

judgment no 3, 1974

IN THE PRIVY COUNCIL

No. 9 of 1973

---

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

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B E T W E E N :

HOWARD SMITH LIMITED

Appellant  
(13th Defendant)

- and -

AMPOL PETROLEUM LIMITED

Respondent  
Plaintiff

R.W. MILLER (HOLDINGS) LIMITED

(1st) Defendant

ARCHIBALD N. TAYLOR

(2nd) Defendant

SIR EMIL HERBERT PETER ABELES

(3rd) Defendant

ELIZABETH MILLER

(4th) Defendant

ROBERT I. NICHOLL

(5th) Defendant

EVAN DUFF CAMERON

(6th) Defendant

KENNETH B. ANDERSON

(7th) Defendant

WILLIAM A. CONWAY

(8th) Defendant

PETER J. DUNCAN

(9th) Defendant

ALAN V. BALHORN

(10th) Defendant

F.M. MURPHY (a male)

(11th) Defendant

C.J. WATT (a male)

(12th) Defendant

SECURITY SHARE SERVICES PTY.

(14th) Defendant

LIMITED

RESPONDENTS

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RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED

LEGAL

- 4 JAN 1975

25 RUSSELL SQUARE  
LONDON, W.C.1.

VOLUME II

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

Clifford-Turner & Company,  
11 Old Jewry,  
London, EC2R 8DS  
Solicitors for Ampol Petroleum Ltd.

Q. And it would be true to say, would it not, that the main purpose which motivated Millers in making loans to licensed clubs was the collateral advantage of having Millers' beers sold in the clubs? A. That was one of the reasons.

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Q. The main one? A. No. Well, I think you have to take three points into consideration here, Mr. Deane. One would be the sale of beer; one would be the sale of wine and spirits and the other would be the interest charged on the loans.

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Q. But you have told his Honour that in 1969 you were constantly in breach of your overdraft. You were at the stage where you had to borrow a million from Mitsui and so on? A. Yes.

Cross-examination by Mr. Deane Q.C.

20

Q. You do not really suggest, do you, that the loan was made to the Eastern Suburbs Club with any idea of the advantages of interest? A. No - yes, I would think the interest rate was reasonable and our associations with Eastern Suburbs had been longstanding.

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Q. But of course you did not even both collecting the interest which they were bound to pay you under the terms of the mortgage? A. That is, I believe, correct, yes.

Q. Well then, in so far as the brewery is concerned, that had been sold in 1967? A. That's correct.

30

Q. So, there was no reason associated with the brewery for making this loan of \$2 million? A. No.

Q. Which means that all we have left is the wine and spirits? A. Yes.

Q. And the total sale of wine and spirits to Eastern Suburbs Leagues Club at this time were less than \$100,000 a year. Would you agree with that? A. No, I would not agree with that because I would not know.

Q. Would you dispute it? A. No, I would not dispute it but I would not agree with it either.

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Q. I suggest, for example, that at a board meeting

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at which you were present it was stated that "the total sales to Eastern Suburbs Leagues Club at present are in the order of \$100,000 per year"?

A. Well, if it is in the minutes I would not dispute it.

Q. And the profit on sales of wine and spirits runs something in the vicinity of 10 per cent, does it not? A. I would not be sure of that either.

Q. Well, would you dispute that figure? A. No, I would not dispute it. 10

Q. Which means something less than \$10,000 a year if the figures I put to you are right? A. Yes.

Q. Which means, of course, far less than the interest which the Eastern Suburbs Club agreed to pay under the document - I withdraw that. Which means, of course, far less than the difference between the figure of 9 per cent which the Eastern Suburbs Leagues Club agreed to pay under the mortgage document and the figure of 7½ per cent which you accepted from them? A. Yes. 20

Q. See, I suggest to you that you were one of the persons involved in arranging this loan of \$2 million to Eastern Suburbs Leagues Club?

A. That is incorrect.

Q. Did you know anything about it? A. No, not at the time.

Q. Who arranged it? A. I have no idea. I assume Sir Roderick. 30

Q. You know now the circumstances of that loan, do you? A. I know that a loan was made to them of \$2 million.

Q. You know, do you not, that it was at a time when T.N.T. had acquired something like 25 per cent of the shares in Millers? A. I don't know for sure the time but it was in the same year, put it that way.

Q. And would you not agree, Mr. Koch, that your understanding of that loan was that it was made to the Eastern Suburbs Leagues Club on the basis that 40

the Eastern Suburbs Leagues Club would utilize half the amount of the loan in acquiring shares in Millers? (objected to by Mr. Glass: allowed).

Q. Is not your understanding of this loan, Mr. Koch, that it was a loan made to Eastern Suburbs Leagues Club on the basis that a large part of the moneys lent would be utilized in acquiring shares in Millers on the Stock Exchange?

10 A. To my understanding the loan was given for club extensions. What Eastern Suburbs did with the actual money that was lent to them I would not have any idea.

Q. You have never heard it suggested that this loan was one of the defensive moves to stop T.N.T.?

A. I have heard it suggested but I don't know whether it is true or not.

Q. Has Mr. Taylor ever suggested that to you?

A. I am not sure whether Mr. Taylor has. He could have mentioned it to me.

20 Q. Mr. Taylor could have mentioned that this loan was one of the defensive moves to stop T.N.T. back in 1969? A. I don't recall him using those words, no.

Q. Well, he could have used words to that effect?

A. No, my understanding of this was that the loan was for improvements and extensions to the club.

30 Q. So, is what you say to his Honour this: Your understanding was that at a time when on your evidence Millers was in grave financial straits, that at a time when it had no brewery, that it lent this money for the purpose of getting some advantage in relation to sales of wines and spirits? A. No, I am saying that my understanding of this loan was that it was given to the club for the purpose of extensions and improvements to the club. What they did with the money, I don't know. I have heard it suggested that they may have acquired shares in  
40 Millers but whether this is true or not, I don't know.

Q. You know, of course, about this time the club became very large shareholder in Millers? A. Yes, I am not sure of the actual date but I believe they did.

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Q. Now, have you heard any suggestion that the acquisition of what I might call the Duncan shares in Millers was associated with any defensive moves?

A. No, I haven't heard that, no.

Q. You told his Honour in relation to the first meeting I think between Millers people and Howard Smiths people, if I can use that description, there was some discussion as to how it would be disadvantageous if Ampol acquired all the shares in Millers in so far as government information was concerned? A. Yes, that was raised at that meeting, yes.

10

Q. Now, this was information relating to what?

A. To our tankers.

Q. Their operating costs? A. Yes.

Q. How many tankers are there operating on the Australian coast similar to the Robert and Amanda Miller? A. Similar to the Amanda? Two others.

Q. And what are they? A. The P.J. Adams and the Solen.

20

Q. And who owns the Solen? A. The Shell Company.

Q. What about Howard Smith? A. I am sorry, I forgot the Howard Smith as well.

Q. So, that is one of four? A. Yes.

Q. Which means you have the P.J. Adams which is owned by Ampol? A. That's correct.

Q. And whose activities are mainly directed to Ampol products? A. Yes, that's correct.

Q. You have the Solen owned by Shell, is that right? A. Yes, that's correct.

30

Q. And its activity has been directed towards Shell requirements? A. Basically. There are interchanging of cargoes.

Q. But generally? A. Generally, yes.

Q. And then you have two others, one, Howard Smith, operating as it were for anyone? A. Yes.

Q. Except for some arrangements with Caltex?  
A. I believe they did have an arrangement with Caltax.

Q. And the other the Amanda Miller operated by Millers for anyone? A. Well, we are under charter to a consortium of oil companies.

Q. But subject to that charter, operated without any particular tie? A. Oh, yes.

10 Q. Which means, it would be true to say, would it not, that in the terms of your main operation, Howard Smith would be your main competitor?  
A. Yes.

Q. In direct competition? A. Is that two words or one word?

Q. In direct competition? A. Yes.

20 Q. And you have expressed concern as to information relating to your activities becoming - when I say "yours" do not misunderstand me - Miller's activities being made public? A. I am sorry, could you repeat that?

Q. You have expressed concern in relation to confidential information relating to your activities being made public? A. Yes.

Q. Now, of course, on the 20th June, 1972 you had not seen a copy of the draft Cooper report, had you?  
A. No, I had not.

Q. And indeed you have never seen it? A. Not the draft, I haven't, no.

30 Q. On 20th June the contents of the draft Cooper report had not been made available to your directors? A. That is correct.

Q. Indeed, would it be true to say that when Mr. Goddard arrived at your meeting with the representatives of your main competitor, nobody in Millers had seen the draft Cooper report?  
A. Not the conclusions, no, that is correct.

Q. Now, when did you talk to Mr. Taylor about showing the draft Cooper report to the

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representatives of Howard Smith? A. I believe it was on the same day.

Q. Before the meeting with Howard Smith? A. I am not sure whether it was before or during the meeting. It would have been before.

Q. But before Mr. Goddard arrived? A. Yes.

Q. And indeed it would be true to say, would it not, that Mr. Goddard was coming for the purpose of talking to the meeting between Millers and Howard Smith. It was not just a chance that he arrived when you were there, when they were there? A. No, we knew he had finished the draft report and he wanted to discuss it with us and we thought it would be in order for him to come down when the meeting was on.

10

Q. And Mr. Taylor was aware of this? A. Yes. He wasn't at the meeting.

Q. Now, is what you tell his Honour this, that in a situation where no-one in your company knew what was in the draft Cooper report, Mr. Taylor authorised you to show it to representatives of your main competitor? A. I would not say that he authorised me. I suggested to Mr. Taylor that we should do this and he agreed with me.

20

Q. Well, Mr. Taylor agreed to your showing this information to your main competitor? A. Yes.

Q. And of course the information in the Cooper report was stressed by Mr. Goddard immediately he arrived as being confidential? A. That's correct.

30

Q. And pursuant to your conversation with Mr. Taylor you said to him "Go ahead"? A. Yes.

Q. And indeed, did you not at the end of the meeting give to the representatives of Howard Smith that draft Cooper report? A. They asked if they could have it. Mr. Goddard said that it is only in draft form but if it was O.K. with Millers he was quite prepared to give them a draft although it was not completed.

Q. So off went the representatives of your main competitor with a highly confidential document relating to the affairs of your company which you had never seen? A. Yes.

Q. And which you still have never seen? A. Not the draft copy, no.

Q. And which no member of the board of directors had ever seen? A. At that time, that is correct.

10 Q. And which even now has never been disclosed to the shareholders of your company? A. That's correct.

Q. And which when an alternate director of your company, Sir Ian Potter, sought to see it, it was refused to him except on the basis of certain terms? A. Yes, originally.

20 Q. When, and I think it was put to your company, was it not, that Sir Ian Potter wanted to see it because he was concerned about some of the public statements that were being made? A. I don't recall him saying that but I know he wrote us a letter - if it is in the letter. I don't recall that being in it.

Q. What other information did you give at these meetings of 9th and 20th June, 1972 to the representatives of your main competitor?  
A. 19th and 20th?

30 Q. 19th and 20th. A. The majority of it was oral information. They had our balance sheets for 1971 and they asked if we would up-date these to what we estimated to be the current position at that time which we did. I believe we gave them details of assets, I think, I am not too sure, but something to do with balance sheet items that we did give them. To my recollection, I think there were about three pages of information that we gave them.

Q. All confidential information? A. I would not say it was confidential, no.

40 MR. GLASS: Before my friend proceeds, I would like to take an objection to any question which takes the form of asking the witness to comment upon the answers given on the part of Howard Smith.

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MR. DEANE: Q. Mr. Koch, you have in front of you certain answers to interrogatories? (witness shown Ex. NN). A. Yes.

Ex.  
NN

Q. Now, you see there some annexures to that document? A. Yes.

Q. I want to take you to those annexures, the first being annexure B? A. Yes.

Q. You see that is a document dated 20th June, 1972? A. Correct.

Q. Setting out estimated operating costs in relation to the Amanda Miller? A. Correct.

10

Q. Now, I presume you would regard those as being highly confidential? A. Yes.

Q. Indeed, if you put those together with the moneys payable under the charter you have the very information which you told his Honour should not be disclosed? A. Well the reason we gave them this information ...

Q. Would you just answer my question?  
A. You are quite correct. yes.

20

Q. And that was a document handed to your main competitor? A. Yes.

Q. Setting out all of the estimated operating costs of the Amanda Miller? A. Yes.

Q. Would you look at the next document? A. Yes.

Q. Was that also a document which was handed over? A. Yes.

Q. On 20th June? A. I believe so, yes.

Q. And it is a profit forecast for the twelve months ending 30th June, 1972? That is so, is it not? A. That's correct, yes.

30

Q. Again, a highly confidential document?  
A. Yes.

Q. Something that your shareholders knew nothing about? A. Correct.

Q. And something which you gave to your main competitor. That is so, is it not? A. I would not say they are our main competitor. You are taking the overall position of the company.

Q. I thought you did say this? A. Regarding tankers. There again, I would say they are one of our competitors. I would not say they are our main competitors.

10 Q. You wish to withdraw your previous answer?  
A. Yes, they are one of our competitors.

Q. Of course, Howard Smith was moving into a takeover situation, was it not? A. We did not know at that time.

Q. You were trying to entice them? A. Yes.

Q. And of course you are aware that a company making a takeover offer is free within limits to purchase shares on the Stock Exchange? A. Yes.

Q. And it is commonly done. A. Yes.

20 Q. So, is this the situation, that you were giving to a company who you were anticipating would be purchasing shares on the Stock Exchange information which you were withholding from your own shareholders? (objected to by Mr. Glass).

Q. You anticipated, did you not, Mr. Koch, that in the event that Howard Smith did make a takeover offer it was highly likely that they would be purchasing some shares on the stock exchange?  
A. Had or would be?

30 Q. I said, you anticipated, did you not, that in the event that Howard Smith made a takeover offer, it is highly likely that they would be purchasing shares on the stock exchange? A. No, I did not anticipate that at all.

Q. The thought never occurred to you? A. No.

Q. You did not at any stage say to Howard Smith "If we give you this information you must undertake not to go on the stock exchange as the purchaser of shares"? A. No, we never said that at all.

40 Q. Of course, you were well aware that it was possible that Howard Smith could purchase shares on the stock exchange? A. Yes.

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Q. And being aware of that possibility you made available to them vital information in relation to the value of the shares? A. No, it had nothing to do with that possibility.

Q. Does profit forecast for twelve months have a vital bearing on the value of the Miller's shares?  
A. On the share market?

Q. Yes? A. No, it does not necessarily follow that share markets increase with profitability.

Q. It is certainly a factor that anyone who was thinking of selling shares in your company as at 20th June, 1972 would like to know, is it not? 10

A. I don't know. I think this is a matter of what shareholders are holding their shares for.

Q. Let us say a shareholder who is holding his shares and is concerned with the return on them?

A. Yes, he would be concerned with profitability.

Q. And in that situation you gave to Howard Smith this information which was denied to your own shareholders? A. Yes. 20

Q. Did you tell Mr. Taylor you were going to give them this information? A. Not this specific information, no I didn't.

Q. Did Mr. Taylor ask you what information you were going to give them? A. Not to my recollection. As far as I can recollect we decided that we would answer any questions that we could.

Q. So Mr. Taylor on your understanding agreed to you giving Howard Smith any information it wanted? 30  
A. Within reason, yes.

Q. Of course, this information was not made available to the other company in a takeover situation in relation to your company, namely Ampol, was it?  
A. No.

Q. The difference between Ampol to whom you did not make the information available and Howard Smith to whom you did being, among other things, that Ampol happened to be the owner of a quarter of the shares in your company? A. No, I don't think that has 40

got anything to do with it. They did not ask for the information.

Q. Did it occur to you that they not only did not ask for it but if you had offered it to them they would not have taken it? A. No, that did not occur to me.

10 Q. Coming now to the next document here, we have details of fixed assets. Is there anything confidential in that? A. I suppose you could - all of these documents so far you could say they were confidential, yes.

Q. That again was handed over at this meeting? A. That's correct. No, not at this meeting. I don't believe it was at this meeting. It could have been a day or so after.

Q. Well, the Cooper report was handed over at this meeting, the draft Cooper report? A. That's correct.

20 Q. And the rest of the documents on your understanding were sent round a day or so after? A. A day or so after, that's correct.

Q. But before 22nd June when Howard Smith indicated its intention to make a takeover offer? A. I could not be sure but I would assume yes.

Q. Would you go through the rest of those documents? A. Including the hand-written one?

Q. Ending with the details of borrowing as at 16th June, 1972? A. Yes.

30 Q. Would you agree that every one of those documents was made available by you to Howard Smith? A. I can't recollect the type on one of the documents. I think it is in duplicate here but it could have been typed on a typewriter that I am not conversant with. This is the details of operating but I would say, yes, they were all given to Howard Smith.

Q. Now, you have told his Honour that they asked you some questions about your charter arrangements for the Amanda Miller? A. Yes.

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Q. And I think you said "I would be surprised if you do not already know it"? A. Yes.

Q. Is it not the fact that on 20th June, 1972 you supplied in writing a copy of the charter party for the Amanda Miller to Howard Smith? A. Not on that day I didn't, no.

Q. Well, when did you supply this? A. That would have been some time after and I am not sure which is the day. I know Mr. Maxwell and Mr. Mifflin looked at the charter party or a copy of the charter party on the 20th. I took it back from them and I recollect Mr. Mifflin ringing up and asking if he could have a copy and I did send him one but I am not sure what day it was. 10

Q. Is there anything at all that they asked for which you did not give them? A. Not to my recollection.

Q. And indeed in so far as you have never seen the draft Cooper report, even now, you do not know precisely how much you did give them? A. Yes, I do, with the exception, and I am assuming that the final Cooper report is the same as the draft report. 20

Q. And your understanding is that all of this confidential information was made available by you to Howard Smith with the approval of Mr. Taylor? A. Yes.

Q. And no doubt at all about that? A. As I say, I am not sure whether he knew what specific information we gave them but I told them that in my opinion we should answer any questions that Howard Smith wished to put to us and we should give them the information that they required. 30

Q. And Mr. Taylor agreed with that? A. Yes.

Q. You never, of course, told Mr. Cameron that all this information had been made available to Howard Smith, did you? A. I don't think we told any director.

Q. Now, I want to take you if I may to the meeting which took place on 4th July between representatives of Howard Smith and representatives of Millers? A. Yes. 40

Q. You can identify the meeting by the date?  
A. Yes. I do.

Q. What time of day - I think you have already told us but can you just tell us again what time of the day did this meeting take place? A. I think it was 12 noon.

Q. And how long did it last for? A. Two hours, an hour and a half to two hours.

Q. Did you have lunch at it? A. No, we did not.

10 Q. Now, you told my friend, Mr. Glass, that the meeting commenced with discussions re the joint announcement? A. That's correct.

20 Q. What was said? A. As I recollect, Mr. Howard Smith opened the meeting and said that in view of the joint announcement made by Ampol and Bulkships they intended to send a letter to the Sydney Stock Exchange. He showed us the letter that he planned, that they intended to send and Mr. Taylor said words to the effect "that is a coincidence. We intend sending letters to the Chairman of Ampol and to the Chairman of Bulkships along similar lines."

Q. What else was said? A. Regarding the announcement?

Q. Yes? A. I think Mr. Howard Smith said that as far as they were concerned it was pretty tough that this announcement was made.

30 Q. Anything else? A. I don't recollect. I think it was just reading the letters from there on.

Q. See, wasn't it made quite clear by Howard Smith that unless something was done the Howard Smith takeover would not go ahead? A. No, I don't recall that being said.

Q. Wasn't anything said about "How can we go ahead with a takeover offer if two shareholders holding 55 per cent between them have said they are not going to accept it?" A. I don't recall that being said, not at that meeting.

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Q. There was no doubt in your mind, was there, that the approach being adopted by Howard Smith, was that unless something was done the Howard Smith takeover would not proceed? A. I don't think he ever said that. Not to my recollection he didn't.

Q. Then, of course, what was the point of the discussion? A. The point of the discussion was that he wanted to buy our tankers. That was how it opened up.

10

Q. Of course, he made a takeover offer for your company or Howard Smith had made a takeover offer for your company? A. Yes.

Q. Under which it would acquire your company if the takeover offer succeeded? A. Yes.

Q. If it were proceeding with that takeover offer, what was the point of having a discussion in relation to tankers? A. I have no idea. I did not raise it.

Q. Then, is what you tell his Honour this, that so far as you know Howard Smith did not at the commencement of the meeting of 4th July give any indication that unless something were done they would not be proceeding with their takeover offer? A. No, I do not recollect him saying that.

20

Q. You see, what I suggest to you is that the whole point of what happened at this meeting was to work out how Howard Smith could be put in a position where they would proceed with their takeover offer? (objected to by Mr. Gleeson).

30

Q. See, what I am suggesting to you, Mr. Koch, is, after the original formalities, your understanding of what people were doing at this meeting was that they were sitting down and trying to work out a way how the Howard Smith offer could go ahead? (objected to by Mr. Gleeson; allowed). A. You are talking prior to any mention of an allotment of shares?

Q. Yes? A. We haven't got that far. No, to my knowledge, there was nothing discussed prior to Mr. Howard Smith saying "We have a proposition to put to you."

40

Q. Of course, when the proposition was raised, it was that you allot to them 3 million shares at \$2 per share? A. That is correct.

Q. But only on a basis that they did not have to pay for them apart from a deposit unless and until they received acceptances of their takeover offer in respect of three million one thousand shares? A. That's correct.

10 Q. And, of course, the significance of three plus three one hundred - is it one hundred thousand or one thousand? A. I believe it was 3,001,000 but I am not sure.

Q. And you were aware, of course, of the significance of the arithmetic involved in 3 million plus 3 million one thousand? A. Yes.

Q. Was control of Millers? A. I am not sure whether it worked out that way.

20 Q. Well, will you think about it? A. Yes, I think that would make them shareholders of slightly in excess of 50 per cent.

Q. Control of Millers? A. Yes, you are correct.

Q. And it was in that context that the first suggestion of allotment of shares arose? A. From Howard Smith?

Q. Yes. A. Yes.

Q. Had there been any from Millers before this? A. No.

Q. Or not that you know of? A. Not that I know of.

30 Q. When that was put to you, wasn't it quite clear to you that Howard Smith were saying "We can't go ahead with our takeover as circumstances changed but allot us 3 million shares at \$2 and then, provided that we do not have to pay for them unless and until we get control of your company, we will go ahead with our takeover offer." (objected to by Mr. Gleeson)

Q. Mr. Koch, wasn't it your clear understanding

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Exhibit SS.

that Howard Smith or the Howard Smith representa-  
tives were saying to you "We can't go ahead with  
our takeover offer in the circumstances as they  
at present exist but allot us 3 million shares  
and provided we do not have to pay for them until  
we get control of your company we will go ahead  
with the takeover offer"? , A. No, I don't agree  
with that.

(Luncheon adjournment)

HIS HONOUR: You are still on your former oath,  
Mr. Koch. 10

MR. DEANE: Q. Mr. Koch, I asked you could you  
try and get some documents over the lunch hour?  
A. Yes, I believe they are in court, Mr. Deane.

(Cash flow in relation to the Robert Miller  
called for: Produced)

MR. DEANE: Q. I have a document headed "Amanda"  
not "Robert"? A. I am sorry, Mr. Deane.  
Perhaps this is my fault. I understood you  
wanted the Amanda Miller. I thought you had the  
Robert Miller in the details for the Australian/  
European finance. 20

MR. DEANE: I stand corrected. You are  
completely right, Mr. Koch.

(Charter rate calculations "Amanda Miller"  
tendered without objection and marked Ex.SS)

MR. DEANE: Q. Mr. Koch, I was asking you some  
questions about the meeting on 4th July this  
year? A. Yes.

Q. And you said at the commencement of that  
meeting there was some discussion about the  
joint announcement? A. That's correct. 30

Q. And Howard Smith or Mr. Howard Smith indicated  
he was proposing to write a letter to the Stock  
Exchange? A. That's correct.

Q. And he indicated what was in that letter?  
A. Yes, he did.

Q. And it was a complaining letter, was it not?

A. I believe it was. I can't recollect the contents of it but it was a complaining letter.

Q. What was he complaining about? A. I think he was complaining - if I could see the letter I would know specifically but I believe he was complaining about the joint announcement by Ampol and Bulkships.

10 Q. Of course, Ampol was a shareholder in Millers in relation to approximately a quarter of the issued shares? A. That's correct.

Q. And you do not suggest, do you, that for Ampol to decide that it did not want to accept the Howard Smith offer was a legitimate cause for complaint against Ampol? A. No, I don't.

Q. And you do not suggest, do you, that if Bulkships had decided that it did not want to accept the Howard Smith offer it was a legitimate cause of complaint against Bulkships?  
A. Individually, no.

20 Q. And you would not see anything improper, would you, in Bulkships, as one of the two larger shareholders in Millers, telling Ampol that it did not propose to accept the Howard Smith offer? (objected to by Mr. Glass: Rejected)

30 Q. Mr. Koch, in terms of the complaint which Mr. Howard Smith was making in relation to the joint announcement, he did not complain, did he, that it was wrong or objectionable for Ampol to reject the joint offer in relation to its shares?  
A. No, he did not.

Q. And he did not complain, did he, that it was objectionable for Bulkships to reject the Howard Smith offer in relation to its shares? A. No, he did not.

40 Q. And he did not suggest, did he, that if Bulkships had decided to reject the joint offer in relation to its shares there would be anything wrong in its indicating its decision to the other main shareholder? A. He made no reference to that at all.

Q. Well then, wasn't the position this, that what

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he was complaining about was that the effect of the joint offer was, joint announcement was that as a factual matter it frustrated the Howard Smith takeover? A. No, I don't think he thought - well, I can't say what he thought but he certainly did not say that either.

Q. See, he did not suggest, did he, that if Bulkships had communicated to Ampol its decision to reject the Howard Smith offer that Ampol - and if Ampol itself had decided to reject the Howard Smith offer that Ampol should have sat by and permitted the Howard Smith offer to go ahead without making public the fact that the two main shareholders had decided not to accept it?

10

A. I am sorry, could you abbreviate that, Mr. Deane.

Q. He did not suggest, did he, that if Ampol had decided to reject the joint offer in relation to its own shares and had been informed by Bulkships that it was going to reject the joint offer in relation to its shares that there was anything improper in Ampol making that fact public?

20

A. On behalf of Bulkships as well?

Q. Yes? A. You are referring to - no, to my recollection, he did not mention that either.

Q. In those circumstances, I will again put it to you that the cause of the complaint that Mr. Howard Smith was expressing was that the two main shareholders having announced that they would not accept the offer in respect of 55 per cent of the shares held by them ... (objected to by Mr. Hughes)

30

HIS HONOUR: Mr. Deane, I will allow you to put your questions in these terms but if Mr. Hughes seeks the opportunity to re-open and to elicit whatever else might have been said in the conversation then I think I should afford him that opportunity.

MR. DEANE: I will accept it.

HIS HONOUR: Mr. Hughes, you may take it if you would like to re-open and put the rest of this conversation before the court, I will accede to that.

40

(Question marked - read by court reporter)

MR. DEANE: Q. ... the Howard Smith offer would not succeed? A. No, to my knowledge he did not make any comment on that.

Q. And you cannot recall what he in fact said?

A. I don't recall it. There was a discussion as I have said previously that Mr. Howard Smith was apparently concerned regarding the joint announcement in so far as he intended to write to the Stock Exchange on this matter. I don't recollect really any other conversation taking place apart from that.

Q. If I can just go on from the meeting then.

After this discussion in relation to the joint announcement, what was the next thing that was said? A. Mr. Howard Smith then asked Mr. Taylor if he had reconsidered his thoughts on selling our tankers to Howard Smith as they still wished to purchase them.

Q. Did you yourself regard as implicit in that question an indication that unless something happened Howard Smith was not going to go ahead with its takeover offer? A. No, I did not.

Q. Had you given any attention or thought to the question of whether Howard Smith would go ahead with the takeover offer? A. It had crossed my mind. I was uncertain.

Q. You had no doubt, did you, that if Howard Smith had been told by a public announcement that the two shareholders holding more than 50 per cent of the shares in Millers had decided not to sell their shares that Howard Smith would not proceed with the takeover offer? A. No. I had given thought to that but I had also given thought to the thought that perhaps even though the joint announcement was made that Howard Smith could still possibly continue and if they obtained the remaining shares they would become a 45 per cent shareholder.

Q. Had there been any discussions between you and Mr. Taylor on that? A. Not that I recollect specifically. I don't think so.

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Q. Did Mr. Taylor express any view to you on that?  
A. We did have the view that following the joint  
announcement of Ampol and Bulkships that it  
appeared that the minority shareholders could be  
locked into a regrettable situation.

Q. Which means it appeared that Howard Smith would  
not go ahead with its takeover offer? A. No, it  
did not mean that at all. No, it did not at all.

Q. Well then, what was the next thing that was  
said? A. The next thing that was said was when 10  
Mr. Taylor said that under no circumstances could  
we sell our tankers, he said, but if Mr. Howard  
Smith was interested in colliers, he certainly  
had one to sell.

Q. Mr. Howard Smith said what? A. He said he  
was not interested in colliers; he was interested  
in tankers.

Q. What was the next thing that was said?  
A. Mr. Taylor said words to the effect "We are 20  
not prepared to sell the tankers to Howard Smith".

Q. And then? A. Mr. Howard Smith said "Well,  
you seem to be definite on that matter so it  
seems fruitless to pursue the situation any  
further".

Q. Yes, what was next said? A. He then said  
"We have a proposition to put to you" that perhaps  
Mr. Maxwell would read out the proposition.

Q. What did Mr. Maxwell read out the proposition  
from? A. Just an ordinary piece of paper.

Q. With handwriting on it? A. I believe it 30  
was handwritten, yes.

Q. Do you know what became of that document?  
A. No.

Q. Well then, what did Mr. Maxwell read out, to  
the best of your recollection? A. Mr. Maxwell  
said that they were proposing to apply for an  
allotment of 3 million shares in Millers at an  
issued price of \$2 per share, payable 10 cents on  
allotment and the balance when 3,001,000 had been  
accepted by Howard Smith from the shareholders of 40  
Millers.

Q. Now, when that question was asked, was it not clear to you that Howard Smith did not propose to proceed with the takeover offer unless something was done? A. No, that did not occur to me.

Q. Even though it did occur to you that the combination of the two figures was, for practical purposes, the minimum to give Howard Smith control of Millers? A. Yes.

10 Q. What did Mr. Taylor say or what was next said?  
A. To my recollection, Mr. Taylor then said that "This is certainly unacceptable" or words to this effect and he felt sure that the Miller board would not agree to such a proposal.

Q. Did he give a reason? A. Not that I recollect, no.

Q. Was anything said about the price? A. I am not sure whether it was at that meeting. It could have been. I can't recollect whether it was.

20 Q. Was anything said to the effect "We can't do that. It is below the Ampol price"? A. No.

Q. Well then, what was the next thing that was said? A. Mr. Taylor then asked my opinion on the matter and I agreed with the chairman and said that I could not see how the board would agree to it and I felt it was pointless in pursuing this matter any further.

30 Q. Did you give any reason? A. I am not sure whether I said it would possibly contravene the Stock Exchange regulations or not. I know this matter was raised at the meeting.

Q. Did you say anything about price? A. I believe I said that the price in my opinion was not sufficient but I couldn't be certain on that.

Q. Except of course this was precisely the price at which in December of 1971 you had been attempting to place shares with Mitsui? A. Part of them, yes. Not all of them.

Q. Well, two million? A. Two million at \$2 and two million at \$2.50.

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Q. Well, as I understand your evidence, what you were suggesting was a placement of two million at \$2 with an option? A. That's correct.

Q. Which means that Mitsui would not be bound in any way to take up the two million at \$2.50?

A. No, it was their option, yes.

Q. So, this was the same price at which you had in December of 1971 suggested an allotment to Mitsui? A. Yes.

Q. With Mr. Taylor's concurrence? A. Yes.

10

Q. Now, I again suggest to you that at this meeting when this suggestion was made the reason advanced was "We can't do it; it is below the Ampol price, below the Ampol offer"? A. I don't recall whether that statement was made.

Q. Well now, as at the time you offered the shares to Mitsui I presume you thought that the allotment price was reasonable? A. At that time but if I could go further on that, that it was not just a one off deal. It was the \$8 million plus the equity.

20

Q. But at that time you thought the allotment price was reasonable? A. Yes.

Q. And come July 1972 you thought a price of \$2 was unreasonable? A. Yes.

Q. Would you agree with me that the reason for that was that in December 1971 the company was in a very difficult financial position which had to a very large extent resolved itself by July 1972? A. No, I would not.

30

Q. See, in these discussions with Howard Smith you were disclosing to them everything they asked for, were you not? A. Yes.

Q. And you were being completely frank? A. Yes.

Q. And indeed you were, as it were, dealing with the company that you anticipated could well control the company in the future of which you were general manager? A. No, I wouldn't say that, no.

Q. Wasn't your purpose in making all this information available to Howard Smith to encourage them to make a takeover offer? A. Yes.

Q. Of the company of which you were general manager? A. Yes.

Q. Didn't you think there was a possibility that such a takeover offer would be made? A. I had hoped it would.

10 Q. And didn't you think there was a possibility that such a takeover would be accepted?  
A. It depended on price.

Q. And if it were accepted Howard Smith - by the shareholders, Howard Smith would control the company of which you were general manager?  
A. That's correct.

Q. So, you would be very careful, I suggest to you, to make sure that you did not mislead Howard Smith? A. Yes.

20 Q. Now, is it not the fact that in all the discussions with Howard Smith at no stage did you make any mention of a liquidity crisis?  
A. I believe we did.

Q. A liquidity crisis? A. They were aware of our short term commitments at that particular stage that we held these meetings with them.

Q. But at no stage did you make mention of any liquidity crisis? A. No, I am not too sure that we did.

30 Q. You told them of the Hambros end finance on the Robert Miller? A. Proposed end finance, yes.

Q. At this stage the letter of commitment had been received for over a month? A. Yes.

Q. And at this stage to your knowledge your company was representing to the Commonwealth Government that there was a firm commitment in relation to that? A. Yes.

Q. And at this stage you were representing to the Bank of New South Wales that that finance was secure? A. Yes, we did.

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Q. Now, I suggest to you that in your discussions with the representatives of Howard Smith you at no stage suggested there was any insecurity at all about that Hambros finance? A. I can't recall whether we did.

Q. Of course, on what you say it would have been a vital matter to have been brought to the attention of somebody to whom you were disclosing all the most intimate details of your company? A. We discussed the details of the Hambros loan with Howard Smith. 10

Q. And I again suggest to you you never suggested in any way to them that there was any uncertainty in relation to that finance? A. Not that I recall.

Q. What was the next thing that was said in this meeting on 4th July? A. When the proposition from Howard Smith was rejected by both Mr. Taylor and myself, I then said to Mr. Howard Smith "Mr. Howard Smith, are you prepared to sell your tankers to Millers?" I said "I am specifically referring to the vessels Howard Smith and Nancy Heath, or if you so desire, your proposed new building tanker which is being built to replace the Nancy Heath." I said that "Our estimate of the price that you would require for both the Howard Smith and the Nancy Heath was approximately \$7½ million." Mr. Maxwell said "Your arithmetic is not far out." I then said that "If you are prepared to sell these vessels to Millers we could propose to allot to you three million shares at \$2.50 per share." I said "If this was acceptable to you then we would be permitted to allot or make a placement of a further 10 per cent of our then issued capital which would be twelve million shares, making a further 1.2 million shares that we could place to Howard Smith at a price of \$2.50 which would net to Millers a figure of three million." 20 30

MR. DEANE: Q. I suggest to you that implicit in what you said was the further proposition: "and then you could go ahead with the takeover?" A. That was one of the reasons that I had in mind at that time. 40

Q. It was the reason? A. It was one of the reasons.

Q. And of course you have already told his Honour you did not know how old these tankers were?

A. Yes, I did.

Q. Ten or 12 years but you did not know? A. Yes.

Q. But you had not inspected them? A. That is correct.

Q. Did you discuss this proposition with Mr. Taylor before you brought it forward? A. No, I did not.

Q. Any other director? A. No.

10 Q. What did Mr. Taylor say when he heard this proposition that your company should pay \$7 m. for these tankers? A. To be perfectly frank he did not say anything.

Q. Did he raise any objection? A. No.

Q. Has he ever raised any objection to you about the proposition? A. No.

Q. When did it first occur to you to put the proposition? A. I would say that morning on 4th July.

20 Q. At the meeting? A. Going to the meeting.

Q. Did you go to the meeting with Mr. Taylor?  
A. Yes.

Q. Did you mention it to him on the way to the meeting? A. No.

Q. You thought of it and kept it to yourself?  
A. I did.

Q. Why did you not mention it to him? A. First of all I wanted to test Mr. Howard Smith's reaction first of all.

30 Q. Before you took any directors into your confidence? A. Certainly.

Q. But Mr. Taylor did not show any disagreement at all with the proposition? A. He did not show any agreement either.

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Q. My question was he did not show any disagreement at all? A. No, he did not.

Q. Do you really think in a context where a general manager of a company is speaking to representatives of another company and he makes the statement in the presence of his chairman of directors, speaking on behalf of his company, and the chairman of directors says nothing, that it is a fair comment to say the chairman of directors did not show any agreement? A. Yes, I would say so. 10

Q. I suggest to you that if Mr. Taylor took the view that he as chairman disagreed with what you were saying you would expect him to say so? A. I can only give an opinion on this.

Q. Your own opinion? A. My own opinion was that the reason he did not say anything was because he was watching for a reaction from Mr. Howard Smith.

Q. So your opinion is that Mr. Taylor was permitting you, as general manager, to put to Howard Smith on behalf of the company he was chairman of, a proposition with which he might have disagreed for the advantage of seeing what reaction Howard Smith gave to it? A. Yes, of course. 20

Q. Are you the shipping expert in Millers? A. I would not say that.

Q. What about Mr. Taylor; would he know these two ships? A. Yes, he would know them. 30

Q. Would he know how old they were? A. I have got no idea.

Q. Have you ever heard it suggested that he has inspected them or anything like that? A. To my knowledge he has not.

Q. You put this proposition and what was said then? A. Mr. Maxwell said, "I like your proposition better than ours". Mr. Howard Smith said, "I don't. Under no circumstances are we going to sell our tankers to Millers". 40

Q. Of course on what you say, if Mr. Howard Smith had said, "Done, we agree", you would have regarded it as quite, as it were, anticipated for Mr. Taylor to say "Unagreed"? A. I should imagine at that stage Mr. Taylor would have said, "Well, it is a matter for our Board".

Q. Or "I have never agreed with this proposal"?  
A. No, I do not think he would have said that.

10 Q. What was the next thing that was said?  
A. To my recollection the next thing that was said was, Mr. Howard Smith, after saying quite emphatically that under no circumstances would he sell the ships to Millers, Mr. Howard Smith said, "Well, you had better leave it with us" or words to that effect.

Q. As you left the meeting did you have any doubt in your mind that Howard Smith was not going to proceed with the takeover offer unless something was done? A. Could you repeat that again?

20 Q. As you left the meeting would you agree with me that you were firmly of the view that Howard Smith would not proceed with the takeover offer unless something was done? A. No, I was not convinced of that.

30 Q. What I am suggesting to you is that your understanding of this meeting was that it was a discussion of ways and means of achieving the result that Howard Smith would continue with the takeover? A. Yes, this could have been a possibility.

Q. And to put it bluntly it was a discussion on ways and means, on your understanding, of cutting down the proportionate shareholding of Ampol and Bulkships in Millers? A. Yes.

40 Q. Because that was the only way in which, on your understanding, the takeover would proceed?  
A. I can only speak from my point of view on this because that was my view anyhow. I do not know whether it was Howard Smith's view.

Q. But you were at the meeting? A. I was at the meeting.

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Q. And you participated? A. Yes, I did.

Q. And that was your understanding of what the meeting was about? A. It was my understanding of what I had said to Howard Smith and the reason for it.

Q. How did this meeting end? A. I think we just left the Board room.

Q. What were the last words said? A. As I recollect Mr. Howard Smith said, "We will be in touch with you".

10

Q. Was anything said about the Miller Board meeting on 6th July? A. I am not sure whether it was raised at that meeting or not. It could have been. I would not like to say whether it was or not mentioned.

Q. It was certainly mentioned at one meeting? A. I think I could have told Mr. Maxwell. It might have been the day after. I have got an idea he enquired when was our next Board meeting and I said that it was on 6th July.

20

Q. When the Miller Board meeting was mentioned, whether in this meeting or the next day, were Howard Smiths asked to have a letter placed before the Miller Board? A. No.

Q. Never asked that at all? A. Not to my knowledge.

Q. I do not want to take you in detail through your evidence of the 5th July meetings and discussions, except I want to direct your attention to the luncheon gathering on 6th July? A. On the 5th.

30

Q. On the 5th; I suggest to you that Mr. Taylor was present at that gathering? A. I do not think he was.

Q. Have you any doubt on that? A. I probably have a little doubt but to my recollection he was not there.

Q. I put this to you, you would agree with me I presume that Mr. Taylor's recollection as to whether

or not he was present at that meeting would be more reliable than yours? A. Yes, I would say that, yes.

Q. On the afternoon of 5th July, as I understand your evidence, you were called to Mr. Taylor's office? A. At approximately 5 o'clock, yes.

Q. And he had an unsigned letter? A. I believe so. I did not see the letter.

10 Q. But he had it in his hand? A. He had something in his hand.

Q. Did you see whether it was on a letterhead? A. No, I did not.

Q. Were you told who was the author of the letter? A. No, I do not think so.

Q. Were you aware whether anyone from Millers participated in the preparation of the letter? A. I was not aware of it.

Q. You do not know one way or the other? A. No, I did not.

20 Q. Except you knew, I presume, you had not? A. That is correct.

Q. What happened after that meeting in Mr. Taylor's office on the afternoon of the 5th? A. To the best of my knowledge I did not remain in his office. I think I went back to my own office then.

Q. Would you agree with me that preparations were set in train for the meeting of 6th July? A. I would not know that.

30 MR. DEANE: Could the witness see Ex. U? That is what was described as the document prepared in anticipation of legal proceedings.

(Ex. U handed to witness)

Q. Have a look at that document; you have seen it before I presume? A. I have.

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Q. When did you first see it? A. After the meeting on 6th July.

Q. You did not see it before? A. No, I did not.

Q. And of course as you read it you would agree with me that it is obviously a script for the meeting of 6th July? A. It appears to be that.

Q. And the parts of the cast as it were are to some extent indicated? A. Yes.

Q. And you come in, do you not, on p.3? A. Yes.

Q. And your task was to fortify? A. That is correct. 10

Q. When had you first been told that your part at the meeting was to fortify? A. To the best of my recollection it was after the letter had been received on the morning of the 6th.

Q. Did you prepare any notes to be used in the performance of the parts? A. Yes, I did.

Q. Have you still those notes? A. Not with me.

Q. Where are they? A. Still in my office, I presume. They were handwritten notes. 20

MR. DEANE: If your Honour pleases we would with respect suggest that they should be made available.

HIS HONOUR: Yes. You want Mr. Koch to seek them out overnight?

MR. DEANE: Yes.

WITNESS: Certainly.

MR. DEANE: Q. I want to bring you to the meeting of 6th July itself and you have told his Honour your general recollection of what took place. I want to ask you about some particular matters. The first is, you said that Sir Peter Abeles was not prevented from participating in discussion? A. That is correct. 30

Q. Would you agree with me that the meeting started in accordance with the document in front of you?

A. Yes, I would say basically in accordance with this document.

Q. I suggest to you the chairman read from this document? A. He did not read it verbatim. I think he referred to it.

10 Q. Before the part was reached where Sir Peter Abeles was to be heard and then disqualified, Sir Peter Abeles had participated in the discussion, had he not? A. Yes, there was very little preceding this at the time.

Q. This of course was a matter of great importance in the life of Millers, was it not, this proposed allotment of shares? A. I do not get what you are hinting it.

20 Q. Did you not think that this was a matter of tremendous importance in the history of Millers, this proposal to increase its capital by 50% in one stroke? A. Yes, I think a lot of the preceding days were of tremendous importance to the Miller company.

Q. And it is a matter on which, from your experience at Board meetings, you would have expected - and this is said in no way critically of him - you would have expected Sir Peter Abeles to have a great deal to say? A. Yes.

Q. Because Sir Peter Abeles, to your knowledge, is a man with a very high reputation as to financial matters? A. I believe so.

30 Q. And of course Sir Peter Abeles was a person who could have contributed a considerable amount to discussion on this topic? A. Yes, he could have.

Q. And he was a person who might have persuaded the other directors one way or the other? A. I do not know of his power of persuasion.

Q. He might have? A. It is a possibility.

Q. You see, the chairman said to Sir Peter Abeles that he wanted him to disqualify himself, did he not? A. He did.

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Q. And Sir Peter Abeles said a great deal on this.

A. Not a great deal but he did com on it, yes.

Q. He did more than comment, he made a small  
speech on it? A. Small one, yes.

Q. Then the chairman, having heard him out, ruled  
that Sir Peter Abeles was not entitled to take  
part in the debate or to vote on the subject?

A. That is correct.

Q. There was then a brief discussion? A. Yes.

Q. And Sir Peter Abeles left the room to seek  
legal advice? A. That is correct. 10

Q. And the meeting went on without him? A. Yes.

Q. And at the time the vote was taken there had  
been no ruling or there had been no attempt to  
acquaint Sir Peter Abeles with what took place  
during his absence? A. No, there was not.

Q. And indeed, his absence extended over the  
major part of your comments in relation to the  
liquidity situation of Millers? A. He did  
return sometime during my comments. I am not too  
sure at what stage but I know I was still talking  
when he did return to the room. 20

Q. At the end of the meeting Sir Peter Abeles did  
not attempt to vote? A. No, he did not.

Q. He acted in accordance with the chairman's  
ruling? A. That is correct.

Q. And when Mr. Anderson said to him, "Are you  
abstaining?", he said "No, the chairman has ruled  
I cannot vote"? A. That is correct.

Q. So he acted in accordance with that ruling? 30  
A. Yes, he did.

Q. I suggest to you that after the chairman  
informed Sir Peter Abeles that he should not  
participate in the debate the only time Sir Peter  
Abeles participated in this meeting was, as it  
were, by way of interjection to correct what  
appeared to him to be misstatements of facts?

A. I could not answer for Sir Peter on that.

Q. And I suggest to you that it was apparent that Sir Peter Abeles was, apart from such occurrences, accepting the chairman's ruling that he should not participate in the debate. (Objected to by Mr. Glass)

10 HIS HONOUR: I think it is a fair question, Mr. Glass. There is inconsistency in the document on this point. I think without going into the details of it it is not unfair. The question is "It was apparent". That obviously means apparent to Mr. Koch. (Mr. Glass pressed his objection).

HIS HONOUR: You can put to Mr. Koch that his behaviour was consistent with - .

(Mr. Deane submitted to his Honour that he was entitled to challenge the witness.)

HIS HONOUR: I do not think I should allow the question in those terms.

20 MR. DEANE: Q. You would agree with me, would you not, from what you observed at the meeting or what you observed at the meeting was consistent with Sir Peter Abeles only interjecting, as it were, to correct matters he thought were wrong but endeavouring in the main to abide by the chairman's ruling that he could not participate in discussion? A. I would not go so far as to say he was correcting things that were wrong rather than making statements where he felt fit.

30 Q. But he did not, as it were, address the Board on the matter that was being discussed?

A. After he was ruled out of order?

Q. Yes? A. No, he did not actually address the Board. He made comments.

Q. And would you agree with me that if Sir Peter Abeles had not been told that he could not participate in a debate you would have regarded his failure to address the Board in these circumstances as being a very surprising thing. (Objected to by Mr. Glass.)

40 HIS HONOUR: I do not think you can have that. Mr. Deane.

MR. DEANE: No your Honour.

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Q. The meeting opened with a reading of the long Howard Smith letter? A. This was after the preliminaries.

Q. I suggest to you that after the preliminaries Mr. Taylor said, "There has been a dramatic development this morning"? A. I am not sure whether he used the words "dramatic" but he may have. I would not dispute that.

Q. But in due course the letter from Howard Smith was read out in full? A. Yes, that is correct. 10

Q. And that no doubt occupied a considerable time? A. Yes.

Q. And that letter put forward reasons for making the allotment? A. He read in full detail the letter from Howard Smith?

Q. And indeed Millers subsequently published that letter in the Financial Review as an advertisement of their own? A. That is correct.

Q. And indeed, in relation to that Mr. Balhorn at the meeting when the publication was discussed made the comment that the letter accurately set out the facts? A. Which meeting, 6th July? 20

Q. The meeting after 6th July when the publication of that letter was discussed. I suggest Mr. Balhorn agreed with the chairman's action in publishing the letter on behalf of the company on the grounds that it accurately set out the facts; do you recall that? A. No, I do not.

Q. I want to put to you some particular matters in relation to this meeting. First of all, would you have a look at Ex. B. Would you turn to p.6 of that document, that is the minutes of this meeting. Do you see five paragraphs from the bottom, "In regard to the proposal from Howard Smith Limited Mr. Cameron stated the Board was attempting to justify making a share placement on the basis of the company's serious financial problems without any suggestion of an issue to shareholders"? A. That is correct. That is what was said. 30

Q. And three paragraphs from the bottom, "Mr. Cameron said that he must repeat at this stage that 40

Exhibit B

he was concerned that the Board was suggesting a share issue to get over financial problems"?

A. That is what was said.

Q. When Mr. Cameron said that you understood him as saying, did you not, that he was concerned that the Board was, as it were, dressing up this share allotment as being an allotment for financial purposes. (Objected to by Mr. Glass.)

10 Q. When Mr. Cameron made those comments did anyone demur to them? A. Not to my recollection.

Ex. HH Q. (Ex.HH handed to witness) I show you another document? A. Yes.

Q. Have you seen that before? A. No, I have not.

Q. This is a transcript of some notes taken by Miss Hill, is it, or Miss Hills? A. Miss Hill.

Q. At the meeting on 6th July 1972? A. Yes.

Q. I refer you to p.7 of that document? A. Yes, I have p. 7.

20 Q. Do you see in the middle of the page a statement attributed to "A.B."? A. Yes.

Q. That is Mr. Balhorn? A. I assume so, yes.

Q. Do you recall Mr. Balhorn saying "I endorse Mr. Nicholl's comments. I would be a little disturbed on the ethical side of this but Mr. Duncan said see what the Board generally thinks of this and to go along with it on what they think"? A. To be honest, I don't recall him saying that.

HIS HONOUR: What page is this?

30 MR. DEANE: That is on p.7.

Q. Well now, you gave some evidence as to what Mr. Nicholl said at this meeting? A. Yes, that is correct.

Q. And I refer you to the extract immediately above Mr. Balhorn's suggested statement? A. Yes, I have that.

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Q. Do you recall Mr. Nicholl saying "I doubt whether you could make an offer to your shareholders at 2.30 per share and on that and having a look at the alternate situation we may have two major shareholders together and being aware of the fact that we are in breach of the Stock Exchange regulations I still feel that I would rather face the shareholders having to accept the situation rather than fade away into the background." Do you recall Mr. Nicholl saying that? A. I recall the majority of this. I can only be assuming on the shorthand notes of this one, but to my recollection Mr. Nicholl would not have used the words "rather than fade away into the background." Definitely not those words. The previous part of it I would say I certainly would not dispute.

10

Q. Now, would you look at p.6 of that document?  
A. Yes.

Q. Do you see about six paragraphs from the bottom a statement attributed to Mr. Cameron "What are the advantages of making a placement outside the company over a placement to our shareholders." Do you see the portion I am referring you to? A. Yes, I see that.

20

Q. Well, do you remember Mr. Taylor saying in answer a comment to the effect "Because the majority of shares, 55% is held by two shareholders which would increase their shareholding." Do you remember Mr. Taylor saying something to that effect? A. No, to be honest I don't recall that being said.

30

Q. Do you deny it was said? A. No, I certainly don't deny it.

Q. Then, if I may, I want to come to your own comments. Might I take you back to the minutes?  
A. I have a copy of the minutes here.

Q. You have told his Honour that you made comments on the current short term borrowings? A. Yes.

Q. And you put to the meeting that the current short term borrowings as at 6th July were as set out there? A. Yes, that is correct.

40

Q. And of course, in putting that, what you put was wrong, wasn't it? It depends which way you look at it. As I said before, with the Bank of N.S.W. I included the full amount of the loan, even though only portion of it had been received at that time.

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10 Q. Of course, you have told his Honour in evidence to Mr. Glass, that in terms of liquidity problems commitments are not nearly as serious as short term borrowings - moneys owing. That is so, is it? A. In my opinion.

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Q. Of course, a large part of these moneys which you stated to be short term borrowings from the Bank of N.S.W. were not even a commitment as at 6th July? A. Yes, I think - we had not received the money.

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Q. You had not borrowed it? A. No, we had not.

Q. You were not liable to repay it as at 6th July?  
A. No.

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20 Q. And the only point of the borrowing was to extinguish a commitment? A. Yes.

Q. So I suggest to you that in terms of short term borrowings, as you distinguish them from commitments, it was quite misleading to suggest that an amount of \$4.2 m. was owing in respect of short term borrowings to the bank? A. Depending on which way you look at it, yes.

30 Q. Now, the Mitsui loan, repayable \$100,000 per month, terminating February 1973, is the first item? A. Yes.

Q. That is the loan secured by mortgage on the El Rancho Hotel? A. Yes, that is correct.

Q. And indeed the situation with Mitsui was, was it not, that when repayments were made new borrowings were made and the amount owing was kept at a pretty constant rate? A. It had been in the past.

Q. It had been in the past? A. Yes.

Q. And there was nothing that you knew which would

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lead you to believe that it would be different in the future? A. I could not be certain of it.

Q. Don't you recall that Tricontinental at one stage, in terms of advising you, suggested "Whenever the Mitsui loan gets below a certain figure, borrow more." Don't you recall them advising you in terms similar to that? A. Yes.

Q. And was not the answer you gave "You don't have to worry about that. We are aware of the situation"? A. We were at that time, yes. 10

Q. Nothing had happened to change the situation as at 6th July, had it? A. Not at 6th July, no.

Q. So that this is the first item - the Mitsui loan? A. Yes.

Q. But if what happened in the past were repeated, even though payments were due the loan would remain at roughly the same amount?  
A. No, that is not correct.

Q. I said if what happened in the past were repeated? A. I am sorry. Yes. 20

Q. But nothing had happened since you expressed your views to Tricontinental on this to alter those views? A. There never does until you ask for the money.

Q. The next item, of course, is the call?  
A. Yes.

Q. What is the detail of that? A. The details of "call" - I am not sure of the exact amounts of this, but one was from Off Shore Oil. There was a loan from the estate of the late Sir Roderick Miller. There was one loan from an employee who has since retired and left his superannuation benefits with the company. I believe that is what makes up the \$406,000. 30

Q. The rest of these moneys are, are they not, moneys which would fall due to be repaid to the Bank of N.S.W. or in respect of Tricontinental short term borrowings? A. No, that is not correct.

Q. What don't you put in that category? A. Due for repayment in September 1972 is an additional \$285,000 which is repayable then. I believe that is from Harbourside General Insurance. And due in January 1973 - I don't think that is Tricontinental either. I believe that is another short term loan.

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10 Q. Apart from those amounts, the balance are payments to either the Bank of N.S.W. or to Tricontinental? A. Yes.

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Q. The last amount being to the Bank of N.S.W.? A. Not all of it, no.

Q. How much of that to the Bank of N.S.W.? A. \$4.2 m.

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Q. And \$250,000 to Tricontinental? A. No, I don't think that is Tricontinental - that \$250,000.

Q. Is that another exception? A. That would be another exception.

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20 Q. What is it? A. I am not sure what that is. But \$4.875 m. is due to Tricontinental and \$4.2 m. to the Bank of N.S.W., and the remainder to odds and sods.

Q. \$9 m. due to the Bank of N.S.W. or Tricontinental. \$800,000 to Mitsui? A. Yes.

Q. And the rest to various sources? A. Yes, that is right.

30 Q. Were any of the other sources pressing for payment for moneys on call? A. Well, they never pressed for payment if it is on call. They only press when they want it paid. You have no alternative then.

Q. How long had these moneys been on call? A. I think one had been on for one or two months. I am not too sure of the others.

Q. Of course, insofar as the Bank of N.S.W. \$4.2 m. was concerned how much of that had not even been borrowed? A. \$1.8 m.

Q. \$1.8 m.? A. Yes.



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Q. You have already dealt in your evidence with the relationship between that money and the end finance from Hambros? A. Yes.

Q. So far as the £4.8 m. was concerned, the bulk of that was covered by arrangements under which it was anticipated that in the ordinary course bills could be rolled over? A. In the ordinary course?

Q. Yes. A. Yes.

Q. And if those moneys had to be repaid that would immediately make available hotel properties of a value in excess of £8 m. which would then be completely unencumbered? A. Yes, that is correct.

10

Q. So far as the Hambros end finance was concerned, you made a suggestion that it may not be completely certain? A. Yes, I did.

Q. And I put it to you that the only basis on which you suggested any uncertainty at all as to the Hambros end finance was the condition relating to change of control? A. That was at the meeting of 6th July, yes.

20

Q. That is correct? A. Yes, that is right.

Q. You did not make any suggestion that the Hambros loan was uncertain because it was an agreement in principle? A. I did not.

Q. You did not make any suggestion that the Hambros loan was uncertain because in the first paragraph of the letter of commitment there was reference to 15th March 1973 as being the date for delivery of the "Robert Miller"? A. I did not.

30

Q. You did not raise any suggestion that the availability of the Hambros loan to pay out the £4.2 m. which had been or was to be borrowed from the Bank of N.S.W. was uncertain because the "Robert Miller" may not be finished by June 1973? A. No I did not, at that meeting.

Q. So insofar as what you put to the directors was concerned, the only basis of uncertainty in

40

relation to the availability of the Hambros loan to meet the past and future borrowings from the bank when they became due was the condition to which reference is made in these minutes? A. That is the only reference I made.

Q. Did Mr. Taylor ever tell you whether he had had a telephone conversation with Mr. Duncan on either 4th or 5th July? A. Not to my recollection he did not.

10 Q. Were you present when any such telephone conversation took place? In other words, did Mr. Taylor have any such conversation in your presence? A. No, he did not.

Q. So that you were unaware of what discussions, if any, took place between Mr. Taylor and Mr. Duncan prior to 6th July? A. Yes, that is correct.

20 Q. Now, so far as Mr. Anderson was concerned, did you have any discussions with him before the meeting of 6th July? A. No, I did not.

Q. So that my question may be in context, I mean on the subject of the allotment of shares? A. Yes, I understand what you mean.

Q. Are you aware of whether any discussions took place between Mr. Taylor and Mr. Duncan on that subject? A. No, I am not aware.

Q. You told his Honour that on 5th July Mr. Nicholl attended at the Board room of Millers at lunch time? A. Yes, that is correct.

30 Q. And that he was informed of what had happened and been said at the meeting of 4th July, and of the discussions that had taken place on the morning of the 5th? A. Yes, that is right.

Q. You said that Mr. Nicholl brought a law book with him? A. Yes.

Q. And it was a law book dealing with the subject of allotment of shares? A. I am not sure what it was dealing with.

Q. Do you know how he came to be in possession of

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the law book? A. No, no idea.

Q. Do you know how he came to come to the meeting on 5th July? A. He was asked to come.

Q. He was asked to come? A. Yes.

Q. By whom was he asked to come? A. I am not sure. I don't know who asked him. I would only be guessing.

Q. Did you have any discussion with Mr. Taylor as to whether or not Mr. Cameron should be informed in advance of the proposed allotment?

10

A. No, I had no discussions with him on that matter.

MR. HUGHES: No questions.

MR. STAFF: Q. Mr. Koch, may I take it from your evidence that by about June 1971 the company, in your view, had a very serious liquid situation?

A. In June 1971?

Q. By June 1971? A. Yes, in my opinion they did have.

20

Q. And it had improved somewhat by December 1971, had it? That is, the liquid situation?

A. If you are referring to just short term borrowings? No, I don't think it had improved at that stage.

Q. Was it not your view that as 1971 progressed the situation qua liquidity in Millers was improving? A. No.

Q. Was it getting worse, in your view? A. I would not say it was getting worse. It was not improving as we had hoped to carry out.

30

Q. I did not ask you that question? A. I am sorry.

Q. Whether or not your earlier hopes were realised in full, was it your view that the liquidity position was improving as 1971 progressed?

A. If I can sort of confine this to short term borrowings from June 1971, or the end of June 1971,

through to, I would say, January 1972, we had less money in on short term than we had at June 1971.

Q. And the company's position as 1971 progressed towards the end improved insofar as its capacity to meet commitments and short term liabilities as they fell due, didn't it? A. You are talking of June 1971?

Q. June 1971, through as 1971 progressed?

10 A. I am confused on what year you are talking about. June 1971 through to June 1972?

Q. No. June 1971 to, say, the end of December 1971? A. The end of December 1971? Yes. in December 1971, I am thinking mainly of the "Amanda Miller" repayments. We would not have had any outstanding at that time. Yes.

Q. In other words, your capacity to pay your way was improving as the year passed? A. From June to December it may have shown slight improvement, yes.

20 Is that the best you can do? A. Yes, that is the best I can recollect.

Q. And that was your belief at the time, was it? A. Yes, I would say so.

Q. And was it your belief that as, for instance, you got to, say, April or May of 1972, there had been a substantial improvement in the company's liquid position? A. No. It had deteriorated.

Q. And that was your view then, was it? A. Yes, it was.

30 Q. You are quite clear about that, are you, Mr. Koch? A. Yes. So far as I can recollect, yes.

Q. And it continued to deteriorate, did it, until July 1972? A. Yes.

Q. And again you are quite clear that that was your belief at July 1972? A. Which part of July?

Q. Up to the 6th. Prior to the 6th July? A. Yes.

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Q. And that your belief had been throughout 1972 up to, say, 5th July, that the position was deteriorating? A. Yes.

Q. And, I suppose, becoming more and more grave and critical in your opinion? A. Yes.

Q. And again, no doubt about that, is there?  
A. No, none in my mind.

Q. You are quite clear about your belief to that effect? A. Yes. In my opinion that was the correct position. 10

Q. Mr. Koch, of course during 1971, and after Sir Roderick's death, the company set about a forward planning scheme to finance its future capital commitments, didn't it? A. We programmed a scheme, yes.

Q. May I take it that during Sir Roderick's life and administration it had not been the custom to programme in that way? A. Perhaps not to the same extent as was done.

Q. Sir Roderick by and large borrowed on a system of ad hoc borrowing for particular projects or purposes or needs, didn't he? A. He had his own view on borrowings. 20

Q. At any rate, prior to his death borrowings were made as the need arose for particular projects, by and large? A. Yes, that is correct.

Q. And the overall capital expenditure programme - financing programme - which was embarked upon in about May-June 1971 was the first comprehensive plan in your experience which Millers had set out to make, was it not? A. No, that is not correct. 30

Q. Was not that generally so? A. No, back - no, that is not so.

Q. Prior to May 1971 there was not, was there, in existence any plan or programme for the financing of future capital expenditure and development of Millers? A. Yes, there was.

Q. And that had been made prior to May 1971, had it? A. Yes. 40

Q. I suppose that there were cash flow statements and the like in support of it? A. No, nothing to that extent.

Q. Nothing of that character? A. No.

Q. Nothing of the character that was devised after May 1971? A. That would be correct.

Q. Indeed, there was at the beginning of 1971, was there not, a liquidity problem emerging, to be seen? A. Had emerged.

10 Q. It had emerged, and it could be seen that there was one emerging? A. Yes.

Q. And which would intensify unless something was done as the year went on? A. Yes, that is correct.

Q. And this situation, may I take it, was exacerbated by three particular matters which occurred earlier in the year 1971, wasn't it? A. Which matters are you referring to, Mr. Staff?

20 Q. The first, I put to you, was the collapse of Minsec at the beginning of the year? A. Yes.

Q. As a result of which credit became much harder to obtain? A. Yes, that is right.

Q. The second was Sir Roderick's death in April? A. Yes.

Q. And that left a gap, for a moment anyway, in the control of the company? A. That is right.

Q. And removed a person of immense commercial influence in the community from the helm of Millers, didn't it? A. Yes.

30 Q. And about the same time - I am not sure whether it preceded or was subsequent to Sir Roderick's death - you had the "Amanda Miller" fire? A. The "Amanda Miller" fire was in 1970.

Q. In 1970, was it? A. Yes, April 1970.

Q. Pardon me for a moment. Your answer at p. 191 of the transcript - two-thirds of the way down -

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"Did something happen to the 'Amanda Miller' in that year? A. Yes. On 18th April, 1971, it caught fire at Whyalla" was not correct?  
A. That is incorrect. It is 1970.

