

No. of 1977

In the Privy Council

ON APPEAL

*FROM THE SUPREME COURT OF
NEW SOUTH WALES
COMMON LAW DIVISION
COMMERCIAL LIST*

THE COMMERCIAL BANKING COMPANY OF
SYDNEY LIMITED *Appellants*

AND

PATRICK INTERMARINE ACCEPTANCES LIMITED
(in liquidation) *Respondents*

TRANSCRIPT RECORD OF PROCEEDINGS

WEDLAKE BELL,
6 Stone Buildings,
Lincoln's Inn.
London, WC 2A 3TG
Solicitors for the Appellants.

LINKLATERS & PAINES,
59-67 Gresham Street,
London, EC2V 7JA
Solicitors for the Respondents.

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Solicitors for the Respondents.

In the Privy Council (on appeal from the Supreme Court of New South Wales in Cause No. 5925 of 1975)

Between: The Commercial Banking Company of Sydney Limited (Plaintiff Appellant)

And: Patrick Intermarine Acceptance Limited and Gavin Hosking (First Defendants Respondents)

And: First Leasing & Finance Limited (Second Defendant)

And: First National Bank of Boston (Third Defendant)

And: State Electricity Commission of Victoria (Fourth Defendant)

And: First Leasing & Finance Limited and First National Bank of Boston (Cross claimants)

And: State Electricity Commission of Victoria (Cross defendant)

INDEX

Documents Included in the Record

<i>No.</i>	<i>Description of Document</i>	<i>Date</i>	<i>Page</i>
1	Statement of Claim (amended) (Annexures "A", "B", "C" and "D" are not reproduced).	3.10.75	1
2	Statement of Defence of the First Defendants.	1.10.75	7
3	Notice to Answer Interrogatories addressed to First Defendants.	19.12.75	8
4	Verified Statement of First Defendant's Answers to Interrogatories.	16.6.76	9
5	Affidavit of Norman Harley Blacket	8.8.75	11
6	Affidavit of Alan Frederick Thompson (Annexures "A", "B", "C", "D", "E", "F", "G", "H", "K", "L" and "M" are not reproduced).	8.8.75	12
7	Affidavit of Alan Frederick Thompson (Annexure "A" is not reproduced).	11.8.75	25
8	Affidavit of Donald Lex Webb. (Annexures "D" and "E" are not reproduced).	11.8.75	26
9	Transcript of Proceedings before His Honour Mr. Justice Sheppard.	2.7.76	31
	Transcript of the evidence of the following witnesses given in the proceedings before His Honour Mr. Justice Sheppard.		
	<i>Case for the Plaintiff (Appellant)</i>		
	BLACKET, Norman Harley Examined, Cross-examined, Re-examined, Further cross-examined.	2.7.76	43
	WHITHAM, Robert Dennis Examined, Cross-examined.	2.7.76	50
	WEBB, Donald Lex Examined, Cross-examined.	5.7.76	65
	<i>Case for the First Defendant (Respondent)</i>		
	GROGAN, Owen James Examined, Cross-examined.	5.7.76	67
	ALLEN, Timothy Richard Wigram Examined, Cross-examined.	5.7.76	73

No.	Description of Document	Date	Page
10	STRUTT, John William Examined, Cross-examined.	5.7.76	82
	DAVIE, Peter Examined, Cross-examined.	5.7.76	85
	<i>Case for Third and Fourth Defendants</i>		
	REINEHR, Francis Ian Examined, Cross-examined.	5.7.76	89
	<i>Plaintiff's Exhibits</i>		
	A Requisition for Local Documentary Credit	8.4.69	94
	B Copy of Irrevocable Letter of Credit	9.4.69	95
	C Letter of Credit issued by First National Bank of Boston	14.8.69	96
	D Requisition for Local Documentary Credit	15.8.69	97
	E Requisition for Local Documentary Credit	14.8.73	98
	F Copy of Irrevocable Letter of Credit	15.8.69	99
	G Copy of Plaintiff's Irrevocable Letter of Credit	16.8.73	100
	H Copy of Notice of Amendment of Letter of Credit from First National Bank of Boston	15.8.73	101
	J Diary Note made by Norman Harley Blacket	19.3.69	102
	K Diary Note made by Norman Harley Blacket	8.5.69	103
	L Letter from Plaintiff to Patrick & Co. and copy of letter from Plaintiff to Patrick & Co.	8.4.69 9.4.69	104 105
	M Copy of letter from Patrick & Co. to Second Defendant	9.4.69	106
	Copy of letter from Patrick & Co. to Fourth Defendant	9.4.69	107
	Receipt signed by Second Defendant	9.4.69	108
	Letter from Plaintiff to Patrick & Co.	9.4.69	109
Copy of letter from Patrick & Co. to Plaintiff	9.4.69	110	
Document headed "Terms and Condi- tions, Special Deal No. 1"		111	
N Inter office memorandum prepared in the office of First Leasing Australia Limited	7.3.73	112	

No.	Description of Document	Date	Page
	O Copy of document headed "FLA Borrowings as at June 4th 1974".		113
	Copy document headed "List of letters of Credit issued by FNBB on behalf of FLA as at 11.4.74." and		114
	Copy of document headed "FLA letters of Credit issued by FNBB Boston as at 11.9.74."		115
	P Letter from Patrick Partners to First Leasing Australia Limited	15.8.73	116
	Q Two copies of a letter from Patrick Partners to Fourth Defendant	15.8.73	117
	R Plaintiff's internal memorandum	12.8.69	119
	S Plaintiff's internal memorandum	15.8.73	120
	T Copy of letter from Plaintiff to Reserve Bank of Australia	14.8.73	121
	U Copy of Inter office communication prepared in First National Bank of Boston	3.2.71	122
	V Copy of Internal memorandum prepared in office of Patrick Partners	20.4.70	126
	W Letter from Patrick & Co. to Plaintiff and copy of letter from Plaintiff to Patrick & Co.	22.5.70	127
	<i>First Defendants' Exhibits</i>		
	1. Draft Local Documentary Credit Requisition	Undated	130
	2. Copy of Borrowing Schedule to Second Defendant	10.8.72	131
	3. Copy of letter from First Defendant to Second Defendant	16.8.73	132
	Copy of letter from Second Defendant to First Defendant	28.9.73	133
	Copy of letter from Second Defendant to First Defendant	28.12.73	134
	Copy of letter from First Defendant to Second Defendant	18.7.74	135
	4. Plaintiff's Internal Minute	1.8.73	136
	5. Plaintiff's Internal Minute	1.8.73	138
	6. Letter from Patrick & Co. to Second Defendant	12.5.69	139
	Letter from Patrick & Co. to Second Defendant	23.5.69	141
	Letter from Patrick & Co. to Second Defendant	16.5.69	142
	Copy of letter from Patrick & Co. to Second Defendant	16.5.69	143

<i>No.</i>	<i>Description of Document</i>	<i>Date</i>	<i>Page</i>
	<i>First Defendants' Exhibits</i>		
	Letter from Patrick & Co. to Second Defendant	15.8.69	144
7.	Letter from Second Defendant to Patrick & Co.	22.5.69	146
8.	Copy of letter from Patrick & Co. to Fourth Defendant	12.5.69	147
	Copy of letter from Patrick & Co. to Fourth Defendant	16.5.69	149
	Copy of letter from Patrick & Co. to Fourth Defendant	19.5.69	150
	Copy of letter from Patrick & Co. to Fourth Defendant	15.8.69	151
9.	Letter from Fourth Defendant to Patrick & Co.	26.5.69	153
10.	Terms and Conditions Special Deal No. 2	Undated	155
11.	Diary Note	27.2.73	156
12.	Copy of letter of Credit of Third Defendant addressed to Patrick & Co.	28.3.69	157
	Letter from Plaintiff to Patrick & Co.	31.4.69	158
	Copy of letter from Plaintiff to Patrick & Co.	9.4.69	159
	Plaintiff's Irrevocable letter of Credit addressed to Fourth Defendant	9.4.69	160
	Copy of letter from Patrick & Co. to Fourth Defendant	1.7.69	161
	Copy of letter from Patrick & Co. to Fourth Defendant	7.10.69	162
	Copy of letter from Patrick & Co. to Fourth Defendant	31.12.69	163
	Letter from Second Defendant to Patrick & Co.	31.12.69	164
13.	Letter from Plaintiff to Patrick & Co.	15.5.69	165
	Copy of letter from Plaintiff advice to Patrick & Co.	16.5.69	166
	Copy of Plaintiff's irrevocable Letter of Credit addressed to Fourth Defendant	16.5.69	167
	Letter from Plaintiff to Patrick & Co.	16.5.69	168
	Copy of letter from Second Defendant to Third Defendant	16.5.69	169
	Letter from Plaintiff to Patrick & Co.	26.5.69	170
	Copy of letter from Second Defendant to Patrick & Co.	30.6.69	170 a
	Copy of letter from Patrick & Co. to Second Defendant	4.7.69	171

<i>No.</i>	<i>Description of Document</i>	<i>Date</i>	<i>Page</i>
	<i>First Defendants' Exhibits</i>		
	Copy of letter from Patrick & Co. to Fourth Defendant	15.8.69	172
	Copy of letter from Second Defendant to Cooper Bros. & Co.	28.8.69	173
	Copy of letter from Patrick & Co. to Fourth Defendant	26.11.69	174
	Copy of letter from Patrick & Co. to Fourth Defendant	25.2.70	175
	Copy of letter from First Defendant to Fourth Defendant	12.3.73	176
	Copy of letter from First Defendant to Second Defendant	15.5.73	177
14.	Copy of letter from Patrick Partners to Second Defendant	29.7.71	178
	Copy of letter from First Defendant to Second Defendant	29.7.71	180
	Copy of letter from Second Defendant to First Defendant	29.7.71	182
15.	Cable from Third Defendant to Plaintiff	13.8.69	183
	Cable from Plaintiff to Third Defendant	14.8.69	184
	Cable from Third Defendant to Plaintiff	14.8.69	185
	Copy of letter from Plaintiff to Patrick & Co.	14.8.69	186
	Copy of letter from Plaintiff to Patrick & Co.	15.8.69	187
	Copy of Plaintiff's letter to Patrick & Co.	14.8.69	188
	Copy of letter from Second Defendant to Third Defendant	18.8.69	189
	Letter from Third Defendant to Plaintiff	14.8.69	190
	Letter from Second Defendant to Patrick & Co.	30.9.69	
	Copy of letter from Patrick & Co. to Fourth Defendant	26.11.69	191
	Copy of letter from Second Defendant to Patrick & Co.	31.12.69	192
	Copy of letter from Patrick & Co to Fourth Defendant	25.2.70	193
	Copy of letter from Second Defendant to Patrick & Co.	31.3.70	194
	Copy of letter from Second Defendant to Patrick & Co.	30.6.70	195

<i>No.</i>	<i>Description of Document</i>	<i>Date</i>	<i>Page</i>
	<i>First Defendants' Exhibits</i>		
	Copy of letter from Patrick Partners to Second Defendant	30.6.72	196
	Copy of letter from Second Defendant to Patrick & Co.	12.7.70	197
	Letter from Patrick Partners to Second Defendant	14.8.70	198
	Internal office Minute Patrick Partners	24.8.70	199
	Copy of letter from Second Defendant to Cooper Bros. & Co.	8.9.70	200
	Copy of letter from Second Defendant to Patrick & Co.	30.9.70	201
	Copy of letter from Second Defendant to Patrick Partners	29.12.70	202
	Copy of letter from Third Defendant to Plaintiff	31.12.70	203
	Second Defendant Internal Minutes	18.1.71	204
	Copy of letter from Second Defendant to Patrick Partners	31.3.71	205
	Copy of letter from Second Defendant to Patrick Partners	30.6.71	206
	Copy of letter from Second Defendant to Patrick Partners	31.12.71	207
	Copy of letter from Second Defendant to Patrick Partners	31.3.72	208
	Copy of letter from Second Defendant to Patrick Partners	30.6.72	209
	Copy of letter from Patrick Partners to Fourth Defendant	30.6.72	210
	Copy of letter from Patrick Partners to Fourth Defendant	31.12.71	211
	Copy of letter from Patrick Partners to Fourth Defendant	30.6.72	212
	Copy of letter from Patrick Partners to Second Defendant	30.6.72	213
	Copy of letter from Second Defendant to Patrick Partners	29.9.72	214
	Copy of letter from Second Defendant to Patrick Partners	29.12.72	215
	Copy of letter from Second Defendant to Patrick Partners	31.3.73	216
	Copy of Accounts of Second Defendant	Undated	217
	Copy of Accounts of Second Defendant	31.12.71	218

<i>No.</i>	<i>Description of Document</i>	<i>Date</i>	<i>Page</i>
	<i>First Defendants' Exhibits</i>		
	Copy of Accounts of Second Defendant	31.1.72	219
	Copy of Accounts of Second Defendant	29.2.72	220
	Copy of Accounts of Second Defendant	31.3.72	221
	Copy of Accounts of Second Defendant	31.5.72	222
	Copy of Accounts of Second Defendant	.11.72	223
	Copy of Accounts of Second Defendant	.12.72	224
	Copy of Accounts of Second Defendant	.1.73	225
	Copy of Accounts of Second Defendant	.2.73	226
	Plaintiff's Internal Minute	8.8.73	227
	Copy of Telex from Second Defendant to Third Defendant	14.8.73	228
	Copy of Telex from Patrick Partners to Second Defendant	14.8.73	229
	Copy of Telex from Patrick Partners to Fourth Defendant	14.8.73	230
	Copy of Telex from Third Defendant to Plaintiff	14.8.73	231
	Copy of letter from Reserve Bank to Plaintiff	15.8.73	232
	Letter from Plaintiff to First Defendant	16.8.73	233
	Copy of Plaintiff's irrevocable Letter of Credit addressed to Fourth Defendant	16.8.73	234
	Copy of Third Defendant's amendment of irrevocable Letter of Credit	15.8.73	235
	Copy of letter from First Defendant to Second Defendant	16.8.73	236
	Copy of Plaintiff's Internal Minute	15.8.73	237
	Receipt from Fourth Defendant to First Defendant	16.8.73	238
	Copy of letter from Second Defendant to Third Defendant	16.8.73	239
	Copy of letter from Plaintiff to Second Defendant	24.8.73	241
	Letter from Plaintiff to First Defendant	24.8.73	243

<i>No.</i>	<i>Description of Document</i>	<i>Date</i>	<i>Page</i>
	<i>First Defendants' Exhibits</i>		
	Copy of letter from First Defendant to Second Defendant	30.8.73	244
	Copy of letter from Plaintiff to First Defendant	20.8.74	245
	Copy of letter from Second Defendant to Third Defendant	23.10.74	246
16.	Plaintiff's Internal Minute	9.8.73	247
	Copy of Telex from Second Defendant to Third Defendant	14.8.73	248
	Plaintiff's Internal Minute	15.8.73	249
	Copy of Third Defendant's irrevocable Letter of Credit	14.8.73	250
	Letter from Second Defendant to Plaintiff	31.8.73	251
	Copy of Requisition for Plaintiff's irrevocable Letter of Credit	16.8.73	252
11	Reasons for Judgement His Honour Mr. Justice Sheppard.	9.8.76	253
12	Order giving Conditional Leave to Appeal to Her Majesty in Counsel	12.9.77	271
13	Order giving Final Leave to Appeal to Her Majesty in Counsel	3.11.77	272

Documents not included in the Record

<i>No.</i>	<i>Description of Document</i>	<i>Date</i>	
1	Order	7.8.75	
2	Summons (amended on 29/8/75 pursuant to leave granted on 12/8/75)	29.8.75	
3	Defence of Second and Third Defendants and cross claim	8.9.75	
4	Plaintiff's Defence to cross claim by Second and Third Defendants		
5	Plaintiff's Notice to Answer Interrogatories to Second and Third Defendants	Undated	
6	Answers of Second and Third Defendants to Plaintiff's Notice to Answer Interrogatories	Undated	

No. 1
STATEMENT OF CLAIM (AMENDED) (ANNEXURES "A", "B", "C" AND "D"
ARE NOT REPRODUCED).

AMENDED STATEMENT OF CLAIM

1. The plaintiff and each of the defendants (other than Gavin Hosking) are companies duly incorporated.

2. In or about August, 1969 a firm carrying on business under the name Patrick & Co. borrowed the sum of \$1,500,000.00 from the fourth defendant for the purpose and with the intention of lending the same sum of money to the second defendant.

10 3. It was a term and condition of the loan from the fourth defendant to Patrick & Co., that repayment thereof be secured by means of an irrevocable letter of credit established by an Australian Bank in favour of the fourth defendant in the sum of \$1,500,000.00

4. On or about 15th August, 1969 Patrick & Co., requested the plaintiff to establish an irrevocable letter of credit in favour of the fourth defendant in the sum of \$1,500,000.00

5. On or about 15th August, 1969 it was agreed by and between Patrick & Co. and the plaintiff that in consideration that the plaintiff would establish the letter of credit referred to in paragraph 4 hereof:—

20 (a) The plaintiff would receive as security for its contingent liability under the letter of credit in favour of the fourth defendant an irrevocable letter of credit established by the third defendant in the sum of \$1,500,000.00.

(b) In the event that the fourth defendant drew on the letter of credit established by the plaintiff:

(i) Patrick & Co. would immediately lodge with the plaintiff a draft and accompanying documents in terms of the letter of credit established by the third defendant for an amount not less than that required to meet the amount drawn by the fourth defendant under the letter of credit established by the plaintiff.

30 (ii) Patrick & Co., would do all things necessary to permit the plaintiff to draw upon the letter of credit established by the *third* defendant.

(iii) Patrick & Co. and the second defendant would not do anything which would prevent the plaintiff drawing upon the said letter of credit, or which would otherwise render valueless to the plaintiff the security referred to in paragraph 5(a) hereof, or the agreement referred to in paragraph 5(b) (i) and (ii) hereof.

40 6. Alternatively to paragraph 5 hereof, on or about 15th August, 1969 it was agreed between Patrick & Co. the plaintiff the second defendant and the third defendant that in consideration that the plaintiff would establish the letter of credit referred to in paragraph 4 hereof:

(a) The plaintiff would receive as security for its contingent liability under the letter of credit in favour of the fourth defendant an irrevocable letter of credit established by the third defendant in the sum of \$1,500,000.00.

(b) In the event that the fourth defendant drew on the letter of credit established by the plaintiff:

(i) Patrick & Co. would immediately lodge with the plaintiff a draft and accompanying documents in terms of the letter of credit established by the third defendant for an amount not less than that required to meet the amount drawn by the fourth defendant under the letter of credit established by the plaintiff.

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- (ii) Patrick & Co. would do all things necessary to permit the plaintiff to draw upon the letter of credit established by the *third* defendant.
- (iii) Patrick & Co. and the second defendant would not do anything which would prevent the plaintiff drawing upon the said letter of credit, or which would otherwise render valueless to the plaintiff the security referred to in paragraph 6(a) hereof, or the agreement referred to in paragraph 6(b)(i) and (ii) hereof.
7. (a) Alternatively to paragraphs 5 and 6 hereof, on or about 15th August, 1969 Patrick & Co. and the plaintiff entered into the agreement referred to in paragraph 5 hereof. 10
- (b) On or about 15th August, 1969 the second defendant and the third defendant knew that on or about 15th August, 1969 Patrick & Co. and the plaintiff had entered into the agreement referred to in paragraph 5 hereof.
- (c) On or about 15th August, 1969 the plaintiff, the second defendant and the third defendant agreed that neither Patrick & Co. nor the second defendant would do anything which would prevent the plaintiff drawing upon the said letter of credit established by the third defendant, or which would otherwise render valueless to the plaintiff the security referred to in paragraph 5(a) hereof, or the agreement referred to in paragraph 5(b) (i) and (ii) hereof. 20
- (d) Alternatively to (c) on or about 15th August, 1969 Patrick & Co. the second defendant and the third defendant knew that the plaintiff in agreeing to establish the letter of credit referred to in paragraph 4 hereof was acting on the faith or understanding of the matters referred to in paragraph (c) hereof.
8. On or about 15th August, 1969:—
- (a) The plaintiff established a letter of credit in the form of annexure “A”.
- (b) The third defendant established a letter of credit in the form of annexure “B”. 30
- (c) The fourth defendant lent the sum of \$1,500,000.00 to Patrick & Co.
- (d) Patrick & Co. lent the sum of \$1,500,000.00 to the second defendant.
9. On or about 14th August, 1973 the loans referred to in paragraphs 8(c) and (d) hereof were repaid by Patrick & Co. (then known as Patrick Partners) and the second defendant.
10. Prior to 15th August, 1973 the first defendant commenced to carry on part of the business formerly conducted by Patrick & Co.
11. On or about 15th August, 1973 the first defendant borrowed the sum of \$1,500,000.00 from the fourth defendant for the purpose and with the intention of lending the same sum of money to the second defendant. 40
12. It was a term and condition of the loan from the fourth defendant that repayment thereof be secured by means of an irrevocable letter of credit established by an Australian Bank in favour of the fourth defendant in the sum of \$1,500,000.00.
13. On or about 15th August, 1973 the first defendant requested the plaintiff to establish an irrevocable letter of credit in favour of the fourth defendant in the sum of \$1,500,000.00.
14. On or about 15th August, 1973 it was agreed by and between the first defendant and the plaintiff that in consideration that the plaintiff would establish the letter of credit referred to in paragraph 13 hereof:—
- (a) The plaintiff would receive as security for its contingent liability under the letter of credit in favour of the fourth defendant an irrevocable letter 50

of credit established by the third defendant in the sum of \$1,500,000.00.
 (b) In the event that the fourth defendant drew on the letter of credit established by the plaintiff:—

(i) The first defendant would immediately lodge with the plaintiff draft and accompanying documents in terms of the letter of credit established by the third defendant for an amount not less than that required to meet the amount drawn by the fourth defendant under the letter of credit established by the plaintiff.

(ii) The first defendant would do all things necessary to permit the plaintiff to draw upon the letter of credit established by the *third* defendant.

(iii) The first defendant and the second defendant would not do anything which would prevent the plaintiff drawing upon the said letter of credit, or which would otherwise render valueless to the plaintiff the security referred to in paragraph 14(a) hereof, or the agreements referred to in paragraph 14(b)(i) and (ii) hereof.

15. Alternatively to paragraph 14 hereof, on or about 15th August, 1973 it was agreed between the plaintiff and the first, second and third defendants that in consideration that the plaintiff would establish the letter of credit referred to in paragraph 13 hereof:—

(a) The plaintiff would receive as security for its contingent liability under the letter of credit in favour of the fourth defendant an irrevocable letter of credit established by the third defendant in the sum of \$1,500,000.00.

(b) In the event that the fourth defendant drew on the letter of credit established by the plaintiff:—

(i) The first defendant would immediately lodge with the plaintiff a draft and accompanying documents in terms of the letter of credit established by the third defendant for an amount not less than that required to meet the amount drawn by the fourth defendant under the letter of credit established by the plaintiff.

(ii) The first defendant would do all things necessary to permit the plaintiff to draw upon the letter of credit established by the *third* defendant.

(iii) The first defendant and the second defendant would not do anything which would prevent the plaintiff drawing upon the said letter of credit, or which would otherwise render valueless to the plaintiff the security referred to in paragraph 15(a) hereof, or the agreement referred to in paragraph 15(b)(i) and (ii) hereof.

16. (a) Alternatively to paragraphs 14 and 15 hereof, on or about the 15th August, 1973 the first defendant and the plaintiff entered into the agreement referred to in paragraph 14 hereof.

(b) On or about 15th August, 1973 the second defendant and the third defendant knew what on or about 15th August, 1973 the first defendant and the plaintiff had entered into the agreement referred to in paragraph 14 hereof.

(c) On or about the 15th August, 1973 the plaintiff, second defendant and the third defendant agreed that neither the first defendant nor the second defendant would do anything which would prevent the plaintiff drawing upon the said letter of credit established by the third defendant, or which would otherwise render valueless to the plaintiff the security referred to in paragraph 14(a) hereof, or the agreement referred to in paragraph 14(b)(i) and (ii) hereof.

(d) Alternatively to (c) on or about 15th August, 1973 the first defendant the second defendant and the third defendant knew that the plaintiff in agreeing to establish the letter of credit referred to in paragraph 13 hereof was acting on the faith or understanding of the matters referred to in paragraph (c) hereof.

17. On or about 15th August, 1973:—

- (a) The plaintiff established a letter of credit in the form of annexure "C".
- (b) The third defendant issued a document in the form of annexure "D".
- (c) The fourth defendant lent the the sum of \$1,500,000.00 to the first defendant.
- (d) The first defendant lent the sum of \$1,500,000.00 to the second defendant.

10

18. Each of the loans referred to in paragraph 17 hereof falls due for repayment on 14th August, 1975.

19. On or about 28th July the first defendant presented a petition to the Court seeking an order that it be wound up on the ground (inter alia) that it was insolvent.

20. Prior to the institution of these proceedings the first defendant informed the plaintiff and the other defendants that it would not repay the sum of \$1,500,000.00 or any part thereof to the fourth defendant on 14th August, 1975.

21. Prior to the institution of these proceedings the fourth defendant informed the plaintiff that in the event that the first defendant did not repay the sum of \$1,500,000.00 or any part thereof to the fourth defendant on 14th August, 1975 the fourth defendant intended to draw upon the letter of credit established by the plaintiff being annexure "C" hereto.

20

22. Prior to the institution of these proceedings the first defendant informed the plaintiff, that in the event that the fourth defendant drew upon the letter of credit established by the plaintiff being annexure "C" hereto it would not lodge with the plaintiff a draft or accompanying documents in terms of the letter of credit established by the third defendant for the amount required to meet the amount drawn by the fourth defendant under the letter of credit established by the plaintiff, or any amount.

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23. The first defendant has denied that it is bound to do all things necessary to permit the plaintiff to draw upon the letter of credit established by the *third* defendant.

24. The second defendant has threatened to pay the sum of \$1,500,000.00 to the first defendant and thereby prevent the plaintiff from drawing upon the said letter of credit.

25. The plaintiff further alleges that by reason of the matters alleged in paragraphs 2-17 hereof inclusive:—

- (a) The first defendant assigned to the plaintiff the debt due by the second defendant to the first defendant.
- (b) The plaintiff has a charge on the debt due by the second defendant to the first defendant to secure the plaintiff's contingent liability under the letter of credit referred to in paragraph 13 hereof.
- (c) The second and third defendants have notice of the said charge and assignment.

40

26. Alternatively to paragraphs 2-25 hereof inclusive on or about 15th August, 1969 Patrick & Co. acting as agent for the fourth defendant and/or the second defendant procured the fourth defendant to lend the sum of \$1,500,000.00 to the second defendant.

27. On or about 15th August, 1969 the plaintiff established a letter of credit in the form of annexure "A" hereto for the purpose of securing repayment of the said loan from the second defendant to the fourth defendant.

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28. On or about 14th August, 1973 Patrick & Co. (then known as Patrick Partners) acting as agent for the fourth defendant and/or the second defendant caused the said loan to be repaid.

29. On or about 15th August, 1973 the first defendant acting as agent for the fourth defendant and/or the second defendant procured the fourth defendant to lend the sum of \$1,500,000.00 to the second defendant.

30. On or about 15th August, 1973 the plaintiff established a letter of credit in the form of annexure "B" hereto for the purpose of securing repayment of the said loan from the second defendant to the fourth defendant.

10 31. The said loan falls due for repayment on 14th of August, 1975.

32. On or about the 28th July 1975 the first defendant presented a petition to the Court seeking an order that it be wound up on the ground (inter alia) that it was insolvent.

33. Prior to the institution of these proceedings the first defendant informed the plaintiff and the other defendants that it would not repay the sum of \$1,500,000.00 or any part thereof to the fourth defendant on 14th August, 1975.

20 34. Prior to the institution of these proceedings the fourth defendant informed the plaintiff that in the event that the first defendant did not repay the sum of \$1,500,000.00 or any part thereof to the fourth defendant on 14th August, 1975 the fourth defendant intended to draw upon the letter of credit established by the plaintiff being annexure "C" hereto.

35. On or about the 26th day of July 1975 Gavin Hosking was appointed provisional liquidator of the first defendant.

36. It would be unjust and inequitable for Gavin Hosking as such provisional liquidator to cause or permit the first defendant to receive payment of the sum of \$1,500,000.00 from the second defendant without paying the said sum to the plaintiff.

The plaintiff claims:

30 1. A declaration that the first defendants are bound in the event that there is a drawing on the plaintiff's letter of credit No. LD1436 in favour of State Electricity Commission of Victoria to execute and deliver to the plaintiff a draft accompanied by such other documents as are necessary to enable the plaintiff to draw on the third defendant's letter of credit No. S11085 as amended in the manner indicated in a letter dated the 15th August, 1973 from the third defendant to the first defendants.

2. An order that the first defendants be restrained from receiving payment of or collecting \$1,500,000.00 from the second defendant or from taking any step or participating in any action that would interfere with the drawing by the plaintiff on the third defendant's letter of credit No. S11085 as amended.

40 3. A declaration that in the event that the State Electricity Commission of Victoria draws on the plaintiff's letter of credit No. LD1436 the plaintiff will be entitled to receive payment of the second defendant's debt to the first defendants.

4. Alternatively to 3, a declaration that the plaintiff has a charge over \$1,500,000.00 to secure any moneys that may become owing to it by the first defendants as a result of any drawing on the plaintiff's letter of credit No. LD1436.

5. An order that the second defendant be restrained from paying \$1,500,000.00 to the first defendants.

6. An order that the third defendant pay to the plaintiff the amount which the plaintiff pays to the State Electricity Commission of Victoria under the plaintiff's letter of credit No. LD1436.

50 7. Alternatively to 6, an order that the second defendant pay to the plaintiff the amount which the plaintiff pays to the State Electricity Commission of Victoria under the plaintiff's letter of credit No. LD1436.

8. Costs.

To the Defendants:

Patrick Intermarine Acceptances Limited, Patrick House, 5 Gresham Street, Sydney.

Gavin Hosking, C/- Price Waterhouse & Co., Royal Exchange Building, Gresham Street, Sydney.

First Leasing Australia Limited, C/- Flynn Borosh Chopin & Co., 155 King Street, Sydney.

First National Bank of Boston, C/- Flynn Borosh Chopin & Co., 155 King Street, Sydney.

State Electricity Commission of Victoria, C/- Vindin & Littlejohn, 49 York Street, Sydney.

10

You are liable to suffer judgment or an order against you unless the prescribed form of notice of your appearance is received in the Registry within fourteen (14) days after service of this Statement of Claim upon you and you comply with the rules of court relating to your defence.

Plaintiff: The Commercial Banking Company of Sydney Limited, 343 George Street, Sydney.

Solicitor: Peter Robert Everett, C/- Dibbs, Crowther & Osborne, 16 Barrack Street, Sydney.

20

Plaintiff's Address for Service: C/- Dibbs, Crowther & Osborne, 16 Barrack Street, Sydney.

Address of Registry: Common Law Office, Cnr. King & Elizabeth Streets, Sydney.

.....
Solicitor for the Plaintiff

Filed:

No. 2

STATEMENT OF DEFENCE OF THE FIRST DEFENDANTS.*Statement of Defence of the First Defendants*

In the Supreme
Court of New
South Wales
Common Law
Division
Commercial
List
No. 2
Statement of
Defence

1. The first defendants admit the facts alleged in paragraphs 1, 3, 4, 8, 9, 10, 12, 13, 17, 18, 19, 23, 32 and 35 of the Amended Statement of Claim.

2. The first defendants do not admit the facts alleged in paragraphs 5, 6, 7, 14, 15, 16, 21, 24, 26, 28 and 34 of the Amended Statement of Claim or any of them.

10 3. In answer to paragraph 2 of the Amended Statement of Claim the first defendants admit that in or about August 1969 a firm carrying on business under the name Patrick & Co. borrowed the sum of \$1,500,000.00 from the fourth defendant with the intention of lending an equivalent sum of money to the second defendant. Save as aforesaid the first defendants do not admit the facts alleged in the said paragraph.

4. In answer to paragraph 11 of the Amended Statement of Claim the first defendants admit that on or about 15th August 1975 the first defendant borrowed the sum of \$1,500,000.00 from the fourth defendant with the intention of lending an equivalent sum of money to the second defendant. Save as aforesaid the first defendants do not admit the facts alleged in the said paragraph.

20 5. In answer to paragraph 20 of the Amended Statement of Claim the first defendants admit that prior to the institution of the proceedings it informed the fourth defendant that it could not repay to the fourth defendant the sum of \$1,500,000.00 or any part thereof on 14th August 1975 but save as aforesaid the first defendants deny the facts alleged in the said paragraph.

6. In answer to paragraph 27 of the Amended Statement of Claim the first defendants admit that on or about 15th August 1969 the plaintiff established a letter of credit in the form of Annexure "A" to the Statement of Claim but save as aforesaid they do not admit the facts alleged in the said paragraph.

30 7. In answer to paragraph 30 of the Amended Statement of Claim the first defendants admit that on or about the 15th August 1973 the plaintiff established a letter of credit in the form of Annexure "B" to the Statement of Claim but save as aforesaid they deny the facts alleged in the said paragraph.

8. In answer to paragraph 33 of the Amended Statement of Claim the first defendants admit that prior to the institution of the proceedings it informed the fourth defendant that it could not repay to the defendant the sum of \$1,500,000.00 or any part thereof on 14th August 1975 but save as aforesaid it denies the facts alleged in the said paragraph.

9. The first defendants deny the facts alleged in paragraphs 22, 25, 29, 31 and 36 of the Amended Statement of Claim and each of them.

40 10. In further answer to paragraphs 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 of the Amended Statement of Claim the first defendants say that the said paragraphs and each of them do not disclose any cause of action or entitlement to relief of the plaintiff against the first defendants.

Filed: 1 Oct 1975

Solicitor for the First Defendants

No. 3

NOTICE TO ANSWER INTERROGATORIES ADDRESSED TO FIRST DEFENDANTS.

NOTICE TO ANSWER INTERROGATORIES (P.I.A.L.)

Within 7 days after service of this notice the first defendants are required to answer interrogatories numbered 1 to 4 and verify their answers:—

INTERROGATORIES

1. On or prior to 16.8.1973 did any officer or employee of Patrick Intermarine Acceptances Ltd. inform any officer, employee or agent of the second defendant or the third defendant:—

- (a) That Patrick Intermarine Acceptances Limited had agreed or arranged to borrow the sum of \$1,500,000 from the fourth defendant for the purpose of lending an equivalent sum to the second defendant.
- (b) That it was a term and condition of the loan from the fourth defendant to Patrick Intermarine Acceptances Limited that repayment thereof be secured by means of an irrevocable letter of credit to be established by the plaintiff in favour of the fourth defendant.

10

2. If the answer to 1 (a) or (b) is in the affirmative:—

- (a) Who on behalf of Patrick Intermarine Acceptances Limited gave the information?
- (b) To whom on behalf of the second or third defendant was the information given?
- (c) What was the information given?
- (d) How was the information given?

20

3. On or prior to 16.8.1973 did any officer or employee of Patrick Intermarine Acceptances Limited inform any officer or employee or agent of the second defendant or third defendant:—

- (a) That the plaintiff required Patrick Intermarine Acceptances Limited to provide security for the plaintiff's contingent liability under the said letter of credit.
- (b) That Patrick Intermarine Acceptances Limited had agreed with the plaintiff to provide as security for the plaintiff's contingent liability under the said letter of credit a letter of credit established by the third defendant in the sum of \$1,500,000.
- (c) That Patrick Intermarine Acceptances Limited had agreed with the the plaintiff that in the event that the fourth defendant drew on the letter of credit to be established by the plaintiff, Patrick Intermarine Acceptances Limited would immediately lodge with the plaintiff a draft and accompanying documents in terms of letter of credit No. S11085 established by the third defendant for an amount not less than that required to meet the amount drawn by the fourth defendant under the letter of credit established by the plaintiff.

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40

4. If the answer to 3 (a), (b) or (c) is in the Affirmative:—

- (a) Who on behalf of Patrick Intermarine Acceptances Limited gave the information?
- (b) To whom on behalf of the second or third defendants was the information given?
- (c) What was the information given?
- (d) How was the information given?

50

.....
Solicitor for the Plaintiff

No. 4
VERIFIES STATEMENT OF FIRST DEFENDANT'S ANSWERS TO INTERROGATORIES.

VERIFIED STATEMENT OF FIRST DEFENDANTS IN ANSWER TO INTERROGATORIES OF THE PLAINTIFF

The First Defendants, PATRICK-INTERMARINE ACCEPTANCES LIMITED and GAVIN JOHN HOSKING, answers the Plaintiff's Interrogatories specified in Notice filed on 19th December, 1975 as follows:—

10 1A. On or prior to 16.8.1973 did any officer or employee of Patrick Intermarine Acceptances Limited inform any officer, employee or agent of the second defendant or the third defendant:—

(a) That Patrick Intermarine Acceptances Limited had agreed to or arranged to borrow the sum of \$1,500,000 from the fourth defendant for the purpose of lending an equivalent sum to the second defendant

1A. (a) No.

1A. (b) On or prior to 16.8.1973 did any officer or employee of Patrick Intermarine Acceptances Limited inform any officer, employee or agent of the second defendant or the third defendant:—

20 (b) That it was a term and condition of the loan from the fourth defendant to Patrick Intermarine Acceptances Limited that repayment thereof be secured by means of an irrevocable letter of credit to be established by the plaintiff in favour of the fourth defendant.

1A. (b) No.

2A. If the answer to 1(a) or (b) is in the affirmative:

(a) Who on behalf of Patrick Intermarine Acceptances Limited gave the information?

(b) To whom on behalf of the second or third defendant was the information given?

30 (c) What was the information given?

(d) How was the information given?

2B. Not applicable.

3A. On or prior to 16.8.1973 did any officer or employee of Patrick Intermarine Acceptances Limited inform any officer or employee or agent of the second defendant or third defendant:—

(a) That the plaintiff required Patrick Intermarine Acceptances Limited to provide security for the plaintiff's contingent liability under the said letter of credit.

3B. (a) No.

40 3A. (b) On or prior to 16.8.73 did any officer or employee of Patrick Intermarine Acceptance Limited inform any officer or employee or agent of the second defendant or third defendant;

(b) That Patrick Intermarine Acceptances Limited had agreed with the plaintiff to provide as security for the plaintiff's contingent liability under the said letter of credit a letter of credit established by the third defendant in the sum of \$1,500,000.00.

3B. (b) No.

3A. (c) On or prior to 16.8.1973 did any officer or employee of Patrick Intermarine Acceptances Limited inform any officer or employee or agent of the second defendant or third defendant:—

50 (c) That Patrick-Intermarine Acceptances Limited had agreed with the plaintiff that in the event that the fourth defendant drew on the letter of

In the Supreme
Court of New
South Wales
Common Law
Division
Commercial
List
No. 4
Verifies
Statement

credit to be established by the plaintiff, Patrick Intermarine Acceptances Limited would immediately lodge with the plaintiff a draft and accompanying documents in terms of letter of credit No. S11085 established by the third defendant for an amount not less than that required to meet the amount drawn by the fourth defendant under the letter of credit established by the Plaintiff.

3B. (c) No.

4A. If the answer to 3(a), (b) or (c) is in the affirmative:—

- (a) Who on behalf of Patrick Intermarine Acceptances Limited gave the information?
- (b) To whom on behalf of the second or third defendants was the information given?
- (c) What was the information given?
- (d) How was the information given?

4B. Not applicable.

.....
Brian Thomas Wilson

Solicitor for the First Defendants

Filed: 15th June 1976

AFFIDAVIT

On 9th June 1976, I, GAVIN JOHN HOSKING of Care of Messrs. Price Waterhouse & Co., Chartered Accountants, Royal Exchange Building, Gresham Street, Sydney in the State of New South Wales, Chartered Accountant, say on oath:— 20

1. I am the Liquidator of Patrick-Intermarine Acceptances Limited (in liquidation).

2. The answers to Interrogatories numbers 1, 2, 3 and 4 are true to the best of my knowledge, information and belief based on my enquiries of officers of the company and others and upon other investigations made in respect of answering the Plaintiff's Interrogatories.

SWORN by the deponent at Sydney on the day first hereinbefore written.

Before me:

B. W. Gollan J.P. (N.S.W.) Sgd.

G. J. Hosking (Sgd.)

A Justice of the Peace

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No. 5
AFFIDAVIT OF NORMAN HARLEY BLACKET.
AFFIDAVIT

On 8th day of August, 1975, I NORMAN HARLEY BLACKET of 61 Cremorne Road, Cremorne Point in the State of New South Wales, retired bank officer say on oath:

1. I was at all material times an Assistant General Manager of the Commercial Banking Company of Sydney Limited ("the Bank"). Prior to my appointment as an Assistant General Manager on 29th of November, 1968 I was the Manager of the Sydney Office of the Bank and in that capacity was immediately responsible for the supervision of the account maintained by Patrick & Company with the Bank.

2. On or about 19th March, 1969 I received a telephone call from Mr. Tim Allen a partner of the firm of stockbrokers then known as Patrick & Co. Mr. Allen said to me, "We are considering a transaction under which \$1m is to be borrowed from an Australian company and re-lent to another Australian company. The lending company is seeking security by way of a bank letter of credit in its favour. Would the Bank be prepared to issue a clean letter of credit in favour of the lending company? The Bank will receive by way of security a letter of credit in its favour from the First National Bank of Boston." Mr. Allen also asked, "What will be the Bank's charge for the issue of the letter of credit?" I said to Mr. Allen, "We will have a look at the matter on the basis of charging a fee at the rate of $\frac{1}{2}\%$ per annum for the life of the facility." Mr. Allen said to me, "Would you consider it on the lowest possible rate as our charge is small and the completion of the transaction could depend on the fee charged by the Bank."

3. At some later time on 19th March, 1969 I phoned Mr. Allen. I said to Mr. Allen, "Further to our earlier conversation, the Bank will enter the commitment and the rate will be $\frac{1}{4}\%$ per annum and not $\frac{1}{2}\%$ per annum as earlier mentioned plus a charge of 0.15% of any negotiations under the letter of credit. Before the Bank issues the local letter of credit we will require that the letter of credit from the First National Bank of Boston is established in our favour and it will have to be in the nature of a "back-to-back" letter of credit." Mr. Allen said to me, "I will confer with your International Department if the matter is to proceed."

4. Pursuant to my agreement with Mr. Allen the Bank issued a letter of credit in favour of State Electricity Commission of Victoria in the sum of \$500,000.00 to expire on 8th April, 1970.

5. On or about 8th May, 1969 I received a telephone call from Mr. Tim Allen. He said to me, "We are considering a further transaction involving \$1.5m which will be borrowed from an Australian organisation and lent to an Australian company and the lending organisation requires a security by way of a Bank letter of credit in its favour. Would the Bank establish the letter of credit required against a "back-to-back" letter of credit from the First National Bank of Boston? It would be for a term of four years." Mr. Allen also asked me, "What would the Bank's fee be?" I said to Mr. Allen, "The Bank will be prepared to enter into the commitment and its fee would be \$2,500 per annum during the currency of the credit plus 0.15% for any drawings made under the credit. We would require to see the terms of the backing credit and have it established prior to us issuing our letter of credit." Mr. Allen said "Yes, that will be all right."

6. Pursuant to my agreement with Mr. Allen the Bank issued a letter of credit in favour of State Electricity Commission of Victoria in the sum of \$1,500,000.00 to expire on 15th May, 1973.

Sworn at Sydney
before me:

Justice of the Peace.

In the Supreme
Court of New
South Wales
Common Law
Division
Commercial
List

No. 5

Affidavit of
Norman
Harley
Blacket

No. 6

**AFFIDAVIT OF ALAN FREDERICK THOMPSON (ANNEXURES "A", "B",
"C", "D", "E", "F", "G", "H", "K", "L" AND "M" ARE NOT REPRODUCED).
AFFIDAVIT**

On the Sixth of August 1975 I ALAN FREDERICK THOMPSON of 89 Ray Road, Epping in the State of New South Wales a General Manager of The Commercial Banking Company of Sydney Limited say on oath:

1. I am a General Manager of The Commercial Banking Company of Sydney Limited (hereinafter called "the Bank").
2. Prior to the 14th August 1969 the firm carrying on business under the name of Patrick & Company were customers of the Bank. 10
3. On or about the 8th July 1970 the Bank was informed by Patrick & Company that on and after the 1st August 1970 the members of the firm carrying on business under the name of Patrick & Company would thereafter carry on that business under the name Patrick Partners.
4. Thereafter the firm carrying on business under the name Patrick Partners were customers of the Bank.
5. On or about the 15th October 1971 Patrick Intermarine Acceptances Limited established an account with the Bank and thereafter was a customer of the Bank.
6. On or about the 15th August 1969 the Bank issued a Letter of Credit No. LD973 in favour of State Electricity Commission of Victoria. Annexed hereto and marked "A" is a copy of the said Letter of Credit. 20
7. The said Letter of Credit was issued by the Bank pursuant to a request by Patrick & Company dated the 15th August 1969 a copy whereof is annexed hereto and marked "B".
8. Annexed hereto and marked with the letters indicated are copies of the following documents, namely:—
 - "C" Advice of credit dated 14th August 1969 from the Bank to Patrick & Company.
 - "D" Letter from the Bank to Patrick & Company. 30
9. Annexed hereto and marked "E" "F" and "G" respectively are copies of the following Telex messages, namely:—
 - "E" 13/8/69 from the Third Defendant to the Bank
 - "F" 14/8/69 from the Bank to the Third Defendant
 - "G" 14/8/69 from the Third Defendant to the Bank.
10. On or about the 19th August 1969 the Bank received from the Third Defendant a letter of Credit dated the 14th August 1969 No. S11085 a copy whereof is annexed and marked "H". The original of the said Letter of Credit is in the possession of the Bank.
11. Annexed hereto and marked "J" is a copy of an internal Minute prepared by Lyons Kerans, Chief Manager—Corporate Services of the Bank, which Minute forms part of the Bank's file relating to Patrick & Company, Patrick Partners and Patrick Intermarine Acceptances Limited. Mr. Kerans is at present on holidays. 40
12. Annexed hereto and marked with the letters indicated are copies of the following documents, namely:—
 - "K" Request by Patrick Intermarine Acceptances Limited dated 14th August 1973.
 - "L" Letter of Credit dated 16th August 1973 issued by the Bank.
 - "M" Advice of amendment of Letter of Credit received from the Third Defendant. 50
 - "N" Letter dated 16th August 1973 from the Bank to Patrick Intermarine Acceptances Limited.

“O” Letter dated 24th August 1973 from the Bank to Patrick Intermarine Acceptances Limited together with the Reserve Bank Exchange Control approval enclosed under cover of that letter.

13. On or about 30th July 1975 the Bank received from the State Electricity Commission of Victoria a letter a copy whereof is annexed and marked “P” together with the copy letter referred to therein.

14. Annexed hereto and marked with the letters indicated are copies of the following letters:—

“Q” The Bank to the First Defendant dated the 30th July 1975

“R” The Bank to the Second Defendant dated 31st July 1975

“S” Clayton Utz & Company to the Bank dated 5th August 1975.

SWORN at Sydney

Before me:

.....
Justice of the Peace

In the Common
Law Division of
the Supreme
Court of New
South Wales
Commercial
List

—
No. 6

—
Affidavit of
Alan
Frederick
Thompson

24th August, 1973.

The Manager,
Patrick-Intermarine Acceptances Limited,
G.P.O. Box 3879,
SYDNEY. 2001

Dear Sir,

We refer to our recent telephone conversations concerning the extension, until 14th August, 1975 of an arrangement under which irrevocable letters of credit are established by the First National Bank of Boston and this Bank to secure a borrowing of \$1,500,000 from the State Electricity Commission of Victoria by Patrick-Intermarine Acceptances Limited for on-lending to First Leasing of Australia Limited, Melbourne.

We are pleased to confirm our Bank approval to the facility which was renewed and completed on 16th August, 1973.

Our commission fee (is .25% per annum payable yearly in advance and arrangements have been made to charge your company's Sundry Charges account at our Castlereagh & Hunter Street Branch with the initial \$3,750.

For your files we enclose copy of the Reserve Bank of Australia Exchange Control approval.

We are pleased to be of service in this regard.

Yours faithfully,

L. D. H. KERANS

L.D.H. Kerans
Chief Manager Corporate Services

This is the Annexure marked "O" referred to in the Affidavit of Alan Frederick Thompson sworn the 6th day of August 1975
Before me

Justice of the Peace

8th August, 1973

Customer 2 years (Old Connection)

L/C fee at present 1/6ths% p.a. Proposed .25% p.a.

Interest Rate

Overdraft %

Line Fee on unused portion 75%

Endorsement Fee 1.2%

BRANCH

CORPORATE SERVICES

NAME

PATRICK-INTERMARINE ACCEPTANCES LIMITED (50% Patrick Corporation Ltd 50% Patrick-Intermarine (Aust) Ltd) Money market operators.

ACTIVITY

DIRECTORS

M.R.L. Dowling (Chm) P. Davie, P. Grey, R. L. Johnson E. J. Roberts Secretary J. R. Lees

PRESENT POSITION

Total Debts \$ Term Loan \$ Total Limits \$ repayable \$ p.a. reducing by \$ p.a. Bill Endorsement Facility \$ 1 million for bills of exchange accepted or endorsed by Patrick-Intermarine Acceptances - bills outstanding \$525,000 Letter of Credit (matched) - issued in favour of the State Electricity of Victoria and expiring 15/8/73 \$1.5m A/C Patrick Partners *Total Bank Liabilities \$1,001,276 Total Cash Balances \$ 1,276 Dr (Castlereagh & Hunter Sts Br.)

Total Bank Liabilities to include O/D Debt or limit whichever is the greater, T.L. and/or F.D.L., Bill Limit, Total Contingent Liabilities including lease finance.)

PROPOSED

Total Limits \$ Term Loan \$ repayable \$ p.a. reducing by \$ p.a. Bill Endorsement Facility \$1,000,000 - unchanged That we issue a letter of credit in favour of the State Electricity Commission of Victoria for \$1,500,000 for 2 years (rollover of existing facility) Contingent Liabilities \$ 1,500,000 *Total Bank Liabilities \$2,501,276

SECURITY

Bill Endorsement Facility - see attached Matching letter of credit in our favour issued by the First National Bank of Boston for \$1,500,000 for two years.

(Summary only)

PURPOSE

Rollover of existing letter of credit in favour of the State Electricity Commission of Victoria for \$1,500,000 to expire 15/8/73 and backed by a matching letter of credit from the First National Bank of Boston.

COMMENTS

The transaction in respect of the maturing letter of credit was entered into in August, 1969 for a four-year term and was arranged on behalf of Patrick Partners who borrowed from the S.F.L. and onlent to First Leasing Australia Limited. Patrick-Intermarine Acceptances Ltd commenced business in July, 1971 and was established to conduct the money market activities on behalf of its shareholder companies including Patrick Partners. The present request was received by telephone from Patrick-Intermarine Acceptances Ltd and has been confirmed by telephone with First Leasing Australia. Reserve Bank of Australia approval is being obtained.

DRAWBACKS (to include reference to hard core)

Our charge on existing facility was 1/6th of 1% - \$2,500 p.a. We consider the charge should now be a minimum of .25% p.a. - \$3,750.

BENEFITS

Closer relationship with the Patrick-Intermarine and First National Bank of Boston Groups.

RECOMMENDATION

Recommended on the basis of .25% per annum return to this bank. 10/8/73-2.30 p.m. telephoned Pat. Int. (Accept.) Ltd. & confirmed our approval of .25% per annum Coy will come back if successful.

This is the Annexure marked "J" referred to in the Affidavit of Alan Frederick Thompson sworn the 6th day of August 1975 Before me

Justice of the Peace

Handwritten notes: 10/8/73, 14/8/73, Dismissed, with some approval, see attached, etc.

OVERSEAS
TC:GPF.

16th August, 1973.

The Secretary,
Patrick Intermarine Acceptances Ltd.,
Patrick House,
5 Gresham Street,
SYDNEY. N.S.W. 2000.

Dear Sir,

The First National Bank of Boston, Boston,
Irrevocable Credit in favour of Patrick Partners
for \$^A1,500,000.

We confirm our telephone conversation of today, in which we advised having received cabled advice from The First National Bank of Boston, Boston, dated 14th instant amending the abovementioned Letter of Credit as follows:

"OUR L/C S-11085 FAVOUR PATRICK AND COMPANY ACCOUNT FIRST LEASING AUSTRALIA LTD VALIDITY EXTENDED TO AUGUST 14 1975 BENEFICIARY OF THIS CREDIT IS NOW PATRICK INTERMARINE ACCEPTANCES LIMITED 128 EXHIBITION STREET MELBOURNE VICTORIA 3000 ACCRUED INTEREST MAY BE NOW DRAWN AT A RATE NOT EXCEEDING 8.7 PERCENT PER ANNUM".

All other terms and conditions of the credit remain unaltered.

Please attach this advice to the original advice of Credit dated 14th August, 1969.

Yours faithfully,

T. G. Crisp

pro Manager.

This is the Annexure marked "N" referred to in the Affidavit of Alan Frederick Thompson sworn the 6th day of August 1975
Before me

Justice of the Peace

State Electricity Commission of Victoria

Monday House 15 William Street Melbourne
Box 27657 G.P.O. Melbourne 3001
Telephone 6150433
Fax 31113
Cable & Telegraphic Address: Electroom Melbourne

SEC

Our Reference
mw

30 July 1975

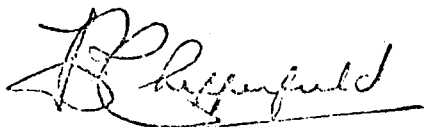
The Manager
Melbourne Office
Commercial Banking Company of Sydney Limited
257 Collins Street
MELBOURNE 3000

Dear Sir

For your information attached is a copy of letter delivered to Patrick Intermarine Acceptances Limited regarding an investment arranged through that Company and secured by an irrevocable Letter of Credit issued by your Bank. (No LD1436 dated 16 August 1973.)

Failing the ability of Patrick Intermarine Acceptances Limited to pay the maturing funds on the due date, the Commission will be seeking from your Bank such repayment under the terms of the said Letter of Credit.

Yours faithfully



F P Chipperfield
SECRETARY

enc

ENQUIRIES: Mr H K Kruse
Telephone 615 2238

This is the Annexure marked "P" referred to in the Affidavit of Alan Frederick Thompson sworn the 6th day of August 1975
Before me

Justice of the Peace

STATE ELECTRICITY COMMISSION OF VICTORIA

COPY for..... COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED.....

mw

30 July 1975

The Manager
Patrick Intermarine Acceptances Ltd
5th Floor
Pearl Assurance Building
151 Queen Street
MELBOURNE 3000

Dear Sir

RE LOAN OF \$1.5M, 8.15% PER ANNUM, DUE 14 AUGUST 1975
SECURED BY BANK IRREVOCABLE LETTER OF CREDIT

In regard to the above investment arranged by you on behalf of the Commission, and in view of the press reports relating to your Company, would you kindly advise forthwith what arrangements are in hand for the repayment of these funds and quarterly interest due on 14 August next.

Yours faithfully

F P Chipperfield
SECRETARY

ENQUIRIES: Mr H K Kruse
Telephone 615 2238

This is the annexure marked "P" referred to in the Affidavit of A F Thompson Sworn the 6th day of August 1975 Before me:

A Justice of the Peace.

Our ref: CM/REG

30th July, 1975.

The Provisional Liquidator,
Board of Directors,
Patrick Intermarine Acceptances Limited,
5 Gresham Street,
SYDNEY, 2000.

Dear Sirs,

As you will be aware the fixed advance by your Company to First Leasing Australia Limited of an amount of 1.5 million dollars Australian matures on the 14th August, next.

This Bank originally issued a letter of credit in favour of the Victorian State Electricity Commissioners to secure an advance to your Company for the purpose of these funds being on-lent to First Leasing against a letter of credit issued in your favour by the First National Bank of Boston. Under the terms of the arrangements between your Company and this Bank in the event of drawings by the Victorian S.E.C. under the letter of credit established by this Bank your Company was to lodge with the Bank drafts and all documentation necessary to entitle it to draw under the First National Bank's letter of credit.

The substance of the arrangement was, of course, that we would have the security of your Company's loan to First Leasing and the supporting letter of credit and that in the event of default by Patrick Intermarine in payment of the Victorian S.E.C. advance at maturity this Bank would have recourse both against the borrower to whom the funds were on-lent and against the letter of credit issued in your favour as security for the on-lending as the case might be.

Further, we have been advised that under your Company's arrangements with this Bank your Company is under a legal obligation not to do anything that would deprive this Bank of the benefit of its security and, in particular, not to participate in any action that would render ineffective or valueless the letter of credit from First National Bank.

Since it appears that there is a real likelihood, in fact a probability that the S.E.C. will draw on our letter of credit, we must, in the circumstances, require that within 24 hours Patrick Intermarine Acceptances Limited undertake in writing to us as follows :

1. That it will not receive repayment of and collect on its own behalf the debt from First Leasing.
2. That it will direct First Leasing to pay the debt to this Bank on maturity.
3. That it will not take any step or participate in any action that would render ineffective or valueless to this Bank the letter of credit from First National Bank of Boston.
4. That upon maturity of the debt from First Leasing in the event that it has not already been paid to this Bank you will provide this Bank with all documentation and drafts necessary to entitle us to draw under the First National Bank's letter of credit.

In the event that such undertaking is not forthcoming we will have no alternative but to commence legal proceedings without further notice.

Yours faithfully,

R. E. Graham
Chief Manager - Sydney Office

**This is the Annexure marked "Q" referred to in the Affidavit of Alan Frederick Thompson sworn the 6th day of August 1975
Before me**

Justice of the Peace

M/G/JMcK/1

31st July 1975

The Managing Director,
First Leasing Australia Limited,
38th Floor, B.H.P. House,
140 William Street,
MELBOURNE. Vic. 3000

Dear Sir,

Re: PATRICK INTERMARINE FIXED ADVANCE

As you are aware this Bank issued the original letter of credit in favour of the Victorian State Electricity Commission as security for their advance to Patrick Intermarine for the purpose of on-lending to your Company against security of a matching letter of credit by the First National Bank of Boston.

The terms of our arrangements with Patrick Intermarine were inter alia that in the event of any drawing under the letter of credit issued by this Bank Patrick Intermarine would lodge with this Bank drafts and necessary documents under the First National's letter of credit to the intent that default by Patrick's in repayment to the Victorian S.E.C. would entitle the Bank to recourse against Patrick's security for the on-lending. As you will be aware it is not usual in such circumstances to take a formal assignment of the actual debt so long as one has secured drawing rights under the letter of credit but notwithstanding this we have been advised that the Bank has recourse not only to the letter of credit but also to the debt in effect "guaranteed" by the letter of credit.

You will be aware that a Provisional Liquidator has been appointed to Patrick Intermarine and we can only assume that our letter of credit will be drawn upon.

In those circumstances, obviously, we would intend that a drawing be made on our behalf on the First National Bank's letter of credit.

- continued -

This is the Annexure marked "R" referred to in the Affidavit of Alan Frederick Thompson sworn the 6th day of August 1975
Before me

Justice of the Peace

1172
1173

CLAYTON UTZ & COMPANY
SOLICITORS

136 LIVERPOOL STREET
SYDNEY N S W 2000

TELEPHONE 20643
CODE 370

CABLES CLU17 SYDNEY
TELEX 24033

THE HON. SENIOR DEPUTY CLAYTON UTZ & COMPANY
WILLIAM H. JACKSON, B.A., LL.B., F.R.S.L.
GEORGE A. HARDWICK, B.A., LL.B.
ANDREW M. CLAYTON, B.A., LL.B.
NEVILLE R. HEAD, B.A., LL.B.
GEOFFREY C. KIRBY, B.A., LL.B.
JAMES C. HOLMAN, B.A., LL.B.
MICHAEL M. HORNTHROPE, B.A., LL.B.
JOHN V. SULLIVAN, B.A., LL.B.
KEPBY Z. BENNETT, LL.B.
GEOFFREY S. BROWN, B.A., LL.B.
BRIAN T. WILSON, LL.B.

OUR REFERENCE 113

YOUR REFERENCE CM:REG

Attention Mr. R.E.Graham

HAND DELIVERY

The Manager,
Commercial Banking Company of Sydney Ltd.,
343 George Street,
SYDNEY 2000

5th August, 1975

Dear Sir,

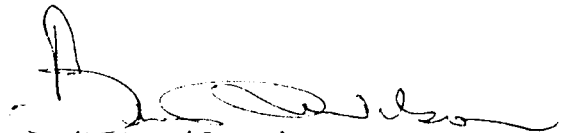
PATRICK INTERMARINE ACCEPTANCES LIMITED

We act for the Provisional Liquidator appointed to Patrick Intermarine Acceptances Limited, who has handed us your letter to him of the 30th July, 1975 with instructions to reply thereto.

We are instructed to advise that the Provisional Liquidator is not prepared to give the undertakings you required of him in that letter.

Yours faithfully,
CLAYTON UTZ & COMPANY

351.


(B.T. Wilson)

5/8/75

This is the Annexure marked "S" referred to in the Affidavit of Alan Frederick Thompson sworn the 6th day of August 1975
Before me

Justice of the Peace

No. 7

AFFIDAVIT OF ALAN FREDERICK THOMPSON (ANNEXURE "A" IS NOT REPRODUCED).

AFFIDAVIT—11th August, 1975

I ALAN FREDERICK THOMPSON of 89 Bay Road, Epping in the State of New South Wales a General Manager of The Commercial Banking Company of Sydney Limited say on oath:

1. I crave leave to refer to the Affidavit sworn by me on 6th August 1975 and filed herein.

10 2. On or about 12th August 1969 I received a telephone call from an Officer of the firm of Patrick & Company. He said to me, "We would like the Bank to establish a further letter of credit in favour of the State Electricity Commission of Victoria for a further 1.5 million dollars for a term of four years commencing on Friday next. It will be similar to the previous transactions of this nature and we propose to on-lend the money to an Australian Company." I said to him, "I assume that the security will once more be a matching letter of credit from the First National Bank of Boston." He said to me, "Yes, that is so. Will the Bank's charge be the same as the Bank's previous letter of credit?" I said to him, "Yes, the Bank's fee would be $\frac{1}{8}\%$ per annum plus 0.15% on any drawings under the letter of credit." I then said
20 to him, "The proposal will of course need the approval of the Board. However, I do not anticipate that there will be any problems and I will advise you further."

3. Annexed hereto and marked with the letter "A" is a memorandum prepared by me following the abovementioned conversation.

4. At the time of the abovementioned conversation I was not informed of the identity of the Australian company. However, on sighting the letter of credit from the First National Bank of Boston I learned that that letter of credit was established on account of First Leasing Australia Limited. I am informed and verily believe that at all material times the First National Bank of Boston had a substantial sharehold-
30 in First Leasing Australia Limited.

SWORN at Sydney
before me:

In the Supreme
Court of New
South Wales
Common Law
Division
Commercial
List
No. 5925 of
1975
No. 7
Affidavit of
Alan
Frederick
Thompson

No. 8

AFFIDAVIT OF DONALD LEX WEBB. (ANNEXURES "D" AND "E" ARE NOT REPRODUCED).

AFFIDAVIT

ON 11th August, 1975 I DONALD LEX WEBB of Rue Pasteur Port Vila New Hebrides, Bank Officer, say on oath:—

1. I was at all material times the Sub-Manager of the Corporate Services Division of The Commercial Banking Company of Sydney Limited ("the Bank").

2. I crave leave to refer to the Affidavit of Alan Frederick Thompson sworn the 6th August, 1975 and filed herein. 10

3. I was immediately responsible for the arrangement of facilities provided by the Bank to Patrick Intermarine Acceptances Limited in aid of its money market operations.

4. In or about July of 1973 in the course of a telephone conversation with Mr. Peter Davie, a Director of Patrick Intermarine Acceptances Limited he said to me, "I should like to discuss with you at some time in the near future the arranging of an extension of the letter of credit supplied by the Bank to State Electricity Commission of Victoria as security for a loan made by the Commission to Patrick & Company". I said to him, "When you have worked out the details of the proposal please let me know and I will discuss it with you. I presume that other than the period of the loan it will be similar to the earlier transaction. 20

5. On or about the 7th August 1973 I received a phone call from Mr. Peter Davie. He said to me, "You will recall that I spoke to you about the extension of the letter of credit to State Electricity Commission of Victoria for 1.5 million dollars which expires on the 14th of this month. That letter of credit was initially arranged by Patrick & Company whose merchant banking operations were taken over by us. We would like to arrange for an extension of that letter of credit for a further two years. The credit will secure a loan by State Electricity Commission of Victoria to us. We will be on-lending the 1.5 million dollars to First Leasing Australia. You will receive as security a matching letter of credit from First National Bank of Boston. 30
The credit will be in our favour and not in favour of Patrick & Company. Would the Bank consider extending the letter of credit and will you let me know what the Bank's charges will be". I said to him, "I don't think there would be any problems but it is ultimately a matter for the Board's approval. I'll get back to you to let you know what the charges will be and whether the extension has been approved."

6. On or about 8th August 1973 I prepared a memorandum for signature by Mr. Lyons Kerans the Chief Manager of the Corporate Services Division for reference to the Board. Annexed hereto and marked with the letter "A" is a true copy of the said memorandum.

7. On or about the 10th August 1973 I spoke to an Officer of Patrick Intermarine Acceptances Limited. I said to him, "The Board has approved in principle the extension of the letter of credit and our charge will be .25% per annum for the life of the facility". The Officer said to me, "I will let you know if we can negotiate an extension of the loan at that rate". 40

8. On or about the 13th August 1973 I received a telephone call from an Officer of Patrick Intermarine Acceptances Limited. He said to me, "We have been successful in renegotiating the loan. Will you please arrange for the issue of the letter of credit in favour of State Electricity Commission of Victoria". I said to him, "Yes, I shall attend to that immediately but before the transaction can proceed we will need to obtain exchange control approval from the Reserve Bank and we will have to sight the First National Bank of Boston's letter of credit". He said to me, "Yes, that will be alright". 50

9. On or about the 14th August 1973 I wrote to the Reserve Bank. Annexed hereto is a true copy of my letter and a copy of their reply marked "B" and "C" respectively.

10. On or about 14th August 1973 I requested the Overseas Department of the Sydney Office of the Bank to prepare the necessary requisition from Patrick Inter-marine Acceptances Limited in respect of the letter of credit in favour of State Electricity Commission of Victoria and to prepare the letter of credit to State Electricity Commission.

11. On or about the 15th August 1973 I prepared a memorandum for the Board of Directors of the Bank. Annexed hereto and marked "D" is a true copy of that memorandum.

12. On or about 24th August 1973 I prepared a letter for signature by Mr. Lyons Kerans addressed to the Manager of Patrick Inter-marine Acceptances Limited. Annexed hereto and marked "E" is a true copy of that letter.

