

judgment no 3, 1974

IN THE PRIVY COUNCIL

No. 9 of 1973

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

BETWEEN :

HOWARD SMITH LIMITED

Appellant
(13th Defendant)

- and -

AMPOL PETROLEUM LIMITED

Respondent
Plaintiff

R.W. MILLER (HOLDINGS) LIMITED

(1st) Defendant

ARCHIBALD N. TAYLOR

(2nd) Defendant

SIR EMIL HERBERT PETER 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 SHARES SERVICES PTY.
LIMITED

(14th) Defendant

RESPONDENTS

UNIVERSITY OF LONDON
ADVANCED
LEGAL
- 4 JAN 1975
25 RUSSELL SQUARE
LONDON, W.C.1.

RECORD OF PROCEEDINGS

VOLUME IV

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

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

- Q. Would you like to look at the letter? A. I would like to look at the letter. (Ex. T* handed to witness) I think there primary reason for this proposal was that it would enable Howard Smith to proceed with their proposed takeover offer to shareholders at \$2.50 per share.
- 10 Q. Now, what I wish to put to you - take your time with this - you would agree with me, would you not, that this is not a letter from Howard Smith saying "We want an allotment for these reasons."? It is a letter from Howard Smith to Millers saying "Make us an allotment for these reasons which should be attractive to you"? A. Yes.
- Q. You follow the difference, don't you?
A. Yes.
- 20 Q. And you would agree that it is a letter saying "These are the reasons which should lead you (Millers) to make the allotment to us"?
A. Yes.
- Q. "And the primary reason is that it will enable, or it will have the result that your shareholders will have the opportunity of accepting the Howard Smith offer". (Objected to by Messrs. Hughes and Glass; rejected.)
- Q. Mr. Anderson, you heard this letter read at the meeting of 6th July? A. Yes.
- 30 Q. And it was a letter that you listened to with great care? A. I did, yes.
- Q. And, looking at it again, no doubt it has refreshed your recollection as to what you heard at the meeting of 6th July? A. Yes.
- Q. Now, would you agree with me that when you heard this letter read your understanding of it was this: "Howard Smith are proposing to us that we allot shares to them". That was your understanding of it, when you heard the letter read? A. Yes.

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Cross-examina-
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Deane Q.C.

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(continued)

*Exhibit T

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- Q. "And they are proposing to us that the main reason which should lead us to allot shares to them is to keep open the Howard Smith offer for the benefit of our shareholders". (Objected to by Mr. Glass; allowed.) That is right, isn't it? Would you just repeat the question as it was last put?
- Q. As you heard the letter read, your reaction to it was "And they are proposing that we allot shares to them for the reason that if we do allot shares to them it will keep the Howard Smith offer open for the benefit of our shareholders"? A. Howard Smith made the proviso that they would not proceed with their take-over offer if this allotment were not made. That would in effect have the effect of keeping open the Howard Smith offer. 10
- Q. But you see, what I am asking you is - you have told his Honour that you heard the letter read? A. Yes. 20
- Q. And that you listened to it with care. That is right, isn't it? A. Yes, that is right.
- Q. And you have now refreshed your memory by reading the letter? A. Yes.
- Q. Now, what I am suggesting to you is that when you heard the letter read you thought in your mind first "Howard Smith are asking us to allot 4½ m. shares at \$2.30 a share"? A. Yes.
- Q. You thought that, did you not? A. Yes.
- Q. And you also thought "And the reason that they are putting forward as to why we, Millers, should allot these shares is that it will give the shareholders of Millers a chance to accept the Howard Smith Offer"? A. Yes. All the shareholders. 30
- Q. "It will give all the shareholders in Millers a chance to accept the Howard Smith offer of \$2.50"? A. Yes.
- Q. And of course, when you heard that read, you thought that was a very fair approach, did you? A. Yes, I did. 40

- Q. And you agreed with it? A. I agreed with it, yes. What I could see, of course, was the infusion of \$10 m.-odd capital.
- Q. ~~Yes,--I-expected-you-to-say-that,--Mr.--Anderson.~~ (Objected to by Mr. Glass; by direction struck out as indicated.)
- 10 Q. But you see, Mr. Anderson, if we can go back, I put it to you that Howard Smith were proposing that Millers should act for a particular reason, and you agreed, I think?
A. I did agree.
- Q. And I put to you that that reason was that the allotment of shares would keep open the Howard Smith offer for the shareholders of Millers? A. Yes.
- Q. And I put to you - I think in quite specific terms - that that reason - have you any difficulty in understanding what I mean by "that reason"? A. No.
- 20 Q. That that reason appealed to you as an attractive one? A. I did not give that much consideration to the attractiveness of that reason.
- Q. You see, is your understanding now that if the Board of Millers had allotted shares for the purpose of cutting down the proportionate shareholding of Ampol and Bulkships so that the Howard Smith offer could be kept open, that that would be a bad purpose? (Objected to by Messrs. Glass and Hughes.)
- 30 Q. That that would be an impermissible purpose?
A. No.
- Q. I beg your pardon? A. No, I do not agree with that.
- Q. If that was the sole purpose? A. I don't know.
- Q. I will rephrase the question, Mr. Anderson, on your understanding of the powers of directors would it be permissible or impermissible for directors to allot shares

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for a purpose other than providing finance for the company? A. The main thing is that directors, in issuing shares, should consider the interests of all shareholders.

- Q. I will ask the question again. On your understanding of the matter would it be permissible for directors to allot shares if the moneys raised by the allotment were not needed by the company? (Objected to by Mr. Hughes; allowed.) 10
- Q. Mr. Anderson, on your understanding of the powers of directors would it be permissible for directors to allot shares in return for allotment moneys in circumstances where the company did not need the moneys raised by the allotment? A. I have not considered that. You are asking me to consider it now? Off the cuff?
- Q. Yes. (Objected to by Mr. Glass.)
- Q. Mr. Anderson, you would agree with me, would you not, that at this meeting there were, as it were, two main heads of discussion as to justification of this allotment? A. Two heads? So far as I am concerned - 20
- Q. No, Mr. Anderson. Would you please only answer my question? You would agree with me that at this meeting - I am not saying what you though, but there were two main matters discussed in terms of justification for the allotment? A. Yes.
- Q. Or two grounds - quite distinct - discussed? A. Yes. 30
- Q. The first ground was the ground suggested by the Howard Smith letter (Objected to.)
- Q. The first was what you understood the Howard Smith letter as suggesting as the ground for the allotment? A. Yes.
- Q. The first was what you tell us was your understanding of the grounds suggested by Howard Smith? A. Yes. That is set out in their letter.

- Q. And there was discussion of that? A. There was discussion of that, yes.
- Q. And there was discussion in which it was said "This is in the interests of all shareholders including Ampol and Bulkships, because Ampol and Bulkships can accept the offer of \$2.50." You remember that being said, don't you? A. I don't know whether it was quite precisely in those terms.
- 10 Q. It may not have been precisely in those terms, but to that effect? A. To that effect, yes.
- Q. And there was a considerable amount of discussion to that effect? A. Yes.
- Q. And the second ground of the allotment which was suggested was "The short-term borrowing of Millers is \$10 m.-plus, and this will raise \$10 m.-plus"? A. Yes.
- 20 Q. Indeed, it would be true to say, would it not, that in terms of Mr. Koch's report all that was put was "There are short-term borrowings of \$10 m.-plus. These are some details of them. This is how they arose, and the allotment will raise \$10 m.-plus"? A. That is right.
- Q. Will you agree with me that when you heard Mr. Koch make his statement your reaction was that "This is inconsistent with the picture that has been presented to us in the May
- 30 report"? A. No.
- Q. Would you agree with me that you thought "But that just does not tie in with the picture that was presented by the Part C statement which every one of these other directors prepared"? A. No.
- Q. Had you seen your company's reports to the Stock Exchange at the times they were made? A. Yes.
- Q. Would you agree with me that you thought "If this is true, we have been concealing something from the Stock Exchange"? A. No.

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- Q. "And from the public"? A. No.
- Q. "And from our shareholders"? A. No.
- Q. None of these things occurred to you? A. No.
- Q. Did it occur to you that insofar as his comments on the Hambros loan were concerned that they just did not add up with what you had been told before? A. At this particular meeting I did not take those previous reports into consideration. I was only concerned with what was taking place at the meeting on 6th July. 10
- Q. So that when you gave evidence this morning that in terms of your financial assessment of the affairs of Millers you relied on management reports, that was not applicable to the meeting of 6th July? A. There was no management report submitted at the meeting of 6th July, I don't think.
- Q. Mr. Anderson, did you ask Mr. Koch a question? A. No, not that I recall.
- Q. Did you ask anybody a question? A. I don't recall asking anybody any questions at all. 20
- Q. Did you ask for further information? A. No, I don't recall having done so.
- Q. Did you seek elucidation of anything that was said? A. Not to my recollection, no.
- Q. Did it occur to you that a lot of the information that would be relevant to the financial side of the allotment was simply not before the Board? A. I had no ideas on that at all.
- Q. You have told his Honour that as at present you could not estimate the cash flow of Millers for the present financial year - A. That is right. 30
- Q. - to the nearest \$2 m.? A. Yes.
- Q. Now, was that the situation as at 6th July? A. Yes, it would have been.

- Q. Well, didn't it occur to you to say "I can't estimate the cash flow to the nearest \$2 m. Can't we have some information on it?"
A. It did not occur to me to raise that matter of cash flow at the meeting.
- Q. Of course, when one is dealing with the repayment of short-term borrowings, cash flow is a relevant matter? A. Yes.
- Q. It did not occur to you? A. No, it did not.
- 10 Q. Did it occur to you to make any calculations as to the cost, as against the old shareholders, of borrowing this amount of money as against raising it by issuing shares? A. I considered that the issue of $4\frac{1}{2}$ m. shares to Howard Smith - \$1 shares - I considered that the company could continue to pay 8% as they had done in the previous year. On short-term borrowings, the interest rate was high, and -
- 20 Q. How high? A. I understand, or I believe at the time that it was about 9% average. It varied from time to time. And, although I did consider the aspect of the interest paid on these loans would be tax deductible so far as the company was concerned, it would be a saving of money to gain this additional capital and pay a dividend, not on \$10,3 m., but on \$4 $\frac{1}{2}$ m.
- 30 Q. You were in Court during a large part of my cross-examination of some previous witnesses?
A. No, not a large part. Only occasionally. And I was told by my legal advisers that I should leave the Court.
- Q. You were in Court while I was asking Mr. Cameron some questions were you not? A. No.
- Q. Were you in Court when I was asking any witness about the comparison between the cost of interest and the cost of dividends?
A. No.
- Q. Not at all? A. Not at all.
- 40 Q. Did you communicate these thoughts you had at the meeting to any other directors? A. No.

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- Q. You see, a meaningful calculation in terms of comparative costs vis a vis the remaining shareholders would have to take into account anticipated profits? A. Yes.
- Q. Because the holders of these shares would receive one-third of all the dividends which the company might pay? A. Approximately, yes.
- Q. And they would also indirectly be entitled to share as to one-third in all the undistributed profits of the company? A. Yes. 10
- Q. Did you take that into account in your calculations? A. Yes.
- Q. I suggest to you that there is no way in which a calculation in terms of the existing shareholders comparing the cost of paying interest and the cost of issuing these shares, if it takes into account the relevant factors, including the projected profits, can lead to a result other than the existing shareholders are in effect suffering twice the detriment they would by allotment of shares as compared with payment of interest. Would you disagree with that? A. Yes, I can't agree with that. 20
- Q. What were the projected profits of Millers?
A. At that time I don't know that it was reported. I don't know whether it was reported at that time what the anticipated profits would be for the year ended 30th June 1972. I don't know whether they were reported at that meeting, or whether it was at a subsequent meeting. 30
- Q. I suggest to you as at 6th July 1972 you had had made available to you the projected profits of Millers for the year 1972, for the year 1973 and for the year 1974? A. At the meeting on 6th July?
- Q. Prior to that meeting? A. It was not available to me.
- Q. Did you ever see the Cooper report? A. No.
- Q. You knew it existed, did you? A. I knew that a report had been authorised to be prepared. 40

Q. But you see, Mr. Anderson, would not you agree with me that you could not make any meaningful calculation as to the cost, as against the existing shareholders, of paying interest on borrowed moneys in the vicinity of \$10 m. and of allotting shares to raise \$10 m. unless you had information relating to the projected profits? A. No, I don't agree with that.

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10 Q. Because one-third of these profits, was, for practical purposes, going to go, either directly or indirectly, to whoever received the allotment of shares? A. That is right.

Q. Part by way of dividend, and the rest, indirectly, by way of undistributed profits? A. If there were any undistributed profits. There may not have been.

20 Q. Which means, of course, that before you could make any meaningful calculation you would need to know what the projected profits were? A. No, I don't consider that would be relevant at the time of the Board meeting on 6th July.

(Further hearing adjourned to Tuesday, 10th October, 1972.)

HIS HONOUR: Are there any matters in the transcript gentlemen?

10th October 1972.

MR. DEANE: At p.1016 the third question, the word "problems" should read "promise".

HIS HONOUR: Yes.

30 MR. DEANE: At p.1032 the third last question, in the third line, "board" should read "law".

HIS HONOUR: Yes.

MR DEANE: At 1032 the third question - the last line of the question - the word "since" should appear between the words "bad things" and "then".

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HIS HONOUR: Yes. The end of the answer should read "... .. and the bad things since then to enable you to consider the offer".

MR. DEANE: P.1039 this could be an error of mine, in view of the fact that I often say numbers incorrectly - the "2,500,000" in the fourth question from the bottom should read "250,000", and the same in the following question. The "2.5" should be ".25".

HIS HONOUR: Yes.

10

MR. DEANE: In the next question the word "the" before "figure" should be "a". It should be "as far as a figure ...".

Finally in the last question - and I may have said it, it ought to be "... .. those loans were the subject of formal documentation" instead of "those loans were subject to formal documentation."

KENNETH BARTON ANDERSON
On former oath:

20

HIS HONOUR: Mr. Anderson, you are still on your former oath to tell the truth.

WITNESS: Yes, I understand that, Your Honour.

MR. DEANE: Q. Mr. Anderson, how long has Mr. Duncan been a director of Millers? A. I would say he was appointed in 1969.

Q. Well, was he a director when you joined the board? A. No.

Q. Was he appointed within 12 months of your joining? A. Yes.

30

Exhibit M.H.13

Q. (Exhibit MHL3 handed to witness). Mr. Anderson, would you turn to the May management report, which is one I asked you some questions about on Thursday? A. Yes.

Q. Have you got that? A. Yes.

- Q. Now, you told His Honour on Thursday that you relied on what you read in the management reports for your information as to the financial affairs of Millers? A. Yes, that is right.
- Q. And indeed, these were far and away the main sources of information you had as to the financial affairs of Millers? A. Yes.
- 10 Q. And you accepted what was in them without question? A. Yes.
- Q. Well now, this May management report was available at the meeting of the board on 1st June, 1972. Do you remember that? A. No, I can't say that I do remember that, Mr. Deane. The May report of 1972? It could have been.
- Q. Would you look at the minutes of the meeting of 1st June 1972? A. Yes.
- Q. Have you those minutes? A. I just can't locate them at the moment. Yes, I have those minutes now.
- 20 Q. Will you look at p.3 of those minutes? A. Yes.
- Q. Do you see opposite "General Manager's management report" an entry? A. Yes.
- Q. Which indicates that the General Manager's management report for May was considered by the Board? A. Yes.
- Q. "And the following matters were discussed"? A. Yes.
- 30 Q. You were at that meeting? A. Yes, I was at that meeting.
- Q. And you would agree with me now that the management report was discussed at the director's meeting of 1st June? A. Yes.
- Q. Do you see under that an entry "long term finance"? A. Yes.

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- Q. Where Mr. Koch reported "It was reasonably expected eight hotels"? A. Yes.
- Q. That was a reference to something in the May management report, wasn't it? A. Yes.
- Q. Because he then said "It had been originally anticipated" A. Yes.
- Q. Was not what he was saying there that the amount available, or "it is reasonably expected that long term finance for \$3-million, and not \$2½-million would be available from the Commonwealth Superannuation Fund"? A. Yes, it was anticipated that that would be so. 10
- Q. Well now, you can go back to the May management report. You would agree with me would you not, that this May management report was the last information you had as to the financial affairs of Millers before you went to Queensland? A. Yes, that is right.
- Q. And when did you return from Queensland? A. Either 29th or 30th June. 20
- Q. Well now, you told us of a conversation you had with Mr. Taylor about the joint announcement? A. Yes.
- Q. And of a conversation you had with Mr. Taylor as to a proposal to allot 3-million shares at \$2 per share? A. Yes.
- Q. Apart from those conversations with Mr. Taylor what conversations did you have with any of the directors of Millers or any of the employees of Millers between your return from Queensland and the commencement of the meeting of 6th July? A. I had no other conversations. 30
- Q. So that at the commencement of the meeting of 6th July the latest financial information you had was as in the May management report presented at the meeting of 1st June. A. That would be so.
- Q. As corrected at the meeting of 1st June, to correct the finance which was reasonably expected would be available from the 40

Commonwealth Superannuation Fund from
~~§2½~~-million to §3-million? A. Yes.

Q. And of course, you have agreed with me that
you accepted what was in the May management
report without question? A. That is right.

Q. Of course, looking at the May management
report - and I think you have already agreed
with this, but correct me if I am wrong -
is it not the fact that it states first that
a telex had been received from Hambros
advising that the long term finance was agreed
to? A. Yes.

Q. And of course, the May report makes it clear
that the money to come from the Bank of New
South Wales was bridging finance? A. Yes.

Q. Which was to be repaid from that long term
finance? A. Yes.

Q. And of course, you had been told that the long
term finance from the Commonwealth Superannuation
Fund was reasonably expected? A. Was
reasonably expected, yes, at that time.

Q. At the beginning of the meeting on 6th July,
you had heard nothing to the contrary? A. You
said "prior to the meeting"?

Q. I said "At the commencement of the meeting"?
A. At the commencement of the meeting.

Q. You had heard nothing to the contrary? A. No,
not at the commencement of the meeting.

Q. And of course, the Tricontinental moneys at
least to the extent of §3-million which were
referred to at the meeting of 6th July
were, as it were, in substitution for that
long term finance which was reasonably
expected from the Commonwealth Superannuation
Fund? A. I don't recall that, Mr. Deane.

Q. Well, didn't you agree with me on Thursday,
on the facts as you knew them, that that was
a reasonable assumption? A. Yes, I probably
did.

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- Q. What I want to ask you, Mr. Anderson, is this. As at the time you read the May management report, and forgetting all about what you were told at the meeting of 6th July, what was your belief as to the short term borrowings of Millers? I will withdraw that question, and reframe it. What I want to ask you is this: Forgetting what you were told at the meeting of 6th July, would you give to His Honour particulars of what lenders there were of moneys to Millers on a short term basis, and what was the amount that each of them had lent? (Objected to by Mr. Rogers; allowed.) 10
- MR. DEANE: Q. Mr. Anderson, what I want to do - I want you to put yourself back in the situation in which you were at 1st June, when you got the May management report, and when you got Mr. Koch's correction at the meeting? A. Yes.
- Q. Do you understand that? A. Yes. 20
- Q. I want you to forget anything that Mr. Koch told you subsequently at the meeting of 6th July. I am just interested in your knowledge as at 1st June. Do you understand that? A. Yes.
- Q. Now, what I want you to do is to tell His Honour what was your belief as at 1st June, 1972 as to the identity of companies or people who had lent money on short term to Millers and as to the amount which Millers owed each of them in respect of their short term borrowings? A. To the best of my recollection it would have been Tricontinental. 30
- Q. In how much? A. \$4 $\frac{3}{4}$ -million. - \$4.75-million.
- Q. But \$3-million of the \$4-point-whatever million which as at 6th July was owing to Tricontinental was not even owing as at 1st June. That is so, isn't it? A. I cannot say that I can answer that, Mr. Deane.
- Q. You see, don't you agree with me that \$3-million of that money was in substitution for the long term finance from the Commonwealth Superannuation Fund? A. I cannot say with certainty. I can't say that for certain. 40

- Q. Well, do you seriously suggest to His Honour that as at 1st June, you believed that a sum in excess of \$4-million was owing to Tricontinental by way of short term borrowings?
A. That is as I recall it.
- Q. On what basis did you have that belief?
A. I can't answer that. I don't remember.
- 10 Q. Well now, Mr. Anderson, Would you agree with me that on the assumption that \$3-million of the Tricontinental moneys were not owing to Tricontinental as at 1st June, it is extremely unlikely that as at 1st June, 1972 you would have had the belief that an amount in excess of \$4-million was owing to Tricontinental? A. I can't remember that.
- 20 Q. Well you see, there is nothing anywhere in these management reports up until 1st June that suggests anything like that figure was owing to Tricontinental. Would you accept that?
A. I will accept that, yes.
- Q. Well now, there is nothing anywhere in any of the financial documents which have been placed before the Court which suggests that as at 1st June anything like \$4-million was owing to Tricontinental in respect of short term borrowings. Would you accept that? A. Yes, I will accept that, Mr. Deane.
- 30 Q. And you are the first person to have raised the possibility of such an amount being owing by Millers to Tricontinental on a short term basis. Would you accept that? (Objected to by Mr. Glass; question withdrawn).
- 40 Q. Mr. Anderson, on the basis that there is nothing at all in the management reports that suggests that anything like \$4-million was owing to Tricontinental in respect of short term borrowings as at 1st June, would you agree with me that it is extremely unlikely that as at 1st June you believed that in excess of \$4-million was owing to Tricontinental on short term borrowings? A. Yes, I will agree with that.

