,089	8,406
Avtur	31,840	34,340	37,690	40,503	45,380
Gases	17,750	20,900	21,380	21,875	22,400
TOTAL	541,880	584,373	618,935	654,377	694,918
Equivalent Bbls. (000)	15,482	16,696	17,684	18,711	19,855
C. TURNOVER \$000					
	171,857	181,565	195,397	207,184	221,019
D. GROUP PROFITS \$000					
OPERATIONS - Cost	(16,117)	(18,744)	(21,128)	(23,944)	(25,962)
REFINERY - Cost	(45,833)	(49,572)	(51,961)	(55,050)	(56,386)
MARKETING - Net Revenue	77,836	83,059	90,951	99,625	107,439
PROCESS DEAL	(1,190)	(1,160)	(1,160)	(1,160)	(1,160)
STOCK USAGE ADJUSTMENT (Difference between Production and Sales Demand)	778	1,973	2,360	2,514	4,139
PROFIT 3 OPERATING DIVISIONS	15,474	15,556	19,062	21,985	28,070
Ampol Exploration Limited	4,071	4,396	3,887	3,503	3,104
Royalty to Ampol	647	619	556	495	443
Security Share Services	3	7	15	29	32
Yellow Cabs	495	520	546	573	601
A.L.O.R. Dividend	206	206	206	206	206
Sundry Income	-	-	-	-	-
TOTAL DIVISIONAL PROFITS	20,897	21,304	24,272	26,791	32,456
Less: Head Office Administration Expenses	2,694	2,878	3,118	3,310	3,445
Finance Charges	4,552	4,721	4,784	4,910	5,031
Inter Company Elimination	200	200	200	200	200
	7,446	7,799	8,102	8,420	8,676
GROUP PROFIT PRIOR TAX	13,451	13,505	16,170	18,371	23,780
Tax Provision - Current	5,613	5,853	7,372	8,785	11,031
- Future	246	220	195	175	155
- Total	5,859 (43.56)	6,073 (44.97)	7,567 (46.80)	8,960 (48.77)	11,186 (47.04)

1st Defendants
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Exhibit MH11Annexure A to
the Notice to
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set by the
1st Defendants
R.W. Miller
(Holdings) Ltd.
for the 3rd
Defendant
Emil Herbert
Peter Abeles
14th January
1972
(continued)

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1972
(continued)

	1971/72	1972/73	1973/74	1974/75	1975/76
	£	£	£	£	£
<u>GROUP PROFIT AFTER TAX</u>	7,592	7,432	8,603	9,411	12,594
Minority Interest	<u>1,093</u>	<u>1,072</u>	<u>949</u>	<u>758</u>	<u>495</u>
<u>NET PROFIT FROM TRADING AVAILABLE TO AMPOL PETROLEUM LTD.</u>	6,499	6,360	7,654	8,653	12,098
Other Items	(125)	-	-	-	-
<u>NET PROFIT AVAILABLE AFTER OTHER ITEMS</u>	£5,374				