SWORN at
before me:

A Justice of the Peace

In the Supreme
Court of New
South Wales
Common Law
Division
Commercial
List
No. 5925 of
1975
—
No. 8
Affidavit of
Donald Lex
Webb

8th August, 1973

Customer 2 years
(Old Connection)

Proposed Interest Rate 25% p.
Overdraft %
Line Fee on unused portion 75%
Endorsement Fee 1.2%

BRANCH	CORPORATE SERVICES
NAME	<u>PATRICK-INTERMARINE ACCEPTANCES LIMITED</u>
ACTIVITY	(50% Patrick Corporation Ltd 50% Patrick-Intermarine (Aust) Ltd) Money market operators.
DIRECTORS	M.R.L. Dowling (Chm) P. Davie, P. Grey, R. L. Johnson E. J. Roberts Secretary J. R. Lees
PRES-NT POSITION	Total Debts \$ Term Loan \$ Total Limits \$ repayable \$ p.a. reducing by \$ p.a.
PROPOSED	<p><i>(Total Bank Liabilities to include O/D Debt or limit whichever is the greater, T.L. and/or F.D.L., Bill Limit, Total Contingent Liabilities including lease finance.)</i></p> <p><u>Bill Endorsement Facility \$ 1 million for bills of exchange accepted or endorsed by Patrick-Intermarine Acceptances - bills outstanding \$525,000</u> <u>Letter of Credit (matched) - issued in favour of the State Electricity Commission of Victoria and expiring 15/8/73 \$1,500,000</u> <u>Total Bank Liabilities \$ 1,001,276</u> <u>Total Cash Balances \$ 1,276 Dr (Castlereagh & Hunter Sts Br.)</u></p>
	<p>Total Limits \$ Term Loan \$ reducing by \$ p.a. repayable \$ p.a.</p> <p><u>Bill Endorsement Facility \$1,000,000 - unchanged</u> <u>That we issue a letter of credit in favour of the State Electricity Commission of Victoria for \$1,500,000 for 2 years (rollover of existing facility)</u> <u>Contingent Liabilities \$ 1,500,000 * Total Bank Liabilities \$2,501,276</u></p>
SECURITY	<p><i>(Summary only)</i></p> <p><u>Matching letter of credit in favour of the First National Bank of Boston for \$1,500,000 for two years.</u></p>
PURPOSE	<p><u>Rollover of existing letter of credit in favour of the State Electricity Commission of Victoria for \$1,500,000 to expire 15/8/73 and backed by a matching letter of credit from the First National Bank of Boston.</u></p>
COMMENTS	<p><i>(to include reference to associated business)</i></p> <p>The transaction in respect of the maturing letter of credit was entered into in August, 1969 for a four-year term and was arranged on behalf of Patrick Partners who borrowed from the S.E.C. and lent to First Leasing Australia Limited.</p> <p>Patrick-Intermarine Acceptances Ltd commenced business in July, 1971 and was established to conduct the money market activities on behalf of its shareholder companies including Patrick Partners. The present request was received by telephone from Patrick-Intermarine Acceptances Ltd and has been confirmed by telephone with First Leasing Australia. Reserve Bank of Australia approval is being obtained.</p> <p style="text-align: center;">***</p>
DRAWBACKS	<p><i>(to include reference to hard core)</i></p> <p>Our charge on existing facility was 1/6th of 1% - \$2,500 p.a. We consider the charge should now be a minimum of .25% p.a. - \$3,750.</p>
BENEFITS	<p><i>(new accounts to be obtained & reference to credit funds & overseas exchange content)</i></p> <p>Closer relationship with the Patrick-Intermarine and First National Bank of Boston Groups.</p>
RECOMMENDATION	<p>Recommend on the basis of .25% per annum return to this bank.</p>

*10/8/73
15/8/73
next day
approval
reference to associated business*

August 7

This is the Annexure marked "A" referred to in the Affidavit of Donald Lex Webb sworn the 11th day of August 1975

Justice of the Peace

24th August, 1973.

The Manager,
Patrick-Intermarine Acceptances Limited,
G.P.O. Box 3070,
SYDNEY. 2001

Dear Sir,

We refer to our recent telephone conversations concerning the extension, until 14th August, 1975 of an arrangement under which irrevocable letters of credit are established by the First National Bank of Boston and this Bank to secure a borrowing of \$1,500,000 from the State Electricity Commission of Victoria by Patrick-Intermarine Acceptances Limited for on-lending to First Leasing of Australia Limited, Melbourne.

We are pleased to confirm our Bank approval to the facility which was renewed and completed on 16th August, 1973.

Our commission fee is .25% per annum payable yearly in advance and arrangements have been made to charge your company's Sundry Charges account at our Castlereagh & Hunter Streets Branch with the initial \$3,750. --

For your files we enclose copy of the Reserve Bank of Australia Exchange Control approval.

We are pleased to be of service in this regard.

Yours faithfully,

J. D. H. KERANS

J. D. H. Kerans
Chief Manager Corporate Services

This is the Annexure marked "B" referred to in the Affidavit of Donald Lex Webb sworn the 11th day of August 1975
Before me

Justice of the Peace

P. A. 124



65 MARTIN PLACE
BOX 3947 GPO SYDNEY 2001
TELEPHONE 2 0177

RESERVE BANK OF AUSTRALIA

IN REPLY PLEASE QUOTE ECD.OB.IC

15 August 1973

The Manager
The Commercial Banking Company
of Sydney Limited
Box 2720 G.P.O.
SYDNEY, N.S.W. 2001

Dear Sir,

EXCHANGE CONTROL

We refer to your letter of 14 August 1973.

Authority under the Banking (Foreign Exchange) Regulations is given to the extension, until 15 August 1975, of arrangements under which guarantees given by The First National Bank of Boston, U.S.A., and your bank secure the borrowing of \$A1,500,000 from the State Electricity Commission of Victoria by Patrick-Intermarine Acceptance Limited for on-lending to First Leasing of Australia Limited.

Yours faithfully,

For the Manager
Exchange Control Department

This is the Annexure marked "C" referred to in the Affidavit of Donald Lex Webb sworn the 11th day of August 1975
Before me

Justice of the Peace

No. 9

TRANSCRIPT OF PROCEEDINGS BEFORE HIS HONOUR MR. JUSTICE SHEPPARD.

Mr. Gleeson, Q.C., appeared with Mr. Downes and Miss Lock for the plaintiff.

Mr. Lockhart, Q.C., appeared with Mr. Tobias for the first defendants, Patrick Intermarine Acceptances Limited and Gavin Hosking.

Mr. Meagher, Q.C., appeared with Mr. Hamilton for the third and fourth defendants, First Leasing Australia Limited and First National Bank of Boston.

10 (Mr. Macready announced that he appeared with Mr. Graham for the State Electricity Commission of Victoria and submitted to any order of the Court except in relation to costs. Mr. Macready was excused until the question of costs should arise.)

(Leave given to the plaintiff to amend the title of the first defendant by adding the words "In liquidation" after the name of Patrick Intermarine Acceptances Limited.)

(Mr. Lockhart stated that Mr. Hosking was the provisional liquidator in the initial stages and would not seem to be a proper party to the proceedings. His Honour stated that to the extent that it was necessary he made an order pursuant to s. 230(3) of the Companies Act giving the plaintiff leave to continue these proceedings against the defendant Gavin Hosking.)

20 (Mr. Lockhart requested that the question of Mr. Hosking's position be cleared up as soon as possible. His Honour stated that he would give Mr. Gleeson some little time to consider the position.)

Mr. Gleeson: Your Honour may recollect some interlocutory proceedings in relation to this matter last year. Indeed I think your Honour made a statement that was recorded at some stage in relation to the basis upon which the matter was to proceed. Mr. Lockhart has a copy of that.

30 This is an action which arises out of a transaction that was entered into in August 1973, a transaction involving an operation on what is sometimes called the money market, and it will involve your Honour looking at practices and commercial agreements made by people operating in that market and considering the legal consequences of the actions and agreements that they undertook and entered into. A good deal of the evidence before your Honour, and indeed some of the allegations contained in the pleadings, relate to matters that happened before August of 1973, and that is because the transaction that the parties entered into in August of 1973 was merely a repetition of transactions of a similar kind that had been entered into between the parties on previous occasions, and it is probably necessary to have a look at the history of their previous dealings to understand what they were doing in August of 1973; but in any event it is necessary because in relation to one vital element of the August 1973 transaction, what was done was merely to extend a contract in the nature of a letter of credit that had been entered into in relation to a similar transaction in 1969.

40 So the history behind the August 1973 transaction is not only significant for the purpose of understanding that transaction but it is also a necessary part of that transaction in the sense that in one important respect the parties, in arranging their legal relationships in August 1973, extended a contract that had previously been entered into.

50 Your Honour, the various parties and their relationships with one another are also important in this case. Patrick Intermarine Acceptances Limited was in substance the successor to a business of a kind which is sometimes described as merchant banking, sometimes described as operating in the money market, which had previously been carried on by a firm of stockbrokers who in 1969 carried on business under the name of Patrick & Co. and later changed the name to Patrick Partners.

In about 1972 (the precise date does not matter) it appears that Patrick Inter-marine Acceptances Limited took over that aspect of the business which had formerly been operated by Patrick & Co., later named Patrick Partners, and persons who were members of the firm of Patrick Partners such as a Mr. Allen and a Mr. Course were active in the affairs of Patrick Intermarine Acceptances Limited also.

It appears that Patrick Intermarine Acceptances Limited, like Patrick Partners, had a Melbourne office, and that Mr. Roy C. Course was the person in charge of the office down there; and Patrick Intermarine Acceptances Limited, like Patrick & Co. and Patrick Partners, was a customer of the C.B.C. Bank at all material times. Another customer of the Melbourne office of the C.B.C. Bank was a company called First Leasing & Finance Limited, and First Leasing & Finance Limited was a company, fifty per cent of the capital of which was owned by the First National Bank of Boston, an American bank, and fifty per cent of which was owned by interests connected with a Melbourne family of the name of Reinehr. The man principally in charge of the business of First Leasing & Finance Limited was Mr. Reinehr. 10

I mentioned to your Honour that First Leasing & Finance Limited was a customer of the bank in Melbourne. The business of First Leasing & Finance Limited consisted in a large part of leasing goods and equipment in the role of a financier. Your Honour is familiar with the kind of leasing operation undertaken by many finance companies and that was the principal business of First Leasing & Finance Limited. It also apparently in a small way dealt on its own account in the money market. First Leasing & Finance Limited, in order to raise funds for its ordinary business operations, raised them, amongst other ways, by borrowing on the money market. 20

Now there will be evidence before your Honour to suggest that First Leasing & Finance Limited really did not have a great deal to offer as security for its borrowings in the way of assets of its own. Its principal asset in terms of its ability to raise moneys on the money market was its association with the First National Bank of Boston and the backing it could produce or obtain from that large and highly respected overseas bank. 30

It will also appear to your Honour that an important source of funds which found their way on to the money market were large institutional lenders like the State Electricity Commission of Victoria, and it appears that those lenders operated under an inhibition in relation to the basis upon which they were prepared to lend moneys in these money market operations. Whilst they were happy to accept the backing of a bank, they required the backing for a borrower of an Australian bank, and that seems to be the way the C.B.C. Bank came into the picture.

Now First Leasing & Finance Limited on a number of occasions prior to August 1973 obtained loan funds in large amounts on the money market through a connection they had with Patrick & Co., later Patrick Intermarine Acceptances Limited. The State Electricity Commission of Victoria for its part placed funds out on loan also through a connection with Patrick & Co., later Patrick Intermarine Acceptances Limited. It appears from the accounts that were kept by Patrick & Co. and Patrick Intermarine Acceptances Limited, and that have been produced on discovery, that Patricks treated moneys they received from the State Electricity Commission of Victoria as deposits with them by the State Electricity Commission of Victoria and when, having received such funds, they on-lent the funds, to use an expression that is used in a number of documents, to people such as First Leasing & Finance Limited, in their own accounts they treated that transaction as a deposit by them with First Leasing & Finance Limited. 40 50

So they kept two deposit accounts, one in the name of State Electricity Commission of Victoria and one in the name of First Leasing & Finance. There was, of course, a margin in it for Patricks. The rate of interest that they were paying the State Electricity Commission of Victoria was lower than the rate of interest they were receiving from First Leasing & Finance Limited and that apparently is a common way in which operators on the money market carried on their business and made a profit.

10 Now the basis upon which the transactions in question were conducted, that is leading up to August 1973 and the August 1973 transaction, in substance involved First Leasing & Finance Limited entering into a borrowing arrangement with Patrick & Co., Patrick Intermarine Acceptances Limited, on the security of a letter of credit issued by the First National Bank of Boston in favour of Patrick & Co., later Patrick Intermarine Acceptances. But when Patricks raised the money from the State Electricity Commission of Victoria, the First National Bank of Boston's letter of credit was not good enough for the State Electricity Commission of Victoria and Patricks procured the bank to issue to the State Electricity Commission of Victoria letters of credit in its favour offering the bank as security—and I might say the only security for these transactions—the letter of credit from the First National Bank of Boston; and the expression that was used to describe the nature of the security that the
20 C.B.C. Bank was getting was that it was issuing its own letter of credit to the State Electricity Commission of Victoria against a back-to-back letter of credit from the First National Bank of Boston.

Now your Honour will be referred in due course to various textbooks on letters of credit which indicate that the expression “back-to-back letter of credit” is a very common one and it is commonly understood in the normal kind of transaction in which letters of credit are in fact used, that is transactions under which the letters of credit are set up as a means of payment of a supplier, usually in an export-import transaction, and in that context the expression “back-to-back letter of credit” is a very well known and well understood one; and in one sense what this case is about is to
30 determine what the legal consequences of a back-to-back letter of credit are in a case like this where letters of credit are being used for a purpose somewhat different than the purposes with which the courts are familiar, and I am not aware for my part of any case in which this question has fallen for consideration before today.

His Honour: In the import-export situation are there usually two letters of credit or is the back-to-back the goods against the letter of credit or the document?

Mr. Gleeson: I will read your Honour a passage from a book “The Law Of Bankers Commercial Credits” by Gutteridge & McGrath p. 163, “The benefit of an irrevocable credit may be made available to a third party . . .”. The books seem to suggest that the normal case in which in the ordinary letter of credit situation a back-
40 to-back arrangement operates is where the supplier in whose favour the original letter of credit was raised is himself purchasing goods from another supplier and he wants to use the letter of credit that has been issued in his favour at the request of his own customer as security for the contract, pursuant to which he is obtaining the goods that he is on-selling.

Now there is evidence to the effect that the first transaction of this nature involving these parties took place in April 1969 and that involved a sum of money of half a million dollars and Patricks approached the bank and told the bank that they were arranging a borrowing from the S.E.C.V. and that they required from the bank the issue of a letter of credit in favour of the S.E.C.V., the security for which
50 was to be a back-to-back letter of credit issues by the First National Bank of Boston, and after some discussion that arrangement was accepted and in due course the First

National Bank of Boston's letter of credit arrived in favour of Patrick & Co. and the bank issued a letter of credit, \$500,000, in favour of the S.E.C.V.

Now the parties between them sought to tie the First National Bank of Boston's letter of credit in with the C.B. Bank's letter of credit by a contractual device which they worked out for themselves without getting legal assistance, of adding to the standard form of requisition for the issue by the bank of a letter of credit, an extra paragraph which in effect contained a promise by Patricks that in the event that there was a drawing by the State Electricity Commission of Victoria on the C.B.C. Bank's letter of credit, Patricks would deliver to the C.B.C. Bank the First National Bank of Boston's letter of credit together with the appropriate documents necessary to enable a drawing on that letter of credit. 10

Now that was the contractual device that the parties worked out for themselves to give effect to their back-to-back arrangement. The significance of the \$500,000 transaction in early 1973 for this case is probably only that in all later transactions, including the August 1973 transaction, they simply followed the precedent of the contractual arrangements that they had worked out on that occasion; and at various times various letters of credit were issued by the bank. At one stage the bank had a contingent liability of I think up to \$7 million pursuant to transactions of this nature, in every case the sole security of the bank being, and being expressed to be, the back-to-back letter of credit by the First National Bank of Boston. 20

The next relevant piece of history, because it ties in with the August 1973 transaction, was that in August 1973 Patricks did one of these deals; they used to describe them in their own books as special deals and they did special deal No. 3 and this case is about a transaction which is described in the books and records of Patrick Partners as special deal No. 3. Special deal No. 3 began in August 1969 and special deal No. 3 involved an amount of money of \$1½ million and the basis on which the transaction was being conducted was the by then familiar basis of a borrowing by Patrick Partners of \$1½ million from the S.E.C.V. on certain terms and conditions and at a certain rate of interest and, to use the expression used by the parties, the on-lending of the identical amount of money at a slightly higher rate of interest. 30

His Honour: Lending it to First Leasing?

Mr. Gleeson: Lending it to First Leasing. It is inaccurate but convenient to say that the term of the loan was four years. I say it is inaccurate because there were some fairly complicated arrangements between the parties involved as to renewal or review of the transaction at various intervals during that period of time, but in the events that happened the loan remained outstanding for four years and the letter of credit was for the maximum possible term which was four years; therefore, subject to any views to the contrary that may be put, it is probably convenient as far as we are concerned to rise above the detail of the arrangement between the parties about repayment of the loan and treat it as a loan for four years. 40

His Honour: Was the transaction one which S.E.C.V. knew involved First Leasing or was it simply a matter of Patricks acting as some kind of principal?

Mr. Gleeson: Whether at the time of the transaction in 1969 S.E.C.V. knew that their money was going on to First Leasing is not entirely clear. One thing that is abundantly clear is that in the transaction that we are here concerned with, the August 1973 transaction, the S.E.C.V. and First Leasing knew the stages in the transaction and indeed it appears that at about the same time First Leasing borrowed some money direct from S.E.C.V. But there are documents which make it obvious that First Leasing knew, at least by August 1973, that the source of the funds that it was getting was the S.E.C.V. 50

His Honour: What it would do was it would go to Patricks and say, "I have got money to lend, so many years, so much interest. We want the security of a local bank's backing of the loan"?

Mr. Gleeson: Yes.

His Honour: So it would get a letter of credit signed by the Commercial Bank?

Mr. Gleeson: A letter of credit from the Commercial Bank.

His Honour: Which would say no more than that it would pay if there was default?

10 *Mr. Gleeson:* In effect, that is right. It would pay if there was default by Patrick & Co.

His Honour: And the loan to the S.E.C.V. was made by Patricks?

Mr. Gleeson: The loan to First Leasing was expressed to be made by Patricks.

His Honour: And the borrowing by Patricks from S.E.C.V.?

Mr. Gleeson: Yes, your Honour. The position is not entirely clear as to earlier time but certainly by 1973 in a situation where First Leasing well knew that the source of the funds was S.E.C.V., they just did not mind Patricks being involved or Patricks taking out a profit or commission.

His Honour: And the S.E.C.V. can look to Patricks as principal?

20 *Mr. Gleeson:* Yes.

His Honour: To repay?

Mr. Gleeson: That is what they did.

His Honour: And in default of them to the bank?

30 *Mr. Gleeson:* The S.E.C.V. have taken various stances on that. They wrote a letter to Patricks which is in evidence in this case because they sent a copy to the bank when in the middle of last year Patricks' financial difficulties became known, in effect asserting I think that Patricks were a mere agent in the transaction; and your Honour will remember that a gentleman from the S.E.C.V. turned up when this matter originally commenced, wanting to argue or stating that he wanted to argue that the contract he had was between himself and First Leasing. He has been rendered content in the meantime by the payment by the bank on its letter of credit.

As I say First Leasing in fact through another broker, J. B. Were & Sons, in which transaction I think the broker was manifestly acting merely as an agent, made a large borrowing from S.E.C.V. in August 1973 on its own account, and the documents produced on discovery by First Leasing make it obvious that well before August 1973 First Leasing knew that the source of these funds and the source of the \$1½ million was the S.E.C.V.

40 But, your Honour, in August of 1973 there was this borrowing of \$1½ million for four years and an on-lending. The loan fell due in August of 1973 and it was in fact repaid. Indeed the explanation may be that there was some delay about getting the extension of the letter of credit from First National Bank of Boston. But the position that existed in August 1973 when that four years was up was that after some hesitation S.E.C.V. and Patricks and First Leasing negotiated from their different points of view what is sometimes called a roll-over of that loan, again on the basis that the S.E.C.V. was to be secured by the C.B.C. Bank's letter of credit and that the bank's security was to be a back-to-back letter of credit issued by the First National Bank of Boston.

50 But apparently because there was some delay in making the precise arrangements with the First National Bank of Boston or for whatever reason—I do not think it matters—the loan actually had to be repaid and indeed the bank extended to First Leasing something very akin to what your Honour has seen in other documents in another case called Daylight Cover. For a day or two, First Leasing was put in funds

in an amount of in excess of \$1 million by the bank to enable it to repay this loan. Then the loan having been repaid, as was always intended to happen, it was in effect renewed so it was always intended to happen (I mean people knew was going to happen at the time of the repayment) and what the First National Bank of Boston did on this occasion was the only aspect of the transaction that was different from the August 1969 arrangements.

There was once again a request or a requisition for the issue of a letter of credit with this standard form of par. (j) in it sent by Patrick Intermarine to the bank. There was once again a letter of credit issued by the bank to the S.E.C.V. but the difference on this occasion was that instead of issuing a fresh letter of credit in favour of Patrick & Co., the First National Bank of Boston issued a document extending the 1969 letter of credit. It referred by number to the 1969 letter of credit. It extended the letter of credit for the contemplated term of the loan which was two years and it changed the name of the beneficiary of the letter of credit from Patrick & Co. to Patrick Intermarine Acceptances Limited.

10

His Honour: You want the letter of credit?

Mr. Gleeson: We want more than that, your Honour. We want a worthwhile letter of credit and not an illusory letter of credit because what we want to prevent happening is First Leasing paying Patrick Intermarine Acceptances Limited and Patrick Intermarine taking the \$1.5 million and depositing it with some other bank, and that is what is threatened will happen.

20

His Honour: You want to be paid out by the American bank?

Mr. Gleeson: Yes.

His Honour: To be considered as a secured creditor for the \$1.5 million you paid, is that right?

Mr. Gleeson: Yes, that is right. To use an expression that is apparently sometimes used, we want to activate the letter of credit.

His Honour: What is said against you? Mr. Lockhart says you are not a secured creditor and he wants the money for the general purposes of Patrick Intermarine?

Mr. Gleeson: That is right.

30

His Honour: What does Mr. Meagher say about that?

Mr. Gleeson: Mr. Meagher, as I understand it, says that for reasons of commerce relating to things that happen in the United States, not for any particular legal reasons, he is most anxious that the First National Bank of Boston's letter of credit should not be activated. He just wants First Leasing to pay Patricks or to pay the Court. I do not think Mr. Meagher minds who First Leasing pays. His principal anxiety is that the vehicle for payment be not the letter of credit.

Mr. Meagher: That is so, your Honour.

Mr. Gleeson: And the reason why he cares about that is a matter personal to First National Bank in the sense that it relates to their own business.

40

His Honour: And First Leasing will do what the bank wants, being half-owned by them?

Mr. Gleeson: Yes, your Honour.

His Honour: But First Leasing I take it simply does not care who it pays. It is willing to discharge its liability to whoever it ought to?

Mr. Gleeson: I think First Leasing is substantially more than half-owned by the bank now but that is First Leasing's attitude.

His Honour: So the main dispute is between you and Mr. Lockhart as to whether you are entitled to have the benefit of this letter of credit and set off against what you paid?

50

Mr. Gleeson: That is so.

His Honour: He is saying it is simply a matter of it being paid to Patrick Inter-marine and indeed you would become an unsecured creditor.

Mr. Gleeson: Of course we alternatively say that we have a charge or an assign-ment of the benefit and that is owing by First Leasing to Patrick Inter-marine. Also we claim as an alternative form of security rights in relation to the fund itself.

Mr. Meagher: If it is convenient to my friend and your Honour to interrupt now, the attitude of First Leasing is twofold. Firstly it wishes to pay the debt. It does not particularly care who its creditor is provided it can get an acquittance on payment, but it does very much want to be in a position to pay on the due date because if it
10 does after the due date then the letter of credit on the Boston bank can be called.

His Honour: When is the due date?

Mr. Meagher: The due date was 15th August, 1975. That has been extended until a date which I am not quite certain of.

His Honour: Pursuant to the arrangement that was made here?

Mr. Meagher: Yes. I do not know what the current extension date is.

Mr. Gleeson: 14th August, 1976.

Mr. Meagher: It does want to pay whoever your Honour tells us our creditor is and it does want to do that on or before the due date.

His Honour: And it wants to do that principally for reasons associated with
20 its parent?

Mr. Meagher: That is so, yes, and for a subsidiary reason. It does not want to be known as a defaulter.

His Honour: I do not think anybody would really think it was a defaulter if they knew what the facts were.

Mr. Meagher: But the main reason is the reason your Honour said.

His Honour: The main contest is really between Mr. Gleeson and Mr. Lockhart?

Mr. Meagher: True. If there were any mechanics whereby that contest could be conducted in such a way that the Boston bank was not called on, I would seek leave to withdraw.

His Honour: I take it some thought has been given to that and no means have
30 been found?

Mr. Gleeson: Yes, at the interlocutory proceedings that problem was raised too. The difficulty is that on one view of the matter—it is only one view of the matter but it has got to be considered a real possibility—this is a case where the legal rights of the parties may depend upon the actual procedures that are followed in relation to their carrying out their contract. I suppose it is always unfortunate when a situation like that arises.

His Honour: You mean First Leasing repay Patrick Inter-marine and Patrick Inter-marine get the money?

Mr. Gleeson: Yes, subject to our argument about charge or assignment or trust
40 or whatever is the proper nature of the right we have. But unless we were prepared to put all our eggs in that basket, it would be dangerous for us not to pursue our attempt to force the payment to be made by the activating of that letter of credit.

His Honour: Do you say the steps necessary to activate it have already occurred?

Mr. Gleeson: Yes.

His Honour: Or will only occur if certain further steps are taken?

Mr. Gleeson: They have already occurred subject to the question of whether or
50 not as a matter of contract between the parties involved First Leasing and Patrick Inter-marine are contractually entitled now in the situation that has arisen in effect to walk away from the bank and make their own arrangements as between them-selves; because if they are entitled to do that subject to this argument of charge or

assignment or some proprietary interest in the fund, they are setting at naught and rendering illusory and valueless that which the bank was offered as security because the letter of credit, according to its terms or according to one construction of its terms, only operates in the event that there is no payment by First Leasing to Patrick Intermarine Acceptances, and if Patrick Intermarine Acceptances and First Leasing are now contractually entitled to walk away from the bank and make their own arrangements as between themselves, the security which the bank was offered and which no one denies it has is just a worthless piece of paper.

His Honour: Do you make any claim against First Leasing for damages in that regard? 10

Mr. Gleeson: We seek to establish a contractual right against First Leasing for us to prevent them doing that. Because they have not yet done it, no question of damages has arisen. We are trying to intercept it. Indeed that was the reason for the urgency of the interlocutory proceedings.

His Honour: Might not you say if you cannot intercept it, and that is plain so that it has to be paid in the way they contend for, they are in breach of some contractual relationship with you?

Mr. Gleeson: Yes, we would say that.

His Honour: Are you going to say that in these proceedings?

Mr. Gleeson: We have alleged the relevant contract in these proceedings. We have alleged they are contractually bound not to do that. I think what I have sought in these proceedings is a declaration that would be in aid of that but we have not yet sought damages. 20

His Honour: Maybe that question ought to be left open?

Mr. Gleeson: Yes.

Mr. Gleeson: Could I hand your Honour a bundle of documents which are either documents that are annexed to affidavits that are to be filed in the present proceedings, or documents produced by one or other of the parties on discovery. My learned friend, Mr. Lockhart, would want me to say to your Honour that in relation to a number of the documents in this bundle which are, as it were, internal documents of First Leasing or the First National Bank, he will be objecting to their tender as against him. 30

Mr. Lockhart: And communications between either the Boston Bank or First Leasing and your clients, Mr. Gleeson.

Mr. Gleeson: Those objections will fall to be determined.

Mr. Meagher: I will be taking a similar objection to documents that do not seem to concern us.

Mr. Lockhart: We have only had a chance to glance at the bundle very briefly this morning and we may—in fact, I am certain—want to add documentation to it, assuming much of it goes into evidence, so when your Honour does read it, I ask your Honour to have in mind it will be supplemented by further material. Your Honour will see gaps as your Honour reads through it. 40

My learned friend has completed his opening address, as I understand it. He is basing his case, as we see it from what he said, upon an assignment of the deed or a charge over the debt from First Leasing to P.I.A.L. or he may be seeking some charge over the letter of credit itself. That, as I understand it from what he said, is the basis upon which he puts this case. His pleading or statement of claim covers many matters, traverses wide avenues of the law. They go wider than what he said in his opening address. I wonder if it could be made clear by him as to whether he is relying on what he said in the opening address or in the statement of claim. 50

Mr. Gleeson: Both, I am relying on every possible cause of action that could be defined from the statement of claim. If I could direct your Honour's attention briefly to some of them before going to the affidavits.

(Bundle of documents referred to handed to his Honour, but not as a tender)

10 The first of the documents is an interesting document; it actually finds its way into an affidavit of Mr. Blackett, whose document it is. It is the Genesis of all these transactions, the telephone call to Mr. Blackett, perhaps I should explain to your Honour who Mr. Blackett was at the time: he was not the manager of the Sydney office at the time and therefore, technically, probably he was not the right person for Mr. Allen to ring, but he had previously been the manager of the Sydney office and in that capacity Mr. Allen knew him and Mr. Allen dealt with him, so that when Mr. Allen had this request to make, he got in touch with Mr. Blackett who had had a promotion.

20 This document is a memorandum of a conversation that is referred to in Mr. Blackett's affidavit. Your Honour will see in that document that the letter of credit to be issued by the First National Bank of Boston is said to be a letter of credit in our favour, and your Honour will learn that it was at a later time when it became apparent that the letter of credit was to be in favour of Patrick & Company that they had decided that that paragraph (j) would be included in the requisition for the C.B.C. Bank's letter of credit. Your Honour will learn that the way par. (j) came about was that it was, as it were, worked out by some officers in the appropriate department of the bank and communicated to Patricks, who accepted it, and then ultimately put before Mr. Blackett, who accepted it as an appropriate way of dealing with the problem. Your Honour will notice the opening words of the third paragraph of the memorandum.

His Honour: It does suggest there was some.

30 *Mr. Gleeson:* Yes, your Honour. The next document in the bundle is the First National Bank's letter of credit for the \$500,000 loan that I told your Honour about, and this is a form of document that was repeated in later documents, and your Honour will see that it is an irrevocable letter of credit in favour of Patrick & Co. available by drafts drawn on the Commercial Banking Company of Sydney Limited for the amount in question; and your Honour will see that as a condition of drawing on the letter of credit, paragraph numbered 3 says that "drafts must be accompanied by a statement that the amount in question was not paid when due and has not since been repaid". So the draft requires, for its operation, evidence that the amount due from First Leasing to Patrick & Company was not paid.

40 There is further correspondence, and if your Honour goes to the document of 8th April 1969, your Honour sees the origin of this par. (j) which is a term of the requisition from Patricks to the bank for the issue by the bank of the letter of credit and it says, "We undertake that in the event of drawings being made under this credit, we will immediately lodge with the bank a draft and accompanying documents in terms of First National Bank of Boston's letter of credit."

His Honour: The last line of my (j) is not copied.

(Original of (j) tendered)

Mr. Meagher: We object to it in so far as it is tendered against us.

50 *His Honour:* I think I will have to deal with these objections at the end. I think I had better say now these documents are received subject to any objections that either you or Mr. Lockhart may eventually wish to argue in relation to them. If that looks likely to get you into trouble on a matter of proof, Mr. Gleeson, you can tell me and I will have to decide the point.

(Tender of requisition admitted subject to Mr. Meagher's objection and marked Ex. A.)

Mr. Meagher: May I take it from your Honour's ruling that so far as I am concerned there is no need for me to take similar objections when further documents are tendered.

His Honour: I would like to say that but I think perhaps we had better not because I do not want to put Mr. Gleeson in a position where he needs a link where I receive something subject to objection and I find I should not have, and he is without some evidence.

Mr. Gleeson: In going through this file, your Honour, you will see the actual letter of credit that the bank issued is dated 9th April 1969 and it authorises the State Electricity Commission of Victoria to draw on Patrick & Company at sight for any sum not exceeding \$500,000 purporting to cover unpaid principal amount of loan made to Patrick & Company, and the draft must be accompanied by a statement of the S.E.C.V. certifying that the draft amount represents the unpaid principal amount of a loan made by the Commission to Patrick & Company, and that payment has been demanded and not received. That was the document that issued pursuant to the requisition that is Ex. A. 10

His Honour: The substantial difference between this type of credit and the one that is more familiar is that the bank would be expected to be called on to pay in the import/export situation. 20

Mr. Gleeson: Exactly.

His Honour: The problem that Mr. Meagher foreshadows would not arise. You pay against the document.

Mr. Gleeson: Yes, your Honour.

His Honour: But here you pay against this condition.

(Bank's copy of letter of credit dated 9th April 1969 tendered)

His Honour: What is the distinction between the two letters of credits in this regard Mr. Gleeson? What was the condition, if any, on the First National Bank's letter. 30

Mr. Meagher: I make the same objection to that.

(Tender marked Ex. B)

Mr. Gleeson: When your Honour ultimately sees the forms of letter of credit issued by the First National Bank of Boston in relation to the relevant transaction, your Honour will find it, for example, in this bundle against the date 14th August 1969. I could answer the question more easily by tendering the original of the letter of credit the subject of this action which comes from the possession of the bank.

His Honour: When you say the bank, you mean—?

Mr. Gleeson: The C.B.C. bank.

(Original of letter of credit tendered without objection and marked Ex. C) 40

Mr. Gleeson: Your Honour will see from that document that the letter of credit is opened in favour of Patrick & Company by drafts drawn on the Commercial Banking Co. of Sydney Limited for \$1,500,000 and the drafts must be accompanied by a statement signed by an authorised officer certifying that the amount in question was not paid when due and has not since been repaid to or collected by Patrick & Company.

Mr. Meagher: And the last words of the next paragraph are important too.

Mr. Gleeson: "The promissory note or other evidence of the indebtedness in respect of such loan". It, in other words, envisages a drawing under the letter of credit in the event of non-payment of the loan by First Leasing. 50

Q. Where does that appear?

Mr. Gleeson: Only from the words that we have just referred to, your Honour—that the loan has not been paid and that—

His Honour: So it is default by First Leasing that is contemplated?

Mr. Meagher: Yes.

Mr. Gleeson: Contemplated by this document, although what is contemplated by the requisition to the bank for the issue of the letter of credit is default by Patrick & Company.

His Honour: That is what I was looking for.

10 *Mr. Gleeson:* Par. (j), but in relation to the requisition for the letter of credit, par. (j) says, “We undertake that in the event of drawings being made under the letter of credit . . .”. Now, there is only one way there could be a drawing under the letter of credit set up by the C.B.C. bank and that is default by Patricks.

His Honour: Yes, but is it right to say that the Commercial Bank is looking at default by Patricks and the First National Bank of Boston was looking to default by First Leasing.

Mr. Gleeson: I think that is generally correct, yes, your Honour; but it is also right to say that what the C.B.C. Bank was given as security for the issue of its own letter of credit and as being a back-to-back arrangement was the letter of credit from the First National Bank of Boston, and if your Honour turns to the August—

20 *His Honour:* Might it not be said by Mr. Meagher that he is not liable because First Leasing has not defaulted?

Mr. Gleeson: Yes, he will say that, your Honour, but we will be submitting that it is plain that in August 1973, when we come to the relevant document First Leasing knew and First National Bank of Boston knew that the First National Bank of Boston letter of credit was being used as a back-to-back letter of credit to be put together with the bank’s letter of credit, and indeed, I mentioned in opening, your Honour, this was the way the affiliate of the American bank was able to have access to the Australian money market, this offering of First National Bank of Boston’s letter of credit as back-to-back arrangements with the local bank’s letter of credit was an important part of the way in which commercially the local affiliate of the First

30 National Bank of Boston was enabled to have access to the sort of moneys that were available to be lent by institutions like the State Electricity Commission of Victoria.

In relation to the knowledge of the parties, your Honour, if your Honour goes through this bundle, for example, to a document which was—

His Honour: I am sorry to interrupt you, but bearing in mind what we have just said about the condition of the American bank’s letter of credit being payment by First Leasing, and bearing in mind the relationship between those two companies, why couldn’t First Leasing simply go on extending the period of the letter of credit so that it was never—the bank was never to be contemplated?

40 *Mr. Gleeson:* Only because—

His Honour: I am only thinking aloud. Don’t answer it now if you don’t want to. Maybe I need some more facts.

Mr. Gleeson: My reaction to that would be, only because one would have to appoint the parties in some way to the transaction in respect of which this letter of credit was issued, and it would be just as wrong for them to do what your Honour has suggested as it would be, so we would suggest, for them, in the events that it now occurred, to walk away from the transaction.

His Honour: That is what you meant when you used that expression earlier?

50 *Mr. Gleeson:* Yes, your Honour. If your Honour goes to a document of 7th March, 1973, that was produced on discovery by First Leasing and First National Bank of Boston—they made a joint discovery—the initials F.I.R. no doubt stands

for Mr. Reinehr, Mr. Frank Reinehr, there is no dispute about that. And it is perfectly obvious from this document that First Leasing and First National Bank of Boston knew that the S.E.C. of Victoria was the source of the \$1.5 million that had been loaned for 4 years in 1973; indeed, there is an interesting description of the role of Patrick Partners when it says the loan is on F.L.A.'s book, because Patrick Partners then, your Honour, when one comes to the August 1973 arrangements, which are the ones that are critical in the present case, if your Honour goes to a document produced on discovery by Patrick Partners, dated 15th August 1973, with some handwriting and the words "David Nicholl" in the corner—that is one of the documents that came into existence at the time of the repayment of the loan which I mentioned to your Honour was repaid and then renewed. Document D 30 I was looking at. 10

His Honour: 15th August?

Mr. Gleeson: Yes, 15th August.

His Honour: Could you tell me what the opening words are?

Mr. Gleeson: "We refer you to the terms and conditions of the loan"—a letter from Patrick Partners to the Secretary of the State Electricity Commission.

His Honour: I think that is D23.

Mr. Gleeson: It says, "We refer to the terms and conditions of the loan of \$1.5 million from you to Patricks", and it finishes up, "The irrevocable letter of credit you are holding as security". D.30 is the same as the D23; the only significance of D30 is it has more material on it, but I don't know at the moment what that material is. I am afraid there is a little interruption in the chronological sequence, but if your Honour goes to a document of 14th August, which is after a couple of documents of 15th August, your Honour sees the actual requisition that is relevant to the present case. 20

His Honour: Is that the 16th August?

Mr. Gleeson: No, your Honour, it is 14th August, 1973.

(Requisition for local documentary credit No. L.D.973 dated 15th August 1969, tendered: objected to by Mr. Meagher: marked Ex. D.)

(Local documentary credit requisition dated 14th August 1973 that led to the issue of credit No. L.D.1436, which is the relevant one in the present case, tendered: objected to by Mr. Meagher on the same basis: marked Ex. E) 30

Mr. Lockhart: I object to that in relation to the liquidator Mr. Hosking, simply

His Honour: Assuming he stays a party?

Mr. Lockhart: Assuming he stays a party.

His Honour: We can note that you would object to any evidence against him.

Mr. Lockhart: Any evidence at all against him.

(Irrevocable letter of credit L.D.973 dated 16th August, 1969, tendered: same objection by Mr. Meagher: marked Ex. F)

His Honour: Would it be possible for a situation to arise, Mr. Gleeson, where it was right for Mr. Meagher's client, First Leasing, to pay Mr. Lockhart's client, but nevertheless right also for you to, in the same way, claim that the First National Bank ought to pay you? 40

Mr. Gleeson: Yes, particularly, of course, and this is one of the things that is no doubt leading my learned friend Mr. Meagher to seek some assurance by way of acquittance, should he pay Mr. Lockhart's client.

Mr. Meagher: Or anybody else.

Mr. Gleeson: Or anybody else, particularly if the State Electricity Commission of Victoria were right when they were asserting that Mr. Lockhart's client was a mere agent or mere intermediary, then anyone who paid Mr. Lockhart's client would do so at his own risk, but it may also be a possible result of the contractual arrangements 50

between the parties that the C.B.C. Bank is entitled to say to the First National Bank of Boston "You are liable to pay us under this letter of credit, the relevant events having happened, and nothing that is done between First Leasing and Patrick Inter-marine Acceptance can defeat that right."

His Honour: I suppose in another situation Mr. Meagher might have, as I think he foreshadowed a little while ago, claimed to be entitled to payment by the bank because he had to pay.

Mr. Gleeson: Yes, your Honour.

10 *His Honour*: That was the basis upon which I entered into the arrangement. If I were called upon I could look to the First National Bank—

Mr. Gleeson: To put it another way, as par. (j) of the requisition to the documentary letter of credit, we entered into this transaction on the basis that if there was a drawing on our letter of credit there would be a drawing on the First National Bank of Boston's letter of credit; otherwise the promise that Patricks gave us was illu-si-ory. (Copy of plaintiff's irrevocable letter of credit dated 16th August, 1973 No. L.D.1436 tendered: same objection by Mr. Meagher: marked Ex. G)

(Copy of notice of extension of letter of credit from the First National Bank of Boston dated 15th August 1973 tendered, without objection, and marked Ex. H.)

20 *Mr. Gleeson*: I will read the affidavit of Norman Harley Blackett of 8th August, 1975.

Mr. Meagher: To save my learned friend the nuisance of objecting to everything piecemeal, we would object to the whole of this affidavit as against our client.

His Honour: I will admit it subject to that objection, but Mr. Gleeson, if there is any problem of proof as distinct from substance, it is up to you to separate it out so that I can deal with it.

Mr. Lockhart: I object to par. 4, to the words "pursuant to my agreement with Mr. Allen", and similarly in par. 6.

His Honour: I will come to that.

(Affidavit read: objection by Mr. Lockhart in par. 4 as mentioned: not pressed)

30 *His Honour*: It can be noted that the words in par. 4 of the affidavit "pursuant to my agreement with Mr. Allen" are objected to and I reject them.

(Same objection in par. 6 by Mr. Lockhart as noted)

His Honour: Again I reject the words "pursuant to my agreement with Mr. Allen".

NORMAN HARLEY BLACKETT

Sworn and examined:

Mr. Gleeson: Q. Mr. Blackett, in your affidavit you referred to a conversation that you had with Mr. Tim Allen on 19th March, 1969. Do you recollect that? A. Yes.

40 Q. Will you look at the document that I show you. Is that document a note that you made of the conversation or at about the time it happened? A. Yes.

Q. There is some typing on that document and also some handwriting? A. Yes.

Q. Whose is the handwriting? A. The handwriting is mostly mine.

Q. Are there initials under the typing? A. Yes.

Q. Whose initials are they? A. Those are my initials.

Q. Which of the handwriting is not yours? A. In the column "Yes" and noted "J.C.W."; otherwise it was all my handwriting or typing.

Q. Who is "J.C.W." A. Mr. Watson who was then manager of our international department.

50 (Notes made by witness tendered; objected to by Mr. Meagher: subject to Mr. Meagher's objection, marked Ex. J)

Q. Par. 5 of your affidavit, you gave evidence of a telephone call that you received from Mr. Allen on 8th May 1969? *A.* Yes.

Q. Will you look at the document I show you. Is that a note that you made of the conversation at the time and does it bear your initials? *A.* Yes.

(Second note made by witness tendered; same objection by Mr. Meagher; marked Ex. K)

Q. Do you recollect whether at any stage, in one or other of these conversations with Mr. Allen, he said anything to you about the requirements of the State Electricity Commission of Victoria in relation to letters of credit? *A.* Yes.

Q. When did he say that to you? *A.* At the telephone conversation on the 19th March, 1963 (sic). 10

Q. Can you tell us what he said to you about that? *A.* He said that—at that time your Honour, he had not mentioned or identified the parties concerned. He said that the lending company required a clean letter of credit from the bank as security for a loan which it was to make in this transaction.

Q. Did he say anything to you about local banks and overseas banks? *A.* Yes, he informed me that, or said that if our bank would issue a local letter of credit in favour of the lending body, that our security would be a letter of credit from the First National Bank of Boston.

Q. In par. 4 of your affidavit you, having previously given an account of your conversation with Mr. Allen, said the bank issued a letter of credit in favour of the State Electricity Commission of Victoria in the sum of \$500,000 (shown Ex. A). (Letter dated 8th April, 1969 from the Bank to Patrick & Co. called for: produced: tendered together with memo for the telegraphic department dated 9th April 1969, a copy of a telex to Melbourne office of the bank dated 9th April 1969 and a copy of a letter dated 9th April 1969 from the plaintiff to Patrick & Company tendered: objected to by Mr. Meagher: subject to objection marked Ex. L.) 20

Mr. Gleeson: Part of that bundle of documents is a memo for the telegraphic department dated 9th April 1969; that is an internal bank memorandum.

Mr. Lockhart: I object to the 9th April 1969 memo as being an internal document, and the telex. 30

His Honour: It is not signed by this witness?

Mr. Lockhart: No. And the telex of the 9th April.

His Honour: What do you say about those documents, Mr. Gleeson?

Mr. Gleeson: There is in evidence the requisition from Patrick & Co., Ex. A, for the issue of a letter of credit, and we would submit that it is open to the bank to prove in evidence what it did in satisfaction of an answer to that request.

His Honour: But surely only on an objective basis. I think I should reject those two documents, with the result that Ex. L will simply be two letters from the Commercial Banking Co. of Sydney to Patrick & Company dated 8th and 9th April 1969, respectively. 40

Mr. Gleeson: *Q.* Mr. Blackett, you recollect that you gave evidence of a conversation you had with Mr. Allen on 19th March 1969, and then you said in your affidavit that the bank issued a letter of credit? *A.* Yes.

Q. You have in front of you the document which is the requisition? *A.* Yes.

Q. For the issue of the letter of credit. There is some handwriting in the margin of that document. Whose handwriting is that? *A.* To the best of my knowledge it is Mr. Gillespie's.

Q. Who is Mr. Gillespie? *A.* Mr. Gillespie was an officer in the overseas department of the bank at that time.

Q. In relation to the issue of the letter of credit, did you have some discussions 50

with people in the overseas department of the bank about the form of the First National Bank's letter of credit? *A.* Yes.

Q. Subsequent to those discussions was something done about the form of the requisition for the letter of credit that was to be signed by Patrick & Company? *A.* Yes.

Q. Can you tell his Honour how it came about in terms of the events that actually happened that par. (j) which is in the document in front of you is in the document? (objected to by Mr. Lockhart and Mr. Meagher.)

His Honour: Mr. Lockhart, why do you object?

10 *Mr. Lockhart:* I object because, by being asked how it came about, he may be giving an answer relating material quite beyond his own knowledge.

Mr. Gleeson: *Q.* I only want to ask you what role you played in the matter?

Mr. Meagher: I object on a different basis from Mr. Lockhart, it has got nothing to do with my client.

His Honour: The general basis?

Mr. Meagher: Yes.

His Honour: That will be noted.

Mr. Gleeson: *Q.* Did you yourself see the form of requisition for letter of credit that was signed by Patrick & Company? *A.* Yes.

20 *Q.* Did you yourself see the form of letter of credit that was actually issued by the First National Bank of Boston? *A.* I believe I did, Mr. Gleeson, but I can't say definitely.

Q. In whose favour was the First National Bank of Boston's letter of credit? *A.* In favour of Patrick & Company.

Q. You gave evidence of a conversation that you had with Mr. Allen about the letter of credit being issued in your favour, in favour of the bank? *A.* Yes.

Q. When you ascertained that the First National Bank of Boston's letter of credit was in favour of Patrick & Company what did you do?

30 *Mr. Meagher:* I object to this. It will certainly slow up proceedings if I object to every single sentence.

His Honour: Yes, I think we can stop. I am concerned that Mr. Gleeson will land himself in some evidentiary problem. I think we can note that Mr. Meagher objects to evidence of this kind as against his client.

Witness: To the best of my knowledge the matter was referred to me by our—either our international or overseas department, and in view of the fact that the First National Bank of Boston was in favour of Patrick & Company we decided that it was necessary for the requisition, for the local letter of credit to be established in favour of the lending company, which would be signed by Patrick & Company to be suitably worded to tie in the—

40 *Mr. Lockhart:* I object to this, your Honour—"We decided that".

Mr. Gleeson: *Q.* Are you talking about a decision you took? *A.* Yes.

Mr. Lockhart: I object to it unless it is something he wrote.

His Honour: It is not a question of what he decided but a question of what he did or said.

Mr. Gleeson: *Q.* You have told us I think that it came to your notice that the First National Bank letter was in favour of Patrick & Company? *A.* Yes.

Q. What did you do about that? *A.* I asked the—either the international department or the overseas department to see what could be done about the matter.

50 *Q.* Did they report back to you that something had been done about the matter? *A.* Yes.

His Honour: I don't think he should tell us what.

Mr. Gleeson: Q. They reported back to you? *A.* Yes.

Q. Subsequently did the requisition from Patrick Partners (sic) issue in the form of the document in front of you? *A.* Yes.

His Honour: Q. Where was, for instance, the Bank's letter of credit kept—by the bank, by your bank? *A.* Your Honour, I can't answer that, at that time.

Mr. Gleeson: Q. Were the bank's solicitors consulted about the form of that requisition? *A.* Not to my knowledge.

(Following documents produced on discovery by First defendants called for: copy letter dated 9th April 1969 from Patrick & Co. to First Leasing, copy letter dated 9th April 1969 from Patrick & Company to the S.E.C.V., a receipt on Patrick & Co. letter head apparently signed for First Leasing dated 9th April 1969, letter from the bank to Patrick & Co. dated 9th April 1969, copy letter from Patrick & Co. to the bank dated 9th April 1969 and a document headed "Terms and conditions, special deal No. 1": produced: 10
tendered)

Mr. Lockhart: I object to one of them.

Mr. Meagher: I object to all but two. I do not object to the letter of 9th April 1969 from Patricks to First Leasing or to the receipt of 9th April 1969 signed by somebody on behalf of First Leasing.

Mr. Lockhart: I object to the one marked for discovery purposes. B.10, it is white foolscap size, on the basis it has not, at least as yet, been identified. 20

Mr. Gleeson: I would ask my learned friend to identify it then. If it was not identified it was because it was not in the affidavit of discovery.

Mr. Lockhart: I am told it was discovered and is identified in the document for discovery. I am just checking as to how it was. It is described apparently as a bundle, and the bundles were simply dealt with in that way. I object to it; it was a document produced by us on discovery but has not been identified.

His Honour: But you are obliged to identify it.

Mr. Lockhart: In due course it will be going in in any event, but I would want your Honour to know what it is from the person in question before it goes into evidence. It makes no sense to your Honour if your Honour sees it now. 30

His Honour: Why can't I let Mr. Gleeson administer an interrogatory on the floor of the court and ask you what it is.

Mr. Lockhart: He would not have to do that. I object, your Honour, on the basis it is simply an internal note of one of the members of Patrick & Company, as they then were, clearly related to the loan of \$500,000 that was arranged in April 1969, but that does not make it admissible; it is simply a note within Patrick Partners.

His Honour: I will have a look at it.

Mr. Lockhart: It is not very significant, frankly, but it is simply not admissible, I would submit to any issue in this case, being an internal note. 40

His Honour: I propose to admit all documents. Those not excluded by Mr. Meagher, subject to his general objection. They will be Ex. M.

CROSS-EXAMINATION

Mr. Lockhart: Q. You have Ex. A in front of you, and you have given evidence as to that marginal note? *A.* Yes.

Q. In Mr. Gillespie's handwriting? *A.* Yes, I believe so, yes.

Q. Is Mr. Gillespie a gentleman who, in April 1969, was in the accounts department of the bank? *A.* No, in the overseas department.

Q. Overseas department? *A.* Yes.

Q. Your note reads, doesn't it, "accounts have added item (j)" *A.* "Accountees" I think it is. 50

Q. Accountees—ees. Was there a department in the bank in 1969 called Accountees department? *A.* No.

Q. What does the word “accountees” mean? *A.* Well, I must confess it is the first time I saw the word itself, but obviously, I think in the context of this, it is Patrick & Company; that is only a deduction.

Q. Item (j) is added at the bottom of the document; Ex. A was a form of words, I think you have said, that was suggested by the bank to Patrick & Company. Isn't that right? *A.* I didn't say “suggested” Mr. Lockhart.

10 *Q.* It was the bank's wording, Item—*A.* It was agreed to. Whether it was agreed—whether it was suggested—done by the bank or Patrick & Company because I believe that at that time there were some discussions with Patrick & Company so—

Q. Anyhow, you don't know, is that right, who the accountees are, but you think it might have been Patrick & Company? *A.* Well, only from deduction, yes.

Q. Just let us be clear about what the note says; it is not easy to decipher. Is it “Accountees have added item (j)” as it is not easy to match with First National Bank of Boston”, followed by the words “Boston account”? *A.* Boston, yes.

Q. What is the next symbol? *A.* Letter of credit.

Q. L/C? *A.* That's right.

20

Q. S 10971, is it? *A.* Yes.

Q. What is the next word? *A.* Owing to—

Q. —different— *A.* —documentation.

Q. Documentation? *A.* That's correct, yes.

Q. That form of words which is in Ex. (j) is a form of words that has been carried across to all subsequent requisitions of Patrick & Company and P.I.A.L. where they have requisitioned your bank for a letter of credit, save for the identification of the particular numbering in the letter of credit, is that right? *A.* I understand that is the position.

His Honour: I do not think he had anything to do with 1973.

Witness: That is correct, your Honour.

30

Mr. Lockhart: *Q.* When did you cease to have anything to do with Patrick & Company's dealings with the bank in relation to letters of credit? *A.* I could not answer that, Mr. Lockhart.

Q. Can you tell us the year? *A.* Well, my difficulty, your Honour, is that Mr. Allen could quite easily have rung me on the phone, telephoned me in connection with a letter of credit matter, and it could have been 1969, it could have been 1971, it could have been other times. I would not like to be pin pointed and this is—

Q. This is the final word you had with Mr. Allen regarding letters of credit issued by the bank?

40

His Honour: *Q.* When did you retire? *A.* 1972, your Honour.

Q. 1972? *A.* —2, yes.

Mr. Lockhart: *Q.* When in 1972? *A.* 14th April 1972.

Q. You gave evidence this morning, in answer to a question of Mr. Gleeson's about a conversation with Mr. Allen on 19th March 1969, do you recall that? *A.* Yes.

Q. You said this this morning, that Mr. Allen said to you that “Our security would be a letter of credit from the First National Bank of Boston”? *A.* Yes.

Q. Is that, as you best recall it, the words that he used, or words to that effect? *A.* Words to that effect.

Q. You are, I gather, as a banker, experienced in relation to matters concerning letters of credit? *A.* No, I don't profess to be, Mr. Lockhart.

50

Q. When the expression “letter of credit in favour of the bank” is used— *A.* Yes.

Q. —you take that to mean, don't you, a letter of credit issued by a banker, other than yourself, where your bank is named as beneficiary? *A.* Yes.

Q. Have you any knowledge of occasions when brokers in the world of finance in Sydney have acted as a mere intermediary in the sense of an agent only where they have brought together the lender and brought together the borrower, but themselves play no role as principal? *A.* Yes, I have, but this is only hearsay only.

Q. You have had some knowledge of it but only through hearsay? *A.* Yes.

Q. Have you had any experience yourself where your bank is concerned of a letter of credit to a lending body and in turn your bank received the letter of credit from another bank in favour of your bank, so that the lending body lends direct to the borrower, not being a broker, the lending body taking as his security your bank's letter of credit and you taking as your security a letter of credit from the borrower's bank in your favour? *A.* I have had no personal knowledge of that. 10

Q. But you know of that occurring, do you? *A.* No, I can't say that I do.

Q. You just don't know? *A.* Just don't know.

(Luncheon adjournment)

His Honour: Q. You are bound by the oath you took before lunch. Do you understand? *A.* Yes, sir.

Mr. Lockhart: Q. (Approached) I show you a document. Is it in Mr. Gillespie's handwriting? *A.* I am not an expert but I would agree it is his in my opinion. I don't know. 20

Q. You think it is Mr. Gillespie's? *A.* In my opinion it is his but I am not sure.

Q. Well, you have seen his handwriting before, haven't you? *A.* I have seen it on this requisition this afternoon. I haven't seen his handwriting for 5 or 6 years I would imagine.

(Agreed that the pencil handwriting is Mr. Gillespie's on Ex. 1)

(Local documentary credit requisition tendered against the plaintiff only and admitted as Ex. 1)

Q. You told his Honour before the luncheon adjournment, as I recall it, that the letter of credit that came back from the Boston Bank No. S10971 dated 28th March, 1969 was referred to the Overseas Department, is that right? *A.* It came back —did you use that term? 30

Q. You tell me now. It came into your possession, did it? *A.* It came to us. It did not come back to us. We only received it once, yes.

Q. Did the letter of credit from the Boston bank No. S10971 come into your possession? *A.* Into the bank's possession?

Q. Your own physical possession? *A.* No, not that I recall.

Q. At any rate, you referred a question to the Overseas Department? *A.* Yes.

Q. What was the question you referred? *A.* To the best of my recollection—can I give an explanation, your Honour, just here? 40

Q. Look, can you answer it as to what the question was referred to then or not? If not, I will not press you to answer it? *A.* It was referred to me in the nature that they received the credit and they referred the matter to me in the first place and we discussed it.

Q. The Overseas Department referred the matter to you and you referred it back to them, did you? *A.* We discussed it. It was the Overseas and the International Departments.

Q. Is that the same Department? *A.* No, they are separate departments.

Q. Did you have any discussions referable to the letter of credit that was established by your bank in favour of the Electricity Commission of Victoria in April 1969? You know the one I am referring to, do you? *A.* Yes. 50

Q. With anyone from Patrick & Company other than Mr. Allen. *A.* None to my knowledge and I don't know that I discussed it with Mr. Allen so far as that letter of credit was concerned.

Q. You could have had a discussion but you do not recall having one, is that right? *A.* I can't recall one.

Q. Would you look at Ex. K. That is your note of the conversation with Mr. Allen on 8th May, 1969, is it? *A.* Yes.

Q. Do you see in the second paragraph you have recorded this: "He was advised also that we would need to see the terms of the backing credit from the First National Bank of Boston before we would issue our own credit and Mr. Allen agreed that this would be the position." *A.* Yes.

Q. May I take it that to the best of your recollection the words that you used were "backing credit from the First National Bank of Boston"? *A.* Yes, I would say this would be correct.

Q. You would have regarded it as understood, what was said by he to you and by you to him? *A.* Yes.

Q. First leasing Australia Limited was a customer of your bank, was it not? *A.* Yes.

Q. Do you know when it first opened its account? *A.* No, I have no knowledge of that.

Q. Was it a customer, as you recall it, throughout the whole of your term as Assistant General Manager of the bank? *A.* No, I couldn't say.

Q. It is correct, isn't it, to say that the charges for the bank's establishing the letter of credit in favour of the Electricity Commission of Victoria, that is Letter of Credit LD 920 dated 9th April, 1969, the one I have been talking about? *A.* The date again would you mind?

Q. 9th April, 1969? *A.* Thank you.

Q. Those charges were debited by the bank to Patrick & Co, were they not? *A.* I haven't any evidence that they have but I assume. This would be usual practice.

Q. And the Commission charged was \$2,500 per annum, was it not? *A.* No, it was one quarter of one per cent per annum. That was the first credit. The second credit was 2,500.

Q. (Approached) I show you copy of a part of Ex. L and you see the reference, do you, to the letter of 9th April, 1969 from the bank to Patrick & Co, the reference to debiting their account 75 cents for the cost of a telegraphic advice? *A.* Yes.

Q. And \$1,250 being "our commission charge"? *A.* Yes.

Q. Is that the quarter of one per cent? *A.* That would be the amount that we agreed on.

Q. And that would be the charge for your establishing the letter of credit in favour of the State Electricity Commission of Victoria? *A.* That would be correct.

Q. Is it also correct to say that in relation to the letter of credit that was established by your bank in favour of the State Electricity Commission of Victoria a little later in 1969, namely, 16th May, 1969, by Letter of Credit 936—do you know the one I am referring to? *A.* I haven't seen that one but I understand that is correct.

Q. Do you mean you understand that whenever your bank established a letter of credit in favour of the Electricity Commission of Victoria that where Patrick & Co. were involved it was their account that would be debited with the commission charges of the bank? *A.* That would be my understanding, yes.

Q. And the percentage of a quarter of one per cent is a percentage per annum, is it not? *A.* No, that is upon negotiations. That could happen on only one occasion.

I am sorry, the quarter per cent or the 15 per cent?

Q. The quarter of one per cent? *A.* No, that was a per annum basis, yes.

Q. During the life of the letter of credit? *A.* That's correct.

Q. What other costs were there, if any, that were charged to Patrick & Co by the bank for establishing letters of credit in favour of the Electricity Commission?
A. I assume there would be telegram costs. Those would be the main costs in this particular case plus the Commission charges, the establishment fee.

RE-EXAMINATION

Mr. Gleeson: Q. (By leave) When Mr. Allen telephoned you in March 1969 I think at that time you were not actually the Manager of the Sydney office of the bank? *A.* That is correct. 10

Q. But you had been the manager of the Sydney office of the bank? *A.* Yes.

Q. And you had known Mr. Allen in that capacity? *A.* Yes

Q. He then for some reason rang you instead of ringing the manager? *A.* Yes.

Q. And you were content to deal with him on that basis? *A.* Yes.

FURTHER CROSS-EXAMINATION

Mr. Lockhart: Q. You said before the luncheon adjournment that so far as you can recall the bank did not consult its solicitors? *A.* Yes.

Q. Over the matters relating to that note J to the form of requisition for the establishment of a letter of credit? *A.* Yes. 20

Q. May I take it that not only were your bank's solicitors not consulted but, so far as you know, advice was not sought from any legal department that you have in the bank on that matter? *A.* That would be correct.

(Witness retired & excused)

ROBERT DENNIS WHITHAM

Sworn and examined

Mr. Gleeson: Q. Is your full name Robert Dennis Whitham? *A.* Yes.

Q. Do you live at 3 Glencester Court, Bulleen in Victoria? *A.* Yes.

Q. You were employed by the defendant First Leasing & Finance Ltd from May 1973 until December 1974 I think? *A.* Yes. 30

Q. What was your position with that company? *A.* I was Administration and Funding Director.

Q. During your time with the company I think that the shares in First Leasing were owned as to 50 per cent by the First National Bank of Boston and as to 50 per cent by interests connected with the Reinehr family? *A.* Yes.

Q. Who was the man principally in charge of the business of First Leasing?
A. Mr. Frank Reinehr.

Q. Did First Leasing occupy in Melbourne a group of offices that provided accommodation not only for it but for the First National Bank of Boston and other subsidiary or related companies of the bank? *A.* Yes, it did. 40

Q. Did the Sydney firm of stockbrokers of Patrick Partners have an office in Melbourne at that time? *A.* Yes.

Q. Did Patrick Intermarine also have an office at their offices? *A.* I assume so.

Q. Did you from time to time in your capacity with First Leasing communicate with persons from Patrick Partners and Patrick Intermarine? *A.* Yes.

Q. Who was the person in charge of the Melbourne office of Patrick Partners?
A. Roy Course.

Q. May we take it that your dealings with Patrick Partners on behalf of First Leasing and Patrick Intermarine were usually over the telephone? *A.* Yes.

Q. And who would you normally speak to? *A.* Owen Grogan. 50

Q. What was the main business of First Leasing in the time you were with it?

A. Financial Leasing.

Q. Do you mean by that leasing of equipment and motor vehicles and the like?

A. Yes.

Q. And the role of a financier? A. Yes.

Q. I think you have told us that you were the Administration and Funding Director of First Leasing while you were there. What was the source from which First Leasing used to obtain its funds for the purpose of its business? A. Two sources. One principal, the other subsidiary. The main source of money came through money market and broking circles. Occasionally there was a flow of money from clients.

10 *Q.* In relation to the latter comment that you make, do you mean that from time to time big clients of First Leasing if they had spare money available themselves might put it on deposit with First Leasing? A. Yes, I mean that.

Q. You made a remark about the money market. Could you just explain to his Honour what you mean by the money market, what it was and how it operated? A. Well, the money market—I'm trying to think of the right word—corners comes to my mind but I don't know if it is the right word. The money market dealers have access to sources of funds. Having established that funds are available, they then seek to place those funds on behalf of the lender and take a commission out of the middle.

20 *Q.* Out of the middle? A. Yes, they introduce the lender to the borrower for a commission.

Q. Did First Leasing itself from time to time engage in money market operations of the kind that you have described as well as looking to the money market for a source of its own funding? A. No.

His Honour: Q. From what you have said I suppose, as you understand it, the relationship might be one of principal and agent between the borrower and the broker and, likewise, between the lender and the broker or the broker may be a principal? A. I have always been of the opinion that the broker was the agent.

Q. And acted only as an agent? A. Yes.

30 *Mr. Gleeson: Q.* When First Leasing used to look to the money market to obtain funds for its ordinary business operations, what did it have to offer as security for loans that it was obtaining? A. The support of the First National Bank of Boston through their making available a letter of credit.

Q. Was that the general form of security that First Leasing would provide when it sought this funding? (Objected to by Mr. Meagher: question withdrawn)

Q. Apart from the particular transaction that we are looking at in this case, were there other borrowings by First Leasing on the security of letters of credit from the First National Bank of Boston? A. Yes.

40 *Q.* And in relation to activities in the money market at the time you were with First Leasing were you aware of limitations that existed in relation to the acceptability of letters of credit from a foreign bank? A. Yes.

Q. What were those limitations? (Objected to by Mr. Meagher and Mr. Lockhart: objections withdrawn)

Q. During your time at First Leasing were you aware that a number of institutions such as the State Electricity Commission of Victoria, who provided the source of funds that went on to the money market, would not accept as security a letter of credit issued by an overseas bank? A. Yes, I was aware of that.

50 *Q.* In cases such as that, bearing in mind that you told us that the main support that First Leasing had in this fund raising was its support from First National Bank, did First Leasing and First National Bank have a practice as to how they overcame that problem? (Objected to by Mr. Meagher—question allowed) A. Would you mind repeating that.

Q. In such a case did First National Bank of Boston and First Leasing have a practice as to how they overcame that difficulty? *A.* First Leasing did.

Q. What was the practice? *A.* That was to seek a back to back arrangement.

Q. Is the expression "back to back arrangement" one that was in common usage in the money market in 1973? *A.* Yes.

Q. What did you understand it to mean—(Objected to by Mr. Meagher—question allowed) *A.* I understood it to mean that if I provided a local bank with a Boston letter of credit that in turn I would be issued with a local bank letter of credit.

His Honour: Q. What do you mean if you provided the local bank with a Boston letter of credit? *A.* If, through the resources of First National Bank of Boston a letter of credit was established in favour of a local bank, that local bank would in turn make their letter of credit available to my nominee. 10

Q. You were talking about the letter of credit from the Boston Bank in favour of the local bank? *A.* Yes.

Q. It was to be the beneficiary? *A.* Yes.

Q. In those circumstances who would hold that letter of credit? *A.* The local bank.

Mr. Gleeson: Q. In a situation such as you have described, what would be the commercial purpose for which the back to back arrangement would be made? *A.* To have access to funds otherwise unavailable. 20

Q. Funds from whom? *A.* From institutions whose charter prohibited them from accepting the overseas letter of credit as security.

Q. Did you understand the S.E.C.V. to be one such institution? *A.* Yes, I knew that.

Mr. Gleeson: I call for inter-office memorandum dated 7th March, 1973, produced on discovery by Mr. Meagher's clients (produced).

Q. I show you a document said to be a memo dated 7th March, 1973. Do you recognise the ink writing at the bottom of the document? *A.* Yes, I do.

Q. Whose writing is that? *A.* Frank Reinehr's.

Q. Whose initials are "F.I.R."? *A.* Francis Ian Reinehr. 30

Q. Whose initials are "R.J.A."? *A.* Ronald J. Ashbolt.

Q. Who is Ashbolt? *A.* He was at that time the administrative manager of First Leasing.

(Document tendered—objected to by Mr. Lockhart)

His Honour: I will admit it subject to your objection, Mr. Lockhart.

(Document admitted and marked Ex. N)

Mr. Gleeson: Q. Were you aware prior to August 1973 that there was a loan of \$1.5 million to First Leasing that fell due for repayment in August 1973? *A.* Yes.

Q. It being a loan that had originally been made in 1969? *A.* Yes.

Q. Were you aware of the source of the loan funds? *A.* Yes. 40

Q. What do you know to be the source of the loan funds? *A.* S.E.C.V.

Q. Did you then, during or prior to August 1973, have some discussions with somebody from Patrick Intermarine with respect to repayment or renegotiation of the loan? *A.* Just a very short time before the loan was due to be repaid I had discussions with Owen Grogan.