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- Q. Well now, apart from Tricontinental, and ignoring what was said at the 6th July meeting, as at 1st June, what was your view or belief as to the identify of any other persons or company to whom Millers owed money on a short term basis. A. The Bank of New South Wales. There were others, but I can't recall them.
- Q. The Bank of New South Wales you have agreed with me was in respect of bridging finance? A. Yes, that is right. 10
- Q. And that was to be discharged from the proceeds of the Hambros loan? A. That was to be discharged by 30th June, 1973, but I can't say for certain where it was to come from.
- Q. Well, would you look again at the May report? A. Yes.
- Q. Would you read it, and, in particular, the second and third paragraphs from the bottom? A. Yes. 20
- Q. Would you agree with me that it is quite clear that, as set out in the May report, the moneys to be borrowed from the Bank of New South Wales were to be repaid from the proceeds of the Hambros loan? A. The Hambros loan when it became available in connection with the "Robert Miller".
- Q. Yes. A. Yes.
- Q. And as at May you had been told that had been agreed to? A. Yes. Not to the full amount we requested. \$4.2-million. 30
- Q. I suggest, Mr. Anderson that the amount of the Hambros loan was \$A7.4-million? A. That was the consortium of banks.
- Q. When I refer to the Hambros loan can you understand it is referring to the loan by the Consortium? A. In this context, yes.
- Q. You see, up at the top of the report, you see that the amount is set out as \$7.4-million? A. Yes. 40

- Q. Now, apart from Tricontinental and the Bank of New South Wales, and again ignoring what you were told on 6th July, what was your belief as at 1st June as to the identity of any other person or company to whom Millers owed money on a short term basis? A. No, I can't recall who they would have been.
- 10 Q. You did not know of the existence of any, did you? A. I must have known that there were some, but who they were - I don't know the particular identity.
- 20 Q. You say you must have known there were some. As at 1st June what did you know as to other short term borrowings? A. Well, it was to make up the difference between Tricontinental and the Bank of New South Wales and the \$7.4-million. No, that is not correct. I did know from various reports during the year that there were short term borrowings and bills were being rolled over from time to time, but it was never certain that any of them would be renewed.
- Q. Mr. Anderson, what bills are you talking about?
A. Short term finance.
- Q. The Tricontinental loan before the \$3-million?
A. Yes.
- Q. Well, that was roughly \$1-million, wasn't it? A. I don't know.
- 30 Q. Well then, take your time. What other information did you have as at 1st June as to the existence of any long term borrowings by Millers from other than the Bank of New South Wales and Tricontinental? I am sorry, what information did you have as at 1st June as to the existence of any short term borrowings by Millers from sources other than the Bank of New South Wales and Tricontinental? A. I had no precise information.
- 40 Q. No precise information? You had no information at all, did you? A. No, not --- (answer interrupted).

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- Q. And you had no belief that Millers owed money - again as at 1st June, as distinct from 6th July - you had no belief that Millers owed money on a short term basis to any lender other than Tricontinental and the Bank of New South Wales? A. I did believe that they owed money.
- Q. How much? A. I could not say how much.
- Q. You can't suggest how much? A. I would say £2-million approximately. 10
- Q. As at 1st June, your belief was that it was reasonably expected that £3-million of long term finance would be coming from the Commonwealth Superannuation Fund? A. At that time, yes.
- Q. Which means that £3-million of the £4-million odd which was owing to Tricontinental as at 6th July was not in your contemplation as at 1st June? A. That is right.
- Q. As at 1st June you believed that the moneys owing or the moneys which would be owing to the Bank of New South Wales as bridging finance would be repaid from the Hambros loan on the "Robert Miller"? A. Yes. 20
- Q. Which, as at 1st June, you believed had been agreed? A. I understood so - that it had been agreed.
- Q. You had been told so? A. Yes, that is right.
- Q. And you have said that you had a belief that £2-million was owing to unspecified entities as short term borrowing? A. Yes. 30
- Q. Which means, doesn't it, Mr. Anderson, that insofar as short term borrowing were concerned, and ignoring borrowings the repayment of which had been covered, as at 1st June your belief was that the only short term borrowings of Millers were an amount of £1-million odd owing to Tricontinental and an amount of £2-million owing to entities which you cannot specify? A. I have no recollection of the amount of £1-million owing to Tricontinental. 40

- Q. You don't recall what you believed was owing to Tricontinental? A. No.
- Q. So that as at 1st June your belief was that there was an unspecified amount owing to Tricontinental and approximately \$2-million owing to entities which you cannot specify? A. Yes. I also understand that the bank of New South Wales overdraft - I regard that as short term.
- 10 Q. How much was that overdraft as at 1st June? A. I don't know. It varies from time to time very considerably.
- Q. So that you have no idea? A. No, I have no idea.
- Q. When you were asked at p.1007 in chief what happened at the meeting of 6th July - what you were asked there was this. Before I come to that, there is another question, Mr. Anderson. Nothing occurred between 1st June and the time
20 when Mr. Koch commenced to talk about finance at the meeting of 6th July which caused you to alter your belief? A. No.
- Q. Now, you see, you were asked: "Q. What was your state of mind with regard to Mr. Koch's recommendation? A. Well, I thoroughly concurred with his recommendation because I had previously formed my own conclusion and he confirmed my conclusions." You were then asked "Q. What was the conclusion on your
30 part which he confirmed? A. That we badly needed over \$10-million to meet these loans falling due." Do you see that? A. Yes.
- Q. Do you wish to withdraw that evidence? A. No.
- Q. You see, what you are saying there is that before Mr. Koch gave the details of the short term borrowings (Objected to by Mr. Glass; question withdrawn).
- 40 Q. Mr. Anderson, you see, you say "We badly needed over \$10-million to meet these loans falling due." A. Yes.

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- Q. And that was the conclusion which you had reached? A. Yes.
- Q. And which Mr. Koch confirmed? A. Yes.
- Q. By giving details of them? A. Yes.
- Q. Which means, doesn't it, that what you were saying there was that you had reached that conclusion before Mr. Koch started to speak? A. Yes, that is so.
- Q. Now, you have told his Honour that your only knowledge before Mr. Koch commenced to speak in relation to short term borrowings was in respect of an unspecified sum owing to Tricontinental and a suggested \$2-million owing to unspecified persons and the bank overdraft in an amount of which you are ignorant? A. Yes 10
- Q. Now, on what conceivable basis could you have formed the conclusion prior to Mr. Koch speaking that you badly needed over \$10-million to meet the loans which Mr. Koch had listed? A. I formed these conclusions from my recollection of the financial reports which had been made in the management reports since June, 1971. 20
- Q. But you see, Mr. Anderson, you said "these loans falling due". Do you see that? A. Yes.
- Q. And "these loans" meant the loans that Mr. Koch had listed and to which you had referred above? A. Yes.
- Q. Which you knew nothing about? A. At that - (answer interrupted). 30
- Q. Until he listed them you knew nothing about them? A. Yes, I must have had some knowledge of these short term borrowings.
- Q. But you did not know about the extra \$3-million from Tricontinental? A. No.
- Q. You did not know that the superannuation fund money had not come through on a long term basis? A. Yes, I knew that.

- Q. How did you know that? A. I can't answer that -- how I knew. But I feel quite sure that I did know that the superannuation fund loan had not come through.
- Q. But you told His Honour that you had not discussed these matters with anybody since 1st June you told His Honour that earlier?
A. Yes.
- 10 Q. You would agree with me, would you not, that, putting yourself back to the position that existed before Mr. Koch started talking, you did not know that the superannuation fund loan had not come through? A. Without referring back to the management reports prior to May, going back a while - December, January, February - they may have been referred to in that. I don't remember.
- 20 Q. (Exhibit MHL3* handed to witness). Mr. Anderson, you have there all the management reports for the 12 months before 6th July?
A. Yes.
- 30 Q. See if there is anything you want to refer to. Mr. Anderson, take your time by all means, but I think you will find that there is nothing in the management reports other than what I referred you to in the May report which contains any suggestion that the Commonwealth Superannuation moneys had not become available? A. Well, I will accept that, Mr. Deane.
- Q. Now, on that basis would not you agree with me that as at the commencement of Mr. Koch's remarks you were not aware that the Commonwealth Superannuation fund moneys had not become available? A. Well, if it is not referred to in the management reports I would agree with you.
- 40 Q. Well now, would you inform His Honour on what basis, before Mr. Koch began speaking, had you formed the conclusion that you badly needed over \$10-million to meet short term commitments or short term loans? A. Would you mind repeating that, Mr. Deane?

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*Exhibit M.H.13

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- Q. Would you inform His Honour on what basis had you, before Mr. Koch commenced to talk at the meeting, formed the view that Millers badly needed over \$10-million to meet their short term borrowings? A. Only on the basis that that had been my understanding even before the management reports were submitted to the meeting. That had been my opinion for some time, and the basis was on my knowledge of the company's affairs whilst I was still employed by the company. 10
- Q. You mean back in January, 1972? A. Before that, yes.
- Q. Before January, 1972? A. Yes.
- Q. But you knew that the finance committee had been working out the resolution of these short term problems? A. Not at the time I am talking about.
- Q. I am talking Mr. Anderson, about 6th July, 1972, immediately before Mr. Koch started talking about finance. Have you any difficulty with that? A. No. 20
- Q. Now, what I am asking you is on what basis do you tell His Honour that you had formed the view as at that time that Millers badly needed over \$10-million to meet short term borrowings? A. I cannot recall the basis on which I formed that opinion.
- Q. You see, I suggest to you that you cannot suggest any conceivable basis to His Honour on which you could have formed that opinion? A. I would not agree with that. 30
- Q. You would not agree with that? A. No, I would not.
- Q. Well, will you suggest a conceivable basis? A. The only thing I can say is that I held that opinion for several years.
- Q. What opinion? A. The opinion that we required large sums to offset the short term borrowings.

- Q. But you had had the May report, Mr. Anderson, which had gone into the short term borrowing position, had you not? A. Yes, Mr. Deane.
- Q. I don't want to take you to it in detail, but I took you on Thursday through the September and November reports. Do you remember them? A. Yes, I do remember them.
- 10 Q. Do you remember the November report where there was a statement that the finance committee was setting out to form a programme to solve problems in relation to finance, or something to that effect? A. I just can't recall that, Mr. Deane.
- 20 Q. Well, you said to me that you did not agree with the proposition that you could not put to His Honour any conceivable basis on which you could have formed the view that Millers needed in excess of \$10-million to discharge their short term borrowings as at the time immediately before Mr. Koch began his statement. Now you have told us that you can put a conceivable basis, is that so? A. If that is what the transcript says, it would be what I said.
- Q. Do I understand you correctly, that the only conceivable basis you can express is that this had been your view going back for two years? A. Yes.
- 30 Q. Without any knowledge as to what the short term borrowings were other than what you have given in evidence this morning? A. Yes.
- Q. And of course, I presume you still adhere to what you said - that the main source of your information was the management reports? You still adhere to that, I presume? A. Yes, presented since June, 1971.
- Q. And that you accepted without question what was in those reports? A. Yes.
- 40 Q. Did you, before Mr. Koch commenced his comments, believe that Miller's liquidity position was critical? A. Yes.

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- Q. By reason of short term borrowings? A. Short term borrowings, yes.
- Q. And it is on the basis again of what you said that you believed at 6th July, before Mr. Koch made his comments, that Millers financial position was critical by reason of short term borrowings? A. Yes.
- Q. Critical? A. Critical? Yes, I considered it so.
- Q. And the only short term borrowings that you had knowledge of - and I put it to you again - were an amount of \$1-million odd owing to Tricontinental, \$2-million which you think was owing to entities that you cannot specify, and the Bank of New South Wales overdraft in a sum completely unknown to you? A. I think the bank overdraft reached the position of \$4-million. 10
- Q. When? A. Well, it can fluctuate from time to time. It goes up and down. Sometimes it exceeds it. 20
- Q. As at 6th July what was the bank overdraft?
A. I don't know precisely.
- Q. To the nearest \$1-million? Can you swear it?
A. No.
- Q. (Transcript for 5th October handed to witness). Will you look at the transcript at p.1005 Mr. Anderson? A. Yes.
- Q. You see in the middle of the page you were asked some questions about a telephone conversation with Mr. Taylor? A. Yes. 30
- Q. Now first of all, are you clear in your mind that you did not have a telephone conversation with Mr. Taylor on the afternoon of 4th July?
A. Quite clear.
- Q. No doubt at all? A. No doubt at all in my mind.

- Q. The conversation that you recount as having taken place on 5th July, - you say that Mr. Taylor said that Howard Smith proposed that Millers should issue 3-million shares at £2 a share? A. Yes.
- Q. now, Mr. Taylor presented that to you, did he, as, as it were, an existing proposal?
A. As an existing proposal verbally, yes.
- 10 Q. In other words, as something which Howard Smith had proposed and which Millers had done nothing at all to reject? A. No, they had not done anything at all to reject it. It was the subject of some confirmation in writing, as I understood it, on the next day.
- Q. Did Mr. Taylor tell you anything about the terms of payment for the allotment? A. No.
- Q. Did he indicate to you that he was in favour of it? A. He did not indicate anything at all.
- 20 Q. You then say that he was asking for your view? A. Yes.
- Q. And you said on Thursday "I expressed the view that £6-million was nowhere near sufficient for our needs." A. Yes.
- Q. What were you talking about, Mr. Anderson?
A. We were grossly under-capitalised and I understood we had a lot of progress payments coming along on the "Amanda Miller" - I am sorry, the "Robert Miller".
- 30 Q. If the liquidity position of Millers was critical £1-million would have been a good thing, wouldn't it - £1-million? A. Yes, every million helps.
- Q. And here we have £6-million? A. Yes.
- Q. And, as I understand it, you were, in what you said, indicating opposition to the Howard Smith proposal? A. At that point of time of the offer of 3-million shares at £2 a share.

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Q. And only on the basis that \$6-million was not enough? A. That is correct.

Q. And if the position of Millers was critical would not \$6-million have been of tremendous assistance in solving that position? A. In my opinion at the time we needed a lot more than \$6-million.

Q. For your short term borrowings? A. Yes.

Q. So that at that stage - again, this is before the meeting of 6th July - you thought a proposal involving Millers receiving \$6-million should be rejected because it was not enough to cover short term borrowings? A. Yes.

10

Q. And at that stage, of course, to your knowledge your short-term borrowings - your only knowledge in regard to short term borrowings was what you told His Honour in the witness box this morning? A. My only knowledge - I have said that I had formed certain conclusions over the years as to short term borrowings.

20

Q. I am asking you for your knowledge as at 5th July, 1972. Would you agree that your only knowledge was what you have told His Honour in the witness box this morning? A. Yes, this was my only knowledge.

Q. Have you ever heard the suggestion that for the allotment of shares to be justified the amount raised by it must be approximately equal to the amount of short term borrowings? A. Yes, I have heard that suggestion.

30

Q. When did you first hear it? A. I cannot recall when I heard it.

Q. It was certainly after 5th July, wasn't it? A. Yes, it would have been.

Q. And of course, I suggest to you that it is only in the context of that suggestion which you heard after the 5th July that your evidence as to \$6-million not being "near sufficient for our needs" is in any way meaningful --- (Objected to by Mr. Glass).

40

HIS HONOUR: Q. Did you understand the question, Mr. Anderson? A. No, I did not.

MR. DEANE: Q. You see, I suggest to you that this comment of yours that \$6-million "was nowhere near sufficient for our needs," can only have any real meaning in a context where the allotment had to be equal to the amount of short term borrowing? A. Yes, but --- (objected to by Mr. Rogers to the answer being interrupted).

10

HIS HONOUR: Q. Did you want to add something to your answer? A. I think I was only going to add what I have said repeatedly, that we needed money in excess of \$6-million.

MR. DEANE: Could that be struck out, Your Honour?

HIS HONOUR: I think it can stand, Mr. Deane.

MR. DEANE: Q. Of course, you did not know of that suggestion that the amount raised by the allotment should be equal to the short term borrowings until after 5th July? A. That is so, yes.

20

Q. Now, if I may, I want to ask you some questions as to the meeting of 6th July? A. Yes.

Q. You have agreed with me that Mr. Cameron was an accountant with a leading firm of accountants in Australia? A. Yes, that is right.

30

Q. And his presence on the management committee or finance committee was a factor which led you to place great importance on what the management report said? A. Yes.

Q. Because, so far as finance was concerned, that would be prepared by the finance committee? A. Yes.

Q. Now would you tell His Honour what you recollect Mr. Cameron saying at this meeting of 6th July? A. Mr. Cameron spoke at great length. I can't recall just precisely what he said.

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Exhibit HH

- Q. Will you tell us to the best of your recollection what he said? A. There was so much said by him and certain other people that I just can't recall what he said. But obviously it is in my mind that he was opposed to the issue. But, on the other hand, I think at one point of time he indicated that he was not opposed to any issue that would be in the interests of all shareholders.
- Q. He spoke about reasons? He gave reasons for his views? A. Yes, he gave reasons, but I don't remember what those reasons were at this stage. 10
- Q. Not at all? A. No.
- Q. Any of the reasons? A. No.
- Q. You see, I suggest you did not even listen to what Mr. Cameron was saying? A. I don't agree with that.
- Q. You see, Mr. Anderson, you were aware, were you not, that proceedings started in this Court the day after the meeting of 6th July? You were aware of that, were you not? A. Yes. 20
- Q. And you were named as a defendant in these proceedings? A. Yes.
- Q. And you were aware that what happened at this meeting was the critical thing in those proceedings? A. Yes, but that was on 7th July, and now it is over two months later.
- Q. But haven't you been directing your mind to that meeting ever since? A. I have been, yes.
- Q. And is what you tell His Honour that you cannot remember one reason advanced by Mr. Cameron as to why this allotment should not go ahead? A. I can't recall any particular reason. 30
- Q. (Exhibit HH handed to witness). May I refer you, Mr. Anderson, to this document? I don't know if you are aware, but this is a typing out of the shorehand notes taken by Miss Hill at the meeting, which was done after the case started? A. Yes

- Q. Would you look at p.5 of that document, down at the bottom? A. Yes.
- Q. In the last paragraph do you see that Mr. Cameron is there reported as having referred to the Cooper Bros. report? A. Yes.
- Q. Do you remember that? A. Yes, I do recall that.
- Q. Well now, of course, you had never seen the Cooper Bros. report? A. No.
- 10 Q. And there you have Mr. Cameron, an experienced accountant, saying that this is something that is relevant to it. A. Yes.
- Q. Didn't it occur to you that you should make yourself acquainted with the Cooper Bros. report? A. Well, I did not think it had been issued - only in a draft form.
- Q. Didn't you think you should make yourself acquainted with the Cooper Bros. report in a draft form? A. No.
- 20 Q. Well now, what did Mr. Nicholl say at the meeting - without looking at the notes of Miss Hill? A. Mr. Nicholl referred to the fact that this issue should be made to Howard Smith because there again, in his view, we needed the finance.
- Q. What else did he say? A. I don't recall what else he said.
- Q. Well, what did Mr. Balhorn say? A. Basically that he agreed with Mr. Nicholl's comment.
- 30 Q. (Exhibit V handed to witness). Would you look, Mr. Anderson, at p.8 of the minutes? A. Yes.
- Q. Now would you agree that the first paragraph commencing on that page accurately sets out what Mr. Balhorn said in terms of agreeing with Mr. Nicholl? A. Yes.

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*Exhibit HH

Q. Which means that Mr. Balhorn said that he agreed with the remarks made by Mr. Nicholl as to the company's shareholders would received \$2.75 for their shares if the board accepted the proposal from Howard Smith Limited rather than being locked in with only Ampol's offer of \$2.27 to accept? A. Yes.