HIS HONOUR: It is the wrong date?

MR. STAFF: At p. 191 - 6 questions from the foot of the page.

WITNESS: I apologise for that answer. It is incorrect.

MR. GLASS: There are other references to 1970 in that portion of the transcript. It is quite probably a shorthand error. 10

HIS HONOUR: I will have it noted that at p. 191 of the transcript, six questions from the bottom, the answer should be "18th April 1970" and not "18 April 1971".

MR. STAFF: Q. During Sir Roderick's life he had almost universally ignored bank overdraft limitations, hadn't he? A. That is a fair comment, yes. 20

Q. And when troubles arose it was his custom to deal with the bank personally? A. Yes. He would let executives of the company go as far as they could, but if we could not get any satisfaction he would then take over.

Q. He would then take over? A. Yes.

Q. And may I take it that ordinarily he managed to achieve something near his target? A. Well, he certainly attempted to.

Q. After his death it became apparent to you, didn't it, Mr. Koch, that the bank was not going to allow this overdraft excess situation to continue in the way in which it had done during Sir Roderick's life? A. I think this started prior to Sir Roderick's death. 30

Q. It certainly became apparent after his death that you were not going to get away with excesses in the same way that Millers had previously?

A. No, it goes back further than that. They made it quite apparent prior to his death that that was their attitude. 40

Q. At any rate, no-one really attempted after Sir Roderick's death to ignore bank limitations on the overdraft limit in the way in which it had been done for the most part during Sir Roderick's life?  
A. Yes, that is correct.

Q. Of course, this very fact accentuated, no doubt, in early 1971 the liquidity problem, didn't it? A. Yes, I suppose it did.

10 Q. And would you agree that the bank showed every indication from April or May 1971 onwards of what we might call disciplining the company in relation to its overdraft situation? A. As I say, Mr. Staff, they disciplined us before Sir Roderick's death.

Q. And continued to do so afterwards? A. Yes, that is right.

20 Q. And indeed, Mr. Koch, they showed a quite unsympathetic attitude to the company in relation to requests for increased overdraft accommodation?  
A. In my opinion they did, yes.

Q. During 1971? A. Yes.

Q. And that was the view you expressed to the Board, wasn't it? A. I am not sure that I expressed it to the Board, but it was my opinion, anyway.

Q. And it was against this background, was it not, that in May 1971 the company engaged Tricontinental as a financial adviser? A. No, I think it was felt that we needed a financial adviser.

30 Q. You say you felt that you needed a financial adviser? A. Yes, I think we felt at that time we needed a financial adviser.

Q. And it just fortuitous, was it, that it was a month or so after Sir Roderick's death that that happened? A. I suppose you could say that, yes.

Q. Do you say that had nothing to do with the loss of Sir Roderick from the helm? A. No, I don't think it did.

Q. And it was just fortuitous too, was it, that a

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month or so after Sir Roderick's death the finance committee was constituted and that senior executives of the company set about programming of the complete scale future capital commitments both for short term liabilities and capital development? A. I am sorry, I missed the opening of your question, if you could paraphrase it?

Q. Do you say it was quite fortuitous that a month or so after Sir Roderick's death the finance committee was constituted? A. Yes. 10

Q. And it had nothing to do with the changes in control that had occurred as a result of Sir Roderick's death? A. Yes, it did. Mr. Taylor, in his opinion as chairman and joint managing director, felt that this was the correct procedure.

Q. At any rate, you, with other senior management executives, set about this complete programming, with the assistance of Tricontinental? A. Yes. 20

Q. I think Mr. Hanley was the gentleman in Tricontinental who was in overall charge of their activities so far as Millers was concerned? A. Yes, that is right.

Q. He being the managing director of Tricontinental? A. Yes.

Q. He then indicated to you in May 1971 what was really wanted to enable the programme to be set up and developed completely? A. Yes, he did.

Q. And your executives set about producing information? A. Yes. 30

Q. And, I think, did so on a very extensive scale? A. I believe so, yes.

Q. And they set about, didn't they, with the aid of Tricontinental, to programme completely the future capital development commitments, short and long term? A. No. We virtually bared our soul to Tricontinental and asked them for their advice on how we could overcome our financial problems.

Q. And cash flow estimates were prepared covering 40 4C

five or six years hence? A. To the best of our ability to forecast these things, yes. To the best of our ability that was done.

Q. All of this material was available to you by, at any rate, June or July 1971? A. It could have been a little later than that. It could have been August.

Q. It did not take too long? A. It did not take very long, no.

10 Q. Whilst some of the material was still being prepared Mr. Hanley proffered certain advice as to the things that ought to be done with a view to improving the liquidity situation? A. As regards borrowings, yes.

Q. And other matters he did not attempt to interfere with? A. He did not attempt to interfere with the operations of the company except as regards finance.

20 Q. But he suggested economies that might be made and directions in which economies would be considered? A. Mr. Hanley?

Q. Yes. A. No, he did not.

Q. What I want to put to you is that he wrote you a number of letters setting out what his views were and what the company ought to do - setting out his views as to the direction which the company ought to take? A. Financially, yes.

Q. In an effort to improve its liquidity situation? A. Yes, he did.

30 Q. And of course you had many conversations with him, I suppose? A. Yes.

Q. Would not you agree that virtually all the decisions of the finance committee as to what might be done to improve the liquidity position and effect economies were in substance the adoption of prior advice furnished by Mr. Hanley or other officers of Tricontinental? A. No, I would say that we listened to Mr. Hanley's advice. Some we adopted; some we did not.

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Q. In any event, these recommendations of the finance committee and decisions of the finance committee about which you gave evidence the other day stemmed largely from advice that Mr. Hanley gave? A. To a certain extent, yes.

Q. And I think you told us the other day that the decisions which were made and the advice from Tricontinental which was adopted was designed to, as it were, correct your financial problems and cover your future capital developments so far as they could be seen? A. Yes, that is correct.

10

Q. You told us, I think, the other day that save for the Commonwealth Superannuation Board loan all of these decisions and recommendations that were taken had been achieved by June of 1972? A. Yes. As I recollect, the loan from the Commonwealth Superannuation Board was the only major item that was not achieved during that year.

Q. And it was really a financing proposal that in outline had been suggested to you back in May or June 1971? A. I am not sure that it went back that far. It would not have gone back that far, Mr. Staff.

20

Q. Was it not suggested in association with the suggestion that you aim to sell \$3 m. worth of hotels to improve liquidity? A. It would have been about that time, or shortly after.

Q. That was one of the very early projects - one of the very early proposals? A. It is difficult to recall actual times, but the time differential would not be great between those two.

30

Q. Indeed, the long term mortgage finance which culminated in the Superannuation Board proposal had to be deferred until you decided what hotels you were going to sell? A. Yes, that did delay it.

Q. Because you did not want to arrange long term mortgages on hotels which you might subsequently decide you wanted to sell? A. That was a factor, yes.

Q. So that it was always envisaged, wasn't it, that the long term mortgage finance on hotels would be one of the last matters to be put into effect or achieved? A. Yes.

40

Q. And indeed by 30th June 1972 you had, in your belief, virtually achieved that finance, hadn't you? A. The hotel mortgage finance?

Q. Yes. A. No, we had not.

Q. Wasn't it your belief by 30th June 1972, Mr. Koch, that you were going to get £3 m. or thereabouts from the Commonwealth Superannuation Board on a 15-year mortgage on hotels? A. We had nothing in writing from them by 30th June.

10 Q. I didn't ask you that. Will you answer the question I asked you? A. Certainly. It was my belief that on 30th June - no, on 30th June we had been advised prior to 30th June that no decision would be made by the Commonwealth Superannuation Board until the Commonwealth Actuary had returned from overseas, which was anticipated in mid-July.

20 Q. What I want to put to you is that before the end of June 1972 it was your belief that Millers were going to achieve their objective of getting £3 m. from the Commonwealth Superannuation Board on long term mortgage finance? A. I believed that in about May 1972.

Q. You believed it in May 1972? A. Yes.

Q. And you still believed it in June, didn't you?  
A. No, I did not.

30 Q. In fact, early in July you received a letter - copy letter - that the Superannuation Board had sent to the Australian Finance and Acceptance Company? A. That is right.

Q. Outlining the terms on which the mortgage might be made available, and indicating that, subject to clarification of a couple of matters, that they proposed to make an offer of these terms, didn't you? A. I don't think it reads exactly that way, Mr. Staff, with respect.

Q. Something like that? A. Something like that. I don't think that it reads exactly that way.

40 Q. I will show it you? A. Yes, I would like to see it.

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Q. In principle that is what it said? A. Yes, in principle that was the basis of the letter.

Q. And indeed, thereafter, sometime in July of this year, after the Howard Smith allotment had been made, you asked the Superannuation Board to keep that offer open for a further three months, didn't you? A. We asked them if they would be prepared to do so, yes.

Q. You asked them if they would be prepared to do so? A. Yes. 10

Q. And they agreed to do so? A. Yes, I think they did.

Q. You have no doubt, have you? A. I believe that they have.

Q. And one of the matters which they indicated they wanted clarification of was the question of, in effect, future control of Millers? A. Yes. I am not sure of the exact words, but it was to that effect.

Q. Of the impact, if any, upon the possible desire of a new controller of Millers to sell off hotels which were to be the subject of the 15-year mortgage? A. Yes. 20

Q. That was a matter of concern to them? They wanted to know the impact of any such possible desire on the part of a new controller of Millers? A. Yes.

Q. Subject to those two matters it was your belief, wasn't it, that there was a firm offer of a 15-year mortgage finance of \$3 m. from the Commonwealth Superannuation Fund? A. No, it was not my belief. 30

Q. It was your belief back in May that that was a firm proposal which was going to be put to you? A. It was my belief that I expected a firm proposal to be put.

Q. And you were hoping in May that it would come before the end of June? A. Yes, that is certainly correct.

Q. And it was when it appeared that the pace was too hot for the Superannuation Board to bring it to fruition by the end of June that Tricontinental offered £3.1 m. bill facility for 12 months?

A. Progressively for 12 months, yes.

Q. And indeed that was offered on the footing, wasn't it, that you would give to Tricontinental, whilst that facility existed, security over the same hotels as it was proposed to offer for mortgage to the Superannuation Board?

10 A. That is correct.

Q. And it was the basis of the Tricontinental arrangement, was it not, that as soon as the Superannuation Board was ready to make the £3 m. loan, that sum would be used to pay off Tricontinental for so much of the facility that had been taken? A. No.

Q. And the hotels would be released for mortgage to the Superannuation Board? A. No. To my knowledge, that was never raised.

20

Q. How are you going to mortgage to the Superannuation Board, if they offer you the mortgage of £3 m. the hotels which are charged to Tricontinental? A. I am not sure how we are going to do that.

Q. You have to pay off the charge to Tricontinental haven't you? A. Yes, of course.

Q. And that was always your belief as to how the Superannuation Board mortgage would be concluded, wasn't it? A. Originally this was it.

30

Q. And at 30th June, when you entered into the bill facility, that was your belief? That was your belief on 30th June when you entered into the bill facility with Tricontinental wasn't it? A. No. It was not, at 30th June.

Q. You thought, did you, at 30th June that the Superannuation Board proposal had lapsed forever? A. No, I did not think that at all.

Q. You believed, did you not, at 30th June that it was only a matter of a short time before the Superannuation Board would write you a letter

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outlining the proposal which you expected to come?  
A. No, that is not correct.

Q. Did you discuss the matter with Mr. Watts of  
the Australian Finance and Investment Company?  
A. To my knowledge I did not personally, no.

Q. Did you discuss it with Mr. Hanley? A. Not  
at round about that time. I had previously,  
because I was concerned with the delays in this  
finance.

Q. Did you tell your Board on 1st June that you  
reasonably expected that the Superannuation Board  
loan of \$3 m. would be available? A. Yes, I did.

10

Q. And that was then your belief, wasn't it?  
A. Yes, it was.

Q. You told your Board on 1st June, did you not,  
that that was to be long term finance against  
mortgage security over eight hotels? A. Yes.

Q. On p.3 of the minutes of 1st June? A. Yes,  
that would be correct.

Q. That correctly reports what you informed the  
Board that day? A. I believe my exact words  
were that although we had anticipated a loan of  
\$2.5 m., we believed this would be increased to  
\$3 m.

20

Q. You said, did you not, it was reasonably  
expected that the Board would advance a \$3 m.  
long term advance against mortgage security over  
eight hotels? A. Yes, it was reasonably  
expected.

Q. And that was your belief then? A. Yes, that  
is correct. That was my belief then.

30

Q. And you had no information which you received  
between then and 6th July to change your view, did  
you? A. Yes, I did.

Q. Did you get a letter from anyone indicating  
the information? A. No, as I say, the only  
letter -

Q. You did not get anything in writing, did you?  
A. Concerning what?

Q. You did not get anything in writing which caused you to change the view which you had expressed to the Board meeting on 1st July about the Commonwealth Superannuation Board? A. I am not sure whether it was in writing, or oral.

Q. You can't recall a written communication?  
A. No, I can't recall it.

10 Q. If you had got a written communication, no doubt you would have it on your files? A. Yes, I would.

MR. STAFF: May I ask Mr. Koch, your Honour, to look to see if he has one overnight, on the same basis, that my junior, Mr. Meagher, will remind Mr. Koch of it at the adjournment?

Q. You say, do you, that if you had not got a written communication or did not get a written communication on this subject matter you had some oral communication? A. Yes.

20 Q. With whom is it your belief you had an oral communication? A. I had an oral communication with the company's executive assistant to the managing director, Mr. Murphy.

Q. And he, you say, told you something which caused you to change your mind or your belief from that which had existed on 1st June?  
A. Yes. that is correct.

30 Q. Can you tell us your recollection as to when, approximately, you think you had such a communication? A. It was towards the end of June, when we were advised that the Commonwealth Superannuation Board would not be able to arrange the finance we required by 30th June because of the absence of the Commonwealth Actuary overseas, and that no decision or no recommendation would be made until he returned, which was mid-July.

Q. When do you say you got that information?  
A. It would have been the last week in June, or the second last week in June.

40 Q. Do you remember hearing on or about 15th June from Mr. Murphy or from anyone in your organisation

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that Millers "have received advice that the Commonwealth Superannuation Board will be considering our proposal at their Board meeting tomorrow, and following this we expect to receive a verbal offer from them on the morning of Monday, 19th June, which they advise will be confirmed to us in writing later that day."

A. Yes, I do recall that.

Q. Do you recall that that was written by Mr. Murphy on or about 15th June 1972? A. I don't recall him writing it. 10

Q. Will you look at the letter which I ask the officer to show you? A. I don't recall the letter, but I recall the incident happening.

Q. And would you agree that as at about 15th June or thereabouts your company was hopeful that the Superannuation Board loan would be approved and documentation finalised so that you could draw \$3 m. before 30th June? A. We were hopeful, yes. 20

Q. You at that time, at any rate, in the middle of June were not aware of anything which would cause you as it were, not to be hopeful?  
A. Not the middle of June, no.

Q. Of course at this point of time in the middle of June 1972 it was your expectation that if the \$3 m. came from the Superannuation Board it would be used to reduce the debt to the Commonwealth in respect of the "Robert Miller"? A. Yes.

Q. At 15th June 1972 you had had no discussions or negotiations for a \$3.1 m. bill facility arrangement with Tricontinental, had you?  
A. No. 30

Q. That is correct, isn't it? A. Yes.

Q. And that question only arose after it became apparent towards the end of June that the Commonwealth Superannuation Board could not, as it were, finalise any deal before 30th June?  
A. That is right.

Q. And it was then that you needed some short term finance to satisfy the Commonwealth debt by 30th June? A. Yes. 40

Q. And you got it from Tricontinental? A. Yes.

Q. On the same security as you were offering the Superannuation Board? A. Yes, that is right.

Q. At the end of June would you not agree that it was your belief that in the ensuing month or two of 1972 you would pursue the Commonwealth Superannuation Board negotiations? A. No, it was not my belief at that stage.

10 Q. Did you believe that that was all off, or you would not pursue it? A. I did not believe it was all off. I believed there was doubt in it.

Q. Were not you told by Australian Finance and Investment Company and Tricontinental that the prospects looked very favourable? A. Yes, I was told that.

20 Q. And at that date it was your view that the company's situation was such that you wanted this long term mortgage finance arranged at a reasonably early date? A. Yes, that is correct.

Q. Q. And again, at the end of July it was your belief, was it not, that the company was reasonably close to obtaining that \$3 m. from the Superannuation Board? A. No, it was not.

Q. I am sorry. At the end of June? A. Yes. It is still the same answer.

30 Q. You could say that because you had been told that no proposal could be put to you before the middle of July because of the absence of the actuary you became pessimistic about the possibility of raising money from the Superannuation Board? A. Yes, I did.

Q. And that was the sole factor which converted your reasonable optimism into pessimism? A. That was one of the reasons, yes.

Q. You did not have any other information, did you, Mr. Koch? A. No.

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Q. What other reason did you have for this sudden change of growing optimism to pessimism? A. I was concerned, and I am always concerned when trying to borrow money when it looks firm, and all of a sudden there is a delay, and I think this, in my opinion, is cause for concern.

Q. It came as a great shock to you, I suppose, when you got what was, in substance, a firm proposal for a \$3 m. loan some ten or twelve days later? A. It came as no surprise to me. 10

Q. You expected it to come, did you? A. I expected the form of letter that I received.

Q. And you regarded it in that form as quite satisfactory? A. No, I did not.

Q. You regarded it as sufficiently satisfactory to ask the Commonwealth Superannuation Board formally to extend it for a further three months? A. Yes, I did. I did, except - yes.

Q. And did you ask for their written confirmation of their agreement to extend it? 20  
A. Yes, I did.

Q. Subject to these unsatisfactory qualifications?  
A. Yes.

(Further hearing adjourned to 10.0 a.m.  
on Wednesday, 20th September, 1972.)

HIS HONOUR: You are still on the former oath administered to you, Mr. Koch.

WITNESS: Yes your Honour.

MR. STAFF: Q. Mr. Koch, you have told us about your management reports from May through to June - May 1971 through to June this year? A. I believe June to May. 30

Q. I am sorry. June 1971 to May this year?  
A. Yes, that is right.

Q. Isn't it implicit in your evidence that you at all times sought to provide information for the board which you believed to be true? A. Yes, that is correct.

Q. And which you compiled with care, knowing that it would be used by the board? A. Yes.

Q. Would you agree that the tone which those reports reflected from at least August or September 1971 right through to June or the end of May is rather an optimistic tone? A. I believe they are factual rather than optimistic.

10 Q. But, reading them, one does not find that there is any sign of pessimism about the financial position of the company, does one? A. I would not agree with that, no.

Q. In November do you recall that you commenced your report in the first paragraph "As advised in the September report we are proceeding as quickly as possible with our financial negotiations to cover our immediate and future capital commitments"? A. Could I look at my report, Mr. Staff?

Q. Yes, certainly. A. Yes, I did report that.

20 Q. Would you agree that in the following page and bit you recount a set of negotiations without any pessimism about their outcome? A. I think in my opinion in the third paragraph I state that regarding the Commonwealth guarantee there is doubt in our minds as to the requirements of Hambros.

30 Q. Yes. Is there anything else you wish to point to? Is there anything else you can point to indicating pessimism about the company's financial position? A. Yes. In the third last paragraph on the first page I make reference to a proposition which we presented to Trans-City Securities, which they rejected.

Q. You don't suggest anywhere in your report that that is going to put the company in a difficult financial position, do you? A. I would not say a difficult one. It is giving to the board what we are preparing to do or what we have done.

40 Q. Do you recall in March 1972 recommending to the board that the three offers which had been received for hotels be accepted? That is on p.3 of your March report, Mr. Koch. Do you recall that? A. I can see this here. I am looking for where I recommended it.

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Q. Will you look at p.3 of your report?

A. I see where I said the submission is made in regard to offers.

Q. On the top of p.4, in the first paragraph?

Will you look at the top of p.4? A. Yes, I did recommend that at that meeting.

Q. And towards the foot of p.4 there is a summation of recommendations which extended to the three? A. Yes.

Q. At that time it appears from par. 1 in item 3 on p.3 that you had already realised \$2,310,000 from the sale of hotels? A. Yes.

10

Q. Do you see that? A. Yes.

Q. Was that true at that time? A. I am trying to recollect whether it was realised or whether contracts had been exchanged and whether this was the amount we were going to realise from these hotels.

Q. You were proposing to sell three more worth about another \$2m? A. Yes.

20

Q. So that you were proposing the sale of hotels to the extent of a million or so more than the original objective of \$3m to be raised from hotels? A. Yes.

Q. Do you recall writing at that time "The liquid resources to be derived from the above sales would very largely correct the financial shortcoming which had been apparent in June 1971"? A. Yes.

Q. Was that true? A. To the extent that I said it would very largely correct the position as at June 1971, yes.

30

Q. And in fact by July 1972 - the beginning of July - the three hotels had been sold? A. Yes.

Q. So that by the beginning of July had those sales achieved the results you predicted of very largely correcting the financial shortcomings which had been apparent in June 1971? A. They certainly assisted.

Q. Do you agree that they had very largely corrected the financial shortcoming? A. In June 1971, yes. As at June 1971.

Q. Nevertheless you say, do you, that there was virtually a desperate financial situation in June 1972? A. I said that, yes.

Q. And you adhere to it? A. Most certainly.

10 Q. Mr. Koch, I show you a letter dated 14th July, 1972 from the Commonwealth Superannuation Board addressed on the last page to Australian Finance & Investment Company Limited. A. Yes.

Q. Is that the letter about which you gave some evidence in answer to my questions yesterday outlining the Superannuation Board proposal? A. Yes, it is.

20 Q. And we can then identify the letter which I show you, or copy letter which I show you, from Australian Finance & Investment Company Limited of 17th July to Mr. Murphy? A. Yes.

Q. That is Mr. Murphy in your organisation? A. Yes.

HIS HONOUR: 17th July?

MR. STAFF: 17th July, 1972.

Q. Perhaps we may be permitted to summarise it this way? That sends on the Superannuation Board letter, and makes a recommendation? A. Yes, that is right. It does.

30 Q. Would you agree that on 19th July Mr. Hanley wrote to you in relation to the matter? A. Yes, that is correct.

Q. And again to Mr. Murphy on 19th July. A copy of that letter is in the file. I am just going fairly quickly. A copy of that letter is in the file? A. Yes.

Q. Would you agree that Mr. Murphy on 2nd August wrote to Mr. Watts about the matter? A. Yes.

Q. And asked that the Board might be requested to

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extend the time for acceptance by two months. Do you see that? A. Yes, I see that.

Q. And on the same day he wrote about the matter to Mr. Hanley, advising him? A. Yes.

Q. And then on 16th August a letter from the Commonwealth Superannuation Board to Mr. Watts of Australian Finance & Investment advising that they would agree to keep the proposal open until 30th September? A. Yes.

Q. And that was sent, would you agree, to Mr. Murphy on 18th August? A. Yes. 10

Q. And Mr. Murphy replied on 24th August "We are pleased the Superannuation Board are keeping their offer open and do hope we are in a position to give a definite answer by 30th September"? A. Yes.

Q. Mr. Koch, in your evidence some days ago you told us of some advice that Mr. Hanley gave your company back in May-June or thereabouts in 1971 about the alleviation of matters - about the steps which should be taken to alleviate the company's position. Do you remember giving evidence some days ago in regard to that matter? A. Yes, I do remember that evidence. 20

Q. Do you recall that he pointed to a number of small loans secured on hotels of very considerable value? A. Yes, my recollection is that he did. I would have to see his letter. My recollection is that he did.

Q. And he suggested that you should pay out the small loans so as to make the security available for larger borrowings? A. Yes, I believe he did. 30

Q. And at the same time did he not draw attention to the company's general under-utilisation of its borrowing capacity by reason of small loans of this character on large securities? A. I am not sure. I would have to look at the letter to be convinced of that.

Q. You have no recollection one way or another in regard to that? A. No, I am not saying whether he did or did not. I would have to see the letter. 40

Q. You gave some evidence about your concern that the change of control provisions in both the Tricontinental facility - \$3 m facility - and the Hambros Bank letter of commitment might breach the performance of the two borrowing loan agreements?

A. Yes, that is so.

10 Q. So far as your company was concerned you had been dealing with them for some period of time prior to 30th June, hadn't you? That is, you had been dealing with Tricontinental for some period of time prior to 30th June? A. Yes.

Q. You had borrowed from them on a number of occasions when you had needed short term money in a hurry? A. Yes.

20 Q. And they didn't ever refuse to come to your help, did they? A. I think initially when they first became our financial advisers and we asked them for money to alleviate our financial position I believe initially they said that they did not have any money themselves. They made this quite clear - they were a merchant bank without money, but they had access to it. I believe initially that there might have been an odd occasion that they could not assist us. But in the main, yes, they did assist us whenever requested.

Q. About the end of June 1971 when you needed \$600,000 to pay the Commonwealth they came to your aid, did they not? A. Yes, that is correct. They did.

30 Q. From then onwards whenever you really needed money they were prepared to try and help you? A. Yes, certainly.

Q. And that was your general experience of them? A. Yes, that is right.

Q. And May I take it that since the change of control which resulted from the allotment of shares to Howard Smith they have not refused to roll over bills? A. No, I don't think they have, to my knowledge.

40 Q. I suppose you have rolled over bills, have you? A. No, I don't think we did. Not since 6th July.

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Q. One was due, wasn't it, to be rolled over in August? A. It was a small amount. I believe that was paid out. I think so, Mr. Staff. I could not be sure of that, but I think that it was paid out.

Q. You had no shortage of money to pay that out?  
A. No.

Q. Well now, you told us also, Mr. Koch, that there was a very considerable sum running into some millions due to the Commonwealth early in - in July 10  
or thereabouts, 1971, which was not paid until May of 1972. Do you remember that in relation to the "Robert Miller"? A. Yes. The repayments to the Commonwealth commenced - we commenced to repay towards the end of May 1972, yes.

Q. \$2m or more of these sums which were paid in about May or June 1972 had been outstanding since July or thereabouts in 1971? A. Yes, that would be correct.

HIS HONOUR: Q. \$2m or \$3m? A. Approximately 20  
\$2m.

MR. STAFF: Q. And it was your experience, Mr. Koch, that the Minister of the Department was sympathetic to the liquidity problems that Millers had had throughout that period? A. Originally, yes.

Q. And indeed, the interest rate on arrears under the Commonwealth contract was seven per cent?  
A. Yes, that is right.

Q. That was cheap credit, was it not, at that 30  
time? A. Yes.

Q. And I suppose so long as the Commonwealth was sympathetic it was advantageous to the company to allow the arrears to remain outstanding?  
A. No, it was not.

Q. You could not have borrowed at less than seven per cent, could you? A. No.

Q. At the time the joint announcement was made by Ampol and Bulkships as to their intention

with respect to the Miller shares held by them and just prior to that time there had been a good deal of speculation about what Bulkships might do in relation to the Ampol and Howard Smith announcement? A. Yes.

Q. And that was both in the public press - both speculation in the public press, and generally about the city? A. Yes.

10 Q. Of course, Bulkships' intention in relation to its shareholding was a matter which was very likely to affect the Stock Exchange market in Millers shares, wasn't it? A. Yes.

Q. And indeed the speculation which had been published in the press and the like pointed this out, didn't it? A. Yes.

Q. And of course you were aware of the listing requirements for listed companies and securities in relation to listed companies, weren't you?  
A. I am sorry, I don't quite follow the question.

20 Q. You are generally aware of the Stock Exchange requirements, aren't you? A. Not all of them, no.

Q. Mr. Koch, you are aware, I suppose, of the requirement of the Stock Exchange that companies provide all material information necessary to prevent the establishment of a false market?  
A. I was not aware of that requirement.

Q. You were not aware of that requirement?  
A. No.

30 Q. Didn't it occur to you that the purpose of the joint announcement may well have been to dispel the speculation that was rife? (Objected to by Mr. Glass; question withdrawn).

Q. (Tricontinental file No. 8 handed to witness) Mr. Koch, do you recall towards the end of April 1972 making some assessment in relation to the profitability of the "Robert Miller"? A. Yes, I would have at about that time, yes.

Q. And you recall, I suppose, that you made them

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- you made these assessments then - for the purpose of forwarding them to the Security Pacific National Bank? A. I don't recall forwarding them to the Security Pacific National Bank. I thought I would have dealt direct with Hambros.

Q. Security Pacific was one of the consortium banks? A. Yes.

Q. You knew it also to be an associate of Tricontinental? A. Yes.

Q. When you made these calculations were you doing so for the purpose of transmission to one of the proposed lenders to your company? A. Yes, that is correct.

10

Q. And I suppose you sought to give an accurate, if slightly rosy, picture of your view of the profitability of your organisation? A. In my opinion what the profitability is expected to be.

Q. At that time it reflected your belief as to what the profitability was expected to be? A. Yes, that is right.

20

Q. And I suppose it still does, does it? It still does reflect your belief in this respect? A. I should imagine so, yes.

Q. Will you look at the letter - the photocopy letter - which the officer will show you? Is the signature reproduced on that your signature? A. Yes, that is my signature.

Q. And is that the letter which you wrote in relation to your estimate of profitability for the purpose of transmission to Security Pacific? A. Yes, it is.

30

Q. And that is the document of which I have just been asking you - the estimate of which I have just asked you? A. Yes, that is it.

Q. You see the figure of estimated profitability and return on capital? A. Yes, I do.

Q. And that was in fact your view at that date? A. That was my view at that date, yes.

Ex. BS1	(Tricontinental letter, 20th April, 1972, tendered and admitted as Ex.BS1)	In the Supreme Court of New South Wales Equity Division
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	Q. Just one or two other matters, Mr. Koch. The Metropole Tavern which your company proposed to develop was first investigated and a decision made to develop it in July 1971? A. I don't think so, Mr. Staff.	Transcript of Evidence on Trial of Action
	Q. Will you look at your report of July 1971, at p.7? (Objected to by Mr. Glass; allowed).	_____
10	Q. Look at your report of July 1971, please, Mr. Koch. A. Yes.	Defendants Evidence 1st Defendants Evidence Leonard Dean Koch
	Q. Did you find p.7 of your July report? A. Yes.	
	Q. Was it true at that date that the "Tavern at the site of the Old Metropole Hotel is well under way"? Was that true? A. Yes, that is correct.	Cross-examination by Mr. Staff Q.C.
	Q. Was it true that at that time it was estimated that the cost of providing fixtures and fittings would not exceed \$150,000? A. Yes.	20th September 1972 (continued)
20	Q. The licence was to be leased to your company? A. Yes.	
	Q. By Parkes Development, I suppose? A. I am not sure.	
	Q. And was it true that by 29th July Tooheys had offered to lend \$1m to your company for financing this and other tavern developments? A. I believe they had indicated that.	
30	Q. Did you not report in May of this year that the Metropole Tavern was to open in October of this year? A. I believe I did. I would like to check it, Mr. Staff.	
	Q. Please check it, by all means. Just have a look at your May report. A. Yes, I reported that.	
	Q. It is on p.2 of your May report, I think? A. Yes.	
	Q. And you also reported - I suppose truthfully - that it was proposed to enter into a leasing arrangement in respect of fittings and furnishings? A. Yes.	

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Q. So that there was not much money to be provided by your company for that tavern development, was there? A. We were trying to minimise as much as possible.

Q. And you would agree also that in April of this year you reported that you were seeking to obtain Tooheys' assent to finance the St. James Tavern, on p.3 of your report? A. Which report are you referring to Mr. Staff? Is that the March report?

Q. I am sorry. Will you look at the minutes of 5th April, 1972? Will you look at p.3 of those minutes, towards the foot of that page? A. Yes.

10

Q. Did you not tell the Board that your aim was now to obtain finance from Tooheys for hotel and tavern development, principally for St. James and other places? A. No, I did not.

Q. Didn't you report that? A. No, I did not.

Q. You were present at the meeting, I suppose?  
A. Yes, I was present at that meeting.

Q. Did you not report in May of 1972 that the St. James Tavern was expected to open in February or March 1973? A. Yes, I did.

20

Q. And finally, do you not recall that in June 1971 the T.N.T. Tavern proposal was finalised?  
A. No. In June 1971? No, it was not.

Q. I suggest to you that in June 1971 the T.N.T. project was finalised, and that Tooheys had committed themselves to \$90,000 to finance it. What do you say to that? A. This is news to me. We have not finalised it yet.

30

Q. Will you look at your minutes dated 24th June, 1971? A. Yes, I have them.

Q. Will you look at p.4 under "Taverns"? A. Yes.

Q. Do you see that it was reported that the offer by Tooheys to provide finance was not restricted -  
A. I am sorry, Mr. Staff. I can't find that.

Q. On p.4? A. Of the minutes ?

Q. Of the minutes of 24th June, 1971. A. I am sorry, I am looking at my report. Yes, that is in the minutes, yes.

Q. And would not you agree that was one of the matters which was discussed following consideration of the general manager's report? A. It is included under that heading, yes.

Q. Look at the top of the page. A. Yes it is included under that heading.

10 Q. And the minutes themselves record that these matters were discussed following consideration of the report? (Objected to by Mr. Glass; question not pressed).

Q. Would not you agree that the rentals had been agreed with T.N.T. at that time? A. To my knowledge they still have not been agreed.

20 Q. This is a matter you don't know much about?  
A. Well I do know, because it has been raised at meetings just recently, and Sir Peter Abeles was becoming concerned in this, and it was my understanding that it was near completion, but negotiations had not been finalised. That was my understanding.

Q. Mr. Koch, I think you gave some evidence the other day in which you suggested - correct me if I am wrong - that because of the financial position you had to withdraw your opposition to the building of the H.C. Sleigh and Howard Smith tankers?  
A. Yes, that is correct.

30 Q. And that was a very bad - I suppose your view was that that was a very bad thing for Millers, was it? A. In my opinion, yes.

Q. Of course, as part of the arrangement to withdraw your opposition Millers obtained the option for construction of the next tanker to be permitted to be employed on the Australian coast? A. The next product tanker, yes.

40 Q. And that, of course, was a very substantial advantage in the future? A. Not as advantageous as being able to build one of these two tankers.

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Q. But that was part of the deal under which you withdrew your opposition? A. Yes, that is right. It was.

Q. And I think that your company has obtained insurance cover against the risk of collision - I am sorry, against the risk of withdrawal from service of the "Amanda Miller" as the result of collisions and accidents? A. Yes.

Q. And also as against strike risks? A. No, we have not. 10

Q. You have been considering that, haven't you? A. We have been considering it, yes. We are still considering it.

Q. You have not finalised it? A. No, we have not finalised it.

Q. Such a cover is available? A. They are available, yes.

Q. Now finally, Mr. Koch, during 1971-72 I think you agreed with me this morning the company sold more hotels in total value than had originally been planned to raise the £3m which was proposed originally? A. We had initiated sales of hotels prior to even making this decision. 20

Q. In the main the hotels which you sold, with one or two exceptions, were poor profit-earners? A. Some of them were. I would say that the majority of them were good profit-earners.

Q. But there were some that were very bad profit-earners? A. Yes, certainly. That is correct.

Q. And you were glad to get rid of them for that reason? A. I would not say that, no. 30

Q. There was at least one which was of very poor construction which you were glad to see on the market and sold? A. That was one of the reasons for selling it, yes.

Q. And others you thought had reached their peak potential and, having regard to the prices which you were offered, you could hardly afford to refuse them? A. I think that only referred to one hotel.

- Q. Bexley North? A. Bexley North. That is right.
- Q. In any event, there were quite a number of them sold which were not sold simply to raise money to relieve the company's liquidity situation? A. I would say they were.
- Q. What you reported to the Board in your reports about proposed sales was true at the time, I suppose? A. Yes, I would say so.
- 10 Q. And it reflected your belief at the time?  
A. I objected to some of them being sold, but I could see the wisdom of it.
- Q. We can see what your belief was at the time from your own management reports? A. Yes, Mr. Glass.
- MR. DEANE (with permission): Q. As I understand the position, Mr. Koch, these notes which I now show you are the notes you referred to yesterday when you said you spoke from notes at the meeting on 6th July? A. That is right, yes.
- 20 Q. Now, when were these notes prepared? A. They were prepared on the morning of July 6th.
- Q. When were the ink additions made? A. The ink additions were done during the meeting.
- Q. When you were speaking, or before you spoke?  
A. Before I spoke. You will see the reference up in the top corner which is obvious as to what it is. I was making a calculation of how much was involved. The ink figures here, as I recall, were prior to giving my statement, so that I had a total there. I combined two figures to get the total.
- 30 Q. How long did it take you to prepare that document? A. 15-20 minutes.
- Q. 15-20 minutes to prepare it? A. Yes.
- Q. What time did you start to prepare it? A. I would have started between 9.30 and twenty to ten on 6th July.

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Q. Before or after the letter arrived? A. I think it was before the meeting, because, as I said in my evidence, we had a meeting with Mr. Maxwell the night before, and when I arrived next morning I took these figures out.

(Mr. Koch's notes, 6th July, 1972, tendered and admitted as Ex, TT)

Ex. TT

RE-EXAMINATION:

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MR. GLASS: Q. You said a moment ago to my friend Mr. Staff that you could see the wisdom in selling the hotels. What was the wisdom you saw?

10

Further cross-examination by Mr. Deane Q.C.

A. Well the wisdom, Mr. Glass, was that it was an attractive price, although the profits from this hotel were excellent in my opinion. When the first offer for the sale of the hotel was received by us it was my opinion, which I expressed to the finance committee, that we should not sell this hotel because of its profitability. But after consideration I agreed that at such price and with the position we were in I felt we should sell it.

20

20th September 1972 (con tinued)

Re-examination by Mr. Glass Q.C.

Q. What was the position you were in that was relevant to that decision? A. Well the main reason was our commitment to the Commonwealth Government, which had to be paid as quickly as possible. I am not sure of the date we had to sell Bexley North, but I had had various meetings with the Minister for Shipping and Transport, and he was expressing great concern that we were in arrears under our contract.

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Q. Now, you have been asked by my friends a number of questions respecting the financial position of Millers up to and during the period ended 6th July, 1972? A. Yes.

30

Q. Having regard to the various matters, do you now see any reason to alter the opinions you expressed to the Board on that date? A. No, none whatsoever.

Q. On p. 298 of the transcript you were asked some questions about a \$5m loan you sought from the Bank of New South Wales. Do you recall being asked questions in regard to that? A. Yes.

40

Q. And you were asked about the sentence which referred to the provision of additional working capital? A. Yes.

Q. Was the \$5m you sought from the Bank of New South Wales earmarked for any particular purpose?

A. Yes. It was earmarked as obligations for payment under our contract for the construction of the "Robert Miller".

10 Q. What were those obligations? A. Well, by 30th June we were obliged to pay to the government just in excess of \$8m, and we had a further payment to be made upon the launching of the vessel, which was anticipated to be November or December this year.

Q. How much was due then? A. \$1.8m.

Q. There has been some reference to the two Hambros loans - one for the "Amanda Miller" and one for the "Robert Miller". Do you remember references being made to that? A. Yes.

20 Q. Was there any relevant difference between the sources of the two loans? A. Yes.

Q. What was the difference there? A. The Hambros loan for the "Amanda Miller" was from the Hambros Bank itself - 100 per cent Hambros. In the case of the "Robert Miller" loan Hambros were merely acting as lead bank in a consortium of bankers which included three other merchant banks.

30 Q. At p. 304 of the transcript you were asked about the Bank of New South Wales extending the loan until the Hambros money became available. Do you remember being asked questions in regard to that? A. Yes, I do.

Q. You said, I think, that there was doubt in your mind whether they would. Do you recall that? A. Yes, I do.

40 Q. It was put to you was there a real possibility, and your answer was "Well, it has been done before." What had been done before by the Bank of New South Wales that raised in your mind the belief that that was a real possibility? A. Well, on previous occasions - and this goes back some time - we had

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asked for assistance from the Bank of New South Wales to assist us during any liquidity problems or financial problems we had, and on a few occasions previously they had refused to assist us.

Q. You were asked at p. 307 of the transcript by Mr. Deane, and later by Mr. Staff, about the loan from the Commonwealth Superannuation Fund?  
A. Yes.

Q. Do you remember that? A. Yes.

10

Q. On 6th July what was your belief as to whether moneys would be available to the company from the Commonwealth Superannuation Fund?  
A. I still had doubts in my mind that it would be forthcoming.

Q. At p. 308 it was put to you regarding the Tricontinental loan that the agreement provided for the rolling over of bills on maturity for a minimum period of twelve months subject to certain conditions, and you answered "Yes" to that question? A. Yes, that is right.

20

Q. Do you have any comment to make on that answer of yours? A. My answer is incorrect - my answer is incorrect for the question. It is a maximum of twelve months, not a minimum of twelve months.

Q. You were asked on the same page whether you were aware that Sir Peter Abeles was on the board of Tricontinental, and you said that you were?  
A. Yes, that is right.

30

Q. Were you aware then who the other members of the board of Tricontinental were? A. The only other members of the Tricontinental that I am aware of are Sir Ian Potter, Mr. Waugh, and Mr. Hanley, as managing director. I am not aware of who the others are. I think a Mr. Williamson from Security Pacific may be, but I am not sure of that.

Q. Did you have any knowledge on 6th July as to any interest on the part of Sir Ian Potter in the Miller takeover situation? A. Well, Sir Ian Potter is the chairman of Bulkships.

40

Q. Did your knowledge as to the membership of the board of Tricontinental that you have detailed affect your belief as to whether the renewals it had could be counted upon? A. It did put doubt in my mind.

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Q. On p. 309 you were asked, the third question from the bottom, if you wanted to safeguard against that possibility you could yourself, at the beginning of July 1972, set about negotiating long-term finance to replace the Tricontinental short-term finance. A. Yes.

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Q. You were asked "Q. And in time you had no real doubt you would have been able to do that? A. We had failed before - there was the possibility we could fail again." Do you remember that question being asked of you, and giving that answer? A. Yes.

Re-examination  
by Mr. Glass,  
Q.C.

Q. What previous experience had you had of failing to raise long-term finance when security had been offered? A. There were quite a few occasions. The Bank of New South Wales - our own bankers - for one. The Commercial Banking Company of Sydney, who were our second bankers at the time. The A.N.Z. Bank, Hill Samuel. They were a few that come quickly to mind.

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Q. At p. 310 you were asked how you could recall that a particular event occurred on 16th June, and your answer was "I recall that, because it was the day I had lunch with Mr. Cribb, from Bulkships or T.N.T.". Do you remember that? A. Yes, I do.

Q. Could I ask you what matters were discussed on 16th June between you and Mr. Cribb? (Objected to by Mr. Deane).

(Mr. Glass was granted leave to re-open on this aspect.)

Q. Who was Mr. Cribb in Bulkships or T.N.T. so far as you know? A. So far as I know he is general manager of T.N.T.

Q. What was the subject of discussion at that lunch between you? (Objected to by Messrs. Staff, Deane and Lockhart; allowed). A. There were various subjects.

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HIS HONOUR: Q. Mr. Koch, are you confident you know what Mr. Cribb's position is? A. He is general manager of T.N.T. What other position he holds I am not sure of.

HIS HONOUR: I will not allow the evidence on the identification given thus far.

MR. GLASS: Q. Mr. Koch, you were asked questions on p. 315 about the "Amanda Miller", and you offered to produce the loan agreement. Is that a photocopy of the loan agreement? A. Yes.

10

("Amanda Miller" loan agreement and charter party tendered and admitted as Ex. MH19)

Ex. MH19

Q. Do you remember saying at p. 328 and earlier pages about the cash flow that you might expect to receive from the "Robert Miller" when she was in service? A. Yes.

Q. Now, I ask you when is the earliest moment at which, on 6th July, 1962 (sic) you expect to have any cash flowing from the use of the "Robert Miller". I am sorry, 6th July, 1972. A. Based on the evidence of our engineers superintendent and our resident engineers on the ship the earliest I expected was about August or September next year.

20

Q. At p. 329 and earlier you were asked some questions about your offer to buy Howard Smith tankers and your knowledge of their condition. Do you recall that? A. Yes, I do.

Q. Is there any advantage, if you are acquiring tankers, which locally registered tankers have over overseas tankers? A. Yes.

Q. What is that advantage? A. Local flag vessels are protected by the Navigation Act in so far as - (Objected to by Mr. Deane; allowed). A. Could you repeat the question, please?

30

Q. Does the fact that a tanker has an Australian flag give it any special value if you are buying a tanker? A. It does if you are going to operate this tanker on the Australian coast or if the tanker is operating on the Australian coast.

Under the Navigation Act Australian flag vessels have priority on all cargoes available over vessels flying foreign flags if an Australian vessel is able to lift that cargo.

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Ex. MH4

Q. On p. 333 you were asked questions about the document Ex.MH4. Do you remember that document? That is the analysis of financial results?

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A. Yes, I remember that document.

10

Q. You were asked if it was meaningful to talk about proportions between shareholders funds and assets employed, as that document does, and you said "Yes, I do". What do you perceive to be the meaningful value of that document? What is meaningful, in your opinion, about it?

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A. As regards shareholders equity?

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Q. Yes. A. Well in my opinion it virtually shows who owns the company - the shareholders, or outside financiers or outside lenders.

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20

Q. It was put to you that the 1972 figures were not based on the actual asset values for 1972.

A. Yes.

Q. What was the position regarding the valuation of assets in the earlier years? A. Well, there had been no revaluation of assets taken into the accounts. It was mainly historical records.

Q. That was the position thereafter? A. Yes.

Q. You were asked at p. 352 about Mitsui as a business associate. A. Yes.

30

Q. What is the nature of the business association between Millers and Mitsui? A. Millers and Mitsui have been associated since either 1958 or 1959, when our company expanded into the export coal trade to Japan, and Mitsui were, and still are, the trading house that we sell our coal through to Japan.

40

Q. You were asked at pp. 357 and 358 about the Cooper report, and do you recall it was put to you that representatives of your main competitor went off with a highly confidential document relating to the affairs of your company which you had never seen? A. Yes.

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Q. You answered "Yes" to that question. A. Yes.

Q. You were asked "Q. And which you still have never seen?" and you answered "Not the draft copy, no". Is that right? A. Yes, that is right.

Q. Have you seen it otherwise than in draft? (Objected to by Mr. Deane; rejected).

Q. Have you ever been in a position to compare the original with the draft? A. No.

Q. You assented to the proposition that the information in it was highly confidential, is that right? A. Yes, that is right. 10

Q. So far as what parties were concerned was the question of receipts from the tankers confidential? (Objected to by Mr. Deane; allowed).

MR. GLASS: Q. I will start at the other end. You recall it was put that the receipts from the tankers were confidential information? A. Yes.

Q. So far as you were concerned, would that information be confidential so far as Howard Smith was concerned? A. Well, they knew what our charter rate was anyhow. 20

Q. With respect to which parties was it confidential, is it confidential? A. This is the "Amanda Miller"?

Q. Yes. A. It would be confidential to all other parties other than the members of the consortium who are chartering the ship.

Q. And which ones in particular do you have in mind? A. That it would be confidential to?

Q. Yes. A. Ampol and Shell. 30

Q. And what about - can I suggest - trade unions? A. Trade unions, yes, this is true.

Q. On p. 359 you were asked about Sir Ian Potter wanting to see a copy of the report. Do you remember that? Page rather? A. Yes, I do remember that.

Q. Can you recall the point of time at which he asked to see it? A. As I recollect, Sir Peter Abeles appointed Sir Ian Potter as his alternate director at the meeting of 6th July. It would have been the following meeting that Sir Ian Potter attended and it would have been some time after that. It would be the middle or end of July 1972.

10 Q. What were the conditions that were attached to his seeing the report? A. The Secretary of the company wrote to Sir Ian and requested that Sir Ian... (Objected to by Mr. Staff)

(Short adjournment)

(Letter addressed to Sir Ian Potter, c/- Tricontinental called for: not produced)

MR. GLASS: Q. It was put to you that you were trying to entice Howard Smith to make a takeover offer. Do you recall that? A. Yes, I do.

Q. Do you recall that question being put to you at p. 361 a third of the way down:

20 "Q. You were trying to entice them?"

Had there been any discussion on the Miller Board with respect to attracting take overs from other people? A. Yes, there had.

Q. When was it? A. To the best of my recollection, it was the meeting held on 1st June.

30 Q. What do you recall was then said? A. As I recollect, the Chairman made reference that he had had an enquiry from Ord-B.T. who are merchant bankers with the view, or they asked questions concerning the Miller company and advised us that they were considering the possibility of making a bid for the shareholding in Millers. Mr. Taylor said that at that stage he had not encouraged anyone to make a bid and Sir Peter Abeles said that in his opinion there was nothing wrong with this and that we should invite or encourage people to make a takeover bid. It was suggested that we do invite others to make a takeover offer.

40 Q. At p. 362 it was put to you the information given to Howard Smith was not made available to

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Ampol. Do you remember that? A. I don't recall it but if it is in the transcript.

Q. Well, it is there, the seventh question on that page:

"Q. Of course, this information was not made available to the other company in a takeover situation in relation to your company, namely Ampol, was it?"

and you answered "No." A. Yes.

Q. Now, did you have any belief as to whether any information respecting Millers' affairs was being received by Ampol? (Objected to by Mr. Deane; allowed)

10

Q. According to your belief, was any information regarding Millers' affairs made available to Ampol? A. Not directly from the company but it was my belief that it was possible that Ampol were in receipt of information regarding the company's affairs.

Q. Information of what kind? A. Cash flows and projected profit forecasts.

Q. In what way was it your belief that this was possibly going to Ampol?

20

HIS HONOUR: Mr. Glass, I am allowing you to ask these questions but it is in anticipation of your making it good. I don't know who is going to be identified now.

MR. GLASS: We will be tendering other evidence on it.

WITNESS: This information was given to Lady Miller's alternate director at the time who was a Mr. Wilkinson at this stage who is a partner in the firm of Abbot, Tout, Creer & Wilkinson, I think the full name is.

30

MR. GLASS: Q. And was any information - how was information regarding the company's financial position given to Mr. Wilkinson? A. He requested the information and asked if he could be given this information.

Q. And what was your belief as to the connection, if any, between him and Ampol? (Objected to by Mr. Deane)

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Q. As to the first leg, Mr. Koch, information moving from Millers to Mr. Wilkinson, over what period did it happen and to what matters did it relate?

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10 HIS HONOUR: Perhaps, just in furtherance as I have over-ruled Mr. Deane's objection, I have permitted you to ask Mr. Koch this because he has been criticised himself for making this information available to Howard Smith. I have allowed you to ask whether he believed that Ampol had this. He has said "Yes"; he has identified the source that he had in mind. Now you are seeking to corroborate his belief by his belief of other matters as to which there may or may not be first hand evidence. I think you have got the fact of his belief and I think that is as far as it is open to you to go.

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20 MR. GLASS: Very well, I won't go any further.

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Q. On p. 368 I think you were asked about the letter Howard Smith said they were sending to the Stock Exchange. Do you remember that? A. Yes.

Q. He, Howard Smith, indicated what was in the letter and it was a complaining letter? A. Yes.

(Letter from Howard Smith to Sydney Stock Exchange dated 4th July, 1972, tendered without objection and marked Exhibit MH20)

Exhibit MH20

30 (Three letters between R.W.Miller (Holdings) and Potter dated 17th July, 1972, 18th July, 1972 and 19th July, 1972 tendered without objection and marked Exhibit MH21)

Exhibit MH21

Q. On p. 372 , third question, you were asked:

"Q. Which means it appeared that Howard Smith would not go ahead with its takeover offer?"

to which you answered:

"A. No, it did not mean that at all. No, it did not at all."

and this was after the joint announcement? A. Yes.

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Q. Now, I ask you what did it appear to you to mean? Perhaps I ought to read the earlier questions.

"Q. Did Mr. Taylor express any view to you on that? A. We did have the view that following the joint announcement of Ampol and Bulkships that it appeared that the minority shareholders could be locked into a regrettable situation.

"Q. Which means it appeared that Howard Smith would not go ahead with its takeover offer? A. No, it did not mean that at all. No, it did not at all."

10

What did it appear to you to mean, the joint announcement? (Objected to by Mr. Deane; allowed)

Q. I will ask the question again. A. Could I possibly see a copy of the transcript because I find it hard. I might have to go back further. (Witness refers to transcript).

Q. Following the joint announcement, what view did you have as to what appeared to be the position whether Howard Smith would go ahead or not? A. Could you read it again please.

20

Q. Yes, after the joint announcement, what was your view as to whether Howard Smith would or would not go ahead with the take over offer? A. My view was that I felt it was not certain that they would not go ahead with it because on a previous question I had answered that they could still go ahead and be content with 45 per cent but at this stage I realised that it was making it very difficult for them to go ahead but I was not convinced that they still would not.

30

Q. Now, at p. 376 - perhaps I ought to take you back to p. 376 and 376 . Do you see the questions and answers on pp. and ?  
A. Yes.

Q. Then at the top of p. 376 the question is:

"Q. I suggest to you that implicit in what you said was the further proposition and

40

then you could go ahead with the takeover?"

A. That was one of the reasons that I had in mind at that time.

"Q. It was the reason? A. It was one of the reasons."

I ask you now what were the other reasons which prompted you to make that suggestion? A. Could I just go to the first question on the top of p. Mr. Glass. That doesn't appear to read  
10 correctly.

Q. Which page? A. 376 . The question. Unless it read it incorrectly.

Q. It should read, I dare say,

"Q. I suggest to you that implicit in what you said was the further proposition that..."

MR. DEANE: Since it is my question, I suggest it should read "Colon quote and, and then unquote".

MR. GLASS: That does not identify what the  
20 further proposition is.

HIS HONOUR: It is a tortuous task to reduce this to grammatical regularity, Mr. Glass. I should have thought that the "and then" ought to mean "that", Isn't that so? Mr. Deane?

MR. DEANE: No, your Honour. What I was putting to him was implicit in it was the further proposition and when him talking to Howard Smith he said all those things, the proposition, and then they could go ahead with the takeover.

MR. GLASS: I really think one could bypass the  
30 obscure question and found upon the clearer answer.

HIS HONOUR: We will not touch the question, Mr. Glass, but if you summarise the topic that you conceive to have been propounded and then put your question to Mr. Koch, it will be easier.

MR. GLASS: Q. You recall, Mr. Koch, that on pp. 376 and 376 you made a suggestion that

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there would be an allotment of 3 m. shares at  
£2.50 followed by a placement of a further 10%  
which would raise £3 m. cash? A. Yes, I do.

Q. The matter was put and you said that going  
ahead with a takeover was one of the reasons you  
had in mind in making that dual proposal?

A. For Howard Smith to go ahead with the  
takeover, yes.

Q. And you said that was one of the reasons  
which prompted you to giving that dual proposal? 10

A. That is correct.

Q. I ask you what were the other reasons?  
(Objected to by Mr. Deane; allowed.)

Q. You suggested there were other reasons. What  
were they? A. Well, there were three reasons  
in total for my making this offer or suggestion  
for the acquisition of the Howard Smith tankers.  
The first reason was that I wanted the tankers.  
I thought it was in the best interests of the  
company to acquire these tankers. The second 20  
reason was that I maintained in the interests of  
all shareholders that the Howard Smith should be  
open and indeed not only the bid from Howard Smith  
but by the possibility of a bid from any other  
company who wished to acquire the shareholding in  
Millers and, in doing this, all of the shareholders  
in Millers would have been given the opportunity to  
accept a higher price for their shares than at  
that time appeared to be the situation. And the  
third reason was for the 10% placement that it 30  
would inject £3 m. into the company's funds which  
would certainly not be sufficient to overcome our  
difficulties but, as I could see it, it was the  
maximum that we could obtain.

Q. Consistently with what? A. With the Stock  
Exchange regulations.

Q. I think I will next take you to p. 377, the  
same page, two-thirds of the way down.

"A. First of all I wanted to test Mr.  
Howard Smith's reaction first of all." 40

Do you see that? A. Yes.

Q. What was his reaction? A. It was a very firm and flat refusal.

Q. And I take you to p. 391. At the very bottom you were asked:

"Q. Of course, insofar as the Bank of N.S.W. \$4.2 m. was concerned how much of that had not even been borrowed?"

You said "\$1.8 m."? A. That is correct, yes.

10 Q. I think this may have been covered before but was that \$1.8 m. on 6th July 1972 a forward requirement to meet a commitment? A. Yes, it was.

Q. Which commitment? A. The launching payment which would become due to the Commonwealth at about November or December this year.

Q. Now, on p. 393, five questions from the bottom, you were asked:

20 "Q. Did Mr. Taylor ever tell you whether he had had a telephone conversation with Mr. Duncan on either 4th or 5th July?  
A. Not to my recollection he did not."

Now, do you wish to make any comment on that answer?  
A. Yes, I do, Mr. Glass. I do recollect Mr. Taylor telling me that he had had a discussion with Mr. Duncan at about that time. I am not sure what day it was.

30 Q. On p. 399 it was put to you that the liquidity prices really began after the death of Sir Roderick Miller in April 1971 and you said it really preceded that event. Do you remember that? Do you remember saying that? A. I remember saying it. I can't find it here, Mr. Glass.

Q. Halfway down, the answer.

"A, As I say, Mr. Staff, they disciplined us before Sir Roderick's death."

A. Yes.

(Four letters dated 9th February 1971, 19th March 1971, 22nd March 1971 and 24th March 1971, from the Bank of N.S.W. Section added to Ex. MH.12.)

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Further Cross-examination by Mr. Deane Q.C.

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Further cross-examination by Mr. Deane Q.C.

MR. DEANE: Mr. Koch corrected an answer he gave to my cross-examination yesterday. I would like to ask him some questions about it.

HIS HONOUR: This is on page?

MR. DEANE: Page 393 , five lines from the bottom.

HIS HONOUR: Yes, very well, I will permit you to re-open that, Mr. Deane.

MR. DEANE: Mr. Koch, the question I am referring to is the matter of a telephone conversation on 4th or 5th July between Mr. Taylor and Mr. Duncan?

10

A. That is correct, yes.

Q. What did Mr. Taylor tell you? A. He just told me that he had spoken to Mr. Duncan. I think it wasn't even - he did not speak to me personally on it face to face. I think he buzzed me on the intercom and said he had just spoken to Peter Duncan and that is all that was said.

Q. About what? A. He did not mention anything about anything.

Q. What was your understanding? (Objected to by Mr. Glass)

20

Q. I will re-phrase the question. Was there any context which gave meaning to your buzzer going and somebody saying "I have just spoken to Peter Duncan" and saying nothing else? A. That quite frequently happens. Mr. Taylor would buzz me on an average of about 50 times a day.

Q. What I am asking is was there any context which gave, as it were, meaning to Mr. Taylor buzzing you saying "I have just spoken to Peter Duncan" and saying nothing further? A. He did not say anything further.

30

Q. Do you understand my question? A. Yes, I understand your question.

Q. If, for example, before Mr. Taylor rang Mr. Duncan you and he had been discussing a matter and it had been said that the views of Duncan on that matter might be relevant, there would be a context for the statement "I have just spoken to Peter Duncan"? A. Yes.

40

Q. Was there any such context? A. No. To my recollection, I had not seen Mr. Taylor prior, that morning or that afternoon, whenever it was.

Q. So, so far as you were concerned the only point of Mr. Taylor's communication was to let you know that he had spoken to Mr. Duncan but not to give any indication of what he had spoken about? A. That is correct. That is what he said.

10 Q. When was this conversation or this buzzing?  
A. I am not sure of the date. The question was either the 4th or 5th July and it would have been either 4th or 5th July. I would think 5th July in the morning.

Q. Can you try and fit it into your narrative of the discussions between the Howard Smith representatives and yourself and the Miller representatives? A. On 5th July?

20 Q. Well, thereabouts, to the best of your recollection, does it come in the chronology?  
A. To the best of my recollection it would be on the morning of 5th July.

Q. After the meeting of 4th July? A. Yes.

Q. And before the Board room lunch on 5th July?  
A. Yes, in my recollection, yes, it would have been before that.

30 Q. Was anything further said about Mr. Taylor's conversation with Mr. Duncan on 5th July?  
A. Not that I recollect. To be honest, I don't even recollect Mr. Taylor being at the luncheon on 5th July.

Q. Who placed or arranged the 'phone call to Mr. Duncan on the morning of 6th July? A. The morning of the 6th - I wouldn't know.

Q. You did not? A. No, I didn't no.

(Witness retired and excused)

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Mr. Glass Q.C.  
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ARCHIBALD NORMAN TAYLOR  
Sworn, examined as under:

MR. GLASS: Q. Mr. Taylor, what is your full name?  
A. Archibald Norman Taylor.

Q. Where do you live? A. 2 Kellaway Street,  
East Ryde.

Q. When did you first become associated with  
Millers? A. In 1954.

Q. What kind of employment had you previously  
followed? 10  
A. Immediately prior to joining?

Q. In your working life just in general terms,  
Mr. Taylor? A. I had worked as an assistant in  
a retail store at Anthony Horderms in Sydney after  
leaving school.

Q. Yes. A. I had been a soldier, I was a soldier  
for five years in the A.I.F. After the war I went  
back to the retail store for a few months and then  
I went to Fiji, the Fiji Islands, where I  
assisted to run a cattle station. Later I worked 20  
for His Majesty's Customs as a Grade II Customs  
Officer. Then, after that, I joined Pan American World  
Airways as a traffic representative at Nadi Airport  
in Fiji. I returned to Australia in 1950 and  
joined British Commonwealth Pacific Airlines and  
I flew with that company as a ship's pursar for  
12 months. I later became the Airport Base Traffic  
Officer in charge of the Mascot Airport for British  
Commonwealth Pacific Airlines. In 1954 when  
Qantas took over that airline I went with Qantas 30  
for about a week or two and then I joined Miller &  
Company.

Q. In what capacity did you join Millers?  
A. There was no job description really. I joined  
Millers primarily as a coal salesman but I was also  
involved in hotel work, the acquiring of sites and  
the general pursuit of transferring the licences  
of hotels from one site to another and my main job  
there was to encourage witnesses to give evidence  
to the Licensing Court on the needs or otherwise 40  
of the licence. But I gravitated back to coal and  
I found out I had a greater love for coal than I  
did in the hotel field.

Q. The encouragement of witnesses. Well, Mr. Taylor, what job did you assume in 1958? A. In 1958 I was transferred to Melbourne as sales manager for R.W. Miller & Company and the other associated companies that were there including Road Transport and subsequently I was made shipping manager and not long after that I was made Manager for Victoria.

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10 Q. Approximately when would that have been?  
A. Early 1959.

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Q. How long did you retain the position as Manager for Victoria approximately? A. For about ten years. It was about 1968 when I returned to Sydney.

Examination by Mr. Glass Q.C.

20 Q. You came back to Sydney to assume what position? A. I came back to Sydney to assist Sir Roderick Miller and we had a lengthy discussion about what title I did have and some argument and it was eventually resolved by the late Sir Roderick that I should be entitled Assistant General Manager when in fact I was more concerned with Assisting Sir Roderick in most activities of the company, no specific task, that I felt, Mr. Glass, that the title Assistant General Manager was rather a misnomer for the various activities for which I was engaged in.

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Q. At that time what positions did Sir Roderick hold? A. He was chairman and managing director.

30 Q. And as assistant general manager, were you concerned with all the company's activities at that time? A. No, I was not concerned with all of them. I was given various tasks. Usually a lot of the misfit jobs, the ones that needed further investigation and sometimes it could be described as a trouble shooter; it involved talks with unions, Government officers, There was no specific task particularly in regard to administration.

40 Q. Did you in October 1968 become a director?  
A. Yes.

Q. And remain a director since then?  
A. Yes, that's correct.

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Q. What re-organisation occurred in April 1971 on the death of Sir Roderick Miller? A. A few days after Sir Roderick died I contacted all of the directors after consultation with Mr. Anderson who was the general manager and also a director and we called a Board meeting and I nominated Mr. Anderson as chairman and managing director. He declined this position and he re-nominated myself as chairman and joint managing director with himself as managing director. This was ultimately carried by the Board. 10  
At about the same time - when I say "on the same day" Lady Miller was invited to join the Board. These moves had the complete accord of the other directors.

Q. For how long did he continue to be a joint managing director with you? A. Till the end of last - or January this year; till the end of last year.

Q. And since then you have been the sole managing director? A. Yes. 20

Q. And since April 1971 chairman of the Board? A. Yes, that's correct.

Q. Now, when the death of Sir Roderick Miller occurred did you then apply yourself to the study of all the affairs of the Miller Group?