Q. What did you say to Mr. Grogan and what did he say to you? *A.* I think he started the conversation. He rang me to say that the loan which was expected to be repaid was not now needed to be repaid, provided First Leasing wished to continue the loan. The point of the rate was discussed and I indicated to Owen Grogan that I would just think about it for a short time and come back to him and let him know what we were going to do. After negotiating the rate I remember we adjusted the 50

rate downwards because I was aware of what S.E.C.V. were charging for that type of money.

Q. How did you become aware of that? *A.* Because I was arranging a \$2 million loan through J. B. Weir & Son of Melbourne for First Leasing from S.E.C.V.

Q. At the time this loan with which we are concerned in this case fell due for repayment and you were negotiating the renewal of the loan, at the same time you were negotiating through Weir's for a loan from the S.E.C.V.? *A.* Yes.

10 *Q.* I am sorry, I interrupted you? *A.* Being aware of what I was doing through Weirs, I was able to negotiate Patrick's commission downwards a fraction to make the two loans come together as to rate and, after discussion at First Leasing, we agreed to roll over the \$1.5 million. I indicated that to Owen Grogan. We discussed security.

Q. What was said about security? *A.* I asked Owen if he needed a new letter of credit from him from the First National Bank in full and he said he did not think that was necessary, that all that was necessary was to amend the existing letter of credit, to insert "Patrick Intermarine" in place of "Patrick & Company" and to change the description of the terms of the new borrowing.

Q. The existing letter of credit in that context was the one that was issued in 1969? *A.* Yes.

20 *Q.* It actually became necessary to repay the \$1.5 million in August 1973 I think? *A.* Yes.

Q. How did that come about? *A.* The documentation from Boston was fractionally late, I cannot recall precisely, but it was a day or two days late and without the facility made available from the C.B.C. there would have been a lack of security for that short time of the money not being repaid.

Q. What was this facility that the C.B.C. made available? *A.* It was what I call an overnight facility to enable us to cover the security situation until such time as the letter of credit issued out of Boston.

30 *Q.* Do you mean by that that First Leasing in fact repaid the amount of the loan and to enable it to do that it was extended for a short term, what you call an overnight facility by the Commercial Banking Company? *A.* Yes.

Q. First Leasing I think was a customer of the Commercial Banking Company in Melbourne? *A.* Yes, for quite some time.

Q. What ultimately happened so far as you were concerned with respect to the August 1973 transaction? *A.* The letter of credit arrived, the money was received.

Q. When you say the letter of credit arrived, you mean the document extended the letter of credit? *A.* Yes, the amended letter of credit, or rather the amendments arrived. They were acceptable; the money was exchanged and the CBC was reimbursed.

40 *Q.* At the time when you arranged this August 1973 transaction that you have told us about, what was your understanding as to what, if any, use was being made of the First National Bank of Boston's letter of credit—(Objected to by Mr. Meagher—question allowed) *A.* My understanding of it was that it would have to be used in a back to back arrangement to enable the borrowing to be made.

His Honour: *Q.* The beneficiary was Patrick Partners and Patrick & Co? *A.* Yes.

Q. How did you envisage it being done? It was not the CBC? *A.* No, it was Patrick.

50 *Q.* Would you have any chance of enabling your understanding to be fulfilled? *A.* To enable the money to flow to us SECV would require the Australian letter of credit, therefore if Patrick Intermarine in this case was getting the Boston letter of

credit, as my understanding is, they would need to use it in some way to obtain the Australian letter of credit to make the funds flow.

Q. But you did not know how precisely? *A.* No, I did not.

Q. And you did not turn your mind to that question? *A.* No, it was more on the assumption as to what was going on generally in the market.

Q. Were there letters of credit that came from the First National Bank of Boston and which made banks, such as the CBC, their beneficiary? *A.* Yes.

Mr. Gleeson: I call for some lists of documents produced on discovery, being lists of letters of credit. (Produced)

(Three documents: (1) Headed "F.L.A. borrowing as at June 4th, 1974"; 10
(2) Headed "List of letters of credit issued by F.N.B.B. on behalf of F.L.A. as at April 11, 1974"; (3) headed "F.L.A. letters of credit issued by F.N.B.B. Boston September 11, 1974" tendered.)

Mr. Lockhart: I object to the three documents on the basis they are not admissible against my client.

His Honour: Subject to Mr. Lockhart's objection the three documents will be admitted and marked Ex. O.

Mr. Gleeson: I call for discovery documents D.27 and D.28—(produced).
First Leasing—(produced).

I call for letter dated 15th August, 1973 from Patrick Partners to First Leasing 20

(Letter dated 15th August Patrick Partners to First Leasing tendered and marked Ex. P)

(Two documents produced on discovery by the first defendant, both bearing date 15th August, 1973, both being copies of a letter written on that date from Patrick Partners to the State Electricity Commission of Victoria, but one of them having some handwriting on it that the other does not have, tendered and marked Ex. Q)

(Undated documents produced on discovery by the first defendant being discovery documents D.27 and D.28 tendered—objected to by Mr. Meagher—tender withdrawn) 30

CROSS-EXAMINATION

Mr. Lockhart: *Q.* Do I understand you to say that you regarded the role of Patrick and Co. in relation to the loan from Patrick & Co. to First Leasing, which is the subject of the letter of credit from the Boston Bank in favour of Patrick & Co. dated 13th August 1969 number 11085, the role of Patrick & Co. was that of a mere agent? *A.* I have not considered that document, because I was not employed by First Leasing in those days.

Q. In relation to the letter of credit no. 1346, which was as it were the roll over letter of credit issued by the Boston Bank on 10th August 1973 of PIAL, do you regard the role of P.I.A.L. as merely that of an agent and not as a principal? *A.* I did. 40

His Honour: *Q.* In every case? *A.* I don't understand what you mean by every case.

Q. Well, wherever they negotiated a loan at this time? *A.* No, I thought the question refers specifically to the negotiations that I was involved in.

Mr. Lockhart: *Q.* But you regarded that negotiation which led to the letter of credit of 16th August 1973 from the Boston Bank as being really only a rolling over of the letter of credit that had been established on 13th August 1969? *A.* Yes.

Q. The only difference that you thought applied was that the beneficiary was different, in that in the 1969 arrangements it was Patrick & Co., under the 1973 arrangements it was P.I.A.L. and that the amounts were different because of an 50

interest differential, is that right? *A.* Yes.

Q. You said to his Honour words to the effect that in August of 1973 that you had before you the requisite material that enabled you to determine what the interest was that was being charged by S.E.C. against Patrick & Co. under the August 1969 loan, is that right? *A.* No.

Q. You learnt that the source of the moneys that were loaned by Patrick & Co. to First Leasing in August of 1969 was the State Electricity Commission of Victoria is that right? *A.* Yes.

Q. When did you first learn that? *A.* June or July, 1973.

10 *Q.* From whom did you learn it? *A.* I am unable to say.

Q. You mean you don't remember? *A.* No.

Q. Do you mean you have no recollection now of who it was that told you or how you learnt it? *A.* No, I don't have any recollection.

Q. Are you certain of that? *A.* Yes, that is my recollection.

Q. That you have no recollection? *A.* Yes.

Q. It is not that you just do not want to reveal the source, is it? *A.* No.

Q. Are you sure of that? *A.* Yes.

20 *Q.* In the money market where a broker is, as a principle, lending money to his borrower it is regarded as very important that he keeps secret the identity of the lender to him, is it not? *A.* Yes.

Q. You had discussions with officers of the Commercial Banking Company in August 1973 did you not? *A.* Yes.

Q. Those discussions related, did they, both to the rolling over of the loan from Patrick & Co. to First Leasing in August of 1969 and to the loan negotiated by J. B. Weirs? *A.* Yes.

Q. You told an officer of the Commercial Banking Company in Sydney in August 1973, did you not, that the loan of Patrick & Co. to First Leasing, which had been established in August 1969 which was to be rolled over was one that—(withdrawn.)

30 *Q.* You told an officer of the Commercial Banking Company of Sydney in August 1973, did you not, that the loan that Weirs had negotiated from the S.E.C. of Victoria direct to First Leasing was one that ought to be the subject of a broker-age payment to Patrick & Co. or P.I.A.L., did you not? *A.* No.

His Honour: Q. When did you leave First Leasing? *A.* December 1974.

Q. Of course, if you be right in your understanding, you would expect First Leasing simply to repay the S.E.C.V., and not worry Patricks or the bank about it? *A.* The reason I answered as I did was for a different reason.

(His Honour indicated he wished to pursue that matter. Mr. Lockhart consented.)

40 *Witness:* Is this the question as to whether I thought it was an agency arrangement? The reason I answered as I did was that to me it was simply another borrowing of one and a half million arranged through traditional or usual sources coming into First Leasing. I knew the money was from S.E.C.V. I simply regarded it as money coming from S.E.C.V. to First Leasing. Patricks, or Patrick Intermarine as it was, then, were the intermediaries. In my mind at that time that was all I considered and then when I was examining the funding situation of First Leasing I added that money, to the individual money we obtained from the S.E.C.V. because to me that was the S.E.C.V.'s exposure to First Leasing and meant that it was unlikely that there would be additional funds from that source and, therefore, I would concentrate on subsequent borrowings in another area.

50 *Mr. Lockhart: Q.* Do you mean that you were looking at the role of Patrick & Co. of P.I.A.L. as being an intermediary in the sense of an agent only, looking at it as a layman, is that what you say? *A.* What is the alternative to a laymen?

Q. Are you aware of whether the legal consequences of what occurred in August 1969 in relation to the establishment of the loan to Patrick & Co. to First Leasing and the letter of credit from the Boston Bank to Patrick & Co. may have had a radically different consequence from that which you understood as being the role of Patrick & Co. being merely an agent, or didn't you consider that? *A.* I don't think I considered that at the time.

Q. Have you considered it since? *A.* Yes.

Q. What is your view now? *A.* That from First Leasing/Boston point of view the letter of credit was issued to Patricks.

Q. And when First Leasing made any repayments under the loan established in August 1969 and rolled over in August of 1973, to whom would the payments be made by First Leasing? *A.* To Patricks. 10

Q. Not to the state electricity commission of Victoria at all, would they? *A.* No, to Patricks.

Q. Because, as you saw it, in 1973 the lender to First Leasing was Patrick & Co. is that not right? *A.* No, that was not as I saw it.

Q. I am sorry, P.I.A.L.? *A.* No, that was not as I saw it. You are asking me what I have understood since that time.

Q. Since that time, then, do you understand that the lender to First Leasing from the rolled over loan August 1969 to August 1973 was not the State Electricity Commission of Victoria but P.I.A.L.? *A.* Yes. 20

Q. And payments of interest under that loan were made periodically by First Leasing were they not? *A.* Yes.

Q. And they were made to Patrick & Co. or P.I.A.L., were they not? *A.* I cannot answer, I don't know.

Q. (approaching witness.) I show you this letter, which is a copy of a letter dated 28th September 1973 to P.I.A.L. and that is a copy of a letter written by First Leasing, is it not? *A.* Yes.

Q. Whose initials are S.C.B.? *A.* Shirley Brighteak.

Q. Was she a clerk in First Leasing in September 1973? *A.* Yes. 30

Q. That clearly enough indicates does it not, that interest was paid by First Leasing to P.I.A.L. for the quarter end 30th September 1973? *A.* Yes, it does.

Q. It is on the loan that I have been asking you questions about, is it not? *A.* It certainly looks like it.

Q. I show you a copy of the letter of 28th December 1973, from First Leasing, is it not, to P.I.A.L.? *A.* Yes.

Q. Are they your initials, R.C.W.? *A.* No.

Q. Whose are they? *A.* Robert Wettenhall.

Q. Having read that, would you agree with me that the interest payment of 31st December 1973 was paid by First Leasing to P.I.A.L.? *A.* Yes. 40

Q. That too relates to the loan we have been discussing? *A.* It looks like it.

Q. I show you a copy letter of 18th July 1974 from P.I.A.L. to the secretary of First Leasing. Do you see that? *A.* Yes.

Q. Were you with First Leasing at that stage, July 1974? *A.* Yes.

Q. You see what its contents are, do you? *A.* Yes.

Q. That too relates, as you understand it, to the loan that we are discussing? *A.* Yes.

Q. I show you a copy letter of 16th August 1973 from P.I.A.L. to the secretary, of First Leasing, discovery reference D35. Do you see that? That is directed to your attention, is it not? *A.* Yes. 50

Q. Whose signature is that at the bottom above First Leasing's printed name?

A. I cannot be certain it looks like Ron Ashfelt.

Q. That letter states, among other things, does it not, "that we" (that is P.I.A.L.) "confirm a loan negotiated with you today as follows" and set out a loan of 1.5 million dollars, a rate of interest and a term fixed to 14th August 1975? A. Yes.

Q. It states, does it not, that as security for that loan P.I.A.L. acknowledges having received an irrevocable letter of credit no. S1105 from the First National Bank at Boston with P.I.A.L. as beneficiary, that is right, is it not? A. Correct.

Q. It draws attention as to how interest is to be paid? A. Yes.

10 Q. And asked if you are in agreement to sign the attached duplicate and return it, is that right? A. Correct.

Q. And that was done, was it not? A. Yes.

(Mr. Lockhart returned to the bar.)

Q. In fact, before the loan we are discussing was rolled over in 1973, there was in fact a repayment of principal by First Leasing to P.I.A.L. was there not? A. No.

Q. Do you deny that? A. No, I think you are slightly mixed up with your Patricks are you not? P.I.A.L. was not involved then.

Q. In 1973? A. Yes.

20 Q. Was there a repayment of the 1.5 million that was owing by First Leasing to Patrick and Co. under the loan established in August 1969, a repayment to Patrick Partners in August of 1973? A. Yes.

Q. Then there was a fresh advance of a million and a half on P.I.A.L. to First Leasing soon thereafter? A. Yes.

Q. And it was that advance that was covered by the letter of credit from the Boston Bank no. S11085? A. I cannot be certain of the number. It was the same number as the original letter of credit. It was a continuance of the letter of credit.

30 Q. Were you aware in August 1973 if the interest rate that was chargeable by S.E.C. Victoria to Patrick & Co. under the August 1969 loan differed from the interest rate that was being charged by Patrick & Co. to First Leasing under the loan to it from Patrick & Co. in August of 1969? A. No, I did not know the rate of the earlier transaction.

Q. Do you now know? A. No.

Q. Do you know if the interest under the loan from S.E.C. to Patrick & Co. was payable on the same or different days as the loan from Patrick & Co. from First Leasing? A. I am sorry what was the question?

Q. Do you know if the interest payable by Patrick & Co. to S.E.C. Victoria under its August 1969 arrangements was payable on different days to the interest payable by First Leasing to Patrick & Co. under the loan established in August of 1969? A. No, I would be unaware of that situation.

40 Q. I suppose, for all you know, the loan from S.E.C. Victoria to Patrick & Co. that we are discussing might have had a provision allowing—(withdrawn.)

Q. Are you aware of whether the loan in August 1969 from Patrick & Co. to First Leasing was one, the repayments of which could be accelerated before the due date by Patrick & Co.? A. The reason I am taking my time there is that I am not certain about this, but I think there was some condition of the first borrowing that it may have been terminated prior to August 1973.

Q. Terminated by Patrick & Co.? A. Yes.

Q. You don't know whether there was any such term in the loan arrangement between S.E.C. Victoria and Patrick and Co. do you? A. No.

Q. (witness shown Ex. P.) That is a letter you have seen before is it not? A. Yes.

50 Q. Indeed was it you who authorized the payment to Patrick & Partners of the money therein referred to \$1,514,101.03? A. Quite likely.

Q. Can you help us more than that or not? *A.* I really cannot help you it may have been Frank Reinehr if it was not myself. It would have been either Frank Reinehr or myself.

Q. So one or other of you authorized the payment to Patrick Partners of that sum I mentioned, which the principal sum plus the final interest payment of \$14,101.03? *A.* Yes.

Q. Mr. Reinehr was he the managing director in August 1973 of First Leasing? *A.* Yes.

Q. It was your view, was it not, in August 1973 that if first Leasing, should default in the loan from P.I.A.L. to it that was made in August 1973 the person who could have recourse to First Leasing for its default would be P.I.A.L., is that so? *A.* Yes. 10

Q. Not the State Electricity Commission of Victoria could it? *A.* No.

Q. No payments whatever were made, were they, by First Leasing to the State Electricity Commission of Victoria in relation to the loan of one and a half million dollars from P.I.A.L. to First Leasing established in August 1973? *A.* I could not answer that without an examination of the records there.

Q. You know of no such payment, do you? *A.* Not to my memory.

Q. Can you really have any doubt as to whether there could have been payments made by First Leasing direct to the State Electricity Commission of Victoria referable to the loan of one and a half million dollars established in August 1973 where the lender was P.I.A.L. and the borrower was First Leasing? *A.* The only reason—I agree it is unlikely. The only reason it may be is if it was a request to do so. 20

Q. Request by whom? *A.* P.I.A.L.

Q. Without the authority of P.I.A.L., it was your view that no such payment could have been made is that right? *A.* Yes.

Q. You don't suggest, do you, that P.I.A.L. was not a principal in its loan of that one and a half million dollars to First Leasing in August 1973? *A.* Now or then? 30

Q. We will take now first? *A.* No, they appear to be the principal.

Q. There is no doubt about it, is there, in your mind? *A.* I don't know that I am really confident to answer that.

Q. Do you mean it may be a legal question? *A.* Yes.

Q. Was there any doubt in your mind back in August 1973 as to whether the principal in the loan from P.I.A.L. to First Leasing was P.I.A.L.? *A.* It was not a question of doubt, it was a question of whether I considered I was simply borrowing money from the S.E.C.V. through Patricks.

Q. But, in fact, you had no contractual arrangement in relation to that loan of any kind with the S.E.C. of Victoria, did you? (withdrawn.)

Q. You mentioned earlier in your evidence a loan was negotiated by Weirs which came to fruition at about the same time as the loan from P.I.A.L. to First Leasing in August of 1973? *A.* Yes. 40

Q. That also was for a million and a half dollars, was it not? *A.* Two million.

Q. That was a loan, was it not, that was in fact made direct by the S.E.C. to First Leasing? *A.* Yes.

Q. The lender, as you understand it, was S.E.C. and the borrower First Leasing? *A.* Yes.

Q. May I take it that any payments of principal or interest that have been made under it have been made by First Leasing so far as you know direct to the S.E.C.? *A.* Yes. 50

Q. Weirs performed the role of a pure broker, did they not? *A.* Yes.

Mr. Lockhart: Q. They acted as a catalyst in bringing the two parties together, is that right? *A.* Yes.

Q. And they received for that a brokerage fee? *A.* Yes.

Q. They received a brokerage fee and P.I.A.L. did not receive a brokerage fee, did they, in relation to the loan by them to First Leasing in August 1973? *A.* The rate was structured for the 1.5 million. As the base rate that I knew was negotiating with S.E.C.V., the cost as I understood it of a back-to-back letter of credit plus Patricks' commission which came to a total sum which would equate what I had organised through Weres.

10 *Q.* Is that in your view an answer to my question. *A.* Yes.

Q. The only moneys that were paid by First Leasing to P.I.A.L. in relation to the August 1973 loan were payments of principal and of interest, is that so? *A.* Yes.

Q. There was no money paid as a brokerage fee whatever, was there? *A.* You would have to work those calculations out. There was 8.7 per cent, wasn't it, from memory from those documents?

Q. Did you discuss the calculations with anyone from P.I.A.L.? *A.* Yes.

Q. Who? *A.* Alan Grogan.

20 *Q.* They were not discussed as brokerage fees though, were they? They were discussed as interest, were they not? *A.* The final answer was interest. The method of calculating the rate included a percentage to Patricks.

Q. In effect a profit margin? *A.* Yes.

His Honour: Q. Did you know what that was at the time? *A.* Yes.

Mr. Lockhart: Q. And you found out from whom? *A.* By deduction and by discussion because—

Q. Discussion with whom? *A.* Alan Grogan.

30 *Q.* What did he tell you referable to that matter? *A.* It was a matter of my deduction knowing the base rate that was necessary to attract S.E.C.V. money, adding to that what I knew to be the cost of a back-to-back for First Leasing and establishing the differential—adding to that what I had paid Weres as brokerage and arriving at a sum and saying to Alan Grogan that if the deal were to proceed that he had to either match that or come very close in relationship to what he was first offering, and the only thing that could be altered was the Patrick commission.

Q. Did you make these calculations on paper? *A.* Quite likely, yes.

Q. Do you have that paper with you? *A.* No.

Q. What did you do with it? Did you destroy it? *A.* Yes, well, I couldn't remember but it is the type of thing I would throw in the wastepaper tin.

40 *Q.* I want you to tell his Honour as best you recall it what you and Mr. Grogan discussed referable to that matter? *A.* It is a repetition of what I have said that one of the aspects of rolling-over the 1½ million was the rate. I knew what I had paid to S.E.C. through Weres and I knew what the cost of a back-to-back letter of credit was for First Leasing. I knew the brokerage that I paid Weres. That came to a total cost of borrowing through Weres and I was prepared to pay that for the other accommodation. Therefore there would have been discussions between Alan Grogan and myself to negotiate a rate, a comparable rate.

Q. Do you mean when you say there would have been such discussions that there were? *A.* Yes, my memory is that there was.

Q. A discussion? *A.* Yes.

Q. Are you sure it was with Mr. Grogan? *A.* My memory is Mr. Grogan.

Q. Could it have been Mr. Strutt? *A.* The name doesn't mean anything at all.

50 *Q.* Whoever it was you spoke to did he say to you that P.I.A.L. could lend the money to First Leasing for two years at 8.7 per cent? *A.* That would have been

eventually but wouldn't have been initially because I remember negotiating the rate down. I can't remember by how much but.

(Mr. Lockhart called for a bank memorandum of 1st August, 1973, reference B33 on discovery.)

Q. Just read that document that I show you—it is two pages—through to yourself if you would.

(Mr. Gleeson objected to the witness being cross-examined on a document which was not his own document.)

His Honour: He can be shown the document and asked a question.

Mr. Lockhart: *Q.* Just read that through to yourself if you would, Mr. Whitham. 10
(Document, as called for above, produced)

Q. You may find that the document now produced by Mr. Gleeson on p. 2 which has some handwriting is a little clearer than the original. Otherwise it is very difficult to read. (Document produced handed to the witness) You have read that document, have you? *A.* Yes, I have.

Q. Having read it can you tell me if you had any discussions with a bank officer in August of 1973 in which you said words to the effect—

(Objected to by Mr. Gleeson on the grounds that the witness is now being cross-examined on another's document)

His Honour: I always think this is difficult. I think the fear one always has is 20
because—I do not say it is a version opposite to what is in a document that has been given by the witness but he may be intimidated by the very sight of a document in front of him. My practice is to allow it to be done but I usually tell the witness what I have just said. In other words, Mr. Whitham, just because you have read something in a document which is not yours and which may—I have no idea whether it does or not—conflict with what you have said, there is no reason for you not to stick to your guns if that is what your real recollection is. In other words Mr. Lockhart is putting to you a contrary version.

Witness: Yes, I have already seen it.

His Honour: It is a matter for you what you say in answer to his questions so long 30
as it is, to the best of your recollection, the truth.

Mr. Lockhart: I will perhaps re-phrase it.

Mr. Lockhart: *Q.* Mr. Whitham, did you in August 1973 have a discussion with an officer of the Commercial Banking Company of Sydney in which you discussed the proposal by First Leasing to borrow money from the State Electricity Commission of Victoria which had been organised by J. B. Were & Son? *A.* Yes.

Q. And did you say to the bank officer something to the effect that it was not proposed by First Leasing to bring Patricks into those negotiations? *A.* I don't see how the question could have arisen. Patricks weren't involved in the negotiations. It was Weres. 40

Q. Did you say to the bank officer, "But should the offer be successful in relation to the Were loan that First Leasing were prepared to pay brokerage to Patricks because Patricks were responsible in putting together the previous deals and effecting the initial introductions"? *A.* No.

Q. Or words to that effect; you deny that? *A.* Yes, I do.

Q. Of course the loan that was organised for Weres was successful in the sense that it did come about, didn't it? *A.* Yes.

Q. And brokerage was not paid by First Leasing to Patrick Partners, Patrick & Co. or P.I.A.L., was it? *A.* As far as I was concerned there was never any consideration of that because they just weren't involved. 50

Q. I put it to you that the bank officer to whom you spoke perhaps expressed

concern that Patricks were not receiving some remuneration in relation to the new loan because they had been the initial introducers of the State Electricity Commission for Victoria to First Leasing? *A.* No, I don't understand that at all.

Q. Now, Mr. Whitham, the loan that was organised by Weres, that was a loan by S.E.C. Victoria to First Leasing direct for \$2 million, was a loan which was the subject of a letter of credit being issued by the Commercial Banking Company of Sydney in favour of the S.E.C. of Victoria, was it not? *A.* Yes.

Q. Because that is what the S.E.C. of Victoria requested? *A.* Yes.

10 *Q.* And in turn the First National Bank of Boston issued a letter of credit in favour of the Commercial Banking Company of Sydney, did it not? *A.* Yes.

Q. And that is because, isn't it, there is no intermediary who is a principal in the transaction as you understand it? *A.* Yes.

Q. And that is the usual practice, isn't it, when a broker who introduces parties to a loan is merely a broker and in no way principal? *A.* Yes, that is correct.

Q. And where a broker is in truth not only the broker but also the principal it is the general practice, is it not, as was followed here with the August 1969 loan and letters of credit that was rolled-over in 1973? *A.* If I may answer that just a little differently?

20 *Q.* Please do. *A.* To receive moneys we would follow the request of the broker as to security arrangements. I don't think we would have been thinking about these matters that are now under consideration. So if we were requested by Weres to give the credit to the S.E.C.V., we would have. If we had been requested by Patricks to make it out to them, we would have.

Q. I appreciate that but if the broker who introduces the parties to the loan is not a mere agent but in fact is interposed as a principal—you follow what I mean, do you? *A.* Yes.

30 *Q.* Then isn't the usual practice that where letters of credit are involved a letter of credit will issue from a bank in favour of the lender, backed by a letter of credit issued by a bank in favour of the broker acting as principal? *A.* Look, I'm sorry, I lost that. Would you mind repeating that?

Q. Isn't the usual practice where the broker in fact is a principal—you follow that? *A.* Yes.

Q. That if letters of credit are used a letter of credit issues from a bank to the lender? *A.* Australian bank you are talking about? Any bank?

Q. We will confine it to an Australian bank, an Australian bank to the lender, is that right? *A.* Yes.

Q. And that is the lender to the broker as principal; you understand that, do you? *A.* Yes.

40 *Q.* And isn't the usual practice in that situation that where there is then a loan-on by the broker as principal to the ultimate borrower, that is backed by a letter of credit from a bank in favour of that broker? *A.* If I were a principal in that situation I would require the letter of credit to myself as principal.

Q. That is if you were the broker as principal? *A.* Just if I were the principal, you know. If I was the principal and the broker it would be the same answer.

His Honour: Mr. Lockhart, I have some difficulty about the use of the word "bank" in your question. It seems to me that is the very thing that it is not.

Mr. Lockhart: I see what your Honour means.

His Honour: I am not sure it is altogether fair to wrap that up.

Mr. Lockhart: Perhaps I will cover it again.

50 *Q.* In the situation I have been describing to you, Mr. Whitham, where the principal is the broker who advances the money on to the ultimate borrower—do

you understand that? *A.* Yes.

Q. Would the usual practice be there that he required a letter of credit from a bank to be issued in his favour? *A.* Well, if he had any sense he would, yes.

Q. Because if the borrower defaults he can have recourse against the bank that issued the letter of credit in his favour? *A.* If nothing else happened in the interim, yes, because that is a clear situation that there is no interposition of any other party, is there? That is the purpose of your question?

Q. That is right, yes. *A.* Yes, if that is the purpose of the question he would go back to the issuer of the letter of credit.

His Honour: Q. Did you deal with a number of brokers or were they mainly Weres and Patricks? *A.* We didn't have very much dealing with Patricks. Weres, Inter-Company Money Markets and Money Market Dealers. 10

Q. What about other brokers? *A.* I'm sorry, I missed the question. No, there aren't too many brokers in the business in Melbourne.

Q. So when you talk generally in the way Mr. Lockhart has put it to you, you are really talking about the difference between Weres and Patricks, are you? *A.* Yes, probably. Yes, I think so; and by "brokers" do you mean sharebrokers?

Q. Yes. *A.* Yes, I can't remember any other sharebrokers we dealt with except Patricks and Weres.

Mr. Lockhart: Q. Of course there was a loan also, was there not, to First Leasing by Australian Gas Light Company in about September of 1973? *A.* Yes, there was. 20

Q. And was that a direct loan by the Gas Light Company to First Leasing? *A.* Yes.

Q. And a loan organised by a broker? *A.* Not a sharebroker.

Q. Not a sharebroker? *A.* No.

Q. But— *A.* But a broker.

Q. But anyhow someone in the financial community who brought the parties together? *A.* Yes, a large part of this market is outside the sharebroking fraternity.

Q. And the broker is I.C.M.M. whoever they may be? *A.* Yes, Inter-Company Money Markets. 30

Q. And that was in turn covered by letters of credit, was it not? *A.* Yes.

Q. Again a letter of credit from Commercial Banking Company of Sydney in favour of the Gas Light Company? *A.* I can't remember but if that was what they required, that is what would have been required.

Q. And the Boston bank again gave a letter of credit in favour of the Commercial Banking Company of Sydney? *A.* If that is what happened, that is what would have happened.

Q. Do you recall? *A.* No, I can't recall whether there was a back-to-back for that particular transaction.

Q. What do you mean by back-to-back? *A.* The Boston letter of credit was issued to the C.B.C. and the C.B.C. issued theirs to the lender. 40

His Honour: Q. So this was not back-to-back in this particular instance? *A.* It could well have been. You know, I simply can't recall that.

Q. If the Boston letter was to Patricks and the Commercial Bank's letter was to the S.E.C.V. it was not back-to-back in your terms? *A.* I see what you mean except that I regard that technique as back-to-back and call it as such. Is that a satisfactory answer? It is the technique of replacing an overseas letter of credit with an Australian one that I call a back-to-back arrangement.

Mr. Lockhart: Q. (Approaches witness with Ex. O) I show you Ex. O, Mr. Whitham, and the first document in that exhibit is dated 11th September, 1974. You see that? *A.* Yes. 50

Q. Who prepared that, do you know? A. Yes, from the initials it was the representative of the First National Bank of Boston.

Q. That is B.J.H.? A. Yes, Bruce Haddow.

Q. I show you the second sheet. It has some initials in ink, initials on the bottom right-hand corner. Do you know whose they are? A. Yes, they are mine.

Q. Did you prepare that document? A. Yes.

Q. That is the document headed "List Of Letters Of Credit Issued By F.N.B.B. On Behalf Of F.L.A. As At April 11, 1974", and on the third document, the last sheet there, it has some initials on the bottom right-hand corner. They are yours also, aren't they? A. Yes, they are.

Q. I show you on that last sheet a reference to Australian Gas Light? A. Yes.

Q. Being the fourth from the bottom in the top group. You see that? A. Yes.

Q. Repayment date? 18.11.74. A. Yes.

Q. An amount of \$1 million? A. Yes.

Q. Letter of credit No. S12782? A. Yes.

Q. And the broker is described as I.C.M.M.? A. Yes.

Q. Does that assist you in indicating whether or not that loan was one that was the subject of a letter of credit from the Boston bank in favour of the Commercial Banking Company? A. No, it does not.

Q. It is a Boston bank letter of credit, isn't it? A. No, the heading of the page is "F.L.A. Borrowings".

Q. But the S number that precedes the number? A. I see.

Q. Does that indicate to you it is the Boston bank? A. It does.

Q. So that does indicate it is a Boston bank letter of credit? A. There were no other letters of credit supporting our loan so it had to be. They would all be Boston.

Q. I think you say Mr. Reinehr was the managing director of First Leasing? A. Yes.

Q. Is he still the managing director of First Leasing? A. No.

Q. Is he still, do you know, employed by that company? A. No.

Q. What had been your experience before you joined First Leasing in 1973 in relation to the money market if any, Mr. Whitham? A. Going backwards I was twelve months as the National Finance Controller of E. A. Watts and had a small amount of dealings in that year. In the fifteen years preceding that I was at various positions including that of Deputy Chairman of Robert Hutchison Holdings Limited where we had a considerable money market operation.

(Mr. Lockhart called for balance sheets and profit and loss accounts of First Leasing Australia Limited for the years ended 30th June, 1969, to 30th June, 1974. Mr. Meagher produced one such document for the year ended 31st December, 1974, and stated that if others came to hand he would produce them.)

Q. (Approaches witness) I show you a document produced by First Leasing Australia Limited on discovery headed with that company's name "Borrowing Schedule As At August 10, 1972". Do you see that? A. Yes.

Q. You see a list of lenders set out? A. Yes.

Q. And do you see one Patrick Partners, \$1,500,000 Australian, maturity date 15th August, 1973? A. Yes, I do.

Q. It lists a number of other people as lenders, does it not? A. Yes.

(Borrowing schedule of F.L.A. as at 10th August, 1972, admitted without objection and marked Ex. 2)

Mr. Meagher: Q. Mr. Whitham, you were never a director of First Leasing? A. No.

Q. On quite a number of occasions when you were there First Leasing made

borrowings from Patricks where Patricks made it clear that it was acting only as agent for a principal, isn't that so? *A.* During the time I was there?

Q. Yes. *A.* I can't recall.

Q. Can you recall when you were there seeing documents from Patricks relating to loans made in the period before you were there in circumstances where it was clear Patricks were acting as agent? *A.* No, I have no recollection of those.

Mr. Whitham: Q. In the J. B. Were borrowing the letter of credit was made out to Commercial Banking Company of Sydney, wasn't it? *A.* Yes.

Q. (Approaches witness) I am showing you one of the three documents which is part of Ex. O, the document headed "F.L.A. Borrowings At June 4, 1974"? *A.* Yes. 10

Q. There are some initials and a date at the bottom. The date is 4th June, 1974? *A.* Yes.

Q. Are they your initials? *A.* Yes, they are.

Q. At that stage in relation to the 1973 loan of \$1.5 million you were under the impression that Patricks were acting only as agents, is that right? *A.* Yes, I hadn't given any other thought to the situation.

Q. But that is why you described the lender as being the Victorian S.E.C. in that document? *A.* Yes, I think in answer to the question asked by his Honour that I indicated that I was—you know, that I regarded it as S.E.C. money and it meant my exposure out of 11.69 million to the S.E.C. was 3.5 million which was fairly substantial in percentage terms and I just always regarded the money as S.E.C. money. It was the way I thought about it. 20

Q. In fact in 1974 once in the office when you referred to that transaction as being the S.E.C. loan you were corrected and told it was a Patrick loan, weren't you? *A.* Was I? I have got no recollection. I'm sorry, but I haven't.

Q. You have stated that fact yourself, haven't you? *A.* I don't believe so.

(Witness retired and excused)

(Letter from P.I.A.L. to First Leasing of 16th August, 1973, copy letter from First Leasing to P.I.A.L. of 28th September, 1973, and 28th December, 1973, and P.I.A.L. to First Leasing of 18th July, 1974, admitted without objection and marked Ex. 3) 30
(Bank minute of 1st August, 1973, admitted without objection and marked Ex. 4. Mr. Lockhart stated that this document was not being tendered against Mr. Meagher's clients.)

(Further hearing adjourned to 11.30 a.m. on Monday, 5th July, 1976.)

(Affidavit of Mr. Thompson sworn 6th August, 1975, read by Mr. Gleeson.)

(Noted that letter of credit S11085 has at all material times been in the possession of the plaintiff.)

(Noted that annexure M to Mr. Thompson's affidavit of 6/8/75, which is also Exhibit H, was first received by the C.B.C. Sydney Limited but forwarded by them to the defendant Patrick Intermarine Acceptances Limited which has continued to hold it since that time. It is agreed that with the original the C.B.C. received a copy which it retained in its possession.)

10

(Noted that the handwriting which appears on annexure P is not part of the document annexed to the affidavit.)

(Affidavit of Mr. Thompson sworn 11th August, 1975, read by Mr. Gleeson.)

(Original of annexure A to above affidavit tendered, admitted without objection and marked Exhibit R.)

(Affidavit of Donald Lex Webb sworn 11th August, 1975, read by Mr. Gleeson. Mr. Lockhart indicated that he would be objecting to certain of the annexures. Mr. Gleeson did not read para. 9, last paragraph of para. 11 or para. 12, nor annexures A, B, C, D and E.)

20

DONALD LEX WEBB

Sworn and examined:

Mr. Gleeson: Q. Is your full name Donald Lex Webb? *A.* Yes.

Q. You swore an affidavit in these proceedings? *A.* Yes.

Q. You said in para. 11 of your affidavit that on or about 15th August, 1973, you prepared a memorandum for the Board of Directors of the Bank. Do you remember that? *A.* I do.

Q. Would you look at the document I show you, and is that the memorandum? *A.* That is the memorandum, yes.

(Above document tendered, admitted without objection and marked Exhibit S.)

30

Q. I show you a document; is that a copy of a letter that you wrote to the Reserve Bank on 14th August, 1970? *A.* Yes, it is a copy.

(Above letter tendered; objected to by Mr. Lockhart and Mr. Hamilton; shown to his Honour. Tender pressed and admitted under s. 14B of the Evidence Act and marked Exhibit T.)

CROSS EXAMINATION:

Mr. Lockhart: Q. Just look at Exhibit S, would you, please? I just want to draw your attention to the last paragraph on the bottom left hand side where it has "matching . . . irrevocable credit." Do you see that? *A.* Yes.

Q. That memorandum was prepared by you, was it? *A.* It was prepared by me.

40

Q. It was clear to you when you wrote it, was it, that there was to be a letter of credit issued by the First National Bank of Boston with the beneficiary as Patrick Intermarine Acceptances Limited for \$1,500,000? *A.* When it was prepared I did not know whether there would be a fresh letter of credit or an extension to the existing letter of credit in favour of Patrick & Co.

Q. Whether it was a fresh letter of credit or an extension of the letter of credit established by the Boston Bank in August, 1969, it was clear to you that the role of the Boston Bank was that it was an issuer of a letter of credit with the beneficiary as Patrick Intermarine Acceptances Limited? *A.* Yes.

50

Q. And that had been clear to you ever since at least 1st August, 1973, had it not? *A.* That is so.

Q. I show you Exhibit 4. You might just like to read that through to yourself.

(shown). Have you read that to yourself? *A.* Yes.

Q. That memorandum records, does it, your recollection on 1st August, 1973, of the interview which you describe in that document? *A.* It does.

Q. At the time you prepared it was it accurate to the best of your knowledge and belief? *A.* This minute?

Q. Yes. *A.* Yes.

Q. Do you still regard it as accurate? *A.* It was prepared on the same day.

Q. At a time when you regarded it as correct? *A.* Yes.

Q. And looking at it now, is there anything in it which you wish to alter? *A.* No, in my opinion it is still an accurate record. 10

Mr. Lockhart: I call for a bank memorandum of 1st August, 1973, marked for discovery B30. Whilst it is coming I will go on with another matter.

Q. Mr. Webb, in 1973 were the First National Bank of Boston and the Commercial Banking Company of Sydney banks that had a number of dealings one with the other? *A.* Of this nature?

Q. Well, generally first? *A.* Yes.

Q. And also there were occasions, were there not, when the First National Bank of Boston would send letters of credit established by it in favour of Australian Resident Beneficiaries to you as the advising banker? *A.* That is so.

Q. And with instructions to advise the beneficiary named in the Boston Bank's letter of credit? *A.* Yes. 20

Q. That was your understanding of what occurred, was it not, in relation to the letter of credit established in 1969 by the Boston Bank in favour of Patrick & Co, S11085 dated 13th August, 1969? *A.* Yes.

Q. Together with the extension No. S12647 dated 14th August, 1963, *A.* Yes, although I was aware that the matter of credit issued in 1969, by the First National Bank of Boston was held in trust, or was in safe custody at a branch of the bank.

Q. You say was held in trust or was in safe custody? *A.* Was in safe custody.

Mr. Gleeson: I produce the document called for.

Mr. Lockhart: *Q.* You mentioned either in trust—you mean in trust for the beneficiary or in safe custody for the beneficiary? *A.* In safe custody. 30

Q. The beneficiary being Patrick & Co. and then later Patrick Intermarine Acceptances Limited? *A.* Yes.

Q. Would you look at the document the officer now shows you, please, marked "Discovery B30", dated 1st August, 1973? Did you prepare that? *A.* I did.

Q. And that of course relates to a different transaction, doesn't it? *A.* It does relate to a different transaction.

Q. With the lending, isn't it, as you understood it, by the S.E.C. Victoria direct to First Leasing of what became I think \$2-million? *A.* It was an amount less than \$3-million. 40

Q. In which, as you understood it, Patrick & Co. or Patrick Intermarine Acceptances Limited played no role? *A.* No, it was my understanding if First Leasing Australia were successful in obtaining a portion or all of the funds that was indicating to us by First Leasing Australia that they would pay a brokerage to Patrick Intermarine Australia.

Q. Was that not because they acted in and about that particular loan but because they had initially acted as broker to transactions going back to 1969 involving the lending of money by S.E.C. Victoria to Patrick & Co.? *A.* Because Patrick & Co. were instrumental in introducing S.E.C. and First Leasing Australia in 1969. 50

Q. In other words as you describe in your memorandum Exhibit 4? *A.* That is so.

Q. It was your understanding, was it, on 1st August, 1973, that there would in fact be a letter of credit issues by the First National Bank of Boston with your bank, the Commercial Banking Company of Sydney Limited, as the beneficiary? *A.* Yes.

Q. Is that why you have described in the document in front of you, about the middle of the document, "Irrevocable letter of credit in our favour for \$3-million"? *A.* That is right.

Q. And it is the \$3-million which in fact became after further discussion a lesser figure? *A.* Yes.

(Above document tendered, admitted without objection and marked Exhibit 5.)

10 *Q.* The bank charged commission, did it not, on the extension of the letter of credit issued by your bank in favour of the S.E.C. Victoria in May of 1969 and as extended—I withdraw that.

In August of 1973 you know that your bank issued a letter of credit in favour of the State Electricity Commission of Victoria, is that right—that is Exhibit G—a commission was charged in relation to that, was it not? *A.* Yes.

Q. And debited to Patrick Intermarine Acceptances Limited? *A.* Yes.

Q. Was that something in the order of \$3,750? *A.* The first twelve months' fee, if I remember rightly, was charged at the time the credit was issued. I just can't recall what the amount was.

20 *Q.* Did you calculate it on a percentage basis? How did you calculate it, as what? *A.* I think it was .25 of 1%.

Q. On an annual fee? *A.* Yes.

Q. And I think any relevant telegraphic charges that were incurred were also debited to Patrick Intermarine Acceptances Limited's account? *A.* Yes.

Mr. Hamilton: No questions.

(Witness retired and excused.)

(Case for the plaintiff closed subject to the further tender of documents.)

(Bank's letter of credit in favour of the State Electricity Commission of Victoria, dated 16th August, 1973, tendered, admitted without objection and added to Exhibit G.)

30
CASE FOR THE FIRST DEFENDANT
OWEN JAMES GROGAN

Sworn and examined:

Mr. Lockhart: *Q.* Is your name Owen James Grogan? *A.* Yes.

Q. Do you reside at 2 McNaught Street, Beaumaris, Victoria? *A.* Yes.

Q. Are you a merchant banker by occupation? *A.* Yes.

Q. I think you are a merchant banker in the employ of Intermarine Australia Limited, are you not? *A.* That is right, yes.

40 *Q.* Was that company known by a different name previously, namely, Patrick Intermarine Australia Limited? *A.* Yes.

Q. Was the name changed to the present name in about February of 1975? *A.* Yes.

Q. I think there were substantial Patrick interests holdings in that company earlier were there not? *A.* Yes.

Q. Are the people who now own shares in the company Marine Midland Bank of New York and the Toki Bank Limited, a Japanese Company? *A.* That is right.

Q. You have been, have you not, in the employ of what is now known as Intermarine Australia Limited since about August, 1971? *A.* That is correct.

50 *Q.* Were you seconded by that company to Patrick Intermarine Acceptances Limited at the time you first joined it? *A.* Yes, that is correct.

Q. In 1971, and did you remain so seconded until about the middle of 1974?

A. That is correct.

Q. What was your position once you were seconded to Patrick Intermarine Acceptances Limited? A. Victorian Manager.

Q. What were your duties? A. I was responsible for the operations of Patrick Intermarine Acceptances Limited in Victoria.

Mr. Lockhart: Q. Responsible to whom, Mr. Grogan? A. The executive director of Patrick Intermarine Acceptances, for that part of the business that I was responsible for to Mr. Davie in Sydney.

Q. D-A-V-I-E? A. That's right.

Q. Did you have discussions during the period 1971 to 1973 with officers of First Leasing Australia Limited? A. Yes. 10

Q. Who were those officers? A. Primarily Mr. Ashbolt and one other person whose name I can't recall, but primarily Mr. Ashbolt.

Q. Do you know a Mr. Whitham, Mr. Robert Dennis Whitham? A. I didn't—I don't recall the name apart from a question put to me by Mr. Brian Watson—Wilson, on Friday as to whether I knew this gentleman, and I said No, I didn't; that is the last time I have heard of his name.

Q. Did you have any discussions with any officer of First Leasing Australia Ltd relating to the rolling-over of a loan by Patrick & Company or Patrick Intermarine Acceptances Limited to First Leasing Australia Limited which had been in August 1969? A. I had discussions with an officer of First Leasing in regard to a loan which was to be secured by letter of credit. Whether specifically the loan originated in 1969 or not, I don't recall. 20

Q. When do you recall the discussions? A. In—I had a meeting with the managing director of First Leasing.

Q. Mr. who? A. Mr. Frank Reinehr, I think, on 27th February, 1973.

Q. Pausing there for a moment, I think you have a diary note of that meeting, do you not? A. Yes, I have.

Q. It is in Melbourne, I gather? A. Yes.

Q. But you have made arrangements to have it sent up here by some rapid means, is that right? A. Yes. 30

Q. Did you use that diary note to assist you to remember the date of the conversation? A. Yes.

Q. What, as best you recall it, was said by you to him and he to you, in that discussion? A. The total discussion?

Q. Yes? A. I had a meeting with Mr. Reinehr with Mr. Davie. The purpose was to continue the relationship of Patrick Intermarine Acceptances Limited with First Leasing and three basic matters were discussed: (1) The question of any subsequent underwriting in regard to fixed interest issues that First Leasing may have; (2) to request that First Leasing add Patrick Intermarine Acceptances's name to the list of approved borrowers for the lending of First Leasing's surplus funds in the short-term money market; and (3) the matter of a letter of credit deal established—No, arranged by Patrick Intermarine Acceptances was brought up by Mr. Reinehr who asked whether the SEC—State Electricity Commission of Victoria—were likely to roll-over a letter of credit that had been established, and I—due for maturity, I think in August 1973. I was not aware of the deal at that particular time; I think Mr. Davie answered that question. 40

Q. Do you recall what was said? A. Only that discussions would take place with the SEC.

Q. It was he, was it, who first raised the name of the SEC in that conversation? A. Yes. 50

Q. Did you make any response to that statement? A. No, it wasn't a matter that I was familiar with. Mr. Davie would have made the response, if response was made, which I think it was.

Q. But you cannot recall? A.—which I think it was.

Q. Can you recall what else was said in that conversation, as best you can recollect it? A. No, no, I can't.

Q. Did you have then the discussions with anybody else than Mr. Reinehr referable to the rolling-over of the 1969 loan of \$1.5-million? A. That is the one that matured in August 1973?

10 Q. Yes? A. Yes, it was my responsibility to complete the documentation as far as First Leasing was concerned, and I had a discussion or discussions with staff of First Leasing.

Q. Who did you have the discussions with? A. Well, to the best of my recollection it was Mr. Ashbolt. He was the principal person with whom I dealt at First Leasing.

Q. Can you recall what your discussions were with him referable to that subject matter? A. No, it was just one of a number of deals that we were doing in the short-term money market, I had had a number of continuing relationships with First Leasing, primarily through an inter-company market.

20 Q. I think you have seen this in chambers this morning, have you not, Mr. Grogan. I show you pp. 35 and 36 of the transcript. Just read, if you would, from the second question from the top, to yourself, and then over to p. 36 to just before it says, "Mr. Lockhart called for a bank memorandum." (Witness reads.) You have read those pages, have you, Mr. Grogan? A. Yes.

Q. You see that there is recorded there a conversation Mr. Whitham says took place with a Mr. "Alan" Grogan and you have read the substance of what he says? A. Yes.

30 Q. Can you tell us, in general terms first, whether you agree or disagree with the words attributed to you in any discussions with Mr. Whitham or any officer of First Leasing Australia Limited? A. Yes. Well, I can't recall that Mr. Whitham was the officer I was dealing with; I had thought it was Mr. Ashbolt; I don't recall Mr. Whitham's name. As far as the substance of the transcript is concerned, I have no recollection at all. There was generally a matter of negotiation in such deals as this particular one; there could have been that type of discussion, but I have no recollection of it.

Q. Do you recall if the person to whom you spoke told you what First Leasing had paid to SEC of Victoria, through Were's, at an interest rate? A. No.

Q. When you say "No" do you have any recollection? A. I have no recollection of that statement at all.

40 Q. Do you mean by that that you simply have no recollection or you think it likely or unlikely it was said? A. I don't recall the statement and whether it was said or not. I have no recollection.

Q. Mr. Grogan, where a person is acting as a broker in the money market in Australia but acting as a principal as distinct from a "mere" broker—A. Mmm.

Q. —is it important to preserve the anonymity of the identity of the lender when talking with the borrower, and vice versa? A. As principal?

50 Q. As principal? A. Well, normally the situation does not arise where it is of any interest to either party; when a money market dealer acts as a principal, he borrows funds and his treatment of those funds is of no interest to anybody, apart from himself. The on-lending of those funds is always anonymous, as opposed to the inter-company market where a money market dealer acts as broker and takes a commission

where both parties know each other—

Q. And both parties have direct contractual nexus? *A.* Yes.

Q. Is it regarded by you as important where the broker is acting as a principal that he does not reveal to the lender who the on-borrower is and does not reveal to the person to whom he is lending the monies who the person is from whom he is borrowing the money? *A.* I would think it would be unprofessional; I think it is very important not to disclose.

Q. Why? *A.* Because the relationship between the borrower and the money market dealer is a professional one where the banker or the money market dealer is borrowing funds on its strength of its reputation, and then its ability to on-lend, it has an ability, a skill in the money market to compete with other dealers, and I don't think it is at all professional to discuss borrowers and lenders in that context.

His Honour: Q. But I suppose these things have a habit of getting out? *A.* I can't answer that one, your Honour, because one can deduce a source of funds, but in my procedures I would not agree that that information should get out.

Q. No, but whether you agreed or not, it sometimes does, I suppose? *A.* Perhaps, yes, perhaps.

Q. What do you mean it is unprofessional; you mean unprofessional because you revealed the source, and therefore they may deal directly next time, or do you mean something ethically wrong with it? *A.* No, I think—I don't think there is anything particularly ethically wrong with it. I think it does preserve a relationship with both parties, and it does not encourage one party going direct to the other party, which can happen; this may be the extent of one's professionalism.

Q. In other words, if it gets out, you may lose business? *A.* Yes.

Q. And that is what you mean by not being professional? *A.* Yes, to a degree, yes.

Q. What else do you mean? *A.* The other matter that I am concerned with is that one does hope to have a certain skill, and if one tells everybody what your skill is, then there certainly is no mystery involved with it; I just don't think it is very correct.

Q. Do you mean "correct" in an ethical sense or "correct" in what I understand your definition of professional sense? *A.* I think in a professional sense; perhaps I could modify that perhaps and also in an ethical sense.

Q. Why would it be unethical? *A.* Well, I think that the nature of money market dealer is—and also banking generally—is very competitive and if everybody was to know each other's business, it would be down-grading one's own organisation.

Q. You mean your own company? *A.* Yes.

Mr. Lockhart: Q. Did you have any discussions with any representatives of First National Bank of Boston referable to the rolling-over of the letter of credit of 13th August, 1969 No. S11015 which became, in due course, the Boston letter of credit S1267 of 14th August, 1973? *A.* No.

Q. Did you have any discussions referable to that same subject matter with any officers of the Commercial Banking Company of Sydney Limited? *A.* No.

CROSS-EXAMINATION:

Mr. Hamilton: Q. You say, Mr. Grogan, that you had a meeting on 27th February, 1973, when you saw Mr. Frank Reinehr in company with Mr. Davie? *A.* Yes.

Q. Where did that meeting take place? *A.* In Mr. Reinehr's office in Melbourne.

Q. Mr. Davie, I think, was normally stationed in Sydney? *A.* Yes.

Q. You say that at that meeting it was Mr. Reinehr who raised the subject of this transaction in which the SECV was involved; is that correct? *A.* Yes.

Q. And that you had not heard of that transaction before that time. *A.* To the

best of my knowledge, yes.

Q. It was spoken of clearly as if it were an existing transaction at that time? *A.* Yes.

Q. Although, do I take this to be correct, you did not know at that time that it dated from 1969, or when it dated from? *A.* Not to the best of my knowledge, no.

Q. The transaction, when it was spoken of by Mr. Reinehr was spoken of in terms of a roll-over of an existing transaction? *A.* The possibility of a roll-over, yes.

10 *Q.* The source of Mr. Reinehr's interest seemed to be whether or not the SECV funds that were involved would continue to be available when the existing arrangement came to an end? *A.* Yes.

Q. You spoke about the two markets; the markets were your merchant banker or principal to principal, and dealings by merchant bankers in the inter-company market, is that correct? *A.* Yes.

Q. So far as the inter-company market is concerned, did you have dealings with First Leasing Australia on the inter-company market? *A.* Yes.

Q. That is you acting on behalf of Patrick Intermarine Acceptances Limited? *A.* Yes.

Q. Did they go on over some period of years? *A.* Yes.

20 *Q.* They were often in the inter-company market? *A.* Yes.

Q. You, on a number of occasions, acting on behalf of Patrick Intermarine Acceptances Limited as broker in such transactions in which First Leasing Australia Limited was involved? *A.* Yes.

Q. As I think you have already said, those were transactions where your company, Patrick Intermarine Acceptances, took a brokerage fee? *A.* Yes.

Q. These otherwise were transactions where the principal and interest payable on the loan were paid directly by First Leasing Australia Ltd. to the lender and not to Patrick Intermarine Acceptances Ltd.? *A.* Yes.

30 *Q.* The only moneys that came to Patrick Intermarine Acceptances Ltd. direct, were its brokerage fees? *A.* Which were paid initially, yes.

Q. Were transactions of that sort in which First Leasing Australia Ltd. was involved sometimes secured transactions? I am thinking in particular, secured by bank letters of credit? *A.* No.

Q. Have you seen transactions in the inter-company market where there has been security by way of letter of credit? *A.* I have negotiated for them. I can't recall one specific one, but they certainly can happen and may happen.

Q. When they do happen is the security in the name of the broker or the name of the person producing the money? *A.* The name of the person providing the money.

Q. That is the broker's lender client? *A.* Yes, that's right.

40 *His Honour:* *Q.* As you understand it, who gets the benefit of the security? *A.* The borrower—the lender.

Mr. Hamilton: *Q.* That is the broker's client? *A.* Yes.

(Mr. Gleeson called for some handwritten notes produced on discovery by the first defendants as discovery document No. D20 (produced.))

Mr. Gleeson: Mr. Grogan, would you look at the documents that I show you, being handwritten notes, discovery documents D20. First of all, do you recognise the handwriting on those notes? *A.* No, I don't.

50 *Q.* Having those documents in front of you and I draw your attention to what is written under the date "13th August 1973" the second line on that page, does that assist you on the question of whether or not you had a telephone conversation on or about 13th August, 1973, with the person whose name might have been known to you as Whitton? *A.* No, it doesn't, I don't recall that name at all.

(Handwritten notes produced: tendered: objected to by Mr. Lockhart and Mr. Hamilton: tender withdrawn.)

Q. Was there a David G. Nicholl in Patrick Intermarine Acceptances Ltd. office?
A. Yes.

Q. I show you what I suggest is a copy of a letter written by Mr. Nicholl to the secretary of First Leasing Australia Ltd. on 16th August, 1973, headed "Attention Mr. R. D. Whitham." Would you look at that letter. Have you seen the original of a copy of that letter before? *A.* Well, Mr. Nicholl should have or would have referred it to me.

Q. That is a letter that was written from your office to First Leasing confirming this transaction, isn't it? *A.* Right. 10

Q. It is addressed, you see, for the attention of Mr. Whitham? *A.* Right.

Q. Do you still say you have no recollection of Mr. Whitham in relation to this matter? *A.* Yes.

(Original of above letter produced and tendered: Noted it is identical with the copy which is part of Ex. 3.)

Q. I think you have told us when you were giving an account of the meeting that took place with Mr. Reinehr on 27th February, 1973, that Mr. Reinehr asked whether the SECV was likely to roll-over the letter of credit? *A.* Yes—roll-over the —not for them to roll-over the letter of credit, but whether they would be lending funds against the security of the letter of credit. 20

Q. I had thought you had used in your evidence the expression "roll-over the letter of credit"? *A.* I would have said it in error because the SEC were providing the cash.

Q. Is there an expression called "roll-over the letter of credit"? *A.* Yes, well, normally a letter of credit expires on due date and a new one is drawn, but the term, it could be used very loosely; for example, if one had a continuing deal where a letter of credit was to be re-established, then one could say the letter of credit was to be rolled over, but it would be a loose term rather than an accurate one.

Q. Yes, but even though it may be perhaps a loose use of language, it would not be a surprising expression? *A.* No. 30

Q. To hear somebody say "roll-over the letter of credit"? *A.* No.

Q. You would understand what they meant? *A.* Yes.

Q. What would you understand it to mean? *A.* The extension of the original letter of credit.

Q. It would be an appropriate expression to use in relation to an extension or a renewal of a loan that was secured by a letter of credit, wouldn't it? *A.* Yes.

Q. It would also be an appropriate expression to use in the case of a loan where the transaction was secured by two back-to-back letters of credit? *A.* Yes.

Q. What do you understand the word "nexus" to mean? *A.* Nexus? 40

Q. Nexus? *A.* I don't understand it; I know the word but I can't give a definition to it.

Q. My learned friend Mr. Lockhart put a question to you in which he used that expression and you assented to what he said. Do we take it you were not entirely sure what he meant when you assented? *A.* Yes.

Q. I show you one other document, a copy of a document which was discovery document No. 25. It does not bear a date and it may be that it is a draft of a letter that was ultimately written, Mr. Grogan, but I show you what appears to be a letter or a draft of a letter from Patrick Partners to First Leasing. In the top right-hand corner there are the words "Copy to PIAL Melbourne. Attention Mr. O. Grogan", and in the body of the letter are the words, "attention Mr. Robert Whitton". Would 50

you have a look at that. Do you remember seeing a letter like that? *A.* No. I don't remember that.

(Original or copy of letter in those terms called for: Mr. Gleeson said he understood a letter in similar but not in the same form is part of Ex. B.)

Q. Having seen that document, does that refresh your recollection as to whether you had dealings with Mr. Whitham in relation to this transaction? *A.* No, it doesn't at all. I just don't recall that name.

Q. Certainly your position now is that not only do you have no recollection of Mr. Whitham but you also have no recollection of a Mr. Whitton—correct? *A.* Yes.

(Witness retired.)

(Luncheon adjournment.)

ON RESUMPTION:

(Uniform Customs and Practice of Documentary Credits referred to in some of the exhibits tendered by Mr. Gleeson deemed to have been tendered as it appears at p. 649 of Paget 1962 ed.)

TIMOTHY RICHARD WIGRAM ALLEN

SWORN AND EXAMINED:

Mr. Lockhart: Q. Is your full name Timothy Richard Wigram Allen? *A.* It is.

Q. Do you live at 1 Wolseley Crescent, Point Piper? *A.* Yes, I do.

Q. You, in 1969 and through to 1973, were a partner of Patrick & Co. and later Patrick Partners, is that so? *A.* Yes, I was.

Q. Stock and share brokers? *A.* Yes.

Q. As a member of that firm, were you in charge of its money market operations? *A.* I was, yes.

Q. Did that involve, amongst other things, the borrowing and lending of money? *A.* It did.

Q. By the firm? *A.* Yes.

Q. Do you recall when Patrick Intermarine Acceptances Ltd. was incorporated? *A.* It was some time in 1971, Mr. Lockhart, I am not sure of the date.

Q. Did it take over the money market operations which had previously been conducted by the firm itself? *A.* Yes, it did.

Q. What was your position in the company Patrick Intermarine Acceptances Ltd.? *A.* I did not have a position in the company Patrick Intermarine Acceptances.

Q. But you continued, did you not, to negotiate certain loans of funds to Patrick Intermarine Acceptances Ltd. and on-lending of funds by it to others? *A.* I had what you might call a "watching brief", Mr. Lockhart, but that would be all.

Q. Did the firm Patrick & Co. act in various money market transactions sometimes, as you understood it, as a principal, sometimes as a mere broker? *A.* Yes, it did.

Q. What is the distinction between the two, as you understood it? *A.* My distinction between the two is that the principal is the man who is liable on each side of the loan, whereas an agent, there is no liability, no direct liability.

Q. Reference has been made in evidence to what are called special deals Nos. 1, 2 and 3? *A.* Yes.

Q. Special deal No. 1 was, if I may direct your attention to it, a loan by the SEC of Victoria to Patrick & Co. of \$500,000? *A.* Yes, I recall that.

Q. With a letter of credit from the Commercial Banking Co. of Sydney in favour of the SEC of Victoria? *A.* Yes, that is correct.

Q. And an on-lending of funds by Patrick & Co. to First Leasing Australia Limited? *A.* Yes, that is correct.

Q. With a letter of credit issued by the First National Bank of Boston in favour of Patrick & Co. as beneficiary? *A.* Yes, I recall that.

In the Supreme
Court of New
South Wales
Common Law
Division
Commercial
List

No. 10

Plaintiff's
Exhibits

Q. Did you have any discussions with any officer of First Leasing Australia referable to the setting up of the loan from Patrick & Co. to it? *A.* Yes, I would have had discussions with Mr. Reinehr.

Q. Did you tell Mr. Reinehr when you had those discussions that the original source of the funds had been SEC of Victoria? *A.* No, I didn't, Mr. Lockhart.

Q. Did you have discussions at or about the same time with representatives of the SEC of Victoria? *A.* Yes, I did.

Q. With whom did you have the discussions? *A.* A man called Mr. Shears, Mr. Bill Shears.

Q. Did you mention to him or anybody else in the State Electricity Commission of Victoria that the funds the Commission was lending Patrick & Co. would be on-lended to First Leasing Australia Ltd.? *A.* No, I did not. 10

Q. Special deal No. 2 as it has been called was the loan of \$1.5-million by the State Electricity Commission of Victoria to Patrick & Company? *A.* Yes, I believe that is the position.

Q. The on-lending of that equivalent sum of money to First Leasing Australia? *A.* A similar sum of money, yes.

Q. Did you have discussions with anybody on behalf of First Leasing in establishing that loan by Patrick & Co. to it? *A.* Yes, again I would have had discussions with Mr. Reinehr and possibly a woman whose name I don't recall, who could have been Mr. Reinehr's secretary. 20

Q. Did you tell Mr. Reinehr or the woman to whom you have referred at any stage during those discussions that the money had, as an initial source, the State Electricity Commission of Victoria? *A.* No, Mr. Lockhart.

Q. Did you have discussions in relation to that same transaction, special deal No. 2, with an officer or officers of the State Electricity Commission of Victoria? *A.* Yes, I did.

Q. With whom? *A.* Mr. Shears again.

Q. Did you tell him at any stage who Patrick & Co. were on-lending funds to? *A.* No, I did not. 30

His Honour: *Q.* Did you borrow funds and on-lend them generally? that is to say, you would borrow a particular sum of money and perhaps lend it in ways that could not be connected with your borrowing sources? *A.* Yes, often, your Honour, and we borrowed, as principal, from the SEC, on numerous occasions on a weekly basis.

Q. And lent it perhaps to half a dozen borrowers? *A.* Sometimes lent it out and sometimes invested it ourselves in Government Bonds which would then be used as security to secure the loan from SEC.

Mr. Lockhart: *Q.* Was that the position through from 1969 to 1974? *A.* Well, 1969 to 1971 or 1972, yes; 1974 I would have been personally more or less out of the picture because it would have been PIAL that was doing the borrowing. 40

Q. Coming to what has been called special deal No. 3, I wish to draw your attention to that. That was the loan from the SEC of Victoria to Patrick & Co. of \$1.5-million? *A.* Yes.

Q. And the lending of \$1.5-million by Patrick & Co. again to First Leasing Australia? *A.* Yes, I remember.

Q. And again with two letters of credit involved. With whom did you have discussions in First Leasing referable to the establishment of that loan? *A.* Again it would have been Mr. Reinehr.

Q. Did you tell him or anyone else in First Leasing that the initial source of funds had been SEC of Victoria? *A.* No, I didn't. 50

Q. With whom did you have discussions at SEC of Victoria referable to that

transaction? *A.* Again, Mr. Shears.

Q. Did you tell him that the moneys were to be on-lent to First Leasing Australia?
A. No, I didn't Mr. Lockhart.

Q. Did you take part in any of the discussions referable to what has been called the rolling-over of that last-mentioned loan of \$1.5-million under special deal No. 3 which took place in 1973? *A.* No, I believe I had one discussion with Mr. Reinehr but most of my discussions would have been with Mr. Davie who would have then taken over the technical details of the rolling-over of the loan with an officer, presumably of First Leasing.

10 *Q.* Mr. Davie being with Patrick Intermarine Acceptances Ltd.? *A.* Yes.

Q. From time to time requisitions were submitted by Patrick & Co. to the Commercial Banking Co. of Sydney for the issuing of letters of credit in relation to loans from the SEC of Victoria to Patrick & Co., is that not so? *A.* Yes, that is correct.

Q. (Approached with Ex. A.) This is a copy of a requisition form of 8th April, 1969, produced by the bank, Mr. Allen. If you would just look at that. I draw your attention to what is note (j) at the bottom in type, do you see that? *A.* Yes, I do.

Q. Can you tell his Honour what role, if any, you played in the drafting of that note? *A.* I would not have played any role at all in the drafting of the note itself.

20 *Q.* Do you know who did, beyond the note (j), Mr. Allen? (objected to by Mr. Gleeson.)

Mr. Lockhart: Q. Do you know if anybody in Patrick & Company played any role in the drafting of Note J which I have just showed you? *A.* I know they didn't play any part in the drafting of Note J.

Q. Why is it that you say that? *A.* It was a requirement put on us by the bank.

Mr. Gleeson: I take it my objection covers this?

His Honour: Yes.

Witness: It was a condition put on us by the bank preparatory to them drawing a letter of credit in favour of the S.E.C.

30 *His Honour: Q.* Could you tell me, Mr. Allen, what you understood it meant?
A. What I understood Note J meant?

Q. Yes. *A.* I thought that that was their requirement to convince them that they were in a position to issue a letter of credit in favour of the S.E.C. in favour of Patrick Partners or Patrick & Company as it was then.

Q. I am sure that is right but I wonder if you yourself had formed any views as to what it meant when you first saw it? *A.* I know we had a lot of discussion as to what exactly it meant because it did not appear to be extremely clear in its wording, your Honour.

40 When I say "we" I mean myself and Mr. Davie or others in our office but we assumed, rightly or wrongly, that as it was the bank's requirement that that placed them in the position that they required to be vis-a-vis the issuing of the letter of credit.

Q. Whatever that position was? *A.* Whatever that position was.

Mr. Lockhart: Q. Requisitions in the same form of the inclusion of Note J then followed in relation to the other special deals that I have referred to, did they not? *A.* Yes, I think they would have. Making an assumption now, I think they would have been got from the initial one rather than each time provided by the bank.