Q. That is what Mr. Balhorn said? A. Yes.

Q. And not just that he agreed with Mr. Nicholls? A. No.

10

Q. He gave a reason? A. He gave a reason.

Q. Now, would you go back to the other document, Exhibit HH*, and will you turn to p.4 of it? A. Yes.

Q. You see some remarks on that page have been attributed to Mr. Cameron? A. Yes.

Q. You see what Mr. Cameron said? A. Yes.

Q. Five lines from the bottom, where he is reported as saying, "Now, we have this present situation accept it". A. Yes.

20

Q. Do you remember Mr. Cameron saying that? A. Yes, when it is brought before my notice I can remember some of these remarks.

Q. And you had no doubt, did you, that Mr. Cameron was saying "Look, you are trying to dress this up as an allotment for financial purposes when it is not that at all"? A. No.

Q. That is what you understood him to mean, wasn't it? A. No. That is not the way I understood it.

30

Q. Well, what did you understand him to mean? A. He means that we are attempting to justify placement of the shares purely and simply on the financial aspect.

Q. And he was implying that that was no true purpose of the allotment at all? He was implying that that was not the true purpose of the allotment? A. I don't know what he was implying.

- Q. You see, you have agreed, Mr. Anderson, that you recall Mr. Cameron saying words to the effect "Well, today we are attempting to justify making this placement on the basis that we have these serious financial problems and they are so serious that we should accept it." Do you see that? A. Yes.
- Q. "Attempting to justify it" do you see that? A. Yes.
- 10 Q. "We are trying to justify" is what you understood those words to mean? A. Well, that is his words. He said "We are attempting to justify".
- Q. Trying to justify? A. Trying to justify, yes.
- Q. Now, would you agree with me that when you heard Mr. Cameron say "Well we are trying to justify this allotment for financial purposes" you understood him as saying "the real purpose of the allotment is not financial, but we are trying to justify it on those grounds".
- 20 A. They are his words.
- Q. And your understanding of what he said was "The purposes of the allotment are not financial purposes, but we are trying to justify it on financial grounds." A. Not that we are trying - "we are justifying it".
- Q. I will put it to you again. You have agreed that he said "We are trying to justify it".
- 30 A. Words to that effect.
- Q. Well, I will again put it to you that your understanding of what he was saying was that "the purposes of making this allotment are not financial purposes but here we are trying to justify the allotment on financial grounds".
- A. That would be a reasonable assumption, yes.
- Q. And that was your understanding as to what he was saying at the time? A. Well yes, I suppose you could say that.

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- Q. And of course, so far as you knew, Mr. Cameron, in terms of experience in financial matters, would have had - possibly with the exception of Sir Peter Abeles - greater experience than any other member of the Board? A. Yes.
- Q. He was, as you have told His Honour, to your knowledge a member of one of Australia's leading firms of accountants? A. Yes, that is so.
- Q. And I presume in terms of financial matters you would not hold yourself forward as being competent to argue with Mr. Cameron? A. I would not - yes, I agree with that. 10
- Q. And of course you were aware that from the time Mr. Cameron joined the board of Millers he had been a member of the finance committee of Millers? A. Yes, that is so.
- Q. And a very active member? A. Yes.
- Q. Well now, I want to ask you some questions about one particular matter, Mr. Anderson. At the time this allotment was made Millers was, or the shares of Millers were listed on the Sydney Stock Exchange were they? A. Yes, they were. 20
- Q. To your knowledge? A. Yes.
- Q. And indeed - correct me if I am wrong, - I think the shares of Millers were listed on every Member exchange of the Australian Associated Stock Exchanges? A. Yes, I think they were listed. There may have been one, which I can't recall. 30
- Q. But it would be true to say, would it not, that to your knowledge they were listed on exchanges in all the capital cities of Australia? A. Yes.
- Q. Of course you presumed, did you not, that the shares of Millers were listed on these exchanges pursuant to a contract between the Sydney Stock exchange and Millers? A. Yes.
- Q. Millers paid a list fee each year to the Sydney Stock Exchange? A. Yes. 40

- Q. And you presumed there was a contract setting out the terms and conditions of that listing?
A. Yes.
- Q. And you presumed, did you not, that the allotment of these shares would be in breach of that contract? A. Yes.
- 10 Q. So that the situation was this, on your understanding, wasn't it, that what was being proposed at a meeting of a board of a public company was an issue of shares in breach of that company's contract with the Stock Exchange?
A. Yes.
- Q. And in breach of the listing requirements of the Sydney Stock Exchange? A. Yes.
- 20 Q. So the first thing that you understood you were voting for - and I am putting it to you as your understanding - the first thing you understood you were voting for in terms of the Sydney Stock Exchange was that Millers committed a breach of the contract which you understood existed between Millers and the Stock Exchange - (Objected to by Mr. Glass; question withdrawn).
- 30 Q. It would be true to say would it not, Mr. Anderson, that you understood that the allotment of shares which you were supporting by your vote would constitute a breach of the contract between Millers and the Sydney Stock Exchange? A. Yes. I am aware of that. I was at the time.
- Q. Did you regard this as an extremely serious matter? A. No.
- Q. Now, you were also aware that the consequence of the allotment could well be the suspension or delisting of the shares in Millers from being quoted on the Stock Exchanges of Australia? A. That is right.
- Q. And did you regard that as a serious matter?
A. No.

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- Q. Was it your view that if a company procured a situation in which its shares were listed on the Sydney Stock Exchange it was holding out to people - members of the public - that it would abide by the listing requirements of the Stock Exchange? A. Under normal circumstances, yes.
- Q. And people would buy shares on that basis. Was that your view? A. I have no view as to what basis they would buy shares on.
- Q. And people would buy shares on the basis that they could buy them one week and be able to sell them on the Stock Exchange the next week. Was that your view? A. Yes. On the Stock Exchange, yes. 10
- Q. And that they would have readily marketable securities or shares? A. Yes.
- Q. And of course, if the shares in Millers were suspended or delisted you would deprive people who bought shares on that basis of the opportunity of selling them quickly, wouldn't you? A. Of selling them quickly, yes. 20
- Q. Selling them within months? A. Not, within months, no.
- Q. How long did you think in the normal course of events would elapse between a person accepting a takeover offer and getting paid for the shares? A. I cannot answer that.
- Q. Approximately? A. Five weeks. Six weeks.
- Q. Is that all? Not months? A. I don't think so.
- Q. Of course at the time this allotment was made the Howard Smith offer had not even been made to Shareholders, had it? A. Howard Smith's offer? 30
- Q. Yes. A. Well, it was well known. It was reported.
- Q. There was nothing that a shareholder could accept? A. Not until he received a formal offer.

- Q. Which means that we add to the five or six weeks whatever period would elapse between 6th July and when he received the formal offer? That is so, isn't it? A. Yes, that would be so.
- Q. Did you think that that result of the allotment was a serious matter? A. No.
- Q. Did you think about it at all? A. I cannot say that I did, no.
- 10 Q. Now I presume, Mr. Anderson, that at least since you became a director of Millers - it being a public company - you have paid some attention to the financial news in the Press? A. Yes.
- Q. You see, I suggest to you that as at 6th July, 1972, your view was that - ignoring oil and mineral companies - what Millers was doing here was in your experience, and to the extent of your knowledge, completely
20 unprecedented? A. I don't think it would be unprecedented.
- Q. Allotting $4\frac{1}{2}$ -million shares, being equivalent to half its then issued capital, to an outsider? A. I cannot say whether it would be unprecedented or not, Mr. Deane.
- Q. Without going to a general meeting and in breach of the Stock Exchange regulations. You say you don't think that is unprecedented?
30 A. I do not think so. I have no knowledge of any precedent.
- Q. You see, you would agree with me, would you not, that in any event the allotment of $4\frac{1}{2}$ -million shares in Millers to Howard Smith was a very serious and grave matter insofar as Millers was concerned? A. Yes.
- Q. And you would agree with me, would you not, that on your understanding of financial affairs the normal and natural thing to do would be to get an expert's report on the consequences of the allotment? A. On the
40 what?

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Q. On the consequence of the allotment? A. We did have advice at a board meeting.

Q. You mean you had Mr. Koch doing no more than listing short term borrowing and saying "Go ahead". Would not you agree with that? A. I don't know whether I misunderstood you, Mr. Deane, but the way I understand it is that we had legal advice that such an issue was within the law.

Q. Could be justified? A. Could be justified? Well, 10 that opinion was not expressed. I don't think it was asked.

Q. But your understanding was it could be justified? A. That is my understanding, yes.

Q. But of course, insofar as financial considerations were concerned an allotment of this kind had a very serious effect on the shareholders, didn't it - whether good or bad? A. Yes.

Q. Because insofar as the existing shareholders indirectly own the assets of Millers, after the allotment, if one divides things up, they only own two-thirds of the assets of Millers? A. That would be the approximate situation.

20

Q. You told His Honour that from the very first moment the Ampol offer was mentioned you thought \$2.27 was inadequate? A. Yes, that is right.

Q. And grossly inadequate? A. I don't think the word "grossly" is the proper expression to use. In my opinion I think it was quite inadequate.

30

Q. But here you have the company - Millers - allotting shares to Howard Smith at a price which you thought was quite inadequate in respect of some shares which had previously been issued? A. Are you referring to Ampol?

Q. Howard Smith had 9-million odd shares issued at this time, did they not? ---

HIS HONOUR: Millers

MR. DEANE: I am sorry, Millers had 9-million odd shares issued at that time? A. Yes.

Q. And the shares in Millers, if issued to Howard Smith, were, for practical purposes, the same as the shares that had already been issued in terms of how much they were worth. A. Yes.

Q. But you see, on what you say the board of Millers was doing, what the board of Millers was doing was proposing to issue shares at a price which you considered quite inadequate insofar as other shares, which for practical purposes were identical, were concerned?
A. No. Howard Smith's offer being issued at \$2.30 was in excess of Ampol's offer of \$2.27. It was also in excess of the then market value of the shares, and when it is related to the Howard Smith offer of \$2.50 in cash I thought \$2.30 was quite reasonable.

20 MR. DEANE: Q. Mr. Anderson, would you agree with me that as at 6th July, 1972, you were of the view that the consequences of an allotment of $4\frac{1}{2}$ million shares could only be understood, insofar as their effect on existing shareholders was concerned by working out a number of answers to financial propositions? A. Yes.

Q. For example, first, one would need to take into account the anticipated profits of Millers during the coming few years? A. Yes.

30 Q. Indeed, indefinitely? A. Yes.

Q. Because, in effect, either directly or indirectly, the result of the allotment would be that one-third of those profits would be taken away from the existing shareholders? A. Yes.

Q. Now, what did you have before you as at 6th July as to the anticipated profits of Millers? A. I don't recall that I had anything excepting the profits for the year, anticipated profits for the year ended 30th June, 1972.

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*Exhibit B

Q. But, see, I suggest that you did not receive those until after the question of the allotment had been discussed? A. I don't recall just when that advice was tendered to the Board.

Q. (Witness shown Exhibit B*) Would you look at the minutes, Mr. Anderson, of the meeting of 6th July and would you turn to p.9 of those minutes, Mr. Anderson? A. Yes.

Q. Do you see "Consideration of Group Results"? 10
A. Yes.

Q. Which is after the discussion of the allotment?
A. That is so.

Q. So, would you agree with me that the figures in relation to the year ended 30th June, 1972, insofar as anticipated profits were concerned were not known to you at the time the question of the allotment was discussed? A. No, that would be so but from time to time the management report contained information as to the progressive profits over the month by month. 20

Q. And insofar as projected profits for future years were concerned, nothing at all was placed before you at the meeting or prior to the meeting? A. No.

Q. Didn't you consider that was an extraordinary thing? A. No.

Q. But you were giving away, as it were, one-third of the future profits of Millers without even ascertaining what they were going to be? (Objected to by Mr. Glass; allowed) A. Well, I naturally formed my own opinion as to what the future profits would be because we would have the "Robert Miller" coming in to trading operations later next year and ... 30

Q. Mr. Anderson...

HIS HONOUR: Just a minute. Mr. Anderson, I don't think you have finished.

WITNESS: And that vessel coming into operation with a charter for five years would in my view have increased the profits just to the extent of which I did not form any opinion.

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MR. DEANE: Q. But you were aware that projections in relation to future profits of Millers had been prepared? A. I can't say that I was aware.

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10 Q. Well, was it not your belief that projections in relation to future profits had been prepared?
A. No.

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Q. Is the situation this, that you did not know whether they had or not? A. That was the situation.

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Q. But, of course, you were aware that it was possible to prepare projections in relation to future profits? A. Yes, it is possible to prepare projections.

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20 Q. Well, I will again put to you, as you understood the situation, and I am speaking in a very general sense, the effect of the allotment was to take away from the existing shareholders one-third of the profits which would have either directly or indirectly have gone for their benefit if the allotment had not been made?
A. I don't think the profits would have been - I don't think the shareholders would have been any better off.

30 Q. Can you now answer my question? (Objected to by Mr. Glass.)

HIS HONOUR: I don't think he finished.

Q. You don't think the shareholders would be any better off... A. If the allotment had not been made. In fact, I come back to my contention all along that the infusion of extra capital would lead to expansion in the company's activities and the shareholders would in that event continue to be just as well off as they had been in the past.

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MR. DEANE: Q. But, of course, you would agree with me, would you not, that it was an essential factor in working out whether or not the shareholders would be better or worse off to know what the future profits would be? A. Yes.

Q. And I again put to you, did you not regard it as an extraordinary thing that nothing was put before the Board in relation to what the projected future profits were? A. No.

Q. You did not? A. No.

10

Q. Did you not regard it as an extraordinary thing that no analysis was put before the board as to what the asset backing of the shares was? A. Nothing was put before the Board...

Q. Because... (Objected to by Mr. Glass.)

HIS HONOUR: Q. Yes, what did you want to say, Mr. Anderson? A. Would you kindly repeat the question please (Question read by court reporter) A. I did not think it extraordinary.

MR. DEANE: Q. But, of course, you believed, did you not, that the asset backing of the shares was substantially higher than \$2.30? A. I had no belief as to the precise amount of the asset backing whether it was substantially in excess of that figure or not.

20

Q. But you believed it was in excess, did you? A. Well, I don't think it was in excess. I didn't believe it was in excess. I thought it probably around that figure although it could have been as high as I suppose \$2.50 because that is how its list would have assessed the backing because that is what was offered the shareholders.

30

Q. Insofar... (Objected to by Mr. Gleeson.)

Q. Of course, you would agree with me, would you not, Mr. Anderson, that for every dollar that - I withdraw that. You would agree with me, would you not, that for every two cents by - and that is wrong. You would agree with me, would you not, that for every three cents by which the asset backing exceeded \$2.30 insofar as the

40

existing shares were concerned, the allotment reduced that asset backing by one cent per share? A. I can't say that I would agree with you, Mr. Deane.

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- Q. You would agree that to the extent that the asset backing exceeded \$2.30 per share the allotment effected a proportionate reduction in the asset backing of the issued shares? A. Yes.
- 10 Q. And in those circumstances did you not regard it as extraordinary that no information was put before this board as to the asset backing of the shares? A. No.
- Q. You see the last information that had been put before the Board as to the asset backing per share apart from the Cooper report was a valuation by the auditors, was it not? A. Yes.
- Q. Of \$3.71 per share? A. Yes.
- 20 Q. Did you not think that it was vital to the consideration of this allotment if financial reasons were the reasons for which it was made to ascertain what the asset backing was? A. No.
- Q. Did you not think in terms of the short term borrowings it was essential to know what the projected cash flow was? A. No, well, I did not think the projected cash flow, if there was one, would materially affect the issue.
- 30 Q. Did you not think that it was a relevant matter that Howard Smith were prepared to pay \$2.50 for shares in the market place when all they were offering in this letter was \$2.30 per share? A. No.
- Q. You did not?
- HIS HONOUR: Q. The answer was "No", was it?
A. Yes, your Honour, no.

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Exhibit MHL3

MR. DEANE: Q. Did you not think the question of whether it was possible to negotiate a higher price with Howard Smith was something that should be considered? A. No, at that board meeting I considered the offer that they had made of £2.30 was quite reasonable and fair and I think it was if I remember the letter that was read from Howard Smith, they required the Board's decision forthwith - I think that is the word they used.

10

Q. Did it not occur to you that perhaps the suggestion might be made to Howard Smith "this is a critical matter so far as Millers is concerned. Can we have a couple of days?" A. No.

Q. Of course, Lady Miller was complaining that she wanted more time, did she not? A. She mentioned that, yes.

Q. Well, she mentioned it very strongly, did she not? A. She said that she would have liked to have more time to consider the offer.

20

Q. And a suggestion was made, was it not, that an approach be made to ascertain the reaction of the Stock Exchange? A. I think Mr. Cameron made that suggestion.

Q. And you were against that? A. Yes.

Q. Why? A. I did not think it was at all relevant or appropriate. We were not concerned with the Stock Exchange at that point.

30

Q. Do you think the shareholders are concerned with the Stock Exchange? A. Yes.

Q. But you think as Directors you were not? A. I was not.

Q. At all? A. At all, no.

Q. Mr. Anderson, I want to direct your attention to the minutes of the meeting of 30th September, 1971. (Witness shown Exhibit MHL3) Would you look at p.3 of 30th September, 1971? A. 30th September, 1971, yes.

40

- Q. Would you look at p.3 under the heading "Eastern Suburbs Leagues Club Limited"?
A. Yes.
- Q. You see there that there is report of a discussion involving a mortgage to Eastern Suburbs Leagues Club? A. Yes.
- Q. At this time, of course, you were managing director of the company? A. Yes.
- 10 Q. And the context of discussion was, was it not, that Eastern Suburbs Leagues Club had in 1969 borrowed \$2 m. from Millers? A. Yes, I believe that is so.
- Q. And the loan was secured by a mortgage over property? A. Yes.
- Q. And the written agreement provided, did it not, that Eastern Suburbs Leagues Club should pay interest at 9 per cent per annum? A. Yes, that's right.
- 20 Q. And, in fact, it had been ascertained that they were only paying interest at 7½ per cent per annum? A. That's correct.
- Q. Which means, on a mortgage of \$2 m so far as interest was concerned, a deficiency of \$30,000 a year? A. Yes.
- Q. Now, you took the view that Millers should not insist on the full interest being paid? A. Yes.
- Q. And you spoke to that effect? A. Yes.
- 30 Q. And there was some suggested arrangement between Sir Roderick Miller and Eastern Suburbs Leagues Club discussed? A. Yes.
- Q. What was that arrangement? (Objected to by Mr. Glass.)
- Q. I withdraw that. What was your understanding of that arrangement? A. I understood that to have been made by Sir Roderick Miller.

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Q. What was your understanding of the arrangement that had been reached? (Objected to by Mr. Glass.)

(At this stage the witness retired while Counsel addressed his Honour)

Q. Mr. Anderson, in opposing - I withdraw that. You see from the minutes opened before you at the last paragraph that Mr. Abeles and Mr. Cameron moved and seconded a motion that the rate of interest stipulated in the mortgage be charged to Eastern Suburbs Club?
A. Yes.

10

Q. And you voted against that, did you not? A. Yes.

Q. Well now, when you voted against it, your understanding was, was it not, that you were honouring some arrangement that Sir Roderick Miller had reached with the Eastern Suburbs Leagues Club? A. Correct.

Q. What was that arrangement? A. That the interest rate would be $7\frac{1}{2}$ per cent, not nine.

20

Q. And this arrangement was reached on your understanding when? A. I can't remember just when.

Q. Well now, had Sir Roderick Miller told you of any arrangement with the Eastern Suburbs Leagues Club? A. I can't recall that he did.

Q. Were you in any way involved in the arranging of the original loan of \$2 m. to the Eastern Suburbs Leagues Club? A. No.

Q. Did Sir Roderick Miller tell you about it at the time it was made? A. Some time after it was made.

30

Q. You were aware that about the time of this loan the Eastern Suburbs Leagues Club purchased a large number of shares in the capital of Millers, were you not? A. No.

Q. That comes as a surprise to you, does it not? A. Not now it doesn't.

- Q. Are you aware of it now? A. I am aware of it but i don't think that they are held in the name of the Eastern Suburbs Leagues Club.
- Q. Well, when did you first become aware of the fact that about the time of this loan to the Eastern Suburbs Leagues Club shares in which the Eastern Suburbs Leagues Club was interested were purchased in a different name? A. Oh, some months later.
- 10 Q. You were aware - Sir Roderick Miller told you, did he not, that the loan to the Eastern Suburbs Leagues Club was to enable them to purchase the shares? A. No, he did not mention that to me at all.
- Q. Never suggested that? A. No.
- Q. You have never heard that suggested? A. I can't say that I have. My understanding was that this loan to the Eastern Suburbs Leagues Club was for building, a building programme.
- 20 Q. You are aware now that shortly after the loan to the Eastern Suburbs Leagues Club was made shares in which the Eastern Suburbs Leagues Club was interested were purchased by them in Millers? A. That would be sometime afterwards because share transfers sometimes take quite a while to go through the process.
- Q. Did you find it surprising that the Eastern Suburbs Leagues Club in a context where it required to borrow \$2 million for building should be purchasing shares in Millers? (objected to by Mr. Glass; allowed) A. No.
- 30 Q. Did Sir Roderick Miller tell you that this arrangement had been made in relation to interest - did Sir Roderick Miller tell you that an arrangement had been made with the Eastern Suburbs Leagues Club that they pay 7½% instead of 9% interest? A. I can't recall that he informed me. It could have been the company secretary.
- 40 Q. Were you given any reason why Eastern Suburbs Leagues Club should pay \$30,000 a year less in respect of interest than what they were bound

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to pay under their mortgage? A. That would be in respect of the first year but the mortgage was being paid off at a monthly rate of \$12,500 instead of the \$7,000 stipulated under the conditions of the mortgage. They were reducing it at a faster rate than they were obliged to.