AMPOL PETROLEUM LIMITED AND SUBSIDIARIESINCOME YEARS ENDED 30TH SEPTEMBER, 1972 - 1976

	1972	1973	1974	1975	1976	5 Years 1972-1976
Funds as at 1st October	(1,718)	2,653	(11,310)	(20,555)	(26,352)	(1,718)
Plus: <u>Cash Generated from Profit</u>						
: Budget Profit after Tax	6,374	6,360	7,654	8,653	12,098	41,139
: Minority Interests	1,093	1,072	949	758	496	4,368
: Taxation Provision	5,859	6,073	7,567	8,960	11,186	39,645
: Depreciation	9,861	10,396	11,005	11,459	11,921	54,642
	23,187	23,901	27,175	29,830	35,701	139,794
<u>Cash from Other Sources</u>						
: 1971 Debenture Issue (Balance)	184	-	-	-	-	184
: Sale of Darlington/Walkley	1,180	-	-	-	-	1,180
: Sale of Ship "54" Machinery	1,341	-	-	-	-	1,341
: Bank Loans (O/D and Term)	15,000	1,500	-	-	-	16,500
: Chase-N.B.A. Tanker Loan	5,071	895	-	-	-	5,966
: Customers' Loan Repayments	621	600	600	600	600	3,021
<u>FUNDS AVAILABLE</u>	44,866	29,549	16,465	9,875	9,949	166,268
<u>Application of Funds</u>						
: Taxation - Previous Year	3,560	5,613	5,853	7,372	8,785	31,183
: Dividends	6,830	6,830	6,830	6,830	6,830	34,150
: Working Capital	10,906	500	500	500	500	12,906
: Redemptions - L.T. Borrowings	3,558	4,265	5,206	3,679	11,570	28,278
: Repayments - Bank Finance	-	2,715	3,529	4,529	1,529	12,302
: Repayments - Chase-N.B.A. New Tanker	-	-	1,000	1,000	1,000	3,000
: Investments (Ampol Property/ Ampol Mining)	1,212	700	700	700	700	4,012
: Capital Expenditure (incl. Ampol Expl.)	10,034	18,374	12,692	10,907	11,799	63,806
: Ship "54" Payments to A.S.B.	4,848	1,119	-	-	-	5,967
: Ship "54" Machine Contract Payments	705	243	210	210	163	1,531
: Customer Loans	560	500	500	500	500	2,560
<u>FUNDS APPLIED FOR YEAR</u>	42,213	40,859	37,020	36,227	43,376	199,695
<u>SURPLUS (SHORTAGE) CUMULATIVE</u>	2,653	(11,310)	(20,555)	(26,352)	(33,427)	(33,427)

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14th January
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(continued)

January 5, 1972

1730.

5 YEAR CAPITAL BUDGET

§000's

DIVISION	71/72	72/73	73/74	74/75	75/76
OPERATIONS	551	1,000	1,000	1,000	1,000
REFINERY	1,152	8,240	2,560	1,225	1,800
MARKETING	1,500	5,500	6,000	6,000	6,000
YELLOW CABS	531	550	550	550	550
HEAD OFFICE	266	300	300	300	300
<u>*SUB TOTAL</u>	<u>§4,000</u>	<u>§15,590</u>	<u>§10,410</u>	<u>§9,075</u>	<u>§9,650</u>
10 AMPOL EXPLORATION	3,489	2,784	2,282	1,832	2,149
AMPOL PROPERTY	1,000	500	500	500	500
AMPOL MINING	212	200	200	200	200
<u>TOTAL</u>	<u>§8,701</u>	<u>§19,074</u>	<u>§13,392</u>	<u>§11,607</u>	<u>§12,499</u>

*DEPRECIATION
 GENERATION §9,216 §9,700 §10,400 §10,875 §11,300
 20 Prior Ampol
 Exploration

NOTE

1. New Tanker Finance is not included.
2. 1972/73 Refinery includes §5,920 for Arabian Crude.

January 5, 1972.

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 14th January
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 (continued)