A. Personally I did not apply myself to all of the activities of the Miller Group. It was a rather enormous task to do that - but I set in train certain committees, primarily the finance committee, and subsequently the management committee with - - 30

Q. May I interrupt to ask you this: what did you find to be the financial position of the company when you took over as chairman? A. I found that we were in a very tight position of liquidity and we had - and I was advised by the finance committee that I had formed almost the day after being chairman that we had no money to move with. We were in a very tight position and in a bind.

Q. Who were the members of the finance committee appointed and when? A. Mr. Koch was chairman, Mr. Harry Ellis-Jones, the company secretary, Mr. Frank Murphy, Mr. Walker. I think that comprised the finance committee. 40

10 Q. Did the Board give general instructions to that committee as to what it should do? A. No. My idea in forming the management committee and particularly the finance committee - their first task was to find money and it was almost as briefly as that, to use every endeavour they could to find money, to get long term loans, and the idea of getting the information together - then I instructed them to get information together so I could report to the Board the exact financial situation that the company was in. This was done on my own volition before we had actually had a Board meeting. I had to have some basis and the only basis I could get this information was from the senior members of the staff and I was trying to get them to paint a picture to me so I could explain to the Board the exact situation of the company.

20 Q. Did that finance committee continue to function from then until July 1972? A. Yes, with the addition of Mr. Cameron who joined the finance committee in about June 1971.

Q. By what means were the views of the finance committee made available to the Board? A. Made available to the Board through the presentation of the general manager's report on one hand and also by some figures prepared by the secretary of the company showing the monthly figures.

30 Q. To what extent did you rely upon the information coming to you from the finance committee and the general manager and secretary? A. I relied wholly upon them.

40 Q. You have said earlier, Mr. Taylor, that one thing with which the finance committee was charged was to obtain long term finance, What was the company's decision with regard to long term finance when you took over as chairman? A. To the best of my belief, the company had no long term finance. I had been with Sir Roderick Miller to the Bank of N.S.W. just the week before he had died when we were negotiating some long term finance and to the best of my belief and knowledge we were dependent upon short term moneys only and on bank overdraft and we were applying to extend the overdraft and also seek long term finance.

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Q. How did it come about that you were without long term finance and dependant upon short term finance? A. I don't know the precise details of how it came about. I do know that at the time of the "Amanda Miller" fire and subsequently with the Minsec crash that negotiations that had been in hand with Chase Manhattan, that negotiations for long term finance had been withdrawn but I don't know any other details.

Q. Did Sir Roderick ever express any views on that subject to you? A. For many years - well, for many years during my conversations with him, he gave me the impression that the secretary and others were keen to enter into long term finance and he at that stage was not particularly happy about long term finance. He wanted to rely more on bank overdraft - this is as he explained it to me - over a period of many years.

10

Q. Did he give any reasons for that preference?  
A. No, I can't recall him giving any reasons.

20

Q. To what extent did his views prevail in the management of the Miller Group? A. Sir Roderick Miller had the say as to the finances of the company.

Q. Now, do you recall an occasion within a week or so of the death of Sir Roderick Miller when you discussed the company's finances with Sir Peter Abeles? A. Yes, within a week or so of Sir Roderick's death, Sir Peter Abeles invited me to his office and asked me to bring with me a statement as to the company's exact or precise financial situation. As I did not have ready access to this, I asked Mr. Murphy and Mr. Harry Ellis-Jones to get some figures together...

30

Q. Now, what are their positions in the company?  
A. Mr. Harry Ellis-Jones is the company secretary and Mr. Murphy is my executive assistant.

Q. Yes. A. And some figures were...

MR. GLASS: It has been brought to my attention, your Honour, that Sir Peter Abeles is in Court. I would propose to comment on that if he chooses to remain.

40

HIS HONOUR: Mr. Lockhart, it is a matter for you. Your client is entitled to remain here.

MR. GLASS: Q. Who accompanied you to see Sir Peter Abeles? A. Mr. Ellis-Jones and Mr. Murphy.

Q. What was said? A. Sir Peter Abeles studied the figures very quickly and came to the conclusion...

Q. Perhaps you had better just tell us what he said, Mr. Taylor? A. I can't recall the exact words.

Q. Not the exact words but the sense? A. He commented that the company could not go ahead with the construction of the "Robert Miller", the tanker the "Robert Miller" as we did not have the money available to do so nor did we have any loans available whereby we could raise the money and I told him - I remember what I said at the time. I said "Well, I can't see how we can get out of it. We are irrevocably committed to the Commonwealth Government to go ahead with the construction."

Q. What did he suggest should be done? A. I can't recall at that meeting that he suggested that we should do anything.

Q. About the "Robert Miller" for example? A. He did not make any suggestions. To my knowledge he did not. I can't recall if he did.

Q. Do you recall something happening with respect to Lady Miller round about 14th January 1972? A. Yes.

Q. How did you first learn what was happening? A. I had received a 'phone call in that afternoon from either Lady Miller or her solicitor, Mr. Wilkinson, to attend a meeting of Romanda which was a private family company and substantial shareholders in R.W. Miller (Holdings) Limited, to attend a meeting at the offices of Abbot, Tout, Creer & Wilkinson. They asked me to come up at about 5 or 5.30 p.m. I forget who asked me, whether it was Lady Miller or Peter Wilkinson.

Q. Do you remember what you were asked to come for? A. Yes, I was asked to come up and discuss

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with them the sale of the Romanda shares to K.C. Sleigh and an amount was mentioned of about \$1.85 per share.

Q. Could I interrupt you to ask your position in Romanda Pty. Limited? A. I am a director of Romanda Pty. Limited.

Q. Who were the other directors? A. The other directors of Romanda were Lady Miller at that time and myself. There were only two directors, Lady Miller and myself. 10

Q. Were other directors later appointed? A. There were three other directors later appointed who at this stage were trustees - they were trustees of Romanda - that is, Mr. Bob Nicholl, Senior, Mr. Norman Middleton and Mr. Keith Pitt. At this stage they were trustees.

Q. Of the Will of Sir Roderick Miller? A. Well, I believe they were the trustees of the Will, yes, and as such they - I believe they were trustees of Romanda Pty. Limited. 20

Q. When did those three join the Board of Romanda? A. After the meeting on January 14th and before May; I think it was April.

Q. Now, you were telling me at a time when you and Lady Miller were the only directors you were asked to come down to discuss an offer from Sleigh to buy the Romanda shares of Millers at \$1.85? A. Yes.

Q. What happened when you got to the offices of Mr. Wilkinson? A. I was then advised by Mr. Wilkinson that Lady Miller had made up her mind to sell the shares to Ampol at \$2.11 per share and no mention was made of the H.C.Sleigh offer and I raised this point. I said, I did not come here to discuss an Ampol offer that I had no knowledge of; I came here to discuss the H.C.Sleigh offer. They said "Well, this has come in since then." When I said "They said it" most of the talking was done by Mr. Wilkinson who was Lady Miller's solicitor. 30

Q. Yes. A. And Lady Miller then advised me that she had made up her mind to sell. She wanted 40

the matter concluded and she wanted me to merely sign a piece of paper as a director. She would add the seal to it and that the matter would be all completed, then I could quickly get out of the building and go back and join my wife who was waiting for me at the French Tavern for dinner. It was quite a simple matter as she put it.

10 Q. Yes. A. I said now, you know, "What are the terms of the offer? Is it cash?" and in reply to that Mr. Wilkinson said that 400 - I believe it was Mr. Wilkinson. I don't recall back to January but I was informed that \$400,000 had been lodged to the credit of Romanda at Capel Court and there were some other questions I asked. I was most reluctant to sign any piece of paper.

Q. Can I ask you this. Who was Lady Miller's alternate director on the Board of Millers?

A. I believe it to be - I don't know - I don't know to be honest.

20 Q. I suggest it was Mr. Wilkinson? A. No, I wasn't going to suggest that. I thought Mr. Anderson was Lady Miller's alternate.

Q. Well, was there, according to your belief, any connection between Mr. Wilkinson's firm and Ampol? (Objected to by Mr. Deane).

30 Q. Now, did you speak to anyone about this proposal while you were still in the office of Mr. Wilkinson when your wife was in the French Tavern? A. Yes, Mr. Glass, I immediately contacted the three trustees and I made it clear to Lady Miller and Mr. Wilkinson that I had to get the trustees' position in this as they were the shareholders, representing the shareholders who were the children, and I contacted Mr. Middleton and I asked him if he had any knowledge of an Ampol offer and he said, no it is news to him, "What do you think about it?" and I said "Well, I haven't had much time to think about it to be honest" and we had some discussion there  
40 and he said "What does Bob Nicholl, Senior, think about this? I think we should take a lead from him." I rang Keith Pitt and I got a similar reaction, similar reply, but the reply was to that effect they were in doubt and would more or less go along with what Mr. Nicholl said. I rang Mr. Nicholl, Senior...(Objected to by Mr. Deane.)

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HIS HONOUR: At this stage I reject the evidence. You may seek to re-open it later.

MR. GLASS: Q. Well, you spoke to Mr. Nicholl - don't tell us what he said - and did the discussion terminate there or was it adjourned to some other office? A. It was adjourned to the offices of Dawson & Waldron in the same building.

Q. Who was there? A. Mr. Mac Leonard, Mr. Ted Harris, the secretary of Ampol, Bob Summervale and another solicitor.

10

Q. Mr. Leonard and Mr. Harris are executives of Ampol, are they? A. Yes.

Q. In that company what was put to you and who put it? (Objected to by Mr. Lockhart).

HIS HONOUR: It will go in as evidence of what took place. Whether it is evidence against your client in that sense but you are not said to be there.

(Luncheon adjournment)

MR. GLASS: Q. I think before lunch, Mr. Taylor, you had carried the narrative to the point where on this Friday you were in the office of Dawson Waldron with Mr. Summervale and Mr. Leonard and Mr. Harris, is that right? Was anyone else there? A. Mr. Glass, I am not certain whether it was - I feel certain it was 14th January but whether it was the Friday or not - it could have been a Thursday - it was late in the week. It could well and truly have been but I am familiar - I am up to that stage where we are in the office of Dawson Waldron.

20

Q. All right, what was said to you there? Was there anyone else there besides the names I have mentioned, Messrs. Leonard, Harris, Summervale and yourself? A. Lady Miller, Mr. Wilkinson and another solicitor.

30

Q. Was a Mr. Binstead there? A. Mr. Binstead is the chief secretary of Ampol. I believe he was there.

Q. Who did the talking in that office? A. To the best of my recollection, Mr. Summervale reiterated the proposition that Mr. Wilkinson had made. I am not certain - I had not met Mr. Summervale before and there could have been some other solicitor but it was certainly not Mr. Mac Leonard or Mr. Harris or Mr. Wilkinson.

10 Q. What did he say? A. He said to me that "I trust, as a director, Mr. Taylor, you realise your responsibility inasmuch that if Romanda do not obtain \$2.11 that you would be held responsible or you could be held responsible for the difference between that amount and any lesser amount" and I replied "Well, this is surely not so. If there is any justice - if I obtain a higher amount for Romanda, the position must be reversed," and he said "No, that is not so".

Q. There is no justice? A. There is no justice. I did use those words.

20 Q. Did you have any further discussion with anyone?  
A. Yes, Lady Miller at this stage was in a rather highly emotional state and wanted the matter concluded and she and I became engaged in some side conversation at which time Mr. Leonard very courteously said "Perhaps you would like to discuss this in an adjoining office" in the  
(sic) adjoining office to which they were at within the offices of Dawson Waldron. We adjourned to the adjoining office and went through the same...  
30 (Objected to by Mr. Deane; allowed.)

40 Q. Now, what was said between you and Lady Miller with respect to the Romanda shares? A. Lady Miller was still insistent that I would sign, that I should sign the document because she had made up her mind and also that she wanted to get rid of the matter and she was going to Fiji the following day or within a few days on holidays and she wanted it all signed and sealed. Mr. Wilkinson had mentioned that Mr. Conway who at that stage, no, prior to this, had been with McElbones and was the architect of Romanda Pty. Limited and perhaps the late Sir Roderick's Will and they asked me would I ring him. Mr. Wilkinson asked would I ring him as he had such an intimate knowledge of the affairs of Romanda and I said that I would not ring him but if he wished to ring him I had no objection

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but in any case it would not have any bearing because my mind had been already made up that I would not sign the document.

Q. And the discussion concluded, did it, on that note that you were not agreeable to sign?

A. I was not agreeable.....?

Q. You were not agreeable... (Objected to by Mr. Deane; rejected.)

Q. On what note did the discussion... (Objected to by Mr. Deane.) A. I left Lady Miller and Mr. Wilkinson who were both together with the firm understanding that I would leave the building as soon as courtesy would permit me to do so.

10

Q. What was the next information you had with respect to the Romanda shares? A. The next information I had was - the next information I had - Mr. Glass, I really don't understand "The next information".

Q. All right. When did you next hear from anybody about the Romanda shares? A. Thank you. Sir Peter Abeles rang me sometime prior to 26th January and said that he, on Bulkships' behalf, wished to make an offer for the shares held by Romanda and other associated Miller family companies and to whom - and he requested of me to whom he should approach and I suggested it was Mr. Bob Nicholl of the firm of Nicholl & Nicholl, Bob Nicholl, Senior, who at this stage - no, he was a trustee...

20

Q. Before you continue with that conversation, was there any discussion between you and Sir Peter Abeles between the night you were in the offices of Dawson Waldron and the time that he rang you about getting in touch with Nicholl? A. I believe that I contacted Sir Peter Abeles and told him of the details of Ampol's offer.

30

Q. Yes, how did you do that? A. By telephone.

Q. Well, tell us what it was you said to him and what he answered? (Objected to by Mr. Deane.)

HIS HONOUR: A question has arisen regarding the admissibility of discussions between individual

40

directors. Insofar as such discussions may be relevant to the critical events of 6th July I am of the view that I should admit evidence of the terms of such discussions. The question of relevance is subject to some uncertainties and will, of course, depend upon what particular discussions are sought to be tendered in evidence. Objections as to relevance will have to be taken as and when counsel may conceive them to lie. So far as concerns admissibility, however, I shall rule now that I shall admit evidence of discussions between directors relevant to the critical events of 6th July. I shall allow the question.

MR. GLASS: Q. Now, you were going to tell us what was said in this conversation between you and Sir Peter Abeles about the Ampol offer? A. Yes, Mr. Glass. I advised Sir Peter on the telephone that Ampol had made an offer.

Q. Did you tell him how much? A. Yes, I believe I did.

Q. What did you say? A. He said he would talk to...

Q. But what price did you tell him? A. \$2.11 per share.

Q. What did he say? A. I don't remember the precise words that he used, Mr. Glass, but he did say that he would talk to Mac Leonard about this matter.

Q. Did he say in what manner he would talk to him? A. Yes, he said he would talk to him on the telephone.

Q. Did he say what he would put to him? A. Yes, my recollection of the conversation is that he used the words that he would pull Mac Leonard off.

Q. Did he give any reason why that would be his approach? A. No, he did not give any reason.

Q. Did he say how he came...

MR. LOCKHART: Could we have the conversation.

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MR. GLASS: Q. Is there anything else of the conversation you are able to recall, Mr. Taylor?  
A. No; I don't recall much more of the conversation.

Q. You were about to tell me of another occasion when Sir Peter Abeles spoke to you about seeing Mr. Nicholl? A. Yes.

Q. About when was that? A. I think that was on 25th January when we finally made an appointment to see Mr. Nicholl, Senior, of Nicholl & Nicholl, solicitors, in Bligh Street, the p.m. of 26th January. We arrived at the offices of Nicholl & Nicholl independently and I introduced Sir Peter to Mr. Bob Nicholl.

10

Q. Was anyone else beside the three of you present? A. No, there was only the three of us.

Q. Well then, what was said? A. Sir Peter Abeles said to Bob Nicholl, apart from exchanging the normal pleasantries, he offered, he made an offer on Bulkships behalf.

20

Q. As best you can, according to the best of your recollection, what was the substance of what he said? A. The substance of what he said was that as a director of Bulkships he was empowered to make an offer on their behalf for the acquisition of all of Romanda and the Miller companies' shares at S/2.40 per share. He also said he was prepared to match any other offer and in reply to my question, a question of mine, I said to him "Is that for part or whole?" He said "Either part or whole of the Romanda shares and the associated family companies." Mr. Nicholl said that he would have to discuss this matter with the Romanda Board and the meeting did not last very long. There was some...

30

Q. Approximately when was that meeting? A. At about 3 o'clock on 26th January to the best of my recollection. There was some conversation by Sir Peter Abeles that I felt it important to mention that I had overlooked before, Mr. Glass.

40

Q. When was this? A. At the meeting with Mr. Nicholl, Sir Peter Abeles did explain that he had

an agreement with the late Sir Roderick Miller that neither he nor Sir Roderick would sell unless they - sell any of their shareholdings unless they gave one another prior six months notice or six months prior notice and in view of the fact that Lady Miller had broken this agreement, he felt no longer honour bound by the agreement and he did not feel out of order by making an offer for the Romanda shares. There was some further discussion between Mr. Nicholl and Sir Peter regarding the validity of this agree-  
 10 ment, this verbal agreement, and I assured Mr. Nicholl that Sir Roderick Miller had discussed this matter with me.

Q. Now, when was any discussion held by the Romanda Board regarding any offer to buy the Romanda shares? A. I don't remember the date but it was at the next Board meeting of Romanda that the trustees were put on to the Board and made directors as well as trustees. That is, Mr. Bob  
 20 Nicholl, Senior, Mr. Pitt and Mr. Middleton. It was considered then... (Objected to by Mr. Deane and Mr. Lockhart.)

Q. I am asking, Mr. Taylor, about decisions taken at the Romanda Board meeting regarding the sale of Romanda shares in Millers? A. ~~The decision taken by the Board was to employ a firm of chartered accountants to assess the value of the shares and also a legal opinion was sought in relation to, I believe, the duties of the trustees and directors.~~

30 HIS HONOUR: Mr. Deane, I will have that struck out if you wish.

MR. DEANE: Yes, I would.

(Previous answer struck out at his Honour's direction.)

MR. GLASS: Q. What decision was taken with respect to the sale or the acceptance or the rejection of the Bulkships' offer? (Objected to by Mr. Staff.)

40 Q. Did the Board of Romanda decide to accept or to reject or not to deal with the \$2.40 offer from Bulkships? A. They decided to defer the offer ~~mainly upon my representations.~~

(Portion of above answer struck out at his Honour's direction.)

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MR. GLASS: Q. What was the next thing that happened at any meeting of the Board of Romanda regarding any offer for Romanda shares in Millers?  
A. Some few days before or probably the day after, 12th May, Mr. Nicholl rang me and told me if...  
(Objected to by Mr. Deane.)

HIS HONOUR: Q. This is Mr. Nicholl, Senior?  
A. Mr. Nicholl, Senior, your Honour. He rang me...

HIS HONOUR: Just a moment. I will permit you to prove the objective chain of events in Romanda but not discussions. 10

MR. GLASS: Q. At the time that the Ampol offer was made had any information been given to the Board of Romanda as to whether the Bulkships' offer was still available or had been withdrawn?  
(Objected to by Mr. Deane.)

Q. Had anything happened or had anything been said to the Board of Romanda prior to 12th May with regard to the continuance or the withdrawal of the Bulkships' offer of \$2.40 for the Romanda shares. 20

HIS HONOUR: That question is objected to and I shall allow it.

MR. GLASS: Q. Do you remember the question?  
A. Yes, Mr. Glass. I was advised that...

HIS HONOUR: Just take it step by step, Mr. Glass. The answer is yes. Next question.

MR. GLASS: Q. Where had that information been given to you? (Objected to by Mr. Staff; allowed.) A. By telephone from Mr. Nicholl to me. 30

Q. Now, can I shift it to another locus or another situation; in the Board room of Romanda was anything said about this \$2.40 offer? (Objected to by Mr. Staff.)

HIS HONOUR: Q. That is a "Yes" or "No"? A. Yes.

MR. GLASS: Q. Now, would you please tell us what was said in the Romanda board room? (Objected to by Mr. Deane.) 40

HIS HONOUR: Q. This is by one of the Romanda directors? A. By the chairman of the Board. Mr. Nicholl, Senior, had been appointed chairman of the Board of Romanda Pty. Limited.

Q. And this was at a Board meeting of Romanda?  
A. That is correct.

10 HIS HONOUR: No, I will not allow it, Mr. Glass. It is sought to tender evidence establishing, so it is said, the withdrawal by Bulkships of its offer to Romanda for the Miller shares. If this offer was withdrawn then I would be disposed to admit evidence of that fact. The withdrawal was apparently oral from an officer of Bulkships to Mr. Nicholl. I would admit evidence either from the Bulkships officer or from Mr. Nicholl of the oral withdrawal. Mr. Glass seeks as the next link in this chain of evidence to carry knowledge of this withdrawal through from Mr. Nicholl to the Board of Romanda. I shall admit evidence of Mr. 20 Nicholl's communication of the withdrawal to Romanda if that indeed took place but I do so only in anticipation of one or other of the parties to the oral withdrawal later giving evidence of the alleged withdrawal. In the absence of such later evidence then the evidence I shall now admit of Mr. Nicholl's report to the Romanda Board will be disregarded.

30 MR. GLASS: Q. Now, Mr. Taylor, limiting your answer to the terms of my question, what did Mr. Nicholl tell the Board on this subject? What did he report to the Board? A. He reported to the Board that the Bulkships' offer had been withdrawn.

Q. Did he make any report to the Board as to the existence of any other offer for Romanda shares?  
A. Yes, he announced... (Objected to by Mr. Deane.)

40 HIS HONOUR: Upon the same basis as I have admitted evidence of Mr. Nicholl's report to the Romanda Board of the withdrawal of the Bulkships' offer, I shall admit evidence of Mr. Nicholl's report to the Board of the Ampol offer.

MR. GLASS: Q. Mr. Taylor, what was it that

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Mr. Nicholl said to the Board with respect to any new offer that had come to hand? A. He had spelled out to me the details of an offer that had come to hand from Ampol.

Q. What did he say it was worth? A. And he stated that the trustees had considered it the day before.

HIS HONOUR: Just a moment, Mr. Glass, I am only going to let you adduce evidence of the Ampol offer produced to the Romanda Board. 10

MR. GLASS: Q. At the Romanda Board meeting did Mr. Nicholl say anything about an Ampol offer?  
A. Yes.

Q. How much did he say they were offering?  
A. \$2.25.

Q. Was that subject to anything? A. With a proviso that this could be increased to \$2.27.

Q. In what circumstances? A. In the circumstances of the trustees being able to persuade Millers Services to a disposal or to sell their shares in Miller (Holdings), the proviso then, increase the Romanda shares to \$2.27 and the Miller Services shares to \$2.27. 20

Q. Mr. Taylor, you can take it that an agreement for the sale by Romanda of its shares in Millers to Ampol was executed on 12th May? A. Yes.

Q. Following that occurrence did Millers write to any company? A. Miller (Holdings)?

Q. Yes. A. Yes, Mr. Glass.

Q. Well, you wrote... A. I believe we did write a letter to Ampol and I think it was on 16th May 30

Exhibit D

Q. Yes. Well, that letter is in evidence as Ex.D, part of Ex. D. (Approached) Do you recall that letter of 16th May, part of Ex. D? A. Yes, Mr. Glass. Yes, I recall that letter.

Q. Who were the persons responsible for drafting that? A. Myself, Mr. Harry Ellis-Jones, the secretary, Mr. Koch.

Q. Did you ever get any reply to it? A. No.

x.H. Q. Did you write a further letter to Ampol dated  
 x.J. 29th May, part of Ex. H, which is alone and did you  
 receive in reply to that a letter of 31st May which  
 is Ex. J? A. I am at a great handicap.

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10 Q. Yes, well, I will try and overcome it for you.  
 Take your time in looking at that letter of 29th  
 May and the reply of the 31st? A. Yes, Mr. Glass,  
 I recall authorising this letter to go and also  
 recall receiving the reply from Ampol.

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Q. Now, comparing the terms of your letter of 29th  
 May and the reply of 31st May - perhaps you had  
 better not answer this question for the moment -  
 was it your view that Ampol had answered the  
 questions that you asked in your letter? (Objected  
 to by Mr. Deane.)

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20 Q. Mr. Taylor, I overlooked to ask you whether you  
 had any conversation with Sir Peter Abeles shortly  
 after the agreement of 12th May between Romanda  
 and Ampol, a conversation in particular with regard  
 to the Board of Millers? A. I had some conversa-  
 tions after 12th May with Sir Peter Abeles. The  
 one I recall was a discussion in his office  
 together with Mr. Koch and Mr. Aston.

Q. I think that is a later point of time from the  
 question that I am now putting to you. There was  
 some earlier discussion between him and you by 'phone?  
 A. Oh, Mr. Glass. I informed Sir Peter Abeles...

MR. LOCKHART: When was this?

30 MR. GLASS: Q. Approximately how long after the sale  
 by Romanda of the shares in Millers? A. I think  
 the next day.

Q. Well, what was the conversation? Who was the  
 one who paid for the call? A. I think it was my  
 call. I rang him, R.W. Miller & Company. I don't  
 recall the substance of the conversation, Mr. Glass,  
 apart from my informing him...

40 Q. Well, can I prompt you by asking if you had any  
 conversations with him with regard to Lady Miller's  
 position on the Board? (Objected to by Mr. Lockhart;  
 allowed.) A. Yes. Thanks, Mr. Glass. Your

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prompting has prompted my memory and I do recall advising Sir Peter Abeles that the Romanda sale had just about been completed - it was dependent on the superannuation I think; there was seven days' notice of that - and he said - he later rang me back and said "As a matter of courtesy, Archie, why don't you invite Mr. Mac Leonard on the Board?" and I explained to him there were no vacancies on the Board and he said that notwithstanding the fact that there were no vacancies that as Lady Miller had sold the shares that she should be invited to resign and when the vacancy occurred and if this was effective and if I was effective in getting her resignation that Mr. Mac Leonard should be given the opportunity to join the Board in view of the size of the shares that were held by Ampol or were about to be held by Ampol. I am a little uncertain as to the dates. I did ring Mr. Mac Leonard and explained to him there was no vacancy and I said when a vacancy occurred I invited him to join the Board and he replied that he may not accept that. I did ring Lady Miller and I invited her to resign in view of the fact that she had sold or had proposed to sell - I think the sale had been completed by then. I invited her to resign to save her any embarrassment at an annual general meeting.

10

20

Q. And what did she say? A. And she refused.

Q. Did you pass that on? A. Yes. I don't think I passed it on immediately. I passed it on at a later date. ~~I don't recall passing it on immediately.~~

30

MR. DEANE: I don't know what that evidence was about.

HIS HONOUR: I think the last part of that should be struck out.

(Portion of answer struck out at his Honour's direction.)

MR. GLASS: Q. Did you inform Sir Peter Abeles of the reply to his suggestion from Lady Miller?

A. Yes. Yes, I did.

40

Q. You were about to tell us of a meeting on 5th June. Do you remember that? A. Yes. The

meeting on 5th June was held at the offices of TNT with Sir Peter Abeles, myself and Mr. Aston being the only ones present. I had asked Mr. Aston to arrange this meeting. I think it was the day before, and the meeting was held at about 5 or 5.30 p.m. at the offices of TNT in Macquarie Street with only those people I had previously mentioned being in attendance.

10 Q. What was the substance of the discussion at that meeting? A. Sir Peter Abeles told me that he was working for a final resolve for R.W. Miller and Company and he was hoping to come to agreement with Ampol and he proposed that the tankers would be put into a separate company, that the hotels be - we dispose of the unprofitable hotels and we develop other hotels and also that we dispose of the colliery interests of the company. I opposed the sale of the colliery as I always had opposed the sale of the colliery interests and he said he  
20 would argue about that and if I could convince him otherwise he would reconsider and he told me he was working towards making an arrangement to control R.W. Miller & Company with Ampol. He forecast there would be staff redundancy particularly at the senior level, but he assured me that any redundancy would be taken up by Ampol, I beg your pardon, by Bulkships-TNT-Union Steam.

30 Q. Was anything said about your own position? A. Yes, Sir Peter Abeles had told me that my position would be secure and that I would be chairman; ~~if-it-worried-me,-as-to-what-was-left-of-the-company,-I-would-be-chairman-of-nothing.~~ (Objected to by Mr. Lockhart.)

(Last part of answer struck out at his Honour's direction.)

MR. DEANE: If your Honour please, I am presuming that I am covered in relation to all this evidence.

HIS HONOUR: Yes, Mr. Deane.

40 MR. GLASS: Q. What was it you said to him when he said your position as chairman was secure? A. I did not say anything, I thought - I didn't comment on it.

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Q. Was there any discussion between you and him about other shares in Millers either then or on any other occasion? A. At that meeting?

Q. Well, was there at that meeting? A. No, not to my recollection.

Q. Was there any discussion between you and him about other shares in Millers on any other occasion? When I say "other shares", any Eastern Suburbs shares? A. Yes, I offered - during this discussion on 5th June I offered without authority a percentage swing of shares to Sir Peter Abeles assuming that he was talking on Bulkships' behalf - I offered to Bulkships through Sir Peter Abeles a percentage swing. I did not mention a price and I did not have any exact number in mind, but I did mention Eastern Suburbs Club, other Clubs and the Duncan shares.

10

Q. What did he say? A. He said that he was not interested in that. Subsequently I was more specific with him between 5th June and 23rd June - that was at a Board meeting. I rang him on one occasion in New Zealand and on one occasion I spoke to him in Sydney and I built it up in my mind to about 15% of the shares that I could probably influence towards Bulkships and he rejected this also.

20

Q. Now, can I take you forward to 16th June? We have been told that on that date representatives of Howard Smith came to your office. Do you remember the occasion to which I am referring? A. Yes.

30

Q. Do you remember the substance of the conversation which took place? First of all, who do you remember being there representing Howard Smith? A. Mr. Bill Howard Smith, the secretary, Mr. Maxwell, Capt. Evans and Mr. Griffin from Howard Smiths, and, on the Millers side, there was myself, Mr. Koch and Mr. Conway.

Q. What was said on that occasion? What was the substance of the conversation on that occasion? A. Mr. Howard Smith's prime concern when he came there was to see if we were interested in selling the tankers.

40

Q. He said this, did he? A. Yes. He wanted to know whether we would be interested in selling the tankers to Howard Smith.

Q. Yes. What answer was he given? A. He was given a positive "No" by me.

10 Q. Did you give any reasons? A. Yes, I gave the reasons that this was the major undertaking of the company; it would have to go to the Board, and probably to the shareholders, and I also considered that in view of the fact that Ampol had made a takeover offer for us at \$2.27 - I think they had made that offer on 24th May -

Q. Yes, that is right. It was 24th May. A. I considered that the major thing they had in mind was the tankers, and I would be in breach of the conditions of the takeover. So that it was quite a firm "No" he got from me, Mr. Glass.

Q. Did Mr. Conway say anything on that occasion? A. Yes, Mr. Conway did speak on that occasion.

20 Q. Will you tell us what it was that he said? A. Yes, he did comment that perhaps Howard Smith should consider making a takeover offer for the company.

Q. Did he give any reason why they should? A. No, I can't recall the reason he gave, but I can recall Mr. Howard Smith's comment on it.

30 Q. What was that? What was the comment he made? A. Mr. Howard Smith's comment was "What, do you mean the whole shooting box?", and Mr. Conway said "Yes," and Mr. Howard said "Well, we would be beaten before we started when two major shareholders have control of a high proportion of shares". I don't remember the percentages.

40 Q. Did Mr. Conway say anything in answer to that? Did he say anything with respect to the two major shareholders? A. I recall that Mr. Conway raised the point that there was doubt in his mind as to whether or not there was an agreement between Ampol and Bulkships. In fact, he raised the point about the payment of the additional 2¢ per share.

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Q. How did he raise that? What did he say in regard to that? A. He raised it by saying that he could not understand, if there was an agreement, why Ampol would pay an additional 2¢ per share for all of the Romanda shares just to acquire the Miller Services shares, and this led him to believe at that stage that there could be no agreement.

Q. Did Mr. Howard Smith say anything further before the meeting broke up? A. I don't recall Mr. Howard Smith saying anything further. No, I think he said "We will have to go away and think about this." I don't think that there was anything further said. 10

Q. Was anything said by him, for example, about tankers going to oil companies? A. Yes, that is right. I recall that. During the conversation he said "Of course, you realise, Archie, that if you go" - meaning Millers - "that we will be the next to go, and the whole of the cartage of the petroleum products by coast then would be in the hands of the oil companies, and there would be no more independent carriers." 20

Q. Was there anything said about Sir Roderick Miller in that context? A. Yes.

Q. Will you tell us what was said in regard to that? A. He also said that it would be a travesty to see tankers go to oil companies after the work that the late Sir Roderick Miller put in and the fight he had with regard to the establishment of the Australian tankers on our coast. 30

Q. Well, after that meeting of the 16th did your secretary, Mr. Ellis-Jones, tell you that Howard Smiths wanted to look at the books of Millers? A. I think it was Mr. Koch. Yes, he did ask. It was the 19th, and again on the 20th.

Q. Did you authorise the making available - (Objected to by Mr. Deane).

Q. What did you say to Mr. Koch or Mr. Ellis-Jones or anyone else about making available Millers records to Howard Smiths? What did you say in regard to that request? A. I advised Mr. Koch to make available all of the documents relating to 40

the company's business, asset backing, cash flows, projected cash flows, and anything relevant - charter parties, and anything relevant to the value of the company.

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10

Q. Was there any special conversation about the Cooper report? A. Yes. That came up on the 20th. I was in Melbourne then. I was in Melbourne on the 19th and 20th, and I was asked by Mr. Koch - I think it was Mr. Koch - I usually dealt through him in most matters - could they have a look at the Cooper Bros. report, and I said that to my knowledge it had not been completed, but "if you can ask the gentleman from Cooper Bros. to come down and explain what it is, I have no objection." I said that I had no objection to that course being taken.

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Q. Do you recall the circumstances in which that report was commissioned? A. Yes. It was commissioned by Mr. Aston to establish the asset backing of the company and other financial data so that the Board could consider the Ampol - so that the Board would be in a stronger position to consider the Ampol offer.

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Q. What knowledge did you have that Mr. Aston was obtaining a report? A. I did not personally have any knowledge of him obtaining it.

Q. Until it was received? A. Until it was completed.

30

Q. You said that you went to Melbourne on 19th and 20th? A. Yes, that is right. I was in Melbourne on the 19th and 20th.

Q. Did you see any director down there? A. Yes, I saw Mr. Balhorn down there.

Q. Did you say anything to him about what was happening? A. Yes. I mentioned to Mr. Balhorn that "We will probably get a takeover offer from Howard Smiths".

40

Q. Prior to 22nd June did you have any personal contact with the Howard Smith people? That is, between the 16th and 22nd. I will withdraw that.  
A. I am sorry?



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Q. I will withdraw that. On 22nd June did you receive the Howard Smith offer? A. Yes.

Q. By letter? A. Yes.

Q. Had you had any personal contact with them after the 16th June meeting and before you got the letter on 22nd June? A. No, I had not.

Q. What action did you take to inform directors when you did receive the letter? A. I informed all of the directors that we had received the offer. Now, whether I informed them all personally or not I don't know. I think Mr. Koch may have spoken to some of them. But we got a message out as quickly as we could on the 22nd that we had received this offer from Ampol - from Howard Smiths, I beg your pardon - that we had received this offer from Howard Smiths. 10

Q. Yes. Now, do you recall when the Board next met after 22nd June? A. Yes, I do recall. It was on 23rd June.

Q. When had that meeting been appointed? A. It had been appointed originally for 27th June, but on the 9th June we realised, or the secretary advised me there would be a printing delay, and we brought it forward to the 23rd. I don't remember the date when we brought it forward, but that was agreeable. 20

Q. What was the printing delay which caused you to bring it forward? Delay in printing what? A. The printing delay was the Board's recommendation on the Ampol offer. 30

Q. Part C statement? A. Part C statement. That is right.

Q. At the Board meeting on 23rd was the Ampol offer considered? A. Yes, it was considered by all of the directors. It was considered by all of the directors, and it was considered to be inadequate.

Q. Was there any dissent from that view on the part of any director? A. No, there was no dissent. 40

- 10 Q. What about the Part C statement? Was that also considered on 23rd June? A. Yes, the Part C statement was considered and it would be the Part C statement - the draft of the Part C statement had been prepared by the management team and probably myself assisting somewhere between the 9th and 23rd in anticipation of the offer being not recommended, and it was finally - some clauses were deleted. I don't remember the clauses. I don't remember the specific clauses that were deleted, but I think they were clauses in relation to the staff. However, it was agreed that the Ampol offer should be rejected on two grounds - one on the ground of inadequacy, and the other ground was on the fact that we had received a higher offer from Howard Smiths.
- 20 Q. Do you recall whether anything was said by Sir Peter Abeles at that meeting regarding his future movements? A. Yes. Sir Peter Abeles said - I think it was at that meeting - that he intended to go overseas on the 8th or 9th July.
- Q. Yes. What else did he say? Did Sir Peter Abeles say anything else? A. Regarding his movements?
- 30 Q. His intentions regarding the takeover situation. A. Just prior to the meeting closing he said that he would like the matter cleared up, and he would like some clarity on where Bulkships and Ampol lay, particularly in regard to an event that had occurred - that is, the tabling of the document of Howard Smiths intentions. He said that he would speak to Bulkships as a director and would also speak to Ampol, but not as a director of R.W. Miller & Company and try and ascertain what their plan was. He stated that he was concerned with the minority shareholders, and he also stated that he was concerned with the effect it had on the staff.
- 40 Q. Did he say anything about some hotel development? A. No, he did not say anything about that at that meeting. That came at a later date. It was not at that meeting.
- Q. After the meeting was over did you have any further discussion with him? A. Yes. I went to the - I asked him if he would require transportation

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to his office, and I called for a car and I stood talking to him in the hallway of the offices at 19 Bridge Street, and he reassured me then that Bulkships would not be selling their shares to anyone or at any price, and he said the position was very straightforward as he saw it - he would now attempt to make a deal with Ampol for the control of the Miller company and, if this failed, he would attempt to make a control (sic) for Howard Smiths.

10

Q. Make a what for Howard Smiths? A. He would attempt to make a deal for the control of the company with Howard Smith Limited.

Q. That, you told us, was the 23rd? A. Yes, that is right.

Q. When did you next hear from Sir Peter Abeles, and in what manner did you hear from him?

A. Some time after 23rd and before 27th Sir Peter Abeles rang me and asked me if I could arrange for three directors to resign, as he had a plan to reconstitute the Board. The directors he asked me to resign were Mr. Anderson, Mr. Nicholl and Mr. Duncan. I explained to him at that stage that they would probably dig their toes in and that I would probably get the same reaction from them as I got from Lady Miller.

20

Q. What did he say when you told him that?

A. Well, he said "You might warn them, or advise them" - he did not say "warn". I beg your pardon, your Honour. He did not say "warn". He asked me to explain to them that they could be easily removed by the calling of an extraordinary general meeting, and they would be removed publicly by the shareholders.

30

Q. Did he say what would happen then? A. Yes. He said the company would be reconstituted, with myself as chairman.

Q. By "myself" meaning who? A. Myself - with Taylor as chairman. Representing Ampol would be Mr. Mac Leonard, Mr. Harris and Sir Ian Potter.

40

Q. Is that right? A. Yes. And representing Bulkships would be himself, Mr. Cameron and Lady Miller.

<p>Q. What did you say? A. I said "Why Lady Miller?" and he stated that Ampol had insisted on that.</p>	<p>In the Supreme Court of New South Wales Equity Division</p>
<p>Q. Let us be quite clear on this. When did this conversation between you and Sir Peter Abeles occur in relation to the general announcement of 27th January? When did the conversation occur in relation to that announcement? A. Mr. Glass, would you mind repeating that?</p>	<p>No. 6</p>
<p>10 Q. Did the conversation you have just related between you and Sir Peter Abeles occur before or after the joint announcement on 27th June?</p>	<p>Transcript of Evidence on Trial of Action</p>
<p>A. It was before the joint announcement.</p>	<p>Defendants Evidence 2nd Defendants Evidence Archibald Norman Taylor</p>
<p>Q. Before the joint announcement? A. Yes, that is right.</p>	<p>Examination by Mr. Glass Q.C.</p>
<p>Q. Now, then, there was the joint announcement of 27th June. Do you remember the terms of that?</p>	<p>20th September 1972</p>
<p>A. Yes.</p>	<p>(continued)</p>
<p>20 Q. When do you next recollect seeing any representatives of Howard Smiths? A. In Howard Smiths office at about five past twelve on 4th July.</p>	
<p>Q. Who else was present on that occasion?</p>	
<p>A. Mr. Bill Howard Smith, a director of Howard Smith, Mr. Trotter, Mr. Maxwell, I believe Capt. Evans, and Mr. Griffin.</p>	
<p>30 Q. What was the substance of the discussion which took place on that occasion? A. Mr. Howard Smith opened the meeting by asking me would I reconsider selling the ships, and I said - I replied to him that if by ships he meant colliers, I had one of those available, and he said, "No, tankers." He then asked, I think it was Mr. Maxwell, to read out the letter.</p>	
<p>Q. Before that happened, what did you say about tankers? What did you say to Mr. Howard Smith about tankers? A. I repeated what I had said to him earlier, that under no circumstances could be consider selling the tankers to Howard Smiths.</p>	<p>(sic)</p>
<p>40 Q. Then you were saying that he read out a letter? A. Yes, they read out a letter that they had sent to the Stock Exchange, and I said "Well, by coincidence we sent a similar letter to both the chairman</p>	

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of Bulkships and of Ampol yesterday." I think I had a copy of this letter with me, and Mr. Trotter read this out.

Q. Well, after you had spoken about your respective letters to the Stock Exchange, what was the next matter that was discussed? A. To the best of my recollection Mr. Maxwell proposed that we issue to Howard Smiths - that R.W. Miller, the company, issue to Howard Smiths 3,000,000 shares at \$2 each.

Q. Yes? A. There were some terms about payment, but I did not pay much attention to them. 10

Q. Did you say anything to the proposal? A. I said that I could not possibly see how I could ever get this through the Board. In fact, I used the words that I could not "wear it".

Q. Could not wear it? A. Yes, that is right. I used those words.

Q. Yes? A. Mr. Howard Smith asked me a few further questions about why I could not get it through, and there was a general discussion surrounding it. 20

Q. What reason did you advance for your inability to get the Board or yourself to wear it?  
(Objected to by Mr. Deane; rejected).

HIS HONOUR: Q. So far as you can recall, Mr. Taylor, tell us how the discussion went? A. There were no reasons why I said that. I did not do any mental arithmetic. I just felt that the Board would not consider such a proposition.

MR. GLASS: Q. Did you tell them why it would not? 30  
A. I don't recall telling them why.

Q. What was your reason for thinking that the Board would not accept it? A. Well, on the face value of it the amount of \$6m - 3,000,000 shares at \$2 each - \$6m would not have met any of our immediate needs, and the amount was just not enough.

Q. \$2. (Objected to by Mr. Deane; question withdrawn).

Q. When you say that the amount was not enough

what do you mean? A. I mean the total amount of money - the equity participation of \$6m. To issue 3,000,000 shares at \$2 each - I considered this would not be allowable by our Board.

Q. What view did you hold as to the adequacy of the allotment price of \$2? A. They had already offered \$2.50 and some share of paper, which was more than that.

10 Q. What was your view as to the adequacy or otherwise of \$2 as an offer? A. I did not consider it in relation to an allotment price. I never considered the value of an allotment figure.

Q. What was the next thing that was said when you rejected that? Can you tell us what was next said following on that? A. Mr. Koch then came back with a counter-proposal that we should purchase from Howard Smiths their ships, and after lengthy discussions, and discussions that I was not in tune to, Mr. Maxwell said he preferred Mr. Koch's proposal to their own.

20

Q. When was it that you first heard of any suggestion that shares be issued by Millers in exchange for Howard Smith ships? A. When Mr. Koch raised it at the meeting.

Q. Did that get any distance? What was the reaction by Howard Smiths? A. No, it did not get too much distance. I was observing Mr. Howard Smith's reaction to this proposal, and it finished up with the fact that Mr. Howard Smith said that he preferred his proposal better than the one that Mr. Koch had proposed.

30

Q. Had the question of takeover bids from persons other than Ampol ever come up for discussion at a board meeting? A. Yes. I can't remember the dates, but on one occasion there was a discussion about the management team were keen on appointing a merchant bank to advise us against takeovers, and I proposed that we appoint a merchant bank, as two of them had more or less made approaches to us - two merchant banks - and Sir Peter Abeles said - I said that I did not encourage any counter-proposals for takeovers, and Sir Peter Abeles said that he could not see anything wrong with them. In fact, I

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think he said "The more the merrier." This was stated by Sir Peter Abeles, and it was also agreed upon by Mr. Cameron that we should not appoint a merchant bank, and there was nothing wrong - they could see nothing wrong in encouraging someone to make a counter-bid or a takeover bid.

Q. I took you away from the meeting at Howard Smiths on 4th July. Was anything further said before the meeting ended? A. Yes. Mr. Howard Smith stated that if they were successful there would be board changes. (Objected to by Mr. Deane.)

10

Q. At the meeting of 4th July was anything said about the composition of the Board if Howard Smith was successful in any takeover offer?

A. Yes, Mr. Glass.

Q. What was said in regard to that, and who said it? A. Mr. Howard Smith said it to me. He spoke to me.

Q. What did he say? A. He said that there would be board changes.

20

Q. Was that all that was said? Was it just left at that? A. No. He did elaborate on that. He said there would be board changes if Howard Smiths were successful with their takeover bid.

Q. Well now, is that the end of the meeting of 4th July so far as your recollection goes?

A. No. They said they would be in further communication with us, and I had said to some member at the meeting - I don't know whom - this was after a drink after the meeting had closed - I had said - told them we had a board meeting for the 6th July; if they were going to do anything, they had better get it in before then. I may not have used those precise words, but that was my intention.

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Q. To what persons did you notify the discussions you had on 4th July? What directors, in particular? A. I notified Mr. Anderson.

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Q. When was that? When did you notify him?

A. On the afternoon of the 4th. I rang Mr. Duncan

in Tokyo, and I notified Mr. Nicholl. I can't recall whether I spoke to him personally, but, if not, I left a message and informed him early the following day. But I think I spoke to these three directors, and also the alternate directors, Mr. Murphy and Mr. Conway.

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Q. Did you notify Lady Miller? A. No, I did not.

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10 Q. What was your reason for not notifying her?  
A. There was nothing precise - there was nothing definite that Howard Smiths would in fact apply for an issue of shares. I was not certain they would. That was one reason. The other reason was I wanted to keep this as close as I could. I was worried that Lady Miller might release some of this information to her solicitors, and in turn that this might get back to some other source.

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Q. Which other source, in particular? A. Ampol.

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Q. Which solicitors were you thinking of?  
A. Abbott, Tout, Creer and Wilkinson.

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20 Q. Did you have any experience involving them and Ampol? (Objected to by Mr. Deane; question withdrawn).

Q. What connection, if any, did you believe that Abbott, Tout had with Ampol? (Objected to by Mr. Deane; allowed).

30 Q. I take you, then, Mr. Taylor to the 5th July, after you had returned, when you were sitting in your office. Do you recall a conversation that you had by 'phone on 5th July about noon? A. Yes, Mr. Glass.

Q. With whom did you have that conversation?  
A. Sir Peter Abeles rang me.

Q. Sir Peter Abeles rang you. What did he say to you? A. He asked me how I got on with the resignations that he had asked me to obtain.

40 Q. Before that, did he say anything about any letters you had written? A. Yes. He commenced his conversation by saying - by referring to the letter of 3rd June (sic) that I had addressed to the chairman of Bulkships and also to the chairman of Ampol.



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Q. Well now, the letter of 3rd July to Ampol I think is in evidence as Ex. R. Is this letter of 3rd July a photocopy of the letter which you sent to Bulkships? A. Yes.

Ex.i

Q. Did you ever get any reply to that letter of 3rd July from Bulkships? A. No.

(Letter dated 3rd July, 1972, Millers to Bulkships tendered and admitted as Ex.MH22

Ex.  
MH2:

Q. Well now, on the occasion of that conversation was anything said by Sir Peter Abeles about letters you had written? A. Yes. Sir Peter said to me that he had discussed the matter of letter writing with me before, and so far as Bulkships were concerned that they did not - he referred to the letter of the 3rd July to Bulkships, and also the letter to Ampol, and he said "Bulkships are not in a takeover situation here, and it serves you no useful purpose in sending these letters. Bulkships don't have to answer your letter, and so far as Ampol is concerned they only have to give the company, or you, the statutory requirement.

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Q. Right. What was the next thing said? Will you tell us what was next said? A. Yes. He then asked me how I got on with the resignations he had previously asked me to obtain, and I told him I had got no joy there, as they had dug their toes in similar to the time that I had asked Lady Miller to resign.

Q. Did you say anything further to him as to the attitude of the directors whom you had consulted? A. Yes, I think I did summarise their answers that they had given me, that they would - as they were appointed by the shareholders, they stated they would be removed by the shareholders.

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Q. What was the next thing that was said?

A. Sir Peter Abeles said that he was tired of playing games and that as from tomorrow morning he would ask anybody - that was referring to the 6th July - as from tomorrow's board meeting he would ask the secretary, Mr. Ellis-Jones, Miss Hill, the general manager, and anybody else other than a director to leave the room, and he would blow the place wide open. He said he was sick and tired of playing games, and then he went on further to state

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that - he asked me then how I had got on with the installation of the pool tables and amusement machines and music boxes that he asked me to put in or asked me to have a discussion with Mr. Senes.

Q. He asked you on the 5th July about that?

A. Yes.

Q. When had he previously discussed that with you?

10 A. Some time after 23rd he had asked me to make an appointment to see Mr. Senes, which I did, with Mr. Senes and his son.

Q. What did Sir Peter Abeles suggest that you discuss with him? A. He suggested - (Objected to by Messrs. Lockhart and Deane; pursuance of this line of questioning deferred).

Q. I won't pursue amusement tables any further. After they had been referred to what was said by Sir Peter Abeles? A. I think he concluded the conversation, and said "I will see you in the morning".

20 Q. Did you take notes - pencil notes - of that conversation? A. Yes, I did.

Q. And preserve them? You have still got them?  
A. No, I gave them to you, Mr. Glass.

30 Q. After you had the conversation by 'phone with Sir Peter Abeles on 5th July did you report it to anyone? A. Yes, I did. There was a meeting being held of the finance committee in the general manager's room and Mr. Aston was also there, and Mr. Conway, and I reported the details of the conversation I had had with Sir Peter Abeles to my management team, or to the finance committee.

Q. Did you say anything to Mr. Aston about the forthcoming board meeting? A. I asked him to attend the meeting in the morning.

Q. Yes. Did he say anything to you? A. Yes.

Q. What was that? What did he say to you?

40 A. He stated that in his opinion that in view of the joint announcement of Bulkships and Ampol in relation to the control of the company that there was a clear case that Sir Peter Abeles, as a

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director of Bulkships, was in clear conflict of duty; he suggested that I should invite him to disqualify himself from debating on the issuance of shares, and also from voting upon the issuance of shares. He also stated if, after being invited to disqualify himself, he did not, I should rule him out of order, and rule that he is not entitled to debate or vote on the matter of the issuance of shares. He also stated that there were many cases of precedent established.

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(Further hearing adjourned to 10 a.m. on Thursday, 21st September, 1972).

ARCHIBALD NORMAN TAYLOR On former oath:

HIS HONOUR: You are still on the former oath administered to you, Mr. Taylor.

WITNESS: Yes, your Honour.

MR. GLASS: Q. Mr. Taylor, the transcript records, I think, the last sentence in your last answer as "He"- meaning Mr. Aston - "also stated that there were many cases of precedent established." Do you remember saying that? A. Yes, Mr. Glass, I remember saying that.

20

Q. Now, with respect to what question did Mr. Aston state that there were many cases of precedent? A. This was concerning the issuance of shares.

Q. Concerning the issuance of shares? A. Yes.

HIS HONOUR: Q. I am not quite sure I understand that answer, Mr. Taylor. You say this observation was made solely with reference to the issuing of shares, and he said there were many cases of precedent, or was this in connection with the ruling of Sir Peter Abeles out of order? Would you like to look at the answer you gave? A. Yes, your Honour. (Transcript handed to witness). Mr. Aston's advice to me was that on the clear conflict, Sir Peter Abeles was not entitled to vote. (Objected to by Mr. Deane.)

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Q. Can you remember either the words or the effect of what he said? A. Yes, your Honour. Mr. Aston advised me in view of the joint announcement that

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Bulkships and Ampol had made that there was - there appeared a clear conflict of interest with regard to Sir Peter Abeles rights to vote.

MR. GLASS: Q. Is that the only question upon which Mr. Aston gave you advice? A. On that occasion in the office of Mr. Koch, yes.

Q. What other occasions did he give you advice about the conduct of the Board meeting? A. During the Board meeting?

10 Q. Before the Board meeting began, you say he gave you certain advice about Sir Peter Abeles' position? A. Yes, that is correct.

Q. Before the Board meeting began did he express any legal opinion on any other question that might arise at the Board meeting? A. There was some discussion concerning the issuance of shares, and it was during that advice, to the best of my recollection - I am sorry, it was during that discussion, to the best of my recollection, that  
20 Mr. Aston advised that there had been precedent in relation to the issuance of shares.

Q. Now this talk with Mr. Aston about Sir Peter Abeles position occurred, you said, on 5th July. About what time of the day did it occur, approximately? A. Just after noon. Just after my discussion on the telephone with Sir Peter.

Q. Where did you have lunch on that day? A. In the Board room at 19 Bridge Street.

30 Q. Who else was present? A. Mr. Nicholl, Mr. Conway, Mr. Koch, Mr. Murphy, Mr. Harry Ellis-Jones, and I think Mr. Walker.

Q. How did Mr. Nicholl come to be there, do you know? A. I had invited him to lunch on the previous day.

Q. When you invited him did you mention any particular matter that you wanted to discuss with him? A. Yes, Mr. Glass. I had mentioned to him that Howard Smiths had made a proposal to me to issue 3 m. shares at \$2 per share.

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Q. Was there any other matter that you had discussed with him before he came along that day regarding his position on the Board? A. No, not to my recollection.

Q. Well, you remember you told us of a conversation with Sir Peter Abeles about the reconstitution of the Board? A. Yes.

Q. Did you ever discuss that with Mr. Nicholl?  
A. No, I did not discuss the reconstitution of the Board - the naming of the new Board - with any other person - with any other director. 10

Q. Did you discuss with Mr. Nicholl the suggestion that he ought to resign? A. Yes.

Q. When had you done that? A. Sometime before 27th, and he asked me why.

Q. What was the rest of his answer? A. I said "Well, it appeared obvious that Sir Peter Abeles was after a reconstitution of the Board".

Q. Yes. What did he say was his intention?

A. Mr. Nicholl stated that he would not resign, as he was appointed by the shareholders, and he would rather face the shareholders than resign voluntarily - at an extraordinary meeting. 20

Q. You have told us of a conversation you had by 'phone with Sir Peter Abeles on 5th July? A. Yes.

Q. Did you discuss that further conversation with him with Mr. Nicholl? A. No, I did not.

Q. When he came down to the Board room on 5th July did he bring anything in particular with him?  
A. Yes, he brought a book with him. I don't know what book it was. It was a law book. 30

Q. Did you hear any discussion in the Board room during lunch on legal questions? A. Yes, there was considerable discussion between Mr. Conway, our legal officer, and Mr. Nicholl in relation to the issuance of shares by our company to Howard Smiths.

Q. Yes. A. I think most of the discussion between those two gentlemen was confined to the legal matter-

was confined to legal matters - I can recall snippets of the conversation.

Q. Can you give us those snippets that you can recollect? A. I referred - I heard Mr. Nicholl state that there was nothing wrong - he could see nothing wrong with the issuance of shares provided the amount involved was adequate not only for the immediate needs of the company, but also for future needs.

10 Q. Yes. Were any figures, according to your recollection, discussed in that connection?  
A. Not at that meeting.

Q. Do you remember any telephone call being received while you were in the Board room?  
A. Yes, I remember a telephone call, as it was explained by Mr. Conway, that Mr. Maxwell had rung him.

Q. About what time was this? A. It was after 2.15. After Mr. Nicholl had left.

20 Q. What did Mr. Conway tell you that Mr. Maxwell had told him? A. That Howard Smiths were considering issuing (sic.) 4½ m. Miller shares. No, applying for - I beg your pardon - Howard Smiths were considering applying for 4½ m. shares at \$2.30.

Q. Did anything further happen that day?  
A. In relation to Howard Smiths?

30 Q. Yes. Did anything further happen that day?  
A. Yes. At about 5 o'clock in the afternoon Mr. Maxwell came to my office and was brought in by Mr. Conway, and he had a draft letter - a draft application or a draft proposal - addressed to Millers from Howard Smiths to the effect that they would apply for 4½ m. shares at \$2.30 per share.

Q. Was it signed? A. No, it was not signed.

40 Q. What did you say to Mr. Maxwell? A. I said - I said that I was pleased to have this letter, but I would be more pleased to have his chairman's signature on it in the morning.

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Exhibit T

Exhibit U

Q. Well, the following day, 6th July, when did the Board meeting begin, approximately? A. It commenced at about 10.15.

Q. Now, can you tell us what happened before the Board meeting began? A. Yes. Through Mr. Conway I received from Mr. Maxwell an application by Howard Smiths together with an agreement at about 20 minutes to 10 to allot 4 1/2 m. shares at \$2.30 per share.

Q. Yes. A. Mr. Anderson had been in my office previously, and he picked up his Board papers and went down to the Board room to study them. Mr. Balhorn was also in the office at the time.

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Q. Was the letter accompanied by any other document? A. The letter from Howard Smiths was accompanied by an agreement.

Q. Before you went into the Board room did you receive any other document in addition to the Howard Smith letter and the agreement? Well, I will suggest it. The memorandum of Mr. Conway, which is Ex. T - when did you get that?

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A. Before the Board meeting. I can't recollect the time. About 9 20 or 9.30.

Q. About what time? A. 9.20 or 9.30.

HIS HONOUR: It is Ex. U, Mr. Glass.

MR. GLASS: I am sorry, your Honour.

Q. Now I ask you, Mr. Taylor, what were your reasons for voting in favour of the allotment of 4 1/2 m. shares at \$2.30 per share to Howard Smith?

A. My reasons were because I had been informed by the finance committee that the company was in a very tight liquidity situation. I considered also that it would be in the best interests of the shareholders to make such an allotment - of all the shareholders - particularly as the two major shareholders, Ampol and Bulkships, could, if they desired, accept a higher price, and it also gave the opportunity of allowing the minority shareholders to avail themselves of the Howard Smith offer.

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Q. Right. Now I want to ask you some specific questions. What was your belief on 6th July as to the security or otherwise of the loan moneys from Hambros on "Robert Miller"? A. I was advised by the finance committee that it was a conditional loan and it was not secured.

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10 Q. And what did you believe? A. I believed that it was not - there was no guarantee of it. I believed it would be certain when the money was in the bank. I was aware of some of the conditions. I was aware that there were some escape clauses.

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Q. What was your belief as to the security or otherwise of Tricontinental rolling on the short term loans when they fell due? A. There was no guarantee that they would roll them over.

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20 Q. And what did you believe? A. I believed that they were not compelled to roll them over, and in fact we had to apply for each roll over, and I also believed that the maximum amount of time was 12 months, and there was no guarantee that they would roll them over. It was insecure.

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Q. What was your belief on 6th July as to the effect, if any, on the company's plans of lack of finance? A. Well, I believed the company was stagnant because of the lack of finance.

Q. How long did you believe that situation had been in existence? A. I believed that since I first got the report from the finance committee just after the death of Sir Roderick Miller.

30 Q. And in what ways did you believe the company in that period had been stagnant? A. We did not have liquid funds to progress the hotel interests of the company, particularly in relation to the development of taverns and the opportunities that came up concerning the acquisition of new properties, and the development of hotels, the development of collieries, and, in particular, the Iron Bark we had to close down, or cease the opening of it.

40 Q. What was your belief, if any, as to the effect in the shipping field as to finance? A. During the year I had to withdraw our priority to the Department of Shipping and Transport for the construction of a product tanker.



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Q. I will come to that in a little more detail later. On 6th July, Mr. Taylor, what was your belief as to the requirement of the company for the \$10 m. to be raised by the placement, assuming that you got the Hambros loan in due course?

A. I was aware that we had, all to fall due within 12 months, about \$10.7 m. of short term money - of short term loans. They were all to fall due within the 12 months period. In the event of the Hambros loan coming due we would have still been short some \$3.7 m., and the Hambros loan would not have necessarily solved the company's lack of liquidity. 10

Q. What did you believe was the company's requirement for liquid cash additional to that \$3 m. deficit? A. We needed some money. It would depend on the number of programmes we had in train. There were \$3 m. required for Iron Bark. There were probably \$2 m. required for hotel development, and probably \$1 m. required for tavern development, and there were other diversifications also that we would require money for. 20

Q. On 6th July what was the state of your knowledge as to efforts that had been made to secure finance on Millers' behalf in the preceding 18 months?

A. I considered they had been exhaustive. I considered we had examined every possible avenue.

Q. What institutions had been approached? First of all, institutions, according to your then knowledge, had been approached without success by Millers? A. Yes, that is correct. 30

Q. What are some you can remember that had been approached unsuccessfully? A. Merchant bankers. Hill Samuel. That is one particular case. Chase Manhattan. Trading banks. The Commonwealth Bank, and the Bank of N.S.W. The A.N.Z. Bank.

Q. What was your belief on 6th July as to the existence of any assets of the Miller Group which were not subject to any security? A. I believed that the company was mortgaged to the hilt - that we had no other properties available to mortgage. 40

Q. What was your belief on that date as to the need for equity capital in the company? A. I considered we did need equity capital to overcome our liquidity crisis.

10 Q. What was your belief on that date as to the propriety of making available to Howard Smith the information that had been given to them? A. I considered it my duty to give it to them in an attempt to get a higher price than that offered by Ampol. At a previous Board meeting it had been said by Sir Peter Abeles, and also stated by Mr. Cameron, that there was nothing wrong - they could see nothing wrong with seeking higher offers. I also considered that it was in the interests of all of the shareholders to do that.

Q. What was your belief on 6th July 1972 as to the effect, if any, on your position on the Board if Ampol's takeover had succeeded? A. I had been informed by Sir Peter Abeles that my position would have been secure.

20 Q. What was your belief on that date as to the effect on your position on the Board if Howard Smith had succeeded in their takeover? A. I had been advised by Mr. Bill Howard Smith there would be Board changes, and I had no guarantee from them that my position was secure. In fact, it had never been raised.

Q. To what extent, if any, was your vote in favour of the allotment influenced by your position on the Board? A. None whatsoever.

30 Q. So far as concerns the Eastern Suburbs Leagues Club, Mr. Taylor, can you recall that being discussed at a Board meeting? A. The Eastern Suburbs Leagues Club - repayments from Eastern Suburbs to the company of a \$2 m. loan - I can recall that.

Q. I will come back to that later, and go to something I ought to put in here? A. Yes.

Q. You ruled, did you not - and this is not in dispute, I am sure - that Sir Peter Abeles was not entitled to vote on the resolution to place shares with Howard Smith? A. Yes, I made that ruling.

40 Q. I ask you what were your reasons for so ruling? A. I believed that if Sir Peter Abeles had been permitted to vote that his vote would not have been in the best interests of Millers.

Q. What were your reasons for holding that belief?

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A. I had known - I had believed for sometime that Sir Peter Abeles was seeking control of R.W. Miller & Company, and that was borne out by - (Objected to by Mr. Deane.)

HIS HONOUR: Q. The question, Mr. Taylor, is just as to your belief - not the reasons for it?

A. Thank you, your Honour.

MR. GLASS: Q. You said, I think, that you believed he had been trying to get control of Millers. You said that you believed that Sir Peter Abeles had been trying to get control of R.W. Miller & Company. On what beliefs of yours was that founded? A. He had made an approach to Romanda for the acquisition of Romanda shares on Bulkships' behalf at \$2.40 a share. I believed it was coincidental, or more than coincidental, that Bulkships withdrew their offer to Romanda and Ampol's subsequent offer of \$2.27.

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Q. What did these two events cause you to believe?

A. I believed that that was making it - that was clearing the decks for Ampol.

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Q. To do what? A. To succeed in the acquisition of the Romanda shares.