- Q. But they of course had the right to make premature repayments, did they? A. I presume they did. I never saw the mortgage document. 10
- Q. What was your understanding as to the reason why the Eastern Suburbs Leagues Club was paying less interest than it was contractually bound to pay under the mortgage? A. I can't answer that.
- Q. No idea? A. No.
- Q. Did you ever ask? A. Not that I can remember.
- Q. You see, here you are at the meeting of 30th September opposing a resolution that the Eastern Suburbs Leagues Club be required to pay the rate of interest stipulated in the mortgage. That is so, is it not? A. Yes. 20
- Q. And the main consideration in you mind was some suggested arrangement between Sir Roderick Miller and the Eastern Suburbs Leagues Club? A. That is so.
- Q. Now, I again ask you, will you tell his Honour everything you knew as at 30th September 1971 or believed as to the nature of that arrangement? A. I can't add anything more to what I have already said. 30
- Q. That it was just an arrangement by Sir Roderick Miller that they pay less interest and nothing more? Your answer is yes? A. Yes.
- Q. (Witness shown Exhibit X) One final matter, Mr. Anderson. I show you exhibit X which is, you can take it, a cutting from a page in a publication known as the Financial Review? A. Yes.

Exhibit X

- Q. Now, you have seen that paper before? A. I saw it in the Financial Review on the day it was published.
- Q. You were, of course, at a meeting of 14th July? A. Yes.
- Q. When this advertisement was considered? A. Yes.
- 10 Q. And indeed, at that meeting, you had a - you were given a folder of documents and one of the documents was this advertisement? A. Yes, I probably was, yes.
- Q. Would you like to refresh your recollection by reference to the minutes? A. No, I would say I was given a copy.
- Q. And you looked at the advertisement again at that time? A. Yes.
- Q. And there was a discussion in relation to the ratification of the insertion of that advertisement? A. Yes.
- 20 Q. I suggest to you that in the course of that discussion Mr. Balhorn commended the chairman on the advertisement as he considered it to be a straightforward statement of facts. Do you remember that? A. Yes.
- Q. Did you agree with that? A. I agreed it was a straightforward statement of facts. So far as I can remember, the letter that was read out to the board meeting on 6th July and this was a complete repeat of that letter to the
- 30 company.
- Q. Of course, or subject of course to the addition of emphasis to a number of words in the fourth paragraph? A. I don't know who the emphasis or who put the emphasis there, whether it was in Howard Smith's original letter or not.
- Q. Well, I suggest to you that you were aware that the emphasis did not appear in Howard Smith's original letter? A. I am not aware of it.

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Evidence

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Evidence
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Anderson
Cross-examina-
tion by Mr.
Deane Q.C.

10th October
1972.

(continued)

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Evidence
Kenneth Barton
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Cross-examina-
tion by Mr.
Deane Q.C.

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(continued)

*Exhibit T

Exhibit DD

Q. (Witness shown exhibit T*) A. Yes, there is no emphasis placed on it by Howard Smith.

Q. I suggest you were aware of that as at 14th July? A. No, I was not aware of it. That question, I don't think was raised on 14th July.

Q. Is the situation this, that you did not know as at 14th July who had added the emphasis, whether it was Millers or Howard Smith? A. No, I did not know.

Q. And you voted in favour of the motion ratifying the insertion of that advertisement on behalf of Millers? A. Yes.

Q. Would you agree with me that in relation to the advertisement inserted in the Australian Financial Review, the chairman told the meeting of 14th July that the decision to insert it was a decision made by a sub-committee which had been formed? A. I don't remember that.

Q. Would you like the minutes to refresh your memory? A. Yes please.

Q. (Witness shown exhibit DD) Would you turn to p.3 of the minutes, Mr. Anderson, the third bottom paragraph? A. Yes.

Q. Would you look at that? A. Yes.

Q. Would you agree with me that the chairman informed the meeting that the decision to insert the advertisement had been made by a sub-committee that had been formed? A. Yes.

Q. Who, on your understanding, were the members of that committee? A. I can't recall.

Q. You were not? A. I was not, no.

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RE-EXAMINATION:

MR. GLASS: Q. Have you got that May report, Mr. Anderson? A. Yes.

Q. Now, it was put to you that you accepted what was in the May report and you agreed? A. Yes.

Q. It was also put to you that you accepted without question whatever appeared in the management reports generally? A. Yes.

10 Q. You agreed with that. According to your understanding, who was the person who prepared these reports? A. Well, Mr. Koch obviously with the assistance of various members such as those that comprised the finance committee and so far as hotels are concerned he would be assisted by the general manager of Millers Hotels Pty. Limited.

Q. Who signed them? A. Mr. Koch.

Q. And you say you accepted what appeared in Mr. Koch's reports during this period? (Objected to by Mr. Deane).

20 Q. Who actually submitted the reports to the board? A. These were included in folders that were tabled together with other documents.

Q. And who, according to your belief, took responsibility for what appeared in the management reports? A. Mr. Koch.

Q. You have said that you accepted what appeared in those reports? A. Yes.

30 Q. What was your attitude towards what Mr. Koch said to the meeting of 6th July? (Objected to by Mr. Deane; question pressed).

Q. Mr. Anderson, you recall Mr. Koch addressing the meeting of 6th July? A. Yes.

Q. What was the attitude you took towards what he told the board meeting orally on that date? (Objected to by Mr. Deane; allowed) A. My attitude was that his recommendation on the

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(continued)

issues that should be made was quite in
accordance with my own views.

Q. What was your attitude to the statement by
him as to the amount falling due in short-term
commitments in the ensuing 12 months? A. I
accepted that.

Q. Did you see any inconsistency between what
Mr. Koch said about that matter on 6th July
and what appeared in the report of May 1972?
A. I don't see anything inconsistent here.

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HIS HONOUR: Q. The question, Mr. Anderson, was,
did you on 6th July see anything inconsistent
between what Mr. Koch then said and what had
been before you in the May management report?
This is, casting your mind back to 6th July?
A. At that meeting on 6th July I did not refer
back to the management report of May. I did
not have it.

MR. GLASS: Q. Well now, I refer you - oh no,
before I come to that. You were asked some
questions about Mr. Cameron and his standing
as a financial expert, do you recall that?
A. Yes.

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Q. Of the person who spoke at the meeting of 6th
July which one did you regard as having the
most detailed familiarity with the company's
financial position? (Objected to by Mr. Deane:
pressed; allowed) A. I regarded Mr. Koch.

Q. Now, would you turn to page 2 of that report.
You observe the first few sentences of page
2 of that report, Mr. Anderson? A. Yes.

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Q. Now, when, according to your belief, was that
sum of \$8.1 million paid to the Commonwealth?
A. Late in the afternoon of 30th June, the
due date.

Q. And when, according - and from what source
according to your belief on 6th July had the
\$8.1 million been obtained? (Objected to by
Mr. Deane).

HIS HONOUR: I shall defer ruling on this objection and the question will be held in suspense for the time being.

MR. GLASS: Q. You said that you had held the opinion for several years that the company required large sums to offset short-term borrowings. Do you remember that? A. Yes.

10 Q. On what particular experience over those years was that belief based? A. Would you repeat it please?

Q. Mr. Anderson, you said that for several years you had held the opinion that the company required large sums to offset its short-term borrowings? A. That's right, yes.

Q. On what did you base that belief? A. I did not like the idea of short-term borrowings for the purpose that they were made.

Q. Which was? A. Financing the construction of new tankers.

20 Q. You also said that the company was grossly under capitalised? A. Yes.

Q. For how long was it your belief that it was grossly under capitalised? A. From the time.. (objected to by Mr. Deane, allowed).

30 Q. Mr. Anderson, you said to my learned friend the company was grossly under-capitalised. My question is, for how long did you think it had been grossly under-capitalised? A. From the time the projected or actual commencement of construction of the Amanda Miller.

MR. GLASS: Q That you, Mr. Anderson. Subject to that matter reserved, I have no further questions.

HIS HONOUR: I will note that that ends the re-examination subject to Mr. Glass's right to recall Mr. Anderson for the purpose of re-opening the question that was objected to and upon which I have deferred ruling.

(Witness retired)

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(continued)

Exhibit MH29*

Exhibit MH30**

M for identification
5

Exhibit MH32

M for identification
3

M for identification
3

(Medical certificate from Dr. George Selby dated 31st August 1972, tendered; objected to by Mr. Deane; rejected).

(Amanda Miller contract of 1970 tendered without objection and marked exhibit MH29*).

(Robert Miller contract of 30th June 1971 tendered without objection, marked exhibit MH30**).

(Notes of meeting of 25th May 1971 and 12th February 1971, the whole of page 1 and page 2 down to "Queensland" tendered; objected to by Mr. Deane).

(Luncheon adjournment).

(Notes of meeting of 25th May 1971 and 12th February 1971, the whole of p.1 and p.2 down to "Queensland" previously tendered, withdrawn).

(Howard Smith to Ampol interrogatory No. 12 together with document tendered only as against Ampol; objected to by Mr. Deane: rejected, m.f.i.5).

(Part of document 7 discovered by the plaintiff dated 26th May 1972 from treasurer to chairman originally called for, produced, tendered, objected to by Messrs Staff & Deane: Mr. Deane withdraw his objection: Ampol inter-office memo of 26th May 1972, not admitted as against Bulkships, only tendered as against Ampol, marked exhibit MH32).

(Carbon copy of document in exhibit MH10 which is identified as m.f.i.3 called for, produced. Two sheets of handwriting called for, produced.)

MR. GLASS: Perhaps the record will show that the two handwritten sheets are in the handwriting of Ampol's treasurer and I therefore tender them together with m.f.i.3 in support of the submission in due course that it is

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also the handwriting of the treasurer which appears on m.f.i.3*.

(M.F.I.3 tendered; objected to by Messrs Deane & Staff, rejected).

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(continued)

M for identification 3*

Marked for identification 6**

Exhibit MHL2***

10 HIS HONOUR: Standing alone I am not prepared to admit the central portion of the document. I say "standing alone" because if there is other evidence or witnesses called, then you may be privileged to retender it. That being so, I reject the whole tender.

(Three sheets mfi 6**).

20 MR. GLASS: There remains, Your Honour, the question of MHL2***. All other documents not now relied on have been abstracted and there are a few documents now in it which have not been the subject of a specific tender - two only, and their dates are 5th August, 1971 and 22nd February, 1971, both in the Bank of New South Wales pocket. To them there have to be added three other letters, and they are to be found likewise in the Bank of New South Wales section; 30th July, 1971, 5th August, 1971, 2nd September, 1971. The whole five of them relate to exchanges between the company and the Bank with respect to money and, unless Your Honour requires it, we would not bother to read them at this stage.

30 HIS HONOUR: I will note that there is added to MHL2 from the Bank of New South Wales section a letter of 22nd February, 1971, 30th July, 1971, two letters of 5th August, 1971 and a letter of 2nd September, 1971.

Exhibit MHL2

MR. GLASS: I think your Honour had noted that I also added this morning a series of documents in the pocket "Amanda Miller".

HIS HONOUR: I noted also all of the documents of the "Amanda Miller" section of MHL2.

Exhibit MHL2

40 MR. GLASS: Of those I draw attention to one in particular namely the Hambros letter of 3rd September, 1971, which relates to "Amanda Miller". We will, in due course, be presenting

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written submissions which will show Your Honour the place of these documents in the scheme as we see it.

MR. DEANE: We object to those on the same basis as we objected previously.

MR. STAFF: We do, too, Your Honour.

HIS HONOUR: Consistently with my earlier ruling on other parts of the file MHL2*, I shall admit the letters I have just referred to.

MR. GLASS: The only matter remaining in the defendant's case is the evidence of Dr. Selby. I have just had a further discussion with my friend and acquainted him with the fact that, when approached, the doctor said that without subpoena he was not prepared to come along till half past three next Thursday, he being committed to appointments between now and then, and we were going to say to Your Honour should we use a subpoena to compel his attendance tomorrow morning at ten, or could it be left to be dealt with according to the doctor's convenience on Thursday? I mentioned this to my friend and he said if we left it open till Thursday he would reconsider the position overnight and it may not be necessary to call him.

HIS HONOUR: I am quite agreeable to Thursday. The case will not finish by Thursday. It is not an issue which needs to be proved in connection with anything else?

MR. GLASS: No.

HIS HONOUR: To meet the doctor's convenience, I am quite prepared to do that. You are agreeable to that.

MR. DEANE: Yes.

HIS HONOUR: It may involve interrupting the addresses, but we can accommodate him.

MR. DEANE: I would think the probabilities are that the problem will be solved. I just want to think about it overnight.

HIS HONOUR: There will be no difficulty meeting his convenience as far as the Court is concerned, if necessary.

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(Subject to the question of the re-examination of Mr. Anderson, case for the first defendant closed).

MR. LOCKHART: There is no evidence I wish to adduce on behalf of the third defendants.

MR. KIRBY: I call no evidence on behalf of the fourth defendant.

MR. ROWLING: I call no evidence on behalf of the sixth defendant.

10 MR. GLASS: There is no evidence on behalf of the fifth, eighth, ninth, tenth and eleventh defendants for whom I appear.

MR. ROGERS: I have no evidence to offer on behalf of the seventh defendant. It may be convenient if I indicated that Mr. Glass now appears for Mr. Anderson as well.

MR. GLASS: On the converse, for Millers I lead Mr. Rogers and Mr. Cole.

20 HIS HONOUR: I note that the appearances for the defendants are amended, and that Mr. Glass, Q.C., Mr. Rogers and Mr. Cole appear for the first, second, fifth, seventh, eighth, ninth, tenth and eleventh defendants.

MR. GLEESON: I tender interrogatories of the thirteenth defendant to the plaintiff numbered three, ten, thirteen, fourteen and fifteen.

30 (Howard Smith to Ampol interrogatories, 3, 10, 13, 14 and 15 tendered and admitted as Exhibit HS1. It is noted that interrogatory 13 is part of Exhibit MH6; the document referred to in interrogatory 14 is Exhibit MH7, and interrogatory 15 is part of Exhibit MH6).

MR. STAFF: I have no evidence to offer.

MR. DEANE: I now wish to tender against the defendant Duncan certain answers to his interrogatories. I tender them in chief, and on my submission my friend's evidence has now made them admissible.

40 (Ampol to Duncan interrotatories 14, 17, 19, 32, 34, 35, 36 and 75 admitted and marked Exhibit YY).

HIS HONOUR: I direct pursuant to Part 34 Rule 6, and subject to considerations that may be put

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Exhibit HS1
Exhibit M.H.6

Exhibit M.H.7
Exhibit M.H.6

Exhibit YY

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Discussion between the Court and Counsel

in opposition to this direction from the Bar table that the order of addresses be Mr. Deane first, on behalf of the plaintiff, to be followed by Mr. Glass on behalf of all the defendants for whom he appears, both in answer to the Plaintiff's claim and on the cross-claim. He will be followed by Mr. Hughes on behalf of Howard Smith. Next will come Mr. Staff for Bulkships, to be followed by Mr. Lockart for Abeles, Mr. Masterman for Cameron, Mr. Kirby for Lady Miller, to be followed by Mr. Deane in reply and by Mr. Glass in reply on the cross-claim.

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Does any counsel wish to put anything in opposition to that sequence of addresses? (No opposition expressed). In the absence of any objection to that course, that will be the order of addresses. If it is desired that it should be amended an appropriate application may be made.

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(Further hearing adjourned to 2 p.m. on Wednesday, 11th October, 1972).

(Medical certificate re Duncan tendered and admitted as Exhibit MH33).

Exhibit M.H.33

11th October 1972
Kenneth Barton Anderson
(Recalled)
Re-examination by Mr. Glass
Q.C.
(continued)

KENNETH BARTON ANDERSON.
On former oath:

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

WITNESS: I understand, your Honour.

MR. GLASS: Q. You told us yesterday, Mr. Anderson, that it was your belief that on 30th June, late afternoon, \$8.1 million was paid to the Commonwealth. Do you remember saying that?
A. Yes.

Q. I ask you, when did you first learn that that payment had been made? (Objected to by Mr. Deane; allowed).

Q. When did you first learn that on 30th June, \$8.1 million had been paid by the company to the Commonwealth? A. On 6th July.

Q. How did you learn that? A. Mr. Koch advised the Board that that amount had been paid progressively since the end of May.

(Witness retired).

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Coram: Street C.J. in Eq.

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Court Notes of
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in Equity

5th September
1972 to
20th December
1972.

10

Tuesday, 5th September, 1972
Wednesday, 6th September, 1972
Thursday, 7th September, 1972
Tuesday, 12th September, 1972
Wednesday, 13th September, 1972
Thursday, 14th September, 1972
Tuesday, 19th September, 1972
Wednesday, 20th September, 1972
Thursday, 21st September, 1972
Tuesday, 26th September, 1972
Wednesday, 27th September, 1972
Thursday, 28th September, 1972
Tuesday, 3rd October, 1972
Wednesday, 4th October, 1972
Thursday, 5th October, 1972
Tuesday, 10th October, 1972
Wednesday, 11th October, 1972
Thursday, 12th October, 1972
Monday, 16th October, 1972
Tuesday, 17th October, 1972
Wednesday, 18th October, 1972
Thursday, 19th October, 1972
Monday, 23rd October, 1972
Tuesday, 24th October, 1972
Wednesday, 25th October, 1972
Thursday, 26th October, 1972
Tuesday, 31st October, 1972
Wednesday, 1st November, 1972
Thursday, 2nd November, 1972
Thursday, 14th December, 1972
Wednesday, 20th December, 1972

20

30

Tuesday, 5th September, 1972

AMPOL PETROLEUM LIMITED v. R. W. MILLER
(HOLDINGS) LIMITED & ORS.

DEANE Q.C., ROFE and SANKEY for Plaintiff & 1st
Cross-Defendant

GLASS Q.C. and COLE for 1st, 2nd, 5th, 8th, 9th,
10th and 11th Defendants and for Cross Claimant

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LOCKHART for 3rd Defendant and 3rd Cross-
Defendant

KIRBY for 4th Defendant

MASTERMAN for 6th and 12th Defendants

ROGERS for 7th Defendant

HUGHES Q.C., GLEESON and BRYSON for 13th Defendant

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BEAUMONT for 14th Defendant

STAFF Q.C. and MEAGHER for 2nd Cross Defendant

EANE Q.C. calls on subpoena duces tecum:-

Sydney Stock Exchange - K.J. Massey answers -
produces part only - no objection

Mabel Janet Hill - answers - produces - any
objection left to Glass Q.C.

I NOTE that the 14th Defendant wishes to submit
and to take no further part in the proceedings.

GLASS Q.C. calls on subpoena duces tecum:-

10

P.A. Holdings Limited - Lockhart answers -
produces - no objection

Abeles Holdings Pty. Limited - Lockhart answers -
produces - no objection

Miro Holdings Pty. Limited - Lockhart answers -
produces - no objection

Boulevard Investments Pty. Limited - Lockhart
answers - produces - no objection

Abelex Investments Pty. Limited - Lockhart
answers - produces - no objection

20

Thomas Nationwide Transport Limited - G.W. Evans
answers - produces - no objection

STAFF Q.C. calls on subpoena duces tecum:-

Mitsui & Co. Australia Limited - already
produced to court

Tricontinental Corporation Limited - Rolfe appears -
deferred

Chase NBA Group Limited - Hutchinson appears -
no objection

All States Commercial Bills Limited -
Hutchinson appears - no objection

30

Australian European Finance Corporation Limited -
already produced to court

Bill Acceptance Corporation Limited - J.H. Goddard answers - produces - no objection.

Bank of New South Wales - L.W. Bernard answers - produces - no objection.

DEANE Q.C. calls on subpoena duces tecum:-

1st Defendant - Glass Q.C. will make available.

13th Defendant - Gleeson will make available.

GLASS Q.C. calls on subpoena duces tecum:-

2nd Cross Defendant - Staff Q.C. seeks deferment.

