

45/85

IN THE PRIVY COUNCIL

No. 30 of 1984

O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT
OF VICTORIA

IN THE MATTER OF THE COMPANIES (VICTORIA) CODE

- and -

IN THE MATTER OF BRINDS LIMITED

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS SECURITIES
LIMITED, CHAPMANS LIMITED, NORTHERN STAR
INVESTMENTS PTY. LIMITED and HALLMARK
MINERALS N.L.

Appellants

- and -

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED and JACKSON GRAHAM MOORE AND
PARTNERS (a firm)

Respondents

RECORD OF PROCEEDINGS
ADDITIONAL EVIDENCE AND AFFIDAVITS
VOLUME SIX

MESSRS. INGLEDEW, BROWN,
BENNISON & GARRETT,
International House,
26 Creechurch Lane,
London, EC3A 5AL

Solicitors for the
Appellants

MESSRS. COWARD CHANCE,
Royex House,
Aldermanbury Square,
London,
EC2V 7LD

Solicitors for the
Respondents

O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT
OF VICTORIA

IN THE MATTER OF THE COMPANIES (VICTORIA) CODE

- and -

IN THE MATTER OF BRINDS LIMITED

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS SECURITIES
LIMITED, CHAPMANS LIMITED, NORTHERN STAR
INVESTMENTS PTY. LIMITED and HALLMARK
MINERALS N.L.

Appellants

- and -

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED and JACKSON GRAHAM MOORE AND
PARTNERS (a firm)

Respondents

RECORD OF PROCEEDINGS
ADDITIONAL EVIDENCE AND AFFIDAVITS
VOLUME SIX

INDEX OF REFERENCE

No.	Description of Document	Date	Page No.
<u>IN THE FULL COURT</u>			
206	Affidavit of William Richard Hunt	10th October 1983	1
207	Affidavit of Phillip Kevin Smith	17th October 1983	8

No.	Description of Document	Date	Page No.
	Exhibits referred to therein:		
208	"T 1" Copies of telexes concerning overseas enquiries about Nationwide Resources Pty.Ltd.		14
209	"I" Copy of set of Interrogatories in N.S.W. Proceedings No.4254 of 1983		19
210	"T" Timetable of pre- trial procedures in that action		115
211	Affidavit of Danny Melech Ungar	3rd November 1983	116
	Exhibits referred to therein:		
212	"A" Copy of letter from Godfrey and Godfrey to Mallesons Solicitors dated 17th October 1983		119
213	"B" Copy of letter in reply dated 18th October 1983		122
214	"C 1-3" Copies of letters all dated 21st October 1983 from Godfrey and Godfrey to Mallesons		125
215	"D" Copy of letter in reply dated 25th October 1983		132
216	Affidavit of Danny Melech Ungar	10th November 1983	134
	Exhibits referred to therein:		

No.	Description of Document	Date	Page No.
217	"E" Copy of receipt of Revised Judgment dated 26th May 1983		137
218	Sixth Affidavit of Phillip Kevin Smith	11th November 1983	141
219	Seventh Affidavit of Phillip Kevin Smith	11th November 1983	144
	Exhibits referred to therein:		
220	"KGW" Copy of Affidavit of Wilshire sworn in New South Wales Proceedings No.3803 of 1982		146
221	Eighth Affidavit of Phillip Kevin Smith	11th November 1983	156
222	Affidavit of Martin Anthony Tosio	16th November 1983	160
	Exhibits referred to therein:		
223	"MAT 1" Draft balance sheet of Brinds Ltd. as at 31st December 1983		167
224	"MAT 2" Copy of Article from "Australian Financial Review" dated 7th November 1983		170
225	"MAT 3" Copy of Article from "Australian Financial Review"		172
226	"MAT 4" Extract from Directors Report of the 1983 BHP Annual Report		174

No.	Description of Document	Date	Page No.
227	"MAT 5" Copy of report on Offshore Oil N.L. prepared by Jackson, Graham Moore and Partners (see "PS 11" to Smith Affidavit of 29th September)		176
228	"MAT 6" 1983 Annual Report of Offshore Oil N.L.	(to be produced)	
229	Affidavit of Martin Anthony Tosio	16th November 1983	206
230	Affidavit of Danny Melech Ungar	16th November 1983	209
	Exhibit referred to therein:		
231	"F" Copy of BHP farm- in-proposal to the WA 64P Venture Parties		
232	Affidavit of Danny Melech Ungar	18th November 1983	212
	Exhibits referred to therein:		
233	"G" Copy of Notes taken on 8th April 1983		215
234	Affidavit of Danny Melech Ungar	28th November 1983	217
235	Counsels' submissions	16th November 1983	221

O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT
OF VICTORIA

IN THE MATTER OF THE COMPANIES (VICTORIA) CODE

- and -

IN THE MATTER OF BRINDS LIMITED

B E T W E E N :

10 BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS SECURITIES
LIMITED, CHAPMANS LIMITED, NORTHERN STAR
INVESTMENTS PTY. LIMITED and HALLMARK
MINERALS N.L.

Appellants

- and -

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED and JACKSON GRAHAM MOORE AND
PARTNERS (a firm)

Respondents

RECORD OF PROCEEDINGS
ADDITIONAL EVIDENCE AND AFFIDAVITS
VOLUME I

IN THE SUPREME COURT
OF VICTORIA
FULL COURT

1983 No. Co. 13015
IN THE MATTER of the Companies
(Victoria) Code
and
IN THE MATTER of Brinds Limited

B E T W E E N :

10 BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS PTY. LTD.,
HALLMARK MINERALS and L.S.D. HOLDINGS
LIMITED Appellants

- and -

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm) Respondents

A F F I D A V I T

I, WILLIAM RICHARD HUNT of 358 Lonsdale Street Melbourne Solicitor

20 MAKE OATH AND SAY :

1. I am a Consultant Solicitor in the employ of Godfrey and Godfrey the Solicitors for the Appellants herein and have taken a substantial part in the conduct of the defence to the Petition herein, have been present from time to time in Court during the hearing of that Petition and have read the material from which the Appeal Book has been compiled.

1. *John Philip Sidwell*

In the Full
Court

No.206
Affidavit
of William
Richard Hunt
dated 10th
October
1983

(continued)

2. ONE of the grounds of appeal herein is that in proceeding to determine the dispute as to the terms of repayment by Brinds Ltd. of its indebtedness to the respondent Petitioner the learned Judge misdirected himself.

3. I respectfully refer to the Judgment of His Honour at pages 685-693 of the Appeal Book herein (Volume 3) in which His Honour makes the following statements :-

(i) "the mode by which large amounts of money were moved from Offshore to Brinds over a period of years is justly to be described as exceedingly irregular" (at page 685 line 22)

(ii) "in truth, the evidence raises in my mind a grave doubt whether there was between the two companies any commercial arrangement or agreement of that kind which was worthy of the name" (at page 685 line 31)

(iii) "Brinds debiting Offshore with a so called 'management fee' " (at page 686 line 26)

(iv) "the practice of disbursement of money out of the bank account of Offshore into the bank account of Brinds appears clearly to have been formulated in order to finance the operations of Brinds and the Brinds Group" (at page 688 line 6)

John Christodoulou

4. COUNSEL instructed by me submitted to His Honour that His Honour should not make a final determination of the Petition herein because there existed a genuine dispute between the Petitioner and the Respondent Company and because the nature of proceedings before His Honour precluded the Respondent Company from utilising the procedural advantages available to a defendant in a common law action and thereby obtaining and placing before the Court evidence and material so obtained.

10 5. IF the case herein was for trial in a common law proceeding for recovery of the debt I would have caused the following steps to have been taken :

- (i) Discovery
- (ii) Interrogatories
- (iii) Subpoenaes as necessary

to establish inter alia

(a) that Offshore Oil N.L. was a company which over a period had surplus funds and lent large sums of money by deposit with borrowers on an approved list, a copy of which appears on page 509 of the Appeal Book herein;

20 (b) that such deposits were made in the ordinary course of business and amounted to millions of dollars, and that the moneys deposited with Brinds were in a similar way deposited in the ordinary course of the earning of interest by Offshore Oil N.L. on its surplus funds and the carrying on by Brinds of its money market activities;

In the Full
Court

No.206
Affidavit
of William
Richard Hunt
dated 10th
October
1983

(continued)

(c) that the normal documentation of such transactions which might involve in aggregate many millions of dollars consisted of documents similiar to the document referred to by His Honour at page 690 of His Honour's Judgment in the Appeal Book;

(d) that money market transactions involving large sums of moneys by regular dealers on the market are documented by similiar documents.

I would in addition have caused evidence to be available to prove

(e) that Brinds carried on money market activities inter alia by accepting funds on deposit from companies with which it was associated and lending the funds to other companies with which it was associated and to other money market dealers;

(f) that about 90% of the funds so lent by Brinds were lent to public companies whose shares were listed on recognised Stock Exchanges.

6. I refer to page 1561 of the Transcript Book (Volume F) in the Appeal Book where Mr. Shaw Q.C. cross-examined Mr. Ganke about an Offshore Oil file of money market transactions. I am informed by Mr. Ganke and I verily believe that such a file did exist as at November 1982 and contained numerous documents similiar to that referred to by His Honour.

John Lewis Sedgwick

7. AS shown from the balance sheets exhibited herein at the 30th June 1982 the amount on deposit by Offshore with Brinds represented about 4.5% of Offshore's assets; and the sum on loan from Offshore to Brinds at the same date equalled about 16.7% of Brinds Limited's assets.

8. I respectfully refer to page 737 of His Honour's Judgment where His Honour says "as Mr. Macintosh stated in effect in one of his letters to Mr. Ganke, it is very difficult to discern what the business of Brinds Ltd. is or has been for some time." I am further informed and verily believe as aforesaid that evidence is available to demonstrate

- 10
- (a) that Brinds Ltd. is a public company which came under the control of Mr. Ganke in about 1964 and has traded successfully since that date;
 - (b) that under Mr. Ganke's control it has been responsible for the formation of a group of public companies which have engaged in property development and mining or petroleum exploration;
 - (c) that at one time nine or ten of those companies were listed on recognised Stock Exchanges. Currently six are quoted on recognised Stock Exchanges;
 - (d) That Offshore Oil was floated in 1969 as a public company by Alexanders Securities Ltd., a public company which has been a subsidiary of Brinds for many years;
- 20

John Chris Adoulos

In the Full
Court

No.206
Affidavit
of William
Richard Hunt
dated 10th
October
1983

(continued)

The initial capital of Offshore Oil was three million dollars. Until 1977 it was capitalised on the market at about one million dollars. As at 30th June 1981 total market capitalisation was about One hundred million dollars and net assets were about sixty-nine million dollars;

(e) Mr. Ganke was Chairman of Offshore Oil from 1973 until 1st July 1982 and he resigned as a director of Offshore Oil on 25th November 1982.

SWORN at Melbourne by the)
abovenamed WILLIAM RICHARD)
HUNT this 10th)
day of October 1983.)

Wm. R. Hunt

10

Before me:

John Christodoulos

A Commissioner of the Supreme Court of the State of Victoria for
taking Affidavits.

This Affidavit is filed on behalf of the Appellants.

In the Full Court
No.206
Affidavit of William
Richard Hunt dated
10th October 1983 (cont'd)

IN THE SUPREME COURT
OF VICTORIA
FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED
NORTHERN STAR INVESTMENTS, PTY. LTD.,
HALLMARK MINERALS N.L. and L.S.D.
HOLDINGS LIMITED Appellants

and

OFFSHORE OIL N.L. MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE
INSURANCE COMPANY LIMITED and
JACKSON GRAHAM MOORE AND PARTNERS
(a firm) Respondents

AFFIDAVIT OF WILLIAM RICHARD HUNT

Sworn: *10th October 1983*

GODFREY & GODFREY,
Solicitors,
358 Lonsdale Street,
MELBOURNE. VIC. 3000

Tel: 67 2547
Ref: 663/83 WRH:

IN THE SUPREME COURT)
OF VICTORIA)
IN THE FULL COURT)

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

BETWEEN :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
and NORTHERN STAR INVESTMENT'S PTY. LTD.,
HALLMARK MINERALS N.L. and L.S.D. HOLDINGS
LIMITED

10

Appellants

and

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

20

Respondents

FINAL AFFIDAVIT OF PHILLIP KEVIN SMITH

On the 17th day of October, 1983 I PHILLIP KEVIN SMITH of 130 Phillip Street, Sydney, Solicitor, make oath and say as follows:-

1. I crave leave to refer to my four (4) earlier Affidavits sworn in these proceedings.
2. I am the Solicitor who has the direct conduct of proceedings No. 4254 of 1983 in the Supreme Court of New South Wales and which constitutes part of the new evidence sought to be used on the hearing of the Appeal herein.
- 10 3. I was in attendance when this Court ordered that any further evidence to be used by the Appellant as new evidence on the Appeal should be filed in this Court by Monday, 17th October, 1983.
4. By this Affidavit and the documents exhibited hereto, it is sought to comply with both the letter and the spirit of the Court's order but I respectfully submit that it is not possible to comply fully with that order.
- 20 5. The nature of the case to be made on behalf of the Appellant on the market rigging aspect concerns activities by persons named in the said New South Wales proceedings most of which activities are wholly within their knowledge. Accordingly, it is only by virtue of the investigatory procedures which are afforded to a party in such proceedings that evidence of such activity is obtainable. A limited amount of evidence has already been obtained by the use of Subpoenae and by calling David Harry Lance, the Stockbroker concerned, as our Witness in proceedings No.S3803 of 1982 on 29th July, 1983 whereby some information about the nature of the impugned behaviour was obtained.
6. The identification of some of the persons beneficially interested in Nationwide Resources Pty. Limited, that being

PKS

the purchaser of approximately 6,000,000 shares on 28th July, 1983, can only be ascertained by the use of further Subpoenas, Interrogatories and investigation. Searches have revealed the principal beneficial owners of the shares in that Company and these are Companies owned or controlled by Lawrence James Adler and by David Harry Lance and John Peter Boyer each of the latter having been employed under the direction of Mr. Adler as Consultants to Offshore Oil N.L. However, a substantial shareholding is held by Peak Nominees Pty. Limited, a nominee Company controlled by a firm of Solicitors, Messrs. Simons & Baffsky of Sydney and they have declined to supply any information as to the beneficial owners of the shares held by that Company except pursuant to Court process. Enquiries with respect to the remaining shareholders, those being a firm in Vienna and a Company in Brazil have been the subject of telexes, copies of which are exhibited to me at the time of swearing this my Affidavit and marked "T1". It is thought that these firms are also connected with Messrs. Adler, Lance or Boyer and I believe that that possible connection should be appropriately investigated by a procedure which I understand is known as Letterogatories and otherwise. This will require further enquiries being made overseas.

7. The Stock Exchanges in Sydney and Melbourne are not prepared to voluntarily provide any information beyond that which is normally made available to members of the public except pursuant to Court process. The Exchange supplies to the public, information as to sales, turnover and prices of shares and other material but not the names of Stockbrokers who are involved in the individual sales. Accordingly, this information has to be obtained by Subpoena.

8. In order to investigate some aspects of the market rigging, it is necessary to ascertain the names of vendors and purchasers of particular parcels of shares. This information

is apparently not available from the Stock Exchanges and must therefore be obtained on Subpoena from individual Stockbrokers after they have been identified.

9. Based on the computer print-out obtained on Subpoena from the Sydney Stock Exchange, which was exhibited to me at the time of swearing my Affidavit dated 29th September, 1983 and marked "PS7", Subpoenas were issued out of the Supreme Court of New South Wales to certain Stockbrokers in order to obtain information as to vendors and purchasers of certain shares in Offshore Oil N.L. A number of firms so subpoenaed were represented on the return of the Subpoenas by Messrs. Dawson Waldron who were also acting for Fire and All Risks Insurance Co. Limited, one of the Defendants. On behalf of those Stockbrokers, it was submitted that the Subpoenas were oppressive, inter alia, because considerable effort would be required to produce the documents sought by the Subpoena. In the events which happened, it has not yet been possible to call on the Subpoenas nor for the objections to the Subpoenas to be determined by the Supreme Court of New South Wales.
10. There is also exhibited to me at the time of swearing this my Affidavit and marked with the letter "I", a set of Interrogatories proposed to be administered to the Defendants in the Sydney proceedings. It is also desired to explore the possibility of interrogating Messrs. Jackson, Graham, Moore & Partners, one of the Respondents to this Appeal, particularly in relation to the fresh evidence which comprises investigations and recommendations contained in the Report prepared by that firm which is exhibit "PS11" in my Affidavit dated 29th September, 1983.
11. The time table, "T", ordered by His Honour, Mr. Justice Waddell, was accepted by both parties and by His Honour as providing the speediest practical method of pursuing the necessary pre trial procedures to prepare the case for

hearing. Both the parties have substantially complied with the programme.

12. In an effort to comply with the spirit of the orders of this Court made on 10th October, 1983, Counsel was briefed on Tuesday, 11th October, 1983 to prepare Interrogatories as a matter of urgency so that they may be placed before this Court as an Exhibit to this Affidavit. However, the Interrogatories are not complete and cannot be completed until after discovery and inspection have taken place in the Sydney proceedings which, pursuant to the order of the Supreme Court of New South Wales, will not occur until 18th October, 1983.

SWORN by the Deponent

Before me:

Phillip Smith
Judge of the Supreme Court
of New South Wales

In the Full Court

No.207

Affidavit of Phillip Kevin
Smith dated 17th October
1983 (cont'd)

IN THE SUPREME COURT

OF VICTORIA

FULL COURT

1983 No. Co. 1015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED
NORTHERN-SOUTH INVESTMENTS, PTY. LTD.
HALLMARK METALS N.L. and L.S.D.
HOLDINGS LIMITED Appellants

and

OFFSHORE OILFIELD MARTIN CORPORATION
LIMITED, METROBANK MUTUAL LIFE
INSURANCE COMPANY LIMITED and
JACKSON GRAHAM MOORE AND PARTNERS
(a firm) Respondents

AFFIDAVIT of PHILLIP KEVIN SMITH

Sworn: 17th October 1983

GODFREY & GODFREY,
Solicitors,
358 Lonsdale Street,
MELBOURNE. VIC. 3000

Tel: 67 2547
Ref: 663/83

TELEX MESSAGE

No. 208
EXHIBIT "T1"
COPIES OF TELEXES CONCERNING
OVERSEAS ENQUIRIES ABOUT NATIONWIDE
RESOURCES PTY.LTD.

BRINDS AA22292
2130413ABOG BR
RIO DE JANEIRO, AUGUST 10, 1983

SOUTHERN CROSS EXPLORATION N L

FURTHER TO OUR TELEX OF YESTERDAY AFTERNOON, PLEASE BE ADVISED THAT OUR SAO PAULO OFFICE HAS FAILED TO FIND ANY COMPANY REGISTERED UNDER THE NAME 'INTERNATIONAL INVESTMENT CONSULTANT CORP.' WITH THE COMMERCIAL REGISTRY OF THE STATE OF SAO PAULO (I.E., REGISTRAR OF COMPANIES).

SIMILAR SEARCH CONDUCTED WITH 4TH REGISTRY OF DEEDS AND DOCUMENTS (WHERE SERVICE COMPANIES ARE USUALLY REGISTERED) HAS ALSO PROVEN NEGATIVE.

10

WE ARE STILL CONDUCTING SEARCHES ON THE OTHER 5 REGISTRIES OF DEEDS AND DOCUMENTS OF THE CITY OF SAO PAULO AND SHALL REPORT RESULTS AS SOON AS POSSIBLE.

OUR SAO PAULO OFFICE SENT A LAW STUDENT TO RUA MARANHAO 133, THE ADDRESS OF INTERNATIONAL INVESTMENT CONSULTANT CORP., HOWEVER THAT ADDRESS TURNED OUT TO BE A RESIDENTIAL APARTMENT BUILDING. THE DOORMAN OF THE BUILDING WAS ASKED IF HE WAS FAMILIAR WITH THAT COMPANY'S NAME AND THE ANSWER WAS THAT HE HAD NEVER HEARD OF SUCH A FIRM.

20

DO YOU HAVE ANY OTHER INFORMATION WHICH MIGHT HELP US LOCATE THE COMPANY IN QUESTION?

REGARDS,

RONALDO VEIRANO

K*
BRINDS AA22292
2130413ABOG BRGGGGV

11 AUG 1983	
BG	✓
FILE	
DESTROY	

TELEX MESSAGE PAGE

In the Full Court

No.208 Exhibit "T 1" Copies of Telexes concerning overseas enquiries about Nationwide Resources Pty. Ltd. (cont'd)

1983

BRINDS AA22292
RIO DE JANEIRO, AUGUST 09, 1983.

BG	✓

TO: SOUTHERN CROSS EXPLORATION N.L.
FR: ULHOA CANTO, REZENDE, NEVIANI E GUERRA - ADVOGADOS
RE: INTERNATIONAL INVESTMENT CONSULTANT CORP.

1. THANK YOU FOR YOUR TLX OF AUGUST 6, 1983.

2. BE ADVISED THAT THE ABOVECAPTIONED COMPANY IS NOT REGISTERED WITH THE COMMERCIAL REGISTRY IN SAO PAULO. WE HAVE ALSO RESEARCHED FOR REGISTRATION THEREOF UNDER NAMES SIMILAR TO THE ONE CONTAINED IN YOUR TELEX, SINCE COMPANIES REGISTERED IN BRAZIL MUST HAVE SOME EXPRESSION IN PORTUGUESE, AT LEAST THE ONE WHICH INDICATES ITS CORPORATE FORM, BUT NO POSITIVE RESULT WAS OBTAINED.

3. BE FURTHER INFORMED THAT THE TELEPHONE DIRECTORY OF SAO PAULO DOES NOT LIST SUCH COMPANY AND THAT ITS ADDRESS APPARENTLY CORRESPONDS TO RESIDENTIAL BUILDING.

4. IF YOU WANT US TO PROCEED, PLS., SEND US ANY OTHER INFORMATION YOU MAY HAVE ON THE COMPANY OR ON ANY PERSON CONNECTED THEREWITH.

BEST REGARDS,
CONDORCET REZENDE

EUGENIO LYRA+
BRINDS AA22292*
BRINDS AA22292
2131541LYLE BR
6666

TELEX MESSAGE

In the Full Court
No. 208 Exhibit "T 1"
Copies of telexes concerning
overseas enquiries about
Nationwide Resources Pty.Ltd.
(continued)

*
BRINDS AA22292
11.8.1983
TO SOUTHERN CROSS EXPLORATION N.1.
SYDNEY, AUSTRALIA.

THE COMMERCIAL REGISTER CONTAINSTHE FOLLOWING INFORMATION
ABOUT WESEMANN AND CO:
THE FIRM'S REGISTERED SEAT IS INKRAPPENWALDGASSE 2, A-1190 VIENNA.
THE OFFICE IS INTHE DOEBLINGER HAUPTSTRASSE 82, A - 1180 VIENNA.
PARTNERS ARE LOTHAR H. WESEMANN AND CHRISTINA WESEMANN, BUT
CHRISTINA WESEMANN HAS NO RIGHT OF REPRESENTATION. THEY ARE
ENGAGED IN ADVERTISING AGENCY BUSINESS, IN TRADING OF MERCHANDISE
AND GENERAL AGENCY BUSINESS.
THE COMPANY HAS BEEN FOUNDED IN 1968.
PLEASE LET ME NOW, IF YOU NEED FURTHER INFORMATION.
SINCERELY YOURS
DR. OSKAR WEISS-TESSBACH*
BRINDS AA22292

*
BRINDS AA22292
135651 AAVOC A
...

1 2 AUG 1983	
BY	✓
MT	✓
EG	✓

TELEX MESSAGE

In the Full Court
No.208 Exhibit ET 1" Copies of Telexes
concerning overseas enquiries about Nationwide
Resources Pty.Ltd. (cont'd)

16 AUG 1983

+
BRINDS AA22292
2121909ABOG BR

BG	✓
MT	

RIO DE JANEIRO, AUGUST 15, 1983

SOUTHERN CROSS EXPLORATION
SYDNEY AUSTRALIA

FURTHER TO OUR TELEX OF AUGUST 10, THIS IS TO ADVISE YOU THAT THE SEARCH IN THE REMAINING 5 REGISTRIES OF DEEDS AND DOCUMENTS IN SAO PAULO HAS FAILED TO DISCLOSE ANY CIVIL COMPANY (SISTROCE ORGANIZATION) REGISTERED UNDER THE NAME "INTERNATIONAL INVESTMENT CONSULTANT CORPORATION".

HOWEVER, OUR SAO PAULO OFFICE WAS ABLE TO FIND A COMPANY WITH THE NAME OF "ICC DO BRASIL LTDA." OF WHICH INTERNATIONAL INVESTMENT CONSULTANTS LTD. IS A QUOTAHOLDER (I.E. EQUITY OWNER). COULD THIS BE THE COMPANY YOU ARE INTERESTED IN? PLEASE ADVISE.

WITHIN A COUPLE OF DAYS WE SHOULD BE ABLE TO HAVE IN OUR POSSESSION A COPY OF THE CHARTER OF ICC DO BRASIL LTDA.

REGARDS,
R. VEIRANO

+
BRINDS AA22292
20 2121909ABOG BRGGGG

TELE
MESSAGE
TELEX MESSAGE

In the Full Court
No.208 Exhibit "T 1"
Copies of telexes concerning
overseas enquiries about
Nationwide Resources Pty.Ltd. (cont'd)

BG	✓
FILE	
DESTROY	

BRINDS AA22292
2130413ABOG BR

RIO DE JANEIRO, AUGUST 24, 1983

SOUTHERN CROSS EXPLORATION
SIDNEY - AUSTRALIA

FURTHER TO OUR TELEX OF AUGUST 15 PLEASE NOTE FOLLOWING
INFORMATION WITH RESPECT TO IIC DO BRASIL LTDA.

A- SHAREHOLDERS - INTERNATIONAL INVESTMENT CONSULTANTS LTD -
COMPANY ORGANIZED UNDER THE LAWS OF JAPAN HEADQUARTERED
AT 1-18-2 SHIMBASHI, MINATO-KU - TOKIO - JAPAN AND
KIYOSHI HOSHINO - CITIZEN OF JAPAN RESIDENT AND DOMICILED
IN SAO PAULO - BRAZIL. 10

B- CAPITAL - CRZ 30,000 DIVIDED INTO 30,000 SHARES OF CRZ 1 EACH -
INTERNATIONAL INVESTMENT CONSULTANTS LTD HOLDS 29.999
SHARES AND KIYOSHI HOSHINO HOLDS 1 SHARE.

C- DIRECTORS - KIYOSHI HOSHINO IS THE SOLE DIRECTOR AND OFFICES
OF THE COMPANY WITH FULL MANAGEMENT AND REPRESENTATION POWERS.

D- CORPORATE FORM - CIVIL LIMITED LIABILITY COMPANY WHOSE
PURPOSE IS TO HOLD SHARES OF OTHER COMPANIES AND THE
RENDERING OF MARKETING RESEARCH SERVICES. 20

E- REGISTERED ADDRESS - AV. PAULISTA, 326 - 15 ANDAR - SALA 150.

PLEASE ADVISE WHETHER YOU REQUIRED ANY ADDITIONAL INFORMATION.

REGARDS,
R. VEIRANO / P. SIMOES

+
BRINDS AA22292
2130413ABOG BRGGGG

I

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY
EQUITY DIVISION
NO. 4254 of 1983

SOUTHERN CROSS
EXPLORATION N.L.

First Plaintiff
ALEXANDERS

SECURITIES LIMITED
Second Plaintiff

CHAPMANS LIMITED
Third Plaintiff

ALEXANDERS DISCOUNTS
PTY. LIMITED

Fourth Plaintiff
AVIVA HOLDINGS

LIMITED

Fifth Plaintiff
FIRE AND ALL RISKS
INSURANCE COMPANY

LIMITED
First Defendant
NATIONWIDE RESOURCES
PTY. LIMITED

Second Defendant
DAVID HARRY LANCE

Third Defendant
OFFSHORE OIL N.L.

Fourth Defendant
LAWRENCE JAMES ADLER

Fifth Defendant

NOTICE TO ANSWER
INTERROGATORIES

VOLUME ONE

Filed pursuant to
Order of Waddell J.
on 8th September,
1983

ABADEE, DRESDNER &
FREEMAN,
Solicitors,
130 Phillip Street,
SYDNEY. N.S.W. 2000
T'phone: 233-2799
D.X. 158 SYDNEY
Ref: Mr. P. Smith

Pursuant to the Orders of the Court on 8th September, 1983, the First, Second, Third, Fourth and Fifth Defendants are each required to answer the following Interrogatories and verify their answers:-

The abbreviations set forth in Schedule I hereto are used in these Interrogatories to denote the persons or companies therein further described.

PART ONE

1. Has Adler owned any shares in the issued share capital of F.A.R at any time from 1st January, 1982 to the date of answering these Interrogatories?
2. If the answer to question 1 is yes, how many shares in the issued share capital of F.A.R., if any, did Adler own on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
3. Has Adler owned any shares in any Company which has owned shares in the issued share capital of F.A.R. at any time between 1st January, 1982 and the date of answering these Interrogatories?
4. If the answer to question 3 above is yes:

(a) What was the name of each and every Company in which Adler owned any shares, which owned shares in the issued capital of F.A.R. during the said period?

(b) How many shares in the issued share capital of F.A.R. did each of the Companies identified pursuant to (a) own on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?

5. Was Adler a Director of any Company that owned shares in the issued share capital of F.A.R. at any time from 1st January, 1982 to the date of answering these Interrogatories?
6. If the answer to question 5 is yes:
 - (a) Of what Companies who had shares in the issued share capital of F.A.R. at any time from 1st January, 1982 to the date of answering these Interrogatories was Adler a Director?
 - (b) How many shares in the issued share capital of F.A.R. did the Company identified pursuant to question 6 (a) own on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
7. What was the issued share capital of F.A.R. on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
8. Has Adler owned any shares in the issued share capital of F.A.I at any time from 1st January, 1982 to the date of answering these Interrogatories? 10
9. If the answer to question 8 is yes, how many shares in the issued share capital of F.A.I., if any, did Adler own on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories? 20
10. Has Adler owned any shares in any Company which has owned shares in the issued share capital of F.A.I. at any time between 1st January, 1982 and the date of answering these Interrogatories?
11. If the answer to question 10 above is yes:
 - (a) What was the name of each and every Company in which Adler owned any shares, which owned shares in the issued capital of F.A.I. during the said period? 30
 - (b) How many shares in the issued share capital of F.A.I. did each of the Companies identify pursuant to (a) own on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
12. Was Adler a Director of any Company that owned shares in the issued share capital of F.A.I. at any time from 1st January, 1982 to the date of answering these Interrogatories?
13. If the answer to question 12 is yes:

- (a) Of what Companies who had shares in the issued share capital of F.A.I. at any time from 1st January, 1982 to the date of answering these Interrogatories was Adler a Director?
- (b) How many shares in the issued share capital of F.A.I. did the Company identify pursuant to Question (a) above own of the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?

- 10 14. What was the issued share capital of F.A.I. on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
15. It is the case, is it not, that Adler was the Chairman of Directors of F.A.R. at all times from 1st January, 1982 to the date of answering these Interrogatories?
16. If the answer to question 15 above is no, was Adler the Chairman of Directors of F.A.R. for any time during the period from 1st January, 1982 to the date of answering these Interrogatories?
- 20 17. If the answer to question 16 above is yes, for what time during that period was Adler the Chairman of Directors of F.A.R.?
18. It is the case, is it not, that Adler was the Chairman of Directors of F.A.I. at all times from 1st January, 1982 to the date of answering these Interrogatories?
19. If the answer to question 18 above is no, was Adler the Chairman of Directors of F.A.I. for any period during the period from 1st January, 1982 to the date of answering these Interrogatories?
- 30 20. If the answer to question 19 above is yes, for what period during that period was Adler the Chairman of Directors of F.A.I.?
21. Did F.A.R. own any of the issued share capital of Offshore upon any date between 1st January, 1982 and the date of answering these Interrogatories?
22. If the answer to question 21 above, is yes, in relation to each and every share or parcel of shares in the issued share capital of Offshore owned by F.A.R. on any date between 1st January, 1982 and the date of answering these Interrogatories:
- (a) Was the said share or parcel of shares or any part thereof acquired by purchase?

(continued)

- (b) If the answer to (a) above, is yes, in relation to each and every share or parcel of shares or part thereof acquired by purchase on any date between 1st January, 1982 and the date of answering these Interrogatories?
- (i) Upon what date was the said share or parcel of shares or part thereof purchase?
 - (ii) For what price per share was the said share or parcel of shares of part thereof purchased?
 - (iii) From whom was the said share or parcel of shares or part thereof purchased? 10
 - (iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof purchased?
 - (v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof purchased?
- (c) Was the share or parcel of shares or any part thereof sold on any date between 1st January, 1982 and the date of answering these Interrogatories? 20
- (d) If the answer to (c) above is yes, in relation to each and every share or parcel of shares or part thereof sold upon any date between 1st January, 1982 and the date of answering these Interrogatories:
- (i) Upon what date was the said share or parcel of shares of part thereof sold?
 - (ii) For what price per share was the said share or parcel of share or any part thereof sold?
 - (iii) To whom was the said share or parcel of shares or part thereof sold? 30
 - (iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof sold?
 - (v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof sold?
23. Did F.A.I. own any of the issued share capital of Offshore upon any date between 1st January, 1982 and the date of answering these Interrogatories?
24. If the answer to question 23 above, is yes, in relation to each and every share or parcel of shares in the issued share capital of Offshore owned by F.A.I. on any date

between 1st January, 1982 and the date of answering these Interrogatories:-

- 10
- (a) Was the said share or parcel of shares or any part thereof acquired by purchase?
- (b) If the answer to (a) above, is yes, in relation to each and every share or parcel of shares or part thereof acquired by purchase on any date between 1st January, 1982 and the date of answering these Interrogatories:
- (i) Upon what date was the said share or parcel of shares or part thereof purchase?
- (ii) For what price per share was the said share or parcel of shares of part thereof purchased?
- (iii) From whom was the said share or parcel of shares or part thereof purchased?
- (iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof purchased?
- 20
- (v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof purchased?
- (c) Was the share or parcel of shares or any part thereof sold on any date between 1st January, 1982 and the date of answering these Interrogatories?
- (d) If the answer to (c) above is yes, in relation to each and every share or parcel of shares or part thereof sold upon any date between 1st January, 1982 and the date of answering these Interrogatories:
- 30
- (i) Upon what date was the said share or parcel of shares of part thereof sold?
- (ii) For what price per share was the said share or parcel of share or any part thereof sold?
- (iii) To whom was the said share or parcel of shares or part thereof sold?
- (iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof sold?
- (v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof sold?

25. Did Adler own any of the issued share capital of Offshore upon any date between 1st January, 1982 and the date of answering these Interrogatories?

26. If the answer to question 25 above, is yes, in relation to each and every share or parcel of shares in the issued share capital of Offshore owned by Adler on any date between 1st January, 1982 and the date of answering these Interrogatories:-

(a) Was the said share or parcel of shares or any part thereof acquired by purchase? 10

(b) If the answer to (a) above, is yes, in relation to each and every share or parcel of shares or part thereof acquired by purchase on any date between 1st January, 1982 and the date of answering these Interrogatories:

(i) Upon what date was the said share or parcel of shares or part thereof purchase?

(ii) For what price per share was the said share or parcel of shares of part thereof purchased?

(iii) From whom was the said share or parcel of shares or part thereof purchased? 20

(iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof purchased?

(v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof purchased?

(c) Was the share or parcel of shares or any part thereof sold on any date between 1st January, 1982 and the date of answering these Interrogatories?

(d) If the answer to (c) above is yes, in relation to each and every share or parcel of shares or part thereof sold upon any date between 1st January, 1982 and the date of answering these Interrogatories: 30

(i) Upon what date was the said share or parcel of shares of part thereof sold?

(ii) For what price per share was the said share or parcel of share or any part thereof sold?

(iii) To whom was the said share or parcel of shares or part thereof sold?

(iv) Through which firm of stockbrokers, if any, was

the said share or parcel of shares or part thereof sold?

(v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof sold?

27. Did Nationwide own any of the issued share capital of Offshore upon any date between 1st January, 1982 and the date of answering these Interrogatories?

10 28. If the answer to question 27 above, is yes, in relation to each and every share or parcel of shares in the issued share capital of Offshore owned by Nationwide on any date between 1st January, 1982 and the date of answering these Interrogatories:

(a) Was the said share or parcel of shares or any part thereof acquired by purchase?

(b) If the answer to (a) above, is yes, in relation to each and every share or parcel of shares or part thereof acquired by purchase on any date between 1st January, 1982 and the date of answering these Interrogatories:

20 (i) Upon what date was the said share or parcel of shares or part thereof purchase?

(ii) For what price per share was the said share or parcel of shares of part thereof purchased?

(iii) From whom was the said share or parcel of shares or part thereof purchased?

(iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof purchased?

30 (v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof purchased?

(c) Was the share or parcel of shares or any part thereof sold on any date between 1st January, 1982 and the date of answering these Interrogatories?

(d) If the answer to (c) above is yes, in relation to each and every share or parcel of shares or part thereof sold upon any date between 1st January, 1982 and the date of answering these Interrogatories:

(i) Upon what date was the said share or parcel of shares of part thereof sold?

In the Full Court

No.209
Exhibit "I"
Copy of set
of Interrogatories in
N.S.W.
Proceedings
No.4254 of
1983

(continued)

- (ii) For what price per share was the said share or parcel of share or any part thereof sold?
 - (iii) To whom was the said share or parcel of shares or part thereof sold?
 - (iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof sold?
 - (v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof sold?
29. Did Lance own any of the issued share capital of Offshore upon any date between 1st January, 1982 and the date of answering these Interrogatories? 10
30. If the answer to question 29 above, is yes, in relation to each and every share or parcel of shares in the issued share capital of Offshore owned by Lance on any date between 1st January, 1982 and the date of answering these Interrogatories:
- (a) Was the said share or parcel of shares of any part thereof acquired by purchase?
 - (b) If the answer to (a) above, is yes, in relation to each and every share or parcel of shares or part thereof acquired by purchase on any date between 1st January, 1982 and the date of answering these Interrogatories: 20
 - (i) Upon what date was the said share or parcel of shares or part thereof purchase?
 - (ii) For what price per share was the said share or parcel of shares of part thereof purchased?
 - (iii) From whom was the said share or parcel of shares or part thereof purchased? 30
 - (iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof purchased?
 - (v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof purchased?
 - (c) Was the share or parcel of shares or any part thereof sold on any date between 1st January, 1982 and the date of answering these Interrogatories?
 - (d) If the answer to (c) above is yes, in relation to each and every share or parcel of shares or part

thereof sold upon any date between 1st January, 1982 and the date of answering these Interrogatories:

- (i) Upon what date was the said share or parcel of shares of part thereof sold?
- (ii) For what price per share was the said share or parcel of share or any part thereof sold?
- (iii) To whom was the said share or parcel of shares or part thereof sold?
- (iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof sold?
- (v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof sold?

10

31. Did any Company in which F.A.R. owned shares, own any of the issued share capital of Offshore upon any date between 1st January, 1982 and the date of answering these Interrogatories?

32. If the answer to question 31 is yes, in relation to each and every share or parcel of shares in the issued share capital of Offshore owned by any Company in which F.A.R. owned shares on any date between 1st January, 1982 and the date of answering these Interrogatories:

20

- (a) Was the said share or parcel of shares of any part thereof acquired by purchase?
- (b) If the answer to (a) above, is yes, in relation to each and every share or parcel of shares or part thereof acquired by purchase on any date between 1st January, 1982 and the date of answering these Interrogatories:

- (i) Upon what date was the said share or parcel of shares or part thereof purchase?
- (ii) For what price per share was the said share or parcel of shares of part thereof purchased?
- (iii) From whom was the said share or parcel of shares or part thereof purchased?
- (iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof purchased?
- (v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof purchased?

30

In the Full Court

No.209
Exhibit "I"
Copy of set
of Interrogatories in
N.S.W.
Proceedings
No.4254 of
1983

(continued)

- (c) Was the share or parcel of shares or any part thereof sold on any date between 1st January, 1982 and the date of answering these Interrogatories?
- (d) If the answer to (c) above is yes, in relation to each and every share or parcel of shares or part thereof sold upon any date between 1st January, 1982 and the date of answering these Interrogatories:
- (i) Upon what date was the said share or parcel of shares of part thereof sold?
 - (ii) For what price per share was the said share or parcel of share or any part thereof sold?
 - (iii) To whom was the said share or parcel of shares or part thereof sold?
 - (iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof sold?
 - (v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof sold?
- (e) What was the name of the said Company in which F.A.R. owned shares?
- (f) What was the issued share capital of the said Company in which F.A.R. owned shares on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
- (g) How many shares in the issued share capital of the said Company in which F.A.R. owned shares did F.A.R. own on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
33. Did any Company in which F.A.I. owned shares, own any of the issued share capital of Offshore upon any date between 1st January, 1982 and the date of answering these Interrogatories?
34. If the answer to question 33 is yes, in relation to each and every share or parcel of shares in the issued share capital of Offshore owned by any Company in which F.A.I. owned shares on any date between 1st January, 1982 and the date of answering these Interrogatories:
- (a) Was the said share or parcel of shares of any part thereof acquired by purchase?

- 10
- (b) If the answer to (a) above, is yes, in relation to each and every share or parcel of shares or part thereof acquired by purchase on any date between 1st January, 1982 and the date of answering these Interrogatories:
- (i) Upon what date was the said share or parcel of shares or part thereof purchase?
 - (ii) For what price per share was the said share or parcel of shares of part thereof purchased?
 - (iii) From whom was the said share or parcel of shares or part thereof purchased?
 - (iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof purchased?
 - (v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof purchased?
- 20
- (c) Was the share or parcel of shares or any part thereof sold on any date between 1st January, 1982 and the date of answering these Interrogatories?
- (d) If the answer to (c) above is yes, in relation to each and every share or parcel of shares or part thereof sold upon any date between 1st January, 1982 and the date of answering these Interrogatories:
- (i) Upon what date was the said share or parcel of shares of part thereof sold?
 - (ii) For what price per share was the said share or parcel of share or any part thereof sold?
 - (iii) To whom was the said share or parcel of shares or part thereof sold?
 - (iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof sold?
 - (v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof sold?
- 30
- (e) What was the name of the said Company in which F.A.I. owned shares?
- (f) What was the issued share capital of the said Company in which F.A.I. owned shares on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?

(g) How many shares in the issued share capital of the said Company in which F.A.I. owned shares did F.A.I. own on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?

35. Did any Company in which Adler owned shares own any of the issued share capital of Offshore upon any date between 1st January, 1982 and the date of answering these Interrogatories?

(continued) 36. If the answer to question 35 is yes, in relation to each and every share or parcel of shares in the issued share capital of Offshore owned by any Company in which Adler owned shares on any date between 1st January, 1982 and the date of answering these Interrogatories:

(a) Was the said share or parcel of shares of any part thereof acquired by purchase?

(b) If the answer to (a) above, is yes, in relation to each and every share or parcel of shares or part thereof acquired by purchase on any date between 1st January, 1982 and the date of answering these Interrogatories:

(i) Upon what date was the said share or parcel of shares or part thereof purchase?

(ii) For what price per share was the said share or parcel of shares of part thereof purchased?

(iii) From whom was the said share or parcel of shares or part thereof purchased?

(iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof purchased?

(v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof purchased?

(c) Was the share or parcel of shares or any part thereof sold on any date between 1st January, 1982 and the date of answering these Interrogatories?

(d) If the answer to (c) above is yes, in relation to each and every share or parcel of shares or part thereof sold upon any date between 1st January, 1982 and the date of answering these Interrogatories:

(i) Upon what date was the said share or parcel of shares of part thereof sold?

- (ii) For what price per share was the said share or parcel of share or any part thereof sold?
- (iii) To whom was the said share or parcel of shares or part thereof sold?
- (iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof sold?
- (v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof sold?
- 10 (e) What was the name of the said Company in which Adler owned shares?
- (f) What was the issued share capital of the said Company in which Adler owned shares on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
- (g) How many shares in the issued share capital of the said Company in which Adler owned shares did Adler own on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
- 20
37. Did any Company in which Nationwide owned shares own any of the issued share capital of Offshore upon any date between 1st January, 1982 and the date of answering these Interrogatories?
38. If the answer to question 37 is yes, in relation to each and every share or parcel of shares in the issued share capital of Offshore owned by any Company in which Nationwide owned shares on any date between 1st January, 1982 and the date of answering these Interrogatories:
- 30 (a) Was the said share or parcel of shares of any part thereof acquired by purchase?
- (b) If the answer to (a) above, is yes, in relation to each and every share or parcel of shares or part thereof acquired by purchase on any date between 1st January, 1982 and the date of answering these Interrogatories:
- (i) Upon what date was the said share or parcel of shares or part thereof purchase?
- (ii) For what price per share was the said share or parcel of shares of part thereof purchased?

In the Full Court

No.209
Exhibit "I"
Copy of set
of Interrogatories in
N.S.W.
Proceedings
No.4254 of
1983

(continued)

- (iii) From whom was the said share or parcel of shares or part thereof purchased?
 - (iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof purchased?
 - (v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof purchased?
- (c) Was the share or parcel of shares or any part thereof sold on any date between 1st January, 1982 and the date of answering these Interrogatories?
- (d) If the answer to (c) above is yes, in relation to each and every share or parcel of shares or part thereof sold upon any date between 1st January, 1982 and the date of answering these Interrogatories:
- (i) Upon what date was the said share or parcel of shares or part thereof sold?
 - (ii) For what price per share was the said share or parcel of share or any part thereof sold?
 - (iii) To whom was the said share or parcel of shares or part thereof sold?
 - (iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof sold?
 - (v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof sold?
- (e) What was the name of the said Company in which Nationwide owned shares?
- (f) What was the issued share capital of the said Company in which Natinwide owned shares on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
- (g) How many shares in the issued share capital of the said Company in which Nationwide owned shares did Nationwide own on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories.
39. Did any Company in which Lance owned shares own any of the issued share capital of Offshore upon any date between 1st January, 1982 and the date of answering these Interrogatories?

40. If the answer to question 39 is yes, in relation to each and every share or parcel of shares in the issued share capital of Offshore owned by any Company in which Lance owned shares on any date between 1st January, 1982 and the date of answering these Interrogatories?

41. Was the said share or parcel of shares of any part thereof acquired by purchase?

10 (a) If the answer to (a) above, is yes, in relation to each and every share or parcel of shares or part thereof acquired by purchase on any date between 1st January, 1982 and the date of answering these Interrogatories:

(i) Upon what date was the said share or parcel of shares or part thereof purchase?

(ii) For what price per share was the said share or parcel of shares of part thereof purchased?

(iii) From whom was the said share or parcel of shares or part thereof purchased?

20 (iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof purchased?

(v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof purchased?

(b) Was the share or parcel of shares or any part thereof sold on any date between 1st January, 1982 and the date of answering these Interrogatories?

30 (c) If the answer to (c) above is yes, in relation to each and every share or parcel of shares or part thereof sold upon any date between 1st January, 1982 and the date of answering these Interrogatories:

(i) Upon what date was the said share or parcel of shares of part thereof sold?

(ii) For what price per share was the said share or parcel of share or any part thereof sold?

(iii) To whom was the said share or parcel of shares or part thereof sold?

(iv) Through which firm of stockbrokers, if any, was the said share or parcel of shares or part thereof sold?

(continued)

- (v) On what Stock Exchange, if any, was the said share or parcel of shares or part thereof sold?
- (d) What was the name of the said Company in which Lance owned shares?
- (e) What was the issued share capital of the said Company in which Lance owned shares on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
- (f) How many shares in the issued share capital of the said Company in which Lance owned shares did Lance own on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
42. Did F.A.R. have a mortgage over any of the issued share capital of Offshore upon any date from 1st January, 1982 to the date of answering these Interrogatories?
43. If the answer to question 42 above is yes, in relation to each and every share or parcel of shares or part thereof in the issued share capital of Offshore over which F.A.R. had a mortgage, upon any date between 1st January, 1982 and the date of these Interrogatories:
- (a) Who was the mortgagor of the said shares or parcel of shares or part thereof?
- (b) Upon what date was the relevant mortgage over the said shares or parcel of shares or part thereof given?
- (c) Please identify the relevant mortgage instrument effecting the said mortgage, if any, by reference to the number of that document in any List of Documents filed in the present proceedings as, at the date of answering these Interrogatories?
- (d) Was the mortgagor identified pursuant to (a) above in default under the mortgage on any date between the date identified pursuant to (b) above and the date of answering these Interrogatories?
- (e) If the answer to (d) above is yes, in relation to each and every such default:
- (i) What was the date of default?
- (ii) What was the nature of the default?
- (f) Did any person take any steps in the exercise or purported exercise of any power of sale under the said mortgage upon any date between 1st January, 1982 and the date of answering these Interrogatories?

(g) If the answer to (f) above is yes, in relation to each and every step taken in exercise or purported exercise of any such power of sale:

(i) Upon what date was that step taken?

(ii) What was the step taken?

(iii) By whom was the said step taken?

(h) Were any of the shares the subject of the said mortgage sold by the mortgagee in exercise or purported exercise of any power of sale upon any date between 1st January, 1982 and the date of answering these Interrogatories?

10

(i) If the answer to Question (h) above is yes, in relation to each and every such sale:

(i) What shares were sold?

(ii) Upon what date was the sale made?

(iii) At what price was the sale made?

(iv) To whom was the said sale made?

(v) Through which stockbroker, if any, was the sale made?

(vi) On what Stock Exchange, if any, was the said sale made?

20

(vii) Did the mortgagee receive any proceeds of sale?

(viii) If the answer to (vii) above is yes, in relation to each and every such receipt:

A. Upon what date were any monies received?

B. How much was received on each of the dates identified pursuant to A.?

C. What was done with the monies received?

D. What amount if any, was owing by the mortgagor to the mortgagee under the mortgage as at the date of receipt?

30

E. What amount, if any, was owing by the mortgagor to the mortgagee under the mortgage on the day immediately following the date of receipt?

In the Full Court

No.209
Exhibit "I"
Copy of Set
of Interrogatories in
N.S.W.
Proceedings
No. 4254 of
1983

(continued)

- (j) Did the mortgagor discharge any such mortgage over the shares or parcel of shares or any part thereof upon any date between 1st January, 1982 and the date of answering these Interrogatories?
 - (k) If the answer to Question (j) is yes, in relation to each and every such discharge:
 - (i) What was the date of discharge?
 - (ii) Did an Instrument of Discharge come into existence?
 - (iii) If the answer to (ii) is yes, please identify any such Instrument of Discharge by reference to its number in any List of Documents filed in the present proceedings upon any date prior to the answering of these Interrogatories.
44. Did F.A.I. have a mortgage over any of the issued share capital of Offshore upon any date from 1st January, 1982 to the date of answering these Interrogatories?
45. If the answer to question 44 above is yes, in relation to each and every share or parcel of shares or part thereof in the issued share capital of Offshore over which F.A.I. had a mortgage, upon any date between 1st January, 1982 and the date of these Interrogatories:
- (a) Who was the mortgagor of the said shares or parcel of shares or part thereof?
 - (b) Upon what date was the relevant mortgage over the said shares or parcel of shares or part thereof given?
 - (c) Please identify the relevant mortgage instrument effecting the said mortgage, if any, by reference to the number of that document in any List of Documents filed in the present proceedings as at the date of answering these Interrogatories.
 - (d) Was the mortgagor identified pursuant to (a) above in default under the mortgage on any date between the date identified pursuant to (b) above and the date of answering these Interrogatories?
 - (e) If the answer to (d) above is yes, in relation to each and every such default:
 - (i) What was the date of default?
 - (ii) What was the nature of the default?

- (f) Did any person take any steps in the exercise or purported exercise of any power of sale under the said mortgage upon any date between 1st January, 1982 and the date of answering these Interrogatories?
- (g) If the answer to (f) above is yes, in relation to each and every step taken in exercise or purported exercise of any such power of sale:
- (i) Upon what date was that step taken?
- (ii) What was the step taken?
- (iii) By whom was the said step taken?
- 10 (h) Were any of the shares the subject of the said mortgage sold by the mortgagee in exercise or purported exercise of any power of sale upon any date between 1st January, 1982 and the date of answering these Interrogatories?
- (i) If the answer to Question (h) above is yes, in relation to each and every such sale:
- (i) What shares were sold?
- (ii) Upon what date was the sale made?
- 20 (iii) At what price was the sale made?
- (iv) To whom was the said sale made?
- (v) Through which stockbroker, if any, was the sale made?
- (vi) On what Stock Exchange, if any, was the said sale made?
- (vii) Did the mortgagee receive any proceeds of sale?
- (viii) If the answer to (vii) above is yes, in relation to each and every such receipt:
- 30 A. Upon what date were any monies received?
- B. How much was received on each of the dates identified pursuant to A.?
- C. What was done with the monies received?
- D. What amount if any, was owing by the mortgagor to the mortgagee under the mortgage as at the date of receipt?

In the Full
Court

No.209
Exhibit "I"
Copy of set
of Interroga-
tories in
N.S.W.
Proceedings
No.4254 of
1983

(continued)

E. What amount, if any, was owing by the mortgagor to the mortgagee under the mortgage on the day immediately following the date of receipt?

- (j) Did the mortgagor discharge any such mortgage over the shares or parcel of shares or any part thereof upon any date between 1st January, 1982 and the date of answering these Interrogatories?
- (k) If the answer to Question (j) is yes, in relation to each and every such discharge:
- (i) What was the date of discharge?
- (ii) Did an Instrument of Discharge come into existence?
- (iii) If the answer to (ii) is yes, please identify any such Instrument of Discharge by reference to its number in any List of Documents filed in the present proceedings upon any date prior to the answering of these Interrogatories.
46. Did Adler have a mortgage over any of the issued share capital of Offshore upon any date from 1st January, 1982 to the date of answering these Interrogatories?
47. If the answer to question 46 above is yes, in relation to each and every share or parcel of shares or part thereof in the issued share capital of Offshore over which Adler had a mortgage, upon any date between 1st January, 1982 and the date of these Interrogatories:
- (a) Who was the mortgagor of the said shares or parcel of shares or part thereof?
- (b) Upon what date was the relevant mortgage over the said shares or parcel of shares or part thereof given?
- (c) Please identify the relevant mortgage instrument effecting the said mortgage, if any, by reference to the number of that document in any List of Documents filed in the present proceedings as at the date of answering these Interrogatories.
- (d) Was the mortgagor identified pursuant to (a) above in default under the mortgage on any date between the date identified pursuant to (b) above and the date of answering these Interrogatories?

10

20

30

- (e) If the answer to (d) above is yes, in relation to each and every such default:
- (i) What was the date of default?
 - (ii) What was the nature of the default?
- (f) Did any person take any steps in the exercise or purported exercise of any power of sale under the said mortgage upon any date between 1st January, 1982 and the date of answering these Interrogatories?
- 10 (g) If the answer to (f) above is yes, in relation to each and every step taken in exercise or purported exercise of any such power of sale:
- (i) Upon what date was that step taken?
 - (ii) What was the step taken?
 - (iii) By whom was the said step taken?
- (h) Were any of the shares the subject of the said mortgage sold by the mortgagee in exercise or purported exercise of any power of sale upon any date between 1st January, 1982 and the date of answering these Interrogatories?
- 20 (i) If the answer to Question (h) above is yes, in relation to each and every such sale:
- (i) What shares were sold?
 - (ii) Upon what date was the sale made?
 - (iii) At what price was the sale made?
 - (iv) To whom was the said sale made?
 - (v) Through which stockbroker, if any, was the sale made?
 - (vi) On what Stock Exchange, if any, was the said sale made?
- 30 (vii) Did the mortgagee receive any proceeds of sale?
- (viii) If the answer to (vii) above is yes, in relation to each and every such receipt:
- A. Upon what date were any monies received?
 - B. How much was received on each of the dates identified pursuant to A.?