Q. What other beliefs did you have with respect to Sir Peter Abeles voting or not voting in the interests of Millers? A. The joint announcement of the 27th had clearly shown that Bulkships and Ampol were acting together for the control of R.W. Miller & Company, and Sir Peter Abeles was a director of Bulkships. He had previously declared his interest in other matters where taverns were concerned, where he had an interest, and on this occasion he did not. I also know that he opposed Ampol's offer at \$2.27, and at the same time he allied himself with the Ampol-Bulkships joint announcement to control of the company, which left the minor shareholders no other opportunity of increasing their price above \$2.27 from a commercial point of view.

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Q. Did you have any belief based upon your conversations with Sir Peter Abeles? A. Yes. I knew that Sir Peter Abeles was working towards a deal with Ampol, particularly in view of my conversations with him when he stated on 5th June at his

office, and also after the Board meeting in the lobby, where he said it was easy for him now - he had to either make a deal with Ampol or make a deal with Howard Smiths, and I knew there was no deal with Howard Smiths.

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Q. Did you have any belief founded upon the letters that Millers had sent to Bulkships and Ampol?

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10 A. Yes, I did have a belief on that, particularly as Sir Peter Abeles had explained to me that Bulkships did not have to answer these letters as they were not in a takeover situation.

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Q. What was your belief, before the takeover announcement, as to the relationship, if any, between Sir Peter Abeles and Ampol? I am sorry, before the joint announcement. Before the joint announcement of 27th June what was the state of your belief as to the relationship, if any, between Ampol and Sir Peter Abeles? A. I believed that Sir Peter Abeles was working towards a joint arrangement.

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Q. Did you have any belief with respect to his interest in the tankers? A. Yes, I believed that Bulkships - Sir Peter and Bulkships - the real prize in R.W. Miller & Company were the tankers.

Q. What did you believe regarding the tankers and Sir Peter Abeles and Bulkships? A. I believed that that was their goal.

30 Q. I think it is common ground that you ruled not only that Sir Peter Abeles might not vote, but that he also might not take part in the debate. That is correct, is it? A. Yes, that is right.

Q. Was he prevented by you from taking part in the debate? A. No, he was not.

Q. Was there any occasion when he sought to express an opinion at the Board meeting on 6th July and was unable to do so because you stopped him?

40 A. No. I only ruled at the beginning of the meeting. ~~But-I-allowed-him-to-discuss~~ - (Objected to by Mr. Deane; by direction portion indicated struck out.)

Q. To what extent did he participate in the discussion when he was there? (Objected to by Mr. Deane; rejected.)

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Q. Can you tell us what statements you can remember Sir Peter Abeles making on the subject of the allotment? A. My only recollection in relation to the subject of the allotment was that it was stated by one member of the Board meeting that we could not raise this price of \$2.30 by an allotment to any other party, and I recall Sir Peter Abeles stating "It depends on who the underwriters are."

Q. I had started to ask you about the Eastern Suburbs Leagues Club. You remember I started to ask you some questions on that subject? A. Yes.

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Q. Now, do you remember their position being discussed at a Board meeting on 30th September 1971? A. I remember it being discussed. I don't know whether that was the date.

Q. Can you remember what was said during the discussion? A. Yes. I can remember not all of the details, but I remember that Sir Peter Abeles said, in view of the legal advice that we had received, that we were entitled to charge the Eastern Suburbs Leagues Club 9% repayments; Sir Peter Abeles moved that we should take action to obtain the 9%. He moved in this direction, and it was seconded by Mr. Cameron and put to the vote. This vote was defeated.

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Q. Do you recall what was said by Lady Miller at that meeting? -

HIS HONOUR: Which meeting was this, Mr. Glass?

MR. GLASS: 30th September 1971, your Honour.

30

Q. Do you recall anything being said at that meeting by Lady Miller about the Eastern Suburbs Leagues Club? A. Yes. Lady Miller had said that there was a verbal agreement between Eastern Suburbs and Sir Roderick that the interest rate should be 7½%, and she wished to honour that agreement.

Q. Well, after the meeting did you yourself do anything about the rate of interest? A. Yes, I did.

Q. What did you do in regard to that? A. I contacted the secretary and the president of the club, and arranged for an interview in my office.

40

10 Q. Yes. A. I negotiated with them to increase their interest rate. I stated that we had a legal opinion that we were fully entitled to charge them the 9%. They reminded me that there was a verbal agreement with the late Sir Roderick Miller who said that it would be 7½%, and I felt, because the Board was split on this issue - I felt it only fair, in view of the circumstances, that we should be entitled to get the 9%, and after some hours of negotiations they agreed to pay 8½%.

Q. When you said that you had a legal opinion that they could be forced to pay 9%, what did they say? A. They said they had a legal opinion that it was not enforceable.

20 Q. Were there any commercial factors present to your mind affecting Millers and the Eastern Suburbs Leagues Club? A. Yes, there were. We have a subsidiary company, Cooper Nathan, that supplies liquor, wines and spirits to the Eastern Suburbs Club. That was gross revenue of some \$100,000 a year.

Q. Has that trading relationship continued? Does that relationship still continue? A. Yes, it does.

Q. And have they been paying at that intermediate rate of 8½%? A. They have since 1st January this year.

Q. Are there any club ties affecting Eastern Suburbs Leagues Club? A. I believe there is a tie. I am not certain of the details.

30 Q. Do you have yourself any knowledge of the circumstances in which the Eastern Suburbs Leagues Club acquired a shareholding in Millers? A. No.

Q. The next matter I ask you about is any discussions that you had with Sir Peter Abeles regarding guarantees of Millers financial position to be given by Bulkships or TNT? A. Yes. Sir Peter Abeles told me that neither TNT nor Bulkships could issue Miller & Company a guarantee for the loan from Hambros Bank.

40 Q. Had you had a conversation with him which

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involved Australian Finance & Investment Corporation? A. Yes. A.F.I.C. had - they are the Hambros Bank agents in Australia - they had asked us if we would obtain a guarantee to facilitate the loan from the Hambros Bank, and I rang Sir Peter Abeles and explained this to him.

Q. Yes. What did he say? A. He asked me how we were going with the letter of commitment from Shell.

Q. Yes. A. I explained that Shell seemed aware of the lack of our ability to obtain a loan, and they were reluctant to give us a firm letter of commitment, as it would make the loan easier, so they were not in a hurry to give us a firm letter of commitment. I explained this to Sir Peter Abeles.

10

Q. What did he say? A. Sir Peter Abeles suggested that what I should do was to tell Mr. Froggatt, the chairman of Shell, that TNT would in fact guarantee Millers, and Sir Peter Abeles said he would then no doubt ring Sir Ian Potter and check on it. (Objected to by Mr. Deane; allowed.)

20

Q. Will you complete the answer, Mr. Taylor? Will you continue, and tell us what Sir Peter Abeles said to you? A. He suggested that I approach Mr. Leslie Froggatt, the chairman of Shell, and state that TNT would guarantee the loan. He said - Sir Peter Abeles then said that he anticipated that Mr. Froggatt would check with Sir Ian Potter, and, in turn, Sir Ian Potter would check with himself, (Sir Peter Abeles), and that he would say "Yes, that is so", when in fact "You know - Sir Peter Abeles said to me - "When in fact you know that we cannot guarantee your loan. Nor can Bulkships."

30

Q. I will take you briefly to the conversation between you and Mr. Koch regarding the Mitsui Company, and securing a loan from that source? A. Yes. I was aware of the conversations - I was aware that Mr. Koch had been negotiating with Mitsui for a loan of up to, I think, \$8 m. with the "Robert Miller" - the tanker "Robert Miller" - as security.

40

Q. Did anything come of that? A. No, not to my knowledge.

Q. The last matter, I think, which is the subject of questions, Mr. Taylor, is the withdrawal of the company's objection to the Caltex product tankers. Do you remember when that happened? A. Yes, this happened not long after Sir Roderick's death.

10 Q. Will you tell us, please, to satisfy our curiosity, how does a product tanker differ from an ordinary tanker? A. There are two types of tankers - the one that carries the petroleum products, and the other that carries the crude oil, and from the crude oil that is tracked down to make the products.

Q. Shortly after Sir Roderick's death did you have dealings with the Department of Transport and Shipping? A. Yes.

20 Q. With whom did you deal? A. I dealt mostly with the permanent head of the department, Mr. Malcolm Summers, and with Mr. Neville Jenner, a senior officer in the department.

30 Q. Did you have a conversation with him in May or June 1971? A. Yes. It was at a luncheon that the secretary had with ship owners. It was a regular luncheon pattern. I can't remember with what regularity, but there was a luncheon pattern. The permanent head of the department wanted to get the ship owner's feelings, and I was invited to attend the luncheon, and it was during the luncheon that Mr. Jenner said - he asked me would I be prepared to withdraw our priority to build a product tanker.

40 Q. Yes. What did you say in response to that? A. I said "Yes," we would have to withdraw it. I said "We are having difficulty, as you well know, in making payments for the "Robert Miller" and we are in a very tight liquidity situation. I see no alternative but to withdraw our objection to Howard Smiths and Caltex-Sleigh," but I also asked him to preserve a slot for us in priority that we be given the first opportunity when the next tanker is required.

Q, Was there correspondence between you on this

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subject? A. Yes, it was confirmed by letter.

(Letters dated 24th May 1971 and 28th May 1971, Millers Holdings and the Department of Transport and Shipping, tendered and admitted as Ex. MH23.)

Ex. MH23

MR. KIRBY: No questions.

MR. ROGERS: No questions.

CROSS-EXAMINATION

MR. HUGHES: Q. I want to ask a few questions of you, Mr. Taylor. You gave some evidence yesterday, on p. 459 of the transcript, about a conversation that took place between yourself and Sir Peter Abeles at Sir Peter Abeles' office at TNT on 5th June in the presence of Mr. Aston. Do you remember that? A. Yes.

10

Q. You told his Honour that on that occasion Sir Peter Abeles told you in substance that he was working towards a final resolution of this problem of R.W. Miller Limited in relation to a takeover. Is that right? A. Yes. Whether I used those precise words - whether I used "resolution", or not I am not quite sure.

20

Q. Your very words, if I can come to them, were - he said to you yesterday, according to the transcript, that "He was working for a final resolve for R.W. Miller & Company and he was hoping to come to agreement with Ampol." Do you remember saying that yesterday? A. Yes, I remember that.

Q. That is the substance of what he told you? A. Yes, Mr. Hughes.

30

Q. Did he tell you how he had it in mind to attain a "final resolve", to use your own words, for R.W. Miller in relation to Ampol? Did he tell you what he had in mind? A. To the best of my knowledge he was working towards -

Q. What did he say? I am only asking you what he said, if he said anything, as to how he was seeking a final resolution of the R.W. Miller-Ampol problem? A. I don't recall that he gave

me - I don't recall that he said how he was going to do that. I don't recall that he gave me details of how he was going to do it.

Q. Did you ask him for any details as to how he was going to do it? A. No, I did not.

Q. At that time, of course, and since January of this year, you had been managing director of R.W. Miller Limited, hadn't you, as well as chairman?

A. Yes, that is right.

10 Q. I don't want the precise figure, but may I take it that as managing director you were receipt of a very substantial salary? A. Yes, I am.

Q. I don't want to embarrass you by asking how much, but may I take it it was in the five figure bracket? A. Yes.

Q. Were you in receipt of a separate salary as chairman of directors over and above your salary as managing director? A. No.

Q. It was a global salary? A. Yes.

20 Q. To cover both positions? A. Yes, that is right.

Q. On this occasion on 5th June at Sir Peter Abeles' office he told you, did he, that you, if his plans were carried through to fruition, would remain as chairman of R.W. Miller Limited? A. Yes.

Q. He told you that? A. Yes, he told me that.

Q. He also told you, did he, that your position would be secure? A. Yes.

30 Q. Well now, of course, your position would not be secure, would it, unless some arrangement were to be made to cover, either by continuing you in office as managing director or making some compensatory arrangement, your status as managing director of R.W. Miller? (Objected to by Messrs. Deane and Lockhart; question withdrawn.)

Q. You understood from Sir Peter that your position, in the event of Ampol and Bulkships getting together to take over R.W. Miller, would be secure? A. Yes.

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Q. And was it your understanding that part of the process by which your position would be made secure was that you would be retained as chairman of R.W. Miller? A. Yes. I was informed by Sir Peter Abeles that that would be so.

Q. Was anything said by Sir Peter to you as to securing your position in relation to your other position in R.W. Miller, namely, your position as managing director? A. No, apart from the fact that he said I would be all right. 10

Q. He said that you would be all right? A. Yes.

Q. Did you infer from that statement that as well as being retained - (Objected to by Mr. Lockhart; rejected.)

Q. Sir Peter told you that as well as being retained as chairman you would be all right, is that correct? A. He did not put it in those precise terms, He did say that I would be all right.

Q. Yes. A. Now, I can't recall whether he said that at the meeting of 6th June - whether he said "retained as chairman" and also "being all right." I think the "retained as chairman" came in at a later stage. I think, to the best of my knowledge, the "all right" part came in on 5th June. There was no specific designation at that stage. 20

Q. Now, I want to ask you about - before I pass from that, when do you say it was, if it was not on 5th June, that he told you you would be retained as chairman of R.W. Miller in case the marriage between Bulkships and Ampol should be consummated? A. That was at the time when he proposed the re-arrangement of the Board: he nominated the re-arrangement of the Board. 30

Q. So that in other words, you are saying it was between the 23rd and the 27th? A. It was between the 23rd and 27th, yes.

Q. I want to pass on to something you said at p. 460 of the transcript. Do you remember telling us yesterday that you offered to Sir Peter Abeles during the discussion on 5th June what you described as a percentage swing of shares to 40

Sir Peter Abeles. Do you remember saying that?

A. Yes.

Q. And you also said that you made that offer without any authority from the owners of the shares that you had in mind? A. Yes.

10 Q. Please don't think I am criticising you for doing it without authority. What I want to ask you, however, is this. What words did Sir Peter use when, as you said, he did reject that offer? What words did he use? A. I don't remember the precise words that he used.

Q. You don't remember the words he used? A. It was a rejection. I don't remember the precise words.

Q. Did he say to you words to this effect: "I am not - " (Objected to by Messrs. Deane and Lockhart; allowed.)

20 Q. Did he give you to understand that he was not interested in any shares that you might be able to gather to gather together for him because his arrangements could probably be carried through anyway without them? (Objected to by Messrs. Deane and Lockhart; rejected.)

Q. Do you recall anything that Sir Peter said, if he did say anything, as to the reason why he was not interested in the shares that you might be able to push in his direction? A. I don't remember any precise words that he said.

Q. You don't remember the precise words? A. No.

Q. Well, do you remember the substance of the words that he may have used in that context or connection? A. He seemed quite confident that he would be able to make a deal.

Q. Is this the substance of what he said? He seemed quite confident, you are saying? A. Yes.

Q. In deference to an interruption from behind me, would you try and use the words that he said which led you to believe that he was confident?

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HIS HONOUR: You can state the effect of what he said, if you can - not necessarily your impressions about it. It is a fine point. You have not got to actually try and reconstruct the actual words, but, if you remember the substance of what he said, rather than any conclusions that you draw from them.

Q. Is that capable of being done? Is your recollection good enough to do that? A. No. I am confused with the questions, and I do not at this stage recollect what was said. 10

MR. HUGHES: Q. Let me ask you a question that is not intended to confuse you, and it may be more simple than the last question I asked. Did Sir Peter Abeles, in rejecting your offer of shares, indicate to you any reason as to why he was not interested in your offer? In answering that question can you please - assuming you have a recollection of anything he said - give the substance of what he said? A. No, I can't remember. I can't remember the words that he said. 20

Q. You can't remember the words he said? A. No.

Q. Can you remember the substance of what he said? A. The substance of the words that he said was that he was confident of making a deal with Ampol.

Q. When he indicated to you that he was confident of making a deal with Ampol without the assistance of such shares as you might be able to bring towards him did he give you any indication, by what he said, of the deal with Ampol that he then had in mind? A. He did not explain in detail the deal that he had in mind. He explained to me what he had in mind in relation to the future of R.W. Miller & Co. 30

Q. I see. What did he say to you, if he said anything to you, about the future of the R.W. Miller tankers? A. To the best of my recollection he said that the tankers would be in a separate company.

Q. The tankers would be in a separate company? A. Yes. 40

Q. The only other matter about which I want to ask you a few questions, if I may, is this. At p. 457/458 of the transcript-at the bottom of the page - do you remember telling his Honour yesterday that following a suggestion made to you by Sir Peter Abeles that you might, as a matter of courtesy, invite Mr. Leonard of Ampol to join the Board of Miller, you first of all had a conversation with Lady Miller. Do you recall telling us that yesterday?

10 A. Yes, I can recall saying that yesterday.

Q. Do you recall telling us yesterday that in your conversation with Lady Miller after that suggestion had been put to you by Sir Peter you suggested to her that she might consider resigning from the Board. Do you remember telling us that yesterday?

A. Yes, that is correct.

Q. May we gather from the answer you gave yesterday that you received rather a frosty reception; that Lady Miller did not react favourably to the suggestion that she might resign? A. It was a definite "No."

20

Q. You received a definite "No"? A. Yes, that is right.

Q. You told us yesterday that you did ring Mr. Leonard? A. Yes, I did ring him.

Q. And you told him, did you, that you would like him to join the Board? A. I explained to him that there was no vacancy on the Board at the moment, and the moment a vacancy occurred I would invite him to join the Board. I did this at Sir Peter Abeles suggestion.

30

Q. Can you tell us approximately - I don't mean the exact date, but approximately - when this conversation with Mr. Leonard took place? In what month of last year? A. May. I think this was not long after Lady Miller or Romanda had sold their shares to Ampol. So it was after 12th May.

Q. After the 12th May? A. Yes.

Q. Was it after the 24th May? A. I don't recall.

40 Q. I beg your pardon? A. I don't recall.

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Q. Was it after you had received notification of Ampol's takeover offer? A. I don't recall the date.

Q. I don't want to tie you to a date, Mr. Taylor, what I am asking you is, can you recall whether or not it was after Ampol's takeover offer had been received by your company? A. That was on May 24th.

Q. That is right. I am asking you do you recall whether or not it was after that that Mr. Leonard and you had this conversation that you had initiated? A. No, I don't recall. 10

Q. You don't recall? A. No.

Q. Was your conversation with Mr. Leonard a short one? A. Yes, it was relatively short.

Q. You said to him that you would like him to join the Board, but there was no vacancy at present? A. Yes, that is right.

Q. You said that you would invite him to join the Board as soon as a vacancy occurred? A. That is right. 20

Q. And did he say "I may not accept that offer when it comes"? A. You are asking me the precise words that we used. I don't know whether they were the precise words that Mr. Leonard used.

Q. I am not trying to tie you down to the precise words. Did he give you to understand that he might not accept it? A. He might not want it.

Q. He might not want it? A. Yes, he might not want to accept. 30

Q. When he said that, did you concern yourself to ask him why he might not want it? A. No, I did not have any thoughts. Mr. Leonard was rather cold.

Q. Rather cold? A. Rather cold in his reply to me, and I think I know - I had given him reason, I believe, for him to be cold towards me.

Q. You are referring to letters? A. The sale of the Romanda shares.

Q. So you did not ask him why he might not want the position? A. No, I did not continue the subject, and apart from the normal courtesies we did not pursue the conversation.

MR. MASTERMAN: No questions.

MR. LOCKHART: Q. Mr. Taylor, I want to take you to the 5th June conversation -

10 HIS HONOUR: Before you do that, there is one part of the evidence that I noticed on p. 458 - the second answer on that page. The portion of the answer which should be struck out is everything after "Yes".

MR. LOCKHART: Q. I want to ask you some questions about the 5th June meeting at the office of TNT with Sir Peter Abeles that you have already given evidence about? A. Yes.

20 Q. I would like to ask you a few questions in regard to that conversation. That was a meeting, was it, which you asked Mr. Aston to arrange?  
A. Yes, that is correct.

Q. Why did you do that? A. Mr. Aston was well-known to Sir Peter Abeles. He was better known to Sir Peter Abeles than myself.

Q. Better known than yourself? A. Yes.

30 Q. Of course, you had been chairman of the Board of Millers since very shortly after the death of Sir Roderick Miller, had you not? A. Yes, that is right.

Q. During that time Sir Peter had been a director of the same company - Millers? A. Yes.

Q. And you, of course, have had a substantial number of conversations with Sir Peter over the years of your acquaintance with him, haven't you?  
A. Yes.

Q. And that is the reason you give, is it, for why you arranged for Mr. Aston to arrange the interview

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with Sir Peter rather than yourself? A. Yes.

Q. And Mr. Aston attended the interview? A. Yes.

Q. And Mr. Koch? A. Yes.

Q. Sir Peter, yourself, and anybody else? Was anybody else present? A. I don't believe there was anybody else present.

HIS HONOUR: Q. You say Mr. Koch was there, was he? A. Yes.

MR. LOCKHART: Q. You are quite clear that Mr. Koch was there, are you, Mr. Taylor? A. To the best of my recollection Mr. Koch was there. 10

Q. You see, yesterday when you were asked by Mr. Glass this question, on p. 458 of the transcript "Q. You were about to tell us of a meeting on 5th June. Do you remember that?" Your answer was "Yes. The meeting on 5th June was held at the offices of TNT with Sir Peter Abeles, myself and Mr. Aston being the only ones present." Do you remember that? A. Yes.

Q. Do I now take it you want to include Mr. Koch in those present? A. Yes, I believe that Mr. Koch was there, and this could have been a lapse of memory of mine yesterday. 20

Q. I am not being critical of you. I want to be clear on that? A. Thank you.

Q. Was Mr. Koch there at your invitation? A. Yes.

Q. Why did you want Mr. Koch there? A. Mr. Koch and I work together in all our general discussions, and we worked as a team, and I relied very heavily on Mr. Koch 30

Q. He was the head of one of your committees, wasn't he? A. Yes.

Q. Which one? A. The finance committee.

Q. And he was on the management committee? A. Yes, he was chairman of the management committee also.

Q. These were two committees that you set up shortly after Sir Roderick's death? A. Yes.

Q. I suppose you relied, did you, fairly heavily on Mr. Koch for detailed financial information about Millers? A. Yes.

Q. And that applied, did it, throughout the whole of the period since the establishment of the finance and management committees? A. Yes.

10 Q. Now, Mr. Taylor, you said yesterday, in answer to Mr. Glass - still talking of the 5th June meeting - that Sir Peter said he was hoping to come to an agreement with Ampol. That is what he said in fact, wasn't it? A. Yes, Mr. Lockhart, I don't remember the precise words. "Hoping" or "working towards". I don't remember the precise words that he used.

Q. Words to the effect that he was hoping to come to some deal with Ampol? A. Yes.

20 Q. That is the impression that, whatever the words he used, was conveyed to you, is that right? A. Yes, that is right.

30 Q. When he said that he proposed that the tankers would be put into a separate company, and that the hotels would be in part disposed of and others re-developed, and the colliery interests disposed of, may I take it that you took him to mean that he was suggesting to you means that he thought appropriate to reorganise and revitalise the interests of Millers? A. I think that would be fair to say they were his thoughts.

Q. I am only asking you about the impression that the words he used conveyed to you. You thought they were his thoughts? That is what you thought at the time? A. Yes.

40 Q. Indeed, you have had a number of discussions, haven't you, with Sir Peter Abeles over the period of your associations with him where he has expressed views as to how the assets of Millers and the affairs of Millers ought to be reorganised? A. Yes.

Q. And he has told you, hasn't he, on a number of

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occasions that some of the hotels were unprofitable,  
is that right? Sir Peter Abeles has told me that?

Q. Yes. A. I don't recall Sir Peter Abeles  
stating that some of the hotels were unprofitable.

MR. LOCKHART: Q. He has made it clear to you,  
hasn't he, that in his view such part of the hotel  
division company as was unprofitable ought to be  
disposed of? A. Yes, he had said that.

Q. And has he also said to you that those that  
had potential ought to be developed and encouraged 10  
or words to that effect? A. Yes.

Q. And you understood him to mean, didn't you,  
that the profitable side of the hotel division  
would be developed and retained by Millers, is  
that so? A. Yes.

Q. And he indicated to you on 5th June, did he  
not, that the tankers would be put into a separate  
division, is that right? A. No.

Q. A separate company? A. Yes.

Q.. And did you understand him to be referring to 20  
the fact that he thought the tanker interests of  
Millers should be placed into a separate division  
rather than left with all the other assets of  
Millers? A. I don't recall him using the word  
"division".

Q. Do you recall specifically the word "company"  
being used? A. Yes, I do.

Q. But did you understand him to be saying that  
the tanker interests of Millers would be put into  
a separate corporate entity of Millers and not 30  
Millers itself? A. He was not specific about that.

Q. Was that your understanding? A. My under-  
standing was that it was his intention if he was  
successful with the Ampol, with the agreement with  
Ampol, that the tankers would be in a separate  
company.

Q. In a separate company? A. Yes.

Q. But a separate Miller company. That is what I

am putting to you? A. No, there was no reference to a separate Miller company.

Q. So, may I take it that you do not know one way or the other whether his reference was to a separate company, part of the Miller group, or not, is that clear? A. No, it is not clear, Mr. Lockhart.

10 Q. It is not? A. Because during this discussion there was also - Sir Peter Abeles made mention of redundancy in staff and he said if there was - particularly in relation to senior staff - and he said if there was - if any staff were replaced, had to be replaced, that they could be taken up by T.N.T.-Bulkships-Union Steam, and I gathered from that that he was referring to redundancy of the officers of the company engaged in the control of the shipping department, the tankers.

20 Q. Quite so, and to the extent of any redundancy that would follow, it would be taken up, you understood him to mean, by Bulkships-T.N.T.-Union Steam? A. Yes.

Q. And you would agree with me, would you not, that what Sir Peter could have been referring to would be a situation where Ampol and Bulkships, being the two major shareholders of the company at that stage, might then work together to include a separate tanker division as part of the Miller structure controlled by them? (Objected to by Mr. Glass: rejected)

30 (Short adjournment)

Q. Mr. Taylor, at this meeting of 5th June, do you recall at this stage who was the first person to speak or would you be guessing? A. I don't recall.

Q. Do you recall Mr. Aston saying as soon as the meeting opened words to the effect "Sir Peter, is there any prospect of Bulkships making a counter bid to take over Millers?" A. No, I don't recall.

40 Q. You see, Mr. Aston was there, was he not, for the specific purpose of inviting Sir Peter to, if possible, say that a counter bid would be made on

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behalf of Bulkships? A. No.

Q. Of course, the question of voting support through shareholding being given to Bulkships was discussed at that meeting, wasn't it? A. Would you mind repeating the question, Mr. Lockhart?

Q. The question of voting support being given to Bulkships in the form of shareholding was discussed, was it not? A. Yes. (sic)

Q. And indeed raised by you, was it? A. Yes.

Q. I think you said you did not discuss a particular percentage at that point of time as to shares you could arrange for Bulkships to have but a percentage was discussed? A. Yes. 10

Q. Was the question of your being able to organise support from shareholders of Millers to Bulkships raised by you or by Mr. Aston or by both? A. It was raised by me. I don't remember Mr. Aston commenting on it.

Q. He could have or ... A. I don't remember Mr. Aston commenting upon it. I don't think it was raised. 20

Q. I missed what you said? A. I don't think Mr. Aston raised the point.

Q. Did you raise it fairly early in the meeting? A. I don't recall.

Q. Of course, that was the main object of the meeting, wasn't it, to deal with the question of share support for Bulkships? A. No.

Q. It was not? A. No, it was not.

Q. But you see, on the accounts you have given yesterday and today of what happened at that meeting, you have told us of what Sir Peter Abeles said but we have not heard much of what you said, Mr. Taylor, and reading - I stand to be corrected - in substance, the only thing we have heard of what was said by you was this statement that you would probably be able to influence shares towards Bulkships. (Objected to by Mr. Glass). 30

Q. And that was the main matter that was mentioned by you, was it not, at that meeting? A. Yes, I believe that was the main matter raised by me.

Q. And it was you who sought the meeting through Mr. Aston, wasn't it? A. Yes.

Q. And it was for the purpose of raising that matter, was it not? A. Yes.

10 Q. So, is this the position: you asked Mr. Aston to arrange this meeting, the main matter raised was this question of share support for Bulkships - the main matter raised by you was this share support for Bulkships but you say it was not the purpose of the meeting, is that so? A. Yes, that is so.

Q. What was the purpose of the meeting? A. The purpose of the meeting - I asked Mr. Aston to establish a meeting and my own purpose was to try and ascertain from Sir Peter Abeles whether or not he was working together with Ampol.

20 Q. Yes, and what questions did you ask him to that end? A. I did not ask any questions directly.

Q. But that was the main purpose of the meeting from your point of view, was it? A. Yes.

Q. But you asked no questions directly about it? A. I don't recall.

Q. Did anybody ask any questions of Sir Peter about it? A. I don't recall.

30 Q. Is your recollection of the events of that interview a little hazy, Mr. Taylor?  
A. Hazy in certain areas.

Q. Now, did Sir Peter say at that interview of 5th June that he had been associated with Ampol for many years or words to that effect? A. Yes.

Q. And that he had always found them honourable people to do business with? A. Yes. Whether he said Ampol or Mr Mac Leonard is an honourable man, I don't quite remember. I think he said "Mr Mac Leonard is an honourable man."

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Q. And you did not mention that in your evidence in chief as to what was said at that meeting when giving answers to Mr. Glass's questions yesterday, did you? A. No, I don't think I did. I don't remember mentioning that.

Q. You may take it you did not. Now, is that because you did not realise it until I refreshed your memory? A. That's correct.

Q. Did Sir Peter say that if it had not been for the assistance of Ampol to his company given about twenty years earlier he could have been in a difficult position or words to that effect? A. I recall something to that effect, yes.

Q. And he emphasised, did he, that at that time in the past, his company had been greatly assisted by Ampol or Mr Leonard? A. I don't remember whether he said they had been assisted by them but he said he was friendly disposed towards them and he also said that his relationships with Ampol were very good.

Q. His relations, yes. The discussion at this meeting of 5th June also involved the question of the colliery aspect of Millers' business, did it not? A. Yes.

Q. Sir Peter said that he was in favour of the colliery interests of Millers being disposed of and you disagreed with him, is that right? A. At that meeting?

Q. Yes? A. Yes, that is so.

Q. And, indeed, you had been associated with coal and I use that general term, for some years, had you not? A. Yes.

Q. I think you said yesterday you loved it or words to that effect, is that right?

HIS HONOUR: Mr. Taylor said he preferred it to beer I think.

MR. LOCKHART: Q. But you are attached to the coal industry, are you not? A. Yes.

Q. And you have had a large amount of experience, have you, in the coal industry? A. In the selling of coal.

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Q. In the selling of coal for some years? A. Yes. In the Supreme Court of New South Wales Equity Division  
 Q. Would it be fair to say that you looked upon the colliery side of the Millers business with some degree of affection? A. No more than any other side of the company.

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Q. I see. At any rate, you and Sir Peter differed on what ought to be the future of the colliery side of Millers business at that meeting, didn't you?  
 A. There was no great difference. These were

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opinions being exchanged.  
 Q. Apart from the meeting of 5th June, that question of the future of the colliery division of Millers has been discussed on more than one occasion between you and Sir Peter, has it not?  
 A. That is so.

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Q. And is it a fair summary of those conversations that you wanted to retain the colliery side of Millers business but Sir Peter's view was it ought to be disposed of? A. I don't think that is a fair summary of the conversation.

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Q. What would you say is a fair summary of the conversations on that aspect of it between you?  
 A. I was always of the belief that the collieries had a great potential and I still am of that belief and whilst the market is in the slump situation which it is suffering today, it would be the wrong time to sell off any of the assets, particularly the colliery assets.

30

Q. Let me interrupt you. I am not asking you what your belief about the colliery side of the business was but what was a fair summary of what you and Sir Peter said about it, you see. I appreciate you hold that belief. I am asking what is a summary of the conversations between you and Sir Peter about it to show up the divergent views.

HIS HONOUR: I think Mr. Taylor is giving his evidence. He is giving the contrasting approaches which obviously derived from what he said to Sir Peter. You proceed, Mr. Taylor.

40

WITNESS: Thank you, your Honour.



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HIS HONOUR: Q. The contrasting approaches that you had for disposal or retention of the collieries and that Sir Peter had indicated to you from the discussions. Those are the two? A. And Sir Peter agreed with me partially that now would be not the most opportune time to dispose of the collieries.

MR. LOCKHART: Q. "Now" being when? A. From the time he first raised it which was about some time after June last year and throughout the year to June - there was that twelve months because the market was suffering, the market was in a declining situation and he was of an open mind on it - if I could convince him otherwise, he was open to be convinced. That, I believe, is a summary of the situation, that there was no, it was a fluid situation.

10

Q. He had told you, hadn't he, that he thought the colliery interests of the company could only be effectively dealt with either by disposal to some outside body or by a joint venture with some outside body? A. He referred - my recollection is that he referred to disposal and I had suggested a joint venture. He later made comments of the joint venture.

20

Q. You were prepared to consider a joint venture in relation to the colliery division, were you, of Millers? A. Yes, I was.

Q. Was that because you appreciated the advantages of additional capital coming in to make the division more profitable? A. To make the company more profitable.

30

Q. The division and then the company. Do you agree with that? A. No, I won't agree with that.

Q. At any rate, by having such a joint venture greater profits would flow through to Millers. Is that right? A. No, that is not right.

Q. But it would make the company more profitable, would it, if there had been in your view such a joint venture? A. No.

40

Q. Isn't that what you just said, Mr. Taylor?  
A. No, I don't believe I said that.

Q. Well, what is your view - the transcript will speak for what you said. What is your view as to the effect on the profit of Millers if there was to be a joint venture between Millers and some outside party qua the colliery division?

10 A. I don't think at this stage of the game that it would increase the profit. I was concerned with a partial hiving off to get some money into the company, to get some cash. That is what we were short of. The only way to make the colliery division more profitable is to get more sales and increase the production and I could not see a partner coming into this situation that would immediately do that, achieve that end.

Q. Sir Peter had expressed to you, had he not, the view that to properly develop the colliery side of the business of Millers required enormous or considerable capital moneys? A. I was aware of it.

20 Q. Yes? A. I don't know whether Sir Peter had expressed that opinion to me.

Q. That is the fact but you cannot recall if Sir Peter said it or not? A. I was aware we were up for big capital.

Q. And you cannot recall if Sir Peter mentioned that or not. Is that right? A. I can't recall him mentioning it. I would not deny that he did mention it. It was mentioned by practically every member of the board.

30 Q. Including Mr. Cameron on at least one occasion at a board meeting? A. Certainly.

Q. Now, you said to Mr. Glass yesterday that the shareholders that you thought could be influenced towards Bulkships were the Eastern Suburbs Club, other clubs and the Duncan shares. Is that so? A. Yes.

40 Q. And when you said yesterday that you offered this percentage swing of shares (at p. 460 ) without authority, did you mean without authority from Millers or without authority from those shareholders I have just mentioned or both? A. I am not sure that I offered the shares or I

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stated I had offered the shares. I think I had said that I offered to influence the sale of the shares and I did that without the authority of the owners of the shares.

Q. Well, what did you say to Sir Peter about this matter at the meeting of 5th June, this matter of the influencing of the shares or the swing of shares? A. I inquired from him if Bulkships were interested in acquiring a percentage swing of shares, shares that I could probably influence. 10

Q. Was anything else said by you about that? A. Yes, I think I identified the shares. I did not mention any number or any price. I think I identified the shares that I had in my mind.

Q. And Sir Peter said he was not interested, is that right? A. I don't know whether he used those precise terms.

Q. I am not suggesting that but is that the substance of what he said? A. Yes.

Q. You may take it, Mr. Taylor, that unless I specifically direct your attention to the chosen form of words that I am only concerned with the substance of any conversations I put to you. Do you follow that? A. I understand. I hope I can remember it. 20

Q. Now, did you tell Sir Peter at this interview what you meant by offering him a percentage swing of shares from these shareholders? A. Would you mind repeating the question?

Q. Yes. Did you tell Sir Peter what you meant by offering him a percentage swing of shares from these shareholders? A. I think Sir Peter fully understood what I meant. 30

Q. Would you tell me what you meant? A. I was inquiring as to whether Bulkships were interested in purchasing a percentage swing of shares.

Q. In purchasing a percentage swing of shares? A. Yes.

Q. What was the percentage swing you had in mind?

A. At that stage I did not have any - I did not calculate a percentage.

Q. Well, you thought there were certain shareholders who you could influence to sell to Bulkships if Bulkships wanted them and they were the ones you named to Sir Peter, is that right? A. I thought I might be able to influence them. I had not approached the parties.

10 Q. And that is because of your close association with those or some of those who controlled those various shareholdings, is that right? A. No that is not right.

Q. Well, you knew some of the executives in charge of the Eastern Suburbs Club, for example, didn't you? A. Yes.

Q. And you had known them for some years, had you not? A. Not some years. I have only been in Sydney, back in Sydney since 1968. I had known them for some years, yes.

20 Q. Since you were back in Sydney you had known them, had you? A. Yes.

Q. You knew Mr. Duncan of course? A. Yes.

Q. What made you think you could possibly count on Mr. Duncan's shares going across to Bulkships?

A. I didn't think I could count on them.

Q. But you were nonetheless offering though without authority those shares to Bulkships through Sir Peter, were you? A. Yes.

30 Q. Well, you must have thought you had a pretty good chance of convincing Mr. Duncan that he should sell his shares to Bulkships? A. No, I didn't.

Q. But yet you told Mr. Duncan rather than, say, Lady Miller or somebody else? A. Lady Miller had ...

40 Q. I withdraw that. You hit upon Mr. Duncan, did you, out of the blue? A. No, because he represented - the Duncan shares represented a major holding, some 350-odd, some 400,000 - I don't know the exact number.

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Q. A big number? A. But they were big slices which could create a big swing.

Q. You thought on 5th June, didn't you, that you would probably be able to influence Mr. Duncan to sell the shares to Bulkships if Bulkships wanted them? A. No, I did not. I never discussed that with Mr. Duncan.

Q. I did not ask you that. Did you think it was a possibility that you would be able to arrange for these shares to be transferred? A. No, it never entered my mind. 10

Q. You just plucked Mr. Duncan's name out of the air because he was a big shareholder? A. That's right.

Q. But the same applied to the other shareholders, the Eastern Suburbs Club and other clubs? A. Yes.

Q. Just out of the blue, willy-nilly. A. Not willy-nilly.

Q. Out of the blue because of their large holding? A. Yes. 20

Q. Were there any other large holders other than Ampol and Bulkships, other than those I have just referred to, any other large holders in Millers at that time comparable to the holdings of those we have just mentioned? A. Ampol.

Q. Yes, apart from Ampol? A. Bulkships.

Q. Bulkships? A. No, I can't recall any.

Q. So, was this the position that you were offering to Sir Peter shares which represented substantial parcels in Millers and in respect of which you had no idea one way or the other whether the holders of them would be prepared to sell to Bulkships? A. That's correct. 30

Q. Yet you said yesterday to Mr. Glass, Mr. Taylor, that you offered without authority this percentage swing of shares and that you did mention those shareholders to which I have referred you? A. Yes.

Q. Just to finalise that point, I am right in saying this, am I, that the only reason that prompted you to mention those shareholders to Sir Peter was because they had large holdings in Millers?

A. Yes, that would be correct.

Q. Now, he rejected that you said, didn't you?

A. Yes.

10 Q. Pausing there for a minute, Mr. Taylor, after the Romanda shares and other Miller family shares went across to Ampol, you would have preferred to see, I gather, Bulkships in control of Millers rather than Ampol, is that right? A. After Ampol had purchased the shares.

Q. I take it you would have preferred no one to purchase the Romanda shares. That is quite obvious, isn't it? A. Yes.

Q. But those having gone to Ampol and faced with that situation, you would have preferred to see control go to Bulkships than Ampol, would you not?

20 A. I think I would have preferred Bulkships as a controller of the company.

Q. And that was why you raised this matter with Sir Peter, wasn't it, at this interview? A. No, it was not.

Q. It was not. It was one of the reasons, wasn't it? A. No, it was not.

30 Q. Well, you were making the offer to Sir Peter because if it had been taken up - I will withdraw that. You were playing some role on that occasion, were you not, in bringing about a situation where Bulkships might be able to control Millers. Wasn't that so? A. No.

Q. Yet you made that offer? A. You said they might be able to.

Q. Yes? A. I had no control over those shareholders.

40 Q. I think we are at cross- purposes, Mr. Taylor. What I am putting to you is you undoubtedly made this offer to Sir Peter, didn't you, about the other shares? A. I said I could influence them.

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Q. That's right? A. I offered to influence them.

Q. And the reason for your making the offer to influence them, was it not, was because, faced with the situation of the sale of the Romanda shares to Ampol, you preferred to see Bulkships in control than Ampol, is that right? A. Not at that time.

Q. At 5th June, 1972? A. Prior - at 5th June, 1972 - do you mind repeating the last part of the question? 10

Q. Yes, I will put the question to you again. As at 5th June, 1972, faced with the sale of the Romanda shares to Ampol, you preferred to see Bulkships in control than Ampol, did you not?  
A. Yes.

Q. And I am putting it to you that that was why you said what you did to Sir Peter on 5th June about influencing other shares? A. No, that was not right.

Q. Well, what was the reason? A. The reason, the real purpose in arranging the meeting and the ... 20

Q. The real purpose for saying what you did to him about being able to influence other shares?  
A. I was trying to establish in my mind whether or not Bulkships and Ampol had in fact made a deal or whether they intended to make a deal.

Q. And you had not reached a final decision on that at the end of that meeting, had you?  
A. I hadn't, I had not reached a final decision.

Q. Now, you are an honourable man, I take it, Mr. Taylor? (No answer). 30

Q. Well, you are. You put yourself forward as an honourable man, of course, don't you? (Objected to by Mr. Glass).

Q. Mr. Taylor, everything you said to Sir Peter at that meeting of 5th June I may take it was true, was it? A. I did not tell any lies.

A. No, everything you said was true, was it not?  
A. Yes.

Q. Now, you later telephoned Sir Peter in New Zealand, did you not, when you were in Sydney and told him you could probably influence fifteen per cent of the shares in Bulkships towards Bulkships - I am sorry, fifteen per cent of the shares in Millers towards Bulkships? A. Yes.

Q. And he rejected that also? A. Yes.

10 Q. How long after 5th June was that telephone conversation in approximate terms? A. Some time between the 5th and the 23rd.

Q. Can you be a little more specific or not?  
A. I don't recall.

Q. Now, had you in the interim spoken to any of the shareholders, the Eastern Suburbs Club or the other clubs or Mr. Duncan, who were in your mind on 5th June as being possible sellers? A. I had not spoken to Mr. Duncan regarding the sale of his shares.

20 Q. Had you spoken to the Eastern Suburbs Club or any of its officers? A. I had spoken to someone in the Eastern Suburbs Club about the sale of the shares.

Q. What had been said about it? A. They inquired of me whether I could get \$2.50 per share for their shares. I said "Leave the matter with me".

Q. Did they make the approach to you or you to them? A. I don't recall.

30 Q. What about the other clubs that you referred to in your evidence yesterday as being those who you had in mind as possible sellers? A. I did not have any specific clubs in mind.

Q. May I take it then that the only conversation that you have had with any of the clubs who held substantial parcels of shares in Millers and Mr. Duncan was the conversation you have just referred to with an officer of the Eastern Suburbs Club? A. Yes.

40 Q. Between 5th June and the time you rang Sir Peter in New Zealand? A. Were the only other clubs or persons.

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Q. The only other persons representing any of the substantial club shareholders was the one person from Eastern Suburbs Club who has been referred to? A. Yes.

Q. Did you speak to Mr. Duncan's alternate on the board of Millers about the question of the sale of shares between 5th June and the New Zealand conversation? A. No.

Q. Do you recall offhand, Mr. Taylor, the portion of the shares held by Eastern Suburbs Club in Millers in June this year in relation to the total issued capital of Millers? A. No, I don't recall.

10

Q. It certainly is not fifteen per cent? A. It certainly is not fifteen per cent.

Q. It is about five per cent, isn't it?

A. They owned, I believe, 350,000 out of 9 million.

Q. It is less than five per cent, isn't it?

A. I have not calculated it, Mr. Lockhart.

Q. All right. You may take it it is less than five per cent. Now, when you said to Sir Peter in this telephone conversation that - I will withdraw that. What you said to Mr. Glass yesterday was this at p. 460.

20

"I rang him (Sir Peter) on one occasion in New Zealand and on one occasion I spoke to him in Sydney and I built it up in my mind to about fifteen per cent of the shares that I could probably influence towards Bulkships and he rejected this also."

That is a substantially accurate record of what you said, is it? A. Yes.

30

Q. When was the other occasion in Sydney that you spoke to him? A. Not long after the meeting.

Q. Before the New Zealand telephone call?

A. I think so.

Q. When you said "the meeting" you meant 5th June?

A. Yes.

Q. What did you mean when you said to Sir Peter

that you could probably influence towards Bulkships about fifteen per cent of the shares? A. What did I mean?

Q. Yes. I will withdraw that. What did you mean to convey to him by using those words? A. I was trying to glean from him whether or not he had in fact made a deal with Ampol and this was the purpose of the exercise.

10 Q. But the words that you - by telling him that you could probably influence about fifteen per cent towards Bulkships was untrue, was it, in fact?  
A. As you put it that way, they were not exactly correct. It was a bigger bait I was putting on the hook.

Q. I follow that but it was in fact not a true statement that was made to him, was it?  
A. That's correct.

Q. You said it was a bigger bait to put on the hook. Is that what you said? A. That's right.

20 Q. What did you mean by that? A. I was trying to ascertain from Sir Peter Abeles whether or not he had in fact a deal with Ampol or whether he was manoeuvring to make a deal and it was uncertain in my mind.

Q. As to which it was? A. As to whether he had made a deal or whether he was making a deal or whether he did not have a deal.

30 Q. It was on 23rd June, 1972, was it not, Mr. Taylor, in that conversation in the lobby of the company's premises that you had a further conversation with Sir Peter about the question of Bulkships' shareholding? A. Yes.

Q. And at pp.465/466 you asked Sir Peter if he would require transportation to his office and called a car and stood talking in the hallway of the offices. Do you recall that? A. Yes.

40 Q. And you said yesterday to Mr. Glass that he, Sir Peter, reassured me then that Bulkships would not be selling their shares to anyone or at any price? A. Yes.

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Q. And he said the position was very straight-forward as he saw it. He would not attempt to make a deal with Ampol for the control of the Miller company and if this failed, an attempt to make a control for Howard Smiths? A. Yes, I recall that.

Q. Did you make any response to that statement by Sir Peter? A. No, I don't recall that I made any response.

Q. But did you understand from what he said that he would, following that meeting with you, attempt to come to some deal with Ampol and, failing that being successful, then with Howard Smith? 10  
A. Yes.

Q. Do you recall on that occasion Sir Peter saying words to you to the effect that he does not think Bulkships will sell their interest in Millers. Do you recall words to that effect being said? A. He stated, I think as you had read out previously, that Bulkships would not sell their 20  
shareholding in Millers to anyone or at any price.

Q. What I am putting to you is, did he say to you - not what you have just said but that in his view Bulkships, he did not think that Bulkships would sell their shares in Millers? A. Mr. Lockhart, are you - the actual words you are getting down to again?

Q. Words to that effect? A. I am confused. Could you please rephrase the question for me?

Q. I will put it to you again. Is what you said yesterday, namely, that he reassured you then that Bulkships would not be selling their shares to anyone at any price your conclusion of whatever words he used? A. Yes. 30

Q. But you do not recall what he said? A. I recall him using almost those precise words, that Bulkships would not be selling their shares to anyone no matter what the price was.

Q. Do you keep notes of conversations, Mr. Taylor? A. Very rarely. 40

Q. Have you kept notes of the conversation of 5th June to which I have just referred? A. No, I have not.

Q. And I suppose not of the conversation in the hallway on 23rd June? A. No, I have not.

Q. Now, you gave evidence yesterday at p. 465 onwards of a conversation between yourself and Sir Peter between 23rd and 27th June - do you recall that? A. Yes.

10 Q. That is the conversation when Sir Peter requested certain resignations from the board? A. Yes.

Q. Now, you said in your evidence yesterday about that conversation Sir Peter said the company would be reconstituted with myself, that is yourself, as chairman. You are clear that was said, are you? A. Yes.

20 Q. And you said yesterday "Representing Ampol would be Mr. Mac Leonard, Mr. Harris and Sir Ian Potter." Now, you do not, do you, really suggest that is what he said as to who would represent Ampol? A. I recall I said that yesterday and I recall it was Lady Miller that was supposed to be - I did say that yesterday and I was incorrect.

Q. It is obviously incorrect, isn't it? A. The placement of Sir Ian Potter is incorrect and Lady Miller.

30 Q. Let me put it to you again. Did he say to you that you could be chairman, that representing Ampol would be Mr. Mac Leonard and Mr. Harris. Is that right? A. Yes.

Q. Representing Bulkships would be Sir Ian Potter and himself, Sir Peter Abeles? A. Sir Ian Potter, Sir Peter Abeles and Mr. Evan Cameron.

40 Q. What I am putting to you is this. Did Sir Peter say to you not that what you have just said but that representing Bulkships would be Sir Ian Potter and Sir Peter Abeles with Mr. Cameron as it were a complete independent or words to that effect? A. I don't recollect. I don't recall Sir Peter saying that.

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Q. Could he have said it? A. I think I would have remembered because he spoke about camps, you know, two sides, Ampol and Bulkships.

Q. He made a remark about Lady Miller, did he not, that he thought she should be retained on the board because of her links with the Miller family and it was good to have such a link in a company such as this? A. No, he did not.

Q. What did he say about Lady Miller at this interview? A. He said that he agreed with my thoughts that Lady Miller should not be on the board. 10

Q. Are you talking of this interview between the 23rd and the 27th? A. Between the 23rd and the 27th on the telephone.

Q. I am sorry, go on, yes. Is that all you wanted to say on that? (Witness nodded).

Q. So, that is what he said about Lady Miller in relation to the board on that occasion, was it? A. He said he shares my views that Lady Miller should not be on the board and my views were that she should not be on the board and he shared that, those views, and he stated that Ampol had insisted that Lady Miller should be on the board. 20

Q. Did he go on to say something to the effect that anyhow it would be a good thing for her to be there because of the Miller image or words to that effect? A. No, he did not say that.

Q. Did he say it on any other occasion? A. Immediately after Sir Roderick's death this was, I think, Sir Peter - I don't recall it but this was the general opinion of all the directors when we invited Lady Miller to join the board, the Miller Board. 30

HIS HONOUR: Mr. Lockhart, if you are leaving that, Mr. Taylor wanted to correct what he said yesterday about those two groups. You put it to him piece-meal. I don't know that he has completely corrected it.

Q. Mr. Taylor, you recollect yesterday you did state the names of these two groups? A. Yes, your Honour. 40

Q. And you said you had some names transposed. Would you like just to restate now what you recollect he said about the proposal for the constitution of the board? A. Yes, your Honour. Sir Peter had suggested that on the Ampol side there should be Mr. Mac Leonard, Mr. Harris and Lady Miller and on the Bulkships side there should be himself, Sir Ian Potter and Mr. Cameron, with myself as chairman. I beg your pardon, I got those names mixed up yesterday, your Honour.

10

HIS HONOUR: Well, you did not have a chance this morning to add Lady Miller on to the Ampol alignment.

MR. LOCKHART: I am indebted to your Honour.

Q. Mr. Taylor, you gave evidence of a board meeting, I think it was, at which, to bring back to your mind, Sir Peter Abeles made that reference to takeover offers "The more the merrier" and Mr. Cameron in fact agreed with it. Do you recall the occasion? A. Yes.

20

Q. That was a board meeting, was it? A. Yes.

Q. Of Millers? A. Yes.

Q. Do you recall when? A. No, I can't recall when.

Q. April, May, June, July 1972? Does that assist on that? A. I would be guessing, Mr. Lockhart and I can't honestly recall when. It wasn't last year. It was whilst the takeover fever was on.

Q. And I suggest to you that Sir Peter said words to the effect that he sees no reason why the board should discourage anybody from making takeover offers if they want to. Would you agree that is a fair summary of what he said? A. No, I don't agree.

30

Q. What did Sir Peter Abeles say on that occasion as you recall it about takeovers? A. He said to me, specifically to me, there was nothing wrong with encouraging other people to make counter-bids at a higher price or words to that effect. That was the import of the message that he gave to me.

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Q. Yes. And did he say anything else?

A. Yes, he ...

Q. Referable to that subject matter? A. I can't recall that he said anything else. It wouldn't have just finished off on the few words I said. It would have been rounded off and couched in better phrases. This was the essence of what he said.

Q. And it was that with which Mr. Cameron agreed in substance, was it? A. Yes, Mr. Cameron agreed and he also said he also could see nothing wrong or words to that effect. He didn't just say Yes and nod his head. He stated that he agreed with it. 10

Q. Now, you said to Mr. Glass this morning, Mr. Taylor, as one of the reasons for voting on the issue of the shares to Howard Smith the way you did on 6th July, 1972, that you - you said "I believed my position would be secure". Do you remember using those words?

MR. GLASS: No, that is not right. 20

WITNESS: I don't remember that.

MR. LOCKHART: I stand to be corrected. I thought he said that this morning, your Honour.

HIS HONOUR: No, that was not one of the reasons, Mr. Lockhart. Mr. Glass asked him what ~~was~~ his belief but it was certainly not a reason that he advanced.

MR. LOCKHART: Q. I will put that to you again, Mr. Taylor. You said to Mr. Glass this morning that you believed your position would be secure, did you not? A. No, I can't ... (Objected to by Mr. Glass). 30

HIS HONOUR: Put it precisely Mr. Lockhart. Mr. Glass put to Mr. Taylor the contrasting situations of an Ampol takeover and a Howard Smith takeover and sought to demonstrate the contrasting in what had an what had not been held out to Mr. Taylor in the two alternative situations.

(sic)

MR. LOCKHART: Q. When you said this morning to Mr. Glass that you believed your position would be 40

secure, to what were you referring? A. To the position if Howard Smith and Bulkships got together to control the company.

Q. And that was because of ...

HIS HONOUR: Q. I think you mean if Ampol and Bulkships? A. I beg your pardon, your Honour. If Ampol and Bulkships had got together.

MR. LOCKHART: Q. Yes. And that was because of what Sir Peter Abeles had told you? A. Yes.

10 Q. And that was your belief? A. Yes.

Q. And you did not, did you, doubt his word in that regard? A. No, I had never commented on it. I didn't doubt it, no. I had no reason.

Q. He said it to you and you accepted it as a genuine statement by him, did you? A. In good faith.

20 Q. Indeed, Mr. Taylor, you have already agreed you had a number of conversations with Sir Peter over the period of your association with him on Millers?  
A. Yes.

30 Q. And Sir Peter has, from time to time during his directorate of Millers, expressed constructive views as to improving financial controls and administrative procedures, has he not? A. Yes, but not in any regular pattern. Early in the - after I was appointed chairman, Sir Peter Abeles did constructively comment in relation to the control of the company and its management and what he thought figures, what figures the board should be presented with, and early in the piece he was quite constructive ...

Q. That was the period - I am sorry, you have not finished the answer. A. There was a period of about six months in which Sir Peter Abeles did not attend board meetings. That was from about the time he was appointed from November in 1971 through till - for a period of about six meetings. Whether it was six months or not, I haven't got the precise minutes with me.

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Q. The minutes speak for absences and attendances at meetings, do they not? A. Yes.

Q. During this earlier period which is the period, I gather, shortly after Sir Roderick's death?  
A. Yes.

Q. That was the period when means of improving administrative techniques and financial procedures were being closely considered? A. Yes. Sir Peter did not involve himself with administrative techniques. 10

Q. He was essentially a man with - is that right - financial abilities? A. He was a guideline man.

Q. Yes, a principal, not of detail? A. Yes.

Q. And a man of wide experience in this field, the field of finance? A. I believe that he had wide experience in this.

Q. It was at the early stage following Sir Roderick's death that you initiated the finance committee and then later the management committee. That is so, isn't it? A. Yes, that's correct. 20

Q. And that, no doubt, is because you took the view that those procedures had to be adopted in the best interest of the future of Millers?  
A. Yes, that's correct.

Q. Because this was a weak area in the running of Millers, was it not? A. From my point of view it was a weak area because I did not have a complete knowledge of the running of the company and I thought it essential for me to get this information, the activities of the company in a concise form, so that I could present it to the board and acquaint them at the same time. 30

Q. To what extent did you, during 1971, Mr. Taylor, acquaint yourself with details as distinct from matters of overall principle in relation to the finances of Millers? A. I was advised by my finance committee and I did not get into the details of the finance. There were discussions that I picked up during discussions that were regular. I continually inquired as to how they were progressing with various lanes and with 40

various people but I did not delve into the details of the financial procedures.

Q. And to the extent of whatever they gave you, you tended to rely upon the accuracy of that?

A. I relied upon that, yes, and their accuracy.

Q. And, Mr. Taylor, I show you this document. Would you look at that please, Mr. Taylor. You have seen that? A. Yes, I have seen this before.

10 Q. When did you last see it? A. One day last week.

Q. By Mr. Koch? A. Yes, after this came out in the newspaper, I referred back and I inquired from Mr. Koch, you know, what had been said and then my secretary produced this document.

Q. This is when Mr. Koch was giving evidence last week? A. It wasn't when he was giving evidence. It was after he had given evidence back in the office and I spoke to him about a newspaper article. I think it was the Financial Review; I  
20 am not certain of that.

Q. You recall that article that is in front of you? A. Yes.

Q. And you can recall reading that at or about the time it appeared in the Press? A. Yes, I would have seen that.

Q. You see where it says - would you look, Mr. Taylor, please, to the second last column under the photograph. "As for the company having financial worries, Mr. Taylor said this was in no way true."  
30 Do you see that? A. Yes.

Q. May I take it that that was, in substance, your view at that time? A. No, it was not my view at the time. We had ...

Q. One minute. Not your view at the time. Is it a substantially accurate statement of what you had said to the Press? A. That is part of - that is part of a whole story that I had given the Press.

Q. It is recorded in the article as a whole? A. No, it is not recorded in the article as a whole.

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Q. But that statement I have just drawn your attention to was a statement that you made to the Press as part of a wider statement. Is that right?

A. Yes, I think I would have made that statement, that particular paragraph that you are referring to or sentence.

Q. Does the statement that you made to the Press as recorded in that paragraph that I have directed your attention to substantially reflect your view at the time, substantially reflect your view at the time? A. No, it did not.

10

Q. Is it wrong? A. I think it is reported correctly. I may have said that. I feel certain I did use those precise words.

Q. That "As for the company having financial worries" it was in no way true? A. Yes, I think I said that in part of a telephone conversation where a reporter had rung me at home.

Q. And may I take it you would not have said that to the Press unless you thought it was basically right? Isn't that so? A. No, that is not so. I was trying to - no, that is not correct.

20

Q. Well, this statement was one you said you read at or about the time it was released in the Press. Is that right? A. Would you repeat the question please?

Q. You have said to me already that this Press statement was one which you had read at or about the time it appeared in the Press? A. Yes.

Q. Did you take any steps to correct any of the statements that appeared in the cutting in front of you? A. No, I didn't.

30

Q. And you appreciated, did you not, that at that time the shares of the company were being traded on the stock market? A. I appreciated they were being traded on the stock market.

Q. Would you look, Mr. Taylor, please, at the minutes of that meeting, folio 225, towards the bottom. You will see under the heading of "Consideration of Group Results" these words appear "Mr. Cameron raised the question as to timing of

40

announcement of results for the six months ended December 31, 1971, and suggested that in view of the activity in trading in the company shares every effort should be made to announce the results at the earliest possible date." Does that accurately record what he said at the board meeting? A. Yes, I believe so.

10 Q. And this Press release to which I have drawn your attention was issued only a matter of days before that board meeting, was it not? A. Yes.

Q. And let me just get this quite clear with you, Mr. Taylor. You say that that statement in the Press to which I have drawn your attention was in fact made by you to the Press, but it was part of a wider statement? A. Yes.

Q. That it was not accurate, read as it appears in the article? A. Yes.

Q. But that no steps were taken to correct it?  
A. That's correct.

20 Q. Why not? Why no steps taken to correct it?  
A. I have never attempted to correct anything that appears in the newspaper unless I considered it to be - I have never and I would only consider challenging it if it was libellous.

Q. It was an accurate account then of what you had told the Press officer. Is that what you say? I will withdraw that. It was out of context. Is that what you say? A. Yes.

30 Q. But nonetheless that statement was made?  
A. Yes.

40 Q. Well, what was the context in which you made this statement to the Press? A. I was painting a picture - firstly I was plagued with 'phone calls. These were regular things and there were a lot of people attempting to discredit the company from outside and there were rumours in the marketplace that the company was going bad, bankrupt, and I was trying to paint a picture of confidence, the fact that the company was into a good trading area, our trading results were improving. I was also attempting to instill confidence into the

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staff and also confidence into the existing share-  
holders of the company. I quoted also the slough  
of despond but it does not appear in the Press.  
I said we had gone through the slough of despond  
and we had got out of it without the helping hand  
and now I said we are into an area where we are  
involved with the muckrakers and this had been  
prompted because I had just recently - at that time  
I had just read Pilgrims Progress and I was drawing  
this picture. We had just gone through some  
troubles, we were suffering from troubles but we  
could see our goal for the future and that was the  
total picture I was attempting to paint; one of  
confidence.

10

Q. In other words, do you mean that the true  
position was that although there were financial  
worries at the time you were confident you could  
overcome them? A. Yes. We were arranging for  
long-term loans and I was confident that we could  
overcome them.

20

Q. And that was based upon your own knowledge of the  
company's financial position and what you had been  
told by management? A. We were working towards  
that goal.

Q. It was based upon your own knowledge of the  
position and what you had been told by management,  
is that so? A. No, I think this was more my own -  
I had drawn my own conclusions on this.

Q. But you had not drawn them contrary to manage-  
ment statements and recommendations, had you?  
A. No, I was confident or arranging the Hambros  
loan.

30

Q. But you had not drawn those conclusions  
contrary to the recommendations of management, had  
you? A. I can't - I don't recall even consider-  
ing at this stage any recommendations of management.

Q. At any rate, you, as chairman of directors and  
managing director of the company, were confident  
that whatever financial worries existed at  
December 1971 were overcome. Is that right?

A. I am a ...

Q. Is that right? A. Yes, that is right.

Q. And that view was based upon your knowledge of the group's affairs? A. It was based on my own confidence.

Q. Yes, but your confidence wasn't just plucked out of the air, was it, Mr. Taylor? A. No.

Q. It was based on sound business experience?  
A. At this stage, it wasn't. It was based on my optimism.

10 Q. But optimism in your view which was based on fact, isn't that so? A. No, that is not so.

Q. What, optimism that was opposed to the fact. Is that what you say? A. No, I did not say that.

Q. I want to get it clear what you do say.  
A. I am an optimistic person and I have an optimistic outlook in most things.

20 Q. I share that, Mr. Taylor, I appreciate that, but optimism must be based upon something, must it not? Well, I will withdraw that. Mr. Taylor, you were optimistic about the company's future?  
A. Yes.

30 Q. Now, you based your optimism in part upon your knowledge of the company's affairs and its finances?  
A. I based it on the fact that we had effected considerable economies and that we were heading into a trading situation and I was confident and optimistic that we would overcome our financial difficulties. I was confident and I based that on my own judgment and this was not supported by any comment or recommendation from the management committee in any way whatsoever. This was the result of a telephone call, a person from the Press ringing me at home at night.

Q. Yes, but your own judgment, leaving aside for the moment the Press, your own judgment as to the future of the company was based in part upon your knowledge of the company, was it not, and its position? A. Yes, I must agree that that is correct to a degree.

40 Q. That must be so? A. Because I was aware of how tremendously wealthy the company was in assets,

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for instance, and not being an accounting man, you can say you are tremendously wealthy in assets and you can still have no working capital.

Q. But you were confident that these financial problems could be re-arranged and all would be well in the future. Is that right? A. I was optimistic and also confident that we would eventually find a solution to our financial situation.

Q. And a not too distant solution? A. I did not put any time limit on it. I cannot agree with that statement, Mr. Lockhart. 10

Q. Do you mean the question of time was not present in your mind? A. No, it was not.

Q. Now, Mr. Taylor, we have heard reference to Mr. Aston, solicitor, as accompanying you on a number of discussions relevant to this suit. Now, was Mr. Aston the company's legal adviser? A. Yes, he was employed by the company as a legal adviser.