10 3rd Defendant - Lockhart answers - further consideration reserved.

GLEESON calls on subpoena duces tecum:-

Plaintiff - Deane Q.C. answers - will make available.

2nd Cross Defendant - Staff Q.C. answers - objects to 1(i) and 2(i) - deferred.

3rd Defendant - Lockhart answers - will make available.

STAFF Q.C. calls on subpoena duces tecum:-

20 1st Defendant - Glass Q.C. answers - will make available.

GLASS Q.C. moved on behalf of Cross Claimant for an order for production of documents No. 56 in Plaintiff's list (Part 23 Rule 12).

Exhibit Voir Dire 1 - Letter 4/9/72

Exhibit Voir Dire 2 - Plaintiff's list of documents para. 56.

Exhibit Voir Dire 3 - First defendant's interrogatories to plaintiff.

30 Exhibit Voir Dire 4 - Plaintiff's verified statement in answer.

Exhibit Voir Dire 5 - Form of Agreement

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Exhibit Voire Dire 6 - 3rd Cross Defendant's
answer to interrogatories of 1st defendant

GLASS Q.C. addresses

DEANE Q.C. addresses

I DELIVER REASONS

I REFUSE the application

s/o 6/9/72

Wednesday, 6th September, 1972

APPEARANCES as before

ROLFE answers subpoena duces tecum to Triconti- 10
mental Corporation and produces

DEANE Q.C. answers a subpoena duces tecum to
Binstead and produces

Exhibits 1 - 6 on voir dire to be handed out

DEANE Q.C. opens to Court

Exhibit A - Memorandum and Articles of
Association of 1st defendant

Exhibit B - Application for listing

Exhibit C - Official list requirements of
Sydney Stock Exchange as at 6/7/72 20

Exhibit D - Letter 16/5/72 and copy announce-
ment of 12/5/72

Exhibit E - Announcement by Ampol 22/5/72 and
Telex by Millers 22/5/72

Exhibit F - Notice of Takeover Scheme 24/5/72

Exhibit G - Telex by Millers 25/5/72

Exhibit H - Letter 29/5/72 Millers to Ampol

Exhibit J - Letter 31/5/72 Ampol to Millers and
Annexure

Exhibit K - Letter 6/6/72 Millers to Ampol 30

Exhibit L - Letter 14/6/72 Millers to Sydney
Stock Exchange enclosed circular

- | | | |
|----|---|---|
| | Exhibit M - Copy Ampol takeover offer 15/6/72 | In the Supreme Court of New South Wales Equity Division |
| | Exhibit N - Letter 22/6/72 Howard Smith to Millers and reply 22/6/72 | |
| | Exhibit O - Millers Directors' Minutes 23/6/72 | No. 7 |
| | Exhibit P - Circular by Millers 27/6/72 | Court Notes of Street C.J. |
| | Exhibit Q - Announcement 27/6/72 | in Equity |
| | Exhibit R - Letter 3/7/72 Millers to Ampol | 5th September 1972 to 20th December 1972 |
| | Exhibit S - Letter 5/7/72 Ampol to Millers | |
| 10 | Exhibit T - Letter 6/7/72 Howard Smith to Millers and Deed (two counterparts) | |
| | Exhibit U - Memorandum 6/7/72 and copy handed to Miss Hill | |
| | Exhibit V - Agenda and Minutes Directors' Meeting 6/7/72 | |
| | Exhibit W - Application 6/7/72 Howard Smith to Millers - original and copy share certificate | |
| | Exhibit X - Press advertisement | |
| | Exhibit Y - Circular 7/7/72 | |
| 20 | Exhibit Z - Howard Smith's answer to plaintiff's interrogatory No. 22 (as against Howard Smith only) | |
| | Exhibit AA - Two letters 7/7/72, 11/7/72 Millers to Sydney Stock Exchange | |
| | Exhibit BB - Letter 7/7/72 Sydney Stock Exchange to Millers | |
| | Exhibit CC - Letter 6/7/72 and enclosure | |
| | Exhibit DD - Minutes Millers Directors' meeting 14/7/72, introduction and pp. 3 - 6 inclusive | |
| | Exhibit EE - Letter 12/7/72 Sydney Stock Exchange to Millers, draft reply and reply 14/7/72 | |
| 30 | Exhibit FF - Letter 7/7/72 Sydney Stock Exchange to Howard Smith, reply Howard Smith to Sydney Stock Exchange and press release 7/7/72 (as against Howard Smith only) | |

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20th December
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MISS M. J. HILL sworn

XD Deane Q.C.

XXD voir dire Glass Q.C.

Exhibit GG - Two transcripts of Miss Hill's
notes

Further XD Deane Q.C.

XXD Glass Q.C.

RE-XD Deane Q.C.

E. D. CAMERON sworn

XD Deane Q.C.

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s/o 7/9/72

Thursday, 7th September, 1972

APPEARANCES as before

M. J. HILL recalled on former oath

Further RE-XD Deane Q.C.

Exhibit HH - Third Transcript of Miss Hill's
notes

Further XXD Glass Q.C.

Further RE-XD Deane Q.C.

E.D. CAMERON on former oath

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Further Xd Deane Q.C.

Exhibit JJ - Financial Report May 1972

Exhibit KK - Cooper Bros. Report 21/6/72

XXD Masterman

XXD Lockhart

XXD Staff Q.C.

XXD Glass Q.C.

Exhibit MH1 - Two letters 1/6/72

Exhibit MH2 - Deed 30/6/72

XXD Rogers

XXD Hughes Q.C.

s/o 11/9/72

Tuesday, 12th September, 1972

APPEARANCES as before except that ROWLING now appears with Masterman

E. D. CAMERON on former oath

Further XXD Hughes Q.C.

RE-XD Masterman

- 10 Exhibit MH3 - Report and accounts 30/6/71
- Exhibit MH4 - Draft summary consolidated balance sheet 30/6/63 to 30/6/72

RE-XD Deane Q.C.

Exhibit LL - Three letters Millers to Sydney Stock Exchange 26/3/71, 13/10/71, 23/12/71

Exhibit MM - Interrogatories Ampol to Millers and answers Nos. 4 and 5

- 20 Exhibit NN - Interrogatories Ampol to Howard Smith and answers Nos. 1, 2, 3, 4, 7, 10, 13, 15, 16, 17, 18, 19, 23, 25, 26, 28, 29, 31, 33, 35, 36, 37, 38, 40, 41, 42, 43, 46(a), 48, 49 and the document 5/7/72 referred to in interrogatory No. 40 and memorandum 20/6/72 referred to in interrogatory No. 46(a).

Exhibit OO - Interrogatories Ampol to Taylor and answers Nos. 1, 2, 3, 4, 5, 14, 18, 19, 20, 21, 22, 23, 24, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 57, 63, 66, 68, 70, 71, 72, 73, 75, 76, 77 and 78.

- 30 Exhibit PP - Interrogatories Ampol to Nicholl and answers Nos. 13, 14, 23, 24, 25, 26, 27, 28, 33, 34, 38, 41, 45, 53, 54, 55, 57 and 59.

Exhibit QQ - Interrogatories Ampol to Balhorn and answers Nos. 1, 6, 15, 16, 17, 19, 29, 30, 31, 32, 33, 34, 35, 36, 40, 44, 45, 46, 48, 60, 62, 79 and 80.

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Exhibit RR - Interrogatories Ampol to Anderson
and answers Nos. 15, 16, 29, 30, 31, 32, 33,
34, 35, 36, 40, 48, 56, 58, 59, 60, 62 and
82.

PLAINTIFF'S CASE CLOSED

GLASS Q.C. opens to Court

Exhibit MH5 - Interrogatories Millers to Ampol
and answers Nos. 1 - 9 inc, 11, 12, 16 - 26
inc, 30 - 41 inc, 46.

Exhibit MH6 - Proposal for acquisition of shares 10
14/1/72 and addendum (as against Ampol only)

Exhibit MH7 - Heads of agreement (as against
Ampol only)

MH8 - Form of agreement unexecuted (as against
Ampol only)

MH9 - Agreement 12/5/72

Exhibit MH10 - Analysis of cost of shares (as
against Ampol only)

Exhibit MH11 - Interrogatories Millers to
Abeles and answers Nos. 7 - 14 inc, 18 - 23
inc, 28 - 30 inc, 31 - 33 inc, 38 - 41 inc,
44 - 45 inc, 47 - 63 inc, 68 and 69. 20

s/o 13/9/72

Wednesday, 13th September, 1972

APPEARANCES as before

L. D. KOCH sworn

XD Glass Q.C.

Exhibit MH12 - Binder containing documents

Exhibit MH13 - Millers Board Minutes and
Management Reports June 1971 to May 1972 30
and Board Minutes 10/8/72

Exhibit MH14 - Millers Board Minutes 20/4/71
and 31/5/71

Exhibit MH15 - Millers Board Minutes 1/6/72

s/o 14/9/72

Thursday, 14th September, 1972

APPEARANCES as before

L. D. KOCH on former oath

Further XD Glass Q.C.

Exhibit MH16 - Letter Shell to Millers 17/11/71

Exhibit MH17 - Loan repayment commitments

Exhibit MH18 - Summary of hotel trading results

XXD Hughes Q.C.

XXD Lockhart

10 XXD Deane Q.C.

s/o 19/9/72

Tuesday, 19th September, 1972

APPEARANCES as before

L. D. Koch on former oath

Further XXD Deane Q.C.

Exhibit SS - Charter rate calculations "AMANDA MILLER"

XXD Staff Q.C.

s/o 20/9/72

20 Wednesday, 20th September, 1972

APPEARANCES as before

L. D. KOCH on former oath

Further XXD Staff Q.C.

Exhibit BSl - Tricontinental letter 20/4/72

Further XXD Deane

Exhibit TT - Mr. Koch's notes 6/7/72

RE-XD Glass Q.C.

Exhibit MH19 - "AMANDA MILLER" loan agreement and charter party

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Exhibit MH20 - Letter Howard Smith to Sydney
Stock Exchange 4/7/72

Exhibit MH21 - Three letters Millers and Potter
17/7/72, 18/7/72 and 19/7/72

A. N. TAYLOR sworn

XD Glass Q.C.

Exhibit MH22 - Letter 3/7/72 Millers to Bulkships

s/o 21/9/72

Thursday, 21st September, 1972

APPEARANCES as before

10

A. N. TAYLOR on former oath

Further XD Glass Q.C.

Exhibit MH23 - Two letters Millers and Depart-
ment of Shipping & Transport 24/5/71 and 28/5/71

XXD Hughes Q.C.

XXD Lockhart

XXD Deane Q.C.

s/o 26/9/72

20

Tuesday, 26th September, 1972

APPEARANCES as before

A. N. TAYLOR on former oath

Further XXD Deane Q.C.

Exhibit UU - Mr. Maxwell's notes (as against Howard Smith only)

Exhibit VV - Details of shareholdings

s/o 27/9/72

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Wednesday, 27th September, 1972

10

APPEARANCES as before

A. N. TAYLOR on former oath

Further XXD Deane Q.C.

R. W. NICHOLL sworn

XD Glass Q.C.

Exhibit MH 24 - Ampol Minutes extracts 14/1/72,
26/1/72, 23/2/72, 22/3/72, 26/4/72 and 22/5/72

Exhibit MH25 - Schedules of Millers' share
prices

W. A. CONWAY sworn

20

XD Glass Q.C.

s/o 28/9/72

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Thursday, 28th September, 1972

APPEARANCES as before

A. N. TAYLOR recalled on former oath

Further RE-XD Glass Q.C.

W. A. CONWAY on former oath

Further XD Glass Q.C.

XXD Rofe

Exhibit WW - Millers Minutes 9/6/72

Exhibit MH26 - Bulkships Minutes (as against
Abeles and Bulkships only)

10

XXD Staff Q.C.

RE-XD Glass Q.C.

Tuesday, 3rd October, 1972

APPEARANCES as before

R. I. NICHOLL sworn

XD Glass Q.C.

XXD Hughes Q.C.

XXD Deane Q.C.

s/o 4/10/72

Wednesday, 4th October, 1972

20

APPEARANCES as before

R. I. NICHOLL on former oath

Further XXD Deane Q.C.

RE-XD Glass Q.C.

A. V. BALHORN sworn

XD Glass Q.C.

XXD Deane Q.C.

Exhibit XX - Mr. Balhorn's notes

s/o 5/10/72

Thursday, 5th October, 1972

APPEARANCES as before

Exhibit MH27 - Mr. Nicholl's extracts from
42 A.L.J. and 42 A.L.J.R.

A. V. BALHORN on former oath

10 Further XXD Deane Q.C.

RE-XD Glass Q.C.

Exhibit MH28 - Debit note and receipt for
"AMANDA MILLER"

K. B. ANDERSON sworn

XD Glass Q.C.

XXD Hughes Q.C.

XXD Deane Q.C.

s/o 10/10/72

Tuesday, 10th October, 1972

20 APPEARANCES as before

K. B. ANDERSON on former oath

Further XXD Deane Q.C.

RE-XD Glass Q.C.

Exhibit MH29 - "AMANDA MILLER" contract

Exhibit MH30 - "ROBERT MILLER" contract

Exhibit MH31 - Howard Smith to Ampol Interro-
gatory No. 12

Exhibit MH32 - Ampol inter-office memo 26/5/72

I NOTE that the appearances for the defendants
are amended and that Glass Q.C., Rogers and
Cole now appear for the 1st, 2nd, 5th, 7th, 8th,
9th, 10th and 11th defendants

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Exhibit HS1 - Howard Smith to Ampol Interrogatories Nos. 3, 10, 13, 14 and 15

I NOTE that the document referred to in Interrogatory No. 13 is part of MH6 and in Interrogatory No. 14 is MH7 and in Interrogatory No. 15 is part of MH6

Exhibit YY - Ampol to Duncan Interrogatories Nos, 14, 17, 19, 33, 34, 35, 36, 75.

s/o 11/10/72

Wednesday, 11th October, 1972

10

APPEARANCES as before

Exhibit MH33 - Medical certificate re Duncan

K.B. ANDERSON recalled on former oath

Further RE-XD Glass Q.C.

COUNSEL addressed

s/o 12/10/72

Thursday, 12th October, 1972

Monday, 16th October, 1972

Tuesday, 17th October, 1972

Wednesday, 18th October, 1972

Thursday, 19th October, 1972

Monday, 23rd October, 1972

Tuesday, 24th October, 1972

Wednesday, 25th October, 1972

Thursday, 26th October, 1972

Tuesday, 31st October, 1972

Wednesday, 1st November, 1972

20

APPEARANCES as before

COUNSEL addressed

s/o

30

Thursday, 2nd November, 1972

APPEARANCES as before

COUNSEL addressed

C.A.V.

Thursday, 14th December, 1972

ROFE and SANKEY for Plaintiff

ROGERS and COLE for 1st Defendant

LOCKHART for 3rd Defendant

KIRBY for 4th Defendant

BRYSON for 13th Defendant

MEAGHER for 2nd Cross-Defendant

I PUBLISH MY REASONS

I MAKE DECLARATIONS AND ORDERS as follows:

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- 10 (1) I DECLARE that the purported allotment and issue of a parcel of 4,500,000 ordinary £1 shares in the capital of the defendant R.W. Miller (Holdings) Limited made on 6th July 1972 to Howard Smith Limited was invalid.
- 20 (2) I DECLARE that the name of the defendant Howard Smith Limited has been without sufficient cause entered into the register of members of the defendant R.W. Miller (Holdings) Limited as a member of that company in respect of the said shares.
- (3) I ORDER that the defendant R.W. Miller (Holdings) Limited forthwith repay to the defendant Howard Smith Limited the amount paid by that company to the defendant R.W. Miller (Holdings) Limited in respect of the said shares.
- 30 (4) I ORDER that the defendant Howard Smith Limited forthwith deliver up to the defendant R.W. Miller (Holdings) Limited for cancellation the share certificate or certificates issued to and received by it in respect of the said shares or any parcel thereof,
- 40 (5) I ORDER that the register of members of the defendant R.W. Miller (Holdings) Limited be rectified by removing therefrom the name of the defendant Howard Smith Limited as a member of the defendant R.W. Miller (Holdings) Limited in respect of the said parcel of 4,500,000 ordinary shares.

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- (6) I DECLARE that the agreement made on 6th July 1972 between the defendant R.W. Miller (Holdings) Limited and the defendant Howard Smith Limited was invalid in that the terms thereof were and are not binding upon the parties thereto.
- (7) I ORDER that the cross-claim be dismissed
- (8) I RESERVE consideration of all questions of costs. 10
- (9) I RESERVE consideration of such further consequential relief to which the plaintiff may be entitled.
- (10) THE proceedings are to stand over to a date to be fixed for determination of the orders to be made for costs.
- (11) GENERAL LIBERTY to apply to all parties on two days' notice.

ROGERS applies for stay of proceedings

I STAY proceedings on the orders up to and including 20/12/72 20

I RESTRAIN any dealings with the said shares during the currency of the stay of proceedings.

Suit s/o 20/12/72

Wednesday, 20th December, 1972

DEANE Q.C. ROFE and SANKEY as before

ROGERS & COLE as before

LOCKHART as before

KIRBY as before 30

MASTERMAN as before

GLEESON & BRYSON as before

MEAGHER as before

GLEESON and BRYSON for Howard Smith seek conditional leave to appeal to the Privy Council

BY CONSENT LEAVE to file in court a Notice of Motion for conditional leave to appeal to the Privy Council returnable forthwith.

In the Supreme
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COUNSEL address on costs

No. 7

ORDER that Millers and Howard Smith do each pay one half of Ampol's costs of the main proceedings including the costs of today.

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ORDER that Millers pay the costs of the Cross-Defendants on the cross-claim.

10 ORDER that Millers pay the costs of Sir Peter Abeles, Lady Miller and Mr. Cameron of the main proceedings.

RESERVE further consideration of whether any and if so what apportionment of the time occupied on the hearing should be made for the guidance of the taxing officer.

GLEESON seeks stay of proceedings on Orders 1 to 6 inclusive

20 ORDER giving conditional leave to appeal in terms of the Short Minutes filed in court

I STAY further proceedings on paras (3), (4) and (5) of the order made on 14/12/72 pending the determination of the appeal to the Privy Council or the further order of this court

I MAKE ORDERS against Millers and Howard Smith in terms of the Short Minutes filed in court

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I RESERVE liberty to apply in respect of
matters arising with reference to declara-
tion (6) pending the determination of the
appeal to the Privy Council

(SIGNED)

Associate

1126.

NO. 8

REASONS FOR JUDGMENT OF STREET C.J.
IN EQUITY DATED 14th DECEMBER 1972

In the Supreme
Court of New
South Wales
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Division

IN THE SUPREME COURT OF NEW SOUTH
WALES EQUITY DIVISION

No. 1240 of 1972

AMPOL PETROLEUM LIMITED v. R.W. MILLER (HOLDINGS)
LIMITED & ORS

No.8.
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JUDGMENT

OUTLINE OF REASONS

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Bulkships' interest in Millers.
Ampol's interest in Millers.
Directors' apprehension regarding
Ampol's takeover offer.
Millers' discussions with Howard Smiths,
16 to 22nd June.
Howard Smiths' takeover offer.
- 20 Ampol's and Bulkships' attitude to Howard
Smiths' takeover offer.
Negotiations between Millers and Howard
Smiths, 27th June to 4th July.
Crystallisation of negotiations on
5th July.
Events of 6th July prior to Millers'
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Notificaton to shareholders of allotment
- 30 Statement of claim, defences and
cross-claim.
Opposing contentions of Ampol and
Millers.
Millers' need of capital.

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Directors' evidence on purpose
of allotment.

Considerations affecting
decision on directors' purpose.

Discussion of directors' purpose.

Mr. Nicholl. Mr. Balhorn and
Mr. Anderson.

Finding on directors' purpose.

Consideration of invalidity of
purpose of destroying majority
bloc. 10

Stock Exchange rules.

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Howard Smiths' knowledge of
invalid purpose.

Finding in favour of challenge
to validity against Millers and
Howard Smiths.

Mr. Taylor's ruling disqualifying
Sir Peter Abeles. 20.

Finding that Mr. Taylor's ruling
was wrong - cross-claim not dealt
with.

Rejection of discretionary defence.

Formal order.

HIS HONOUR:

INTRODUCTORY SUMMARY

R.W. Miller (Holdings) Limited, (which I shall
hereafter refer to as Millers) was incorporated on
11th June, 1962. It is a public company, and its
shares until the events under challenge in this
case occurred, were listed on the Sydney Stock
Exchange and the other Australian Stock Exchanges.
Although incorporated under the Australian Capital
Territory Companies Ordinance, its principal office
and the centre of its administration has always
been in Sydney. The business of Millers falls
broadly into three categories - it owns a number of
hotels, it has coal-mining interests and it is a 30

shipowner.