Q. I want to take you to the affidavit of Mr. Blackett sworn on 8th August, 1975. Do you have Mr. Blackett's affidavit? *A.* Yes, I do.

Q. Just read to yourself please if you would pars. 2 and 3. *A.* Yes.

50 *Q.* Tell his Honour if you disagree with anything that is related there as conversations and what it is. *A.* The only part I disagree with is the suggestion that a letter of credit be made in favour of the Commercial Banking Company of Sydney

and not in favour of Patrick & Company.

Q. Just identify it a little more precisely. Do you mean in par. 2 the third line?
A. Yes, the words "in its favour".

Q. And what about par. 3? *A.* The words "in our favour".

Q. Otherwise do you agree in substance with what he relates? *A.* Yes, I do.

His Honour: Q. What did you understand by a "back-to-back letter of credit" in those circumstances? Let me show you what I mean. You take par. 3. According to you, I am to read it, "before the bank issues the local letter of credit we will require that the letter of credit from the First National Bank of Boston is established and it will have to be in the nature of a back-to-back letter of credit." 10

What did you understand by a back-to-back letter of credit in that context? *A.* The bank issuing a letter of credit in favour of a lender at the instigation of a party against the existence of a letter of credit in favour of the requesting party.

Q. But wouldn't that rather indicate that if the Australian bank were called upon to pay it could have recourse to the foreign bank's letter of credit? *A.* I would have assumed so, yes, your Honour.

Q. I appreciate that you say that the words "in our favour" were not used but was there any difference in your understanding of what was said to you from what there would have been if those words had not been used? *A.* Yes, quite strongly.

Q. In what way? *A.* I had to make sure that Patrick & Company was secured against the money that they were lending to First Leasing and, if the letter of credit had not been in favour of Patrick & Company, then Patrick & Company itself would not have been secure so it was necessary for the transaction, for the letter of credit, to be in favour of Patrick & Company. 20

Q. But I just wondered how the expression in your understanding of what was going on "back-to-back" fitted in? *A.* I think it does. It is a letter of credit that I requested in favour of or that was in existence in favour of Patrick & Company and, because of this letter of credit which would have put Patrick & Company in funds, we asked the bank if they would issue a letter of credit in favour of S.E.C. on our account and the fact that we would have received the funds would have presumably offset any drawing on the letter of credit that the C.B.C. had issued. 30

Q. All as long as your company stayed solvent? *A.* I must admit that possibility had not crossed my mind at the time.

Q. It probably didn't cross anybody's mind. *A.* No, I don't think it did, your Honour.

Mr. Lockhart: Q. Who did you regard as being entitled to call on the letter of credit issued by the First National Bank in favour of Patrick & Company as beneficiary in the event of default of the borrower, firstly? *A.* Patrick & Company.

Q. Anybody else? *A.* No.

CROSS-EXAMINATION: 40

Mr. Meagher: Q. Would you look at this bundle of five documents. Are they copy letters written by you to First Leasing relating to Special Deal No. 1 and Special Deal No. 2? *A.* They are certainly my signatures, yes.

(Bundle of five copy letters tendered and admitted as Ex. 6)

Q. I hand you a letter from First Leasing to Patricks of 22nd May, 1969. Is that a letter received by you at Patricks from First Leasing? *A.* Yes, it is.

(Letter from First Leasing to Patrick & Company of 22nd May, 1969, tendered and admitted as Ex. 7)

Q. I show you another bundle of copy letters. Tell me, are they copies of letters sent by you on behalf of Patricks to the State Electricity Commission? *A.* Yes, they are. 50

(Bundle of copy letters sent from Patrick & Company to the State Electricity Commission tendered and admitted as Ex. 8)

Q. Would you look at this letter of 26th May, 1969, from the State Electricity Commission of Victoria. Is that a letter received by you in Patricks from them?

A. Yes, it is.

(Letter from State Electricity Commission of Victoria to Patrick & Company of 26th May, 1969, tendered and admitted as Ex. 9)

Q. In the 1969 transactions you dealt with Mr. Reinehr? *A.* Yes, I did.

10 *Q.* Apart from his secretary or some other lady, no one else in First Leasing that you can remember? *A.* No, not to my recollection.

Q. And you had no direct dealings whatever with the Boston Bank? *A.* Yes. On numerous occasions I spoke to the representative of the Boston bank when he was in Australia.

Q. In relation to these transactions? *A.* In general, about the type of transaction that was going on.

Q. In dealing with First Leasing in the 1969 transactions there was no mention that you were acting as agent, was there? *A.* No.

Q. And you did not disclose at any stage to Mr. Reinehr the source of the funds which you were on-lending to First Leasing? *A.* No, I didn't.

20 *Q.* All payments of interest and principal in respect of the 1969 transactions were made to Patricks? *A.* They were.

Q. You never told S.E.C. Victoria that you were acting as an agent? *A.* No, I didn't.

Q. You never told Mr. Reinehr that if Patricks defaulted in its obligation to repay S.E.C. Victoria the Commercial Bank would have an automatic recourse against the Boston bank? *A.* I certainly can't recall having told him that, no.

Q. And you never told anyone else that in First Leasing, did you? *A.* No.

Q. Patricks on occasions did act as agents, didn't they? *A.* Yes, they did.

30 *Q.* And on those occasions was a brokerage fee always charged? *A.* On every occasion I can remember, yes.

Q. Referred to specifically as a brokerage fee? *A.* Yes.

Q. On every occasion that Patricks did clearly act as agents would interest have been paid to the principal direct? *A.* On every occasion that I can think of the borrower would have paid the interest to the lender.

Q. And the principal would have been repaid to the lender direct? *A.* Yes. We probably would have carried the cheques.

Q. And whatever security there was for the loan would be made out in the name of the principal? *A.* Yes.

40 *Q.* In 1969 you never showed Mr. Reinehr copies of any of the letters of credit issued by the bank in favour of the S.E.C. Victoria? *A.* No, I wouldn't have.

Q. And you never showed Mr. Reinehr copies of the requisitions you had put into the bank requesting the issue of a letter of credit? *A.* No, I didn't.

Q. In talking to Mr. Reinehr you never suggested that it might be his company's duty not to repay on the due date? *A.* Certainly not, no.

Mr. Gleeson: Q. (Witness shown Ex. A) (Approached) Mr. Allen, Ex. A bears the signature of Mr. John Keir. Do you see that? *A.* Yes, I do.

Q. He was a member of the firm of Patrick & Company at the time the document was signed? *A.* Yes, he was.

Q. Did you read Ex. A before Mr. Keir signed it? *A.* I can't recall.

50 *Q.* Were you aware of the terms of Ex. A before it was sent by Patrick & Company to the bank? *A.* Yes, I was.

Q. In particular, were you aware of the terms of par. (j) of Ex. A before it was sent by Patrick & Company to the bank? *A.* I was.

Q. You have been asked some questions about your understanding of the contractual position. Did you believe that you understood par. (j) before it was sent by Patrick & Company to the bank? *A.* Yes, I did.

Q. And did you believe that it contained an undertaking on the part of Patrick & Company to do something in a certain event? *A.* Yes, I did.

Q. That event was there being a drawing under the letter of credit to be established by the bank? *A.* Yes.

Q. In that eventuality, Patrick & Company was to do something? *A.* That's right. 10

Q. And what it was to do was to lodge with the bank certain documents? *A.* That's right.

Q. And the documents were those referred to in par. (j)? *A.* Yes.

Q. Now, I suppose you understood that there was a reason why in that event Patrick & Company were undertaking to take that step? *A.* Yes, I did.

Q. And the reason why Patrick & Company were undertaking to take that step in that eventuality was to enable the bank to do something? (Objected to by Mr. Lockhart and Mr. Meagher; allowed).

Q. I think my question might not have been as clear as it should have been. To come back again, you agree that your understanding was that Patrick & Company by par. (j) was undertaking that in the event of a drawing being made under the C.B.C.'s letter of credit Patrick & Company was going to lodge some documents with the C.B.C. Bank? *A.* Yes, I do. 20

Q. It was your understanding, was it not, that the reason why Patrick & Company was going to lodge those documents with the bank was to enable the bank to do something with the documents? *A.* That's right.

Q. And it was your understanding that what the bank was going to do with the documents was to draw on the letter of credit set up by the Boston bank, wasn't it? *A.* It was going to pay out to us on the letter of credit.

Q. I direct your attention to par. (j). *A.* Yes. 30

Q. You see that in an event there described you were undertaking to lodge with the C.B.C. Bank a draft and accompanying documents

Mr. Gleeson: Q. Is the expression "back-to-back letter of credit" a common expression in situations like this? *A.* I think it is, yes.

Q. And it is one that you used in your discussions with Mr. Thompson? *A.* Yes. Might I say these are probably not or at the time were not very often done, so, in 1969 it would not have been a word that was very freely used.

Q. You thought you understood what it meant? *A.* I thought I understood what it meant.

Q. What did you understand it to mean in your discussions with Mr. Thompson? *A.* The issuing of a letter of credit in favour of a lender against the existence of a letter of credit in favour of the requesting party, in this case Patrick & Company. 40

Q. When you say "against the existence of" do you mean, amongst other things, upon the security of? *A.* That would depend entirely on the deal, on the requirements of the bank or on the requirements of the person issuing the letter of credit.

Q. But the use of the First National Bank of Boston's letter of credit in a back-to-back arrangement such as this was intended to provide security to the C.B.C. Bank, wasn't it? (Objected to by Mr. Lockhart; allowed).

Q. Is that right? *A.* The existence of the letter of credit certainly provided the C.B.C. with security, yes.

Q. And, indeed, in the discussions that Mr. Thompson had with you, he made it 50

plain to you, did he not, that the C.B.C. Bank was looking for the security of a letter of credit from the First National Bank of Boston? *A.* Yes.

Q. You have told us about some general discussions that you had with representatives of the First National Bank of Boston about this kind of transaction generally. May we take it that amongst other things you discussed with them the fact that you were using the First National Bank of Boston's letter of credit in a back-to-back way? *A.* Not necessarily, no.

Q. Well, you say "Not necessarily". You did not withhold from the First National Bank of Boston information as to the manner in which you were dealing with their letter of credit, did you? *A.* I don't think the word "withhold" really comes into it.

Q. Well, you were using their letter of credit, weren't you? *A.* Yes, sometimes.

Q. And you were using their letter of credit as security for an arrangement that you had that the C.B.C. Bank be bankers? *A.* In the second place, yes. In the first place, we were using it as security for the money we lent their clients.

Q. But you were using the First National Bank of Boston's letter of credit as security for your arrangements with the C.B.C. Bank? *A.* Yes, we were.

Q. Did you regard that as being material information of interest to the First National Bank of Boston? *A.* No, I didn't.

Q. Did you regard it as being material information of interest to First Leasing?
20 *A.* No.

Q. But you knew, didn't you, that the device of using back-to-back letters of credit was one of the ways in which this Australian affiliate of the American bank was gaining access to Australian sources of money? You knew that, didn't you? *A.* I don't believe it was.

Q. Did you in fact in any discussions with Mr. Reinehr make reference to the fact that the First National Bank of Boston's letter of credit was being used by you as security for an arrangement you were making with your bank? *A.* I don't believe I would have. I certainly don't recall having done so.

Q. Was that because you assumed that he would have realised that that was
30 happening? *A.* No, I didn't see that it was—

Q. None of his business? *A.*—that it was particularly of his business. We were providing money for his clients against the security of a letter of credit. So far as we were concerned, that is what we wanted and what he wanted.

Q. And you did not regard it as being any business of either First Leasing or the First National Bank of Boston that you were using the First National Bank of Boston's letter of credit as security for your own arrangements? *A.* Not specifically, no.

Q. Well, in general terms? *A.* In general terms, it may, technically, have been necessary to advise them in certain instances of the fact that we used it in discussions with the potential lender but I don't recall ever having done so.

Q. You regarded it as being within your authority to use it as security for your
40 arrangement with the bank, didn't you? *A.* Oh, certainly.

Q. And what was it that you regarded as giving you that authority? *A.* The fact that the letter of credit was made out in favour of Patrick & Company and we were using it as security for a loan to First Leasing.

Q. And you were also using it as security under your arrangements with the bank, weren't you? *A.* Which particular case are we talking about? This \$1½ million one?

Q. This \$1½ million Special Deal No. 3? *A.* Certainly it was the existence of that that was the reason for the C.B.C. drawing the letter of credit, yes.

Q. And you were using the First National Bank of Boston's letter of credit as
50 security in your arrangements with the C.B.C., weren't you? *A.* Yes, we were using

it as security.

His Honour: I do not fully understand the sense in which you say that; using it in which sense as a security? *A.* Without the existence of the letter of credit, your Honour, the C.B.C. would not have issued the letter of credit to the S.E.C. so, in that form, of course, it was used as security. It was not taken as an individual document and mortgaged, if you like, but the fact that it was there was the security for the bank because they knew that if we could not pay the S.E.C. or if we were not paid by First Leasing then we would receive \$1½ million from the First National.

Mr. Gleeson: *Q.* But, Mr. Allen, the bank not only required that there be a letter of credit from the First National Bank of Boston but they required a promise by you that in the event referred to in par. (j) you would draw on that letter of credit. That was plain to you, wasn't it? *A.* Sorry, Mr. Gleeson? 10

Q. The bank not only required the existence of a letter of credit but they required a promise by you to draw on the letter of credit in the event referred to in par. (j)? *A.* I think that's correct. Yes, they did.

Q. And you said in your evidence when my learned friend Mr. Lockhart I think was asking you some questions that one of the things that the bank was looking for as security was an arrangement under which the First National Bank's letter of credit would put Patrick & Co. in funds in a certain situation? *A.* That's right, yes.

Q. And you understood it to be a necessary part of that security that once Patrick & Co. were put in funds in that eventuality they would deposit those funds with the bank? That was plain, wasn't it? *A.* No, not necessarily. 20

Q. It wasn't much use to the bank to have Patrick Partners put in funds unless Patrick Partners applied those funds in a particular way, was it? *A.* We had a very large turnover in our money market. I mean, we would have paid out \$1½ million to the S.E.C. on the day that it was due. We would have been debited with that amount of money. We may have used the A.N.Z. Bank or the Bank of New South Wales to do that.

Q. If you paid out \$1½ million to the S.E.C.V. there would not have been a drawing under the bank's letter of credit? *A.* Not under the C.B.C.'s letter of credit but under the First National Bank's letter of credit. 30

Q. The event that the C.B.C. Bank was interested in and the only event that the C.B.C. Bank was interested in was the drawing being made under its letter of credit, wasn't it? (Objected to by Mr. Lockhart: question withdrawn)

(Objection as to understanding taken by Mr. Lockhart.)

Mr. Gleeson: *Q.* I am asking you about an answer you gave to my learned friend Mr. Lockhart about Patrick & Co. being put in first under the First National Bank of Boston's letter of credit. It is plain, is it not, that the event that par. (j) is talking about involves default by Patrick & Co.; that is plain, is not it? *A.* Yes.

Q. For whatever reason the situation to which par. (j) is addressing itself is that Patrick & Co. is a defaulter? *A.* Yes, it has not paid. 40

Q. It has not paid the State Electricity Commission? *A.* That is right.

Q. When you say that the bank was looking to see that Patrick & Co. would be put in funds under the First National Bank of Boston's letter of credit, that eventuality to which this arrangement is addressing itself is happening in the context of Patrick & Co. being a defaulter, is not it? *A.* Yes, it is.

Q. What I am suggesting to you is that in a situation where Patrick & Co. is a defaulter an arrangement under which Patrick & Co. is going to be put in funds by some third party provides a security to the bank only if Patrick & Co. applies those funds by putting them into its account with the bank; that is plain, is not it? *A.* Yes, that seems quite plain. 50

Q. You never understood that in the event to which this paragraph is addressing itself, that is Patrick & Co. being a defaulter, if Patrick & Co. got \$1.5-million from the First National Bank of Boston it was to be at liberty to go back and pay that \$1.5-million into the ANZ Bank or the Commonwealth Bank? *A.* The thought never occurred to me that Patrick & Co. would default. I can only say I never thought of it.

Q. This clause is about what is going to happen in the event that Patrick & Co. does default, is not it? *A.* Yes.

Q. Did you ever tell Mr. Reinehr that the source of the \$1.5-million involved in special deal No. 3 was the State Electricity Commission of Victoria? *A.* I certainly do not recall ever having told Mr. Reinehr that.

Q. It became apparent to you at some stage that Mr. Reinehr knew that? *A.* Yes.

Q. When did it first become apparent to you that Mr. Reinehr knew that? *A.* As far as I can recollect it was some time either late in 1972 or early 1973.

Q. Do you recollect the occasion on which it first became apparent that he knew that? Was it a meeting or a telephone-discussion? *A.* I have a feeling Mr. Davie told me.

Q. You may have got the information about Mr. Reinehr's state of knowledge indirectly? *A.* From somebody else. I may have got it from Mr. Reinehr. I remember being surprised at the time.

Q. What I want to suggest to you is that during 1969 you became aware that Mr. Reinehr knew that the State Electricity Commission of Victoria was the source of these funds. Do you disagree with that? *A.* Yes, I do.

Q. In the records that were kept by Patrick & Co., later Patrick Partners, in relation to special deal No. 1 and special deal No. 2 and special deal No. 3 the amounts of money in question were recorded as being on deposit, were they not? *A.* I cannot recall.

Q. You are not familiar with the accounting kept? *A.* No, not really.

Q. (Ex. Q. handed to witness.) Would you look at Ex. Q. I think you will notice on one of the documents there is some handwriting. Do you see that? *A.* Yes.

Q. Do you know whose writing that is? *A.* No, I am not certain. It is certainly not mine.

Q. You disagree in part with some evidence that Mr. Thompson has given of conversation that you had with him. Do you recollect that? You have in front of you an affidavit? *A.* I thought that was Mr. Blackett.

Q. You disagree in part with the evidence given by Mr. Blackett in that affidavit? *A.* Yes, I do.

Q. Do you have any note or record of the conversation referred to in that affidavit? *A.* No, I do not, not to my knowledge, although I have not searched diligently for any notes or records.

Q. Where would you search if you were asked to search diligently for such a note or record? *A.* In the dungeons of Grace Bros.

Q. There are documents belonging to Patrick Partners or Patrick & Co. that may relate to the matter that are in storage? *A.* That may relate to the matter. I have no knowledge of any specific documents.

Q. You have no note of the conversation, and may we take it no other record of the conversation? *A.* I do not know whether there is or is not.

Q. There is nothing that you have to assist your recollection of the conversation? *A.* No.

Q. Except Mr. Blackett's own affidavit? *A.* And my knowledge of the transaction.

Q. May we take it, if you had not read Mr. Blackett's affidavit you would not even have as good a recollection of the conversation as you now have? *A.* That is not correct.

Q. What is your recollection of what the conversation was? *A.* I would not have recalled the conversation. I would have recalled the terms of the discussion but not the conversation.

Q. What is your best recollection now as to the conversation? *A.* I do not have a recollection of the conversation at all.

His Honour: Q. Do you remember having a conversation with him about this matter? *A.* Once again I spoke to the CBC possibly three or four times a day for three years. I certainly cannot recall a specific conversation about this specific loan, I did many deals with the CBC, and many deals with regard to letters of credit. I may have spoken to Mr. Blackett a dozen times on this particular deal.

Mr. Gleeson: Q. Have you seen other records? Have you seen Mr. Blackett's record of this conversation? *A.* No.

Q. Upon what do you base the statement that you disagree in part with Mr. Blackett's account of the conversation? *A.* My total knowledge and memory and what I was doing at the time.

Q. You have no particular knowledge of the conversation? *A.* No.

Q. May we take it when you disagreed with the words "in your favour" for example you were not giving evidence of a recollection of the conversation but you were merely intending to convey to us that you do not believe you would have said that? *A.* No, I am saying I definitely would not have said that. I am saying I definitely did not say that.

Q. Do you understand the difference? *A.* I do understand the difference.

Q. It is one thing to say you remember a conversation and the conversation did not include those words, and it is another thing to say, "If I did have a conversation with him on a particular occasion, I certainly would not have said that because that is not the kind of thing I would have said." *A.* If I was discussing something that was black I certainly would not at that conversation have said it was white.

Q. Which of those two situations is it, the former or the latter? May we take it that you do not remember the conversation with Mr. Blackett about which he speaks in his affidavit? *A.* No, I do not recall the conversation.

Q. You do not recall anything about it? *A.* I recall speaking to officers of the bank and arranging the deal.

Q. But you have no better recollection than that? *A.* No. I spoke to Mr. Blackett often. I cannot recall whether it was Mr. Blackett specifically I spoke to on this particular deal.

Q. So far as your recollection goes you could have had no communication with Mr. Blackett about this deal at all? *A.* With Mr. Blackett particularly, yes.

Q. Is that right? *A.* That is right. It is unlikely.

Mr. Lockhart: No questions.

(Witness retired.)

JOHN WILLIAM STRUTT

sworn and examined:

Mr. Lockhart: Q. You live at 1 Cooper Street, Paddington? *A.* I do.

What is your occupation? *A.* Departmental manager.

Q. In August 1973 were you employed by Patrick Intermarine Acceptances Ltd. as manager of that company? *A.* I was.

Q. When did you first commence employment with that company? *A.* 1st February, 1973.

Q. When did you leave their employ? *A.* I left the liquidator's employment in March of this year.

Q. In general terms what were your duties as manager of that company? *A.* I

was responsible for the day to day activities of the company's money market operations in all centres.

Q. Which are those centres? *A.* Sydney, Melbourne, Brisbane and Perth.

Q. Do you know of Mr. Whitham of First Leasing Australia Ltd.? *A.* I have spoken to Mr. Whitham on the telephone I believe, from my notes.

Q. Did you speak to him about August 1973? *A.* I believe so.

Q. Did you speak to him referable to the rolling-over of a loan that had been made by Patrick & Co. to First Leasing in August 1969? *A.* I spoke to him about the re-negotiation of a loan.

10 *Q.* The re-negotiation of a loan by Patrick Intermarine Acceptances Ltd.; is that right? *A.* Correct.

Q. This was a telephone call? *A.* Yes.

Q. Can you recall what he said to you and what you said to him? *A.* No, I cannot really. I spoke to Mr. Grogan, our Melbourne manager, who communicated with him. I believe I spoke with him from notes I have referred to. There would be several conversations I believe; two, anyway.

Q. Can you recall the subject matter of those conversations? *A.* Not specifically.

Q. Did you play any part in the making of the loans by Patrick & Co. to First Leasing Australia in 1969? *A.* None at all.

20 *Q.* Can you recall discussing with anyone on behalf of First Leasing the interest rate at which the loan to be made by Patrick Intermarine Acceptances Ltd. was to be made in August 1973? *A.* Again referring to these notes—

Q. Do you have your notes with you? *A.* Somebody here has them.

Q. Are these the notes marked D.20 that you are referring to? *A.* They are.

Mr. Lockhart: May Mr. Strutt refer to his notes?

His Honour: Yes.

30 *Mr. Lockhart:* *Q.* Using your notes, can you assist us with whom you had a conversation referable to the subject matter of interest on the loan Patrick Intermarine Acceptances Ltd. to First Leasing Australia? *A.* I think Mr. Whitham's name crops up first here. "Bob Whitton" is a name I have here. I mention the rate. This letter on 14th August 1973; I mentioned a rate of 8.7. I have written his name there.

Q. Do the notes assist you to recall what was said by the two of you? *A.* My recollection is that most of my conversations took place with Mr. Grogan. The initial conversation was specifically that either himself or myself would do all the negotiations and that no other member of the staff, apart from Peter Davie, the executive director, would have anything to say. The conversations I had with Mr. Grogan are intermingled in my thoughts with the conversations I had with Mr. Whitham. I know I did speak to Mr. Whitham. I believe the initial discussions indicated the rate we would be looking at would be too high for us to go ahead with a re-negotiation of the

40 *Q.* Can you recall anything further about the discussions with the aid of your notes? *A.* I did do a calculation, that was the opening one, and this is the second one. I calculated a rate which I believed would be around 9 per cent by the look of it. It seemed that the parties could not get together because it was too high for him. I believe that was the essence of the conversation, that the rate we were looking at was initially too high. That would have been the first conversation I had with him.

50 *Q.* Did you have a subsequent conversation with him? *A.* I believe that is the second conversation referred to on the fourth foolscap page. I have underlined Mr. Whitton's name. I told him we could do it at a rate of 8.7. That was offered because the SEC dropped their rate to us. You may have noticed from these notes I mentioned that the SEC said they could get a rate of eight and a quarter per cent from another

source. Our negotiations were based on that eight and a quarter from the SEC. Subsequently they dropped it .1 per cent, and we dropped our margin, and we started to talk positively from that point.

Q. Did you reach agreement about an interest rate in that conversation you are referring to? *A.* On 14th August it appears we got down to tin-tacks.

Q. (Mr. Webb's affidavit of 11th August, 1975 handed to witness.)

Q. Would you read to yourself pars. 7 and 8. In par. 7 Mr. Webb is referring to a conversation on or about 10th August, 1973, with an officer of Patrick Intermarine Acceptances Ltd. Do you see that? *A.* Yes.

Q. Do you recall having a discussion with Mr. Webb on or about that day? *A.* I do. 10

Q. You see what he relates as to what was said in par. 7? *A.* Yes.

Q. Do you agree or disagree with any part of that? *A.* I agree with it entirely.

Q. In par. 8 you see that he refers to a conversation on or about 13th August, 1973. Have you read that? *A.* Yes.

Q. Did you have a discussion with him on or about that date? *A.* I did.

Q. Do you agree or disagree with what he says as to the substance of the conversation? *A.* I agree.

Mr. Gleeson: Q. I think you said in your evidence that Mr. Grogan communicated with Mr. Whitham; is that right? *A.* My instructions were specific that either myself or Mr. Grogan should handle the dealings with all parties, other than Mr. Davie, at all times. 20

Q. Is it your belief that Mr. Grogan spoke with Mr. Whitham? *A.* I believe it was either Mr. Grogan or his money-market operator, Mr. Nicholl.

Q. I understood you to say in your evidence in a context where the word "him" meant Mr. Whitham, Mr. Grogan communicated with him? *A.* Yes, I believe he did.

Q. Indeed, the notes you have in front of you record that there was a telephone communication between Mr. Grogan and "Mr. Whitton"? *A.* Yes.

Q. Whether it is spelled as "Whitham" or "Whitton" it is the same man, is not it? *A.* I am quite sure. 30

Q. You may take it from me the correct way to spell the name is "Whitham". Your notes record that there was a telephone conversation between Mr. Grogan and Mr. Whitham? *A.* That is right.

Q. Those handwritten notes that you have in front of you are at least in part notes of your discussion with Mr. Grogan rather than notes of a discussion that you had with Mr. Whitham? *A.* Yes. They are.

Q. Do I understand that you cannot now separate out in your own mind the parts, if any, of those notes that record a conversation you had with Mr. Whitham, and the parts that record conversations that you had with Mr. Grogan in which matters that were discussed between Mr. Grogan and Mr. Whitham were noted? *A.* I agree it is difficult, but I do know that I spoke to Mr. Whitham. 40

Q. Did you actually negotiate with Mr. Whitham? *A.* I believe I was involved in the final negotiation in a telephone call with Mr. Whitham, as shown in these notes. I believe that discussion took place between himself and myself.

Q. It was obvious to you in the course of these discussions that Mr. Whitham knew that the source of the funds in question was the SECV? *A.* No, it was not.

Q. Mr. Whitham was putting pressure on you to reduce your rate, was not he? *A.* No, he was not. My view was after the initial discussions that the existing loan between Patrick & Co. and First Leasing would be retired and would not be renewed.

Q. Because? *A.* Because the rate was too wide. 50

Q. The rate was too high? *A.* Yes.

Q. That is the interest rate that you were asking for and the interest rate they were prepared to pay were too far apart? *A.* Correct.

Q. Mr. Whitham made it clear to you, did he not, that there could not be a deal unless you reduced your interest? *A.* I do not know how he made it clear. His rate was obviously well below that which we could accept. Yes, he must have made it clear.

Q. Is it your understanding or belief that the discussions that Mr. Grogan had with Mr. Whitham were also negotiating discussions?

Q. Because that is what Mr. Grogan told you? *A.* Yes.

10 *Q.* Do you remember how many times Mr. Grogan spoke to Mr. Whitham according to what he told you? *A.* I do not know the exact number. I believe he spoke several times. I know he must have spoken several times.

Q. Was it Mr. Grogan's practice to report to you the detail of his discussions with Mr. Whitham or would he merely tell you what the ultimate upshot of the discussions was? *A.* He would inform me the facts I should know.

Q. You would not know one way or the other whether what he was telling you was everything that had passed between him and Mr. Whitham or only the ultimate effect of it? *A.* The important facts were related.

20 *Q.* Do you remember Mr. Grogan telling you that Mr. Whitham had indicated to him that he, Mr. Whitham, had some knowledge of the rates that the SECV were prepared to take, and used that as a bargaining weapon? *A.* No, I have no knowledge at all.

Q. (Approaches). In relation to those handwritten notes in front of you, are they all in your handwriting or are some of them in other people's handwriting? *A.* This is the initiating one; this is the first document; and that is in the handwriting of Peter Davie.

Q. The document that is partly in black ink? *A.* No, that is pencil, is not it?

Q. Partly in black ink and partly in pencil, is Mr. Davie's document? *A.* That is Mr. Davie there, and the rest is me.

30 *Q.* The words in pencil are Mr. Davie's words, and the rest is in your writing? *A.* Yes.

Q. In relation to the remainder of the documents? *A.* All of them are mine; everything.

Q. I think you have told us in relation to the negotiations for the August 1973 transaction it was you and Mr. Grogan who did the negotiating on behalf of Patrick Intermarine Acceptances? *A.* Yes.

40 *Q.* Is your evidence that the man, and indeed the one person who did the negotiating on behalf of First Leasing, was Mr. Whitham? *A.* I believe Mr. Whitham was one of the people. I have written the name of Mr. Wettenhall there. I do not know who Mr. Wettenhall is. I must have spoken to him. That name appears there. I can recall speaking to someone other than Mr. Whitham. I recall speaking to an executive of that company who was in Sydney occasionally.

Q. May we put it this way, the person from First Leasing with whom PIAL had most contact in relation to the negotiations for the August 1973 transaction was Mr. Whitham? *A.* I believe so.

Mr. Lockhart: No questions.

(Witness retired.)

PETER DAVIE,

Sworn and examined:

50 *Mr. Lockhart:* *Q.* Is your full name Peter Davie? *A.* Yes, Mr. Lockhart.

Q. Do you live at 357A Edgecliff Road, Edgecliff? *A.* Yes.

Q. Are you a money market executive by occupation? *A.* Yes.

Q. Were you a director of Patrick Intermarine Acceptances Limited in 1973?
A. Yes, I was.

Q. Can you recall when you first became a director of that company? *A.* As far as I remember it was in approximately May or June 1971.

Q. Did you remain a director, until when? *A.* Until I resigned at the beginning of April 1976.

Q. What were your duties—I withdraw that. Were you in addition to being a director, did you hold an executive office in Patrick Intermarine Acceptances Limited?

A. I was in charge of the domestic money market operations and as such I instructed the manager as to the operations of the company. 10

Q. You played—what role did you play in the making of a loan in August 1973 by Patrick Intermarine Acceptances Limited to First Leasing Australia Limited of \$1,500,000? Do you recall the loan I am referring to? *A.* Yes, I do.

I was aware that the loan was coming up for—the loan from Patrick & Company to First Leasing was coming up for maturity and it was necessary for me to either have the loan discontinued or, alternatively, to make further arrangements, and I instructed Mr. Strutt to take charge of negotiations with First Leasing Australia and instructed him that only he or Mr. Grogan were to deal with that company.

Q. Did you have any discussions referable to the making of that loan with Mr. Reinehr of First Leasing Australia? *A.* There were discussions earlier that year between myself and Mr. Reinehr. 20

Q. That is earlier than August 1973? *A.* Yes, but I do not remember the substance of them now.

Q. Did you have any discussions with Mr. Reinehr in August 1973 referable to that loan? *A.* Not as far as I recall.

Q. Can you recall having discussions with any person who was an officer of First Leasing Australia other than Mr. Reinehr in or about August 1973? *A.* No, not that I recall (shown Ex. M).

Q. (Approached) Would you look please in Ex. M at the last document, it is marked in red "B.10". Can you tell us who prepared that document? *A.* That document was prepared under my instructions as a summary sheet for a file which contained details of what was called special deal No. 1. 30

Q. And it refers to borrower as First Leasing Australia Limited, is that right? *A.* Yes.

Q. And Lender as State Electricity Commission of Victoria? *A.* Yes.

Q. What was intended by those references when you authorised the preparation of that document? *A.* These transactions—transactions of this type were rather different to the remainder of the transactions in our money market operations, in what was then Patrick & Company, and I decided to isolate the documents dealing with each of these transactions and to include a summary sheet setting out briefly the basic information in order to enable anybody who was looking at the file in the future to know what the subject matter was without going through the whole of the correspondence in the file. 40

Q. What did you intend by the borrower First Leasing Australia? Borrower from whom? (Objected to by Mr. Gleeson; allowed) *A.* Borrower from Patrick & Company.

Q. And the lender State Electricity Commission of Victoria? *A.* Lender to Patrick and Company.

Q. Would you cast your eye a little further down the page, after the amount \$500,000 and the time of twelve months; you see under "Lender" 6.50 per cent and 50

under "Borrower" 7.25 per cent per annum. You see that? *A.* Yes.

Q. What were those interest rates under those respective headings intended to indicate? *A.* The 6.5 per cent under "Lender" is the per annum rate of interest that Patrick & Company was paying to the State Electricity Commission of Victoria.

Q. And the other, the 7.25? *A.* The 7.25 per cent per annum is a rate of interest which First Leasing Australia was paying to Patrick & Company.

Q. Now did you have any conversation with any officer or officers of the State Electricity Commission of Victoria referable to the making of a loan of \$1,500,000 in August 1973 by Patrick Intermarine—I am sorry—in reference to the loan to
10 Patrick Intermarine Acceptances Limited in August of 1973 of \$1,500,000? *A.* I don't recall any conversations.

Q. Who was Mr. Course? *A.* Mr. Course was the second senior partner in Patrick & Co., and later Patrick Partners and he was the Resident Partner in Melbourne.

Q. Did he have any role to your knowledge in the conduct of the money market operations of Patrick Intermarine Acceptances Limited whilst you were with that company? *A.* No.

Q. Or money market operations of Patrick & Co. prior to the taking over of its money market investment by Patrick Intermarine Acceptances Limited? *A.* Yes, he had a certain role there in that many transactions that took place in Melbourne for
20 1973 were settled through the Melbourne office of Patrick & Co. and it was a normal arrangement that Mr. Course would be kept informed as to what was required even though he delegated responsibility for carrying out settlements to one of his staff.

Q. (Approached). Look at this document C.18 that I show you; do you see it is headed "Terms and Conditions Special Deal No. 2", and it has the borrower First Leasing Australia Limited, Lender State Electricity Commission of Victoria, and an amount, and then a reference to three columns headed "Time" "Lender Per Cent" "Borrower Per Cent". Do you see that? *A.* Yes.

Q. What do those three columns indicate—first of all, did you prepare that document? *A.* That document was prepared under my instructions.

Q. What do the three columns that I have just referred to indicate? *A.* This particular deal was written on a basis whereby the borrowing rate of Patrick & Co. from the State Electricity Commission of Victoria and the rate at which they were lending the money to First Leasing escalated as time passed and the time column indicates the dates at which the rates changed.

Q. For example, the first entry is, "12.M." What does the "12M" stand for? *A.* That means twelve months after the commencement of the loan. We were borrowing money from the State Electricity Commission at 6.25 per cent and the money was being lent to First Leasing Australia at 6.75 per cent.

Q. And is the same principle followed throughout the balance of those three
40 columns? *A.* Yes.

(Above document tendered, admitted without objection and marked Ex. 10)

Q. Was Ex. 10 prepared on the same basis as the document that is described in B.10, Ex. N? *A.* Yes.

Q. Reference has been made to these transactions of Special Deal No. 1, Special Deal No. 2 and Special Deal No. 3. Do you know why they are called special deals? *A.* Yes, I do.

Q. What was the reason? *A.* I was an assistant to Mr. Allen and was responsible for the firm's records of all these transactions and as these deals were rather complex and out of the normal type of transaction that we carried out, I decided to institute
50 special filing arrangements for them and as a result of that they became called special deals and numbered from 1 to 12 or 15. (Witness shown Mr. Webb's affidavit of 11.8.75)

Q. I think you have read a copy of this before, haven't you, Mr. Webb's affidavit of 11th August 1975? *A.* Yes, I have.

Q. Just look at paragraphs 4 and 5 if you would and read them through to yourself again? *A.* Yes.

Q. Now I take you to par. 4 first. Do you recall any discussion with Mr. Davie on the telephone about July 1973? *A.* With Mr. Webb?

Q. I am sorry, with Mr. Webb? *A.* I don't recall the particular conversation.

Q. Do you disagree with anything he says? *A.* Not in par. 4.

Q. What about par. 5? *A.* I have difficulty in believing that I would have said, "A matching letter of credit", otherwise I don't disagree with it. 10

Q. Why is it you have difficulty in believing you said that, "Matching"? *A.* When I was discussing these matters I tried to be as precise as I could be in my description of the documentation involved and "matching" was not an expression which I would have normally used in this context.

Q. What do you understand by matching in relation to letters of credit? *A.* I am not familiar with the expression in connection with letters of credit but if it was put to me what did it mean I would think that it meant that the amount of money in one credit matched the amount of money in the other credit. I was not accustomed to using it myself.

Q. We know that the letters of credit issued by the C.B.C. in favour of the S.E.C. of Victoria were of a different amount from those issued by the First National Bank of Boston. Is that what you are referring to? *A.* That was normally the arrangement, yes. 20

Q. One includes an interest component and the other did not, is that so? *A.* That was the normal arrangement.

Q. Did Patrick Intermarine Acceptances Limited from the time you joined it onwards sometimes engage in some money market transactions as a mere broker and other times as a principal? *A.* Yes.

Q. What is the distinction between the two as you understand it? *A.* As a broker the transaction would involve the identity of one party being revealed to the other party and that payments of principal and repayments of principal and payments of interest would be made direct between those two parties. 30

Q. What remuneration did the broker receive? *A.* Normal remuneration was a quarter per cent, although sometimes it did go as high as a half per cent.

Q. What was your understanding as to the role of the company Patrick Intermarine Acceptances Limited where it acted as a principal? *A.* It was careful not to reveal the identity of borrowers and lenders one to the other.

Q. Can you recall a discussion in February or March of 1973 in Melbourne with Mr. Reinehr and Mr. Grogan being present? *A.* Yes, I have a vague recollection of that discussion. 40

Q. What is the best of your recollection that you can give as to what was said? *A.* Well, the best recollection that I have is the subject which was to do with lease syndication and my recollection of other matters that were discussed is very hazy.

Q. You do not have any note of your own? *A.* No, I have no notes.

Q. Do you have any recollection of any discussion with Mr. Reinehr in February or March of 1973 or thereabouts over the telephone in addition to that one where Mr. Grogan was present in Melbourne? *A.* I have no particular recollection. I am not saying that there were not such conversations but I do not recall them.

Mr. Meagher: No questions.

CROSS-EXAMINATION:

Mr. Gleeson: *Q.* Mr. Davie, I want you to have a look at Ex. Q which comprises 50

two documents and on the bottom of the second document there are some hand-written notations. Do you recognise the writing? *A.* Yes, I do.

Q. Whose writing is it? *A.* It is Mr. David Thorpe.

Q. You remember being asked some questions about par. 5 of the affidavit of Mr. Webb and you said that you do not think that you would have used the word "matching" to describe the letter of credit there referred to. What term would you have used? *A.* If I had used any term at all I would have said using a back-to-back arrangement.

10 *Q.* And the reason you deny, or you do not think you used the word "matching" is because it was your custom to be precise in relation to such terminology? *A.* I tried to be.

His Honour: Q. What motivates a dealer in the money market to act as a broker or to act as a principal? What are the considerations? *A.* The motivation really starts with the borrower normally coming to a dealer and saying that he wishes to borrow money for a certain period and the dealer will then go out as either agent or principal in order to try and find those funds.

If in fact he can set himself as a principal the margin that he can make on the overall transaction is normally greater than that which he can make—than when he acts as a broker.

20 *Q.* About .5% you said? *A.* Well, it varies because in some transactions it is possible to make perhaps a margin as high as one per cent.

Q. But as a broker it is about .5 did you say? *A.* Yes, the maximum margin normally made by a broker is .5, and the normal margin is .25 per cent per annum.

Q. So you prefer to act as a principal if you can? *A.* It depends on the company, your Honour. Some companies prefer to deal as brokers because then they are free of risk; others prefer to make the additional margin and accept the risk.

Q. But you did both apparently? *A.* Yes, but the brokerage type of business was a minor activity as far as Patrick Intermarine Acceptances was concerned.

(Witness retired and excused)

30 (Subject to the tendering of documents case for the First Defendant closed).

CASE FOR THE THIRD AND FOURTH DEFENDANTS.

(His Honour informed counsel for the Defendants that he would like an explanation as to why they had not complied with his direction to furnish affidavits.)

FRANCIS IAN REINEHR,

Sworn and examined:

Mr. Meagher: Q. Your full name is Francis Ian Reinehr? *A.* Yes.

Q. You live at 603 Nepean Highway, Carrum? *A.* Yes.

Q. You are a company director? *A.* Yes.

40 *Q.* Might I ask you initially some questions about First Leasing. I think the First National Bank of Boston at some stage in the sixties became the owner of half the issued capital of First Leasing? *A.* Correct.

Q. When was that? *A.* That was in December 1969.

Q. Prior to December 1969 the capital was owned by whom? *A.* It was owned by two companies, Expansion Finance Australia Pty. Limited, which was an investment company for the Reinehr family, and another small proprietary company—I cannot recall its name now—which was the family company of one of the other directors, a Mr. Hamilton—Mr. Wheelton, Hamilton Wheelton, Hamilton is his first name.

Q. And I think your company owned 82 per cent? *A.* It would be approximately.

50 *Q.* Mr. Wheelton's family owned 18 per cent? *A.* Correct.

Q. In December 1969 the First National Bank of Boston acquired a half interest

and I think that reduced your holdings from approximately 82 per cent to 37½ per cent? *A.* Correct.

His Honour: What is the relevance of that, Mr. Meagher?

Mr. Meagher: My learned friend Mr. Gleeson referred to some of this in opening, your Honour, presumably to base some argument that the Boston Bank would have known anything that First Leasing knew. I cannot see any other reason and since my learned friend opened I assumed it was going to be relevant on some basis.

Q. I think you are not now connected with First Leasing? *A.* No, I am not.

Q. You are aware, are you not, that in 1969 certain moneys were made available on loan by Patricks to First Leasing? *A.* Correct. 10

Q. I think you agree that in the first instance it was half a million dollars, in I think April 1969, and thereafter an agreement to lend \$3,000,000 in May 1969, in two parts, the first part in May the second part in September? *A.* I think it was August; correct.

Q. You now know that the source of those funds was the S.E.C. of Victoria? *A.* Yes.

Q. Did you know that in May—*A.* Can I—?

Q. Sorry? *A.* I was not aware in actual fact until today that the first \$500,000 was from the S.E.C. I was aware of the two lots of \$1.5 million.

Q. When did you first become aware that the two lots of \$1.5 million— *A.* I can't recall exactly but it would have been some time after the first transaction of \$1.5 million. It could have been over a six month period, it could have been shorter, I just can't pin when this may have been. 20

Q. But to summarise that, it was after May 1969 and it might or might not have been after August 1969? *A.* Correct.

His Honour: *Q.* How did you hear? *A.* Your Honour, I believe I was told by Mr. Tim Allen in a telephone conversation whereby he let slip that the funds came from a Victorian semi-governmental institution and I possibly said "The S.E.C.?" and either by his—either he said "Yes" or by his reply I was to my own mind sure it was from the S.E.C. 30

Mr. Meagher: *Q.* Is there any way you can now fix the date of that conversation? *A.* No, there is not.

Q. Could it have been after the end of 1969? *A.* It could have been, yes.

Q. In all the 1969 transactions did you regard yourself as dealing with Patricks as principal or as agent? *A.* As principal.

Q. In your negotiations with Patricks was it ever suggested to you that First Leasing might be under obligation to make default in its payments? *A.* No, it was not.

Q. As far as the 1969 transactions were concerned, did you personally conduct those negotiations with Patricks? *A.* Yes, I did.

Q. As far as you know did any other person in First Leasing other than you have any part in it? *A.* The major negotiations would have been done by myself. There could have been other people on my staff carrying out various aspects associated with the transaction but nothing of material fact. 40

Q. As far as you were concerned with whom did you conduct your negotiations? *A.* Tim Allen.

Q. I think it is clear that you personally did not negotiate with Patrick Inter-marine Acceptances Limited on the 1973 transaction? *A.* No, I did not.

Q. Did the Commercial Banking Company ever complain to First Leasing, as far as you know, that the Boston Bank's letters of credit were inappropriate in any way? *A.* No. 50

CROSS-EXAMINATION:

In the Supreme
Court of New
South Wales
Common Law
Division
Commercial
List
No. 10
Plaintiff's
Exhibits

Mr. Lockhart: *Q.* Mr. Reinehr, you said that you believed it was Mr. Tim Allen who told you that the S.E.C. was the source of the funds. Do I gather from what you said in answer to Mr. Meagher's question that he may have simply told you it was a Victorian institution and that you having other information may have put two and two together and said, "Ah S.E.C. Victoria"? *A.* I would have said that but he would have confirmed it to me or I would have taken that my guess was correct.

Q. That your guess as being the S.E.C. was correct? *A.* Yes.

Q. But the initial statement of the actual name of the body may have been—
10 *A.* It could be mine as I mentioned earlier. I can't recall exactly the terms of the conversation but I believe it was along those lines.

Q. Were you ever shown by Mr. Allen or anybody else from Patricks or Patrick Intermarine Acceptances Limited a Commercial Banking Company letter of credit in favour of the State Electricity Commission of Victoria? *A.* No.

Q. Or any requisition by Patricks or Patrick Intermarine Acceptances Limited to the Commercial Banking Company of Sydney in favour of S.E.C. Victoria? *A.* No.

Q. Did you requisition the First National Bank of Boston to issue its letters of credit referable to the borrowings by First Leasing Australia from Patrick & Co. and Patrick Intermarine Acceptances Limited? *A.* I can't recall exactly. Probably I would
20 have. If I didn't do it myself it would have been someone else doing it under my instructions.

Q. But that requisition in any event was by your company not by Patricks? *A.* Yes, by ourselves requesting a letter of credit per telex to the First National Bank of Boston.

Q. When did First Leasing Australia first become a customer of the Commercial Banking Company of Sydney, do you recall that? *A.* We have to go back a little further. First Leasing Australia Limited was initially a subsidiary of Reinehr Industrial Lease and Finance Limited and its relationship with the C.B.C. Bank would possibly go back to, I would say within an accuracy of one year, 1961 or 1962.

Q. The company grew considerably, did it not, in the period 1969 to 1972 or
30 1973? *A.* Yes, it did.

Q. Would it be correct to say—I do not want to be offensive to you, but it was a fairly small customer in about 1969 and became a big customer in about 1973? *A.* This would be correct.

Q. Did its capital increase substantially in that period? *A.* No, it did not.

Q. It increased in what way? Borrowings? *A.* When you say "capital" I immediately think of paid capital. It increased from \$10,000 to \$100,000 paid capital in that period.

Q. Also did the amount of its borrowings increase considerably in that period?
40 *A.* Total assets, yes, it did, assets and liabilities.

His Honour: *Q.* I gather you mean the amount of business it was doing became very much greater? *A.* Yes, it did, yes, your Honour.

Mr. Lockhart: *Q.* Do you know why it was that the First National Bank of Boston in relation to the transactions in issue here nominated the Commercial Banking Company of Sydney as its advising banker? *A.* It did not nominate, I nominated, or First Leasing would nominate the advising banker.

Q. Now this was either on the instruction of the lender or, alternatively, if there was not an instruction we would try and do it ourselves or influence it to the C.B.C. Bank.

50 *Q.* Because it was your banker? *A.* Correct.

Q. Do you recall which of those two situations applied in the case of the letter

of credit that was issued by the Boston Bank No. S11085 on 13th August 1969 in relation to the loan for a million and a half dollars? *A.* It would have been at the request of Patrick Partners.

Q. And what of the later one S.11011 of 13th May 1969? *A.* The same.

Q. And the earlier one again of 28th March 1969 S.10971 for some \$536,250? *A.* That one I can't answer but I would assume—I can't answer exactly but I would assume it would be the same.

Mr. Gleeson: Q. Mr. Reinehr, I think you said that at all times that we are concerned with and some time before that First Leasing was a customer of the C.B.C. Bank? *A.* Yes.

Q. And I think you were aware yourself through 1969 and right up until 1973 that Patricks were a customer of the C.B.C. Bank? *A.* Yes, I was aware of that.

Q. That is Patrick & Co., and it later changed its name to Patrick Partners, and also Patrick Intermarine Acceptances Limited? *A.* I can't answer the last two, I can only speak of Patrick & Partners.

Q. In any event, as far as you were concerned you were aware that the C.B.C. Bank was the banker for Patrick & Co.? *A.* Yes.

Q. And Patrick & Company had in fact—had they made that clear to you right from the outset? *A.* I would assume so, yes.

Q. It would be your normal practice, wouldn't it, at a very early stage of any significant business relationship with somebody like Patrick and company to find out who their bankers were? *A.* Yes, that is quite correct.

Q. And you found out in the present case at a fairly early stage of your business association with the Patrick people that their bankers were the C.B.C. Bank? *A.* Yes, that would be correct.

Q. Whenever it was that you became aware that the source of the loan funds in question was the S.E.C.V.—and you have given us the best of your recollection about that—may we take it that having that knowledge you then either knew or assumed that the First National Bank of Boston's letter of credit was being used in a back-to-back security arrangement by Patricks? (Objected to by Mr. Meagher; allowed) *A.* Yes, I would have. I would not have known the details but I would have known or assumed that our letter of credit had some significance.

His Honour: Q. That is rather different from saying you assumed that it would be used in a back-to-back arrangement with the C.B.C. Bank, which is what Mr. Gleeson put to you? *A.* I thought my reply—

Q. "Assume" has some significance? *A.* Yes, I thought my reply was, your Honour, and certainly this was my intention, I knew the letter of credit was of significance to Patrick & Partners. Now to take it further I cannot comment other than that.

Mr. Gleeson: Q. Just coming to the August 1969 transaction relating to the \$1,500,000, may we take it that when the letter of credit from the First National Bank was issued in favour of Patrick Partners you either knew or assumed that Patrick Partners would make some use of that letter, they would not just sit there and keep it? (Objected to by Mr. Lockhart; pressed on the authority of the First National Bank and First Leasing to Patrick Partners; Mr. Lockhart informed his Honour that he would not be making any submission on that "authority"; question rejected.)

Q. Are you familiar with the expression back-to-back letter of credit? *A.* Yes.

Q. What do you understand that expression to mean? *A.* One letter of credit is issued in favour of a beneficiary and that beneficiary obtains a similar letter of credit to enable him to borrow funds to support the first letter of credit.

Q. At some stage did you become aware that Patrick & Company had made a back-to-back letter of credit arrangement with the C.B.C. Bank? (Objected to by Mr. Meagher; rejected).

Q. May we take it that so far as you were concerned when that First National Bank of Boston letter of credit was issued in August 1969, whether or not Patrick and Company chose to use it for the purposes of a back-to-back letter of credit arrangement, or some similar purpose, was a matter that did not concern—was their business? (Objected to by Mr. Meagher; allowed) *A.* It did not concern us.

10 *Q.* As far as you were concerned they were entitled to do that if they wished, correct? *A.* Correct.

Q. And the same applies to the August 1973 extension? (Objected to by Mr. Meagher; allowed) *A.* Correct.

Q. Now can I take you to your state of actual knowledge as at August 1973. As at August 1973 you in fact knew that the State Electricity Commission of Victoria was the source of the \$1.5 million in question? *A.* Yes.

Q. I think you told us at all material times you knew that the C.B.C. Bank was Patrick's bankers? *A.* Yes.

Q. As at August 1973— *A.* Excuse me, Patrick Partners' bankers.

20 *Q.* As at August 1973 did you in fact know that there was an arrangement between Patrick Intermarine Acceptances Limited and the C.B.C. Bank in relation to the First National Bank of Boston's letter of credit? *A.* Yes, I did know there was some arrangement.

Q. You knew that there was some arrangement between the C.B.C. Bank and Patrick Intermarine Acceptances Limited in relation to the letter of credit that was being extended in August 1973 by the First National Bank? *A.* I knew there was something. What that was I did not delve into because it was not our business.

30 *His Honour: Q.* Why would not you in that state of knowledge simply go to the S.E.C.V. and do a deal directly? *A.* First off in the money market business it is necessary to act correctly at all times. That could be construed as acting incorrectly or impropriately so far as our relationship with Patricks would have been concerned.

The other reason would be that the S.E.C. was not allowed to lend funds without acceptable securities and an overseas letter or credit was not an acceptable security.

Q. But you could have procured a local one, couldn't you? *A.* Yes, we could.

Q. So it was more to do with what you believed to be the ethics of the money market? *A.* And I think what was happening at that time. Patricks approached us first and we would tend to explore all transactions to its ultimate. If it did not make sense to us we would not go ahead, we would possibly look for another. I would say at that time it made sense.

40 *Q.* You mean if the interest was too high you would go somewhere else? *A.* Yes.

Mr. Gleeson: Q. When did you first learn that the S.E.C.V. was not allowed to lend funds on a foreign bank's letter of credit? *A.* This was common knowledge in the market place I would say some six or nine months before August 1973.

Q. It was common knowledge? *A.* Yes.

(Witness retired and excused)

(Further hearing adjourned to 10 a.m. Tuesday, 6th July, 1976).

LOCAL DOCUMENTARY CREDIT REQUISITION

Form No. 4.

Credit No. LD920
Office use only.

To: The Manager,
THE COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED,
(Hereinafter called 'the Bank')

8th April, 1969.

343 George Street,
SYDNEY

We hereby request you to open on our account by Telegraph an irrevocable credit subject to
(Mail or telegraph)

Uniform Customs and Practice for Documentary Credits (1962 Revision), International Chamber of Commerce Brochure

No. 222 authorising S.S.C. 15 William Street, Melbourne
(Full name of beneficiary)

of
(Full address)

to draw on us for any sum or sums not exceeding in all A \$500,000 (Aust.)
Five hundred thousand dollars - Australian currency)

* F.O.B., C.I.F., etc. available by their drafts at sight purporting to cover unpaid principal amount
(Usance)

of loan made to Patrick & Company, 2 Castlereagh Street, Sydney
(Mention name of beneficiary and description of goods)

* Shipped, railed, etc. of or on account from
(Country) (City and name of dispatch)

Department (No)

The drafts must be presented for negotiation not later than 8th April, 1970 and must be accompanied by the following documents relating thereto: -

* Add other documents required.

~~Commercial Invoice~~ **Statement of State Electricity Commission of Victoria certifying that the draft amount represents the unpaid principal amount of a loan made by the Commission to Patrick & Company and that payment has been demanded and not received.**

Additional instructions (if any): - Negotiation/s under this credit are restricted to the Commercial Banking Co. Limited, Melbourne. Drawings under this credit must not be made prior to 6th April, 1970. Please hand documents to our representative on application on the morning of 9th April, 1969.

In consideration of the Bank establishing this credit we hereby agree with the Bank as follows:-

- A. Neither the Bank nor its agents shall be under any liability in respect of loss or damage arising or resulting:-
 - (i) From any error, omission or delay in the transmission or delivery or decoding of any message (whether literal, in code or in cypher) by mail, telegraph or otherwise or in the interpretation of or compliance with any instruction or mandate howsoever such error, omission or delay shall have arisen or been caused.
 - (ii) From any fault, error or mistake as to the quantity, quality, nature, value, consignment or delivery of the goods, or as to the amount of the shippers', rail or carriers' charges thereon or therefor or as to the validity, enforceability, efficacy, sufficiency, genuineness or accuracy of any draft, invoice, bill of lading, insurance policy or certificate or other documents, or any endorsement or negotiation of or title to any such document.
- B. To accept on presentation and pay at maturity the drafts drawn under or in intended or purported compliance with the credit or this requisition together with:-
 - (i) Bank interest for any period by which the date of payment by the Bank precedes the date of our payment to the Bank and (ii) a commission of () % on the amount of the credit, and (iii) all usual Bank charges.
- C. and so to do notwithstanding that for any reason whatsoever, any such draft or other documents hereinafter mentioned shall be the genuine or shall be or become invalid or payment or recovery of any money thereunder or the performance of any contract thereby created or evidenced be or become delayed postponed or impossible. Further if we fail to accept any draft negotiated by the Bank or be excused from acceptance thereof on any ground whatsoever, we will pay to the Bank at the branch or office first abovementioned on demand the amount paid by the Bank.
- D. The Bank shall hold the above-mentioned documents and goods as a continuing security by way of pledge independent of and additional to any other security held by the Bank for payment of all moneys payable by us to the Bank including all commission banking and other charges expenses and interest and we will not do or omit or suffer to be done or omitted any act matter or thing which might prejudice the value or existence of the said security. We will pay to the Bank any moneys received by us under any insurance of the goods which moneys until so paid shall be held by us in trust for the Bank.
- E. Immediately upon the Bank's request, to do, and procure the doing of, all such acts and to sign, endorse, execute and/or deliver, and to procure the signature, endorsement, execution and/or delivery of, all such authorities, transfers, deeds and/or documents as the Bank may require in order to perfect its title to the goods and/or documents and/or to vest the same in and/or deliver the same to any purchaser from the Bank and/or to recover any insurance moneys payable or paid in respect of loss of or damage to the goods.
- F. In the event of default being made by us in any of our obligations to the Bank the Bank may without notice to us sell, by public auction or private treaty, dispose of or otherwise deal with the goods or any of them (whether landed or not) as and when it may think fit and collect and give receipts for any amounts due or to become due under any insurance Policy or Certificate and apply the proceeds first in or towards payment to the Bank of an amount equal to any charges and expenses made or incurred by the Bank in obtaining possession of, landing, storing, reconditioning and/or disposing of the goods and second in or towards payment of all or any moneys for the time being owing by us to the Bank or hereby agreed to be paid by us without prejudice to all or any of the Bank's rights against us or any other party and we will on demand pay to the Bank any deficiency with bank interest thereon until payment.
- G. The Bank its Agents and each negotiating Bank are respectively authorized without reference to us and without being liable for any act or omission to give effect to this request in such manner as in its or their opinion may be most convenient or expedient.
- H. To indemnify and hold the Bank its servants and agents harmless and free from liability in respect of all loss and damage (including costs and expenses incurred by any of them in resisting claims by third parties) arising or resulting from the negotiation of drafts or any other act, matter or thing done or omitted to be done in actual or in intended or purported compliance with this request and with any letter of credit issued in consequence thereof.
- I. This agreement shall continue in force notwithstanding any change in the constitution of any firm or company referred to herein.
- J. If this request is made by two or more parties, their obligations shall be joint and several. Throughout this document the singular number shall include the plural and vice versa.

Accounts have added items & cost is not feasible to match with First National Bank of Boston. \$16 510971 using different documentation

C \$1250

J. We undertake that in the event of ~~drawings~~ **drawings** being made under this credit, we will immediately lodge with the Bank a draft and accompanying documents in terms of First National Bank of Boston, Boston, Letter of Credit No. 510971 for an amount not less than that required to meet the drawing(s) under the credit requested in this requisition.

Yours faithfully,
PATRICK & COMPANY

John A. Keel Street

(APPLICANT'S ADDRESS TO BE STATED BELOW SIGNATURE)

B

CONFIRMATION OF CREDIT ESTABLISHED BY TELEGRAPH
THE COMMERCIAL BANKING COMPANY OF SYDNEY, LIMITED

SYDNEY, 9th April, 19 69.
New South Wales.

IRREVOCABLE CREDIT
No. LD.920.

We hereby authorise STATE ELECTRICITY COMMISSION OF VICTORIA, 15 WILLIAM STREET, MELBOURNE, VICTORIA.

to draw on Patrick and Company, 2 Castlereagh Street, Sydney, N.S.W.

at _____ sight for any sum or sums not exceeding in all \$A500,000.00. (Five hundred thousand dollars. _____ Australian currency)

purporting to cover ~~invoice cost~~ unpaid principal amount of loan made to Patrick & Company, 2 Castlereagh Street, Sydney.

~~XX~~

for account of PATRICK & COMPANY.

The draft(s) drawn under this credit must be accompanied by the following documents relating thereto:—

~~XXXXXXXXXXXXXXXXXXXX~~
Statement of State Electricity Commission of Victoria certifying that the draft amount represents the unpaid principal amount of a loan made by the Commission to Patrick & Company and that payment has been demanded and not received.

COPY NOT NEGOTIABLE

Additional instructions (if any):—
Negotiation(s) under this Credit are restricted to The Commercial Banking Company of Sydney Limited, Melbourne.
Drawing(s) under this Credit must not be made prior to 6th April, 1970.

Drafts must be presented for negotiation not later than 8th April, 1970 and forwarded to our HEAD _____ office _____ together with relative documents for _____/payment.

Drafts must be enfaced with the number, date and place of issue of this credit and the negotiating Bank must record the amount of each draft on the back hereof.

THE COMMERCIAL BANKING COMPANY OF SYDNEY, LIMITED, hereby engages with the drawers, endorsers and bona fide holders of drafts drawn under and in compliance with the terms of this credit, that such drafts shall meet with due honour upon presentation.

W. G. CARMAN
Countersigner.

E. A. FLANDERS
pro. Manager.

Subject to Uniform Customs and Practice for Documentary Credits (1962 Revision), International Chamber of Commerce Brochure No. 222

The FIRST NATIONAL BANK of BOSTON
INTERNATIONAL DIVISION
BOSTON, MASSACHUSETTS, U.S.A.

[Handwritten signature]

Aust. ~~5000000~~ **1500000**

LETTER OF CREDIT NO.S-11085
Patrick and Company
G.P.O. 2850
Sydney, Australia

Date August 14, 1969

GENTLEMEN:

WE HEREBY OPEN OUR IRREVOCABLE LETTER OF CREDIT IN YOUR FAVOR AVAILABLE BY YOUR DRAFTS DRAWN ON Commercial Banking Company of Sydney, Ltd. Sydney, Australia

AT AGENT FOR ANY SUM OR SUMS NOT EXCEEDING IN TOTAL
One Million Five Hundred Thousand Australian Dollars

FOR ACCOUNT OF First Leasing Australia, Ltd. Melbourne, Australia

DRAFTS MUST BE ACCOMPANIED BY:

Your statement signed by an official authorized to sign on your bank account certifying that:

The draft amount represents the unpaid principal amount plus accrued interest (which may be drawn in excess of the credit amount, at a rate not exceeding 7.625% Per Annum and inclusive of stamp duties, if applicable) of a fixed loan to November 15, 1970 made by you to First Leasing Australia, Ltd.

That such amount was not paid when due and has not since been repaid to or collected by you.

The promissory note or other evidence of the indebtedness in respect of such loan.

This credit is also available on the first day of each succeeding quarter beginning on February 15, 1971 at an interest rate agreed upon between yourselves and First Leasing Australia, Ltd. but not to exceed 7.625% Per Annum for any period during the life of the credit provided we have been advised by authenticated cable through Commercial Banking Company of Sydney, Ltd. Sydney, Australia dispatched at least 60 days prior to the first day of each succeeding quarter that you have demanded payment of the above mentioned loan or portion thereof from First Leasing Australia, Ltd. and that such amount was not paid when due.

EACH DRAFT MUST BEAR UPON ITS FACE THE CLAUSE "DRAWN UNDER LETTER OF CREDIT No. S-11085 DATED August 14, 1969 OF THE FIRST NATIONAL BANK OF BOSTON, Boston, Mass."

EXCEPT SO FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1963 REVISION), INTERNATIONAL CHAMBER OF COMMERCE BROCHURE No. 522".

WE HEREBY AGREE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF PRESENTED TO THE ABOVE MENTIONED BANK OR ON BEHALF August 15, 1973.

NEGOTIATE ON THIS INSTRUMENT
[Handwritten signature]

D-105

AUTHORIZED OFFICIAL

AUTHORIZED OFFICIAL

ds

C Letter of Credit issued by First National Bank of Boston

14.8.69

LOCAL DOCUMENTARY CREDIT REQUISITION

Form No. 4.

Credit No. LD 973
Office use only.

To: The Manager,
THE COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED,
(Hereinafter called "the Bank")

15th August, 1969.

343 George Street, SYDNEY.

We hereby request you to open on our account by Telegraph an irrevocable credit subject to Uniform Customs and Practice for Documentary Credits (1962 Revision), International Chamber of Commerce Brochure No. 222 authorising State Electricity Commission of Victoria of 15 William Street, Melbourne.

to draw on us for any sum or sums not exceeding in all \$1,500,000.00. (One million five hundred thousand dollars. Australian currency) available by their drafts at unpaid principal of sight purporting to cover loan made to Patrick & Company, 2 Castlereagh Street, Sydney.

* Shipped, railed, etc.

of (Country) (Description)

The drafts must be presented for negotiation not later than 15th August, 1970 and must be accompanied by the following documents relating thereto: -

* Add other documents required.

Commercial Invoice Statement of State Electricity Commission of Victoria certifying that the draft amount represents the unpaid principal amount of a fixed loan to 15/11/70 made by the Commission to Patrick & Company and payment of the loan has been demanded and not received. This credit is also available on the first day of each succeeding quarter beginning on February 15th, 1971 provided The Commercial Banking Company of Sydney Ltd., Sydney have been notified immediately that State Electricity Commission of Victoria have demanded payment of the loan or portion thereof from Patrick & Company and that such (continued over) **Additional instructions (if any): - Negotiation/s under this credit are restricted to The Commercial Banking Company of Sydney Limited, Melbourne.**

COST OF TELEGRAM ALSO AT

In consideration of the Bank establishing this credit we hereby agree with the Bank as follows:-

- A. Neither the Bank nor its agents shall be under any liability in respect of loss or damage arising or resulting:- (i) From any error, omission or delay in the transmission or delivery or decoding of any message (whether literal, in code or in cypher) by mail, telegraph or otherwise or in the interpretation of or compliance with any instruction or mandate howsoever such error, omission or delay shall have arisen or been caused. (ii) from any fault, error or mistake as to the quantity, quality, nature, value, consignment or delivery of the goods, or as to the amount of the shippers', rail or carriers' charges thereon or therefor or as to the validity, enforceability, efficacy, sufficiency, genuineness or accuracy of any draft, invoice, bill of lading, insurance policy or certificate or other documents, or any endorsement or negotiation of or title to any such document.
- B. To accept on presentation and pay at maturity the drafts drawn under or in intended or purported compliance with the credit or this requisition together with:- (i) Bank interest for any period by which the date of payment by the Bank precedes the date of our payment to the Bank and (ii) a commission of () % on the amount of the credit, and (iii) all usual Bank charges. and so to do notwithstanding that for any reason whatsoever, any such draft or other documents herein mentioned shall not be genuine or shall be or become invalid or payment or recovery of any money thereunder or the performance of any contract thereby created or evidenced be or become delayed postponed or impossible. Further if we fail to accept any draft negotiated by the Bank or be excused from acceptance thereof on any ground whatsoever, we will pay to the Bank at the branch or office first above-mentioned on demand the amount paid by the Bank.
- C. The Bank shall hold the above-mentioned documents and goods as a continuing security by way of pledge independent of and additional to any other security held by the Bank for payment of all moneys payable by us to the Bank including all commission banking and other charges expenses and interest and we will not do or omit or suffer to be done or omitted any act matter or thing which might prejudice the value or existence of the said security. We will pay to the Bank any moneys received by us under any insurance of the goods which moneys until so paid shall be held by us in trust for the Bank.
- D. Immediately upon the Bank's request, to do, and procure the doing of, all such acts and to sign, endorse, execute and/or deliver, and to procure the signature, endorsement, execution and/or delivery of, all such authorities, transfers, deeds and/or documents as the Bank may require in order to perfect its title to the goods and/or documents and/or to vest the same in and/or deliver the same to any purchaser from the Bank and/or to recover any insurance moneys payable or paid in respect of loss of or damage to the goods.
- E. In the event of default being made by us in any of our obligations to the Bank the Bank may without notice to us sell, by public auction or private treaty, dispose of or otherwise deal with the goods or any of them (whether landed or not) as and when it may think fit and collect and give receipts for any amounts due or to become due under any insurance Policy or Certificate and apply the proceeds first in or towards payment to the Bank of an amount equal to any charges and expenses made or incurred by the Bank in obtaining possession of, landing, storing, reconditioning and/or disposing of the goods and second in or towards payment of all or any moneys for the time being owing by us to the Bank or hereby agreed to be paid by us without prejudice to all or any of the Bank's rights against us or any other party and we will on demand pay to the Bank any deficiency with bank interest thereon until payment.
- F. The Bank its Agents and each negotiating Bank are respectively authorised without reference to us and without being liable for any act or omission to give effect to this request in such manner as in its or their opinion may be most convenient or expedient.
- G. To indemnify and hold the Bank its servants and agents harmless and free from liability in respect of all loss and damage (including costs and expenses incurred by any of them in resisting claims by third parties) arising or resulting from the negotiation of drafts or any other act, matter or thing done or omitted to be done in actual or in intended or purported compliance with this request and with any letter of credit issued in consequence thereof.
- H. This agreement shall continue in force notwithstanding any change in the constitution of any firm or company referred to herein.
- I. If this request is made by two or more parties, their obligations shall be joint and several. Throughout this document the singular number shall include the plural and vice versa.
- J. We undertake that in the event of drawing/s being made under this credit we will immediately lodge with the bank a draft and accompanying documents in terms of First National Bank of Boston, Boston, Letter of Credit Nos. S.11085 for an amount not less than that required to meet the drawing(s) under the credit requested in this requisition.