R.W. MILLER (HOLDINGS) LIMITED AND ITS SUBSIDIARY COMPANIES

CONSOLIDATED BALANCE SHEET AT 30TH JUNE, 1971

<u>1970</u>		<u>1970</u>		<u>1970</u>
	AUTHORISED CAPITAL OF R.W.MILLER (HOLDINGS) LIMITED: 15,000,000 Ordinary Shares of \$1 each \$15,000,000		FIXED ASSETS: FREEHOLD AND LEASEHOLD PROPERTY (at cost)	12,373,225
	ISSUED CAPITAL: 9,000,786 Ordinary Shares of \$1 each fully paid	9,000,786	Less - Amortisation and amounts written off	<u>593,643</u>
	RESERVES & UNAPPROPRIATED PROFITS: 580,495 Share Premium Reserve	580,495	SHIPS, PLANT, MACHINERY AND DEVELOPMENT, MOTOR VEHICLES, FURNITURE, FIXTURES, CARS ETC. (at cost)	14,198,666
	51,610 General Reserve	51,610	Less - Provision for Depreciation and amounts written off	<u>6,911,715</u>
	2,009,138 Capital Profits Reserve	2,103,844	TANKERS UNDER CONSTRUCTION Progress Payments and Costs to date ..	6,174,220
	175,000 Reserve for Insurance Claims	175,000	PLANT AND MACHINERY (at Directors' 1969 Valuation)	285,000
	<u>3,766,779</u> Unappropriated Profits	<u>3,915,030</u>	Less - Provision for Depreciation and amounts written off	<u>96,204</u>
	15,583,803	15,826,765		<u>188,796</u>
	9,087 Less - Goodwill on Consolidation	<u>9,087</u>	TOTAL FIXED ASSETS	25,429,549
	15,574,721	15,817,678	INVESTMENTS AND LOANS: INVESTMENTS: In Companies listed on Prescribed Stock Exchanges	
	<u>348,090</u> INTERESTS OF OUTSIDE SHAREHOLDERS IN SUBSIDIARY COMPANY	<u>443,900</u>	398 (at cost) (Market Value \$408)	398
	15,922,811	16,261,578	1,452 In other Companies (at cost)	1,535
	LONG TERM LIABILITIES - Secured: 405,460 Secured by Mortgages on Freehold Properties etc.	260,440	DEFERRED LOANS 3,696,000	
	640,000 MORTGAGE DEBENTURE STOCK	-	Less - Provision for Doubtful Debts	<u>150,000</u>
	BANK OF NEW SOUTH WALES: - TERM LOAN ACCOUNT	<u>1,711,112</u>		<u>3,546,000</u>
	1,045,460	1,971,552	CURRENT ASSETS: Cash on Hand	55,868
	<u>233,600</u> DEFERRED INCOME TAX	379,500	Trade Debtors 2,123,334	
	CURRENT LIABILITIES & PROVISIONS: 4,592,782 Trade Creditors	4,647,253	Less - Provision for Doubtful Debts	<u>170,491</u>
	492,855 Other Creditors	930,607	1,952,843	
	3,833,086 Short Term Loans	4,071,083	Other Debtors	<u>866,556</u>
	3,725,642 Bank of New South Wales (Secured Net Balance)	4,932,381		2,819,399
	- Australia & New Zealand Banking Group Limited	7,864	Stock on Hand and Work in Progress (at the lowest of cost, realisable value and market value)	2,385,142
	75,020 Mortgages (Secured)	165,020	Payments in Advance	669,065
	PROVISIONS: 679,286 Income Tax	420,918	Future Income Tax Benefits resulting from past losses	63,000
	912,248 Other Provisions	932,496	CASH AT BANK AND ON DEPOSIT: Cash at Bank	2,224
	<u>630,055</u> Final Dividend	<u>270,024</u>	18,097 Short Term Deposits	<u>18,096</u>
	<u>14,940,974</u>	16,377,646		6,012,794
		3,563,215		
		<u>745,852</u>		
		1,412,737		
		<u>520,970</u>		
		16,610		
		<u>18,097</u>		
		<u>6,327,110</u>		
	<u>32,142,845</u> Notes numbered 1 to 7 form part of these Accounts.	<u>\$34,990,276</u>		<u>\$34,990,276</u>

1st Defendants Exhibits Exhibit MH11

Annexure A to the Notice to answer interrogatories set by the 1st Defendants R.W. Miller (Holdings) Ltd. for the 3rd Defendant Emil Herbert Peter Abeles 14th January 1972 (continued)

Exhibit MH11

Annexure B to Notice to answer interrogatories set by the 1st Defendant R.W. Miller (Holdings) Ltd. for the 3rd Defendant Emil Herbert Peter Abeles

PROPOSAL FOR ACQUISITION OF SHARESADDENDUM

10 Yesterday, January 13, Messrs. Harris and Leonard met Lady Miller and Mr. Wilkinson of Abbott Tout Creer & Wilkinson.

Mr. Wilkinson was substituting for Mr. Parker, who had taken ill.

Lady Miller said that she had made up her mind to sell and her asking price was \$2.25 per share. We countered (subject to Board approval) with \$1.85 per share.

20 We were handed a list of shareholders and their ownership and told that these were Clubs, friends and relatives, whom Lady Miller controlled. She would acquire these shares from the owners and the successful bidder would purchase the lot from her. They total 3,315,741. Attachment (3) lists these.

30 Lady Miller and Wilkinson advised that there was now only one other bidder, H.C. Sleigh Limited. Their offer had been \$1.75 per share but they had been informed that morning that the price was unacceptable and the asking price was \$2.25 per share. They asked for the opportunity of reconsidering their bid, which was given. They proposed submitting a new bid immediately after our interview.

In fact, we were let out one door of Abbott Tout Creer & Wilkinson's office whilst the Sleigh group came in another.