(continued)

- C. What was done with the monies received?
- D. What amount if any, was owing by the mortgagor to the mortgagee under the mortgage as at the date of receipt?
- E. What amount, if any, was owing by the mortgagor to the mortgagee under the mortgage on the day immediately following the date of receipt?
- (j) Did the mortgagor discharge any such mortgage over the shares or parcel of shares or any part thereof upon any date between 1st January, 1982 and the date of answering these Interrogatories?
- (k) If the answer to Question (j) is yes, in relation to each and every such discharge:
- (i) What was the date of discharge?
- (ii) Did an Instrument of Discharge come into existence?
- (iii) If the answer to (ii) is yes, please identify any such Instrument of Discharge by reference to its number in any List of Documents filed in the present proceedings upon any date prior to the answering of these Interrogatories.
48. Did Nationwide have a mortgage over any of the issued share capital of Offshore upon any date from 1st January, 1982 to the date of answering these Interrogatories?
49. If the answer to question 48 above is yes, in relation to each and every share or parcel of shares or part thereof in the issued share capital of Offshore over which Nationwide had a mortgage, upon any date between 1st January, 1982 and the date of these Interrogatories:
- (a) Who was the mortgagor of the said shares or parcel of shares or part thereof?
- (b) Upon what date was the relevant mortgage over the said shares or parcel of shares or part thereof given?
- (c) Please identify the relevant mortgage instrument effecting the said mortgage, if any, by reference to the number of that document in any List of Documents filed in the present proceedings as at the date of answering these Interrogatories.

- 10
- (d) Was the mortgagor identified pursuant to (a) above in default under the mortgage on any date between the date identified pursuant to (b) above and the date of answering these Interrogatories?
- (e) If the answer to (d) above is yes, in relation to each and every such default:
- (i) What was the date of default?
- (ii) What was the nature of the default?
- (f) Did any person take any steps in the exercise or purported exercise of any power of sale under the said mortgage upon any date between 1st January, 1982 and the date of answering these Interrogatories?
- (g) If the answer to (f) above is yes, in relation to each and every step taken in exercise or purported exercise of any such power of sale:
- (i) Upon what date was that step taken?
- (ii) What was the step taken?
- (iii) By whom was the said step taken?
- 20
- (h) Were any of the shares the subject of the said mortgage sold by the mortgagee in exercise or purported exercise of any power of sale upon any date between 1st January, 1982 and the date of answering these Interrogatories?
- (i) If the answer to Question (h) above is yes, in relation to each and every such sale:
- (i) What shares were sold?
- (ii) Upon what date was the sale made?
- (iii) At what price was the sale made?
- 30
- (iv) To whom was the said sale made?
- (v) Through which stockbroker, if any, was the sale made?
- (vi) On what Stock Exchange, if any, was the said sale made?
- (vii) Did the mortgagee receive any proceeds of sale?
- (viii) If the answer to (vii) above is yes, in relation to each and every such receipt:

In the Full
Court

No.209
Exhibit "I"
Copy of set
of Interroga-
tories in
N.S.W.
Proceedings
No.4254 of
1983

(continued)

- A. Upon what date were any monies received?
- B. How much was received on each of the dates identified pursuant to A.?
- C. What was done with the monies received?
- D. What amount if any, was owing by the mortgagor to the mortgagee under the mortgage as at the date of receipt?
- E. What amount, if any, was owing by the mortgagor to the mortgagee under the mortgage on the day immediately following the date of receipt?

(j) Did the mortgagor discharge any such mortgage over the shares or parcel of shares or any part thereof upon any date between 1st January, 1982 and the date of answering these Interrogatories?

(k) If the answer to Question (j) is yes, in relation to each and every such discharge:

(i) What was the date of discharge?

(ii) Did an Instrument of Discharge come into existence?

(iii) If the answer to (ii) is yes, please identify any such Instrument of Discharge by reference to its number in any List of Documents filed in the present proceedings upon any date prior to the answering of these Interrogatories.

50. Did Lance have a mortgage over any of the issued share capital of Offshore upon any date from 1st January, 1982 to the date of answering these Interrogatories?

51. If the answer to question 50 above is yes, in relation to each and every share or parcel of shares or part thereof in the issued share capital of Offshore over which Lance had a mortgage, upon any date between 1st January, 1982 and the date of these Interrogatories:

(a) Who was the mortgagor of the said shares or parcel of shares or part thereof?

(b) Upon what date was the relevant mortgage over the said shares or parcel of shares or part thereof given?

(c) Please identify the relevant mortgage instrument

effecting the said mortgage, if any, by reference to the number of that document in any List of Documents filed in the present proceedings as at the date of answering these Interrogatories.

(d) Was the mortgagor identified pursuant to (a) above in default under the mortgage on any date between the date identified pursuant to (b) above and the date of answering these Interrogatories?

(e) If the answer to (d) above is yes, in relation to each and every such default:

10

(i) What was the date of default?

(ii) What was the nature of the default?

(f) Did any person take any steps in the exercise or purported exercise of any power of sale under the said mortgage upon any date between 1st January, 1982 and the date of answering these Interrogatories?

(g) If the answer to (f) above is yes, in relation to each and every step taken in exercise or purported exercise of any such power of sale:

20

(i) Upon what date was that step taken?

(ii) What was the step taken?

(iii) By whom was the said step taken?

(h) Were any of the shares the subject of the said mortgage sold by the mortgagee in exercise or purported exercise of any power of sale upon any date between 1st January, 1982 and the date of answering these Interrogatories?

(i) If the answer to Question (h) above is yes, in relation to each and every such sale:

30

(i) What shares were sold?

(ii) Upon what date was the sale made?

(iii) At what price was the sale made?

(iv) To whom was the said sale made?

(v) Through which stockbroker, if any, was the sale made?

(vi) On what Stock Exchange, if any, was the said sale made?

In the Full Court

No.209
Exhibit "I"
Copy of set
of Interrogatories in
N.S.W.
Proceedings
No.4254 of
1983

(continued)

- (vii) Did the mortgagee receive any proceeds of sale?
- (viii) If the answer to (vii) above is yes, in relation to each and every such receipt:
- A. Upon what date were any monies received?
 - B. How much was received on each of the dates identified pursuant to A.?
 - C. What was done with the monies received?
 - D. What amount if any, was owing by the mortgagor to the mortgagee under the mortgage as at the date of receipt?
 - E. What amount, if any, was owing by the mortgagor to the mortgagee under the mortgage on the day immediately following the date of receipt?
- (j) Did the mortgagor discharge any such mortgage over the shares or parcel of shares or any part thereof upon any date between 1st January, 1982 and the date of answering these Interrogatories?
- (k) If the answer to Question (j) is yes, in relation to each and every such discharge:
- (i) What was the date of discharge?
 - (ii) Did an Instrument of Discharge come into existence?
 - (iii) If the answer to (ii) is yes, please identify any such Instrument of Discharge by reference to its number in any List of Documents filed in the present proceedings upon any date prior to the answering of these Interrogatories.
52. Did any Company in which F.A.R. owned shares have a mortgage over any of the issued share capital of Offshore upon any date from 1st January, 1982 to the date of answering these Interrogatories?
53. If the answer to question 52 above is yes, in relation to each and every mortgage of any share or parcel of shares or part thereof in offshore held by any company in which F.A.R. owned shares upon any date between 1st January, 1982 and the date of answering these Interrogatories:-
- (a) Who was the mortgagor of the said shares or parcel of shares or part thereof?

- 10
- (b) Upon what date was the relevant mortgage over the said shares or parcel of shares or part thereof given?
- (c) Please identify the relevant mortgage instrument effecting the said mortgage, if any, by reference to the number of that document in any List of Documents filed in the present proceedings as at the date of answering these Interrogatories.
- (d) Was the mortgagor identified pursuant to (a) above in default under the mortgage on any date between the date identified pursuant to (b) above and the date of answering these Interrogatories?
- (e) If the answer to (d) above is yes, in relation to each and every such default:
- (i) What was the date of default?
- (ii) What was the nature of the default?
- 20
- (f) Did any person take any steps in the exercise or purported exercise of any power of sale under the said mortgage upon any date between 1st January, 1982 and the date of answering these Interrogatories?
- (g) If the answer to (f) above is yes, in relation to each and every step taken in exercise or purported exercise of any such power of sale:
- (i) Upon what date was that step taken?
- (ii) What was the step taken?
- (iii) By whom was the said step taken?
- 30
- (h) Were any of the shares the subject of the said mortgage sold by the mortgagee in exercise or purported exercise of any power of sale upon any date between 1st January, 1982 and the date of answering these Interrogatories?
- (i) If the answer to Question (h) above is yes, in relation to each and every such sale:
- (i) What shares were sold?
- (ii) Upon what date was the sale made?
- (iii) At what price was the sale made?
- (iv) To whom was the said sale made?

In the Full
Court

No.209
Exhibit "I"
Copy of set
of Interroga-
tories in
N.S.W.
Proceedings
No.4254 of
1983 (cont'd)

- (v) Through which stockbroker, if any, was the sale made?
- (vi) On what Stock Exchange, if any, was the said sale made?
- (vii) Did the mortgagee receive any proceeds of sale?
- (viii) If the answer to (vii) above is yes, in relation to each and every such receipt:
- A. Upon what date were any monies received?
 - B. How much was received on each of the dates identified pursuant to A.?
 - C. What was done with the monies received?
 - D. What amount if any, was owing by the mortgagor to the mortgagee under the mortgage as at the date of receipt?
 - E. What amount, if any, was owing by the mortgagor to the mortgagee under the mortgage on the day immediately following the date of receipt?
- (j) Did the mortgagor discharge any such mortgage over the shares or parcel of shares or any part thereof upon any date between 1st January, 1982 and the date of answering these Interrogatories?
- (k) If the answer to Question (j) is yes, in relation to each and every such discharge:
- (i) What was the date of discharge?
 - (ii) Did an Instrument of Discharge come into existence?
 - (iii) If the answer to (ii) is yes, please identify any such Instrument of Discharge by reference to its number in any List of Documents filed in the present proceedings upon any date prior to the answering of these Interrogatories.
- (l) What was the name of the said Company in which F.A.R. owned shares?
- (m) What was the issued share capital of the said Company in which F.A.R. owned shares on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?

- (n) How many shares in the issued share capital of the said Company in which F.A.R. owned shares did F.A.R. own on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
54. Did any Company of which Adler was a Director have a mortgage over any of the issued share capital of Offshore upon any date from 1st January, 1982 to the date of answering these Interrogatories?
- 10 55. If the answer to question 54 above is yes, in relation to each and every mortgage of any share or parcel of shares or part thereof in Offshore held by any Company in which Adler was a Director, owned shares upon any date between 1st January, 1982 and the date of answering these Interrogatories:-
- (a) Who was the mortgagor of the said shares or parcel of shares or part thereof?
- (b) Upon what date was the relevant mortgage over the said shares or parcel of shares or part thereof given?
- 20 (c) Please identify the relevant mortgage instrument effecting the said mortgage, if any, by reference to the number of that document in any List of Documents filed in the present proceedings as at the date of answering these Interrogatories.
- (d) Was the mortgagor identified pursuant to (a) above in default under the mortgage on any date between the date identified pursuant to (b) above and the date of answering these Interrogatories?
- 30 (e) If the answer to (d) above is yes, in relation to each and every such default:
- (i) What was the date of default?
- (ii) What was the nature of the default?
- (f) Did any person take any steps in the exercise or purported exercise of any power of sale under the said mortgage upon any date between 1st January, 1982 and the date of answering these Interrogatories?
- (g) If the answer to (f) above is yes, in relation to each and every step taken in exercise or purported exercise of any such power of sale:
- (i) Upon what date was that step taken?

In the Full
Court

No.209
Exhibit "I"
Copy of set
of Interrogatories in
N.S.W.
Proceedings
No.4254 of
1983

(continued)

- (ii) What was the step taken?
- (iii) By whom was the said step taken?
- (h) Were any of the shares the subject of the said mortgage sold by the mortgagee in exercise or purported exercise of any power of sale upon any date between 1st January, 1982 and the date of answering these Interrogatories?
 - (i) If the answer to Question (h) above is yes, in relation to each and every such sale:
 - (i) What shares were sold? 10
 - (ii) Upon what date was the sale made?
 - (iii) At what price was the sale made?
 - (iv) To whom was the said sale made?
 - (v) Through which stockbroker, if any, was the sale made?
 - (vi) On what Stock Exchange, if any, was the said sale made?
 - (vii) Did the mortgagee receive any proceeds of sale?
 - (viii) If the answer to (vii) above is yes, in relation to each and every such receipt: 20
 - A. Upon what date were any monies received?
 - B. How much was received on each of the dates identified pursuant to A.?
 - C. What was done with the monies received?
 - D. What amount if any, was owing by the mortgagor to the mortgagee under the mortgage as at the date of receipt?
 - E. What amount, if any, was owing by the mortgagor to the mortgagee under the mortgage on the day immediately following the date of receipt? 30
- (j) Did the mortgagor discharge any such mortgage over the shares or parcel of shares or any part thereof upon any date between 1st January, 1982 and the date of answering these Interrogatories?

- (k) If the answer to Question (j) is yes, in relation to each and every such discharge:
- (i) What was the date of discharge?
 - (ii) Did an Instrument of Discharge come into existence?
 - (iii) If the answer to (ii) is yes, please identify any such Instrument of Discharge by reference to its number in any List of Documents filed in the present proceedings upon any date prior to the answering of these Interrogatories.
- 10
- (l) What was the name of the said Company of which Adler was a Director and owned the said shares?
- (m) What was the issued share capital of the said Company in which Adler was a Director and owned the said shares on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
- (n) How many shares in the issued share capital of the said Company in which Adler was a Director and owned the said shares did such Company own on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
- 20
56. Did any Company of which Lance was a Director have a mortgage over any of the issued share capital of Offshore upon any date from 1st January, 1982 to the date of answering these Interrogatories?
57. If the answer to question 56 above is yes, in relation to each and every mortgage of any share or parcel of shares or part thereof in Offshore held by any Company in which Lance was a Director, owned shares upon any date between 1st January, 1982 and the date of answering these Interrogatories:-
- 30
- (a) Who was the mortgagor of the said shares or parcel of shares or part thereof?
 - (b) Upon what date was the relevant mortgage over the said shares or parcel of shares or part thereof given?
 - (c) Please identify the relevant mortgage instrument effecting the said mortgage, if any, by reference to the number of that document in any List of Documents filed in the present proceedings as at the date of answering these Interrogatories.

In the Full
Court

No.209
Exhibit "I"
Copy of set
of Interroga-
tories in
N.S.W.
Proceedings
No.4254 of
1983

(continued)

- (d) Was the mortgagor identified pursuant to (a) above in default under the mortgage on any date between the date identified pursuant to (b) above and the date of answering these Interrogatories?
- (e) If the answer to (d) above is yes, in relation to each and every such default:
- (i) What was the date of default?
 - (ii) What was the nature of the default?
- (f) Did any person take any steps in the exercise or purported exercise of any power of sale under the said mortgage upon any date between 1st January, 1982 and the date of answering these Interrogatories?
- (g) If the answer to (f) above is yes, in relation to each and every step taken in exercise or purported exercise of any such power of sale:
- (i) Upon what date was that step taken?
 - (ii) What was the step taken?
 - (iii) By whom was the said step taken?
- (h) Were any of the shares the subject of the said mortgage sold by the mortgagee in exercise or purported exercise of any power of sale upon any date between 1st January, 1982 and the date of answering these Interrogatories?
- (i) If the answer to Question (h) above is yes, in relation to each and every such sale:
- (i) What shares were sold?
 - (ii) Upon what date was the sale made?
 - (iii) At what price was the sale made?
 - (iv) To whom was the said sale made?
 - (v) Through which stockbroker, if any, was the sale made?
 - (vi) On what Stock Exchange, if any, was the said sale made?
 - (vii) Did the mortgagee receive any proceeds of sale?
 - (viii) If the answer to (vii) above is yes, in relation to each and every such receipt:

- 10
- A. Upon what date were any monies received?
 - B. How much was received on each of the dates identified pursuant to A.?
 - C. What was done with the monies received?
 - D. What amount if any, was owing by the mortgagor to the mortgagee under the mortgage as at the date of receipt?
 - E. What amount, if any, was owing by the mortgagor to the mortgagee under the mortgage on the day immediately following the date of receipt?
- (j) Did the mortgagor discharge any such mortgage over the shares or parcel of shares or any part thereof upon any date between 1st January, 1982 and the date of answering these Interrogatories?
- (k) If the answer to Question (j) is yes, in relation to each and every such discharge:
- (i) What was the date of discharge?
 - (ii) Did an Instrument of Discharge come into existence?
 - (iii) If the answer to (ii) is yes, please identify any such Instrument of Discharge by reference to its number in any List of Documents filed in the present proceedings upon any date prior to the answering of these Interrogatories.
- 20
- (l) What was the name of the said Company of which Lance was a Director and owned the said shares?
- (m) What was the issued share capital of the said Company in which Lance was a Director and owned the said shares on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
- 30
- (n) How many shares in the issued share capital of the said Company in which Lance was a Director and owned the said shares did such Company own on the first day of each calendar month from 1st January, 1982 to the date of answering these Interrogatories?
58. What was the issued share capital of Offshore as at the first day of each and every calendar month from 1st January, 1982 to the date of answering these Interrogatories.

59. It is the case, is it not, that as at 27th July, 1983 the issued share capital of Offshore was approximately 380,000,000 ordinary shares?
60. If the answer to question 59 is no, what was the issued share capital of Offshore as at 27th July, 1983.
61. It is the case, is it not, that as at 27th July, 1983 Adler controlled F.A.R.?
62. It is the case, is it not, that as at 27th July, 1983, Adler controlled F.A.I.?
63. It is the case, is it not, that as at 29th July, 1983, F.A.R. had sold approximately 12,400,000 shares in Offshore during the preceding month? 10
64. It is the case, is it not, that as at 26th July, 1983, F.A.R. had sold two parcels of 1,506,000 and 5,574,000 shares in Offshore respectively, as mortgagee?
65. It is the case, is it not, that as at 26th July, 1983, F.A.I. and associated companies held beneficially approximately 100,000,000 shares in Offshore.
66. What was the closing price of Offshore shares on the Sydney Stock Exchange on each trading day from 1st January, 1983 to 27th July, 1983? 20
67. Were Offshore shares listed on any Stock Exchange other than Sydney Stock Exchange on any trading day from 1st January, 1983 to 27th July, 1983?
68. If the answer to question 67 above is yes:
- (a) On what Stock Exchanges in addition to the Sydney Stock Exchange were Offshore shares listed on any date between 1st January, 1983 and 27th July, 1983?
 - (b) What was the closing price of Offshore shares on each of the Stock Exchanges identified pursuant to (a) above on each trading day from 1st January, 1983 to 27th July, 1983? 30
69. It is the case, is it not, that the closing price of Offshore shares on the Sydney Stock Exchange was 40 cents in or about January, 1982?
70. It is the case, is it not, that the closing price of Offshore shares on the Sydney Stock Exchange was 8 cents in or about April, 1983?

71. It is the case, is it not, that the market for Offshore shares on the Sydney Stock Exchange was rising during the period from 1st July, 1983 to 26th July, 1983?
72. It is the case, is it not, that a number of sales of Offshore shares took place on the Sydney Stock Exchange at prices of 15 cents per shares between 12th July, 1983 and 27th July, 1983 (inclusive)?
- 10 73. If the answer to question 72 is yes, how many shares in Offshore were sold on the Sydney Stock Exchange at prices of 15 cents or more between 12th July, 1983 and 27th July, 1983 (inclusive)?
74. It is the case, is it not, that a number of sales of Offshore sales on the Sydney Stock Exchange at prices of 14 cents or more took place during the period from 12th July, 1983 to 27th July, 1983 (inclusive)?
75. If the answer to question 74 above is yes, how many Offshore shares were sold on the Sydney Stock Exchange at prices of 14 cents or more during the period from 12th July, 1983 to 27th July, 1983 (inclusive)?
- 20 76. It is the case, is it not, that on the evening of 27th/28th July, 1983, a sale of 2,000,000 Offshore shares took place on the Sydney Stock Exchange at a price of 16 cents per share.
77. If the answer to question 76 above is no, did any sale of Offshore shares take place on the Sydney Stock Exchange on any date between 12th July, 1983 and the morning of 28th July, 1983 at a price of 16 cents per share?
78. If the answer to question 77 above is yes, in relation to each and every such sale of shares at the said price of 16 cents per share:
- 30 (a) How many such shares were sold at that price during that period?
- (b) In how many parcels, if any, were the shares identified pursuant to (a) above sold during the said period?
- (c) Upon what date or dates were the parcels identified pursuant to (b) above sold during that period?
79. It is the case, is it not, that as at 7.00 p.m. on 27th July, 1983, Adler believed that a sale of approximately two million Offshore shares had been made on the Sydney Stock Exchange on or about that day at a price of 16 cents per share?

80. It is the case, is it not, that as at 7.00 p.m. on 27th July, 1983, Lance believed that a sale of approximately two million Offshore shares had been made on the Sydney Stock Exchange on or about that day at a price of 16 cents per share?
81. It is the case, is it not, that as at 7.00 p.m. on 27th July, 1983, F.A.R. believed that a sale of approximately two million Offshore shares had been made on the Sydney Stock Exchange on or about that day at a price of 16 cents per share? 10
82. It is the case, is it not, that as at 7.00 p.m. on 27th July, 1983, F.A.I. believed that a sale of approximately two million Offshore shares had been made on the Sydney Stock Exchange on or about that day at a price of 16 cents per share?
83. It is the case, is it not, that as at 7.00 p.m. on 27th July, 1983, Nationwide believed that a sale of approximately two million Offshore shares had been made on the Sydney Stock Exchange on or about that day at a price of 16 cents per share? 20
84. It is the case, is it not, that as at 10.00 a.m. on 28th July, 1983, Adler believed that a sale of approximately two million Offshore shares had been made on the Sydney Stock Exchange on or about that day at a price of 16 cents per share?
85. It is the case, is it not, that as at 10.00 a.m. on 28th July, 1983, Lance believed that a sale of approximately two million Offshore shares had been made on the Sydney Stock Exchange on or about that day at a price of 16 cents per share? 30
86. It is the case, is it not, that as at 10.00 a.m. on 28th July, 1983, F.A.R. believed that a sale of approximately two million Offshore shares had been made on the Sydney Stock Exchange on or about that day at a price of 16 cents per share?
87. It is the case, is it not, that as at 10.00 a.m. on 28th July, 1983, F.A.I. believed that a sale of approximately two million Offshore shares had been made on the Sydney Stock Exchange on or about that day at a price of 16 cents per share?
88. It is the case, is it not, that as at 10.00 a.m. on 28th July, 1983, Nationwide believed that a sale of approximately two million Offshore shares had been made on the Sydney Stock Exchange on or about that day at a price of 16 cents per share?

89. It is the case, is it not, that notification of a sale of 2,000,000 Offshore shares at 16 cents per share was posted on the Sydney Stock Exchange board for the information of its Brokers and Traders prior to 10.10 a.m. on 28th July, 1983?
90. Did Adler inspect any notice posted on the Sydney Stock Exchange board at any time on the morning of 28th July, 1983?
91. If the answer to question 90 is yes, in relation to each and every such inspection:
- 10 (a) At what time of day did the inspection take place?
- (b) Did the said inspection reveal the position of any notice in relation to any sale of Offshore sales?
- (c) If the answer to (b) above is yes, what was the substance and effect of any such notice?
92. Did Lance inspect any notice posted on the Sydney Stock Exchange board at any time on the morning of 28th July, 1983?
93. If the answer to question 92 is yes, in relation to each and every such inspection:
- 20 (a) At what time of day did the inspection take place?
- (b) Did the said inspection reveal the position of any notice in relation to any sale of Offshore sales?
- (c) If the answer to (b) above is yes, what was the substance and effect of any such notice?
94. Did any person on behalf of Adler inspect any notice posted on the Sydney Stock Exchange board at any time on the morning of 28th July, 1983?
95. If the answer to question 94 is yes, in relation to each and every such inspection.
- 30 (a) Who carried out the said inspection?
- (b) At what time of day on 28th July, 1983 was the said inspection carried out?
- (c) Did the said inspection reveal the posting of any notice in relation to the sale of Offshore sales?
- (d) If the answer to question (c) above is yes, what was the substance and effect of any such notice?

96. Did any person on behalf of Lance inspect any notice posted on the Sydney Stock Exchange board at any time on the morning of 28th July, 1983?
97. If the answer to question 96 is yes, in relation to each and every such inspection.
- (a) Who carried out the said inspection?
 - (b) At what time of day on 28th July, 1983 was the said inspection carried out?
 - (c) Did the said inspection reveal the posting of any notice in relation to the sale of Offshore sales? 10
 - (d) If the answer to question (c) above is yes, what was the substance and effect of any such notice?
98. Did any person on behalf of F.A.R. inspect any notice posted on the Sydney Stock Exchange board at any time on the morning of 28th July, 1983?
99. If the answer to question 98 is yes, in relation to each and every such inspection.
- (a) Who carried out the said inspection?
 - (b) At what time of day on 28th July, 1983 was the said inspection carried out? 20
 - (c) Did the said inspection reveal the posting of any notice in relation to the sale of Offshore sales?
 - (d) If the answer to question (c) above is yes, what was the substance and effect of any such notice?
100. Did any person on behalf of F.A.I. inspect any notice posted on the Sydney Stock Exchange board at any time on the morning of 28th July, 1983?
101. If the answer to question 100 is yes, in relation to each and every such inspection.
- (a) Who carried out the said inspection? 30
 - (b) At what time of day on 28th July, 1983 was the said inspection carried out?
 - (c) Did the said inspection reveal the posting of any notice in relation to the sale of Offshore sales?
 - (d) If the answer to question (c) above is yes, what was the substance and effect of any such notice?

102. Did any person on behalf of Nationwide inspect any notice posted on the Sydney Stock Exchange board at any time on the morning of 28th July, 1983?
103. If the answer to question 102 is yes, in relation to each and every such inspection.
- (a) Who carried out the said inspection?
- (b) At what time of day on 28th July, 1983 was the said inspection carried out?
- (c) Did the said inspection reveal the posting of any notice in relation to the sale of Offshore sales?
- 10 (d) If the answer to question (c) above is yes, what was the substance and effect of any such notice?
104. Did any person on behalf of Offshore inspect any notice posted on the Sydney Stock Exchange board at any time on the morning of 28th July, 1983?
105. If the answer to question 104 is yes, in relation to each and every such inspection.
- (a) Who carried out the said inspection?
- (b) At what time of day on 28th July, 1983 was the said inspection carried out?
- 20 (c) Did the said inspection reveal the posting of any notice in relation to the sale of Offshore sales?
- (d) If the answer to question (c) above is yes, what was the substance and effect of any such notice?
106. Did any person on behalf of Messrs. Norths, Stock & Sharebrokers, inspect any notice posted on the Sydney Stock Exchange board at any time on the morning of 28th July, 1983?
107. If the answer to question 106 is yes, in relation to each and every such inspection.
- (a) Who carried out the said inspection?
- 30 (b) At what time of day on 28th July, 1983 was the said inspection carried out?
- (c) Did the said inspection reveal the posting of any notice in relation to the sale of Offshore sales?
- (d) If the answer to question (c) above is yes, what was the substance and effect of any such notice?

108. Did any person on behalf of Ricdal Consultants Pty. Limited inspect any notice posted on the Sydney Stock Exchange board at any time on the morning of 28th July, 1983?

109. If the answer to question 108 is yes, in relation to each and every such inspection.

(a) Who carried out the said inspection?

(b) At what time of day on 28th July, 1983 was the said inspection carried out?

(c) Did the said inspection reveal the posting of any notice in relation to the sale of Offshore sales? 10

(d) If the answer to question (c) above is yes, what was the substance and effect of any such notice?

110. Did any person on behalf of Trassyer Pty. Limited inspect any notice posted on the Sydney Stock Exchange board at any time on the morning of 28th July, 1983?

111. If the answer to question 110 is yes, in relation to each and every such inspection.

(a) Who carried out the said inspection?

(b) At what time of day on 28th July, 1983 was the said inspection carried out? 20

(c) Did the said inspection reveal the posting of any notice in relation to the sale of Offshore sales?

(d) If the answer to question (c) above is yes, what was the substance and effect of any such notice?

112. Did any person on behalf of John Peter Boyer inspect any notice posted on the Sydney Stock Exchange board at any time on the morning of 28th July, 1983?

113. If the answer to question 112 is yes, in relation to each and every such inspection.

(a) Who carried out the said inspection? 30

(b) At what time of day on 28th July, 1983 was the said inspection carried out?

(c) Did the said inspection reveal the posting of any notice in relation to the sale of Offshore sales?

(d) If the answer to question (c) above is yes, what was the substance and effect of any such notice?

114. Did any person on behalf of International Investment Consultant Corporation inspect any notice posted on the Sydney Stock Exchange board at any time on the morning of 28th July, 1983?
115. If the answer to question 114 is yes, in relation to each and every such inspection.
- 10 (a) Who carried out the said inspection?
- (b) At what time of day on 28th July, 1983 was the said inspection carried out?
- (c) Did the said inspection reveal the posting of any notice in relation to the sale of Offshore sales?
- (d) If the answer to question (c) above is yes, what was the substance and effect of any such notice?
116. Did any person on behalf of Messrs. Wesemann & Co. inspect any notice posted on the Sydney Stock Exchange board at any time on the morning of 28th July, 1983?
117. If the answer to question 116 is yes, in relation to each and every such inspection.
- 20 (a) Who carried out the said inspection?
- (b) At what time of day on 28th July, 1983 was the said inspection carried out?
- (c) Did the said inspection reveal the posting of any notice in relation to the sale of Offshore sales?
- (d) If the answer to question (c) above is yes, what was the substance and effect of any such notice?
118. Did any person on behalf of Peak Nominees Pty. Limited inspect any notice posted on the Sydney Stock Exchange board at any time on the morning of 28th July, 1983?
- 30 119. If the answer to question 118 is yes, in relation to each and every such inspection.
- (a) Who carried out the said inspection?
- (b) At what time of day on 28th July, 1983 was the said inspection carried out?
- (c) Did the said inspection reveal the posting of any notice in relation to the sale of Offshore sales?

- (d) If the answer to question (c) above is yes, what was the substance and effect of any such notice?
120. It is the case, is it not, that at a time prior to about 10.30 a.m. on 28th July, 1983, Adler and Lance agreed that Nationwide would buy 5,574,000 Offshore shares from F.A.R., being shares held by F.A.R. as security, at 13 cents per shares?
121. Did Adler and Lance have any conversation at any time on 27th July, 1983?
122. If the answer to question 121 above is yes, in relation to each and every such conversation:
- (a) Upon-what date did the conversation take place?
- (b) At what time of day did the said conversation take place?
- (c) Where was Adler when the conversation took place?
- (d) Where was Lance when the said conversation took place?
- (e) Was anything said about any sale of Offshore sales by any person at 16 cents per share?
- (f) If the answer to question (e) is yes, what was the substance and effect of what was said about any sale of Offshore shares by any person at 16 cents per share? 20
- (g) Was anything said about any sale of Offshore shares by any person at 13 cents per share?
- (h) If the answer to question (g) is yes, what was the substance and effect of what was said about any sale of any Offshore sales by any person at 13 cents per share?
- (i) Was anything said about any sale of any Offshore shares by any person at any price between 16 cents and 13 cents per share? 30
- (j) If the answer to question (i) above is yes, what was the substance and effect of anything that was said about any sale of Offshore shares by any person at any price between 16 cents and 13 cents per share?
- (k) Was anything said about the current value of Offshore shares?

- 10
- (l) If the answer to question (k) above, was yes, what was the substance and effect of anything that was said about the current value of Offshore shares?
- (m) Was anything said about the sale or possible share by F.A.R. of any Offshore shares?
- (n) If the answer to question (m) is yes, what was the substance and effect of anything that was said about the sale or possible share of Offshore shares by F.A.R.?
- (o) Was anything said about the purchase or possible purchase of Offshore shares by Nationwide?
- (p) If the answer to question (o) is yes, what was the substance and effect of anything that was said about the purchase or possible purchase of Offshore shares by Nationwide?
- (q) Was anything said about a parcel of approximately 5,574,000 Offshore shares held by F.A.R. as mortgagee?
- 20
- (r) If the answer to question (q) is yes, what was the substance and effect of anything that was said about any parcel of approximately 5,574,000 Offshore shares held by F.A.R. as mortgagee?
- (s) Was anything said about the sale or possible sale of Offshore shares by F.A.R. to Nationwide?
- (t) If the answer to question (s) is yes, what was the substance and effect of anything that was said about the sale or possible sale of Offshore sales by F.A.R. to Nationwide?
- 30
- (u) Was anything said about any mortgage over any shares held by F.A.R. as mortgagee?
- (v) If the answer to question (u) above is yes, what was the substance and effect of what was said about any mortgage of Offshore shares held by F.A.R. as mortgagee?
- (w) Did any party to the said conversation give the other any instructions?
- (x) If the answer to question (w) is yes, what was the substance and effect of the said instructions?
- (y) Did any party to the said conversation give the other any advice?

In the Full Court

No.209
Exhibit I"1
Copy of set
of Interrogatories in
N.S.W.
Proceedings
No.4254 of
1983

(continued)

- (z) If the answer to question (y) above is yes, what was the substance and effect of the said advice?
- (aa) Was anything said about possible movement in the market price of Offshore shares in the future?
- (ab) If the answer to question (aa) above is yes, what is the substance and effect of what was said in relation to possible movement in the market price of Offshore shares in the future.
- (ac) Was anything said about a desire to depress the market price of Offshore shares in the short term? 10
- (ad) If the answer to question (ac) above is yes, what was the substance and effect of anything that was said concerning a desire to depress the market price of Offshore shares in the short term.
123. Did any person on behalf of Adler have any conversation with Lance at any time on 27th July or 28th July, 1983?
124. If the answer to question 123 above is yes, in relation to each and every such conversation:
- (a) Upon what date did the conversation take place?
- (b) At what time of day did the said conversation take place? 20
- (c) Where was Adler when the conversation took place?
- (d) Where was Lance when the said conversation took place?
- (e) Was anything said about any sale of Offshore sales by any person at 16 cents per share?
- (f) If the answer to question (e) is yes, what was the substance and effect of what was said about any sale of Offshore shares by any person at 16 cents per share? 30
- (g) Was anything said about any sale of Offshore shares by any person at 13 cents per share?
- (h) If the answer to question (g) is yes, what was the substance and effect of what was said about any sale of any Offshore sales by any person at 13 cents per share?
- (i) Was anything said about any sale of any Offshore shares by any person at any price between 16 cents and 13 cents per share?

- (j) If the answer to question (i) above is yes, what was the substance and effect of anything that was said about any sale of Offshore shares by any person at any price between 16 cents and 13 cents per share?
- (k) Was anything said about the current value of Offshore shares?
- (l) If the answer to question (k) above, was yes, what was the substance and effect of anything that was said about the current value of Offshore shares?
- 10 (m) Was anything said about the sale or possible share by F.A.R. of any Offshore shares?
- (n) If the answer to question (m) is yes, what was the substance and effect of anything that was said about the sale or possible share of Offshore shares by F.A.R.?
- (o) Was anything said about the purchase or possible purchase of Offshore shares by Nationwide?
- 20 (p) If the answer to question (o) is yes, what was the substance and effect of anything that was said about the purchase or possible purchase of Offshore shares by Nationwide?
- (q) Was anything said about a parcel of approximately 5,574,000 Offshore shares held by F.A.R. as mortgagee?
- (r) If the answer to question (q) is yes, what was the substance and effect of anything that was said about any parcel of approximately 5,574,000 Offshore shares held by F.A.R. as mortgagee?
- 30 (s) Was anything said about the sale or possible sale of Offshore shares by F.A.R. to Nationwide?
- (t) If the answer to question (s) is yes, what was the substance and effect of anything that was said about the sale or possible sale of Offshore sales by F.A.R. to Nationwide?
- (u) Was anything said about any mortgage over any shares held by F.A.R. as mortgagee?
- (v) If the answer to question (u) above is yes, what was the substance and effect of what was said about any mortgage of Offshore shares held by F.A.R. as mortgagee?

In the Full
Court

No.209
Exhibit "I"
Copy of set
of Interroga-
tories in
N.S.W.
Proceedings
No.4254 of
1983

(continued)

- (w) Did any party to the said conversation give the other any instructions?
- (x) If the answer to question (w) is yes, what was the substance and effect of the said instructions?
- (y) Did any party to the said conversation give the other any advice?
- (z) If the answer to question (y) above is yes, what was the substance and effect of the said advice?
- (aa) Was anything said about possible movement in the market price of Offshore shares in the future?
- (ab) If the answer to question (aa) above is yes, what is the substance and effect of what was said in relation to possible movement in the market price of Offshore shares in the future.
- (ac) Was anything said about a desire to depress the market price of Offshore shares in the short term?
- (ad) If the answer to question (ac) above is yes, what was the substance and effect of anything that was said concerning a desire to depress the market price of Offshore shares in the short term.
- (ae) Who had the said conversation on behalf of Adler?
125. Did Adler have any conversation with any person on behalf of Lance at any time on 27th or 28th July, 1983?
126. If the answer to question 125 above is yes, in relation to each and every such conversation:
- (a) Upon what date did the conversation take place?
- (b) At what time of day did the said conversation take place?
- (c) Where was Adler when the conversation took place?
- (d) Where was Lance when the said conversation took place?
- (e) Was anything said about any sale of Offshore sales by any person at 16 cents per share?
- (f) If the answer to question (e) is yes, what was the substance and effect of what was said about any sale of Offshore shares by any person at 16 cents per share?

- (g) Was anything said about any sale of Offshore shares by any person at 13 cents per share?
- (h) If the answer to question (g) is yes, what was the substance and effect of what was said about any sale of any Offshore sales by any person at 13 cents per share?
- (i) Was anything said about any sale of any Offshore shares by any person at any price between 16 cents and 13 cents per share?
- 10 (j) If the answer to question (i) above is yes, what was the substance and effect of anything that was said about any sale of Offshore shares by any person at any price between 16 cents and 13 cents per share?
- (k) Was anything said about the current value of Offshore shares?
- (l) If the answer to question (k) above, was yes, what was the substance and effect of anything that was said about the current value of Offshore shares?
- (m) Was anything said about the sale or possible share by F.A.R. of any Offshore shares?
- 20 (n) If the answer to question (m) is yes, what was the substance and effect of anything that was said about the sale or possible share of Offshore shares by F.A.R.?
- (o) Was anything said about the purchase or possible purchase of Offshore shares by Nationwide?
- (p) If the answer to question (o) is yes, what was the substance and effect of anything that was said about the purchase or possible purchase of Offshore shares by Nationwide?
- 30 (q) Was anything said about a parcel of approximately 5,574,000 Offshore shares held by F.A.R. as mortgagee?
- (r) If the answer to question (q) is yes, what was the substance and effect of anything that was said about any parcel of approximately 5,574,000 Offshore shares held by F.A.R. as mortgagee?
- (s) Was anything said about the sale or possible sale of Offshore shares by F.A.R. to Nationwide?
- (t) If the answer to question (s) is yes, what was the substance and effect of anything that was said about

(continued)

the sale or possible sale of Offshore sales by F.A.R.
to Nationwide?

- (u) Was anything said about any mortgage over any shares held by F.A.R. as mortgagee?
- (v) If the answer to question (u) above is yes, what was the substance and effect of what was said about any mortgage of Offshore shares held by F.A.R. as mortgagee?
- (w) Did any party to the said conversation give the other any instructions?
- (x) If the answer to question (w) is yes, what was the substance and effect of the said instructions?
- (y) Did any party to the said conversation give the other any advice?
- (z) If the answer to question (y) above is yes, what was the substance and effect of the said advice?
- (aa) Was anything said about possible movement in the market price of Offshore shares in the future?
- (ab) If the answer to question (aa) above is yes, what is the substance and effect of what was said in relation to possible movement in the market price of Offshore shares in the future.
- (ac) Was anything said about a desire to depress the market price of Offshore shares in the short term?
- (ad) If the answer to question (ac) above is yes, what was the substance and effect of anything that was said concerning a desire to depress the market price of Offshore shares in the short term.
- (ae) With whom on behalf of Lance did Adler have the said conversation.
127. Did any person on behalf of F.A.R. have any conversation with some other person on behalf of Messrs. Norths, Stock and Sharebrokers, at any time on 27th July or 28th July, 1983?
128. If the answer to question 127 above is yes, in relation to each and every such conversation:
- (a) Upon what date did the conversation take place?
- (b) At what time of day did the said conversation take place?

10

20

30

- (c) Where was Adler when the conversation took place?
- (d) Where was Lance when the said conversation took place?
- (e) Was anything said about any sale of Offshore sales by any person at 16 cents per share?
- (f) If the answer to question (e) is yes, what was the substance and effect of what was said about any sale of Offshore shares by any person at 16 cents per share?
- 10 (g) Was anything said about any sale of Offshore shares by any person at 13 cents per share?
- (h) If the answer to question (g) is yes, what was the substance and effect of what was said about any sale of any Offshore sales by any person at 13 cents per share?
- (i) Was anything said about any sale of any Offshore shares by any person at any price between 16 cents and 13 cents per share?
- 20 (j) If the answer to question (i) above is yes, what was the substance and effect of anything that was said about any sale of Offshore shares by any person at any price between 16 cents and 13 cents per share?
- (k) Was anything said about the current value of Offshore shares?
- (l) If the answer to question (k) above, was yes, what was the substance and effect of anything that was said about the current value of Offshore shares?
- (m) Was anything said about the sale or possible share by F.A.R. of any Offshore shares?
- 30 (n) If the answer to question (m) is yes, what was the substance and effect of anything that was said about the sale or possible share of Offshore shares by F.A.R.?
- (o) Was anything said about the purchase or possible purchase of Offshore shares by Nationwide?
- (p) If the answer to question (o) is yes, what was the substance and effect of anything that was said about the purchase or possible purchase of Offshore shares by Nationwide?

In the Full Court

No.209
Exhibit "I"
Copy of set
of Interrogatories in
N.S.W.
Proceedings
No.4254 of
1983

(continued)

- (q) Was anything said about a parcel of approximately 5,574,000 Offshore shares held by F.A.R. as mortgagee?
- (r) If the answer to question (q) is yes, what was the substance and effect of anything that was said about any parcel of approximately 5,574,000 Offshore shares held by F.A.R. as mortgagee?
- (s) Was anything said about the sale or possible sale of Offshore shares by F.A.R. to Nationwide?
- (t) If the answer to question (s) is yes, what was the substance and effect of anything that was said about the sale or possible sale of Offshore sales by F.A.R. to Nationwide? 10
- (u) Was anything said about any mortgage over any shares held by F.A.R. as mortgagee?
- (v) If the answer to question (u) above is yes, what was the substance and effect of what was said about any mortgage of Offshore shares held by F.A.R. as mortgagee?
- (w) Did any party to the said conversation give the other any instructions? 20
- (x) If the answer to question (w) is yes, what was the substance and effect of the said instructions?
- (y) Did any party to the said conversation give the other any advice?
- (z) If the answer to question (y) above is yes, what was the substance and effect of the said advice?
- (aa) Was anything said about possible movement in the market price of Offshore shares in the future?
- (ab) If the answer to question (aa) above is yes, what is the substance and effect of what was said in relation to possible movement in the market price of Offshore shares in the future. 30
- (ac) Was anything said about a desire to depress the market price of Offshore shares in the short term?
- (ad) If the answer to question (ac) above is yes, what was the substance and effect of anything that was said concerning a desire to depress the market price of Offshore shares in the short term.
- (ae) Who had the said conversation on behalf of F.A.R.?

(af) Who had the said conversation on behalf of Messrs. Norths, Stock and Sharebrokers?

129. Did any person on behalf of F.A.R. have any conversation with any person on behalf of Messrs. Norths, Stock and Sharebrokers concerning any Offshore shares at any time in the period from 5th May, 1983 to 26th July, 1983 (inclusive)?

130. If the answer to question 129 above is yes, in relation to each and every such conversation:

10 (a) Upon what date did the conversation take place?

(b) At what time of day did the said conversation take place?

(c) Where was Adler when the conversation took place?

(d) Where was Lance when the said conversation took place?

(e) Was anything said about any sale of Offshore sales by any person at 16 cents per share?

20 (f) If the answer to question (e) is yes, what was the substance and effect of what was said about any sale of Offshore shares by any person at 16 cents per share?

(g) Was anything said about any sale of Offshore shares by any person at 13 cents per share?

(h) If the answer to question (g) is yes, what was the substance and effect of what was said about any sale of any Offshore sales by any person at 13 cents per share?

30 (i) Was anything said about any sale of any Offshore shares by any person at any price between 16 cents and 13 cents per share?

(j) If the answer to question (i) above is yes, what was the substance and effect of anything that was said about any sale of Offshore shares by any person at any price between 16 cents and 13 cents per share?

(k) Was anything said about the current value of Offshore shares?

(l) If the answer to question (k) above, was yes, what was the substance and effect of anything that was said about the current value of Offshore shares?

In the Full
Court

NO.209
Exhibit "I"
Copy of set
of Interroga-
tories in
N.S.W.
Proceedings
No.4254 of
1983

(continued)

- (m) Was anything said about the sale or possible share by F.A.R. of any Offshore shares?
- (n) If the answer to question (m) is yes, what was the substance and effect of anything that was said about the sale or possible share of Offshore shares by F.A.R.?
- (o) Was anything said about the purchase or possible purchase of Offshore shares by Nationwide?
- (p) If the answer to question (o) is yes, what was the substance and effect of anything that was said about the purchase or possible purchase of Offshore shares by Nationwide? 10
- (q) Was anything said about a parcel of approximately 5,574,000 Offshore shares held by F.A.R. as mortgagee?
- (r) If the answer to question (q) is yes, what was the substance and effect of anything that was said about any parcel of approximately 5,574,000 Offshore shares held by F.A.R. as mortgagee?
- (s) Was anything said about the sale or possible sale of Offshore shares by F.A.R. to Nationwide? 20
- (t) If the answer to question (s) is yes, what was the substance and effect of anything that was said about the sale or possible sale of Offshore sales by F.A.R. to Nationwide?
- (u) Was anything said about any mortgage over any shares held by F.A.R. as mortgagee?
- (v) If the answer to question (u) above is yes, what was the substance and effect of what was said about any mortgage of Offshore shares held by F.A.R. as mortgagee? 30
- (w) Did any party to the said conversation give the other any instructions?
- (x) If the answer to question (w) is yes, what was the substance and effect of the said instructions?
- (y) Did any party to the said conversation give the other any advice?
- (z) If the answer to question (y) above is yes, what was the substance and effect of the said advice?

- (aa) Was anything said about possible movement in the market price of Offshore shares in the future?
- (ab) If the answer to question (aa) above is yes, what is the substance and effect of what was said in relation to possible movement in the market price of Offshore shares in the future.
- (ac) Was anything said about a desire to depress the market price of Offshore shares in the short term?
- (ad) If the answer to question (ac) above is yes, what was the substance and effect of anything that was said concerning a desire to depress the market price of Offshore shares in the short term.
- (ae) Who had the said conversation on behalf of F.A.R.?
- (af) Who had the said conversation on behalf of Messrs. Norths, Stock and Sharebrokers?
- 10 131. It is the case, is it not, that shortly after the Sydney Stock Exchange opened for trading at or about 10.10 a.m. on 28th July, 1983, Lance sold a number of parcel of Offshore shares totalling 198,000 shares at 14 cents?
- 20 132. It is the case, is it not, that or about 10.30 a.m. on 28th July, 1983, on any date, Lance purported to effect a sale of approximately 5,574,000 Offshore shares then held by F.A.R. as mortgagee to Nationwide by "marrying" documents in the Officers of Messrs. Norths, Stock and Sharebrokers, at a price of 13 cents per share.
133. Did F.A.R. or any person on its behalf instruct Messrs. Norths, Stock and Sharebrokers, to effect a sale of any Offshore sales on 28th July, 1983, on any date?
- 30 134. If the answer to question 133 is yes, in respect of each and every such instruction:
- (a) Was the instruction oral or in writing?
- (b) If the instruction was oral:
- (i) By whom was the instruction given?
- (ii) To whom was the instruction given?
- (iii) How was the instruction given?
- (iv) On what date was the instruction given?
- (v) At what time of day was the instruction given?

In the Full Court

No.209
Exhibit "I"
Copy of set
of Interrogatories in
N.S.W.
Proceedings
No.4254 of
1983

(continued)

- (vi) Was the instruction given by telephone or in person?
 - (vii) Where was the person identified pursuant to (i) above at the time of giving the instruction?
 - (viii) Where was the person identified pursuant to (ii) above at the time of receiving the said instruction?
 - (ix) Was the said instruction given in the course of a conversation?
 - (x) If the answer to (ix) is yes, what was the substance and effect of the conversation? 10
- (c) If the instruction was in writing, please identify that writing by reference to its numbers in any List of Documents filed in the present proceedings prior to the date of answering these Interrogatories.
135. Did Messrs. Norths, Stock and Sharebrokers, on any date, receive any instructions from any person to effect any sale of Offshore shares on 28th July, 1983.
136. If the answer to question 135 is yes, in respect of each and every instruction: 20
- (a) Was the instruction oral or in writing?
 - (b) If the instruction was oral:
 - (i) By whom was the instruction given?
 - (ii) To whom was the instruction given?
 - (iii) How was the instruction given?
 - (iv) On what date was the instruction given?
 - (v) At what time of day was the instruction given?
 - (vi) Was the instruction given by telephone or in person?
 - (vii) Where was the person identified pursuant to (i) above at the time of giving the instruction? 30
 - (viii) Where was the person identified pursuant to (ii) above at the time of receiving the said instruction?
 - (ix) Was the said instruction given in the course of a conversation?

(x) If the answer to (ix) is yes, what was the substance and effect of the conversation?

(c) If the instruction was in writing, please identify that writing by reference to its numbers in any List of Documents filed in the present proceedings prior to the date of answering these Interrogatories.

137. It is the case, is it not, that at no time in or about July, 1983 did Nationwide have available to it sufficient funds to pay for a purchase of 5,574,000 Offshore shares at a purchase price of 13 cents per share?

10

138. If the answer to question 137 is no, did Nationwide at any time in or about July, 1983 have sufficient funds to pay for a purchase of 5,574,000 Offshore shares at 13 cents per share?

139. If the answer to question 138 is yes:

(a) Did Nationwide have any bank account with any Bank in the months of July to September, 1983 (inclusive)?

(b) If the answer to question (a) above, is yes:

(i) At which Branches of which Banks did Nationwide have a bank account in any of the said months?

(ii) What were the account numbers of each bank account maintained at each of the Branches of each of the Banks identified pursuant to (i) above?

20

(iii) What cash funds did Nationwide have in each of the bank accounts identified pursuant to (i) and (ii) above during each of the said months?

(c) What assets did Nationwide have as at 28th July, 1983?

(d) What value did each of the assets identified in question (c) in the books and accounts of Nationwide for any accounting period including 28th July, 1983?

30

(e) What liabilities did Nationwide have as at 28th July, 1983?

(f) What was the quantum of the liabilities identified pursuant to (e) above in the books and accounts of Nationwide in any accounting period including 28th July, 1983?

140. Did Nationwide by its Directors or Officers form an intention at any time in or about July, 1983 to pay for any quantity of approximately 5,574,000 Offshore shares purchased on or about 28th July, 1983 at 13 cents per share?
141. If the answer to question 140 above is yes:
- (a) When was any such intention formed?
 - (b) By whom on behalf of Nationwide was any such intention formed?
 - (c) When was it that Nationwide intended to pay for the said shares? 10
 - (d) How did Nationwide intend to pay for the said shares.
142. Is it not the case, that at no time did Nationwide intend to pay for any quantity of approximately 5,574,000 Offshore shares purchased by it at a price of 13 cents per share on or about 28th July, 1983?
143. Is it not the case, that on or about 28th July, 1983, Nationwide formed an intention to acquire approximately 5,574,000 Offshore shares at a price of 13 cents per share from F.A.R. on a credit basis?
144. Is it not the case, that on or about the 28th July, 1983 it was agreed between F.A.R. and Nationwide that F.A.R. would sell approximately 5,574,000 Offshore shares to Nationwide on a credit basis? 20
145. Did any person on behalf of F.A.R. have any conversation with any person on behalf of Nationwide in or about July or August, 1983, concerning the means by which Nationwide would pay for all of the granted credit in relation to the purchase of approximately 5,574,000 Offshore shares from F.A.R.?
146. If the answer to question 145 above is yes, in relation to each and every such conversation: 30
- (a) Who participated in the conversation on behalf of F.A.R.?
 - (b) Who participated in the said conversation of behalf of Natinwide?
 - (c) Was the conversation by telephone or in person?
 - (d) Where was the person identified pursuant to (a) above at the time of the conversation?

- (e) Where was the person identified pursuant to (b) above at the time of the conversation?
- (f) On what date did the conversation take place?
- (g) At what time of day did the conversation take place?
- (h) What was the substance and effect of the said conversation?
- (i) Was anything said in the course of the said conversation about any inability of Nationwide to pay for the purchase of approximately 5,574,000 Offshore shares at 13 cents per share?
- 10 (j) If the answer to question (i) is yes, what was the substance and effect of what was said in relation to the said matter?
- (k) Was anything said in the course of the said conversation to the effect that Nationwide would not be called upon by F.A.R. to pay for the said shares.
147. Did F.A.R. or any person on its behalf report to the Sydney Stock Exchange a sale of approximately 5,574,000 Offshore shares at 13 cents per share on or about 28th July, 1983?
- 20 148. If the answer to question 147 above is yes, in relation to each and every such report:
- (a) Upon what date was the report made?
- (b) At what time of the date identified pursuant to (a) above, was the report made?
- (c) By whom on behalf of F.A.R. was the report made?
- (d) To whom on behalf of the Sydney Stock Exchange was the report made?
- (e) In what terms was the report made?
- 30 149. Did Lance or any person on his behalf make a report to the Sydney Stock Exchange Limited of the fact of any sale of approximately 5,574,000 Offshore shares at 13 cents per share on or about 28th July, 1983?
150. If the answer to question 149 is yes, in relation to each and every such report:
- (a) Upon what date was the report made?
- (b) At what time on the date identified pursuant to (a) above was the report made?

- (c) By whom on behalf of Lance was the report made?
- (d) To whom on behalf of the Sydney Stock Exchange Limited was the report made?
- (e) In what terms was the report made?
151. It is the case, is it not, that the Sydney Stock Exchange Limited received a report on or about 28th July, 1983 that on that day a quantity of approximately 5,574,000 Offshore shares was sold at 13 cents per share?
152. It is the case, is it not, that the price of Offshore shares on the Sydney Stock Exchange after the sale of 5,574,000 Offshore shares at 13 cents per share on 28th July, 1983 was depressed in virtue of the fact of the reporting of such a sale on the said exchange.
153. It is the case, is it not, that on or about 28th July, 1983 Adler intended that a sale by F.A.R. of approximately 5,574,000 Offshore shares at 13 cents per share would have the effect of depressing the market for Offshore shares after that date?
154. It is the case, is it not, that the recording of a sale of 5,574,000 Offshore shares at 13 cents per share on the Sydney Stock Exchange on 28th July, 1983 had the effect of preventing the price of those shares on that market from rising at all or at a rate which would have otherwise been the norm?
155. It is the case, is it not, that on about 28th July, 1983 Adler intended that the recording of a sale of approximately 5,574,000 Offshore shares at 13 cents per share on the Sydney Stock Exchange would have the effect of preventing the price of those shares from rising at all or at a rate which would have otherwise been the norm?
156. Did Adler or any person on his behalf report to the media on or about 28th July, 1983 that F.A.R. had caused sales to take place of approximately 12,400,000 Offshore shares to take place in the exercise of its power of sale as a mortgagee over those shares?
157. Did Adler or any person on his behalf cause any report to be made to the media on or about 28th July, 1983 in relation to the sale of any Offshore shares by F.A.R. exercising a power of sale as mortgagee?
158. If the answer to either of the preceding questions 156 and 157 above, is yes, in relation to each and every such report:

- (a) By whom was the report made?
- (b) To whom was the report made?
- (c) On what date was the report made?
- (d) At what time of day was the report made?
- (e) Was the report oral or in writing?
- (f) If the report was oral, where were the persons identified pursuant to (a) and (b) at the time of making the report?
- (g) If the report was in writing, please identify that writing by reference to its number in any List of Documents filed in the present proceedings prior to the answering of these Interrogatories?