10 A dominant figure in the history of Millers was the late Sir Roderick Miller. Up until his death on 25th April, 1971, he had been chairman and managing director, positions he had occupied since incorporation. Sir Roderick Miller had held wide power in the day-to-day conduct of Millers' affairs. It is clear that he commanded the total confidence and co-operation of the board. He was described in the evidence as "a king" or "an emperor", and the strength and competence of his control was recognised inside and outside Millers.

20 It seems that in the months that followed Sir Roderick Miller's death discussion and speculation upon Millers' future became rife in commercial circles. The shareholding controlled by him or subject to his direct influence amounted to some 2,681,641 shares - 29.8% of the issued capital. The prospect of this large shareholding becoming available for purchase on the market, and the inevitable change in the management of Millers consequent upon the removal of Sir Roderick Miller's hand from the helm, overshadowed the future with a cloud of uncertainty. Millers' financial position became a subject of comparatively widespread interest in commercial circles, and it was not long before there began to be talk of the possibility of a takeover offer being made in respect of its shares.

30 On 22nd May, 1972, Ampol Petroleum Limited, an oil company operating in Australia, (which had in that month acquired the 2,681,641 shares owned or influenced by Sir Roderick Miller), announced an intention to make a takeover offer. This was followed by an announcement on 22nd June, 1972, by Howard Smith Limited, an Australian shipowner, that it intended to make a competing takeover offer.

40 The nominal capital of Millers is \$15,000,000 divided into shares of \$1 each of which, prior to the events in dispute, 9,000,786 shares had been issued. On 6th July, 1972 the directors allotted to Howard Smiths 4,500,000 shares. The decision was made at a board meeting attended by six of the seven directors and by the alternate for the seventh director. Four voted in favour of the allotment (Mr. Taylor, chairman and managing

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director, Mr. Nicholl Mr. Balhorn and Mr. Anderson, two voted against it (Lady Miller and Mr. Cameron), Sir Peter Abeles was precluded by the chairman from voting.

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Prior to the allotment, Ampol held 2,681,641 shares - 29.8% of the issued capital, Bulkships Limited (a shipowner operating, inter alia, on the Australian coast) held 2,257,100 shares - 25.1% of the issued capital, together these two Companies held 54.9% of the shares. The allotment to Howard Smiths on 6th July placed it in the position of holding 33.3% of the shares. The proportionate holdings of Ampol and Bulkships were reduced to 19.9% and 16.7% respectively, their combined holding was reduced to 36.6%.

10

In the present proceedings Ampol challenges the validity of this allotment of 4,500,000 shares, and seeks orders having the effect of cancelling Howard Smiths' shareholding. The allotment is attacked by Ampol on the ground that the directors were not acting bona fide in the interest of Millers as a whole. It is claimed that the primary purpose of the allotment was to reduce the proportion of the shares held by Ampol and Bulkships, this would hinder Ampol's takeover offer and facilitate that of Howard Smiths. Ampol contends that this purpose lies outside the legitimate scope of the power of directors to issue shares.

20

Millers and the four majority directors refute this challenge. They contend that the allotment was made primarily for the purpose of meeting what was said to be Millers' urgent need for capital.

30.

Broadly speaking, these are the competing contentions put forward for decision in the present proceedings. Alternative claims and defences have been propounded, and a number of other matters have been litigated during the course of the hearing. I shall refer to some of these alternatives and other matters later in these reasons.

40

I acknowledge at the outset a feeling of passing sympathy for the four directors who voted in favour of the allotment and whose conduct is under scrutiny and challenge. Three of them

(Messrs. Nicholl, Balhorn and Anderson) had but little commercial or boardroom experience. Although only recently incorporated, Millers is a long established, essentially Australian business. It is a worthy company which, by reason possibly of its gratifying survival as a relatively small hotel owner and a relatively small shipowner in two challenging fields, has earned and enjoys a wide-ranging acceptance throughout the community. But, notwithstanding the enthusiasm and diligence of its top management (both Mr. Taylor and Mr. Koch, the general manager, impressed me in the witness-box as men of considerable capacity), it was vulnerable to a takeover after Sir Roderick Miller's death.

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The defensive measures open to directors of a company in that position are necessarily limited. The principals of law governing the powers and conduct of directors place limitations upon them designed to prevent abuse of their fiduciary obligations and duties. These limitations are of a general character, and it would not be beneficial to compromise them in order to meet the difficulties presented by a takeover. The Courts have consistently refused to permit any such compromise. It is more important that fiduciary obligations be fully enforced than that directors be allowed a licence to depart from such obligations in order to make a defence in a takeover battle.

There have been during the hearing repeated protests at the absence of oral evidence from directors or officers of Ampol and Bulkships. But it is essentially the conduct of the four Millers' directors that is called in question in these proceedings. The issue is whether they exceeded the limitations upon their powers. It is they who have acted. It is their conduct which is placed under examination. It is they who must suffer the discomfiture of meeting and attempting to answer the challenge to what they have done. Although in form the case is Ampol against Millers, the real question is were the actions of the directors valid - the standard question in proceedings such as these. Little if any light could be cast upon the answer by looking into the affairs of those who seek to achieve a takeover.

I make these general observations because some reference was made to these considerations during

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the hearing. It should be made clear, however, that sympathy plays no part in the decision of the dispute. The validity of the actions of the directors will be tested against long-standing and well-tried principles of equity governing the conduct of directors. These directors occupied seats in the boardroom. They will be judged against the standards and duties governing directors of a large public company.

POWERS OF DIRECTORS

10

The provisions of the articles of association of Millers having particular relevance to the present proceedings are as follows:

"4. The business and management of the Company shall be vested in the Directors.."

"8. Subject to the provisions (if any) in that behalf of the Memorandum of Association and without prejudice to any special rights previously conferred on the holders of any shares or class of shares and save as provided by contract to the contrary the shares shall be under the control of the Directors who may allot or otherwise dispose of the same to such persons on such terms and conditions and with such preferred deferred or other special rights or such restrictions whether in regard to dividend voting or return of share capital and either at a premium or otherwise and at such time or times as the Directors may think fit with full power to give to any person the call of or option over any shares either at par or at a premium and for such time or times and for such consideration as the Directors may think fit. Notwithstanding the foregoing without the prior approval of the shareholders in General Meeting the Company shall not and the Directors shall not make any issue of shares to any person including a corporation where such issue would result in a controlling interest in the Company being vested in such person or corporation."

20.

30.

40

It is not necessary in the resolution of this

dispute to make wide-ranging reference to authority. The inquiry is directed in the first instance to the ascertainment of the substantial object of the directors. In *Mills v. Mills* (60 C.L.R. 150 at 185-186) Dixon, J. said:

In the Supreme Court of New South Wales Equity Division

10 "Directors of a company are fiduciary agents, and a power conferred upon them cannot be exercised in order to obtain some private advantage or for any purpose foreign to the power. It is only one application of the general doctrine expressed by Lord Northington in *Aleyn v. Belchier*: 'No point is better established than that, a person having a power, must execute it bona fide for the end designed, otherwise it is corrupt and void'.

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.....

20 When the law makes the object, view or purpose of a man, or of a body of men, the test of the validity of their acts, it necessarily opens up the possibility of an almost infinite analysis of the fears and desires, proximate and remote, which, in truth, form the compound motives usually animating human conduct. But logically possible as such an analysis may seem, it would be impracticable to adopt it as a means of determining the validity of the resolutions arrived at by a body of directors, resolutions which otherwise are ostensibly within their powers. The application of the general equitable principle to the acts of directors managing the affairs of a company cannot be as nice as it is 30 in the case of a trustee exercising a special power of appointment. It must, as it seems to me, take the substantial object the accomplishment of which formed the real ground of the board's action. If this is within the scope of the power, then the power has been validly exercised. But if, except for some ulterior and illegitimate object, the power would not have been exercised, that which has been attempted as an ostensible exercise of the power will be void, notwithstanding 40 that the directors may incidentally bring about a result which is within the purpose of the power and which they consider desirable."

I discard the suggestion that the directors of Millers allotted these shares to Howard Smiths in

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order to gain some private advantage for themselves by way of retention of their seats on the board or by obtaining a higher price for their personal shareholdings. Personal considerations of this nature were not to the forefront so far as any of these directors was concerned, and in this respect their integrity emerges unscathed from this contest. The strength of Ampol's challenge, however, is that the purpose which provided the substantial object of their action was a purpose foreign to their power under the articles to issue shares.

10

The ascertainment of the substantial object, the accomplishment of which formed the real ground of the board's action, involves essentially a question of fact. A considerable volume of evidence has been placed before the Court. In addition, I have had the benefit of a close and reasoned analysis of this evidence by counsel appearing for the various interests. I do not intend to canvass the whole of the evidence in these reasons, nor to deal expressly with all of the matters that have been argued. It is necessary, however, to go back to earlier events in order to indicate the context within which the validity of the actions of the directors is to be judged.

20.

BULKSHIPS' INTEREST IN MILLERS

At some time shortly prior to the death of Sir Roderick Miller, Bulkships had acquired 2,257,100 ordinary shares in Millers, amounting to 25.1% of the issued capital, and had given consideration to making a takeover offer, this was not carried through to fulfilment. Throughout the hearing Millers made a sustained attempt to establish that Ampol and Sir Peter Abeles were jointly engaged in a course of action detrimental to the interests of Millers and compromising Sir Peter Abeles's position as a director of Millers. There apparently exists between Ampol and Bulkships, or at least between Sir Peter Abeles and Mr. Leonard (the chairman of Ampol), a relatively longstanding background of commercial goodwill. Late in 1971 and on through into 1972 there were discussions between Sir Peter Abeles, in his capacity as a director of Bulkships, and Mr. Leonard concerning the possibility of a joint approach being made to acquire the shares in Millers. The 66,000 ton tanker "Amanda Miller",

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built for Millers and delivered to it on 31st August, 1971, and "Robert Miller", a partly-constructed sister ship being built for Millers, the keel of which had been laid on 2nd June, 1971, made such a takeover attractive both to Ampol and to Bulkships. Ownership or control of these tankers would be of significant advantage to Ampol in its business as an oil company. Bulkships, too, as a shipowner, had a particular interest in the Millers' tankers. Each of Bulkships and Ampol was interested in investigating, and did investigate, the prospect of a joint approach to take over Millers. But I am not satisfied that at this early part of 1972 any agreement or any understanding was reached between these two men, or the companies they represented, upon a joint course of action in connection with Millers.

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The negotiations leading up to the acquisition by Ampol of its holding of 2,681,641 shares originated in the early part of 1972 and continued until May. The course of these negotiations, and some concurrent negotiations initiated by Sir Peter Abeles, were investigated in evidence, and were the subject of submissions in argument. There is insufficient material upon which to base any finding of concerted activity, such as is alleged by Millers. I am not satisfied that, in the negotiations culminating in Ampol purchasing these 2,681,641 shares, there was any collaboration between Ampol and Sir Peter Abeles or Bulkships. There are straws in the wind that suggest that there may, during the course of the negotiations have been some exchange of confidences between Ampol and Bulkships concerning the future of Millers. But these fall short of providing a basis upon which I am prepared to make any affirmative finding. I state this view after giving full weight in the reliance placed by counsel for Millers upon the scintilla doctrine and the inferences it is entitled to have drawn in its favour by reason of the failure of Ampol and Bulkships to call evidence from any of their officers.

AMPOL'S INTEREST IN MILLERS

On 12th May and 22nd May agreements were executed between Ampol and Romanda Pty. Limited (a company sufficiently described as the late Sir Roderick Miller's family company) and between Ampol and other vendors associated with the Miller family.

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Under these agreements Ampol bought 2,144,871 shares and 536,770 shares respectively for a price of \$2.27 per share.

DIRECTORS' APPREHENSION REGARDING AMPOL'S
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On the date of the execution of the first of these agreements, 12th May, Mr. Leonard made a public announcement of the agreement. This public announcement was considered by the directors of Millers at a meeting held on 15th May. The minutes of this board meeting disclose that the directors gave some consideration to the possibility of there being collaboration between Ampol and Bulkships in connection with the future of Millers. A draft letter to Ampol was discussed. This draft contained a number of questions, amongst them being:

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"Is it your company's intentions to make to all other shareholders in Holdings an offer of purchase of not less value than the price agreed with Romanda Pty. Limited?"

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The suggestion that similar question be asked of Bulkships was considered, and in this context the minutes record that the chairman, Mr. Taylor, referred to the duty of the board to make "every endeavour to protect the interests of minority shareholders and staff". The reference to "minority shareholders" was clearly enough a reference to shareholders other than Ampol and Bulkships.

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There was evident, even at this early stage, an attitude in the Millers' board room which pervaded with increasing intensity the whole of the subsequent events. This was an attitude of concern, even apprehension, as to the intentions of Ampol and Bulkships regarding Millers - an attitude which tended to identify Millers and the best interests of Millers with the "minority shareholders" and the best interests of the "minority shareholders". It grew out of the suspicion of the directors that Ampol and Bulkships were acting in concert, and a fear that such concerted action would be detrimental to Millers. The directors, at this board meeting, perceived what they regarded as the prospect in the future of Ampol and Bulkships versus the rest. As the

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narrative will disclose, this prospect had crystallised in their minds to an established fact by the time of the board meeting of 6th July.

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The directors' anticipation of the imminence of a takeover offer was soon fulfilled. On 22nd May, the date upon which Ampol acquired the balance of its total holding of 2,681,641 shares, a press release was issued by Ampol, announcing this acquisition at the price of \$2.27 per share. This release states, inter alia:

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"Mr. Leonard further announced that Ampol Petroleum Limited had decided to extend its offer of \$2.27 per share to all holders of ordinary shares in R.W. Miller (Holdings) Limited. Formal notice of intention will be given to the chairman of R.W. Miller (Holdings) Limited within the next few days."

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Upon receiving this information, Mr. Taylor, on 22nd May, 1972, sent a telex to the Australian Stock Exchanges, announcing receipt of Ampol's information of intention to make a takeover offer. The telex advised that the asset backing of the shares as certified by the auditors was \$3.71, and that the assets were in the course of being revalued. Shareholders were recommended not to sell shares until the board was in the position to tender further advice.

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On 24th May a formal notice by Ampol of intention to make a takeover offer was received by Millers. The offer was to extend to all of the shares not already owned by Ampol, the price being \$2.27 per share, payable in cash. The statutory statement disclosed Ampol's holding of 2,681,641 shares. The offer was to be conditional upon receipt of not less than 90% acceptances.

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The notice of intention was considered by the Millers board at a meeting on 26th May. There was discussion regarding the employment of expert advisers upon the action to be taken by the company. Mr. Balhorn is reported as commenting "that the situation depended to a great extent on future action by Bulkships Limited and no decision should be made until the attitude of Bulkships Limited was known". The minutes record comments by two other directors:

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"Mr. K.V. Anderson recommended the (sic) employment of outside experts to advise management and, in concurring, Mr. R.I. Nicholl stated that experts should be retained to protect the interests of minority shareholders."

I note in passing that Sir Peter Abeles was not present at either of the meetings of 15th and 26th May.

On 29th May Millers wrote to Ampol, seeking certain information concerning Ampol and its intentions with regard to the future of Millers. The specific information sought by Millers was not furnished, and a further letter was sent on 6th June, pressing Millers' request for the furnishing of further information. This letter was signed by Mr. Taylor, and in it he states, inter alia:

"The board must also consider the situation which could arise should Bulkships accept your offer or enter into some arrangement with your company whereby effective control of this company passes either to your company's hands or to the hands of your company and Bulkships. If either of these events were to happen, then any shareholder who rejected your offer would be placed in the situation of being a shareholder in a company subsidiary to your company on the one hand, or a minority shareholder in a company completely dominated by your company and Bulkships.

The possibility of such a situation arising makes it essential to alert our shareholders to the difficulties of their position in such a circumstance."

In the meantime Millers had instructed a well-known firm of chartered accountants to review the financial position of the company and its subsidiaries. The report was prepared, as it states, in order to provide information to assist in advising the board of Millers regarding the Ampol takeover offer. Specifically the object of the report was to ascertain whether the price of £2.27 was adequate. The report was dated 21st

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June, 1972, and apparently the draft became available a day or so prior to that date.

On 15th June, 1972, the formal takeover offer was made by Ampol to the shareholders of Millers. The terms of the offer corresponded with those notified earlier.

MILLERS' DISCUSSIONS WITH HOWARD SMITHS, 16TH JUNE to 22ND JUNE

10 On 16th June the chairman of Howard Smiths (Mr. Howard Smith) and other representatives of that company called on Mr. Taylor and, in the presence of Mr. Koch and Mr. Conway (the general manager and the legal officer of Millers respectively), inquired whether Millers would be prepared to sell their tankers to Howard Smiths. Mr. Taylor said he gave a firm refusal to that proposal. The discussion regarding Howard Smiths' wish to purchase the tankers included reference to the undesirability of the tankers passing to the ownership of Ampol. Mr. Howard.
20 Smith said to Mr. Taylor:

"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."

He also said that

30 "...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."

40 Mr. Conway gave evidence regarding this conversation. He was a witness whose honesty, and the reliability of whose evidence, was plainly to be seen. Indeed, no party sought at any stage to impeach his credit, and I am confident in placing reliance upon Mr. Conway's evidence. According to him, when Howard Smiths' request to purchase the tankers was refused there was a pause, after which he (Mr. Conway), said, "Well, so far as we are concerned, we would prefer you to offer for the shares of the company". Mr. Howard Smith asked, "You mean offer for the whole shooting box?", to

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which Mr. Conway replied, "Yes". Mr. Howard Smith then said:

"Ampol and Bulkships also hold over 50 per cent of your shares. How could we come in under those circumstances?"

Mr. Conway then expressed some doubt as to whether there was an existing understanding between Ampol and Bulkships. It was also asserted that the Commonwealth Government would be pleased if Howard Smiths took over Millers, "because they would still have an independent oil carrier on the coast to use as a yardstick". The meeting ended upon the basis that Howard Smiths would think about the proposal. 10

The next event in the narrative occurred on 19th June. On that day there was a further meeting between representatives of Millers and Howard Smiths; neither Mr. Taylor nor Mr. Howard Smith was present. The discussion consisted mainly of a series of questions by the Howard Smiths' representatives as to Millers' financial position and the furnishing of information in response to those questions. On the following day, 20th June, there was a further meeting between representatives of Howard Smiths and Millers. In the course of that meeting a draft of the comprehensive chartered accountants' report on Millers was made available to Howard Smiths. The conversation appears once again to have been directed to financial matters. Some criticism has been made of the actions of Mr. Taylor and Mr. Koch in authorising the making available to Howard Smiths of full information concerning Millers' financial affairs, including details of the chartered accountants' report. I need not stay to examine the validity of this criticism. It is sufficient to note that the fullness and the frankness of the disclosure to Howard Smiths of Millers' intimate financial affairs underlines the warmth of the desire of Mr. Taylor and Mr. Koch to facilitate the making of a takeover bid by Howard Smiths. Also implicit in this is the recognition that the end of the independent existence of Millers was at hand. 20 30 40.

HOWARD SMITHS' TAKEOVER OFFER

On 22nd June Mr. Howard Smith sent to Mr. Taylor a letter giving notice of an intention to

make a takeover offer to acquire all of the issued shares in Millers on the basis of either \$2.50 per share in cash or two \$1 Howard Smiths shares plus \$6 in cash for every five shares in Millers.

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10 On 23rd June Millers' board considered a draft statement pursuant to s.184 in relation to the Ampol takeover offer. The board was unanimous in endorsing the draft statement, and approval was also given to the form of a covering letter to accompany the statement. In the covering letter, signed by Mr. Taylor, the full context of Howard Smiths' letter of intention of 22nd June was set out. Reference was made in the covering letter to the inadequacy of the Ampol offer (\$2.27 per share) by comparison with the Howard Smiths offer. The covering letter stated that the board "has no hesitation in recommending that you should not accept the Ampol offer". This adverse recommendation was repeated in the formal statement.

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20 AMPOL'S AND BULKSHIPS' ATTITUDE TO HOWARD SMITHS' OFFER

After the formal termination of the board meeting of 23rd June there was a brief discussion between Mr. Taylor and Sir Peter Abeles, in the course of which, according to Mr. Taylor, Sir Peter Abeles

30 "...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 for Howard SmithsHe would attempt to make a deal for control of the company with Howard Smith Limited."

On 27th June a press statement was made by the chairman of Ampol and the chairman of Bulkships (Sir Ian Potter). It was announced that:

40 "Following discussions that took place today, agreement has been reached for the two companies to act jointly in relation to the future operation of R.W. Miller (Holdings) Limited. Accordingly, they have both decided to reject any offer for their shares

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whether from Howard Smith Limited
or from any other source. Ampol
Petroleum and Bulkships Limited,
between them, control in excess of
55 per cent of the issued shares
of R.W. Miller (Holdings) Limited."