Q. The company did, in fact, retain other solicitors generally, did it not? A. Yes. 20

Q. Nicholl & Nicholl, is that right? A. Yes, we have our own company officer and other ...

Q. Mr. Conway? A. Mr. Conway.

Q. Is the legal officer, is he not? A. Yes.

Q. When did Mr. Aston first act for the company? A. I can't recall the date when he first acted for the company.

Q. Can you assist me as to why it was that Mr. Aston acted in relation to the matters we have heard evidence about in this suit to date and not the company's usual solicitors? A. I had been advised that Mr. Aston specialised more in this field of, in this takeover field. 30

Q. When were you advised of that? A. I think it was November or December last year.

Q. Who advised you that? A. A public relations officer that we employ.

Q. Who is that? A. Mr. Carew.

(Luncheon adjournment)

MR. LOCKHART: Q. Mr. Taylor, you gave evidence yesterday of what was said at an interview, in Mr. Nicholl Sr's office where present were yourself, Sir Peter and Mr. Nicholl. Do you recall that?  
A. Yes.

10 Q. Did Sir Peter say at the meeting that Bulkships was prepared to buy or words to the effect that Bulkships was prepared to buy the Romanda shares at \$2.40? Did he say that? A. Yes.

Q. But that Bulkships was not prepared to make a formal offer for that? A. No, I don't recall...

Q. You do not recall that? A. I don't recall that statement being made by Sir Peter.

20 Q. Did Sir Peter say that he assured the people present, yourself and Mr. Nicholl, that if Romanda gives a firm offer to that effect the board of Bulkships might accept it or words to that effect?  
A. No, I don't recall that conversation being made.

Q. You do not recall that. When was it that you learned from Sir Peter that Bulkships was not interested in purchasing the Romanda holdings?  
A. I did not learn from Sir Peter at all.

Q. When did you learn it? A. I learned it the day I think before 12th May. It could have been the 10th or the day before. Within two days of the meeting of Romanda of 12th May.

30 Q. The meeting of Romanda to which you have already referred? A. The meeting to which ...

Q. Do you mean the board meeting of Romanda?  
A. The board meeting of Romanda held in Nicholl & Nicholl's office.

Q. Could you answer that? A. Yes.

Q. That is the meeting you gave evidence about yesterday. Is that right? A. Yes.

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Q. Now, it was on 23rd June, was it not, when Sir Peter said to you in the hallway after the board meeting words that indicated to you that Bulkships was not interested in selling its shares. Is that right? A. On 23rd June?

Q. Yes. A. Yes, that's correct.

Q. That was in the hallway, wasn't it? A. Yes.

Q. Did Sir Peter ever tell you why Bulkships wasn't interested in purchasing the Romanda shares or did he not tell you? A. No, he did not tell me why he was not interested in purchasing them. 10

Q. Now, do you remember before Sir Peter and you spoke to Mr. Nicholl Sr. when reference was made to Bulkships and the Romanda shares you gave evidence yesterday of a preliminary discussion which occurred between Sir Peter and yourself. Do you recall that? A. I recall.

Q. I am sorry? A. I recall some of the details. I recall that I did make mention of a discussion.

Q. What was said in that discussion between Sir Peter and yourself? A. That was when Sir Peter asked me to make the appointment with a responsible person in Romanda so he could, to enable him to make an offer for the acquisition of Romanda shares. 20

Q. Was that the effect of his words as you understood it or were they his words? A. I can't recall the precise words.

Q. Now, do you recall giving evidence yesterday of an interview that took place within a week or so of the death of Sir Roderick with yourself, Mr. Murphy, Mr. Ellis-Jones and Sir Peter Abeles? A. Yes, I recall. 30

Q. Do you recall that? A. That interview, yes.

Q. And there was a discussion at that meeting about finance in relation to the company? A. Yes, there was discussion about finance.

Q. And did Sir Peter make comment to the effect that something should be done in relation to

organising long-term finance to meet commitments of the company? A. I don't recall Sir Peter making any comment in that regard.

Q. When you say you do not recall that, do you mean that you do not remember one way or the other?  
A. I don't remember.

10 Q. Mr. Taylor, why were there no management reports prepared for the board for the June and July meetings this year? A. I can't correctly answer that.

Q. Do you mean you don't know one way or the other? A. I don't know.

Q. So, it would not be right to say that they were not prepared for those meetings based on instructions that you gave? A. I did not give any instructions that they should be prepared.

Q. Did you give any instructions that they should not be prepared? A. No.

Q. Did anyone discuss with you the question whether they should or should not be prepared?  
A. No, not to my - no.

20 Q. You are clear about that, are you? A. Yes, I am clear about it.

Q. Do you know why they were not prepared?  
A. I can assume - I don't know the exact reason why they were not prepared.

Q. You don't know do you say? A. I don't know.

30 Q. The exact why they were not prepared. But of course at the 6th July meeting there was a great deal of attention centred around the financial position of the company, wasn't there? A. No more than at any other board meeting.

Q. No, but there was a great deal of attention centred around it, wasn't there? A. No.

Q. A lot of statements were made by Mr. Koch. A lot of statements were made by Mr. Koch, weren't they about the financial position at the meeting?  
A. No more than he would normally present for the board's information.

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MR. LOCKHART: You gave evidence this morning about a conversation you said took place between Sir Peter Abeles and yourself with reference to the Shell letter of commitment. Do you recall that? A. Yes.

Q. I want you to tell us again what was said in that conversation (Objected to by Mr. Deane; allowed). A. I had explained to Sir Peter Abeles that we were having difficulty in getting a letter of commitment from the Shell Company, and this letter of commitment was impeding the loan from Hambros Bank, and I felt that - I inquired as to whether - 10

Q. Inquired of him? A. Of Sir Peter Abeles, whether he would give consideration to a bank guarantee as had been suggested by A.F.I.C. Do you want me to continue?

Q. Yes please. A. Sir Peter had suggested to me -

Q. At this discussion? A. At this discussion, that the quickest way - he may not have used these words - but he suggested the quickest way to get a letter of commitment from Shell that would assist us with our arrangements with the Hambros Bank was for me to tell Leslie Froggatt, the Chairman of the Shell Company, that T.N.T. would act as guarantee and then he stated that no doubt Sir Leslie Froggatt would check this with Sir Ian Potter and Sir Ian Potter in turn would "check this back with me and I would say Yes." 20

Q. "I" being whom, as you understood it? A. T.N.T. at that stage, and that this information, feeding back to Shell could assist them in expediting their letter of commitment because they would be aware that we had overcome our financial difficulties in relation to the Bank. He then went on to say, "You know very well T.N.T. can not -" I beg your pardon-" You know T.N.T. can not act as guarantee, nor can Bulkships." 30

Q. You are clear about that, as to what the conversation was? A. Yes, I am.

Q. Was anything else said about it by either of you in that conversation relevant to the Shell letter of commitment? A. I would think that was the essence of the conversation. 40

Q. I put it to you that what was said was not that at all, but this, by Sir Peter. Listen carefully to this: that he said that "you should get in touch with Mr. Froggatt of Shell". Do you agree with that so far? A. Yes.

Q. And that you should explain to him what it was you were seeking, is that correct? A. No, that is not correct.

10 Q. And, at any rate, that you should speak to him and tell him that Bulkships was an interested party, being a shareholder. A. No, he didn't say that.

Q. Are you sure about that? A. I am sure.

Q. I put it to you that Sir Peter said to you words to the effect that under no circumstances could a guarantee be given? A. That is not correct. He did say in the latter part that he could not guarantee, but not in that context that you have just put it.

20 Q. I put it to you that all he told you in relation to communicating with Mr. Froggatt was that you should do that and tell him that Bulkships, which of course he knew was an interested party, and that Mr. Froggatt would then check with Sir Ian Potter about the matter and doubtless then would communicate with you (Objected to by Mr. Glass).

30 Q. I put it to you that Sir Ian Potter said to you that you should get in touch with Mr. Froggatt of Shell, tell him that Bulkships was an interested party in the matter, that he, Mr. Froggatt, would doubtless get in touch with Sir Ian Potter and discuss the matter, but that under no circumstances could a guarantee be given. Was that said by Sir Peter or not? Words to that effect? A. No, that is incorrect.

Q. When was this conversation? A. I cannot name the precise time, but it was at that time when we were negotiating with Shell for the Hambros loan.

40 Q. Approximately when was this? A. I would be guessing the time. I feel it would be wrong for me to guess it. I don't know the time.

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Q. I suggest the next thing you said was "I am not in a position to offer it yet because there is not a vacancy but I expect that there will be one shortly?" Do you deny you said that in this telephone conversation? A. Yes.

Q. I suggest that you then said, "I am having a board meeting tomorrow and I cannot comment any further until after the meeting"? A. I do not recall saying anything to that effect.

Q. Do you deny you said that? A. I do not recall having said it. 10

Q. You see, what I am suggesting to you is that the only occasion on which there was any conversation between yourself and Mr. Leonard relating to Ampol being represented on the board of Millers was in that telephone conversation on the afternoon of 5th July. A. Your suggestion is not correct. I had two telephone conversations with him.

Q. When was the other telephone conversation? A. Not long after Ampol had purchased the Romanda shares. 20

Q. Before Ampol had indicated it was going to make the takeover offer for all the shares? A. I don't recall the exact date. It was at Sir Peter Abeles' suggestion.

Q. Where was Mr. Leonard when you rang him? A. I couldn't say. I asked for Mr. Leonard through the telephone.

Q. You agree, I presume, that he was not out of the country? A. Yes. 30

Q. Would you agree with me that in the only telephone conversation or conversation you had in relation to Mr. Leonard going on to the board of Ampol his answer to you was "That is a matter which would have to be considered by my board"? A. No, that is not correct.

Q. You rang Mr. Leonard on 5th July, did you not? A. Yes, I did.

Q. Why did you ring him? A. I rang him and acknowledged the letter. I said "Thank you". I 40

rang him to acknowledge the letter and I referred to the last paragraph.

Q. What did you say? A. I said, "I was under the impression that Sir Peter Abeles was speaking on your behalf when he said no useful purpose would be served by continual exchange of correspondence and if there is any fault it is mine for not having contacted you previously and talked the matter over with you".

10 Q. What else did you say? A. I can't recall what else I said but I accepted the responsibility because I had not contacted him earlier, and that was triggered by that last paragraph in that letter.

Q. I want to ask you some questions about the meeting between Mr. Nicholl, Sir Peter Abeles and yourself. You said that in the course of that meeting Sir Peter Abeles referred to an agreement between himself and Sir Roderick Miller. A. Yes.

20 Q. You said that Sir Roderick had informed you or discussed the matter with you? A. Yes.

Q. What had Sir Roderick Miller told you?  
A. He told me that he had agreed with Sir Peter Abeles - Sir Peter Abeles had agreed with him that neither party would sell their shares unless they gave one another six months' notice, and this was a verbal agreement.

Q. That coincided with what Sir Peter Abeles told Mr. Nicholl. A. Yes.

30 Q. Because at this time Sir Peter Abeles, as you understood it, that is at the time this agreement was made known to you, Sir Peter Abeles represented the shares now held by Bulkships? A. Yes.

Q. What percentage of your share capital?  
A. About 25 per cent.

Q. And Sir Roderick Miller represented, as it were, the shares that Ampol acquired from Romanda?  
A. Yes.

Q. Which means that Sir Roderick Miller and Sir

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Peter Abeles in this agreement, of which you had been informed, were, as it were, acting in relation to more than half the share capital of Millers.

A. I think it was less than half. I think Romanda and the associated companies had something under 25 per cent.

Q. Well, so close to half that it didn't matter.

A. Yes, that would be correct.

Q. For practical purposes, control of Millers.

A. Yes.

10

Q. Did you complain when you were told by Sir Roderick that the two major shareholders had entered into an arrangement that they would not sell their shares? A. No. (Objected to by Mr. Glass; disallowed).

Q. Did you complain when you were told by Sir Roderick Miller that the two major shareholders had entered into an arrangement that neither of them would sell their shares without giving six months' prior notice to the other. A. I did not complain, and as it was a verbal agreement -

20

Q. Did you suggest to Sir Roderick Miller "This is something of great interest to the minority shareholders"? A. No.

Q. Did you suggest to Sir Roderick Miller that the least that could have been done was that a joint announcement could be made so that people buying and selling shares in Millers would know what the situation was. A. No.

Q. Did you suggest to Sir Roderick Miller that if a takeover offer were made for Millers the result of the arrangement would be that the minority shareholders could not sell their shares because a takeover could not succeed. Did you mention that to him? A. No.

30

Q. Of course, for practical purposes, so far as you are concerned, the position is, is it not, that there are two main differences between the joint announcement by Millers and Ampol and this unannounced agreement between Sir Roderick and Sir Peter Abeles, and I suggest to you that those two differences are, first, Ampol and Bulkships

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immediately published the fact of their agreement. That is one difference is it not? A. Yes (Objected to by Mr. Glass; allowed).

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10 Q. The second difference was that insofar as the first arrangement was concerned, the party to it was Sir Roderick Miller, whom you liked, and so far as the second arrangement or announcement was concerned, the party to it was Ampol? (Objected to by Mr. Glass; allowed). A. Would you mind repeating that question.

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Q. The second difference, Mr. Taylor, was that the first unannounced arrangement was between Bulkships and Sir Roderick Miller, whom you liked; and the second publicised announcement was between Bulkships and Ampol? A. Yes.

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Q, By the time the second publicised announcement had been made most of your activities were being directed to defeating Ampol's takeover offer. A. That is not correct.

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20 Q. Then, a great part of your activities were directed towards defeating Ampol's takeover? A. Part of my activities - not a great part.

30 Q. Did you point out to Sir Roderick Miller that this arrangement, that if it were not made public, people could buy shares on the Stock Exchange in Millers, believing that a takeover offer could succeed, whereas in fact it could not? A. No, I did not. I was aware of the fact that whilst Sir Roderick Miller was alive, that he particularly would always look after the interests of all of the shareholders of the company.

Q. I want to bring you to your account of the meeting between Millers' representatives and Howard Smiths' representatives in June and July of this year. Just one matter before I come to that. We have been told that there was a telephone call or conversation between Mr. Balhorn and Mr. Duncan on the morning of 6th July. A. Yes.

40 Q. Did you arrange that call? A. Mr. Balhorn asked me to ring Mr. Duncan.

Q. You yourself made the call? A. I booked the call.



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Q. What time did you book it? A. Almost immediately upon receipt of Howard Smith's proposal - twenty minutes to ten.

Q. Had you had any prior conversation with Mr. Duncan about this call? A. About that call?

Q. About Mr. Balhorn calling him from Millers on the morning of 5th July - in other words, did you have Mr. Duncan standing by for a call? A. No.

Q. What was the phone number, do you know, of the phone from which the call was made? A. I booked it through the switch.

10

Q. Through the ordinary switch of Millers? A. I believe so.

Q. What is the phone number? A. 27-4364.

Q. Coming to the meeting between representatives of Millers and representatives of Howard Smith, the first such meeting of which you have given evidence took place I think on 16th June? A. That is correct.

Q. How do you remember the date? A. I made some notes. In reply to the interrogatories that I had to fill in I had to stretch my memory hard and in conjunction with Mr. Conway we established that it was 16th June.

20

Q. So you were answering interrogatories, that is right, isn't it? You, personally, were answering interrogatories? A. Yes.

Q. And Mr. Conway was answering interrogatories. A. Yes.

Q. So you got together and worked out the answers? A. That is incorrect.

30

Q. Then, did you take any notes of this first meeting of 16th June? A. No, I did not take any notes.

Q. Of which meeting did you take notes? A. Since I have been chairman of the company I do not recall having taken notes at any meeting.

- Q. You told us yesterday you took some notes of a conversation, I think, between yourself and Sir Peter Abeles? A. On a scribble pad.
- Q. Did you take any notes on a scribble pad of any of these meetings between representatives of Millers and representatives of Howard Smith? A. No.
- Q. None at all? A. None at all.
- 10 Q. Did you take any documents with you to any of these meetings? A. No.
- Q. Did anybody on Millers' side take notes at these meetings? A. No.
- Q. How did the meeting of 16th June 1972 come to be arranged? A. Someone from Howard Smith rang, I believe it was the secretary of our company, and asked if a meeting could be arranged.
- Q. Did you know Mr. Howard Smith personally before this? A. Yes.
- Q. Well? A. Not well.
- 20 Q. What, you had known him in a business - A. In a business sphere.
- Q. Over years I suppose. A. Yes.
- Q. Can you repeat to me, to the best of your recollection, what was said at this meeting of 16th June? A. Yes, to the best of my recollection Mr. Howard Smith opened the meeting and enquired whether or not our tankers were for sale. I told him they were not for sale.
- 30 Q. What was then said? A. I told him, as it was a major undertaking of the company, I doubted whether we could ever get our board to agree to this.
- Q. What was then said? A. Mr. Conway made some comments about the effect the sale of such ships would have in relation to the Ampol takeover and the breach of the rules that they had laid down.

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Q. What was then said? A. I think Mr. Conway said, "The only way for you to get anywhere here would be for you to make the takeover for the whole of the company". Mr. Howard Smith said, "Do you mean the whole shooting box?" He said "We would be beaten before we started as, together, Bulkships and Ampol control over 50 per cent of the company" to the best of his knowledge.

Q. Which meant, did it not, that Mr. Howard Smith had made it quite clear to you that the only circumstances in which Howard Smith would be interested in a takeover bid would be if Ampol and Bulkships were, as it were, not acting in concert? A. He did not use those precise terms, but he drew those conclusions in the conversation. 10

Q. In other words, the takeover offer had been suggested and the flat answer was that it would be pointless because Ampol and Bulkships between them controlled more than half the shares? A. That was the impression he gave me, yes. 20

Q. What happened then? A. Mr. Conway said he had no evidence, or we had no evidence that they were in fact acting in concert. In fact there was some doubt as to whether they were, and he referred particularly to the fact that Ampol had made a \$2.25 offer for Romanda and this could be increased to \$2.27 provided the Millers services sold their shares for \$2.27 and he could not see why they would do that if they were acting together. I think I suggested to Mr. Howard Smith that he should be able to find out through Adelaide Steam whether or not they were acting together. If it was not me it was Mr. Conway or Mr. Koch. 30

Q. What was the next thing said? A. He drew to my attention that they were in the same position as we were. If we were to go they would be the last to go; that they would be the next to go and this would put the carriage - if Ampol succeeded in their takeover bid it would put the carriage of the petroleum products on the coast in the hands of the oil refinery companies. 40

Q. Did you express agreement to this? A. Yes, I was concerned that this should be so.

Q. You stated your view that you did not want

Ampol to get control of Millers? A. I did not mention Ampol's name on that particular occasion. I was concerned. Someone - I don't remember who said it, that they would not be unmindful of this position, because if the carriage of the petroleum products went into the hands of the oil refinery companies the Government would lose a yardstick whereby they could assess the freights.

10 Q. You agreed with the proposition, that in your view it would be a bad thing for an oil company to get control of Millers. A. Yes, I agreed with that.

Q. What was next said? A. Mr. Howard Smith said he considered it a travesty to think that the tankers should go to an oil company after the fight that the late Sir Roderick had had with the Government and the oil companies to get the carriage of the products in Australian hands with Australian seamen.

20 Q. Did you agree with that. A. Yes, I did.

Q. What was the next thing said? A. I can't recall much more of the conversation.

Q. You see, you have told us that Mr. Conway expressed some views as to whether Ampol and Bulkships were acting together. What was said after he expressed those views? A. He said he was not certain that they were acting together.

30 Q. You have told us what he said. What did the Howard Smith people say after he said that?  
A. They did not know whether they were acting together either.

Q. What did they say about their intentions? They had just rejected the suggestion of making a takeover offer on the basis that it could not possibly succeed. After Mr. Conway made his comments what did they say? A. I think we finished the meeting then and they said they would have to go away and think about it.

40 Q. Which means that as at 16th June Howard Smith had not indicated any intention at all to make a takeover offer. A. They had not announced any

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intention. They had not named any intention that they would in fact do that.

Q. All they had said was "We will have to go away and think about this"? A. Yes.

Q. So far as you were concerned, the position had advanced no further when you authorised Mr. Koch to make available to them the draft Cooper report and the other information concerning the affairs of your company? A. Yes.

Q. Howard Smith had said, "We will think about this" but no further commitment in relation to a takeover. A. Yes. 10

Q. It was on that basis that you authorised Mr. Koch to make available to them any of your records relating to finance? A. Yes, that is correct.

Q. And subsequently you authorised him to make available to them the draft Cooper Bros. report. A. Yes.

Q. At the time you authorised him to make available to him the Cooper Bros. draft report you had never seen it? A. I had never seen it. 20

Q. You did not know what was in it? A. No.

Q. You had no idea what it said? A. I had no idea what it said.

Q. Except you knew that it had been prepared by a firm of accountants who had been given unfettered access to Millers' records. A. Yes.

Q. You knew it had been prepared by a firm of accountants who had been provided with every confidential piece of Miller information that was asked for and you knew it was a most confidential document? A. I did not know it was a confidential document. I had not seen the report, Mr. Deane. 30

Q. Mr. Taylor, is what you tell His Honour this? That you do not think a report by a firm of accountants who have been provided with every bit of confidential information that they require, which is a report about the internal affairs of

Millers, and which has not even been seen by any member of the board of directors of Millers is not a confidential document? Do I understand you correctly? A. I think under those circumstances, as you have put it, I must consider it a confidential document.

Q. Can you think of a more confidential document?  
A. No, I cannot at the moment.

10 Q. Of course, in a takeover situation it was a document which was of vital importance to your shareholders, was it not? A. Yes.

Q. In that if this report had said the assets backing for the Miller shares was less than \$2 it would effectively, one assumes, prevent anybody making a takeover offer in competition with Ampol? A. It could have that result.

20 Q. And of course, if it were made available to somebody who was making a takeover offer it would mean that he was in the situation where he could estimate to a penny or a cent from internal sources the precise value of the Miller shares.  
A. Yes.

Q. Of course a takeover offer was made by Howard Smith was it not? A. Yes.

Q. Based on this Cooper report. A. I don't know on what they based it.

30 Q. But fortified by this Cooper report. A. I don't know whether they were fortified by it. They had my permission, through Mr. Koch, to examine it. I did not know what bearing it had on it.

Q. Having possession of this Cooper Bros report.  
A. Yes, having possession of it.

Q. You have indicated to your shareholders that you think they should accept the takeover offer?  
A. Howard Smith?

Q. Yes. A. We have indicated we consider the takeover offer to be fair.

Q. Which means you have encouraged your shareholders to accept the takeover offer. A. I think

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we put a clause on that - this would be subject to - we made it clear that the matter was being heard in the Equity Court, and one of the conditions was the outcome of this particular case.

Q. Didn't you indicate to your shareholders that were it not for these proceedings you would be recommending that the Howard Smith takeover offer be accepted? You would be recommending the Howard Smith takeover offer. A. Yes, we did say that.

Q. And you still kept the draft Cooper report away from your shareholders (No answer) 10

Q. That is so, isn't it? A. Yes.

Q. So you have armed the outside party with the most intimate confidential details of your company and kept them concealed from your shareholders - that is so, isn't it? A. As you put it that way, it is so.

Q. Is there any other way of putting it, Mr. Taylor? A. Putting it - No, there is not. I cannot think of another way. 20

Q. You see, I suggest to you that your conduct in that regard is disgraceful conduct in a chairman and managing director of a public company (Objected to by Mr. Glass).

HIS HONOUR: Mr. Taylor, would you prefer to answer that question or would you prefer that I rule it out?

WITNESS: I prefer that Your Honour rule it out.

HIS HONOUR: Very well, I reject it, Mr. Deane.

MR. DEANE: Q. Have you, even yet, seen the draft Cooper Bros. report? A. No. 30

Q. So you still do not know precisely what confidential information Howard Smith was given? A. No I don't.

Q. Haven't you thought it was something you should find out? A. No, I did not think it was something I should find out.

Q. Howard Smith, of course, is a competitor of Millers in the tanker field? A. A competitor, yes.

Q. From what you and Mr. Howard Smith said in the conversation, one gains the impression that they are the only two independent bulkship operators.  
A. No, tanker operators.

Q. Tanker operators, is that so? A. Yes.

10 Q. Which means of course that the detailed confidential information, so far as operations of tankers are concerned, would be of more use to Howard Smith than to any other company in Australia?  
A. I think it would be equally - I think any oil company would be pleased to get the same detailed information.

20 Q. Well, subject to the qualifications in relation to oil companies, would you agree with me that the detailed confidential information insofar as it related to operations of tankers would be of more value to Howard Smith than any other company in Australia? A. Yes.

Q. And of more value to it, to a corresponding degree, as detrimental to Millers? (Objected to by Mr. Glass - rejected).

Q. And of value to Howard Smith in terms of their own operations in competition with Millers.  
A. Yes, it would be advantageous to them.

30 Q. If Howard Smith had, as it were, - and Mr. Hughes can rest assured, I know that they would not - but if Howard Smith had employed someone, as it were, to enter the premises of Miller and steal this information, Millers would have suffered a terrible loss. You would agree with that, wouldn't you? A. I do not consider we would have suffered a terrible loss.

Q. You have told His Honour that you were in Melbourne on 19th and 20th June? A. Yes.

Q. Where you had a conversation with Mr. Balhorn?  
A. Yes.

40 Q. You said to Mr. Balhorn, "We will probably get a takeover offer from Howard Smiths". A. Yes.

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Q. Was your only basis for that comment that Howard Smiths had said "We will think about it"?

A. That was on the morning of the 19th - no, that was not the only basis. It was on the morning of the 19th that I had authorised Mr. Koch to give the details of the cash flows and some other documents.

Q. Well, was the only basis that Howard Smith had said, "We will think about it" and you had authorised the handing over to them of all this confidential information? A. It was on the basis that I was anticipating that Howard Smiths would make a takeover bid. 10

Q. When was your next personal contact with anyone from Howard Smith? A. On 4th July.

Q. Had there been no phone conversations between yourself and Mr. Howard Smith? A. None.

Q. Had there been no discussions between you and anyone from Howard Smith after the joint announcement? A. I had not discussed it with anyone - Howard Smiths? 20

Q. From Howard Smiths? A. I did not discuss it with anyone from Howard Smiths.

Q. Could we come now to the meeting of 4th July. How did that meeting come about? A. At Mr. Howard Smith's request.

Q. By whom to whom? A. I don't recall exactly. I think it was from their general manager to myself, Mr. Griffin.

Q. Can you recall what day that telephone conversation took place. A. It would have been on the 3rd I think. 30

Q. What was said? A. "What time can you come around and see our chairman?" We made an appointment for 12 o'clock.

Q. Was anything else said regarding the appointment? Was anything else said in the conversation? A. I think I asked permission for Mr. Koch to go with me.

Q. Was anything else said? A. I can't recall anything else said.

Q. You went to this meeting with Mr. Koch?  
A. Yes.

Q. Did you walk or drive? A. Walked up one block.

Q. Together? A. Yes, together.

Q. Talking all the time I presume? A. We were not talking all the time, to be honest.

10 Q. You got there and what happened? A. We met Mr. Trotter - we were introduced to Mr. Trotter, one of their directors, and we sat down in the board room and Mr. Howard Smith opened up the conversation.

Q. Who else was present? A. Mr. Koch, Mr. Trotter, Mr. Howard Smith and yourself?  
A. Mr. Maxwell, Captain Evans, I think, Mr. Griffin - and I think that made the complement.

Q. You were sitting around the table? A. Yes.

20 Q. With pieces of paper in front of you? A. No.

Q. Nobody taking notes? A. I did not see anybody taking notes.

Q. What was said? A. Mr. Howard Smith opened the conversation and enquired of me whether or not we would be interested in the selling of the tankers, "the ships" he said. He used the word "ships".

30 Q. Didn't the conversation start with some discussion about the joint announcement? A. Yes, it did start with conversation about the joint announcement.

Q. What was said? A. To the best of my recollection, Mr. Maxwell was asked to read out a letter dated 4th July, that they had sent to the Secretary of the Sydney Stock Exchange concerning the joint announcement.

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Q. Something must have been said about the joint announcement before someone read out the letter. Surely there was a discussion about it? A. If there was a discussion it could have been of no consequence - leading around to this.

Q. Would you agree with me that Howard Smith's representatives made it quite clear that unless something happened they would not be proceeding with their takeover offer? A. No, I do not recall that.

10

Q. Well, you were in no doubt that that was the case, were you? A. I was in an open mind. I was hoping against hope that they could find a way to continue with their takeover offer. I was interested in obtaining a higher price for the smaller shareholders.

Q. You have told us that when the question of making a takeover offer was first suggested to Mr. Howard Smith, his comment was to the effect, "That is out of the question because Ampol and Bulkships between them have more than half the shares". That is so, isn't it? A. That was at the previous meeting, yes, back on 16th June.

20

Q. And the takeover offer idea was only pursued after Mr. Conway expressed the view that Ampol and Bulkships were not acting, as it were, together? A. I was aware - I don't know quite how to answer that question - Can you be kind enough to rephrase it for me?

Q. What I am saying is that the takeover offer idea which Mr. Conway suggested, and which Mr. Howard Smith rejected, was only investigated on the basis of Mr. Conway's suggestion that Ampol and Bulkships were not acting together. A. I do not know how they investigated their takeover bid.

30

MR. DEANE: Q. But in any event, Mr. Taylor, it would be true to say, would it not, that at the commencement of this meeting your view was that the Howard Smith takeover offer could not proceed unless a way was found to alter the then existing situation? A. No, that was not my view. I did not really know whether or not Ampol or Bulkships

40

would break. I could not speak on their behalf. I was hoping - because of the figures I had given them, or I had instructed to be given to them, they had found some sort of - I was hoping they would come up with a solution.

Q. Because of the figures you had given to whom?

A. The figures I had instructed Mr. Koch to give to the officers at Howard Smith.

10 Q. But those figures had been given to them before there was any question of a joint announcement?

A. Yes, that is right.

Q. What did they have to do with finding a solution? A. I did not know. That was one purpose why I was attending the meeting. I did not know what was going to go on at the meeting.

Q. What else was said about the joint announcement?

20 A. They read out from a letter to the Stock Exchange, and I handed Mr. Trotter a photostat copy of a letter that I had sent to the chairman of Bulkships, and I also handed a photostat copy of a letter I had sent to Ampol on June 3rd.

Q. Where did you get those from? Where did you get those letters from? A. I got them from my office. I brought them with me.

Q. What other documents did you take with you?

A. I did not have any other documents with me.

Q. Was anything said about the joint announcement?

A. There were comments made across the table, but not in the official opening of the meeting.

30 Q. So far as my questions are concerned, Mr. Taylor, would you treat the unofficial meeting as being as important as the official meeting? Were any other comments made in relation to the joint announcement? A. Yes, there were other comments made about the joint announcement.

Q. What were they? What were the other comments that were made? A. About the unfairness of it.

Q. Yes. What else? A. About the locking in of the small shareholders.

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Q. Yes. What else? A. About the fact that the  
minor shareholders were placed in a situation where  
they had to accept \$2.27 or perhaps nothing.

Q. Did you say that? A. I think I did say that.

Q. Of course, that would be a completely untrue  
comment, wouldn't it? A. As I saw it, it was not  
untrue.

Q. Of course at that stage your shareholders had  
had an opportunity of selling their shares on the  
Stock Exchange, didn't they? A. Yes. They had  
no opportunity - 10

Q. Will you just answer my question? At that  
stage your shareholders had an opportunity of  
selling their shares on the Stock Exchange?  
A. Yes.

Q. They had the opportunity, if they wished, to  
retain their shares. That is so, isn't it? A. Yes.

Q. And indeed, retaining their shares in a company  
which continued to be controlled by two main  
shareholders? A. Yes. 20

Q. Which had been the situation in Millers for  
years? That is so, isn't it? A. Yes.

Q. And of course you are aware that there are many  
public companies listed on the Stock Exchange in  
whom one shareholder holds the majority of the  
votes? A. I am not aware of any.

Q. You are not aware, for example, that the Bank  
of N.S.W. has a very large public company  
subsidiary? Are you not aware of that? A. No.

Q. Does the idea surprise you? A. No, it does  
not surprise me. 30

Q. And of course, the shareholders in such a  
company enjoy all the protection of the law inso-  
far as the conduct of the major shareholders is  
concerned? You knew that, didn't you? A. Yes.

Q. Well anyway, we can go back to what you said.  
What was said after your comment? A. I made  
some further comment.

Q. Yes. What did you say? A. On 4th July?

Q. Yes. What was it? What further comment did you make then? A. That it appeared to me that the shareholders - the minority shareholders of R.W. Miller & Company, after this joint announcement, could not avail themselves of the higher offer that Howard Smiths had given notice of.

Q. You thought that that was a bad thing?

A. I thought it was unfair.

10 Q. Let us say in 1970 that the shares of Millers were selling at \$1 something, and someone came along and offered \$2.27, which was more than the minority shareholders could get by selling their shares on the Stock Exchange, would you suggest it would have been unfair for Sir Roderick Miller and Bulkships to refuse to accept the offer?  
A. Yes, I would have considered that unfair.

20 Q. So that your proposition is that if a majority shareholder does not want to sell his shares his conduct is unfair if his desire to retain his shares means that other shareholders cannot sell at a profitable figure? Is that what you are putting? A. I did not put that. It was you who put it to me, Mr. Deane, and who are asking me to comment upon it.

Q. Well, is that your view? A. As you put it, it would appear that that would be my view.

30 Q. Well, what was next said at this meeting? What next occurred at the meeting? A. Mr. Howard Smith then asked us would we be interested in our company selling to Howard Smiths our ships, as he had done at the previous meeting.

Q. What did you say? A. I told him - I said to him "If you are talking about colliers I have one for sale now," and he said "No. By 'ships' I mean tankers," and we said - I said "We could not consider that".

40 Q. Yes. What was the next thing that was said?  
A. Then to the best of my knowledge Mr. Howard Smith asked Mr. Maxwell to read out a proposal that our company should issue to Howard Smiths 3m. shares at \$2 each.

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Q. Yes. A. He read that out, and I commented that -

Q. That proposal is subject to certain terms as to payment? A. Yes. I don't recall the terms of the payment.

Q. Were not the terms of payment 10¢ per share on allotment, and the balance if and when Howard Smith obtained acceptances in respect of its takeover offer in relation to 3,001,000 shares?

A. I think that is the qualification that went with it. They were the details of payment. 10

Q. It was 10¢ on allotment, and the balance if and when Howard Smith controlled Millers. A. No, when they had received acceptances for 3,001,000 shares.

Q. Of course, if you allotted to them 3 m. shares, and they obtained through their takeover offer 3,001,000 shares, Howard Smith would then have controlled more than one half of the issued shares in Millers, wouldn't they? A. Yes. 20

Q. So that I again put to you that for practical purposes the suggested terms of payment were 10¢ on allotment and the balance if and when Howard Smith controlled Millers? A. Yes.

(At this stage his Honour enquired of Mr. Taylor if, in view of the sustained cross-examination to which he had been subjected, he would like a brief adjournment. Mr. Taylor indicated that he was quite agreeable to carry on.) 30

Q. What was the next thing that was said, Mr. Taylor? Mr. Maxwell read out this proposition?

A. He read it out, and I commented on it, and I said I could not see - I said that I could not wear this, and I could never get it through my Board.

Q. What was then said? A. Mr. Koch then, to the best of my recollection, came back with a counter-proposal, the details of which I am not completely familiar with, but the proposal was to the effect that we should purchase from Howard 40

Smith their ships, and pay for it by issuing shares.

Q. What ships? A. The tankers.

Q. What tankers? A. The "Howard Smith" and the "Nancy Heath".

Q. What are their tonnages? A. The "Nancy Heath" is 21,000 tons dead weight, and I think the "Howard Smith" is in the vicinity of 55,000 or 58,000 tons.

10 Q. How old are they? A. I am not certain of their age. They are not - 10 years old.

Q. They are not new? A. They are not very old.

Q. I suggest to you between 10 and 12 years old, or at least one of them is? A. Yes. I do not consider that old for a tanker.

Q. What about 16 years? A. Yes, that is getting on.

20 Q. 12 years is young, and 16 years is old?  
A. In ships, yes. You go up in four-yearly surveys, and you can get into the expensive period. We have ships 21 years old, and I consider that old.

Q. What are these two ships? "Nancy Heath" and "Howard Smith".

Q. What did you think the worth of them was?  
A. "Nancy Heath"?

Q. Yes. A. I never formed an opinion as to the value of the "Nancy Heath".

30 Q. What about "Howard Smith"? A. "Howard Smith" is - I have always been led to believe a ship is worth as much as it can earn.

Q. Had you ever directed your mind to the value of the "Howard Smith"? A. No, I did not know the details of the contract that they had.

Q. You are sitting there, and your general manager says, "We will buy these two ships" - for how much

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was it? A. I don't recall. For the issue of some shares.

Q. I suggest that it was to buy two ships for \$7 m., and "We will issue you some shares in payment." Is that right? A. Yes, that is correct.

Q. What did you say? A. I did not say anything. Mr. Koch was talking.

Q. But, Mr. Taylor, you are the managing director of Millers? A. Yes, that is right.

Q. You are the chief executive of Millers? A. Yes. 10

Q. You are the No. 1 person in management? A. Yes.

Q. And here we have Mr. Koch saying that Millers will buy two ships for \$7 m. and you don't say anything? A. Mr. Koch did not say that he would buy them. He was putting up a proposition - a counter proposal. Mr. Koch is the general manager of R.W. Miller (Holdings) and all of the subsidiaries, and he is also a director of R.W. Miller & Company, and he is No. 2 in the company in regard to management, and I allow - and I have always allowed, both 20 here and overseas - Mr. Koch great licence in regard to negotiations. He and I work very well together as a duo in negotiations, and this is not an unusual tactic of his - to come up with a counter-proposal.

Q. Without your knowing it? A. Certainly.

Q. Anyway, what was next said? Will you tell us what next occurred? A. The Howard Smith people allowed Mr. Koch to put - to expound the whole of his proposal right through without interruption, and this was favoured by the secretary, whose name 30 I forget - it was favoured by Mr. Maxwell. He liked Mr. Koch's proposal.

Q. Mr. Koch's proposal also involved an allotment of shares, didn't it? A. I believe it did, yes.

Q. How many? It involved the allotment of how many shares? A. I don't remember. I think it was 10%, but I am not certain. I was not listening to the details of what Mr. Koch was saying.

Q. Why not? A. I was more concerned with the reaction and the attitude of Mr. Howard Smith. 40

Q. As to what? A. As to whether or not he would go ahead with a takeover bid or an issue of shares was something I did not know.

Q. You were watching his reaction to Mr. Koch's proposition? A. Yes, that is right. I was.

Q. To see whether that would be an acceptable basis for him to make a takeover offer? A. Yes.

10 Q. And indeed, everything that was being put at this meeting was being put, was it not, as a suggested means by which Howard Smith could go ahead with their takeover offer? A. Yes.

Q. And that was all the meeting was about?  
A. That was the essence of the meeting, yes.

Q. Of course the problem that was faced, wasn't it, was that Ampol and Bulkships between them controlled more than half of the issued shares in Millers? A. Yes.

20 Q. And all of the propositions that were discussed were directed to reducing Ampol's and Bulkships' proportionate shareholdings? A. The discussions were held to encourage Howard Smiths to pursue with their takeover at a higher price.

Q. The only way Howard Smith could proceed with their takeover offer was if the proportionate shareholding of Ampol and Bulkships were reduced?  
A. Yes. This became apparent during the meeting.

30 Q. And that was what was then discussed - ways and means of reducing Ampol's and Bulkships' proportionate shareholding? A. Together with ways and means of making Howard Smith's offer successful.

Q. But you see, Mr. Taylor, there are two steps, aren't there? There is the object, or the motive, for making Howard Smith's offer successful - and I accept that that was genuinely in your mind?  
A. It was in my mind. It was in my mind; I considered it my duty.

Q. The only way that could be achieved was if the proportionate shareholding of Ampol and

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Bulkships was cut down. That is correct, isn't it?  
A. That is the only way I could see at that stage.  
That was the only way I could see.

Q. So what was being discussed was ways and means  
of cutting down the proportionate shareholding of  
Ampol and Bulkships so that the Howard Smith offer  
could succeed? A. Yes, that is right.

Q. Now, coming back to the meeting, what was said  
after Mr. Koch put forward his proposals?

A. Mr. Maxwell had stated that he favoured  
Mr. Koch's proposal better than his own. 10

Q. And Mr. Howard Smith, one gathers, took a  
different approach to Mr. Maxwell, as you had  
taken to Mr. Koch? (Objected to by Mr. Glass;  
question withdrawn).

Q. Mr. Howard Smith had been sitting silent?

A. Mr. Howard Smith said "I prefer my idea better -  
my proposal better".

Q. His proposal being what? A. The issuance of  
shares. 20

Q. 3 m.? A. 3 m. He thought that was a better  
idea.

Q. Then what happened? What was then said?

A. He then concluded the meeting, and we had a  
drink.

Q. Well now, who had a drink? A. I think  
everybody in the room had a drink.

Q. What time did the meeting conclude? A. At a  
quarter to one.

Q. What time did you leave the premises? 30

A. 10 to one.

Q. You just had one drink? A. Yes.

Q. What was said over the drink? A. Mr. Howard  
Smith said to me "If we are successful in this you  
know there will be Board changes".

Q. "If we are successful" in what? A. In taking  
over the company.

Q. Now, was he talking still on the basis of 3m. shares at \$2 each? A. At that time he was talking on the basis of 3 m. shares at \$2 each.

Q. So that the situation is this, is it, that the idea of Howard Smith buying the tankers is completely gone by this time? You made it clear you would not be in it? A. Yes.

10 Q. The idea of Millers allotting shares, as it were, in return for the Howard Smith tankers has likewise completely gone, because Mr. Howard Smith would not be in it? A. Yes, that is right.

Q. And all that was being discussed was, as it were, a reversion to the possibility of an allotment of 3 m. shares at \$2? A. That was all that was discussed there. But I do recall that the meeting concluded with the phrase that "We will have to do some figuring," or words to that effect; words to the effect that they would have to do some figuring.

20 Q. Was anything else said? A. I think I said then "Well, you had better do it pretty quickly and get it to us before the 6th," because we had a Board meeting on the 6th. Whether I said that at the meeting, or to Mr. Howard Smith on the quiet, I don't know. But I do recall saying that, and telling him that we had a Board meeting for the 6th.

30 Q. When you left did you anticipate that you would be receiving a letter from Howard Smith? A. No, I did not know. I did not anticipate that we would be getting one. I thought that they would be working on it - working on some proposition.

Q. Different to the 3 m. shares at \$2? A. Well, I had indicated to them that I confidently could not get that through the Board.

Q. Mr. Howard Smith asked you why not, didn't he? A. No, I don't think he asked me why not. I don't recall whether he did, or not.

40 Q. You left, and went back to Millers? A. Yes. That is on the 4th.

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Q. What did you do when you got back to Millers?  
A. I contacted the management team - the finance committee.

Q. Being who? Who was that? A. Mr. Koch, Mr. Murphy, Mr. Harry Ellis-Jones, the secretary, and Mr. Walker, I think, and also Mr. Conway.

Q. Not Mr. Cameron? A. No.

Q. He also was a member of the finance committee?  
A. Yes, that is right. He was a member of the finance committee. 10

Q. Was there a decision to leave him out deliberately? A. Yes.

Q. What was the next thing you did? A. I advised them of the discussion I had had or the discussions we had had with Howard Smiths.

Q. Yes. A. I then contacted the other directors, Mr. Anderson, Mr. Nicholl and Mr. Duncan. I did not contact Lady Miller, Sir Peter Abeles or Evan Cameron.

Q. How did you contact Mr. Anderson? A. I contacted him by 'phone. 20

Q. What did you say to him? A. I gave him the details, as best I could, of what happened at Howard Smiths and I said, "They are proposing - "

Q. I don't want to take you through it in detail, Mr. Taylor, unless I should, but would it be a fair summary to say that you told him what had been said at the meeting with the Howard Smith representatives? A. Yes.

Q. Indeed, a blow-by-blow description, I suppose? A. Not a blow-by-blow description. You are the only person I have ever given a blow-by-blow description to, Mr. Deane. 30

Q. Well, you told him everything about the meeting that you thought was relevant?  
A. Particularly in relation to the issuance of 3 m. shares at £2 each.

Q. And what did he say? A. He thanked me for the information.

Q. Did you discuss it? A. No, I did not discuss it. I did not discuss it.

Q. Not at all? A. No, I did not discuss it with him. I told him what had happened. There were a lot of things happening. There were so many. There were all rumours going on at that time, and a lot of plans that did not reach fruition from other parties. I did not tell every Board member all of the details of all of this. I told some, and not others.

Q. Who did you next ring? A. I think it was Mr. Nicholl.

Q. What did you tell him? A. I told him the same thing - the substance of it.

Q. What did he say? A. I can't recall what he said, but I invited him to lunch at the Board room on the 5th.

20 Q. Did you indicate any reason for him coming around to lunch at the Board room? A. No. It was not an irregular thing for me to invite directors from time to time down to Board meetings to mix with the management staff.

Q. Did you suggest to him that the purpose of the meeting might be to see whether you could lawfully do what Howard Smith was asking you to do?  
A. No, I did not.

30 Q. Of course, he arrived with a law book?  
A. On the 5th July at the Board meeting he arrived with a law book, yes. Mr. Nicholl is a solicitor.

Q. You did not, as it were, suggest to him that the purpose of the lunchtime meeting would be to get, as it were, his legal views? A. No, I did not.

Q. Who did you next ring? A. I next rang Mr. Anderson.

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Q. You rang Mr. Anderson, and you rang Mr. Nicholl?

A. I rang Mr. Duncan.

Q. Where was he? Was he in Japan, or Sydney?

A. He was in Tokyo.

Q. What did you tell him? A. The same substance.

Q. What did he say? A. He didn't have much to say. He said - I can't recall what he said, but he did not comment on it.

Q. When was the next time you spoke to Mr. Duncan?

A. This was on the 4th. 10

Q. Yes. A. I do remember speaking to him on the morning of the 6th.

Q. Yes. A. And I may have spoken to him - I don't remember - on the 5th.

Q. You discussed with Mr. Duncan on the telephone the question of excluding Sir Peter Abeles from voting at the Board meeting, didn't you?

A. No, I did not.

Q. No doubt about that? A. No, I don't recall that. I did not discuss it with Mr. Duncan; ruling Sir Peter Abeles out. 20

Q. You see, I suggest to you, Mr. Taylor, that you discussed with Mr. Duncan on the telephone on 4th and 5th July the question of Sir Peter Abeles eligibility to vote, having regard to conflict of interest? A. I don't recall discussing that with anybody else apart from Mr. Aston and Mr. Conway, and perhaps this was in the hearing of the management team.

Q. Do you deny you discussed it with Mr. Duncan?

A. I deny that I discussed Sir Peter Abeles with Mr. Duncan, yes. I deny that I discussed the exclusion of Sir Peter Abeles with Mr. Duncan. 30

Q. You have no doubt in your mind at all on that?

A. No, there is no doubt in my mind.

Q. What was the purpose of your ringing Mr. Duncan?

A. To inform him what had transpired at the meeting with Howard Smiths - the issuance of 3 m. shares.

Q. Did he express any view? A. No, he did not express any view. He said - he did not express any view, apart from the fact that he seemed to give me the impression that he discounted it.

Q. But, of course, this question of the Howard Smith offer going ahead was something that was of great concern to you, wasn't it? A. It was.

10 Q. And you had had many discussions with Mr. Duncan about it? A. I had not had many discussions. I had not had many conversations.

Q. You had had a number? A. Yes.

Q. And it was of concern to him, I suppose, was it? A. He did not display any concern.

Q. You had had conversations with Mr. Nicholl about it? A. Yes. On the morning - on the afternoon of the 4th, and again at lunchtime in the office of the Board room.

20 Q. Had not you had conversations before the 4th with Mr. Nicholl as to the effect of the joint announcement? A. Yes, I had rung him on 18th, and expressed my concern.

Q. And did he express his concern? A. I don't recall that he had any particular concern.

Q. Before the joint announcement? A. I don't recall that he expressed it at that time.

30 Q. What about Mr. Anderson? A. Mr. Anderson did not have any - he was in Queensland. He did not come back until early July, or late in the month. About the 29th I think he came back, when I discussed it with him, and he said he had read it in the newspapers. But he did not display any concern about it.

Q. Am I correct in this, that what you tell his Honour is that none of Mr. Nicholl, Mr. Duncan or Mr. Anderson, when you conveyed to them what had happened at this meeting of 4th July, did more than in effect say "Thank you for the information"?

A. They must have had some more comments than just "Thank you for the information," but I do not

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recall the comments. I do not recall their concern, or their elation, or their disappointment, or anything.

Q. Did you, in your account of what had happened at the meeting, tell these three gentlemen that you had told Howard Smith that there was a meeting of the Board on the 6th, and suggest that they might send a letter? A. No.

Q. That is the fact, is it not, that at the end of the meeting with the Howard Smith representatives, you informed them that there was a Board meeting on the 6th, and suggested they might send a letter? A. If they had anything further to offer any more than what I considered would not work - that is, 3 m. shares at \$2 - they had better get it to us before the Board meeting on the 6th. 10

Q. Did you tell Mr. Nicholl of that? A. No.

Q. Are you sure of that? A. Yes, I am sure.

Q. Why not? Why didn't you tell him? A. I can't say why I did not tell him. 20

Q. Did you tell Mr. Duncan of that? A. No.

Q. Are you sure? A. Yes, I am sure. I told him about the details of the 3 m. shares.

Q. You did not tell them that the meeting had ended on the basis that if Howard Smith wanted to put a proposition they would be sending a letter for the Board meeting of the 6th? A. No, I did not tell them that.

Q. No doubt you did not tell them that? A. I am positive I did not tell them that. 30

Q. What is the next thing that happened? A. Where are we at, Mr. Deane?

Q. We have your telephone conversation with Mr. Nicholl, Mr. Anderson and Mr. Duncan on 4th July? A. Do you want to know what I did from then on?

Q. Yes. A. I did not contact Howard Smiths.

Q. What was the next thing? A. The next important

thing that I remember was that we had luncheon at the Board meeting.

Q. What time did that luncheon meeting commence?

A. I would say that it commenced about 12.30.

Q. What time did it conclude? A. It concluded about 2 o'clock.

Q. Was it still going when the 'phone call came from Howard Smith, or had it concluded? A. The luncheon was not going, but we carried on with the meeting after Mr. Nicholl had retired.

10

Q. Mr. Nicholl had left? When did he leave?

A. He left about 2 o'clock. The 'phone call came about 2.15.

Q. I want to take you to the discussion at the luncheon meeting. Who was there, again?

A. Mr. Nicholl, Mr. Conway, myself, Mr. Koch, Mr. Harry Ellis-Jones, Mr. Murphy and I think Mr. Walker.

Q. Was Mr. Aston there? A. No, Mr. Aston was not there.

20

Q. Well then, what was said at this meeting?

A. Most of the talk was between Mr. Nicholl and Mr. Conway about the issuance of shares.

Q. Yes. Well now, who did most of the talking? Mr. Nicholl, or Mr. Conway? A. Mr. Conway did most of the talking.

Q. What did he say? A. I did not listen to him all the time, because I was talking to other people. But he was enquiring of Mr. Nicholl the legalities of the issuance of shares.

30

Q. Yes. A. And I remember some reference being made to the Woodside Burmah case, and also to Glegg, or something, or Hogg and something. Hogg and Cranbourne, or something.

HIS HONOUR: I think we should have it straight, for the record. Hogg v. Crampthorn.

MR. DEANE: Q. What was then said? A. I remember Mr. Nicholl saying that provided the

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amount was sufficient for the immediate needs, and not only for the immediate needs, this seemed all right. I think Mr. Conway said "Well it seems spot-on", or words to that effect.

HIS HONOUR: Q. What was that? A. "It seems quite all right," and Mr. Conway commented words to the effect that it was "Spot-on", referring to the Woodside Burmah case.

MR. DEANE: Q. What was "spot-on"? A. I did not get the full detail of it. The issuance of shares in relation to an amount of money, not only the immediate requirements or the sufficiency of the immediate requirements but the requirements for the future. 10

Q. Who had said that that was "spot-on"? A. Mr. Conway said it - I heard parts of this conversation, and I recall Mr. Conway saying that he shared that view, and that it was "spot-on".

Q. What was "spot-on"? A. I did not hear all of the details of what they were referring to. 20

Q. But what proposition was "spot-on" on this approach? A. I don't know all the details of it, apart from what I have told you.

Q. But they were talking, were they, about an allotment of a specific number of shares at a specific price? A. All I heard was the price - the issuance of shares, and the price.

Q. What price? A. I did not hear the price. I explained to you previously, I think, the details of what I heard of the conversation that I had heard between Mr. Nicholl and Mr. Conway. There were about 10 people in the room. 30

HIS HONOUR: Q. When you say "price", you mean the aggregate, Mr. Taylor? A. The total of the money, not the price per share. That is the part that I heard that they were discussing.

MR. DEANE: Q. Am I correct that your understanding of the legal situation, taken from that discussion, was that for an allotment of shares to be lawful it had to cover, or the money raised by the allotment had to be of an amount sufficient to cover not only 40

all the immediate financial needs of the company, but the needs - the financial needs - in the foreseeable future? A. I did not hear all of the conversation. I was not seeking a legal opinion.

Q. Was that your understanding of what was said?

A. No, I did not understand the full context of their conversation, and I certainly could not consider that as a legal opinion.

10 Q. What was your view at the time of the meeting as to the minimum amount which could be raised by an allotment of shares? A. I did not have any amount in mind.

Q. You had heard a discussion relating to the legal limitations upon issuing shares, had you not?  
A. Yes, I had heard parts of a conversation.

20 Q. And you have told his Honour that the law, as you understood it as being expressed in the parts of the conversation which you heard, was to the effect of your evidence of a few minutes ago. That is right, isn't it? A. No, that is not so.

30 Q. You heard Mr. Nicholl and Mr. Conway making certain comments about the legal limitations of making an allotment? A. I heard parts of a conversation, and I heard an amount of money being mentioned not only for the immediate requirements but for some future requirements. Now, that is the extent of what I can remember they were discussing, apart from the cases that I mentioned to you previously. They were not sitting near me. I was at the top of the table, and they were down along the side.

Q. Mr. Taylor, what did you hear being said as to the legal requirements of a valid allotment of shares by Mr. Nicholl and Mr. Conway? A. I heard parts of a requirement - I am sorry, parts of a conversation, wherein Mr. Nicholl said that the amount has not only to be for the immediate needs, but also for the future needs.

40 Q. And you regarded that as being a statement of part of the legal requirements for a valid allotment? A. No, I did not.

Q. What did you regard it as being? A. I regarded it as part of a conversation between two

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lawyers, and I was on the side of it - a conver-  
sation between two solicitors.

Q. You did not regard what Mr. Nicholl was saying  
as relating to the legal requirements for a valid  
allotment? A. I did not hear completely what  
Mr. Nicholl was saying. I only heard part of the  
conversation.

Q. I will ask you again, Mr. Taylor. You did not  
regard what Mr. Nicholl was saying as referring to  
the legal requirements for a valid allotment? 10

A. I did not hear all of this conversation.

Q. I will ask you again, Mr. Taylor. You did not  
regard what you heard Mr. Nicholl saying as relating  
to the legal requirements for a valid allotment?

A. I did not hear the complete conversation  
between the two parties.

Q. Mr. Taylor, is the situation this, that you say  
that you did not regard the statement which you  
heard Mr. Nicholl make, and which you have just  
repeated in the witness box, as relating to part 20  
of the legal requirements for a valid allotment?

A. Part of the legal requirements for an allotment.  
I could draw that conclusion.

Q. And of course, you would accept what Mr. Nicholl  
and Mr. Conway said as being good law? A. Yes.

Q. And you heard nothing from the time of that  
conversation until after the meeting of 6th July  
which contradicted what you had heard Mr. Nicholl  
say? A. What I had heard Mr. Nicholl say? No,  
I had not heard anything contrary to that. 30

(Further hearing adjourned to 10.30 a.m.  
on Tuesday, 26th September, 1972.)

---oOo---

Mr. Glass: There are a few small corrections to the transcript. On p. , the third question from the bottom, and the third line of that question reads "What was the company's decision with regard to long term finance..." "Decision" should be "position".

His Honour: Yes.

10 Mr. Glass: Page 479 of the transcript, the second question from the top, the last word reads "secured." I suggest it should be "secure".

His Honour: Yes

(Archibald Norman Taylor  
On former oath:)

His Honour: You are still on the former oath administered to you, Mr. Taylor.

Witness: Yes, your Honour.

Mr. Deane:

20 Q. (exhibit M.H.13 handed to witness)\* Mr. Taylor there are a few minor matters I want to ask you about before I go back to where we were on Thursday? A. Yes.

Q. Will you look at p.6 of the minutes of the board meeting of the directors of Millers which was held on 24th February of this year, and would you look two-third of the way down the page at an entry opposite the words "H.C. Sleigh Ltd"? A. Yes.

30 Q. Do you remember that discussion at the board meeting of 24th February this year? A. Yes, Mr. Deane.

Q What was said during that discussion, and who said it? A. I had advised the board that I had been approached by Mr. Peter Sleigh and another gentleman from H.C. Sleigh and I believed that their purpose in approaching us was for the acquisition of the tankers.

Q. Yes. A. I also stated that I did not believe their intention was to make a takeover offer for the whole of the company - I believed they

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were concerned - if this is February - at that stage I believed they were concerned with the acquisition of the Romanda shares.

- Q. Yes. Well, what did you tell the board with relation to financial information? A. I think : is it is fairly concise that what they asked me for was to provide detailed information of the company's activities.
- Q. And that you had refused? A. Yes.
- Q. Did any of the directors indicate disagreement with your course of action in refusing to provide financial information? A. Not to my recollection. 10
- Q. Did any indicate agreement? A. I don't recall any conversation.
- Q. But you thought that a request by H.C. Sleigh to provide financial information which had been refused by you to be of sufficient importance as as to warrant being raised at a board meeting and recorded in the minutes? A. Yes. 20
- Q. Did you ever raise the provision of confidential information to Howard Smith at a meeting of the board of Millers? A. No.
- Q. Did you ever inform any of the directors of Millers that you had provided this confidential information? A. The alternate directors, Mr. Conway and Mr. Murphy, would have known.
- Q. Yes. A. As you know, I did not personally provide it. I gave instructions that it should be provided. I personally did not provide it. 30
- Q. Yes. A. And I feel I did not communicate to any other director that I had in fact provided or made this financial information available.
- Q. The next matter I would like to ask you some questions about is in relation to the minutes of the meeting of 5th April 1972 which I think you will find in that folder? A. Could you give me the portfolio number?
- Q. Folio 244? A. Yes.

- Q. Do you see halfway down the page the heading - not in the margin, but in the body of the page - "Increase in issued capital". Do you see that heading? A. Yes.
- Q. Now, we have been told by Mr. Cameron and Mr. Koch that this discussion was a very brief one. Would you agree with that? A. Yes, I consider that it was a brief discussion.
- 10 Q. You see in the last paragraph under that heading a reference to you giving certain advice to the board in relation to Mitsui. Do you see that? A. Yes, I can see that.
- Q. What did you say? A. I advised the board that Mitsui had expressed to me an interest in an acquisition of or a part acquisition of the colliery interests of the company.
- Q. Yes. A. There had been many discussions over this period, but I did not discuss it then. I did advise them that Mitsui had been interested and in fact were still interested in acquiring some interest in the coal activities of the company.
- 20 Q. Of course, you signed these minutes as a correct record of what took place at the meeting, did you not? A. Yes, I did, Mr. Deane.
- Q. And your comments were made in a context of an allotment of shares. That is so, isn't it? A. No, that is not so. No, that is not so.
- Q. You see the heading is "Increase in issued capital". Do you see that? A. Yes.
- 30 Q. Mr. Nicholl raised for discussion the possibility of a general share issue or share placement? A. Yes.
- Q. Mr. Cameron made a comment on that? A. Yes.
- Q. And the minutes then refer to you as saying "The chairman advised the board that Mitsui & Company Limited had expressed an interest in obtaining an equity in the company." Now, does that accurately record what you said? A. I would not argue about the accuracy of the recording of the minutes. The minutes would
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have been moved by some board member and confirmed by another, and the minutes are never the precise words that are stated at the board meeting, nor are the intentions recorded. My purpose in mentioning the fact that Mitsui & Company were interested in obtaining an equity in the company was not relating necessarily to the issuance of shares. I did not quite know how they were going to do it. We were talking, and the Japanese were talking to us.

10

Q. But, Mr. Taylor, does not "equity in the company" in your language mean a shareholding in the company? A. To be honest I really don't have a full understanding of the definition.

Q. Because of course the situation was, was it not, that in November and December of 1971 you had authorised Mr. Koch to offer Mitsui two million shares at \$2 per share in the capital of Millers? A. I don't recall that. I recall authorising Mr. Koch to try and borrow some money from Mitsui and to lodge the "Robert Miller" as security.

20

Q. Do you deny, Mr. Taylor, that in December 1971 - do you deny that in November or December 1971 you authorised Mr. Koch to offer to Mitsui two million shares in the capital of Millers and an option over a further two million shares? A. I can recall something of that conversation. I can't recall the details. I can't recall the precise details of the conversation. Mr. Koch had an open authority from me to raise money.

30

Q. You see, you can remember, can you not, the situation that existed in relation to Millers in November-December 1971? A. Yes, I can remember that we had a monetary - we were short of money. I can't remember all of the details.

Q. This was the time, was it not, when reference to a possible takeover were achieving great currency in the press? A. I believe this was not at any particular time - this had carried on from even - from just after Sir Roderick's death. I cannot remember any peak period.

40

Q. I suggest to you it was November-December that there was a great deal of speculation in the press in relation to a possible takeover. Would you disagree with that? A. It was at the end of August, I think, when the big rumours started to come around.

Q. I suggest to you in November and December you and Mr. Koch had conversations about the possibility of a takeover? A. We certainly did. I think it would have been November. I think from August onwards we had regular discussions about such a possibility.

Q. And I suggest that you expressed concern as to the possibility of a takeover? A. Yes.

10 Q. What I am putting to you is that in the context of your concern about the possibility of a takeover you authorised Mr. Koch to approach Mitsui and offer them two million shares with an option over a further two million shares? A. I don't recall the number of shares or the amount, but I do recall that he had blanket approval to approach Mitsui and anybody else for the purpose of raising money.

20 Q. By allotting shares? A. I don't recall by allotting shares. I don't recall the details of how we could do it. We were mainly concerned with borrowing moneys, lodging hotels and ships and other assets as security.

Q. Did you or did you not authorise Mr. Koch to offer shares in the capital of Millers to Mitsui? A. I don't recall. I probably could have. I would not deny that I did not authorise him (sic) But I don't recall specifically.

30 Q. Did Mr. Koch tell you that he had offered two million shares and an option over a further two million shares in the capital of Millers to Mitsui? A. I don't recall that, and I did not recall the first part.

Q. So far as you are aware there had never been any discussion at all with Mitsui in relation to Mitsui being allotted shares in the capital of Millers? A. No, that is not correct.

40 Q. Well, what discussions had there been? A. I don't recall the precise details of what you mentioned to me previously about two million shares at \$2 a share. I don't recall that. It could have happened. But I do recall conversations with Mr. Koch - daily conversations with Mr. Koch concerning the raising of money.

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Q. Is what you tell his Honour this, that you don't recall whether or not Mitsui ever offered any shares in the capital of Millers? A. I can recall some discussions where the issuance of shares to Mitsui was discussed. I can't recall the amount, the number or the time. It would more than probably be with Mr. Koch.

Q. You would agree with me, wouldn't you, that you can recall that Mitsui had rejected any proposal to take up shares in the capital of Millers?

10

A. No, I can't remember that. Mitsui were a company, like most Japanese companies, that are very careful to give you (sic) a definite yes or a definite no. They like to keep their options open. They say that they would still like to look at it and to refer it back to Japan. That is the way they operate. They don't give you a clear-cut answer of "yes" or "no". I can recall that they did not give any clear cut answer.

20

His Honour: I think you may have left a "not" out of that answer, Mr. Taylor. You meant they are very careful not to give a definite answer?

Witness: Yes. Thank you, your Honour.

Mr. Deane:

Q. Would you agree with me, Mr. Taylor, that this discussion recorded in the minutes of the meeting of directors of 5th April 1972 was the only occasion, apart from the meeting of 6th July 1972, in recent years in which the directors of Millers discussed any allotment of shares to any entity? A. No, there were other discussions of issuing shares.

30

Q. Now, when? A. I can remember one on 6th July when Mr. Cameron suggested that we should give the existing shareholders an opportunity of issuing shares.

Q. Mr. Taylor, I said excluding the meeting of 6th July? A. I beg your pardon. There was one other occasion - I cannot recall the date - I think the same matter was raised by Mr. Cameron.