10

159. It is the case, is it not, that Adler intended that an announcement in the media on or about 28th July, 1983 that F.A.R. had caused a sale of approximately 12,400,000 Offshore shares to have taken place by exercise of a mortgagees power of sale would have the effect of depressing the market price of Offshore shares thereafter?

20

160. It is the case, is it not, that Adler intended that an announcement in the media on or about 28th July, 1983 that F.A.R. had caused a sale of approximately 12,400,000 Offshore shares to have taken place by exercise of a mortgagees power of sale would have the effect of preventing the market price of Offshore shares from rising thereafter?

161. It is the case, is it not, that Adler was aware as at 28th July, 1983 that the Plaintiffs held between themselves and their associated corporations approximately 30,000,000 Offshore shares?

30

162. It is the case, is it not, that the intention of Adler on or about 28th July, 1983 was to deprive the Plaintiffs and other holders of Offshore shares of the true market value of those shares?

163. Did F.A.R. sell approximately 1,506,000 Offshore shares on or about 12th July, 1983?

164. If the answer to question 163 is yes, in relation to the said sale:

- (a) To whom were the said shares sold?
- (b) On what Stock Exchange, if any, were the said shares sold?

In the Full
Court

No.209
Exhibit "I"
Copy of set
of Interroga-
tories in
N.S.W.
Proceedings
No.4254 of
1983

(continued)

- (c) Through which Stockbroker, if any, were the said shares sold?
- (d) At what price were the said shares sold?
- (e) Were the said shares sold by F.A.R. purporting to exercise a power of sale as mortgagee?
- (f) If the answer to question (e) is yes, who was the mortgagor of the said shares?
- (g) Please identify by reference to its number in any List of Documents filed in the present proceedings before the date of answering these Interrogatories.
- (h) What Instrument, if any, comprises the mortgage, if any, pursuant to which any power of sale purported to have been exercised by F.A.R. in the sale of the shares is contained?
- (i) Was the mortgagor identified pursuant to (f) in default under the mortgage identified pursuant to (h) as at 12th July, 1983?
- (j) If the answer to question (i) is yes, in what respect was the said Mortgagor in default under the said mortgage as at that date?
- (k) Did F.A.R. receive the proceeds of the said sale?
- (l) If the answer to question (k) is yes:
 - (i) Upon what date or dates did F.A.R. receive the proceeds of the said sale?
 - (ii) What sum or sums were received on each of the dates identified pursuant to (i) above.

165. Did Lance sell approximately 1,506,000 Offshore shares as a Principal on or about 12th July, 1983?

166. If the answer to question 165 is yes, in relation to the said sale:

- (a) To whom were the said shares sold?
- (b) On what Stock Exchange, if any, were the said shares sold?
- (c) Through which Stockbroker, if any, were the said shares sold?
- (d) At what price were the said shares sold?

- (e) Were the said shares sold by Lance purporting to exercise a power of sale as mortgagee?
- (f) If the answer to question (e) is yes, who was the mortgagor of the said shares?
- (g) Please identify by reference to its number in any List of Documents filed in the present proceedings before the date of answering these Interrogatories.
- (h) What Instrument, if any, comprises the mortgage, if any, pursuant to which any power of sale purported to have been exercised by Lance in the sale of the shares is contained?
- 10 (i) Was the mortgagor identified pursuant to (f) in default under the mortgage identified pursuant to (h) as at 12th July, 983?
- (j) If the answer to question (i) is yes, in what respect was the said Mortgagor in default under the said mortgage as at that date?
- (k) Did Lance receive the proceeds of the said sale?
- (l) If the answer to question (k) is yes:
- 20 (i) Upon what date or dates did Lance receive the proceeds of the said sale?
- (ii) What sum or sums were received on each of the dates identified pursuant to (i) above.
167. Did Lance or any person on his behalf report a sale of approximately 1,506,000 Offshore shares made on 12th July, 1983 at 13 cents per share to the Sydney Stock Exchange Limited?
168. If the answer to question 167 above is yes, in relation to each and every such report:
- 30 (a) Upon what date was the report made?
- (b) At what time on the date identified pursuant to (a) was the report made?
- (c) By whom was the report made?
- (d) To whom on behalf of the said Stock Exchange was the report made?
- (e) Was the report oral or in writing?

- (f) If the report was oral, was the report made by telephone or in person/
- (g) Where was the person identified pursuant to (c) above when the report was made?
- (h) When was the person identified pursuant to (d) above when the report was made?
- (i) If the report was in writing or partly in writing or referred to in writing, please identify that writing by reference to its number or numbers in any List of Documents filed in the present proceedings?
- (j) Did any conversation take place between the persons identified pursuant to (c) and (d) above at the time of making the report?
- (k) If the answer to question (j) above is yes, what was the substance and effect of the said conversation?

169. It is the case, is it not, that throughout the period from 1st January, 1982 to the date of these Interrogatories, Lance has been a Member of the Sydney Stock Exchange Limited?

170. It is the case, is it not, that throughout the period from 1st January, 1982 to the date of these Interrogatories, Messrs. Norths have been a firm of Stock and Sharebrokers operating on the Sydney and Melbourne Stock Exchanges?

171. It is the case, is it not, that throughout the period from 1st January, 1982 to the date of these Interrogatories, Lance has been a Consultant employed by Messrs. Norths, Stock and Sharebrokers?

172. It is the case, is it not, that as at 28th July, 1983, the Shareholders of Nationwide were as follows:

F.A.I.;
Ricdal Consultants Pty. Limited;
Trassyer Pty. Limited;
International Investment Consultant Corporation;
Messrs. Wesemann & Co.; and
Peak Nominees Pty. Limited.

173. It is the case, is it not, that as at 28th July, 1983, F.A.I. held 20,000 shares in the issued share capital of Nationwide?

174. It is the case, is it not, that as at 28th July, 1983, Ricdal Consultants Pty. Limited held 30,000 shares in the issued share capital of Nationwide?

175. It is the case, is it not, that as at 28th July, 1983, Trassyer Pty. Limited held 30,000 shares in the issued share capital of Nationwide?
176. It is the case, is it not, that as 28th July, 1983, International Investment Consultant Corporation held 45,000 shares in the issued share capital of Nationwide?
177. It is the case, is it not, that as at 28th July, 1983, Messrs. Wesemann & Co. held 15,000 shares in the issued share capital of Nationwide?
- 10 178. It is the case, is it not, that as at 28th July, 1983, Peak Nominees Pty. Limited held 60,000 shares in the issued share capital of Nationwide?
179. What was the issued share capital of Nationwide as at 28th July, 1983?
180. It is the case, is it not, that Lance was a Director of Nationwide as at 28th July, 1983.
181. It is the case, is it not, that Lance was a Director of Ricdal Consultants Pty. Limited as at 28th July, 1983?
- 20 182. It is the case, is it not, that Lance was a shareholder of Ricdal Consultants Pty. Limited as at 28th July, 1983

In the Full Court

No.209 Exhibit "I"

Copy of set of Interrogatories
in N.S.W. Proceedings No.4254
of 1983 (cont'd)

PART TWO

1. It is the case, is it not, that International Investment Consultant Corporation is a Corporation in Sao Paulo, Brazil?
2. Who were the Directors of International Investment Consultant Corporation as at 28th July, 1983?
3. Who were the Shareholders of International Investment Consultant Corporation as at 28th July, 1983?
4. Who were the Beneficial Owners of International Investment Consultant Corporation as at 28th July, 1983?
5. Who were the members of Wesemann & Co. as at 28th July, 1983?
6. Who were the owners of Wesemann & Co. as at 28th July, 1983? 10
7. Who were the Shareholders of Peak Nominees Pty. Limited as at 28th July, 1983?
8. Who were the Beneficial Owners of the shares in Peak Nominees Pty. Limited as at 28th July, 1983?
9. Who were the Directors of Peak Nominees Pty. Limited as at 28th July, 1983?
10. It is the case, is it not, that Trassyer Pty. Limited is a Company controlled by Boyer?
11. It is the case, is it not, that Boyer was a Director of Trassyer Pty. Limited as at 28th July, 1983? 20
12. It is the case, is it not, that Boyer was a Shareholder of Trassyer Pty. Limited as at 28th July, 1983?
13. Who were the Directors of Trassyer Pty. Limited as at 28th July, 1983?
14. Who were the Shareholders of Trassyer Pty. Limited as at 28th July, 1983?
15. Has Lance ever been employed by Offshore in the capacity of a Consultant?
16. If the answer to question 15 is yes, in relation to each and every such Consultancy: 30
 - (a) When was Lance first so employed?
 - (b) When was Lance last so employed?

- 10
- (c) Was Adler the Chairman of Directors of Offshore during the course of Lance's employment as a Consultant to Offshore?
 - (d) What duties did Lance perform in the office as Consultant?
 - (e) Did Lance attend at the Executive Offices of Offshore during the course of the performance of any of his duties as a Consultant to that Company?
 - (f) Did Lance give any advice to Offshore or its Directors in relation to the market position of Offshore shares on the Sydney Stock Exchange at any time during his said Consultancy?
 - (g) If the answer to question (f) above is yes, in relation to each and every such piece of advice:
 - (i) When was the advice given?
 - (ii) To whom was the advice given?
 - (iii) What was the substance and effect of the advice concerning the market for Offshore shares on the said Stock Exchange?
- 20
17. Has Boyer ever been employed by Offshore in the capacity of a Consultant?
18. If the answer to question 17 above is yes, in relation to each and every such Consultancy:
- (a) When was Boyer first so employed?
 - (b) When was Boyer last so employed?
 - (c) Was Boyer the Chairman of Directors of Offshore during the course of Boyer's employment as a Consultant to Offshore.
 - (d) What duties did Boyer perform in the office of Consultant?
 - (e) Did Boyer attend at the Executive Offices of Offshore during the course of the performance of any of his duties as a Consultant to that Company?
 - (f) Did Boyer give any advice to Offshore or its Directors in relation to the market position of Offshore shares on the Sydney Stock Exchange at any time during his said Consultancy?
- 30

- (g) If the answer to question (f) above is yes, in relation to each and every such piece of advice:
- (i) When was the advice given?
 - (ii) To whom was the advice given?
 - (iii) What was the substance and effect of the advice concerning the market for Offshore shares on the said Stock Exchange?
19. Has any Company, firm or partnership of which Lance and/or Boyer have been directors, shareholders, partners or members (hereinafter referred to collectively as "any such firm") ever been employed by Offshore in the capacity of a Consultant? 10
20. If the answer to question 19 is yes, in relation to any such firm and any such Consultancy:
- (a) When was any such firm first so employed?
 - (b) When was any such firm last so employed?
 - (c) What duties did any such firm perform?
 - (d) Did a representative of any such firm attend at the Executive Offices of Offshore during the course of the performance of any of its duties as a Consultant to that Company? 20
 - (e) Did any such firm give any advice to Offshore or its Directors in relation to the market position of Offshore shares on the Sydney Stock Exchange at any time during its said Consultancy?
 - (f) If the answer to question (f) above is yes, in relation to each and every such piece of advice:
 - (i) When was the advice given?
 - (ii) To whom was the advice given? 30
 - (iii) What was the substance and effect of the said advice concerning the market for Offshore shares on the said Stock Exchange?
21. It is the case, is it not, that 28th July, 1983 was a Thursday?
22. It is the case, is it not, that 2nd August, 1983 was a Tuesday?

23. It is the case, is it not, that the weekend of 30th and 31st July, 1983 intervened between Thursday 28th July, 1983 and Tuesday 2nd August, 1983?
24. It is the case, is it not, that, excluding 28th July, 1983 and 2nd August, 1983 two (2) business days only intervened between 28th July, 1983 and 2nd August, 1983?
25. It is the case, is it not, that between 28th July, 1983 and 2nd August, 1983 the Sydney Stock Exchange was open for trading on only Friday 29th July, 1983 and Monday 1st August, 1983?

10

Look at the document, a copy of which is annexed hereto and marked with the letter "A".

26. It is the case, is it not, that Annexure "A" hereto is a true copy of a memorandum to one Paul Gow from Lance dated 2nd August, 1983?
27. Who is Paul Gow?
28. Who is the "WWM" referred to in Annexure "A" hereto?
29. Did Lance have a belief as at 2nd August, 1983 that the share price of Offshore shares on the Sydney Stock Exchange would move towards 20 cents over the weeks following 2nd August, 1983?
30. If the answer to question 29 above is yes:

20

- (a) When did Lance first form any such belief?
- (b) In what circumstances did Lance first form any such belief?
- (c) Where was Lance when he first formed any such belief?
- (d) Was Lance employed as a Consultant to Offshore when he first formed any such belief?
- (e) What facts and circumstances did Lance take into consideration in forming any such belief?
- (f) Did Lance at any time in or about July or August, 1983 have any conversation with Adler in relation to the facts and circumstances set forth pursuant to question (e) above?
- (g) If the answer to question (f) above is yes, in relation to each and every such conversation:
- (i) When did the conversation take place?

30

- (ii) At what time of day did the conversation take place?
 - (iii) Where was Lance when the conversation took place?
 - (iv) Where was Boyer when the conversation took place?
 - (v) What was the substance and effect of the conversation?
 - (h) Did Lance have any conversation with Boyer upon any date in or about July or August, 1983 concerning the said belief?
 - (i) If the answer to question (h) above is yes, in relation to each and every such conversation: 10
 - (i) When did the conversation take place?
 - (ii) At what time of day did the conversation take place?
 - (iii) Where was Lance when the conversation took place?
 - (iv) Where was Boyer when the conversation took place?
 - (v) What was the substance and effect of the conversation? 20
31. Is it the case that on or about 2nd August, 1983 Offshore was involved in a reorganisation?
32. If the answer to question 31 is yes:
- (a) What was the nature of the reorganisation?
 - (b) When did the reorganisation commence?
 - (c) What steps had been taken in relation to the reorganisation as at 2nd August, 1983?
 - (d) What steps remained to be taken in relation to the reorganisation subsequent to 2nd August, 1983?
 - (e) Was Lance informed of the reorganisation by Offshore during the course of any period of employment of Lance as a Consultant by Offshore? 30
 - (f) If the answer to question (e) above is yes:
 - (i) When was Lance so informed?
 - (ii) By whom was Lance so informed?

33. Did Lance have a belief that Offshore was involved in a reorganisation as at 2nd August, 1983?

34. If the answer to question 33 is yes:

- (a) When did Lance form the said belief?
- (b) What reorganisation did Lance believe Offshore was engaged in as at 2nd August, 1983?
- (c) How did Lance come to form the said belief?
- (d) Where was Lance when he formed the said belief?
- (e) Did Lance form the said belief during the course of his employment by Offshore in the capacity of a Consultant?
- (f) Did Lance have any conversation with Adler concerning the said belief?
- (g) If the answer to question (f) is yes, in relation to each and every such conversation with Adler:
- (i) When did the conversation take place?
- (ii) Where did the conversation take place?
- (iii) What was the substance and effect of the said conversation?
- (h) Did Lance have any conversation concerning the said belief with Boyer?
- (i) If the answer to question (h) is yes, in relation to each and every such conversation:
- (i) When did the conversation take place?
- (ii) Where did the conversation take place?
- (iii) What was the substance and effect of the conversation?

35. Did Lance have a belief as at 2nd August, 1983 that WA-64P may shortly thereafter be farmed out?

36. If the answer to question 35 is yes:

- (a) When did Lance form the said belief?
- (b) What were the facts and circumstances that led Lance to form the said belief?

- (c) Did Lance form the said belief during the course of his capacity as a Consultant to Offshore?
- (d) Did Lance learn of the facts and circumstances identified pursuant to question (c) above during the course of his employment as a Consultant to Offshore?
- (e) Did Lance have a conversation concerning the said belief at any time with Adler?
- (f) If the answer to question (e) above is yes, in relation to each and every such conversation:
 - (i) When did the said conversation take place? 10
 - (ii) Where did the said conversation take place?
 - (iii) What was the substance and effect of the said conversation?
- (g) Did Lance have a conversation with Boyer about the said belief at any time?
- (h) If the answer to question (g) above is yes, in relation to each and every such conversation:
 - (i) When did the conversation take place?
 - (ii) Where did the conversation take place?
 - (iii) What was the substance and effect of the said conversation? 20
- 37. Did Offshore intend to farm out WA-64P in the weeks following 2nd August, 1983?
- 38. It is the case, is it not, that had any intention of Offshore to farm out WA-64P in the weeks following 2nd August, 1983 been public knowledge, the market price of Offshore shares would have been enhanced?
- 39. It is the case, is it not, that Nationwide purchased approximately 5,574,000 Offshore shares on or about 28th July, 1983 from F.A.R. with the intention of reselling the same within the next few weeks thereafter. 30
- 40. It is the case, is it not, that Nationwide purchased approximately, 5,574,000 Offshore shares from F.A.R. on or about 28th July, 1983 in the belief that the market price of those shares would rise in the next few weeks thereafter?
- 41. It is the case, is it not, that Nationwide purchased approximately 5,574,000 Offshore shares from F.A.R. on or about 28th July, 1983 intending to resell the same at a profit?

42. It is the case, is it not, that on or about 4th August, 1983 Lance and Adler agreed that a quantity of approximately 5,574,000 Offshore shares purchased by Nationwide on or about 28th July, 1983 should be sold?
43. Did Adler or any person on his behalf have a conversation with Lance or any person on his behalf concerning the sale or proposed sale of any Offshore shares held by Nationwide upon any date between 28th July, 1983 and 4th August, 1983 (inclusive)?
- 10 44. If the answer to question 43 above is yes, in relation to each and every such conversation:
- (a) Who had the conversation on behalf of Adler?
 - (b) Who had the conversation on behalf of Lance?
 - (c) On what date did the conversation take place?
 - (d) At what time of day did the conversation take place?
 - (e) Where was the person, identified pursuant to question (a) above, at the time of the conversation?
 - (f) Where was the person, identified pursuant to question (b) above, at the time of the conversation?
 - 20 (g) Did the conversation take place by telephone or in person?
 - (h) What was the substance and effect of what was said in the conversation?
 - (i) Did either party to the conversation give the other any instructions?
 - (j) If the answer to question (i) above is yes, what was the substance and effect of the said instructions?
 - (k) Did either party to the said conversation give any advice to the other party to the conversation?
 - 30 (l) If the answer to question (k) above is yes, what was the substance and effect of the said advice?
 - (m) Did either party to the said conversation state any reasons for any decision for Nationwide to sell any Offshore shares?
 - (n) If the answer to question (m) above is yes, what was the substance and effect of the said reasons?

45. Did F.A.I. or any person on its behalf have conversation with Nationwide or any person on its behalf concerning the sale of any Offshore shares held by Nationwide between 28th July, 1983 and 4th August, 1983 (inclusive)?
46. If the answer to question 45 above is yes, in relation to each and every such conversation:
- (a) Who had the said conversation on behalf of F.A.I.?
 - (b) Who had the said conversation on behalf of Nationwide?
 - (c) On what date was the conversation held?
 - (d) At what time of day was the conversation held? 10
 - (e) Where was the person, identified pursuant to question (a) above, when the conversation was held?
 - (f) Where was the person, identified pursuant to question (b) above, when the conversation was held?
 - (g) Was the conversation by telephone or in person?
 - (h) What was the substance and effect of what was said in the said conversation?
 - (i) Did either party to the said conversation give the other any instructions?
 - (j) If the answer to question (i) above is yes, what was the substance and effect of the said instructions? 20
 - (k) Did either party to the said conversation give the other any advice?
 - (l) If the answer to question (k) above is yes, what was the substance and effect of the said advice?
 - (m) Did either party to the said conversation express any reasons for any decision for Nationwide to sell any Offshore shares?
 - (n) If the answer to question (m) above is yes, what was the substance and effect of the said reasons? 30
47. Did Ricdal or any person on its behalf have any conversation with Nationwide or any person on its behalf concerning the sale of any Offshore shares held by Nationwide between 28th July, 1983 and 4th August, 1983 (inclusive)?
48. If the answer to question 47 above is yes, in relation to each and every such conversation:

- (a) Who had the said conversation on behalf of Ricdal?
- (b) Who had the said conversation on behalf of Nationwide?
- (c) On what date was the conversation held?
- (d) At what time of day was the conversation held?
- (e) Where was the person, identified pursuant to question (a) above, when the conversation was held?
- (f) Where was the person, identified pursuant to question (b) above, when the conversation was held?
- (g) Was the conversation by telephone or in person?
- (h) What was the substance and effect of what was said in the said conversation? 10
- (i) Did either party to the said conversation give the other any instructions?
- (j) If the answer to question (i) above is yes, what was the substance and effect of the said instructions?
- (k) Did either party to the said conversation give the other any advice?
- (l) If the answer to question (k) above is yes, what was the substance and effect of the said advice?
- (m) Did either party to the said conversation express any reasons for any decision for Nationwide to sell any Offshore shares? 20
- (n) If the answer to question (m) above is yes, what was the substance and effect of the said reasons?
49. Did Trassyer or any person on its behalf have any conversation with Nationwide or any person on its behalf concerning the sale of any Offshore shares held by Nationwide between 28th July, 1983 and 4th August, 1983 (inclusive)?
50. If the answer to question 49 above is yes, in relation to each and every such conversation: 30
- (a) Who had the said conversation on behalf of Trassyer?
- (b) Who had the said conversation on behalf of Nationwide?
- (c) On what date was the conversation held?
- (d) At what time of day was the conversation held?

- (e) Where was the person, identified pursuant to question (a) above, when the conversation was held?
 - (f) Where was the person, identified pursuant to question (b) above, when the conversation was held?
 - (g) Was the conversation by telephone or in person?
 - (h) What was the substance and effect of what was said in the said conversation?
 - (i) Did either party to the said conversation give the other any instructions?
 - (j) If the answer to question (i) above is yes, what was the substance and effect of the said instructions? 10
 - (k) Did either party to the said conversation give the other any advice?
 - (l) If the answer to question (k) above is yes, what was the substance and effect of the said advice?
 - (m) Did either party to the said conversation express any reasons for any decision for Nationwide to sell any Offshore shares?
 - (n) If the answer to question (m) above is yes, what was the substance and effect of the said reasons? 20
51. Did Boyer or any person on his behalf have a conversation with Nationwide or any person on its behalf concerning the sale of any Offshore shares held by Nationwide between 28th July, 1983 and 4th August, 1983 (inclusive)?
52. If the answer to question 51 above is yes, in relation to each and every such conversation:
- (a) Who had the said conversation on behalf of Boyer?
 - (b) Who had the said conversation on behalf of Nationwide?
 - (c) On what date was the conversation held?
 - (d) At what time of day was the conversation held? 30
 - (e) Where was the person, identified pursuant to question (a) above, when the conversation was held?
 - (f) Where was the person, identified pursuant to question (b) above, when the conversation was held?
 - (g) Was the conversation by telephone or in person?

- 10
- (h) What was the substance and effect of what was said in the said conversation?
 - (i) Did either party to the said conversation give the other any instructions?
 - (j) If the answer to question (i) above is yes, what was the substance and effect of the said instructions?
 - (k) Did either party to the said conversation give the other any advice?
 - (l) If the answer to question (k) above is yes, what was the substance and effect of the said advice?
 - (m) Did either party to the said conversation express any reasons for any decision for Nationwide to sell any Offshore shares?
 - (n) If the answer to question (m) above is yes, what was the substance and effect of the said reasons?
- 20
53. Did International Investment Consultant Corporation or any person on its behalf have a conversation with Nationwide or any person on its behalf concerning the sale of any Offshore shares held by Nationwide between 28th July, 1983 and 4th August, 1983 (inclusive)?
54. If the answer to question 53 above is yes, in relation to each and every such conversation:
- (a) Who had the said conversation on behalf of International Investment Consultant Corporation?
 - (b) Who had the said conversation on behalf of Nationwide?
 - (c) On what date was the conversation held?
 - (d) At what time of day was the conversation held?
 - (e) Where was the person, identified pursuant to question (a) above, when the conversation was held?
 - 30 (f) Where was the person, identified pursuant to question (b) above, when the conversation was held?
 - (g) Was the conversation by telephone or in person?
 - (h) What was the substance and effect of what was said in the said conversation?
 - (i) Did either party to the said conversation give the other any instructions?

- (j) If the answer to question (i) above is yes, what was the substance and effect of the said instructions?
 - (k) Did either party to the said conversation give the other any advice?
 - (l) If the answer to question (k) above is yes, what was the substance and effect of the said advice?
 - (m) Did either party to the said conversation express any reasons for any decision for Nationwide to sell any Offshore shares?
 - (n) If the answer to question (m) above is yes, what was the substance and effect of the said reasons? 10
55. Did Weseman & Co. or any person on its behalf have a conversation with Nationwide or any person on its behalf concerning the said of any Offshore shares held by Nationwide between 28th July, 1983 and 4th August, 1983 (inclusive)?
56. If the answer to question 55 above is yes, in relation to each and every such conversation:
- (a) Who had the said conversation on behalf of Weseman & Co.?
 - (b) Who had the said conversation on behalf of Nationwide? 20
 - (c) On what date was the conversation held?
 - (d) At what time of day was the conversation held?
 - (e) Where was the person, identified pursuant to question (a) above, when the conversation was held?
 - (f) Where was the person, identified pursuant to question (b) above, when the conversation was held?
 - (g) Was the conversation by telephone or in person?
 - (h) What was the substance and effect of what was said in the said conversation?
 - (i) Did either party to the said conversation give the other any instructions? 30
 - (j) If the answer to question (i) above is yes, what was the substance and effect of the said instructions?
 - (k) Did either party to the said conversation give the other any advice?

- (l) If the answer to question (k) above is yes, what was the substance and effect of the said advice?
- (m) Did either party to the said conversation express any reasons for any decision for Nationwide to sell any Offshore shares?
- (n) If the answer to question (m) above is yes, what was the substance and effect of the said reasons?

10 57. Did Peak Nominees Pty. Limited or any person on its behalf have a conversation with Nationwide or any person on its behalf concerning the sale of any Offshore shares held by Nationwide between 28th July, 1983 and 4th August, 1983 (inclusive)?

58. If the answer to question 57 above is yes, in relation to each and every such conversation:

- (a) Who had the said conversation on behalf of Peak Nominees Pty. Limited?
- (b) Who had the said conversation on behalf of Nationwide?
- (c) On what date was the conversation held?
- (d) At what time of day was the conversation held?
- 20 (e) Where was the person, identified pursuant to question (a) above, when the conversation was held?
- (f) Where was the person, identified pursuant to question (b) above, when the conversation was held?
- (g) Was the conversation by telephone or in person?
- (h) What was the substance and effect of what was said in the said conversation?
- (i) Did either party to the said conversation give the other any instructions?
- (j) If the answer to question (i) above is yes, what was the substance and effect of the said instructions?
- 30 (k) Did either party to the said conversation give the other any advice?
- (l) If the answer to question (k) above is yes, what was the substance and effect of the said advice?
- (m) Did either party to the said conversation express any reasons for any decision for Nationwide to sell any Offshore shares?

(n) If the answer to question (m) above is yes, what was the substance and effect of the said reasons?

59. It is the case, is it not, that on or about 4th August, 1983 Nationwide sold approximately 5,574,000 Offshore shares, being shares it acquired on or about 28th July, 1983, for an average sale price of approximately 15 cents per share?

60. Did Nationwide sell any Offshore shares on or about 4th August, 1983?

61. If the answer to question 60 above is yes, in relation to each and every such sale:

(a) How many Offshore shares were sold?

(b) At what price or prices were the said shares sold?

(c) At what average price were the whole of the said shares sold?

(d) Were the said shares sold on a Stock Exchange?

(e) If the answer to question (d) above is yes, on what Stock Exchange were the said shares sold?

(f) Were the said shares sold through a stock and share broker?

(g) If the answer to question (f) is yes, through which stock and share broker were the said shares sold? 20

(h) To whom were the said shares sold?

62. It is the case, is it not, that Nationwide made a profit for itself in or about July and August, 1983 by purchasing approximately 5,574,000 Offshore shares on or about 28th July, 1983 and reselling the same on or about 4th August, 1983?

63. If the answer to question 62 above is yes, what profit was made by Nationwide by buying and selling the said shares?

64. It is the case, is it not, that Adler enriched himself by the purchase of approximately 5,574,000 Offshore shares by Nationwide on or about 28th July, 1983 and the resale of those shares on or about 4th August, 1983? 30

65. It is the case, is it not, that Lance enriched himself by the purchase of approximately 5,574,000 Offshore shares by Nationwide on or about 28th July, 1983 and the resale of those shares on or about 4th August, 1983?

66. It is the case, is it not, that F.A.I. enriched itself by the purchase of approximately 5,574,000 Offshore shares by Nationwide on or about 28th July, 1983 and the resale of those shares on or about 4th August, 1983?
67. It is the case, is it not, that F.A.R. was a wholly owned subsidiary of F.A.I. throughout the calendar months of July and August, 1983?
68. It is the case, is it not, that F.A.R. enriched its parent company by the sale of approximately 5,574,000 Offshore shares to Nationwide on or about 28th July, 1983?
69. It is the case, is it not, that F.A.R. enriched Adler by the sale of approximately 5,574,000 Offshore shares to Nationwide on or about 28th July, 1983?
70. It is the case, is it not, that on or about 10th August, 1983 Adler, in his capacity as Chairman of Directors of Offshore, announced a one-for-two renouncable rights issue of Offshore shares.
71. Did Offshore, by its Chairman of Directors or otherwise, announce any rights issue of Offshore shares on or about 10th August, 1983?
72. If the answer to question 71 above is yes, in relation to each and every such announcement:
- (a) Who made the said announcement?
 - (b) When was the said announcement made?
 - (c) What was the substance and effect of the said announcement?
 - (d) To whom was the said announcement made?
 - (e) In what form was the said announcement made?
 - (f) Was the said announcement or any part thereof recorded in writing?
 - (g) If the answer to question (f) above is yes, please identify that writing by reference to its number in any List of Documents filed in the present proceedings prior to the date of answering these Interrogatories?
73. Did Offshore resolve to make a one-for-two renouncable rights issue of its shares on or about 10th August, 1983?
74. If the answer to question 73 above is yes, in relation to each and every such resolution:

- (a) When was the resolution made?
- (b) What were the terms of the said resolution?
- (c) Was the resolution a resolution of a meeting of the Board of Directors of Offshore?
- (d) If the answer to question (c) above is yes, in relation to each and every such meeting of the Board of Directors of Offshore:

- (i) On what date did the meeting take place?
- (ii) Who was present at the Meeting?
- (iii) Were any minutes of the meeting brought into existence? 10
- (iv) If the answer to question (iii) above is yes, please identify the said minutes in any List of Documents filed in the present proceedings prior to the date of answering these Interrogatories.
- (v) Was a motion put to the said meeting proposing a rights issue?
- (vi) If the answer to question (v) above is yes, in relation to each and every such motion:

- A. Who proposed the said motion? 20
- B. What was the substance and effect of the proposed motion?
- C. Was the said motion seconded?
- D. If the answer to question C. is yes, who seconded the motion?
- E. Was the said motion put to the meeting?
- F. If the answer to question E. above is yes, was the motion voted for on by the meeting?
- G. If the answer to question F. above is yes, who voted for the motion and who voted against the motion? 30

75. Did Adler upon any date on or before 10th August, 1983 form an intention that Offshore should make a rights issue of its shares?
76. If the answer to question 75 above is yes, upon what date did Adler first form the said intention?

77. Did Adler upon any date on or before 10th August, 1983 form a belief that Offshore should make a rights issue of its shares?
78. If the answer to question 77 above is yes, upon what date did Adler first form any said belief?
79. It is the case, is it not, that Adler announced a one-for-two renouncable rights issue of Offshore shares on or about 10th August, 1983 with the intention of depressing the then current market price of Offshore shares on the Sydney Stock Exchange?
80. It is the case, is it not, that Adler announced a one-for-two renouncable rights issue of Offshore shares on or about 10th August, 1983 with the intention that such an announcement would prevent the then current market price for Offshore shares from rising?
81. Did Offshore announce a one-for-two renouncable rights issue of Offshore shares on or about 10th August, 1983 for any particular purpose?
82. If the answer to question 81 above is yes, for what purpose did Offshore announce a one-for-two renouncable rights issue on or about 10th August, 1983?
83. It is the case, is it not, that by an agreement made on or about 3rd June, 1982 between Southern Cross and F.A.R., 4,000,000 fully paid shares in Offshore were made the subject to a security for an advance of \$4,000,000.00 by F.A.R. to Southern Cross?
84. It is the case, is it not, that on 28th July, 1983 Southern Cross tendered to F.A.R. two bank cheques in the sum of \$4,000,000.00 by way of discharge of the capital debt under the agreement made on or about 3rd June, 1982 between Southern Cross and F.A.R. whereby 4,000,000 fully paid Offshore shares were made the subject of security for an advance of that sum?
85. It is the case, is it not, that on 28th July, 1983 F.A.R. rejected a tender of bank cheques to a total of \$4,000,000.00 by Southern Cross in discharge of the capital debt under the agreement between Southern Cross and F.A.R. dated 3rd June, 1982?
86. It is the case, is it not, that on 28th July, 1983 Southern Cross by its Counsel made an offer to the Supreme Court of New South Wales to pay into Court the sum of \$150,000.00 in relation to any possible outstanding claim for interest or costs under the agreement between Southern Cross and F.A.R. made on or about 3rd June, 1982?

In the Full Court

No.209 Exhibit "I"

Copy of set of Interrogatories

in N.S.W. Proceedings No.4254

of 1983 (cont'd)

87. It is the case, is it not, that on 28th July, 1983 there were proceedings before the Supreme Court of New South Wales in its Equity Division wherein Senior Counsel for Southern Cross sought against F.A.R. an Injunction to restrain the sale of 4,000,000 shares in Offshore by F.A.R.?

88. It is the case, is it not, that F.A.R. effected a sale of 4,000,000 shares in Offshore, being shares the subject of an agreement between Southern Cross and F.A.R. dated 3rd June, 1982, at or about 10.35 a.m. on that date?

89. It is the case, is it not, that proceedings before the Supreme Court of New South Wales in its Equity Division between Southern Cross and F.A.R. continued on Friday, 29th July, 1983?

10

90. It is the case, is it not, that Adler was present before the Supreme Court of New South Wales on 29th July, 1983 when proceedings No. 3803 of 1982 were being heard before Mr. Justice McLelland of that Honourable Court?

91. It is the case, is it not, that on or about September, 1982 Adler said to Ganke words to the effect: "In view of what you have done, I have no option but to destroy you and I will do everything possible to destroy you"?

20

92. It is the case, is it not, that Ganke is a Director of Brinds Limited, Gulf Resources N.L., Alexanders Securities Limited, Chapmans Limited, Northern Star Investments Pty. Limited, Hallmark Minerals N.L. and L.S.D. Holdings Limited?

93. It is the case, is it not, that Ganke and/or companies in which he is a shareholder or director are shareholders of Brinds Limited, Gulf Resources N.L., Alexanders Securities Limited, Chapmans Limited, Northern Star Investments Pty. Limited, Hallmark Minerals N.L. and L.S.D. Holdings Limited?

30

Look at the document annexed hereto and marked with the letter "B".

94. It is the case, is it not, that Annexure "B" hereto (excluding thereout the words "PS2" where the same appear on the top of the same document) is a true copy of a BUY order No. 21341 comprising part of the business records of Messrs. Norths, stock and share brokers?

95. It is the case, is it not, that the party referred to on Annexure "B" hereto as "Nationwide Resources" is Nationwide?

96. If the answer to question 95 above is no, who is the party referred to on Annexure "B" hereto as "Nationwide Resources"?

97. It is the case, is it not, that account No. 8412900 maintained by Messrs. Norths, stock and share brokers, is the account of Nationwide with that firm of stock and share brokers?
98. If the answer to question 97 above is no, whose account is the account No. 8412900 referred to in Annexure "B" hereto?
99. It is the case, is it not, that the person whose initials appear under the words "Taken By" where those words appear on Annexure "B" hereto, is Lance?
- 10 100. If the answer to question 99 is no, who is the person whose initials appear under the words "Take By" where the same appear on Annexure "B" hereto?
101. Who wrote the initials "D L" on the original document of which Annexure "B" is a copy, where the same appear under the words "Taken By" on that document?
102. At what time on what date were the initials "D L" written on the original document of which Annexure "B" is a copy, where the same appear under the words "Taken By" on that document?
- 20 Look at the document annexed hereto and marked with the letter "C".
103. It is the case, is it not, the Annexure "C" hereto is a true copy of a "SELL" Order No. 14322 dated 28th July, 1983 comprising part of the business records of Messrs. Norths, stock and share brokers?
104. If the answer to the question above is no, what is Annexure "C"?
105. It is the case, is it not, that the party referred to as "Fire & All Risks Insurance" on Annexure "C" hereto is F.A.R.?
- 30 106. If the answer to the preceding question is no, who is the party referred to as "Fire & All Risks Insurance" on Annexure "C" hereto?
107. Who is the holder of account No. 8405755 with Messrs. Norths, stock and share brokers?
108. Whose initials are those which appear under the words "Taken By" where the same appear on Annexure "C" hereto?
109. It is the case, is it not, that the initials "D L" where the same appear under the words "Taken By" on Annexure "C" are those of Lance?
110. At what time were the initials "D L" applied to the original

document of which Annexure "C" hereto is a copy, where the same appear under the words "Taken By" on the said document?

Look at the document annexed hereto and marked with the letter "D".

111. It is the case, is it not, that Annexure "D" hereto is a true copy of a memorandum from Lance to one John Fuller dated 28th July, 1983?

112. If the answer to the preceding question is no, what is Annexure "D" hereto?

113. Who is John Fuller?

10

114. Who is referred to by the word "We" on the face of Annexure "D"?

115. Did Lance marry a parcel of Offshore shares. on 28th July, 1983?

116. Did Lance participate in the "marriage" of a parcel of Offshore shares on 28th July, 1983?

117. If the answer to the preceding question is yes, in relation to each and every such marriage:

(a) What number of shares were married?

(b) Who was the seller of the shares?

20

(c) Who was the buyer of the shares?

(d) At what price were the shares married?

(e) At what time of day on 28th July, 1983 did the marriage take place?

(f) What steps were taken to effect the marriage?

(g) Were any business records brought into existence to record the marriage?

(h) If the answer to question(g) above is yes, please identify each and every such business record by reference to its number in any List of Documents filed in the present proceedings prior to the date of answering these Interrogatories?

30

118. Does the figure "10" where the same appears on Annexure "C, under the word "Time", mean that instructions to sell the shares made subject of that document were received at 10.00 a.m. on 28th July, 1983?

119. If the answer to the preceding question is no:
- (a) Were any instructions to sell the shares made subject of annexure "C" taken by the person whose initials appear under the words "Taken By" where the same appear on that document at any time on 28th July, 1983?
 - (b) If the answer to (a) above is yes, at what time of day on 28th July, 1983 were any such instructions received?
120. Does the figure "10" where the same appears under the word "Time" on Annexure "B" hereto indicate that at 10.00 a.m. on 28th July, 1983 the person whose initials appear under the words "Taken By" where the same appear on the said Annexure received instructions to buy the shares referred to in the said document?
121. If the answer to the preceding question above is no:
- (a) Did the person whose initials appear under the words "Taken By" on Annexure "B" hereto receive instructions to buy the shares made subject of Annexure "B" hereto at any time on or about 28th July, 1983?
 - (b) If the answer to question (a) above is yes, at what time on what date were any such instructions received?
122. To what do the numbers "10.26" refer where they appear on Annexure "C" hereto?
123. Who wrote the numbers "10.26" where the same appear on Annexure "C" hereto?
124. At what time of what day were the numbers "10.26" written on the original document of which Annexure "C" is a copy?
125. Did the person whose initials appear under the words "Taken By" where the same appears on Annexure "C" hereto receive instructions by telephone to sell the shares referred to in that document?
126. If the answer to the preceding question above is yes, in relation to any such instructions:
- (a) By whom were the said instructions given?
 - (b) To whom were the said instructions given?
 - (c) What was the substance and effect of the said instructions?
 - (d) On what date were the said instructions given?
 - (e) At what time of day were the said instructions given?

(f) Where was the person identified pursuant to (a) above at the time of giving the said instructions?

(g) Where was the person identified pursuant to (b) above at the time of receiving the said instructions?

(h) Did the parties identified pursuant to (a) and (b) above have any conversation on the occasion of the giving of the said instructions concerning any of the following topics:

(i) The current market value of Offshore shares?

(ii) The price at which any shares made subject of the instructions were to be sold? 10

(iii) The identity of any buyer or potential buyer of Offshore shares?

(iv) The possibility that Nationwide might buy Offshore's shares?

(v) The time by which any sale of Offshore shares should be completed?

(vi) The manner in which any such sale might be carried out?

(i) If the answer to question (h) above is yes, what was the substance and effect of any such conversation in relation to any of the said topics? 20

127. Did the person whose initials appear under the words "Taken By" where the same appears on Annexure "B" hereto receive instructions from any person to buy the shares made subject of that document?

128. If the answer to the preceding question is yes, in relation to each and every such instruction:

(a) By whom were the said instructions given?

(b) To whom were the said instructions given? 30

(c) What was the substance and effect of the said instructions?

(d) Upon what date were the said instructions given?

(e) At what time of day were the said instructions given?

(f) Where was the person identified pursuant to (a) above at the time of giving the said instructions?

- (g) Where was the person identified pursuant to (b) above at the time of receiving the said instructions?
- (h) Did the parties identified pursuant to (a) and (b) above have any conversation on the occasion of the giving of the said instructions concerning any of the following topics:
- (i) The current market value of Offshore shares?
 - (ii) The price at which any Offshore shares may be purchased?
 - (iii) The identity of any prospective seller of Offshore shares?
 - (iv) The possibility that F.A.R. might sell any Offshore shares?
 - (v) The date at which any such purchase should be carried out?
 - (vi) The time of day by which any such purchase should be carried out?
 - (vii) The price at which any such purchase may be carried out?
 - (viii) The manner in which the purchase may be carried out?
- (i) If the answer to question (h) above is yes, what was the substance and effect of any such conversation in relation to each such topic.

Look at the document annexed hereto and marked with the letter "E".

129. It is the case, is it not, that Annexure "E" hereto is a true copy of a Contract Note issued by Messrs. Norths, stock and share brokers, to F.A.R. in relation to the sale of 5,926,000 Offshore shares on 28th July, 1983?
130. If the answer to the preceding question above is no, what is Annexure "E"?
131. It is the case, is it not, that the total of 5,926,000 Offshore shares referred to in Annexure "E" under the words "total units" where the same appears on that document includes a quantity of approximately 5,574,000 Offshore shares sold by F.A.R. on that date as mortgagee purporting to exercise a power of sale?

132. Who was the purchaser of each of the shares referred to in Annexure "E" under the words "total units" where those words appear on that document?
133. To whom do the typed initials "D L" refer where the same appear on the Annexure "E" beneath the word "money" where the same appears on that document?
134. Whose initials appear on Annexure "E" hereto to the right of the initials "D L" where the same appear under the word "money" on the said Annexure?
135. To whom or what do the initials "D L" refer where the same appear on Annexure "E" on top of the words "First Tear Here" on the said Annexure? 10

Look at the document annexed hereto and marked with the letter "F".

136. It is the case, is it not, that the said Annexure "F" is a true copy of a "SELL" order No. 20815 comprising part of the business records of Messrs. Norths, stock and share brokers?
137. If the answer to the preceding question is no, what is Annexure "F" hereto?
138. Whose initials are those which appear under the words "Taken By" where the same appears on Annexure "F" hereto? 20
139. What do each of the hand written numbers appearing in or about the column headed "Units" on Annexure "F" hereto mean?
140. What do each of the hand written numbers appearing under the column headed "Security" on Annexure "F" hereto mean?
141. What do the numbers in the box headed "Phone" on Annexure "F" hereto mean?
142. What do the numbers in each of the columns under the heading "New Client" on Annexure "F" hereto mean?
143. Did any person given the person whose initials appear under the words "Taken By" where the same appear on Annexure "F" hereto any instructions on or about 4th August, 1983 to sell the shares made subject of Annexure "F" hereto? 30
144. If the answer to the preceding question above is yes, in relation to each and every such instruction:
- (a) By whom were the said instructions given?
 - (b) To whom were the said instructions given?
 - (c) What was the substance and effect of the said

instructions?

- (d) On what date were the said instructions given?
- (e) At what time of day were the said instructions given?
- (f) Where was the person identified pursuant to (a) above at the time of giving the said instructions?
- (g) Where was the person identified pursuant to (b) above at the time of receiving the said instructions?
- (h) Did the parties identified pursuant to (a) and (b) above have any conversation on the occasion of the giving of the said instructions concerning any of the following topics:

- (i) The current market value of Offshore shares?
- (ii) The price at which the shares made subject of Annexure "F" hereto may be sold?
- (iii) The day upon which the shares made subject of Annexure "F" hereto may be sold?
- (iv) The manner in which the shares made subject of Annexure "F" hereto may be sold?

- (i) If the answer to question (h) above is yes, what was the substance and effect of any such conversation in relation to any such topic?

145. To whom were the shares made subject of Annexure "F" hereto sold, if at all?

146. At what price or prices were the shares made subject of Annexure "F" hereto sold, if at all?

147. In what parcels, if any, were the shares made subject of Annexure "F" hereto sold, if at all?

Look at the document annexed hereto and marked with the letter "G".

148. It is the case, is it not, that the shares made subject of Annexure "G" hereto were purchased by Nationwide from F.A.R. on 28th July, 1983?

149. It is the case, is it not, that the shares made subject of Annexure "G" hereto were sold by F.A.R. on 28th July, 1983 purporting to exercise a power of sale as mortgagee?

150. It is the case, is it not, that 4,000,000 of the shares made subject of Annexure "G" hereto were shares owned by Southern

Cross and mortgaged to F.A.R. by an Instrument dated 3rd June, 1982?

Look at the document annexed hereto and marked with the letter "H".

151. It is the case, is it not, that Annexure "H" hereto is a Computer Print Out dated 9th August, 1983 particularising all trading in Offshore shares on the Sydney Stock Exchange from 1st June, 1983 to 8th August, 1983?
152. Did Messrs. Norths, stock and share brokers, transact any of the buy or sell transactions in Offshore shares recorded in Annexure "H" hereto? 10
153. If the answer to the preceding question is yes, please identify by reference to Annexure "H" each and every transaction in Offshore shares transacted by Messrs. Norths, stock and share brokers.
154. Did F.A.R. buy or sell any Offshore shares recorded in Annexure "H" hereto?
155. If the answer to the preceding question is yes, please identify by reference to Annexure "H" hereto each and every transaction therein appearing in which F.A.R. bought or sold any Offshore shares. 20
156. Did F.A.I. buy or sell any Offshore shares recorded in Annexure "H" hereto?
157. If the answer to the preceding question is yes, please identify by reference to Annexure "H" hereto each and every transaction therein appearing in which F.A.I. bought or sold any Offshore shares.
158. Did Adler buy or sell any Offshore shares recorded in Annexure "H" hereto?
159. If the answer to the preceding question is yes, please identify by reference to Annexure "H" hereto each and every transaction therein appearing in which Adler bought or sold any Offshore shares. 30
160. Did Nationwide buy or sell any Offshore shares recorded in Annexure "H" hereto?
161. If the answer to the preceding question is yes, please identify by reference to Annexure "H" hereto each and every transaction therein appearing in which Nationwide bought or sold any Offshore shares.
162. Did Lance buy or sell any Offshore shares recorded in Annexure "H" hereto?

163. If the answer to the preceding question is yes, please identify by reference to Annexure "H" hereto each and every transaction therein appearing in which Lance bought or sold any Offshore shares.

164. Did Ricdal buy or sell any Offshore shares recorded in Annexure "H" hereto?

165. If the answer to the preceding question is yes, please identify by reference to Annexure "H" hereto each and every transaction therein appearing in which Ricdal bought or sold any Offshore shares.

166. Did Trassyer buy or sell any Offshore shares recorded in Annexure "H" hereto?

167. If the answer to the preceding question is yes, please identify by reference to Annexure "H" hereto each and every transaction therein appearing in which Trassyer bought or sold any Offshore shares.

168. Did Boyer buy or sell any Offshore shares recorded in Annexure "H" hereto?

169. If the answer to the preceding question is yes, please identify by reference to Annexure "H" hereto each and every transaction therein appearing in which Boyer bought or sold any Offshore shares.

Look at the document annexed hereto and marked with the letter "J"

170. Is the author of that letter the same Lawrence J. Adler who is a Defendant in these proceedings?

Look at the document annexed hereto and marked with the letter "K".

171. It is the case, is it not, that the document annexed hereto and marked with the letter "K" is a true copy of the daily trading report of trading on the Sydney Stock Exchange in mining and oil shares up to close of business on Wednesday, 28th September, 1983 as published in The Sydney Morning Herald on or about 29th September, 1983?

172. It is the case, is it not, that on 28th September, 1983 714,300 Offshore shares were traded on the Sydney Stock Exchange at prices ranging from 16 cents per share to 17 cents per share, inclusive?

173. How many Offshore shares were sold on the Sydney Stock Exchange on each trading day from 28th July, 1983 to the date of answering these Interrogatories?

174. What was the closing price of Offshore shares on the Sydney Stock Exchange on each trading day from 28th July, 1983 to the date of answering these Interrogatories?
175. How many shares in Offshore were registered on the share register of Offshore pursuant to any form of transfer between 28th July, 1983 and the date of answering these Interrogatories?
176. It is the case, is it not, that Jackson, Graham, Moore & Partners, stock and share brokers, act in that capacity for Adler from time to time?
177. It is the case, is it not, that Jackson, Graham, Moore & Partners, stock and share brokers, act in that capacity for F.A.R. from time to time?
178. It is the case, is it not, that Jackson, Graham, Moore & Partners, stock and share brokers, act in that capacity for F.A.I. from time to time?

Look at the document annexed hereto and marked with the letter "L".

179. It is the case, is it not, that Annexure "L" hereto is a true copy of a report prepared by Jackson, Graham, Moore & Partners on Offshore dated 20th September, 1983? (Exhibit "PS11" to the Affidavit of Phillip Kevin Smith dated 29th September, 1983 in proceedings No. Co 13015).
180. It is the case, is it not, that Annexure "L" hereto was circularised to clients of Jackson, Graham, Moore & Partners on or about 20th September, 1983?
181. Who is "Tony Mackay"?
182. It is the case, is it not, that on or about 20th September, 1983 Jackson, Graham, Moore & Partners, after an exhaustive examination and valuation of Offshore shares, held the opinion that Offshore shares were most likely to achieve a value of 36.4 cents per share?
183. It is the case, is it not, that on or about 20th September, 1983 Jackson, Graham, Moore & Partners, after an exhaustive examination and valuation of Offshore, held the opinion that on the most pessimistic valuation the shares of Offshore would be 18 cents per share?
184. Did Adler have any communication with any partner or employee of Jackson, Graham, Moore & Partners upon any date in the 15 months preceding 20th September, 1983?
185. If the answer to the preceding question above is yes, in

relation to each and every such communication:

- (a) What was the date of the communication?
- (b) With whom on behalf of Jackson, Graham, Moore & Partners did Adler communicate?
- (c) Did the communication involve any conversation?
- (d) If the answer to question (c) above is yes, as to each and every such conversation:
- (i) Who were the parties to the conversation?
- (ii) When did the conversation take place?
- 10 (iii) Where were the parties at the time the conversation took place?
- (iv) What was the substance and effect of the conversation?
- (v) Did the conversation or any part thereof concern the true value of Offshore shares?
- (vi) If the answer to question (v) above is yes, what was the substance and effect of the conversation in relation to the true value of Offshore shares?
- 20 (e) If any such communication was in writing, please identify that writing by reference to its numbers of any List of Documents filed in the present proceedings prior to the date of answering these Interrogatories?

Look at the document annexed hereto and marked with the letter "M".

186. It is the case, is it not, that Annexure "M" hereto is a true copy of a report on the affairs of a Company known as Negri River Corporation Pty. Limited conducted after an investigation under Section 170(1) of the Companies Act, 1961 (N.S.W.)?

30 187. If the answer to the preceding question above is no, what is Annexure "M" hereto?

188. Is Lance the person referred to in Annexure "M" as David Harry Lance?

Look at the documents (comprising thirteen (13) pages) annexed hereto and marked with the letter "N".

189. It is the case, is it not, that the documents comprising Annexure "N" hereto are Contract Notes in relation to trading

by Nationwide in the shares of Negri River Corporation Limited?

190. It is the case, is it not, that during the period from about August, 1982 to about April, 1983 Adler participated in the trading of shares in Negri River Corporation Limited by means of the shareholding of F.A.I. in Nationwide?

191. It is the case, is it not, that during the period from about August, 1982 to about April, 1983 Adler enriched himself by means of the participation of Nationwide in trading in shares in Negri River Corporation Limited through Lance?

SCHEDULE I

In these Interrogatories,

"Adler" means "Lawrence James Adler"

"F.A.R." means "Fire and All Risks Insurance Company Limited"

"F.A.I." means "F.A.I. Insurances Limited"

"Offshore" means "Offshore Oil N.L."

"Nationwide" means "Nationwide Resources Pty. Limited"

"Lance" means "David Harry Lance"

"Offshore shares" means "shares in the issued share capital of Offshore Oil N.L."

"Trassyer" means "Trassyer Pty. Limited"

"Boyer" means "John Peter Boyer"

"Southern Cross" means "Southern Cross Exploration N.L."

"Ganke" means "Boris Andrew Ganke".

"Ricdal" means Ricdal Consultants Pty. Limited

In the Full Court
No.209 Exhibit "I"
Copy of set of Interrogatories
in N.S.W. Proceedings No.4254
of 1983 (cont'd)

- NOTE: [1] Annexure "H" to the Interrogatories is

the computer print-out of Offshore prices

on the Stock Exchange of Sydney and is also

Exhibit "PS 7" to the Affidavit of P. Smith

sworn 29th September, 1983.
- [2] Annexure "L" is Jackson's report on Offshore

which is also exhibit "PS 11" to Smith's

Affidavit of 29th September, 1983.
- [3] Annexure "M" is the N.S.W. Corporate Affairs

Report on Negri River Corporation.

THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

EQUITY DIVISION

No. 4254 of 1983

SOUTHERN CROSS EXPLORATION

N.L.

First Plaintiff

ALEXANDERS SECURITIES
LIMITED

Second Plaintiff

HAPMANS LIMITED

Third Plaintiff

ALEXANDERS DISCOUNTS
PTY. LIMITED

Fourth Plaintiff

VIVA HOLDINGS LIMITED

Fifth Plaintiff

FIRE AND ALL RISKS INSURANCE
COMPANY LIMITED

First Defendant

NATIONWIDE RESOURCES
PTY. LIMITED

Second Defendant

DAVID HARRY LANCE

Third Defendant

OFFSHORE OIL N.L.

Fourth Defendant

LAWRENCE ADLER

Fifth Defendant

SHORT MINUTES OF ORDER

By CONSENT

The Court makes the following orders:-

1. The Plaintiffs file and serve a Statement of Claim by 4 p.m. on 8 September 1983.
2. Any request for further particulars of the Statement of Claim be delivered by the defendants to the plaintiffs by 4 p.m. on 9 September 1983.
3. The defendants provide answers to any such request by 4 p.m. on 13 September 1983.
4. The defendants file statements of defence on or before 20 September 1983.
5. Each party give discovery by filing and serving a verified List of Documents in accordance with the Supreme Court Rules on or before 4 October 1983.
6. Inspection be given by all parties of discovered documents by 18 October 1983.
7. Appoint 25 October 1983 before the Registrar for return of subpoenas issued by any party.
8. Interrogatories to be administered on or before 1 November 1983.
9. Answers to interrogatories to be provided on or before 15 November 1983.
10. The proceedings be further mentioned on *17th November, 1983 at 9.30 a.m.*
11. Liberty to any party to apply *before* on 3 days notice.
12. Costs reserved.