NEGOTIATIONS BETWEEN MILLERS AND HOWARD SMITHS,
27TH JUNE to 4TH JULY

On the 27th June, but before the terms of the
Ampol-Bulkships joint announcement were known,
forewarning that Ampol and Bulkships had
decided to act jointly in relation to Millers
reached Mr. Koch. An urgent meeting was
accordingly arranged on that day between
representatives of the two companies, included
amongst whom were Mr. Koch and Mr. Conway for
Millers, and Mr. Maxwell (the secretary of Howard
Smiths), through whom, on behalf of Howard Smiths,
many of the relevant negotiations were carried
out. Mr. Maxwell, at this urgent meeting,
declined to commit Howard Smiths, or to forecast
what might be the attitude of the board of his
company if the intimation which had reached Mr.
Koch should prove to be true. When the joint
announcement of 27th June became known there
followed a number of conversations between Mr.
Conway and Mr. Maxwell, the continuing subject of
which, so far as Mr. Conway was concerned, was the
question of the effect of the joint announcement
on Howard Smiths' offer, and the further question
of whether Howard Smiths would go on with the
offer, or withdraw it. Mr. Maxwell apparently
remained non-committal throughout.

The suggestion of an allotment of shares to
Howard Smiths was first made by Mr. Conway. Shortly
prior to 4th July he had a conversation with Mr.
Koch. I quote from Mr. Conway's evidence.

"I went into Mr. Koch's room and discussed,
I raised with him the possibility of
endeavouring to buy some of Howard Smiths
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

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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."

10 Mr. Taylor and Mr. Koch called on Mr. Howard Smith on the morning of 4th July. Mr. Howard Smith, Mr. Maxwell and other representatives of Howard Smiths were present also at the meeting Mr. Howard Smith asked whether Mr. Taylor would reconsider selling the tankers and was told "No". He then had read out a letter he had sent to the Stock Exchange, suggesting that Ampol should be asked to state what arrangements had been made between Ampol and Bulkships. Mr. Taylor referred to a similar letter which he had the previous day sent to Bulkships and Ampol. According to Mr. Taylor's evidence the conversation proceeded:

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"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.

30 Q. Yes. A. There were some terms about payment, but I did not pay much attention to them.

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'."

According to Mr. Koch's evidence the discussion continued:

40 "Q. Well, who else spoke for Millers about it? A. Mr. Taylor asked me my opinion on the proposal and I supported Mr. Taylor on his views and said that I couldn't see the board of Millers accepting such a proposition and also that it was in contravention to the requirements under the Stock Exchange.

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Q. Did you express any reason why you thought it would be unacceptable to the board? A. Yes, I said, firstly, the price offered of \$2 a share would not be acceptable to the board. I don't recollect saying anything else.

Q. What followed that discussion? A. I then asked would Howard Smiths be prepared to sell their tankers to Millers and - -

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Q. What tankers were referred to? A. I told them I was referring particularly to their vessels, the 'Howard Smith' and the 'Nancy Heath' or, if they so desired their proposed new construction tanker that was about to be constructed to replace the 'Nancy Heath' but I said that I would prefer the two tankers that were then in operation.

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Q. What else did you say regarding that proposition? A. I said that if Howard Smiths were prepared to sell the two tankers to Millers that I had estimated that the value that they would want for those two vessels would be approximately \$7½m. Mr. Maxwell said 'Well, your arithmetic isn't far out'. I then said that if Howard Smiths were prepared to sell the tankers to us we could propose to allot them 3,000,000 shares at \$2.50 per share. I then said that if this was acceptable and was carried by our board that we could then make an issue to them of 10 per cent of our then issued capital.

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Q. Issue to them of ten per cent? A. Issue to them, Howard Smiths, of ten per cent of our then issued capital which would have been a further placement of 1.2 million shares at \$2.50 per share making a total cost of \$3,000,000.

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Q. Now, was anything said by you as to how this matched with the Stock Exchange regulations? A. I said that under the Stock Exchange regulations that a placement of ten per cent of the issued capital of the company was within their requirements."

Mr. Maxwell expressed interest in Mr. Koch's proposal, but Mr. Howard Smith said that under no circumstances would he sell his company's tankers to Millers. The Howard Smiths representatives said they would be in further communication with Millers. Mr. Taylor said that there was a board meeting fixed for 6th July, and that "if they were going to do anything they had better get it in before then".

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10 Upon returning to their office Mr. Taylor and Mr. Koch discussed the interview with Mr. Conway. In recounting the interview they informed Mr. Conway that the offer of £2 per share made by Howard Smiths for 3,000,000 shares was for a payment of ten cents per share, and the balance to be payable when Howard Smiths obtained acceptances for 3,100,000 shares in response to their takeover. In fact the terms of a document used by Mr. Maxwell at the meeting disclosed that the specified quantity of shares was 3,001,000. The significance of Howard Smiths
20 obtaining an allotment of 3,000,000 shares and obtaining, pursuant to the takeover offer, a further 3,001,000, making a total of 6,001,000 out of the then issued capital of 12,000,786 shares, is at once apparent and did not require specific comment either at the meeting with Howard Smiths or in the later discussion between Mr. Taylor, Mr. Koch and Mr. Conway. Indeed, Mr. Koch's counter-proposal of two issues making up 4,200,000 shares for a consideration of which the cash component was only
30 £3,000,000 showed a ready recognition on his part of a need to get a sizeable parcel of shares out to Howard Smiths rather than to get any substantial capital funds for Millers. Mr. Conway told Mr. Taylor and Mr. Koch that £2 a share was not a realistic price, particularly as Ampol had offered £2.27 a share. He pointed out, in addition, that such an issue would amount to a breach of the Stock Exchange regulations.

40 After this discussion with Mr. Taylor and Mr. Koch Mr. Conway telephoned Mr. Maxwell. He was asked about this in cross-examination, and I quote:

"Q. Do you remember why you rang him? A. Yes, so far as I can recollect, I said to him 'Tom, this offer of three million shares at £2 a share with deferred payment just isn't on. What about our ships, our offer to buy your ships?' and Mr. Maxwell said, 'No, that's just no good because if we sell you the ships then we have to buy them back again if we did'

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not succeed in our takeover bid.' and that was about all there was to that conversation."

Later on 4th July a member of Millers' finance committee, Mr. Walker (the general manager of Millers Hotels Pty. Limited, a subsidiary of Millers), came to see Mr. Conway. Mr. Conway described the substance of the conversation as follows:

"He gave me some facts and figures as to Millers' financial position and pointed out to me 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'."

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Mr. Taylor rang Mr. Balhorn in Melbourne after the meeting of 4th July and told him of the possibility of Howard Smiths proposing an allotment of 3,000,000 shares at \$2 each. Mr. Balhorn was doubtful about placing reliance upon any proposal until it was specifically made in writing. Mr. Taylor also told Mr. Nicholl (either on 4th or 5th July) and Mr. Anderson (on 5th July) of the possibility of Howard Smiths applying for 3,000,000 shares at \$2 per share. Mr. Nicholl was busy when Mr. Taylor telephoned him, and he made no comment on the news. There is some divergence between Mr. Taylor's and Mr. Anderson's recollection of what Mr. Anderson said. Mr. Anderson's recollection and understanding throughout his evidence was conspicuously less reliable than Mr. Taylor's. According to Mr. Taylor, Mr. Anderson thanked him for the information, but there was no discussion of the proposal.

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CRYSTALLISATION OF NEGOTIATIONS ON 5TH JULY

It was on 5th July that the negotiations between Millers and Howard Smiths crystallised in the firm proposition placed before the board and approved by the directors on 6th July by a vote of four to two.

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On the morning of 5th July there were discussions between Mr. Conway, Mr. Koch,

Mr. Walker, two other senior officers of Millers, and Mr. Aston (a solicitor who had been retained by Millers as legal adviser on the take-over situation). Mr. Taylor came in and out of the meeting on occasions.

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Mr. Aston advised the meeting that

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10 "...so far as any allotment of shares 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."

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20 Mr. Conway agreed with this statement. There was some discussion of the price at which shares should be issued, and figures of \$2.50 and \$2.30 per share were mentioned. Mr. Koch worked out some figures, and said that at \$2.30 per share Millers would need to issue 4,152,000 shares in order to produce \$9½ million. This was the sum which presumably represented Mr. Koch's view of the amount "necessary to safeguard the company's financial position".

30 Mr. Conway, at Mr. Koch's suggestion, then rang Mr. Maxwell of Howard Smiths. He told Mr. Maxwell that Millers did not think 3,000,000 shares were enough, and that if Howard Smiths were minded to make an application it should be for not less than 4,152,000 shares at a price of not less than \$2.30 per share. This apparently corresponded with a view being formed by Howard Smiths. No conclusion was reached during this telephone conversation.

40 Mr. Nicholl lunched in the board room of Millers on 5th July together with Mr. Taylor, Mr. Conway, Mr. Koch and others. Mr. Nicholl, who is a member of a firm of solicitors practising in Sydney, brought with him to that lunch a copy of 42 A.L.J. and 42 A.L.J.R. containing the comment on and the report of the High Court decision in Harlowe's Nominees Pty. Limited v. Woodside (Lakes Entrance) Oil Co. and also vol. 90 C.L.R. containing the report of the High Court decision in Ngurli Limited v. McCann. He read out to Mr. Conway an extract from the Woodside case appearing at 42 A.L.J.R. 125, as well as the comment on that case at 42 A.L.J. 264-265. Mr. Nicholl's expressed summation of the law as discussed in those cases was "that it was quite legal for a company to make a placement of shares in a

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situation where the money was immediately required to meet the company's present and future financial requirements." I should add that Mr. Nicholl was at pains to disclaim any assumption of the role of legal adviser to the company. Mr. Aston, an expert in the field, had already been retained to advise the company. Mr. Conway's summation, after the discussion with Mr. Nicholl, was expressed by him as being "that the issue of shares could be justified if it were for a proper amount bearing in mind the company's cash requirements."

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The tenor of the lunchtime discussion so far as Mr. Conway was concerned - indeed, the tenor of Mr. Conway's whole approach to this problem - was that it was most desirable for Millers to make an issue of shares to Howard Smiths, and the question was how could this legally be done. This being Mr. Conway's approach, it can be safely inferred that the general drift of the discussion between Mr. Conway and Mr. Nicholl turned upon the answering of this question. Mr. Conway was a careful and precise witness. He is a man of obvious integrity. It can confidently be inferred that he would have placed before Mr. Nicholl a frank statement of the position as he, Mr. Conway, saw it. The narrative I have thus far set forth makes clear that in Mr. Conway's view the problem was to justify an issue of shares to Howard Smiths.

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After lunch on 5th July Mr. Maxwell rang Mr. Conway and said that Howard Smiths had decided to make an offer for 4,500,000 shares at \$2.30 per share, and stated that he would be bringing a letter around to that effect later in the afternoon.

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Mr. Maxwell came to Millers office shortly before 5 o'clock on the afternoon of 5th July with a form of letter that he showed Mr. Conway. Mr. Conway read the letter through and suggested that there be deleted from it a brief passage (about two lines) making reference to the infusion of capital enabling Millers to engage in further development. Mr. Maxwell agreed to take out this reference to development. The draft was shown to Mr. Taylor who said that he would want it signed by Howard Smiths' chairman so he could put it before Millers' board on the following morning.

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After Mr. Maxwell left on the evening of 5th July Mr. Taylor rang Mr. Balhorn and put Mr. Conway on to speak. Mr. Conway told

Mr. Balhorn that an offer from Howard Smiths was expected before the board meeting on the 6th. Mr. Balhorn again expressed doubt, and said he would believe it when he saw it. I quote from Mr. Conway's cross-examination:

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Q. Didn't you discuss with Mr. Balhorn as to the justification for the allotment?

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A. Yes, I did. As I recollect it Balhorn said to me, 'But isn't this a bit unethical?'

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10 I said, 'No, it is not unethical. It is unusual, perhaps'."

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Mr. Balhorn was not told any of the details of the offer, not even the price or the number of shares. This perhaps has significance as being consistent with an inference that the major point of concern was to arrange for an allotment of shares to Howard Smiths in the context of the 55% shareholders (Ampol and Bulkships) having, for all practical purposes, killed the Howard Smiths' takeover offer by the joint announcement of 27th June. It was the fact of the proposed allotment, not its terms, that mattered. Neither Mr. Nicholl nor Mr. Anderson was contacted on the night of 5th July.

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I have thus far referred to the extent of the communications between four only of the seven directors of Millers during the period leading up to 6th July. Prior to the morning of 6th July no intimation of the negotiations with Howard Smiths was given to either Sir Peter Abeles, Mr. Cameron or Lady Miller, the other three directors. The segregation of those taken into advance confidence was, of course, known to Mr. Taylor, whose segregation it was. Some reflection might accordingly be cast upon Mr. Taylor's own approach to the problem by this act on his part. But none of his three confidants, Mr. Anderson, Mr. Nicholl or Mr. Balhorn, was aware of the segregation, and there is no evidence that the four were all knowingly party to preliminary exchanges of confidences from which the remaining three were deliberately excluded.

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Events of 6th July prior to Millers' Board Meeting

I come then to the critical events of 6th July. Mr. Maxwell arrived with the signed engrossment of the letter dated 6th July from Howard Smiths at about twenty to ten. There had overnight been

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prepared by Howard Smiths' solicitors, after discussion with Mr. Conway, a formal agreement for execution by the two companies. Together with the letter, Mr. Maxwell brought the original and a counterpart of the form of agreement, one of which had been duly executed by Howard Smiths. He also brought a formal application dated 6th July duly executed by Howard Smiths applying for 4,500,000 shares, payable as to 23 cents per share on application and as to the balance on 30th September, 1972. A cheque for the amount payable on application accompanied this formal application. 10

For three reasons the letter of 6th July is of critical significance. First, it was read out in full at the Millers' meeting on 6th July. Secondly, its terms were reproduced verbatim in an advertisement and a circular subsequently approved by the directors of Millers as a satisfactory communication to shareholders of the circumstances of the allotment to Howard Smiths. And thirdly, it is significant evidence of the knowledge and understanding of Howard Smiths of the circumstances of the allotment. Although the letter runs to three pages I shall set it out in full: 20

"

6th July, 1972.

Dear Mr. Taylor,

I refer to my letter of 22nd June, 1972 in which I informed you of my Company's intention to make an offer to acquire all of the issued shares of R.W. Miller (Holdings) Limited and also to the joint statement on 27th June on behalf of Ampol Petroleum Limited and Bulkships Limited in which those two companies stated their intention 'to act jointly in relation to the future operations of R.W. Miller (Holdings) Limited.' According to Press reports the two companies announced also that they would reject any offer for their shares whether from Howard Smith Limited or from any other source. 30 40

You will be aware that Ampol Petroleum Limited has informed the Sydney Stock Exchange that its bid of \$2.27 per share will remain open despite the much higher offer which Howard Smith Limited will make and which is currently in course of preparation.

This combination by the two largest shareholders of your Company would in the present circumstances effectively deprive the very large number of minority shareholders of R.W. Miller (Holdings) Limited of the opportunity of securing a substantially higher price for their shares. My Board would be most reluctant to proceed with a bid which, even if every shareholder other than Ampol or Bulkships accepted, could only result in Howard Smith Limited being the largest individual shareholder in a company the future operations of which would be controlled by a combination of two smaller shareholders.

We believe that your Board is conscious of the injustice being suffered by your smaller shareholders and we submit for your consideration a proposal which, if it meets with the approval of your Board, would enable Howard Smith Limited to proceed with its intended offer thereby restoring to your minority shareholders the right to sell their shares to the highest bidder and would give Ampol Petroleum Limited and Bulkships Limited a similar opportunity.

Our proposal is that R.W. Miller (Holdings) Limited should forthwith make to Howard Smith Limited an allotment of 4,500,000 ordinary \$1 shares at a premium of \$1.30 per share, on the basis that such shares should not participate in any dividend paid in respect of profits derived in the year ended 30th June, 1972, but ranking pari passu with existing shares in all other respects.

If the Board of your Company is prepared to consider our application favourably we would propose that the form of application should be lodged during your Board meeting on 6th July and the shares be issued forthwith. Our application would be accompanied by our cheque for \$1,035,000 representing application monies of 23 cents per share, with the balance of \$2.07 per share to be paid on 30th September, 1972, but on condition that such balance will be accepted at an earlier date if tendered by Howard Smith Limited.

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As an earnest of the good faith of both companies we would ask that your Board should execute an agreement providing for the undermentioned matters. When lodging its application form and cheque Howard Smith Limited will hand to you a similar agreement executed by Howard Smith Limited in exchange for the agreement executed by your Board.

The matters to be covered in detail in the agreement which has been drawn up by our Solicitors are - 10

- (i) R.W. Miller (Holdings) Limited shall on 6th July, 1972, make an allotment of ordinary shares to Howard Smith Limited.
- (ii) Howard Smith Limited shall proceed with its offer to acquire all the issued shares of R.W. Miller (Holdings) Limited, as mentioned in Howard Smith Limited's letter of 22nd June subject to Howard Smith Limited having the right to withdraw its offer at any time. 20
- (iii) R.W. Miller (Holdings) Limited shall not make any further share issues for a period of six months.
- (iv) Provisions regulating the status of R.W. Miller (Holdings) Limited until Howard Smith Limited shall withdraw its bid or declare it to be unconditional. 30

Notwithstanding the current circumstances I believe that the opportunity of placing such a large parcel of shares at a substantial premium is likely to be of considerable benefit to your Company. The infusion of £10,350,000 cash is likely to ease the financing problems your Company has faced in recent years, and enable you to rearrange your borrowings with the prospect of interest savings.

My Board recognises and respects the right of

your Directors to concern themselves with the intentions of a company which has indicated its intention of making a takeover bid, and subject to due allowance being made for unforeseen circumstances which may arise in the future, I can inform you that it is the intention of my Board should it receive a dominant shareholding in your Company, to maintain R.W. Miller (Holdings) Limited intact as a trading organisation. Some degree of rationalisation may in the future be unavoidable on common sense grounds, but I give you an assurance that this will be kept to an absolute minimum, and where it is necessary, the utmost care will be taken to see that humane principles are observed. In the past 11 years Howard Smith Limited has taken over several companies and we are justly proud of our treatment of the men and women affected. As a Board we have always recognised that our best asset is our employees.

If our bid succeeds we shall naturally expect changes to be made in the Board of R.W. Miller (Holdings) Limited to reflect the altered shareholdings, but minority shareholder representation will be maintained to an equitable extent.

As the terms of our proposed bid provide for the alternatives of a share and cash, and a cash only bid we cannot estimate with any degree of accuracy what our final cash commitment is likely to be. We have had preliminary talks with our Bankers but apart from this, we feel certain that an examination of our last published balance sheet will convince your fellow Directors that we shall have no difficulty in raising such funds as may be required.

Yours faithfully,
for HOWARD SMITH LIMITED

(W. Howard-Smith)
CHAIRMAN OF DIRECTORS

"

Mr. Conway read the letter through when Mr. Macwell handed it to him and observed that, in accordance with his request of the previous evening,

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it omitted the two lines in the draft dealing with development. He then took the documents in to Mr. Taylor. Mr. Conway told Mr. Taylor that the letter was the same as the one he had seen yesterday with the exception of the two lines, and he told him that the agreement was all right.

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In fact the agreement contained a number of far-reaching provisions which ordinarily would have required careful consideration by Millers. The agreement was said in argument to contain no more than the customary stipulations of a takeover offer, but it had a significant difference. A takeover offer is not binding upon the company to whose shareholders the offer is made. This agreement bound Millers not to issue any shares for a period of six months. For an indefinite period which could extend many months into the future it tied up Millers in respect of a number of important aspects of Millers' internal affairs. It prevented any mortgages or charges on properties; and it prevented any borrowing of money otherwise than by bank overdraft. These fetters would have frustrated a great many of the carefully-laid plans for the financing of Millers' operations. It forbade, inter alia, disposal of assets otherwise than in the ordinary course of business, it forbade the making of various types of internal staff contracts, and it forbade the entry into of any long-term or onerous contract or commitment. The foregoing prohibitions were all qualified as not to be undertaken without first obtaining the written consent of Howard Smiths. The agreement contained an absolute prohibition against Millers declaring or paying any dividend or bonus or making any other distribution of its profits or assets during the currency of the agreement.