Our reception was warm and friendly and it is possible that we may be told the amount of Sleigh's second bid.

We believe that she would prefer to do business with us if our offer is, say, equal to Sleighs.

40 Lady Miller indicated that she was leaving for Fiji on the 18th and wished to finalise the matter forthwith.

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RECOMMENDATION.

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14th January
1972

(Continued)

The Executive Directors are unanimous that we make an offer to purchase the shares.

It is very difficult to place a price on them because some hard bargaining lies ahead. It is possible that we could purchase them at a figure equivalent to half the difference between our bids - i.e. \$2.05 per share, which is slightly in excess of our estimate of the net asset value, but well below the Miller Board's estimate. 10

It is emphasized that, in our opinion, our estimates of the worth of the assets is conservative. It does not allow, of course, for the intangible benefits that will flow from the strong position we will have in the Australian tanker market. Obviously Sleigh recognises this too.

We have verified that the profits on the tanker now operating is at the rate of \$.9 million per annum, after interest and after tax. The Company's present equity in this tanker is probably about \$8 million, showing a return of about 30%. On total cost, after charging interest, it is 9%. 20

The second tanker, now under construction, will produce the same rate of profit. Shell have already presented to the Miller Board a firm offer to charter this vessel exclusively for 5 years.

With these additional profits, it is reasonable to anticipate that the dividend can be restored to 10%.

The diversification fits in with our existing Company philosophy - i.e. tankers and real estate. 30

We believe the acquisition will have a beneficial impact on the image of our Company, and improve our profits and our share values.

The acquisition is supported by the Bank of New South Wales and J.B. Were & Son, who agree it is a good investment for Ampol. The Bank add that R.W. Miller & Co. has sound assets, but has been badly managed.

We have been advised legally, that as Lady Miller's shares are held on the Canberra register, they can be acquired and not constitute a takeover offer, 40

which would be the case under the new Company legislation of New South Wales and Victoria. The Canberra Act has not yet been proclaimed, but could happen shortly.

Wilkinson and Lady Miller confirmed our legal advice and hence, another reason why she wishes to finalise the matter promptly.

10 If \$2.05 per share was insufficient to acquire her shares and beat off the Sleigh bid, then we, the Executive Directors, believe it would be regrettable if we lost the opportunity because of 10 or 15¢ per share.

Of course, we may do better than \$2.05 per share, but Management may need authority in excess of this to clinch the deal.

20 The acquisition of Lady Miller's shares, we regard as the first step in acquiring control of the Company. It may take several months before we could move to the second stage and would involve further discussions with Sir Peter Abeles.

In the event of us proceeding to acquire the balance of the shares other than Bulkships, at \$2.05 per share, the total investment would be approximately \$13.8 million -- i.e. approximately \$7 million over and above Lady Miller's interests.

J.B. Were have indicated they could finance this on a long term basis, probably by means of a debenture issue.

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Peter Abeles
14th January
1972

(Continued)

O N A P P E A L
FROM THE SUPREME COURT OF NEW SOUTH WALES
EQUITY DIVISION

B E T W E E N :

HOWARD SMITH LIMITED Appellant
(13th Defendant)

- and -

AMPOL PETROLEUM LIMITED Respondent
Plaintiff

R.W. MILLER (HOLDINGS) LIMITED (1st) Defendant
ARCHIBALD N. TAYLOR (2nd) Defendant
SIR EMIL HERBERT PETER ABELES (3rd) Defendant
ELIZABETH MILLER (4th) Defendant
ROBERT I. NICHOLL (5th) Defendant
EVAN DUFF CAMERON (6th) Defendant
KENNETH B. ANDERSON (7th) Defendant
WILLIAM A. CONWAY (8th) Defendant
PETER J. DUNCAN (9th) Defendant
ALAN V. BALHORN (10th) Defendant
F.M. MURPHY (a male) (11th) Defendant
C.J. WATT (a male) (12th) Defendant
SECURITY SHARE SERVICES PTY.
LIMITED (14th) Defendant

RESPONDENTS

RECORD OF PROCEEDINGS

VOLUME V

Linklaters & Paines,
Barrington House,
59-67 Gresham Street,
London, EC2V 7JA.
Solicitors for the Appellant

Clifford-Turner & Company,
11 Old Jewry,
London, EC2R 8DS

Solicitors for Ampol Petroleum Ltd