Yours faithfully,
PATRICK & COMPANY.

John A. Patrick

(APPLICANT'S ADDRESS TO BE STATED BELOW SIGNATURE)

C 1/6/70
2,500,000

LOCAL DOCUMENTARY CREDIT REQUISITION

Credit No. **LD 1486**
Office use only.

Form No. 4.

To: The Manager,
THE COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED,
(Hereinafter called "the Bank")

14th August 1973

343 George Street, Sydney, N.S.W. 2000.

We hereby request you to open on our account by Telegraph an irrevocable credit subject to

Uniform Customs and Practice for Documentary Credits (1962 Revision), International Chamber of Commerce Brochure

No. 222 authorising State Electricity Commission of Victoria

of 15 William Street, Melbourne, Vic. 3000.

to draw on us for any sum or sums not exceeding in all \$1,500,000.00 (One million five hundred thousand dollars)

available by their drafts at sight purporting to cover unpaid principal of

of loan made to Patrick-Intermarine Acceptances Limited, 5 Gresham Street, Sydney

of origin to be on our account from

to 14th August 1975

The drafts must be presented for negotiation not later than 14th August 1975 and must be accompanied by the following documents relating thereto: -

Statement of State Electricity Commission of Victoria certifying that the draft amount represents the unpaid principal amount of a fixed loan to 14th August, 1975 made by the Commission to Patrick-Intermarine Acceptances Limited and payment of the loan has been demanded and not received. Negotiation/s under this credit are restricted to The Commercial Banking Company of Sydney Limited, Melbourne.

Additional instructions (if any): -

In consideration of the Bank establishing this credit we hereby agree with the Bank as follows:-

- A. Neither the Bank nor its agents shall be under any liability in respect of loss or damage arising or resulting:-
 - (i) From any error, omission or delay in the transmission or delivery or decoding of any message (whether literal, in code or in cypher) by mail, telegraph or otherwise or in the interpretation of or compliance with any instruction or mandate howsoever such error, omission or delay shall have arisen or been caused.
 - (ii) From any fault, error or mistake as to the quantity, quality, nature, value, consignment or delivery of the goods, or as to the amount of the shippers', rail or carriers charges thereon or therefor or as to the validity, enforceability, efficacy, sufficiency, genuineness or accuracy of any draft, invoice, bill of lading, insurance policy or certificate or other documents, or any endorsement or negotiation of or title to any such document.
- B. To accept on presentation and pay at maturity the drafts drawn under or in intended or purported compliance with the credit or this requisition together with:
 - (i) Bank interest for any period by which the date of payment by the Bank precedes the date of our payment to the Bank, and
 - (ii) a commission of () % on the amount of the credit, and
 - (iii) all usual Bank charges.
 and so to do notwithstanding that for any reason whatsoever, any such draft or other documents herein mentioned shall not be genuine or shall be or become invalid or payment or recovery of any money thereunder or the performance of any contract thereby created or evidenced be or become delayed postponed or impossible. Further if we fail to accept any draft negotiated by the Bank or be excused from acceptance thereof on any ground whatsoever, we will pay to the Bank at the branch or office first above-mentioned on demand the amount paid by the Bank.
- C. The Bank shall hold the above-mentioned documents and goods as a continuing security by way of pledge independent of and additional to any other security held by the Bank for payment of all moneys payable by us to the Bank including all commission banking and other charges expenses and interest and we will not do or omit or suffer to be done or omitted any act matter or thing which might prejudice the value or existence of the said security. We will pay to the Bank any moneys received by us under any insurance of the goods which moneys until so paid shall be held by us in trust for the Bank.
- D. Immediately upon the Bank's request, to do, and procure the doing of, all such acts and to sign, endorse, execute and/or deliver, and to procure the signature, endorsement, execution and/or delivery of, all such authorities, transfers, deeds and/or documents as the Bank may require in order to perfect its title to the goods and/or documents and/or to vest the same in and/or deliver the same to any purchaser from the Bank and/or to recover any insurance moneys payable or paid in respect of loss of or damage to the goods.
- E. In the event of default being made by us in any of our obligations to the Bank the Bank may without notice to us sell, by public auction or private treaty, dispose of or otherwise deal with the goods or any of them (whether landed or not) as and when it may think fit and collect and give receipts for any amounts due or to become due under any Insurance Policy or Certificate and apply the proceeds first in or towards payment to the Bank of an amount equal to any charges and expenses made or incurred by the Bank in obtaining possession of, landing, storing, reconditioning and/or disposing of the goods and second in or towards payment of all or any moneys for the time being owing by us to the Bank or hereby agreed to be paid by us without prejudice to all or any of the Bank's rights against us or any other party and we will on demand pay to the Bank any deficiency with Bank interest thereon until payment.
- F. The Bank its Agents and each negotiating bank are respectively authorized without reference to us and without being liable for any act or omission to give effect to this request in such manner as in its or their opinion maybe most convenient or expedient.
- G. To indemnify and hold the Bank its servants and agents harmless and free from liability in respect of all loss and damage (including costs and expenses incurred by any of them in resisting claims by third parties) arising or resulting from the negotiation of drafts or any other act, matter or thing done or omitted to be done in actual or in intended or purported compliance with this request and with any letter of credit issued in consequence thereof.
- H. This agreement shall continue in force notwithstanding any change in the constitution of any firm or company referred to herein.
- I. If this request is made by two or more parties, their obligations shall be joint and several. Throughout this document the singular number shall include the plural and vice versa.
- J. We undertake that in the event of drawing/s being made under this credit we will immediately lodge with the bank a draft and accompanying documents in terms of First National Bank of Boston, Boston, Letter of Credit Nos. to be supplied, for an amount not less than that required to meet the drawing/s under the credit requested in this requisition.

Yours faithfully,
PATRICK-INTERMARINE ACCEPTANCES LIMITED

(APPLICANT'S ADDRESS TO BE STATED BELOW SIGNATURE)

1/40
3750
due
12 min

THE COMMERCIAL BANKING COMPANY OF SYDNEY, LIMITED

SYDNEY, 15th August, 1973.
New South Wales.IRREVOCABLE CREDIT
No. LD. 973.

We hereby authorise STATE ELECTRICITY COMMISSION OF VICTORIA, 15 WILLIAM STREET, MELBOURNE.

to draw on Patrick & Company, 2 Castlereagh Street, Sydney, N.S.W. 2000.

at _____ sight for any sum or sums not exceeding in all \$1,500,000.00 One

million, five hundred thousand dollars. _____ Australian currency)

purporting to cover ~~XXXXXXXXXXXXXXXXXXXX~~ unpaid principal of loan made to Patrick & Company, 2 Castlereagh Street, Sydney.~~of~~~~XXXXXXXXXXXX~~~~XXXXXX~~~~XXXX~~

for account of PATRICK & COMPANY

The draft(s) drawn under this credit must be accompanied by the following documents relating thereto:—

~~XXXXXXXXXXXXXXXXXXXX~~

Statement of State Electricity Commission of Victoria certifying that the draft amount represents the unpaid principal amount of a fixed loan to 15th November, 1970 made by the Commission to Patrick & Company and payment of the loan has been demanded and not received. This credit is also available on the first day of each succeeding quarter beginning on February 15th, 1971 provided The Commercial Banking Company of Sydney Limited, Sydney have been notified immediately that State Electricity Commission of Victoria have demanded payment of the loan or portion thereof from Patrick & Company and that such amount was not paid when due. Such advice must reach the Commercial Banking Company of Sydney Limited, Sydney not later than 70 days prior to the first day of the quarter succeeding the one in which demand was made.

Additional instructions (if any):—

Negotiation(s) under this credit are restricted to The Commercial Banking Company of Sydney Limited, Melbourne.

Drafts must be presented for negotiation not later than 15th August, 1973 and forwarded to our Head _____ office/_____ together with relative documents for _____/payment.

Drafts must be en faced with the number, date and place of issue of this credit and the negotiating Bank must record the amount of each draft on the back hereof.

THE COMMERCIAL BANKING COMPANY OF SYDNEY, LIMITED, hereby engages with the drawers, endorsers and bona fide holders of drafts drawn under and in compliance with the terms of this credit, that such drafts shall meet with due honour upon presentation.

C. S. KENNEDY

Countersigner.

W. G. CARMAN

pro. Manager.

CONFIRMATION OF CREDIT ESTABLISHED BY TELEGRAPH.

THE COMMERCIAL BANKING COMPANY OF SYDNEY, LIMITED

16 th August, 73.

SYDNEY,
New South Wales.

19

IRREVOCABLE CREDIT
No. ~~LS 1436~~.We hereby authorise STATE ELECTRICITY COMMISSION OF VICTORIA, 15 WILLIAM
STREET, MELBOURNE. VIC. 3000.to draw on ~~Patrick-Intermarine Acceptances Limited, 5 Gresham Street,
Sydney, N.S.W. 2000.~~at _____ sight for any sum or sums not exceeding in all \$A1,500,000 ~~or~~ One
million, five hundred thousand dollars. _____ Australian
currency)purporting to cover ~~invoice cost~~ ~~xxxxxxx~~ of ~~xx~~ unpaid principal of loan made to Patrick
Intermarine Acceptances Limited, 5 Gresham Street, Sydney.of ~~xxx~~ ~~xxxxxxx~~ origin, to be ~~xxxx~~ from _____ to ~~xx~~

for account of PATRICK-INTERMARINE ACCEPTANCES LIMITED. _____

The draft(s) drawn under this credit must be accompanied by the following documents relating
thereto:—~~Commercial Invoice(s)~~
~~Statement of State Electricity Commission of Victoria certifying~~
~~that the draft amount represents the unpaid principal amount of~~
~~a fixed loan to 14th August, 1975 made by the Commission to~~
~~Patrick-Intermarine Acceptances Limited and payment of the loan~~
~~has been demanded and not received.~~

COPY NOT NEGOTIABLE

Additional instructions (if any):—

~~Negotiation(s) under this credit are restricted to The Commercial
Banking Company of Sydney Limited, Melbourne.~~Drafts must be presented for negotiation not later than 14th August, 75
to our ~~SYDNEY~~ office/branch together with relative documents for ~~xxxxxx~~ and forwarded
and payment.Drafts must be enfaced with the number, date and place of issue of this credit and the negotiating
Bank must record the amount of each draft on the back hereof.THE COMMERCIAL BANKING COMPANY OF SYDNEY, LIMITED, hereby engages with the
drawers, endorsers and bona fide holders of drafts drawn under and in compliance with the terms of this
credit, that such drafts shall meet with due honour upon presentation.

L. A. FARRAND

Countersigner.

C. S. KENNEDY

Manager.

Subject to Uniform Customs and Practice for Documentary Credits (1962 Revision), International Chamber of Commerce Brochure No. 222

k

THE FIRST NATIONAL BANK OF BOSTON

INTERNATIONAL BANKING

POST OFFICE BOX 1784, BOSTON, MASSACHUSETTS 02105 U.S.A.

— August 15, 1973

Patrick and Company
G.P.O. 2850
Sydney, Australia

Commercial Banking Company of
Sydney
Sydney
Australia

10
S/6190V67

(BENEFICIARY)

RECEIVED
23 AUG 1973
H.O.

MAIL TO

RE: OUR LETTER OF CREDIT NO. S-11085

ACCOUNT

First Leasing Australia Ltd.
Melbourne, Australia

GENTLEMEN:

WE HAVE AMENDED OUR CAPTIONED CREDIT IN THE FOLLOWING MANNER:

Beneficiary is now:

Patrick Intermarine Acceptances Limited
128 Exhibition Street
Melbourne, Victoria, 3000 Australia

Validity extended to August 14, 1974.

Accrued interest may be now drawn at a rate not exceeding 8.75% per annum.

ALL OTHER CONDITIONS REMAIN UNCHANGED.

- CONFIRMING OUR CABLE OF TODAY
- ADVISED BY AIR MAIL
- ADVISED BY AIR MAIL DIRECT TO BENEFICIARY

- PLEASE FORWARD THE ATTACHED LETTER OF AMENDMENT TO THE BENEFICIARY.
- THE ORIGINAL LETTER OF AMENDMENT HAS BEEN FORWARDED TO THE BENEFICIARY AND NO ACTION ON YOUR PART IS NECESSARY.

J. J. MacLennan
AUTHORIZED OFFICIAL

D 1221

COPY FOR BANK ADDRESSED

2

H Copy of Notice of Amendment of Letter
of Credit from First National Bank of
Boston

15.8.73

J

19th March, 1969.

HEAD OFFICE
PATRICK & CO.

Mr. Tim Allen rang and advised that his firm is considering a transaction under which \$1m. is to be borrowed from an Australian company and re-lent to another Australian company.

1/10/69

The lending company is seeking security by way of bank Letter of Credit and Mr. Allen asked whether we would be prepared to issue a Clean Credit for \$1m. for a period of 12 months less one day, in favour of the lending company (at this stage unnamed), against security of a Letter of Credit in our favour issued by The First National Bank of Boston, also what would be our charge for the issuance of the Credit.

1/10/69

There would appear to be little risk involved in the business and it is recommended that we favourably consider the proposal on the basis of charging a fee at the rate of ~~4%~~ ^{2.25%} per annum during the currency of the facility. ~~\$2500-~~

plus 15 cents % of any negotiations under the credit.

ms

19/3/69

*Mr. Allen advised of the above rates also that the ~~1st~~ ^{1st} National Bank of Boston would need to be of the nature of a bank to bank credit and it would require to have that credit established with us prior to issue the deal. ~~etc~~ Mr. Allen will confer with our International Dept if the matter is to proceed *ms**

K

8th May, 1969.

HEAD OFFICEPATRICK & COMPANY

Mr. Tim Allen rang and advised that his firm is considering a further transaction involving \$1.5m. to be borrowed from an Australian organisation and re-lent to another Australian company. He asked whether the Bank would establish a Letter of Credit in favour of the lending company virtually as security, the Bank to hold as its security a matching Letter of Credit from The First National Bank of Boston.

The period of the loan would be for four years and Mr. Allen was advised that we would be prepared to enter into the commitment, our fee for which would be \$2,500 per annum, plus 150% for any negotiations under the Credit. He was advised also that we would need to see the terms of the backing Credit from The First National Bank of Boston before we would issue our own Credit. Mr. Allen agreed that this would be the position.

It appears that the transaction will be similar, except for the term of the loan, to that relating to our memo. of 19/3/1969. In this case the actual amount of the Credit required was \$500,000, as against the original request for \$1m.

MH

The Commercial Banking Company of Sydney Limited.

KL B19

(ESTABLISHED 1864)

POSTAL ADDRESS -
BOX 2729, G.P.O.,
SYDNEY, N.S.W. 2001.

343 GEORGE STREET

TELEPHONE: 2 - 6240
Ext. 370

Sydney, 8th April, 1969.

PLEASE QUOTE IN REPLY
Overseas
NR:MM

**The Secretary,
Patrick and Co.,
2 Castlereagh Street,
SYDNEY. N.S.W. 2000.**

Dear Sir,

**The First National Bank of Boston, Boston,
Irrevocable Letter of Credit No. S-10971
in favour of Yourselfs for \$A576,250.00.**

Further to our letter of 31st March, 1969 and at the request of The First National Bank of Boston, Boston, we enclose original of the abovementioned Letter of Credit dated 28th March, 1969.

We shall be pleased if you will acknowledge receipt of this credit in due course.

Yours faithfully,

[Handwritten Signature]
Pro Manager.

9th April, 1969.

341

OVERSEAS
WGC:MA

The Secretary,
Patrick & Company,
2 Castlereagh Street,
SYDNEY. N.S.W. 2000.

Dear Sir,

In terms of your requisition dated 8th instant, we have established the undermentioned Letter of Credit by telegraph through our Melbourne office:-

<u>Credit No.</u>	<u>Amount.</u>	<u>In favour of.</u>	<u>Expires.</u>
LD.920.	\$A500,000.00.	State Electricity Commission of Victoria.	8th April, 1970.

We have debited your account \$-.75¢, (seventy-five cents) for cost of the telegraphic advice and \$1,250.00. (One thousand, two hundred and fifty dollars) being our commission charge.

Yours faithfully,

W. G. CARMAN

pro Manager.

Copy of letter from Plaintiff to | 9.4.69
Patrick & Co.

M B18

TRA

9th April, 1969.

The Manager,
First Leasing Australia Limited.
Suite 2.
73 - 79 Riverside Avenue,
SOUTH MELBOURNE 3205

Dear Sir,

Attention - Mr. F.I. Reinehr

We advise having today handed you a cheque for the sum of \$500,000 to be held on deposit at the rate of 7½% per annum to the 6th April 1970.

If suitable we would prefer interest payments to be made on the accepted quarterly rests, namely, 30th June, 30th September, 31st December and the final payment being due on repayment on the 6th April, 1970.

Against this deposit we confirm receipt of Letter of Credit No. S10971 dated 28th March, 1969 from The First National Bank of Boston in our favour.

Yours faithfully,
PATRICK & COMPANY

T. R. Allen

M Copy of letter from Patrick & Co. to
Second Defendant

9.4.69

817

TRA

9th April, 1969.

The Secretary,
State Electricity Commission of Victoria,
15 William Street,
MELBOURNE

Dear Sir,

Attention - Mr. N.W. Shears

We confirm having today received the sum of \$500,000 to be held on deposit with this firm until the 6th April, 1970.

Interest is to be paid on the 30th June, 30th September, 31st December and the 6th April for amounts accrued up to and including these dates at the rate of 6½% per annum.

Yours faithfully,
PATRICK & COMPANY

T. R. Allen

Copy of letter from Patrick & Co. to
Fourth Defendant

9.4.69

B16

PATRICK R. LEVY
RICHARD H. ALLEN
M. R. L. DOWLING
N. R. COURSE
F. A. ROBERTSON
M. A. MCGRATH
T. R. ALLEN
MEMBERS OF THE
SYDNEY STOCK EXCHANGE LIMITED

J. A. KEIR
R. A. NOSS
W. J. EDWARDS
J. S. CORNER

REF

PATRICK & COMPANY

MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

2 CASTLEREAGH STREET, SYDNEY, 2000

G. P. O. BOX 2880, SYDNEY, 2001. TELEX 20787

TELEPHONE 2-0318 (25 LINES)

151 QUEEN STREET
MELBOURNE, 3000
TELEPHONE
60 1141 (19 LINES)

43 NORTHBOURNE AVENUE
CITY CANBERRA, 2601
TELEPHONE CANB. 4-0365/66

181 KEIRA STREET
WOLLONGONG, 2500
TELEPHONE WOLL. 2-5900

TELEGRAMS & CABLES
"ROSDALE"
SYDNEY, MELBOURNE
CANBERRA, WOLLONGONG

Melbourne
9th April 1969

Received from PATRICK & COMPANY, Melbourne,
\$500,000 (Five hundred thousand dollars).

First Leasing Australia Limited

Per. J. Ross.

B.530.

ADDRESS LETTERS TO
BOX 254C, G.P.O.,
MELBOURNE, C.T.

TELEPHONE: 63-7511 EXT.

T
(K) B12

The Commercial Banking Company of Sydney Limited.

WITH WHICH IS AMALGAMATED

The Bank of Victoria Limited.

251-257 COLLINS STREET

Melbourne 9th April, 1969.

Overseas.

The Secretary,
Patrick & Company,
150 Queen Street,
MELBOURNE. 3000.

Dear Sir,

Our Sydney Office, Irrevocable Credit
No. LL.920 for A\$500,000.00. in favour
of State Electricity Commission of Victoria
on account of Patrick & Company, Sydney.

As requested by our Sydney Office we enclose original
of the abovementioned Letter of Credit,

Yours faithfully,


Pro Manager.

*Copy only behind this letter in file.
Original delivered to SECvic
Pl.*

B11

TRA

9th April. 1969.

The Manager,
The Commercial Banking Company of Sydney Limited,
343 George Street
SYDNEY

Dear Sir

Re: The First National Bank of Boston. Boston.
Letter of Credit No. S10971 in favour of
ourselves for \$536,250.00.

Further to your letter of the 8th April, we acknowledge receipt
of the above Letter of Credit as requested.

Yours faithfully,
PATRICK & COMPANY

T. R. Allen

Copy of letter from Patrick & Co. to
Plaintiff

9.4.69

TERMS AND CONDITIONS - SPECIAL DEAL NO. 1.

B10

Borrower : First Leasing Australia Limited.
Lender : State Electricity Commission of Victoria.
Amount : \$500,000.00

<u>TIME</u>	<u>LENDER</u>	<u>BORROWER</u>
12 months	6.50%	7.25% p.a.

Fixed to 6.4.70.

Letter of Credit - C. B. C. Co. of Sydney, Melbourne.

Charges for Bank L/C - 0.25% p. a.

Penal rate to Lender - Nil

Penal rate to Borrower - Nil

Handwritten: PA... (B) -

MEMO: RJA

FROM: FIR

7/3/73

Patrick-Intermarine (Australia) Ltd, per Peter Davie, informed today that the SEC will require repayment of each one of the \$1.5 million loans now on FLA's books ex Patrick Partners.

The loans will be repaid when they become due as per the terms of the original agreement. According to Peter Davie the SEC stated to him that they are caught in a fund squeeze at the moment but expect to have excess funds by August 1973 and will be pleased to offer the funds firstly to FLA.

Peter Davie also mentioned that Patrick Partners will be happy to fund short term, whether by bills or intercompany loans, any moneys FLA may require to build up to the \$3 million repayment.

Handwritten signature: J. R.

N Inter office memorandum prepared in
the office of First Leasing Australia
Limited

7.3.73

F.L.A. BORROWINGS AS AT JUNE 4, 1974

	<u>Repayment</u> <u>Date</u>	<u>AS</u> <u>Amount</u>	<u>I/C</u> <u>No.</u>	<u>All Up</u> <u>Rate %</u>	<u>Broker</u>
Hoover	23.6.1974	500,000	S12306	11.5	I.C.M.M.
Monsanto	25.7.1974	1,200,000	0131	11.5	Irving
Hoover	15.7.1974	500,000	S12648	11.5	I.C.M.M.
Lysaght	29.7.1974	750,000	0139	13.5	I.C.M.M.
Boston Financial (S.G.I.O.)	1.8.1974	500,000		17.0	Direct
Boston Financial	28.8.1974	500,000	Stand-by	24.15	Direct
Carr Fastener	23.8.1974	450,000	S12305	9.25	Direct
Nyer Emporium	30.8.1974	500,000	S11751	9.5	Were
XL Petroleum	29.8.1974	160,000	0146	21.75	Were
Jervo's Sulphates	29.8.1974	40,000	0145	21.75	Were
Williams and Birrell	4.9.1974	140,000	N/A	21.75	Were
Australian Gas Light	4.10.1974	1,000,000	S12727	10.625	I.C.M.M.
Carr Fastener	23.11.1974	700,000	S11961	11.0	Direct
Australian Gas Light	18.11.1974	1,000,000	S12782	11.25	I.C.M.M.
F.C. Finances	24.4.1975	250,000		14.75	Were
State Electricity Commission	21.8.1975	2,000,000	S12647	9.625	Were
State Electricity Commission	14.8.1975	1,500,000	S11085	9.7	Patrick
		<u>\$11,690,000</u>			
Bruce Crawley Crane Services	Call	5,000	-	9.25	Direct
Dizgalvis	Call	24,000	-	10.0	Direct
Expansion	Call	4,000	-	8.25	Direct
Highland Plant Hire	9.6.1974	40,000	-	9.5	Direct
Lewis	30.6.1974	5,000	-	14.0	Direct
Love *	19.6.1974	2,000	-	9.0	Direct
Wheadon	Call	10,000	-	9.0	Direct
		<u>\$11,780,000</u>			
<u>Maturity By Months</u>					
June 1974		590,000			
July		2,450,000			
August		2,150,000			
September		140,000			
October		1,000,000			
November		1,700,000			
January 1975 onwards		3,750,000			
		<u>\$11,780,000</u>			

[Handwritten signature]
4/6/74

O Copy of document headed "FLA Borrowings as at June 4th 1974".

LIST OF LETTERS OF CREDIT ISSUED BY FNBB

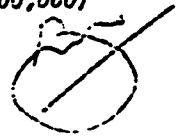
ON BEHALF OF FLA AS AT APRIL 11, 1974.

Repayment Date	Broker	Beneficiary	Original Term	Basic Rate	L/C No.	^{SA} Principal Amount
27.5.1974	Wallace	Wallace	24 Months	7.75	S 12088	500,000
26.11.1974	ICMN	Hoover Australia Pty. Limited	12 Months (Break June 23)	10.25	S 12306	500,000
25.3.1975	Irving	Monsanto	12 Months (Break at June, Sep., Dec.)	10.25	0131	1,200,000
15.7.1974	ICMN	Hoover Australia Pty. Limited	12 Months	10.25	S 12648	500,000
23.8.1974	Direct	Carr Fastener	12 Months	8.25	S 12305	450,000
30.8.1974	Were	Nyer Emporium	12 Months	8.25	S 11751	500,000
23.11.1974	Direct	Carr Fastener	Broken Periods	10.00	S 11961	700,000
14.8.1975	Patrick	Patrick Intermarine Acceptance Ltd. (Lender: S.E.C. of Victoria)	24 Months	8.7	S 11085	1,500,000
21.8.1975	Were	Commercial Banking Co. of Sydney Ltd. (Lender: S.E.C. of Victoria)	24 Months	8.375	S 12647	2,000,000
4.10.1976	ICMN	Commercial Banking Co. of Sydney Ltd. (Lender: Australian Gas Light Co. Ltd.)	36 Months (Break at 12/24 M.)	9.125	S 12727	1,000,000
18.11.1976	ICMN	" . " . " . " . "	36 Months (Break at 12/24 M.)	9.75	S 12782	1,000,000
				<u>9.13%</u>		<u>\$9,850,000.</u>

(Budgetted wind down as at April 30, 1974)

\$9,900,000)

Copy document headed "List of letters of Credit issued by FNBB on behalf of FLA as at 11.4.74."



FLA LETTERS OF CREDIT ISSUED BY FNBB BOSTONSeptember 11, 1974. ⁸³⁸⁴₈₈

<u>BENEFICIARY NAME</u>	<u>CREDIT NO.</u>	<u>AMOUNT</u>	<u>DATE OF ISSUANCE</u>	<u>DATE OF EXPIRY</u>
Carr Fasteners Pty Ltd.	S-12305	AUS \$ 450,000	Nov. 21, 1972.	Aug. 30, 1974
Commercial Banking Company of Sydney	S-12647	2,325,451.39	Aug. 14, 1973.	Aug. 21, 1975
Hoover Pty Ltd	S-12306	500,000	Nov. 21, 1972.	Dec. 3, 1974
Commercial Banking Company of Sydney	S-12782	1,000,000	Nov. 9, 1973.	Nov. 19, 1974
Commercial Banking Company of Sydney	S-12727	1,000,000	Oct. 1, 1973.	Oct. 9, 1974
Carr Fasteners Pty Ltd.	S-11961	700,000	Jan. 13, 1972.	Nov. 23, 1974
Patrick Intermarine Acceptances Ltd.	S-11085	1,500,000	Aug. 14, 1969.	Aug. 14, 1975
National Bank of Australasia Ltd.	S-11751	500,000	Sept. 3, 1971.	Aug. 30, 1974
Hoover Aust.	S-12648	500,000	Aug. 15, 1973.	Aug. 22, 1974

FLA Letters of Credit Issued by FNBB, Nassau Branch

Commercial Banking Company of Sydney	0174	600,000	Aug. 16, 1974.	Feb. 26, 1975
Commercial Banking Company of Sydney	0145	40,000	May 31, 1974.	Sept. 5, 1974
Commercial Banking Company of Sydney	0146	160,000	May 31, 1974.	Sept. 5, 1974
Commercial Banking Company of Sydney (John Protheroe etc.)	0147	140,000	June 4, 1974.	Sept. 7, 1974
CBC	0139	750,000	Apr. 23, 1974.	May 6, 1975.
CBC	0140	250,000	Apr. 24, 1974.	May 1, 1975.
Monsanto Aust.	0131	1,200,000	March 22, 1974.	Apr. 2, 1975
Wallace Brothers Finance	0125	500,000	Feb. 25, 1974.	June 7, 1974

BJH/d1

*File: FLA Letters of Credit ✓
FLA Financial
FLA Lines*

Copy of document headed "FLA letters
of Credit issued by FNBB Boston as at
11.9.74."

Patrick Partners

MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

• M. R. L. DOWLING
 • N. R. COURSE
 • M. A. McGRATH
 J. A. KEIR
 • T. R. ALLEN
 R. W. BURGE
 W. R. TOSSE
 J. S. CORNER
 W. J. EDWARDS
 M. E. SAUME
 A. BURT
 P. DAVIS
 R. N. GOTTLIEBSEN

151 QUEEN STREET, MELBOURNE, 3000
 G.P.O. BOX 5730, MELBOURNE, 3001. TELEX 30184

TELEPHONE 86-4461 (9 LINES)
 TELEGRAMS & CABLES "ROSDALE"

SYDNEY, BRISBANE, CANBERRA, WOLLONGONG, PERTH, BRUSSELS.

REF.
 RG/mb

15th August, 1973.

The Secretary,
 First Leasing Australia Limited,
 379 Collins Street,
MELBOURNE. 3000.

Attention: Mr. Robert Whitton

Dear Sir,

We confirm the termination of the loan negotiated on 15th August, 1969 between Patrick and Company and yourselves which takes effect today.

We acknowledge receipt of your cheque for \$1,514,101.03 being the principal sum plus final interest payment of \$14,101.03.

Yours faithfully,
 PATRICK PARTNERS.


 R. N. Gottlieb.

P Letter from Patrick Partners to First
 Leasing Australia Limited

15.8.73

Q

D23

PATRICK PARTNERS

15th August, 1973

The Secretary,
State Electricity Commission of Victoria,
15 William Street,
MELBOURNE. VIC. 3000

Dear Sir,

We refer you to the terms and conditions of a loan of \$1,500,000 from you to Patrick and Company on the 15th August, 1969. Patrick and Company lodged with you as security an Irrevocable Letter of Credit from the Commercial Banking Company of Sydney Limited in favour of yourselves for the principal amount of the loan.

We now confirm the termination of the loan, and accordingly enclose Bank Cheque for \$1,528,687.50 being the principal sum plus final interest payment of \$28,687.50 which we would thank you to accept in exchange for the Irrevocable Letter of Credit you are holding as security.

Yours faithfully,
PATRICK PARTNERS

Q Two copies of a letter from Patrick
Partners to Fourth Defendant

15.8.73

PP

1208-921.
Donat 230
Nacholl

PATRICK PARTNERS

03/635429

15th August, 1973

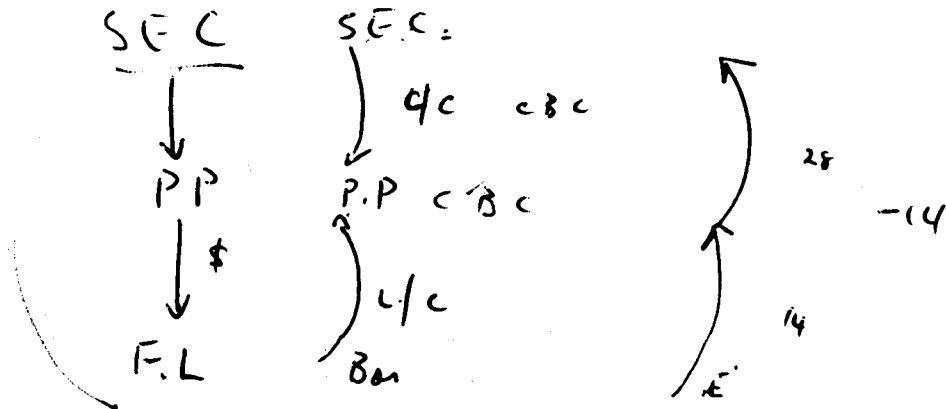
The Secretary,
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15 William Street,
MELBOURNE. VIC. 3000

Dear Sir,

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We now confirm the termination of the loan, and accordingly enclose Bank Cheque for \$1,528,687.50 being the principal sum plus final interest payment of \$28,687.50 which we would thank you to accept in exchange for the Irrevocable Letter of Credit you are holding as security.

Yours faithfully,
PATRICK PARTNERS



12 Noon of no news from Boston

F.L. will send \$1,500,000 ^{B.C.} & out to P.P. Mell.
the P.P. will draw ^{B.C.} cheques in favour
of SEC for 1,500,000 & 921 & receive back 4c
from SEC.

③ Folio 292

R

HEAD OFFICE

12th August, 1969

PATRICK & COMPANY

● this Office	Cr. \$93,747
● Castlereagh and Hunter Streets Branch	Dr. 25
● Queen Street Melbourne	Dr. 62,785 (as at 8/8/69)
● Wollongong Branch	Cr. 10 (as at 6/8/69)

Net Cr. \$30,947

● this Office
Trust A/c Cr. \$160,798

Daylight Cover Facility

● Castlereagh and Hunter Streets Branch - up to an amount of \$2,000,000 outstanding at any one time during any one day.

CONTINGENT LIABILITIES

Outstanding under our Letter of Credit No. LD920 in favour of State Electricity Commission of Victoria for \$ 500,000 ^{1/40} ₄₀
 to expire 8/4/1970 ~~with~~ matching Letter of Credit from the First National Bank of Boston No. S-10971.

Outstanding under our Letter of Credit No. LD936 in favour of State Electricity Commission of Victoria for 1,500,000 ^{1/40} ₄₀
 to expire 15/5/1973 ~~with~~ matching Letter of Credit from the First National Bank of Boston No. S-11011.

\$2,000,000

The firm has requested today that we establish a further letter of credit in favour of the State Electricity Commission of Victoria for an amount of \$1,500,000 for a term of four years, commencing Friday 15th next as security for loan to be made by the Commission which will be on-lent by Patrick & Company to a company in Australia.

Security for this liability will be, as before, a matching letter of credit from the First National Bank of Boston.

Our fee to be at the rate of 1/6th% per annum - equal to \$2,500 per annum plus 15 cents % for any negotiations under the credit.

AS TO: Agreeing to the above request.

*Deans
confirmed
15/8/69*

PATRICK-INTERMARINE ACCEPTANCES LIMITED

● Castlereagh & Hunter Streets Branch

- 50% owned by Patrick Corporation Limited and

*50% owned by Patrick-Intermarine (Australia) Limited

*Shareholders - Patrick Corporation Limited	50%
Algoma Pty.Ltd.	10%
Marine Midland Bank (U.S.A.)	20%
The Tokai Bank Limited (Japan)	10%
Banque de L'Union Europeenne (France)	10%

Head Office - 5 Gresham Street, SYDNEY.

Established in 1971

*Recommendation by
Auditing Committee
14/8/73
Approved by Board
17/8/73*

EXISTING FACILITIES
 Bill Endorsement Limit
 \$1,000,000 for bills of exchange
 presented to the Bank, accepted
 or endorsed by Patrick-
 Intermarine Acceptances Limited.
 Maximum usance to be 180 days
 and one roll-over to be
 permitted at the Bank's
 discretion (i.e. maximum term
 12 months)

PROPOSED FACILITIES
 Bill Endorsement Limit \$1,000,000
 for bills of exchange presented
 to the Bank, accepted or endorsed
 by Patrick-Intermarine Acceptances
 Limited. Maximum usance to be 180
 days and one roll-over to be
 permitted at the Bank's discretion
 (i.e. maximum term 12 months).
 That the Bank issue a local
 documentary letter of credit in
 favour of the State Electricity
 Commission of Victoria for
 \$1,500,000 for a period of 2 years

- V -

Unlimited J&S Guarantee of
Patrick Corporation Limited
& Patrick-Intermarine (Aust)
Limited

PLUS

Where appropriate, letter of
lodgement from applicant
company over security taken
by Patrick-Intermarine
Acceptances Limited from its
clients. The Bank to have
the right to accept or reject
any Bill submitted for
endorsement.

Unlimited J&S Guarantee of Patrick
Corporation Limited & Patrick -
Intermarine (Aust.) Limited

PLUS

Where appropriate, letter of
lodgement from applicant company
over security taken by Patrick-
Intermarine Acceptances Limited
from its clients. The Bank to
have the right to accept or reject
any Bill submitted for endorsement.

Matching irrevocable Letter of
Credit for \$1,500,000 in favour
of Patrick-Intermarine Acceptances
Limited for a period of 2 years
issued by the First National Bank
of Boston, Boston. U.S.A.

14th August, 1973

The Manager,
Exchange Control,
Reserve Bank of Australia,
Martin Place,
SYDNEY. N.S.W. 2000

Dear Sir,

We refer to our telephone conversation of today with your Mr. King in which the writer explained that a loan of \$1,500,000 from the State Electricity Commission of Victoria to First Leasing of Australia Limited and arranged during August 1969, for four years fixed by our customers of Patrick & Co. is maturing on August 15, 1973, and the parties involved now wish to roll-over the facility for further two years to mature on 14th August, 1975.

The proposed facility will be similar to the one previously entered into i.e. The First National Bank of Boston will establish an irrevocable letter of credit for \$1,500,000 through this Bank in favour of Patrick-Intermarine Acceptance Limited (company now ~~handling~~ ^{conducting} all money market activities for the Patrick Group of companies). The ultimate borrower in Australia is First Leasing Australia Limited, Melbourne.

This Bank in turn will issue a matching local irrevocable letter of credit in favour of the State Electricity Commission of Victoria for \$1,500,000.

We regret we have been unable to locate that part of our Sydney Office file pertaining to your Bank's interest in the facility entered into in 1969. However we enclose copies of the overseas and local irrevocable letters of credit covering that transaction to assist you with your deliberations.

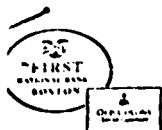
We would be grateful if you would let us have your decision in this matter by telephone before noon tomorrow.

Thanking you,

Yours faithfully,



D.L. Webb
Sub Manager
Corporate Services.



INTEROFFICE COMMUNICATION

February 3, 1971

To: Mr. Warren J. Olmsted, Executive Vice President
Mr. George C. Ricker, Senior Vice President

Subject: FLA Report

The purpose of this report is to assist you in informing the BOFC Board of Directors about seven important areas in FNBB's relationship with First Leasing Australia.

1. Present FLA funding

(A) In borrowing short and lending long FLA incurs a risk of not being able to roll over short term borrowings, but the writers believe that, barring an extraordinary liquidity crisis, FLA is adequately prepared to meet any rollover crises. The following schedule shows that the amount to be refinanced over any two month period is never greater than \$2.4 million and FLA has taken the precaution of purchasing standby loan facilities totaling \$2.4 million from reputable Australian lenders.

USES: Funds employed in Leasing Operations A\$11.3MM
Funds put out in short term loans (30% at call) 1.5MM
A\$12.8MM

SOURCES: Funds not to be called (i) A\$ 5.6MM
(Verbal agreement only)

Funds to be refinanced (ii) 7.2
A\$12.8MM

(i) Patrick --- A\$ 3.0MM	(ii) FEB	600	JULY	1400
Mt. Isa --- 1.0	MAR	600	AUG	-----
Darling --- .8	APR	1000	SEPT	290
FLA/FNBB/BOFC --- .6	MAY	----	OCT	200
Sundry --- .2	JUN	1000	NOV	-----
A\$ 5.6MM			DEC	1000

U Copy of Inter office communication
prepared in First National Bank of
Boston

3.2.71

Lease receivables/residuals will be coming in at \$350,000 per month. It is expected that this will be used to write new business but, together with A\$500,000 in FLA call loans out, can be considered additional protection.

(E) The danger of a cost-price profitability squeeze is real but not imminent. To avoid the squeeze a concerted effort is now being made to write leases at a flexible rate (to date less than 5% of outstandings are on a flexible rate basis). Also, FLA continues to look for long term money and both FLA and FNBB are maintaining maximum close contact with the money market.

(C) The high leverage factor leaves minimal cushion for bad debts, and cost price squeezes, but in real terms the low capitalization does not affect FLA's operations today except for lack of window dressing. Capital must be increased before FLA can borrow in a conventional manner in Australia. More on this in #2. Nevertheless, in the meantime, FLA is protected by the good asset value of its leases and like Banker's Leasing, FLA is looking to the net worth of its lessees.

2. Future Funding

FLA has five methods to improve its funding situation and to reduce its dependence on FNBB guaranties, direct loans and standby lines of credit. We anticipate that all five methods will be used concurrently. Initial reaction has been favorable, both in Australia and the U. S. A. In Australia, there are at least three sizeable entities that are enthusiastic about Numbers 1-3 and in the USA five banks have expressed considerable interest in Numbers 3 and 4.

1. FLA sells outright a percentage of a lease asset. In this case, the buyer receives cash flow from leasing and pays tax on total income less depreciation. There is no recourse to FLA or FNBB. A principal and agent agreements, similar to that already tried and proven by RILF and its underwriters, will be used.

The next four funding methods will be achieved under the auspices of the FNBB-FLA \$15,000,000 credit line agreement. Please note that Exhibits 2 and 3 contain this document and FLA's informal non-legal summary of the documents.

2. A lender lends to FLA using FNBB as an intermediary and takes a percentage share in FNBB debenture. There is no recourse to FNBB except that of a fiduciary responsibility to insure that proper and normal control is maintained over FLA assets.
3. A lender may lend funds directly to FLA against the specific asset backing of leases which, at FNBB's discretion, have been assigned to the lender from the FNBB debenture. In this case, there would be a substitution of assets in the FNBB asset pool. That is, lease assets are replaced by cash and at a later date this cash is used to buy new lease assets for a lessee of similar caliber to that which was released from the debenture.

-3-

4. U.S. and foreign banks may share in FNBB standby letters of credit using a pari passu percentage of FNBB/FLA debenture as collateral or if necessary, specific asset assignment.
5. FLA continues to try to change its borrowings backed by FNBB L/C from short to long term maturities.

The question of capitalization continues to be thorny. We are almost certain that the Reinhr and Wheelton interests will never be able to come up with significant blocks of increased capital. However, it is our hope that we may establish a decent track record for FLA in terms of experience, profitability, dividends, and adequate reserves before we are forced to take the drastic step of inviting additional investors to take an equity position in the company. We would hope that by December, 1973, we can be prepared to have an offering of a debt-equity package to the public at a substantial premium. Nevertheless, we are resigned to the fact that if the desired and expected track record does not materialize by the end of 1973, we must be ready to alter our long range capitalization plans. This may mean inviting a selective group of private investors to take equity positions in FLA and therefore diluting the FNBB and/or Reinchr interests without a premium.

3. FNBB Credit Function

The Australian desk has the final approval on FLA credit decisions and the more difficult credit questions are reviewed by GCR. Detailed credit policy statements have been issued to FLA and individual files on all lessees are maintained in Boston. To date FLA has not incurred any bad debts, although a reserve has been set up. (The portfolio is currently being reviewed by SMB of the international credit committee under the auspices of GCR as a matter of general policy.)

4. Concentration of Asset Risk

FLA has written large amounts of business with G. J. Coles (\$2.8MM) and K-Mart (\$2.1MM). This high concentration is intended to expedite large scale participation of these two excellent lessees. It is now a matter of policy that in the future FLA will not concentrate more than 20% of its outstanding leases with any new lessee.

5. FNBB Fees

- a. BOFC receives a dividend from FLA, (in 1970 this was only \$A9,288).
- b. Fees are received for our Letter of Credit exposure, aggregating 1.5% on our L/C exposure for funds used in leasing and .5% on the L/C exposure on funds not used in leasing.
- c. Interest on the FNBB loan of \$550,000 is calculated at 1% over prime and interest on the BOFC loan is at prime.

In excess of \$200,000 was remitted from FLA to FNBB in 1970.

-4-

6. Permewan Wright - 7 year lease

This is a unique deal which FLA entered into with Boston approval because it has a return in excess of 12%, good security and most importantly, an excellent chance of being underwritten by an insurance company. It is jointly understood that no similar transactions will be written until this deal has been underwritten successfully. It has been examined in depth by Steve Bavaria at the request of GCR.

7. Residual Risk to FLA

In all cases FLA lessees must guarantee the residual value of their leases. This requirement is defined in Paragraphs 6, 7, and 13 of the FLA Master Lease Agreement which will be found in Exhibit 6.

B. L. Moyer
International Officer

Edward C. Reybitz
International Division

D/3

MEMORANDUM

TO: Linda Juleff
 FROM: Nick Christian
 RE: Special Deal No. 3.

April 20, 1970.

Special Deal No. 3 runs from 15th August, 1969 to 15th November, 1970, and is then open to renegotiations for a further period of 2 years and 9 months.

The S. E. C. of Victoria has loaned \$1,500,000 to Patrick & Co. at 6.25% per annum against a Bank Letter of Credit.

Interest to the S. E. C. Victoria is payable quarterly on the 15th day of November, February, May and August and on repayment in November (if the loan is concluded).

Patrick & Company have lent this money on to First Leasing Australia Ltd. for the same period and with the same option to renew. The rate is 6.75% per annum and the security is a Bank Letter of Credit.

Interest is payable to us ~~on the same dates as above~~ p/s

The interest rates rise for each quarter that the loan continues and back interest is due for the period of the preceding loan at the higher rate -- see the file for rates.

PATRICK R. LEVY
M.R.L. DOWLING
N.R. COURSE
F.A. ROBERTSON
M.A. McGRATH
T.R. ALLEN

MEMBERS OF THE
SYDNEY STOCK EXCHANGE LIMITED

J.A. KEIR
R.A. NOSS
W.J. EDWARDS
J.S. CORNER
M. E. BAUME
B. W. CLEARY

REF.
TRA

PATRICK & COMPANY

MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

2 CASTLEREAGH STREET, SYDNEY, 2000

G.P.O. BOX 2850 SYDNEY, 2001. TELEX 20787

TELEPHONE 2 0319 (25 LINES)

TELEGRAMS & CABLES "ROSDALE"

SYDNEY, BRISBANE, CANBERRA, MELBOURNE, WOLLONGONG.

151 QUEEN STREET
MELBOURNE, 3000.
TELEPHONE
60-1141 (8 LINES)

370 QUEEN STREET,
BRISBANE, 4000.
TELEPHONE 21-5183

43 NORTHBOURNE AVENUE
CITY CANBERRA, 2601.
TELEPHONE CANB. 4-0385/86

181 KEIRA STREET,
WOLLONGONG, 2500
TELEPHONE WOLL. 2-9800.

7 AVENUE ERNESTINE
BRUSSELS 5, BELGIUM
TELEPHONE 40-8151/2

May 14, 1970.

The Manager,
Commercial Banking Co. of Sydney Ltd.,
343 George Street,
SYDNEY, N. S. W. 2000.

Attention: Mr. D. W. McClymont.

Dear Mr. McClymont:

I refer to a recent telephone conversation between yourself and Mr. Christian in which Bank Guarantees and Letters of Credit were discussed.

Patrick & Company have previously arranged a substantial volume of back-to-back Letter of Credit deals through the Commercial Banking Co. of Sydney whereby Patrick & Company have obtained an Irrevocable Letter of Credit from yourselves against the security of a third party's Irrevocable Letter of Credit in favour of Patrick & Company.


We are now interested in arranging transactions of a somewhat similar type in which Patrick & Company would obtain an Irrevocable Bank Guarantee from a borrower in favour of ourselves and would ask you to raise an Irrevocable Letter of Credit against the security of this Bank Guarantee. The Irrevocable Letter of Credit would give the lender of funds the right to draw against Patrick & Company in the event of default when repayment was due.

The probable period of the deals would be from 6 - 9 months and the amounts involved from half-a-million to one million dollars or more

.../2

We would be grateful if you would give consideration to this proposal. Please do not hesitate to contact the writer if you require any further information about this matter.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'T. R. Allen', written in black ink.

T. R. ALLEN.

285

22nd May, 1970.

Act.M.

Messrs. Patrick and Company,
G.P.O. Box 2850,
Sydney, New South Wales. 2001.

Attention Mr. T.R. Allen

Dear Mr. Allen,

In response to your letter of 14th May, we would advise that the matter outlined has been discussed at this Office.

We would prefer to consider the request against a suitable bank's back-to-back Letter of Credit, rather than negotiate on the basis of a Guarantee.

Whilst we would not anticipate any real difficulties, there are occasions when Guarantees can present problems, especially when the Guarantor is in another country.

Yours sincerely,

(D. V. McClyment).

Acting Manager.

Copy of letter from Plaintiff to
Patrick & Co.

22.5.70

LOCAL DOCUMENTARY CREDIT REQUISITION

Credit No. LD920
Office use only.

Form No. 4.

To: The Manager,
THE COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED
(Hereinafter called 'the Bank')

19.....

We hereby request you to open on our account by an irrevocable credit subject to
(Mail or telegraph)
Uniform Customs and Practice for Documentary Credits (1962 Revision), International Chamber of Commerce Brochure
No. 222 authorising State Electricity Commission of Victoria,
(Full name of beneficiary)
of 15 William St Melbourne
(Full address)
to draw on us for any sum or sums not exceeding in all A\$500,000
currency)

* F.O.B.,
C.I.F., etc.

available by their drafts at sight purporting to cover import of equipment
(Usance)
of a loan made to State E & Co a partner of St. Sydney
("Merchandise" or brief description of goods)

* Shipped,
railed, etc.

of origin to be on our account from
(Country) (City or town of despatch)
.....
(Destination)

The drafts must be presented for negotiation not later than 8th April 1970 and must be
accompanied by the following documents relating thereto: -

* Add other
documents
required.

Commercial Invoice
Statement of State Electricity Commission of Victoria, certifying that the draft amount
represents the unpaid financial amount of a loan made
by the Commission to State E & Co. & that payment has
been demanded & not received.

Additional instructions (if any): -

Negotiators under this credit are restricted to The Commercial Banking
Company of Sydney Ltd, Melbourne.
Drawings under this credit must not be made prior to 6th April, 1970.

In consideration of the Bank establishing this credit we hereby agree with the Bank as follows:-

A. Neither the Bank nor its agents shall be under any liability in respect of loss or damage arising or resulting:-

- (i) From any error, omission or delay in the transmission or delivery or decoding of any message (whether literal, in code or in cypher) by mail, telegraph or otherwise or in the interpretation of or compliance with any instruction or mandate howsoever such error, omission or delay shall have arisen or been caused.
- (ii) from any fault, error or mistake as to the quantity, quality, nature, value, consignment or delivery of the goods, or as to the amount of the shippers' rail or carriers' charges thereon or therefor or as to the validity, enforceability, efficacy, sufficiency, genuineness or accuracy of any draft, invoice, bill of lading, insurance policy or certificate or other documents, or any endorsement or negotiation of or title to any such document.

B. To accept on presentation and pay at maturity the drafts drawn under or in intended or purported compliance with the credit or this requisition together with:-

- (i) Bank interest for any period by which the date of payment by the Bank precedes the date of our payment to the Bank, and
- (ii) a commission of () % on the amount of the credit, and
- (iii) all usual Bank charges.

and so to do notwithstanding that for any reason whatsoever, any such draft or other documents herein mentioned shall not be genuine or shall be or become invalid or payment or recovery of any money thereunder or the performance of any contract thereby created or evidenced be or become delayed postponed or impossible. Further if we fail to accept any draft negotiated by the Bank or be excused from acceptance thereof on any ground whatsoever, we will pay to the Bank at the branch or office first above-mentioned on demand the amount paid by the Bank.

C. The Bank shall hold the above-mentioned documents and goods as a continuing security by way of pledge independent of and additional to any other security held by the Bank for payment of all moneys payable by us to the Bank including all commission banking and other charges expenses and interest and we will not do or omit or suffer to be done or omitted any act matter or thing which might prejudice the value or existence of the said security. We will pay to the Bank any money

FIRST LEASING AUSTRALIA LIMITEDBORROWING SCHEDULE AS AT AUGUST 10, 1972

<u>Lender</u>	<u>Amount</u> <u>(Aust. \$)</u>	<u>Maturity date</u>
Robert Hutchinson	200,000	24 hour call
Thiess Holdings	350,000	7 day call
First National Bank of Boston	1,430,254	August 25, 1972
Capel Court Securities (Bills accepted by Bank of New Zealand)	300,000	September 4, 1972
Carr Fastener	500,000	October 13, 1973
National Nominees	67,200	October 29, 1972
Myer Limited	500,000	October 31, 1972
State Government Insurance Office, Queensland	1,000,000	November 22, 1972
Hoover Australia Limited	500,000	November 24, 1972
Winegardner Pty. Limited	1,000,000	December 14, 1972
Carr Fastener	500,000	January 13, 1973
Abegg Holdings	500,000	January 31, 1973
Hill Samuel Australia	300,000	March 19, 1973
Australian International Finance Corporation	500,000	March 27, 1973
Patrick Partners	1,500,000	May 15, 1973
Darling & Co. Limited	300,000	August 10, 1973
Patrick Partners	1,500,000	August 15, 1973
Vine Nominees Pty. Limited	200,000	September 10, 1973
Westralian International	1,165,000	February 16, 1974
Tradax (Australia) Pty. Limited and/or Capel Court Corporation	1,000,000	April 5, 1974
Colonial Sugar Refining Co. and/or Wallace Bros. Finance (Australia)	500,000	May 31, 1974
First National Bank of Boston	95,000	
First National Bank of Boston	140,000	
First National Bank of Boston	112,000	

PATRICK-INTERMARINE ACCEPTANCES LIMITED

(INCORPORATED IN NEW SOUTH WALES)
128 Exhibition Street, Melbourne, Victoria, Australia, 3000

D35³

TELEPHONE
63 8036

SYDNEY BRISBANE PERTH

CORRESPONDENCE:
G.P.O. Box 21177
Melbourne. Vic. 3001

16th August 1973

The Secretary,
First Leasing Australia Limited,
379 Collins Street,
MELBOURNE 3000

Attention: Mr. R.T. Whitham

Dear Sir,

We confirm a loan negotiated with you today as follows:-

Amount: \$1,500,000.00
Rate: 8.7% p.a.
Term: Fixed to 14th August, 1975.

As security for this loan, we acknowledge having received an Irrevocable Letter of Credit No. S-11085, from the First National Bank of Boston, Boston, U.S.A., with Patrick-Intermarine Acceptances Limited named as beneficiary.

Interest on this loan is payable quarterly on the 15th day of November, February, May and August until repayment.

If you are in agreement with the terms and conditions, as detailed above, please sign the attached duplicate copy of this letter and return to us.

Yours faithfully,
FOR PATRICK-INTERMARINE ACCEPTANCES LIMITED

David G. Nicoll
David G. Nicoll
Money Market Manager

We are in agreement with the terms and conditions, as detailed above.

..... *[Signature]*
For an on behalf of
First Leasing Australia Ltd.

3. Copy of letter from First Defendant
to Second Defendant

16.8.73

SCB:vmf

28th September, 1973

Patrick-Intermarine Acceptances Limited,
 G.P.O. Box 2117T,
MELBOURNE Vic., 3000

Dear Sir,

We have pleasure enclosing our interest cheque for the
 quarter ended 30th September, 1973 calculated as follows:-

<u>Principal</u>	<u>Rate</u>	<u>From</u>	<u>To</u>	<u>Interest</u>
\$1,500,000.00	8.7%	16/8	30/9	16446.57

Yours Sincerely,

Shirley G. Brideoak.
Accountant.

Copy of letter from Second Defendant
 to First Defendant

28.9.73

CHQ 2641

RCW/as

28th December, 1973

Patrick-Intermarine Acceptances Ltd.,
 G.P.O. Box 2117T,
MELBOURNE 3001

Dear Sir,

We have pleasure in enclosing our cheque for \$32,893.15 representing interest for the quarter ending 31st December, calculated as follows:

<u>Principal</u>	<u>Rate</u>	<u>Period</u>	<u>Amount</u>
\$1,500,000.00	8.7%	1/10 to 31/12	\$32,893.15

May we take this opportunity to wish you the compliments of the season and to thank you for your continued support of our organisation.

Yours Faithfully,


Robert.C.Wettenhall
 Chief Accountant

Copy of letter from Second Defendant
 to First Defendant

28.12.73

3 ✓
~~82~~
86**PATRICK-INTERMARINE ACCEPTANCES LIMITED**

Patrick House, 5 Gresham Street, Sydney

PHONE:
Dist Office 241-3686
Accounts 241-3162
Reading DeskMELBOURNE BRISBANE
PERTHCORRESPONDENCE:
P.O. Box R146, Royal Exchange,
Sydney, N.S.W. 2000.
Telegrams: "Patac" Sydney.
Telex: 25588The Secretary,
First Leasing Australia Limited,
379 Collins Street,
MELBOURNE VIC 3000

18th July, 1974.

Dear Sir,

Deposits with Patrick-Intermarine Acceptances Limited

For audit purposes, our auditors, Messrs. Coopers & Lybrand, Chartered Accountants of 6 O'Connell Street, Sydney, would like you to confirm directly to them the following details as at 30th June, 1974:-

- | | | |
|----|-------------------|-------------------------------|
| 1. | Deposit balance: | \$1,500,000.00 |
| 2. | Term of Deposit: | Fixed to 14.8.75 @ 8.70% P.A. |
| 3. | Interest paid to: | Not Applicable |
| 4. | Securities held: | Letter of Credit |

We would be grateful for your confirmation on the attached duplicate of this letter as early as possible. A self addressed envelope is enclosed for your convenience.

Yours faithfully,
PATRICK-INTERMARINE ACCEPTANCES LIMITED

The above details are hereby confirmed as correct.

Signed  Date July 19, 1974Position held Chief Accountant.

(Being an authorised signatory)

Please DO NOT detach from above letter.Copy of letter from First Defendant
to Second Defendant

18.7.74

CORPORATE SERVICES

1st August, 1973.

FIRST LEASING AUSTRALIA LIMITEDInterview this office today -

Present - R. T. Whitham - Administration & Funding
Director

L. D. H. Kerans }
D. L. Webb } Bank.

and Mr A. F. Thompson was present briefly during
the interview.

Mr Whitham, through an introduction previously made with Mr Searle, Melbourne Office, called to see whether the bank would be interested in the following proposal.

First Leasing Australia Limited has been offered \$5 million for three years by the State Electricity Commission of Victoria at a rate to be determined but Mr Whitham envisages something around 7% per annum. S.E.C. require a bank letter of credit. The company is interested in bidding for \$3 million only.

Although the market is aware of the availability of these funds, Mr Whitham believes that SEC would like First Leasing to secure the business because of two similar transactions arranged several years ago and of the smooth settlement at the time.

The previous transactions were arranged through this bank (Sydney Office) with Patrick & Company the intermediary; SEC the lender and First Leasing the borrower. The bank's charge was .6% per annum on a letter of credit basis matched by the First National Bank of Boston.

On this occasion it is not proposed by First Leasing to bring Patricks into negotiations, however, should the offer be successful, First Leasing are prepared to pay brokerage because Patricks were responsible in putting together the previous deals and effecting the initial introductions.

We were told confidentially that First National Bank of Boston is charging 1.5% per annum and First Leasing is looking for a fee from us of .25% per annum.

We said we viewed the proposal favourably and on receipt of balance sheet information would follow the matter up with our Lending Committee. A degree of urgency naturally does exist.

Other points raised at the meeting were :-

- (1) First Leasing Australia Limited - not listed
50% owned First National Bank of Boston
50% Reinehr Family Melbourne.
- (2) First National Bank of Boston to set up a funding company for the leasing company. First Leasing currently has a \$18 m.A. letter of credit limit with First National Bank of Boston with usage \$A13 million.

.. /2

- 2 -

- (3) Reserve Bank advise that the letter of credit facility is not subject to the two-year embargo or the 25% deposit requirement.
- (4) The Australian Federal Government has placed a three months injunction order on the establishment of the funding company, hopeful of setting up before end of this year.
- (5) Operations of First Leasing & Reinehr Industrial Lease & Finance Pty Ltd could amalgamate under new name of "Reinehr Leasing Ltd". *First Leasing wholly owned by Reinehr's Industrial Lease & Finance Pty. Co. Company*
- (6) Reinehr Industrial Lease operating 14/15 years & First Leasing around 6 years.
- (7) Current annual sales of the group is \$15 million and is anticipated sales in five years will be \$90 million.
- (8) Group's bankers have recently been realigned and through an old Reinehr family banking connection at our Melbourne Office the CBC will be bankers in N.S.W. and Victoria. We understand certain arrangements have already been introduced both at our Sydney and Melbourne Offices to augment the new proposals. The National Bank, because of a close relationship with the First National Bank of Boston, will be the group's bankers in Queensland.

Lm.

1st August, 1973 Connection
Customer 15 years

Interest Rate *5% 7/1A 92(a)*
Fee .25% p.a. %
%
%

RANCH CORPORATE SERVICES

NAME
ACTIVITY
DIRECTORS
PRESENT POSITION

FIRST LEASING AUSTRALIA LIMITED
50% owned by First National Bank of Boston & 50% owned by Reinehr Family (Melbourne)
Leasing.
F.I. Reinehr, J. H. Lewis, L.P. Smart, W. Olmsted (1st NB) M. Wolfe (1st N.B.) G. Pheylan (1st N.B.)
Contingent liability of \$1,500,000 outstanding under our letter of credit No. LD973 in favour of the State Electricity Commission of Victoria to expire 15/8/73 backed by a matching letter of credit issued by First National Bank of Boston.
● Sydney Office
Reinehr Industrial Lease & Finance Pty Ltd - in the process of being opened
● St. Kilda Road Branch (transfer from CBA)
4 A/cs Dr \$32,059 *Total Bank Liabilities \$
Total Credit Balances \$ 65,294 (9 accounts)

Total Bank Liabilities to include O/D Debt or limit whichever is the greater, T.I. and/or F.D.L., Bill Limit, Total Contingent Liabilities including lease finance.)

PROPOSED

Total Limits \$ Term Loan \$
reducing by \$ p.a. repayable \$ p.a.
That we issue a Local Documentary Letter of Credit in favour of the State Electricity Commission of Victoria for \$3,000,000 for a period of three years.
Contingent Liabilities ~~\$1,500,000~~ ^{\$3,000,000} *Total Bank Liabilities \$

SECURITY
(Summary only)

Irrevocable Letter of Credit in our favour for \$3,000,000 for three years issued by the First National Bank of Boston, Boston, U.S.A.

PURPOSE

General funding of the company.
First Leasing borrows both on a secured and unsecured basis and currently has a \$A18 million Letter of Credit line with the First National Bank of Boston of which \$A13 million has been utilised.

COMMENTS
(to include reference to associated business)

The company wishes to bid for \$3 million three year money which the State Electricity Commission of Victoria has available. SEC require security by way of an Australian bank letter of credit. The availability of the funds is known in the money market sphere; however, we are informed that SEC would like First Leasing to secure the business because of similar transactions arranged four years ago. On that occasion the deals were put together by Patrick Corporation through this bank on a back-to-back letter of credit basis as now proposed. Patrick Corporation will not be brought into this arrangement although First Leasing is prepared to pay them brokerage as the company was instrumental in arranging the initial introduction. The Reserve Bank has advised the company that the letter of credit facility would not be subject to the two-year embargo or the 25% deposit requirement. First Leasing is looking for a bank letter of credit charge of not greater than .25% per annum on the full line.

DRAWBACKS
(to include reference to hard cases)

We are informed that profitability for this year for First Leasing is approximately the same as 1972 (\$148,000) and the assets/liabilities position is virtually in line with the previous year. 1973 audited accounts will be available by 31st August, 1973.

BENEFITS
(new accounts to be obtained & reference to credit funds & overseas exchange content)

Income at .25% per annum - \$7,500,000

RECOMMENDATION

Recommended.

PATRICK R. LEVY
 RICHARD H. ALLEN
 M. R. L. DOWLING
 M. R. COURSE
 F. A. ROBERTSON
 M. A. MCGRATH
 T. R. ALLEN
 MEMBERS OF THE
 ONEY STOCK EXCHANGE LIMITED

J. A. KEIR
 R. A. NOSS
 W. J. EDWARDS
 J. S. CORNER

REF
 TRA

PATRICK & COMPANY

MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

2 CASTLEREAGH STREET, SYDNEY, 2000

G. P. O. BOX 2880, SYDNEY, 2001. TELEX 20787

TELEPHONE 2-0318 (25 LINES)

151 QUEEN STREET
 MELBOURNE, 3000
 TELEPHONE
 60 1141 (9 LINES)

43 NORTHBOURNE AVENUE
 CITY CANBERRA, 2601
 TELEPHONE CANB. 4-0388/88

181 KEIRA STREET
 WOLLONGONG, 2500
 TELEPHONE WOLL. 2-8900

TELEGRAMS & CABLES
 "ROSDALE"
 SYDNEY, MELBOURNE
 CANBERRA, WOLLONGONG

12th May, 1969.

The Secretary,
 First Leasing Australia Limited,
 Suite 2,
 73 - 79 Riverside Avenue,
SOUTH MELBOURNE 3205

Dear Sir,

Attention - Mr. F.I. Reinehr

We confirm below details of deposits totalling \$3,000,000 from this firm as arranged by telephone last week.

The sum of \$1,500,000 will be placed on deposit with you by this firm on the 15th May, 1969 and an additional \$1,500,000 to be deposited on the 15th September, 1969 under the following terms and conditions.

Security is to be by way of an Irrevocable Letter of Credit from the First National Bank of Boston in favour of this firm covering the principal sums only. No withdrawal of funds to be made before funds have been in your hands for a period of 15 months and thereafter no sum in excess of \$1,500,000 to be withdrawn at any one time. (It is understood that calls of \$1,500,000 may be made in successive months.)

SA. Interest is to be paid on an ascending scale with each quarterly payment of interest being made at the rate applicable to that quarter as set out below plus the additional interest due for past periods due to the ~~amp~~ up in interest rate.

...