40

- Q. Now, would you agree with me that in recent years no foreign company or no foreign entity has ever approached Millers seeking to have shares allotted to it? A. When you say "foreign", do you mean overseas, or registered other than in New South Wales?
- 10 Q. I will rephrase the question. Would you agree with me that no one has in recent years approached Millers seeking to have shares allotted to him or it, apart from Howard Smith? A. Yes, I have some recollection of a proposal by Sir Peter Abeles to Sir Roderick Miller to form a separate company for the purpose of controlling shares in R.W. Miller & Company.
- 20 Q. Well, now, apart from that would you agree with me that no one in recent years has approached Millers seeking an allotment of shares with the exception of Howard Smith? A. I think the approach to Sir Roderick Miller as chairman was an approach to the company.
- Q. I said with the exception of that, Mr. Taylor. Would you agree with me that no one in recent years has approached Millers seeking an allotment of shares other than Howard Smith? A. Other than Howard Smith?
- 30 Q. Yes. A. I hope that I can follow your question, and I am not delaying it on purpose. I did mention that Sir Peter Abeles had approached the late Sir Roderick Miller for the forming of another company to control the shares in R.W. Miller & Company.
- 40 Q. Mr. Taylor, I accept that you said that. What I am putting to you is this: with the exception of that approach by Sir Peter Abeles no one in recent years has sought an allotment of shares from Millers other than Howard Smith? I am excepting from the question the approach by Sir Peter Abeles to which you have referred? A. There could have been. Mr. Koch could have approached Mitsui. I don't recall.
- Q. Apart from that? A. We have three parties - Howard Smiths. Mitsui and Sir Peter Abeles.
- Q. With the exception of those would you agree that no one in recent years has approached Millers seeking the allotment of shares?

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A. No, I cannot recall any other party,  
Mr. Deane.

Q. Is what you say this, that you do not recall  
whether Mr. Koch approached Mitsui, and, if he  
did approach Mitsui, you don't recall what the  
result of the approach was? A. The latter  
part. I don't recall the results of the  
approach.

Q. And you would agree with me, would you not,  
that in recent years the directors of Millers  
never at a board meeting discussed the allot-  
ment of shares to any specific entity other  
than Howard Smith? A. No, they had a dis-  
cussion in regard to the existing shareholders.  
They discussed an offer to existing shareholders.

10

Q. The next matter I want to ask you some  
questions about, Mr. Taylor, is in relation to  
the minutes of the meeting of directors of  
24th February. Can you turn to p. 8 of those  
minutes, which is folio 235? A. Yes.

20

Q. Do you see there, about one-third of the way  
down the page, the heading "Asset backing of  
company's shares". Do you see that? A. Yes.

Q. And that refers to a qualification by the  
company's auditors, doesn't it? A. Yes.

Q. And the qualification resulted in a figure of  
£3.71 in relation to the net asset backing  
of the shares in Millers? A. Yes.

Q. You see the following that the statement "The  
valuation had been prepared by the auditors  
for the board's information and it was not  
intended to make the valuation public"?  
A. Yes.

30

Q. Do you see that? A. Yes.

Q. What was said in relation to that? Why was it  
not intended to make it public? A. There was  
some discussion on this, and there was some  
disagreement as to how the valuation had been  
made, particularly in relation to the  
colliery assets, and the board was rather  
divided as to the accuracy of that amount.

40

- Q. Which means that it was made clear that at least some members of the board thought that the valuation was inaccurate? A. Yes, that is correct.
- Q. And that it would be misleading to publish it? A. They did not say those words. I do not ever recall them saying those words. I have only heard those words from you just now, Mr. Deane.
- 10 Q. It was on the basis of the views of some members of the board that a decision was reached that the figures be not published? A. Yes, because there was doubt as to the manner in which they had prepared them, and they had also not been completed. That was another reason why it was decided not to release them. The valuation had not been completed.
- Q. Did that figure of \$3.71 ever come up again at a board meeting between this meeting on 24th February and the meeting of 6th July? A. It could have. I don't recall exactly when.
- 20 Q. Can you recall there being any alteration in the decision that they not be published? A. No.
- Q. Of course, the very first thing that you did when you heard of the Ampol takeover was to publish them? A. I published them soon after. It was not the very first thing I did. I did publish them soon after,
- Q. I suggest to you that immediately you learned of the Ampol takeover offer you sent a Telex to the Stock Exchange? A. Yes. I don't deny that.
- 30 Q. In which you published these figures? A. I don't deny that.
- Q. Before the board had considered the Ampol takeover offer? A. Yes.
- Q. Without the authority of the board. Is that so? A. I considered it my duty to acquaint the Stock Exchange of the valuation of the shares, and I did that.
- 40 Q. But with details of a figure which the board had decided not to publish because some members of the board thought it was inaccurate? A. Some members of the board had not said they thought

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it was inaccurate. They had discussions as to the manner in which it was compiled, and they did not believe it to be - there were some doubts about it. And I certainly did do that, Mr. Deane - I released it without the board's authority.

Q. And you did it, did you not, to discourage people accepting the Ampol takeover? A. I did it of my own volition because I wanted the shareholders of the company to know that their shares were worth more than the bid that Ampol had made for them.

10

Q. Of course, this was your immediate reaction, was it not, when you learned that Ampol was making a takeover offer for the whole of the shares of the company? A. It was an immediate reaction of mine, yes. I considered it my duty.

Q. You were aware, weren't you, that in the discussions leading to the acquisition by Ampol of the Romanda shares Lady Miller had sought assurances that the other shareholders would be given an opportunity of selling their shares at the same price as she - as Romanda was receiving? A. I recall some discussion on that point, when they made their first bid for \$2.11. Lady Miller told me that Ampol intended to offer \$2.11 for the shares, and on the second occasion she said that they had - it was their intention to make an offer for all of the company's shares at \$2.25 cum \$2.27. The answer to that is "yes". Excuse me repeating -

20

Q. Didn't Lady Miller tell you that she had sought from Ampol an assurance that the other shareholders would be given an opportunity of selling their shares at the price Romanda was receiving? A. I don't recall it in those precise words. I remember her telling me that Ampol intended to make a takeover offer to the remaining shareholders.

Q. Coming back to the matters that I was asking you some questions about on Thursday, you told his Honour that at the meeting of 4th July Mr. Maxwell was reading from a document when he put his initial proposition of an allotment of three million shares to Howard Smith. Do you recall that? A. Yes, I recall saying that.

Mr. Deane: I call for that document.  
(produced by Mr. Hughes)

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Q. Might I suggest to you that what Mr. Maxwell proposed was that there be a binding contract between Howard Smith and Millers providing for certain matters. Would you agree with that?  
A. I don't recall that discussion. He could well have said that, but I don't recall it.

10 Q. And I suggest that he said the contract would provide first that Howard Smith would agree to proceed with its takeover offer. Does that ring a bell? A. No, it does not. No, it does not ring a bell with me.

Q. Second, that Miller would agree to allot three million shares to Howard Smith at \$2 per share, payable 10 cents on application and as to \$1.90 when, and only when, the shareholders of not less than 3,001,000 shares accepted the Howard Smith offer? A. I remember - here again, as you read it out - something in the order of that discussion. I remember some discussion along those lines.

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Q. And that the contract would also provide that Millers would agree not to allot any further shares without the consent of Howard Smith. Do you remember that? A. No, I don't remember that.

30 Q. Or until - or that they will not allot further shares until Howard Smith notifies Millers that its offer has been withdrawn. Do you remember that? A. No.

Q. And I also suggest that it was proposed that the contract would provide that Millers would not dispose of any of its assets until Howard Smith either withdrew its offer or declared it unconditional. Do you recall that? A. No, I don't recall that.

40 Q. Did Mr. Maxwell read out details of percentage voting power if this allotment of three million shares was proceeded with? A. I don't remember. I can't recall him reading that out. I can recall him reading out the three million shares at \$2, and the manner in which he paid for them.



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Q. Did he read out the proposition that if the Howard Smith takeover did not proceed Howard Smith would have these three million shares and would never have to pay more than 10 cents per share in relation to them? A. No, I don't recall the details of what he read out in the letter apart from what I previously said, because I knew that anything that he was reading out would have to be subject to the board's approval, and anything he said I would have had to put up to the board, and I did not take particular notice of the details of it as Mr. Koch was with me in the room, and he was the man that gave more attention to minute detail than I did.

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Q. There was no doubt in your mind, was there, Mr. Taylor, that Mr. Maxwell was reading from a document? A. I can recall him reading from a document.

Mr. Deane: I tender that document.  
(objected to by Mr. Glass)

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Mr. Deane: I tender it as against Howard Smith.

His Honour: I admit as exhibit UU Mr. Maxwell's notes, and I will note that it is admitted against Howard Smith only.\*

\* Exhibit UU

(Mr. Maxwell's notes admitted as exhibit UU as against Howard Smith only)

Mr. Deane:

Q. Mr. Taylor, what I want to suggest to you is that the terms of payment of the \$1.90 in respect of these three million shares was the subject of discussion at this meeting on 4th July. Would you agree or disagree with that proposition? A. It was a subject. It was a matter of discussion. It was not the substance.

30

Q. You see, I suggest to you that either you or Mr. Koch indicated that you would not be in agreement with an allotment on the basis that the final \$1.90 only became payable in the event that Howard Smith acquired 3,001,000 shares pursuant to its takeover offer? A. Mr. Koch may have raised that point. I don't recall raising any particular point.

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- Q. You see, what I am suggesting to you is that in these discussions that proposal of Howard Smiths was altered at the insistence of Millers, and that by the end of the meeting what was being discussed was the payment of the allotment moneys as to ten cents on application, with the balance of \$1.90 representing capital and premium to be paid on a date to be fixed or at the discretion of the Miller board? A. I don't recall that part of the discussion, if there was that part of the discussion.
- 10 Q. Do you deny that the discussions at this meeting of 4th July had the result, at Millers insistence - this is at yours and Mr. Koch's insistence - of altering the proposed terms of payment by Howard Smith for the three million shares from what was originally proposed to what I have just put to you? A. Could you please repeat that question, Mr. Deane, step by step so that I can answer it? It was a rather lengthy question. I lost track of it half way through.
- 20 Q. Do you deny that the result of the discussions at the meeting of 4th July was that Howard Smith, at the insistence of yourself and Mr. Koch, altered its proposal as to how the three million shares should be paid for (objected to by Mr. Glass: question withdrawn).
- Q. Do you deny, Mr. Taylor, that in the course of this meeting Howard Smith altered its proposed terms of payment for the three million shares which it was seeking during that meeting? A. They did not discuss the alteration of their proposal.
- 30 Q. At all? A. At the end of it they said they would have to think about it further.
- Q. So you deny that in the course of this meeting Howard Smith altered the proposed terms of payment for the shares? A. Not during that meeting.
- 40 Q. So that your answer to my question is "Yes" - you do deny it? A. Yes, I deny that it was at that meeting that they altered the proposed terms, yes.
- Q. You told his Honour that after the meeting you telephoned Mr. Anderson, Mr. Duncan and Mr. Nicholl. That is right, isn't it? A. Yes, that is correct.

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- Q. And I think you requested Mr. Conway to telephone Mr. Balhorn, is that so? A. I don't recall whether I rang Mr. Balhorn, or whether Mr. Conway did.
- Q. But you are confident that someone did? A. I feel Mr. Conway Mr. Balhorn was notified.
- Q. I want to take you back to your phone conversation with Mr. Anderson? A. Yes.
- Q. What was said in that conversation? A. I told him in broad details the circumstances of what had happened at the meeting. 10
- Q. I know that it is difficult, but can you tell us to the best of your recollection what was said? A. No, I would only be making it up. I would only be making it up, and I don't wish to do that. I would only be guessing, with this passage of time.
- Q. Mr. Taylor, you have given detailed evidence as to conversations you had with people from Ampol in January, haven't you? A. Yes. 20
- Q. And you have given detailed evidence as to conversations that you had over a period of months with Sir Peter Abeles? A. Yes.
- Q. And this conversation was in January of this year? A. Yes.
- Q. And it was an important conversation? A. I did not attach as much important to this particular conversation as I did to the other conversations that you referred to, because they were more in detail. This was an area of doubt, and I didn't bother either of the board - I don't recollect bothering either of the board members with the full details because there was no fact about it. We did not know they were going to apply for shares. We knew they had an intention, but there was nothing definite, and it only became definite when it was signed by Mr. Bill Howard Smith. 30
- Q. What were their intentions that you knew they had? A. I believed that they intended to apply for an issuance of shares. 40
- Q. Intended to apply for an issuance of shares? A. Yes.

- Q. How many? A. I didn't know.
- Q. Except you mentioned a figure of three million to Mr. Anderson? A. On that occasion I recall saying that to Mr. Anderson, yes. I recall saying that to Mr. Anderson - at \$2 each.
- Q. Now, what else did you say to Mr. Anderson? A. I don't recall what else I said to him.
- 10 Q. In relation to the conversation with Mr. Nicholl, what did you say to him? A. I told him - as you have triggered my memory, I gave him the details of the three million shares at \$2 each.
- Q. And what did you say in relation to the three million shares at \$2 each? A. I think I told him that I told Howard Smith that I could not get that through the board.
- Q. What did Mr. Nicholl say? A. I think he agreed with me.
- 20 Q. Of course, on Thursday you told his Honour that Mr. Nicholl did not make any comment at all. Which is it, Mr. Taylor? A. As I have previously stated, you have just triggered my memory. If I did say that, it was an omission, and I beg your Honour's pardon if I did say that on Thursday.
- Q. What was your conversation with Mr. Duncan? What was said in that conversation? A. Similar to what I have previously said to you about the number of shares.
- 30 Q. Can you just tell us what was said, please, Mr. Taylor? A. I said that I had had a talk to Mr. Howard Smith and some other officers of Howard Smiths and they had approached me for the issuance of shares - three million shares at \$2 each. I can't recall what he said back to me, but I did tell him that it was not definite.
- Q. Now, you have told his Honour that you did not tell Sir Peter Abeles, Lady Miller or Mr. Cameron about this proposal? A. Yes.
- Q. That is so, isn't it? A. Yes, that is so.

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Q. Why was that? Why didn't you tell them? A. It was not unusual for me to tell some directors some part of a conversation. That was one of the reasons.

Q. What were the other reasons? A. The other reasons was because I considered after their joint announcement of Bulkships and Ampol it was quite clear that Sir Peter Abeles was in conflict, and that was the same reason I didn't tell Mr. Cameron.

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Q. Why didn't you tell Mr. Cameron? A. Because he was very closely associated with Sir Peter Abeles. His company was the auditors for T.N.T., and he was closely involved in business, and I did not quite know, or I thought that was an area I had better keep away from.

Q. What about Lady Miller? Why didn't you tell Lady Miller? A. I did not tell Lady Miller because I was concerned that Lady Miller could tell her solicitors, Abbott Tout Creer & Wilkinson, and that, in turn, could possibly get back to Ampol.

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Q. But why would it matter if it got back to Ampol that Howard Smith was going to make a proposal that you thought you could not get through the board? A. I was hopeful that Howard Smiths would find a way - come up with a solution - find some way around to make their offer work. They had previously offered a takeover bid at \$2.50, and I was hopeful they would find a way around it.

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Q. Of course, Ampol owned more than one quarter of the issued shares in Miller? A. I believe so.

Q. And Bulkships own more than one quarter of the issued shares in Millers? A. Yes.

Q. Why would it matter if the two shareholders who between them owned more than one half of the issued capital of your company found out that Howard Smith was likely to seek an allotment of shares? A. They had made a joint announcement to, I considered, lock in the minority shareholders. That is, the minority - in fact they were the majority in number, but they held the minor holding. They would be locked in at \$2.27, and these two companies had got together

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to lock them in, and I did not want to give them any advantage to keep these people locked in and I was trying to find a way out so that they could avail themselves of the higher price and Ampol and Bulkships, too, if they intended to, could have availed themselves of the higher price.

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- Q. What could Ampol and Bulkships have done about it? A. I don't know.
- 10 Q. Did it occur to you they might bring proceedings in this court? A. No.
- Q. You see, I suggest to you that the whole of the secrecy surrounding this meeting and the whole point of pushing the allotment through at the first meeting at which it was ever suggested was to prevent the matter being brought before this court (objected to by Mr. Glass; allowed).
- Q. Do you agree with that? A. No, I would not agree with that.
- 20 Q. Well then, what was the point of rushing it through at the meeting of 6th July? A. To make it succeed.
- Q. What could have stopped it succeeding? A. I don't know.
- Q. You see, what I am suggesting to you, Mr. Taylor, is that the secrecy which was preserved in relation to three of the directors, in relation to the shareholders holding the majority of the shares, and the haste with which the matter was dealt with despite the objections of some of your directors were all aimed at presenting the shareholders with a fait accompli? A. That is not true. If that had been true, Mr. Deane, and there was any doubt I would not have ruled Sir Peter Abeles out.
- 30 Q. Coming to your return from the meeting of 4th July, you told his Honour that you placed the matter before the finance committee of Millers? A. Yes.
- 40 Q. And that Mr. Cameron was deliberately excluded from those included in the discussions. That is so, isn't it? A. He was not in attendance at the meeting that was going on at the time.

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Q. Didn't you tell his Honour on Thursday that the decision to exclude Mr. Cameron from the discussions of the finance committee of which he was a member was a deliberate one? A. I can recall saying that it was deliberate not to tell him the details of it.

Q. Now, in your discussions with Mr. Anderson, Mr. Duncan and Mr. Nicholl did you tell them to keep it quiet? A. No, I did not.

Q. Did you tell them not to tell Sir Peter Abeles and Mr. Cameron or Lady Miller? A. No.

Q. Did you tell them that you were not going to tell them? A. No.

Q. Why not? A. It was not unusual for me to discuss a matter with some directors and not to discuss it with others, because ultimately things of this nature would have to come to a board meeting for decision.

Q. Mr. Taylor, you have told his Honour that you had deliberately decided to keep this information from three members of your board because you thought they might pass it on. Do you say that in those circumstances as a matter of course you do not tell other directors what you are doing? A. That is what transpired.

Q. Do you suggest that this was a normal course of practice, for you to deliberately exclude almost half of your board from information you were giving to the other half? A. I considered they were not normal circumstances and also that it was not unusual for me to discuss with some member of the board and no other, particularly as this was only a proposal - a verbal proposal. There was no guarantee that they in fact would make an application to allot shares. There was a lot of talk going on.

Q. You made a deliberate decision to tell three members of your board, and not to tell the other three? A. Yes, that is correct.

Q. Would it be true to say you made a deliberate decision to tell the three members of the board on whose support you were sure you could rely? A. I certainly did not expect the reliance of their support.

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- Q. You told his Honour that you had a telephone conversation with Sir Peter Abeles on 5th July?  
A. Sir Peter Abeles rang me, I believe.
- Q. When was that? Was that before, or after, the luncheon meeting? A. Before. Before noon.
- Q. Having acquainted some of the members of the finance committee with what had taken place at the meeting of 4th July, what was your next activity in relation to Howard Smith? A. I did not contact Howard Smith or anyone in Howard Smiths.
- Q. Did you participate in the discussions of the finance committee? A. No.
- Q. Were you kept acquainted with what they were talking about? A. No, No.
- Q. Did you discuss the possible allotment with anyone apart from in the phone calls? A. To the finance committee I discussed a possible allotment. Mr. Aston was in the room at about 12.30.
- Q. We are still on the 4th July? A. On the 4th July. I don't recall discussing it with anybody else apart from the finance committee and the three directors on the 4th July.
- Q. A good point, Mr. Taylor. We are on the 4th July? A. It was on 4th July that I rang the three directors and advised them of the details of what had happened at Howard Smiths on 4th July.
- Q. And you informed the finance committee of these details? A. Well, I don't think I addressed them, but I certainly spoke to Mr. Koch, and others could have been present.
- Q. What other discussions did you have on 4th July? A. I can't recall. I would have had other discussions, but I can't recall the details of them.
- Q. Did anyone tell you of the views of the finance committee? Did anyone tell you what the views of the finance committee were on 4th July? A. No, I can't recall that.

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- Q. Did you have any communications with them on the morning of 5th July before the luncheon meeting?  
A. Yes. Just after I had received the phone call from Sir Peter Abeles.

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- Q. Tell us about that? What happened? A. I walked into the room. Mr. Aston was in the room at that stage. I walked into the room after Sir Peter Abeles had rung me.

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- Q. This is before the luncheon meeting? A. Yes. This was about noon - a bit after noon. 10

- Q. Yes. A. Do you want the details of what I said?

- Q. Yes, I want everything that was said, please?  
A. I said "Well fellows, this looks like a declaration of war. It looks like Sir Peter Abeles is going to declare the whole board on and rearrange it to suit himself and Ampol.

- Q. Yes. A. Then I gave them details of the telephone conversation that Sir Peter had with me, and I had in my hand the pencil notes that I had made, particularly with the emphasis on one or two words. 20

- Q. Yes. A. Where he stated that from now on he was on his own.

- Q. If you can, just tell us what was said in the conversation. As near as you can, tell us the conversation which took place? A. I thought I was doing that.

His Honour: Mr. Taylor, what Mr. Deane wants is for you to recount again the details of the conversation. 30

Witness: I beg your pardon your Honour.

Mr. Deane:

- Q. What else was said? Can you tell us what else was said? A. I think we had better get back -

His Honour: You take up the thread where it suits you, Mr. Taylor. Pick up the threads again, if you can. If you would like to go back to the beginning, say so, and, if not, pick it up at the point where you said "This 40

looks like a declaration of war".

Witness: I said to the members "I have just had a phone call from Sir Peter Abeles, who is very calm and concise, and he said to me that he had given me a very good run, and the company a very good run, and that from now on he was on his own and that he intended tomorrow morning (the 6th) to direct people other than the directors to resign (sic) - that was, legal advisers, to retire from the room - legal advisers, the general manager, Miss Hill, or any person other than a director, and he was going to force them to resign - force them to resign by explaining that they -

Mr. Deane:

10 Q. Force who to resign? A. Three directors, Mr. Anderson, Mr. Duncan or his alternate, and Mr. Nicholl. He said he was - if I have stated this earlier I beg your pardon if I repeat it -  
20 I'm trying to get my memory in sequence - he said that he was going to blow the place open.

Q. This is what you have told the members? A. I am telling the members of the staff what he told me. I turned around to Mr. Walker, who is the general manager of the hotels, and I said "Don, he also said you will be a very sorry man unless you put in the amusement machines that you are conducting an inquiry on in relation to Mr. Senes and his company".

30 Q. What else did you say? A. I said "This is bringing the paternal instinct out in me. I feel responsible for the shareholders and I feel responsible for the members of my staff and I don't like being threatened by anyone. In fact, I am not even scared." I remember using those precise words.

Q. Yes. What else was said? A. I don't recall myself saying much more.

40 Q. Yes. A. I don't recall much return conversation of what the officers of the company said.

Q. Was anything said about excluding Sir Peter from voting at the board meeting? A. Mr. Aston said to me at that stage that it was quite clear in his mind that Sir Peter would be in clear conflict and Mr. Aston also stated, so far as I can recollect

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that if the matter of the issuance of shares comes up this will not be breaking the law - the Company law - that it would certainly be breaking Stock Exchange regulations.

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Q. Did he say anything about Sir Peter Abeles being excluded? A. Yes. He suggested I should invite him to exclude himself.

Q. In relation to a possible issue of shares? A. In relation to voting - it could have been to do with possible issuance of shares. I would not argue one way or another about that.

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Q. Mr. Taylor, surely it was, wasn't it? A. I said I am not sure, Mr. Deane.

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Q. It was only in relation to the issue of shares, was it not? A. I only vaguely recall it. I don't recall it altogether.

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Q. Did you agree with what Mr. Aston said? A. He volunteered the advice to me, and I did not disagree with it, and we went down to lunch after that. Mr. Conway agreed with him.

(continued)

Q. Did you accept the advice when it was given? A. I agreed with it.

Q. So, it would be true to say, would it, that you had decided to exclude Sir Peter Abeles from voting in relation to the allotment of shares to Howard Smith before you received the proposal from Howard Smith in the afternoon of 5th July? A. No, I did not.

Q. Well then, what do you say? A. I did not say anything. You just put something to me and I said "no".

Q. Mr. Taylor, you say before lunch you had given advice to exclude Sir Peter Abeles. That is so, isn't it? A. I had been given advice by Mr. Aston should it come up.

Q. And you also said that you accepted that advice and agreed with it? A. I agree that is so, yes.

Q. And of course, this was before the offer from Howard Smith was received on the afternoon of 5th July? A. Yes.

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- Q. I will again put to you that the decision to exclude Sir Peter Abeles from voting in respect of the issue of shares was made by you before the proposal was received from Howard Smith?  
A. No.
- 10 Q. And that is your answer? A. It was an opinion I had<sup>2</sup> it was not a decision. The decision was made at the time that I invited him to declare his interests or to abstain from discussing or voting.
- Q. So, is what you say this, that the decision to exclude him was made after the script for the conduct of this meeting was prepared? A. Yes, it was made by me at the time that I made it at the board meeting. That is when the decision was made.
- Q. And it was not made in advance of the board meeting? A. There was some suggestions made; it was not made by me.
- 20 Q. So, you did not make the decision - and I want there to be no mistake on this. Is what you tell his Honour you did not make the decision to exclude Sir Peter Abeles until the moment of time at the board meeting when you excluded him? A. That's correct.
- Q. No doubt? A. No doubt at all. I had advice earlier and I acted on the advice and made the decision then. That was the moment that I had made the decision.
- 30 Q. Didn't you tell Mr. Duncan you were going to exclude him on 5th July? A. No.
- Q. I beg your pardon? A. No.
- Q. Now, coming to this luncheon meeting on 5th July, will you tell his Honour what time you arrived at it? A. At approximately 12.30.
- Q. And where was it? A. In the board room of the office of R.W. Miller & Company at 19 Bridge Street.
- Q. And who was present when you arrived there?  
A. Mr. Koch - I don't recall who was - I don't recall the turn of arrival.

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(continued)

In the Supreme Court of New South Wales Equity Division Q. Then who was present when the meeting got under way? A. There was Mr. Conway and Mr. Nicholl; there was Mr. Murphy; there was Mr. Walker I think; there was Mr. Koch; Mr. Harry Ellis-Jones.

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(continued)

Q. Was Mr. Aston there? A. No.

Q. What was said at this meeting in relation to an allotment of shares to Howard Smith to the best of your recollection? A. Most of the conversation in relation to the allotment or an allotment of shares, not any specific number, but an allotment of shares, was between Mr. Nicholl and Mr. Conway.

10

Q. What can you recall being said? A. I can recall that Mr. Nicholl referred to the Australian Law Journal and he referred to two cases. Now, I mentioned the names incorrectly on Thursday and I think I could...

Q. You need not worry about? A. And I think I could mention them incorrectly today. I remember parts of the conversation only parts of it, and I heard Mr. Nicholl saying that not only should the amount be sufficient for the immediate needs but also for future needs and I can remember Mr. Conway saying "That is spot on".

20

Q. Would it be a fair summary of what was being discussed or rather what you heard being discussed, Mr. Taylor, to say that it was a discussion aimed at working out what legal justification could be made for an allotment of shares through Howard Smith? (Objected to by Mr. Glass; allowed)

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Q. Did you hear the question, Mr. Taylor? (Previous question read by Court Reporter.) A. It turned out that way. The purpose of the meeting wasn't really to discuss that but it turned out that way.

Q. We have been told that after this luncheon meeting there was a telephone conversation between Mr. Conway and Mr. Maxwell. Were you there when that conversation took place? A. I was in the Board room when the conversation took place, yes, when Mr. Conway answered the 'phone.

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Q. Did you see Mr. Conway make that sign (demonstrates) as he was talking on the 'phone? A. Yes.

Mr. Deane: Perhaps the sign needs to be described again, your Honour. I would call an "it is right" sign but my friend called it a digital sign.

His Honour: It can go down as "a circular digital sign."

10 Mr. Deane:

Q. After that conversation what did Mr. Conway say or rather might I withdraw that question. Did you hear what Mr. Conway said as he was talking on the 'phone? A. No.

Q. Well then, what did he say after he had finished talking on the 'phone? A. He told me I could expect a draft letter from Howard Smith that afternoon setting out a proposal for the company to allot shares.

20 Q. Did he tell you how many shares? A. I don't recall.

Q. Did he tell you what price? A. No. I don't recall.

Q. Well then, what happened then? A. We stayed and had general conversation for about five or ten minutes.

Q. And what was said? A. I don't recall the details of what was said.

Q. Was there general elation among the executives. A. They were not displeased.

30 Q. Isn't it putting it a little mildly, Mr. Taylor? A. No, I don't think so. A lot of things happen in business, Mr. Deane, which you hear is going to happen and it doesn't happen so we get pretty accustomed to disappointments and things so you do not get too elated at the possibility of something happening.

Q. But there was delight at the prospect? A. There was no displeasure.

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\*Exhibit T
- Q. Well, then, what was the next thing that happened so far as you were concerned?  
A. I received a draft letter at about 5 o'clock.
- Q. (Witness shown Ex. T.)\* I do not think you need look closely, Mr. Taylor, it is the letter of 6th July from Howard Smith. Was it a draft of that letter?  
A. Without going through all of the details on it, this was the details of the draft. 10
- Q. Was it on Howard Smith letterhead, the draft letter you saw?  
A. I don't recall.
- Q. Was it typed or handwritten?  
A. Typed.
- Q. With handwritten notes on it?  
A. I beg your pardon.
- Q. With handwritten notes on the typing?  
A. I don't recall handwritten notes being on the typing. I recall a typed letter and I don't recall whether it had a letterhead and I don't recall whether it had any handwritten notes. 20
- Q. Did you make any suggestions in relation to the letter?  
A. Yes, I said to Mr. Maxwell "I will be pleased to receive it in the morning signed by your Chairman".
- Q. Did you make any comments in relation to the contents of the letter?  
A. No, I did not.
- Q. What was your understanding as to when the letter had first reached Millers?  
A. When the letter first reached?
- Q. When the draft letter first reached Millers?  
A. When I received it in my office at night, you know, approximately 5, 5.30. I don't recall the exact time. 30
- Q. What did Mr. Conway say in relation to the contents of the draft letter?  
A. I don't recall Mr. Conway commenting on it.
- Q. Did he indicate that he had assisted in any way in the drafting of it?  
A. No.
- Q. What did Mr. Maxwell say in relation to the draft letter?  
A. He did not have anything to 40

say. He just presented me with the letter and asked me for my comments on it I think and I said "I would be pleased to see it back in the morning". I beg your pardon, I don't recall Mr. Maxwell even inviting my comments. He gave me the letter, I read it and suggested he should bring it back in the morning signed by his Chairman.

- 10 Q. What did you think Mr. Maxwell was showing you the letter for? (Objected to by Mr. Glass; allowed.) A. He was showing me - what did I think he was showing it to me for?
- Q. Yes. A. To give me some prior notice of a letter he proposed to give to me so I could present it in the morning.
- Q. See, it was unsigned, of course, when he showed it to you? A. Yes.
- 20 Q. I am suggesting to you it was made clear to you that Mr. Maxwell was, to use your words of a few minutes ago, inviting your comments on the letter? A. He did not suggest that and he did not use those words.
- Q. I am suggesting to you that that was your belief as to why Mr. Maxwell was showing you the letter? A. My belief was he was showing me the letter to give me prior knowledge of it so I could present it to the Board.
- 30 Q. And you tell his Honour that you made no comment at all as to the contents of the letter other than saying "I will be pleased to see your Chairman's signature on it"? A. That is all I recall saying to Mr. Maxwell.
- Q. How long did this discussion with Mr. Maxwell last on 5th July? A. A few minutes to give me sufficient time to read the letter.
- Q. Was the agreement attached to the letter, the draft letter? A. Which agreement?
- 40 Q. The agreement which was subsequently executed at the Board meeting of 6th July? A. No, I only saw a letter, a draft of this particular letter here.
- Q. After Mr. Maxwell left having shown you the letter, did you make any telephone conversations,

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(continued)

calls to any of the directors? A. No, I did not make any telephone conversations to any of the directors.

Q. Did you discuss the matter with any of the directors? A. If it is considered that Mr. Murphy and Mr...

Q. No, excluding...A. The alternate directors - no, I did not discuss it with any of the directors.

Q. Did you have any conversation with any of the directors on the evening of 5th July? A. I recall discussing - I don't recall having any discussion with any director on the evening after I received that letter.

10

Q. What about Mr. Duncan? A. No, I think I had answered this to you previously. I had not discussed with Mr. Duncan, I had not had a discussion with Mr. Duncan on 5th July. I think it was on two previous occasions I had said that.

20

Q. We come now to the morning of 6th July. What time did you arrive at Millers? A. I would be guessing. I don't recall.

Q. Well, before 9 o'clock? A. Quarter to nine probably.

Q. What time did Mr. Anderson arrive? A. Sometime after nine.

Q. And he went to your office? A. Yes.

Q. And you had a discussion with him? A. Yes, I gave him the folder. I gave him his folder, containing the Board papers.

30

Q. And no doubt you told him, did you, that a letter was coming from Howard Smith? A. No, I did not.

Q. Did you mention anything about Howard Smith to him? A. No.

Q. Nothing at all? A. Nothing at all.

Q. Did Mr. Balhorn then arrive? A. Yes, Mr. Balhorn arrived shortly after that.

Q. Was Mr. Duncan there when Mr. Balhorn was there?  
A. Mr. Duncan was in Japan.

Q. I am sorry. Was Mr. Anderson there while Mr. Balhorn was there? A. No, I think Mr. Anderson was downstairs. They could have crossed at the door; I am not quite certain.

Q. Well, you had a discussion with Mr. Balhorn?  
A. Yes.

10 Q. What did you say to him? A. I said I had received a letter from Howard Smiths.

Q. You had received the letter by this stage? A. Yes.

Q. And what, you handed it to him? A. I let him read it.

Q. What was then said with Mr. Balhorn? A. He asked me to get Mr. Duncan on the 'phone.

Q. Yes. A. Which I did.

20 Q. How long did that take? A. About 10 or 15 minutes. I don't recall. It could have been a little longer.

Q. So, the situation is - what time did Mr. Balhorn arrive? A. About 9 - about the same time as the letter, about 9.20. It wasn't very - no, it could have been a little after that. It was after I received the letter.

Q. That was 9.30? A. No, it was a bit after that, about 9.40 I think.

30 Q. So, Mr. Balhorn arrived after 9.40 and read the letter then asked you to get Japan and that took about quarter of an hour? A. I don't recall the precise time but I was downstairs at the meeting ready to commence at 10 o'clock.

Q. (Witness shown Ex. U.) Mr. Taylor, you have seen that document before I presume? A. Yes, I have.

Q. Your company described this document in an affidavit of discovery as being prepared for the purposes of litigation. Is that an accurate description? (Objected to by Mr. Glass).

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Exhibit U

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Transcript of Evidence on Trial of Action Defendants Evidence 2nd Defendants Evidence Archibald Norman Taylor Cross Examination by Mr. Deane Q.C.

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(continued)

Q. Do you regard this document as being a document prepared for the purposes of litigation? A. No, I don't regard it in that manner at all.

Q. Well now, by whom was this document prepared?  
A. By Mr. Conway.

Q. At whose request? A. I can't recall whether this was volunteered by Mr. Conway or whether I asked for it, whether this would cover a previous instruction I had given to get everything ready in case Howard Smith did make their offer. 10

Q. Did anybody else see this document before the meeting other than yourself and Mr. Conway?  
A. Yes, I think Miss Hill, I think I would have given Miss Hill this document for the purpose of the preparation of minutes or a guide for the preparation of minutes.

Q. In that you planned to read from the document and would have made her transcribing easier?  
A. I planned to read from it, yes, some parts of it. 20

Q. When was this document prepared? A. I don't know.

Q. When was the instruction given to have things ready in case there was an offer from Howard Smith? A. The following day - the previous day, I beg your pardon.

Q. 5th July? A. 5th July.

Q. What time? A. To the best of my knowledge it was given after I had received the draft letter from Howard Smiths. 30

Q. What time were you handed the document in front of you? A. At about 9,30.

Q. Before or after you received the Howard Smith letter? A. It could well have been before but I don't recall exactly the time.

Q. Well, would you think about it, Mr. Taylor?  
A. Yes, I am thinking about it.

Q. I suggest to you you answered a question in relation to this matter in the interrogatories?  
A. I don't recall the time and I do not wish to guess.

Q. So, is the situation this that you do not know whether or not this document was handed to you before or after you received the Howard Smith letter? Is that the situation? A. I do not in this climate that we are at now, I don't know.

Q. But it may well have been before? A. It may well have been after also.

10 Q. Did you read the document before the meeting?  
A. Yes, I did.

Q. Carefully? A. No.

Q. What, you glanced through it? A. Yes.

20 Q. Now, we can come to the commencement of the meeting. I want to ask you some questions in relation to your beliefs as to the state of knowledge of each of the directors. What did you believe Mr. Cameron knew as to a proposal by Howard Smith for the allotment of shares at the time this meeting commenced?  
(Objected to by Mr. Glass)

His Honour:

Q. Mr. Taylor, you followed the inter-change I have had with Mr. Glass, perhaps to some extent What I have ruled is that it is open to either side in this dispute to ascertain what factors were operating in your mind particularly at this Board meeting and what your belief might have been on anything? A. Yes, I appreciate that.

30 Q. If questions are asked of you as to your belief at the Board meeting, just take care to make sure that you are casting your mind back to the Board meeting and not reconstructing and giving us your present belief. That is what Mr. Glass wants me to remind you of. We are trying to go back and get into your chair as you were in it at the Board meeting to see what was then the matter which appeared to you to be of significance and what was then your belief? A. Yes, I appreciate your comments, your Honour, and I wonder if I might have the question again.

40

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Cross Examina-  
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(continued)

Mr. Deane:

the Supreme Q.  
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No. 6

- Transcript of Q. At the commencement of this Board meeting,  
Evidence on Mr. Taylor, what was your belief as to what  
Trial of Mr. Cameron knew in relation to a possible  
Action allotment of shares to Howard Smith? A. I  
Defendants believed that he had no knowledge of any  
Evidence possible allotment.
- 2nd Defendants Q. What was your belief as to Sir Peter Abeles....  
Evidence A. I believed he...
- Archibald Q. Well, you know the question? A. I believed  
Norman Taylor Sir Peter Abeles had no knowledge of a proposed  
Evidence allotment. 10
- Cross Examina- Q. And what was your belief so far as Lady Miller  
tion by was concerned? A. I believed that she had no  
Mr. Deane Q.C. belief, no knowledge of a proposed allotment.
- 26th September, Q. What about Mr. Nicholl? A. Mr. Nicholl had  
1972 knowledge of a proposed allotment but to the  
(continued) best of my knowledge he had no knowledge of any  
amount or number of shares that were involved.
- Q. But Mr. Nicholl, of course, had been telephoned  
by you and given the information on 4th July. 20  
That is so, isn't it? A. 3 m. shares at \$2,  
yes.
- Q. And he had participated in the lunch-time  
discussion as to how legal justification could  
be obtained for an allotment of shares to  
Howard Smith? A. Yes, that is...
- His Honour: He had left before the digital sign  
then, Mr. Deane.
- Mr. Deane: I appreciate that.
- Q. What about Mr. Anderson? A. Mr. Anderson had 30  
no knowledge of the issuance of shares but he  
had knowledge - of a proposal to issue the  
exact number of shares, 4½ m. at \$2.30 but he  
didn't have knowledge of a proposal to allot  
3 m. shares at \$2 each.
- Q. What about Mr. Balhorn? A. Mr. Balhorn had  
prior knowledge because of the fact that he had  
spoken to Mr. Duncan in Tokyo so he had a  
little prior knowledge. Now, my correct under- 40  
standing is that Mr. Balhorn was a little late  
at the meeting, a little late at arriving at  
the meeting and he had previously asked me at

the commencement of the meeting. I want to make that point clear. I don't think it is relevant.

Q. At the time this meeting commenced, your understanding was, was it not, that there had been a proposal of, among other thing, an allotment of 3 m. shares at £2 to Howard Smith on 4th July. That is so, isn't it? A. It was verbal.

Q. Yes. A. This was brought to the meeting or at the commencement of the meeting.

10 Q. I am taking you to the commencement of the meeting and looking back to what your knowledge of affairs was. There had been a proposal made on 4th July for an allotment of 3 m. shares at £2? A. Yes.

Q. Which it would be true to say on your understanding, Millers had indicated on 5th July would not be acceptable to the Board? A. By Millers, Mr. Deane, who do you mean: the company or myself or...

20 Q. Well, somebody on behalf of Millers talking to Howard Smith, whether it be Mr. Conway, you, Mr. Koch, whoever you like? A. I am a little confused. Could you please give me that question again.

Q. Your understanding at the commencement of the meeting was, was it not, that this proposal of an allotment of 3 m. shares at £2 a share had been, as it were, turned round by someone from Millers on the morning of 5th July?  
30 (Objected to by Mr. Glass.)

Q. Mr. Taylor, at the commencement of this meeting were you aware that on the morning of 5th July Mr. Conway had telephoned somebody from Howard Smiths? A. It became apparent to me that he had telephoned someone from Howard Smiths after Mr. Maxwell had rung him at about 2.15.

Q. Now, were you aware that Mr. Koch had done his sums with short term liabilities on the morning of 5th July? A. In relation to the presentation to the Board meeting or done his sums with short term liabilities in relation to discussion with Howard Smith?

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Transcript of Evidence on Trial of Action

Defendants Evidence 2nd Defendants Evidence

Archibald Norman Taylor Cross Examination by Mr. Deane Q.C.

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\*Exhibits W and CC.

Q. In relation to discussion with Howard Smith? A. No, I did not know he had.

Q. You were aware, were you not, that this proposal which was contained in the letter of 6th July, had, as it were been hammered out in discussion between Mr. Maxwell and Mr. Conway? A. I was aware after that luncheon at 2.15; I was aware that some discussion was going on.

Q. As to what might be an acceptable proposition?

A. I was aware discussions were going on. I did not know to what extent.

10

Q. But between representatives of Millers and representatives of Howard Smith? A. I think it is fair that I would be aware of that although I had no details of the specific discussions or the answers concerned.

(Witness shown Exhibits W and CC.)\* Mr. Taylor, you will find in that envelope I hope a share certificate in relation to the Howard Smith shares, the envelope in front of you. Would you agree with me that before this meeting commenced you gave directions to have that share certificate prepared? A. No, I didn't I can't recall having given instructions to issue the share certificate.

20

Q. You were aware it was prepared before the meeting, weren't you? A. No, I wasn't aware when it was prepared.

Q. You see, you recall answering interrogatories in relation to this suit, do you not? A. Yes.

30

Q. Referring to Interrogatory 43 you were asked the question "Prior to the commencement of the Board meeting did you cause or instruct to be prepared share certificate in respect of 4 1/2 m. shares to be allotted to Howard Smith?" and you answered that question "Yes." Now, what I am putting to you is that before this meeting commenced you caused that share certificate to be prepared? A. I did give an over-ruling, over-riding instruction to prepare and to get in readiness any documentation concerning the issuance or the allotment of shares.

40

Q. Including the share certificate? A. I don't think I was precise about those words but it would be included.

- Q. Of course, prior to the meeting you had also given instructions for the register entry form to be prepared in respect of the proposed allotment, had you not? A. Here again, in relation to an overall preparation of documents.
- Q. So, before the meeting commenced on your understanding you had given instructions that both the share certificates should be prepared and ready and the entry in the share register should be prepared and ready. Is that so? A. If they formed part of the necessary documents to register the shares and provided that the - yes, I did. I gave an overriding instruction to get everything ready.
- Q. And there is no doubt that you intended your instruction to include the share certificate and the entry into the share registry? A. Yes.
- Q. You mean there is no doubt, you agree with me? A. There is no doubt.
- Q. Now, if we may from there come to the events of the meeting and I do not want to take you word by word through everything that was said - I just want to ask you some particular questions in relation to it. As I understand it, you followed the provisions or directions contained in the document prepared by Mr. Conway to some extent in relation to this meeting? A. Yes, they were guidelines for my Chairmanship of the meeting. They were not directions.
- Q. I suggest to you that to a large extent you read from this document? A. Yes, that would be - to a large extent, I did.
- (Witness shown Ex. U.) I think, Mr. Taylor, generally speaking you followed what is on Ex. U down to the relevant letter which commences at the third item. Would that be so? A. Yes.
- Q. Well now, you departed from the words in the paragraph commencing the third item, did you not, to the extent at least that you referred to a "dramatic development"? A. Yes, I could have used those words but I don't recall.
- Q. At this stage you had the letter from Howard Smith in your possession, did you? A. Where at the Board meeting?

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(continued)

Exhibit U



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Transcript of Evidence on Trial of Action Defendants Evidence 2nd Defendants Evidence

Archibald Norman Taylor Cross Examination by Mr. Deane Q.C. 26th September 1972

(continued)

- Q. Yes, we are at the beginning of the Board meeting? A. Yes.
- Q. Now, you have told his Honour that you received that at, I think, 9.40. Is that right? A. I think that is correct.
- Q. Did you read it when you received it? A. Yes.
- Q. Or did you just check to see it was the same document you had seen the night before? A. No, I read it.
- Q. In terms of contents? A. No, I read it through very quickly. 10
- Q. And what about the agreement which was annexed to it? A. I had not seen the agreement until it had been handed to me that morning and I had not read the content of the agreement.
- Q. Did you read it when you got it? A. No, I did not read it when I got it. I asked Mr. Conway, I believe, to read it at the Board meeting.
- Q. So, when the agreement was read at the Board meeting, that was the first occasion you were aware of its contents? A. Yes. 20
- Q. Now, of course, correct me if I am wrong, but the agreement having been read at the Board meeting was never again mentioned in the course of this Board meeting until you and Mr. Anderson executed it? A. Yes, I think it was mentioned - the details of it were mentioned during the course of the meeting. Lady Miller had asked me what the rush was for to get this through and I said I had to refer back - I think Mr. Conway referred back and reminded Lady Miller that this offer was only open until 6th July and there was some reference to the agreement then and I can't recall now whether the time limit of 6th July was in the proposal to allot shares or the agreement but there was some mention of the agreement during the Board meeting.
- Q. Any other mention of the agreement apart from that? A. I don't recall; I don't recall.

- Q. Did the agreement contain any promises by Howard Smith? A. I don't recall the details of the agreement now. I read the agreement at the same time - I heard the agreement read by Mr. Conway at the same time as the other Board members.
- Q. Mr. Taylor, are you able, as it were, to understand the content of an agreement of this type if it is just read to you once? I mean, don't you normally want to see the document and consider it for yourself? A. Yes, I would, I believe, have read the document.
- Q. When? A. During the Board meeting.
- Q. While the discussion was going on? A. I don't recall the precise time. I do remember Mr. Cameron talking for about 20 minutes or half an hour and I think it was during that time I read it but I am not certain.
- Q. What promises or undertakings by Howard Smith, in your recollection, does the agreement contain?  
A. I don't recall the details of the agreement.
- Q. Well, do you know whether Howard Smith offered or promised anything at all in the agreement?  
A. No. I do not recall the details of it and the reason I do not recall it is because I thought if this was to be discussed that I would have the opportunity of having it in front of me and I would be more correct and I did not wish to rely on my memory.
- Q. I am asking you now? A. Well, I don't recall the details of the agreement.
- Q. Did Millers make any promises in the agreement?  
A. I don't recall the details of the agreement.
- Q. What was the agreement about? A. I believe it was to do with the issuance of shares.
- Q. By whom to whom? From R.W. Miller & Company to Howard Smith.
- Q. And your belief is that it contained the terms of the issue? A. I don't recall the details of it.
- Q. Well, what do you remember about the agreement - anything at all? A. No, I don't recall anything about it.

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- Q. See, I suggest to you that apart from the reading out aloud of the agreement at the commencement of this meeting you have never even looked at it? A. I had not seen it prior to the meeting.
- Q. And I suggest to you that apart from it being read at the meeting to you you have never taken any step to acquaint yourself with what is in it? A. I remember perusing it briefly while Mr. Cameron was talking. I have not seen the document subsequently and I have deliberately not seen it. 10
- Q. So, the situation is this, that you had not seen this agreement before the meeting to read. That is so, isn't it? A. That is correct.
- Q. But you heard it read out aloud? A. Yes.
- Q. You say you perused it briefly while the meeting was in progress? A. Yes.
- Q. And you then executed it? A. I executed it on a - after it had been moved by a member of the Board and they had had time to consider it and second it and I executed it on their behalf. 20
- Q. And you then executed it? A. After the appropriate move,
- Q. Had Mr. Nicholl ever read this agreement? A. Prior to the meeting or at any other time.
- Q. Prior to the meeting or at the meeting? A. I don't know. I can't recall. Certainly not prior to the meeting and during the meeting. Whether or not he received a copy of it or not I am not aware. 30
- Q. But there were not copies, were there? A. I am not aware. I remember Miss Hill leaving the room trying to get copies of the proposal and the agreement on numerous occasions. Now, whether or not Mr. Nicholl got a copy of it, I can't recall, and if he did receive a copy I don't recall if he read it or not.
- Q. Mr. Anderson did not read the agreement at the meeting, did he? A. I don't know, Mr. Deane. 40

- q. Have you read the agreement since the meeting?  
A. No, I explained that to you previously.
- Q. Coming back to it, is the best you can do as to what this agreement says - I withdraw that. Is the best your recollection allows you to say as to what this agreement says that it is an agreement governing the allotment of shares in Millers to Howard Smith? A. I don't even remember the word "governing". "In relation to" - that is the extent of my recollection of this agreement after it was read out. It was in relation to the issnance of shares.
- Q. Did it deprive Millers of the right to declare any dividends to their shareholders during a designated period? A. I don't recall.
- Q. That, of course, would be a terribly important thing for a director? A. Yes, it certainly would.
- Q. That his company was during a period which could be very substantial giving away the right to declare dividends to its own shareholders. That would be a most important thing, wouldn't it?  
A. As you put it, if it referred to that, no doubt it would.
- Q. And is what you tell his Honour this that you do not even know whether by this agreement your company gave away the right during a specified period of declaring any dividends to its shareholders? A. I don't recall at this stage.
- Q. And you do not recall what other rights your company may have given away by this agreement?  
A. I don't recall at this stage.
- Q. Would you agree with me or do you know that the term of the operation of the promises made by your company was not only while the current Howard Smith takeover was on foot, but during the term of any substituted takeover offer? A. I don't know it at this stage, Mr. Deane.
- Q. You would agree with me, would you not, that it would be quite clear to you that a period covered by a takeover offer that was current and any new takeover offer that might be substituted could be a very substantial period? A. I don't understand that question.

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Q. Well, you see, what I am putting to you is you would agree with me, would you not, that you are aware that a takeover offer which is not made unconditional can subsist for let us say a period of six months. You are aware of that, aren't you? A. I don't remember the details. I can't recall. I am certainly not aware of it now.

Q. But Mr. Taylor, you would not, would you dispute the proposition that a takeover offer which is not made unconditional can remain operative for a period of six months? A. I believe that all takeover bids have some conditions on them.

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Q. But it could remain operative for a period of six months before it was withdrawn. Would you dispute that? A. I am not certain of the time and I have no recollection of it in relation to Howard Smiths offer.

Q. But would you dispute the proposition I am putting to you that a takeover offer which is not made unconditional could remain on foot for six months before it is withdrawn? (Objected to by Mr. Glass.)

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Q. Mr. Taylor, you do not suggest to his Honour, do you, that at the time of this meeting you believed that the period covered by a takeover offer between the making of it and the withdrawal of it must of necessity be less than six months? A. I have no knowledge of any time factor in this matter at all.

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Q. And you did not advert to it either? A. I would have no knowledge of it now. During the time the matter was being discussed, I would have no doubt have given consideration to the time factor. I would have given some consideration to the interests of all of the shareholders and also to the interests of attaining a higher price for all of the shareholders. This was my prime concern.

Q. You see, I suggest to you that by this agreement Millers deprived itself of the right of paying dividends to its shareholders for a period which could last up to 12 months? (Objected to by Mr. Glass).

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Q. You see, I suggest to you, Mr. Taylor, that this

agreement to which we have been referring precludes Millers from paying any dividend to its shareholders for what could be a period up to 12 months? (Objected to by Mr. Glass.)

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Q. What do you say to that? A. I have no recollection of what the agreement provided for.

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10 Q. And may I suggest to you it was because you did not care what the agreement provided? A. You may suggest that I believe but whether I am entitled to agree with you or not - that is certainly incorrect. I always care and I always cared about the shareholders.

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Q. Would you agree with me that you did not concern yourself with the precise content or effect of this agreement? A. That is a fairer statement.

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20 Q. And you do not suggest, do you, Mr. Taylor, that if at the meeting of 6th July you were aware that Millers was by this agreement depriving itself of the rights to pay dividends to its shareholders for what could be a substantial period of time that would have forgotten it in the meanwhile? A. I do not recall the details of what went on.

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30 Q. What I am putting to you is that if at this meeting you had directed your mind to the fact that by this agreement Millers was depriving itself of the right to pay dividends to its shareholders for what could be a substantial period of time you would remember it now? A. Are you suggesting that I do remember it and I am not telling you, Mr. Deane?

Q. I am suggesting to you that you never directed your mind to what the agreement contained? A. The precise details of the agreement, I was advised by the general manager, the two legal officers I had there and the other directors and their opinions and they all had their opinions on it.

Q. But Mr. Cameron had never seen the agreement? A. He had had the same time - he had had the same time to consider it as I had and if he wanted to call for it, he could call for it; it was there at the meeting.

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Q. He had had a legal document read out to him.  
That is so? A. Yes, that is what I had.

Q. And both he and Lady Miller were saying they  
wanted time? A. I don't recall him saying  
he wanted time.

Q. Lady Miller was saying she wanted time, wasn't  
she? A. That's correct.

Q. But you would not give her time? A. It wasn't  
a matter of me giving them time; it was a  
matter as chairman of the meeting of accepting  
the ruling of the majority of the directors.

Q. But you had Howard Smith standing by, didn't  
you? A. I personally did not have Howard  
Smith standing by.

Q. Didn't you have Howard Smith standing by with  
their letter of application and their cheque  
A. I believe I have learned subsequently that  
they were standing by. If this was part of  
my previous direction to get everything ready,  
you could be correct in that statement.

Q. See, what I am suggesting to you is that so far  
as you were concerned this meeting was simply a  
formality. Would you agree with that? A. I  
would disagree with that.

Q. You see, you had your little script all ready  
with comments after the allotment had been  
made? A. Not an unusual thing for me to  
have, to prepare a document, have a document  
prepared before a meeting.

Q. And you had your share certificate all ready.  
That is so, isn't it? A. Hopeful that  
Howard Smith would be successful.

Q. And you had Howard Smith standing by, did you  
not? A. As part of the overall instruction, if  
they were standing by, that is so.

Q. And you had the entry in the share registry  
all ready? A. I don't remember the precise  
details although you showed them to me. I  
had never seen an entry in a share register.

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- Q. A document, of course, normally prepared elsewhere. That is so, isn't it? A. It wasn't the usual way for us to conduct an issuance of shares. I will agree to that but we were under unusual circumstances.
- Q. And of course you had discussed the matter with Mr. Nicholl? A. The matter - I don't understand.
- 10 Q. The general question of an allotment of shares to Howard Smith? A. I had stated that Howard Smith had discussed with me the issuance of 3m. shares at \$2 each.
- Q. And you had heard a conversation in which Mr. Nicholl had participated in working out how legal justification could be found for an allotment of shares to Howard Smith? A. I don't know to what end their discussion was aimed at. There were two lawyers discussing a matter and I explained to you quite clearly and I repeated it on a few occasions, Mr. Deane, I heard snippets of the conversation and I don't know to what end they were working.
- 20 Q. You had no doubt to what end Mr. Nicholl would go? A. Would go where?
- Q. You had no doubt that Mr. Nicholl would support this allotment? A. I did not know which way he would go. If there was any suggestion - if I knew which way any director was going to vote, I certainly would not have ruled Sir Peter Abeles out because I would have had the majority so that is a - you know, if you are suggesting, Mr. Deane, that I had pre-arranged this, you are on the wrong track.
- 30 Q. So, you ruled Sir Peter Abeles out because you thought you might not have the numbers? A. No, I ruled him out for reasons I have already explained.
- Q. Mr. Taylor, didn't you just say that if you thought you had the numbers you would not have ruled Sir Peter Abeles out? (Objected to by Mr. Glass).
- 40 Q. Mr. Taylor, didn't you say that if you had been aware of how the directors were going to vote you would not have ruled Sir Peter Abeles out?

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- A. There would be no need to rule him out. If my concern was just for cooking up votes and if my only concern was for cooking up votes.
- Q. What was the need to rule him out? A. I have explained previously. Do you want me to start right from the beginning of my reasons for it?
- Q. Why would there have been no need to rule him out if you knew what the directors were going to do? A. I was talking in relation to votes and this is what you were saying previously, counting votes. You asked me which way Mr. Nicholl would go. 10
- Q. Why, if you had known how the directors were going to vote would there have been no need to rule Sir Peter Abeles out? A. If I was concerned with the votes on that particular issue and I was counting heads as you are suggesting to me that I was counting heads and I had knowledge as to which way each director would go and this was in part of a conversation I considered there was a need. 20
- Q. Mr. Taylor, didn't you a few moments ago suggest to his Honour that the fact that you ruled Sir Peter Abeles out indicated that you did not know how the directors were going to vote? A. I used that as an illustration.
- Q. Would you answer my question. Didn't you a few minutes ago put the proposition that the fact that you ruled Sir Peter Abeles out indicated that you did not know how the directors were going to vote? A. Perhaps I could have said that. I don't remember the precise words what I said but I know the reason why I said them. 30
- Q. And you said that in those circumstances there would have been no need to rule Sir Peter Abeles out? A. If there are no other issues and I was concerned only with counting heads.
- Q. Having read the letter - or perhaps I should come to that differently. The proceedings in relation to the allotment of shares commenced, did it not, with you reading the Howard Smith letter in full? A. In the Board room on the 6th, yes. 40

Q. Did you make any comment on it as you read it?  
A. I read it as it was written.

Q. Without commenting? A. Yes.

Q. In other words, you did not interrupt your reading to make any comments? A. To the best of my knowledge, I read it as it was written.

Q. And you then called upon Mr. Conway to read the document? A. Yes.

10 Q. And he read it from beginning to end? A. To the best of my knowledge he read it from beginning to end. I did not have a copy of it in front of me. He had the copy.

Q. Did he interrupt his reading to make any comments? A. I don't recall him interrupting.

Q. Did he proffer any explanation of the contents of the agreement? A. I don't recall him - I recall him reading the letter, the agreement, in full.

20 Q. And that is all you can recall in relation to Mr. Conway's activities vis a vis the agreement? A. Later on there were some comments concerning the overall situation but I do not recall precisely whether or not he was referring to the agreement.

Q. Now, you opened your comments to the meeting by saying there had been a dramatic development this morning? A. Yes, I did.

30 Q. And of course you have told his Honour that your belief was that Mr. Cameron, Sir Peter Abeles and Lady Miller knew nothing about any proposal to allot shares to Howard Smith and that Mr. Nicholl, Mr. Anderson and Mr. Balhorn all had some information relevant to a proposed allotment of shares to Howard Smith? A. Yes.

40 Q. And of course would you agree with me that in the context of that Board meeting saying "A dramatic development has occurred at 9.40 this morning" and producing what appeared to be an unsolicited letter from Howard Smith was liable to be misleading to Mr. Cameron, Sir Peter Abeles and Lady Miller? A. I do not understand your reference. When you stated there "What appeared

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to be unsolicited", the very agenda itself that was prepared some days earlier said the purpose of the meeting was to discuss a certain matter and any information that may be received from Howard Smith so I can't understand your remark, Mr. Deane, on the word "unsolicited".

Q. Well, Mr. Taylor, Mr. Anderson, for example, knew that this letter was the, as it were, final outcome of discussions that have been going on since 4th July. That is so, isn't it? (Objected to by Mr. Glass; rejected)

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Q. Well, you see, Mr. Taylor, this letter from Howard Smith was the final outcome of discussions between Millers and Howard Smith extending back to 4th July, was it not? A. It could be considered that way, yes.

Q. In which certain proposals had been put up and rejected? A. One proposal had been - no, two proposals had been put up and rejected, one by Howard Smith for 3 m. shares - 3, one by Mr. Koch, and also the third one that Howard Smith should purchase the ships.

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Q. And in which discussions as to what might be legally justified had taken place between Howard Smith and Millers? A. I don't know whether the legalities of this had been discussed between Howard Smith and Millers.

(Luncheon adjournment.)

Mr. Deane:

Q. Mr. Taylor, at the adjournment I was asking you some questions in relation to your statement at the commencement of the meeting that there was a dramatic development and that the letter had only been received at 9.40 that morning? A. Yes, Mr. Deane.

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Q. Now, without going into any further detail, I suggest to you that at the time you made that statement you were of the view insofar as Sir Peter Abeles, Mr. Cameron and Lady Miller were concerned it was likely to mislead them. Would you agree with that? A. No, I would not agree with that.

40

- Q. I suggest to you that you were endeavouring to convey to each of Mr. Cameron, Sir Peter Abeles and Lady Miller the impression that this proposal from Howard Smith had come, as it were, out of the blue at 9.40 that morning? A. Mr. Deane, it had in fact only arrived at 9.40 that morning. It had not come out of the blue.
- 10 Q. See, I am suggesting to you that you were endeavouring to convey the impression to Sir Peter Abeles, Mr. Cameron and Lady Miller that it had in fact come out of the blue at 9.40 that morning? A. No, that is not correct.
- Q. Of course, in the whole of the discussions at this Board meeting no mention was made by you or by anyone else of the discussions and negotiations which had preceded the receipt of the letter from Howard Smith. That is so, isn't it? A. That is so.
- 20 Q. Didn't you think it was relevant for the three directors to whom I have referred to know in their consideration of this offer that it had only come after other offers had been made by both Howard Smith and Millers? A. No I did not consider that unusual.
- Q. "That unusual"? A. I did not consider that unusual.
- 30 Q. But didn't you consider that in terms of forming a view on this proposal there was a distinction that should be drawn between a letter which had been received only after negotiations extended over 4th and 5th July and a proposal that had come out of the blue? A. I thought I had covered the "out of the blue" part of it earlier and you are giving me a doubt e-barrelled question again, Mr. Deane. Would you kindly....
- 40 Q. I stand corrected, Mr. Taylor. Did you intend by your statement to convey the impression that the proposal had come out of the blue? A. No.
- Q. And is what you tell his Honour this that it did not occur to you that the natural impression which your words "a dramatic development" and a "letter at 9.40 this morning" would convey was that the offer had in fact come out of the blue? A. No I did not, no.

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\* Exhibit HH

Q. That did not occur to you? A. No.

Q. Was your decision - I withdraw that. Was your failure to inform Sir Peter Abeles, Lady Miller and Mr. Cameron at the Board meeting of what had happened in the discussions on 4th July the result of a deliberate decision? A. No.

Q. Did you address your mind to whether you should inform them of what had happened previous to 6th July? A. No.

Q. You paid no attention to that aspect at all? A. No. 10

Q. I want to ask you some questions in relation to some particular matters or some particular things which were s d, I suggest, at this meeting. (Witness shown ex. HH.)\* Have you seen that document before, Mr. Taylor? A. Yes.

Q. That is one of a number of transcripts...

His Honour: Just make clear which one it is. Mr. Taylor might be mistaking it for one of the two earlier editions, Mr. Deane. 20

Q. This was the one that Miss Hill typed out after this hearing began a week or so ago? A. Thank you, your Honour.

Mr. Deane:

Q. I show you the document, Mr. Taylor, open at p. 7. Do you see in the middle of the page the comment attributed to AB. Do you see that? A. Yes, I can see it.

Q. And I think you would agree with me that that represents Mr. Balhorn? A. Yes, I believe that that refers to Mr. Balhorn. 30

Q. Do you remember Mr. Balhorn saying "I would be a little disturbed on the ethical side of this. Mr. P.J. Duncan said 'See what the Board generally thinks of this and to go along with it on what they think'"? A. No, I don't recall those words being said at the meeting. I can read it here but I do not recall that being said at the meeting.