Justice Waddell

DAWSON WALDRON
Solicitors
10 Martin Place
SYDNEY. N.S.W. 2000
T.X. 355

IN THE SUPREME COURT
OF VICTORIA
FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS PTY. LTD.,
HALLMARK MINERALS and L.S.D. HOLDINGS
LIMITED

Appellants

10

- and -

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

Respondents

A F F I D A V I T

I, DANNY MELECH UNGAR of 376 Alma Road, Caulfield in the State of Victoria,
Articled Clerk, MAKE OATH AND SAY AS FOLLOWS:-

20

1. I crave leave to refer to the Affidavit of Phillip Kevin Smith in these proceedings sworn the 17th day of October, 1983 and filed herein.
2. NOW produced and shown to me and marked with the letter "A" is a true copy of a letter dated 17th October, 1983 from Godfrey and Godfrey Solicitors for the Appellants herein addressed to Messrs. Mallesons, Solicitors for the Respondents herein which I personally delivered on that day.

(continued)

3. NOW produced and shown to me and marked with the letter "B" is a true copy of the letter in reply from Mallesons dated 18th October, 1983.

4. NOW produced and shown to me and marked with the letters "C1-3" are true copies of letters all dated 21st October, 1983 from Godfrey and Godfrey addressed to Mallesons which I personally delivered on that day.

5. NOW produced and shown to me and marked with the letter "D" is a true copy of the letter in reply from Mallesons dated 25th October, 1983.

10

SWORN at Melbourne by the said
DANNY MELECH UNGAR the 3rd
day of November, 1983.

)
) D. UNGAR
)
)
)

Before Me:

T. E. REILLY
.....
A Commissioner of the Supreme Court of Victoria
for taking Affidavits.

In the Full
Court

No.211
Affidavit
of Danny
Melech Ungar
dated 3rd
November
1983

(continued)

IN THE SUPREME COURT

OF VICTORIA

FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKER
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED
NORTHERN STAR INVESTMENTS, PTY. LTD.
HALLMARK MINERALS N.L. and L.S.D.
HOLDINGS LIMITED Appellants

and

OFFSHORE OIL N.L. MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE
INSURANCE COMPANY LIMITED and
JACKSON GRAHAM MOORE AND PARTNERS
(a firm) Respondents

A F F I D A V I T

Deponent: Danny Melech Ungar

Sworn: 3/11/83

GODFREY & GODFREY,
Solicitors,
358 Lonsdale Street,
MELBOURNE. VIC. 3000

Tel: 67 2547

Ref: 663/83 WRH:

No.212
EXHIBIT "A"
COPY OF LETTER FROM GODFREY AND GODFREY
SOLICITORS TO MALLESONS SOLICITORS

G63/83 MRH/BA

17th October, 1983.

Messrs. Mallesons,
Solicitors,
121 William Street,
MELBOURNE, 3000.

Dear Sirs,

RE: Brinds Limited and Offshore Oil N.L.

We refer to the recent Order of the Full Court whereby it was ordered that affidavits about the new evidence relied upon be filed by today.

10 The affidavits already filed contain such evidence as we currently possess.

We also serve herewith Interrogatories, the answers to which are essential for the proof of the Appellant's case. It would be appreciated if you could let us have the answers to the questions within the next seven days.

We will also be serving upon you copies of Subpoenas to produce documents directed to persons who are not parties to the proceedings. For the most part the persons' subpoenaed are either Stock Exchanges or Stockbrokers.

20 On previous occasions when such subpoenas were served on stockbrokers it was noted that Messrs. Dawson Waldron and Company who act for FAI Limited also acted for the stockbrokers concerned.

Our clients have a sincere desire to produce before the Full Court all necessary evidence to enable the issues to be determined.

Whilst recognizing that there is no obligation on the part of your clients either to answer the Interrogatories or to procure the production of documents particularly by persons who are not parties to the proceedings, we do invite your co-operation and assistance in obtaining the necessary evidence.

30 These Interrogatories are necessarily limited at this stage because Discovery has not yet occurred in accordance with the time table set down by the Supreme Court of New South Wales in the action No. 4254 of 1983 - Southern Cross Exploration N.L. and Ors. v. Fire and All Risks Insurance Co. Ltd.

In fact, Discovery will occur in accordance with that time table tomorrow. We anticipate that volume 2 of the Interrogatories will be served at some time as soon as possible after Discovery.

17th October, 1983.

In the Full
Court

No.212
Exhibit "A"
Copy of
letter from
Godfrey and
Godfrey
Solicitors to
Mallesons
Solicitors
dated 17th
October
1983

The Subpoenas which are to be issued out of the Supreme Court of New South Wales are returnable before the Court on the 25th October. We anticipate that the documents produced pursuant to those Subpoenas will be the subject of further Interrogatories and an Application to the Full Court to permit evidence of same to be produced before it on the present application will be made.

It is also intended to interrogate Mr. Adler on his reported statement contained in Business Review Weekly in the issue for 15th to 21st October 1983 where he is alleged to have stated that he was not a seller of Offshore shares at current prices but if he was offered say \$2.00 a share then he would have to give it serious consideration and that basically he was very satisfied with the prospects that Offshore has.

10

(continued)

Yours truly,

GODFREY AND GODFREY

In the Full
Court

No.212
Exhibit "A"
Copy of
letter from
Godfray and
Godfrey
Solicitors
to Mallesons
Solicitors
dated 17th
October
1983

"A"

(continued)

This is the Exhibit marked with the letter "A" referred to
in the Affidavit of DANNY MELECH UNGAR sworn the 3rd
day of November, 1983.

Before Me:

..... T.E. REILLY

A Commissioner of the Supreme Court of Victoria for taking Affidavits.

MALLESONS

SOLICITORS & NOTARIES

PETER CAMPBELL TRUMBLE
WILLIAM GERSON SMITH
ROY ERNEST PICKER
BERNARD JAMES WALTER
CHARLES KELLOW McMILLAN
DAVID ANTHONY WALSH
GRAMHAM JOHN FREDERICK DETHRIDGE
RICHARD EDWARD NELSON
IAN ANDREW MURRAY
MATTHEW JOHN WALSH
THOMAS EDWARD BOSTOCK
ANTHONY PETER JOHN KELLY
DONALD LATIMER BROOKER
JOHN DAVID BAYFORD WELLS
JAMES WILLIAM ANTONY HIGGINS
RICHARD ANDREW LABBURY
ROBIN DENIS VAGUE
DAVID BRUCE BRETHERTON
ANTHONY HAROLD ROSS BORDER
GREGORY DAVID MUNN
HUGH ALEXANDER SCOTT-MACKENZIE
CHRISTOPHER MARTIN SEENY
PETER FOX
GERALD LIVINGSTON JOHN RYAN
ANTHONY MICHAEL D'ALOISIO
CHARLES MICHAEL SCERRI

No.213
EXHIBIT "B"
COPY OF LETTER IN REPLY

SENIOR ASSOCIATES
JOHN McDONALD CURTIS
PAMELA MOREY-NADE
WARWICK JOHN STEWART ISHERWOOD
FRANCIS CAREW O'BRIEN
ROWAN JOHN KENNEDY
TIMOTHY EDWARD DOUGLAS HAMMON
DAVID BRUCE MOORE
BERNARD FRANCIS SHINNERS
JOHN CHESTER HANBLY
ANDREW WARNER ERIKSON

CONSULTANTS
ROY JAMES McARTHUR CBE
ROSS MORTON MACDONALD
MAXWELL RUPERT HAM
COLIN CAMPBELL TRUMBLE

ST JAMES BUILDING
121 WILLIAM STREET
MELBOURNE VICTORIA
AUSTRALIA 3000

TELEGRAPHIC & CABLE ADDRESS
MALLESONS MELBOURNE

TELEX AA30091
FAX GROUPS 1 & 2 014 1528
GROUP 3 014 1529
AUSDOC 101

TELEPHONE
AUSTRALIA 031 82 0761
INTERNATIONAL + 613 82 0761

YOUR REF
OUR REF PJH:JWH

18th October 1983

Messrs Godfrey & Godfrey
Solicitors
358 Lonsdale Street
MELBOURNE 3000

Dear Sirs,

Brinds Limited ("the Brinds proceedings")

We refer to your letter of 17th October 1983 and our telephone conversation today with Mr Ungar of your office.

Pursuant to the Orders of the Full Court made on Monday 10th October 1983 you served upon us yesterday the Affidavit of Phillip Kevin Smith sworn 17th October 1983 and exhibits thereto being:-

"T1" - various telexes; and

"I" - interrogatories in respect of proceedings in New South Wales between (inter alia) Southern Cross Exploration N.L. and (inter alia) Fire and All Risks Insurance Company Limited ("the New South Wales proceedings").

We should point out that our instructions are confined solely to acting in connection with the Brinds proceedings; we are neither concerned in the New South Wales proceedings nor do we act in the New South Wales proceedings as agents for Messrs. Dawson Waldron.

Therefore the statement contained in the third paragraph of your letter, namely, "we also serve herewith interrogatories..." is in our opinion misconceived. No interrogatories as such were served nor do we have any instructions to accept service of interrogatories in respect of the New South Wales proceedings. Accordingly, we have no instructions to accept service either of volume 2 of the interrogatories foreshadowed in the ninth paragraph of your letter or of the further interrogatories which you refer to in the tenth paragraph of your letter.

Received 11/10/83
12/10/83

10

20

30

In the Full Court

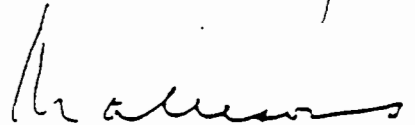
No.213 Exhibit "B"

Copy of letter in reply

dated 18th October 1983 (cont'd)

For the reasons already stated, we do not have any instructions to accept service of the subpoenae duces tecum referred to in the fourth paragraph of your letter.

Yours faithfully, JH.

A handwritten signature in cursive script, appearing to read "H. Allen".

In the Full Court

No. 213
Exhibit "B"
Copy of letter
in reply
dated 18th
October 1983

"B"

(continued)

This is the Exhibit marked with the letter "B" referred to
in the Affidavit of DANNY MELECH UNGAR sworn the 3^d
day of November, 1983.

Before Me:

..... T.E. REILLY

A Commissioner of the Supreme Court of Victoria for taking Affidavits

No.214
EXHIBIT "C 1"
COPY OF LETTER DATED 21ST OCTOBER 1983
FROM GODFREY AND GODFREY TO MALLESONS

GODFREY AND GODFREY

SOLICITORS

MITCHELL HOUSE
358 LONSDALE STREET, MELBOURNE
TELEPHONE *67-3684

GEORGE GODFREY
1845 - 1922

ERNEST M. GODFREY
1889 - 1939

HERBERT C. GODFREY
1896 - 1947

ARTHUR GODFREY
1922 - 1984

F. J. R. HUNT, B.A., LL.B.
SOLICITOR

CONSULTANTS:

WM. R. HUNT, M.A., LL.B.
F. D. N. GREWCOCK

YOUR REF. PJH/JWH
OUR REF. G63/83 WAH:RS

21st October, 1983.

Messrs. Mallesons,
Solicitors,
121 William Street,
MELBOURNE, 3000.

BY HAND

Dear Sirs,

re: Brinds Ltd.

We thank you for your letter of 18th inst.

10 We appreciate that the situation is unusual,
and point out that the Full Court is being asked to
consider as new evidence material which is in fact
the subject of proceedings before the Supreme Court
of New South Wales.

As we stated in our letter, of 17th inst. there
is of course no direct obligation on the part of your
clients to co-operate in providing the material which
is sought by the interrogatories and the subpoenas
which have been delivered to you.

20 However, in the unusual circumstances, it is our
obligation to place before the Full Court all the
material upon which we rely to establish the likelihood
that the evidence will be accepted and that it is
accurate and that it would have a material effect upon
the Appeal.

30 Since most of the evidence will in due course be
obtained in New South Wales upon interrogatories and
subpoenas, there does not appear to be any real objections
to seeking co-operation and assistance from you and your
clients in providing now the answers to the interrogatories
and the documents sought by the subpoenas so that we may
fairly present our clients' case to the Full Court in
Victoria.

It is in these circumstances that we are unable
to appreciate the significance of the third paragraph
of your letter wherein you point out you are neither
concerned with the New South Wales proceedings nor act
in the New South Wales proceedings as agents for Messrs.
Dawson Waldron.

In the Full
Court

No.214
Exhibit "C 1"
Copy of letter
dated 21st
October 1983
from Godfrey
and Godfrey
to Mallesons

We accept the validity of your statement but would respectfully point out the issues before the Full Court in Victoria happen to be in part identical with the issues in New South Wales. It is for this reason that we seek to place before the Full Court in Victoria the same evidence that will ultimately be placed before the Supreme Court in New South Wales.

Your co-operation and assistance in this respect will accordingly be greatly appreciated.

(continued)

Yours truly,

.....
GODFREY and GODFREY.

In the Full
Court

No.214
Exhibit "C 1"
Copy of letter
dated 21st
October 1983
from Godfrey
and Godfrey
to Mallesons

"C1"

(continued)

This is the Exhibit marked with the Letter "C1" referred to in
the Affidavit of DANNY MELECH UNGAR sworn the 3rd day
of November, 1983.

Before Me:

..... T. E. REILLY

A Commissioner of the Supreme Court of Victoria for taking Affidavits.

No.214
EXHIBIT "C 2"
COPY OF LETTER DATED 21ST OCTOBER 1983
FROM GODFREY AND GODFREY TO MALLESONS

PJH/JWH
663/83 WRH:AM

21st October, 1983

Messrs. Mallesons,
Solicitors,
121 William Street,
MELBOURNE. VIC. 3000

Dear Sirs,

Re: Brinds Ltd. (Appeal to the Full Court)

We refer to our letter to you of 17th October, 1983.

We now enclose copies of Subpoenas to produce documents directed to persons who are not parties to the proceedings.

We repeat our invitation to you to co-operate and assist us in obtaining all necessary evidence to enable the issues to be determined before the Full Court.

10

Enclosed also herewith is a Notice of Withdrawal by LSD Holdings Ltd. as an Appellant in this Appeal.

We note that LSD Holdings Ltd. was not a party to the two Notices of Motion dated respectively the 29th day of September, 1983 and the 10th day of October, 1983.

Yours faithfully,

GODFREY AND GODFREY

Per:

20

Enc.

In the Full
Court

No.214
Exhibit "C 2"
Copy of letter
dated 21st
October 1983
from Godfrey
and Godfrey
to Mallesons

(continued)

"C2"

This is the Exhibit marked with the letter "C2" referred to
in the Affidavit of DANNY MELECH UNGAR sworn the 3rd day
of November, 1983.

Before Me:

..... T. E. REILLY

A Commissioner of the Supreme Court of Victoria for taking Affidavits.

In the Full
Court

No.214
Exhibit "C 3"
Copy of letter
dated 21st
October 1983
from Godfrey
and Godfrey
to Mallesons

No.214
EXHIBIT "C 3"
COPY OF LETTER DATED 21ST OCTOBER 1983
FROM GODFREY AND GODFREY TO MALLESONS

FJH/JMH

53/83 WRH:RS

21st October, 1983,

Messrs. Mallesons,
Solicitors,
121 William Street,
MELBOURNE, 3000.

Dear Sirs,

re: Brinds Ltd.

We refer to our letter to you of 17th October,
1983. We regret that we omitted to serve you with
three annexures to the interrogatories and enclose
them herewith:-

- (1) Annexure "H" to the interrogatories
is the computer print-out of Offshore
prices on the Stock Exchange of Sydney
and is also exhibit "PS 7" to the
Affidavit of P. Smith sworn 29th September,
1983.
- (2) Annexure "L" is Jackson's report on
Offshore which is also exhibit "PS 11"
to Smith's Affidavit of 29th September, 1983.
- (3) Annexure "M" is the N.S.W. Corporate
Affairs Report on Neppi River Corporation.

Yours truly,

.....
GODFREY and GODFREY

Encs3

In the Full
Court

No.214
Exhibit "C 3"
Copy of letter
dated 21st
October 1983
from Godfrey
and Godfrey
to Mallesons

(continued)

"C3"

This is the Exhibit marked with the letter "C3" referred to in
the Affidavit of DANNY MELECH UNGAR sworn the 3rd day
of November, 1983.

Before Me:

..... T.E. REILLY

A Commissioner of the Supreme Court of Victoria for taking Affidavits.

MALLESONS

SOLICITORS & NOTARIES

PETER CAMPBELL TRUMBLE
 WILLIAM GERSON SMITH
 ROY ERNEST RICKES
 BERNARD JAMES WALTER
 CHARLES KELLOW McMILLAN
 DAVID ANTHONY WALEY
 GRAMAM JOHN FREDERICK OETHRIDGE
 RICHARD EDWARD NELSON
 IAN ANDREW MURRAY
 MATTHEW JOHN WALSH
 THOMAS EDWARD SOSTOCK
 ANTHONY PETER JOHN KELLY
 DONALD LATIMER BROOKER
 JOHN DAVID BAYFORD WELLS
 JAMES WILLIAM ANTHONY HIGGINS
 RICHARD ANDREW LABURY
 ROBIN DENIS YAGUE
 DAVID BRUCE BRETHERTON
 ANTHONY HAROLD ROSS GORBER
 GREGORY DAVID MUNN
 HUGH ALEXANDER SCOTT-MACKENZIE
 CHRISTOPHER MARTIN BEENY
 PETER FOX
 GERALD LIVINGSTON JOHN RYAN
 ANTHONY MICHAEL D ALDISIO
 CHARLES MICHAEL SCERRI

SENIOR ASSOCIATES
 JOHN McDONALD CURTIS
 PAMELA MOREY-NADE
 WARWICK JOHN STEWART FISHERWOOD
 FRANCIS CAREW O'BRIEN
 ROWAN JOHN KENNEDY
 TIMOTHY EDWARD DOUGLAS HAMMON
 DAVID BRUCE MOORE
 BERNARD FRANCIS SHINNERS
 JOHN CHESTER HAMBELT
 ANDREW WARNER ERIKSON

CONSULTANTS
 ROY JAMES McARTHUR CBE
 ROSS MORTON MACDONALD
 MAXWELL RUPERT HAN
 COLIN CAMPBELL TRUMBLE

No.215
 EXHIBIT "D"
 COPY OF LETTER IN REPLY

57 JAMES BUILDING
 121 WILLIAM STREET
 MELBOURNE VICTORIA
 AUSTRALIA 3000

TELEGRAPHIC & CABLE ADDRESS
 MALLESONS MELBOURNE

TELE: AA30831
 FAX: GROUPS 1 & 2 614 1824
 GROUP 3 614 1328
 AUSDOC 101

TELEPHONE
 AUSTRALIA (03) 62 0761
 INTERNATIONAL + 613 62 0761

YOUR REF G63/83 WRH:RS
 C.C.F. REF PJE:JWH

BY HAND

October 25, 1983

Messrs. Godfrey & Godfrey,
 Solicitors,
 358 Lonsdale Street,
MELBOURNE. VIC. 3000

AUSDOC
 HAND DELIVERY

Dear Sirs,

Brinds Limited

We acknowledge receipt of your three letters of 21st
 October, 1983.

Yours faithfully,

Mallesons

In the Full
Court

No.215
Exhibit "D"
Copy of
letter in
reply
dated 25th
October 1983

"D"

(continued)

This is the Exhibit marked with the letter "D" referred to in
the Affidavit of DANNY MELECH UNGAR sworn the 3rd day
of November, 1983.

Before Me:

..... T. E. REILLY

A Commissioner of the Supreme Court of Victoria for taking Affidavits.

IN THE SUPREME COURT
OF VICTORIA
FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS PTY. LTD.,
HALLMARK MINERALS and L.S.D. HOLDINGS
LIMITED

Appellants

10

- and -

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

Respondents

AFFIDAVIT

I, DANNY MELECH UNGAR of 376 Alma Road, Caulfield in the State of Victoria
Articled Clerk, MAKE OATH AND SAY AS FOLLOWS :-

20

1. On the 7th day of November, 1983 I spoke by telephone to Mr. Ian Brown of Court Recording Services Pty. Ltd. (hereinafter called "C.R.S."). I requested him to provide Godfrey and Godfrey, Solicitors for the Appellants herein, with an unedited copy of the transcript of the original tape recording of the Judgment of His Honour Mr. Justice Tadgell made on the 5th day of May, 1983. He informed me and I verily believe that C.R.S. no longer has custody of the said transcript but still has custody of the original

tape recording. I was then informed by Mr. Brown and verily believe that the transcript provided by C.R.S. to Godfrey and Godfrey on the 26th day of May, 1983 was a much revised version of the Judgment delivered by His Honour on the 5th day of May, 1983. Now produced and shown to me and marked "E" is a true copy of receipt of the revised Judgment by Godfrey and Godfrey on that date. Mr. Brown then informed me that if I obtained permission from His Honour's Associate, Mr. Mackinlay, he (Brown) would allow me to listen to a replay of the original tape recording at the premises of C.R.S.

10

2. On the 9th day of November, 1983 in the morning I attended on the said Mr. Mackinlay, at his office and asked that permission be granted to C.R.S. to enable me to listen to the said recording. In my presence Mr. Mackinlay rang Mr. Brown and said that he would permit C.R.S. to allow me to listen to it. Mr. Mackinlay then told me and I verily believe that Mr. Brown had replied that he now required the permission of His Honour Mr. Justice Tadgell.

20

3. Mr. Mackinlay then entered His Honour's room and soon returned and told me that His Honour would not grant permission for me to listen to the said original tape recording because His Honour did not think that it was a good idea because he had changed his mind on a few issues.

SWORN at Melbourne on the
day of November, 1983 by the said
DANNY MELECH UNGAR.

)
)
)
)
)
)
)

Before Me:

T. E. REELLY
.....
A Commissioner of the Supreme Court of
Victoria for taking Affidavits.

In the Full
Court

No.216
Affidavit of
Danny Melech
Ungar
dated 10th
November
1983

(continued)

IN THE SUPREME COURT
OF VICTORIA
FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS, PTY. LTD.,
HALLMARK MINERALS N.L. and L.S.D.
HOLDINGS LIMITED Appellants

and

OFFSHORE OIL N.L. MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE
INSURANCE COMPANY LIMITED and
JACKSON GRAHAM MOORE AND PARTNERS
(a firm) Respondents

A F F I D A V I T

Deponent: Danny Melech Ungar
Sworn: 10/11/83

GODFREY & GODFREY,
Solicitors,
358 Lonsdale Street,
MELBOURNE. VIC. 3000

Tel: 67 2547

Ref: G63/83 WRH: AM

ORDER FOR TRANSCRIPT AND/OR RECORDING

ON 83/122

C

COURT RECORDING SERVICES PTY. LTD.

63 Kingsway, South Melbourne, 3205. Telephone 61 3541
Correspondence to : P.O. Box 131, South Melbourne, 3205.

URGENT

*Attacker
Mr N.R. HUNT
3rd Floor*

Date of Order 6/5/83 Court Supreme Operator

Case RE BRINDOS LTD (in liq.)

Before His Honour TROGELL J.

Name of Counsel

Instructing Solicitor (Firm's Name)

Address Telephone 675694

..... Record only.

..... Copies of Full Transcript.

..... Copies of Evidence only. Date of Evidence Required

..... Copies of all Submissions only. Date of Submissions Required

1 Copies of Blurred Judgment/Charge. Date of Judgment/Charge delivered. 5/5/83

(Judgment and Charge to Juries not available until revised by Judge concerned)

RATE AND BASIS OF CHARGE:

As per Victorian Government Gazette - Evidence Act.

I/we the above-named instructing Solicitor/s in consideration of Court Recording Services Pty. Ltd. performing and carrying out this order for the taking and providing the above number of copies of transcript required hereby agree personally to pay the cost of the same to Court Recording Services Pty. Ltd. on delivery of the completed number of copies of the transcript, but if the hearing of the case shall extend beyond five days (excepting Saturdays, Sundays and public holidays) then payment shall be made on a weekly basis according to the work done relative to the transcript during each such week involved. If within a period of thirty (30) days from the date of each invoice payment is not received by the above company, I/we agree to pay an accounting charge representing 2 1/2% per month on the above outstanding monies.

Signature of Person Ordering Transcript and/or Executing [Signature]

For: GOFFREY & GOFFREY
(name of Principal or Firm)
358 LANSDALE ST.

Delivered/Collected/Posted

Number of Pages 91

I hereby certify that I have received the above Transcript.
Signed [Signature] Date 26/5/83

In the Full
Court

No.217
Exhibit "E"
Copy of receipt
of Revised
Judgment
dated 26th May
1983

"E"

(continued)

This is the Exhibit marked with the Letter "E" referred
to in the Affidavit of DANNY MELECH UNGAR sworn the
day of November, 1983.

Before Me: T.E. REILLY

.....
A Commissioner of the Supreme Court of Victoria for taking Affidavits

ORDER FOR TRANSCRIPT AND/OR RECORDING

ON 83/122

C

COURT RECORDING SERVICES PTY. LTD.

63 Kingsway, South Melbourne, 3205. Telephone 61 3541
Correspondence to : P.O. Box 131, South Melbourne, 3205.

URGENT

*Attention
Mr N.R. HUNT
3rd Floor*

Date of Order 6/5/83 Court Supreme Operator

Case RE BRINDOS LTD (in liq)

Before His Honour TADGELL J.

Name of Counsel

Instructing Solicitor (Firm's Name)

Address

Telephone 675694

- Record only.
- Copies of Full Transcript.
- Copies of Evidence only. Date of Evidence Required
- Copies of all Submissions only. Date of Submissions Required
- 1 Copies of ~~Judgment~~ ^{Charge} ~~Charge~~. Date of Judgment/ Charge delivered. 5/5/83

(Judgment and Charge to Juries not available until revised by Judge concerned)

RATE AND BASIS OF CHARGE: As per Victorian Government Gazette - Evidence Act.

I/we the above-named instructing Solicitor/s in consideration of Court Recording Services Pty. Ltd. performing and carrying out this order for the taking and providing the above number of copies of transcript required hereby agree personally to pay the cost of the same to Court Recording Services Pty. Ltd. on delivery of the completed number of copies of the transcript, but if the hearing of the case shall extend beyond five days (excepting Saturdays, Sundays and public holidays) then payment shall be made on a weekly basis according to the work done relative to the transcript during each such week involved. If within a period of thirty (30) days from the date of each invoice payment is not received by the above company, I/we agree to pay an accounting charge representing 2 1/2% per month on the above outstanding monies.

Signature of Person Ordering Transcript and/or Recording [Signature]

For : GOFFREY & GOFFREY (name of Principal or Firm)
358 LANSDALE ST.

Delivered/Collected/Posted

Number of Pages 91

I hereby certify that I have received the above Transcript.
Signed [Signature] Date 26/5/83

In the Full
Court

No.217
Exhibit "E"
Copy of receipt
of Revised Judgment
dated 26th May
1983

"E"

(continued)

This is the Exhibit marked with the Letter "E" referred
to in the Affidavit of DANNY MELECH UNGAR sworn the
day of November, 1983.

Before Me:

J. E. REILLY

.....
A Commissioner of the Supreme Court of Victoria for taking Affidavits

IN THE SUPREME COURT)
OF VICTORIA)
IN THE FULL COURT)

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

BETWEEN :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
and NORTHERN STAR INVESTMENTS PTY. LIMITED,
HALLMARK MINERALS N.L. and L.S.D. HOLDINGS
LIMITED

10

Appellants

and

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

Respondents

SIXTH AFFIDAVIT OF PHILLIP KEVIN SMITH

On the 11th day of November, 1983 I PHILLIP KEVIN SMITH of 130 Phillip Street, Sydney, Solicitor, make oath and say as follows :-

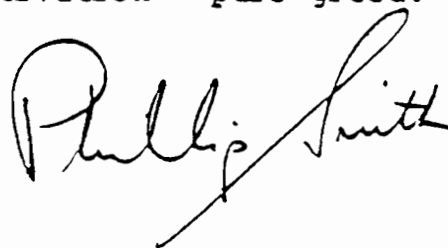
1. On Thursday evening, 20th October, 1983 from about 5.30 p.m. onwards, I attended a Seminar in the Auditorium of the Angel House in Sydney, organised by the Securities Institute of Australia at which Mr. Lawrence James Adler was guest speaker.
2. At the conclusion of the talk given by Mr. Adler, the chairman of the Seminar extended an invitation to the audience to put questions to Mr. Adler. 10
3. One member of the audience asked a question to the following effect :

"Why did your F.A.I. Group enter the retailing industry and in particular the Waltons Bond Department Store operation?"

Mr. Adler replied with these words :-

"We have a very simple motivation - pure greed."

SWORN by the Deponent)
Before me :-)



A Solicitor of the Supreme Court of New South Wales

In the Full Court

No.218

Sixth Affidavit of Phillip
Kevin Smith dated 11th November
1983 (cont'd)

IN THE SUPREME COURT

OF VICTORIA

FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS, PTY. LTD.,
HALLMARK MINERALS N.L. and L.S.D.
HOLDINGS LIMITED Appellants

and

OFFSHORE OIL N.L. MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE
INSURANCE COMPANY LIMITED and
JACKSON GRAHAM MOORE AND PARTNERS
(a firm) Respondents

SIXTH AFFIDAVIT OF PHILLIP KEVIN SMITH

GODFREY & GODFREY,
Solicitors,
358 Lonsdale Street,
MELBOURNE. VIC. 3000

Tel: 67 2547

Ref: G63/83 WRH:

IN THE SUPREME COURT)
OF VICTORIA)
IN THE FULL COURT)

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

BETWEEN :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
and NORTHERN STAR INVESTMENTS PTY. LIMITED,
HALLMARK MINERALS N.L. and L.S.D. HOLDINGS
LIMITED

10

Appellants

and

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

20

Respondents

SEVENTH AFFIDAVIT OF PHILLIP KEVIN SMITH

I, PHILLIP KEVIN SMITH of 130 Phillip Street, Sydney in the State of New South Wales make oath and say as follows :-

1. I crave leave to refer to my Affidavit sworn on 23rd September, 1983 and filed in these proceedings.
2. Exhibited to me at the time of swearing this Affidavit and marked with the letters "KGW" is the Affidavit of Mr. K.G. Wilshire sworn 28th July, 1983 annexed to which was the document headed "Acknowldgement (sic) of Deposit" which is Exhibit "PKS4" to my Affidavit sworn on 23rd September, 1983.
3. Exhibited to me at the time of swearing this Affidavit and marked with the letters "SML" is the Standard Manual Letter Book 2 which I am informed by Ms. Lenka Pauler maintained by Brinds Limited and associated Companies from some time in 1974 up to the present date.

SWORN by the Deponent)
Before me :-)
On 11th November, 1983.



A Solicitor of the Supreme Court of New South Wales

No.220
EXHIBIT "KGW"
COPY OF AFFIDAVIT OF WILSHIRE
SWORN IN NEW SOUTH WALES
PROCEEDINGS NO.3803 OF 1982

IN THE SUPREME COURT)
OF VICTORIA)
IN THE FULL COURT)

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

BETWEEN :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
and NORTHERN STAR INVESTMENTS PTY. LIMITED,
HALLMARK MINERALS N.L. and L.S.D. HOLDINGS
LIMITED

10


Appellants

and

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

Respondents

This is the Exhibit marked with the letters "KGW" exhibited to PHILLIP KEVIN SMITH at the time of swearing his Affidavit on 11th November, 1983.


A Solicitor of the Supreme
Court of New South Wales

SYDNEY REGISTRY

EQUITY DIVISION

In the Full Court

No.220 Exhibit "KGW"

Copy of Affidavit of Wilshire
sworn in New South Wales

Proceedings No.3803 of 1982 (cont'd)

No. S 3803 of 1982.

On the 28th day of July, 1983

SOUTHERN CROSS EXPLORATION

I, KENNETH GEORGE WILSHIRE of

N.L.

3 Morotai Crescent, Castlecrag

AND the Companies Code

in the State of New South Wales,

FIRE AND ALL RISKS

Company Secretary being duly

INSURANCE COMPANY LIMITED

sworn make oath and say:-

10

Plaintiff

1. I am the Secretary of

Offshore Oil N.L.

("Offshore") and am duly

SOUTHERN CROSS EXPLORATION

authorised by Offshore

N.L.

to make this Affidavit

Defendant

on its behalf.

2. The Defendant in these

proceedings is, and has

been since prior to the

commencement of these

proceedings, indebted to

Offshore in a principal

sum of \$608,044 plus

interest. This debt is

already the subject of

certain evidence in these

proceedings. I crave

leave to refer in that

regard to: Exhibits J,

JA, JB, JC, JD and JE of

the Affidavit of Boris

Andrew Ganke sworn 19th

November, 1982 and filed

AFFIDAVIT

Deponent : K.G. Wilshire

Sworn : 28th July, 1983

DAWSON WALDRON

Solicitors,

60 Martin Place,

20

SYDNEY. N.S.W. 2000

Tel: 236 5365

D.X.: 355

Ref: 31

26-4

290783

231445

Margaret Selby JP *K.G. Wilshire*

In the Full Court

No.220 Exhibit "KGW" Copy of Affidavit of Wilshire 3. sworn in N.S.W. Proceedings No.3803 of 1982

(continued) 4.

herein; Annexures "A" and "B" to the Affidavit of Martin Tosio sworn 14th June, 1983 and filed herein (where the amount is shown as \$611,235), and the Affidavit of Ross Anthony Gatwood sworn 25th March, 1983 and filed herein. I have been the secretary of Offshore since 1st December, 1976 and was the secretary of that company at the time of the advances which go to make up the said indebtedness.

At the time of the making of nearly all of the said advances the said Boris Andrew Ganke was the person principally involved in the management of the affairs of both Offshore and the Defendant.

10

5. Part of the said principal sum includes an advance of \$330,000 on or about 3rd June, 1982. Annexed hereto and marked "A" is a true copy of an "Acknowledgement of Deposit" bearing the signature of Lenka Pauler on behalf of the Defendant.

6. The advances of Offshore were the subject to the following letters true copies of which are annexed hereto and marked "B", "C", "D" and "E" respectively:

- Offshore to Defendant dated 27th August, 1982.
- Defendant to Offshore dated 31st August, 1982.
- Offshore to Defendant dated 31st August, 1982.
- Defendant to Offshore dated 3rd September, 1982.

20

7. Annexed hereto and marked "F" is a true copy of a Notice of Demand served by Offshore on the Defendant on or about 7th September, 1982. Since 30th June, 1982 the Defendant has not paid either the sum of \$608,044 or any other moneys to Offshore on account of the loan.

8. Exhibited to me at the time of swearing this my Affidavit and marked "KGW1" is a deed bearing date 4th June, 1982

30

280783

Margaret M. Wilshire
148. Margaret M. Wilshire J.P.

between Offshore and the Defendant. At the time of the execution of the Deed I was the secretary of both parties and the document bears my signature twice. The signature of the said Boris Andrew Ganke on behalf of Offshore and the Common Seal of Offshore also appear on the documents. So far as I am aware the charge referred to in Clause 1 of the deed has never been executed. The amount of \$330,000 referred to in the deed is the same amount referred to in Annexure "A" hereto and is part of the total debt owing by the Defendant to Offshore. No consent has been given by Offshore pursuant to Clause 3 of the Deed.

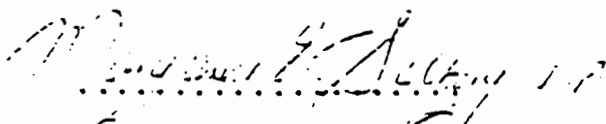
10

- 10. I crave leave to refer to paragraph 17 of the Affidavit of Boris Andrew Ganke sworn 19th November, 1982 and filed herein; Paragraph 9(d) of Exhibit 4 in these proceedings and page 1 of the Directors' Report in Annexure "A" to the said Affidavit of Mr. Tosio.
- 11. Offshore respectfully requests that it be substituted as the Plaintiff herein.

SWORN by the deponent)
 at Sydney on the day)
 first abovementioned)
 before me:)

20




 Justice of the Peace

26-4

280783

Z31445

"A"

Southern Cross Exploration N.L.

INCORPORATED IN NEW SOUTH WALES

In the Full
Court

233 602

No.220
Exhibit "KGW"
Copy of
Affidavit of
Wilshire sworn
in N.S.W.
Proceedings
No.3803 of
1982

7th Floor 82 Elizabeth Street Sydney Australia 2000 Cables Southexplor Telephone 233 602

Offshore Oil N L
167 Phillip Street
Sydney NSW 2000

(continued)

Dear Sir

Re Acknowledgement of Deposit

We acknowledge receipt of the following amount(s) as unsecured/
~~secured~~ deposits:

Date of Receipt : 3rd June, 1982

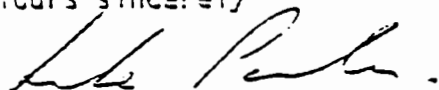
Broker : -

Amount : \$330,000

Rate : 13%

Terms : 90 days call

Yours sincerely

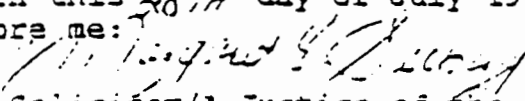


Southern Cross Exploration N L

-ks

AofD

This is the annexure marked with
the letter "A" referred to in the
Affidavit of KENNETH GEORGE WILSHIRE
sworn this 28th day of July 1983
before me:

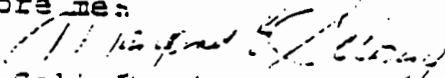


Justice of the Peace.

In the Full Court
No.220 Exhibit "KGW"
Copy of Affidavit of
Wilshire sworn in
New South Wales
Proceedings No.3803 of
1982 (cont'd)

"B"

This is the annexure marked with
the letter "B" referred to in the
Affidavit of KENNETH GEORGE WILSHIRE
sworn this ~~27th~~ day of July 1983
before me:


~~Solicitor~~ / A Justice of the Peace.

27th August 1982

Southern Cross Exploration N L
7th Floor
82 Elizabeth Street
Sydney NSW 2000

Dear Sir

Re Loan from Offshore Oil N L

According to our records as at 30th June, 1982 the sum of \$608,044.00 is
owing by your company to Offshore Oil in respect of the loan of that amount
made to your company and repayable at call. Therefore, please take notice
that we require payment of the sum of \$608,044.00 by 12 noon, Tuesday, 31st
August, 1982.

Yours faithfully

Offshore Oil N L


K G Wilshire
Secretary

kgw-lsE/JSS.110

Southern Cross Exploration N.L.

INCORPORATED IN NEW SOUTH WALES

233 602

In the Full Court

No.220
Exhibit "KGW"
Copy of
Affidavit of
Wilshire sworn
in N.S.W.
Proceedings
No.3803 of
1982

7th Floor 82 Elizabeth Street Sydney Australia 2000 Cables Southexcor Telephone 250

31st August 1982

(continued)

The Secretary
Offshore Oil N L
167 Phillip Street
Sydney NSW 2000

31 AUG 1982	
KW	✓
FILE	
DESTROY	

Dear Sir

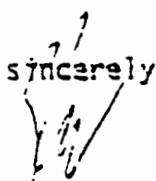
Thank you for your letter of 27th August, 1982.

The amount of loan funds advanced to this company has not been checked. However, assuming it is correct, there is no provision that the funds are repayable at call.

It was agreed that on the company arranging a farm-out of its interest in NTP 28, or raising funds from its shareholders, any amount outstanding to your company would be repaid.

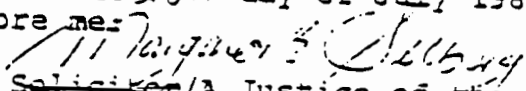
Your co-operation will be appreciated.

Yours sincerely


Southern Cross Exploration N L

This is the annexure marked with the letter "C" referred to in the Affidavit of KENNETH GEORGE WILSHIRE sworn this 28th day of July 1983 before me:

bg-ks/956.114


Solicitor/A Justice of the Peace.



"D"

In the Full Court No.220 Exhibit "KGW"
Copy of Affidavit of Wilshire sworn in N.S.W
Proceedings No.3803 of 1982 (cont'd)

KGW.cas

OFFSHORE OIL
167 PHILLIP STREET SYDNEY
BOX 1246 GPO SYDNEY AUSTRALIA 2001
TELEPHONE 333 6272
TELEX AA22297

31 August 1982

The Secretary
Southern Cross Exploration NL
82 Elizabeth Street
SYDNEY NSW 2000

This is the annexure marked with
the letter "D" referred to in the
Affidavit of KENNETH GEORGE WILSHIRE
sworn this 23rd day of July 1983
before me:

[Signature]
Solicitor/A Justice of the Peace

Dear Sir,

Advances - Offshore Oil NL

Thank you for your letter of 31 August 1982.

10 We have found no documentary evidence to support the assertion
made in your third paragraph. If you hold such documents
we ask that they be exhibited to us no later than 12 noon
on Friday 3rd September. Any failure on your part to
exhibit such documents will act as confirmation of our
view that these moneys were loaned on a call basis.

In the absence of any evidence to the contrary the loan is
repayable upon demand which has already been made in our
letter to you of 27 August 1982.

20 Yours faithfully,
OFFSHORE OIL N.L.

[Signature]

K.G. Wilshire,
Secretary.

is the annexure marked with
letter "E" referred to in the
affidavit of KENNETH GEORGE WILSHIRE
sworn this 17th day of July 1983
before me Magistrate D. J. ...
Magistrate A Justice of the Peace.

"E"

In the Full
Court
No.220
Exhibit
"KGW"
Copy of
Affidavit
of Wilshire
sworn in
N.S.W.
Proceedings
No.3803 of
1982

Southern Cross Exploration N.L.
INCORPORATED IN NEW SOUTH WALES

7th Floor 82 Elizabeth Street Sydney Australia 2000 Cables Southexplor Telephone 233 6022

3rd September 1982

The Secretary
Offshore Oil N L
167 Phillip Street
Sydney NSW 2000

- 3 SEP 1982	

(continued)

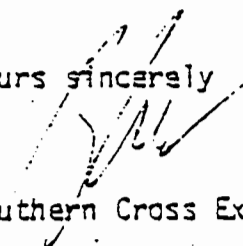
Dear Sir

Thank you for your letter of 31st August, 1982.

This amount is not at call as it was agreed between the parties that the advance would be of a longer-term nature, sufficient to affect either a farm-out or another form of re-financing.

10

A document was prepared and executed by both companies, which should indicate that the giving of security at some future time was contemplated and therefore this amount would not be at call.

Yours sincerely

Southern Cross Exploration N L

"F"

In the Full Court

DEMAND IN TERMS OF SECTION
164(2) (a) OF THE COMPANIES
(NEW SOUTH WALES) CODE

No.220
Exhibit "KGW"
Copy of Affidavit
of Wilshire sworn
in N.S.W.Proceedings
No.3803 of 1982
(continued)

TO: SOUTHERN CROSS EXPLORATION N.L.
7TH FLOOR,
82 ELIZABETH STREET,
SYDNEY NSW 2000

YOU ARE HEREBY REQUIRED TO PAY

TO: OFFSHORE OIL N.L.
5TH FLOOR,
OFFSHORE HOUSE,
167 PHILLIP STREET,
SYDNEY NSW 2000

This is the annexure marked with
the letter "F" referred to in the
Affidavit of KENNETH GEORGE WILSHIRE
sworn this 28th day of July 1983
before me:

Margaret E. Boldon
~~Secretary~~ A Justice of the Peace

10

the sum of Six hundred and eight thousand and forty four dollars
(\$608,044.00) in which sum you are indebted to OFFSHORE OIL N.L.
and which sum is due for payment.

If you fail within three weeks of the service of this demand upon
you, to pay the aforesaid sum, or to secure or compound for it
to the reasonable satisfaction of OFFSHORE OIL N.L., you will be
deemed to be unable to pay your debts.

20

Dated at Sydney this 7th day of SEPTEMBER, 1982.

THE COMMON SEAL of OFFSHORE)
OIL N.L. was hereunto)
affixed by the authority of)
the Board of Directors in)
the presence of:)

[Signature]
.....
Director

K.G. Wilshire
.....
Secretary

IN THE SUPREME COURT)
OF VICTORIA)
IN THE FULL COURT)

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

BETWEEN :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
and NORTHERN STAR INVESTMENTS PTY. LIMITED,
HALLMARK MINERALS N.L. and L.S.D. HOLDINGS
LIMITED

10

Appellants

and

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

20

Respondents

EIGHTH AFFIDAVIT OF PHILLIP KEVIN SMITH

I, PHILLIP KEVIN SMITH of 130 Phillip Street, Sydney in the State of New South Wales make oath and say as follows :-

1. I crave leave to refer to those of my previous Affidavits sworn in these proceedings which relate to the "market rigging" action in the Supreme Court of New South Wales being proceedings no. 4254 of 1983.
2. I set out hereunder a timetable of the events to date in relation to the aforesaid proceedings :-

10	28th July, 1983	Shares in Offshore Oil sold by Fire & All Risks Insurance Company to Nationwide Resources Pty. Limited through David Harry Lance, Stockbroker.
	29th July, 1983	David Harry Lance gave evidence in the Supreme Court of New South Wales as to the identity of Nationwide Resources Pty. Limited.
20	Thursday evening 4th August, 1983	Evidence as to the ownership of Nationwide Resources Pty. Limited, in the form of searches conducted at the Corporate Affairs Office, placed before Senior Counsel.
	5th August, 1983	Ex-parte Injunction sought from Mr. Justice Kearney in relation to the sale of shares to Nationwide Resources Pty. Limited
30	2nd September, 1983	New Statement of Claim handed up to Mr. Justice Waddell. His Honour directed that the Plaintiffs be informed by 10.00 a.m., 7th September, 1983 as to whether the Defendants intended to proceed with their Notice of Motion to strike out the Statement of Claim. In the meantime, the Court arranged for the Chief Judge in Equity, namely, His Honour, Mr. Justice Helsham, to hear the Defendants' Motion on 8th and 9th September, 1983.



Eighth Affidavit of
Phillip Kevin Smith
dated 11th November 1983
(continued)

7th September, 1983

Shortly before 10.00 a.m., Counsel for the Plaintiffs was informed that the Defendants did not propose to proceed with their Motion and the hearing dates before Mr. Justice Helsham were vacated.

8th September, 1983

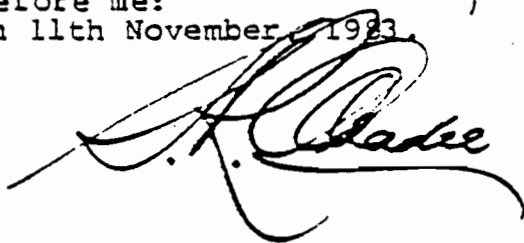
The parties agreed to the following timetable, Short Minutes of which, were filed with the Court:-

<u>Date</u>	<u>Event</u>	<u>Compliance Date</u>	
8th September	Plaintiffs file New Statement of Claim	8th September	10
9th September	Defendants request Particulars	9th September	
13th September	Plaintiffs provide Particulars	15th September	
20th September	Defendants file Defence	22nd September	
4th October	Plaintiffs file List of Documents	11th October	
4th October	Defendants file List of Documents	12/13th October	20
18th October	Inspection	19th October	
25th October	Subpoenas returnable	25th October	
1st November	Plaintiffs' Interrogatories	28th October	
1st November	Defendants' Interrogatories	3rd November	
15th November	Answers to Interrogatories	?	

26th October, 1983

Proceedings listed for hearing before Mr. Justice Waddell from 12th March, 1984 to 29th March, 1984 by the Registrar in Equity.

SWORN by the Deponent)
before me:)
On 11th November 1983.



In the Full Court
No.221
Eighth Affidavit of
Phillip Kevin Smith
dated 11th November 1983
(continued)

IN THE SUPREME COURT
OF VICTORIA
FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS, PTY. LTD.,
HALLMARK MINERALS N.L. and L.S.D.
HOLDINGS LIMITED Appellants

and

OFFSHORE OIL N.L. MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE
INSURANCE COMPANY LIMITED and
JACKSON GRAHAM MOORE AND PARTNERS
(a firm) Respondents

EIGHTH AFFIDAVIT OF PHILLIP KEVIN SMITH

GODFREY & GODFREY,
Solicitors,
358 Lonsdale Street,
MELBOURNE. VIC. 3000

Tel: 67 2547
Ref: 663/83 WRH:

IN THE SUPREME COURT
OF VICTORIA
FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS PTY. LTD.,
HALLMARK MINERALS and L.S.D. HOLDINGS
LIMITED

Appellants

10

- and -

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

Respondents

AFFIDAVIT OF MARTIN ANTHONY TOSIO

I, MARTIN ANTHONY TOSIO, of 40 Provincial Road, Lindfield in the State of
New South Wales, Chartered Accountant, MAKE OATH AND SAY as follows :

20

1. I have prepared draft pro forma balance sheets for Brinds Limited
("Brinds") as at 31st October, 1983. Now produced and shown to me
and marked "MAT 1" is a spread sheet setting out those draft balance
sheets.
2. THE first column illustrates the position of the company based on
directors' valuation of investments, with which I concur.
3. THE succeeding columns illustrate the position of the company in certain
eventualities, related to the sale of Offshore Oil N.L. ("Offshore")
shares, or related to damages recoverable by Brinds as a result of the
market rigging case pending in the Supreme Court of New South Wales.

30

4. APART from its ownership of the 9th Floor of 82 Elizabeth Street, Sydney, which it at present occupies, the assets of Brinds consist essentially of investments in shares of other companies. In addition, it owns certain land in Vanuatu and Fiji and a condominium in Hawaii.

5. SINCE the appointment of the Provisional Liquidator on 17th February, 1983, Brinds has not actively engaged in any projects.

6.1 DURING the period from the delivery of His Honour Mr. Justice Tadgell's judgement on 5th May 1983, to the date of this my Affidavit, the essential changes in the Brinds financial position have been a net
10 increase in the amounts owing by way of interest and other outgoings in the sum of approximately \$1 million.

6.2 THIS sum would have been more than balanced by the increase in value of Offshore shares from the price of 11 cents assumed by His Honour to the present price which is approximately 18 cents. As at the date of His Honour's Judgment the Brinds group and associated companies held 47 million shares in Offshore which are worth \$3.3 million more following the aforesaid price rise. In addition, during August and September 1983 the shares held by Brinds, et al, entitled the holders to the right to buy one Offshore share for 10 cents on the basis of one such
20 right for every two shares held. Many of these rights were sold for prices in the vicinity of seven cents.

6.3 HOWEVER, in view of the intervening periods, Brinds' position was adversely affected by three factors, namely :-

- (a) Adler caused a mortgagee sale in respect of property owned by Chapmans Limited and caused a lowering of the price realised by causing to be published in the Financial Review a statement that the properties valued by Directors at \$4 million was unlikely to realise more than \$2.25 million. A copy of the newspaper article is exhibited to the Affidavit of Mr. Phillip
30 Kevin Smith sworn on 10th October, 1983 in these proceedings.

As a result, the properties only realised \$2.3 million. The realisation of this asset at an undervalue is reflected in the accounts of Chapmans Limited and therefore depreciated the value of the Brinds holding in Chapmans from approximately \$4.7 million to approximately \$3.9 million.

(b) Despite Mr. Ganke's attempts to persuade Mr. Macintosh to permit the payment of the 5 cents call on the shares of Southern Cross Exploration N.L., the amounts were not paid and the subsequent appointment of the Provisional Liquidator prevented the redemption of the shares. As a result, it has been necessary to write off \$850,000 of Brinds' assets representing the original cost of the Southern Cross shares forfeited. 10

(c) Of the approximately 47 million shares held by the Brinds group and associated companies as at the date of His Honour's judgment, Mr. Adler caused 12.4 million shares held by subsidiary or associated companies to be sold at depressed prices. The difference between my valuation of 20 cents a share and the price realised was at least 6 cents, and represented a loss of at least \$740,000 to the holders of the shares. The loss which thereby flowed through to Brinds being a company with a direct or an indirect interest in those companies, was of the order of \$500,000. 20

6.4. IF the extraordinary items mentioned in the preceding paragraph had not occurred, the delay from the date of His Honour's judgment to the present date would have resulted in a substantial net increase in net assets over liabilities.

7. IT is my opinion that in the next six months the value of Brinds' assets will increase to at least the same extent as the further amounts becoming due by way of interest and other outgoings.

8. BRINDS' object in making a substantial investment in Offshore and in causing that company to undertake major exploration projects, involving the expenditure of some \$120 million, was to develop Offshore into a major oil producing company, with a large investment in an Australian drillship with an estimated revenue of \$30 million p.a.

9.1. AN offshore exploration area known as WA-149-P, in which Offshore has a 20% interest, stands in Offshore's books at a figure of \$5 million. The total area has now been valued at \$330 million, by virtue of an option of \$16.5 million for 5% of the area, negotiated between Offshore and Consolidated Press and Moage Limited. Now produced and shown to me and marked "MAT 2" is a copy of an article which appeared in the Financial Review on 7.11.83. This places a value of \$66 million on Offshore's 20% interest in the area, compared with the book value of \$5 million.

9.2. NOW produced and shown to me and marked "MAT 3" is a copy of an article published in the Financial Review on the 15th day of November 1983 with respect to an oil strike in the permit area WA-192-P - adjacent to WA-149-P. It is my view that this oil find will further upgrade the value of Offshore exploration areas - and therefore the value of Offshore shares.

10. BHP (through its subsidiary, BHP Petroleum) has, within the past few weeks negotiated an agreement whereby that company will expend a sum in excess of \$20 million in drilling one or more wells on an area, WA-64-P, in which Offshore has an interest. An earlier well on the permit (West Barrow No. 1A) ultimately cost nearly \$30 million and was suspended after a 24 inch spanner was dropped down the well, resulting in the well becoming stuck and preventing testing. During the drilling stage there were strong indications that the well had encountered 110 metres of hydrocarbon-bearing sands. Proceedings are pending in the

International Court of Arbitration in Paris in respect of a claim by Offshore and other joint venture parties in that well against the drilling contractors for damages of about \$30,000,000. The successful result of this arbitration would have a material bearing on Offshore's financial position and on the position of Brinds.

11. THERE is every reason to believe that Offshore's quest for further commercial oil discoveries will be ultimately successful and should this occur, the value of the shares in Offshore could increase to a price of 50 cents or \$1 or more, depending on the extent of the further discoveries made. 10
12. BHP, which commenced drilling in Australia at a time when there had been no major commercial oil discoveries, now earns a net profit of \$300,000,000 for its oil and gas division. Now produced and shown to me and marked "MAT 4" is a copy of an extract from the Directors' Report of the 1983 Annual Report of BHP. Woodside Petroleum, which has not yet produced any commercial oil or gas and which a few years ago was a small exploration company, now has a market capitalisation in excess of \$500,000,000.
13. A recent study by Jackson Graham Moore & Partners, stockbrokers, found a "most likely" value for Offshore shares to be 36.4 cents. This study appraised the value of the major exploration areas held by Offshore and a value of \$60,000,000 was ascribed to Offshore's interest in WA-149-P. Now produced and shown to me and marked "MAT 5" is a copy of the said Jackson Graham Moore study. 20
14. THE Jackson Graham Moore study assumes that nothing would be recovered from the Brinds group in respect on the loans and if, as I expect, all the Brinds' loans and all of the loans to other members of the Brinds Group (with the possible exception of a sum of \$300,000) are ultimately repaid in full, the recovery will represent an additional value of 1.7 cents for each Offshore share. 3

15. NOW produced and shown to me and marked "MAT6" is a copy of
the 1983 Annual Report of Offshore Oil NL.

16. IN all of these circumstances, it is my opinion that there
is no risk to the creditors if the matter is adjourned
for a period of three to six months, and, on the contrary,
there are very real prospects that the position of Brinds
will be greatly improved in the period.

SWORN at Melbourne in the State of)
Victoria by the said MARTIN)
ANTHONY TOSIO this 16th day of)
November, 1983.)

Before me :

A Commissioner of the Supreme Court of the State of Victoria
for taking Affidavits.

This Affidavit is filed on behalf of the Appellant.

In the Full
Court
No.222
Affidavit of
Martin Anthony
Tosio
dated 17th
November 1983

(continued)

IN THE SUPREME COURT

OF VICTORIA

FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS, PTY. LTD.,
HALLMARK MINERALS N.L. and L.S.D.
HOLDINGS LIMITED Appellants

and

OFFSHORE OIL N.L. MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE
INSURANCE COMPANY LIMITED and
JACKSON GRAHAM MOORE AND PARTNERS
(a firm) Respondents

AFFIDAVIT OF MARTIN ANTHONY TOSIO

Deponent: Martin Anthony Tosio

Sworn: 16th November, 1983

GODFREY & GODFREY,
Solicitors,
358 Lonsdale Street,
MELBOURNE. VIC. 3000

Tel: 67 2547
Ref: G63/83 WRH: BA

No.223
EXHIBIT "MAT 1"
DRAFT BALANCE SHEET OF
BRINDS LTD. AS AT 31ST
DECEMBER 1983

This is the Exhibit marked "MAT1" referred to in the Affidavit of MARTIN ANTHONY TOSIO sworn before me this 16th day of November 1983.