6. Letter from Patrick & Co. to Second Defendant.

12.5.69

-2-

**Interest Rate if
Deposit Remains**

12 months	6.75%	15/27/70
15 months	6.85%	15/8
18 months	6.90%	15/11
21 months	6.95%	15/22/71
24 months	7.00%	15/5/71
27 months	7.10%	15/16/71
30 months	7.20%	15/4/71
33 months	7.30%	15/24/72
36 months	7.40%	15/5/72
39 months	7.45%	15/8/72
42 months	7.50%	15/11/72
45 months	7.55%	15/2/72
48 months	7.625%	15/5/72

Should the above agree with your understanding of the arrangements negotiated by telephone, we would appreciate your confirmation at your convenience.

Yours faithfully,
PATRICK & COMPANY



T. R. Allen

PATRICK R. LEVY
RICHARD H. ALLEN
M. R. L. DOWLING
N. R. COURSE
F. A. ROBERTSON
M. A. MCGRATH
T. R. ALLEN
MEMBERS OF THE
SYDNEY STOCK EXCHANGE LIMITED

J. A. KEIR,
R. A. NOSS
W. J. EDWARDS
J. S. CORNER

REF
TRA/pd

PATRICK & COMPANY

MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

2 CASTLEREAGH STREET, SYDNEY, 2000

G. P. O. BOX 2880, SYDNEY, 2001. TELEX 20787

TELEPHONE 2-0318 (25 LINES)

TELEGRAMS & CABLES "ROSDALE"

SYDNEY, MELBOURNE, CANBERRA, WOLLONGONG

6

151 QUEEN STREET
MELBOURNE, 3000
TELEPHONE
60-1141 (19 LINES)

43 NORTHBOURNE AVENUE
CITY CANBERRA, 2601
TELEPHONE CANB. 4-0365/66

181 KEIRA STREET
WOLLONGONG, 2500
TELEPHONE WOLL. 2-5900

7 AVENUE ERNESTINE
BRUSSELS 5, BELGIUM
TELEPHONE 49-8151/2

23rd May, 1969.

The Secretary,
First Leasing Australia Limited,
Suite 2,
73 - 79 Riverside Avenue,
SOUTH MELBOURNE, 3205

Dear Sir,

Attention: Mr. F.I. Reinehr

Further to our letter of 16th May, 1969 with regard to a deposit of \$1.5 million, I would like to confirm that any call made on this deposit under the terms and conditions laid out in our letters of 12th May and 16th May, 1969 is subject to notice of sixty days prior to the date of repayment.

Yours faithfully,
PATRICK & COMPANY



T.R. Allen

Letter from Patrick & Co. to Second Defendant

23.5.69

4 6 2

PATRICK R. LEVY
RICHARD H. ALLEN
M. R. L. DOWLING
N. R. COURSE
F. A. ROBERTSON
M. A. MCGRATH
T. R. ALLEN
MEMBERS OF THE
SYDNEY STOCK EXCHANGE LIMITED

PATRICK & COMPANY.
MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

2 CASTLEREAGH STREET, SYDNEY, 2000

G. P. O. BOX 2850, SYDNEY, 2001. TELEX 20787

TELEPHONE 2-0319 (25 LINES)

TELEGRAMS & CABLES "ROSDALE"

SYDNEY MELBOURNE, CANBERRA, WOLLONGONG

151 QUEEN STREET
MELBOURNE 3000
TELEPHONE
60-1141 (19 LINES)

43 NORTHBOURNE AVENUE
CITY CANBERRA, 2601
TELEPHONE CANB. 4-0385/86

181 KEIRA STREET
WOLLONGONG, 2500
TELEPHONE WOLL. 2-5900

7 AVENUE ERNESTINE
BRUSSELS 5, BELGIUM
TELEPHONE: 48-8151/2

J. A. KEIR
R. A. NOSS
W. J. EDWARDS
J. S. CORNER

REP
TRA

16th May, 1969.

The Secretary,
First Leasing Australia Limited,
Suite 2,
73 - 79 Riverside Avenue,
SOUTH MELBOURNE 3205

Dear Sir,

Attention - Mr. F.I. Reinehr

Further to our letter of the 12th May, we would like to confirm a loan to you today of \$1,500,000 and receipt of security in the form of an Irrevocable Letter of Credit No. S11011 dated 13th May, 1969 from The First National Bank of Boston, Boston.

The terms and conditions of this loan are as stated in our letter of the 12th May, 1969 with the following exceptions:

1. Quarterly dates of withdrawal are to deemed to have begun from the 15th May, 1969 although interest of course will accrue only from today's date.
2. It is agreed that no withdrawal of funds be made before the 15th August, 1970.

Further to the above loan, we confirm that we have today accepted on same-day call deposit the sum of \$1,500,000 to accrue interest at the rate of 5% per annum from today's date.

Yours faithfully,
PATRICK & COMPANY


T. R. Allen

Letter from Patrick & Co. to Second Defendant

16.5.69

TRA

16th May, 1969.

The Secretary,
First Leasing Australia Limited,
Suite 2,
73 - 79 Riverside Avenue,
SOUTH MELBOURNE 3205

Dear Sir,

Attention - Mr. F.I. Reinehr

Further to our letter of today's date, we would like to confirm arrangements whereby this firm reserves the right to withdraw the deposit of \$1,500,00 made today on 24 hour's notice any time between the 15th November, 1969 and the 15th August, 1970.

However, should this occur, the interest rate due and payable by First Leasing will be at the rate of 3% per annum for the term of the deposit.

Yours faithfully,
PATRICK & COMPANY

T.R. Allen

Copy of letter from Patrick & Co. to
Second Defendant

16.5.69

20.

PATRICK R. LEVY
M. R. L. DOWLING
N. R. COURSE
F. A. ROBERTSON
M. A. McGRATH
T. R. ALLEN
 MEMBERS OF THE
 SYDNEY STOCK EXCHANGE LIMITED

PATRICK & COMPANY
 MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

151 QUEEN STREET
 MELBOURNE. 3000
 TELEPHONE
 60-1141 (9 LINES)

43 NORTHBOURNE AVENUE
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 TELEPHONE CANB. 4-0365/66

181 KEIRA STREET
 WOLLONGONG. 2500
 TELEPHONE WOLL 2-5900

7 AVENUE ERNESTINE
 BRUSSELS 5. BELGIUM
 TELEPHONE: 49-8151/2

2 CASTLEREAGH STREET, SYDNEY. 2000

G. P. O. BOX 2850, SYDNEY, 2001. TELEX 20757

TELEPHONE 2-0319 (25 LINES)

TELEGRAMS & CABLES "ROSDALE"

SYDNEY, MELBOURNE, CANBERRA, WOLLONGONG

J. A. KEIR
 R. A. NOSS
 W. J. EDWARDS
 J. S. CORNER

REF
TRA

15th August, 1969.

The Secretary,
 First Leasing Australia Limited,
 379 Collins Street,
MELBOURNE 3000

Dear Sir,

Attention - Mr. F.I. Reinehr

We would like to confirm a loan to you today of \$1,500,000 and receipt of security in the form of an Irrevocable Letter of Credit No. S-11085 from the First National Bank of Boston, Boston. The terms and conditions of the above loan are as follows.

Withdrawal of funds may be made at three monthly intervals dating from today's date subject to sixty day's notice being given and also subject to the first withdrawal not being made prior to the 15th November, 1970.

Notwithstanding the above, this firm reserves the right to withdraw this deposit any time between the 15th February, 1970 and the 15th November, 1970 on 24 hour's notice subject to accepting an interest rate of 3% per annum for the term of the deposit. Interest is to be paid on an ascending scale with each quarterly payment of interest being made at the rate applicable to that quarter as set out below plus the additional interest due for past periods due to the step up in interest rates.

Interest Rate If
 Deposit Remains

12 months	6.75%	12/8/70
15 months	6.85%	11/70
18 months	6.90%	2/71
21 months	6.95%	5/71
24 months	7.00%	8/71
27 months	7.10%	11/71
30 months	7.20%	2/72

Copy of letter from Patrick & Co. to
 Second Defendant

15.8.69

-2-



33 months	7.30%	5/72
36 months	7.40%	8/72
39 months	7.45%	11/72
42 months	7.50%	2/73
45 months	7.55%	5/73
48 months	7.625%	8/73

Should the above agree with your understanding of the arrangements regarding this loan, we would appreciate your confirmation at your convenience.

It is further agreed by this firm that any withdrawal of funds be restricted to the sum of \$1,500,000 in any quarter, this deposit being part of a total of \$3,000,000 under these arrangements.

Yours faithfully,
PATRICK & COMPANY



T. R. Allen

C14

FIRST LEASING AUSTRALIA LIMITED**Head Office: Legal & General House, 379 Collins St., Melbourne 3000. Phone 613871****Telegraphic Address: Reinehr Melbourne.****Interstate Offices — Adelaide, Brisbane, Sydney**

FIR/ej

22nd May, 1969.

Patrick & Company,
2 Castlereagh Street,
Sydney, 2000.
G.P.O. Box 2850,
SIDNEY. 2001.

Dear Sir,

For the attention of Mr. T.R. Allen

Reference your letter of 12th May, in connection with the deposit of \$1,500,000 taken down by us from Friday, 16th May.

We agree with the terms of your letter but notice you fail to mention that withdrawal at the quarterly rest is subject to 60 days notice, as discussed in our 'phone conversations. Would you please forward a letter to us confirming the 60 days notification.

All other aspects in your abovementioned letter are agreeable and acceptable to us.

CORRESPONDENCE			
REC'D.	26 MAY 1969		
WORLD	PRL	RHA	FAR
MEM	JAK	TRA	RAN
NEWS	RESEARCH	SCRIP	ACCTB.

Yours faithfully,



F.I. Reinehr
Director

7. Letter from Second Defendant to
Patrick & Co.

22.5.69

See also file n
S.D. - No 3

c4

TRA

12th May, 1969.

The Secretary,
State Electricity Commission of Victoria,
15 William Street,
MELBOURNE 3000

Dear Sir,

Attention - Mr. N.W. Shears

We would like to confirm arrangements made last week with regard to loans totalling \$3,000,000 with this firm.

The sum of \$1,500,000 is to be lodged with Patrick & Company on the 15th May, 1969 and an additional \$1,500,000 is to be lodged on the 15th September, 1969 under the following terms and conditions.

Security is to be by way of an Irrevocable Letter of Credit from the Commercial Banking Co. of Sydney Limited in favour of the State Electricity Commission for the principal amounts of these loans and it is agreed that no funds are to be called until they have been lodged with the firm for a minimum of 15 months. Notice of any call is to be on the basis of 60 days prior to the date of repayment; such date to be at intervals of three months from the date of deposit of the funds or the first working day thereafter. It is agreed that the State Electricity Commission restrict their calling to \$1,500,000 at any one time. However, it is understood that the entire sum may be called in two successive quarters.

Interest is to be paid on an ascending scale with each quarterly payment of interest being made at the rate applicable to that quarter as set out below plus the additional interest due for past periods due to the step up in increased rate.

with

...

8. Copy of letter from Patrick & Co. to
Fourth Defendant

12.5.69

-2-

C4

Interest rate
if Deposit Remains

12 months	6.25%
15 months	6.25%
18 months	6.30%
21 months	6.35%
24 months	6.40%
27 months	6.45%
30 months	6.55%
33 months	6.60%
36 months	6.70%
39 months	6.75%
42 months	6.80%
45 months	6.85%
48 months	6.90%

Should the above agree with your understanding of the arrangements negotiated by telephone, we would appreciate your confirmation at your convenience.

Yours faithfully,
PATRICK & COMPANY

T. R. Allen

C9

TRA

16th May, 1969.

The Secretary,
State Electricity Commission of Victoria,
15 William Street,
MELBOURNE 3000

Dear Sir,

Attention - Mr. N.W. Shears

Further to our letter of the 12th May, 1969, we would like to confirm that we have today received the sum of \$1,500,000 to be lodged on deposit with this firm under the terms and conditions expressed in our previous letter.

We also advise having forwarded an Irrevocable Letter of Credit issued by the Commercial Banking Co. of Sydney Limited in favour of yourselves.

This deposit is subject to the following amendments to the terms in our letter of the 12th May.

1. The first call of funds and subsequent quarterly rests are deemed to date from the 15th May, 1969 although funds were not actually lodged until today's date.
2. However, the S.E.C. reserves the right to call these funds on 24 hour's notice any time between the 15th November, 1969 and 15th August, 1970, on the understanding that the rate of interest payable by Patrick & Company is to be reduced to 3% for the term of the deposit.

Yours faithfully,
PATRICK & COMPANY

T. R. Allen

Copy of letter from Patrick & Co. to
Fourth Defendant

16.5.69

CB

TRA/sbc

Attention: Mr. N.W. Shears

19th May, 1969.

The Secretary,
State Electricity Commission of Victoria,
15 William Street,
MELBOURNE. VIC. 3000.

Dear Sir,

Further to our letter of May 16th, we would like to confirm an alteration of call deposit arrangements applying to the loan of \$1.5 million made on the 16th May, 1969, to this firm. These new arrangements are to replace the terms in the last paragraph of our letter of that date.

"However, Patrick & Company reserves the right to repay these funds to the State Electricity Commission of Victoria on 24 hours notice any time after the 16th May, 1969, to the date on which they are called by the State Electricity Commission on the understanding that the rate of interest payable by Patrick & Company in the event of such repayment is to be at the rate of 8% per annum for the total term of the deposit".

Yours faithfully,
PATRICK & COMPANY

T.R. Allen

Copy of letter from Patrick & Co. to
Fourth Defendant

19.5.69

D12

TRA

15th August, 1969. 

The Secretary,
 State Electricity Commission of Victoria,
 15 William Street,
MELBOURNE 3000

Dear Sir,

Attention - Mr. N.W. Shears

Further to your letter of the 26th May and our letters of the 12th, 16th and 19th May, we would like to confirm receipt today of a loan from you of \$1,500,000 against which we advise having lodged with you as security an Irrevocable Letter of Credit from the Commercial Banking Company of Sydney Limited in favour of yourselves for the principal amount of this loan.

We agree the terms and conditions of the above loan to be as follows:

Withdrawal of funds may be made at three monthly intervals from today's date subject to 60 day's notice being given and also subject to the first withdrawal not being made prior to the 15th November, 1970. Notwithstanding the above, this firm reserves the right to repay these funds to the State Electricity Commission of Victoria on 24 hour's notice any time between 15th August, 1970 and 15th November, 1970 on the understanding that the rate of interest payable by this firm in the event of such prior repayment is to be at the rate of 8% per annum for the term of the deposit.

Interest is to be paid on an ascending scale with each quarterly payment of interest being made at the rate applicable to that quarter as set out below plus the additional interest due for past periods due to the step up in interest rates.

Copy of letter from Patrick & Co. to
 Fourth Defendant

15.8.69

-2-

D/2

<u>Duration of Deposit Months</u>	<u>Interest Rate Payable</u>
12	6.25%
15	6.25%
18	6.30%
21	6.35%
24	6.40%
27	6.45%
30	6.55%
33	6.60%
36	6.70%
39	6.75%
42	6.80%
45	6.85%
48	6.90%

It is further understood that any call made by the Commission shall be restricted to the sum of \$1,500,000 in any one quarter under the agreement in your letter of the 26th May, 1969 which takes note of a total of \$3,000,000 deposit with the firm in this manner.

Yours faithfully,
PATRICK & COMPANY

T. R. Allen

Telephone No.
615-1433
Telex 3 1153



STATE
ELECTRICITY
COMMISSION
OF VICTORIA

Cable and Tel. Address:
"ELECTROCOM"
MELBOURNE

NWS:EDS
Telephone:
Extension No. 2242

16
C

Head Office:
MONASH HOUSE,
15 WILLIAM STREET,
MELBOURNE, 3000.

26th May, 1969.

Messrs. Patrick & Company,
Stock & Sharebrokers,
2 Castlereagh Street,
SYDNEY, N.S.W. 2000.

Attention: Mr. T. R. Allen

Dear Sirs,

Referring to your letters of the 12th, 16th and 19th May, 1969, I confirm, for the Commission, the arrangements made between Mr. T. R. Allen and the Loans and Investments Officer (Mr. N. W. Shears), for the lodgement with your Firm of \$3,000,000, with settlement of \$1,500,000 on 16th May, 1969, and \$1,500,000 on 15th September, 1969, each deposit to be secured by Irrevocable Letter of Credit from the Commercial Banking Company of Sydney Limited in favour of the Commission.

Interest on the deposits is to be paid to the Commission on an ascending scale, and each quarterly payment of interest shall be made at the rate applicable to that quarter as set out below, plus the additional interest due for past periods due to the step-up in interest rate:

<u>Duration of Deposit</u> (months)	<u>Interest Rate Payable</u> (% p. a.)
12	6.25 6.00
15	6.25 6.10
18	6.30 6.15
21	6.35 6.20
24	6.40 6.25
27	6.45 6.30
30	6.55 6.40
33	6.60 6.45
36	6.70 6.55
39	6.75 6.60
42	6.80 6.65
45	6.85 6.70
48	6.90 6.75

Subject to the funds remaining on deposit for a minimum period of 15 months the Commission shall have the right to call for repayment on the basis of 60 days' notice prior to the date of repayment, which for this purpose shall be at quarterly intervals from the respective dates of 15th May and 15th September, 1969, or the first working day thereafter. It is agreed, however, that the Commission shall restrict such calling to \$1,500,000 at any one time, but that the entire sum may be called in two successive quarters.

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~~C-3~~

Patrick & Company shall have the right to repay the funds on giving 24 hours' notice to the Commission, in which case the rate of interest shall be 8% per annum for the total term of the deposit.

Although settlement of the first \$1,500,000, in terms of this agreement, was made on 16th May, 1969, against receipt of Irrevocable Credit No. LD. 936 from the Commercial Banking Company of Sydney Limited, the first call of funds and subsequent quarterly rests shall be deemed to date from 15th May, 1969.

Yours faithfully,


J. L. Pepperell
CHIEF FINANCE OFFICER

to
C/8

TERM AND CONDITIONS - SPECIAL DEAL NO. 2

Borrower: First Leasing Australia Limited.
Lender : State Electricity Commission of Victoria.
Amount : \$1,500,000.00

<u>TIME</u>	<u>LENDER %</u>	<u>BORROWER %</u>
12m	6.25	6.75 15/1/77
15m	6.25	6.85
18m	6.30	6.90
21m	6.35	6.95
24m	6.40	7.00 22 ✓ 7.00 23 ✓ 24 ✓ 25 ✓
27m	6.45	7.10
30m	6.55	7.20
33m	6.60	7.30
36m	6.70	7.40
39m	6.75	7.45
42m	6.80	7.50
45m	6.85	7.55
48m	6.90	7.625

Letter of Credit C. B. C. Co. of Sydney, Melbourne.

Charges by Bank for L/C.

0.25% p.a. for short periods, 2/3rd of 0.25% p.a. for long periods.

Penal rate to Lender (if repaid at immediate notice)

6% p.a. for whole period if repaid at 24 hours notice.

Penal rate to borrower (if called at 60 days notice)

3% p. a. for whole period.

CALL REPORT

FIRST LEASING AUSTRALIA LIMITED
MR. F. REINEHR

27TH FEBRUARY, 1973.

I visited with Peter Davie primarily to discuss a twelve month loan from the S.E.C., secured by letter of credit which is due for repayment at the end of April and to also apply for Patrick-Intermarine Acceptances to be an approved borrower of unsecured money. Reinehr is to consider this last request.

First Leasing are to form a new company with the First Boston Bank called First Boston Financial Corporation and are contemplating issuing a prospectus and having the issue under-written.

I expressed interest in the under-writing but Reinehr stated that they have had discussions with another party who will have first preference. However, he did not close the door and I will take the matter up with them at a later date.



OWEN J. GROGAN.

B20

The FIRST NATIONAL BANK of BOSTON
INTERNATIONAL DIVISION
BOSTON, MASSACHUSETTS, U.S.A. *Just. 575 514 2501*

LETTER OF CREDIT NO. S-10971
Patrick & Co.
2 Castlereagh Street
Sydney, Australia

Date March 28, 1969

GENTLEMEN:

WE HEREBY OPEN OUR IRREVOCABLE LETTER OF CREDIT IN YOUR FAVOR AVAILABLE BY YOUR DRAFTS DRAWN ON Commercial Banking Co. of Sydney, Ltd. Sydney, Australia

AT SIGHT FOR ANY SUM OR SUMS NOT EXCEEDING IN TOTAL
Five Hundred Thirty Six Thousand Two Hundred Fifty Australian Dollars . . .

FOR ACCOUNT OF First Leasing Australia, Ltd. Melbourne, Australia

DRAFTS MUST BE ACCOMPANIED BY:

Your statement addressed to First National Bank of Boston, Boston, Massachusetts and signed by any officer or officers as are authorized to sign on your account, certifying:

- (1) that the draft amount represents the unpaid principal amount plus accrued interest (to be computed at a rate not exceeding 7 1/4% per annum and inclusive of stamp duties, if applicable) on a loan made by you to First Leasing Australia, Ltd.
- (2) that such loan or loans was made available to First Leasing Australia, Ltd. by your arranging payment to First Leasing Australia, Ltd. Finance Account at The Commercial Banking Company of Sydney, Ltd. Sydney, Australia.
- (3) that such amount was not paid when due and has not since been repaid to or collected by you.

The promissory note or other evidence of the indebtedness in respect of such loan.

Certificate from your Bankers certifying that the signatory or signatories to the statement and accompanying draft are as authorized to operate on the Company's Bank Account.

EACH DRAFT MUST BEAR UPON ITS FACE THE CLAUSE "DRAWN UNDER LETTER OF CREDIT No. S-10971 DATED March 28, 1969 OF THE FIRST NATIONAL BANK OF BOSTON, BOSTON, MASS."

EXCEPT SO FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1962 REVISION), INTERNATIONAL CHAMBER OF COMMERCE BROCHURE No. 222".

WE HEREBY AGREE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF PRESENTED TO THE ABOVE MENTIONED DRAWEE BANK ON OR BEFORE April 9, 1970 but not prior to April 2, 1970.

2, 71.
VERY TRULY YOURS

D-105

AUTHORIZED OFFICIAL

AUTHORIZED OFFICIAL

Note Original lodged for safe custody with CB Co. Hunter + Castlereagh St. 28/6

CB.499.

B22

The Commercial Banking Company of Sydney Limited.

(ESTABLISHED 1834)

POSTAL ADDRESS -
BOX 2720, G.P.O.,
SYDNEY, N.S.W. 2001.
TELEPHONE: 2-0260
Ext. 370

343 GEORGE STREET

Sydney, 31st March, 1969.

PLEASE QUOTE IN REPLY
Overseas
NR:MM

M.R. KIRK

The Secretary,
Patrick and Co.,
2 Castlereagh Street,
SYDNEY. N.S.W. 2000.

Dear Sir,

The First National Bank of Boston, Boston,
irrevocable Letter of Credit No. S-10971
in favour of Yourselfs for \$A536,250.00.

We confirm our telephone conversation of today, in which we advised having received cabled advice from The First National Bank of Boston, Boston, concerning the abovementioned Letter of Credit:-

"AIRMAILING OUR IRREVOCABLE CREDIT S-10971 FOR AUSTRALIAN DOLLARS 536250 FAVOUR PATRICK AND CO TWO CASTLEREAGH ST SYDNEY COVERING LOAN OF FIRST LEASING AUSTRALIA LTD AT 7-1/4 PER CENT ANNUM PAYABLE ON OR BEFORE APRIL NINETH 1970 BUT NO PRIOR TO APRIL SECOND 1970 ADVISE BENEFICIARY".

We shall advise you further in due course.

Yours faithfully,

[Signature]
pro Mana gef.

CB. 530.

ADDRESS LETTERS TO
BOX 254C, G.P.O.,
MELBOURNE, C1.

TELEPHONE: 63-7511 EXT.

T
(K) B13

The Commercial Banking Company of Sydney Limited.

WITH WHICH IS AMALGAMATED

The Bank of Victoria Limited.

251-257 COLLINS STREET

Melbourne 9th April, 1969.

Overseas.

The Secretary,
Patrick & Company,
150 Queen Street,
MELBOURNE. 3000.

Dear Sir,

Our Sydney Office, Irrevocable Credit
No. LL.920 for A\$500,000.00. in favour
of State Electricity Commission of Victoria
on account of Patrick & Company, Sydney.

As requested by our Sydney Office we enclose original
of the abovementioned Letter of Credit,

Yours faithfully,


Pro Manager.

*Copy only behind this letter in file.
Original delivered to SECvic
.. .. .*

Copy of letter from Plaintiff to Patrick
& Co.

9.4.69

INTERNATIONAL DOCUMENTARY LETTER OF CREDIT - FORM NO. 4

B14

THE COMMERCIAL BANKING COMPANY OF SYDNEY, LIMITED

DETALTOBEN MOHW YH

257 Collins Street.

TRUOMA

DETALTOBEN

OUR HEAD OFFICE. SYDNEY.

MELBOURNE, 9th April,

19 69.

IRREVOCABLE CREDIT
No. LD.920

We hereby authorise (State Electricity Commission of Victoria, 15 William Street, Melbourne.

to draw on Patrick and Company, 2 Castlereagh Street, Sydney.

at ----- sight for any sum or sums not exceeding in all A\$500,000-00. (Five hundred thousand dollars - - - Australian currency)

purporting to cover invoice cost ~~XXXXXXXXXXXX~~ Unpaid principal amount of loan made to Patrick and Company.

of ~~XX~~ ~~XXXXXXXXXX~~ amount to be ~~from~~ ~~to~~

for account of Patrick and Company.

The draft(s) drawn under this credit must be accompanied by the following documents relating thereto:—

~~XXXXXXXXXXXX~~

Statement of (State Electricity Commission of Victoria certifying that the draft amount represents the unpaid principal amount of a loan made by (the commission) to Patrick and Company and that payment (as) been demanded and not received.

COPY NOT NEGOTIABLE

Additional instructions (if any):—

Negotiation(s) under this Credit are restricted to the Commercial Banking Company of Sydney Limited, Melbourne.

Drawing(s) under this Credit must not be made prior to 6th April, 1970.

Drafts must be presented for negotiation not later than 8th April, 1970 and forwarded to our head office/branch together with relative documents for acceptance/payment.

Drafts must be enaced with the number, date and place of issue of this credit and the negotiating Bank must record the amount of each draft on the back hereof.

THE COMMERCIAL BANKING COMPANY OF SYDNEY, LIMITED, hereby engages with the drawers, endorsers and bona fide holders of drafts drawn under and in compliance with the terms of this credit, that such drafts shall meet with due honour upon presentation.

R. N. FINNIN
Countersigner.

I. M. YOUNG
Manager.

Subject to Uniform Customs and Practice for Documentary Credits (1962 Revision), International Chamber of Commerce Brochure No. 222

Interest - Special Deal No. 1

B9

TRA

1st July, 1969.

The Secretary,
State Electricity Commission
of Victoria,
15 William Street,
MELBOURNE. 3000

Attention: Mr. H. V. Shearn.

Dear Sir,

Please find enclosed cheque for \$7,390.41 being interest due on \$500,000.00 at 6.5% from 9th April to 1st July, 1969.

Yours faithfully,
PATRICK & COMPANY

T. R. Allen.

Copy of letter from Patrick & Co. to
Fourth Defendant

1.7.69

No 1 A/C

BS

TRA

7th October, 1969.

The Secretary,
State Electricity Commission of
Victoria,
15 William Street,
MELBOURNE. 3000

Attention: Mr. J. Shears.

Dear Sir,

Please find enclosed cheque for \$8,191.78 being interest due on your deposits with this firm to and including the 30th September, 1969.

Yours faithfully,
PATRICK & COMPANY

T. E. Allen.

Copy of letter from Patrick & Co. to
Fourth Defendant

7.10.69

TRA/JM

31st December, 1969.

The Secretary,
The State Electricity Commission
of Victoria,
15 William Street,
MELBOURNE...VIC. 3000

DEAL NO. 1

Attention: MR. W. SHEARS.

Dear Sir,

Please find enclosed cheque for \$8,191.78 being interest due on your deposit of \$500,000.00 with this firm to and including the 31st December, 1969.

Yours faithfully,
PATRICK & COMPANY

T.R. ALLEN.

B21

FIRST LEASING AUSTRALIA LIMITED

Head Office: Legal & General House, 379 Collins St., Melbourne 3000. Phone 61 3371

Telegraphic Address: Relestr Melbourne.

Interstate Offices — Adelaide, Brisbane, Sydney

SGR/ej

31st December, 1969.

Patrick and Company,
2 Castlereagh Street,
SYDNEY. N.S.W. 2000.

Dear Sir,

We have pleasure in enclosing our cheque for \$60,178.08, made up as follows:-

6 3/4% interest on deposit \$3,000,000 1/10 - 31/12 \$51,041.10

7 1/4% " " " 500,000 1/10 - 31/12 9,136.98

\$60,178.08

*Has-293
No. 1*

In addition we also enclose our cheque for \$373.29, being brokerage due against the two deposits placed with us by Mt. Isa Mines Limited, i.e. \$500,000 for the period 1st October - 31st December and \$500,000 for the period 15th - 31st Dec.

Thanking you, we remain,

Yours faithfully,
FIRST LEASING AUSTRALIA LIMITED

S.G. ROSS
ACCOUNTANT

enc. (2)

Letter from Second Defendant to
Patrick & Co.

31.12.69

CB.499

The Commercial Banking Company of Sydney Limited c6
(ESTABLISHED 1834)

POSTAL ADDRESS -
BOX 2720, G.P.O.,
SYDNEY, N.S.W. 2001.
TELEPHONE: 2 - 0260
Ext. 370

343 GEORGE STREET

Sydney, 15th May, 1969.

PLEASE QUOTE IN REPLY
OVERSEAS
NR.LR.

The Secretary,
Patrick and Co.,
Box 2850, G.P.O.,
SYDNEY N.S.W. 2001.

Dear Sir,

First National Bank of Boston, Boston,
Irrevocable Letter of Credit No. S-11011
in your favour for A\$1,500,000.

We confirm our telephone conversation of today,
advising receipt of the following cable dated 13th instant,
from the First National Bank of Boston, Boston, concerning
the abovementioned Letter of Credit:-

"OPENING IRREVOCABLE CREDIT S-11011 FOR AUSTRALIAN DLRS
1500000 EFFECTIVE 5/15 IN FAVOUR OF PATRICK AND CO
GPO 2850 SYDNEY AUSTRALIA COVERING LOAN FOR FRIST LEASING
AUSTRALIA PAYABLE ON OR BEFORE 5/15 1973 ADVISE BENEFICIARY"

We shall advise you further in due course.

Yours faithfully,

[Signature]
pro Manager. R. RUGGINS

RECD. 15 MAY 1969
MRLD PRL RHA FAR
MAM JAK TRA RAN
[Stamp with checkmark]

The Commercial Banking Company of Sydney Limited

Address Letters to
Box 2720, G.P.O.,
SYDNEY.

The Manager,
Patrick & Company,
2 Castlereagh Street,
SYDNEY, N.S.W. 2000.

Sydney, 16th May, 1969.

In replying, please quote:
OVERSEAS EXPORT CREDIT.

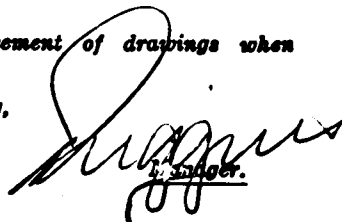
Dear Sir,

We advise that a credit as stated hereunder has been established in your favour.

If you are unable to comply exactly with the terms and conditions of the credit, please advise us immediately.

Kindly produce this letter of advice for endorsement of drawings when presenting documents for negotiation.

Yours faithfully,



J. Sanger.

THE COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED
INCORPORATED IN AUSTRALIA
REGISTERED OFFICE: 2 CASTLEREAGH STREET, SYDNEY, N.S.W. 2000.

PARTICULARS OF CREDIT:

Established by: First National Bank of Boston, Boston.

IRREVOCABLE

No.: S-11011 dated 13th May, 1969.

On Account of: First Leasing Australia Ltd., Melbourne.

Drafts payable on or Amount: \$A1,500,000.00. (One million, five hundred thousand dollars, Australian currency).
before 15th
May, 1973.

Drafts at sight on The Commercial Banking Company of Sydney Limited, Sydney.

Enclosed: "Drawn under First National Bank of Boston, Boston, Irrevocable Letter of Credit No. S-11011 dated 13th May, 1969".

Documents Required for negotiation (copies of duplicate, unless otherwise specified):-

Drafts must be accompanied by:-

YOUR STATEMENT signed by an Official authorized to sign on your Bank Account certifying that: The Draft amount represents the unpaid principal amount plus accrued interest (which may be drawn in excess of the credit amount, at a rate not exceeding 7.625 percent per annum and inclusive of stamp duties, if applicable) of a fixed loan to August 15, 1970 made by you to First Leasing Australia Ltd that such amount was not paid when due and has not since been repaid to or collected by you. The promissory note or other evidence of the indebtedness in respect of such loan.

This credit is also available on the first day of each succeeding quarter beginning on November 15, 1970 at an interest rate agreed upon between yourselves and First Leasing Australia Ltd. But not to exceed 7.625 percent per annum for any period during the life of the Credit, provided the First National Bank of Boston, Boston have been advised by authenticated cable through The Commercial Banking Company of Sydney Ltd., Sydney, Australia, dispatched at least 60 days prior to the first day of each succeeding quarter that you have demanded payment of the abovementioned loan or portion thereof from First Leasing Australia Ltd. and that such amount was not paid when due.

THIS ADVICE IS BASED ON CABLE INSTRUCTIONS RECEIVED AND IS SUBJECT TO AMENDMENT IF NECESSARY ON RECEIPT OF MAIL CONFIRMATION.

Copy of letter from Plaintiff advice to
Patrick & Co.

16.5.69

D3

THE COMMERCIAL BANKING COMPANY OF SYDNEY, LIMITED

257 Collins Street,

OUR HEAD OFFICE, SYDNEY.

MELBOURNE, 16th May, 1969.

Victoria.

IRREVOCABLE CREDIT
No. ~~LS. 936~~

We hereby authorise State Electricity Commission of Victoria, 15 William Street, Melbourne, 3000.

to draw on Patrick and Company, 2 Castlereagh Street, Sydney.

at ----- sight for any sum or sums not exceeding in all A\$1,500,000. (One million, five hundred thousand dollars - - Australian currency)

purporting to cover ~~invoice cost~~ of Unpaid principal amount of loan made to Patrick and Company.

~~XXXXXXXXXXXXXXXXXXXX~~ of origin, to be from to

Patrick and Company.

for account of

The draft(s) drawn under this credit must be accompanied by the following documents relating thereto:—

~~XXXXXXXXXXXXXXXXXXXX~~
Commercial Invoice(s).

Statement of State Electricity Commission of Victoria certifying that the draft amount represents the unpaid principal amount of a fixed loan to 15/3/70, made by the Commission to Patrick and Company and payment of the loan has been demanded and not received.

COPY NOT NEGOTIABLE

credit is also available

This ~~Additional instruction (if any)~~ is liable on the first day of each succeeding quarter beginning on November 15th 1970 provided the Commercial Banking Company of Sydney Ltd., Sydney have been notified immediately that State Electricity Commission of Victoria have demanded payment of the loan or portion thereof from Patrick and Company and that such amount was not paid when due such advice must reach the Commercial Banking Company of Sydney Limited, Sydney not later than 70 days prior to the first day of the quarter succeeding the one in which demand was made. Negotiation/s under this credit are restricted to the Commercial Banking Company of Sydney Limited, Melbourne.

Drafts must be presented for negotiation not later than 15th May, 73. ~~19xxxxxx~~ forwarded to our ~~head~~ office/branch together with relative documents for acceptance/payment.

Drafts must be encased with the number, date and place of issue of this credit and the negotiating Bank must record the amount of each draft on the back hereof.

THE COMMERCIAL BANKING COMPANY OF SYDNEY, LIMITED, hereby engages with the drawers, endorsers and bona fide holders of drafts drawn under and in compliance with the terms of this credit, that such drafts shall meet with due honour upon presentation.

I. M. YOUNG
Countersigner.

P. A. EVANS
Manager.

Subject to Uniform Customs and Practice for Documentary Credits (1962 Revision), International Chamber of Commerce Brochure No. 222

Copy of Plaintiff's irrevocable Letter of Credit addressed to Fourth Defendant

16.5.69

CS.499.

c/2

The Commercial Banking Company of Sydney Limited.
(ESTABLISHED 1834)

POSTAL ADDRESS -
BOX 2720, G.P.O.,
SYDNEY, N.S.W. 2001.
TELEPHONE: 2-0260
Ext. **341**

343 GEORGE STREET

Sydney, 16th May, 1969.

PLEASE QUOTE IN REPLY
OVERSEAS
WGC:MA

The Secretary,
Patrick & Company,
2 Castlereagh Street,
SYDNEY, N.S.W. 2000.

FILE
Copy behind this letter in file off

Dear Sir,

In terms of your requisition dated today, we have established the undermentioned Letter of Credit by telegraph through our Melbourne Office:-

<u>Credit No.</u>	<u>Amount.</u>	<u>In favour of.</u>	<u>Expires.</u>
LD.936.	\$A1,500,000.00.	State Electricity Commission of Victoria.	15th May, 1973.

We have debited your account \$-.75¢ (seventy-five cents) for cost of the telegraphic advice and \$2,500.00. (Two thousand, five hundred dollars,) being our commission charge.

Yours faithfully,

[Signature]
pro Manager.

REGD. 20 MAY 1969

M.R.L.D.	P.R.L.	R.H.A.	F.A.R.
M.A.M.	J.A.K.	TRA	R.A.N.
ADVISERS	RESEARCH	SCRIP	ACCTS.

[Handwritten checkmark in TRA cell]

APPLICATION FOR COMMERCIAL LETTER OF CREDIT

To: The First National Bank of Boston,
67 Milk Street,
BOSTON. MASS. 02110. U.S.A.

26th May, 1969.

We confirm your opening irrevocable letter of credit numbered S-11011, the copy of which is attached for Aus. \$1,500,000 in favour of:

Patrick & Company,
G.P.O. 2850,
SYDNEY. AUSTRALIA

In consideration of your opening such credit, we hereby agree that it shall be subject to indemnity agreement dated 1st June, 1967, the provisions of which are agreed to as defining your rights and our obligations.

FIRST LEASING AUSTRALIA LIMITED

.....

Copy of letter from Second Defendant
to Third Defendant

26.5.69

C 17

The Commercial Banking Company of Sydney Limited

(ESTABLISHED 1834)

POSTAL ADDRESS -
BOX 2720, G.P.O.,
SYDNEY, N.S.W. 2001.

343 GEORGE STREET

TELEPHONE: 2 - 0260
Ext. 370

Sydney, 26th May, 1969.

OVERSEAS IN REPLY
NR:MM

The Secretary,
Patrick & Company,
2 Castlereagh Street,
SYDNEY, N.S.W. 2000.

Dear Sir,

First National Bank of Boston, Boston,
Irrevocable Letter of Credit No. S-11011
in your favour for \$A1,500,000.00.
Account: First Leasing Australia Ltd.

We have today debited your account \$A11.90. for the cost
of our agents' telex sent to us on 15th May, 1969 giving full
details of the abovementioned Letter of Credit as requested.

Yours faithfully,


pro Manager

170a

SGR/ej

30th June, 1969.

Patrick & Company,
2 Castlereagh Street,
SYDNEY. N.S.W. 2000.

Dear Sir,

We enclose our cheque for the sum of \$21,003.42, being interest payments as detailed below:-

<u>Deposit</u>	<u>Rate</u>	<u>Period</u>	<u>Amount</u>
\$1,500,000	6.75%	16th May - 30th June inc.	\$12,760.27 ✓
500,000	7 1/4%	9th April - 30th June inc.	8,243.15 ✓
			<hr/>
			\$21,003.42
			<hr/>

Thanking you,

we remain,

Yours faithfully,
FIRST LEASING AUSTRALIA LIMITED

F.I. REINEHR
DIRECTOR

enc.

67,500
33,750
12,101 250 | 8437
96
52 45
48 36
90

Copy of letter from Second Defendant
to Patrick & Co.

30.6.69

PATRICK & COMPANY
MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

PATRICK & COMPANY

MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

2 CASTLEREAGH STREET, SYDNEY 2000

C.P.O. BOX 2562, SYDNEY 2001, TELER 20757

TELEPHONE 2 COINLESS LINES

TELEGRAMS & CABLES 20756

SYDNEY, MELBOURNE, CAPELLE, WOLLONGONG

181 QUEEN STREET
MELBOURNE 3000
TELEPHONE
60 4419 LINES

43 NORTHOURNE AVENUE
CITY CANBERRA 2601
TELEPHONE CANB. 40305-60

181 KEIRA STREET
WOLLONGONG 2500
TELEPHONE WOLL. 25000

7 AVENUE ERNESTINE
BRUSSELS 5 BELGIUM
TELEPHONE 49 8151/2

J. A. KEIR
R. A. FOSS
W. J. EDWARDS
J. S. CORRIER

REC
PD

4th July, 1969.

The Secretary,
First Leasing Australia Limited,
8th Floor, 379 Collins Street,
MELBOURNE. 3000

Dear Sir,

Deposits by Patrick & Company.

Our auditors, Cooper Brothers & Co., 20 - 22 O'Connell Street, Sydney, have asked that you confirm to them the following details regarding the deposits lodged with you by this firm at the close of business on 30th June, 1969 :

1. Amounts of deposits.
2. Details of any security held by Patrick & Company.
3. Interest due to Patrick & Company but unpaid at 30th June, 1969.

We would be pleased if you could arrange to forward us a copy of the letter that you send to Cooper Brothers & Co.

Yours faithfully,
PATRICK & COMPANY



(P. Davie).

C19

TRA

15th August, 1969.

The Secretary,
State Electricity Commission of
Victoria,
15 William Street,
MELBOURNE. 3000

Attention: Mr. N. W. Shears.

Dear Sir,

Please find enclosed cheque for \$23,180.65 being quarterly interest due on your deposit with this firm.

Yours faithfully,
PATRICK & COMPANY

T. R. Allen.

Copy of letter from Patrick & Co. to
Fourth Defendant

15.8.69

SGR/ej

28th August, 1969.

Cooper Brother & Co.
20-22 O'Connell Street,
SYDNEY. N.S.W.

Dear Sir,

With regard to Patrick & Company, we confirm that they lodged \$500,000 with us on 9th April 1969 and \$1,500,000 on 16th May 1969. Security held by Patricks is irrevocable letter of credit numbered 510971 for an amount of \$536,250 and number 511011 for an amount of \$1,500,000.

Unpaid interest to Patrick & Company as at 30th June 1969 was nil amount. Our cheque drawn on 30th June for the sum of \$21,003.42 paid total interest due 30th June inc.

Yours faithfully,

FIRST LEASING AUSTRALIA LIMITED

S.G. Ross

Accountant

Copy of letter from Second Defendant
to Cooper Bros. & Co. |

28.8.69

C20

TRA

26th November, 1969.

The Secretary,
State Electricity Commission of
Victoria,
15 William Street,
MELBOURNE. 3000

Attention Mr. N.W. Shears

DEAR MR 2

Dear Sir,

Please find enclosed cheque for \$23,437.50 being quarterly interest due
on your deposit with this firm.

Yours faithfully,
PATRICK & COMPANY

T.R. Allen

c21

DET/CS

25th February, 1970.

The Secretary,
State Electricity Commission
of Victoria,
15 William Street,
MELBOURNE, 3000.

Attention: Mr. H. W. Sperry.

DEAL
No. 2

Dear Sir,

Please find enclosed cheque for \$23,437.50 being quarterly interest due on your deposit with this firm as at 15th February.

We regret any inconvenience caused by the delay in forwarding this cheque.

Yours faithfully,
PATRICK & COMPANY.

D. I. Thorpe,
FINANCIAL CONTROLLER.

Copy of letter from Patrick & Co. to
Fourth Defendant

25.2.70

C 25

March 12, 1973

The Secretary,
State Electricity Commission of Victoria,
15 William Street,
MELBOURNE. VIC. 3000.

Attention Mr. K. Cruise

Dear Sir,

We refer to a recent conversation between Messrs. Cruise, Davie and Grogan at which discussion took place about a loan of \$1,500,000.00 due for repayment by Patrick-Intermarine Acceptances Limited (on behalf of Patrick Partners) on 15th May, 1973.

We would be grateful if you would inform us whether we should commence negotiations for renewal of this loan or whether the Commission wishes funds to be repaid on due date.

Yours faithfully,
PATRICK-INTERMARINE ACCEPTANCES LIMITED



Peter Davie
Director

c.c. O.Grogan - Melbourne Office

PATRICK-INTERMARINE ACCEPTANCES LIMITED

(INCORPORATED IN NEW SOUTH WALES)

128 Exhibition Street, Melbourne, Victoria, Australia, 3000

TELEPHONE
63 6036

SYDNEY BRISBANE PERTH

67

CORRESPONDENCE:
G.P.O. Box 21177
Melbourne. Vic. 3001

15th May, 1973.

Attention: Mr. R. AshboltThe Secretary,
First Leasing Australia
Limited,
379 Collins Street,
MELBOURNE, VICTORIA. 3000

Dear Sir,

We confirm having received a bank cheque for
\$1,513,787.67, made payable to Patrick Partners,
being repayment of the following:Principal: \$1,500,000.00
Interest: \$ 13,787.67Yours faithfully,
for PATRICK-INTERMARINE ACCEPTANCES LTD.
David G. NicollCopy of letter from First Defendant to
Second Defendant

15.5.73

Patrick Partners

MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

- M. R. ENDLING
- N. R. COURNE
- M. A. MCGRATH
- J. A. NEILL
- T. R. ALLEN
- R. W. GIBSON
- R. A. GIBBS
- J. S. COOPER
- W. J. EMMETT
- M. E. BAUCE
- A. BURT
- P. DAVIE
- R. N. GOTTLIEBSON

2 CASTLECREAGH STREET, SYDNEY, 2000
G.P.O. BOX 2650, SYDNEY, 2001. TELEX 20757

TELEPHONE 2-0319 (20 LINES)
SCRIP & ACCOUNTS DEPART
TELEGRAMS & CABLES "ROSDALE"

MELBOURNE, BRISBANE, CANBERRA, WOLLONGONG, PERTH, BRUSSELS.

1/3

REF.
PD

The Secretary,
First Leasing Australia Limited,
379 Collins Street,
MELBOURNE. VIC. 3000

29th July, 1971.

Attention: Mr. Reinehr.

Dear Sir,

Reference is made to the \$500,000.00 deposited by M.I.M. Holdings Limited with your company at 8 1/2% p.a. fixed to 6.12.71. This deposit was originally made by Patrick Partners on behalf of M.I.M. Holdings Limited.

As advised by telephone we wish to confirm that all future money market transactions will be conducted by Patrick-Intermarine Acceptances Limited. We shall be obliged if you could pay the procuration fees due on the above and all future deposits to Patrick-Intermarine Acceptances Limited.

Yours faithfully,
PATRICK PARTNERS

(Peter Davie)

Patrick Partners

MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

- M. R. L. DOWLING
- N. R. COURSE
- M. A. INGRAHAM
- J. A. KEIR
- T. H. ALLEN
- R. W. BURKE
- R. A. NOSS
- J. S. CORRIER
- W. J. EDWARDS
- M. E. GAUPE
- A. BURT
- P. DAVIE
- R. M. GOTTLIEBSON

2 CASTLEHEAGH STREET, SYDNEY, 2000
G.P.O. BOX 2850, SYDNEY, 2001. TELEX 20757

TELEPHONE 2-0310 (25 LINES)
SCRIP & ACCOUNTS 28-4511
TELEGRAMS & CABLES "ROSSDALE"

MELBOURNE, BRISBANE, CANBERRA, WOLLONGONG, PERTH, BRUSSELS.

0 *PA 44*

REF.
PD

29th July, 1971.

The Secretary,
First Leasing Australia Limited,
8th Floor,
379 Collin Street,
MELBOURNE. VIC. 3000

Attention: Mr. Reinehr

Dear Sir,

Reference is made to the \$500,000.00 deposited by M.I.M. Holdings Limited with your company at 8½% p.a. fixed to 11.12.71. This deposit was originally made by Patrick Partners on behalf of M.I.M. Holdings Limited

As advised by telephone we wish to confirm that all future money market transactions will be conducted by Patrick-Intermarine Acceptances Limited. We shall be obliged if you could pay the procuration fees due on the above and all future deposits to Patrick-Intermarine Acceptances Limited.

✓

Yours faithfully,
PATRICK PARTNERS

[Handwritten Signature]
(Peter Davis)

Pw-45

PATRICK-INTERMARINE ACCEPTANCES LIMITED

2 Castlereagh Street, Sydney

TELEPHONES:
221-3895
221-2606
221-2400

CORRESPONDENCE:
G.P.O. Box 3879,
Sydney, N.S.W. 2001

29th July, 1971.

The Secretary,
First Leasing Australia Limited,
6th Floor,
379 Collins Street,
MELBOURNE. VIC. 3000

Attention: Mr. Reinehr,

Dear Sir,

We refer to the letter dated 29th July 1971 from Patrick Partners and confirm that you are holding a deposit of \$500,000.00 on behalf of M.I.M. Holdings Limited at 8 $\frac{1}{2}$ % p.a. fixed to 6.12.71.

The procuration fee due on the above deposit should be paid to Patrick-Intermarine Acceptances Limited.

✓
Yours faithfully,
PATRICK-INTERMARINE ACCEPTANCES LIMITED



Copy of letter from First Defendant to |
Second Defendant |

29.7.71

PATRICK-INTERMARINE ACCEPTANCES LIMITED

2 Castlereagh Street, Sydney

FL/H

TELEPHONES:
221-3395
221-2606
221-2400

CORRESPONDENCE:
G.P.O. Box 3879,
Sydney, N.S.W. 2001

29th July, 1971.

The Secretary,
First Leasing Australia Limited,
8th Floor,
379 Collins Street,
MELBOURNE. VIC. 3000

Attention: Mr. Reinhr

Dear Sir,

We refer to the letter dated 29th July 1971 from Patrick Partners and confirm that you are holding a deposit of \$500,000.00 on behalf of M.I.M. Holdings Limited at $8\frac{1}{2}\%$ p.a. fixed to 11.12.71.

The procuration fee due on the above deposit should be paid to Patrick-Intermarine Acceptances Limited.

Yours faithfully,
PATRICK-INTERMARINE ACCEPTANCES LIMITED



F2 47
}

RCW/wm

29th July, 1971

Patrick Partners,
2 Castlereagh St,
SYDNEY, N.S.W. 2000

Dear Sirs,

We have pleasure in enclosing our cheque for \$623.28, being brokerage payable on the following deposits placed with our company:-

<u>Lender</u>	<u>Amount</u>	<u>Period</u>	<u>Brokerage</u>
Mt. Isa Mines Ltd.	.580,000	1/4/71-30/6/71	.311.64
"	.580,000	1/4/71-30/6/71	<u>.311.64</u>
			<u>\$623.28</u>

We apologise for the delay in forwarding this payment.

Yours sincerely,

RCW.

R. C. WETTENHALL
ACCOUNTANT

Copy of letter from Second Defendant
to First Defendant

29.7.71

EXTRACT OF TELEGRAM RECEIVED FROM

M #

CBCOS AA20350

MASSNAT BSN

FIRST NATIONAL BANK OF BOSTON

BOSTON (Mass USA)

P.C. 38

COMMERCIAL BANKING CO OF SYDNEY LTD

SYDNEY AUSTRALIA

Dated 12/8/69 - Recd 14/8/69

U R G E N T

20341

DIRECT VIA INTLX

TEST 51509

OPENING OUR IRREVOCABLE LETTER OF CREDIT S-11085 FOR AUST DLRS
1,500,000 FAVOR PATRICK AND COMPANY G P O 2850 SYDNEY ACCOUNT
FIRST LEASING AUSTRALIA LTD TERMS SAME AS L/C'S-11011 ADVISE
BENEFICIARY

JMAR INTL L/C (0/1000000)

FIRST NATL BANK BSN MASS

CFM 51509 S-11085 1,500,000 2850 S-11011

#

CBCOS AA20350

MASSNAT BSN

.....=.

MASSNAT BSN

f. C 39

CBCOS AA20350

14TH AUGUST 1969

EXTRACT OF TELEGRAM DESPATCHED TO

TO - THE FIRST NATIONAL BANK OF BOSTON BOSTON
FROM - THE COMMERCIAL BANKING CO. OF SYDNEY LTD, HEAD OFFICE, SYDNEY

REFER YOUR TELEGRAM 13/8/69 CREDIT S-11085 PATRICK AND CO INFORM
US FIXED LOAN TO 15TH NOVEMBER 1970 CREDIT AVAILABLE EACH
SUCCEEDING QUARTER BEGINNING ON 15TH FEBRUARY 1971 AND VALIDITY
ON OR BEFORE 15TH AUGUST 1973 PLEASE CONFIRM DATES
BY RETURN TELEX URGENT 81347

(81347)

(Overseas)

EP\$8-40

Cable from Plaintiff to Third
Defendant

14.8.69

.....=.

CBCOS AA20350

MASSNAT BSN

EXTRACT OF TELEGRAM RECEIVED FROM

FIRST NATIONAL BANK OF BOSTON

BOSTON

COMMERCIAL BANKING COMPANY OF SYDNEY
SYDNEY AUSTRALIA

DIRECT VIA INTLX

Dated 14/8/69 -Recd 15/8/69

81347 RE YOUR CABLE 8-14-69 OUR CREDIT S-11095 WE CONFIRM
FIXED LOAN TO NOVEMBER 15 1970 EACH SUCCEEDING QUARTER FROM
FEBRUARY 15 1971 VALIDITY TO AUGUST 15 1973 ADVISE BENEFICIARY

LOMBARD L/C DEPT
FIRST NATL BANK BSN MASS

eb

CBCOS AA20350

(O/seas.)

MASSNAT BSN

.....

P C 40

Cable from Third Defendant to Plaintiff

14.8.69

FF 40 (7)

The Commercial Banking Company of Sydney Limited *P. 242*

Address Letters to
Box 2720, G.P.O.,
SYDNEY.

The Secretary,
Patrick and Company,
2 Castlereagh Street,
SYDNEY. 2000.

Sydney, 14th August, 1969.

In replying, please quote :
OVERSEAS EXPORT CREDITS.

Dear Sir,

We advise that a credit as stated hereunder has been established in your favour.

If you are unable to comply exactly with the terms and conditions of the credit, please advise us immediately.

Kindly produce this letter of advice for endorsement of drawings when presenting documents for negotiation.

SUBJECT TO UNIFORM CUSTOMS AND PRACTICE FOR
DOCUMENTARY CREDIT (1962 REVISION), INTERNATIONAL
CHAMBER OF COMMERCE BROCHURE No. 222.

Yours faithfully,

[Signature]
Manager.

PARTICULARS OF CREDIT :

Established by : First National Bank of Boston, Boston.

IRREVOCABLE

No. : S-11085 dated 13th August, 1969.

On Account of : First Leasing Australia Ltd., Melbourne.

Expires : before 15th August 1973 Amount : \$A1,500,000.00. (one million, five hundred thousand dollars, Australian currency).

Drafts at 1973 sight on The Commercial Banking Company of Sydney Limited, Sydney.

Encased : "Drawn under First National Bank of Boston, Boston, Irrevocable Letter of Credit No. S-11085 dated 13th August, 1969".

Documents required ~~(full negotiable sets in duplicate, unless otherwise specified) :-~~

Drafts must be accompanied by:-

YOUR STATEMENT signed by an Official authorised to sign on your Bank Account certifying that: The draft amount represents the unpaid principal amount plus accrued interest (which may be drawn in excess of the credit amount, at a rate not exceeding 7.625 percent per annum and inclusive of stamp duties, if applicable) of a fixed loan to November 15, 1976 made by you to First Leasing Australia Ltd that such amount was not paid when due and has not since been repaid to or collected by you. The promissory note or other evidence of the indebtedness in respect of such loan.

This credit is also available on the first day of each succeeding quarter beginning on February 15, 1971 at an interest rate agreed upon between yourselves and First Leasing Australia Ltd. But not to exceed 7.625 percent per annum for any period during the life of the credit, provided the First National Bank of Boston, Boston have been advised by authenticated cable through The Commercial Banking Company of Sydney Ltd., Sydney, Australia, despatched at least 60 days prior to the first day of each succeeding quarter that you have demanded payment of the above-mentioned loan or portion thereof from First Leasing Australia Ltd. and that such amount was not paid when due.

THIS ADVICE IS BASED ON CABLE INSTRUCTIONS RECEIVED AND IS SUBJECT TO AMENDMENT IF NECESSARY ON RECEIPT OF FURTHER INFORMATION.

Copy of letter from Plaintiff to Patrick & Co.

14.8.69

P. C 34

341

15th August, 1969.

OVERSEAS
WGC:MAThe Secretary,
Patrick & Company,
2 Castlereagh Street,
SYDNEY. N.S.W. 2000.

Dear Sir,

In terms of your requisition dated today, we have established the undermentioned Letter of Credit by telegraph through our Melbourne Office:-

<u>Credit No.</u>	<u>Amount.</u>	<u>In favour of.</u>	<u>Expires.</u>
LD.973.	\$A1,500,000.00.	State Electricity Commission of Victoria.	15th August, 1973.

We have debited your account \$-.75¢ (seventy-five cents) for cost of the telegraphic advice and \$2,500.00. (two thousand, five hundred dollars,) being our commission charge.

Yours faithfully,

W. G. Carman
pro Manager.

P. C42

The Commercial Banking Company of Sydney Limited

Address letters to
Box 2720, G.P.O.,
SYDNEY.

Sydney,19.....
14th August, 69.

**The Secretary,
Patrick and Company,
2 Castlereagh Street,
SYDNEY. 2000.**

In replying, please quote:
OVERSEAS EXPORT CREDITS

Dear Sir,

We advise that a credit as stated hereunder has been established in your favour.
If you are unable to comply exactly with the terms and conditions of the credit,
please advise us immediately.

Kindly produce this letter of advice for endorsement of drawings when presenting
documents for negotiation.

Yours faithfully,

SUBJECT TO UNIFORM CUSTOMS AND PRACTICE FOR
DOCUMENTARY CREDITS (1962 REVISION), INTERNAT-
IONAL CHAMBER OF COMMERCE BROCHURE No. 222.

Manager.

PARTICULARS OF CREDIT:

✓ Established by: **First National Bank of Boston, Boston.**

✓ **IRREVOCABLE**

✓ No.: **S-11085 dated 13th August, 1969.**

✓ On Account of: **First Leasing Australia Ltd., Melbourne.**

Drafts payable on or **\$A1,500,000.00. (one million, five**
✓ ~~before~~ **before 15th August, 1973** **hundred thousand dollars, Australian**
Amount: **currency).**

✓ Drafts at: ~~_____~~ **sight on** **The Commercial Banking Company of Sydney**
Limited, Sydney.

Enfaced: **"Drawn under First National Bank of Boston, Boston,
Irrevocable Letter of Credit No. S-11085 dated 13th
August, 1969".**

~~Documents Required: (full negotiable sets in duplicate, unless otherwise specified) :-~~

✓ **Drafts must be accompanied by:-**

**YOUR STATEMENT signed by an Official authorised to sign on your
Bank Account certifying that: The draft amount represents the
unpaid principal amount plus accrued interest (which may be
drawn in excess of the credit amount, at a rate not exceeding
7.625 percent per annum and inclusive of stamp duties, if
applicable) of a fixed loan to November, 1970 made by you to
First Leasing Australia Ltd that such amount was not paid when
due and has not since been repaid or collected by you. The
premissary note or other evidence of the indebtedness in respect
of such loan.**

**This credit is also available on the first day of each succeeding
quarter beginning on February 15, 1970 at an interest rate agreed
upon between yourselves and First Leasing Australia Ltd. But not
to exceed 7.625 percent per annum for any period during the life
of the credit, provided the First National Bank of Boston, Boston
have been advised by authenticated cable through The Commercial
Banking Company of Sydney Ltd., Sydney, Australia, despatched at
least 60 days prior to the first day of each succeeding quarter
that you have demanded payment of the abovementioned loan or
portion thereof from First Leasing Australia Ltd. and that such
amount was not paid when due.**

✓ **THIS ADVICE IS BASED ON CABLE INST UCTIONS RECEIVED AND IS SUBJECT
TO AMENDMENT IF NECESSARY ON RECEIPT OF MAIL CONFIRMATION.**

APPLICATION FOR COMMERCIAL LETTER OF CREDIT

To: The First National Bank of Boston

100 Park Street,

BOSTON, MASS. 02111 .

Date: 11th August, 1967.

We confirm your opening irrevocable letter of credit numbered 661111, the copy of which is attached hereto for ams. \$1,500,000 in favour of Patrick and Company, P.O. 2450, Sydney.

In consideration of your opening such credit, we hereby agree that it shall be subject to indemnity agreement dated June 1, 1967, the provisions of which are agreed to as defining your rights and our obligations.

FIRST LEASING AUSTRALIA LIMITED

.....

Copy of letter from Second Defendant
to Third Defendant

18.8.69

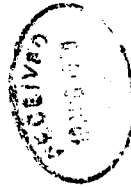
P. C 41



The FIRST NATIONAL BANK of BOSTON
International Division | 67 Milk Street, Boston, Massachusetts 02110

August 14, 1969

Commercial Banking Company of Sydney, Ltd.
Sydney
Australia



Gentlemen:

Letter of Credit No. S-11085

Australian
for/\$1,500,000.00

We are enclosing the original and one copy of the
above-mentioned letter of credit in favor of Patrick and Company
G.P.O. 2850, Sydney, Australia

and request that you forward the original to the beneficiary
retaining the copy in your files.

Very truly yours

[Handwritten Signature]
Authorized Official

P.S. This refers to our cable of August 13, 1969

Overseas offices of The First National Bank of Boston are located in Argentina, Brazil, England, France
In New York City — Bank of Boston International, 2 Wall Street

AIRMAIL
D-1202

ds

Letter from Third Defendant to
Plaintiff

14.8.69

FIRST LEASING AUSTRALIA LIMITED *DS*

Head Office: Legal & General House, 379 Collins St., Melbourne 3000. Phone 613871
Telegraphic Address: Parerem Melbourne Interstate Offices: Adelaide, Brisbane, Sydney.

SGR/ej

30th September, 1969.

Patrick & Company,
2 Castlereagh Street,
SYDNEY, N.S.W. 2000.

Dear Sir,

We have pleasure in enclosing our cheques for \$47,695.21 and \$267.12, made up as follows:-

6 3/4%	interest on deposit	\$1,500,000	15/8 - 30/9	\$13,037.67	<i>No. 3</i>
6 3/4%	" " "	1,500,000	1/7 - 30/9	25,520.55	<i>No. 2</i>
7 1/4%	" " "	500,000	1/7 - 30/9	9,136.99	<i>No. 1</i>
				\$47,695.21	

1/4% brokerage on Mt. Isa Mines \$500,000 deposit 15/7 - 30/9 *← Jan*
\$267.12.

Yours faithfully,
FIRST LEASING AUSTRALIA LIMITED

S. G. Ross
S. G. ROSS
ACCOUNTANT

enc. (2) *7/10/69 - RASS*

| Letter from Second Defendant to | 30.9.69
| Patrick & Co. |

D/6

TRA

26th November, 1969.

The Secretary,
State Electricity Commission of
Victoria,
15 William Street,
MELBOURNE. 3000

Attention Mr. N.W. Shears

DEAN NO. 3

Dear Sir,

Please find enclosed cheque for \$23,437.50 being quarterly interest due on your deposit with this firm.

Yours faithfully,
PATRICK & COMPANY

T.R. Allen

SGR/ej

31st Decemb er, 1969.

Patrick and Company,
2 Castlereagh Street
SYDNEY. N.S.W. 2000

Dear Sir,

We have pleasure in enclosing our cheque for \$60,178.08, made up as follows:-

6 3/4%	interest on deposit	\$3,000,000	1/10 - 31/12	\$51,041.10
7 1/4%	" " "	500,000	1/10 - 31/12	9,136.98
				<u>\$60,178.08</u>

In addition we also enclose our cheque for \$373.29, being brokerage due against the two deposits placed with us by Mr.

Isa Mines Limited, i.e. \$500,000 for the period 1st October - 31st December and \$500,000 for the period 15th - 31st Dec.

Thanking you, we remain,

Yours faithfully,

FIRST LEASING AUSTRALIA LIMITED

S.G. ROSS

ACCOUNTANT

Copy of letter from Second Defendant
to Patrick & Co.

31.12.69

D17

DIT/CS.

25th February, 1970.

The Secretary,
State Electricity Commission
of Victoria,
15 William Street,
MELBOURNE. 3000.

Attention: Mr. M. A. Shears.

DEAL NC

Dear Sir,

Please find enclosed cheque for \$23,437.50 being quarterly interest due on your deposit with this firm as at 15th February.

We regret any inconvenience caused by the delay in forwarding this cheque.

Yours faithfully,
PATRICK & COMPANY.

D. I. Thorpe,
FINANCIAL CONTROLLER.

Copy of letter from Patrick & Co to
Fourth Defendant

25.2.70

SGR/wm

31st March, 1970

Patrick & Co.,
2 Castlereagh S ,
SYDNEY. N.S.W.

Dear Sirs,

We have pleasure in enclosing our cheque for the sum of
\$58,869.86, being interest earned as follows -

\$3,000,000 6½% interest for the period 1st January -31st March

\$500,000 7½% interest for the period 1st January -31st March.

Thanking you, we remain,

Yours faithfully,

S. G. ROSS
ACCOUNTANT

Copy of letter from Second Defendant |
to Patrick & Co.

31.3.70

30

SGR:wn

30th June, 1970

Patrick & Company,
2 Castlereagh St.,
SYDNEY. N.S.W. 2000

Dear Sir,

We have pleasure in enclosing our cheque for the sum of \$68,092.46, being interest earned as follows:-

\$3,000,000	6½%	1/4 - 30/6 inclusive	\$50,486.30
\$500,000	8½%	24/4 - 30/6	7,684.93
\$500,000	7½%	1/4 - 5/4	496.57
\$500,000	8%	6/4 - 30/6	9,424.66
			<u>\$68,092.46</u>

Also enclosed is our cheque for \$856.16, being ½% brokerage due against the following deposits -

Mount Isa Mines.			
	\$1,000,000	1/4-30/6/70	\$623.28
Patrick & Company			
	\$500,000	24/4-30/6/70	<u>\$232.88</u>
			<u>\$856.16</u>

Thanking you,

Yours faithfully,

S. G. ROSS
ACCOUNTANT

Copy of letter from Second Defendant
to Patrick & Co.

30.6.70

Patrick Partners

• MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

• M. R. L. DOWLING
 • N. R. COURSE
 • M. A. McGRATH
 J. A. KEIR
 • T. R. ALLEN
 R. W. BURGE
 J. S. CORNER
 W. J. EDWARDS
 M. E. BAUME
 A. BURT
 P. DAVIE
 R. N. GOTTLIESEN

2 CASTLEREAGH STREET, SYDNEY, 2000
 G.P.O. BOX 2850, SYDNEY, 2001. TELEX 20757

TELEPHONE 2-0319 (25 LINES)
 TELEGRAMS & CABLES "ROSDALE"

MELBOURNE, BRISBANE, CANBERRA, WOLLONGONG

219

REF.

30th June, 1972.

The Secretary,
 State Electricity Commission of Victoria,
 15 William Street,
 MELBOURNE, VIC. 3000

Dear Sir,

Re: Deposits with Patrick Partners

For audit purposes, our Auditors, Messrs. Cooper Brothers & Co., Chartered Accountants of 6 O'Connell Street, Sydney would like you to confirm directly to them the following details as at 30th June, 1972.

	<u>Deposit 1</u>	<u>Deposit 2</u>
1. Deposit balance:	\$1,500,000.00	\$1,500,000.00
2. Term of deposit:	Fixed to 15.5.73 Interest sliding scale.	Fixed to 15.8.73 Interest sliding scale.
3. Interest paid to:	15.5.72	15.5.72
4. Securities held:	Letter of Credit	Letter of Credit

We would be grateful for your confirmation on the attached duplicate of this letter as early as possible. A self-addressed envelope is enclosed for your convenience.