- Q. Do you recall anything to that effect being said at the meeting by Mr. Balhorn? A. No, I don't recall.
- Q. You would not deny that was said I presume? A. In view of the circumstances that there are some notes that Miss Hill made, it would be difficult for me to deny it and I did not pay attention to word for word that every director said so I could not deny that it was said, Mr. Deane.
- 10 Q. Would you look at the paragraph above that where some comments have been directed, recorded as having been made by R.N. Do you see that? They are interrupted by telephone? A. Yes, I can see that paragraph.
- Q. Well, .R.N. is Mr. Nicholl, is it not? A. Well, it appears so.
- Q. Do you see about four lines from the end of those comments the words "I still feel that I would rather face the shareholders having to accept this situation rather than fade away into the background." Do you see that? A. Yes, I can see that.
- 20 Q. Do you recall Mr. Nicholl using those words? A. No, I do not recall Mr. Nicholl using those words.
- Q. Is the situation the same as Mr. Balhorn's comment or reported comment that you are unable to affirm or deny what Mr. Nicholl said? A. Not in this particular case because I had had previous discussion regarding Mr. Nicholl and a resignation and I remember Mr. Nicholl saying that he would rather face the shareholders in public meeting; certainly never the words "fading into the background" to the best of my recollection. This is why I would remember.
- 30 Q. So, you deny those words were used at the meeting? A. May I read the paragraph in its full context again? Yes, I would deny that Mr. Nicholl used the words "rather than fade into the background".
- 40 Q. Now, can you turn to p. 6 of that document. Do you see two-thirds of the way down a comment attributed to C? A. "What are the advantages..."

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Q. Yes, and then you are reported as having made a comment. Do you see that? A. Yes.

Q. Did you say that? A. I think I could have said that. After Mr. Cameron had said it and I think I could have been repeating what Mr. Cameron said.

Q. What did you mean when you said "The majority of shares, 55%, is held by two shareholders which would increase their shareholding"? A. Mr. Cameron was talking about an offer of existing shareholders taking up shares and as he was explaining it I recall that he said that this could not work because, firstly, he doubted whether they would pay the premium, that is the premium of \$1.30, and further it would only benefit the majority of the shareholders, namely Ampol and Bulkships.

Q. But, of course, all shareholders would have got the shares? A. I don't know whether they would be able to afford them and Mr. Cameron raised that point.

Q. I would suggest to you that what you are saying there is, in effect, a placement to shareholders generally would be no good because it would defeat the whole purpose of the exercise? A. That is not correct.

Q. It is not correct? A. No.

Q. You see, weren't you there answering a question which was posed by Mr. Cameron? A. I was there as Chairman of the meeting. I don't recall.

Q. I was referring to a particular comment? A. I don't recall him asking any questions. He made a comment.

Q. Did Mr. Cameron make the comment "What are the advantages of making a placement outside the company to a placement to our shareholders?" A. Yes, I believe he used words to that effect.

Q. And didn't you in answer to that say "Because the majority of shares, 55% is held by two shareholders which would increase their shareholding." A. I think I would answer that question previously to the question that you just asked me the same question.

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Q. Well, do you agree? A. And my answer is, I believe he was repeating what he had said. He had asked the question; he was making a statement he had posed the question to himself and answered it himself and I repeated part of that answer and that is to the best of my recollection.

10 Q. See, I suggest to you that the whole purpose of the allotment, insofar as you were concerned, was to enable the minority shareholders to have the chance of accepting the Howard Smith offer? A. That is not the whole purpose. That was part of the purpose.

Q. It was the main purpose, was it not? A. It was part of the purpose.

20 Q. It was the main purpose, was it not? A. It was part of the purpose. The offer was available to all of the shareholders. 'Howard Smith did not make this offer of shares to the minority shareholders; they offered it to all of the shareholders.

30 Q. But your purpose in supporting the allotment as you saw it was to ensure that the shareholders of Millers had the opportunity of accepting the Howard Smith offer if they wanted to? A. That was part of my purpose. The main purpose in supporting the allocation was to get the cash infusion into the money, the cash infusion of the money into the company to overcome our short term commitments and that was the main purpose. The secondary purpose was to consider all of the shareholders and in particular the minority shareholders who could avail themselves of a higher price.

40 Q. Mr. Taylor, you have told his Honour that the question of allotment of shares first came up at a meeting which was, as it were, a meeting considering ways and means of permitting the Howard Smith offer to go ahead. That is so, isn't it? A. As you put it that way, I believe this to be correct. It certainly wasn't for any other purpose.

Q. And the situation is, is it not, that from the time of that meeting on 4th July until the time of this Board meeting you had never discussed the effect of the allotment insofar as the

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finances of Millers were concerned with anyone at all. That is so, isn't it? A. No, I had - there had been discussions about the finances of the company practically every day.

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Q. See, didn't you in your answer to interrogatories say that prior to this meeting you never discussed the financial consequence of the allotment with anyone at all? A. Yes, this could well be so, of the allotment of 4 1/2 m. shares at \$2.30 but not the allotment of 2 m. - not an allotment. 10

Q. So, is what you say this that while you never discussed the effect of the proposal to allot 4 1/2 m. shares from the financial point of view, you did discuss the financial effects of the allotment? A. An allotment.

Q. Yes. A. Yes, not the allotment.

Q. When did you discuss it? A. From the 4th - from the moment it first came up.

Q. With whom? A. Mr. Koch to commence with. 20

Q. And when? A. Probably right after the meeting.

Q. And was that the only occasion? A. There were other occasions when it was - I was in company when it was discussed by members of the financial committee.

Q. When were they? A. On the 5th.

Q. What time? A. Round about lunch time.

Q. And any discussions after that? A. Not originated by me.

Q. Did you discuss...A. I did not discuss it, no. 30

Q. You did not. Well then, the luncheon meeting of 5th July you have told his Honour was, in effect, concerned with working out legal justification for this allotment of shares. That is so, isn't it? A. Did you say this allotment of shares or an allotment?

Q. An allotment of shares.

- Q. When you commenced this meeting you read out in full the letter from Howard Smith? A. Which meeting are we referring to now?
- Q. The board meeting of 6th July - that is so isn't it? A. Not at the commencement. I think the first thing I did was to call for a coffee break.
- 10 Q. Well, at the commencement of the discussion on this point you read out in full the letter from Howard Smith? A. I said we received - yes, I did.
- Q. After the meeting? A. No, I beg your pardon, not at the commencement of the meeting. There were some other matters came upon the agenda that I dealt with, but I said I received the letter from Howard Smith.
- Q. You read it out in full? A. Yes.
- Q. That contained a great many arguments in favour of the allotment? A. It set out the details of the allotment.
- 20 Q. It contained arguments in favour of the allotment? A. I do not recall whether it contained arguments in favour of it - a pretty clear cut offer.
- Q. You then adopted that letter, did you not, by causing it to be published in the Financial Review as a notice to your shareholders? A. The letter of Howard Smith's offer?
- Q. The letter of Howard Smith of 6th July - did you not cause that to be published in the Financial Review? A. I think I informed the Stock Exchange of the letter.
- 30 Q. I am suggesting to you that with Miller's money you caused the letter of 6th July, 1972, to be inserted as a full page advertisement in the Financial Review? A. I do not recall that. I thought that was some other previous letter.

Mr. Deane: Could the witness be shown Ex. X please. (handed to witness).

Witness: Yes, my memory is refreshed now when I see the date on that letter.

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Q. That was an advertisement inserted for the information of your shareholders was it not? A. Yes, this was - also to reaffirm the previous advice of the Ampol bid.

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Q. But it was addressed to your shareholders, or it was inserted for the benefit of your shareholders? A. For the benefit of the shareholders, yes, that is correct.

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Q. Looking at that letter, it sets out in considerable detail the reasons why the allotment should be made, does it not? A. Yes.

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Q. I suggest to you that it sets out accurately the reasons which motivated you in supporting the allotment? A. Some of the reasons. I just cannot find any reference here - the ten million three hundred and fifty - yes.

Q. I suggest to you it sets out what was to you an acceptable order of priorities? A. I did not consider the priorities to be acceptable or otherwise. I authorised the printing of the letter as it was written.

20

(continued)

Q. What I am suggesting to you is that that letter faithfully recorded your motives in supporting the allotment (objected to by Mr. Glass - rephrased).

Q. Would you agree with me that that letter from Howard Smith puts forward as the reason why the allotment should be made the object of preserving the Howard Smith offer for the shareholders in Millers? A. Together with an opportunity for a considerable number of people who represent the minority shareholders to avail themselves of a higher price.

30

Q. That is the main suggestion made in the letter as to why the allotment should be made? A. I cannot agree that that is the main suggestion. It is hard to pick out one point and say which is the main one and which is the secondary one. The infusion of \$10,000,000 cash is very significant.

Q. That is the only mention, isn't it, in one paragraph in the whole letter? A. Yes.

- Q. And it is mentioned in the context of "notwithstanding the current circumstances" (objected to by Mr. Glass - allowed)
- Q. Would you not agree with me that when you read this letter you read it as saying, in effect, that the main purpose suggested for the allotment was to keep the Howard Smith offer open?  
A. That was one of the purposes.
- 10 Q. Would you answer my question? My question was - would you not agree with me that when you read this letter - A. I would not agree with you.
- Q. So when you read this letter you did not read it as putting forward a main reason as to why the allotment should be made the object of keeping open the Howard Smith offer? A. That was one of the reasons.
- 20 Q. I will repeat the question so there can be no doubt; when you read this letter you did not read it as putting forward, as the main reason why the allotment should be made, the object of keeping open the Howard Smith offer? A. I cannot agree that it was the main object. One of the main objects really was to keep the shareholders informed of what was going on. That was one of the objects.
- Q. Mr. Taylor, you received this letter from Howard Smith on 6th July? A. Yes.
- Q. You read it? A. Yes.
- 30 Q. What I am asking you is when you read it did you not read the letter as putting forward as the main reason why an allotment should be made to Howard Smith the object of keeping the Howard Smith offer open for shareholders? (objected to by Mr. Glass - allowed) A. Mr. Deane, it is difficult for me to answer what was the main object. It was probably more than two-fold. That did serve part of the object, to keep the Howard Smith offer open so that the "locked in" shareholders could get a higher
- 40 price, but also I considered it necessary to acquaint them with the fact that there would be a cash infusion of \$10,000,000 if they decided not to sell; and thirdly, the overall purpose my reason for printing this was to advise them that they could still avail themselves of the higher price and that the Board still considered that they had considered the Ampol offer inadequate.

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Q. You will see in the fourth paragraph of the advertisement that certain words are in black print. Do you see that? A. Yes, I see those words.

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Q. Did you cause those words to be put in black print? A. No, I did not personally see the layout of the letter.

Q. They certainly were not in black print in the letter you received, were they? A. The letter I received was a normal typewritten letter with no emphasis. 10

Q. With no words in emphasis? A. Yes.

Q. The advertisement you put in or caused to be put in the Australian Financial Review had certain words in black print. That is so, isn't it? A. Yes, that is so.

Q. And those words are, "thereby restoring to your minority shareholders the right to sell their shares to the highest bidder, and will give Ampol Petroleum and Bulkships Limited a similar opportunity"? A. Yes, I said that. 20

Q I will again put it to you that when you read this letter, before the advertisement was put in the Financial Review you read it as conveying the proposition that the main reason why the allotment should be made was that it would allow the Howard Smith offer to remain open to shareholders? A. I cannot agree that that was the main reason. It was one of the reasons.

Q. Is what you tell his Honour that you did not read this letter as indicating that the main reason why the allotment should be made was to keep open the Howard Smith offer to shareholders? A. It was one of the reasons. 30

Q. As I have explained to you previously, not the main reason, I was not responsible for the layout and the type of this particular letter.

Q You signed the advertisement, didn't you? A. Did I? I don't recall.

- Q. It was an advertisement over your name? A. Yes, In the Supreme  
I would have seen no doubt the draft of it. There Court of New  
could have been other drafts. I would have South Wales  
relied on management to arrange that with the Equity Division
- Q. What about the emphasis of those words? A. It  
is to that I am referring. I would not personally  
be involved with the layout of the letter.
- 10 Q. Did you personally disagree with the layout of  
certain words when you saw the advertisement?  
A. It is only as you brought it to my mind now  
that I see the emphasis on those words.
- Q. I suggest to you it was clear when you read the  
letter that it conveyed the impression that the  
purpose of the proposed allotment was to keep  
the Howard Smith offer open? A. That is  
correct, in part.
- 20 Q. And that it also, as it were, went on to convey  
the impression that even though the purpose of  
the allotment is to keep the Howard Smith offer  
open, the company will be able to use the money?  
A. Part of the purpose.
- Q. I suggest to you that the addition of the emphasis  
to certain parts of the letter was designed to  
convey to your shareholders the real purpose of  
the allotment? A. I was not responsible for  
the design of the layout and therefore it would  
be wrong for me to comment on it.
- 30 Q. Who was responsible? A. I would have to refer -  
I think Mr. Koch, the general manager, would be  
next in line of responsibility for the layout.
- Q. Of course, at the next directors' meeting, that  
is on 14th July, the question of the publication  
of this advertisement was raised, was it not?  
A. I do not recall. I know it was raised sub-  
sequently, but I don't know whether it was 14th  
July. I thought it was raised in August.
- 40 Mr. Deane: Could the witness see Ex. DD, the  
minutes of the directors' meeting of 14th July.  
(Handed to witness)\*
- Q. Would you look at p. 3 of those minutes, please?  
A. Yes, certainly.

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- Q. Do you see there that at the meeting of 14th July you sought ratification by the board of your action in inserting an advertisement in the Australian Financial Review? A. Yes, I recall this, and I recall Sir Ian Potter was the trigger for that. I recall that.
- Q. The reason for inserting it was to fully inform the company's shareholders as quickly as possible? A. Yes.
- Q. Mr. Balhorn commented did he not, in regard to inserting the advertisement and stated he considered it to be a straightforward statement of facts. Can you see that? A. Yes, I can see that. 10
- Q. Was the advertisement before the meeting when that was discussed? A. I do not recall.
- Q. Do you disagree with anything in that letter in so far as it represents the motives which actuated you in supporting the allotment? (Objected to by Mr. Glass - not pressed). 20
- Q. Coming back to the meeting of 6th July, at what stage was the second letter from Howard Smith - that is the letter applying for the shares - received. Do you understand? A. Yes, I understand, the letter of application.
- Q. Yes? A. That was received some time after noon I believe. I am informed after twelve o'clock.
- Q. By whom was it received, by you? A. No, it was not received by me. It was received, I believe, by Mr. Conway. 30
- Q. What about the cheque which came with that letter? A. I think that would have been received also by Mr. Conway, with the application.
- Q. We have been told by Mr. Cameron that he had a conversation with you the day after the meeting in relation to a suggestion that certain directors might have had prior knowledge - do you recall that conversation? A. That I had had with Mr. Cameron? 40

- Q. Yes, the day after the meeting? A. I recall one after the meeting. I recall discussing that matter with Mr. Cameron.
- Q. What was said, to your recollection? A. He asked me why he - words to the effect, why he was not given prior knowledge as to the allotment of shares and I said, for the same reason - I did not have any reason - I did not know it was a fact until just before the meeting and I had not informed any director apart from Mr. Balhorn who had been talking to Mr. Duncan, that in fact we did have a proposal to allot shares.
- 10 Q. Did you tell Mr. Cameron you had informed other directors of such a possibility of an application?  
A. No, I did not go through all the details of it.
- Q. Did you tell Mr. Cameron that you thought because he was a member of the firm of accountants who acted as auditors for T.N.T., that information such as this should be kept away from them?  
A. No.
- 20 Q. Why not? A. I did not think it necessary for me to tell him what I thought.
- Q. Did you not think, as a matter of ordinary fairness, you should tell a director, a fellow director, that by reason of certain associations you were deliberately keeping information from him?  
A. I was not deliberately keeping information from him. I did not consider it necessary to tell him.
- 30 Q. But you had been deliberately keeping information from him? A. Well, the same could be said for all of the other shareholders as well, after I had received the draft at 5 p.m.
- Q. That might be so, but in so far as what happened at the meeting of 4th July, you had deliberately kept that from Mr. Cameron? A. And other directors.
- Q. Two of the other directors? A. All of the other directors.
- 40 Q. I said "in so far as what happened at the meeting of 4th July"? A. I told them part of the negotiations that were in train.

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Q. You had deliberately kept that from Mr. Cameron?  
A. Yes.

Q. By reason of the fact that you thought that his membership of a firm of accountants who were auditors for T.N.T. might lead him to divulge the information to someone else? A. I did say that, yes.

Q. What I am putting to you; didn't you think, as a matter of common fairness to a fellow director, you should inform him you were taking this approach? A. As a matter of fairness? The matter of fairness did not cross my mind. 10

Q. You said, in answer to my learned friend Mr. Glass that you did not prevent Sir Peter Abeles from participating in the discussion at the meeting. Do you recall that? A. I recall ruling that he was not entitled to participate and I do not recall saying to Mr. Glass that I did not prevent him from any discussions. 20

Q. What did you mean by that? A. I meant precisely what I said, that I had ruled he was not entitled to participate or vote because there was a clear conflict of interest.

Q. Why did you rule that he was not entitled to participate discussion? At what purpose was that aimed? A. He had previously volunteered not to enter into any discussion concerning matters where he had an interest. These matters were the taverns. 30

Q. What object did you have in mind when you ruled that he could not participate in the discussion. A. I had the object of establishing that he was in conflict.

Q. You did not suggest that he leave the meeting, did you? A. No.

Q. Which means it was not a matter of preventing him from knowing what was said at the meeting? A. No.

Q. It was a matter of preventing him from contributing to what was said at the meeting? A. I ruled that way but I did not prevent him from talking or discussing.. 40

Q. We will come to that, but what was involved was a matter of preventing Sir Peter Abeles from contributing to the discussion, was it not, in terms of your ruling? A. Yes, it was aimed towards preventing him from discussing it because, in my mind there was a clear conflict of interest.

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Q. What was your object in seeking to prevent him from discussing the matter, as distinct from voting on it and as distinct from being present at the discussions? A. To exclude him because I considered, as a shareholder of Bulkships, he had a major personal interest in this other than the other shareholders of the company.

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Q. The only reason which was advanced by you as being a basis for excluding Sir Peter Abeles from both discussing and voting on the matter was the joint announcement by Ampol and Bulkships? (objected to - allowed) A. At the meeting, yes. I was also acting on advice given to me that that was sufficient.

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Q. But the only cause suggested by you at the meeting as a basis for excluding Sir Peter Abeles from participating in discussion and from voting was the joint announcement? A. Yes, that is correct.

30

Q. And there was no suggestion made there was anything other than the joint announcement which would lead to his being excluded from joining in discussion or from voting. A. That was the only reason I had in mind, however, Sir Peter Abeles did ask Mr. Aston whether or not I was entitled to rule that way and I believe that Mr. Aston said that I was entitled to rule that way.

Q. Did you prevent Sir Peter Abeles from voting on the resolution at this meeting? A. I told him he was not entitled to vote.

Q. And he did not vote? A. That is correct.

40

Q. When Mr. Anderson suggested he was abstaining he said he was not abstaining but he was not voting because you had ruled that he could not vote. That was so, wasn't it? A. It is not too clear in my mind what Mr. Anderson said. I know Sir Peter Abeles did not register a vote.

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Q. And on the express basis that you had ruled he was not entitled to vote? A. Previously, yes.

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Q. In your view did you prevent Sir Peter Abeles from voting on the resolution? A. Yes, with my original ruling - I would agree, yes.

Q. Involved in that is the acceptance by Sir Peter Abeles of your ruling that he could not vote. Isn't that so? A. It is a bit difficult for me to answer that question because you are putting me in a position where you are attempting to gain from me what Sir Peter Abeles thought. I cannot - would you mind repeating it? 10

Q. You have agreed with me that you prevented Sir Peter Abeles from voting? A. By the ruling, yes.

Q. What I am putting to you is that involved in your agreement that you were preventing Sir Peter Abeles from voting on the resolution is the acceptance of the proposition that he obeyed your ruling? A. Yes. 20

Q. You also ruled, of course, that he could not participate in the discussion? A. Yes.

Q. I suggest to you that after that ruling Sir Peter Abeles did not address any lengthy comments at all to the meeting on the merits of what was being discussed? A. Yes, that would - there were no lengthy comments on it, that would be correct.

Q. Indeed, the only comments that Sir Peter Abeles made were comments by way of interjection? A. Yes. 30

Q. Whereas Mr. Cameron, for example, addressed the meeting at length; Sir Peter Abeles did not, after your ruling, make any comments addressed to the general desirability of making the allotment? A. No, after Mr. Cameron had finished there was very little to say really.

Q. But what I am suggesting to you is that after your ruling Sir Peter Abeles did not, as it were, make any submissions addressed generally to the desirability of the allotment? A. No, 40

he did not. Mr. Deane, I do not want you to think I am attempting to be rude when I answered that question previously, when I elaborated on what Mr. Cameron had said. I was not being rude there. Sir Peter Abeles had some cross talk, across the table, whilst I was chairman of the meeting, to Mr. Cameron, who then immediately got up and talked for something like half an hour and I was under the impression then that he had given Mr. Cameron advice to continue the conversation and to bring out as many points as he possibly could whilst he retired from the room.

10

Q. Could we just go back on that? When Sir Peter Abeles retired wasn't Mr. Koch giving his financial report? A. Yes.

Q. And when Sir Peter Abeles came back wasn't Mr. Koch still -? A. I think he concluded his report and then Mr. Cameron was then speaking.

20

Q. I suggest to you that Sir Peter Abeles came back just as Mr. Koch was concluding his financial report? A. I think it was about a dead heat. There were some instructions given across the table or some conversation going across the table to Mr. Cameron.

Q. But Sir Peter Abeles was not absent at all whilst Mr. Cameron was making these comments, was he? A. He may not have been absent.

30

Q. How can you suggest to his Honour that Mr. Cameron was making his comments to keep the meeting going whilst Sir Peter Abeles was absent from the room? A. That was my feeling, that Mr. Cameron was following instructions from Sir Peter Abeles; that was my understanding of the situation.

Q. To keep the meeting going whilst Sir Peter Abeles was out of the room? A. Not necessarily whilst he was out of the room but to keep him going. I could be out of time in that regard.

40

Q. Isn't that what you said previously? A. I said that previously, and I was in error. I apologise if I was in error.

Q. Would you agree with me that Sir Peter Abeles in your view was suggesting to Mr. Cameron what Mr. Cameron should say and that was the strongest

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possible indication you could have that Sir  
Peter Abeles was accepting your ruling that he  
himself could not participate in the discussion?  
A. Yes, I would not argue against that.

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Q. On what basis did you tell my friend, Mr. Glass,  
that you did not prevent Sir Peter Abeles from  
participating in the discussion? A. I did not  
prevent him.

Q. As I understand it, what you say is that you  
gave a ruling that he could not participate in  
the discussion. That is right, isn't it? A.  
Yes.

Q. You then observed him saying things to  
Mr. Cameron? A. Yes.

Q. Who then addressed the meeting? A. Yes.

Q. You were of the view that he was telling them  
that he was doing that because he was obeying  
your ruling? (Objected to - allowed).

Q. You were of the view that Sir Peter Abeles was,  
as it were, communicating ideas to Mr. Cameron  
because he himself was obeying your ruling.  
That is so, isn't it? A. It would appear that  
way, yes.

Q. Well, on what basis do you say you did not  
prevent him from participating in the meeting?  
A. I made the ruling early in the meeting  
and I did not elaborate on it and I did not  
have to call him to attention.

Q. So is the situation this; that so far as you  
are concerned if, as chairman, you ruled that  
somebody could not participate in a discussion  
and that person obeys the ruling, you have not  
prevented him from participating in the discus-  
sion. Is that the proposition? A. I did not  
prevent him from participating in the discussion.

Q. You ruled that he could not participate in the  
discussion? A. Yes.

Q. You observed him obeying that ruling? A. I  
observed him disobeying it also.

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- Q. You observed him obeying that ruling in so far as making comments to Mr. Cameron were concerned, to be relayed to the meeting? A. I said it was my thought. I could not hear what he was saying across the table.
- Q. Well, it was your impression that he was obeying the ruling at the time he was making comments to Mr. Cameron, is that so? A. He did not make any comments that had any material effect on the allotment of shares. I would consider fairly that he obeyed the ruling that he should not be entitled to debate, however, he did make some comments that were not major comments, but each comment he made he asked that it be recorded in the minutes. and there were some other interjections he made also about underwriting and other things. He was no prevented, although he was ruled.
- 10 Q. What comments did he make? A. Once I suggested - when Mr. Cameron suggested the issuance of shares and he ruled out the issuance of shares because no-one would pay that price, Sir Peter said, "It all depends who the underwriters are".
- 20 Q. Which was put in by way of correction? A. I do not think it was correction. I think he was "ad-libbing" to it. I think he was "ad-libbing" to it.
- Q. I want to take you back to matters upon which you gave evidence relating to Romanda. When did you become a director of Romanda? A. I do not recall the date.
- 30 Q. Approximately: A. 1967, to the best of my recollection before I returned from Melbourne - it could have been 1966 or 1965.
- Q. Well, in any event, it means you were a director of Romanda throughout the whole of 1971? A. Yes.
- Q. From the time of Sir Roderick Miller's death was the situation that there were only two directors, yourself and Lady Miller? A. From the time of his death till - ?
- 40 Q. Until we have heard some other people were appointed? A. Yes, I think it was about April.

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Q. When was the first occasion on which you learned of the possibility of the Romanda shares being sold? A. On the day that the Amanda Miller was named in Whyalla, the latter part of August in 1971.

Q. Would it be true to say that you were opposed to the idea of Romanda selling the shares in Millers? A. Are you talking about that specific time? At all times I was opposed to it because Romanda had never received a price that I had considered under the circumstances was adequate. 10

Q. Of course, was not one of your reasons for being opposed to Romanda selling the shares in Millers the fact that unless Romanda sold the shares you believed that Millers would be as it were, that the integrity of Millers would be preserved. A. Would you mind repeating that?

Q. Would you agree with me that your main reason for being opposed to Romanda disposing of its shares in Millers was that while Romanda held those shares you believed the integrity of Millers could be preserved? A. No, that is not true. I cannot agree with you on that. 20

Q. Was that one of your reasons? A. No, I did not ever confuse my duty as a director of Romanda with my duty as a director of R.W. Miller and Co.

Q. You see, you have given some evidence of the meeting of 14th June with Lady Miller and a solicitor, of Ampol's solicitors and certain representatives from Ampol. You remember that, don't you? A. I am sorry, I don't. 30

Q. I am sorry, 14th January? A. Yes, I remember that.

Q. At the end of that meeting were you not asked by Mr. Leonard whether you thought a price of \$2.11 was fair? A. No, I was not asked. I do not recall Mr. Leonard saying that. I recall I volunteered to Mr. Leonard in relation to the current - words to the effect that in relation to the current market price, which I think was around about \$1.70, taking that

item on its own, the price did not seem unfair, or words to that effect.

10 Q. What I am suggesting to you is that on that occasion in the presence of all the people there you informed Mr. Leonard and the representatives of Ampol that you thought the price was fair and that you, as a director of Romanda, supported the sale? A. I stated in relation to the price I considered the offer of \$2.11 in relation to \$1.70 - it could have been \$1.80 - had seemed fair.

Q. I suggest to you that you also stated, without any equivocation at all, that you, as a director of Romanda, supported the sale? A. I do not recall having supported the sale. I think I would have taken -

20 Q. Do you deny that you said on that occasion in the presence of all these people that you, as a director of Romanda, supported the sale? A. I deny that I said that.

Q. You see, didn't the meeting of the 14th adjourn on the basis that the consent of the trustees would be obtained in the next couple of days and the transaction could go ahead on the following Monday? A. No, it did not. I said the matter would be referred to the trustees.

30 Q. But on 14th January, 1972, as a director of Romanda, did you support the sale in your mind? A. I think I answered that question before. I said no.

Q. I asked you before what you said and I am not asking you what you thought? A. I did not support it. If I had supported it I would have.

Q. Were you opposed to it? A. Yes, I was opposed to it.

40 Q. Would you agree with me that you did not on that occasion say one thing which you would anticipate would lead the representatives of Ampol to be of the view that you were opposed to the sale? A. I did not say one thing.

Q. And the only reason - A. Excuse me. I have not answered your question.

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His Honour: Yes, Mr. Taylor. (Question marked read)

Witness: I feel that I must have said something to let them know that I was opposed to the sale, or I would have agreed to sign a document and have it sealed.

Mr. Deane:

- Q. Didn't you tell the representatives of Ampol that so far as you were concerned you were not opposed to it, but that while two of the trustees were not opposed, you thought that it could not go ahead unless and until Mr. Nichool agreed with it? A. That was the view of the other two trustees. They were the words that they had used. 10
- Q. What was your view? A. I wanted to get the view of all the directors and also I said that I did consider it reasonable in view of the market price, or not unfair in view of the current market price, but I also let them know I wanted to have a little time to think about it. 20
- Q. Of course, you had gone along to the offices of Abbott Tout thinking you were going to discuss an offer by H.C. Sleigh? A. Yes.
- Q. On what figure? A. Either \$1.70 or \$1.80.
- Q. Had you formed any view as to that? A. Yes.
- Q. Had you communicated your view? A. No.
- Q. When the Ampol offer came up you complained you had not been given prior notice of it, is that so? A. Yes. 30
- Q. Was it explained to you that Ampol had been told that if they wanted to make the offer they had to make one within a very short time? A. No, I was not aware of that.
- Q. Were you told that Ampol had been told that it was proposed to sell to H.C. Sleigh unless they came up forthwith with a higher offer? A. No, I had not been told. I did not know what Ampol had been told. 40

- Q. In any event, you expressed the view that in the circumstances the price was a fair one? A. In relation to the market price at the time I considered \$2.11 a fairer price than \$1.78 or \$1.83, but I had not had time to assess the share situation, the full value of the shares, as had none of the other trustees, and the over-ruling thought of course in all of these matters was the children and the beneficiaries of the estate.
- 10 Q. You do not suggest, do you, by any comment you have made; you do not intend to suggest that Lady Miller was not acting with the highest regard to all those considerations? (objected to by Mr. Glass and Mr. Kirby - not pressed)
- Mr. Dean: Could Mr. Taylor have the document MH13.\* (handed to witness)
- Q. Might I ask you to turn to the minutes of the meeting of 23rd December? A. Yes.
- 20 Q. Would you turn to the first page of those minutes? A. Yes.
- Q. Do you see certain questions directed to both Mr. Abeles, as he then was, and Lady Miller? A. Yes.
- Q. Do you recall, was anything said in relation to those questions and answers that is not recorded in the minutes? A. Is this in relation to the intentions of the stock exchange.
- 30 Q. I am only concerned with the question in relation to the sale of some shares. What I am asking you is can you recall - I know that it is difficult - can you recall anything that was said on that occasion in relation to those matters that is not recorded in the minutes? Can you recall anything in relation to those matters which is not recorded in the minutes? A. Yes. To the best of my recollection this is a summary of what I would explain to the board. I explained my purposes in asking the questions, and one of the purposes was to try and get - one of the purposes was to try and ascertain from the two major shareholders whether or not they were engaged in buying and/or selling their shares so that I could inform the Stock Exchange, who in turn could inform the shareholders, and stop some of the rumours that were going around
- 40

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the market, and I don't think that that is recorded.

Q. You said that at the meeting? You said that at the meeting? A. I think that I said words to that effect.

Q. Will you turn to the minutes of the meeting of 24th February 1972? A. Yes.

Q. Will you turn to p. 3 of those minutes? A. Yes.

Q. Do you see there the heading "Sale of shares in company"? A. Yes.

10

Q. Do you see the portion I am referring to? A. Yes.

Q. And again you ask a number of questions? A. Yes, that is correct.

Q. And do you see on p. 6 you made a statement? A. The one after I mentioned Lady Miller's name.

Q. Yes. You see "I am chairman of this company and am charged with the responsibility..." Do you see that paragraph? A. Yes.

20

Q. There you were correcting, were you not, what you believed Lady Miller to have said? A. Yes.

Q. And what you said there, amongst other things, was "At a meeting of Romanda Pty Limited held on the 15th of this month which I attended a resolution was passed by the majority of the directors that the company, Romanda Pty Limited, would accept for sale of the shares the best offer received." A. Yes.

Q. Do you see that? A. Yes, I see that.

30

Q. You added "I might add that I voted against this resolution and had my dissent recorded in the minutes of the meeting". A. Yes.

Q. On what basis did you think you were entitled to communicate to the directors of Millers what had taken place at a board meeting of Romanda? A. On the basis that I had been - on the basis

that it had come to my knowledge at a board meeting of Romanda that the directors had decided to sell, and I thought it only correct that the directors of Romanda (sic) should be acquainted of that.

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- 10 Q. The directors of Millers? A. The directors of Millers. I am sorry.
- Q. Was not that a matter for the board of Romanda to say who should be informed of their decision? A. Yes.
- Q. Did you have the permission of the board of Romanda to communicate this to the directors and the executives of Millers who were present at this meeting? A. No, I did not.
- Q. You see, if you come to the next meeting to which I want to refer, which is the meeting of 15th May - A. Yes.
- Q. Would you look at p. 3 of the minutes of that meeting? A. Yes.
- 20 Q. There you direct some questions to Lady Miller in relation to the sale by Romanda of its shares. That is right, isn't it? A. Yes, that is right.
- Q. Well now, at that stage, of course, the board of Romanda included Mr. Nicholl senior, Mr. Pitt - am I right? A. Yes.
- Q. Mr. Middleton? A. Yes.
- Q. Lady Miller, and yourself? A. Yes, that is right.
- Q. And those four members - the four members of the board other than yourself - were all in favour of the sale of shares to Ampol at \$2.27? A. Yes.
- 30 Q. And Mr. Nicholl, you knew, was a solicitor of great experience in this city? Mr. Nicholl Snr.? A. Yes, I was aware of that.
- Q. Now, on what basis was it that, in front of the whole of the Board of Millers, you suggested to Lady Miller that she was guilty of a breach of trust in selling the shares to Ampol? A. I can't recall the exact basis why I considered she was - that she had sold the shares - that she would be at risk, unless it was for the fact that Ampol had not made an offer - I will have to get my dates correct - that Ampol had
- 40

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not undertaken to make an offer for all of the shares in R.W. Miller & Company, and she controlled - the trustees controlled quite a major holding. I believe that was my reason.

- Q. But Ampol had agreed to buy all the Romanda shares at \$2.27, hadn't it, to your knowledge at this time? A. I don't know whether it had, or not. No, I don't think that Ampol had. No, I don't think they had.
- Q. Will you look at the second paragraph on p. 247 - 10 (sic) "By selling Romanda' shares at \$2.27 we know that it was pretty close to the mark." What did you mean by that? What did you mean by that comment, Mr. Taylor? A. Frankly, I don't know.
- Q. Of course, if you go over the page you find you suggesting that Lady Miller had passed on to Ampol the details of the auditors' report that the asset backing of Millers shares was \$3.71 per share. Do you see that? A. Yes, I can see that. 20
- Q. And would you agree with me that you were suggesting she was acting in breach of her duties as a director? A. No, I think I was not referring to Lady Miller as much as to her solicitors, that I had given the same figures to at her request. I had given to her alternate director, Mr. Wilkinson - I had previously given details of the figures, and I felt that she would give her solicitors details of this figure of \$3.71. 30
- Q. And they would have been passed on to Ampol? A. I thought they could have been passed on to Ampol.
- Q. And you were suggesting that was an improper thing, were you? A. Yes.
- Q. Well then, of course, immediately Lady Miller said they had not been passed on to Ampol you then went on to suggest that it was an improper thing not to have passed them on? A. Yes, it reads that way there. 40
- Q. And that is what you said, wasn't it? A. I don't deny that I said that.

- Q. What I am suggesting to you is that by the date of this meeting - that is, 5th May 1972 - you were absolutely opposed to any suggestion of Ampol acquiring any interest in Millers? A. Yes, I think it is fair to say that.
- Q. And you were prepared to make absolutely unfounded accusations against anyone who sold shares in Millers to Ampol? A. That part of it is not correct - anyone who sold shares in Millers to Ampol. I have never made that accusation.
- Q. Because of your antipathy to the proposition of Ampol's acquiring an interest in Millers you were prepared to make absolutely unfounded allegations against Lady Miller solely by reason of her having been a party to selling shares to Ampol? A. That is not true. I did not make the accusations against Lady Miller.
- Q. So that you do not regard saying to Lady Miller "In this regard you, as a trustee, in my view could be at risk in having sold the shares at an under value...." You don't regard that as being an accusation? A. That appears, as read, as though it is an accusation.
- Q. You don't deny you said it, do you? A. No.
- Q. Of course, if we can go back a little - will you look first of all, Mr. Taylor, at this document (exhibit D handed to witness): Will you look at the first document in exhibit D, please? It is an announcement by the Chairman of Ampol? A. Yes.
- Q. You have seen that before, I think? A. Yes, I have seen it before.
- Q. Attached to that document is a letter of 16th May 1972? A. Yes.
- Q. Which is signed by Mr. Ellis-Jones? A. Yes.
- Q. Did you play any part in the drafting of this letter? A. Yes, I believe I would have played a part in that.
- Q. What about the last paragraph, paragraph 6. Was that included at your suggestion? A. I don't recall specifically whether that was included. I don't recall what part I played in it. But I accept responsibility for contributing towards the letter.

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\* Exhibit E

Q. And you agreed with the letter and its contents at the time it was sent? A. Yes.

Q. (Exhibit E handed to witness)\* Mr. Taylor, have you exhibit E in front of you? A. Yes.

Q. You see there a further announcement by the chairman of Ampol? A. Yes.

Q. And attached to it is a copy of the Telex? A. Yes.

Q. That Telex is signed by you? A. Yes.

Q. Were you the author of it? A. I think Mr. Koch and I would have jointly prepared that. 10

Q. You see that the announcement is dated 22nd May? A. Yes.

Q. And that is the announcement that Ampol had decided to make its offer of \$2.27 available to all shareholders? A. Yes, that is right.

Q. When did you first become aware of that announcement? I know that it was on 22nd May, but approximately when on that day did you first become aware of the announcement? A. Even looking at the time stamp here, I would be hazarding a guess. But can I say 'in the morning'? 20

Q. Now, the Telex which is attached to the document - can you recall what time approximately, that was despatched? A. No. It has got a stamp here saying "12 o'clock" but I can't recall what time it was despatched.

Q. Would you agree with me that the Telex was your immediate reaction to learning that Ampol was going to extend its offer to all shareholders? A. Yes. 30

Q. And, having referred to the fact that a Telex has been received from Ampol, you then make a number of comments? A. Yes.

Q. The first comment is, "The present asset backing per share as certified by the company's auditors stands at \$3.71"? A. Yes, I can see that.

- Q. Of course, that was information that the board had decided should not be made available to the public? That is so, isn't it? A. Yes, that is right.
- Q. And immediately you hear of Ampol's extending or immediately you hear that Ampol proposes to extend the \$2.27 offer to all shareholders, you disclose that information to the public? A. Yes, that is right.
- 10 Q. Before your board had had a chance of considering the offer? A. Yes.
- Q. Before your board had, as it were, even formally been appraised of the offer? A. Yes.
- Q. And indeed, you would agree with me, would you not, before you had told any of the directors? A. Yes.
- Q. - of the proposed offer? A. Yes, I think that is correct. I don't know whether it was before I told them or after I told them.
- 20 Q. I want now, if I may, to ask you some questions about discussions between yourself and Sir Peter Abeles during this period. As I understand your evidence, after the meeting on 14th January - using "meeting" in a broad sense, as a getting together of people - you telephoned Sir Peter Abeles? A. On 14th January? The meeting that -
- Q. The meeting with representatives of Ampol? A. Yes.
- 30 Q. Of course you no doubt regarded the fact that Ampol was offering \$2.11 per share for the Romanda shares as a confidential matter? A. Yes.
- Q. And as a matter which had come to your information or as a matter of which you first became aware in your capacity as a director of Romanda? A. Yes. that is right.
- Q. Did you have the authority of Romanda to communicate this information to Sir Peter Abeles? A. No.
- 40 Q. Did you ever inform Lady Miller, or subsequently any of the other directors of Romanda, that you had communicated this information to Sir Peter Abeles? A. No, I don't recall having informed them of that.

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Q. You see, you told his Honour that this discussion ended, as it were, with Sir Peter Abeles sayingdhe would pull Mac Leonard off? A. He would give him a ring.

Q. And pull him off? A. Yes.

Q. Did you protest at that suggestion? A. Yes.

Q. You agreed with it, didn't you? A. No, I did not agree with it.

Q. But you did ring up Sir Peter Abeles and give him the information? That is right isn't it?  
A. Yes, that is right.

10

Q. And Sir Peter Abeles reacts, from what you say, by saying that he will pull Mac Leonard off?  
A. Yes.

Q. You say you did not say anything to that?  
A. No, I did not. I was trying to get a higher price for the shares.

Q. You did not indicate any disagreement with Sir Peter Abeles' suggestion that he would pull Mac Leonard off? A. No, I did not.

20

Q. Of course, you were a director of Romanda. That is right, isn't it? A. Yes.

Q. And Romanda had received an offer which Sir Roderick Miller's widow, who was a director, wanted to accept. That is right, isn't it?  
A. Yes, that is right.

\*Q. And you would agree with me, would you not, that, whether or not the offer were accepted it was a beneficial thing from Romanda's point of view to have the offer there? A. My purpose in telling Sir Peter was to try and get a higher price.

30

Q. Would you answer my question? A. Would you repeat the question, please?

(Question marked \* read by court reporter)

Witness: Yes.

Mr. Deane:

- Q. You have already said in the state of the market it was unquestionably a fair offer? A. Not in the state of the market. In view of the market price at that time of the state of the market, yes (sic).
- 10 Q. Having passed on this confidential information to Sir Peter Abeles you appreciated, did you not, that the consequence of your passing it on would, if Sir Peter did what he said he would do, be detrimental to Romanda? A. That was not my aim.
- Q. But you appreciated, did you not, that from Romanda's point of view it would have been a very bad thing if Sir Peter Abeles had - to use the words you used - succeeded in "pulling Mac Leonard off"? A. Yes, as you put it in those words it would appear that way.
- 20 Q. Of course, from your point of view it would be a most welcome development, or it would have been a most welcome development? A. No, I was trying to get other bids. Many other people were interested in Romanda at the time.
- Q. At that stage you were opposed to any idea of Ampol acquiring the Romanda shares? A. Whether it be Ampol or anybody else at that price. Not specifically Ampol.
- 30 Q. Were not you opposed at that stage to an oil company acquiring Romanda's shares? A. When it got to the case of the difference between Bulkships and an oil company I favoured Bulkships. That was correct.
- Q. At that stage you were opposed to any oil company acquiring shares in Millers? A. I cannot put the exact time on to that. I cannot be honest in my answer there. I don't know what time it was when this became tremendously apparent in my mind.
- 40 Q. You see, if Sir Peter Abeles were to succeed in persuading Ampol to, as it were, withdraw its offer, your understanding of what was involved was, was it not that Ampol would just disappear from the scene as a prospective purchaser? A. I could not answer where Ampol would go. I could not forecast Sir Peter Abeles' offer. I could not forecast what Ampol would do.

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- Q. Could I put this to you, Mr. Taylor? It would be true to say, would it not, that you received Sir Peter Abeles' statement that he would pull Mac Leonard off with pleasure?  
 A. No, I did not receive it with pleasure.
- Q. Were you upset by it? A. Yes. It gave me - it worried me - it gave me concern that they were working together.
- Q. But did the thought of Ampol being taken off upset you, or did it please you? A. It did not please me. But it concerned me that Sir Peter Abeles could have that much influence to pull a company like Ampol off a bid. 10
- Q. Of course, this was the man you had telephoned about it? A. Yes, that is right.
- Q. Why did you telephone him? A. In an attempt to get a higher price for the shares of Romanda for the estate.
- Q. What was it that led Sir Peter Abeles to say that he would approach Ampol? A. I could not answer that. That I would approach? 20
- Q. What was it that led Sir Peter Abeles to suggest that he would approach Ampol?  
 A. By me telling him that Ampol had approached - I don't know who had approached who - that Ampol had offered \$2.11.
- Q. The next thing, as I understand your evidence in relation to Sir Peter Abeles, is that when the question of Bulkships offer arose you took him to see Mr. Nicholl?  
 A. No, I did not take him, I met him in the offices. I arranged the meeting and met him in the offices. 30
- Q. And would you agree with me that in the context of the conversation in Mr. Nicholl's office you were, as it were, supporting the Bulkships' offer? A. I don't recall having supported the offer. 40
- Q. Mr. Taylor, you were a director of Romanda, were you not? A. Yes, that is right.

- Q. You were with Mr. Nicholl and Sir Peter Abeles in Mr. Nicholl's office discussing the Bulkships' offer of \$2.40. A. Yes.
- Q. And I suggest to you that at that time you supported the Bulkships' offer of \$2.40? A. I supported it in favour of the Ampol offer, but I can't recall coming out wholeheartedly and supporting it.
- 10 Q. You see, I suggest to you that you were without qualification in favour of Romanda accepting the Bulkships' offer of \$2.40? A. I was pleased to receive the offer of \$2.40, but I can't remember recommending it - I can't remember commenting on it.
- Q. But you were in favour of accepting it? A. I was not in favour of accepting it, because I recall I asked Sir Peter if he would consider selling (sic) a portion of the shares rather than the whole.
- 20 Q. Of buying a portion? A. I beg your pardon. Sir Peter Abeles, or Bulkships, rather, buying a percentage of it rather than the entire 2½ million, or whatever the figure was.
- Q. When it became apparent that Bulkships wanted to buy the lot you were in favour of it? A. Yes. It became apparent to me as a result of that question that Bulkships would be interested in part or whole.
- Q. What were you in favour of then? Bulkships acquiring how many? A. I was merely asking a question to see whether or not they were interested in acquiring part or whole, and I don't recall being in favour of it, because subsequently I had sought and investigated higher offers for the Romanda shares.
- 30 Q. Is what you tell his Honour this, that at the time - you cannot recall whether, at the time of this meeting in Mr. Nicholl's office which you have given evidence of took place, you were in favour of or against the offer which was being discussed? Is that what you say? A. I don't recall being in favour or against.
- 40 Q. As I understand in your chronology the next thing that you say that happened was that Sir Peter Abeles suggested that you might invite Mr. Leonard to join the board of Millers. Is that correct?

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Norman  
Taylor

Cross Examina-  
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(continued)

A. It was some time - it was some time after.  
This meeting was then on April, I think?

Q. Yes. A. Now, it was after Ampol had made  
their takeover bid or I think been  
successful - had confirmed their takeover  
bid - had made an announcement of the take-  
over bid for all of the shares - they had  
already purchased the Romanda shares - it  
was after that time that Sir Peter Abeles  
rang me and suggested I should approach  
Mr. Mac Leonard and invite him on to the  
board.

10

Q. And you complied with that request? A. Yes.

Q. Sir Peter Abeles suggested, did he, that  
you should ask Lady Miller to retire as a  
director? A. Yes.

Q. And you complied with that request? A. Yes.

Q. And you communicated that to Sir Peter Abeles  
the consequence of your compliance with his  
request? A. Yes.

20

Q. Now, you have told us about the meeting of  
5th June where, to use your phraseology,  
you offered Sir Peter Abeles, I think "a  
percentage swing," and you then said "I  
rang him on one occasion in New Zealand and  
on one occasion I spoke to him in Sydney  
and I built it up in my mind to about 15%  
of the shares." Do you remember giving  
that evidence? A. Yes.

Q. "I built it up in my mind to about 15% of  
the shares that I could probably influence  
towards Bulkships"? A. Yes.

30

Q. Well now, of course, there you swore that  
in this period you were, as it were,  
calculating and building up in your mind  
the number of shares you could probably  
influence towards Bulkships. That is  
what you swore, isn't it? A. Yes.

Q. And that was accurate? A. What? The fact  
that I had said that, or the fact that I  
could influence them?

40

- Q. What you said in your evidence, namely, "I built it up in my mind to about 15% of the shares that I could probably influence towards Bulkships. "Was that correct? A. I think what I said there in evidence was accurate. That is the way my mind was thinking. But it was not necessarily accurate that I could influence those shares.
- 15 Q. But you were building up in your mind the number of shares that you could probably influence towards Bulkships? A. Yes, for the purpose of which I explained later in the same evidence.
- Q. What you said - and you did not explain this, if I might tell you - what you said was "I built it up in my mind to about 15% of the shares that I could probably influence towards Bulkships." Now, that was accurate, wasn't it? A. If you are referring to the evidence that was given yesterday -
- 20 Q. I am referring to evidence given last Thursday? A. - last Thursday, I must agree, and I could not argue. I have not got the document in front of me. I think that is what I said.
- Q. Would you like to see the transcript? A. I will take your word for it if you are reading from it, Mr. Deane. I would not argue on it.
- Q. You see, I suggest to you that the picture of you building up in your mind the number of shares which you could influence in Bulkships which you gave in your evidence in chief is quite inconsistent with the picture of this being simply a little game you were playing with Sir Peter Abeles which you subsequently sought to give? A. I don't remember ever using the words "a little game". I was trying to establish in my own mind whether or not Ampol and Bulkships did have a deal between them.
- 30 Q. Why were you going through the exercise of building up in your mind the percentage of shares that you could influence or probably influence, towards Bulkships? A. I recall that, but Mr. Lockhart picked me up very quickly, also. "Bait". It was to increase the bait - to see if I could get Sir Peter Abeles to declare himself.
- 40

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Q. You are not saying in your evidence in chief "I was working out how many shares I could hang out as a bait." What you say is that you were building up in your mind the percentage of the shares that you could probably influence towards Bulkships? A. Yes.

Q. Why were you doing that? A. To establish - in an attempt to establish whether or not he had a deal - whether Bulkships had a deal with Ampol for the control and the ultimate hiving-off of R.W. Miller & Company.

10

Q. You see, at that stage as at 5th June, and as at the time you were making a telephone call to Sir Peter Abeles in New Zealand, you were very much in favour of Bulkships increasing its shareholdings in Millers? That is so, isn't it? A. I was in favour? I was trying to ascertain - I had received one "No" from him that he was not interested, so I thought I would put a bit of weight to it to see if I could get another "No".

20

Q. You were trying to build up Bulkships' shareholding to defeat Ampol's takeover offer? A. It was to get a higher price for the shares to all of the shareholders. My aim was not to defeat - it was to get a higher price; to get another interested party.

Q. How would being able to influence 15% of the shares towards Bulkships get a higher offer? A. Perhaps Bulkships, if they so desired, could have made a counter-bid.

30

Q. But that was not what you were putting to Sir Peter Abeles, was it? What you were putting to him was that you could get him a percentage swing? A. Yes.

Q. And I am suggesting to you you were putting to him a proposition that you could get enough shares for Bulkships to enable Bulkships for practical purposes to control Millers? That is so, isn't it? A. That is part of it. That is part of my reason in saying those things.

40

Q. And of course, your desire to have Bulkships control Millers was the consequence, was it not, of your anxiety that Ampol should not

Millers? A. I was concerned with getting the highest possible price I could for the shareholders.

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- Q. Of course, if Bulkships acquired for practical purposes control of Millers as a consequence of acquiring a percentage swing the consequence could very well be, could it not, that nobody would make a takeover offer for Millers. A. Perhaps that could be. It did not enter my mind.
- 10 Q. Really? Is what you tell his Honour that at the time you were suggesting to Sir Peter Abeles that you could get a percentage swing which would enable Bulkships for practical purposes to control Millers it did not occur to you that the consequence would be that the shareholders of Millers lost all hope of receiving a takeover offer? A. No, that did not occur to me. I was trying to establish in my mind whether or not Ampol and Bulkships had a deal together to control
- 20 the company, and at the back of my mind was always the fact that I was trying to get the highest possible price that I could for all of the shareholders of the company.
- Q. Of course, your concern that Ampol and Bulkships might have a deal was to a large extent aimed at the proposition that Ampol and Bulkships might together control the company, is that so? A. Sir Peter Abeles told me that he was working along those lines earlier in the year. He told
- 30 me that earlier in the year.
- Q. Of course, you would still have two shareholders in the company, even though they might in some matters work together. That is so, isn't it? A. Yes. He had laid out to me the details of how they had planned to control the company.
- Q. But in offering a percentage swing to Sir Peter Abeles you were, for practical purposes, offering a situation where one shareholder - Bulkships - could control the company? A. Yes, that is right.
- 40 Q. The prospect of two shareholders being able to control the company concerned you? A. Yes, as one concerned me also.



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Q. Did the prospect of Bulkships being able to control the company cause you concern? A. Not if they were prepared to pay a higher price. I knew that someone was going to own us. After Romanda shares were sold to Ampol I knew someone was going to own us, and it is very difficult in this situation for me to pick the owner that will serve the interests of the shareholders best and the interests of the company best. So a lot of things went through my mind. This is one of them. I had to firmly establish whether or not Bulkships and Ampol did in fact have a deal together, or whether or not Bulkships were working towards a deal.

10

Q. Which means, on what you say, that you knew that when the time came for the Hambros Bank Loan to be required Millers would be a subsidiary of some other company. Is that what you say? A. No, I did not say that, and I did not think about that at that particular time.

20

His Honour:

Q. Mr. Taylor, when you say you knew someone was "going to own us" - A. Ultimately own the company.

Q. Did you mean in the sense of having acquired all of the shares? A. I did not know whether there would be one, two or three lots of owners. I knew our ownership was going to change and not be spread over, I believed, a great number of shareholders. It was either going to be in the control of one, two or three groups of shareholders.

30

Q. AS wholly-owned by one, two or three? A. Yes. But not necessarily a subsidiary. This did not enter my mind.

Mr. Deane:

Q. As I understand the situation, you say that Sir Peter Abeles subsequently requested you to approach Mr. Duncan, Mr. Nicholl and Mr. Anderson and request their resignation? A. Yes.

40

- Q. Did you comply with that request? A. Yes.
- Q. And you informed Sir Peter Abeles as to the results of your approach? A. Yes, some time later.
- Q. I think you told him you had no joy in it? A. Yes. that is right.
- Q. You see, what I am suggesting to you, Mr. Taylor, so that there can be no doubt about it, is that from January, when you passed on the confidential Romanda information to Sir Peter Abeles, until June, when you complied with Sir Peter Abeles' request to approach three directors, you were working for, in your mind, a situation where Bulkships would control for practical purposes, Millers, and thereby defeat any attempt by Ampol to take over Millers? A. No, I can't agree with all of that.
- Q. What part of it don't you agree with? A. I don't agree - you went back to January?
- Q. Yes. A. We were talking about defeating Ampol's takeover offer. My main objective was to try and get a higher price for the shareholders.
- Q. If I did not go back to January, would you agree with what I put to you then? A. I was working towards the defeat of Ampol's takeover price because I had one indication from Bulkships that the shares were worth \$2.40, and also on 22nd June, I think it was, Howard Smith offered up to \$2.50, so that I was certainly working towards the defeat of Ampol.
- Q. But I suggest to you that up until at least the approach from Howard Smith, in your dealings with Sir Peter Abeles you were attempting to produce a result whereby Bulkships controlled Millers. Would you agree with that? A. I would rather I did say this in evidence also, and I repeat it, that if it came to a preference I would have preferred Bulkships to control the company than Ampol.
- Q. But you see, what I am putting to you is that quite apart from any question of Bulkships making a takeover offer, what you were seeking to achieve in your relations with Sir Peter Abeles was a

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situation where Bulkships controlled Millers?  
A. That was not always the case. That was  
one of the cases.

- Q. And of course, in your mind was the thought  
that if Bulkships controlled Millers the  
Ampol takeover must fail? A. At \$2.27 I  
was aware that it would have failed, but I  
did not know whether Ampol were going to  
make a counter bid. And I don't know today  
whether they are going to make a counter-bid  
or not. 10
- Q. Of course, on that, Mr. Taylor, you would  
agree with me, would you not, that for any  
company to make a counter-bid for Millers in  
view of this allotment of shares would mean  
not only would it have to pay an increased  
price in respect of the shares that had  
previously been issued - it would have to  
pay 50% more because of the shares which  
your board allotted? A. I don't know  
whether it is 50% or not, is it? I did not  
work out the percentages. I know there was  
4½ million shares issued. 20
- Q. Don't you really think that the allotment  
of these shares to Howard Smith for practical  
purposes ensured that no company would make  
a takeover offer for all of the issued  
shares, including the Howard Smith shares?  
A. I cannot speak on behalf of other  
companies. I can recall in 1965, Mr. Deane,  
where Ludwicke & Company made a takeover  
bid for two million Miller Bros. shares,  
which was only 66% of the company, at £3 a  
share, and the company was not worth half  
as much as it is today. So I can't speak  
of what other companies will do. 30
- Q. Coming to the question of seeking to get  
Bulkships for practical purposes control-  
ling Millers, when did you cease to regard  
that as something which was to be pursued?  
A. When did I cease to regard it as some-  
thing - I am sorry? 40
- Q. The object of getting Bulkships for practical  
purposes controlling Millers? A. I think I  
ceased this line of thought when Bulkships,

653-654.

or when Sir Peter Abeles on Bulkships' behalf withdrew their offer of \$2.40 per share for Romanda.

Q. When was that? A. Before the Ampol meeting of \$2.11 I think the 8th or 10th May. I am not certain of the date. About 8th May, I think.

(Details of shareholdings tendered and admitted as exhibit VV)\*

(Further hearing adjourned to 10 a.m. on Wednesday, 27th September, 1972)

10 Mr. Deane: On page 588 of the transcript, the fourth question, the word "been" has been left out in the first line between the words "had" and "given". The phrase should be "...you had been given advice..".

His Honour: Yes.

Mr. Deane: On page 590 of the transcript, the 5th question, and the last word in the fourth line, that word should be "to" and not "through".

His Honour: Yes.

20 Mr. Staff: On page 627 of the transcript, the fourth question - the answer to that question - I think it is probably correctly recorded. It may be brought to the attention of the witness in order that he may be given an opportunity to correct what is obviously an error.

His Honour: The answer as recorded is correct, Mr. Staff. I remember the answer. Mr. Taylor should be given an opportunity to correct it if he wishes.

(Archibald Norman Taylor on former oath:)

30 His Honour: You are still on the former oath administered to you, Mr. Taylor.

Witness: Yes, your Honour.

His Honour: Q. I think in the fourth question on page 627 of the transcript, Mr. Taylor, you meant to say, in the latter portion of your answer, "other than the other directors of the company," and not "other than the other shareholders of the company". A. Yes.

Mr. Deane: Q. (Exhibit MH3 handed to witness) Mr. Taylor, I show you exhibit MH3, which is the annual report of Millers? A. Yes.

40 Q. I presume you have seen it before? A. Yes, Mr. Deane.

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\* Exhibit VV

Exhibit MH,3

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Q. Would you agree with me that as at 30th June 1971 Millers had one main financial worry, and that was in relation to commitments? A. Mr. Deane, to my recollection it had - that was part of the financial worry. It was lack of ready cash or long term loans. That was a big problem.

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But if you look at the page of that report headed "Notes to and forming part of the accounts," which comes immediately after the consolidated balance-sheet and profit and loss of the company and subsidiaries - A. Yes. 10

Q. Do you see that? A. Yes.

Archibald Norman Taylor

Q. That shows, doesn't it, capital commitments of \$16,705,000 in respect of tankers? A. Yes.

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Q. And of course, as at 30th June 1971 no firm arrangements had been made in relation to these capital commitments? A. Yes, that reads that way there.

(continued)

Q. That is so, isn't it? A. I could not argue against that. 20

Q. And of course, the capital commitments referred to there were in respect of the "Amanda Miller" of which delivery was anticipated in the coming financial year? That is so, isn't it? A. I cannot honestly answer that, because I see the amount there is \$16,000,000.

Q. Closer to \$17 million than \$16 million? A. The "Amanda Miller" did not cost anything like that. It was in the vicinity of -

Q. Isn't it obvious to you that the capital commitments of \$16,700,000 which existed at 30th June, 1971 were in respect of the "Amanda Miller" and the "Robert Miller"? A. No, it does not appear obvious to me by looking at these figures. 30

His Honour: I think, Mr. Deane, if you show Mr. Taylor right in the middle of the accounts.

Q. In the consolidated balance sheet there is an item there for the progress payments on "Tankers under construction" over on the assets side? A. Yes, it is \$6 million. 40

Q. That plus \$16 million may have significance. I don't know. You paid \$6 million and you have \$16 million commitments? A. Yes, but I cannot recall whether or not we had been committed for the "Amanda Miller" in June 1971. Yes, we had been committed.

Mr. Deane:

10 Q. You had paid \$6 million by June 1971? A. For the "Robert Miller".

Q. I am sorry. Might I suggest to you that if you look at the description of that \$16,700,000 commitment, that that is oil tankers. It is clear that it was a combined commitment in relation to the "Amanda Miller" and the "Robert Miller"? A. Yes, this is becoming more clear as you explain it.

20 Q. Of course, as at 30th June 1971 it was anticipated that the "Amanda Miller" would be completed in the coming financial year - That is, the financial year ended 30th June 1972. That is so, isn't it? A. Yes.

Q. And that the "Robert Miller" would be completed in the next financial year - that is, the year ending 30th June 1973? A. That is correct.

30 Q. So that as at 30th June 1971 the company was facing a situation in which in respect of its tankers alone it had to pay \$16,700,000 within the next two years. That is so, isn't it? A. Yes, that is so.

Q. And no firm arrangements had been made in relation to one dollar of that finance? A. That is not so. I believe there were some short term loans available, and we were attempting - we did have some money from short term loans. I can't remember the details of it.

Q. Apart from some possible moneys being available from short term loans no firm commitment had been made in respect of finance for any of those moneys the company had to pay? A. No, I can't recall that any long term finance had been concluded. We were negotiating with Hambros Bank.

Q. And of course it would be true to say, would it not, that that situation was regarded by you as a very grave one? A. Yes, I was very concerned.

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Q. And it was towards solving that situation that the main activities of the finance committee and the financial advisers of the company were directed during the ensuing 11 months? A. Yes. Under my direction they were told to use every endeavour they could to arrange long term finance.

Q. And to a large extent they solved the position? A. They did not. They solved the long term finance for the "Robert Miller" but even as of today - for the "Amanda Miller", I beg your pardon, but even as of today we have not got long term loans for the "Robert Miller".

10

Q. You agree, do you not, that the problem insofar as it related to the "Robert Miller" was solved in the first half of the financial year - I am sorry, you agree, do you not, that the problem insofar as the "Amanda Miller" is concerned was solved in the first half of the financial year ending June 1972? A. Yes, we had the ship mortgaged.

20

Q. The moneys came through from Hambros for long term finance? A. Yes, for five years, with a blow-out at five years. I was satisfied that was sufficiently covered with Hambros.

Q. And under the arrangement Hambros said that at the end of the five year period they would favourably consider granting further time? A. They did say that, but they also mentioned it would depend on our performance of how our repayments were made - whether they were on time, or otherwise. But they did not anticipate any trouble, particularly - (answer interrupted)

30

Q. Throughout a large period of the financial year ending June 1972 the company was in default with payments it was liable to make to the Commonwealth in respect of the "Robert Miller"? A. That is right.

Q. And by the end of the financial year ending June 1972 that default had been remedied? A. Yes.

40

Q. And all moneys had been paid? A. All moneys had been paid to the Commonwealth Government up to that date.

- Q. And the end finance for the "Robert Miller" had been arranged with Hambros? A. No, it had not been arranged. There was a provisional agreement, as I recall it.
- Q. Mr. Taylor, was there not, in your understanding, a firm commitment from Hambros in relation to end finance? A. I was advised that it was not firm.
- 10 Q. Did you not represent to the Commonwealth that the end finance for the "Robert Miller" was secure? A. I think I could have said that. I don't recall. I think I could have said that it was secure.
- Q. Did not you represent to the Bank of New South Wales that the end finance for the "Robert Miller" was secure? A. Yes, I can recall that I was confident that it would be secure.
- 20 Q. Are not you aware that your company undertook to pay a substantial fee in relation to this finance? A. For the letter of agreement?
- Q. Yes. A. Yes, I am aware of that.
- Q. And that it in fact paid it? Your company in fact paid it? A. Yes, under my instructions.
- Q. And what did it pay it for? A. For the letter of agreement - for the provisional agreement - conditional - the letter of agreement in relation to a loan. I think it was \$7 million or \$8 million.
- 30 Q. It was the end finance for the "Robert Miller"? A. Yes, end finance, and the amount we did in fact owe the Commonwealth Government.
- Q. If I may, I want to take you to some particular matters. I am now showing you exhibit MH13. A. Yes. Exhibit MH13
- Q. You will see a number of management reports and minutes of R.W. Miller. I want to take you to some of them. A. Yes.
- Q. Will you turn first of all to the management report of 28th September 1971? A. Yes.
- 40 Q. You will see that this is a document which is stated to be from the general manager to the joint managing directors. Do you see that? A. It is the general manager's report you are referring to?