A Commissioner of the Supreme Court of the State of Victoria
for taking Affidavits.

BRINDS LIMITED
(PROVISIONAL LIQUIDATOR APPOINTED)

NOTES TO DRAFT BALANCE SHEETS AS AT 31 OCTOBER 1983

1. BASIS OF BALANCE SHEETS

The values attributed to certain investments are based not on market values but on net asset backing - circumstances dictate which method is adopted.

2. IDENTIFICATION OF BALANCE SHEETS

The differentiation between the six balance sheets presented lies in the value ascribed to a major group investment - viz. shares in Offshore Oil N L. The balance sheets have been prepared as follows:

10

- Number (1) - is the base balance sheet with Offshore shares @ 20¢ each
- Number (2) - as in (1) above, but with a minimum 6¢ damages claim arising out of the NSW proceedings flowing through to Brinds directly and indirectly
- Number (3) - as in (2) above but with Offshore shares @ 22¢ each
- Number (4) - as in (2) above but with Offshore shares @ 25¢ each
- Number (5) - as in (2) above but with Offshore shares @ 30¢ each
- Number (6) - as in (2) above but with Offshore shares @ 36¢ each

-ks/945.110

111183

20

BRINDS LIMITED (PROVISIONAL LIQUIDATOR APPOINTED)
DRAFT PRO-FORMA BALANCE SHEETS AS AT 31 OCTOBER 1983

	(1) \$000	(2) \$000	(3) \$000	(4) \$000	(5) \$000	(6) \$000
<u>SHAREHOLDERS FUNDS</u>	1050	2847	3424	4291	5736	7470
Represented by:						
<u>Fixed Assets & Investments</u>						
Strata Title Premises	400	400	400	400	400	400
Shares in Listed Companies	13450	15048	15555	16315	17583	19104
Shares in Other Companies	1175	1175	1175	1175	1175	1175
Other Investments	20	20	20	20	20	20
	15045	16643	17150	17910	19178	20699
<u>Current Assets</u>						
Cash at Bank	66	66	66	66	66	66
Short Term Deposits	3261	3357	3393	3447	3537	3645
Advances to Subsidiary Companies	3314	3417	3451	3504	3591	3696
Sundry Debtors & Projects	292	292	292	292	292	292
	6933	7132	7202	7309	7486	7699
<u>TOTAL ASSETS</u>	21978	23775	24352	25219	26664	28399
<u>Current Liabilities</u>						
Bank Overdraft	49	49	49	49	49	49
Bills Payable	950	950	950	950	950	950
Short Term Loans - unsecured	4015	4015	4015	4015	4015	4015
Short Term Loans - secured	2621	2621	2621	2621	2621	2621
Sundry Loans	55	55	55	55	55	55
Share Purchase Creditor	1227	1227	1227	1227	1227	1227
Sundry Creditors & Accruals	45	45	45	45	45	45
Liabilities to Subsidiary Companies	74	74	74	74	74	74
	9036	9036	9036	9036	9036	9036
<u>Non Current Liabilities</u>						
Term Loans - unsecured	4294	4294	4294	4294	4294	4294
Liabilities to Subsidiary Companies	7598	7598	7598	7598	7598	7598
	11892	11892	11892	11892	11892	11892
<u>TOTAL LIABILITIES</u>	20928	20928	20928	20928	20928	20928
<u>NET ASSETS</u>	1050	2847	3424	4291	5736	7470

No.224
EXHIBIT "MAT 2"
COPY OF ARTICLES FROM
"AUSTRALIAN FINANCIAL
REVIEW" dated 7th
November 1983

This is the Exhibit marked "MAT2" referred to in the Affidavit of MARTIN ANTHONY TOSIO sworn before me this 16th day of November 1983.

A Commissioner of the Supreme Court of the State of Victoria for taking Affidavits.

F.R

Consol Press in option deal for WA offshore oil stake

From TONY GRANT-TAYLOR in LONDON

CONSOLIDATED Press Holdings Ltd has taken the plunge into oil and gas exploration through the joint purchase with Moage Ltd of an option to acquire from Offshore Oil NL a 5 per cent interest in WA149P.

The exercise price of the option is \$16.5 million.

If it is taken up, Offshore Oil's interest in the block will be reduced from 20 to 15 per cent.

This Offshore Western Australia permit area contains the North Herald and Chervil oil discoveries and the partners in the block are moving quickly to develop the fields.

The first oil is expected to flow by the fourth quarter of 1984.

The \$16.5 million price for a 5 per cent interest values the block at \$330 million.

This is somewhat higher than the valuation of the block based on the price for 20 per cent equity in WA149P bought recently by Western Mining Corp Holdings Ltd.

Western Mining paid Mesa \$40 million for its Australian interests, a key part of which is the 20 per cent equity in WA149P.

The Western Mining price values the block at \$200 million.

A direct comparison cannot be drawn between the two deals, however, because Western Mining acquired interests in other acreage around Australia as well as assuming responsibility for Mesa's contract with the rig operator, Global Marine.

Western Mining has also agreed to pay Mesa a 5 per cent royalty on any production from Mesa's exploration acreage in Australia.

Pelsart Resources Ltd bought that royalty recently from Mesa for \$US6.5 million.

If Consolidated Press and Moage exercised the option, Offshore oil would be left cashed-up.

Offshore Oil recently completed a \$20 million rights issue.

The company may retain a 15 per cent interest in

WA149P, however, and will still have to finance its share of the development of the North Herald, Chervil and South Pepper oilfields.

Development is expected to cost \$120 million.

Oil production is expected to begin around 10,000 barrels a day and rise to 25,000 barrels by mid-1985.

Offshore Oil is controlled by FAI Insurances Ltd.

FAI's chairman, Mr Larry Adler, said that the 20 per cent of WA149P held by Offshore Oil is worth \$65.5 million on the basis of the agreement reached with Moage and Consolidated Press.

That price compares more than favourably with the value of only \$5 million

placed on this acreage in Offshore Oil's books.

The valuation placed on Offshore Oil's interest in WA149P gives shareholders a better guide to the company's worth should the foreshadowed takeover offer for Offshore Oil from Mr Boris Ganke's Southern Cross Exploration NL eventuate.

Mr Adler said at the weekend, however, that Offshore Oil had received no word or documents from the Ganke camp since the initial announcement of the foreshadowed offer.

Mr Ganke intended offering one share in Southern Cross Exploration for each share held in Offshore Oil.

Southern Cross has a 9 per cent stake in Offshore Oil.

Mr Adler said Offshore Oil

would retain the remaining 15 per cent stake in WA149P but that the sale of a portion of the company's equity had been the "ultra-conservatively prudent" course for Offshore Oil to take.

By the sale Offshore Oil has guarded against all contingencies. It had also "made pleasant" Offshore Oil's task of contributing to development.

Of the estimated development cost of \$120 million, Offshore Oil's share is \$18 million.

"It is a fabulous price," Mr Adler said at the weekend.

"I believe the discoveries are very good, but they are not fully proven yet, so liquidating a quarter of our holding at this stage covers any risk."

7.11.83

No.225
EXHIBIT "MAT 3"
COPY OF ARTICLE FROM "AUSTRALIAN
FINANCIAL REVIEW" Jated 15th
November 1983

This is the Exhibit marked "MAT3" referred to in the Affidavit
of MARTIN ANTHONY TOSIO sworn before me this 16th day of November
1983.

A Commissioner of the Supreme Court of the State of Victoria
for taking Affidavits.

INVESTMENT

Barrow Island and Surat finds reaffirm potential

By RICK WILKINSON

THE proven hydrocarbon provinces of Barrow Island and the Surat Basin returned to prominence yesterday with oil being found at two separate locations off the Barrow coasts and a strong gas flow being reported just south of the Kincora field in Queensland.

The first oil report came from the Australian Occidental Pty Ltd-led group which has flowed oil at 1,432 barrels a day under test from its Harriet No. 1 well in permit WA-192-P.

The result follows encouragement in repeat formation tests from the well last week and further confirms the potential of

the Cretaceous age Barrow Group sands in the Barrow Island region.

Occidental said that the drill stem test was conducted through casing in the narrow interval 1,950m-1,951m.

The test also recorded 701,000 cubic feet of gas giving a gas-oil ratio of 490 cubic feet a barrel. The flow was measured through a 3/8-inch choke and the flowing well head pressure was 990 psi.

Oil gravity was measured at 38.5 degrees on the API scale.

Little information has been released about the Harriet prospect, but it is believed to be a medium feature slightly larger than the Bamba prospect which also found oil in the Cretaceous section for the Occidental group earlier this year.

Bamba was not considered commercial on its own, but it

could be considered for development if other finds were made nearby.

Additional testing at Harriet is expected in the next few days across the same 1m interval, although earlier logging and formation testing indicated the potential zone of interest lay between 1,934m and 1,955m.

At this stage it is difficult to judge the viability, but a favourable point is the well's location just 17km north-east of Barrow Island and in a water depth of only 22m.

Interests in the well are Occidental 27 per cent, Bond Corp Holdings Ltd 25 per cent, Getty Oil Development 17 per cent, Texas Eastern Australia Inc 10 per cent, Reading and Bates Australia Petroleum Co 8.5 per cent, Pentoon Oil and Minerals NL 7.5 per cent and Peisart Oil NL 5 per cent.

The Harriet find lacks the

interest generated already in the waters south of Barrow Island where the Westminco Oil Pty Ltd group has found oil at South Pepper, North Herald and Chervil in permit WA-149-P.

That group yesterday added again to the list with a report of preliminary oil and gas zones in its South Chervil No. 1 well.

A suite of wireline logs was run over the open hole section in the Barrow Group reservoir and preliminary analyses of core data indicate the well has a total hydrocarbon column of 13.5m thickness below the 1,839m mark.

The gross column consists of about 9.4m of gas overlying a 4.1m oil leg.

Confirmation of the hydrocarbons came in a formation test sample taken at 1,050m which recovered 11.3 litres of oil (42 degrees API), 13 cubic feet of gas and 2.6 litres of sand sludge.

The well will be tested after it reaches its proposed total depth of 1,300m.

Much interest centres around whether the reservoir in the current well is connected to the Barrow Group reservoir found in Chervil No. 1 just to the north and drilled earlier this year.

The Chervil structure is cut by a normal fault which disrupts the seismic picture and the explorers are not yet sure if it extends right down to the reservoir zone.

If it does not, the Chervil find could be much larger than originally thought.

Even at this stage before drill stem testing the south Chervil location, the results have already upgraded other large structures in the immediate vicinity like Fennel to the south-east and Basil to the north-east.

Coupled with their recent finds in the region, including Harriet, it appears the Barrow Island region will support an basal development offshore. The question remaining is the zone east of the project.

The good news was rounded off yesterday with a strong gas flow in the Surat Basin permit ATP332P south of the Kincora oil and gas field and only 7km south of the Newstead gas find which came on stream last week.

The new find, Yarrabend No. 1, has been drilled by the Harrogen Energy Ltd group and flowed at a rate of 13.3 million cubic feet a day through a 7/8-inch orifice plate.

It is the largest flow recorded by Harrogen in the Surat Basin and comes from the upper part of the basal Evergreen formation.

The structure is a faulted anticline similar to many of the others in the basin and will probably need to appraisal wells before a likely stream date of 1984.

Because of its proximity to Newstead, it will be relatively easy and cheap (about \$150,000) to connect into the existing gas system.

The Yarrabend structure is about 5km long and 1km wide — a large size for the Surat area.

The Newstead field began production from one of its three reservoir zones last week and is flowing at about two million cubic feet a day.

No.226
EXHIBIT "MAT 4"
EXTRACT FROM DIRECTORS REPORT OF THE
1983 BHP ANNUAL REPORT

This is the Exhibit marked "MAT4" referred to in the Affidavit of MARTIN ANTHONY TOSIO sworn before me this 16th day of November 1983.

A Commissioner of the Supreme Court of the State of Victoria
for taking Affidavits.

\$299
 \$315
 prima
 sales
 The C
 produ
 The a
 oil wa
 averag
 differ
 Govern
 \$330
 and pi
 \$218

Exploration

The Company increased the human and financial resources devoted to the search for oil and gas.

In the Gippsland Basin the joint venture with Esso drilled 9 wells, 2 of which resulted in small oil discoveries. Two wells were drilled from the Snapper platform to seek oil below the main Snapper gas and oil reservoir; both wells encountered a number of small hydrocarbon accumulations.

Drilling by the North West Shelf consortium resulted in a significant increase in potential gas reserves in the Scott Reef field in the Browse Basin. Another successful well, Wilcox - 1, was drilled in the Dampier sub Basin, about 50 km south of the Goodwyn field. The well flowed gas with relatively high volumes of condensate from three zones.

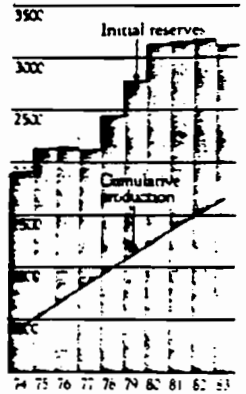
The Company participated in a number of exploration activities overseas. One well onshore in Papua New Guinea resulted in a gas discovery. A well in the British sector of the North Sea was unsuccessful. In the United States, 6 small oil and gas accumulations were discovered in North Dakota, Kansas and Texas. Of major potential significance, a consortium in which the Company has a 20% interest was granted 5 exploration areas off the coast of the People's Republic of China.



R J Fynno
 Executive
 Oil & Gas



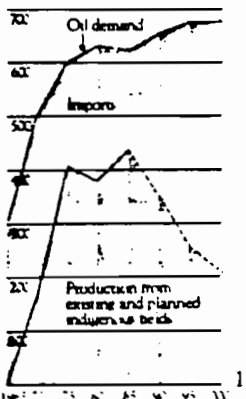
Gippsland Basin crude oil & condensate reserves & production
 million barrels, as at 31 May



Returns to Government and BHP from crude oil sales to refineries
 \$ a barrel, average, years ended 31 May



Australian oil supply and demand
 Thousand barrels a day, as at December



No.227

EXHIBIT "MAT 5"

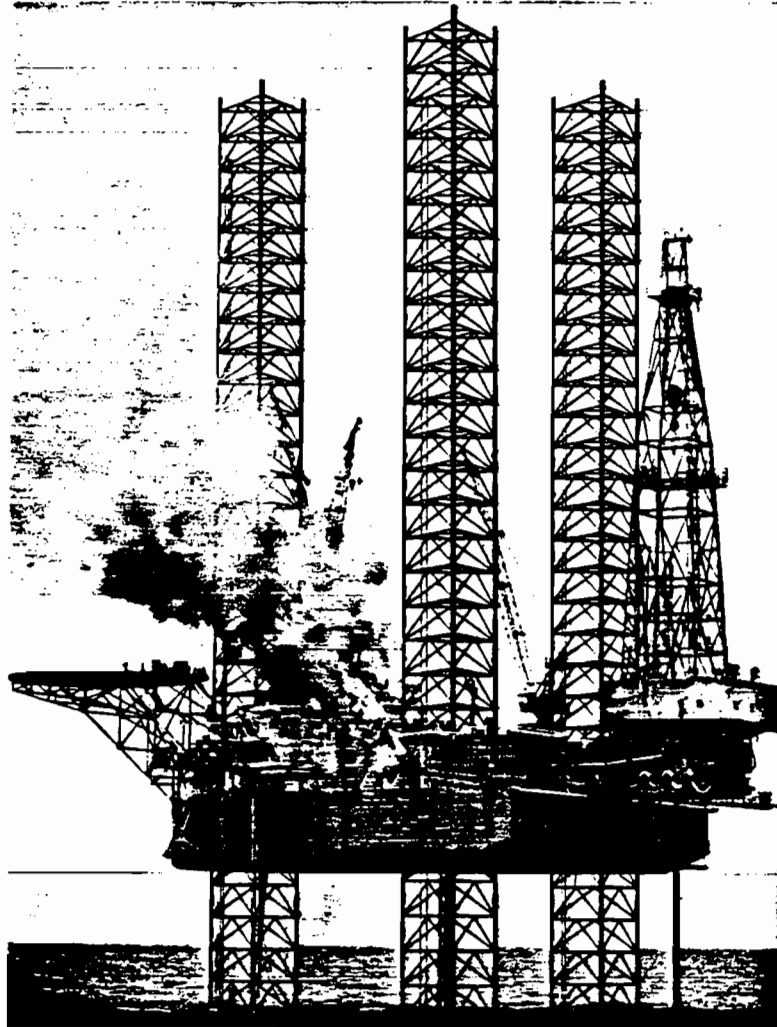
COPY OF REPORT ON OFFSHORE OIL N.L

PREPARED BY JACKSON, GRAHAM MOORE

AND PARTNERS (see "PS 11" to

Smith Affidavit of 29th September

OFFSHORE OIL NL



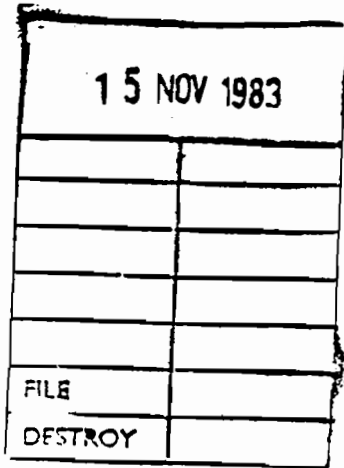
Annual Report 1983





OFFSHORE OIL NL

Contents	PAGE
THE COMPANY	3
IMPORTANT EVENTS IN THE PAST 12 MONTHS	4
HIGHLIGHTS	5
REVIEW OF OPERATIONS	6-10
REPORT OF THE DIRECTORS	11-15
PROFIT AND LOSS STATEMENTS	16
BALANCE SHEETS	17
NOTES TO THE FINANCIAL STATEMENTS	18-24
SOURCES AND APPLICATIONS OF FUNDS	25
AUDITORS' REPORT	26
STATEMENT BY DIRECTORS	26
SHAREHOLDERS	27
INTERESTS IN EXPLORATION TENEMENTS	28
CHART OF JOINT VENTURE INTERESTS	29



Notice of Annual General Meeting 1983

Notice is hereby given that the Fourteenth Annual General Meeting of members of Offshore Oil N.L. will be held at the Reception Hall, Sydney Opera House, Bennelong Point, Sydney on Wednesday, 30th November, 1983 at 10.30 am.

See separate Notice and Proxy Form enclosed.

FRONT COVER — Production Testing South Pepper No 1 Permit WA149P.

Directors

Lawrence J Adler (Chairman)
 Albert G Harris (Managing)
 Thomas E Atkinson
 John Belfer
 Geoffrey G Hill
 Professor James R Wilson

Management

Albert G Harris (Managing Director)
 Kenneth G Wilshire (Secretary NSW)
 Christopher G Chenoweth (Secretary ACT)
 Robin A N Johnson (Secretary ACT)
 Neil W Johnson (Manager — Oil and Gas Operations)
 John K Booth (Financial Controller)
 Bun C Hung (Senior Corporate Counsel)

Auditors

Coopers & Lybrand

Bankers

Westpac Banking Corporation

Principal Office

5th Floor, Offshore House
 167 Phillip Street
 Sydney NSW 2000

Telephone: (02) 233 6299

Telex: AA 73269

Registered Office

Phipson Nominees Pty Ltd
 12th Floor, National Mutual Centre
 Darwin Place
 Canberra ACT 2601

Telephone: (062) 48 8311

Share Register

Coopers & Lybrand
 Level 4, Citicorp Building
 24 Marcus Clarke Street
 Darwin Place
 Canberra ACT 2601

Telephone: (062) 48 5244

Share Processing Centre

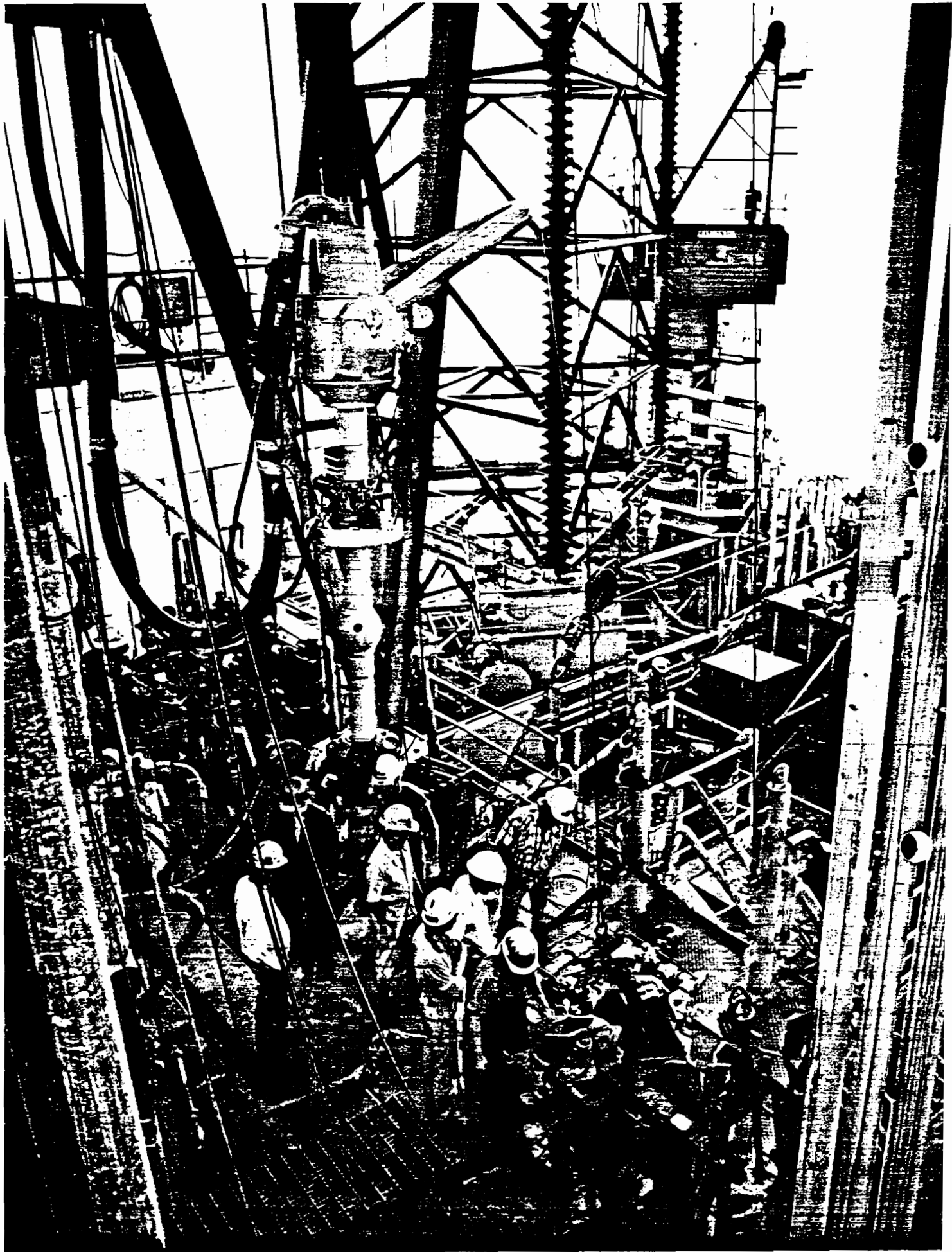
Coopers & Lybrand
 Level 14, Kindersley House
 20-22 O'Connell Street
 Sydney NSW 2000
 Telephone: (02) 239 7777

Stock Exchange

Australian Associated Stock Exchanges

Incorporation

The company was incorporated in the Australian Capital Territory on 7th March, 1969.



Scene on rig floor during testing operations.

THE COMPANY

Offshore Oil N.L. was incorporated in 1969, has been listed on Australian Associated Stock Exchanges since that year and its shares are also actively traded in London.

Shareholders' funds at 30 June 1983 total \$74,490,000. Market capitalisation of the company upon completion of the 1983 share issue will, on the basis of current share price of 17 cents per share, stand at \$96,841,000.

It has over 24,000 shareholders with 89% of the voting power held by shareholders with registered addresses in Australia.

Its main objectives and activities are oil and mineral exploration, natural gas and condensate production and charter of the drillship Energy Searcher for offshore drilling.

The group holds interests through joint ventures with other Australian and overseas exploration and mining companies in petroleum tenements totalling over 162,000 square kilometres and a uranium tenement of about 800 square kilometres.

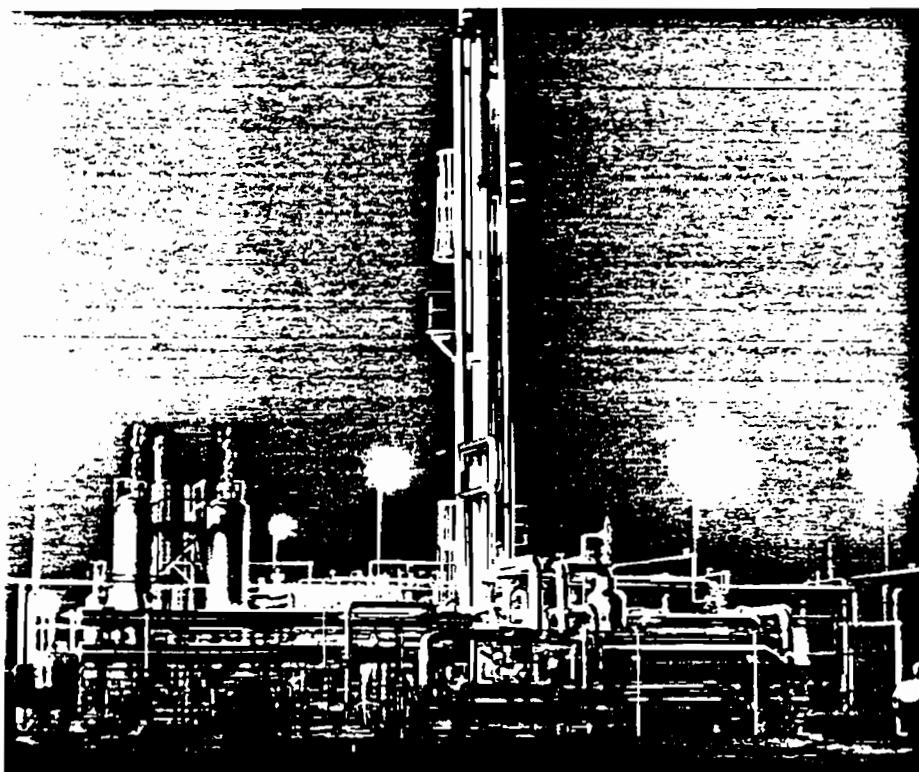
The company's principal petroleum areas are:

- Onshore Surat Basin, Queensland which provides the source of the company's production income
- Onshore Eromanga Basin, Queensland which contains its most recent oil find
- Offshore Carnarvon Basin, Western Australia which contains its most successful oil discoveries in the past 12 months
- Offshore Bonaparte Gulf Basin, Northern Territory which has a known large gas resource
- Offshore Asahan Block, Indonesia which is regarded as a highly prospective area

The drillship Energy Searcher under charter by a subsidiary of the company has successfully completed the first year of a three year contract with very little downtime.

Revenue from gas and condensate production in the Queensland Surat Basin has been generated from commencement of production in 1978, has steadily improved since then and is expected to significantly increase in 1984/85 when the Liquid Petroleum Gas Plant is established.

In 1983 total revenue from all sources reached \$38.8 million including \$6.1 million from production and \$24.9 million from the drillship charter being earned out on the Northwest Shelf, Western Australia.



View of a 15 MMCFD Liquid Petroleum Gas Plant.

IMPORTANT EVENTS IN THE PAST 12 MONTHS

- Drilling of three successful oil-producing wildcats on separate structures in Permit WA-149P, offshore Carnarvon Basin, Western Australia. South Pepper #1, North Herald #1 and Chervil #1 have all flowed oil in significant quantities. These strikes are of great importance to shareholders, as they point to the establishment of a commercial operation. If the planned appraisal wells, to be drilled late in 1983, are successful, the fields will be developed immediately with anticipated commencement of production in late 1984.
- Final design for the LPG plant to extract additional petroleum liquids from the gas fields in PL 15 and PL 16, Surat Basin, Queensland, was agreed following evaluation of engineering studies carried out by Gaffney, Cline and Associates. The 30 mmcf/d plant will be constructed at the head of the Silver Springs Pipeline at ML1A and will produce for sale an anticipated 24,000 tonnes of LPG annually. The predicted completion date for the LPG plant and associated pipeline is September 1984.
- Farmout agreement signed between ATP 275P partners and AGIP Australia Ltd., whereby AGIP will spend 1.12 million dollars to earn a 40% interest in the Eromanga Basin Queensland block.
- Agreement reached in principle with BHP Petroleum Pty Ltd., formerly Hematite Petroleum Pty Ltd., a subsidiary of Broken Hill Proprietary Company Ltd., to farm into Permit WA64P Carnarvon Basin, Western Australia. The agreement will provide for a well to be drilled on the West Barrow structure in 1984 to evaluate the Barrow Group encountered in West Barrow #1A. That well was suspended after running logs and no testing was undertaken. However, log interpretation inferred a 110 m net pay interval between 3,376 — 3,520 m containing high API gravity liquid hydrocarbons.
- Drillship Energy Searcher was sold during the year and Social Chartering Pty Limited, a wholly owned subsidiary, entered into a time charter by demise. The vessel is carrying out a drilling contract for Woodside Offshore Petroleum Pty. Ltd.
- Drilling of discovery oil well Nockatunga #1 in Permit ATP 267P Eromanga Basin Queensland during September 1983.

ABBREVIATIONS USED IN THIS ANNUAL REPORT

MCF	: One thousand cubic feet
MMCF	: One million cubic feet
BCF	: One billion cubic feet
MCM	: One thousand cubic metres
MMCM	: One million cubic metres
KL	: One Kilolitre = 6.29 barrels
BBL	: One barrel = 35.476 gallons = 159 litres
MBBL	: One thousand barrels
MMBBL	: One million barrels

CONVERSIONS APPLICABLE TO OIL & GAS

→ convert MCF into cubic metres	multiply by	29.317
→ convert MCM into MCF	multiply by	35.315
→ convert BBLs into KL	multiply by	0.159
→ convert KL into BBL	multiply by	6.290

HIGHLIGHTS

Five year statistics

FINANCIAL (Consolidated Figures)

Year	Issued Capital \$000	Reserves \$000	Shareholders' Funds \$000	Total Assets \$000	Total Liabilities \$000
1979	7,413	3,286	10,699	13,936 –	3,237
1980	10,772	28,216	38,988	41,500	2,512
1981	15,065	54,193	69,258	72,066	2,808
1982	24,298	36,550	60,848	131,080*	70,232*
1983	37,947	36,543	74,490	190,597	116,107

*Note: 1982 figures adjusted to include consolidation of subsidiary.

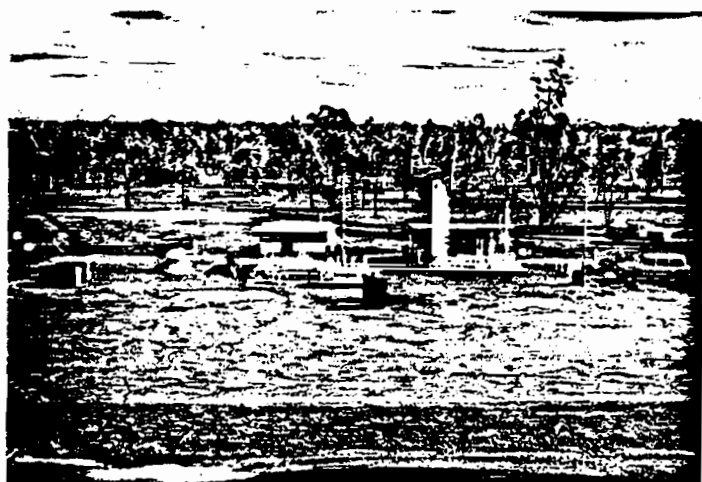
Year	Production Revenue		Other Revenue \$000	Total Revenue \$000	Net Profit/(Loss) & Extraordinary Items \$000	Net Tangible Assets per share Cents
	Gas \$000	Liquids \$000				
1979	827	246	514	1,587	983	7.2
1980	2,057	983	921	3,961	2,311	20.8
1981	3,120	1,580	1,912	6,612	4,160	30.0
1982	3,690	1,878	3,755	9,323	(20,460)	25.0
1983	4,388	1,759	32,622	38,769	(6,377)	19.6

EXPLORATION

Year	Exploration Expenditure \$000	Wells Drilled	Wells Successful	Wells total depth Metres	Seismic Survey Kms	Total Petroleum Tenements Sq Kms
1979	1,008	5	3	9,691	1,126	60,790
1980	2,020	8	3	21,645	1,587	131,900
1981	5,161	5	2	16,474	6,260	215,631
1982	29,371	25	6	69,412	7,364	205,401
1983	10,561	8	4	17,607	3,007	162,527

PRODUCTION — Source: Surat Basin (Offshore's Share)

Year	Gas Production		Condensate/Oil Production	
	MMCM	MMCF	Kilolitres	Barrels
1979	19.1	674	3,600	22,644
1980	38.4	1,357	6,886	43,311
1981	46.4	1,640	8,332	52,432
1982	47.0	1,662	9,705	61,039
1983	48.0	1,693	9,640	60,629



Gas/condensate processing plant at Silver Springs

REVIEW OF OPERATIONS 1982-1983

During the past year, Offshore Oil continued to actively explore and develop its petroleum tenements.

The company has a substantial interest in gas and condensate producing fields in Queensland and in three recently discovered potentially commercial oil fields off the coast of Western Australia. Exploration acreage comprises 24 tenements with a gross area of 163,322 sq km (over 40 million acres).

Seismic surveys totalling 3,007km were completed during the year and the company participated in the drilling of eight wells (four offshore and four onshore) four of which were successful. Since the end of the year, a further 2 onshore wells have been drilled one of which was a successful oil discovery.

1. PRODUCTION

Production of gas and condensate from the Surat Basin, Queensland fields was maintained at approximately the same level as 1982.

These results were adversely affected by the prolonged drought in Queensland which depressed sales to our major purchasers. Subsequent heavy rain in the June quarter further affected sales.

Offshore's share of production for the 12 months ended 30 June, 1983 compared with 1982 was as follows:

	Gas — million cubic feet (MMCF)		
	Silver Springs	Boxleigh	Total
1983	1,498	195	1,693
1982	1,391	271	1,662

	Condensate/Oil — barrels (BBL)			
	Silver Springs	Boxleigh	Other	Total
1983	51,513	7,776	1,340	60,629
1982	49,719	10,881	639	61,039

Gross revenue to the company from gas and liquid production during the past year (before pipeline tariff and take or pay income) totalled \$6.1 million, an increase of 10.4% over 1982.

Revenue contributed from gas production was \$4.4 million and from liquids production was \$1.7 million.

2. LIQUID PETROLEUM GAS PLANT

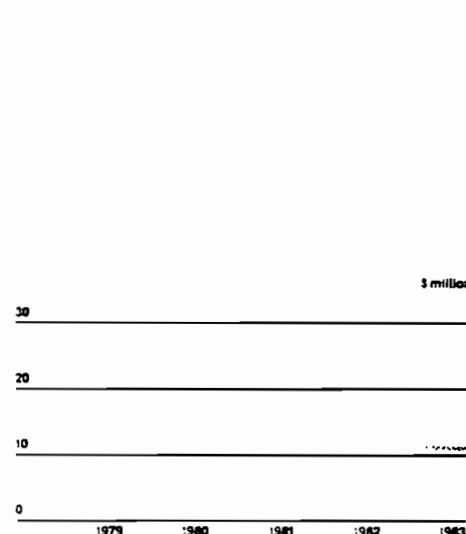
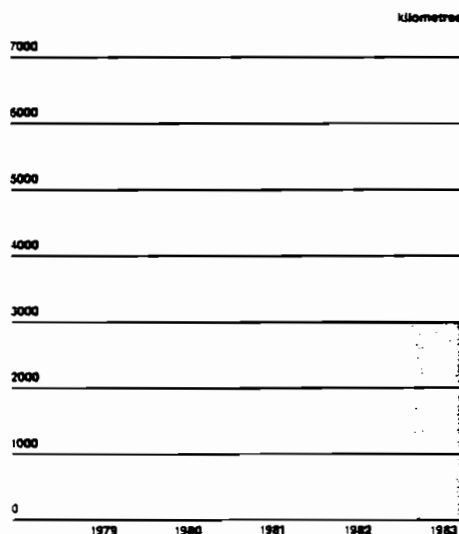
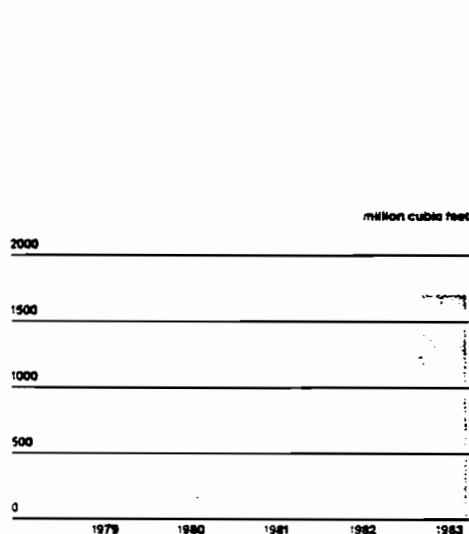
Evaluation and feasibility studies were conducted and the final design for an LPG plant to extract additional petroleum products from the Surat Basin gas/condensate fields was agreed. The plant will have the capacity to process 30 million cubic feet of gas per day and will be constructed at the head of the Silver Springs Pipeline, south of Wallumbilla, Queensland and is due for completion in November 1984. The plant will extract an estimated 24,000 tonnes of LPG from 5.4 BCF gas during 1985 with associated condensate production of 220,000 barrels.

Offshore's 47.74% share of the cost of the project is estimated at \$7 million.

NATURAL GAS PRODUCTION (Offshore Oil's Share)

SEISMIC ACTIVITY

EXPLORATION EXPENDITURE



3. EXPLORATION

Queensland — Onshore

AUTHORITY TO PROSPECT 145-P, SURAT BASIN

Exploration in ATP-145-P during the year consisted of two wells and 432 km of seismic. A substantial review of the area was conducted to formulate ongoing exploration in association with development of the liquids plant.

PL15, PL16, PL19, Noona Block, Wünger Block and Allgas Sub-
blocks.

(Offshore's interests — refer chart of tenements. Operator-Bridge Oil Ltd.)

The step out well Silver Springs #9 was unsuccessful, but the appraisal well Sirrah #3 achieved drill stem test flow rates of up to 6.3 MMCFD of gas and associated condensate. Subsequent production testing of Sirrah 2 and 3 confirmed the field as commercial.

During the year Gaffney, Cline and Associates carried out reservoir engineering studies on the Sirrah field to confirm proven and probable reserves and also reassessed reservoir data on the Silver Springs, Boxleigh and Renlim fields. These reports,

supported by the Operator's in-house studies, determined the optimum production schedules for the efficient operation of the liquids plant. The plant will initially treat gas from Silver Springs and Boxleigh fields with both Renlim and Sirrah being placed on production in subsequent years. During the forthcoming year a detailed seismic grid will be shot over the Sirrah structure and an additional well drilled to upgrade the current possible reserves.

In the remainder of the acreage additional seismic will be shot and an accelerated drilling programme of up to five wells will be undertaken. Commencement of this programme has been delayed by unseasonal wet weather in the region.

Myall and Bainbilla Blocks, Dalkeith Block.

(Offshore's interests — Myall and Bainbilla Blocks 15%, Dalkeith Block 25%. Operator — Bridge Oil Ltd.)

Long-term production testing of Permian reservoirs in Noorindoo #1 (Myall block) and Waggamba #1 (Dalkeith block) were undertaken, and on completion of tests, options for improving flow rates will be evaluated. One or more wells will be drilled on prospects delineated by recent seismic in the Bainbilla block during the coming year. Additional seismic is contemplated for both areas.

AUTHORITY TO PROSPECT 254-P, SURAT BASIN

(Offshore's interest 17%. Operator — Era South Pacific Pty Ltd)

Application for renewal of a reduced area was approved and granted by the Mines Department from 1 August 1982 for a period of four years. Geological and geophysical studies were undertaken for Year 1, and a seismic survey is planned for Year 2.

AUTHORITY TO PROSPECT 267-P, EROMANGA BASIN

(Offshore's interest 12.5%. Operator — Pancontinental Petroleum Ltd.)

A discovery well, Nockatunga #1, was drilled during September 1983 confirming the prospectivity of this permit. ATP 267P is adjacent to the successful Naccowlah Block (ATP 259P) containing the Jackson oilfield. The Jackson pipeline (see inside front cover) currently being built from Jackson to Moonie will provide the necessary transportation infrastructure to enable early development of any commercial fields in the area.

Nockatunga #1, which is located 16kms south-east of Jackson, discovered oil in the lower cretaceous Murta sandstone. DST #1 recovered 36.8 barrels of 46 API oil in the drillstring at a calculated flow rate of 245 barrels/day. Further testing of this reservoir will be undertaken to evaluate the discovery.

Two other wells were drilled during the year. Kihee North #1 was completed as a dry hole in July 1982. This well was reported in the Review of Operations in the 1982 Annual Report. A seismic survey of 621.28km was completed in the Bellalie-Omicron area, and 111.84km of seismic was acquired south of Kihee #1, approximately 20km south-east of the Jackson Oilfield. A large closed anticlinal feature was defined in the south-western part of the permit, and Pigeon Lake #1 was drilled on this structure during August 1983. The well was plugged and abandoned after failing to encounter hydrocarbons.

DEPTH DRILLED: thousand metres

	1979	1980	1981	1982	1983
10					
20					
30					
40					
50					
60					
70					
80					

AUTHORITY TO PROSPECT 275-P, EROMANGA BASIN

(Offshore's interest 12.5%.
Operator — Offshore Oil N.L.)

A Farmout Agreement has been signed between the present ATP-275 joint venture parties and AGIP Australia Ltd., whereby AGIP will spend \$1.12 million to earn a 40% interest in the block. Offshore Oil's interest will reduce to 12.5%. The exploration programme will include a well on a large seismically-defined structure in the south-west of the permit, and over 300 km of seismic.

AUTHORITY TO PROSPECT 330-P, BOWEN BASIN

(Offshore's interest 30%. Operator — Offshore Oil N.L.)

This permit was issued on 1 January 1983 for an area previously held under ATP-284-P together with some additional blocks. Exploration during the year was limited to evaluation of data and geological assessment. A seismic programme is planned for late 1983.

AUTHORITY TO PROSPECT 354-C, CLARENCE-MORETON BASIN

(Transferred)

Offshore Oil has withdrawn from all coal exploration areas. Offshore's 50% interest in ATP 354-C was transferred to Pacific Copper Ltd.

Queensland — Offshore

AUTHORITY TO PROSPECT Q11P (incorporating ATP-262-P), PENINSULAR TROUGH — GULF OF PAPUA

(Offshore's interest 100%.
Operator — Offshore Oil N.L.
Group)

Owing to the continuing moratorium on petroleum exploration off the eastern Queensland coast, no work was carried out in these permit areas.

Northern Territory — Onshore

EXPLORATION LICENCE EL-2710, NGALLIA BASIN, URANIUM LICENCE

(Offshore's interest 8.1%. Operator — Central Pacific Minerals N.L.)

Exploration activity has been halted in EL-2710 since January 1983, and the permit placed on a care and maintenance basis until uranium prices and demand improve, and Government policy is established. Current reserves of U_3O_8 total 2,773 tonnes at an average grade of 3.43 kg per tonne. This represents an increase of 288 tonnes on previous reserves.

Core examination at onshore well Nockatunga No. 1 (Eromanga Basin)



Northern Territory — Offshore

EXPLORATION PERMIT NTP-28, BONAPARTE GULF BASIN

(Offshore's interest 25%. Operator — Australian Aquitaine Petroleum Pty. Ltd.)

Activity was limited to geological, geophysical and source rock studies, together with the Dussejour seismic survey of 350.31 km which was conducted in the southern part of the permit over interpreted Devonian reefs. The operator is continuing to pursue markets for this large but isolated gas resource.

EXPLORATION PERMIT NTP-34, ARAFURA BASIN

(Offshore's interest 12.5%. Operator — Diamond Shamrock Oil Co. (Aust.) Pty. Ltd.)

Following detailed interpretation of the 1593 km seismic data acquired in 1982, all efforts have been directed to obtain a farmout partner to drill one of the several attractive targets within the area.

Western Australia — Onshore

EXPLORATION PERMIT EP-130, PERTH BASIN

(Relinquished)

Following the drilling of the dry hole Sabina River #1 in August 1982, EP-130 was relinquished. This well was reported in the 1982 Annual Report.

EXPLORATION PERMIT EP-170, CANNING BASIN

(Offshore's interest 20%. Operator — ESP Interior Pty. Limited)

The Doman seismic survey of 221.9 km was shot in the northern part of the permit in October 1982. Interpretation defined two closed anticlinal structures, Doman and Spinifex and separate subsurface Devonian reef plays in the north of the area.

Negotiations are currently being held with a farmin partner to drill one or more of these prospects.

Western Australia — Offshore

EXPLORATION PERMITS WA-62-P, WA-137-P AND WA-142-P, CANNING BASIN

(Relinquished)

Following the drilling of the dry hole North Turtle #1 (WA-137-P, September 1982) and the final abandonment of Phoenix #2 (WA-62-P, January 1983) the permits were relinquished.

EXPLORATION PERMIT WA-64-P, CARNARVON BASIN

(Offshore Group's interest 51.81%. Operator — Offshore Oil N.L.)

Agreement has been reached in principle for BHP Petroleum Pty. Ltd. to farm-in to the permit. Formal documentation, under which BHP Petroleum will become Operator and drill a well to earn an approximate 49.54% interest in the permit is expected to be completed in the near future. The well to be drilled by BHP Petroleum in 1984, will be on the West Barrow structure to evaluate the Barrow Group encountered in the West Barrow #1A well. This well was suspended after running logs and no testing could be undertaken. However, log interpretation inferred a 110 m net pay interval between 3,376-3,520 m, containing high API gravity liquid hydrocarbons. The permit was renewed for a five year period on 30th June, 1983.

EXPLORATION PERMIT WA-149-P, CARNARVON BASIN

(Offshore's interest 20%. Operator — Wesminco Oil Pty. Ltd.)

This permit represents the most successful exploration area in which the company was involved during the year. To date three discovery wells have been drilled on separate structures which confirms the high prospectivity of the permit. The shallow water depth (17m), proximity to production facilities at Barrow Island and shallow producing horizons (1000-1200m) will enable economic and rapid development

of any commercial fields.

The Irene seismic survey of 494.27 km was completed on 16 July 1982. Following interpretation of the data, South Pepper #1 well was spudded on 9 November 1982 and drilled to a total depth of 2,550 metres. Production testing in the Lower Barrow Group yielded 520 barrels of oil per day from a three metre sand between 2,214m — 2,217m. Production testing in the Upper Barrow Group yielded 1,515 barrels of oil per day from a nine metre sand between 1,213m — 1,240 m overlain by 14 metres of gas sands yielding 10.9 MMCF per day.

Following the drilling of South Pepper #1, the South Pepper seismic survey of 398 km was shot during February 1983. This detailed survey embodied a 1 km grid over both South Pepper and North Herald structures. North Herald #1 was spudded on 21 May 1983 and drilled to a total depth of 2,600 metres. The Upper Barrow Formation was tested over the interval 1,197m — 1,203.5m and flowed 1,883 barrels of oil per day. Log interpretation indicates a total oil column of 11 — 12 m. The lower oil sand encountered in the South Pepper well was not present in North Herald. Chervil #1 was spudded on 30 June 1983 and drilled to a total depth of 2,661m. The Upper Barrow Group was interpreted to have a gas cap between 1,045.5m — 1,047.1m (1.6m) underlain by an oil leg to 1,054.5m (7.4m). A drill stem test from 1,049m — 1,052.5m flowed a maximum of 2,053 barrels of oil per day.

During late 1983 an appraisal programme, comprising three wells and detailed seismic, will commence. The wells are planned to delineate the size and reserves of the South Pepper/North Herald fields. If the wells are successful, the South Pepper/North Herald fields will be developed immediately, with anticipated commencement of production in late 1984.

EXPLORATION PERMIT WA-174-P, PERTH BASIN

(Offshore's interest 15%. Operator — B.P. Petroleum Development Aust.)

Evaluation of a previous seismic survey was completed, and additional infill seismic will be undertaken in 1983-84.

New South Wales — Onshore

PETROLEUM LICENCE PEL-211, BULLOO EMBAYMENT, EROMANGA BASIN

(Transferred)

Restrictions on entry into the Sturt National Park in the more prospective part of the permit have drastically reduced the potential of this area and all parties except Sydney Oil voted to relinquish the permit. By common assent the licence was transferred to Sydney Oil Company.

Indonesia

ASAHAN BLOCK, NORTH SUMATRA

(Offshore's interest 80%. Operator — Oxoco International Inc.)

During the year seismic interpretation was carried out and several drilling targets on Miocene reef trends were delineated.

Both the Operator, Oxoco International Inc. and Offshore Oil are actively seeking a farmin partner to drill these reef plays.

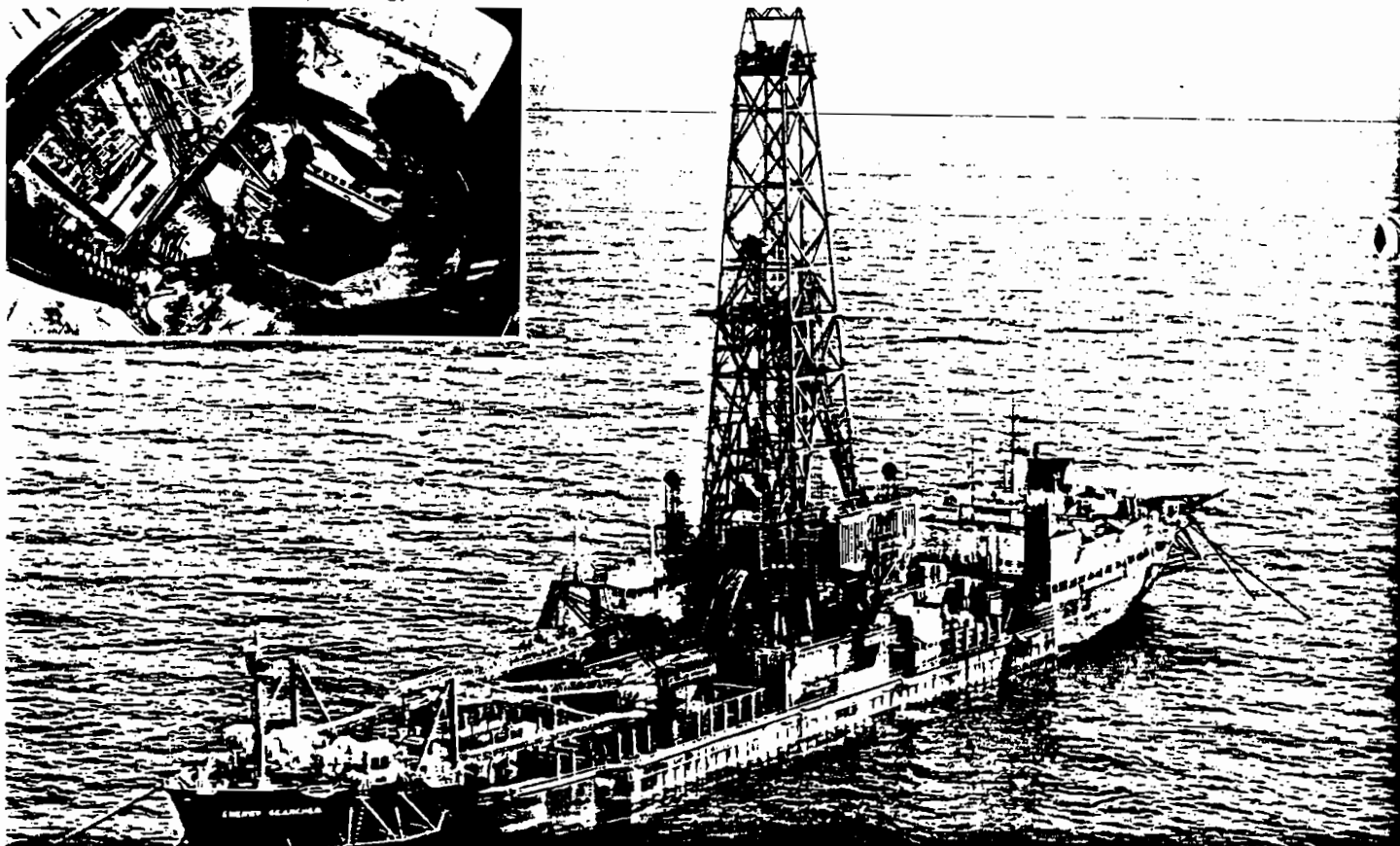
4. DRILLSHIP "ENERGY SEARCHER"

The drillship "Energy Searcher", chartered by a subsidiary of Offshore Oil is currently drilling its third well, Caswell #2, 400 km off Broome, Western Australia as part of Woodside Offshore Petroleum Pty. Ltd.'s drilling programme.

The vessel which is capable of drilling to a depth of 25,000 feet in water depths up to 1,500 feet has operated continuously since its arrival in Australia in mid October 1982 and is carrying out a major role in the search for further Australian petroleum reserves.

NEIL W. JOHNSON
Manager — Oil and Gas
Operations
September, 1983

View from the derrick on drillship "Energy Searcher".



"Energy Searcher" drilling in Australian waters.



OFFSHORE OIL NL
and Subsidiaries

REPORT OF THE DIRECTORS 30TH JUNE, 1983

The directors present their fourteenth Annual Report with respect to the financial statements and the state of affairs of the company and subsidiaries for the year ended 30th June, 1983.

Results

The group generated revenue for the current financial year of \$38.8 million. The principal sources of revenue were \$6.1 million from gas and liquid production (before pipeline tariff and take or pay income) and revenue of \$24.9 million received pursuant to a drilling contract with Woodside Offshore Petroleum Pty. Ltd. The drillship Energy Searcher is being chartered by a subsidiary of the Group to carry out this contract, for Atwood Oceanics Inc.

The operating profit for the holding company after extraordinary items was \$0.3 million compared with a loss of \$19.8 million in 1982.

The group results were an operating loss after extraordinary items of \$6.4 million compared with a \$20.5 million loss in 1982. The major items included in the 1983 loss were additional provisions against loans to the Brinds Group of Companies of \$1.4 million net, exploration expenditure written off on areas abandoned of \$1.7 million, depreciation expense of \$4.9 million for the drillship now sold, provision for loss on contingencies \$0.8 million, these losses being reduced by an amount of \$2.8 million representing the reversal of provisions no longer required and the bringing to account of income previously reported as unearned.

Consolidated Financial Statements

The consolidated financial figures presented include for the first time the results of the operations of the subsidiary companies involved in the charter of the drillship "Energy Searcher". The drillship, a major asset of the group, was sold during the year under a sale

and lease back arrangement with a consortium of leading banks in Australia.

The vessel is chartered by a subsidiary of the company for a five year term with an option to renew for a further 10 years.