Yours faithfully,
 PATRICK PARTNERS

Copy of letter from Patrick Partners to
 Second Defendant

30.6.72

12th July, 1970

Patrick & Company,
2 Castlereagh St.,
SYDNEY. N.S.W.

Dear Sir,

Our Auditors, Arthur Andersen & Co. of 330 Collins Street, Melbourne, are now engaged in the regular audit of our records, and in this connection would like you to confirm the details of moneys placed on deposit with our company, which are shown in our records at 30th June, 1970, as :-

<u>Principal</u>	<u>Rate of Int.</u>	<u>Term</u>	<u>Interest paid to</u>
\$500,000	8¼%	Fixed to 19/1/71	30th June, 1970
\$500,000	8%	" 2/4/71	"
\$1,500,000*	7.625%	" 15/8/73 with 3-monthly break provisions after 15/8/70 or call 3% prior to 15/8/70.	"
\$1,500,000*	7.625%	Fixed to 16/5/73 with 3-monthly break provisions after 15/11/70 or call 3% between 15/2/70 and 15/11/70.	"

* Of total \$3,000,000 deposit, withdrawal is restricted to the sum of \$1,500,000 in any one quarter.

If these details are in agreement with your records, please sign this letter and return it to our Auditors in the attached reply-paid envelope.

Yours faithfully,
FIRST LEASING AUSTRALIA LTD.

F. I. REINEHR
MANAGING DIRECTOR.

Copy of letter from Second Defendant
to Patrick & Co.

12.7.70

Patrick Partners

MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

• M. R. L. DOWLING
• N. R. COURSE
• F. A. ROBERTSON
• M. A. McGRATH
• J. A. KEIR
• T. R. ALLEN
• R. W. BURGE
• R. A. NOSS
• J. S. CORNER
• W. J. EDWARDS
• M. E. BAUME
• B. W. CLEARY

2 CASTLEREAGH STREET, SYDNEY, 2000
G.P.O. BOX 2850, SYDNEY, 2001. TELEX 20757

TELEPHONE 2-0319 (25 LINES)
TELEGRAMS & CABLES "ROSDALE"

MELBOURNE, BRISBANE, CANBERRA, WOLLONGONG, PERTH, BRUSSELS.

REF.
GVR.

14th August, 1970.

The Secretary,
First Leasing Aust. Ltd.
8th Floor,
379 Collins Street,
MELBOURNE. VIC. 3000.

Dear Sir,

DEPOSITS LODGED BY PATRICK AND COMPANY.

Our Auditors, Cooper Brothers and Company, 20-22 O'Connell Street, Sydney, have asked that you confirm to them the following details regarding the deposits lodged with you by this firm at the close of business on 30th June, 1970:-

1. Amounts of deposits.
2. Details of any security held by Patrick and Company

We enclose an addressed envelope for your reply.

Yours faithfully,

G. V. ROGERS.
ACCOUNTANT.

\$ 4,000,000.00
FN-BB IRREVOCABLE 1/2 Nos: 510971-11011-11083-
11344

Letter from Patrick Partners to Second
Defendant

14.8.70

OFFICE COPY
of Accts. Receivable
set of Tickets

No. 93850

Date August 24, 1970 33

DATE	DESCRIPTION	AMOUNT DUE
August 24, 1970	L/C 5-11035 our commission on A\$1,500,000.00 at 1/2% PA for 1 year (3-15-70 - 3-15-71). Rate 51.11.	US 33,325.00

First Leasing Australia Ltd.
Melbourne
Australia

AA266
REV. 1/70

Internal office Minute Patrick | 24.8.70
Partners

SGR:wn

8th September, 1970

Cooper Brothers & Company,
20-22 O'Connell Street,
SYDNEY. N.S.W.

Dear Sirs,

DEPOSITS LODGED BY PATRICK AND COMPANY

This letter is to confirm details of deposits lodged with our company by Patrick and Company as under -

1. Amounts of deposits - \$4,000,000.00
2. Details of any security held by Patrick & Company -
First National Bank of Boston Irrevocable Letters of
Credit Nos. S10971, S11011, S11085, S11344.

Yours faithfully,

S. G. ROSS
ACCOUNTANT

Copy of letter from Second Defendant
to Cooper Bros. & Co.

8.9.70

SGR:wn

30th September, 1970

Patrick & Company,
2 Castlereagh St.,
SYDNEY. N.S.W.

Dear Sirs,

We have pleasure in enclosing our cheque for the sum of \$76,314.38, being interest earned as follows:-

\$500,000	8½%	1/7 - 30/9/70 inclusive	\$10,397.26
\$500,000	8%	1/7 - 30/9	" \$10,082.19
\$1,500,000	0.10%	15/8/69-30/6/70	" \$1,315.07
	6.85%	1/7 - 30/9	" \$25,898.63
\$1,500,000	0.15%	16/5/69 - 30/6/70	" \$2,533.56
	6.90%	1.7 - 30/9/70	" <u>\$26,087.67</u>
			<u>\$76,314.38</u>

Thanking you,

we remain,

Yours faithfully,

SG. ROSS
ACCOUNTANT

Copy of letter from Second Defendant
to Patrick & Co.

30.9.70

35 36

LJ:bw

29th December 1970.

Patrick Partners
2 Castlereagh Street,
SYDNEY N.S.W. 2000

Dear Sirs,

We have pleasure in enclosing our cheque for the sum of \$74,723.94.

\$ 500,000	8.%	1/10 - 31/12/70	inclusive	10,397.25
\$ 500,000	8 %	1/10 - 31/12/70	"	10,082.19
\$1,500,000	6.90%	1/10 - 31/12/70	"	26,087.67
	.05%	15/8/69 - 30/9/70	"	846.56
\$1,500,000	6.95%	1/10 - 31/12/70	"	26,276.71
	.05	16/5/69 - 30/9/70	"	1,033.56
				<hr/>
				74,723.94
				<hr/>

Yours faithfully,



L. JEFFERS.
ACCOUNTANT.

Encl.

Copy of letter from Second Defendant
to Patrick Partners

29.12.70

COPY

3677

December 31, 1970

Commercial Banking Company
of Sydney
Overseas Department
343 George Street
Sydney, NSW, Australia

Ref.: Our Letters Of Credit Nos.S-10971,
S-11011, S-11085, S-11091, S-11344
In favor of Patrick & Co. for account of
First Leasing Australia, Ltd.

Dear Sirs:

At the request of the beneficiary we hereby con-
firm to you that drafts signed "PatrickPartners
formerly Patrick & Company" are acceptable for drawing
under the above mentioned credits.

Very truly yours

Authorized Official

CC: Patrick Partners
First Leasing Australia, Ltd.

LMC/ds

Copy of letter from Third Defendant
to Plaintiff

31.12.70

C
O
P
Y

INTER OFFICE MEMORANDUM

MEMO TO: LEO JEFFERS

MEMO FROM: FIR

SUBJECT: _____

DATE: 18/1/71

Reference FLA Provision created for Patrick & Company Loan.

*7.625%
ie 7 1/2%
3 1/2%
of what.*

14/5/70 - 15/8/70
In the FLA accounts as 30/6/70, we showed a provision for interest at \$26,286. Would you advise the full interest rate applicable to the two Patrick & Company loans if they go to their full period. Also, give the date and amount on which the loans are due.

now 6%

In view of the fact that the current U.S. rate is $6\frac{1}{2}\%$, it might behove us to replace these Patrick & Company loans with U.S. loans. In all probability, Boston would charge a 1.5% premium over and above the rate. This would make the loan cost ~~7.70%~~. If however, we could obtain a rate lower than the equivalent Patrick rate and such rate equivalent to the rate, say, at 30/6/70, we could write back the interest provision as additional income into FLA this year.

Would you look at the situation at the 31/12/70 to enable an assessment. Any thoughts you have on the matter would be appreciated. If this proposal is feasible (I am not sure that it is) it would be nice to receive as income the \$26,286 for it would be tax free.



REF:LJ/RE

31st March, 1971.

Patrick Partners,
2 Castlereagh Street,
SYDNEY, N.S.W. 2000

Dear Sirs,

We have pleasure in enclosing our cheque for the sum of \$63,717.11,
being interest earned as follows:-

\$500,000	8.00%	1.1.71 - 31.3.71 inclusive		9,863.01
\$1,500,000	6.95%	1.1.71 - 31.3.71	"	25,705.48
	.05%	15.8.69 - 31.12.70	" 139 + 365 504	1,035.61
\$1,500,000	7.00%	1.1.71 - 31.3.71	"	25,890.41
	.05%	16.5.69 - 31.12.70	" 595	<u>1,222.60</u>
				<u><u>\$63,717.11</u></u>

Yours faithfully,



L. JEFFERS
ACCOUNTANT

Copy of letter from Second Defendant
to Patrick Partners

31.3.71

30th June, 1971

30/9/71

Patrick Partners,
2 Castlereagh St,
SYDNEY, N.S.W. 2000

Dear Sir,

66501.36

We have pleasure in enclosing our cheque for \$60,258.89,
being interest derived as follows :-

Amount.	Rate.	Period.	Interest.	
\$300,000	8.5%	1/7/71 - 30/6/71 incl.	2,493.15	34
\$1,500,000	7.00%	1/4/71 - 31/5/71	17,422.59	21
	7.00%	15/8/69 - 15/8/71	1,345.89	110
	7.10%	1/6/71 - 30/9/71	8,630.14	69
\$1,500,000	7.10%	1/7/71 - 15/8/71	17,547.94	112
	7.10%	1/2/71 - 31/5/71	3,065.76	112
	7.20%	15/8/71 - 30/4/71	18,753.42	112
	7.20%	1/6/71 - 30/6/71	18,753.42	112
			<u>60,258.89</u>	<u>66501.36</u>

Thanking you,

Yours faithfully,

R. WETTENHALL
ACCOUNTANT

Copy of letter from Second Defendant
to Patrick Partners

30.6.71

49

31/12/71

RW/3n

~~30th September 1971~~

Messrs Patrick Partners,
2 Castlereagh St,
SYDNEY. N.S.W. 2000

Dear Sirs,

68005-35

We have pleasure in enclosing our cheque for ~~\$66,581.36~~,
being interest derived as follows -

<u>Amount.</u>	<u>R te.</u>	<u>Period.</u>	<u>Interest</u>
\$300,000	8.5%	1/7/71 - 30/9/71 ^{1/10/71 - 31/12/71} incl.	16,427.39 ✓ 6427.39
\$1,500,000	7.88% 7.10	1/7/71 - 15/8/71 ^{1/10/71 - 15/11/71} "	12,945.21 13130.13
	.10%	15/8/69 - 15/8/71 ^{15/11/71} "	3,004.18 3378.08
	7.18% 7.20	15/8/71 - 30/9/71 ^{15/11/71 - 31/12/71} "	13,713.69 13906.79
\$1,500,000	7.10% 7.20	1/7/71 - 15/8/71 ^{1/10/71 - 15/11/71} "	13,138.12 13315.06
	.10%	16/5/69 ^{15/11/71} 15/8/71 ^{15/11/71} "	3,374.00 3747.90
	7.20% 7.30	16/8/71 - 30/9/71 ^{15/11/71 - 31/12/71} "	13,986.85 14100.00
			\$66,581.36 <u>68005.35</u>

Thanking you,

Yours faithfully,



R. C. WETTENHALL
ACCOUNTANT

MARCH '72

RCW:MEH

31st December, 1971.

Messrs. Patrick Partners,
2 Castlereagh St.,
SYDNEY. N.S.W. 2000.

Dear Sirs,

68843-78

We have pleasure in enclosing our cheque for \$68,005.35 being interest derived as follows :

Amount	Rate	Period	Interest	
300,000		1/1/72 - 31/3/72	6367.53	
\$800,000	8.5%	1/10/71 - 31/12/71	6427.39	
\$1,500,000	7.10%	1/1/72 - 15/2/72	13190.19	13315-05
	.10%	15/8/69 - 15/11/71	9970.08	8756-86
	7.20%	15/2/72 - 31/3/72	13908.79	13800
		15/2/72 - 31/3/72		
\$1,500,000	7.20%	1/10/71 - 15/11/71	13319.06	13500
	.10%	16/5/69 - 15/11/71	3747.90	4126-02
	7.30%	15/11/71 - 31/12/71	14100.00	13989-02
		15/2/72 - 31/3/72		
			<u>\$68005.35</u>	<u>68843.78</u>

Thanking you,

Yours faithfully,



R.C. Wettenhall
Accountant.

~~58~~
56

30th June 1972

Messrs. Patrick Partners,
2 Castlereagh St.,
SYDNEY NSW 2000

Dear Sirs,

We have pleasure in enclosing our cheque for \$61,637.63
being interest derived as follows:

<u>Amount</u>	<u>Rate</u>	<u>Period</u>	<u>Interest</u>
\$1,500,000	7.3%	1/4/72-15/5/72	13,200.00
	.10%	15/8/69-15/5/72	4,126.02
	7.40%	15/5/72-30/6/72	14,293.15
\$1,500,000	7.40%	1/4/72-15/5/72	13,389.80
	.05%	16/5/69-15/5/72	2,249.94
	7.45%	15/5/72-30/6/72	14,389.72
			<u>\$61,637.63</u>

Thanking you,

Yours sincerely,



R. C. Wettenhall
Accountant

Patrick Partners

MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

• M. R. L. DOWLING
 • N. R. COURSE
 • M. A. McGRATH
 J. A. KEIR
 • T. R. ALLEN
 R. W. BURGE
 J. S. CORNER
 W. J. EDWARDS
 M. E. BAUME
 A. BURT
 P. DAVIE
 R. N. GOTTLIEBSEN

2 CASTLEREAGH STREET, SYDNEY, 2000
 G.P.O. BOX 2850, SYDNEY, 2001. TELEX 20757

TELEPHONE 2-0319 (25 LINES)
 TELEGRAMS & CABLES "ROSDALE"

MELBOURNE, BRISBANE, CANBERRA, WOLLONGONG

REF.

30th June, 1972.

The Secretary,
 First Leasing Australia Ltd.,
 8th Floor,
 379 Collins Street,
 MELBOURNE, VIC. 3000

Dear Sir,

Re: Deposits from Patrick Partners

For audit purposes, our Auditors, Messrs. Cooper Brothers & Co., Chartered Accountants of 6 O'Connell Street, Sydney would like you to confirm directly to them the following details as at 30th June, 1972.

	<u>Deposit 1</u>	<u>Deposit 2</u>
1. Deposit balance:	\$1,500,000.00	\$1,500,000.00
2. Term of deposit:	Fixed to 15.5.73 Interest on sliding scale.	Fixed to 15.8.73 Interest on sliding scale.
3. Interest paid to:	31.3.72	31.3.72
4. Securities held:	Letter of Credit	Letter of Credit

We would be grateful for your confirmation on the attached duplicate of this letter as early as possible. A self-addressed envelope is enclosed for your convenience.

Yours faithfully,
 PATRICK PARTNERS

Copy of letter from Patrick Partners to
 Fourth Defendant

30.6.72

Patrick Partners

• MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

• M. R. L. DOWLING
 • N. R. COURSE
 • M. A. McGRATH
 J. A. KEIR
 • T. R. ALLEN
 R. W. BURGE
 R. A. NOSS
 J. S. CORNER
 W. J. EDWARDS
 M. E. BAUME
 A. BURT
 P. DAVIE
 R. N. GOTTLIEBSEN

2 CASTLEREAGH STREET, SYDNEY, 2000
 G.P.O. BOX 2850, SYDNEY, 2001. TELEX 20757

TELEPHONE 2-0319 (25 LINES)
 SCRIP & ACCOUNTS 28-4511
 TELEGRAMS & CABLES "ROSDALE"

MELBOURNE, BRISBANE, CANBERRA, WOLLONGONG, PERTH, BRUSSELS.

REF.

c.c. Messrs. Cooper Bros. & Co.

31st December, 1971.

The Secretary,
 State Electricity Commission of
 Victoria,
 15 William Street,
 MELBOURNE. VIC. 3000

Dear Sir,

Re: Deposits with Patrick Partners

For audit purposes, our Auditors, Messrs. Cooper Brothers & Co. Chartered Accountants of 6 O'Connell Street, Sydney would like you to confirm directly to them the following details:-

	<u>Deposit 1</u>	<u>Deposit 2</u>
1. Deposit balance at 31st December, 1971:	\$1,500,000.00	\$1,500,000.00
2. Term of deposit:	Fxd. to 15.5.73 Int. Sliding Scale	Fxd. to 15.8.73 Int. Sliding Scale
3. Interest has been paid up to:	15.11.71	15.11.71
4. Securities held:	Letter of Credit	Letter of Credit

We would be grateful for your confirmation on the attached duplicate of this letter as early as possible. A self-addressed envelope is enclosed for your convenience.

Yours faithfully,
 PATRICK PARTNERS.

Copy of letter from Patrick Partners to
 Fourth Defendant

31.12.71

PATRICK PARTNERS

MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

• M. H. L. DOWLING
 • N. R. COURSE
 • M. A. McGRATH
 J. A. KEIR
 • T. R. ALLEN
 R. W. BURGE
 J. S. CORNER
 W. J. EDWARDS
 M. E. BAUME
 A. BURT
 P. DAVIE
 R. N. GOTTLIEBSEN

2 CASTLEREAGH STREET, SYDNEY, 2000
 G.P.O. BOX 2850, SYDNEY, 2001. TELEX 20757

TELEPHONE 2-0319 (25 LINES)
 TELEGRAMS & CABLES "ROSDALE"

MELBOURNE, BRISBANE, CANBERRA, WOLLONGONG

REF.

30th June, 1972.

The Secretary,
 State Electricity Commission of Victoria,
 15 William Street,
 MELBOURNE, VIC. 3000

Dear Sir,

Re: Deposits with Patrick Partners

For audit purposes, our Auditors, Messrs. Cooper Brothers & Co., Chartered Accountants of 6 O'Connell Street, Sydney would like you to confirm directly to them the following details as at 30th June, 1972.

	<u>Deposit 1</u>	<u>Deposit 2</u>
1. Deposit balance:	\$1,500,000.00	\$1,500,000.00
2. Term of deposit:	Fixed to 15.5.73 Interest sliding scale.	Fixed to 15.8.73 Interest sliding scale.
3. Interest paid to:	15.5.72	15.5.72
4. Securities held:	Letter of Credit	Letter of Credit

We would be grateful for your confirmation on the attached duplicate of this letter as early as possible. A self-addressed envelope is enclosed for your convenience.

Yours faithfully,
 PATRICK PARTNERS

c.c. Cooper Bros. & Co.

Copy of letter from Patrick Partners to
 Fourth Defendant

30.6.72

Patrick Partners

MEMBERS OF THE SYDNEY STOCK EXCHANGE LIMITED

• M. R. L. DOWLING
 • N. R. COURSE
 • M. A. McGRATH
 J. A. KEIR
 • T. R. ALLEN
 R. W. BURGE
 J. S. CORNER
 W. J. EDWARDS
 M. E. BAUME
 A. BURT
 P. DAVIE
 R. N. GOTTLIEBSEN

2 CASTLEREAGH STREET, SYDNEY, 2000
 G.P.O. BOX 2850, SYDNEY, 2001. TELEX 20757

TELEPHONE 2-0319 (25 LINES)
 TELEGRAMS & CABLES "ROSDALE"

MELBOURNE, BRISBANE, CANBERRA, WOLLONGONG

REF.

30th June, 1972.

The Secretary,
 First Leasing Australia Ltd.,
 8th Floor,
 379 Collins Street,
 MELBOURNE, VIC. 3000

Dear Sir,

Re: Deposits from Patrick Partners

For audit purposes, our Auditors, Messrs. Cooper Brothers & Co., Chartered Accountants of 6 O'Connell Street, Sydney would like you to confirm directly to them the following details as at 30th June, 1972.

	<u>Deposit 1</u>	<u>Deposit 2</u>
1. Deposit balance:	\$1,500,000.00	\$1,500,000.00
2. Term of deposit:	Fixed to 15.5.73 Interest on sliding scale.	Fixed to 15.8.73 Interest on sliding scale.
3. Interest paid to:	31.3.72	31.3.72
4. Securities held:	Letter of Credit	Letter of Credit

We would be grateful for your confirmation on the attached duplicate of this letter as early as possible. A self-addressed envelope is enclosed for your convenience.

Yours faithfully,
 PATRICK PARTNERS

Copy of letter from Patrick Partners to
 Second Defendant

30.6.72

RCW:RG.

September 29, 1972.

The Secretary,
Patrick Partners,
2 Castlereagh Street,
SYDNEY, N.S.W. 2000.

Dear Sir,

The company is pleased to enclose interest cheque due for the quarter, calculated as follows :-

<u>Principal</u>	<u>Rate</u>	<u>Period</u>	<u>Interest</u>
\$1,500,000.00 \$1,550,000.00	7.30	1/7/72 - 14/8/72	\$13,684.93
\$1,500,000.00	.10	15/8/69 - 14/8/72	\$ 4,504.01
\$1,500,000.00	7.40	15/8/69 - 30/9/72	\$14,389.72
			<hr/>
			\$32,578.66
\$1,500,000.00	7.45	1/7/72 - 14/8/72	\$13,777.39
\$1,500,000.00	.05	16/5/69 - 14/8/72	\$ 2,436.99
\$1,500,000.00	7.50	15/8/72 - 30/9/72	\$14,486.31
			<hr/>
			\$30,700.69
			<hr/>
			<u>\$63,279.35</u>

Yours sincerely,



Robert C. Wettenhall
Accountant.

Copy of letter from Second Defendant
to Patrick Partners

29.9.72

60 34
62

RCW:bs

29th December, 1972.

Patrick Partners,
2 Castlereach Street,
SYDNEY, 2000. N.S.W.

Dear Sir,

We have pleasure in enclosing our cheque for
\$61,783.50 representing interest for the quarter
ending 31st December, calculated as follows:

<u>Principal</u>	<u>Rate</u>	<u>Period</u>	<u>Amount.</u>	
\$1,500,000.00	7.40	1.10.72-14.11.72	\$13,777.39	
	0.05	15.8.69-14.11.72	\$ 2,441.11	
	7.45	15.11.72-31.12.72	<u>\$14,486.29</u>	\$30,704.79
\$1,500,000.00	7.50	1.10.72-14.11.72	\$13,869.86	
	0.05	16.5.69-14.11.72	\$ 2,626.02	
	7.55	15.11.72-31.12.72	<u>\$14,582.83</u>	<u>\$31,078.71</u>
				<u>\$61,783.50</u>

Yours faithfully,

ROBERT C. WETTENHALL.
Accountant.

encl.

Copy of letter from Second Defendant
to Patrick Partners

29.12.72

~~11~~
66

RCW:meh

March 31, 1973

Patrick Partners,
2 Castlereagh Street,
SYDNEY. N.S.W. 2000.

Dear Sir,

We have pleasure enclosing our interest cheque for the quarter ended March 31, 1973, calculated as follows :-

<u>Principal</u>	<u>Rate</u>	<u>From</u>	<u>To</u>	<u>Days</u>	<u>Interest</u>
(1) 1,500,000	7.5%	1/1/73	15/2/73	45	\$13,869.86
	.05%	15/8/69	15/2/73	1280	\$ 2,630.02
	7.55%	15/2/73	31/3/73	45	\$13,962.32
					<u>\$30,462.20</u>
(2) 1,500,000	7.55%	1/1/73	15/2/73	45	\$13,962.28
	.075%	16/5/69	15/2/73	1370	\$ 4,222.60
	7.625%	15/2/73	31/3/73	45	\$14,101.34
					<u>\$32,286.22</u>
					<u>\$62,748.42</u>

Yours sincerely,

Robert C. Wettenhall
Accountant

Copy of letter from Second Defendant
to Patrick Partners

31.3.73

FIRST LEASING AUSTRALIA LIMITED

AT

1971

LENDINGS

Associated Securities Ltd.	100,000.00 ✓
* Barco Transport Pty. Ltd.	85,126.99 ✓
Berkitt Investments	40,000.00 ✓
F.N.C.S.-Wallens Corp.	50,000.00 ✓
* Robert Tison Pty. Ltd.	100,000.00 ✓
	<u>3375,126.99</u>

INVESTMENTS

* Keyes Fibre Company	169,419.00 ✓
-----------------------	--------------

LAND & BUILDINGS

Permanen Wright Ltd.	<u>1,090,512.52</u>
	<u>\$1,635,050.51</u>
* Loans to U.S. Subsidiaries with Head Office Guarantee.	354,545.99
Loans to U.S. & Australian Subsidiaries without Head Office Guarantee.	<u>1,280,512.52 ✓</u>
	<u>\$1,635,050.51</u>

RECEIVINGS

Amdux Mining Ltd.	250,000.00 ✓
American Home Assurance	200,000.00 ✓
Barclays Nominees	200,000.00 ✓
B.C.F.C.	97,094.00
Broken Hill Pty. Co. Ltd.	600,000.00 ✓
Buxton L & R	290,000.00
Capel Court Corporation	600,000.00
Carr Fastener	1,400,000.00 ✓
Clydeholm	14,093.20
Colonial Sugar Refining Co. Ltd.	500,000.00
Elders Finance & Investment	500,000.00
Expansion Finance (Aust.)	64,394.00
Fox & Lillie Pty. Ltd.	150,000.00
F.W.E.B.	500,000.00
Hoover Australia Pty. Ltd.	500,000.00
M.I.M. Holdings	2,500,000.00 ✓
Patrick Partners	3,500,000.00 ✓
Permanen Wright.	163,576.07
R.I.L.F. Pty. Ltd.	24,000.00
R.I.L. (B) Pty. Ltd.	10,000.00
St. Laurence Trust Pty. Ltd.	50,000.00
Swinburne College	170,000.00
J.H. West & Son	<u>250,512.00</u>
	<u>\$12,562,759.67</u>

Lendings	1,635,050.51
Lease Funds	10,927,507.15
Finance Account Balances	<u>100,201.01</u>
	<u>\$12,562,759.67</u>

FIRST LEASING AUSTRALIA LIMITED31st DECEMBER, 1971BORROWINGS:

Abegg Holdings.	\$500,000
Australian Conservation Foundation	100,000
Hanover & American Home Assurance.	350,000
American Home Assurance	200,000
BHP Co.	500,000
Barclays Nominees.	200,000
BOFO	114,495
BHP Co.	600,000
Capel Court Securities.	300,000
Carr Fastener	400,000
" "	1,000,000
Clydeholme	18,634
C.M.I.	300,000
Darling & Co.	500,000
Expansion Finance	85,754
FNBB	500,000
"	140,000
"	95,000
Hoover Australia.	500,000
Robert Hutchinson Ltd.	200,000
Myer Ltd.	500,000
M.I.M.	300,000
"	500,000
National Nominees	0,600
" "	58,600
Patrick & Co.	300,000
"	1,500,000
"	1,500,000
Permewan Wright Ltd.	226,449
RILF	24,000
RIL(Q)	18,000
SGIO	1,000,000
St. Laurence Trust	50,000
Swinburns College	100,000
" "	70,000
Winegardner Operations.	1,000,000
Westralian International 9	600,000

\$14,559,532
USE OF FUNDS

Lendings.	1,069,560
Loans Funds.	12,639,670
Finance ccount Balances.	2

\$14,559,532

Copy of Accounts of Second
Defendant

31.12.71

FIRST LEASING AUSTRALIA LIMITED31ST JANUARY 1972LENDINGS

Bartlett Investments Ltd.	\$100,000
Expansion Finance (Aust.) Ltd.	12,000
FACB Waltons Ltd.	<u>50,000</u>
	\$162,000

INVESTMENTS:

Keyes Fibro Co.	247,998
-----------------	---------

LAND & BUILDING

Permewan Wright Pty. Ltd.	\$1,509,662
	<u>\$1,919,660</u>

1. Loans to U.S. Subsidiaries with H.O. Guarantee	247,998
2. Loans to U.S. Subsidiaries & Australian without H.O. Guarantee	<u>1,671,662</u>
	<u>\$1,919,660</u>

BORROWINGS:

Abegg Holdings Ltd.	500,000
Australian Conservation Foundation	100,000
American International Underwriters	200,000
American Home & Hanover Assurance Coy.	350,000
" " " " " "	200,000
B.H.P. Coy Ltd.	1,000,000
Barclays Nominees Pty. Ltd.	200,000
B.O.F.O.	112,835
Capal Court Securities	300,000
Carr Fasteners	1,700,000
Clydeholm Pty. Ltd.	20,134
Darling & Co.	500,000
Expansion Finance (Aust) Pty. Ltd.	65,755
F.N.B.B.	735,000
Hoover Australia Ltd	500,000
Myer Ltd.	500,000
Mount Isa Mines Ltd.	1,000,000
National Nominees Ltd.	67,200
Patrick & Co.	3,300,000
Permewan Wright Pty. Ltd.	226,449
RILF Pty. Ltd./RIL(Q) Pty. Ltd.	42,000
SGIO Queensland	1,000,000
St. Laurence Trust Pty. Ltd.	50,000
Swinburns College of Technology	170,000
Winegardner Pty. Limited	1,000,000
Westralien International Ltd.	600,000
	<u>14,555,373</u>

Lendings	1,919,660
Lease Funds	12,635,710
Finance Account Benefits	3
	<u>14,555,373</u>

Copy of Accounts of Second
Defendant

31.1.72

FIRST LEASING AUSTRALIA LIMITED29th February, 1972LENDINGS:

Bartlett Investments Ltd.	100,000
Expansion Finance (Aust.) Ltd.	12,000
FNCB Waltons Ltd.	50,000
GMAC	300,000
Waltons Ltd.	100,000
Clydeholm	<u>30,000</u>
	\$592,000

INVESTMENTS:

Keyes Fibre Co.	247,998
-----------------	---------

LAND & BUILDINGS:

Permewan Wright Pty. Ltd.	<u>1,509,662</u>
	<u>\$2,349,660</u>

1. Loans to U.S. Subsidiaries with H.O. Guarantees.	247,998
2. Loans to U.S. Subsidiaries & Australian Companies without H.O. Guarantee.	<u>2,101,662</u>
	<u>\$2,349,660</u>

BORROWINGS:

Abegg Holdings Ltd.	500,000
Australian Conservation Foundation	100,000
American International Underwriters	200,000
American Home & Hanover Assurance Coy.	350,000
" " " "	200,000
B B.H.P. Coy. Ltd.	500,000
Barclays Nominees Pty. Ltd.	200,000
B.O.F.C.	112,835
Capel Court Securities.	300,000
Carr Fasteners	1,700,000
Clydeholm Pty. Ltd.	19,834
Darling & Co.	500,000
Expansion Finance (Aust) Pty. Ltd.	85,755
Falkiner Collins & Co.	500,000
F.N.B.B.	735,000
Hoover Australia Ltd.	-
Myer Ltd.	500,000
Mount Isa Mines Ltd.	1,000,000
National Nominees Ltd.	67,200
Patrick & Co.	3,300,000
Permewan Wright Pty. Ltd.	226,449
RILF Pty.Ltd/RIL(Q) Pty.Ltd.	42,000
SGIO Queensland	1,000,000
Swinburne College of Technology	170,000
Thiess Holdings Ltd.	350,000
Winegardner Pty. Ltd.	1,000,000
Westralian International Ltd.	<u>1,000,000</u>
	<u>\$14,658,273</u>

Lendings.	2,349,660
Lease Funds	<u>12,308,613</u>
	<u>\$14,658,273</u>

Copy of Accounts of Second
Defendant

29.2.72

FIRST LEASING AUSTRALIA LIMITED31st MARCH, 1972LENDINGS

Bartlett Investments Pty. Ltd.	100,000
Clydeholm Pty. Ltd.	30,000
Elders Finance Co. Ltd.	25,000
Expansion Finance Aust. Pty. Ltd.	12,000
FNCB Waltons Ltd.	75,000
G.M.A.C.	300,000
Robert Hutchinson Ltd.	615,638
Waltons Ltd.	<u>100,000</u>
	1,257,638

INVESTMENTS

Keyes Fibre Co.	247,998
-----------------	---------

LAND & BUILDINGS

Permewan Wright Pty. Ltd.	<u>1,509,662</u>
	<u>\$3,015,298</u>

1. Loans to U.S. Subsidiaries with H.O. Guarantee \$247,998

2. Loans to U.S. & Australian subsidiaries without H.O. Guarantee.	<u>2,767,300</u>
	<u>\$3,015,298</u>

BORROWINGS

Abegg Holdings Ltd.	500,000
American International Underwriters	200,000
American Home & Manover Assur. Coy.	350,000
" " " "	200,000
BHP Coy. Ltd.	500,000
Barclays Nominees Ltd.	200,000
B.O.F.C.	112,835
Capel Court Securities Ltd.	300,000
Carr Fastener Pty. Ltd.	1,700,000
Clydeholm Pty. Ltd.	19,034
Darling & Co.	500,000
Expansion Finance (Aust) Pty. Ltd.	85,755
FNBB	735,000
MAC Ltd.	500,000
Myer Ltd.	500,000
M.I.N. Ltd.	1,000,000
National Nominees Ltd.	67,200
Patrick & Co.	3,300,000
Permewan Wright Pty. Ltd.	226,449
RILF Pty. Ltd. RIL(Q) Pty. Ltd.	52,000
SGIO Q'ld.	1,000,000
Swinburne College of Technology	170,000
Theiss Holdings Ltd.	350,000
Winegardner Pty. Ltd.	1,000,000
Westralian International Ltd.	<u>1,000,000</u>
	\$14,568,273

Lendings.	<u>2,907,339</u>
Lease Funds	<u>11,660,934</u>
	\$14,568,273

1322.851

111.8511

FIRST LEASING AUSTRALIA LIMITED31st MAY, 1972

✓ 34

LENDINGS

Bartlett Investments	\$300,000
Clydeholm Pty. Ltd.	30,000
Expansion Finance (Aust) Pty.Ltd.	12,000
Dalgety Australia Ltd.	300,000
Esso Standard Oil (Aust.) Ltd.	250,000
I.A.C.	300,000
National Discount	500,000
J. B. Were & Son	<u>450,000</u>
	<u>\$2,142,000</u>

INVESTMENTS

Keyes Fibre Co.	247,998
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LAND & BUILDINGS

Permewan Wright Pty. Ltd.	<u>1,509,662</u>
	<u>\$3,899,660</u>

1. Loans to U.S. Subsidiaries with H.O. Guarantee.	\$247,998
2. Loans to U.S. Subsidiaries & Australian Subsidiaries without H.P. Guarantee.	<u>3,651,662</u>
	<u>\$3,899,660</u>

BORROWINGS

American International Underwriters	120,000
Abegg Holdings	500,000
B.O.F.C.	112,004
Barclays Nominees	200,000
Carr Fastener	1,700,000
Capel Court Securities	600,000
Clydeholm Pty. Ltd.	17,630
Expansion Finance (Aust.) Pty. Ltd.	69,355
F.N.B.B.	2,159,501
Hoover Australia Ltd.	500,000
Robert Hutchinson Ltd.	200,000
M.I.M. Holdings Ltd.	1,000,000
Myer Ltd.	500,000
National Nominees	67,200
Patrick Partners	3,000,000
Provident Building Society	200,000
Permewan Wright Ltd.	226,449
R.E.S.I.	100,000
RILF/RIL(Q)	52,000
S.G.I.O.Q'ld.	1,000,000
Thiess Holdings Ltd.	350,000
Tradax (Aust.) Ltd.	1,000,000
Wallace Bros.	500,000
Westralian International Ltd.	1,000,000
Winegardner Pty.Ltd.	<u>1,000,000</u>

\$16,174,139

Lendings.	3,899,660
Lease Funds	<u>12,274,479</u>
	<u>\$16,174,139</u>

Copy of Accounts of Second Defendant

31.5.72

FIRST LEASING AUSTRALIA LIMITED
NOVEMBER 1972

57
1)

LENDINGS

Ayres Rock Tourist Development	\$125,000
Bartlett Investments	300,000
Gosford Meats	46,498
Korfra Investments	<u>95,000</u>
	\$566,498

INVESTMENTS

Keyes Fibre Co.	209,907
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LAND & BUILDINGS

Permewan Wright	<u>1,527,655</u>
-----------------	------------------

\$2,304,060

1. Loans to U.S. Subsidiaries with H.O. Guarantee	209,907
2. Loans to U.S. & Australian Subsidiaries without H.O. Guarantee	<u>2,094,153</u>

\$2,304,060

BORROWINGS

A.I.F.C.	500,000
Abegg Holdings	500,000
Carr Fastener	450,000
Carr Fastener	500,000
G.J. Coles	500,000
C.S.R. Co.	500,000
Clydeholm	14,926
Darling & Co.	300,000
Expansion Finance (Aust) Pty. Ltd.	31,431
Hoover Australia	500,000
Hill Samuel	300,000
Hoover Australia	500,000
Myer Ltd.	500,000
Patrick Partners	3,000,000
Permewan Wright	229,148
S.G.I.O.	1,000,000
Thiess Holdings	300,000
Tradax	1,000,000
Vine Nominees	200,000
Winegardner	1,000,000
Westralian International Ltd.	<u>1,000,000</u>

\$12,025,505

Lendings	2,304,060
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Lease Funds	<u>10,521,445</u>
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\$12,825,505

Copy of Accounts of Second
Defendant

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FIRST LEASING AUSTRALIA LIMITEDDECEMBER 197259
~~62~~
61LENDINGS:

Elder Finance	\$450,000
Ayres Rock Tourist Development	125,000
Bartlett Investments	300,000
Darling & Co.	250,000
Gosford Meats	119,698
Korfra Investments	95,000
	<u>\$1,339,698</u>

INVESTMENTS:

Keyes Fibre Co	197,107
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LAND & BUILDINGS

Permewan Wright.	1,527,655
	<u>\$3,064,460</u>

1. Loan to U.S. Subsidiaries with H.O. Guarantee	197,107
2. Loan to U.S. & Australian subsidiaries without H.O. Guarantee.	2,867,353
	<u>\$3,064,460</u>

BORROWINGS:

A.I.F.C.	500,000
Abegg Holdings	500,000
Carr Fastener	450,000
" "	500,000
G.J. Coles	500,000
Clydeholm	45,000
C.S.R.	500,000
Darling & Co.	300,000
Expansion Finance	65,081
Hoover Aust.	500,000
Hill Samuel	300,000
Hoover Aust.	500,000
Robert Hutchinson	250,000
Myer Ltd.	500,000
Ord B.T.	1,000,000
Patrick & Co.	1,500,000
"	1,500,000
Permewan Wright	229,148
S.G.I.O.	1,000,000
Thiess Holdings	450,000
Tradax	1,000,000
Vine Nominees	200,000
Winegardner	500,000
Westralian International Ltd.	1,000,000
	<u>\$13,789,229</u>

Lendings.	3,064,462
Lease Funds.	10,724,767
	<u>\$13,789,229</u>

FIRST LEASING AUSTRALIA LIMITED.JANUARY, 1973.LENDINGS.

AYERS ROCK TOURIST DEVELOPMENT	125,000
BARTLETT INVESTMENTS	300,000
DARLING & CO.	100,000
GOSFORD MEATS	207,996
KORFRA INVESTMENT	95,000
WALTONS LTL.	<u>100,000</u>
	927,996

INVESTMENTS

KEYES FIBRE CO.	197,107
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LAND & BUILDINGS.

PERMEWAN WRIGHT	<u>1,527,655</u>
	<u>\$2,652,758</u>

1. Loan to U.S. subsidiaries with H.O. G'tee
2. Loan to U.S. & amount without " "

197,107
2,455,651
\$2,652,758

BORROWINGS

A.I.F.C.	500,000
CARR FASTENER	450,000
" "	500,000
G. J. COLES	500,000
C.S.R.	500,000
CLYDEHOLM	45,000
DARLING & CO.	300,000
EXPANSION	65,081
HOOVER	500,000
HILL SAMUEL	300,000
HOOVER	500,000
ROBERT HUTCHINSON	150,000
MYER LTD.	500,000
ORD. B.T.	1,000,000
PATRICK & CO.	1,500,000
" " "	1,500,000
PERMEWAN WRIGHT	229,148
S.G.L.O.	1,000,000
THIESS HOLDINGS	450,000
TRADAX	1,000,000
VINE NOMINEES	200,000
WINEGARDENER	500,000
WESTRALIAN INTERNATIONAL LTD.	<u>1,000,000</u>
	<u>\$13,189,229</u>

LENDINGS
LEASE FUNDS

2,652,758
10,536,471
\$13,189,229

Copy of Accounts of Second
Defendant

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62
61

FIRST LEASING AUSTRALIA LIMITED
FEBRUARY 1973

LENDINGS

Ayers Rock Tourist Development	\$125,000
Bartlett Investments	300,000
Gosford Meats Pty.Ltd.	482,959
Korfra Investments	<u>95,000</u>
	<u>\$1,002,959</u>

INVESTMENTS

Keyes Fibre Co.	197,107
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LAND & BUILDINGS

Permewan Wright	1,527,655
	<u>\$2,727,721</u>

1. Loan to U.S.Subsidiaries with H.O.Guarantee	197,107
2. Loan to U.S.& Australian subsidiaries without H.O.Guarantee	<u>2,530,614</u>
	<u>\$2,727,721</u>

BORROWINGS

A.I.F.C.	500,000
Carr Fastener	950,000
G.J.Coles	500,000
C.S.R.	500,000
Clydeholm Pty.Ltd.	42,000
Darling & Company	300,000
Expansion Finance	65,081
Hoover Australia	500,000
Hill Samuel	300,000
Myer Ltd.	500,000
N.C.R.	50,000
Ord B.T.	1,000,000
Patrick & Co.	3,000,000
Permewan Wright.	229,148
S.G.I.Q.	1,000,000
Thiess Holdings	300,000
Tradax.	1,000,000
Vine Nominees	200,000
Winegardner	500,000
W.I.L.	<u>1,000,000</u>
	<u>\$12,436,229</u>

Lendings	\$2,727,721
Lease Funds	<u>9,708,508</u>
	<u>\$12,436,229</u>

"A"

L/C fee at present 1/6ths% p.a.
Proposed .25% p.a.

8th August, 1973

Customer 2 years
(Old Connection)

Interest Rate
Overdraft %
Line Fee on unused port 75%
Endorsement Fee 1.2%

BRANCH

CORPORATE SERVICES

NAME
ACTIVITY
*DIRECTORS

PATRICK-INTERMARINE ACCEPTANCES LIMITED
(50% Patrick Corporation Ltd 50% Patrick-Intermarine (Aust) Ltd)
Money market operators.
M.R.L. Dowling (Chm) P. Davie, P. Grey, R. L. Johnson
E. J. Roberts Secretary J. R. Lees

PRESENT POSITION

Total Debts \$ Term Loan \$
Total Limits \$ repayable \$ p.a.
reducing by \$ p.a.
Bill Endorsement Facility \$ 1 million for bills of exchange accepted or endorsed by Patrick-Intermarine Acceptances - bills outstanding \$525,000
Letter of Credit (matched) - issued in favour of the State Electricity of Victoria and expiring 15/8/73 \$1.5m A/C Patrick Partners *Total Bank Liabilities \$1,001,276
Total Credit Balances \$1,276 Dr (Castlereagh & Hunter Sts Br.)

(Total Bank Liabilities to include O/D Debt or limit whichever is the greater, T.L. and/or F.D.L., Bill Limit, Total Contingent Liabilities including lease finance.)

PROPOSED

Total Limits \$ Term Loan \$
reducing by \$ p.a. repayable \$ p.a.
Bill Endorsement Facility \$1,000,000 - unchanged
That we issue a letter of credit in favour of the State Electricity Commission of Victoria for \$1,500,000 for 2 years (rollover of existing facility)
Contingent Liabilities \$1,500,000 *Total Bank Liabilities \$2,501,276

SECURITY

(Summary only)

Bill Endorsement Facility - see attached
Matching letter of credit in our favour issued by the First National Bank of Boston for \$A1,500,000 for two years.

PURPOSE

Rollover of existing letter of credit in favour of the State Electricity Commission of Victoria for \$A1,500,000 to expire 15/8/73 and backed by a matching letter of credit from the First National Bank of Boston.

COMMENTS

(to include reference to associated business)

The transaction in respect of the maturing letter of credit was entered into in August, 1969 for a four-year term and was arranged on behalf of Patrick Partners who borrowed from the S.E.C. and onlent to First Leasing Australia Limited.

Patrick-Intermarine Acceptances Ltd commenced business in July, 1971 and was established to conduct the money market activities on behalf of its shareholder companies including Patrick Partners. The present request was received by telephone from Patrick-Intermarine Acceptances Ltd and has been confirmed by telephone with First Leasing Australia. Reserve Bank of Australia approval is being obtained.

DRAWBACKS (to include reference to hard core)

Our charge on existing facility was 1/6th of 1% - \$2,500 p.a.
We consider the charge should now be a minimum of .25% p.a. - \$3,750.

BENEFITS

(new accounts to be obtained & reference to credit funds & overseas exchange content)

Closer relationship with the Patrick-Intermarine and First National Bank of Boston Groups.

to be based on the basis of .25% per annum return to this bank.

Handwritten notes:
10/8/73
2/8/73
14/8/73
D. J. ...
Nest ...
Approved ...
14/8/73

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BOSTONBK B8N A

FLAUST AA31087

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ATTENTION REYNOLDS

PLEASE ISSUE L/C IN FAVOUR OF COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED FOR TWO MILLION AUST DOLLARS PRINCIPAL PLUS INTEREST AT EIGHT POINT ONE TWO FIVE PERCENT FROM AUGUST 20, 1973 TO AUGUST 21, 1975 STOP THIS L/C IS BACK TO BACK WITH L/C ISSUED BY COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED TO STATE ELECTRICITY COMMISSION OF VICTORIA WHO IS LENDER STOP//ALSO PLEASE ROLLOVER L/C 11085 IN FAVOUR OF PATRICK INTERMARINE ACCEPTANCES LIMITED (FORMERLY PATRICK AND CO.) 128 EXHIBITION STREET, MELBOURNE, VICTORIA, 3000, FOR ONE POINT FIVE MILLION AUST DOLLARS PRINCIPAL PLUS INTEREST AT EIGHT POINT SEVEN PERCENT FROM AUGUST 15, 1973 TO AUGUST 14, 1975 STOP IMPERATIVE YOU TELEX ISSUANCE ADVICE IMMEDIATELY TO REACH OVERSEAS DEPARTMENT, COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED, SYDNEY OFFICE, TELEX NUMBER 20350 NO LATER THAN AUGUST 15, 1973 STOP

REGARDS
LEWIS/FIRSTLEASING

AUGUST 14, 1973

FLAUST AA31067
BOSTONBK BSN A

229

GA
30194
ROSDALE AA30194
ROSDALE AA21279

PATRICKS SYDNEY 14/8/73

MELB OFFICE OUT 1.23 14.8.73.

THE SECRETARY,
FIRST LEASING AUSTRALIA LIMITED,
379 COLLINS STREET,
MELBOURNE. VIC. 3000

ATTENTION MR. ROBERT WHITTON

DEAR SIR,

WE CONFIRM THE TERMINATION OF THE LOAN NEGOTIATED ON
15TH AUGUST, 1969 BETWEEN PATRICK AND COMPANY AND YOURSELVES
WHICH TAKES EFFECT TODAY.

WE ACKNOWLEDGE RECEIPT OF YOUR CHEQUE FOR \$1,514,101.03
BEING THE PRINCIPAL SUM PLUS FINAL INTEREST PAYMENT OF
\$14,101.03.

YOURS FAITHFULLY,
PATRICK PARTNERS

COPY TO PIAL - MELB
ATTENTION MR. O. GROGAN

Copy of Telex from Patrick Partners
to Second Defendant

14.8.73

THE SECRETARY,
STATE ELECTRICITY COMMISSION OF VICTORIA,
15 WILLIAM STREET,
MELBOURNE. VIC. 3000

DEAR SIR,

WE REFER YOU TO THE TERMS AND CONDITIONS OF A LOAN OF \$1,500,000 FROM YOU TO PATRICK AND COMPANY ON THE 15TH AUGUST, 1969. PATRICK AND COMPANY LODGED WITH YOU AS SECURITY AN IRREVOCABLE LETTER OF CREDIT FROM THE COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED IN FAVOUR OF YOURSELVES FOR THE PRINCIPAL AMOUNT OF THE LOAN.

WE NOW CONFIRM THE TERMINATION OF THE LOAN, AND ACCORDINGLY ENCLOSE BANK CHEQUE FOR \$1,528,687.50 BEING THE PRINCIPAL SUM PLUS FINAL INTEREST PAYMENT OF \$28,687.50 WHICH WE WOULD THANK YOU TO ACCEPT IN EXCHANGE FOR THE IRREVOCABLE LETTER OF CREDIT YOU ARE HOLDING AS SECURITY.

YOURS FAITHFULLY,
PATRICK PARTNERS

.....DAVID THORPE

SENT 1.23#
ROSPALE AA30194

5812-63

B25

VVB
CBCOS AA20350
BOSTONBK BSN D

COMMERCIAL BANKING COMPANY OF SYDNEY LTD
SYDNEY AUSTRALIA

ATTN OVERSEAS DEPT

MESSAGE BACKDATED AND TESTED FOR AUGUST 14, 1973

91724 ON 4,325,451

HA
SM

WE HAVE OPENED OUR IRREVOCABLE LETTER OF CREDIT S-12647 FOR AUSTRALIAN DLRS 2,325,451.39 FAVOR YOURSELVES FAVOR YOURSELVES ACCOUNT FIRST LEASING AUSTRALIA LTD., MELBOURNE AVAILABLE BY YOUR SIGHT DRAFTS ACCOMPANIED BY YOUR SIGNED STATEMENT THAT YOU HAVE BEEN REQUIRED TO MAKE PAYMENT UNDER YOUR LETTER OF CREDIT OPENED FOR ACCOUNT OF FIRST LEASING AUSTRALIA LTD., IN FAVOR OF STATE ELECTRICITY COMMISSION OF VICTORIA. THAT YOU HAVE REQUESTED REIMBURSEMENT FROM FIRST LEASING AUSTRALIA LTD, AND SAME HAS NOT BEEN RECEIVED FROM FIRST LEASING AUSTRALIA LTD. OR ANY OTHER SOURCE. THE AMOUNT OF THIS CREDIT INCLUDES PRINCIPAL OF ADLRS 2,000,000. PLUS INTEREST AT 8.125 PERCENT PER ANNUM. THIS CREDIT EXPIRES AUGUST 21, 1975. STOP/OUR L/C S -11085 FAVOR PATRICK AND COMPANY ACCOUNT FIRST LEASING AUSTRALIA LTD., VALIDITY EXTENDED TO AUGUST 14, 1975.- BENEFICIARY OF THIS CREDIT IS NOW PATRICK INTERMARINE ACCEPTANCES LIMITED 128 EXHIBITION STREET, MELBOURNE VICTORIA 3000. ACCRUED INTEREST MAY BE NOW DRAWN AT A RATE NOT EXCEEDING 8.7 PERCENT PER ANNUM. PLEASE ADVISE BENEFICIARY TEST 91724 ON 4,325,451

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YCA

HA

BOSTONBANK BOSTON

*Corporate
America*

CBCOS AA20350
BOSTONBK BSN D
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Copy of Telex from Third Defendant
to Plaintiff

14.8.73

P.A. 12



RESERVE BANK OF AUSTRALIA

63 MARTIN PLACE
BOX 3947 GPO SYDNEY 2001
TELEPHONE 2 0337
IN REPLY PLEASE QUOTE ECD.OB.IC

15 August 1973

The Manager
The Commercial Banking Company
of Sydney Limited
Box 2720 G.P.O.
SYDNEY, N.S.W. 2001

Dear Sir,

EXCHANGE CONTROL

We refer to your letter of 14 August 1973.

Authority under the Banking (Foreign Exchange) Regulations is given to the extension, until 15 August 1975, of arrangements under which guarantees given by The First National Bank of Boston, U.S.A., and your bank secure the borrowing of \$A1,500,000 from the State Electricity Commission of Victoria by Patrick-Intermarine Acceptance Limited for on-lending to First Leasing of Australia Limited.

Yours faithfully,

For the Manager
Exchange Control Department

CB.499 (3/73)

The Commercial Banking Company of Sydney Limited 037

Established 1834

BOX 1720 G.P.O.
SYDNEY, N.S.W., 2001
TELEPHONE 2 6260

SYDNEY

343 GEORGE STREET
SYDNEY, N.S.W.OVERSEAS
TC:GPF.

16th August, 1973.....

The Secretary,
Patrick Intermarine Acceptances Ltd.,
Patrick House,
5 Gresham Street,
SYDNEY. N.S.W. 2000.

Dear Sir,

The First National Bank of Boston, Boston,
Irrevocable Credit in favour of Patrick Partners
for \$^1,500,000.

We confirm our telephone conversation of today, in which we advised having received cabled advice from The First National Bank of Boston, Boston, dated 14th instant amending the abovementioned Letter of Credit as follows:

"OUR L/C S-11085 FAVOUR PATRICK AND COMPANY ACCOUNT FIRST LEASING AUSTRALIA LTD VALIDITY EXTENDED TO AUGUST 14 1975 BENEFICIARY OF THIS CREDIT IS NOW PATRICK INTERMARINE ACCEPTANCES LIMITED 128 EXHIBITION STREET MELBOURNE VICTORIA 3000 ACCRUED INTEREST MAY BE NOW DRAWN AT A RATE NOT EXCEEDING 8.7 PERCENT PER ANNUM".

All other terms and conditions of the credit remain unaltered.

Please attach this advice to the original advice of Credit dated 14th August, 1969.

Yours faithfully,

pro Manager.Letter from Plaintiff to First
Defendant

16.8.73

J. W. S.
c26

DOCUMENTARY LETTER OF CREDIT — FORM No. 4.

THE COMMERCIAL BANKING COMPANY OF SYDNEY, LIMITED

257 Collins Street,

MELBOURNE,
Victoria.

16th. Aug. 1973.

SYDNEY
IRREVOCABLE CREDIT
No. LD 1436

We hereby authorise State Electricity Commission of Victoria, 15 Williams Street, MELBOURNE Vic.3000

to draw on Patrick-Intermarine Acceptances Ltd.

at - sight for any sum or sums not exceeding in all \$1,500,000 (One million five hundred thousand dollars. currency)

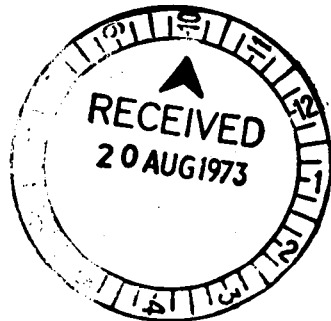
purporting to cover ~~interest~~ of Unpaid Principle of Loan made to Patrick-Intermarine Acceptances Ltd, 5 Gresham Street, SYDNEY.~~mk~~ ~~xxxxxxx~~ ~~xxxx~~ ~~mk~~

for account of

The draft(s) drawn under this credit must be accompanied by the following documents relating thereto:—

~~Commercial Invoice(s).~~

Statement of State Electricity Commission of Victoria certifying that the draft amount represents the unpaid principle amount of the fixed loan to 14/8/75 made by the Commission to Patrick-Intermarine Acceptances Ltd. and payment of the loan has been demanded and not received.



Additional instructions (if any):—

Negotiations under this credit are restricted to this bank.

235

To:
THE FIRST NATIONAL BANK OF BOSTON
INTERNATIONAL BANKING - LETTER OF CREDIT
POST OFFICE BOX 1784
BOSTON, MASSACHUSETTS 02108 U.S.A.

August 15, 1973

Patrick and Company
G.P.O. 2850
Sydney, Australia

Commercial Banking Company of
Sydney
Sydney
Australia

(BENEFICIARY)

(ADVISING BANK, IF ANY)

RE: YOUR LETTER OF CREDIT Nos-11085

ACCOUNT

First Leasing Australia Ltd.
Melbourne, Australia

GENTLEMEN:

WE CONFIRM YOUR ACTION AMENDING THIS CREDIT IN FAVOR OF THE CAPTIONED BENEFICIARY
IN THE FOLLOWING MANNER:

Beneficiary is now:

Patrick Intermarine Acceptances Limited
128 Exhibition Street
Melbourne, Victoria, 3000 Australia

Validity extended to August 14, 1975.

Accrued interest may be now drawn at a rate not exceeding 8.7% per annum.

ALL OTHER CONDITIONS REMAIN UNCHANGED.

METHOD OF NOTIFICATION

- By CABLE THROUGH ABOVE NAMED BANK
- By AIR MAIL THROUGH ABOVE NAMED BANK
- By AIR MAIL DIRECT TO BENEFICIARY

IN CONSIDERATION OF YOUR COMPLIANCE WITH OUR REQUEST, WE HEREBY AGREE AND GUARANTEE TO MAKE DUE
PROVISION FOR ANY DRAFTS UNDER THIS CREDIT WITH THE SAME FORCE AND MANNER AS COVERED BY THE AGREEMENT
SIGNED AT THE TIME THIS LETTER OF CREDIT WAS ORIGINALLY OPENED.

D 1221

CUSTOMER'S FILE COPY

6

Copy of Third Defendant's amend-
ment of irrevocable Letter of Credit

15.8.73

PATRICK-INTERMARINE ACCEPTANCES LIMITED

(INCORPORATED IN NEW SOUTH WALES)
128 Exhibition Street, Melbourne, Victoria, Australia, 3000

TELEPHONE
63 6036

SYDNEY BRISBANE PERTH

CORRESPONDENCE:
G.P.O. Box 21177
Melbourne, Vic. 3001

16th August 1973

The Secretary,
First Leasing Australia Limited,
379 Collins Street,
MELBOURNE 3000

Attention: Mr. R.T. Whitham

Dear Sir,

We confirm a loan negotiated with you today as follows:-

- Amount: \$1,500,000.00
- Rate: 8.7% p.a.
- Term: Fixed to 14th August, 1975.

As security for this loan, we acknowledge having received an Irrevocable Letter of Credit No. S-11085, from the First National Bank of Boston, Boston, U.S.A., with Patrick-Intermarine Acceptances Limited named as beneficiary.

Interest on this loan is payable quarterly on the 15th day of November, February, May and August until repayment.

If you are in agreement with the terms and conditions, as detailed above, please sign the attached duplicate copy of this letter and return to us.

Yours faithfully,
For PATRICK-INTERMARINE ACCEPTANCES LIMITED

D. G. Nicoll
David G. Nicoll
Money Market Manager

FILE COPY
of Accts. Receivable
out of Tithon

25A 7

No. 52720

Date August 15, 1973

DATE	DESCRIPTION	AMOUNT DUE
8/15/73	L/C S-11035 our commission on AUST\$1,500,000.00 at 1/23PA for 2 years (8-15-73 to 8-14-75). Rate 1.42.	US\$10,650.00

←

First Leasing Australia Ltd.
Melbourne
Australia

AASB
Rev. 2/73

5

Copy of First Defendant's Internal
Minute

15.8.73

PATRICK-INTERMARINE ACCEPTANCES LIMITED

DB6

(INCORPORATED IN NEW SOUTH WALES)
128 Exhibition Street, Melbourne, Victoria, Australia, 3000

TELEPHONE
63 6036

SYDNEY BRISBANE PERTH

CORRESPONDENCE:
G.P.O. Box 2117T
Melbourne, Vic. 3001

16th August 1973

The Secretary,
State Electricity Commission
of Victoria,
15 William Street,
MELBOURNE 3000

Attention: Mr. A. Bruce

Dear Sir,

We confirm receipt today of a loan from you of \$1,500,000.00 against which we advise having lodged with you as security an Irrevocable Letter of Credit from the Commercial Banking Company of Sydney Limited in favour of the State Electricity Commission of Victoria, named as beneficiary, for the principal amount of this loan.

The term of this loan is fixed to 14th August 1978 and the rate of interest payable is 8.15% per annum. Interest on this loan is payable quarterly on the 15th day of November, February, May and August until repayment.

If you are in agreement with the terms and conditions as detailed above, please sign the attached duplicate copy of this letter and return to us.

Yours faithfully,
For PATRICK-INTERMARINE ACCEPTANCES LIMITED

D.G. Nicoll
D.G. NICOLL
Money Market Manager

We are in agreement with the terms and conditions as detailed above.

[Signature]
.....
For and on behalf of

State Electricity Commission of Victoria

Receipt from Fourth Defendant to
First Defendant

16.8.73

74

77

FIRST LEASING AUSTRALIA LIMITED

Head Office: Legal & General House, 379 Collins Street, Melbourne 3000 Phone 61 3871
 Telegraphic Address: Rcincnr, Melbourne Interstate Offices — Brisbane, Sydney

FIR:DB/F

16th August, 1973.

Mr. Frank Castle,
 International Factoring & Leasing,
 The First National Bank of Boston,
 100 Federal Street,
BOSTON,
 Massachusetts,
 U.S.A.

Dear Frank,

We certainly do appear to be having a mess up in regard to Letter of Credit notifications to the Australian banks. Our telephone call of yesterday, to you, re the \$1.5 million Letter of Credit to Patrick & Company did not arrive at the C.B.C. until 9.30 am today. According to the C.B.C. they claim the Letter of Credit was not sent from Boston until the previous day i.e. 15th August, whereas it should have been sent on the 14th. As you already know it is imperative that the Letters of Credit do leave the Bank the day they are requested, for we assume the Letter of Credit will arrive in Australia the day following our request to lock into the planned various movement of funds.

In the case of the Patrick & Company loan we were seriously embarrassed for Patrick & Company demanded from us \$1.5 million per a bank cheque because the Letter of Credit did not arrive on the due date. This necessitated us in borrowing unsecured from the C.B.C. Bank \$1.3 million to accede to Patrick & Company's request.

Maybe some of the problems could be the perennial troubles we have had in the past in regard to Letters of Credit i.e. the Letter of Credit telex is given by the Australian desk to the Boston telex department late in the day and as a consequence the telexes are not sent out on that day. I recommend that the telexes be given to the telex department early in the morning to ensure they do leave Boston that day.

On another matter in regard to L/C's we have run into trouble on our request per our cable dated August 14th, wherein we asked for a Letter of Credit issued in favour of the Commercial Banking Co. of Sydney Ltd. \$2,000,000 Australian dollars principal plus interest to commence from August 20th, 1973 to August 21st, 1975. The Letter of Credit received by the Bank does not show the date of August 20th and as a consequence we are forced to take down the funds immediately even though they are not yet required, for our planning is for the 20th to lock into various lending arrangements and repayment of previous borrowings. In other words we are now paying a warehouse cost from today's date, 16th August, to

Copy of letter from Second Defendant
 to Third Defendant

16.8.73

- 2 -

20th August needlessly. If there is a difficulty in issuing a Letter of Credit to commence on a future date, you might write to me on this. If a Letter of Credit cannot be issued on a set future date the alternative is to issue the Letter of Credit to arrive in Australia on the due date, in this case August 20th. It would again be most essential that the Letter of Credit does leave Boston to ensure it is in Australia on the required date.

As you know Frank, we have built up an excellent reputation in our dealings with the brokers and banks in connection with the Letters of Credit having pioneered this form of security lending in Australia over many years. We wish to ensure that we continue to hold our reputation for this most important side of our business. To do so we must make sure that our requests are acted on urgently and as per the instructions in our telexes.

Incidentally I have issued instructions that henceforth all telex requests will be signed by either John Lewis or myself. A separate memo will spell out this in more detail.

Kindest regards to you and Hanna.

F.I. Keinehr
Managing Director

P. B 20

24th August, 1973.

The Managing Director,
 First Leasing Australia Limited,
 Legal & General House,
 379 Collins Street,
MELBOURNE. VIC. 3000

Dear Sir,

We refer to our discussion with Mr. R. Witham on 1st August, 1973 and subsequent telephone conversations concerning your company's proposed borrowing of \$3,000,000 for three years from the State Electricity Commission of Victoria, against the security of a local Bank irrevocable letter of credit for a similar amount, and as already confirmed to you our Bank has approved the request.

As further discussed, the local letter of credit established by the Bank on 16th August, 1973 for \$2,325,451-39 for two years against a matching irrevocable letter of credit in our favour for a similar period issued by the First National Bank of Boston, Boston, was applied against the \$3,000,000 approved limit and the balance remaining, namely \$674,548-61 has been treated by us as being cancelled.

The Bank's fee for making the letter of credit available is .25% per annum, payable yearly in advance on the amount guaranteed and arrangements have already been made to charge your Company's I.J.D. account at our Melbourne Office with the amount involved, namely \$5,813-60.

A local documentary credit requisition covering the transaction arranged on 16th August, 1973 is enclosed for your signing where indicated and return to us. A copy is also enclosed for your files.

cont.

- 2 -

P. B20

We very much appreciated the opportunity of participating in this facility with your company and would be pleased to consider any similar arrangement in the future.

Yours faithfully,

L. D. H. KERANS
L.D.H. Kerans
Chief Manager Corporate Services

Encl. (2)

SMB 8

C27

The Commercial Banking Company of Sydney Limited

243 GEORGE STREET, SYDNEY

24th August, 1973.

POSTAL ADDRESS:
BOX 2726, G.P.O.
SYDNEY 2001

The Manager,
Patrick-Intermarine Acceptances Limited,
G.P.O. Box 3879,
SYDNEY. 2001

Dear Sir,

We refer to our recent telephone conversations concerning the extension, until 14th August, 1973 of an arrangement under which irrevocable letters of credit are established by the First National Bank of Boston and this Bank to secure a borrowing of \$1,500,000 from the State Electricity Commission of Victoria by Patrick-Intermarine Acceptances Limited for on-lending to First Leasing of Australia Limited, Melbourne.

We are pleased to confirm our Bank approval to the facility which was renewed and completed on 16th August, 1973.

Our commission fee is .25% per annum payable yearly in advance and arrangements have been made to charge your company's Sundry Charges account at our Castlereagh & Hunter Streets Branch with the initial \$3,750.

For your files we enclose copy of the Reserve Bank of Australia Exchange Control approval.

We are pleased to be of service in this regard.

Yours faithfully,



L.D.H. Kerans
Chief Manager Corporate Services

Letter from Plaintiff to First
Defendant

24.8.73

30th August, 1973

J.C.:HG

The Secretary,
First Leasing Australia Ltd.,
379 Collins Street,
MELBOURNE 3000

Attention: Mr. R. T. Whitham.

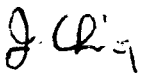
Dear Sir,

RE: \$1,500,000 LOAN FIXED TO 14.08.1975

This is to advise that we would appreciate reimbursement of \$70.00 being loss of interest on the loan as a result of delay in finalising it.

Yours faithfully,

PATRICK-INTERMARINE ACCEPTANCES LIMITED,



J. CH'NG

LD 1436
in favour of SEC

61 Smith
DH

914-000

The Commercial Banking Company of Sydney Limited
Established 1834

1 CASTLEREAGH STREET
SYDNEY, N.S.W. 2000
TELEPHONE 282886 232.2888
SC:JAM

CASTLEREAGH & HUNTER STREETS
BRANCH

CASTLEREAGH & HUNTER STS
SYDNEY, N.S.W.

20th August, 1974

The Manager,
Patrick Intermarine Acceptance Ltd.,
G.P.O. Box 3079,
SYDNEY 2000

Dear Sir,

Re: Letter of Credit No. 101436
for \$1,500,000 - In favour
of State Electricity Commission of Victoria

At the request of our Sydney Office we have today debited your Sundry Charges Account with the sum of \$1,750 being $\frac{1}{2}$ establishment commission on the above Letter of Credit.

We trust this is to your entire satisfaction.

Yours faithfully,

J.A. Macdonald
J.A. Macdonald
for the Manager.

Trevor CRISP
Anos.

FIRST LEASING AUSTRALIA LIMITED

B.H.P. House, 140 William Street, Melbourne 3000

Phone 602 1122

Telegraphic Address: Reinahr, Melbourne

Telex Number: FLAUST AAS1087

Interstate Offices — Brisbane, Sydney

*PSA
~~85~~
89*

RCV:nb

October 23, 1974.