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- Q. Yes. The general manager's report of 28th September 1971. A. Yes, I have that.
- Q. Now at that stage the joint managing directors were yourself and Mr. Anderson. That is so, isn't it? A. Yes, that is right.
- Q. And all of these management reports - I think what I am saying is correct - all of these management reports are in a form from the general manager to either the joint managing directors or, subsequently to Mr. Anderson's retirement, simply to the managing director? Does that accord with your understanding of them? A. I don't recall. They were matters that were always presented to me for presentation at the board meetings, and I don't remember the headings. I was more concerned -
- Q. What I wanted to ask you about I think you have answered. What was the procedure adopted in relation to these management reports? Mr. Koch was responsible ultimately for their preparation, is that so? A. Yes, that is right.
- Q. And would it go to you first of all? A. No, it used to go - they used to go to the - there was a folder for each director. It was put in the folder for each director, and it was included in the agenda.
- Q. So even though they are headed from the general manager to the joint managing directors, or to the managing director, as a matter of practice they went direct to all the directors? Is that so? A. Yes, that is so.
- Q. And without you sort of getting it in advance? A. That is right.
- Q. Now, you told his Honour that you relied on what was said in these management reports? A. Yes. I can't recall on any occasion where I queried any matters that were raised in the reports as to their correctness or otherwise, and I can't recall any other director querying the accuracy of them, either.

10

20

30

40

- Q. Will you turn to page 2 of the management report - In the Supreme  
the third paragraph? A. Yes. Court of New  
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- Q. Do you agree that what is said there is "At this  
stage they"- meaning the Australian Shipbuilding  
Board - "are not pressing for the Robert Miller  
outstanding payments". Do you see that? A. Yes,  
I see that. \_\_\_\_\_  
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- 10 Q. What I want to suggest to you is that through a  
large part of this period the Commonwealth was not  
pressing for the moneys that were in default in  
terms of payment. Would you agree with that?  
A. I cannot agree with that as you put it. Defendants  
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- Q. Can I put it to you this way? Would you agree  
with me that it was made clear to Millers that  
provided the payments were brought up to date by  
30th June 1972 - being the operative date for  
the Auditor General - that the Commonwealth was  
not pressing for the payment of the moneys? A.  
No, that is not correct. Archibald  
Norman Taylor  
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- 20 Q. You say that is not correct? A. No, that is not  
correct. (continued)
- Q. What did you understand by the statement that  
the Commonwealth was not pressing for the  
"Robert Miller" outstanding payments? A. We  
had been in regular contact with the Department  
in Canberra - the Department of Shipping and  
Transport - and we had acquainted them with  
our endeavours to raise finance through  
various sources that had been made, and when we  
got to an optimistic area where it appeared as  
though something was coming through they would  
ease off the permanent pressure that they had  
on us, and that is what I think prompted  
Mr. Koch to state there that at this stage -  
that was at the end of September - at this  
stage there was no pressing for the "Robert  
Miller" outstanding payments. But there was a  
continuing pressure. All the time there was a  
continuing pressure.
- 30 Q. Looking at this report, and going back to the  
first page, you see under the heading of  
"Finance", it is reported that the loan of  
\$7,187,000 in respect of the "Amanda Miller"  
had been received from Hambros? A. Yes.
- 40

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Q. And of course that, as it were, solved the commitment problems that had existed in respect of the "Amanda Miller" as at 30th June 1971? A. I don't remember whether it solved it as of 30th June 1971 or whether it solved the financial commitments that were due at the end of September with the handover of the vessel. I think that was what it solved.

Q. £7,187,000? A. Yes. It was a consequence of the 30th June, but we had a further payment on 30th June and a payment on handover (sic).

10

Q. Of course, the amount on handover is stated on page 2 as being £1,997,000, is that right? A. Yes, that is right.

Q. And of course it is quite clear, isn't it, that the £7,187,000 was applied in extinguishing the liability for the handover payment, and in also extinguishing the short term commitments that had been undertaken in relation to the "Amanda Miller"? A. No, it is not quite clear in my mind.

20

Q. Would you dispute it? A. I would not dispute it. I am not financially inclined in this manner to understand figures.

Q. I direct your attention to the fourth paragraph on page 2. Do you see that? A. Yes, I can see that.

Q. Where there is a reference to the Hambros Bank. Do you see that reference? That is September 1971? A. Yes.

30

Q. Where it is stated that "We have been in touch with Hambros Bank and they have advised that as soon as the charter for the Amanda Miller is executed they are anxious to make a start on the financing of the Robert Miller". Do you see that? A. Yes, I can see that.

Q. Did you believe that when you read it? A. I did not query it.

Q. Now, can you turn from there to the financial report of 18th November 1971? A. Yes.

40

Mr. Deane, you mentioned 19th November?

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Q. No, 18th November. A. 1971?

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Q. 1971. The management report. A. It would be attached to the minutes of the board meeting. Yes. I have that in front of me.

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10 Q. You see that this report opens "As advised in the September report we are proceeding as quickly as possible with our financial negotiations to cover our immediate and future capital commitments"? A. Yes.

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Q. Do you see that? A. Yes, I can see that.

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Q. Did you accept that when you read it? A. Yes, I accepted that.

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Q. You see, what I suggest to you, the planned financial negotiations to cover the immediate and future capital commitments were first the arranging of construction finance for the "Robert Miller"? A. Yes.

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Q. Second, the arranging of long term finance for the "ROBERT Miller" or "end finance" for the "Robert Miller"? A. Yes, that is correct.

Q. And thirdly, the arranging of a long term loan on the security of certain hotel properties. Do you recall that? A. I recall the first two, yes - the construction and the end finance.

30 Q. And finally, the disposal of certain hotels to raise money? A. Yes, that was part - (answer interrupted)

Q. Of course, insofar as plans were concerned, hotels were disposed of and raised more money than was anticipated? A. No, I cannot agree that that is correct.

Q. Would not you agree with me that the sale of the Bexley North produced the result that the overall sales of hotels raised far more money than was anticipated? A. That was not one of the planned hotels to sell. It was quite a profitable hotel,

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and the capital gain on that was so great that we felt it our duty to accept it.

Q. That is right. Which means that the tremendously good price obtained for the Bexley North, which as a matter of duty you accepted, meant that the proceeds of the sale of hotels was well in excess of what had been anticipated. Would you agree with that? A. For that particular hotel. We had plans to sell about £3 million worth of hotels as I can remember and I believe we ultimately did sell - we planned to raise £3 million by the sale of certain hotels, mostly the unprofitable ones, and I believe by the 30th June this year we had achieved our goal.

10

Q. Of course, so far as construction finance for the "Robert Miller" was concerned, by 30th June that had been obtained from the Bank of N.S.W. hadn't it? A. Partly

Q. Well, insofar as any further commitment for construction finance for the "Robert Miller" was concerned it was covered by the arrangements with the Bank of N.S.W.? A. Partly.

20

Q. You say "partly"? A. In part. There was also mortgaging of hotels also with Tricontinental for contributing to the payment for the "Robert Miller" (sic).

Q. I will put it to you differently. As at 30th June 1972 some further payments were anticipated as having to be met in respect of the "Robert Miller" - future payments? A. Yes, that is right.

30

Q. Those payments were covered by the finance obtained from the Bank of N.S.W. were they not? A. I am not completely certain.

Q. Would you deny that? A. I would not deny it, no.

Q. And of course, subject to the question of uncertainty, to which I will be taking you, the end finance for the "Robert Miller" had been covered by the arrangements with Hambros? A. It had been covered - not completely covered

40

There was some area of doubt about it.

Q. Can I reframe the question? To the extent that the arrangements with Hambros were secure the end finance for the "Robert Miller" was covered?

A. The end finance for the "Robert Miller" was not covered completely. The loan had not been made. There were a few provisions that I can recall in conversation.

10 Q. I will ask you the question again, Mr. Taylor. To the extent that the arrangement with Hambros was secure the end finance for the "Robert Miller" was covered? (Objected to by Mr. Glass).

Q. On the assumption that the arrangements with Hambros were secure, the end finance for the "Robert Miller" had been covered, hadn't it?  
A. Yes.

20 Q. And of course, insofar as the raising of moneys on mortgage of hotels was concerned, there had been negotiations with the Superannuation Fund? There had been negotiations with the Superannuation Fund in regard to the raising of moneys on the mortgage of hotels? A. Yes, I can recall some discussions with them.

Q. And as at 30th June the situation was, was it not, that the negotiations had not come to finality? A. I believe that to be correct.

30 Q. But Tricontinental had made available, on the security of these hotels, the \$3 million? A. I don't remember the amount, but to the extent that all of our hotels were then lodged as security.

Q. And the negotiations with the Superannuation Fund for the long term finance were continuing? A. I believe they are continuing to today, yes.

Q. You know, don't you, that these negotiations reached a stage where you could have had the \$3 million? A. No, I don't recall that.

Q. And your company declined it? A. I don't recall that.

40 Q. You asked could the matter be left open for another three months? A. I don't recall declining it.

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Q. You see, what I am suggesting to you is that as at 30th June, subject to what you say about the uncertainty of the Hambros arrangement and subject to the fact that the negotiations with the Superannuation Fund had not been brought to finality, the negotiations referred to in the first paragraph of that report had been successfully carried out? A. Are you referring to the report of 18th November?

Q. Yes. A. I don't think there is any mention of "successfully carried out". It states "We are proceeding as quickly as possible with our financial negotiations to cover our immediate and future needs".

10

Q. You see, Mr. Taylor, you agreed with me, as I understand it, as to what was involved or what was sought to be achieved in the negotiations referred to in that paragraph? A. Yes.

Q. Now, what I am suggesting to you is that as at 30th June, apart from what you say in relation to uncertainty in the arrangement with Hambros, and subject to the fact that the negotiations with the Superannuation Fund had not proceeded to finality, the negotiations referred to in the first paragraph of that report had been successfully carried out? A. Well, I knew it to be a fact that the negotiations for the end finance on a long term basis with Hambros Bank had not been successfully carried out, but we had an understanding with them, and we paid some moneys. But the loan was not a loan until it was in the bank. A loan is not a loan until it is in the bank, and I figure that way.

20

30

Q. What you just said is a correct statement of your point of view? A. A loan is not a loan until - -

Q. A loan is not a loan until it is in the bank? A. Yes. I believe that.

Q. And it is on that basis that you suggest that the moneys from Hambros were not secure? A. Yes, I believed that there was always doubt about it.

40

- Q. May I again put to you the question - would you agree with me that, assuming that the moneys from Hambros Bank were secure, and on the assumption that the negotiations with the Superannuation Fund would result in long term finance, as at 30th June the negotiations referred to in the first paragraph of that letter had either been successfully carried to completion or were about to be successfully carried to completion? A. That was rather a long question for me to answer. Perhaps my answer could well be that I was confident that we would be successful in the loan, and I was hopeful that we would be successful in the loan.
- Q. May I again direct your attention to that first paragraph? You made some comments in relation to the insecurity of the Hambros loan, and we are aware that the negotiations with the Superannuation Fund had not been completed as at 30th June? A. Yes.
- Q. If we put those two things aside, was there anything referred to in the first paragraph of that report which had not been achieved? A. Yes, I believed that we hadn't money - cash in hand - to cover our immediate and future capital commitments.
- Q. What specific things had not been achieved? A. I cannot recall specific items that had not been achieved at November 1971. I cannot recall them, and I would be guessing. This is a matter that I would normally put to the general manager or the finance committee to give me the answers.
- Q. Can I take you from there to the management report of March 1972. A. Yes.
- Q. Would you agree that you saw this report when it was prepared? A. Yes.
- Q. Now, you see there certain references to meetings with Hambros Bank? A. Yes.
- Q. And you see in the last paragraph - the second last - "To summarise our financial problem we submit the following...". A. Yes.

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Q. You see that portion to which I am referring you? A. Yes.

Q. Would you go back to the third paragraph, where there is a reference to a letter of Commitment from Hambros Bank? A. With the Shell Company.

Q. I am sorry. Mr. Taylor, can you point to anything in that report which suggests that the finance from Hambros was insecure? A. No, there is no reference to insecurity there. 10

Q. Did anybody at the directors' meeting at which that report was discussed suggest there was any insecurity in relation to the Hambros loan? A. No query was made in regard to it to the best of my knowledge.

Q. Now, can I take you from there to the May report, which is Exhibit JJ\* and which is also in there? Have you the May report in that folder, Mr. Taylor? A. Yes, I have the report in front of me. 20

Q. This, of course, was prepared before the formal letter of commitment had been received from Hambros Bank, wasn't it? A. I don't know.

Q. If you look at the first page I think you will see that this is so. A. I don't think - I cannot see that that mentions the date.

Q. Do you see the third last paragraph in the report "on 25th May...one week". A. Yes.

Q. Do you see that? A. Yes, I can see that. 30

Q. Is there anything you can see in that management report which suggests in any way that the moneys from Hambros were insecure? A. No, Mr. Deane. I can't also quite understand how 25th May - how the report referring to 25th May was attached to the board minutes of 15th May.

Q. I think that is a mistake, Mr. Taylor. It should be June. A. Which? The board meeting? 40

Q. Yes. A. The board meeting should have been June?

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Q. I think it was a meeting of 1st June. A. You mean the report of 25th May - it is here in a position out of order? You are referring to a report in May which was read at the meeting in June?

Q. Yes. Read at the meeting of 1st June. A. Thank you.

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10 Q. Would you agree with me that if you look at the first two pages of that report one sees the complete planning for the financing of the "Robert Miller"? A. Yes, this appears to set out the situation.

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20 Q. And, subject to what you say as to the uncertainty of the Hambros arrangements, and subject to the substitution of Tricontinental for the Commonwealth Superannuation Fund pending the completion of negotiations with the Superannuation Fund, all of things had been achieved by 30th June 1972? A. Yes. But may I qualify that? They have been achieved on a short-term basis - not a long term basis.

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30 Q. Just answer my questions would you please, Mr. Taylor. The things here, subject to the matters I raised, had all been achieved by 30th June 1972? A. I can't understand the mortgage finance from the Commonwealth Superannuation Fund. Later I believe Tricontinental took over the balance of that. Having not prepared the figures, and having not commented on them, we accepted them as read, and I can't remember any queries raised by any director at the board meeting.

Q. Of course, by 30th June arrangements had been made with the Bank of N.S.W. whereby \$1.82 million was made available? A. I believe so.

Q. And under these arrangements all of the future payments in respect of the "Robert Miller" were covered? That is, moneys held in reserve? A. I don't know whether they were held in reserve. It reads from this - it appears that they were covered. It does not state what length of time they were covered.

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Q. Mr. Taylor, your company, over the name of Mr. Ellis-Jones, from time to time during the financial year ending 30th June 1972 wrote letters or made reports to the Sydney Stock Exchange. Do you agree with that? A. Yes.

Q. Would you have approved these letters before they went? A. In cases where they were by the direction of the board I doubt whether I would have had a final check of it.

Q. (Exhibit LL shown to witness)\* Will you look at the exhibit, please, Mr. Taylor? A. Yes. 10

Q. Would you look at the letter - which is the second letter in that group - of 13th October, from Millers to the Stock Exchange? A. Yes.

Q. Did you see that before it was sent? A. Yes. I would have seen that letter I believe.

Q. Did you approve it? A. If I had seen it I must have approved it. I did not disagree with it.

Q. I don't want to take undue time over this. Will you direct your attention to what occurs on page 2 under the heading "Future"? A. Yes. 20

Q. Do you consider that an accurate statement? A. It is accurate in certain areas. In relation to trading results for the year ended 1971-72 we did increase trade results.

Q. Then it is quite accurate, is it? A. It is quite optimistic. I cannot see any inaccuracy.

Q. And again, under "Finance", commencing on the bottom of the page and going over to the next page? A. Yes. 30

Q. Again would you agree that this is accurate? A. Yes.

Q. And under "Hotels", the second paragraph, you see "The company has continued .."? A. Yes.

Q. Will you agree that that is accurate? A. Yes, it was not inaccurate.

- Q. Now, can you turn to the report of 23rd December 1971, which is the next document? A. Yes.
- Q. This discloses, doesn't it, that there had been a revaluation of the hotels which resulted in an excess of \$5,025,000 over book value? Would you agree that is a summary of the document?  
A. Yes, I recall that document.
- 10 Q. I suggest to you that this revaluation led to a number of press comments and a number of requests for information by the press to you?  
A. Yes, it certainly did. They were fairly rife about that time.
- Q. Would you agree that you stated to The Australian about this time in relation to a rise in the share prices "I categorically deny I know anything about any takeover. I just consider it my duty to inform shareholders of the solidarity of their company?" A. I don't recall those precise words, nor have I the document  
20 in front of me.
- Q. Do you deny that you said that? - -
- His Honour: Would you read it again, Mr. Deane?
- Mr. Deane:
- Q. "I just consider it my duty to inform shareholders of the solidarity of their company"?  
A. Yes, I remember using words to that effect to convey that message - one again of confidence.
- 30 Q. Of course, you have already agreed with my learned friend, Mr. Lockhart, that on 17th December you made a statement in the following terms, "As for the company having financial worries, this is in no way true".  
A. I don't deny that I used those words, but I explained also that I was trying to instil in the shareholders an overall picture of the wealth of their company, and not referring particularly to the problems of liquidity that we had. I tried to avoid that.
- 40 Q. You made a public statement on 17th December to the effect that Millers had no financial worries?  
A. Part of a whole. Part of an overall statement, and part of that was pointed out, and emphasis was put on that particular word.

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- Q. But how could the context in which it was made alter the meaning of the words: "As for the company having financial worries, this is in no way true". (Objected to by Mr. Glass; allowed).
- Q. Mr. Taylor, how do you suggest that the context in which it was made could affect the meaning of the statement: "As to the company having financial worries, this is in no way true"?  
 A. I was at that time receiving many phone calls from friends of rumours they had heard about the company being in fact bankrupt and unable to meet its commitments. I had heard rumours that we could not meet our commitments - in fact some of the rumours that Lady Miller herself just before this period - (answer interrupted) I am trying to answer your question. 10
- Q. I am sorry. A. I was trying to instil, through medium of the press, confidence in the shareholders that they held shares in a company that was wealthy, particularly in assets, although I did not mention it at that time. But at that time I was having a rearrangement of the assets, and this occasioned a letter of December 27th, because I let the Stock Exchange know part by part as to what the assets were worth, because I was worried that some shareholders might be panicked into selling at a lesser price. 20
- Q. So would it be true that this statement was made in a context where there was public interest in the question whether Millers had any financial problems? A. Public speculation, if speculation is interest. 30
- Q. And public interest? A. More interest to the shareholders than public interest. I was concerned with the shareholders - concerned with the existing shareholders of the company.
- (Article from "Sun" of 17th December 1971 tendered; objected to by Mr. Glass; rejected) 40
- Q. Mr. Taylor, I would like to take you if I may, to exhibit MH12\*. Would you look in the pocket of that folder dealing with the Bank of N.S.W. at the letter of 18th May 1972? A. Yes, I have that letter in front of me.

- Q. Did you sign that letter? A. Yes, I did sign it.
- Q. Of course you were aware, no doubt, when you wrote this letter that it was a letter seeking finance from the Bank of N.S.W.? A. I did not write the letter. I signed it.
- Q. You were aware when you signed it that it was a letter seeking finance from the Bank of N.S.W.? A. Yes.

10 Q. To an extent of \$5 million? -

His Honour: What is the date of that letter, Mr. Deane?

Mr. Deane: 18th May, 1972

Witness: Could you help me, Mr. Deane, as to where it refers to precisely \$5 million? I am trying to speed read it, and I am not being very successful.

Mr. Deane:

20 Q. Would you see at the top of page 2, Mr. Taylor, "Our proposal is that the bank..." Do you see the passage to which I am referring? A. Yes. Thank you.

30 Q. In this letter you were putting forward certain factual matters upon which the bank was being invited to act? A. The finance committee that prepared this letter, primarily on this occasion led by Mr. Murphy, I think it was, was putting forward the company's case, and it was putting it forward as optimistically as it could. How factually it was put forward I cannot accurately say. But I believe it would have been - in submissions to the bank by Mr. Murphy I would have considered that he would ask for a little more than would be required.

40 Q. In terms of how much you want? A. In dealing with with a bank you know - I was advised by Mr. Murphy that he feels they are going to cut it down in any case, so that you go for a bull's eye and sometimes you are lucky if you get an outer.

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- Q. You would agree with me, wouldn't you, that the factual statements contained in the letter were made for the purpose of informing the bank of the relevant circumstances? A. Yes. I cannot advise you as to the degree of how factual they were. It would not be unusual for me to expect an application from one of our officers that he had written and submitted for my signature to be a little optimistic.
- Q. But you would agree with me, would you not, in the context where the bank is being asked to land up to \$5 million on the basis of what is set out in the letter it would be completely wrong for the letter to be misleading? A. I don't think any attempt was made to make it misleading. 10
- Q. Well now, would you look at the first paragraph of this letter? Would you see what is said is "We now submit for consideration by the bank a proposal to assist our company by the provision of short term accommodation which will enable us to secure our company's immediate objective and at the same time provide a basis of a sound financial plan for the future". Do you see that? A. Yes. 20
- Q. And that was an accurate statement? A. Yes, I believe that to be correct. I believe that is an accurate statement.
- Q. If you turn over the page, in the first paragraph you will see there is a reference to Hambros Bank, and their not wishing to provide construction finance. Do you see that in the first paragraph on page 2? A. Who do you mean by "their"? 30
- Q. Hambros Bank. A. Hambros Bank, yes.
- Q. And the statement that "Hambros still wish to provide the end finance"? A. Yes.
- Q. Now, the next paragraph: "The end financing for operation of the vessel is secure". Do you see that? A. Yes, I can see that. 40

- Q. I suggest to you that was an accurate statement?  
A. In view of what I subsequently learned, and my memory has been refreshed on it, that would appear an inaccurate statement.
- Q. But, Mr. Taylor, as at May 1972 you did not even have the letter of commitment with Hambros, did you? A. No.
- 10 Q. Which means as at May 1972 what you had was an assurance from a group of the world's leading banks that the money was available? A. I don't know whether they were the world's leading banks. I can think of the Bank of England and other banks I would consider more of the world's leading bank, and I think that emphasis is a little bit unnecessary. Some leading banks. But they were not secure. In fact, even the end financing to the best of my knowledge - (answer interrupted).
- 20 Q. I will accept your correction to the question, and I will put it to you again. What you had was an assurance from a group of leading banks that the moneys would be available? A. At that stage in May they were working towards that end, but there were a few problems that were worrying them.
- Q. Which were subsequently sorted out? A. No, they are still outstanding.
- 30 Q. What do you say as to the statement in the letter of 18th May that the end financing is secure? Do you say it is false? A. It is hard for me to say otherwise. It was not secure.
- Q. Made over your hand? A. Yes.
- Q. To a bank? A. Yes.
- Q. Seeking up to \$5 million money? A. Yes, that is right.
- Q. And made for the purpose of influencing the making of that loan? A. Yes.
- 40 Q. Did you believe the statement to be false at the time you signed the letter? A. No, I don't recall putting any emphasis on it. I would

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have read it, and I don't recall any emphasis on that particular part of it.

Q. You see, Mr. Taylor, what the bank was being asked to provide was, was it not, bridging finance? A. Yes.

Q. That is, finance for the period up until the loan from Hambros became available? A. Yes, that is right.

Q. Which means that the most important thing in the whole of this letter insofar as the bank providing that bridging finance was concerned was, was it not, that the moneys would be available from Hambros bank? A. Yes.

10

Q. Because it was from that source, and from that source direct, that it was being proposed that the bank would receive repayment? A. Yes.

Q. Well now, in that context I suggest to you that it would have been apparent to you that from the bank's point of view the most important statement in this whole letter would have been "The end financing for operation of the vessel is secure"? A. Yes. No, I feel that the bank, as you mention it now - I did not lay any emphasis at the time I signed the letter, but as you have been asking me questions I realise that no bank would advance \$5 million<sup>m</sup> unless they checked up or had some security from the lending authorities that were going to advance it, so I don't think they would pluck it out of the air and, on my word alone, because I said it was secure, write out a cheque for \$5 million. But I thought of that only now.

20

30

Q. The bank, of course, did get its security?  
A. I am not certain how the bank got its security - whether by hotels, or - -

Q. Didn't Millers obtain from Hambros an undertaking to pay the bank direct from the proceeds of the loan that was going to be made? A. I don't remember the details of that.

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Q. You don't know? A. I don't know.

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- Q. Going over the page to page 3, you see under the heading "Repayment"? A. Yes.
- Q. Will you read what is there, just to yourself? That is on page 3. A. Yes, I have that, under "Repayment".
- Q. Would you agree that the statements there made are accurate? A. Yes. I can't guarantee for the exactness of the figures being correct, but I would agree that, as put by the finance people of our company, they would be correct.
- 10 Q. You were aware, of course, that subsequent to this letter the bank did make finance available to an amount of \$4.2 million? A. Yes. I don't know whether it was as a direct result of this, or whether it was the result of continual negotiations that we had had with the Bank of N.S.W. over some 18 months period.
- Q. Will you look at page 4 of the letter? You see the heading "Loans"? A. Yes.
- 20 Q. And there is a reference to the Eastern Suburbs Leagues Club and the Miller Staff Superannuation Fund. Do you see that? A. Yes, I can see that.
- Q. And there is a statement that they are both debtors of the company; that the sales of their shares are under consideration? A. Yes.
- Q. And that you had been advised that, should they sell their shares, the proceeds of sale will be paid to the company in reduction of the respective debts? A. Yes, I remember that.
- 30 Q. I think so far as the Eastern Suburbs Leagues Club was concerned you yourself had been given information to that effect, had you not? A. Yes. As I recall, looking at the date - I don't know whether it was before or after that date, but, if I could get \$2 - a member of the club asked if I could get \$2.50 for the shares - for their shares in R.W. Miller & Company.
- Q. When was that? A. I don't recall the date.
- Q. Well, approximately when? About when was that? A. There is doubt in my mind now, seeing 18th May, and in consideration of the Romanda sales.

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I think it was after Romanda had sold their shares, which decision had been made, I think, on 12th May, so that would be round about this time.

- Q. Mr. Taylor, you told my learned friend, Mr. Glass, that you were not actively involved in the loan of \$2 million to the Eastern Suburbs Leagues Club which was made in 1969, is that so? A. I don't recall. I had no part. and I had no knowledge. 10
- Q. You had no knowledge at all? A. No knowledge at all? I knew a loan had been made.
- Q. Did you not regard it as an extraordinary transaction at the time it was effected? A. How do you mean extraordinary? I did not consider it extraordinary.
- Q. We have been told that at that time Millers was in constant overdraft with its bank and had a real liquidity problem. Does that accord with your recollection? A. Is this in 1969? 20
- Q. Yes. A. I don't think I understood the full meaning of the word in 1969 - "liquidity".
- Q. At that time Millers had sold its brewery. They had sold the brewery at this time? A. Yes.
- Q. That is so, isn't it? A. I think it was in 1967 they sold the brewery. I am not sure but I think it was 1967.
- Q. And whether or not one uses the word "liquidity", 30 at that time you were aware that Millers was in real need of money? (Objected to by Mr. Glass; allowed)
- Q. That is so, isn't it? At that time you were aware that Millers were in real need of money? A. No, I was not aware.
- Q. Well then, of course, the circumstances in which this loan was made subsequently became of concern to you, did they? A. I had no knowledge of the manner in which the loan was made apart from when someone - Sir Peter Abeles, after stating the figures, drew the board's attention to the fact that they 40

were paying  $7\frac{1}{2}$  per cent interest.

Q. Whereas the contract provided for 9 per cent?  
A. Yes. That is when I became aware of the circumstances of the repayment of the loan and the percentage rates.

Q. Which, of course, was an amount of \$30,000 a year?  
A. I don't recall the amount.

10 Q. There is no great mathematics that  $1\frac{1}{2}$  percent of \$2 million is 30,000 a year? A. I am not a mathematician, Mr. Deane. Perhaps you are: I am not.

Q. When you became aware that this large amount of money was not being paid did you make enquiries into the circumstances in which the loan had been made? A. No.

Q. You didn't? A. No.

Q. Did you discuss it with anybody at the Eastern Suburbs Leagues Club? A. I discussed with them the interest rates.

20 Q. With whom did you discuss it? A. With the president, I think it was the secretary-manager, and in fact, I successfully increased their rate by negotiation three-quarters per cent rather than by litigation.

30 Q. If we can take it step by step, with whom did you discuss it? A. "Buster" Craigie. That is a nickname - I don't know him by any other name. He is the president of Eastern Suburbs Leagues Club. I discussed it with him, and with Ron James.

Q. It was in the context of this discussion, was it, that you were informed that if the club could sell its shares it would devote the proceeds of sale to the reduction of the loan? A. No, it was - that was nothing to do with the increase in rate. I don't remember the timing.

Q. When, on your understanding, did the Eastern Suburbs Leagues Club become a shareholder in Millers? A. I don't know.

40 Q. Mr. Taylor, have you really any difficulty with that question? A. Well, I have heard things

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subsequently mentioned here by you. You said  
1969.

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Q. But you have no doubt, have you, that the  
Eastern Suburbs Leagues Club became a shareholder  
about the same time as this loan of \$2 million  
was made? A. I have doubt. I don't know when  
they became shareholders.

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Q. And shortly after T.N.T. took up a large share-  
holding in Millers? A. I don't recall when  
they became shareholders.

10

Q. Didn't you discuss with the gentlemen from the  
Eastern Suburbs Leagues Club the question of  
whether there was a connection between their  
shareholding in Millers and this loan?  
A. No.

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(Short adjournment)

Mr. Deane:

Q. Mr. Taylor, might I ask you to turn in the  
Commonwealth pocket there - I don't know  
whether it is the Commonwealth or the Ship  
Building - which is termed "Correspondence  
with the Minister of Shipping and Transport",  
the pocket that contains that? A. Yes, I have  
that.

20

Q. Would you look at the letter of 13th June,  
1972? A. Yes.

Q. You would agree with me, would you not, that  
this is a letter signed by you to the  
Minister for Shipping and Transport? A. Yes.

Q. And, of course, by 13th June, the formal letter  
of commitment had been received from Hambros  
Bank. Would you agree with that? A. I don't  
recall which date it was. I am trying to read  
it to see if it referred to - if there had  
been a formal letter of commitment received I  
think the first thing we would have done would  
be to advise the Minister.

30

Q. Would you look at the second last paragraph?  
A. Yes.

- Q. You forwarded a copy of the letter of commitment to the Minister? A. Yes.
- Q. And you informed the Minister, did you not, that you were pleased to report that "Hambros Bank Limited have now made a firm commitment for end financing"? A. Is this in relation to the "Amanda Miller"?
- Q. No, in relation to the "Robert Miller"? A. I can't see that.
- 10 Q. You see, this is a letter of 13th June, 1972, is it not? A. Yes.
- Q. And it is dealing with the finance for the "Robert Miller"? A. Yes.
- Q. And you said in the second last paragraph.
- "Furthermore, we are pleased to report that Hambros Bank Limited have now made a firm commitment for end finance to the extent of \$US8.8m. under similar terms and conditions to our previous loan regarding M.T. "Amanda Miller'."
- 20 A. Yes, I can see that now.
- Q. Which means that in this letter you are informing a Minister of the Crown that Hambros Bank Limited have now made a firm commitment for end financing of the "Robert Miller"? A. Yes.
- Q. And you would agree with me, would you not, that that was an accurate statement? A. In the context that you have placed on it, it
- 30 would appear inaccurate.
- Q. I see. So, was it your view as at 18th June, 1972 that Hambros Bank had not made a firm commitment? A. I knew they had made a conditional - they were prepared to make an additional - they had made a conditional - there were certain conditions attached to it that I have explained before.
- Q. Mr. Taylor, was it your view as at 13th June, 1972, that Hambros Bank had not made a firm

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commitment in respect of the end finance for "Robert Miller"? A. It was my view that they had made a commitment with certain conditions and I think we informed the Minister also - I think we gave him a copy - I can't be sure what the arrangements were but I think we gave him a copy of the commitment as well so he would be able to see it.

- Q. Mr. Taylor, was it your view as at 13th June, 1972, that Hambros Bank had not made a firm commitment in respect of the end finance for the "Robert Miller"? A. Yes. 10
- Q. So, is what you tell his Honour this: that the statement in the second last paragraph of that letter to the Minister was false? A. As you put it.
- Q. And false to your knowledge? A. No, I had no knowledge that it was a conditional commitment but there were escape clauses.
- Q. Of course, you have told his Honour that in relation to this commitment to Hambros Bank you authorised Mr. Koch to pay a commitment fee? A. Yes. 20
- Q. An amount of \$US66,000? A. Yes.
- Q. Do you really suggest to his Honour that you would have authorised the payment of \$66,000, United States dollars, of Millers' money in respect of a loan which you did not think was secure? A. Yes, I did authorise it.
- Q. And do you suggest to his Honour that you would authorise the payment of \$US66,000 as a commitment fee when you did not think the commitment was firm? Is that what you suggest? A. No, I am not suggesting that. You are doing all the suggesting, with respect. 30
- Q. Mr. Taylor... A. See, if I may be permitted to attempt to answer the question. There naturally was an element of risk in this as I believed it. We were under threat of legal proceedings from the Commonwealth Government that if we were in default in our payments that the company could probably lose the ship and if we lost it, it could go to some other owner and I wanted to 40

protect the shareholders' own ship or the company's ship by the - if it is considered a risk, a risk of paying this money and that was the reason why I authorised this money to be paid.

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10 Q. Mr. Taylor, is what you say this: that you authorised the payment of \$US66,000 by way of commitment fee in circumstances where you did not think there was any firm commitment? Can you answer that question "Yes" or "No"? A. Yes, Yes, there was no firm commitment.

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20 Q. And, of course, would you agree with me that the very first occasion after the receipt of the telex from Hambros on which any suggestion at all was made to any of the directors of Millers to the effect that the Hambros loan was not secure was at the meeting of 6th July, 1972? A. I do not - yes, I would agree that would be correct. No other director had queried it.

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Q. And the only basis on which any suggestion was made that the Hambros moneys might not be secure at that meeting was in relation to a provision concerning change of control? A. I don't recall. I don't recall whether it was change of control or some of the other conditions.

(continued)

30 Q. Well, I suggest to you the only basis on which any suggestion was made at the meeting to the effect that the Hambros moneys may not be secure was on the basis of a provision relating to change of control? A. Yes, you are suggesting it, Mr. Deane. I said that I did not recall it.

Q. So, you don't know one way or the other? A. I know of one way, one way; that was the change of ownership. I know that was mentioned but I don't know whether the other conditions were mentioned or not.

40 Q. What other conditions? A. There were other escape clauses.

Q. What? A. Documentation was one, the final preparation of documentation; the delivery of the vessel was another one; the change of ownership. That was three and I can't recall



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precisely what other escape clauses they had. I had always believed that in the event of some world crisis or something like that, they could get out of it.

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Exhibit DD

Q. I want to direct your attention to some evidence you gave on p. 459 of the transcript and this was in relation to the conversation between yourself and Sir Peter Abeles on 5th June, 1972. You were asked the question by Mr. Glass: "Was anything said about your own position?" to which you replied "Yes, Sir Peter Abeles had told me that my position would be secure and that I would be Chairman." Do you remember that? A. I remember the question and I remember that was on 5th June. I don't deny that that was the answer I gave.

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Q. You then went on to add some comments and I suggest what you said was "If it worried me as to what was left of the Company, I would be Chairman of nothing." A. I remember making that comment.

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Q. (Witness shown Exhibit DD)\*Mr. Taylor, you have told his Honour that you ruled Sir Peter Abeles was not entitled to participate in discussion or to vote because of a conflict of interest or because in your view there was a conflict of interest. That is a correct summary of the situation, is it? A. Yes, after I had invited him to disqualify himself.

Q. Now, what do you mean by the phrase "conflict of interest" when you use it? A. I considered that his vote would be other than in the interests of Millers, that he also had, as a Director of Bulkships, that he had a duty towards Bulkships.

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Q. Or would it be correct to say that you considered and do not accept my words if they do not coincide with your view, that he considered that he was in a position where it would be difficult for him to act, as it were, solely in the interests of Millers because there were things pulling him in another direction? A. I can't agree, you know, in those words. See, the announcement, the joint announcements had been made where he had allied himself as a Director of Bulkships with Ampol..

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Q. See, what I want to put to you... (Objected to by Mr. Glass.)

His Honour: Yes, he had not finished.

Witness: And previously he had voted for the rejection of the Ampol at \$2.27 and he was leaving the minority shareholders with no opportunity to avail themselves of a higher price and that is what was through my mind.

Mr. Deane:

- 10 Q. At this meeting of 14th July a motion was put, was it not, that the legal fees of any directors who might be separately represented in this litigation should be paid by Millers? A. Yes, I can recall that motion. I can't pick it up here.
- Q. I suggest to you if you look at the middle of p.2 under "Legal Expenses" going over to p.3. A. Yes.
- Q. In relation to that, of course, the directors were, as it were, voting for payment of expenses incurred by some of their number? A. Yes.
- 20 Q. Did it occur to you that there was a conflict of interest involved there? A. Yes.
- Q. Did you rule that none of the directors could vote? A. Could vote on the motion?
- Q. On the motion. A. No.
- Q. Why not? A. This matter was originally raised, I believe, on the advice of counsel and I did not see the actual words but I was advised by Mr. Conway the company's legal officer, that this was a proper thing to do.
- 30 Q. But, Mr. Taylor, you have agreed that you saw a conflict of interest in directors voting on this resolution? A. Yes.
- Q. Did you give consideration to ruling that none of the directors could vote on it? A. No, I didn't I did not.

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Q. After the meeting of 6th July the shares of Millers were suspended on the Sydney Stock Exchange, were they not? A. Some time after 6th July.

Q. Well, on 6th July the decision to suspend was made, was it not? A. I don't recall.

Q. (Witness shown Ex. AA) Would you look at that document. It is a letter, is it not, from you to the Secretary of the Sydney Stock Exchange? A. Yes, that's correct,

Q. And if you look at the first sentence you will see it says "We refer to the suspension of trading in shares of this company which was announced yesterday, 6th July"? A. Yes.

Q. This, of course, was a letter which was being written by you to the Stock Exchange in relation to that suspension? A. I was not the author of the letter.

Q. But you signed it? A. Yes, I signed it.

Q. And it was being written on a very serious matter? A. Yes, and I played a part in its compilation.

Q. Who was the author? A. I can't precisely recall who the authors were but it would have been members of the management team.

Q. But yet you played a part in its compilation and you signed it? A. Yes.

Q. You see, the fourth paragraph of that letter to the Sydney Stock Exchange says "It was at all times open to Millers to make within the confines of your rules and regulations progressive placements to foreign entities which would have solved liquidity problems." Do you see that? A. Yes.

Q. "However, in view of the loyalty felt to its shareholders and with reference to the Commonwealth Government policy, the Board in keeping with its tradition as a wholly owned Australian company deliberately abstained from pursuing this course." Do you see that? A. Yes, I see that.

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- Q. I suggest to you that is a completely false statement? A. That is not completely false.
- Q. See, the position was, was it not, that not only had the Board never deliberately abstained from pursuing the course but in so far as Millers was concerned the only suggestion of a placement to a foreign entity was a suggested placement to Mitsui which Mitsui had rejected? A. Mitsui had not rejected straight out a placement of shares; they had kept their lines open.
- 10 Q. I suggest to you that Mr. Koch told you that Mitsui had said they would have no part in it. Do you deny that? A. I do not deny that but my experience dealing with Japanese is that they do not give you a Yes or a No and I thought you were trying to get from me before there was another course open to the company. Some years ago where the late Sir Roderick and his brother Robert rejected outright the infusion of foreign capital into the company by refusing to sell their shares to Daniel Ludwig & Company - so there were two occasions so it is not false.
- 20 Q. Let us take them, Mr. Taylor. The Mitsui occasion was an approach by Millers to Mitsui. That is so, isn't it? A. And some approaches from Mitsui to us up to and including 7th July, the time that that letter had been raised.
- Q. The only question of any allotment of shares being given to Mitsui was an approach by Mr. Koch to Mitsui? A. An allotment of shares. However, Mitsui had displayed an interest to me in the acquisition of Romanda shares.
- 30 Q. Will you come back to your letter; the paragraph I referred you to is concerned with placement of shares, is it not? A. Yes.
- Q. And it is only in relation to placement of shares that I am asking you questions. Is that clear? A. Yes.
- Q. Now, I put to you that the only time there was ever any question of an allotment being made by Mitsui was the occasion, being made to Mitsui was the occasion when Mr. Koch approached Mitsui? A. Regarding the allotment of shares, yes, that's correct.
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And I suggest to you that in the context of this letter the statement that the Board "has deliberately abstained from pursuing the course of allotting shares to foreign entities" is completely false? A. I cannot agree it is false because they had not pursued it.

Q. What did you understand the word "deliberately" to mean? A. That they had not sought it or deliberately sought it.

Q. And you, the author of the letter and the chairman of the Board, had as recently as last November authorised Mr. Koch to seek to bring about an allotment of shares to a foreign entity? A. Yes. 10

Q. And you still say you do not think that statement in that paragraph of the letter is completely false? A. I don't say it is completely false. One is an exploration area in that Mr. Koch went out to see how far they were interested. All of these things had to be resolved by the Board and I felt certain and I feel certain now that the Board of Miller & Company would deliberately try to keep the company in Australian hands rather than go out and seek foreign capital into the company. I believe that would be the judgment of our Board and I don't consider this to be inaccurate. 20

Q. So, is what you are saying to his Honour this, that you believe that at the time you authorised Mr. Koch to seek to make a placement of shares to Mitsui the Board would have rejected the suggestion? A. I can't speak on behalf of the Board. I feel that they would have to weigh it up very seriously and I feel keeping the company in Australian hands would be foremost in their thoughts. 30

Q. And I refer you to the last paragraph of the letter. You see the sentence "In conclusion, might we state that the decision taken by the Board of this company to make the allotment was made only after the fullest possible debate with all members being given full rights to state their views." A. Yes. 40

- Q. I suggest to you that that was a false statement?  
A. I had ruled Sir Peter Abeles out as I had explained to you yesterday but I did not prevent him from airing his views and, therefore, I consider that is not a false statement.
- 10 Q. Mr. Taylor, you not only did not give Sir Peter Abeles full rights to state his view; you told him he had no right to state any view, did you not? A. I don't remember those precise words. I told him he was not entitled to debate and also when in fact he did make some comments he was not entitled to vote.
- 20 Q. So there can be no mistake about this, is what you tell his Honour this, that in a context where on your evidence you ruled that Sir Peter Abeles could not participate in the discussion and where, to a large extent, you believe he complied with that ruling, you think it is an accurate statement to say "All members were given full rights to state their views"? A. I prefer your choice of words "It is rather inaccurate" rather than "false".
- Q. The next sentence "The motion was spoken to by all directors". A. That is correct.
- 30 Q. What did Mr. Anderson say? A. Mr. Anderson when asked by Mr. Cameron to give his views stated that, to the best of my knowledge, that the company was in need of the money and was suffering from some liquidity problems, some grave liquidity problems, and he was in favour of it as he considered it in the best interests of all of the shareholders of the company. Now that is the best of my recollection what Mr. Anderson said on 6th July.
- Q. When did Sir Peter Abeles speak to the motion?  
A. Mr. Abeles, Sir Peter - I don't recall Sir Peter Abeles speaking to the motion.
- Q. Of course, this was a letter the day after the meeting, was it not? A. Yes.
- 40 Q. And it was written in a context where the shares in Millers had been suspended by the Stock Exchange. That is so, isn't it? A. They had been suspended, yes.

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Q. And it was written to give information to the Stock Exchange? A. Yes.

Q. And it was written in a situation where you and the directors who voted with you had deliberately breached the rules of the Stock Exchange? A. We were aware that the rules of the Stock Exchange were going to be broken. We had been advised legally . . .

Q. Can you answer my question Yes or No? A. It is very difficult for me to answer it Yes or No.

10

Q. It was written in a situation where you and the directors who voted with you had knowingly breached the rules of the Stock Exchange? A. That's correct.

Q. And in that context would you not agree with me that the need for scrupulous honesty in anything you said to the Stock Exchange was apparent? A. No, I won't agree with this - your choice of words there. This did not enter my mind. I was aware of the fact that we had broken the rules and we had broken the rules for a very valid reason and other companies had broken the rules before and we had been advised legally that they had not been de-listed.

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Q. What other companies? A. I can't recall what other companies but Mr. Aston advised there were many cases where companies had not been de-listed when they, or suspended, when they had broken Stock Exchange Regulations.

30

Q. Mr. Taylor, you do not suggest, do you, that there has been in recent years any company which has allotted shares representing fifty per cent of its issued capital before allotment in breach of Stock Exchange rules where the Stock Exchange Committee has not taken action? A. I don't know the circumstances of the cases. I was being guided by a legal opinion.

Q. Were any cases cited? A. Not a number. A number in excess of twelve and under seventeen. I can recall that specific number of cases being mentioned.

40

Q. What do you say as to your understanding of your obligation to be accurate in the context of writing a letter such as this to the Sydney

Stock Exchange? (Objected to by Mr. Glass).

His Honour:

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Archibald  
Norman Taylor

Cross Examina-  
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(continued)

Q. I am just not clear, Mr. Taylor. What was the authorship of that letter. Could you tell me what you recollect as to who prepared a draft and how the letter came into existence? A. I did, your Honour, refer to the management team in conjunction with myself.

10 Q. That means that Mr. Aston had no hand in it, does it? A. Mr. Aston would not have had a hand in the compilation of the letter. Mr. Aston had given me that previous advice, had volunteered that advice on the 5th, and if your Honour will recall, it was on that occasion when I got confused with the word "precedent" that I was attempting to correct.

20 Q. You do not know how the letter came to be written? You did not instruct somebody to write it? I am just interested . . . A. I don't remember whether I instructed anybody to write it or not. I must explain to your Honour that the management team, the top half dozen members of the management team of R.W. Miller & Company and myself work very closely and we work in great unison.

30 Q. This was not a lawyer's document which was put in front of you to sign? A. No, it was not. It would have been from the general manager of the company I should imagine; Mr. Koch, would have been the prime mover of this supported by Mr. Murphy . . .

Q. I don't think I can ask who would have been.  
A. Thank you.

(Re-examination of Mr. Taylor deferred to a later stage)

(Schedules of Millers share prices tendered: objected to by Mr. Deane on the ground of relevance: admitted and marked Ex. MH25)

Exhibit MH25

(Further examination of Mr. Nicholl deferred)



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WILLIAM ANDREW CONWAY  
sworn, examined as under:

Mr. Deane: If your Honour pleases, Mr. Rofe will be cross-examining Mr. Conway soon. Might he handle objections too?

His Honour: Yes.

Mr. Glass:

- Q. Your full name, Mr. Conway? A. William Andrew Conway.
- Q. And your address? A. 95 Wentworth Street, Randwick. 10
- Q. Are you presently employed by R.W. Miller & Company? A. Yes.
- Q. In what capacity? A. As legal officer.
- Q. Since what date? A. 1st January, 1972.
- Q. What was your legal experience in general terms prior to that date? A. I was admitted as a solicitor of the Supreme Court in November 1936. I practised as a managing law clerk for a number of years and I ultimately became a partner in the firm of W.P. McElhone & Co. and I was in that position at the time when I retired from the firm and took up duties as legal officer with R.W. Miller & Company Pty. Limited. 20
- Q. During what period of time were you a partner in W.P. McElhone & Co.? A. I became a salaried partner in 1951 or 1952 and after some years, I can't exactly remember when, I then became a full partner entitled to a share of profits. It would have been somewhere in the 1950s. 30
- Q. I take you to 16th June, 1972. Did you attend a meeting on that date? A. I did.
- Q. Where was the meeting? A. If the meeting to which you refer was with Howard Smith, it was in Millers boardroom.
- Q. Yes, and who else was present representing Millers besides yourself? A. Mr. A.N. Taylor, Mr. L.D. Koch, I think Mr. Ellis-Jones and myself.

Q. And representing Howard Smith? A. Mr. W. Howard Smith, Mr. Noel Griffin and Capt. John Evans.

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Q. What is the first important statement of that meeting that you recall? A. Mr. Howard Smith addressed his remark to Mr. Taylor and said, so far as I recall, "Archie, would you be prepared to sell us your ships?"

10 Q. What did Mr. Taylor say? A. Mr. Taylor said "What ships are you referring to?". Mr. Howard Smith said "The tankers". I can't remember the reply Mr. Taylor made but it was a refusal.

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20 Q. You do not recall what reason, if any, he gave? A. No, I don't recall the reason that Mr. Taylor gave but I do recollect that at that stage I spoke and said that "According to our articles of association we have to have the consent of a general meeting for the sale of our main undertaking. I regard the tankers as one of our main undertakings and in my view the sale of the tankers would require the consent of a general meeting."

Examination by  
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(continued)

30 Q. Yes. Now, what was the next important statement by anyone that you remember? A. Well, when the request was refused, there was a pause and nobody said anything for a while and I recall it and I again spoke and said "Well, so far as we are concerned, we would prefer you to offer for the shares of the company."

Q. What was said to that?

Mr. Glass:

Q. The question I asked you was, what was the response to your suggestion? A. Mr. Howard Smith as I recall it, spoke and said, "You mean offer for the whole shooting box?" and I said, "Yes."

40 Q. Anything further said thereupon? A. Yes. I think Mr. Howard Smith was the next one to speak again, and he said, "Ampol and Bulk Ships also hold over 50 per cent of your shares. How could we come in under those circumstances?" I answered him and said, "Well, I don't know that Ampol and Bulk Ships are together. In the Romanda transaction as I understand the contract, Ampol agreed to pay

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£2.25 for each of the Romanda shares, but there was a special condition in the agreement that if Ampol succeeded in also purchasing the shares held by Miller's Superannuation Fund, the price to be paid was £2.27, not only for the Super. Fund shares, but also for the Romanda shares. Now why would Ampol offer another two cents a share overall if at that stage they were or they had a deal with Bulk Ships? They surely would not have gone any higher than £2.25." Those would not be my exact words, but that is my recollection of the substance of what I said.

10

Q. Did anyone present comment upon the view that you had expressed? A. No, I don't think they did. I can't recollect anybody commenting on that.

Q. Then was anything further said at that meeting? A. There was some further conversation, which I can't recollect, except that Howard Smith did say they wondered how the Government (and I took this to mean the Commonwealth Government) would view the situation, and I certainly said, and perhaps one other of the Miller group of people said, that we could not see that the Commonwealth would be other than pleased with the situation, because they would still have an independent oil carrier on the coast to use as a yardstick. I can remember that when I made that remark Captain Evans agreed with that; but apart from that I don't remember who else said anything.

20

30

Q. Did anything firm crystallise on that occasion (objected to by Mr. Rofe).

Q. Was anything further said? A. I think there were further remarks passed, but I certainly cannot remember what they were, and finally, after some little time, the Howard Smith people went away and said, "We will have to think about this." They used some words about there was nothing, no firm commitment, was made.

40

Q. Were you at the meeting on the 19th June? A. Yes.

Q. Where was it held? A. It was held again in Miller's Board Room.

- Q. Who was there on Miller's side? A. Mr. Koch  
Mr. Ellis-Jones, I think Mr. D.P. Walker, the  
Manager of the Hotels Division, was there,  
Mr. F.M. Murphy and myself.
- Q. And on behalf of Howard Smith? A. Mr. T. Maxwell,  
who was introduced as their Secretary, Mr.  
Charles Mifflin, who I think was their principal  
accountant.
- 10 Q. Now you tell us the substance of the discussions  
on that day? A. The most I can say about the  
conversation was that it in the main consisted  
of a series of questions by the Howard Smith  
people as to Miller's financial position.
- Q. And were they answered? A. Yes. They were  
answered. I would like to add that I did not  
answer them, because I was not capable of  
answering them.
- Q. Who was doing most of the answering? A. Well,  
they would have been answered by probably every-  
20 body except myself, because the other members  
who were there were members of Miller's Finance  
Committee and the questions were finance questions,  
but I could not undertake to say who answered  
what question.
- Q. Were you at the meeting on the following day,  
20th June? A. I was.
- Q. Held where? A. In Miller's Board Room again.
- Q. With you on behalf of Millers were? A. There  
were the same parties present at the second  
30 meeting as were present at the first meeting at  
the start. But later on Mr. John Goddard, of  
Cooper Brothers and Company, came into the  
meeting.
- Q. When did he arrive? A. He was asked whether he  
had --
- Mr. Rofe: Do you remember who asked him?
- Mr. Glass:
- Q. Do you remember who asked him whatever was asked?  
A. No. I don't.

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Q. Someone present put the question? A. Someone present asked Mr. Goddard whether he had as yet available a draft of the report that Cooper's Board were preparing from R.W. Miller Holdings Limited; and Mr. Goddard as I recollect said that they had not completed the report, but he did have it in draft form.

Q. Yes. A. Howard Smith asked whether they might have access to the report and Mr. Goddard sought permission from Millers before releasing it. He was given permission to release the draft (objected to by Mr. Rofe).

10

His Honour.

Q. Mr. Conway, you are familiar with the rules?  
 A. Yes.

Q. As far as possible were you able to identify who said it and what was said? A. I think the question your Honour asked was asked of Mr. Koch. That is my recollection, and the question was asked by Mr. Goddard, asked to Mr. Koch. I don't think he called him by name, but said: "May I release or disclose this report?" and Mr. Koch said, "yes".

20

Mr. Glass Q. I don't think you are being required to put this in the direct setting, the substance as far as possible, but will you identify the person you know? A. I will, yes, Mr. Glass.

Q. Do you recollect anything in particular about what was said regarding the report or any other matters on the 20th June? A. No. My recollection is not sufficiently good. I do remember that Mr. Goddard dealt with the question of the Coal values. But what he said I can't remember. Certainly I do remember that he did specifically talk about coal, but that is all I can say.

30

Q. Mr. Conway, there is in evidence a letter from Howard Smith of the 22nd June making an offer of \$2.50 for the shares of Miller. I take it you saw that when it came in? A. Yes. I saw that letter when it came in on the 22nd.

40

Q. Were you present at the Board Meeting on the following day, Friday the 23rd? A. Yes, I was.

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10 Q. Can you remember anything in particular about the discussion at that Board Meeting on Friday, 23rd? A. I think this was the Board Meeting at which we were discussing the question of acceptance or rejection of the Ampol offer. I was at the Board Meeting on that day as the  
10 alternate director for Mr. Anderson. I suppose I was also there at the legal officer, and the Howard Smith letter would have been, no, I must say that, I was going to say, I don't remember whether the Howard Smith letter was dealt with at that meeting or not.

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20 Q. Then I take you to the following Tuesday, which was the 27th June. Now we know that there was a joint announcement on that date. Did anything happen in Miller's office before the joint announcement was made? A. Yes. On the morning of 27th June I was told something by Mr. Koch. Can I say what I was told?

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30 Q. Perhaps, don't tell us what he told you; what was it that you did thereafter? A. I there-upon rang Mr. Maxwell, of Howard Smith, and said, "Tom there is something urgent that has come up. I wonder if you could come down to the office and see us?" He said, yes he would. Later that morning he came down to my office where he saw Mr. Koch, Mr. Ellis-Jones, Mr. Murphy and I think Mr. Walker.

(sic) 40 Q. What did you say. What was said when those people got together? A. I said, "Tom, Mr. Koch has heard from Peter Duncan in Tokyo this morning that he had a social engagement with Max Leonard recently, and he got the impression that either Ampol and Bulk Ships had got together or would get together in regard to Miller's." I am still quoting what I said. He emphasised, Duncan emphasised that it was only an impression and was not a firm statement. "Now what are Howard Smith going to do if this proves to be true? Is your offer going to stay in or are you going to pull out?" Mr. Maxwell said, "Well, I don't know. I don't necessarily think that we would pull out. We might stay in as a minority shareholder, but you understand I can't bind the

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Board, and I can't say anything further than that."

- Q. Well then at what hour of the 27th did you learn about the joint announcement? A. I am not certain whether I learned about it on the 27th or whether actually I first saw it in the press on the 28th, because as I recall it the announcement was made after the afternoon papers had come out.
- Q. Well, whether it was the 27th or 28th, when was the news discussed by you and any other members of the management team of Miller's when it became officially known? A. Yes, it was. 10
- Q. Tell us the substance of what was said (objected to my Mr. Rofe) A. Yes.
- Q. Who discussed it? A. Well, I think I discussed it with just about all of the Miller management team: and the substance of the conversation that I had with one or more of the Miller people was, well, Ampol and Bulk Ships were together after all, and this has just about finished the Howard Smith offer. 20
- Q. Between the 28th June and the 3rd July did you have any conversations with Mr. Maxwell?  
A. Yes.
- Q. Are you able to recollect when they were?  
A. No.
- Q. What was the subject of them? A. A continuing subject: What was the effect of the joint announcement going to be on the Howard Smith offer? Were they going to go on with it or were they going to pull out? 30
- Q. And what was the substance of the answers he gave to that renewed question? A. Only that the matter was still under consideration and he could not commit the Board.
- Q. During that period was there any mention of allotments of shares to Howard Smith? A. No. There was not.
- Q. When did you first learn of the meeting that was held on the 4th July? A. This was the meeting that Mr. Koch and Mr. Taylor had with Howard Smith? 40

- Q. Yes. A. I learned that the meeting was to take place that morning.
- Q. Yes, I see. You did not go? A. No.
- Q. But did you have any discussion with Mr. Koch before he went to it? A. That morning?
- Q. Well, either that morning or the day before, or at any time before the 4th July, did you have any discussion with Mr. Koch about possible propositions? A. Yes, I did. I can't remember when it was, but it was not that morning, but it was before that morning. I went into Mr. Koch's room and discussed, I raised with him the possibility of endeavouring to buy some of the Howard Smith ships. I only knew of two ships that they had. One was the Nancy Heath and the other was the Howard Smith. I asked Mr. Koch whether he had any idea of the value of the ships and he did not have any idea. He said he did not have any idea of the value of the ships, and I said, "Well, one way of keeping Howard Smith in the race would be if we could buy their ships for an issue of shares."; and at that stage we were thinking in terms -- I am sorry.
- Q. Was any price discussed for the issue? A. Yes, well \$2.50 per share. That was the price that Mr. Koch and I talked about.
- Q. And does that represent the substance of the discussion you and he had about it? A. That was the substance of the discussion that we had, yes.
- Q. When did you learn that there was going to be a Board Meeting on the 6th July? A. According to my recollection I was told on the 3rd by the Secretary, Mr. Ellis-Jones.
- Q. The following day, the 4th July, you have told us that you did not go with Mr. Koch and Mr. Taylor? A. No.
- Q. When did you see them on their return approximately? A. I think it was in the morning, but it could have been early in the afternoon.
- Q. Yes; and what did they report or inform you about the meeting they had had? A. Well, either Mr. Koch or Mr. Taylor, or perhaps both, one said: "Well the first thing happened when we

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went around was that Bill Howard Smith asked us whether we had changed our mind about selling the ships." I am pretty certain it was Mr. Taylor who told me that, and he said: "I said, no, we had not." Then he said that Mr. Howard Smith had said: "Well, we have a proposition, and I will ask Mr. Maxwell to read it out to you"; and Mr. Maxwell then read out a proposition which, as Mr. Taylor gave it to me, was that Howard Smith should apply for three million shares in Miller Holdings at \$2 per share payable by a down payment of 10 cents a share, and the balance to be payable when Howard Smith got acceptances for three million, and I think it was one-hundred thousand shares in response to their proposed offer. Mr. Taylor told me that he replied that he certainly could not get this through the Board, and that - I can't remember what he said, I got the impression myself - it is no good giving you my impression. No. That is all I can remember.

10

20

Q. What did you comment, if anything, when this was reported to you? A. I said to them, "Mr. Taylor and Mr. Koch, this just isn't on."

Q. Did you say why? A. I said, "You could not possibly expect to issue shares at \$2 a share. Ampol has offered \$2.27 a share. \$2 is not a realistic price." Further, I said: "it also happens to be a breach of Stock Exchange regulations."

30

His Honour:

Q. I just did not catch that. You said \$2 and something was the price? A. I said; "\$2 is not a realistic price, particularly when Ampol have offered \$2.27 a share."

Mr. Glass: On that same day, 4th July, did you have any discussion with Mr. Walker?  
A. Yes, I did.

Q. What was his actual position in Miller's?  
A. He is the General Manager of the Hotels Division of the Miller group of companies.

40

Q. What was the substance of your discussion with him on the 4th July (objected to by Mr. Rofe; pressed; allowed).

Mr. Glass:

Q. What was the substance of the exchange between you and Mr. Walker? A. Mr. Walker came to see me that night, and - -

His Honour:

Q. This is the 4th July? A. Yes, 4th July.

Mr. Glass:

10 Q. Yes. What was the substance of the exchange between you? A. I gave him some facts and figures as to Millers' financial position and pointed out to him that from a short term liability point of view the company was urgently in need of cash and so far as I can recall I said "Well surely, in a situation like this, there is some justification for issuing shares.

20 Q. All right. We won't take it any further. Did you then have any firm view yourself on the legal questions involved? A. No, I was hesitating at that stage. I had originally expressed my views quite forcibly on the three million shares at \$2. I still was not happy about that. But after I had spoken to Mr. Walker, I then started to have - (objected to by Mr. Rofe).

Q. ~~Did you have any definite views yourself at that stage? - After the conversation with Mr. Walker I was still hesitant.~~

(Objected to by Mr. Rofe; question rejected and answer struck out as indicated)

30 Q. Now on the following day did you have a conference with any members of the Miller organisation? A. Yes, I did.

Q. About what time was it? A. I think that the conference started round about half past ten, and it was in Mr. Koch's room.

40 Q. Who was there? Who was present on that occasion? A. At various times various people, but throughout the conference, as I recollect it, Mr. Koch, Mr. John Aston, Mr. Murphy, Mr. Walker, Mr. Ellis-Jones, and Mr. Taylor was also there on at least one, and I believe on several occasions. He came in and out..

Q. Now, was anything said about an allotment of shares to Howard Smith? A. Yes. This question of the allotment of shares - the allotment of three million shares at \$2 - (Objected to by Mr. Rofe).

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- Q. Give us the substance of the conversation. Just the substance, not the direct speech, but so far as you are able to recall it will you identify the person who is expressing the substance? A. Well, I can remember that Mr. Aston said that so far as any allotment of share was concerned that it should be related, if it were to be justified, to the amount which would be necessary to safeguard the company's financial position as it stood at that time. 10
- Q. Yes? A. I agreed with that position. I don't think anybody else expressed a view about it.
- Q. Was anything said about the price - A. Yes.
- Q. - about the price at which the allotment might be made? A. Yes.
- Q. Who said it? A. Here I cannot identify who said it. All I can say is that nobody at that conference agreed that the price should be £2 per share. I remember Mr. Aston saying he thought it ought to be £2.50. I agreed that I thought that would be a proper price, and to the best of my recollection there was no controverting that. I said, though, after that that in view - I don't know whether I did say that - I said after that that I would personally feel that £2.30 could be an acceptable price. At this stage somebody or someone of the particular persons who were there worked out what the company's short term liabilities were. 20
- Q. And what was that calculation? A. It was in the vicinity of - (Objected to by Mr. Rofe: rejected)
- Q. Will you tell us, Mr. Conway, in what manner this working out was done, and who did it, so far as you are able? A. I know that Mr. Koch was figuring on a piece of paper. I think that others were figuring as well.
- Q. Yes? A. I did not work it out myself. 40
- Q. After various impressions had been made on paper was something said by someone? A. Yes.
- Q. Who spoke, so far as you can recollect, and what did he say? A. I think it was Mr. Koch who said, "Well, at £2.30 a share we would need to issue 4,152,000 shares."

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

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B E T W E E N :

HOWARD SMITH LIMITED

Appellant  
(13th Defendant)

- and -

AMPOL PETROLEUM LIMITED

Respondent  
Plaintiff

R.W. MILLER (HOLDINGS) LIMITED	(1st)	Defendant
ARCHIBALD N. TAYLOR	(2nd)	Defendant
SIR EMIL HERBERT PETER ABELES	(3rd)	Defendant
ELIZABETH MILLER	(4th)	Defendant
ROBERT I. NICHOLL	(5th)	Defendant
EVAN DUFF CAMERON	(6th)	Defendant
KENNETH B. ANDERSON	(7th)	Defendant
WILLIAM A. CONWAY	(8th)	Defendant
PETER J. DUNCAN	(9th)	Defendant
ALAN V. BALHORN	(10th)	Defendant
F.M. MURPHY (a male)	(11th)	Defendant
C.J. WATT (a male)	(12th)	Defendant
SECURITY SHARE SERVICES PTY. LIMITED	(14th)	Defendant

RESPONDENTS

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RECORD OF PROCEEDINGS

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VOLUME II

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