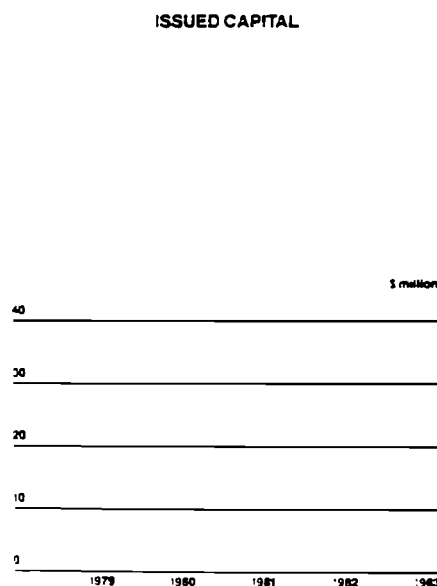
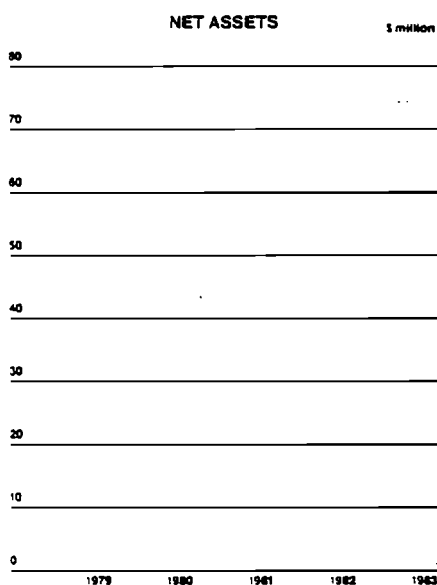
Petroleum Production and Exploration Interests

Petroleum production interests are shown in the balance sheet at \$52 million based on an independent valuation of reserves and production capabilities. Petroleum exploration interests are brought to account in the consolidated balance sheet at \$31.6 million being cost less amounts written off on areas abandoned. Expenditure on Permit WA-149-P is included in exploration interests at \$5.17 million. This area is considered by your directors to be one of the company's most valuable assets and based on the recent sale of a company which is a joint venture participant in the Permit, the market value of the company's 20% interest in the said Permit could be in order of \$50 million. However, in accordance with the normal accounting procedures of our Group this area will continue to be carried in our books on the basis of exploration costs actually incurred to date.

Production

Production of gas and condensate from the Surat Basin, Queensland fields, was at a similar level to the previous year.

The company's share of production for the year under review amounted to 1,693 million cubic feet of natural gas and 60,629 barrels of liquids. Gross revenue from production of \$6.1 million was an increase of 10.4% over 1982.



DIRECTORS' REPORT continued**Exploration**

Exploration expenditure for the financial year totalled \$10.6 million which was within the company's financial capacity and significantly less than the \$29 million incurred in 1982.

The company participated in the drilling of 8 wells (4 offshore and 4 onshore) of which 4 were successful. Notable achievements included three successive oil strikes in Permit WA-149-P, offshore Western Australia, which are expected to lead to the development of one or more commercial oil fields towards the end of 1984.

The other successful well was in the Surat Basin and was completed and suspended as a gas/condensate producer.

Agreement was successfully concluded with the substantial Italian-based group AGIP Australia Ltd to farm in to Prospect 275-P, Eromanga Basin, Queensland, and agreement was reached in principle with BHP Petroleum Pty Ltd (a subsidiary of Broken Hill Proprietary Company Ltd) to farm in to Permit WA-64-P, Carnarvon Basin, Western Australia.

Further details of these developments are outlined in the Review of Operations.

Liquidity Position

The Company's liquidity position improved during the 1982/83 financial year as a result of last year's placement and share issue and the provision of secured loan funds totalling \$14.5 million by the substantial shareholder, FAI Insurance Group.

Legal actions to endeavour to recover the loans made in prior years to various companies in the Brinds Limited Group were instituted and are being actively pursued though unfortunately, to date, no recoveries have been made and, as stated above, an additional provision of \$1.4 million net has been made in respect of the various loans.

In addition, a further issue of shares has been announced and will be made during the current financial year. Particulars appear on page 14. The funds generated by that issue should place the Group in a satisfactory position as far as its liquidity and working capital are concerned.

Acknowledgements

The company acknowledges the continuing assistance and co-operation of the various State Mines Departments, other government agencies and its many joint venture partners throughout the year.

The directors are happy to place on record the support of shareholders who have responded to the company's requirements for additional funds over past years and to the current share issue. The Board is confident that this support will be justified by the company's continued progress.

To our executives and staff who have contributed their efforts to the results achieved, the directors extend their sincere thanks and appreciation.

Appointment of Managing Director

Mr. Albert G. (Bert) Harris has been appointed Managing Director of the company effective from 19th September, 1983. Mr. Harris was previously General Manager and a Director of Bridge Oil Limited and has a wide experience in the oil exploration industry.

Future Prospects

The Directors believe that the Company's past problems have been substantially overcome and that the Company's prospects for growth and increased earnings in 1983-1984 are firmly established. They look forward to the future with confidence.

Directors

The directors in office at the date of this report are:

L.J. Adler (Chairman)
A.G. Harris (Managing Director)
T.E. Atkinson
J. Belfer
G.G. Hill
Professor J.R. Wilson

In accordance with Article 64 of the company's Articles of Association, Mr. Harris and Mr. Hill retire from the Board of Directors at the forthcoming Annual General Meeting. Under Articles 72 and 73 of the Articles of Association, Mr. Atkinson retires by rotation. Mr. Harris, Mr. Hill and Mr. Atkinson being eligible offer themselves for re-election at the said Annual General Meeting.

Activities

The principal activities of the corporations in the group in the course of the financial year were:

- oil and mineral exploration
- natural gas and condensate production, charter of a drillship and the investment of surplus funds in the money market, mortgages, and shares.
- The charter of a drillship constituted a new activity of the group which commenced during the year.

Subsidiaries

No subsidiaries were acquired or disposed of during the financial year.

Reserves and Provisions

The following material transfers were made to or from reserves and provisions of the group during the year:

Reserves

Asset revaluation:

— petroleum production interests

— freehold property

Capital profits

Provisions

Provision for exchange fluctuation

Provision for diminution in value of investments

Provision for loss on loans to subsidiaries

Provision for diminution in value of shares in corporations quoted on stock exchanges

Provision for loss on loans to unrelated corporations

Provision for maintenance

Provision for loss on contingencies

	Holding Company		Consolidated	
	To \$000	From \$000	To \$000	From \$000
Asset revaluation:				
— petroleum production interests	5,707	—	5,707	—
— freehold property	—	—	267	—
Capital profits	—	—	396	—
Provisions				
Provision for exchange fluctuation	5,030	—	5,492	—
Provision for diminution in value of investments	150	—	150	—
Provision for loss on loans to subsidiaries	922	—	—	—
Provision for diminution in value of shares in corporations quoted on stock exchanges	—	—	359	—
Provision for loss on loans to unrelated corporations	1,104	1,905	2,233	1,905
Provision for maintenance	—	—	938	—
Provision for loss on contingencies	826	—	826	—

Rounding off of Amounts in Accounts and Report

As the company is of the kind referred to in regulation 58(6) of the Companies Regulations, the directors have chosen to round off amounts in this report and the accompanying accounts to the nearest one thousand dollars in accordance with Section 271 of the Companies Act and regulation 58 of the Companies Regulations.

DIRECTORS' REPORT continued**Issue of shares**

During the financial year the company issued 136,490,141 shares paid to 10c each the purpose of which was to provide working capital. In addition, Aureole Investments Pty. Limited issued 2 'A' class shares of \$1 each pursuant to directors' share qualification.

On 10th August, 1983 the company announced a new renounceable rights issue to shareholders of 189,885,212 ordinary fully paid shares of 10 cents each in the

capital of the company at 10 cents per share on the basis of one new share for each two held at 31st August, 1983.

The issue closes on 7th October, 1983 and is fully underwritten by Jackson Graham Moore & Partners, members of The Sydney Stock Exchange Limited.

Funds raised from the issue amounting to \$18.99 million will provide additional working capital and for continued exploration and development of the company's petroleum tenements.

Options

At the date of this report, options to take up ordinary shares in the company are as follows:

Staff Incentive Share Scheme

Date granted	Date of exercise or expiry	No of Shares	Exercise Price c	Number Exercised	Number Outstanding
31 July 1978	28 July 1983	300,000	12.5	300,000	-
20 July 1979	19 July 1984	220,000	20.0	-	220,000
1 January 1980	31 December 1984	700,000	35.0	-	700,000
3 February 1981	2 February 1986	400,000	45.0	-	400,000
16 September 1980	15 September 1985	300,000	44.0	-	300,000
26 January 1982	25 January 1987	600,000	45.0	-	600,000
Other Share Options					
10 June 1983	31 December 1985	600,000	12.0	-	600,000

No shares were issued during the financial year in respect of options and since the end of the financial year 300,000 shares were issued by virtue of the exercise of a staff share option. In June, 1983 options over 600,000 shares were granted to Ricdal Consultants Pty Limited at an exercise price of 12 cents for each fully paid share. None of the holders of any of the options above referred to are entitled by virtue of the options to participate in any share issue of any other corporation of the group.

Dividends

No amounts have been paid or declared by way of dividend by the company since the end of the previous financial year, and no dividend will be recommended by the directors for declaration at the forthcoming Annual General Meeting.

No dividends were paid to or declared in favour of the holding company by any subsidiary company since the end of the previous year and up to the date of this report.

Bad and Doubtful Debts

Before the profit and loss statement and balance sheet of the company were made out the directors took reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts, and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts.

At the date of this report, the directors of the company are not aware of any circumstances that would render the amount written off for bad debts or the amount of the provision for doubtful debts in the group inadequate to any substantial extent.

Current Assets

Before the profit and loss statement and balance sheet of the company were made out, the directors took reasonable steps to ascertain whether any current assets other than debts were unlikely to realise in the ordinary course of business their value as shown in the accounting records of the company and to the extent so ascertained caused:

- (i) those assets to be written down to an amount that they might be expected so to realise, or
- (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise.

At the date of this report the directors are not aware of any circumstances that would render the values attributed to the current assets in the group accounts misleading.

Events Subsequent to Balance Date

At the date of this report, there does not exist:

- (i) any charge on the assets of any corporation in the group that has arisen since the end of the financial year and secures the liabilities of any other person; or
- (ii) any contingent liabilities in respect of any corporation in the group that has arisen since the end of the financial year.

No contingent liability or other liability of any corporation in the group has become enforceable to the date of this report. The likelihood of contingencies becoming enforceable within the period twelve months after the end of the financial year is dependent upon the outcome of litigation, negotiation and commercial arbitration of the matters outlined in note 22 to the financial statements. In the opinion of the directors, no contingent or other liability of any corporation in the group has become enforceable or is likely to become

enforceable within a period of twelve months after the end of the financial year which will or may substantially affect the ability of the corporation to meet its obligations as and when they fall due.

Items of an Unusual Nature

At the date of this report, the directors are not aware of any circumstances, not otherwise dealt with in this report or the group accounts, that would render any amount stated in the group accounts misleading.

The results of the operations of the group, and of each corporation in the group for the financial year were not, in the opinion of the directors, substantially affected by any item, transaction or event of a material and unusual nature, other than those disclosed as extraordinary or abnormal items in the accounts.

There has not arisen in the interval between the end of the financial year and the date of this report any item, transaction or event of a material and unusual nature likely, in the opinion of the directors, to affect substantially the results of the operations of any corporation in the group for the next succeeding financial year.

Directors' Benefits

No director has received or become entitled to receive a benefit by reason of a contract made by the corporation or a related corporation with the director or with a firm of which he is a member or with a company in which he has a substantial financial interest, other than in the normal course of business.

Signed at SYDNEY this 19th day of September, 1983, in accordance with a resolution of the directors.

L.J. ADLER
T.E. ATKINSON
Directors



OFFSHORE OIL NL and Subsidiaries

PROFIT AND LOSS STATEMENTS FOR THE YEAR ENDED 30TH JUNE, 1983

	Notes	Holding company		Consolidated	
		1983 \$000	1982 \$000	1983 \$000	1982 \$000
REVENUE	2	<u>14,695</u>	<u>9,128</u>	<u>38,769</u>	<u>9,323</u>
OPERATING LOSS before income tax	3	<u>214</u>	9,678	<u>6,690</u>	11,507
Income tax expense applicable thereto (1982: overprovision in prior years)		<u>—</u>	(38)	<u>—</u>	(38)
OPERATING LOSS		<u>214</u>	9,640	<u>6,690</u>	11,469
EXTRAORDINARY ITEMS	4	<u>(520)</u>	<u>10,145</u>	<u>(313)</u>	<u>8,991</u>
OPERATING (PROFIT)/LOSS & EXTRAORDINARY ITEMS		<u>(306)</u>	19,785	<u>6,377</u>	20,460
Accumulated losses/(profits) at 1st July, 1982		<u>13,815</u>	(5,953)	<u>13,817</u>	(6,525)
		<u>13,509</u>	13,832	<u>20,194</u>	13,834
Transfer from capital profits reserve		<u>—</u>	(17)	<u>—</u>	(17)
ACCUMULATED LOSSES AT 30TH JUNE, 1983		<u>13,509</u>	<u>13,815</u>	<u>20,194</u>	<u>13,817</u>

The above profit and loss statements are to be read in conjunction with the notes to and forming part of the financial statements set out on pages 18 to 24



OFFSHORE OIL NL and Subsidiaries

BALANCE SHEETS AS AT 30TH JUNE, 1983

	Notes	Holding company		Consolidated	
		1983 5000	1982 5000	1983 5000	1982 5000
AUTHORISED CAPITAL		200,000	200,000	200,000	200,000
ISSUED CAPITAL	5	37,947	24,298	37,947	24,298
RESERVES	6	42,564	36,551	36,543	36,550
TOTAL CAPITAL & RESERVES		80,511	60,849	74,490	60,848
DEFERRED LIABILITY	7	5,030	—	5,492	—
NON-CURRENT LIABILITIES					
Term loans, secured	8	14,520	1,909	75,039	4,750
Provision for maintenance		—	—	938	—
Term loans, unsecured		280	352	280	352
		14,800	2,261	76,257	5,102
CURRENT LIABILITIES					
Bank overdraft		—	190	—	190
Bills payable, secured	8	16,625	16,625	16,625	16,625
Trade creditors & accrued expenses		2,162	13,047	5,649	47,828
Loan, secured	8	539	487	539	487
Term loan, secured		—	—	10,782	—
Unearned income		763	—	763	—
		20,089	30,349	34,358	65,130
TOTAL FUNDS PROVIDED		120,430	93,459	190,597	131,080
These funds are represented by:					
FIXED ASSETS					
Vessel under construction		—	—	—	51,760
Pipeline and plant	9	1,524	1,789	1,524	1,789
Other fixed assets	10	408	421	795	556
		1,932	2,210	2,319	54,105
NON-CURRENT ASSETS					
Petroleum production interests	11	52,000	44,169	52,000	44,169
Petroleum exploration interests	12	28,175	22,013	31,574	24,119
Other energy interests	13	560	723	560	723
investments	14	1,112	1,960	1,111	1,963
Loans to subsidiaries	15	27,100	18,906	—	—
Other debtor — subsidiary		6,624	—	—	—
Loan, unsecured		—	—	60,176	—
Intangible asset		—	—	—	41
		115,571	87,771	145,421	71,015
CURRENT ASSETS					
Cash at bank		58	8	845	62
Short term deposits	16	300	—	19,485	—
Inventories		—	—	1,810	—
Trade and joint venture debtors		1,390	2,116	4,125	3,199
Other debtors & prepayments		579	754	4,855	—
Shares in corporations quoted on a prescribed stock exchange	17	—	—	354	1,099
Loans, unsecured	18	600	600	11,383	1,600
		2,927	3,478	42,857	5,960
TOTAL ASSETS EMPLOYED		120,430	93,459	190,597	131,080
CAPITAL EXPENDITURE COMMITMENTS	19,20				
LEASE COMMITMENTS	21				
CONTINGENT LIABILITIES	22				

The above balance sheets are to be read in conjunction with the notes to and forming part of the financial statements set out on pages 18 to 24.



NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

for the year ended 30TH JUNE, 1983

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The principal accounting policies are consistent with those adopted in previous years except where stated:

(a) Basis of Financial Statements

The financial statements have been prepared in accordance with the requirements of the 7th Schedule of the Companies Act, 1981. The accounts are prepared primarily under the historical cost convention and do not take into account changing money values or, except where stated, current valuations of non-current assets.

(b) Principles of Consolidation

The group accounts comprise consolidated accounts of all subsidiaries within the meaning of the Companies Act, 1981. A list of subsidiaries appears in note 14(a). All inter-company balances and unrealised profits resulting from intra-group transactions have been eliminated. The interest of outside shareholders in the operating results and net assets of subsidiaries are stated separately in the consolidated profit and loss statement and balance sheet respectively. The company absorbs the minorities' interest in accumulated losses of subsidiary companies where accumulated losses are in excess of the minorities' investment. The comparative figures in the consolidated accounts have been adjusted to include a subsidiary company not previously consolidated, based on audited accounts at 31st March, 1982. Variations from the 1982 audited consolidated balance sheet reflect the impact of this change.

(c) Petroleum Production Interests

Natural gas and condensate fields with commercial reserves are shown at independent valuation. This valuation reflects a conservative estimate of the economic value of the interest. Amortisation of the petroleum production interests is based on production output relative to known recoverable reserves.

(d) Petroleum and Other Energy Exploration Areas

Exploration costs are accounted for under the 'Area of Interest' method, whereby costs are carried forward while there is a reasonable probability of success. Costs in respect of areas abandoned are written off in the period in which the decision to abandon is made.

(e) Joint Ventures

Production activities of the company are carried on through joint ventures with other parties, and the company's appropriate equity in major assets, liabilities and revenue is included in the accounts.

(f) Share Portfolio

The group's interests in companies, other than subsidiaries, are shown as investments and current assets. Dividend income is taken into profits as it is received.

(g) Fixed Assets & Other Non-Current Assets

Pipeline and plant, motor vehicles and other equipment are depreciated on a straight line basis over their expected economic lives. Holding charges on funds raised for major projects during development stages are capitalised. Depreciation of capitalised costs occurs over the expected economic life of the asset or project, and begins from the commencement of operation.

(h) Buildings

The amounts at which buildings are stated in the accounts are regularly reviewed. Where revaluations are made, valuations adopted by the directors are not in excess of those given by independent valuers.

(i) Leasehold Improvements

The cost of improvements to or on leasehold properties is amortised over the unexpired period of the lease or the estimated useful lives of the improvements, whichever is the shorter.

(j) Inventories

All inventory is valued at the lower of cost and net realisable value. Costs are assigned to individual items of inventory mainly on the basis of weighted average costs.

(k) Income Tax

Tax effect accounting procedures are followed. Future income tax benefits relating to tax losses and other timing differences are not brought to account as assets unless the benefit is virtually certain of being realised.

(l) Foreign Currencies

Amounts stated in foreign currencies are translated at the rate of exchange ruling at balance date. Assets and liabilities of foreign subsidiaries have been translated into Australian currency at year end rates of exchange while profits/losses of those subsidiaries have been translated at the average of rates ruling during the year. Unrealised translation gains have been credited directly to an account titled "Provision for Currency Fluctuation".

(m) Maintenance & Repairs

Maintenance, repair costs and minor renewals are charged against income as incurred. Maintenance provisions are raised by a charge against income to cover costs of periodic overhaul of major operating plant, the cycle of which extends beyond one financial year.

(n) Unearned Income

The company enters into "take or pay" contracts with respect to its gas sales whereby customers are invoiced and the company agrees to deliver the gas at some future date, to be specified by the customer. The company has amended its accounting policy from 1 July, 1982 from recognising revenue at the date of invoice to recognising revenue when the gas is delivered. Had the same policy been followed during the previous year unearned income at 30th June, 1982 would have been \$177,000.

NOTES continued

	Holding company		Consolidated	
	1983 \$000	1982 \$000	1983 \$000	1982 \$000
2. REVENUE				
Turnover from trading activities	7,617	7,331	34,229	7,358
Investment and other income	7,078	1,797	4,540	1,965
	<u>14,695</u>	<u>9,128</u>	<u>38,769</u>	<u>9,323</u>
3. OPERATING LOSS				
The operating loss before income tax is arrived at after charging and crediting the following specific items:				
(a) Charging as expense:				
Amortisation — freehold building	—	—	2	—
petroleum production interests	433	180	433	180
Auditors' remuneration — audit (no other benefits received)	52	15	56	15
— other services	15	—	15	—
Previous auditors — audit	20	—	20	—
Directors' emoluments — part time	19	30	19	30
Depreciation — pipeline and plant	264	248	264	248
— other fixed assets	43	47	45	52
— vessel	—	—	4,921	—
Foreign exchange loss	—	—	4	—
Interest paid/payable — other corporations/persons	4,483	2,170	11,683	2,171
Loss on sale of — fixed assets	10	—	10	—
— vessel	—	—	839	—
Preliminary expenses written off	—	—	4	—
Provisions for:				
— diminution in value of investments	150	—	150	—
— diminution in value of share portfolio	—	—	359	—
— maintenance	—	—	938	—
Share issue expenses written off	9	—	46	—
(b) Crediting as revenue:				
Dividends received — other corporations	20	60	22	74
Interest received/receivable:				
— other corporations	299	965	3,112	1,278
— subsidiaries	4,441	643	—	—
(c) Abnormal items of expense:				
(Income tax effect: \$Nil)				
Exploration expenditure on areas abandoned	1,689	12,377	1,689	12,377
Rights issue and underwriting commission written off	659	—	659	—
(iii) Write down of shares in listed companies to market value	—	—	—	1,344
4. EXTRAORDINARY ITEMS				
Extraordinary items with \$Nil (1982 \$Nil) income tax applicable comprise:				
Provision for loss on contingencies	826	—	826	—
Provision for loss on loans:				
— loans to subsidiary companies	922	2,619	—	—
— other loans	1,104	7,509	2,233	8,974
Loss on sale of investments	227	17	227	17
Provision for loss on loan written back	(1,905)	—	(1,905)	—
Unearned income brought to account	(1,694)	—	(1,694)	—
	<u>(520)</u>	<u>10,145</u>	<u>(313)</u>	<u>8,991</u>

NOTES continued

	Holding company		Consolidated	
	1983 \$000	1982 \$000	1983 \$000	1982 \$000
5. ISSUED CAPITAL				
379,470,424 shares of 10c each fully paid	<u>37,947</u>	<u>24,298</u>		
Issued capital was increased during the year as follows:				
(a) Placement of 10,000,000 shares paid to 10c on 1 July, 1982	<u>1,000</u>			
1 for 2 rights of 126,490,141 paid to 10c	<u>12,649</u>			
	<u>13,649</u>			
During the 1982 financial year issued capital was increased as follows:				
(a) 10,500,000 contributing shares paid to 5c were issued			525	
(b) 174,163,523 contributing shares paid to 5c each were converted to fully paid shares of 10c each			<u>8,708</u>	
			<u>9,233</u>	
6. RESERVES				
(a) Reserves include:				
Accumulated losses	(13,509)	(13,815)	(20,194)	(13,817)
Asset revaluation comprising:				
— petroleum production interests	48,707	43,000	48,707	43,000
— freehold property	—	—	267	—
Capital profits	85	85	482	86
Share & option premium	<u>7,281</u>	<u>7,281</u>	<u>7,281</u>	<u>7,281</u>
	<u>42,564</u>	<u>36,551</u>	<u>36,543</u>	<u>36,550</u>
(b) Movements in reserves:				
Asset revaluation reserve				
Balance 30th June, 1982	43,000	43,000	43,000	43,000
Surplus on revaluation of petroleum production interests	5,707	—	5,707	—
Surplus on revaluation of freehold property	—	—	267	—
Balance 30th June, 1983	<u>48,707</u>	<u>43,000</u>	<u>48,974</u>	<u>43,000</u>
(c) Capital profits reserve:				
Balance 30th June, 1982	85	85	86	86
Shareholder loan funds capitalised	—	—	396	—
Balance 30th June, 1983	<u>85</u>	<u>85</u>	<u>482</u>	<u>86</u>
7. DEFERRED LIABILITY				
Provision for exchange fluctuation representing the surplus on translation of loan balances due from subsidiary and related companies	<u>5,030</u>	<u>—</u>	<u>5,492</u>	<u>—</u>

NOTES continued

	Holding company		Consolidated	
	1983 \$000	1982 \$000	1983 \$000	1982 \$000

8. SECURED LOANS AND BILLS PAYABLE

(a) Secured loans

(i) Loan from the State Government Insurance Office (Queensland) of \$539,000 (1982 \$2,396,000) to the company is secured by first ranking charge over the company's Queensland petroleum leases, pipeline licence, all present and future assets and undertakings in the State of Queensland, together with the assignment of the benefit of the company's Queensland gas sales contracts.

(ii) A loan to the company of \$14,520,000 (1982 \$Nil) is secured by a third ranking charge over the company's Queensland petroleum leases, pipeline licence, gas sales contracts and joint venture property governed by the Noona and Wunger Joint Venture Agreements.

(iii) A loan to a subsidiary company is secured by a charge over the cash flow of that subsidiary company. The loan is represented as follows:

Non current			60,519	2,841
Current			10,782	—
			71,301	2,841

Bills payable

Bills payable facility is secured by a second ranking charge over the company's Queensland petroleum leases, pipeline licence and gas sales contracts.

9. PIPELINE AND PLANT

47.74% interest in Silver Springs pipeline at cost

	2,643	2,643	2,643	2,643
Provision for depreciation	1,119	854	1,119	854
	1,524	1,789	1,524	1,789

10. OTHER FIXED ASSETS

Strata title premises

— at cost			—	114
— Directors valuation 1.3.83			380	—
			380	114

Vehicles, furniture & equipment — at cost

	522	497	534	523
Provision for depreciation	114	76	119	81
	408	421	415	442
	408	421	795	556

PETROLEUM PRODUCTION INTERESTS

Petroleum production interest — at cost

		1,774		1,774
Provision for amortisation		605		605
		1,169		1,169
Directors' valuation — 30 June, 1981		43,000		43,000
Independent valuation 30 June, 1983	52,000	44,169	52,000	44,169

Australian ERC Energy Resource Consultants (ERC) considers this valuation of the producing oil and gas reserves of Offshore Oil N.L. in the Surat Basin to be fair and reasonable on the basis of information made available to them and at a 15 percent discount rate. ERC has not made an independent study of reserves and production capabilities. The assumptions made regarding these items are the result of earlier studies carried out by another independent consultant and have not been verified by ERC.

NOTES continued

	Holding company		Consolidated	
	1983 \$000	1982 \$000	1983 \$000	1982 \$000
12. PETROLEUM EXPLORATION INTERESTS				
Petroleum exploration interests, at cost	29,670	34,312	33,069	36,418
Amounts written off on areas abandoned during the year	1,495	12,299	1,495	12,299
	28,175	22,013	31,574	24,119

Barrow Basin Joint Venture (WA-64-P)

(a) The company and one of its subsidiaries with interests totalling 51.81%, are participants in the Barrow Basin Joint Venture (WA-64-P). The joint venture participants have claimed unquantified damages against the drilling contractor alleging negligence, breach of contract, breach of conditions of fitness for purpose and other matters in providing and operating a vessel required to fulfill contractual obligations. A counter claim has been made by the contractor for US\$6,170,000, group proportion US\$3,197,000, being amounts invoiced and unpaid under the contract. The participants believe that the joint venture will be awarded damages in excess of this counter claim consequently, no liability will arise against the company or its subsidiary.

(b) The company has fulfilled its guarantee obligations pursuant to agreements dated 2nd and 7th April, 1983, in paying cash calls on behalf of a participant, Hallmark Minerals NL, in the WA-64-P joint venture. The agreements contain provision that the company can assume the interests of the guaranteed participant if the company fulfills its guarantee obligation. By notice of assumption dated 23rd February, 1983 the company assumed the participant's 9 45/95% interest in the permit. The company has instituted proceedings in the Supreme Court of NSW against the participant for declarations that the company was entitled to, and has, assumed the interests of the participant and that the participant holds its interests in trust for the company; and for an order that the participant transfer its interests in the permit to the company. The effect of the assumption notice has resulted in a provision of \$1,905,000 (1982 \$1,079,000) against the amount due from the participant being reversed and the amount paid of \$2,283,000 (1982 \$1,033,000) on behalf of the participant in respect of the WA-64-P permit being transferred from unsecured loans to petroleum exploration interests.

13. OTHER ENERGY INTERESTS

Acquisition and expenditure on various ventures, at cost	754	801	754	801
Amounts written off on areas abandoned during the year	194	78	194	78
	560	723	560	723

14. INVESTMENTS

Shares in corporations quoted on stock exchanges — at market value	491	1,392	491	1,392
At cost	641	1,339	641	1,343
Provision for diminution in value	150	—	150	—
	491	1,339	491	1,343
Shares in other corporations — at cost	620	620	620	620
Shares in subsidiary companies — at cost	1	1	—	—
	1,112	1,960	1,111	1,963

(a) Subsidiary Companies

Company	Place of incorporation	Class of share	1983		1982	
			% Holding	Cost \$	% Holding	Cost \$
Aureole Investments Pty Limited	NSW	Ordinary	100	5	100	3
Australian Assets (Offshore Oil) Limited	UK	Ordinary	100	4	100	4
Gulf Interstate Overseas Limited	Delaware USA	Ordinary	100	—	100	—
Offshore Oil (Far East) Limited	Hong Kong	Ordinary	100	824	100	824
Pacific Supplier Inc	Liberia	Ordinary	95	475	95	475
Socal Chartering Pty Limited	ACT	Ordinary	100	2	—	—
				<u>1,310</u>		<u>1,306</u>

All companies carry on business in their country of incorporation, except Pacific Supplier Inc., which carries on business in a number of countries excluding Australia.

NOTES continued

	Holding company		Consolidated	
	1983 \$000	1982 \$000	1983 \$000	1982 \$000
(b) During the year members of the group contributed to the group operating loss for the year as follows:				
	1983	1982		
	\$000	\$000		
Offshore Oil NL	214	10,346		
Aureole Investments Pty Limited	(60)	1,097		
Australian Assets (Offshore Oil) Limited	—	3		
Gulf Interstate Overseas Limited	4	9		
Offshore Oil (Far East) Limited	59	14		
Pacific Supplier Inc	2,200	—		
Socal Chartering Pty Limited	4,273	—		
	6,690	11,469		

15. LOANS TO SUBSIDIARIES

Loans to subsidiaries	30,641	21,525		
Provision for loss	3,541	2,619		
	27,100	18,906		

16. SHORT TERM DEPOSITS

AMP Morgan Grenfell Acceptances Limited	300		300	
Australian Bank	—		14,022	
Chase NBA	—		5,163	
	300		19,485	

17. SHARES IN CORPORATIONS QUOTED ON STOCK EXCHANGES

Share trading portfolio, at cost (1982 market value)			713	1,099
Provision for diminution in value			359	—
Market value at 30th June, 1983			354	1,099

18. LOANS

Unsecured:				
— Acron Pacific Limited	802	779	802	779
— Alexanders Corporation Limited	33	32	33	32
— Brinds Limited (provisional liquidator appointed)	3,513	3,485	3,513	3,485
— Bonds & Securities Nominees Pty Limited	138	129	138	129
— Bonds & Securities Trading Pty Limited (in liquidation)	797	782	797	782
— Gulf Resources NL	401	391	401	391
— Hallmark Minerals NL	95	1,079	95	1,079
— Investment Corporation of Fiji Limited	872	824	872	824
— Nadi Bay Beach Corporation Limited	—	—	2,594	2,449
— Southern Cross Exploration NL	657	608	657	624
	7,308	8,109	9,902	10,574
Less: Provision for loss on loans	6,708	7,509	9,302	8,974
	600	600	600	1,600
Other loan, unsecured	—	—	10,783	—
	600	600	11,383	1,600

NOTES continued

Holding company		Consolidated	
1983	1982	1983	1982
\$000	\$000	\$000	\$000

19. CAPITAL EXPENDITURE COMMITMENTS

The company has agreed in principle with the joint venture partners to construct a Liquid Petroleum Gas Extraction Plant in the Surat Basin, Queensland. The estimated cost of the plant is \$14 million, of which the company's share is approximately \$7 million.

20. CAPITAL AND FUTURE EXPLORATIVE COMMITMENTS

The holding company and subsidiaries, together with joint venture partners, at 30th June, 1983 had undertaken to contribute to exploration programmes in respect of which the contribution of the holding company would be approximately \$9,873,000 (1982 \$9,200,000) and holding company and subsidiaries approximately \$9,893,000 (1982 \$10,500,000).

21. LEASE COMMITMENTS

Drillship	—	—	111,061	—
Motor vehicles	108	91	108	91
	<u>108</u>	<u>91</u>	<u>111,169</u>	<u>91</u>
Due within twelve months	40	20	18,390	20
Due after twelve months	68	71	92,779	71
	<u>108</u>	<u>91</u>	<u>111,169</u>	<u>91</u>

22. CONTINGENT LIABILITIES

Details and estimates of maximum amounts of contingent liabilities are as follows:

- (a) The company is jointly and severally liable to the State Government Insurance Office (Queensland) for loan funds used to finance the Silver Springs Pipeline in which the company's interest is 47.74%. As at 30th June, 1983 the contingent liability is \$581,000 (1982 \$1,093,000).
- (b) The company may be obligated from 1st September, 1985 to service the debt of a subsidiary company should it have insufficient funds to service its loan obligations to a syndicate of banks. The debt service would consist of thirteen equal instalments of US\$1,538,462 and it reduces as each quarterly instalment is serviced.
- (c) An income tax assessment for the year ended 30th June, 1980 amounting to \$680,000 has been received. The company has lodged an objection to this assessment. The basis of the objection has included the issue concerning the Commissioner of Taxation's interpretation of the Income Tax Assessment Act concerning the treatment of declared capital in ascertaining taxable income. If the Commissioner adopts the same basis of assessment for the year ended 30 June, 1981 it is expected that a tax assessment, including penalties totalling approximately \$350,000 will be issued. Should such an assessment be issued, the company will again lodge an objection.
- (d) There is a claim against a subsidiary company in respect of commission of approximately US\$500,000. The claim has not been accepted nor agreed to by the subsidiary company.
- (e) A subsidiary company has agreed to incur costs to approximately US\$500,000 in carrying out rectification work to the drillship, Energy Searcher which was sold during the year. These costs form part of a claim by the subsidiary company against the rig consultants and the dockyard who contracted to convert the vessel. It is believed that the claim will be successful however, a contingent liability exists to the extent that the amount awarded is less than US\$500,000.
- (f) The syndicate lenders to a subsidiary company have an option over 300 of the 475 shares owned by the company in that subsidiary. The option may be exercised at any time at a price of US\$1 per share up until the syndicate loan is fully repaid.
- (g) A contingent liability may exist in relation to the group's interest in Permit WA-64-P. However for the reason stated in note 12(a) the directors believe that no loss will arise.



OFFSHORE OIL NL and Subsidiaries

STATEMENT OF SOURCES AND APPLICATIONS OF FUNDS

	Consolidated		%
	1982 \$000	1983 \$000	
SOURCE OF FUNDS			
Increases in issued capital	9,233	13,649	8
Share premium	2,818	—	—
Increase in long term borrowings	3,791	70,685	39
Decrease in investments	257	701	—
Proceeds from sale of non-current assets:			
— vessel	—	93,097	51
— other assets	—	10	—
— non-cash items	—	3,263	2
Increase in current liabilities	63,633	—	—
Decrease in current assets	6,507	—	—
Decrease in non-current assets	1,599	—	—
	<u>87,838</u>	<u>181,405</u>	100
APPLICATION OF FUNDS			
Operating loss	11,469	6,690	4
Non-cash items	7,205	—	—
Exploration in continuing areas of interest	16,994	10,263	6
Decrease in term deposits	—	72	—
Increase in fixed assets:			
— vessel	51,760	40,498	22
— plant & equipment	370	16	—
Increase in non-current assets	—	54,684	30
Decrease in current liabilities	—	31,598	17
Increase in current assets	—	37,584	21
Formation expenses	40	—	—
	<u>87,838</u>	<u>181,405</u>	100

OFFSHORE OIL NL and Subsidiaries

STATEMENT BY DIRECTORS

In the opinion of the directors:

(a) the financial statements of the company and of the group, set out on pages 16 to 25 are drawn up so as to give a true and fair view of the state of affairs as at 30th June, 1983, and the results for the year ended on that date, of the company and of the group as far as they concern members of the company;

(b) there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due.

Signed at SYDNEY this 19th day of September, 1983,
in accordance with a resolution of the directors

L.J. ADLER
T.E. ATKINSON
Directors

AUDITORS' REPORT TO THE MEMBERS

In our opinion:

(a) the accounts and group accounts set out on pages 16 to 26, which have been prepared under the historical cost convention stated in note 1(a) are properly drawn up in accordance with the provisions of the Companies Act, 1981 and so as to give a true and fair view of:

- (i) the state of affairs of the company and of the group as at 30th June, 1983 and of the results of the company and of the group for the year ended on that date so far as they concern members of the holding company; and
- (ii) the other matters required by section 269 of that Act to be dealt with in the accounts and in the group accounts;

(b) the accounting records and other records, and the registers required by that Act to be kept by the company and by those subsidiaries of which we are the auditors have been properly kept in accordance with the provisions of that Act (or, in the case of the subsidiary incorporated in another State and of which we are the auditors, in accordance with the provisions of the corresponding law of that State).

The subsidiaries of which other member firms of Coopers & Lybrand (International) have acted as auditors are:

Pacific Supplier Inc
Offshore Oil (Far East) Limited

and we have examined those subsidiaries' accounts and the auditors' reports thereon.

The subsidiary of which we have not acted as auditors is:

Australian Assets (Offshore Oil) Limited

and we have examined that subsidiary's accounts and the auditors' reports thereon.

We are satisfied that the accounts of the subsidiaries that have been consolidated with other accounts are in form and content appropriate and proper for the purposes of the preparation of the

consolidated accounts and we have received satisfactory information and explanations required by us for that purpose.

No auditors' report on the accounts of any of the subsidiaries was made subject to any qualification, or included any comment made under subsection (4) of section 285 of that Act.

COOPERS & LYBRAND
Chartered Accountants

by R.B. Scott

Sydney, 19th September, 1983.

SHAREHOLDERS

Statement as at 22nd September 1983:

1. Size of Holdings: Holding	No of Holdings	Shares Held	% of issued shares
1 — 1,000 shares	2,724	2,241,458	0.58
1,001 — 5,000 shares	14,760	39,502,494	10.22
5,001 — 10,000 shares	3,622	27,564,282	7.13
10,000 or more shares	3,270	317,311,647	82.07
	<u>24,376</u>	<u>386,619,881</u>	<u>100.00</u>

2. Voting Rights

On a show of hands every member present or by proxy shall have one vote and upon a poll one vote for each share held.

3. Twenty Largest Shareholders:

The total holding of the 20 largest holders of shares was 199,850,667 shares being 51.69% of the issued shares.

4. Substantial Shareholders

As shown in the company's Register of Substantial Shareholders:

Name	Address	Shares held	% of issued shares
FAI Insurances Limited (Group)	185 Macquarie Street Sydney, NSW, 2000	114,094,096	29.51

Note: The above Shareholders' Statement as at 22nd September, 1983 includes partial allotments made up to that date of approximately 6,849,000 shares in the current 1 for 2 share issue of 189,885,212 shares.

Directors' Interests

As at 21st July, 1983 the interests of directors in the share capital of the holding company were:

Director	Number of shares held	
	Non-beneficially	Beneficially
L J Adler	4,000	NIL
T E Atkinson	4,000	NIL
J Belfer	4,000	NIL
G G Hill	NIL	1,000
Prof J R Wilson	4,000	NIL

Note: L J Adler has a non-beneficial interest as a substantial shareholder of FAI Insurances Limited.

None of the directors of the holding company hold a beneficial interest in any shares of a related company.

At the end of the financial year, there were no material contracts subsisting involving directors' interests and no such contracts had been entered into since the end of the previous financial year.



INTERESTS IN EXPLORATION TENEMENTS

Location	Total Area		%	Offshore Group's Interest	
	Acres	Sq Kms		Acres	Sq Kms
Petroleum					
Queensland — Onshore					
Petroleum Lease No 15 — Surat Basin	64,246	260	33.3	21,394	87
Petroleum Lease No 16 — Surat Basin	64,246	260	50.0	32,123	130
Petroleum Lease No 19 — Surat Basin	6,425	26	33.3	2,142	9
Allgas Sub-Block No 1 — Boggo Creek	3,706	15	37.5	1,390	6
Allgas Sub-Block No 2 — Cooma	3,706	15	37.5	1,390	6
Allgas Sub-Block No 3 — Glen Fosslyn	3,706	15	37.5	1,390	6
ATP 145P — Surat Basin — Bainbilla Block	117,867	477	15.0	17,680	72
ATP 145P — Surat Basin — Myall Block	46,702	189	15.0	7,005	28
ATP 145P — Surat Basin — Noona Block	39,536	160	50.0	19,768	80
ATP 145P — Surat Basin — Wunger Block	13,343	54	33.3	4,448	18
ATP 145P — Surat Basin — Dalkeith Block	74,871	303	25.0	18,718	76
ATP 254P — Surat Basin	3,981,769	16,114	17.0	676,901	2,739
ATP 267P — Eromanga/Cooper Basin	4,367,987	17,677	12.5	545,998	2,210
ATP 275P — Eromanga Basin	3,513,021	14,217	12.5	439,128	1,777
ATP 330P — Bowen Basin	3,563,676	14,422	30.0	1,069,103	4,327
Queensland — Onshore — Sub-total	15,864,807	64,204		2,858,578	11,571
Q11P — Peninsula Trough	2,643,970	10,700	100.0	2,643,970	10,700
ATP262P — included within Q11P					
Northern Territory — Offshore					
NTP28 — Bonaparte Gulf Basin	6,851,589	27,728	25.0	1,712,897	6,932
NTP34 — Arafura Sea	7,966,504	32,240	12.5	995,813	4,030
Western Australia — Offshore					
WA-64P — Barrow Sub-basin	316,288	1,280	51.8	163,837	663
WA-149P — Carnarvon Basin	1,228,581	4,972	20.0	245,716	994
WA-174P — Perth Basin	1,796,417	7,270	15.0	269,463	1,091
Western Australia — Offshore — Sub-total	3,341,286	13,522		679,016	2,748
Western Australia — Onshore					
EP170 Canning Basin	1,652,605	6,688	20.0	330,521	1,338
North-East Sumatra — Offshore					
Asahan Block — Malacca Strait	1,839,650	7,445	80.0	1,471,720	5,956
Total Petroleum Areas	40,160,411	162,527		10,692,515	43,275
Uranium					
Northern Territory — Onshore					
EL2710 — Bigryli Prospect, Nagalia Basin	196,444	795	8.1	15,912	64



CHART OF JOINT VENTURE INTERESTS

Joint Venture Partners	QUEENSLAND — SURAT BASIN											QUEENSLAND — OTHER			NORTHERN TERRITORY			WESTERN AUSTRALIA			INDO-NESEA				
	PL 15	PL 16	PL 19	ATP 14SP Noona Block	ATP 14SP Wunger Block	PL 16 Sub-block #1 Boggo Creek	PL 16 Sub-block #2 Cooma	PL 16 Sub-block #3 Glen Fosslyn	ATP 14SP Myvall Block	ATP 14SP Bambulla Block	ATP 14SP Dalkeith Block	ATP 254P	Cooper/Eromanga Basin (267P)	Eromanga Basin (ATP 275P)	Bowen Basin (ATP 330P)	Peninsula Trough Gulf of Papua (Q11P)	Ngalia Basin (EL 271P)	Bonaparte Gull Basin (NTP209)	Aralura Sea (NTP 34)	Canning Basin (EP 170)	Barrow Sub-basin (WA64P)	Carnarvon Basin (WA149P)	Perth Basin (WA174P)	Asahan Block — North Sumatra	
Agip Australia Pty Ltd													40.0				39.7								
Alkane Exploration													7.5												
Allgas Energy						25.0	25.0	25.0	25.0	25.0															
Asahi Group													10.0	25.0				15.0							
Bain Petroleum																	25.0								
Banner Petroleum													30.0												
Bligh Oil													17.5												
BP Australia																							50.0		
Bridge Oil Group	33.3	50.0	33.3	50.0	33.3	37.5	37.5	37.5	25.0	25.0	25.0														
Carr Boyd Minerals													7.5												
Central Pacific Minerals																		16.9							
Charterhall Oil Australia																					7.8				
Chumelle													7.5												
Crusader Oil											25.0														
Diamond Shamrock Oil																		25.0			16.3				
Golden West Hydrocarbons																						9.9			
Gulf Resources																		1.15	5.0						
Longreach Oil														10.0											
Magnet Group																		25.0			12.0	10.0			
Mobil Oil Group	33.3		33.3		33.3				25.0	25.0															
Northern Michigan Exploration												33.0	12.5	5.0						25.0					
Offshore Oil Group	33.3	50.0	33.3	50.0	33.3	37.5	37.5	37.5	15.0	15.0	25.0	17.0	12.5	12.5	30.0	100	8.10	25.0	12.5	20.0	51.8	20.0	15.0	80.0	
O C A.																					20.0				
Oil Investments															20.0										
Oxoco International																							20.0		
Pancontinental Petroleum													10.0									10.0			
Pan Pacific Petroleum																				20.0		6.66			
Pelsart Resources														7.5											
Petro Energy																			12.5			6.66			
Petroleum Securities									10.0	10.0			5.0												
Reading & Bates Petroleum																						6.0			
Southern Cross Exploration															15.0		2.31	5.0							
Sovereign Oil																						6.0			
Strata Oil																			12.5	20.0					
Swan Resources												17.0													
Sydney Oil Group												33.0	5.0	10.0					12.5	20.0		3.3			
Urangesellschaft																									
Weeks Petroleum																							3.3		
Western Mining											25											40.0	25.0		

Denotes Operator

IN THE SUPREME COURT)
OF VICTORIA)
IN THE FULL COURT)

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

BETWEEN :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
and NORTHERN STAR INVESTMENTS PTY. LIMITED,
HALLMARK MINERALS N.L. and L.S.D. HOLDINGS
LIMITED

10

Appellants

and

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

20

Respondents

SECOND AFFIDAVIT OF MARTIN TOSIO

I, MARTIN ANTHONY TOSIO of 40 Provincial Road Linfield in the
State of New South Wales Chartered Accountant MAKE OATH AND SAY
as follows :

1. AT about 2.45 p.m. on Thursday, 13th October 1983 I attended a conference at the premises of Martin Corporation Ltd. ("Martin Corp."), P. & O. Building, 2 Castlereagh Street Sydney.

Those present were Mr. Malcolm Irving, Managing Director of Martin Corp.; Mr. Ken House, Associate Director of Credit & Administration of Martin Corp.; Boris Ganke and myself.

2. IN the course of conversation, the Martin Corp. representatives were asked a question in words to the effect : "Is it true that Offshore Oil and Adler are paying the legal costs of Martin Corp. in the action to wind up Brinds?" Either Irving or House said : "Yes".

10

3. I am informed and verily believe that the legal fees of both Mercantile Mutual Holdings Ltd. and Messrs. Jackson Graham Moore & Partners in respect of those actions were also paid by Offshore Oil NL.

SWORN at MELBOURNE in the)
)
State of Victoria by the said)
)
MARTIN ANTHONY TOSIO this)
)
16th day of November 1983)

20

Before me :

A Commissioner of the Supreme Court of the State of Victoria
for taking Affidavits.

This Affidavit is filed on behalf of the Appellant.

In the Full Court

No.229

Affidavit of Martin Anthony
Tosio dated 16th November 1983
(continued)

IN THE SUPREME COURT

OF VICTORIA

FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS, PTY. LTD.,
HALLMARK MINERALS N.L. and L.S.D.
HOLDINGS LIMITED Appellants

and

OFFSHORE OIL N.L. MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE
INSURANCE COMPANY LIMITED and
JACKSON GRAHAM MOORE AND PARTNERS
(a firm) Respondents

SECOND AFFIDAVIT OF MARTIN ANTHONY TOSIO

Deponent : Martin Anthony TOSIO

Sworn : 16th November, 1983

GODFREY & GODFREY,
Solicitors,
358 Lonsdale Street,
MELBOURNE. VIC. 3000

Tel: 67 2547
Ref: G63/83 WRH: PG

IN THE SUPREME COURT
OF VICTORIA
FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES M.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS PTY. LTD.,
HALLMARK MINERALS and L.S.D. HOLDINGS
LIMITED

Appellants

10

- and -

OFFSHORE OIL M.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

Respondents

A F F I D A V I T

I, DANNY MELECH UNGAR of 376 Alma Road Caulfield in the State
of Victoria Articled Clerk make oath and say as follows :

1. ON the 22nd day of August 1983 I was present in Court when
His Honour Mr. Justice Tadjell listened to arguments by
the parties on the question of costs of the Petition herein.

2. BEFORE making his Order His Honour said words to the effect
"..... too much time was spent in hearing the petition for
the purpose of Ganke pursuing a vendetta against Alder.
That was his only motivation. Costs which might otherwise
be recoverable by the Company are to be reduced by fifty
per cent on that account."

20

In the Full Court

No.230

Affidavit of Danny Melech Ungar
dated 16th November 1983 (cont'd)

3. HIS Honour then ordered that the taxed costs of the Company of the Petition as to one half thereof be costs in the winding up.

4. NOW produced and shown to me and marked with the letter "F" is a copy of the BHP farm-in proposal to the WA64P Venture parties.

SWORN at Melbourne by the)
)
abovenamed DANNY MELECH UNGAR)
)
this 16th day of November)
)
1983.)

Before me -

A Commissioner of the Supreme Court of the State of Victoria
for taking Affidavits.

3

In the Full Court

No.230

Affidavit of Danny Melech

Ungar dated 16th November 1983

(continued)

IN THE SUPREME COURT

OF VICTORIA

FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies

(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED
NORTHERN STAR INVESTMENTS, PTY. LTD.
HALLMARK MINERALS N.L. and L.S.D.
HOLDINGS LIMITED Appellants

and

OFFSHORE OIL N.L. MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE
INSURANCE COMPANY LIMITED and
JACKSON GRAHAM MOORE AND PARTNERS
(a firm) Respondents

A F F I D A V I T

Deponent : Danny Melech UNGAR

Sworn :

GODFREY & GODFREY,
Solicitors,
358 Lonsdale Street,
MELBOURNE. VIC. 3000

Tel: 67 2547

Ref: G63/83 WRH:

IN THE SUPREME COURT
OF VICTORIA
FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS PTY. LTD.,
HALLMARK MINERALS and L.S.D. HOLDINGS
LIMITED

Appellants

10

- and -

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

Respondents

A F F I D A V I T

I, DANNY MELECH UNGAR of 376 Alma Road Caulfield in the State
of Victoria Articled Clerk MAKE OATH AND SAY as follows :

1. I was present in Court during the hearing of the Petition
before His Honour Mr. Justice Tadgell.
2. ON Friday the 8th day of April 1983 the second day of
the hearing of the proceedings I heard Mr. Sher, Senior
Counsel for Brinds Ltd, say words to the effect, "There
is a dispute as to when the debts are payable and as
to the existence of the debts at all. Hence the petition
to liquidate is not the appropriate forum to hear the
matter. The issue is the solvency of Brinds. There

20

is also a dispute as to the validity of the moratorium and its termination."

3. NOW produced and shown to me and marked with the letter "G" is a photostat of the notes I made at the time of Mr. Sher's said submission.

SWORN by the abovenamed)
)
DANNY MELECH UNGAR this)
)
eighteenth day of)
)
November 1983)

Before me :

A Commissioner of the Supreme Court of the State of Victoria
for taking Affidavits.

In the Full
Court

No.232
Affidavit of
Danny Melech
Ungar dated
18th November
1983

(continued)

In the Full
Court

No.232
Affidavit of
Danny Melech
Ungar dated
18th November
1983

(continued)

IN THE SUPREME COURT

OF VICTORIA

FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED.
NORTHERN STAR INVESTMENTS, PTY. LTD.,
HALLMARK MINERALS N.L. and L.S.D.
HOLDINGS LIMITED Appellants

and

OFFSHORE OIL N.L. MARTIN CORPORATIO:
LIMITED, MERCANTILE MUTUAL LIFE
INSURANCE COMPANY LIMITED and
JACKSON GRAHAM MOORE AND PARTNERS
(a firm) Respondents

AFFIDAVIT OF DANNY MELECH UNGAR

Deponent : Danny Melech UNGAR

Sworn : 18th November 1983.

GODFREY & GODFREY,
Solicitors,
358 Lonsdale Street,
MELBOURNE. VIC. 3000

Tel: 67 2547

Ref: G63/83 WRH:PG

"G"

In the Full Court

No.233
EXHIBIT "G"
COPY OF NOTES TAKEN ON 8TH APRIL 1983

No.233
Exhibit "G"
Copy of Notes
taken on 8th
April 1983

Dispute as to whether the debt is payable
 & the existence of debt is all
 →
 Hence petition to liquidate is
 not the appropriate forum to
 hear the matter.

There is no remedy of Brinds

Dispute as to remedy of maintenance
 & its termination.

Every if case should be evidence
 in chief & only then to
 be cross-examination.

In the Full Court
No.233 Exhibit "G"
Copy of Notes taken on
8th April 1983 (cont'd)

" G "

This is the Exhibit marked "G" referred to in the Affidavit
of DANNY MELECH UNGAR sworn before me this 18th day of November
1983

A Commissioner of the Supreme Court of the
State of Victoria for taking Affidavits.

IN THE SUPREME COURT
OF VICTORIA
FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

BETWEEN :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS PTY. LTD.,
HALLMARK MINERALS and L.S.D. HOLDINGS
LIMITED

Appellants

- and -

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

Respondents

A F F I D A V I T

I, DANNY MELECH UNGER of 376 Alma Road Caulfield in the State
of Victoria Articled Clerk MAKE OATH AND SAY as follows:-

1. I crave leave to refer to my affidavit sworn the
16th day of November 1983 and filed herein.

2. NOW produced and shown to me and marked with the letter
"H" is a copy of the form order made pursuant to the
judgment of His Honour on 22nd August, 1983.

3. NO Final calculation of the costs of the proceedings
before His Honour Mr. Justice Tadgell has been made but
such costs will include the following items:-

- (a) Counsel's Fees approximately \$72,000.00;
- (b) Costs of the transcript approximately \$6,000.00;
- (c) Travelling and hotel expenses.

Numerous trips to Melbourne were made by witnesses from Sydney who were obliged to stay in Melbourne for various periods during the hearing. Mr. Ganke made more than ten trips from Sydney and stayed at a hotel in Melbourne for over a month. I estimate the costs of witnesses hotel and travelling expenses would be of the order of \$10,000.00.

[d] Solicitors costs. No bill for Solicitors costs has yet been prepared but I understand that in practice total costs of solicitors approximate the fees of junior counsel and I upon that rough basis I would estimate solicitors costs at about \$30,000.00.

4. I would estimate the taxed costs in a case such as this might approximate 60% of actual costs and for the purposes of this calculation I have excluded travelling and hotel expenses because I am not certain what view the Taxing Master would take as to this item.

5. UPON this basis I would anticipate that taxed costs would be in the vicinity of \$66,000.00 together with such sum as the Taxing Master allows for travelling and accommodation 20 expenses.

6. MR. Ganke has in fact paid counsel's fees and various other out of pocket expenses and we look to him for payment of our proper costs in due course.

7. ON the basis set out in this affidavit the difference between the total costs and 50% of the taxed costs is about \$77,000.00.

SWORN at Melbourne)
)
this 20th day of)
)
November, 1983.)

(continued)

Before me.....
A Commissioner of the Supreme
Court of Victoria for taking
Affidavits.

In the Full
Court

No.234
Exhibit "G"
Affidavit
of Danny
Melech Ungar
dated 28th
November
1983

(continued)

IN THE SUPREME COURT

OF VICTORIA

FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS, PTY. LTD.,
HALLMARK MINERALS N.L. and L.S.D.
HOLDINGS LIMITED Appellants

and

OFFSHORE OIL N.L. MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE
INSURANCE COMPANY LIMITED and
JACKSON GRAHAM MOORE AND PARTNERS
(a firm) Respondents

A F F I D A V I T

Deponent: D. M. Unger

Sworn: 29/11/1983.

GODFREY & GODFREY,
Solicitors,
358 Lonsdale Street,
MELBOURNE, VIC. 3000

Tel: 67 2547
Ref: 663/83 PH.