**Mr Boardman,
First National Bank of Boston,
100 Federal Street,
BOSTON..MASSACHUSETTS..U.S.A.**

Dear Sir,

Re: Letters of Credit

We received your copy invoices No. 74078 and 74079 and will be arranging for their payment today. With regard to Invoice No. 74078, the \$500,000 loan for which this letter of credit was issued was repaid on August 30, 1974. We have therefore paid the letter of credit fee up until the date of repayment.

We also received a copy of Invoice No. 50254 for letter of credit No. S12782. I am having difficulty locating the payment date in our books and would be grateful if you could advise the approximate date that you received payment.

Letter of Credit No. 11085 expired on August 14, 1974 and I would be grateful if you would invoice us for the next twelve months fees.

Advice of payment of the above invoices should be received from the National Bank of Australasia Limited in due course.

Yours faithfully,



Robert C. Wettenhall.
Chief Accountant.

*Tom O'Toole
Please respond for me -
Copy to me. Thanks
LOB*

B29

*1st Nat Bank
Register
page 270.*

CORPORATE SERVICES

9th August, 1973.

FIRST LEASING AUSTRALIA LIMITED

(50% owned by the First National Bank of Boston
& 50% owned by the Reinehr family)

Head Office : 379 Collins Street,
Melbourne, 3000

N E W

PROPOSED FACILITY

To issue a local documentary letter of credit
in favour of the State Electricity Commission
of Victoria for \$3,000,000 for a period of
three years

Charge : .25% per annum

*Approved
10/8/73*

*Case is to be taken
that terms of credits
letter exactly & that
the bank can draw of FNBS*

- v -

Matching irrevocable letter of credit
in our favour for \$3,000,000 for a
period of three years issued by the
First National Bank of Boston

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BOSTONBK B8N A

FLAUST AA31087

URGENT UTGENT UTGENT URGENT URGENT

ATTENTION REYNOLDS

PLEASE ISSUE L/C IN FAVOUR OF COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED FOR TWO MILLION AUST DOLLARS PRINCIPAL PLUS INTEREST AT EIGHT POINT ONE TWO FIVE PERCENT FROM AUGUST 20, 1973 TO AUGUST 21, 1975 STOP THIS L/C IS BACK TO BACK WITH L/C ISSUED BY COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED TO STATE ELECTRICITY COMMISSION OF VICTORIA WHO IS LENDER STOP//ALSO PLEASE ROLLOVER L/C 11085 IN FAVOUR OF PATRICK INTERMARINE ACCEPTANCES LIMITED (FORMERLY PATRICK AND CO.) 128 EXHIBITION STREET, MELBOURNE, VICTORIA, 3000, FOR ONE POINT FIVE MILLION AUST DOLLARS PRINCIPAL PLUS INTEREST AT EIGHT POINT SEVEN PERCENT FROM AUGUST 15, 1973 TO AUGUST 14, 1975 STOP IMPERATIVE YOU TELEX ISSUANCE ADVICE IMMEDIATELY TO REACH OVERSEAS DEPARTMENT, COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED, SYDNEY OFFICE, TELEX NUMBER 20350 NO LATER THAN AUGUST 15, 1973 STOP

REGARDS
LEWIS/FIRSTLEASING

AUGUST 14, 1973

FLAUST AA31067
BOSTONBK BSN A

~~LEON MAGRIN~~

LEON MAGRIN

MR. CRISP - ^{O.I.G} Export L/C Dept

C. B. C. - Sydney

B26

15th August, 1973

MEMO TO: Manager,
Melbourne Office.

FROM : Assistant Chief Manager in Victoria.

SUBJECT : First Leasing Australia Ltd, I.J.D. Account

Mr. Frank Reinehr telephoned to advise that approximately 4 years ago they arranged for the Bank to issue a Letter of Credit for \$3 million in favour of Patrick Partners, Sydney being a back to back credit with a Letter of Credit for same amount established in favour of C.B.C. by First National Bank of Boston.

This documentation supported a loan to First Leasing Australia of \$3 million from State Electricity Commission of Victoria through Patrick Partners.

Meanwhile \$1.5 million has been repaid and the balance of \$1.5 million matures today.

First Leasing Australia Ltd. arranged with Head Office of First National Bank of Boston to provide a new Letter of Credit for \$1.5 million to enable repayment of S.E.C. Loan and roll over the amount for a further loan (lender not disclosed) of \$1.5 million through Patrick Partners.

At this point of time telex advice of Letter of Credit from First National Bank of Boston has not been received by C.B.C. Head Office and to keep faith with Patrick Partners and S.E.C. First Leasing wishes to issue cheque for \$1.5 million on "First Leasing Australia I.J.D." account at Melbourne Office which would have effect of overdrawing the account to \$1.2 million temporarily - daylight cover only may be required but in any case the debt would be cleared tomorrow 16th August at latest.

Mr. Bruce J. Haddow, Melbourne Representative of First National Bank of Boston advises he has confirmed by telephone with Boston that Letter of Credit \$1.5 million has been approved and is being advised by telex.

We are requested to issue a Bank Cheque for \$1.5 million in favour of Patrick Partners and upon written confirmation of the establishment of the Letter of Credit from Mr. Bruce J. Haddow have agreed to do so. (copy of letter attached)

Make appropriate charges.

Advise should debt not be cleared as indicated.

*Do the
JCA*

[Handwritten signature]

THE FIRST NATIONAL BANK OF BOSTON
INTERNATIONAL BANKING DEPT. ~~\$\$\$~~
POST OFFICE BOX 1784
BOSTON, MASSACHUSETTS 02105 U.S.A.

LETTER OF CREDIT NO. S-12647
Commercial Banking Company of Sydney
Sydney, N.S.W.
Australia

DATE August 14, 1973



GENTLEMEN:

WE HEREBY OPEN OUR IRREVOCABLE LETTER OF CREDIT IN YOUR FAVOR AVAILABLE BY YOUR DRAFTS DRAWN ON Commercial Banking Company of Sydney, Sydney, N.S.W. Australia

AT AMOUNT FOR ANY SUM OR SUMS NOT EXCEEDING IN TOTAL
Two Million Three Hundred Twenty Five Thousand Four Hundred Fifty One
and 39/100 Australian Dollars.
FOR ACCOUNT OF First Leasing Australia Ltd., Melbourne, Australia

DRAFTS MUST BE ACCOMPANIED BY:

Your signed statement that you have been required to make payment under your letter of credit opened for account of First Leasing Australia Ltd. in favor of State Electricity Commission of Victoria; that you have requested reimbursement from First Leasing Australia Ltd. and same has not been received from First Leasing Australia Ltd. or any other source.

The amount of this credit includes principal of A\$2,000,000.00 plus interest at 8.125% Per Annum.

This credit becomes operative August 20, 1973.

This confirms our cable of August 14, 1973.

EACH DRAFT MUST BEAR UPON ITS FACE THE CLAUSE "DRAWN UNDER LETTER OF CREDIT No. S-12647 DATED August 14, 1973 OF THE FIRST NATIONAL BANK OF BOSTON, Boston, Mass."

EXCEPT SO FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1962 REVISION) INTERNATIONAL CHAMBER OF COMMERCE BROCHURE No. 325".

WE HEREBY AGREE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF PRESENTED TO THE ABOVE MENTIONED DRAWEE BANK ON OR BEFORE August 21, 1975.

VERY TRULY YOURS

[Handwritten Signature]
AUTHORIZED OFFICIAL

D-108 REV. 8-71

aem

Copy of Third Defendant's irrevocable
Letter of Credit

14.8.73

FIRST LEASING AUSTRALIA LIMITED

Head Office: Legal & General House, 379 Collins St., Melbourne 3000. Phone 61 3871

Telegraphic Address: Reinehr, Melbourne

Interstate Offices — Brisbane, Sydney

Telex Number: FLAUST AA31087

RTW:lr

August 31, 1973

Mr. L.D.H. Kerans,
Chief Manager Corporate Services,
The Commercial Banking Co. of Sydney Ltd.,
343 George Street,
SYDNEY. N.S.W. 2000.

Dear Mr. Kerans,

Thank you for your letter of August 24, 1973 as a result of which we now return to you the local documentary credit requisition signed as requested.

As mentioned to you in our telephone conversation of this morning, the writer will be in Sydney on Wednesday September 19, 1973 and looks forward to lunching with you and Bob Graham to discuss the facility and matters of mutual interest.

With best wishes,

Yours faithfully,


R.T. Whitham
Administration & Funding Director

Letter from Second Defendant to
Plaintiff

31.8.73

No. 11

REASONS FOR JUDGEMENT HIS HONOUR MR. JUSTICE SHEPPARD.

His Honour: The principal questions to be decided in this case are whether:

- (a) the defendant Patrick Intermarine Acceptances Limited (in liquidation) (hereinafter called P.I.A.L.) and its liquidator the defendant Gavin Hosking are bound to take all necessary steps to draw upon a letter of credit issued by the defendant the First National Bank of Boston (hereinafter called the Boston Bank) and pay the proceeds either to the plaintiff or into an account in the name of the defendant P.I.A.L. kept by it with the plaintiff;
- (b) the defendants First Leasing Australia Limited (hereinafter called First Leasing) and the Boston Bank are, as regards the plaintiff, bound to take all necessary steps to facilitate and assist the defendant P.I.A.L. and its liquidator in effecting the drawing mentioned in question (a);
- (c) the defendant First Leasing, however questions (a) and (b) may be answered, is bound, as regards the plaintiff, to pay moneys which it owes to P.I.A.L. into an account kept by that company with the plaintiff, and P.I.A.L. is bound, also as regards the plaintiff, to accept such payment as a discharge of First Leasing's obligation to it;
- (d) the defendant P.I.A.L., however questions (a), (b) and (c) may be answered, has a proprietary interest in the sum of \$1,500,000 owing by the defendant First Leasing to the defendant P.I.A.L., with the result that when that sum is repaid P.I.A.L. is in turn bound to pay it to the plaintiff.

The questions arise because P.I.A.L. is in liquidation and insolvent. Unless both questions (a) and (b), question (c) or question (d) be answered in the affirmative, the plaintiff will rank as an unsecured creditor in the winding up of P.I.A.L. for an amount of \$1,500,000 which it has paid out to the defendant the State Electricity Commission of Victoria (hereinafter called the S.E.C.V.) because of a drawing made by that undertaking upon a letter of credit issued to it by the plaintiff. The facts which give rise to the questions are not in substantial dispute but they are complex. I shall state them as shortly as I can.

The plaintiff carries on the business of banking principally within the Commonwealth of Australia. Prior to its winding up the defendant P.I.A.L. carried on business as what has been described as a merchant banker. In the transactions to which I shall refer its business appears to me to have been no less and no more than that of a money lender. P.I.A.L. was at all material times associated in its business with the stockbroking firm of Patrick Partners. Until 1st August, 1970, Patrick Partners was known as Patrick & Company. Patrick & Company, and subsequently Patrick Partners and P.I.A.L. were customers of the plaintiff. Until 15th October, 1971, when P.I.A.L. opened an account with the plaintiff, transactions of the kind I am about to mention were entered into, firstly by Patrick & Company and then by Patrick Partners. As I have indicated the transactions were not stockbroking transactions but involved the borrowing and lending of money.

The defendant First Leasing is a company incorporated in the State of Victoria. It carries on business within the Commonwealth of Australia as a financier, but usually by leasing commercial and industrial equipment and motor vehicles to persons in return for periodical payments. It needs substantial funds to enable it to carry on its business. It is a company associated with the Boston Bank, the Boston Bank owning a substantial number of its shares. The Boston Bank carries on the business of banking in the United States of America and elsewhere.

In the Supreme
Court of New
South Wales
Common Law
Division
Commercial
List

No. 11

Reasons for
Judgement
His Honour
Mr. Justice
Sheppard

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In the year 1969 First Leasing wished to borrow money for the purpose of its business. In order to assist it in obtaining finance the Boston Bank was willing to issue irrevocable letters of credit in favour of persons from whom money was to be borrowed. Patrick & Company was prepared to lend First Leasing money. The money which it had to lend, although it, and subsequently Patrick Partners and P.I.A.L., operated at all times as a principal in the transactions shortly to be described, came from the defendant the S.E.C.V. The S.E.C.V. was not prepared to accept an irrevocable letter of credit from the Boston Bank. This was not for any reason associated with that Bank's financial stability but by reason of the fact that it feared that problems might arise in relation to the taking of such a security because of exchange control legislation. 10

In March 1969 Mr. N. H. Blacket was the Assistant General Manager of the plaintiff. He had been appointed to that position on 29th November, 1968, up to which time he had been the manager of its Sydney office. In that capacity he had been immediately responsible for the supervision of the account maintained with the plaintiff by Patrick & Company.

On or about 19th March, 1969, Mr. T. W. Allen, a member of the firm of Patrick & Company, rang Mr. Blacket. Mr. Allen told him that his firm was considering a transaction under which \$1,000,000 was to be borrowed, "from an Australian company and re-lent to another Australian company. The lending company is seeking security by way of a bank letter of credit in its favour. Would the Bank (i.e. the plaintiff) be prepared to issue a clean letter of credit in favour of the lending company. The Bank will receive by way of security a letter of credit in its favour from the First National Bank of Boston". There then followed some discussion concerning the charge which the plaintiff would make for issuing its letter of credit. 20

Some days later Mr. Blacket informed Mr. Allen that the plaintiff would enter into the transaction and told him of the charge which it proposed to make. He continued, "Before the Bank issues the local letter of credit we will require that the letter of credit from the First National Bank of Boston is established in our favour and it will have to be in the nature of a 'back-to-back' letter of credit". 30

The letter of credit issued by the Boston Bank was numbered S-10971 and dated 28th March, 1969. It was expressed to be an irrevocable letter of credit opened in favour of Patrick & Company in the sum of \$536,250 (not \$1,000,000). It was expressed to be for the account of First Leasing. The letter provided that any drafts drawn upon it should be drawn upon the plaintiff which was the Boston Bank's agent in Australia, and must be accompanied by a statement from Patrick & Company addressed to the Boston Bank in Boston, Massachusetts, certifying that the draft amount represented the unpaid principal amount plus accrued interest on a loan made by Patrick & Company to First Leasing, that such loan was made available to First Leasing by Patrick & Company arranging payments to First Leasing at the plaintiff bank and that such amount was not paid when due and had not been since repaid to or collected by Patrick & Company. Patrick & Company sent the letter of credit to the plaintiff. 40

On 9th April, 1969, the plaintiff issued a letter of credit in favour of the S.E.C.V. in the sum of \$500,000 to expire on 8th April, 1970. It was expressed to be an irrevocable letter of credit and was issued in favour of the S.E.C.V. It authorised the S.E.C.V. to draw on Patrick & Company for any sum not exceeding in all \$500,000, "purporting to cover unpaid principal amount of loan paid to Patrick and Company". The credit provided that any draft drawn under the credit must be accompanied by a statement of the S.E.C.V. certifying that the draft amount represented the unpaid principal amount of the loan made by the S.E.C.V. to Patrick 50

& Company and that the amount had been demanded and not received.

Before the plaintiff would issue a letter of credit, it required the applicant therefor to fill in and sign a form of requisition which was a standard printed bank form. The letter of credit dated 9th April, 1969, was not issued in respect of the transaction with which I am concerned in this case. But the form of the requisition which led to the issue by the plaintiff of the letter of credit which does form a part of that transaction has its origin in the form of the requisition which was signed by Patrick & Company on 8th April, 1969, in order to procure the issue by the plaintiff of the letter of credit of 9th April, 1969.

10 The requisition so far as it is relevant is as follows:

“To: The Manager,
The Commercial Banking Company of Sydney Limited
(Hereinafter called ‘the Bank’)
343 George Street,
SYDNEY

Credit No. LD920.

8th April, 1969

20 We hereby request you to open on our account by Telegraph (Mail or telegraph) an irrevocable credit subject to Uniform Customs and Practice for Documentary Credits (1962 Revision), International Chamber of Commerce Brochure No. 222 authorising State Electricity Commission of Victoria, 15 William Street, Melbourne (Full name of beneficiary) of — (Full address) to draw on us for any sum of sums not exceeding in all A\$500,000 (Five hundred thousand dollars —Australian currency) available by their drafts at — (usance) sight purporting to cover unpaid principal amount of loan made to Patrick & Company, 2 Castlereagh Street, Sydney.

The drafts must be presented for negotiation not later than 8th April, 1970 and must be accompanied by the following documents relating thereto:—

Statement of State Electricity Commission of Victoria certifying that the draft amount represents the unpaid principal amount of a loan made by the Commission to Patrick & Company and that payment has been demanded and not received.

30 Additional instructions (if any): Negotiation/s under this credit are restricted to the Commercial Banking Co. of Sydney Limited, Melbourne. Drawing(s) under this credit must *not* be made prior to 6th April, 1970.

Please hand Letter of Credit to our representative on application on the morning of 9th April, 1969.”

There then followed nine printed paragraphs, each of which was lettered. It is unnecessary for me to set out each of these. It is sufficient if I set out paragraphs B, C, G and H. Those paragraphs were as follows:—

40 “B. To accept on presentation and pay at maturity the drafts drawn under or in intended or purported compliance with the credit or this requisition together with:—

(i) Bank interest for any period by which the date of payment by the Bank precedes the date of our payment to the Bank, and

(ii) a commission of (%) on the amount of the credit, and

(iii) all usual Bank charges

and so to do notwithstanding that for any reason whatsoever, any such draft or other documents herein mentioned shall not be genuine or shall be or become invalid or payment or recovery of any money thereunder or the performance of any contract thereby created or evidenced be or become delayed postponed or impossible. Further if we fail to accept any draft negotiated by the Bank or be excused from acceptance thereof on 50 any ground whatsoever, we will pay to the Bank at the branch or office

- first above-mentioned on demand the amount paid by the Bank.
- C. The Bank shall hold the above-mentioned documents and goods as a continuing security by way of pledge independent of and additional to any other security held by the Bank for payment of all moneys payable by us to the Bank including all commission, banking and other charges expenses and interest and we will not do or omit or suffer to be done or omitted any act matter or thing which might prejudice the value or existence of the said security. We will pay to the Bank any moneys received by us under any insurance of the goods which moneys until so paid shall be held by us in trust for the Bank. 10
- G. To indemnify and hold the Bank its servants and agents harmless and free from liability in respect of all loss and damage (including costs and expenses incurred by any of them in resisting claims by third parties) arising or resulting from the negotiation of drafts or any other act, matter or thing, done or omitted to be done in actual or in intended or purported compliance with this request and with any letter of credit issued in consequence thereof.
- H. This agreement shall continue in force notwithstanding any change in the constitution of any firm or company referred to herein". 20

Although there is no direct evidence on the point, it would seem that the letter of credit No. S-10971 issued by the Boston Bank was not in the form which the plaintiff expected it to take because the beneficiary was Patrick & Company and not the plaintiff. In addition to the printed paragraphs of the requisition, a further paragraph, paragraph J, was added in typescript. It was added because the Boston Bank's letter of credit was in favour of Patrick & Company and not the plaintiff. Paragraph J was as follows: 20

"J. We undertake that in the event of drawing/s being made under this credit, we will immediately lodge with the Bank a draft and accompanying documents in terms of First National Bank of Boston, Boston, Letter of Credit No. S10971 for an amount not less than that required to meet the drawing(s) under the credit requested in this requisition." 30

On or about 8th May, 1969, Mr. Allen rang Mr. Blacket again. He informed him that Patrick & Company were considering a further transaction involving \$1,500,000 which would be borrowed from an Australian organisation and lent to an Australian company. Again the lending organisation required a security by way of a local bank letter of credit in its favour. Mr. Allen said, "Would the Bank establish the letter of credit required against a 'back-to-back' letter of credit from the First National Bank of Boston. It would be for a term of four years". Mr. Blacket said, "The Bank will be prepared to enter into the commitment . . . we would require to see the terms of the backing credit and have it established prior to us issuing our letter of credit". Mr. Allen assented to this course. 40

On 16th May, 1969, the plaintiff issued a second letter of credit in favour of the S.E.C.V. in the sum of \$1,500,000. It was to expire on 15th May, 1973. The procedure followed in relation to its issue was the same as in the case of the issue of the letter of credit of 9th April, 1969. The Boston Bank's letter of credit was dated 15th May, 1969, and numbered S-11011. The beneficiary was again Patrick & Company. The requisition signed by Patrick & Company to procure the issue by the plaintiff of its letter of credit contained a paragraph in the same form as paragraph J above set out except that the number of the Boston Bank's letter of credit was S-11011. The two transactions to which I have referred, that is those by which firstly the sum of \$500,000 and secondly the sum of \$1,500,000, were lent by the S.E.C.V. 50

to Patrick & Company and then by Patrick & Company to First Leasing were described in the books of Patrick & Company as "special deal number 1" and "special deal number 2", respectively.

I next turn to what was described both in the books of Patrick & Company and of P.I.A.L. as "special deal number 3". It was a transaction of a similar kind. A variation of it is the transaction with which I am concerned in this case. Again the S.E.C.V. was prepared to lend \$1,500,000 and again First Leasing wished to borrow that sum on the security of a letter of credit issued by the Boston Bank. Again Patrick & Company acted as a principal, although the moneys went directly, but through
10 Patrick & Company, from the S.E.C.V. to First Leasing.

The letter of credit issued by the Boston Bank was dated 14th August, 1969, and numbered S-11085. The beneficiary was Patrick & Company. The letter of credit was expressed to be irrevocable and to be available by draft drawn upon the plaintiff at sight for any sum or sums not exceeding in total \$1,500,000. The letter of credit was said to be for the account of First Leasing.

Under the words "Drafts must be accompanied by" appeared a number of statements. It is unnecessary for me to set these out. They were the statements to be obtained by Patrick & Company in the event that a drawing was to be made under the letter of credit. There is some complexity about them because of the terms relating
20 to the date when the loan was to be repaid by Patrick & Company to the S.E.C.V. The terms of the repayment by Patrick & Company to the S.E.C.V. matched the terms of the repayment of the loan by Patrick & Company to First Leasing. These terms appear in two letters each dated 15th August, 1969, one from Patrick & Company to the S.E.C.V. and the other from Patrick & Company to First Leasing. It was provided in these letters that withdrawal of funds might be made at three-monthly intervals from 15th August, 1969, subject to sixty days' notice being given and also subject to the first withdrawal not being made prior to 15th November, 1970. There were other terms concerning the interest rate which was to be payable depending on the length of time the moneys in each case remained deposited. Although no mention of
30 it is made in the letters, the two letters of credit, that is to say that issued by the plaintiff and that issued by the Boston Bank, were no longer available to be drawn against after 15th August, 1973. I have referred to the terms of the two loans rather than to the documents which were to accompany drafts in the event of a drawing under the letter of credit issued by the Boston Bank because the words used in that letter of credit are not entirely clear. There is a question as to whether they give effect to the agreement which was made and to which I have referred. However, no question of that kind gives rise to any problem in the present case.

In fact the two loans were left outstanding until 14th August, 1973. On that date First Leasing repaid Patrick & Company the sum of \$1,500,000 and Patrick & Company repaid the S.E.C.V. the same sum. The plaintiff's letter of credit, which
40 it had issued on 15th August, 1969, thus expired. I do not make any reference to this letter of credit except to mention that it was issued upon a requisition similar in form to that upon which the earlier letters of credit were issued by it. But for what next ensued the letter of credit issued by the Boston Bank on 14th August, 1969, would also have expired upon the repayment of the moneys due to Patrick & Company by First Leasing. It did not expire because, in the circumstances I now relate, it was extended in time and varied in another respect.

In July, 1973, Mr. D. L. Webb was the sub-manager of the Corporate Services Division of the plaintiff. In that month he had a telephone conversation with a Mr.
50 Peter Davie who was a director of P.I.A.L. Mr. Davie said to Mr. Webb, "I should like to discuss with you at some time in the near future the arranging of an extension

of the letter of credit supplied by the bank to the State Electricity Commission of Victoria as security for a loan made by the Commission to Patrick and Company." Mr. Webb asked Mr. Davie to work out details of the proposal and let him know when he was ready to discuss the matter. He said to Mr. Davie "I presume that other than the period of the loan it will be similar to the earlier transaction."

On 7th August, 1973, Mr. Webb received a further call from Mr. Davie. Mr. Davie proposed an extension of the letter of credit for a further period of two years. He said the credit would secure the loan by the S.E.C.V. to P.I.A.L. and that P.I.A.L. would be on-lending the \$1,500,000 to First Leasing. Mr. Davie further said, "You will receive as security a matching letter of credit from the First National Bank of Boston. The credit will be in our favour (that is P.I.A.L.) and not in favour of Patrick and Company". Mr. Webb said that he did not think there would be any problem and that he would let Mr. Davie know the position. In a memorandum prepared for the plaintiff's Board, on 8th August, 1973, Mr. Webb referred to the history of the matter. The memorandum tends to bear out Mr. Webb's recollection of the conversation which, in any event, is not challenged by Mr. Davie except that Mr. Davie does not think that he used the expression "matching letter of credit". This expression is used in Mr. Webb's memorandum. I do not think it important to resolve this conflict in their evidence; in the end the documents must speak for themselves.

On 10th August, 1973, P.I.A.L. was informed by Mr. Webb that the extension of the letter of credit had been approved. On 13th August, 1973, Mr. Webb was informed by P.I.A.L. that the loan had been re-negotiated and was asked to arrange for the issue of a letter of credit in favour of the S.E.C.V. Mr. Webb said that, amongst other things, he said to the officer from P.I.A.L. to whom he spoke, "... before the transaction can proceed we will need to obtain exchange control approval from the Reserve Bank and we will have to sight the First National Bank of Boston's letter of credit".

Notwithstanding the terms of the conversations between Mr. Webb and Mr. Davie, the transaction was in reality a new transaction. As already mentioned the moneys which had been lent in 1969 were repaid. The plaintiff issued a new letter of credit. The only document connected with the new transaction which continued to have force and effect was the Boston Bank's letter of credit issued on 15th August, 1969, which was extended so that it would remain in force up to and including 15th August, 1975. A further variation made to it was that the beneficiary became P.I.A.L. and not Patrick & Company.

Pursuant to his conversations with Mr. Davie, Mr. Webb made arrangements for the preparation of the requisition for the issue of the new letter of credit by the plaintiff. The requisition was to be signed on behalf of P.I.A.L. which, as I have indicated, by now had taken over this type of business from Patrick & Company. The requisition was in the form earlier set out. The amount was \$1,500,000 and the requisition provided that drafts to be drawn under the letter of credit must be presented for negotiation not later than 14th August, 1975, and must be accompanied by a statement from the S.E.C.V. certifying that the draft amount represented the unpaid principal amount of a fixed loan to 14th August, 1975, made by the S.E.C.V. to P.I.A.L. and that payment of the loan had been demanded and not received. Paragraph J was included. It did not refer to any letter of credit number but said, instead, "Letter of Credit Nos. to be supplied". The letter of credit referred to was, of course, the letter of credit issued by the Boston Bank. It was apparently thought, at the time that the requisition was prepared, that the Boston Bank would issue a new letter of credit. As I have said it did not do so. The number of the letter of credit it had issued on 14th August, 1969, was S-11085 and the requisition signed on behalf of

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P.I.A.L. on 14th August, 1973, ought therefore to be read as if the number S-11085 were included in paragraph J.

There is one other matter that I should mention in relation to the form of that requisition. It is to be observed in relation to the form of requisition which I have earlier set out that underneath the words "loan made to Patrick & Company, 2 Castlereagh Street, Sydney." are words in brackets which have been struck out. The words in brackets are " 'Merchandise' or brief description of goods". Neither in the requisition signed on behalf of Patrick & Company on 15th August, 1969, nor in that signed on behalf of P.I.A.L. on 14th August, 1973, were those words crossed out. The words are printed and are obviously intended for use when the form of requisition is used to procure the issue of a letter of credit to provide payment for goods which a customer is buying. It is to be noted that in paragraph C of the requisition there is a reference to the goods being a continuing security by way of pledge for payment of all moneys payable by the customer to the bank (the plaintiff). It will be necessary for me to say more about paragraph C of the requisition and the words " 'Merchandise' or brief description of goods" appearing thereon.

Pursuant to the requisition the plaintiff issued its letter of credit in favour of the S.E.C.V. It was dated 16th August, 1973. It provided, in accordance with the requisition that drafts drawn under the credit must be accompanied by a statement of the S.E.C.V. certifying that the draft amount represented the unpaid principal amount of the fixed loan to 14th August, 1975, made by the S.E.C.V. to P.I.A.L. and that payment of the loan had been demanded and not received.

P.I.A.L. was unable to repay the moneys which it owed to the S.E.C.V. The S.E.C.V. drew upon the plaintiff pursuant to the letter of credit and the plaintiff was compelled to pay to it the sum of \$1,500,000.

Before coming to deal with the questions posed in the opening paragraph of this judgment there are two preliminary matters which I should mention. In the course of dealing with one of them I shall dispose of a submission made by the plaintiff not adverted to in the questions. By July 1973 it was well known to all parties that the S.E.C.V. was lending money to P.I.A.L. and that P.I.A.L. was lending the same moneys to First Leasing. It would appear that the source of the funds it was borrowing was not originally known to First Leasing. It ascertained the information in a roundabout fashion some time after 1969. By the time of the 1973 transaction it and its associate, the Boston Bank, knew that, although they were dealing with P.I.A.L. as a principal, the moneys were in reality coming to First Leasing from the S.E.C.V. Counsel for the plaintiff submitted that in reality P.I.A.L. acted in the subject transaction only as a broker. If this were so the moneys in question would have been lent directly by the S.E.C.V. to First Leasing. The consequence of this, so counsel submitted, was that the plaintiff was entitled to recover the moneys owed by First Leasing to the S.E.C.V. from it on the basis that the plaintiff had discharged its indebtedness. Notwithstanding the knowledge of the source of the funds which all parties had by July, 1973, I am satisfied that P.I.A.L. did not act in the transaction as a broker but acted as a principal. Having considered the documents and the evidence of the witnesses who were called I do not think that the transaction is open to any other interpretation. The evidence left me with such a clear impression that P.I.A.L. was a principal in all the transactions in question that I did not complicate my recital of the facts of the matter by referring to this submission at an earlier stage. In that recital I have asserted that P.I.A.L., and Patrick & Company before it, were principals. That is the finding which I make. Accordingly the submission made by the plaintiff upon the basis that P.I.A.L., in the subject transaction, was acting as a broker is rejected.

The other preliminary matter to which I should refer is that it is not common

In the Supreme
Court of New
South Wales
Common Law
Division
Commercial
List

No. 11

Reasons for
Judgement
His Honour
Mr. Justice
Sheppard

in Australia to use letters of credit for the purposes for which the letters of credit to which I have referred were used. A reading of a number of legal and banking text books would lead me to think that it is not common for letters of credit to be used in this way in the United Kingdom. I am not aware of the position in the United States of America. It would appear that the idea of using letters of credit in this way originated with a Mr. Reinehr who, at the relevant time, was a director of First Leasing. Irrevocable letters of credit are commonly used in this country and, as I understand the position, in the United Kingdom in connection with transactions involving the sale and purchase of goods, particularly where those transactions involve the goods being imported or exported. Plainly the plaintiff's requisition form for the issue of letters of credit contemplated that the credit would be used in connection with such a transaction. So much can be seen from the use of the words in paragraph C and the reference to " 'Merchandise' or brief description of goods", the words in small print in the early part of the document. Furthermore, side notes to the document include the words, "F.O.B., C.I.F., etc." and, "Shipped, railed, etc." 10

The letter of credit in question was a document by which the plaintiff in effect guaranteed the repayment of \$1,500,000 to the S.E.C.V. by P.I.A.L. The letter of credit issued by the Boston Bank, as varied, was one whereby the Boston Bank guaranteed the repayment of \$1,500,000 by First Leasing to P.I.A.L. I have referred to letters of credit being thought to be, at least by Mr. Blacket, back-to-back letters of credit, and by Mr. Webb to their being matching letters of credit. I think that each thought that the plaintiff would issue a letter of credit in favour of the S.E.C.V. conditioned upon default by Patrick & Company, and later P.I.A.L., and would receive from the Boston Bank a letter of credit conditioned upon default by First Leasing, the plaintiff, and not Patrick & Company nor P.I.A.L., being the beneficiary of such letter of credit. In transactions concerning the sale and purchase of goods the expression "back-to-back letter of credit" has a well-settled meaning both in legal and banking circles—see Paget's Law of Banking, 7th Ed. p. 625; Chorley's Law of Banking, 4th Ed. pp. 178-9; Gutteridge & Megrah, The Law of Bankers' Commercial Credits, 4th Ed. pp. 163-4. In the present context it has no such well-settled meaning. 20 30 It is, however, plain that the letters of credit in the present case were neither matching nor back-to-back in the sense in which Mr. Blacket and Mr. Webb understood those expressions. The reason for this was that the beneficiaries of the letters of credit issued by the Boston Bank were either Patrick & Company or P.I.A.L. and not the plaintiff.

This was something perceived by at least one officer of the plaintiff at the time of Mr. Blacket's negotiations, and it is plain that paragraph J of the requisition was inserted with the intention of overcoming, from the plaintiff's point of view, any problem that arose by reason of the beneficiary being Patrick & Company or P.I.A.L. and not the plaintiff. 40

It must be pointed out, however, (Mr. Allen gave evidence of this) that it was important to Patrick & Company, and later P.I.A.L., that it have security from First Leasing for the loan which was being made to that company. The fact that the letters of credit issued by the Boston Bank made Patrick & Company, and later P.I.A.L., the beneficiaries was not regarded as an oversight by those in the Patrick organisation. It was an intended effect of the documents so that Patrick & Company and P.I.A.L. would, in the event of default by First Leasing, have immediately the ability, subject to the notice referred to therein, to draw upon the Boston Bank pursuant to the letters of credit issued by it.

This problem has arisen because nobody really contemplated the possibility of insolvency on the part of P.I.A.L. All was designed to take care of a situation which 50

would arise if First Leasing, for some reason, defaulted. Nobody turned his mind to the possibility of financial failure on the part of P.I.A.L. I say that notwithstanding that the plaintiff could not be called upon to pay any sum pursuant to any of its letters of credit unless there were default by Patrick & Company or P.I.A.L. in their obligations to the S.E.C.V. Although paragraph J itself only operates in that event, it obliges P.I.A.L. to lodge with the plaintiff a draft and accompanying documents in terms of the Boston Bank's letter of credit for an amount not less than that required to meet the drawings under the plaintiff's credit. Obviously what the parties had in mind was a failure by First Leasing to pay P.I.A.L. and any failure by P.I.A.L. to meet its obligations to the S.E.C.V. arising only as a result of the failure of First Leasing to pay its indebtedness to P.I.A.L. It would only be in that event that the documents referred to in the Boston Bank's letters of credit could or would come into existence.

The fact is that First Leasing has made no default. It has not paid the moneys due by it to P.I.A.L. The reason why it has not paid is not because of any unwillingness or inability on its part to meet its obligations. It has been ready and willing to make payment of the amount which it owes since 14th August, 1975. These proceedings were commenced on 7th August, 1975. On 13th August, 1975, the parties entered into an arrangement designed to preserve the status quo until such time as the matters in issue between them could be determined by the court. Included in their agreement was an agreement that the time for the repayment of the loan should be extended to 14th August, 1976, and that the Boston Bank's letter of credit should be similarly extended. First Leasing is ready now to pay \$1,500,000 to P.I.A.L. Its submission is that it should be permitted to do so. The joint submission of the Boston Bank and First Leasing is that the occasion for a drawing under the Boston Bank's letter of credit will never arise because First Leasing will meet its obligations.

I now come to the first of the plaintiff's principal submissions. In the plaintiff's submission P.I.A.L., First Leasing and the Boston Bank are contractually bound to the plaintiff to act in concert to procure a drawing on the Boston Bank's letter of credit "so that P.I.A.L.'s account with the plaintiff will be sufficient to cover the drawing upon the plaintiff by the S.E.C.V.". The words which I have quoted from counsel's submission involve a little more than at first meets the eye. In the events which have happened no result is of any assistance to the plaintiff unless it can procure the payment of the indebtedness of First Leasing or the amount payable (if it be payable) pursuant to the Boston Bank's letter of credit to it, or into a P.I.A.L. account maintained with it, which account is in debit to the extent of at least \$1,500,000. I am not at the moment dealing with alternative submissions made concerning the plaintiff's alleged entitlement to be paid the moneys to be repaid by First Leasing. But so far as the letter of credit is concerned the plaintiff's submission above referred to goes so far as to assert that, not only is the plaintiff entitled to compel the three defendants to bring about a situation pursuant to which P.I.A.L. is entitled to draw upon the letter of credit; additionally the proceeds when paid by the Boston Bank must be paid to the plaintiff or into a P.I.A.L. account kept with it.

The obligation is said to arise *ex contractu*; no other basis for it is relied upon. The contract is said to arise from the entirety of the facts and circumstances which were in, or came into, existence in August, 1973 when the transaction was entered into. Insofar as First Leasing and the Boston Bank are concerned reliance is placed largely upon the conduct of First Leasing which it was said must have been known to the Boston Bank and upon the knowledge of First Leasing that the funds being advanced by P.I.A.L. to First Leasing came in turn from the S.E.C.V. which would not lend them without the security of a letter of credit issued, not by the Boston Bank,

but by a local bank.

There are obvious difficulties in the submission. Counsel for the plaintiff did not shrink from facing them. Those difficulties, of course, arise by reason of the apparent lack of any contractual relationship between the plaintiff and the defendants other than P.I.A.L. There is a clear contractual relationship established between the plaintiff and P.I.A.L. itself. The contract between them certainly consists of the requisition signed on behalf of P.I.A.L. in order to procure the issue of the plaintiff's letter of credit and the letter of credit itself. Counsel for P.I.A.L. submitted that those documents comprised the entirety of the contract between the plaintiff and P.I.A.L.

Part of the requisition was paragraph J, the form of which (it comes from an earlier requisition) I have set out. By that clause P.I.A.L. promised the plaintiff that in the event of default by P.I.A.L. it would draw upon the Boston Bank by lodging with the plaintiff, as agent for that Bank, a draft "and accompanying documents in terms of" the Boston Bank's letter of credit. Effectively the document which must accompany the draft is a statement by P.I.A.L. that the sum of \$1,500,000 owing by First Leasing to P.I.A.L. was not paid when due and has not since been repaid to or collected by P.I.A.L. Because of the extension of the period of the loan, the amount is not due by First Leasing until 14th August next. As I have previously said First Leasing is and, at all material times has been, ready and willing to repay what is owing. It has not repaid its indebtedness only because of its willingness to assist the Court in the resolution of the dispute by agreeing to the interlocutory arrangements which were made. Accordingly, any statement signed by P.I.A.L. to the effect of that required before a drawing pursuant to the Boston Bank's letter of credit could be made would be false. Nevertheless P.I.A.L. has bound itself in paragraph J of the requisition to make that statement in the events which have happened, that is default by P.I.A.L. in its obligation to repay the moneys on the due date to the S.E.C.V. If it were to make the statement contemplated by paragraph J, the Boston Bank could, unless it is bound contractually to accept it, refuse to give effect to it and seek the Court's assistance to enable it to do so. Unless the Boston Bank is contractually bound to accept such a statement (and that is the critical question) the most the plaintiff will have will be an action for damages against P.I.A.L. for breach of contract constituted by its inability to provide the documents referred to in paragraph J of the requisition. That will not assist the plaintiff; for such damages as it is entitled to recover, it will rank only as an unsecured creditor in the winding-up of P.I.A.L. It is agreed that it has that right in any event; for that purpose it is enough for it to rely upon the indemnity given to it by paragraph G of the requisition.

I come then to the question of whether there is the contractual relationship between the plaintiff and the defendants First Leasing and the Boston Bank for which the plaintiff contends. Evidence was given by executives of First Leasing including a Mr. Robert Whitham. I accept his evidence. To the extent that it deals with matters not dealt with by other witnesses or is in conflict with their evidence I prefer it. But that finding will not take the plaintiff very far.

An analysis of the detail of the plaintiff's submissions reveal that their basis is the reference in the discussions which took place between the representatives of First Leasing and P.I.A.L. on the one hand, and those of P.I.A.L. and the plaintiff on the other, to the two letters of credit being "back-to-back". What the plaintiff very understandably seeks to do is to make that the most significant feature of what might be termed very generally the overall arrangement made by all the participants. But to do what the plaintiff asks involves, if not leaving out of account, at least substantially playing down the importance of, the plain terms of the documents in the case—the two letters of credit and the requisition which procured the issue of that given by the

plaintiff to the S.E.C.V.

I have already mentioned the fact that the use of letters of credit in this field of commercial activity is rare. The term back-to-back letter of credit has no well-known connotation in this area as it has in that concerned with the sale and purchase of goods. The Courts, when dealing with a problem concerning any commercial transaction, will always pay great attention to the documents in the case particularly when they form either the whole or part of a contractual arrangement. Rarely will the effect which they would otherwise have be overborne by verbal discussions or what are said to be common understandings which pre-date them. From the plaintiff's point of view all would have been well if it had insisted upon the issue by the Boston Bank of a letter of credit of which the plaintiff was the beneficiary and in respect of which a drawing could be made if P.I.A.L. did not repay, upon the due date thereof, its indebtedness to the S.E.C.V. Instead, not overlooking the provisions of paragraph J of the requisition, the plaintiff accepted as sufficient for its purposes a letter of credit of which P.I.A.L. was the beneficiary which could only be drawn upon by P.I.A.L. if First Leasing defaulted in its obligations to P.I.A.L. I say that notwithstanding the fact that the operation of paragraph J is conditioned upon default, not by First Leasing, but by P.I.A.L. To be added to what I have so far said is the fact that P.I.A.L. had a real reason, itself, for wanting as security for the advance it was making to First Leasing a letter of credit in its favour. Otherwise its loan of \$1,500,000 was totally unsecured.

Notwithstanding such knowledge of the overall arrangement and the source of the funds being borrowed by First Leasing which can be imputed to First Leasing and the Boston Bank, it is impossible, in my opinion, to find expressly or by implication any promise made either by First Leasing or the Boston Bank other than a promise by First Leasing to repay to P.I.A.L. the moneys which it had borrowed upon the due date for their repayment, and a promise by the Boston Bank to make good any default by First Leasing in that obligation.

In the development of this argument counsel for the plaintiff said that when the moneys in question left the S.E.C.V. they flowed through a channel which the parties knew and expected they would follow. This channel led them from the S.E.C.V. into the account kept by P.I.A.L. with the plaintiff (which issued its letter of credit to procure that situation) and from that account to First Leasing. Counsel submitted that it was the intention of all that when the time for repayment by First Leasing came the moneys should take the same route back. If this occurred the plaintiff, having paid out the S.E.C.V. pursuant to its obligation to do so under the letter of credit issued by it, would be reimbursed, which, so it was said, was, in the events which had happened, the common contractual intention of all. In counsel's language, the three defendants ought not to be allowed "to walk away" or "wash their hands" of the problem and leave the plaintiff, which came into the transaction only because a local letter of credit was required, lamenting as an unsecured creditor. Reliance was placed upon the dictum of Cockburn, C.J. in *Stirling v. Maitland*, 5 B. & S. 840; 122 E.R. 1043. At p. 857 (E.R. 1047) his Lordship said:

"I look on the law to be that, if a party enters into an arrangement which can only take effect by the continuance of a certain existing state of circumstances, *there is an implied engagement on his part that he shall do nothing of his own motion to put an end to that state of circumstances, under which alone the arrangement can be operative.*"

The words which I have emphasised are those relied upon by counsel. They were applied by Lord Atkin in *Southern Foundries Limited v. Shirlaw* (1940) A.C. 701 at p. 717.

In the Supreme
Court of New
South Wales
Common Law
Division
Commercial
List

No. 11

Reasons for
Judgement
His Honour
Mr. Justice
Sheppard

This way of putting the plaintiff's case (what I might term the channel argument) is different from that with which I have already dealt. It does not necessarily involve a drawing upon the Boston Bank's letter of credit. Accordingly no question of the need for there to be a statement by P.I.A.L. that First Leasing has not repaid on the due date arises. What is involved is an obligation on the part of First Leasing owed to the plaintiff to repay its indebtedness into an account maintained by P.I.A.L. with the plaintiff, and an obligation on the part of P.I.A.L., again owed to the plaintiff, to accept such a payment as a discharge of the obligation owed to it by First Leasing.

In giving consideration to the submission I am prepared to take into account, not only the documents to which I have referred, but the whole course of dealing between the parties. I do this not overlooking a submission made by counsel for P.I.A.L. that, in the circumstances of the case, it was impermissible to have regard to any material other than the requisition for the issue of the plaintiff's letter of credit and the letter of credit itself. It is not enough, of course, that it may seem fair and reasonable that the course contended for by the plaintiff should be taken. The obligations relied upon are said to be contractual. They must appear as part of a contract to which the plaintiff, P.I.A.L. and, at least, First Leasing are parties. That contract may itself be implied, or terms forming part of such a contract, part of which is express, may be implied. My difficulty in accepting the proposition advanced by the plaintiff lies in my inability to perceive any contractual relationship whatever between the plaintiff and First Leasing. Unless there be such a relationship there is no basis for the implication, as an incident of that relationship, of a term of the kind referred to by Cockburn, C.J. and Lord Atkin in the cases above cited. There are questions as to the extent and operation of the doctrine enunciated by Cockburn, C.J. To some of those I referred in *Rio Pioneer Gravel Co. Pty. Limited v. Marley Australia Holdings Limited*, 23rd December, 1975, unreported. But I do not come to those questions in this case because the underlying basis which must exist before they arise, namely a contractual relationship between the plaintiff and First Leasing, is absent. As previously said the basis for saying that there was such a relationship is in essence the reference in the discussions to the letters of credit being "back-to-back" and the knowledge which First Leasing had of the source of the funds which it was borrowing. I do not wish to add to what I have earlier said about those circumstances being insufficient to give rise to a contractual relationship between the plaintiff and First Leasing.

For the above reasons the submissions made on behalf of the plaintiff are rejected. Although the first of the questions posed at the outset of this judgment should be answered in the affirmative, questions (b) and (c) should both be answered in the negative. No other submission made on the plaintiff's behalf sought to implicate the defendants First Leasing and the Boston Bank. The proceedings brought against those defendants and against the defendant, the S.E.C.V., which submitted to such judgment or order as the Court saw fit to make, should therefore be dismissed.

I turn to deal with further submissions made by counsel for the plaintiff which are directed against P.I.A.L. alone, but which, if accepted, would have the effect of entitling the plaintiff to have the moneys owing by First Leasing to P.I.A.L. channelled into P.I.A.L.'s account with it. Those submissions relate to the matters referred to in question (d).

It was submitted that the plaintiff, in the circumstances which had arisen, had a proprietary interest and claim upon the debt owed by First Leasing to P.I.A.L. The starting point for the submission was that the transaction was proposed by P.I.A.L. to the plaintiff on the basis that a particular sum of money or fund was to be borrowed by P.I.A.L. from the S.E.C.V. and, in turn, lent by P.I.A.L. to First Leasing. Thus

a fund was identified. That fund, so it was submitted, still exists, not in identifiable cash, but in the form of the moneys which First Leasing is ready and willing to repay to P.I.A.L. Counsel for the plaintiff submitted that the plaintiff has an equitable interest in that fund:—

- (a) by reason of the law relating to subrogation;
- (b) by reason of the existence of a trust pursuant to which the moneys, when paid to P.I.A.L., will be held on trust by it for the plaintiff; or
- (c) by reason of the existence of an equitable assignment of the debt from P.I.A.L. to the plaintiff by way of charge.

10 Reliance was placed upon the decision of the House of Lords in *Duncan Fox & Co. v. North and South Wales Bank* (1880) L.R. 6 A.C. 1. That case is authority for the proposition that an indorser of a bill of exchange, by reason of the fact that he is a surety for its payment to the holder, is entitled, in the event that he is called upon to pay the bill, to the benefit of any securities to cover the amount paid deposited with the holder by the acceptor. He is entitled to those securities whether he knew or did not know of the deposit. The indorser's right in this respect in no way depends upon contract but is the result of the equity of indemnification attendant on the suretyship. In the course of his speech Lord Selborne, L.C. referred, at p. 11, to three classes of case which he said it was important to distinguish when the principles and authorities applicable to the question in issue were being examined. The third class, into which the case under consideration fell was, in his Lordship's words, "those in which, without any such contract of suretyship, there is a primary and a secondary liability of two persons for one and the same debt, the debt being, as between the two, that of one of those persons only, and not equally of both, so that the other, if he should be compelled to pay it, would be entitled to reimbursement from the person by whom (as between the two) it ought to have been paid". At p. 13, after having referred to the principles which were applied in equity in relation to contracts of suretyship, his Lordship said that it appeared to him that these principles of equity were not less applicable to cases of the third class, "cases in which there is, strictly speaking, no contract of suretyship, but in which there is a primary and secondary liability of two persons for one and the same debt, by virtue of which, if it is paid by the person who is not primarily responsible, he has a right to reimbursement or indemnity from the other". His Lordship added that to this third class of cases the rights of an indorser against an acceptor of a bill of exchange might most properly be referred. Lord Blackburn, at p. 19, said that he thought that although the indorser of a bill was not exactly a surety for the acceptor, or a co-surety with those who are sureties for the acceptor, yet he stood in a position sufficiently analogous to that of a surety to bring him within the principles referred to by Lord Selborne. The opinion of Lord Watson was the same.

40 I have given this case, which was strongly relied upon by the plaintiff, close consideration. In doing so I have paid attention to the general principles of equity upon which it is based and I have examined the origin and development of these. I do not consider it necessary to engage in an elaborate citation of passages from authorities and texts. The general principle is stated in *Sheldon on Subrogation*, published in 1882 in Boston, as follows (p. 10):

50 "General Doctrine of Subrogation.—In short, the doctrine of subrogation is that when one has been compelled to pay a debt which ought to have been paid by another, he is entitled to a cession of all the remedies which the creditor possessed against that other. To the creditor they may have been both equally liable; but if, as between themselves, there is a superior obligation resting upon one to pay the debt, the other, after paying it, may use the creditor's securities to obtain reimbursement. The doctrine does not depend upon privity; nor is it

confined to cases of suretyship. It is a mode which equity adopts, to compel the ultimate discharge of a debt by him who in equity and good conscience ought to pay it, and to relieve him whom none but the creditor could ask to pay. Although, as between debtor and creditor, the debt may be extinguished, yet, as between the person who has paid the debt and the other parties, the debt is kept alive, so far as may be necessary to preserve the securities. When the money due upon a debt is paid, this will operate as a discharge of the indebtedness, or in the nature of an assignment of it, subrogating him who pays it to the place of the creditor, as may best serve the purposes of justice and the just intent of the parties.”

I refer also to Ashburner, *Principles of Equity*, 2nd Ed. p. 243, Hanbury's *Modern Equity*, 9th Ed. p. 429 and *Equity—Doctrines and Remedies*, Meagher, Gummow and Lehane, paras. 901 et seq.

Having considered the principles so enunciated, I am at a loss to understand how they can be of assistance to the plaintiff. I recognise that it was intended that the two letters of credit should be, as I have earlier mentioned, back-to-back, that the plaintiff would not have been a party to the transaction if it had not been for the insistence of the S.E.C.V. that it be provided with a letter of credit issued by a local bank and that there are, because of the facts that I have mentioned, reasons why the plaintiff here may be said to be in a position analogous to that of a surety and thus entitled to call in its aid principles such as were successfully relied upon by the indorser of the bills of exchange in *Duncan Fox*.

But this is not a case where there is any available security. In some circumstances the letter of credit issued by the Boston Bank might have been regarded as a security but, for reasons already given, there will be no drawing under that letter of credit and no payment, therefore, by the Boston Bank. All that will happen is that First Leasing will discharge in the ordinary way the obligation which it has to P.I.A.L.

Of course it is correct to say, as I have already indicated, that here there is, in the words of Lord Selborne, L.C. in *Duncan Fox*, “a primary and a secondary liability of two persons (P.I.A.L. and the plaintiff) for one and the same debt, the debt being, as between the two, that of one of those persons only . . . so that the other, if he should be compelled to pay it, would be entitled to reimbursement from the person by whom (as between the two) it ought to have been paid”. There is no question that, as between the plaintiff and P.I.A.L., it is P.I.A.L. which ought to pay. It is not in contest that that is so. But unless there can be identified a security to the benefit of which the plaintiff can be said to be entitled, the plaintiff is no further forward; it has a right, but only as an unsecured creditor. I should add that when one contemplates a security in this situation one would, in the normal situation, expect it to be a security held by the creditor, namely, the S.E.C.V. It held no security other than the plaintiff's letter of credit pursuant to which it was paid out. Accordingly, the plaintiff's submission based on *Duncan Fox* is rejected.

Counsel for the plaintiff relied additionally upon the decision of Wynn-Parry, J. in *In re Miller, Gibb & Co. Limited* (1957) 1 W.L.R. 703. His Lordship based his decision upon the well-known case of *Castellain v. Preston* (1883) L.R. 11 Q.B.D. 380 from which he cited extensively. *Castellain v. Preston* is authority for the proposition that, as between an underwriter and an insured, the underwriter, having paid out the insured, is entitled to the advantage of all his rights, legal or equitable, in relation to the subject matter of the insurance. It is thus an application of the doctrine of subrogation. *Miller, Gibb*, however, goes a step further.

Although its facts are complex it is important that I indicate generally what they were. In 1951 the Exports Credits Guarantee Department of the Board of Trade

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issued a shipments policy of indemnity to a company which carried on the business of exporters. Under the terms of the policy the department guaranteed to pay to the exporter ninety per cent of the amount of any loss sustained in respect of goods sold and shipped from the United Kingdom to any buyer in the countries specified in the schedule thereto, which included Brazil, by reason of the operation of a law which, in circumstances outside the control of the exporter or of the buyer, prevented the transfer of payments from the buyer's country to the United Kingdom. The policy further provided that any sum recovered by the exporter or the department after the date at which the loss was ascertained should be divided between the department and the exporter in the proportions of ninety and ten. in 1952 the company exported machinery to Brazil. The buyer made payment into a bank in Brazil but the transfer of this payment from Brazil to the United Kingdom was prevented by Brazilian currency exchange regulations. In 1953 the company made a claim against the department for ninety per cent of its loss which the department paid. The company was wound up in December, 1954. In January, 1956, the company's bankers received on its account the full purchase price in sterling from Brazil and the Board of Trade claimed ninety per cent thereof from the company. Wynn-Parry, J. held, upon the authority of *Castellain v. Preston* (supra), that it was entitled to be paid the sum claimed. At p. 710 his Lordship said that it followed necessarily to his mind that as a result of the payment made by the department to the company in 1953 the department, "by reason of the nature of the contract and not as a result of any extreme term in it, became subrogated to all the rights of the company". He added "Therefore, if (which did not happen) the sterling sum in question had been received by the company, the company would thereupon have become trustees thereof for the department".

The situation in *Miller, Gibb* was one of double payment. The moneys to be received by the company were impressed with a trust in favour of the Board of Trade because the company had already received payment from the Board. Because of the finding that there was a trust there is, as I have said, more to the decision than an application of the principles of subrogation. But the case, in my opinion, is distinguishable from the present. Here no question of any double payment is involved. The plaintiff, being in a position analogous to that of a surety, has discharged an indebtedness that is properly that of P.I.A.L. It is entitled to look to P.I.A.L. for payment. But it is not, in the absence of some contractual provision, entitled to have P.I.A.L. treated as a trustee of moneys it will receive in repayment of an indebtedness owed to P.I.A.L. in respect of an entirely separate, although commercially related transaction. As I have already said the plaintiff as a surety, or as a person in a position analogous thereto, is plainly entitled to payment by P.I.A.L. What I am unable to do is to take the further step, which is involved in the plaintiff's submission, and treat the moneys to come to P.I.A.L. from First Leasing, as impressed with a trust, in the plaintiff's favour. Accordingly the plaintiff's submission based on *Miller, Gibb* is rejected.

Counsel for the plaintiff then relied upon cl. C of the requisition. That clause, as I have said, was not appropriate for the present transaction because it assumes that the letter of credit will be issued in connection with a sale of goods transaction. In such a case the plaintiff's customer effects payment of the price to be paid by him for the goods by procuring the issue by the plaintiff of a letter of credit in favour of the seller which is drawn upon by him. Normally the drawing will not be given effect to unless the seller hands over to the plaintiff or its agent the documents, including documents of title, which are specified both in the requisition and letter of credit. In such a situation the opening words of the clause namely, "the Bank shall hold the

above mentioned documents and goods as a continuing security by way of pledge . . .” have a clear field of operation. Counsel for the plaintiff submitted that I should not regard the clause, despite the inappropriateness of its language for present purposes, as having no effect in the present case. He submitted that the word “goods” should be read as “loan” and that the word “pledge” should be read as “charge”. The loan to which he referred was the loan by P.I.A.L. to First Leasing. It is to be observed that the only loan referred to in the requisition is that mentioned in the early part of it as “the unpaid principal amount of loan made to P.I.A.L.”. That is not the loan to which counsel for the plaintiff refers. It is further to be noted that in the requisition in question, that is the requisition dated 14th August, 1973, the words in brackets underneath the loan to which I have referred as being in the requisition are not crossed out. Those words are “‘Merchandise’ or brief description of goods”. Obviously the words in clause C, “the above mentioned documents and goods”, were intended in a sale of goods transaction to refer to the goods described above the words in small print to which I have just referred. Consequently one cannot read clause C at all literally if one is to give effect to the submission made by counsel for the plaintiff. Such charge as the plaintiff has pursuant to clause C, if there be one at all, is, if the words of the requisition are read literally, a charge over the unpaid principal amount of the loan made by the S.E.C.V. to P.I.A.L. Reading the words literally will not therefore assist the plaintiff. Much more has to be done than merely changing the word “goods” into the word “loan” and the word “pledge” into the word “charge”. Notwithstanding the fact that one will always endeavour, in construing a commercial document, to give it full force and effect, it becomes impossible in my opinion to do what the plaintiff asks the Court to do here without rewriting a printed clause in the plaintiff’s own document. To the extent that the clause does not do for the plaintiff what it wishes it to do, one can only say that the problem is caused by the plaintiff selecting, for the purposes of the issue by it of its letter of credit, a printed form which was quite inappropriate for the purpose for which it was intended. The plaintiff’s argument based upon clause C is therefore rejected.

Finally it was submitted that clause J of the requisition was effective to confer upon the plaintiff a proprietary interest in the moneys to be repaid by First Leasing to P.I.A.L. because the words of the clause constituted an equitable assignment of that indebtedness to the plaintiff by way of charge. Reliance was placed upon a long line of cases of which *re Warren* (1938) 1 Ch. 725 and *In re Kent and Sussex Sawmills* (1947) 1 Ch. 177 are examples. It is to be noted that in each of those cases the Judges construed the words in the documents which were submitted to constitute charges with a degree of strictness. I regret to say that I am unable to construe the words of clause J, notwithstanding that the condition of the operation of the clause is the default of P.I.A.L., as a charge or an equitable assignment of anything. Certainly it does not operate to create an equitable charge over, or an equitable assignment of, the moneys to be repaid to P.I.A.L. by First Leasing.

The plaintiff’s submission that it had a proprietary interest in the moneys to be repaid by First Leasing to P.I.A.L. is therefore rejected. It follows that question (d) posed in the early part of this judgment should be answered in the negative.

One further submission remains to be dealt with. It is based upon the rule in *ex parte James; re Condon* (1874) L.R. 9 Ch. 609. In that case James, L.J. said at p. 614:

“I am of opinion that a trustee in bankruptcy is an officer of the Court. He has inquisitorial powers given him by the Court, and the Court regards him as its officer, and he is to hold money in his hands upon trust for its equitable distribution among the creditors. The Court, then, finding that he has in his hands

money which in equity belongs to some one else, ought to set an example to the world by paying it to the person really entitled to it. In my opinion the Court of Bankruptcy ought to be as honest as other people”.

Of the rule Williams, J. in *Downs Distributing Co. Pty. Limited v. Associated Blue Star Stores Pty. Limited*, 76 C.L.R. 463 at p. 482, said that it had been invoked in many subsequent cases “on some occasions with, but more often without, success”. Williams, J. referred to *In re Thellusson* (1919) 2 K.B. 735 where at p. 764, Atkin, L.J. (as he then was) said: “it can make no difference whether the trustee himself has acquired the property by unworthy means, or whether there is vested in him by operation of law property which has been acquired by the debtor by unworthy means. If it would be dishonourable of the debtor to use the money to pay his creditors, it is equally dishonourable for the officer of the Court, knowing the full facts, to use the money to pay his creditors”.

After citing that passage Williams, J. continued:

“But the cases as a whole appear to show that it is only in exceptional cases that the rule would be applied where the officer or his predecessor in office has not been personally concerned in the transaction. In *re Thellusson*, (1919) 2 K.B. 735 is an exceptional case. There a creditor who had agreed to lend the debtor money to pay a pressing debt paid the money into the bank account of the debtor in ignorance of the fact that a receiving order had been made against him. Out of the money paid in, the bank recouped itself for the amount of an overdraft leaving a balance in the account. The balance vested in the Official Receiver by operation of law. The money was paid into a bank account over which the Official Receiver had control, so that the payment was very much akin to a payment to him personally. In *Re Gozzett* (1936) 1 All E.R. at 88, Lord Wright M.R. said that the payment was very analogous to a payment under mistake of fact and it was not therefore a matter of astonishment that the Court held that the rule should apply. In his judgment in *In re Wigzell* (1921) 2 K.B. at pp. 868, 869, Younger, L.J. set out the exceptional circumstances that existed in *In re Thellusson* (supra). He referred to the essential difference between applying the rule to ‘a transaction initiated by the bankrupt himself, not presumably in every case a person of the highest commercial morality, and a transaction initiated either by the trustee or the Court’. ((1921) 2 K.B. at 869). He pointed out that in the case of transactions initiated by the bankrupt himself ‘it is not obvious that a creditor with whom that transaction has been carried out and is complete, even one who in relation to it may have been tricked by the bankrupt, has any equity at all as against the other creditors of the same bankrupt, who may all have been equally tricked, merely because in his case the proceeds of the transaction can be traced amongst the bankrupt’s assets, and in the other cases they cannot’ ((1921) 2 K.B. at pp. 869, 870).

The trickery alleged in the present case is that the defendant was induced to give credit by the fraudulent representation of the agent of the plaintiff that there would be no difficulty whatsoever in paying for the goods, whereas the agent well knew that the plaintiff was insolvent and would be unable to pay for the goods. This is an allegation of fraud, and fraud should be strictly pleaded and proved. Fraud was not raised before Roper, C.J. in Eq., and it is apparent that on such an issue further evidence might have been tendered. But it is unnecessary to pursue the matter because the trickery, if any, was the trickery of the plaintiff whilst it was a going concern, and it was not trickery in which the liquidator was in any sense involved. It may be that some of the

goods sold and delivered by the defendant to the plaintiff or their proceeds of sale could be traced into the possession of the liquidator, but the mere fact that the assets available for the unsecured creditors are thereby increased would not give the defendant any equity to be paid in full. A person who sells his goods on credit without security has only himself to thank if he finds himself an unsecured creditor on the bankruptcy of his debtor: *Re Gozzett* (supra). If as in the present case he takes a security too late he cannot complain of any hardship caused by the operation of the bankruptcy law: *In re Hall*, (1907) 1 K.B. 875; *In re Wigzell* (supra).”

Having given consideration to what was said by Williams, J. I have reached the conclusion that this is not a case where I should invoke, in the plaintiff's favour, the rule in *ex parte James*. I think it has a very limited operation and will usually only apply where the liquidator or trustee in bankruptcy as an officer of the Court has been guilty of some dishonourable or discreditable conduct. It will, as *In re Thellusson* shows, have some operation in other cases but these will be rare and certainly, before the rule can be successfully invoked by a creditor, there must be trickery of some kind. Here there is no trickery on the part of anyone. Certainly from the plaintiff's point of view the situation is an unfortunate one. Naturally one feels sympathy for it particularly when one bears in mind the circumstances in which it came to enter into the transaction. Nevertheless it charged a commission for its services and, although the amount of the letter of credit issued by it was substantial, the fee it charged would not appear to have been minimal. I do not think that one can say more than that the sympathy one feels for it is the sympathy one feels always for a person who unexpectedly finds himself in the position of an unsecured creditor in the winding up of a company, the failure of which, at the time that the transaction in question was entered into, could not reasonably have been foreseen.

In the result I am of the opinion that the plaintiff has failed in respect of all the submissions which it has made. The defendants are entitled to judgment and to costs.

ORDER GIVING CONDITIONAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

THE COURT ORDERS:—

1. That leave to appeal to Her Majesty in Council from the judgment of this Court be and the same is hereby granted to THE COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED hereinafter called the Appellant UPON CONDITION that the Appellant do within three months from the date hereof, give security to the satisfaction of the Prothonotary in the amount of One thousand dollars (\$1,000) for the due prosecution of the said appeal and the payment of such costs as may become payable to the Respondents in the event of the Appellant not obtaining an order granting him final leave to appeal from the said judgment or of the appeal being dismissed for nonprosecution or of Her Majesty in Council ordering the Appellant to pay the Respondents costs of the said appeal, as the case may be, AND UPON FURTHER CONDITION the Appellant do within fourteen (14) days from the date hereof deposit with the Prothonotary the sum of Fifty dollars (\$50) as security for and towards the costs of the preparation of the transcript record for the purposes of the said appeal AND UPON FURTHER CONDITION that the Appellant do within three months of the date hereof take out and proceed upon all such appointments and take all such other steps as may be necessary for the purpose of settling the index to the said transcript record and enabling the Prothonotary to certify that the said index has been settled and that the conditions hereinbefore referred to have been duly performed AND UPON FURTHER CONDITION finally that the Appellant do obtain a final order of this Court granting it leave to appeal as aforesaid.

2. That the costs of all parties of this application and of the preparation of the said transcript record and of all other proceedings hereunder and of the said final order do follow the decision of Her Majesty's Privy Council with respect to the costs of the said appeal or do abide the result of the said appeal in case the same shall stand or be dismissed for non prosecution or be deemed so to be subject however to any orders that may be made by this Court up to and including the said final order or under any of the rules next hereinafter mentioned that is to say Rules 16, 17, 20 and 21 of the rules of the 2nd day of April One thousand nine hundred and nine regulating appeals from this Court to Her Majesty in Council.

3. That the costs incurred in New South Wales payable under the terms hereof were under any order of Her Majesty's Privy Council by any party to this appeal be taxed and paid to the party to whom the same shall be payable.

4. That so much of the said costs as become payable by the Appellant under this order or any subsequent order of the Court or any order made by Her Majesty in Council in relation to the said appeal may be paid out of any moneys paid into Court as such security as aforesaid so far as the same shall extend AND that after such payment out (if any) the balance (if any) of the said moneys be paid out of Court to the Appellant.

5. That each party is to be at liberty to restore this matter to the list upon giving two days notice thereof to each of the other parties for obtaining any necessary rectification of this order.

ORDERED: 27th August, 1976

ENTERED: 12th September, 1977

(Sgd.) G. Whalan (L.S.)
Registrar
Court of Appeal.

In the Supreme
Court of New
South Wales
Common Law
Division
Commercial
List

No. 12

Order giving
Conditional
Leave to
Appeal to Her
Majesty in
Council

**ORDER GIVING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL
THE COURT ORDERS that:—**

1. That final leave to appeal to Her Majesty in council from so much of the judgment of this Court given by the Honourable Ian Fitzhardinge Sheppard on 13th August 1976 as provided for judgment for the respondents Patrick Intermarine Acceptances Limited and Gavin Hosking and as ordered the Plaintiff to pay those defendants' costs be granted to The Commercial Banking Company of Sydney Limited.

2. That upon payment by the Commercial Banking Company of Sydney Limited of the costs of preparation of a transcript record and dispatch thereof to England the sum of Fifty dollars deposited in Court by The Commercial Banking Company of Sydney Limited as security for and towards the costs thereof be paid out of Court to The Commercial Banking Company of Sydney Limited.

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ORDERED: 15th August, 1977

ENTERED: 3rd November, 1977

Registrar.