COUNSELS' SUBMISSIONS

IN THE SUPREME COURT)
OF VICTORIA)
IN THE FULL COURT)

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

BETWEEN :

10

BRINDS LIMITED, BORIS ANDREW CANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
and NORTHERN STAR INVESTMENTS PTY, LIMITED,
HALLMARK MINERALS N.L. and L.S.D. HOLDINGS
LIMITED

Appellants

and

20

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

Respondents

APPELLANTS' SUBMISSIONS ON ADJOURNMENT

1. Two basic contentions put before Tadgell J. by the Appellants to explain the motivation for the Petition to wind-up Brinds were:-

(a) "In summary, the contention (which I shall have to consider in a little more detail anon) is that those responsible for the management of Offshore have designedly acted and induced others to act with a view to depressing the value on the market of the issued shares in its capital, thus embarrassing Brinds financially for the purpose of having it wound up so that they might ultimately acquire the Offshore shares which Brinds and its subsidiaries now hold: The Petition has accordingly been contested on the footing that an investigation is required not merely of the financial position of Brinds and its subsidiaries and associated companies, but also of the present and prospective position of the Petitioner and, to some extent, of the conduct of those who control the Petitioner." ... Line 5, page 661.

10

(b) "It is said on behalf of the Opponents of the Petition that it is to be regarded not as a genuine attempt by Offshore to recover its debt from Brinds, but as part of a vendetta by Mr. Adler against Mr. Ganke, and is inspired by motives ulterior to the best interests of Offshore." ... Line 4, page 670.

20

2. It is respectfully submitted that although his Honour acknowledges that the making of the Winding-Up Order was opposed on the grounds that the Petition was inspired by improper motives, his Honour, in his Judgment, made no examination of any such evidence and came to no conclusion in respect of those matters. In Pettitt -v- Dunkley (1971) 1 N.S.W.L.R. 376 the New South Wales Court of Appeal dealt with a case where the Trial Judge gave only a very brief reason for his verdict. Moffitt J.A. said, "Jordan C.J. in delivering the judgment of the Full Court said: 'It has long been established that it is the duty of a court of first instance, from which an appeal lies to a higher court, to make, or cause to be made, a note of everything necessary to enable the case to be laid properly and sufficiently before

30

the appellate court if there should be an appeal. This includes not only the evidence, and the decision arrived at, but also the reasons for arriving at the decision. The duty is incumbent, not only upon magistrates (Ex parte Powter; Re Powter) and District Courts, but also upon this Court, from which an appeal lies to the High Court and the Privy Council (Ex parte Reid; Re Lynch)".

10 "In my respectful opinion the authorities to which I have referred and the other decisions which are therein mentioned establish that where in a trial without a jury there are real and relevant issues of fact which are necessarily posed for judicial decision or where there are substantial principles of law relevant to the determination of the case dependent for their application upon findings of fact in contention between the parties, and the mere recording of a verdict for one side or the other leaves an appellate tribunal in doubt as to how those various factual issues or principles have been resolved, then, in the absence of some strong compelling reason, the case is such that the judge's findings of fact and his reasons are essential for the purpose of enabling a proper understanding of the basis upon which the verdict entered has been reached, and the judge has a duty, as part of the exercise of his judicial office, to state the findings and the reasons for his decision adequately for that purpose. If he decides in such a case not to do so, he has made an error in that he has not properly fulfilled the function which the law calls upon him as a judicial person to exercise and such a decision on his part constitutes an error of law".

30 Manning J.A. said that he had read Moffitt J.A.'s judgment and further, "I agree with him that if it can be established that a judge has failed or declined to give any reasons for his decision in circumstances where there was a judicial duty, expressed or otherwise, to do so, then there has been an error of law". He further said, "As to whether an error of law could be shown to exist in this particular case and such error attracts the jurisdiction of this court, I agree with Moffitt J.A. in his reasons for concluding that although it cannot be said that there was an apparent error in the decision of his Honour, it is sufficient to show an error of law in the judicial process".

Moffitt J.A. also said, "...one is left with the view that the error of law in giving no reasons may well have concealed error in the decision. In my view, however, in order to found the jurisdiction to order a new trial, it is sufficient to show error of law in the judicial process".

3. His Honour Mr. Justice Tadgell does not suggest and it is not the fact, that there was no evidence touching the two basic contentions before him. So that it may be inferred that his Honour was of the view that having come to the conclusion that the debts were presently due and payable and that on the state of the Company's accounts, as his Honour found them to be, the Company could not pay its debts, the matters adverted to in paragraphs (a) and (b) above were irrelevant; at least in the sense, that they did not afford an answer to the Petition. 10

4. It is respectfully submitted that if his Honour had been of the view that the matters contained in paragraph 1 were relevant and might have resulted in the Petition being dismissed, notwithstanding his Honour's other relevant findings, his Honour would necessarily have considered the evidence in relation to these matters and made findings in respect thereof. 20

5. The law is and has been, at least since 1858, that a winding-up petition issued in bad faith may on this ground alone, be dismissed. This would appear to be the result of the permissive nature of the jurisdiction but it would seem that the Court will not dismiss a petition for lack of bona fides unless the circumstances amount to an abuse of the process of the Court or, at least to something approaching that degree of bad faith. 30

Ex parte Hawkins, In re the Metropolitan Saloon Omnibus Co. Ltd. (1858) 28 L.J. (CH) 830. In that case, a shareholder petitioned for the winding-up of the company, the petition was dismissed both on the basis that the ground had not been made out and also of bad faith of the petitioner. The full judgment of the Lord Justice Knight Bruce was as follows:
"This petitioner, who is a member of the company, is a mere instrument in the hands of its external opponents. It is a

petition presented in bad faith and on false pretences and must be dismissed with costs".

In In re a Company (1894) 2 Ch 349, Vaughan Williams J. said; "In my judgment, if I am satisfied that a petition is not presented in good faith and for the legitimate purpose of obtaining a winding-up order, but for other purposes, such as bringing pressure on the company, I ought to stop it if its continuance is likely to cause damage to the company."

10 In Re The M'Donald Gold Mines Ltd. (1898) T.L.R. 204, Lord Justice Rigby said he was not satisfied that the petition was really presented in good faith and not for a collateral purpose and agreed that the appeal against dismissal of the petition should be dismissed. In Mann -v- Goldstein (1968) 1 W.L.R. 1091, Ungood-Thomas J. found that "... it is clear ...that as the debts are disputed on substantial grounds, to pursue the petitions would be an abuse of the process of the Court". He therefore granted an injunction restraining the advertising or prosecution of the petitions notwithstanding that his Honour found "the evidence of such insolvency of
20 both companies is ultimately so conclusive to my mind that I do not propose to analyse it or particularise it, especially as I do not rely on it for my conclusion but came to my conclusion despite it."

In Re First Western Corporation Ltd. (1970) W.A.R. 136, Virtue S.P.J. said, "The only findings which I am required to make relate to the bona fides and the motives of the respondents. They relate to the question whether solely by reason of lack of bona fides and improper motives if so found against the respondents the Court should exercise the exceptional
30 jurisdiction which it is said to possess in cases of this kind to strangle at birth and without consideration of their merits winding-up proceedings which may be brought against a company under the provisions of the Companies Act.

Certainly no such power is expressly conferred by the statute. But in a number of cases in the latter part of the last century the English courts have claimed that such a right or the analagous right of prohibition by injunction of the presentation of a winding-up petition where proceedings have not actually been commenced, exists in a proper case as

being within the inherent jurisdiction of the Court to prevent an abuse of its process".

In I.O.C. (AUSTRALIA) Pty. Ltd. -v- Mobil Oil Australia Ltd. (1975) 49 A L.J.R., 176, Gibbs J. delivering a judgment, with which Stephen J. and Jacobs J. concurred, at page 181 set forth the argument that, "Mobil's dominant motive in prosecuting the petition was to force the appellant out of business and that, inter alia, there had been a conspiracy between Mobil and other oil companies to harm the appellant." His Honour held that "... in truth there was no evidence on which a finding that Mobil engaged in a conspiracy could be supported. Nor is there any evidence that Mobil's decision to seek a winding-up order against the appellant was actuated by any motive other than desire to avail itself of one of the remedies open to a creditor of a company which cannot pay its debts." In other words, the High Court recognises the principles which the appellants submit are applicable although in that case, the evidence was insufficient to justify the Court's intervention on that ground.

6. The Court has a different discretion as to whether or not it will stand over the Petition for a lengthy period (which might even be some years) if it is satisfied that it is just, in the circumstances, to do so. (L.H.F. Wools Ltd. (1970) Ch.27)
7. The general principles of the law of bankruptcy are applicable to Winding-Up Petitions. There are two well established principles of bankruptcy law, which, in our submission, are relevant to these proceedings, namely, abuse of process and extortion.

Volume 3 of the 4th Edition of Halsbury's Laws of England states the following at pages 193-4:-

"321 Other sufficient cause: abuse of process

If the presentation of a bankruptcy petition is an abuse of the process of the court, it should be dismissed.

'Abuse of process' includes, and in relation to bankruptcy proceedings is normally confined to, the obtaining or an attempt to obtain, by the judgment creditor or petitioning creditor, through the bringing of or the continuing of, or a threat to bring or continue bankruptcy proceedings, the payment of money or other advantages to which the creditor is not properly entitled. Such conduct on the part of the creditor is commonly termed "extortion".

10 If a petition is presented by a creditor, not bona fide with the view of obtaining an adjudication, but for some collateral purpose or with a view to putting pressure on the debtor, it should be dismissed as an abuse of the process of the court. But the mere fact that the petitioning creditor is actuated by a motive other than a desire to obtain a distribution of the debtor's assets in bankruptcy, for example, by a wish to put an end to a partnership with the debtor, does not constitute an abuse of the process of the court so as to disentitle the petitioning creditor to a receiving order.

20 322. Extortion. Extortion in relation to bankruptcy proceedings has no special or artificial significance, divorced from the ordinary implication of the word, and whether or not extortion has been committed is always a question of fact. However, because bankruptcy proceedings are, or can be, a potent instrument of oppression, the court will always look strictly at the conduct of a creditor who uses or threatens such proceedings, so as to ensure that he has not overstepped the recognised limits.

A debt in relation to which a creditor has been guilty of extortion cannot afterwards be used by the creditor to support a bankruptcy petition.

30 If a creditor attempts to extort money as a condition of his assent to a transaction carried out in order to avoid bankruptcy, and afterwards presents a petition founded on the same transaction, the petition is tainted and should be dismissed. It is the court's duty to dismiss a petition which is made a means of extorting or attempting to extort money.

8. It is submitted that if the appellant can establish that the petition was actuated or infected by extortion or was otherwise "an abuse of process" it should be dismissed notwithstanding, that the debt may be due and payable and that according to normal commercial standards, the Company may be unable to pay its debts. Rozenbes -v- Kronhill (1956) 95 C.L.R. 407.

40 9. The appellants submit that the principles on which an application for security for costs may be defeated, namely that the applicant has been in some respect responsible for the impecuniosity of the defendant are analogous and may be considered as a guide to the exercise of the discretion to dismiss or adjourn a winding-up petition.

50 Meares J. in Lynnebry Pty. Ltd. -v- Farquhar Enterprises Pty. Ltd. (1977) 3 A.C.L.R. 133 said: "I am of the opinion that the plaintiffs's present financial difficulties are largely due to the transaction (a land transaction with the plaintiff). This is, I think, a most relevant circumstance (Sir Lindsay Parkinson & Co. Ltd. v. Triplan Limited (1973) 1 Q.B. 609. and one which warrants the application being refused."

Smithers, J. in Tradestock -v- T.N.T. (1973) A.C.L.C. - 40-377

"In current circumstances I have to balance the possibility of the defendants being put to the expense of being unsuccessfully sued by the impecunious plaintiff, against the likelihood that that plaintiff has a good cause of action for very substantial relief against a group of defendants who are so far as the evidence appears, in the relevant respects, conducting their business in concert and unlawfully with a view to the exclusion of the plaintiff from the opportunity to conduct its business according to the rules laid down by the law.

10

Having regard to the matters referred to in those reasons I am of the opinion that on balance consideration of the justice of the situation requires that the plaintiff be relieved from giving security for costs in respect of various of the defendants."

10. In order to understand the appellant's submission, as summarised by his Honour the trial judge, it is necessary to consider the history of the relationship between the parties as disclosed by the evidence.

20

(a) The Persons Involved: The Trial Judge found, inter alia, Mr. L.J. Adler ("Adler") and Mr. B.A. Ganke ("Ganke") were of "Hungarian origin", (line 23, page 669). There appears to be no evidence on this point and in fact, Adler is Hungarian and Ganke is Russian. The only significance of the Judge's findings is that he recognised the personal nature of the conflict. "Indeed, the Petition has been opposed on the footing that it involves a personal contest between the two." .. Line 2, page 670. - See the following pages of the transcript pp. 320, 400, 842, 899.

30

(b) Adler is the Chairman and Chief Executive Officer of P.A.I. and group of associated Companies. Despite serious and substantial allegations made against Adler, during the course of the trial, Adler was never called to give evidence. - See the following pages of the transcript pp. 219, 389, 397, 404, 842.

- (c) Ganke was the Chairman and Chief Executive Officer of the appellant and a group of associated Companies.
- (d) F.A.I. is now a substantial Company in the Insurance field and either directly or through other Companies, operates as a money-lender.
- (e) Brinds is a Merchant Banker whose business was dealing in money and promoting and managing other Companies particularly petroleum and mining exploration. - See the following pages of the transcript pp. 1497, 1542, 1555, 1594, 1737, 1794, 1808, 1815.

10

11. The Feud between Adler and Ganke

Ganke's greatest commercial achievement was to sponsor in the year 1969 a small Company, Offshore Oil N.L. ("Offshore") which then had assets of approximately \$ 3 million and to transform it into a Company with assets of \$ 100 million and an annual income from oil and gas production of \$6 million. He would regard as perhaps a major achievement on behalf of Offshore Oil, the concept and execution of a project to convert a bulk-ore carrier into an offshore oil drilling rig (known as the "Energy Searcher"), it being the largest of its kind owned in Australia. The venture cost about \$ 90 million and was financed by an international syndicate of banks as to \$ 67 million and the respondent, Jackson Graham Moore & Partners ascribe the net sum of \$ 15 million as the net value to Offshore of its interest in the "Energy Searcher". See p. 27 of Exhibit "PS11" to the Affidavit of Phillip Kevin Smith sworn 29th September, 1983. - Also see the following pages of the transcript pp. 16, 88-93, 116-118, 132-43, 511, 1492, 1532-3.

20

- 30 12. Ganke's other major achievement on behalf of Offshore was to acquire substantial interests in highly prospective exploration acreage in Australia and elsewhere. Amongst those was an application for a substantial interest in an exploration permit known as WA-64 P which was considered to be highly prospective. Ganke succeeded in "farming-out" substantial proportions of that area and put together a joint venture with overseas and Australian partners, in such a way that Offshore carried only 6% of the risk but would earn 24%

- of the profits, if production occurred. Non-chronologically, but to indicate that Ganke's confidence was not misplaced, B.H.P. is currently about to spend some \$ 20 million on exploration in this area. See generally, Exhibit "PS10" to the Affidavit of Phillip Kevin Smith sworn 29th September, 1983. - Also see the following pages of the transcript pp. 140, 141, 436, 442, 447, 459, 632, 662.
13. As at an arbitrary date of 1st January, 1982 the value of Offshore shares was 40 cents, there were approximately 250 million shares on issue, giving a total market capitalisation of \$ 100,000,000. The shares had been as high as 48 cents. - See the following pages of the transcript pp. 521, 1598. 10
14. Offshore had so arranged the contracts in respect of WA-64 P that Offshore was the operator of the joint venture for the purpose of drilling the wells on WA-64 P and engaged a Company of world repute to carry out the actual work. - See the following pages of the transcript pp. 136-137.
15. The well was estimated to cost approximately \$ 13 million but very high pressures were found to exist as drilling progressed. Finally, a 24 inch spanner fell down the well due, it is alleged, to the negligence of the drilling contractor (which is subject to Arbitration in the International Court). The combination of these problems resulted in an expenditure of about \$ 29 million on the well and the suspension for the time being, at least, of that well without it being tested for hydrocarbons which were strongly indicated during the drilling stage. - See the following pages of the transcript pp. 133-5, 631, 959, 1716, 1721. 20
16. The combined effects of the delays in the bank syndicated loan drawdown in respect of the "Energy Searcher" and the excessive cost of WA-64 P well caused Offshore to experience a temporary liquidity problem. - See the following pages of the transcript pp. 169, 566, 1545-7, 1604, 1613. 30
17. Ganke through his group, (mainly Brinds Limited and other public companies) owned about 33% of Offshore's issued capital amounting to a value of \$ 30 million in 1982. All of the companies with which Ganke was associated were

...shing of which 8 were public companies listed on Stock Exchanges. Brinds' assets at that time were in the order of \$ 45-50 million. - See the following pages of the transcript pp. 1443, 1690, 1850, and pp. 187, 251, 346, 362 in Volumes 1 - 3 of the Appeal Books.

18. Offshore had over the years under Ganke's guidance pursued a policy of capital growth and investment of surplus funds. Taxation benefits were also given high priority. In the early 1970s Offshore made a first mortgage loan to Nadi Bay Beach Corporation which later became part of the Brinds/Ganke's group. Other investments were made in companies in which Brinds and Offshore held substantial equity interests. Depending on whether one considers these companies to be Ganke companies (the same as Offshore was considered to be by the Stock Market) or Offshore associated companies, the amounts so invested reached a figure of some \$7-9 million. When these investments were made, the funds were surplus to Offshore's needs and Offshore's total assets at that time were about \$ 90 million. - See the following pages of the transcript pp. 1500, 1548, 1568, 1595, 1708, 1722-6, 1735, 1738, 1739.
19. In mid June, 1982 the position was transformed. The expenditure on the drillship and the offshore well caused liquidity problems not only for Offshore but also for the whole Ganke group. The shares in Offshore dropped to 12 cents. The market value of the assets of the Brinds group was reduced by approximately \$ 20 million by reason of the diminution in the market value of the shares in Offshore although the intrinsic values remained relatively stable. - See the following pages of the transcript pp. 9, 1617, 1820.
20. Brinds owed Adler (F.A.I.), at that time, approximately \$ 4.4 million which Adler demanded to be repaid within 6 days. Adler was prepared to forego his demand provided that Ganke would sell two-thirds of his 30% shareholding in Offshore and Adler would then be willing to fund Offshore's exploration programme in future. - See page 177 and the following

Adler and Ganke at that time, were business friends. Adler had plenty of money and intimated to Ganke that he would act as a 'white knight' to lend Offshore funds to tide it over a sticky period. Adler promised \$ 5 million within a week and up to \$20 million, if needed, over the next 12 months. - See the following pages of the transcript pp. 1592-6, 1610, 1726.

22. Adler wanted repayment of the said \$ 4.4 million to F.A.I. before 30th June, 1982. In consideration for Adler's promise to fund Offshore, it would appear that a deal was struck whereby Adler obtained 26 million Offshore shares held by Brinds, thereby extinguishing the debt due by Brinds to F.A.I. However, Adler imposed the following conditions at the last minute, namely:-

(a) A right to obtain 10 million Offshore shares at 10 cents.

(b) A right to underwrite an issue of 125,000,000 shares.

(c) A right to become Chairman of Offshore with Ganke being appointed as Executive Deputy Chairman. - See the following pages of the transcript pp. 146, 944-7, 1037, 1095, 1362, 1369, 1602 and p. 590 in Volume 3 of the Appeal Books.

23. The arrangement was concluded in great haste on 1st July, 1982. It was in effect an agreement whereby Adler and Ganke would be partners in Offshore with Adler as Chairman and his companies holding 36 million shares and Ganke as Executive Director providing management expertise and his companies having a shareholding of approximately 50 million shares.

24. The feud erupted soon after Adler got into control when

(a) Adler reneged on a promise to provide the loan of \$5 million to Offshore.

(b) He disregarded all of the management of Offshore and installed Stockbroker David Harry Lance and John Peter Boyer as Executive Officers under the names of Consultants, - See the following pages of the

transcript pp. 157, 563, 937, 1381, and p. 347 in Volume 2 of the Appeal Books.

10 (c) By refusing to provide loan funds and keeping the share price low, Adler created a situation where a substantial shortfall of the share issue would occur thereby enabling him to acquire 46 million shares under the underwriting arrangements. Initially, Adler had attempted to obtain 53 million shares by refusing to accept about 2,000 applications which arrived late from overseas, mainly due to mail strikes in Australia. - See the following pages of the transcripts pp. 219, 943, 1356, 1371.

20 25. Adler's breach of undertaking with respect to Offshore and change in management, contrary to the agreement reached, convinced Ganke both that Adler had designs for the total control of Offshore to the exclusion of Ganke and that Adler's actions would not be beneficial to Offshore. Adler started "unexplainable actions" against companies in August, 1982 in which Offshore had a large equity interest but which Adler chose to classify as "Ganke companies". These amounted to demands for immediate repayment irrespective of whatever arrangements or agreements were in existence in respect of loan funds amounting to about \$ 9 million. Correspondence between 10 companies and Offshore went on for a few days and without regard to submissions made by Ganke, Adler issued Section 364 Notices of Demand against all 10 companies. - See the following pages of the transcript pp. 883, 891, 893-8, 896, 906, 913, 1071, 1080 1292, 1338, 1396, 1410; 1463 1606, and pp. 100, 101, 110, 116, 582 in
30 Volumes 1 to 3 of the Appeal Books.

26. Adler also used Offshore's status as operator for WA-64 P to give a Notice of Default to Southern Cross Exploration N.L. ("Southern Cross") in respect of the overrun in drilling costs in spite of the operating committee of the joint venture not voting on such action and in spite of other companies not having complied with the JVOA (Joint Venture Operating Agreement). - See the following pages of the transcript pp. 463, 669, 1051, 1326, 1425.

(continued)

Adler, when striking the deal with Ganke on 1st July, 1982, promised to pay contributions to the WA-64 P joint venture on behalf of Southern Cross a company in which Brinds, F.A.I. and Offshore had large shareholdings. Adler did not keep his promise and Southern Cross made a call of 5 cents on the contributing shares in order to raise funds to pay for its participation in the drilling of WA-64 P. Adler objected to the call and on 24th September, 1982 said to Ganke, words to the effect, "I shall give your companies whatever time you say is applicable to the repayment of the loan funds, withdraw all Section 364 Notices but you must buy my shares (F.A.I.) in Southern Cross for \$ 1.2 million (12 cents per share before call) and I shall also revoke the Notice of Default against Southern Cross made by Offshore in respect of WA-64 P." - See the following pages of the transcript pp. 452, 473, 633.

28. By that stage, Ganke was convinced that Adler was misusing his position as Chairman of Offshore and sought legal advice in the light of Adler's actions. As a result of conferences with Solicitors and Counsel, it was ascertained that Adler and his two co-directors had not obtained directors' qualification shares and the advice he received was that Adler could not continue to act as director of Offshore. As Ganke was by that stage completely disillusioned in Adler, he took the advice and an action was started in the Supreme Court of the Australian Capital Territory. - See the following pages of the transcript pp. 1607, 1813.
29. Adler went to Hong Kong to launch Ganke's baby, the "Energy Searcher" and did not want Ganke to attend, although Ganke was invited by the bankers and the shipyard. Ganke stayed in Sydney and following legal action had Adler's and his co-directors' seats on the Board declared vacant on the ground that they had not acquired qualification shares.
30. Adler in retaliation applied for Injunctions against the properly constituted Board of Offshore and claimed, inter alia, that the purpose of the action to remove him was to prevent Offshore instituting winding-up proceedings based on the Notices issued under Section 364 of the relevant Companies legislation.

.. The directorship dispute came before Sheppard J. in the Supreme Court of the Australian Capital Territory and his Honour "suggested" that to stop the feuding an independent Chairman of Offshore be appointed until the position was resolved. Alexander Robert MacKay MacIntosh ("MacIntosh") a Partner in the Sydney firm of Messrs. Peat Marwick Mitchell & Co. who was regarded as independent of both parties was then appointed and some of the litigation was concluded. - See the following pages of the transcript pp. 169, 566.

10 32. As a result of this forced reconciliation by the parties, MacIntosh had the sole power to override any Board decision on which there was a conflict between the 'Adler' or 'Ganke' factions, which in practice, proved to be almost every decision. - See the following pages of the transcript pp. 102, 186, 557, 568.

33. The Moratorium Deed

20 To avoid continuous arguments and litigation in respect of the underwriting by F.A.I. of the Offshore share issue, the directorships, the loans and Section 364 Notices, an overall "settlement" was reached on 25th November, 1982 which became known, rather unfortunately, as the 'Moratorium Deed'. That Deed provided a 12 months Moratorium on repayment of the amounts owing to Offshore or F.A.I. by the Ganke Companies on rather harsh terms and the cessation of all litigation between the parties. These terms included an admission for the purposes of the Moratorium that all of the respective debts were then due, notwithstanding that most were not "at call" and were not due, unless and until, a demand allowing the appropriate period to pay, was made. The debts were
30 subject to equitable mortgages of 2-3 years. The Deed gave very extensive powers to MacIntosh. The principal relevant power was a right for Mr. MacIntosh to form and express an unexaminable opinion, (immediately after the signing of the Moratorium if he chose to do so) that the Deed was not in the best interests of the creditors which would give Adler the opportunity to seek the immediate winding-up of all the Ganke Companies. Ganke accepted this situation as he had total trust and confidence in MacIntosh. Ganke says that MacIntosh betrayed that trust by having secret meetings with Adler and
40 complying with Adler's instructions to terminate the Moratorium Deed by giving an appropriate opinion. - See the

following pages of the transcript pp. 58, 219, 241, 287, 386, 397, 402, 404, 405, 406, 421, 423, 477, 486, 538, 578, 636, 689, 703, 704, 709, 731, 816, 842, 843, 943, 1052, 1404, 1415, 1523, 1671, 1824, 1825.

34. On the same day (25th November, 1982) another Deed was entered into between Southern Cross and Offshore in respect of WA-64 P which was to discontinue the arguments about alleged default and related matters.
35. Under the latter Deed, Southern Cross was obliged to pay an amount of approximately \$ 300,000.00 to the WA-64 P joint venture which Offshore wrongly refused to accept when tendered and legal action by Southern Cross against Offshore and MacIntosh (Stakeholder) commenced in December, 1982 in order to protect Southern Cross' position in respect of WA-64 P. - See the following pages of the transcript, pp. 398, 702, 709, 719, 1676 and pp. 180 in Volume 1 of the Appeal Books. 10
36. In January, 1983, secret meetings were held between Adler and MacIntosh and also between Adler, MacIntosh and other parties which discussed the placing of Brinds into provisional liquidation. - See the following pages of the transcript pp. 26, 52, 222, 223-7, 275, 388, 398, 405. 20
37. After 21st January, 1983, MacIntosh wrote numerous letters to Ganke, which it is claimed 'manufactured evidence' of minor technical breaches of the Moratorium Deed. - See the following pages of the transcript pp. 397, 402, 477, 709, 842, 1404, 1523, 1825.
38. Unbeknown to Ganke, steps were being taken to determine the Moratorium by MacIntosh and Adler. Affidavits which Ganke says were outright misleading but in any event at least of very doubtful accuracy, were prepared for the purpose of supporting an ex parte application for a provisional liquidator to Brinds Limited. This enabled a provisional liquidator to be appointed on the ex-Parte application of Offshore and, on the instructions of Adler, contemporaneously with the termination of the Moratorium Deed. - See the 30

following pages of the transcript pp. 487, 489, 550, 704, 708, 838, 933, 1290, 1391, and pp. 13, 156, 202 in Volumes 1 - 3 of the Appeal Books.

10
39. Ganke was not informed of these meetings and great care was taken to keep secret from him these arrangements so that he was simultaneously confronted with the termination of the Moratorium and notice of the appointment of the provisional liquidator. At the date of the appointment of the provisional liquidator, Brinds Limited had assets in excess of \$ 20 million and the group had assets of about \$ 40 million and the secretly prepared Affidavits claimed that Brinds was going to spend \$ 1 million (2.5-5% of the total assets) in the purchase of shares in Southern Cross. No explanation was afforded as to how such expenditure could occur without first obtaining the consent of MacIntosh as required by the terms of the Moratorium Deed. Brinds group and Ganke associated companies had at that time 53,000,000 Offshore shares. Accepting for this purpose that the most likely Stock Exchange price of Offshore shares stated by the Stockbrokers, Jackson Graham & Moore & Partners in a report dated 20th September, 1983, to be 36.4 cents, Ganke's holdings would have a value of in excess of \$ 20 million. In addition, this holding of 53,000,000 shares was a parcel of great strategic value. At that time Adler had about 100,000,000 shares out of a total issued share capital of 390,000,000 and there was no other substantial shareholder except Ganke. If Ganke had made a bid for the Company he would need to have acquired only 20% of the outstanding shares as to probably control an Annual General Meeting and oust Adler. - See the following pages of the transcript pp. 20
30 841, 922, 1840.

40. On the other hand, if Brinds could be hamstrung with a provisional liquidator and finally wound up, the Offshore shares were likely to be sold at market price of 10 cents or about \$ 5,000,000 and Adler or his friends would have been able to purchase them through the market. - See the following pages of the transcript pp. 219, 943.

41. Adler's Motivation

40 The possible Brinds winding-up would eliminate simultaneously the threat to Adler's control of Offshore and enable Adler or

his friends to make the potential profit of \$ 15 million on the Offshore shares alone, with many other valuable assets and strategic shareholdings of the Brinds group coming on the market at liquidator's bargain basement prices. - See the following pages of the transcript pp. 944-7.

42. A Court would require convincing proof of the degree of malevolence to lead it to the conclusion that Adler had depressed the price of the Offshore shares for the purpose of financially embarrassing Brinds and had caused Offshore to wind-up Brinds so that Adler could acquire a direct purchase of a strategic holding in Offshore at an undervalue. 10

43. The way in which it was sought to formulate these matters at the trial was to introduce evidence as to the:-

(a) Secret meetings between Adler and MacIntosh, as to the manipulation of the Financial Accounts of Offshore and adverse publicity all of which were intended to depress and maintain a depression of the price of Offshore shares. For example:-

(i) The achievement of the "Energy Searcher" - See the following pages of the transcript pp. 110, 114, 155, 590, 973, 975, 1319. 20

(ii) Treatment of Brinds Loans - See the following pages of the transcript pp. 71, 193, 606, 747, 792, 870, 977, 1046, 1095, 1336, 1597, 1727.

(iii) Expenditure after 30th June, 1982 - See the following pages of the transcript pp. 113, 171, 178, 593, 745, 791, 976, 1335.

(iv) New issue of shares - See the following page of the transcript p. 152. 30

(v) The Louisiana Deal - See the following pages of the transcript pp. 182, 189, 593, 602, 743, 979.

(vi) No details of Moratorium in report - See the following page of the transcript p. 767

- (vii) F.A.I. entitlement to take up shares - See the following pages of the transcript pp. 201 1296, 1345
- (viii) No details of gas reserves in report - See the following pages of the transcript pp. 936, 1094
- (b) Such evidence of the attitudes and motivations of Adler as was adduced from the evidence of Ganke and cross-examination, mainly of MacIntosh. For example:-
- (i) Hostility to Ganke - See the following pages of the transcript pp. 320, 400, 842, 899, 977, 1044, 1056, 1340, 1438, 1823.
- (ii) Adler's greed for profit - See the following pages of the transcript pp. 146, 944-7, 1037, 1095, 1362.
- (iii) 25% Interest on loans - See the following pages of the transcript pp. 953, 957, 1048, 1050, 1341-4, 1400.
- (iv) Desire to increase share holdings - See the following pages of the transcript pp. 1347-51, 1360, 1435.
- (v) Adler deceives Ganke - See the following pages of the transcript pp. 1369, 1602.
- (c)
- (i) That the then current market price of Offshore shares was:-
- A. unnecessarily low;
- B. temporarily so.
- (See evidence of K.G. Wilshire at p. 948 also B.G. Jackson at pp. 1212 and 1231)
- (ii) That the 1982 Annual Report of Offshore
- A. contributed to that undervaluation;
- B. inhibited recovery.
- (See evidence of B.G. Jackson at pp. 1217-8, also MacIntosh at pp. 64-5, 73-4, 112, 113-6,

In the Full
Court

152-3, 140-1, 155-7, 166-7, 171-9, 194,
198, 245-53)

No.235
Counsels'
Submissions
(continued)

- (iii) That the true price was 20 - 23 cents minimum.
(See evidence T.J. Whitfield at pp. 1185-1192 also
B.G. Jackson at pp. 1212-1213)
- (iv) That upon release of information known to Offshore
Oil the value of the shares would rise.
(See evidence B.G. Jackson at pp. 1244-8 also
T.J. Whitfield at pp. 1171-1174)
- (v) That Adler (or F.A.I.) was buying as many Offshore
Oil shares as possible. 10
(See evidence MacIntosh at pp. 56-8 also
T.E. Atkinson p. 1358 et seq)
- (vi) As cheaply as possible.
(See evidence K.G. Wilshire at p. 947 also
MacIntosh at pp. 146-8)
- (vii) Adler (or F.A.I.) was the principal beneficiary of
this low market price of Offshore Oil shares.
(See evidence MacIntosh at p. 57)
- (viii) That the inclusion within the 1982 report of 20
"depressing" factors was at least in part the
responsibility of Adler.
(See evidence McIntosh at pp. 64-9, 71-2,
112-6, 157, 171-2, 177-9, 188-93)
- (ix) As was the exclusion of relevant material.
(See evidence Wilshire at pp. 936-8)
- (x) The allegation was implicit that Adler sought by
deliberate acts to depress the value of Offshore
shares either by
A. withholding information; 30
B. or giving a false picture of the position of
Offshore.

A major tactical question in the conduct of the case was whether or not the weight of evidence was such that unless answered by Adler the Court would find in favour of the Appellant in accordance with usual principles.

45. Judgment Fails to Answer Questions

The Judge omitted to consider the evidence referred to in para. 43 above and in Annexure "A" hereto and to consider:-

(a) Whether or not that evidence called for an answer by Adler;

10 (b) Whether in the absence of an answer by Adler, his Honour should have drawn the inference that Adler had in fact caused or contributed to a diminution of price of Offshore or a failure of the shares to rise to their asset-backing value.

20 (c) If he did regard it as a proper inference that Adler had so caused or contributed to a lower price in Offshore Oil shares, what effect that would have on the exercise of his discretion. His Honour was, with respect, under a duty to state his reasons for rejecting or not dealing with issues which he acknowledged in his judgment, were regarded by the appellant as issues of substantial importance.

46. It is with respect, not sufficient to state in respect of these arguments, "I have, I believe, understood them and I have considered them." at Page 734, Line 18.

30 47. The Learned Judge said at Page 719, Line 10, "The allegations to which it was said Adler ought to provide an answer, or in respect of which he ought at least to have submitted himself for cross-examination, are largely speculative".

This was said in relation to the allegation that Adler, "...incited Mr. MacIntosh to act as he did and acted in combination with him to destroy the moratorium." at Line 7, Ibid.

48. Relevance of Fresh Evidence

Proof of the rigging of the share market in a publicly listed company by a clever businessman must, of necessity, be extremely difficult to ascertain. The circumstances would ordinarily involve instructions to Stockbrokers, bound to act faithfully towards their Client and not at liberty to disclose information imparted by their Clients. Stock Exchanges keep no records as to the beneficial buyers and sellers of shares and do not even make available to the public the names of Stockbrokers involved in buying and selling shares.

49. Accordingly, it is virtually impossible for the Appellant, except in the most exceptional circumstances, to obtain direct evidence of a market rigging exercise. For this reason, a Court should regard less substantial evidence as calling upon the person against whom the allegation is made, to answer that allegation.

50. The Court should be willing to draw adverse inferences if a witness is available to give evidence and to answer, but is not called.

51.

(a) At the hearing of a petition by Fire and All Risks Insurance Company Limited ("F.A.R.") to wind-up Southern Cross Exploration N.L. in the Supreme Court of New South Wales in June, 1983, Mr. Justice McLelland determined that there had been non-compliance with a Section 364 Notice and a deemed insolvency. The proceedings were adjourned to the week commencing 25th July, 1983 during which time the Defendant was to defend the winding-up proceedings on the basis that there was a lack of bona fides on the part of the Petitioner. The Petitioner's claim was in respect of a loan of \$400,000.00 secured by 4,000,000 Offshore Oil shares then trading at 15 cents. At the commencement of this part of the proceedings, Senior Counsel for Southern Cross (a Ganke company) submitted that F.A.R. (an Adler company) was not acting bona fide, inter alia, because by a single

telephone call to a broker, Adler could sell the shares he held as security for considerably more than the debt and any interest or costs thereon. Mr. Gleeson Q.C., on behalf of the Petitioner, refused to take this step. (See generally, Affidavit of Phillip Kevin Smith sworn 23rd September, 1983).

10 (b) On 27th July, 1983 a written offer to pay the debt in full and, to pay into Court \$ 150,000.00 to cover any possible costs and expenses, was conveyed to the Petitioner. (See Exhibits "PKS1" and "PKS2", Ibid.).

(c) On the morning of 28th July, 1983 evidence of this offer was placed before his Honour and there was placed on the Bar Table two bank cheques in the sum of \$ 400,000.00 and Senior Counsel for Southern Cross offered to pay into Court a further sum of \$ 150,000.00 . Mr. Gleeson Q.C. stated that the offer was refused and that the shares would be sold by his Client.

20 (d) Mr. Ganke, being suspicious of Adler, instructed Mr. Gruzman to seek an Injunction from his Honour there and then to restrain the sale of the shares. While Mr. Gruzman was in the process of making this Application before Mr. Justice McLelland, Mr. Gleeson, Q.C. interrupted the proceedings to state that he had been advised that the shares had just been sold. It appears from certain evidence that the sale took place at approximately 10.35 a.m. on 28th July, 1983.

30 (e) The matter was adjourned to the following day and it was discovered that the shares had been trading steadily at 15 cents and that there had been an overnight sale reported on 28th July, 1983 in which 2,000,000 shares in Offshore were sold at 16 cents. It was also ascertained that Mr. Adler had sold 5,574,000 shares held as security for monies lent to Ganke companies, at a price of 13 cents and that the Stockbroker was Mr. David Harry Lance, an associate of Mr. Adler.

(f) On the following day, namely, 29th July, 1983 his Honour permitted Mr. Gruzman to call on Lance and to produce

documentation subpoenaed. Mr. Lance was examined-in-chief by Mr. Gruzman. (See Exhibit "PKS3", Ibid.). His evidence revealed, inter alia, that he had spoken to Mr. Adler on Wednesday morning, 27th July, 1983 and at around about 8.15 a.m. on 28th July, 1983 about selling 5,926,000 shares held by Adler. Lance informed Adler during the latter meeting that, "...a client company of mine would be interested at 13 (cents)." Shortly before 10.00 a.m. and prior to the market opening on 28th July, 1983, Lance gave evidence that Adler re-confirmed his instruction to sell 5,926,000 shares in Offshore Oil. It appeared that the market opened at 10.10 a.m. and that shares were sold at 13 cents shortly thereafter. Lance stated that he had been told by Adler to sell at best and that he was not aware of the overnight sale at 16 cents although his dealer on the floor would have been. Lance was questioned as to the identity of the 'client company' and stated it was Nationwide Resources Pty. Limited. By a Notice of Motion dated 29th July, 1983 Offshore then applied for an Order that it be substituted as Plaintiff in place of F.A.R. in those proceedings and sought ancillary orders. On 2nd August, 1983 in a short judgment, Mr. Justice McLelland dismissed this application.

- (g) Search of the Corporate Affairs Commission records did not reveal details as to the ownership of Nationwide Resources until the following Thursday afternoon when the missing microfiche was located and it was then discovered that the company was owned by, inter alia, F.A.I Insurances Limited (an Adler company) and two companies controlled by Adler's associates Boyer and Lance. (See Exhibit "PS 5" to the Affidavit of Phillip Kevin Smith sworn 29th September, 1983).
- (h) On the following morning an Injunction was granted by Mr. Justice Kearney on the basis of this evidence, restraining completion of the impugned sale. On subsequent occasions further relevant documents were produced under Subpoena. (See Exhibits "PS2", "PS3", "PS4", "PS6" and "PS7" Ibid.).

(i) Documents produced by the Sydney Stock Exchange revealed that after the sale of 2,000,000 at 16 cents, Messrs. Norths had effected several sales at 14 cents thereby establishing an apparent downturn in the market price, whereby under the rules of the Sydney Exchange they were able to "marry" 5,774,000 shares in their office at the further reduced price of 13 cents. (See Exhibit "PS7" Ibid.). These sales were accepted by the Sydney Stock Exchange as genuine transactions at an arms-length.

10

(j) A number of applications were made by the Defendants to strike out the Statement of Claim filed by the Plaintiffs in the ensuing market rigging proceedings. Eventually, two days were set aside for the hearing of one such Notice of Motion by the Chief Judge in Equity. Shortly before the hearing, the Plaintiffs were advised that the Defendants did not intend to proceed with the Application and would file a defence.

20

1/2 million

(k) The evidence in this case is voluminous and will be further enlarged when answers to the Interrogatories filed on behalf of both the Plaintiffs (see Exhibit "I" to the Affidavit of Phillip Kevin Smith sworn 17th October, 1983) and the Defendants have been received. The Plaintiffs have asked about 1,000 questions of the Defendants and likewise, the Defendants have asked about 1,000 questions of the Plaintiffs

30

52. The fresh evidence sought to be adduced is in these circumstances of inestimable evidentiary value because it comprises a concrete example of an agreement between Adler and his Stockbroker, David Harry Lance ("Lance") (who was employed by Adler as an Executive Officer and titled "Consultant") pursuant to which, inter alia,

(a) The market in Offshore Oil was deliberately manipulated downwards from 16 cents to 13 cents.

(b) Adler and Lance through their respective Companies personally profited to a substantial extent by the sale at a depressed value.

- (c) The purchasing company was probably a "dummy" for Adler, Lance and Boyer, also at one time employed by Adler as an Executive Officer but entitled a Consultant.
- (d) A report was made to the Sydney Stock Exchange falsely suggesting that an extremely large parcel of shares had been sold in an arms-length transaction through an independent Stockbroker at a price of about 20% less than the preceding overnight sale at 16 cents.

53. Order 58 Rule 12

The Full Court has a discretionary power to receive further evidence on questions of fact. Under sub-rules (2) and (3) in the case of evidence as to matters which have occurred since the trial, no special leave is necessary and the Appellant although it could comply with the high standards required by Young -v- Symans (1972) V.R. at 615, is not required to do so.

10

54. It is submitted the evidence in this case is within the principle propounded in Jenkins -v- Richard Thomas (1966) All ER 15 where events which occur subsequent to the trial are receivable on the hearing of the Appeal to establish, in some material respect, that the Appeal proceeded on a false or inadequate basis.

20

55. Even if the matter is considered according to the principles in Young -v- Symans the following submissions are made:-

- (i) The fresh evidence could not have been obtained by reasonable diligence for use at the trial.
- (ii) The fresh evidence does place such a different complexion on the trial, that a different result ought certainly ensue.

56. Correlative to these submissions, it is submitted that, "the effect of new evidence of the kind prescribed in this case must be assessed upon the assumption that it had been given at the trial. It is not sufficient to envisage that trial without the impugned evidence. It is to be assumed that

30

evidence was given and was met or challenged by the evidence now tendered as fresh evidence". Young -v- Symans at p. 616.

57. Although the Appellant is not required to comply with this standard, it is submitted the evidence tendered does in fact do so.
58. Evidence before the Trial Judge which provided, at best, a basis for an inference of market rigging, will be substantiated by fresh evidence which will have as its foundation a clear case of manipulation of Offshore Oil share prices on the Stock Exchange by Adler, a profit as a result of that transaction going to one of Adler's Companies and an essentially false report of the transaction to the Stock Exchange which had a depressing effect on the prices of shares in Offshore Oil.
59. This fresh evidence would clearly alter the complexion of the case and would require Adler's evidence to answer it. The Trial Judge found himself essentially compelled to decide, as between the allegations made by Ganke (a clearly interested party) and the denials by MacIntosh who had been brought into the matter as an independent professional expert. In these circumstances, his Honour preferred the evidence of MacIntosh. The matter would have been entirely different if Adler had been forced to explain how it came about that Mr. D.H. Lance, his colleague at Offshore and Stockbroker, came to tell him at approximately 10.00 a.m. on 28th July, 1983, that he (Lance) "Had a Client Company that might be interested at 13 cents". Adler would have to explain the use of this terminology in respect of a company of which he was one of the principal shareholders and Lance was another and a third shareholder was their common associate Boyer. Adler would also have to explain the involvement of Brazilian and Viennese firms in this private company. Adler would have to explain how he and Lance agreed to a sale at 13 cents when the last overnight sale had been a sale of 2 million at 16 cents.
60. He would also have to explain how it was agreed that the market would be forced down from 16 cents to 13 cents so that in accordance with the rules of the Sydney Stock Exchange a

marriage would take place at the lower figure. Adler would have to explain how he came to sell shares on behalf of a public company which it held as mortgagee, not only at an undervalue, but also on a deferred payment term to a purchaser with inadequate assets to meet the cost of the shares.

- (a) Adler would also have to explain whether he proposed to account to his own public company or to the Mortgagee, for the illicit profits which would accrue to Nationwide by reason of the sale. 10
- (b) Adler would particularly have to explain his knowledge of the procedure whereby the sale would be reported to the Stock Exchange as an apparently genuine sale of a large parcel of shares, amounting to almost a strategic interest, not only at a price which did not contain premium but was 3 cents below market.
- (c) Adler would also have to explain his view of the effect on the market of reporting the transaction without explanation.
- (d) Against this background, Adler would be cross-examined as to the specific matters dealt with in the evidence before his Honour indicative of a holding down of the price of Offshore shares. This would include his reasons for making provision against most of the debts due by the Ganke group (almost \$ 9 million) and thereby artificially depressing the profit shown in the accounts of Offshore by that sum. 20
- (e) He would also be subject to cross-examination as to his relationship with stockbrokers and his efforts, or the lack of them, to make favourable reports which would enhance the price of shares in Offshore by demonstrating the strength of its net assets and valuable exploration permits. 30

- (f) Adler would also be subject to considerable questioning as to his credit. The opportunity would also exist to compare his evidence on essential matters with that of MacIntosh.
- (g) It would be suggested to Adler that he was aware that his colleague Lance, through his family company, was making a personal profit from the impugned transaction and splitting his commission with another person.
- 10 (h) It would be suggested that he was aware that Lance was unethical and improper in carrying out, as a Stockbroker, the sale of the 5,724,000 shares after artificially forcing down the price from 16 cents to 13 cents and concealing from the Stock Exchange that he was in part a principal in the purchase.
- 20 (i) Questions would also arise as to discussions between Adler and Lance as to the true value of shares in Offshore Oil, that in Lance's view the shares would go toward 20 cents in the next few weeks as revealed in Lance's own document - see Exhibit "I" to the Affidavit of Phillip Kevin Smith sworn 17th October, 1983, which are the Plaintiffs' Interrogatories in proceedings No. 4254 of 1983. In particular at pp. 67-70 thereof.
- 30 (j) After lengthy cross-examination of Adler and other matters dealt with in the evidence, Ganke's general allegations and assertions and from answers arising in the course of cross-examination, the Respondent may consider it necessary to call David Harry Lance to explain his part played in the enterprise. In many respects, the cross-examination of Lance would follow similar lines to that of Adler.
61. Having regard to the general nature of the allegations made against Adler and Lance, and to the material evidence available to the Appellant, it is likely that if either attempted to deny the thrust of the essential allegations and the machinations by which Adler sought to destroy Ganke and his companies and to gain the balance of Ganke's holding in Offshore, they would be discredited.

62. It is probable, having regard to the serious and concrete nature of the allegations contained in the new evidence, that whether or not Adler and/or Lance gave evidence in rebuttal, the thrust of Ganke's allegations with respect to the transaction on 28th July, 1983 would be accepted. This gross and deceitful method and injurious behaviour would no doubt induce the Court into believing the more subtle and surreptitious forms of market rigging behaviour put before the learned Trial Judge.

63. It is submitted that the fresh evidence is indeed such as to place "such a different complexion upon the case that a reversal of the former result ought certainly to ensue". AND even if the evidence does not reach that high standard it is clearly such that in exercise of its power to admit evidence of subsequent facts, the Court ought to admit it. If the Court is of the view that the fresh evidence ought to be admitted, the question arises as to what is the most convenient method of dealing with the fresh evidence.

64. Adjournment is the most convenient course

Unless the Court is of the view that the allegations contained in the New Statement of Claim (Exhibit "PKS5" to Affidavit of Phillip Kevin Smith sworn 23rd September, 1983) are to be, for the purposes of the Appeal, assumed to be proven, this Court will itself have to determine the method by which it will ascertain the evidence. This is not a case where one additional witness gives evidence of perjury at an earlier hearing or some relatively simple fact occurs such as a remarriage of the Plaintiff.

65. The additional evidence is that a group of reasonably complex facts, committed basically by Adler, in his dual role as Chairman of F.A.I. (group) and Offshore constituted, inter alia, a rigging of the market of shares in Offshore and whether that transaction when placed in combination with other matters, provided evidence of malevolence by Adler against Ganke, a desire to harm Ganke's companies financially, a desire to make a profit for Adler's companies and at the expense of Ganke's companies and whether the relationship between Adler and F.A.R., and Adler and

Offshore, Offshore and F.A.R. and indeed the Adler group of companies and the Ganke group of companies are such that the subsequent events throw light on the matters alleged in the Petition.

10 66. This complex situation can, if the allegations contained in the New Statement of Claim are not assumed to be true, only be determined after a proper hearing in which the Appellant is afforded the opportunity of utilising the normal processes of the Court to prove what it alleges. This hearing, whether before the Full Court in Victoria or elsewhere, will be lengthy and expensive.

20 67. Although the Court has power to refer such a hearing under Order 58 Rule 12, "Either by oral examination in Court by Affidavit or by deposition taken before an Examiner or Commissioner", it is submitted that the better course is to defer the hearing of this Appeal until after the Judgment of the Supreme Court of New South Wales on identical facts. In the Supreme Court of New South Wales both Adler and Offshore are parties and an application has been made for Brinda to be joined on a proper indemnification being given. Accordingly, all necessary parties would be bound by the decision.

The Supreme Court has imposed very strict time limits on the interlocutory steps and by consent the Court made the following Orders:-

1. The Plaintiffs file and serve a Statement of Claim by 4.00 p.m. on 8th September, 1983.
2. Any request for further particulars of the Statement of Claim be delivered by the Defendants to the Plaintiffs by 4.00 p.m. on 9th September, 1983.
- 30 3. The Defendants provide answers to any such request by 4.00 p.m. on 13th September, 1983.
4. The Defendants file Statements of Defence on or before 20th September, 1983.

In the Full Court

No.235
Counsels'
Submissions
(continued)

5. Each party give discovery by filing and serving a verified List of Documents in accordance with the Supreme Court Rules on or before 4th October, 1983.
6. Inspection be given by all parties of discovered documents by 18th October, 1983.
7. Appoint 25th October, 1983 before the Registrar for return of Subpoenas issued by any party.
8. Interrogatories to be administered on or before 1st november, 1983.
9. Answers to Interrogatories to be provided on or before 15th November, 1983.
10. The proceedings be further mentioned on 17th November, 1983 at 9.30 a.m. before Mr. Justice Waddell.

68. A Notice of Motion returnable on 17th November, 1983 to compel the Defendant, Nationwide, to give full discovery and to compel all Defendants to give further and better discovery, has been filed by the Plaintiffs in the market rigging proceedings.
69. As a result of that Motion further documents have been made available to the Plaintiffs. Additionally, the Interrogatories, required to be served on the Plaintiffs by Tuesday 1st November, 1983, were received from the Defendants on Thursday 3rd November, 1983.
70. The matter is proceeding substantially in accordance with the time table.
71. Mr. Justice Waddell who is dealing with the matter in New South Wales ordered an expedited hearing and that the matter be heard as the first case in 1984. As a result of opposition by the Defendants to this date, on the basis their Senior Counsel would be otherwise engaged during the first

six weeks of the new law term, the matter was fixed for 12th March, 1984, notwithstanding the Plaintiff's opposition to that delay.

72. The Supreme Court of New South Wales has set aside the following dates in 1984 - March 12 - 15
- March 19 - 22
- March 26 - 29

and it is not considered that hearing before the Court will be any shorter.

- 10 73. The position is therefore, that a Court of competent jurisdiction will shortly deal with the matter and determine the issues in the usual and proper way.

74. The alternative of this Court itself hearing the evidence or referring the matter to a Commissioner is less convenient, duplicative, more expensive and probably, in the long run, not as quick. Such a hearing would not, it is submitted, properly proceed before the completion of the interlocutory proceedings which, having regard to outstanding matters, will not be finally completed prior to Christmas vacation. The real alternatives before the Court are:-
- 20

(a) Accept as proven the contents of the New Statement of Claim.

(b) Order a hearing before the Full Court as the first matter in the new Law Term of 1984.

75. It is submitted that a hearing before an Examiner or a Commissioner (if those terms in the Rules imply officers who take evidence), leaving it to the Full Court to make decisions thereon, is not convenient.

76. The allegations are of a most serious kind, and if proven, constitute a basis for criminal prosecution, so a Court in determining this, would wish to see and hear the witnesses.
- 30

77. For these reasons, it is submitted that the hearing of the Appeal should be deferred until after the hearing and

determination of those aspects of the fresh evidence by the Supreme Court of New South Wales.

78. Further Aspects of Fresh Evidence

Fresh evidence is relevant to the following:-

- (a) The proof of the aspects of abuse of process and extortion.
- (b) The ability of the Appellant to pay its debts by reason of the depression in value of its major asset, which at the date of petition comprised 53 million shares in Offshore Oil.
- (c) The existence of documentation relating to the loans made by Offshore to Ganke companies as to which his Honour found that,

at page 688, line 15. "The money was abstracted from Offshore...".

at page 690, line 9, "The deposit variation form which had been enclosed with the letter from Brinds to Offshore dated 2nd September, 1982, and which was offered by Ganke as evidence of an agreement as to terms of repayment is, to my mind, singularly unconvincing." (emphasis added).

at page 685, lines 22-6, "...the mode by which large amounts of money were moved from Offshore to Brinds over a period of years is justly to be described as exceedingly irregular." (emphasis added).

- (d) at page 685, lines 31-4, "In truth, the evidence raises in my mind a grave doubt whether there was between the two companies any commercial arrangement or agreement of that kind which was worthy of the name." (emphasis added).

79. These findings were made by his Honour in circumstances where the only relevant issue tended to him was whether or not there was a bona fide dispute as to the terms of repayment by

Brinds to Offshore. His Honour was not invited to determine the issue, and if he had indicated that was his intention, additional evidence would have adduced.

80. Whilst the Judgment stands, it may be argued, since both Ganke and Offshore were parties that Judgment is binding between them, whether or not the argument be correct, the terms in which it was framed should be permitted to stand.

10 81. Part of the reason given in his Honour's judgment was that certain correspondence of a challenging nature was dispatched from the office of Offshore to Brinds, in which Offshore required immediate payment of its loan. Brinds alleged there was a document showing that the funds were lent on a 12 month call basis.

20 82. Offshore demanded production of any documentation evidencing that fact. As a result, on 2nd September, 1982, Brinds sent to Offshore a document, which his Honour found, at page 690, line 13, was "singularly unconvincing" because, inter alia, the person who had sworn to its preparation conceded in cross-examination that she could not remember having so prepared or seen it.

at page 690, line 18, "She could neither read nor recognise the indecipherable initials at the foot of it, or say when it might have been prepared".

at page 691, line 8, ""It seems to me to be but a slender basis for an agreement between Brinds and Offshore".
(emphasis added).

30 83. In the conduct of a hearing in which the question was not the result of the dispute, but whether a dispute in fact existed, it was not necessary to produce all available evidence bearing on the matter.

84. At a subsequent hearing before Mr. Justice McLelland in the Supreme Court of New South Wales, an Application was made to wind-up Southern Cross Exploration N.L. (a Ganke company) on the basis of a presently payable loan of approx. \$ 680,000

including a component of \$330,000.00. (See generally the Affidavit of Phillip Kevin Smith sworn 17th September, 1983).

85. Identical challenging letters had been written by Offshore and in this respect Southern Cross Exploration N.L. was unable to locate any document evidencing the term of the loan. However, in the course of the hearing it transpired that there was found in the files of Offshore the relevant document evidencing the terms of the loan which his Honour Mr. Justice McLelland accepted as "fairly strong evidence that the \$ 330,000.00 component of the sum was repayably on ninety days call". (Ibid. para. 3 (h) and Exhibit "PKS4" thereto).

10

86. The evidence sought to be adduced is that there is a file of many such documents and the failure of an Accounts Clerk who swears that she was in the habit of preparing such documents to recognise one such document shown to her, should be overlooked.

87. It is clear that if his Honour had before him evidence that a similar document created in similar circumstances was virtually not disputed by Offshore as a valid document and if there had been further evidence that it was but one of many, all equally valid, it is unlikely that Mr. Justice Tadgell would have been as suspicious and as unconvinced of the validity of the document before him.

20

ISSUE

FACTS

REASONS

DECISION

1. What is the business of BRINDS?

P.658 line 9: Described by Ganke as a merchant bank for a group of companies for which it provides both financial and management services; it holds shares in most of these companies.

As Mr. Macintosh said ... to Mr. Ganke ., . it is very difficult to discern what the business of Brinds Limited is or has been for some time. Indeed, it seems to me that its business, whatever it once was, cannot now be said to be that of a merchant bank. If it were allowed to continue, it seems to me the only purpose of allowing it to do so would be that of allowing it to realize its assets as best it could with a view to satisfying the creditors and then not entirely satisfying them.

This and the following 17 pages are the Annexure "A" referred to in the written Submissions to be put before the Full Court of Victoria in Appeal No. C 13015.

It was also said that I should have regard to the wishes of the opposing creditors and that, having regard to what they say, I should dismiss the petition. ... All of them are companies of which Mr. Ganke is Chairman of Directors. ... In my opinion it would be unjust and inequitable as against the petitioner if the winding-up order were not made. That is to say, I am satisfied that a winding-up by the Court would be just and equitable.

Provisional Liquidator: Concurrently with the hearing of this petition there has been on foot a summons by way of appeal from an order of Master Jacobs made on 17th February last, for the appointment of the Provisional Liquidator. I was urged on behalf of Brinds to allow that appeal, whatever might be the result of the

DECISION

REASONS

FACTS

ISSUES

1. (Cont.)

petition. It seems to me that the appeal no longer contains an issue which is a live issue, in view of the fact that I propose to order that the company be wound-up. I do not therefore propose to deal with the argument upon the summons and I think the right thing to do is simply to dismiss it.

ISSUE	FACTS	REASONS	DECISION
<p>2. The existence of each of these four debts which aggregate over \$7 million is not disputed by Brinds, but Brinds does dispute that they are due for payment.</p>	<p><u>P.673:</u> Letter of 27th August, Offshore to Brinds demanding repayment by the 31st August 1982. 31st August 1982 - letter Ganke to Brinds - money has been placed not at call but at 12 months call.</p> <p>31st August 1982 - letter Offshore to Brinds "We have not seen documentary evidence ... re 12 months call. Documentary evidence ... required prior to 12 noon Friday 3rd September 1982. In the absence of any evidence to the contrary the loan is repayable upon demand ..."</p> <p>2nd September 1982 - Letter Brinds to Offshore "Enclosed is a copy of a deposit variation form which was given to your company in respect of amounts outstanding at the time. This was issued shortly after Brinds Limited repaid \$950,000 to Offshore at relatively short notice."</p> <p>The so-called deposit variation form which was enclosed with that letter was undated and read as follows: (i.e. 12 months call)</p> <p>7th September 1982 - Statutory Notice under S.364.</p> <p>24th September 1982 - Brinds to Offshore - Threat of injunction. The notice was not complied with but no petition was presented, for the dispute was temporarily overtaken by subsequent events.</p> <p><u>P.699 line 10:</u> The Moratorium Deed contained acknowledgments by the debtors, in clause 10, that the debts owed to Offshore which were the subject of dispute as to terms of repayment were unconditionally repayable on demand.</p>		<p><u>P.690 line 9:</u> The deposit variation form which had been enclosed with the letter from Brinds to Offshore dated 2nd September 1982 and which was offered by Ganke as evidence of an agreement as to terms of repayment is, to my mind, singularly unconvincing ... (P.691 line 4) ... The form never left the file kept in Miss Pauler's office until 2ND September 1982, even supposing that she did prepare the document at some earlier time. It seems to me but a slender basis for an agreement between Brinds and Offshore. The same may be said of the ledger cards. ... At the top of another, the latest in point of time, is handwritten "12 months call". Miss Pauler said that she made the latter notation, but could not say when. In any event, the cards remained with her and were produced from the custody of Brinds, not Offshore, upon this hearing. Copies have been provided to Offshore but not, I think, before 27th August, 1982.</p>

NOTE: No decision on this point (P.721 line 27)

N.B. No decision on terms of arrangement; decision based on Moratorium Deed.

In the Full Court
No. 235
Counsel's Submissions
(continued)

ISSUES

FACTS

REASONS

DECISION

3. Another matter of acute contention between the parties to the petition is the extent of the assets of Brinds.

It does appear that the assets of Brinds itself are, as to some of them, over-valued in its own estimation. I give two examples which will be sufficient to make the point: Part of the assets which Brinds values at \$20 million odd consist of its Offshore shares of which there are some 19 million. These, of course, are at present all encumbered. They were valued by Mr. Tosio, the Accountant of the Brinds Group, at 20¢ and are therefore said to represent an asset of some \$3,800,000. It has, however, been common ground throughout these proceedings that the present market price of Offshore shares is in the region of 10¢ or 11¢ and that this has been so now for some weeks. The 19 million shares so valued by Mr. Tosio include, of course, those which were pledged to Jackson Graham Moore & Partners, some 5 million of which have now been sold at 10¢... In one asset alone there appears to be an over-optimistic valuation by some \$2 million.

Another asset ... is the holding by Brinds of shares in Gulf Resources N.L. These shares are valued by Mr. Tosio on the basis of their net asset backing at 23¢. Their market price in April ... was some 3¢ and it appears that at present and for the foreseeable future ... they would realize nothing like 23¢. There seems to be a very appreciable over-valuation on that basis of at least \$200,000 - \$300,000.

In the Full Court
No. 235
Counsel's Submissions
(continued)

ISSUES

FACTS

REASONS

DECISION

Brinds contends that its solvency is attributable in large measure to the substantial holding by itself and its subsidiaries in the capital of Offshore. Brinds and its associated companies holds 53,476,000 shares of which 44,013,000 are encumbered.

P.660 line 85

In December 1981 the fully paid 10¢ shares had been selling for as high as 48¢ on the Stock Exchange but by March 1982 they had fallen to 21¢ and by April they had gone to 13¢. During June 1982 the market price for fully paid Offshore shares fell to 11¢ (P.668 line 1).

P.677 line 23: In the midst of what was described by one witness as a "Boardroom brawl" which had become public knowledge, the market price of Offshore shares fell in August 1982 to 9¢. On 30th September the Stock Exchange listing of Offshore was suspended and it remained suspended until November, 1982.

In the event, the 1982 accounts of Offshore contain the provision for loss equal to the whole of the amount of the debts owed by Brinds and its associated companies save for \$1.6 million which was secured. The provision was therefore of \$8,974,000 ... The provision was insisted on by Macintosh over Ganke's dissent.... Macintosh was subject to considerable criticism by counsel for Brinds for taking this stand, not only because it was said to be by itself unfair to Brinds, but because it was - as the contention went - part of a concerted campaign in the interests of Mr. Adler and the FAI Group to paint as bleak a picture as possible of the financial position of Offshore with a view to disadvantaging Brinds, a substantial shareholder.

N.B. No discussion or decision on the vulnerability of Brinds to the manipulation of Offshore market price.

5. Brinds contends that even if shown to be unable to pay its debts, no order to wind-up should be made because of the allegedly unconscionable behaviour of Offshore.

P.711 line 26: That the non-payment of its debts is attributable not to its own shortcomings but to the conduct of the creditors being parties to the Deed and Macintosh and some of its secured or partly secured creditors, notably Martin Corporation Ltd. and Jackson Graham Moore & Partners. But having regard to the circumstances referred to, it is entitled to the exercise of the Court's discretion in its favour not to make a winding-up order.

Mr. Ganke has sworn that he believes Mr. Adler to be bitterly hostile to him both personally and in business (P.669 line 21). Mr. Adler gave no evidence. It is said on behalf of the opponents of the petition that it is to be regarded not as a genuine attempt by Offshore to recover its debt from Brinds, but as part of a vendetta by Mr. Adler against Mr. Ganke and is inspired by motives ulterior to the best interests of Offshore.

P.676: Having become directors of Offshore on 1st July 1982, Messrs. Adler and Atkinson and Professor Wilson had 2 months in which to acquire 1,000 shares each as a qualification for office as prescribed by the Articles of Association of Offshore... Neglected to acquire the shares ... From 27th September or thereabouts Ganke treated Adler, Atkinson and Wilson as not being directors of Offshore ... Commenced proceedings in the Supreme Court of New South Wales against them. 12th October 1982 - Some companies in the FAI Group ... commenced proceedings in the Supreme Court (P.677) and so it was on the 14th October 1982 Mr. A.R.M. Macintosh, a member of the Sydney firm of Peat Marwick Mitchell & Co., Chartered Accountant and a man of wide experience in insolvency work, was appointed Chairman of the Board and Chief Executive of Offshore. He retained those offices until the Annual General Meeting of Offshore was held on 3rd December, 1982.

Many of them involved a criticism of Mr. Adler and Mr. Macintosh, each of whom were said to have acted, the latter under the influence of the former, with a view to ensuring that the Moratorium would not work and with a view to accomplishing the destruction of the Brinds Group.

Before dealing with the principal bases of opposition seriatim I want to make some general remarks about Mr. Macintosh and about the criticism that was levelled at him ... I say at once that in my opinion the evidence does not provide a foundation for it.

P. 734 line 4: To recapitulate, these are that any inability of Brinds to repay its debts or any non-payment by it of its debts was attributable to the conduct of the creditors under the Deed and Mr. Macintosh and remarkably Martin Corporation and Jackson Graham Moore & Partners; and that there should, because of these other circumstances which have been mentioned, be an exercise of the Court's discretion in favour of the company.

I hope I shall not be thought to have failed to understand or appreciate and consider the sustained and indeed valiant efforts of counsel to make these points good if I do not add to these reasons by adumbrating their arguments. I have, I believe,

ISSUES

FACTS

REASONS

DECISION

5. (Cont.)

263

understood them, and I have considered them ... The evidence doesnot sustain the conclusion that Macintosh was designedly remiss in his dealings with the Brinds Group under the Deed ... It might be said that he refused to allow Mr. Ganke to proceed with plans ... which would have enabled the company to be in a better position than it is now. These and other similar proposals ... were turned down by Mr. Macintosh. ... Mr. Macintosh was entitled to act as he did and it is not through any fault of his that the company is now in the position in which it finds itself.

It was said by Mr. Ganke that Martin Corporation and Jackson Graham Moore & Partners are in some measure to be blamed for the condition in which Brinds now finds itself. ... The mere failure by Martin Corporation or by Jacksons to present a petition ... amounted in my opinion to no abandonment or waiver of any rights.

N.B. No discussion or decision on the issues raised; no acceptance or rejection of the evidence specifically directed to diminishing the share price, e.g. provision for bad debts of almost \$9 million etc. .

ISSUES	FACTS	REASONS	DECISION
6. Those responsible for the management of Offshore have designedly acted and induced others to act with a view to depressing the value and market of the issued shares in its capital, thus embarrassing Brinds financially for the purpose of having it wound-up so that they might ultimately acquire the Offshore shares which Brinds and its subsidiaries now hold.	FAI Group took up a further 10 million shares issued by Offshore on 1st July 1982. In August 1982 the Board of Offshore decided to make a 1-for-2 rights issue of shares to raise further capital. This was underwritten by a subsidiary of the FAI Group, Metropolitan Executors & Nominees Pty. Limited, which ultimately took up - after some dispute about it - some 53 million shares which had not been taken up by existing shareholders in accordance with their rights to do so..		<u>N.B.</u> No discussion or decision on the issues raised; no acceptance or rejection of the evidence specifically directed to diminishing the share price, e.g. provision for bad debts of almost \$9 million etc.

ISSUES

FACTS

REASONS

DECISION

7. P.662 line 25
Has Offshore standing
to present the
petition?

P.681 line 11:
First, Offshore, as petitioner,
has alleged that the debt of
\$3,513,236 owed by Brinds is
presently due and owing, whereas
it is contended on behalf of
Brinds that the debt is not due
but that it is not disputed that
it is owing. The petitioner thus
presents the petition as a creditor
to whom a present debt is now due
for payment ... although it relies
alternatively on its status as a
contingent or respective creditor.

ISSUES

FACTS

REASONS

DECISION

8. Is Brinds unable to pay its debts?

P.725 line 7:

In addition to what appears from the narrative ... I refer to the circumstances of the execution by Brinds of the Moratorium Deed itself on 25th November that seems to me does provide evidence, when taken along with the other evidence, of the inability of the company to meet on that date the liabilities which it therein acknowledges.

P.727 line 28:

The very fact that Mr. Ganke's estimation, made so recently as 7th April, it would take 3-4 months in which, at best, Jackson Graham Moore & Partners would be paid by Brinds, is further evidence that Brinds is in terms of the expression in S.364(2)(e) of the Code, unable to pay its debts. Nothing has occurred since mid-October to improve Brinds' ability to pay its debts. The position has, if anything, become steadily worse.... Brinds incurred a trading loss for the year ending 31st December, 1981 of some \$605,000. In the succeeding financial year, just concluded ... its loss was some \$1.5 million. (P.729 line 10) At the 31st December, 1982 it had assets potentially available to it from its subsidiaries of some \$33 million and there were liabilities on that basis of some \$22 million. The table further shows assets which might be available if Brinds were able to resort to some of the other companies in the Brinds Group, not specifically its subsidiaries, but with which it is

In the Full Court
No.235
Counsel's Submissions
(continued)

ISSUES

FACTS

REASONS

DECISION

8. (Cont.)

associated. On that basis, it is said, there are total assets existing of \$41 million and total liabilities of some \$14 million.

It seems to me that notwithstanding that there might on one view, if one looks at the whole of the Brinds Group, be a substantial excess of assets over liabilities judging simply by balance sheets, this is not sufficient to override what appears from the other evidence to be the fact that as at 17th February this year and indeed for many months before that, Brinds is and was unable to pay its debts as they fell due.

ISSUES

FACTS

REASONS

DECISION

9. Should a winding-up order be made on the petition?

P.681 line 24

The date of due payment of the Brinds debt could affect the question whether Brinds was able to pay its debts at the time of presentation of the petition and, for that matter, whether it is able to do so at the present time.

It was said that I should exercise a discretion in favour of the company because in truth there is, if the company is allowed to go about its business, a prospect of its realization within a reasonable time sufficient to enable it to pay its debts ... it really amounts to no more than allowing Mr. Ganke to act by way of realizing assets instead of liquidators so acting.

In the Full Court
No.235
Counsel's Submissions
(continued)

ISSUES

FACTS

REASONS

DECISION

10. This (detailed investigation...of various matters by reference to which the debt was disputed) was undertaken, according to counsel for the opponents and necessarily so, in order to show that there is substance in the dispute. I was invited (P.683 line 22), in the light of that evidence, to take the view that the terms of repayment of the debt of \$3.5 million owed by Brinds to Offshore raised such a substantial dispute that I should dismiss the petition without more ado.

P.683 line 15

Having considered the documentary evidence and listened to the lengthy oral evidence, I do not take that view.

In the light of all this, I do not feel able to take the view that the evidence of arrangements between Offshore and Brinds as to money moved from the former to the latter is such as to raise a bona fide dispute on substantial grounds which is sufficient to justify dismissal of the petition.

DECISION

REASONS

FACTS

ISSUE

11. Beginning 30th June 1979 the debt increased. ...During the year ended 30th June 1982 the principal had been reduced to \$2,252,000 but accrued interest increased to \$1,232,854, leaving an indebtedness of \$3,484,854 which was the subject of the demand by Offshore on 27th August 1982. ...The indebtedness...remained wholly unsecured and not a pennyworth of interest had been paid, although interest on interest had been calculated quarterly and added in the accounts, not to principal, but to accrued interest. During the same 3 years, Mr. Ganke was the Chairman and sole Executive Director of both Brinds and Offshore. ...The accounts of both Brinds and Offshore in relation to these dealings...were kept by Brinds at its office, Brinds debiting Offshore with a so-called "management fee" for keeping them.
P.687 line 2: According to Ganke's evidence, Lenka Pauler had complete authority on her own initiative to effect a movement of money from Offshore to Brinds and back again. ...She said nothing was done by her on her own initiative. ...I have no doubt that her evidence on the subject is to be preferred to that of Mr. Ganke. ...Disbursement of money out of...Offshore into Brinds appears plainly to have been pursued in order to finance the operation of Brinds and the Brinds Group. ...It is evident that the money derived from Offshore was, in effect, being used as working capital or as a substitute for it. The overwhelming burden of the

Taking that view... (P.685 line 22) ...I am of opinion that the evidence indicates that the mode by which large amounts of money were moved from Offshore to Brinds over a period of years is justly to be described as exceedingly irregular. P.685 line 31: In truth, the evidence raises in my mind a grave doubt whether there was between the two companies any commercial arrangement or agreement of that kind which was worthy of the name. Were it necessary to decide what the arrangements amounted to, I should think that there would be much to be said for the view that no consensus was reached between debtor and creditor as to repayment and that the money was recoverable as money had and received to the use of Offshore. In the event, however, I find it unnecessary to form a conclusion on the matter, for such arrangements as there were have been overtaken by events.

ISSUES

FACTS

REASONS

DECISION

1. (Cont.)

evidence is that the terms on which money was abstracted from Offshore was substantially if not completely at the discretion of Mr. Ganke. ...P.689 line 3...All this was at a time...when Ganke personally held some 45% of the capital of Brinds.
P.689 line 25: Ganke's view was that the ordinary business of Offshore included the lending of money and that the advances made by it to Brinds were of monies surplus to its requirements. I do not stay to consider whether there might have been a breach of S.125 or any of its equivalents.

12. P.711 line 13:
The moratorium
has not been
duly terminated.

The argument was that the opinion that Mr. Macintosh expressed by letter on the 10th February was no opinion at all because it was not formed and expressed in good faith and was contrary to the facts. At worst for Brinds, it was argued that there was a real dispute of fact about the validity of the opinion which this Court should not determine on the petition. In elaboration of the argument that the opinion was not formed in good faith by Macintosh, it was argued that Macintosh had expressed it because he was coerced by Adler and the lack of independence and individual judgment by Macintosh affected the opinion so that it may now be disregarded.

P.719 line 3: It was argued by Brinds that it would be improper and unsafe to reach the conclusion I have without having heard evidence from Mr. Adler, having regard to the allegations which are now made that he incited Mr. Macintosh to act as he did and acted in combination with him to destroy the moratorium. Having carefully considered this submission, I feel unable to accept it. The allegations ... are largely speculative.

P.720 line 14: I do not, having regard to the positive evidence called on behalf of the petitioner and to the relative paucity of evidence on the subject called on behalf of the opponents to the petition, feel inhibited on account of Mr. Adler's absence in reaching the conclusion I

The opposition on the basis that the Moratorium is still on foot is, in my opinion, unsustainable on the evidence (P.716 line 25).

ISSUES

FACTS

REASONS

DECISION

12. (Cont.)

have that Macintosh had good grounds for the opinion he expressed, at least in part. On the other parts of the opinion, that is to say those not related to the failure of the debtors to provide accounts, under Clause 4.2(a) and (b), I think it is unnecessary to dwell and I do not propose to do so.

273.

ISSUES	FACTS	REASONS	DECISION
--------	-------	---------	----------

13. P.711 line 15:
The acknowledgment in the Moratorium Deed of present indebtedness cannot now be relied on.

P.721 line 3:
The second principal basis for opposition to the petition ... involves the interpretation of Clause 20 of the Deed. The submission involves treating this present assertion of Brinds, that its debt to Offshore is not now due and payable, as a "claim" ...

P.721 line 19:
I am of opinion that the word "claim" means a pecuniary claim ... The present contention that Brinds is not indebted to Offshore for a sum now due is not in my opinion such a claim. The acknowledgment in Clause 10 may accordingly be relied on by Offshore against Brinds. It is for that reason that I thought it unnecessary to pursue more than I did the original arrangements, if any, which were made between the parties as to repayment.

NOTE: No decision on Clause 20
"No provision of this Deed shall ... in any way operate as a ... alteration ... of any of the rights ... which subsist ... pursuant to the terms of existing agreements..."

IN THE SUPREME COURT
OF VICTORIA
FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

946 - 4160
Wicks - Robertson
Convey
BETWEEN: *KL Factors*

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS PTY. LTD.,
HALLMARK MINERALS and L.S.D. HOLDINGS
LIMITED

Appellants

10

- and -

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

Respondents

PRINCIPLES APPLICABLE TO THE DETERMINATION OF DISPUTES ARISING
IN WINDING-UP PROCEEDINGS

1. There are essentially two different types of petition, namely :
 - A. Petitions based on matters entirely within the exclusive jurisdiction of the winding-up Courts, and
 - B. Petitions based on unpaid debts.
2. Type A Petitions contain the essential allegations relied upon e.g. misfeasance of direction, fraud on minority. It follows that particulars, discovery, inspection and interrogatories can be effective for trial procedures.
3. Type B Petitions are based on the dual allegation of unpaid debt and inability to pay such a debt.
4. The primary rule is that if the debt is disputed on substantial grounds

20

of law it must limit the power of the Court to hear matters coming within the rule and logically prevents the winding-up Court from exercising jurisdiction in such matters. The basic rule appears as long ago as the decision in Cadiz Waterworks Co. v. Barnett (1874) LR 19 Eq 182 and as recently as the Privy Council decision in Re: Batemans case (1971) NZLR 650.

5. There have been some minor inroads into the basic rule :-
 - (a) where the dispute involves only a matter of construction of a document - re Horizon Pacific 2 ACLR 495 per Needham J.
 - (b) where the parties expressly or impliedly consent to the winding-up Court determining the dispute. 10
6. We are not aware of any judicial decision which permits the winding-up Court to determine a substantial dispute (except as in para. 5 above) as to the existence or the availability of a debt to support a Petition despite the protest of the Respondent that the winding-up Court is not the appropriate forum.
7. If this submission is correct it follows that if the debt was disputed on substantial grounds, the winding-up Court had no power to hear the matter without the express or implied consent of the parties.
8. The Respondent (the Appellant in this Appeal) made its attitude clear at the earliest opportunity (on the second day of the hearing) and maintained that position in its final address. That position was recognized by His Honour as a submission that the Petition should be dismissed without "further ado" because the debt was disputed on substantial grounds. 20
9. The question is now asked whether because the hearing continued for some weeks and involved,
"...a detailed investigation upon the hearing of various matters by reference to which the debt was disputed," there was an implied consent to His Honour finally determining the disputes.

10. His Honour clearly did not regard any such consent as having been given because he recognized at p.683 that the enquiry, "...was undertaken, according Counsel for the opponents, and necessarily so, in order to show that there is substance to the dispute. It was, in that way that the Court heard what was, for winding-up proceedings, and unusual range of cross-examination over matters that are not commonly investigated upon a winding-up Petition." (emphasis added).
11. It is submitted that no implied consent can be read into the conduct of the lengthy hearing when the Learned Judge specifically explains the purpose of the hearing.
12. It is respectfully submitted that in the absence of either express or implied consent from the parties, His Honour had no power or alternatively, wrongly exercised his discretion, to decide the matters by reason whereof the debt was disputed if in fact that dispute was substantial.
13. It necessarily follows from the limited purpose for which the "detailed investigation" took place, namely, "to show that there is substance to the dispute", that no Court could be satisfied that the same evidence would have been presented in the same fashion if it had been directed to a different end namely, whether in fact and law the debt was due and payable.
14. The determination of the dispute, as shown in submissions to be handed to the Full Court today, depended to a substantial extent on the credibility of certain witnesses.
15. As an example of the difference between a trial enabling final determination of certain issues on the one hand and a mere demonstration of the existence of a substantial dispute on the other, the precedent investigation of many of the issues during the two months which elapsed after the presentation of the Petition and before the hearing commenced,

without the benefit of discovery, inspection and interrogatories would necessarily be of a different nature and magnitude to the preparation of a "full-scale" trial involving a disputed debt of some \$3 million involving complex issues of fact and law. Cross-examination, probably inhibited by the limited facilities for investigation, might well stop Counsel short at some point where it was believed that Counsel had demonstrated the unreliability of a particular witness' evidence, without necessarily proceeding to the full extent essential at a trial when issues are posed for final determination.

IN THE SUPREME COURT
OF VICTORIA
FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW BANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS PTY. LTD.,
HALLMARK MINERALS and L.S.D. HOLDINGS
LIMITED

10

Appellants

- and -

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

Respondents

SUBMISSIONS OF THE APPELLANTS

1. The Petition (as amended) was based solely upon an allegation so far as the Petitioner was concerned;
 - (a) that a certain sum was due and owing at the date of the Petition
 - (b) that the Company was unable to pay its debts and ought to be wound up. (see Appeal Book Volume 1 Page 1).
2. There is no provision in the Rules relating to winding up petitions for the filing of a Defence and accordingly so far as the pleadings are concerned the only obvious issue is an assumed denial by the Respondents of the relevant allegations in the Petition.
3. As a matter of practise and procedure the issues to be litigated arise -

20

- (a) from the respective allegations made in the Affidavits filed on each side.
- (b) from the cross-examination of the witnesses.
- (c) from an examination of the exhibits.
- (d) from the opening addresses of Counsel.
- (e) from the course of the proceedings and,
- (f) from the closing addresses of Counsel.

4. Because the only relevant issue appearing in the only pleading namely the Petition was an allegation the debt was due and payable and that the company was unable to pay its debts, particulars, discovery, interrogatories 10 and other interlocutory proceedings would not be apt to assist in the determination of issues raised at the times and by the processes referred to in the preceding paragraph hereof.

- (a) because those issues were not known before the proceedings commenced, and
- (b) because the absence of pleadings in the ordinary sense precluded the limitation of issues, in the manner in which pleadings limit and define the issues in matters before the Common Law and Equity Jurisdictions of the Court.

5. The matters in dispute may be considered as at 3 points of time - 20

- (a) at the close of the Affidavit evidence,
- (b) at the conclusion of the evidence,
- (c) at the conclusion of the final addresses of Counsel.

6. Although various disputes were expanded and were the subject of cross-examination, discussion and additional evidence the position in relation to the areas of dispute mentioned hereunder does not appear to have materially altered from the beginning of the case to the end.

7. This is not a case where a Court embarked in what appeared to be a simple hearing which turned out to be unexpectedly complex. The Affidavits reveal the following areas of dispute.

THE DISPUTES

A. As to the date of Payments of the Debt

- (a) Whether Mr. Ganke as chief executive officer of the respective companies had power to bind each company to an agreement that the petitioner's debt was lodged with Brinds on 12 months' call.
- 10 (b) If he had such authority whether he exercised it in this case.
- (c) Whether the document which acknowledged the deposit was -
- (i) genuine
- (ii) prepared at the time when according to the internal evidence of the document it appeared to be prepared
- (d) Whether the document was bilateral in the sense that it bound both companies.
- (e) Whether the ~~provision~~^{presence} of document~~s~~^{we} should lead to a belief that it was manufactured post-hoc i.e. at a time when Ganke was not authorised by Offshore to have the document prepared.
- 20 (f) Whether the account cards in respect of the petitioning creditors debt were genuine.
- (g) Whether the notation referring to 12 months call made on the relevant card by Miss Lenka Pauler was made at a time when she could properly make that entry on behalf of those companies.
- (h) Whether the evidence of Ganke relating to the making of a loan should be accepted.
- (i) Whether the accounting records kept by Brinds and Offshore were appropriate to disclose the true position between the companies.

- (j) Whether the transaction whereby Offshore's funds were deposited with Brinds was a true commercial transaction or whether it was a "mere abstraction" of funds from Offshore to Brinds with overtones of commercial immorality if not worse on the part of Mr. Ganke.
- (k) Whether in fact the funds advanced by Offshore were advanced in part to companies in which Offshore had substantial shareholdings e.g. \$824,000.00 was deposited by Offshore with Investment Corporation of Fiji, a company in which Offshore held 50% of the shares (see page 1724 of the Transcript Book).

10

8. Moratorium Deed

8. On the 25th of November, 1982 a Moratorium Deed was entered into by a number of parties including the Petitioner and Brinds dealing inter alia with the debt the non-payment of which founded the Petition.
9. The existence of the Moratorium would have prevented the Petitioner from relying on the debt to found the Petition but the Moratorium was brought to an end on 10th February, 1983 pursuant to an opinion given by Mr. Macintosh which under the terms of the Deed enable the creditors to terminate it.
10. The disputes which arose on the winding-up petition included the following -
- (a) whether Mr. Macintosh had given his opinion -
- (i) in bad faith
- (ii) in breach of a duty owed to the debtors
- (b) ^{Whether} Macintosh failed to fully inform himself of the business and operations of Brinds, - failed to appoint any or any adequate meetings for the purposes of defining the manner of implementation of the deed and failed

20

to give Brinds extensions of time for compliance with the deed as were reasonable.

- (c) Whether Macintosh failed to exercise an independent discretion but allowed himself to be overborne by Mr. Adler or conspired with Mr. Adler to wrongfully determine the Moratorium.
- (d) Whether Macintosh misrepresented to Ganke what his intentions with respect to the Deed were and lulled Ganke into a false sense of security so as to create technical breaches by Mr. Ganke which would enable Macintosh to have grounds to terminate the Deed.
- (e) Whether Macintosh waived compliance by Mr. Ganke with the terms of which he subsequently alleged were breaches and represented to Mr. Ganke that he did not require strict compliance with the Deed.
- (f) Whether Macintosh held secret meetings with Mr. Adler at which agreement was reached between them to frustrate the Deed and thereafter Macintosh acted as a tool of Mr. Adler to bring about the destruction of the Deed and thereby the destruction of Mr. Ganke and his companies. (reference is made to the matters referred to above in the index annexed hereto).

10

20

C. (g) The cessation of the Deed
Disputes as to the Bona Fides of the Petitioner's motives in presenting the Petition

The areas of dispute were as follows:-

- (a) Whether the Petitioner under the direction of Adler was seeking the destruction of Brinds in order to cause the 53 million shares held by the Brinds group to be sold by a liquidator so either Mr. Adler or his friends could acquire them or they would be

dissipated on the market so that they would not remain in Mr. Ganke's hands as a threat to Mr. Adler's control of Offshore by virtue of the 100 million shares he had acquired.

- (b) Whether Mr. Adler was engaged in a design to lower and to keep low the value of the shares in Offshore Oil on the Stock Exchange so that the principal asset of the Ganke group namely the Offshore shares will apparently have small value with the result -

(i) ~~they~~^{there} would not be adequate security to borrow money to pay back outstanding loans,

(ii) Brinds would appear to be insolvent and thus to be wound up.

10

- (c) Whether this plan was implemented by Mr. Adler and whether it was manifested -

(d) by the issue of ten million shares to FAI at par (10 cents) at a time when the last issue of ⁹the substantial quantity to an institution had been at 33 cents, and when the shares had never been below 11 cents and when the last sale had been at 15 cents.

- (d) Whether the one for two share issue was made in the interests of Offshore or whether it was made -

20

(i) for the purposes of further depressing the market;

(ii) for the purposes of enabling Mr. Adler to obtain at par 53 million Offshore shares, subsequently reducing ^{to 47}the 47 million after protest by Ganke at the failure to honour applications for shares which arrived out of time due to a postal strike.

- (e) Whether the writing off of some 9 million dollars of loans to the Ganke companies was made by Adler and Macintosh acting in concert to destroy the credit of the Ganke companies and at the same time reduce the profits of Offshore so as to further depress

30

the value of Offshore shares and further reduce the value of

Brinds' assets.

- (f) Whether the method of dealing with the "Energy Searcher" and other matters in the accounts of Offshore was calculated to paint as bleak a picture of the prospects of Offshore as was feasible for the purposes of depressing the demand for and the value of shares in Offshore.
- (g) Whether the real purpose of the Petition was not legitimate and was to destroy Ganke and his companies.

IN THE SUPREME COURT

OF VICTORIA

FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES W.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS PTY. LTD.,
HALLMARK MINERALS and L.S.D. HOLDINGS
LIMITED

Appellants

10

- and -

OFFSHORE OIL W.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

Respondents

FURTHER SUBMISSIONS OF THE APPELLANTS

What were the Judge's reasons for exercising his discretion to determine the issues?

20

- Dispute - controversy, debate; quarrel, difference of opinion.

(Definition Oxford dictionary).

Judge did not take into account:

First Dispute

1 Apparent dispute on the affidavits between Wilshire and Ganke

as to existence of "12 months" document. This required -

(a) an examination of the affairs and relationship between Offshore and Brinds to determine the course of business

as throwing light on the efficacy of what might otherwise

appear to be an "informal document".

(b) an examination of the circumstances in which the loan was made including

(i) whether Ganke had authority on behalf of the respective boards to fix the terms of the loan;

(ii) whether he did so in the terms alleged.

(c) An examination of what was meant by the money market, the method by which Brinds and Offshore dealt on the money market and the general operation of the money market.

10 The essential difference between loans in the real sense and money market operations is that in the case of an ordinary loan the lender investigates the financial position of the borrower, the nature of the security and the terms of the loan for each transaction. On the money market, organizations approve one another as authorised borrowers and the transaction is determined by the question whether at any given time the "lender" has surplus cash upon which it wishes to earn interest and whether the "borrower" can effectively use that cash. The market operates by money market operators who may be quite young men and women who are informed by their company that they have surplus cash not
20 required for a certain period and it is the function of these operators to telephone to borrowers approved by the Company to ascertain which borrower can use the money for the specified time and offers the best rate. The transactions are normally concluded by informal documents similar to the one in evidence here.

It emerged in evidence in the Minsec Company failure that virtually on the last day of the Company's trading very large deposits were made with the Company unsecured, by a clerk in one Company making the transaction with a clerk in Minsec who had no knowledge of what was to occur.

11 Second Dispute

The Judge failed to take into account that

- (a) the availability of the debt for the purpose of the petition depended on the construction of a complex moratorium deed;
- (b) there were extremely complex questions of fact and law which necessarily had to be determined to decide whether or not the moratorium was effective;
- (c) there was then currently pending in the Supreme Court of New South Wales a proceeding commenced on the 24th February 1983 by the Ganke group against inter alia Offshore Oil, the Adler group and Macintosh with Brinds a defendant (because of the Provisional Liquidator).

10

The sole issue in those proceedings was the validity of the opinion given by Macintosh upon which the Petitioner relied in these proceedings.

- 1. A further legal question which arose was the effect on the existence or otherwise of a presently payable debt if the Moratorium as held to be validly terminated.
- 2. The correctness of the exercise of the Judge's discretion to himself determine the dispute instead of permitting the dispute to be determined in the normal way, falls to be considered as at two dates.
- 3. Until the affidavits had been read and the Court had decided questions of admissability of the affidavits and exhibits, the nature of the case and the issues to be raised could not be known to the Judge. Pleadings, particulars, discovery and interrogatories are devices developed by the courts over many years to facilitate an orderly and efficient presentation of the case and to prevent either party (or indeed the Court) being met with issues without warning.

20

4. Accordingly the conduct of winding up proceedings without the benefit of those interlocutory steps must necessarily be more complex than if those proceedings had taken place before the trial.
5. At the end of the reading of the Affidavits there were revealed to the Judge highly complex disputes which by their nature were likely to occupy a common law or equity court for a lengthy period. The disputes were obviously very substantial. Ganke's allegation that the original debt was payable on twelve months' call was supported by documentary evidence and was prima facie correct and could only be defeated by showing that the documents relied on were in substance fraudulent in that they were not created at the time when Ganke had the power on behalf of Offshore to cause them to be created. There was no suggestion in the affidavits of the Petitioner that Ganke's allegations were not bona fide.
6. Moreover the dispute concerning the termination of the deed involved the additional allegations that Mr. Macintosh had not acted bona fide and the determination of that dispute could obviously require detailed examination of the creation, operation and termination of the Moratorium of the forces acting upon Macintosh, his responses to those forces and his ultimate motive in issuing the opinion.
7. The determination of these disputes was likely therefore to involve virtual allegations of fraud against Ganke without benefit of particulars or interlocutory proceedings and allegations of mala fides against Macintosh who would be equally prejudiced.
8. There were then before the Court 345 pages of affidavits and exhibits setting out the opposing intentions.

9. It was at this point and before any oral evidence was given that Mr. Sher Q.C. submitted there was evidence of a bone fide dispute and that it was not appropriate that the court should deal with it on a winding-up petition. There is no note in the transcript of any decision by His Honour on this point nor of any reasons given by His Honour for the exercise of a discretion to proceed to determine the dispute. The fact that the Judge rejected the submissions must be assumed by the fact that the matter proceeded.
10. The failure of His Honour to cause to be recorded his reasons and judgment on this initial submission are sufficient in themselves to constitute a failure of the judicial process within the meaning of Pettit v. Dunkley (1971) M.S.W. L.R. 376 "...The Judge has a duty to state the findings and the reasons for his decision adequately for that purpose. If he decides in such a case not to do so, he has made an error in that he has not properly fulfilled the function which the law calls upon him as a judicial person to exercise and such a decision on his part constitutes an error of law" (See Appellants submission p. 2)
11. The effect is that this court has no way of knowing what matters the Judge took into consideration so that it is impossible for the Court to say whether his reasoning was correct or incorrect.
12. Accordingly His Honour's Judgment was vitiated without anything further.
13. During the course of the trial it became ever increasingly apparent that there were disputes of major proportions between the parties entirely unsuited to a determination in a winding-up petition.

10

20

14. One of the most important features was the tendering into evidence of the Summons and the Statement of Claim (which appear at pages 643-644 Appeal Book) Tendered on page 1728.

These documents were tendered on 28th April, the fifteenth day of the trial, in the course of the re-examination of Ganke who was the first witness for the defence.

10 15. It was submitted by Mr. Sher. Q.C. in the course of his final address that His Honour should adjourn the further hearing of the trial until the conclusion of the matter in Sydney. His Honour acknowledges in his judgment that he was invited to "dismiss the Petition without more ado" but stated that "having considered the documentary evidence and listened to the lengthy oral evidence" he "does not feel able to take the view that the evidence of arrangements between Offshore and Brinds as to moneys moved from the former to the latter is such as to raise a bona fide dispute on substantial grounds which is sufficient to justify dismissal of the petition".

20 16. His Honour makes no reference at all in his judgment to the application made on the second day of the trial. He gives no reasons whatever for the making of the decision to determine the matter with respect to the moratorium deed and specifically makes no reference to the proceedings concurrently pursued on the Statement of Claim which was in evidence before him on that matter.

17. The proceedings in Sydney although confined to the single issue of the termination of the deed were far more comprehensive in that they involved all of the relevant Companies in the Ganke and Adler groups as well as the necessary personal parties such as Macintosh against whom the allegations were made.

18. These proceedings were commenced on 25th February and were obviously not commenced as a manoeuvre to frustrate this winding-up petition. If that had been the intention the Summons would have been exhibited to affidavits filed before the commencement of the winding-up petition. The evidence is very close to being conclusive that the dispute with respect to the moratorium was substantial and bona fide. His Honour's decision to proceed was doubly unfortunate. Firstly, the Judge made a winding-up decision and secondly, the petitioners armed with Tadjell J's decision proceeded to the hearing before Needham J. 10
19. As Forsyth Q.C. said on Friday "Needham's judgment echoed Tadjell." Mr. Forsyth also said that Ganke got "short shrift" from the Court of Appeal. The procedure in New South Wales in cases of urgency is for the respective parties to submit a draft index of most important documents required for Appeal. These are bound and known as the "Appeal Papers". The remaining documents, transcript etc., are available to the Court in unbounded form.
20. The Appeal Papers before the Court of Appeal comprise 243 pages of which pages 78-168 comprise the judgment of Mr. Justice Tadjell i.e. about 35% of the Appeal Papers are Mr. Justice Tadjell's judgment. One of the matters argued by the Respondents was that the decision of Mr. Justice Needham should be affirmed on the ground that certain Appellants (including Mr. Ganke) were "bound by an issue estoppel arising out of the proceedings before Mr. Justice Tadjell in Victoria". 20
21. Although not so stated in either judgment one can have little doubt that Needham J. and their Honours in the Court of Appeal had regard to Tadjell J's judgment.

22. Before Mr. Justice Needham, Offshore and the Adler group claimed that Mr. Ganke and his group including Brinds were by reason of proceedings in the Supreme Court of Victoria No.13015 and the Judgment of Tadgell J. dated 5th May 1983 were estopped from asserting that the opinion given by Mr. Macintosh under Cl.22 is of no effect and further from asserting that the deed was not validly terminated.

10

23. The Judgment of the Court of Appeal is on appeal to the High Court on numerous grounds including the issue of whether or not on the construction of the deed and the surrounding circumstances Macintosh had a fiduciary or similar duty to Ganke and the moratorium companies. In that Appeal the Appeal Papers have been duly lodged and the Appellants have applied to the Registrar for a hearing date but no such date has yet been fixed.

24. It is respectfully submitted that His Honour's decision to determine the issues related to the original date of payment of the debt and as to the termination of the moratorium are vitiated

20

- (a) by the failure to give any reason for rejecting the application by Sher Q.C. when first made;
- (b) by failing to give any or any adequate reasons for dismissing or deferring the hearing when application was made by Sher in the final address;
- (c) by failing to take into account relevant matters;
- (d) by apparently taking into account irrelevant matters such as his view of the commercial desirability of the loans by Offshore to Brinds;
- (e) because in the terms of the decision of Lord Upjohn in the Privy Council, His Honour was wholly wrong.

IN THE SUPREME COURT

OF VICTORIA

FULL COURT

1983 No. Co. 13015

IN THE MATTER of the Companies
(Victoria) Code

and

IN THE MATTER of Brinds Limited

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS
SECURITIES LIMITED, CHAPMANS LIMITED,
NORTHERN STAR INVESTMENTS PTY. LTD.,
HALLMARK MINERALS and L.S.D. HOLDINGS
LIMITED

Appellants

10

- and -

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED, MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED and JACKSON GRAHAM MOORE
AND PARTNERS (a firm)

Respondents

NOTES ON SOME ASPECTS OF ADDRESS IN REPLY

Mr. Forsyth Q.C. submitted that it was not contended that the Trial Judge was wrong on any findings of fact or law on the merits, and the circumstance that no attack is made on substantive issues shows that it was a clear issue. Our substantial criticism of His Honour's judgment was that as appears from Exhibit "G" to the Affidavit of Danny Melech Ungar sworn the 16th November, Mr. Sher Q.C. referred to the following disputes:-

20

- (i) As to when the debts are payable,
- (ii) As to the existence of the debt at all (this is taken to mean in the sense of a debt presently payable and available to support a Petition),
- (iii) The solvency of Brinds,
- (iv) The validity of the Moratorium and its termination.

2. The Appellants' case was that from the second day of the trial there were bona fide disputes which should not be determined on a winding-up Petition.
3. Insofar as His Honour found that the disputes were not bona fide or substantial we submit that His Honour's judgment was clearly wrong.
4. In written submissions made to this Court (differently constituted) on the 10th of October last, paragraph 12 was in the following terms:-
"The Appeal raises important questions of fact and of law. Without limiting the grounds of Appeal, but in an endeavour to indicate to this
10 Court some, at least, of the matters which will be argued, they will include the following :-

As to Grounds 9 and 10, the question will be argued whether or not what amounted to a denial of natural justice occurred by reason of the fact that :

- (i) His Honour recognised at page 683, line 12, that a detailed investigation of various matters took place and stated that :-

'This was undertaken, according to Counsel for the opponents, and necessarily so, in order to show that there is substance to the dispute.'

- (ii) It was submitted to His Honour in specific terms that His Honour should not decide the dispute without the Appellant having had the benefit of pleadings, discovery, inspection, interrogatories and other procedural advantages normally afforded to a similarly placed litigant.
- (iii) His Honour's decision, made in the course of his Judgment, to effectively decide the issue without

first informing the Appellant of his intention of taking that course and without inviting the Appellant to bring such further evidence as might be appropriate on a final hearing of the issue, deprived the Appellant of the opportunity to properly litigate the matter.

(iv) As a result of the foregoing, the Court will be asked to consider the nature of the procedural advantages of which the Appellant was deprived and to consider the nature and the effect of some evidence which might otherwise have been adduced before His Honour and which is indicated in the Affidavit of William Hunt, sworn on 7th October, 1983." 10

5. It was recognised by the Appellants that it could not be effectively argued before this Court that His Honour's determinations as to credit were in substance incorrect, and the Appeal has been presented upon the basis that where there is a conflict of evidence between Mr. Macintosh and Mr. Ganke, this Court should, for the purpose of this Appeal, prefer the evidence of Mr. Macintosh.
6. For this reason there has been no criticism of His Honour's findings with respect to the motivation of Mr. Macintosh. 20
7. There has been throughout this Appeal strong criticism of His Honour's failure to answer matters which did fall for His consideration, namely the motivation of the Petitioner under the control of Adler, and the clearly put argument certainly comprehended by His Honour that the winding-up Petition was not presented to recover payment of a debt but to destroy Brinds and thereby to obtain or cause to be dissipated the strategic shareholding in Offshore which Adler feared.
8. His Honour's judgment has also been criticised for his failure to deal with the issue whether the shares of Offshore had been deliberately diminished and kept diminished by Adler.

9. It is respectfully submitted that His Honour's judgments contained a circuitous reference in the terms of Professor Julius Stone's analysis in "The Province and Function of Law".
10. The question submitted to His Honour was whether Adler had depressed the price of Offshore shares to harm Brinds. His Honour's answer was that because the price of Offshore shares was so low, Brinds could not pay its debts and therefore the Petition was justified.
- 10 11. There was a total failure by His Honour to consider whether had it not been for Adler's activities, the shares would have been at least 20 cents, which was the value put on them by Mr. Tosio, instead of the ten or eleven cents which happened to be the depressed market price at the time of the hearing.
12. Although His Honour's judgment is structured in the reverse order (he dealt with the question of solvency later in the Judgment) one could have little doubt that having come to the conclusion that Brinds was unable to pay its debts he would have less difficulty in finding that a dispute was not bona fide.
- 20 13. Our submission is and has been throughout this Appeal that His Honour's judgment is flawed by his failure to determine the issues squarely raised before him that Adler - not Macintosh - was actuated by improper motives and had succeeded in depressing the price of the shares by ten cents per share or thereabouts, so that in what otherwise would have been a thoroughly solvent company and group situation, the situation appeared to His Honour to be one of inability to pay debts.
14. Mr. Forsyth submitted that this is "not a case where credibility is of vast importance". If Mr. Ganke's evidence had been preferred to that of Mr. Macintosh, the result would have been that :-

- (a) There would have been a finding that the original debt was not repayable except on twelve months' notice which had not been given;
 - (b) The Moratorium Deed precluded reliance upon the debt;
 - (c) As a result of the conspiracy between Mr. Adler and Mr. Macintosh, Mr. Macintosh abdicated his position as independent Examining Accountant and became a tool of Adler so that the opinion which he purported to give was of no value.
15. If His Honour had so found presumably and consistently with the way in which His Honour finally dealt with the matter, His Honour would have found as a fact matters which gravely affected Macintosh's integrity and which would have resulted in the dismissal of the Petition not because it was bona fide disputed, but because His Honour had found the issues in the opposite way to which he in fact did. 10
16. It is quite clear that the credibility of Macintosh and Ganke, and the motivation of the absent Adler were matters of crucial importance.
17. Mr. Forsyth submitted that the fact that His Honour came to such clear views "helps the argument that the issues were not substantial."
It has been shown above that the determination of the issues depended entirely upon the relative credit of Macintosh and Ganke. Both entered the witness box on equal terms. There is no suggestion whatsoever that either man by reason of past activities was prima facie more worthy of credit than the other. The cross-examination of Mr. Ganke revealed some comparatively few matters which caused His Honour to form an adverse view:- it could be shown in cross-examination of Macintosh that his evidence reveals inconsistencies which might have led His Honour to a different conclusion. 20

18. Accordingly, the "clear views" which His Honour formed were the result of a fine judgment on the question of credit. How could it possibly be argued, one might ask, that a dispute which could have been decided either way depending on a nice appreciation of the relative credit of the two men was not a substantial dispute.

19. Mr. Forsyth submitted:

(a) That if the matter had been adjourned and the relevant New South Wales proceedings permitted to follow their course, the matter would now be finished;

10 (b) That there was no prejudice to Brinds;

(c) That the focal point of the issues seems to have been the Moratorium.

20. If one assumes that for whatever reason His Honour's judgment was incorrect, Brinds has suffered a grave injustice. His Honour's judgments became a central point in the proceedings in the Supreme Court of New South Wales relating to the termination of the Moratorium to the extent that it was relied on. The Petition and the Notice of Intention to Appear and the judgments of Tadgell J. and the Notice of Appeal therefrom all comprised the first exhibit (exhibit 1A) tendered by the Respondents, the Adler group. Although not referred to in Needham J.'s judgment, the considered opinion of a Judge of co-ordinate jurisdiction must have had an effect upon him particularly when it was relied upon as constituting an issue estoppel. The judgment occupied some 35% of the Appeal Papers in the Court of Appeal and was relied upon by the Respondents as an estoppel.

20

21. The result so far as Brinds is concerned can be reasonably apprehended to have been detrimental to and to have affected the making of the judgement's adverse to it. The injustice thereby sustained can be

properly regarded as substantial.

22. Mr. Forsyth relied upon the fact that Needham J. "echoed Tadjell J.'s judgment" and the Full Court gave "short shrift" to the Appeal. This submission certainly does not answer our submission that His Honour's judgment was wrong.
23. Mr. Forsyth submitted that from the conduct of the case it could be seen that Brinds would be willing to have a full scale contest before Tadjell J.
24. There is no basis for this submission. It is at variance with:-
(a) Mr. Sher's submission on the second day of the trial, 10
(b) Mr. Sher's final submissions, and
(c) His Honour's judgment.
25. If Mr. Forsyth is ~~incorrect~~ on that submission, and it is clear to this Court that Brinds was not willing to have a "full scale contest", but only to show that there was a substantial dispute, it is clear that His Honour should not have decided the disputes.
26. We submitted that His Honour misinterpreted clause 20 of the Moratorium Deed.
27. Our original submission did not differentiate between the position during the existence of the Moratorium and after its termination. 20
28. Mr. Forsyth submitted that if clause 20 applied during the existence of the Moratorium, the first part of the clause would negative the effect of the Moratorium. On reflection, it would appear that there is considerable substance to Mr. Forsyth's submission.
29. Although the first sentence of clause 20 is not in terms limited to a time after the termination of the Moratorium, the second sentence is so limited.

30. Upon the assumption that Mr. Forsyth's submission is correct, in order to give effect to the clear terms of a carefully drafted document, it is necessary to read each of the first two sentences of clause 20 as being applicable only to the position after the termination of the Deed.
31. The Deed refers in numerous instances to a moratorium. (see clause 1, 1B, 3, 4 (iii), (iv), (v), 5, 6, 7 and indeed clause 20).
32. A "moratorium" is normally understood to comprise a suspension of rights during a given period rather than an alteration of rights.
- 10 33. It would therefore not be surprising if the Deed provided that at its expiration, the parties reverted to their pre-existing rights. This is precisely what clause 20 says; no rights are permanently altered by the Moratorium and neither party can plead the Moratorium after it has been determined as an answer to a claim by another party.
34. Whilst it is possible to speculate as to the respective advantages sought to be obtained by each party as a result of the Moratorium, there were obvious advantages to both parties - e.g. clause 11.1 where Ganke, Kippist and Tosio covenant to resign as Directors of Offshore; clause 11.2 where each of Ganke, Kippist and Tosio agree not to stand as a Director of Offshore and other restrictions; clause 12 under which Offshore which had (under the direction of Ganke) started certain proceedings against Adler and others would file Notice of Discontinuance; clause 14 whereby Ganke agreed to discontinue proceedings in the Supreme Court of the A.C.T. and an order for costs was agreed.
- 20
35. In these circumstances it is not permissible to speculate that the Adler group demanded and received a permanent acknowledgement of indebtedness and this is contrary to the express terms of the Deed on a fair interpretation.

36. If this construction be correct it follows that upon the terms of the Deed, the parties reverted to the pre-existing condition under which the funds were at twelve months call and no call having been made there was no debt available for the Petition.
37. Whether or not a call had been made, as to which there was also a possible dispute, the period of any call had certainly not expired at the date of the Petition, the date of the hearing or the date of the Judgment.
38. It follows that His Honour had not made any finding as to whether the funds were repayable on demand or at twelve months call (see page 10 of the Appeal Book) and so there was no basis on which the winding-up order could have been made.
39. On the question of costs, we submitted that the appointment of the Provisional Liquidator was:-
- (a) wrong,
 - (b) the subject of Appeal for Tadgell J., and
 - (c) is the subject of Appeal to this Court.
40. Our submission was that if there had been no Provisional Liquidator Brinds would in the ordinary course of events have defended the proceedings and would have paid for its defence out of its funds. 20
41. If it had been held that the Provisional Liquidator should not have been appointed then one asks should not this Court make such orders as are appropriate to rectify any injustice caused by the unjustifiable appointment of the Provisional Liquidator without notice on an ex parte application.
42. It is upon this basis that this Court's intervention is sought.

43. It was pointed out by the Bench that what was really being sought was a different order as to costs than that which His Honour had made and that special leave was necessary. Special leave was sought and granted and an application is now before the Court for an amended order as to costs.
44. This order is, it is submitted, appropriate if it is assumed that the Court acceded to the arguments that it should proceed upon the basis of rectifying this particular injustice which arose from the appointment of the Provisional Liquidator.
- 10 45. It is conceded that the order sought is not appropriate as an alternative order to the order which Tadgell J. made in the exercise of his discretion. Insofar as this Court is being asked to exercise a different discretion with respect to that of Tadgell J., the order that we seek is that the company's costs as between Solicitor and client be paid out of the assets of the company as part of the costs of the winding up.
46. The order refers to Ganke's costs. This should more accurately have been stated as costs incurred or expended by Ganke or by companies associated with him in fulfillment of the obligations of Brinds to pay its costs to its Solicitors and Counsel.
- 20 47. Insofar as a variation of the order is sought on the basis that His Honour wrongly exercised his discretion, it is submitted that the reasons advanced by His Honour as set forth in the Affidavits of Danny Melech Ungar sworn the 16th November, was not a proper exercise of His Honour's discretion. There never was any suggestion in the evidence that Ganke was pursuing a "vendetta" against Adler as stated by His Honour.

48. His Honour's failure to adequately consider and deal with the submissions relating to the depression in the value of Offshore shares and Adler's motivation in causing the petition to be prosecuted, precluded His Honour from having a proper basis for finding that the company should be deprived of any of the costs properly incurred by it.

O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT
OF VICTORIA

IN THE MATTER OF THE COMPANIES (VICTORIA) CODE

- and -

IN THE MATTER OF BRINDS LIMITED

B E T W E E N :

BRINDS LIMITED, BORIS ANDREW GANKE,
GULF RESOURCES N.L., ALEXANDERS SECURITIES
LIMITED, CHAPMANS LIMITED, NORTHERN STAR
INVESTMENTS PTY. LIMITED and HALLMARK
MINERALS N.L.

Appellants

- and -

OFFSHORE OIL N.L., MARTIN CORPORATION
LIMITED and JACKSON GRAHAM MOORE AND
PARTNERS (a firm)

Respondents

RECORD OF PROCEEDINGS
ADDITIONAL EVIDENCE AND AFFIDAVITS
VOLUME SIX

MESSRS. INGLEDEW, BROWN,
BENNISON & GARRETT,
International House,
26 Creechurch Lane,
London, EC3A 5AL

Solicitors for the
Appellants

MESSRS. COWARD CHANCE,
Royex House,
Aldermanbury Square,
London,
EC2V 7LD

Solicitors for the
Respondents