Mr. Balhorn came to Mr. Taylor's office shortly before 10.00 a.m. Mr. Taylor gave him the letter to read. Mr. Balhorn asked for a call to be put through to Tokyo for him to speak to Mr. Duncan, the Millers director of whom he, Mr. Balhorn, was the alternate. At Mr. Balhorn's request Mr. Conway took over and spoke to Mr. Duncan when the call came through. There has been some contest as to the significance attaching to this communication between Mr. Balhorn and Mr. Duncan. The conclusion that I have reached is that Mr. Duncan indicated his concurrence in Mr. Balhorn voting in favour of the allotment. Whilst undoubtedly strongly influenced

by Mr. Duncan's expressed concurrence, Mr. Balhorn's role at the board meeting was not that of a mere cipher. The part that he played at the meeting and the vote that he cast were his own.

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10 In the meantime Mr. Taylor and Millers' officers had made preparations for the meeting. Mr. Conway had prepared for Mr. Taylor a script outlining the manner of conduct of the meeting. It appears from this script that it had been planned that Howard Smiths' letter of 6th July should be read out and the agreement should be tabled. The meeting was to be advised that there was no legal objection precluding the allotment but that it would constitute a breach of Stock Exchange regulations which, if not waived, could result in suspension or de-listing of the company by the Stock Exchange. The meeting was also to be advised of the legal principles governing allotments of shares. Sir Peter Abeles, being a director of Bulkships, was to be invited to disqualify himself and, if he refused so to do, then Mr. Taylor was to rule that Sir Peter Abeles was not entitled to take part in the debate or to vote. The general manager, Mr. Koch, was then to be asked to give a summary of the company's financial position. Mr. Taylor was then to inform the meeting that, from what Mr. Koch had said, the company could be at risk in the near future and that "if it is to avoid the possibility of a forced liquidation" it was essential that adequate provision be made to cover the liabilities as and when they fell due.

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As well as this script having been prepared, arrangements had been made to have ready for sealing at the board meeting, a share certificate covering 4,500,000 shares, as well as having ready the necessary documentation for effecting registration of that allotment in Millers' share register.

MILLERS' BOARD MEETING OF 6th JULY - ALLOTMENT OF SHARES

40 The meeting was attended by Mr. Taylor, Lady Miller, Sir Peter Abeles and Messrs. Nicholl, Anderson, Balhorn and Cameron. Inter alia, Mr. Koch, Mr. Conway and Mr. Aston were in attendance. Detailed minutes of the meeting were later prepared. I am not confident that total reliance can be placed upon the minutes as an entirely reliable account of events at the meeting. They diverge in some respects from the oral evidence as well as from a

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transcript of contemporaneous shorthand notes made of parts of the meeting by a Miss Hill, who was present from time to time during the meeting. Miss Hill's notes, so far as they go, can be accepted as accurate. Where they diverge from the formal minutes, they are the more reliable record. The formal minutes were admittedly confirmed at a later meeting of the directors held on 10th August, 1972. This date was, however, not only after the commencement of these proceedings (25th July, 1972), but after the relevant pleadings had closed (the defences of Millers and the directors were filed on 1st August, 1972). I do not intend to suggest that the formal minutes are false. Generally speaking I am content to use them as providing the narrative of events at the meeting.

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The first main item of business dealt with was entitled in the minutes "Howard Smith Limited". Mr. Taylor announced that there had been a "dramatic development this morning from Howard Smith hand delivered to me". He then read the letter of 6th July, and Mr. Conway read out the accompanying agreement. Mr. Taylor then said he had been advised by Mr. Conway and Mr. Aston that "on a quick assessment of the situation there is no provision in the Companies Act which precludes the board from making such an allotment". Reference was made to the allotment constituting a breach of the Stock Exchange regulations, and to the possibility of suspension or de-listing. Mr. Taylor then said:

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"I am also advised that under the law the directors are required to use their powers bona fide for the benefit of the Company, which means the shareholders as a whole, that they cannot justify the exercise of their powers for the benefit of themselves or some only of the shareholders."

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He then invited Mr. Conway to speak. Mr. Conway said he had only one other comment to make:

"It is necessarily very brief, but, in regard to the question of de-listing it is, of course, anticipated that at some stage it is obvious that this company is going to be taken over - we will expect that the company will be de-listed." (from Miss Hill's notes)

I take the continuation from Mr. Conway's oral evidence.

10 " 'I don't know that de-listing is going to affect the shareholders because at some stage we are going to be de-listed and in the meantime the shareholders would have two alternative offers available to them.' I said, 'In my view the Board has a duty to consider the interests of all shareholders, both major and minor, and if it is satisfied that it is in the interests of all the shareholders then, in my view, they should accept the offer but, if they are not satisfied that it is in the interests of all the shareholders, then they should reject it'."

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Mr. Aston, in response to Mr. Taylor's invitation, said:

20 "No comment - just simply to reaffirm that any decision to accept is a valid exercise to do this and it is completely unchallengeable. It is incumbent upon the board to consider this matter in the best interests of the shareholders as a whole that this is a proposition that can be entered into without any fear of challenge."

30 Sir Peter Abeles pointed out that the price of \$2.30 was significantly less than the estimated asset backing in excess of \$3.70 per share. There was then an exchange between Mr. Taylor and Sir Peter Abeles concerning Sir Peter Abeles' entitlement to participate in the discussion and to vote. At the end of this discussion Mr. Taylor ruled "that there is a conflict of interest and duty and that you are not entitled to take part in the debate or to vote on this subject." Mr. Aston expressed his concurrence with the validity of this ruling. After some further discussion Sir Peter Abeles left the meeting to telephone for legal advice.

At Mr. Taylor's request so as to open the matter for discussion Mr. Anderson then moved (seconded by Mr. Nicholl) that the form of agreement be executed and that 4,500,000 shares be allotted to Howard Smiths. Mr. Taylor then said:

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"So that you may be fortified with the company's financial position and the events which led to the repayment of our indebtedness to the Commonwealth, I will ask the general manager to give you a summary of the company's present financial position."

Mr. Koch then addressed the meeting for something between ten and twenty minutes.

I shall not attempt to cover the matters put by Mr. Koch to the meeting. Mr. Koch said in his evidence that at the discussion on 5th July Mr. Aston and Mr. Conway had both agreed that "If there were to be any allotment for it to be within the law it would have to be to an extent to cover such short-term commitments that we had." At the board meeting Mr. Koch directed his attention to demonstrating the existence of short-term commitments and the liquidity problem confronting Millers. He said that all of the company's assets were charged. The minutes record a list entitled "Summary of current short-term borrowings". The list shows a series of dates upon which short-term borrowings were said to fall due running up to June 1973, the amounts totalling \$10,741,900 (an issue of 4,500,000 shares at \$2.30 per share would bring in \$10,350,000). Mr. Koch spoke of the difficulty the company had had in meeting a peremptory demand from the Commonwealth on 15th June, 1972 for outstanding progress payments due on the construction of the "Robert Miller"; the deadline fixed by the Commonwealth (30th June, 1972) was met, but only just, and only after considerable activity. He also referred to the serious position the company had been in in April 1971. He referred to what were suggested to be doubts attending the prospects of long term finance being forthcoming to cover the short-term borrowings. Arrangements had already been made for such long term finance. No concluded binding contracts in that regard had been entered into. Mr. Koch concluded with a strong recommendation in favour of the proposal.

Mr. Taylor then asked for comment. Mr. Cameron (who was one of the minority voting the allotment) then spoke for about fifteen minutes. Here again I shall not attempt to cover the matters dealt with by Mr. Cameron. He drew attention to the Stock

Exchange requirement that an issue should be approved by shareholders in general meeting, and to the reason underlying that requirement, namely, the protection of the rights of all shareholders. He pointed out that the proposal would fail to gain the approval of shareholders because 55% would vote against it. He pointed out that the present shareholders could remove all the members of the board, He referred to the harm to the rights of shareholders if the company were de-listed. The formal minutes include, as part of the summary of what Mr. Cameron said:

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"In regard to the proposal from Howard Smith Limited, Mr. Cameron stated that 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

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Mr. Cameron went on to say that the present Board had been aware for twelve months that a liquidity crisis had existed and had done nothing to consider a share issue to shareholders and that, whilst the company would not at the present time make a share issue to the shareholders at an issue of \$2.30 per share, it was still possible to make an issue to shareholders at a substantial premium.

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Mr. Cameron said that he must repeat at this stage that he was concerned that the Board was suggesting a share issue to get over financial problems."

There was discussion regarding the confidence that could be placed in long term finance coming forward. Mr. Cameron indicated an impression that, notwithstanding the asset backing of the Miller's shares, serious consideration would have to be given to recommending the Howard Smiths' takeover offer. The formal minutes record:

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"The Chairman then quoted the action of Ampol Petroleum Limited and Bulkships Limited in joining forces and placing the Company's shareholders in a position where Ampol's offer of \$2.27 per share was the only offer open to them. The Chairman also said that, if the Board

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accepted the proposal from Howard Smith Limited, the major shareholders would have received consideration as they could accept the offer made for their shares by Howard Smith Limited.

Mr. Cameron again posed the question to the Board in general as to why a share issue could not be made to existing shareholders." 10

Mr. Taylor answered this question (I quote from Miss Hill's notes):

"Because the majority of shares, 55% is held by two shareholders which would increase their shareholding."

Mr. Nicholl said that a share issue had been previously discussed and that he doubted whether an issue could be made to shareholders at a price of £2.30 per share; Mr. Cameron agreed that an issue to shareholders could not be placed at £2.30. I quote from the formal minutes: 20

"Mr. Nicholl further stated that, having regard to the alternate situation, where you had two major shareholders together he would rather face the company's shareholders having to accept the fact of being in breach of the Stock Exchange rules if the proposal from Howard Smith was accepted.

Mr. A.V. Balhorn said that he agreed with the remarks made by Mr. Nicholl, as the company's shareholders would receive £2.75 for their shares if the Board accepted the proposal from Howard Smith Limited rather than being locked in with only Ampol's offer of £2.27 to accept." 30

Mr. Balhorn also said that he would be a little disturbed on the ethical side of what was proposed, but that Mr. Duncan had said to see what the board thinks of the proposal and "to go along with it on what they think". 40

The minutes record that Lady Miller stated she was not happy with the proposal, and would have liked more time to consider it before making up her mind. Furthermore, she did not like the thought of the company being de-listed. This apparently ended the contributions of the directors. Mr. Conway then made some comments minimising the likelihood

of the Stock Exchange de-listing the company. Finally Mr. Aston, the solicitor who had been retained as an expert to advise on the legal implications, made some observations on the commercial merits of the proposal. I note in passing that Mr. Aston was not called as a witness. His account of his instructions and of what might have passed from Mr. Taylor to him is accordingly not before the Court. He seems to have accepted the role of an advocate for the proposal. But in this he was no doubt reflecting the eagerness of Mr. Taylor (and the Millers' management team) to procure the making of the allotment to Howard Smiths.

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The motion was then put to the vote and carried by four votes to two, those in favour being Mr. Taylor, Mr. Nicholl, Mr. Anderson and Mr. Balhorn: those against were Lady Miller and Mr. Cameron. Sir Peter Abeles did not attempt to vote. There has been a contest during the hearing regarding the degree of Sir Peter Abeles' participation at the meeting. He made some interjections, but I am satisfied that, in the absence of Mr. Taylor's ruling at the outset of the meeting, Sir Peter Abeles would have made a substantial contribution to the deliberations of this meeting in relation to the important question being considered. In due submission to the chairman's authority Sir Peter Abeles held back from participation, and did not vote. I am satisfied that he was prevented from taking part in the discussion and from voting by Mr. Taylor's ruling.

Mr. Taylor forthwith signed the form of agreement and signed the share certificate that had already been prepared, and both of these documents were formally sealed. Mr. Conway then left the meeting, taking with him the agreement and the script. He went straight to Mr. Maxwell, who was waiting upstairs, handed to Mr. Maxwell the agreement and the share scrip and accepted in exchange the counterpart of the agreement, the formal application for the shares and the cheque for the application money. He then returned to the meeting with the counterpart of the agreement sealed by Howard Smiths. Steps were promptly taken thereafter to procure the necessary registration of Howard Smiths as the owner of these 4,500,000 shares. It is, perhaps, not unreal to suspect that the expedition with which these administrative steps were taken had some association with a general anticipation recorded in the minutes as having

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been expressed by Mr. Cameron after the motion had been passed that "the Board has laid itself open to an injunction being taken out within the next twenty-four hours and could find itself in a very serious situation".

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Notification to shareholders of allotment

At the conclusion of the meeting arrangements were made to publish Howard Smiths' letter of 6th July in the Australian Financial Review. This was not dealt with at the board meeting. The decision was apparently made afterwards by Mr. Nicholl and some others, the identity of whom is not entirely clear. Mr. Nicholl thought that Mr. Taylor was present and Mr. Balhorn could have been present, at the discussion in which it was decided to publish the letter. It was in fact published verbatim in a large advertisement measuring some ten inches by twelve inches in the Australian Financial Review of 7th July. The letter constituted the main substance of the advertisement. It was introduced under a bold heading of the name and address of Millers with the words:

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"Set out hereunder is the text of a letter received by Mr. A.N. Taylor, Chairman of R.W. Miller (Holdings) Ltd., from Mr. W. Howard-Smith, Chairman of Howard-Smith Limited, just prior to the holding of a meeting on Thursday, July 6, of the Miller Board."

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After the letter, the advertisement stated:

"The letter was considered by the Board which resolved that it issue 4,500,000 shares in the capital of the Company at a premium of \$1.30 per share. The voting of the Board was four to two in favour of the resolution, the Chairman having ruled that Sir Peter Abeles was ineligible to vote in view of a conflict of duty and interest because of his membership of the board of Bulkships Limited which had announced that it would act jointly with Ampol

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Petroleum Limited in relation to the future operations of R.W. Miller (Holdings) Limited.

The Board also reaffirmed its previous advice to shareholders to reject the Ampol bid.

A.N. Taylor
CHAIRMAN OF DIRECTORS"

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10 In the printing of the letter in the advertisement emphasis was laid upon the latter portion of the fourth paragraph by the use of heavier type so as to make this passage stand out. The part thus emphasised was

"...thereby restoring to your minority shareholders the right to sell their shares to the highest bidder, and would give Ampol Petroleum Limited and Bulkships Limited a similar opportunity."

20 The publication of this advertisement was mentioned at a board meeting held on 14th July, attended by six of the seven persons who attended the meeting of 6th July, and by Sir Ian Potter, who was then acting as alternate for Sir Peter Abeles. The minutes of 14th July record in this regard, inter alia:

30 "The Chairman then sought ratification by the Board for his action in inserting the advertisement in the 'Australian Financial Review' and an appropriate motion was moved by Mr. K.B. Anderson and seconded by Mr. A.V. Balhorn.

40 Sir Ian Potter asked the reason for inserting the advertisement in the 'Australian Financial Review' and was advised by the Chairman that a sub-committee had been formed to frame a reply to the Stock Exchange and it had been decided to use this media to fully inform the Company's shareholders as quickly as possible and reprints of the advertisement had also been mailed to shareholders.

Mr. Conway commented that the letter from Howard Smith Ltd. was a lengthy letter

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and, as not every shareholder would read the 'Australian Financial Review', the advertisement containing the full text of the letter had been mailed to all shareholders.

Mr. A.V. Balhorn commended the Chairman on the advertisement as he considered it to be a straightforward statement of facts and, in agreeing with Mr. Balhorn's comment, Mr. E.D. Cameron stated that he was prepared to ratify the Chairman's action. 10

The motion was then passed without dissent with Sir Ian Potter abstaining from voting on the grounds that he was not present at the last Board Meeting."

A copy of the advertisement was also sent out to each shareholder under cover of a letter dated 7th July, 1972. As this covering letter and the advertisement are the contemporaneous public statements made by Millers in respect of the allotment, the covering letter is of such importance that I quote the greater part of it. The first four paragraphs are as follows: 20

"Dear Shareholder,

For your information I am enclosing a print of a statement which appeared in the Australian Financial Review on 7th July 1972 and you will see that a placement of 4,500,000 shares has been made by your elected Board. This issue is at a premium of \$1.30 per share, making a total price of \$2.30 per share, which is 5 cents above the Market Price of Thursday last, and 3 cents above the Ampol offer of \$2.27. 30

This means an injection of \$10,350,000 cash into Millers' shareholders' funds, thereby immensely strengthening the financial position of our Company.

Following this allotment of shares, Howard Smith Ltd. will now proceed with its proposed offer to all shareholders. We are advised that the formal notice thereof, which by law has to be served on this Company, will issue next week. By law Howard Smith Ltd. must then wait 40

for 28 days before sending to shareholders the offer to purchase their shares. You can, therefore, expect to receive the offer from Howard Smith in approximately five weeks' time.

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Much has been made in the Press of the suspension by The Australian Associated Stock Exchanges of trading in Miller shares. However, we believe this inconvenience will be only minor when compared with the freedom of decision which you now enjoy. Irrespective of such suspension, you are now in a position to assess any further offers which may be made, as well as to consider the offer which you will receive from Howard Smith Ltd."

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The letter concludes by stating the precise terms of the Howard Smiths offer and by reaffirming, in block capitals, the directors' recommendation to reject the Ampol bid. It is signed by Mr. Taylor.

20

This letter of 7th July was also tabled at the meeting of 14th July and apparently accepted without demur.

The anticipated action by the Stock Exchange was not long in coming. Trading in the shares in Millers was suspended on 6th July, 1972. That suspension apparently remains current, notwithstanding protests made. The first of such protests was sent by Mr. Taylor on 7th July (this letter also being tabled and accepted at the directors' meeting on 14th July). This letter is in two respects not entirely frank. Its purpose was to press for re-listing of the shares and it is probably unsafe to use its terms as a basis for inferring the purposes of intentions of the directors in allotting the shares to Howard Smiths.

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Statement of claim, defences and cross-claim

The present proceedings were commenced on 7th July, on which day the plaintiff obtained an interlocutory injunction having the effect of preventing any further dealing with these shares. In due course formal pleadings were filed. In its statement of claim Ampol seeks:

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- (1) A declaration that the allotment of the shares was void or invalid, and an order that the allotment be set aside;
- (2) a declaration that the agreement of 6th July was void or invalid, and an order that it be set aside;
- (3) rectification of the register by removing Howard Smiths' name;
- (4) injunctions precluding recognition of Howard Smiths as a shareholder; 10
- (5) an order that Millers repay to Howard Smiths the moneys paid in respect of the allotment;
- (6) an order that the share certificate be delivered up for cancellation;
- (7) injunctions restraining Howard Smiths from exercising rights as a shareholder; and
- (8) an order for costs. 20

It is charged in the statement of claim that the directors who voted in favour of the allotment and the execution of the agreement did so for the purpose of reducing the proportion of shares in the capital of Millers held by each of Ampol and Bulkships, that they did so for the purpose of defeating Ampol's takeover offer and facilitating and ensuring the success of Howard Smiths' takeover offer, that they did so for the purpose of preserving their own positions as directors, and that they did not vote bona fide in the interests of Millers as a whole. 30

Two subsidiary charges were made in the statement of claim. The first is that Mr. Balhorn did not cast his vote in the exercise of his own independent judgment, but that he was in fact acting simply as the voice of Mr. Duncan, who was then absent in Japan; I have already stated a finding in this regard. The second is that the exclusion of Sir Peter Abeles from participating in the discussion was wrong and that, in 40

consequence, the proceedings had thereby lost their character as a directors' meeting thus invalidating the meeting; this allegation is closely bound up with the cross-claim.

Finally it is alleged in the statement of claim that Howard Smiths was aware of the matters relied upon as invalidating the actions of the directors.

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10 The defendants in the proceedings include
Millers, all directors and their alternates, and
Howard Smiths. The main defence is that filed on
behalf of Millers and Messrs. Taylor, Nicholl and
Balhorn (as well as another director, Mr. Duncan,
and two alternates, who were not present as such at
the meeting of 6th July). The form of this defence
is closely followed in the defence filed on behalf
of the remaining one of the four majority directors,
Mr. Anderson. In substance these defences deny the
allegations and charges made against Millers and
20 the majority directors. They take issue upon the
allegations relating to Mr. Balhorn and Sir Peter
Abeles. They claim to justify the exclusion of
Sir Peter Abeles. In addition they put forward
a discretionary defence turning upon allegations made
against Ampol and Sir Peter Abeles of wrongful com-
plicity in actions inimical to the interests of
Millers such as to compromise Sir Peter Abeles'
position as a director of Millers. This amounts to
a discretionary defence of want of clean hands.

30 A cross-claim has been filed by Millers against
Ampol, Bulkships and Sir Peter Abeles. The cross-
claim is related to the exclusion of Sir Peter Abeles
from participating in the discussion at the meeting
and from voting. The issues raised by the pleadings
on this cross-claim have led to an appreciable exten-
sion of the evidence and of the matters which were
the subject of argument. In the view which I have
formed however, there is no occasion for me to state
a conclusion on any of these matters. They only fall
40 for decision in the event of the exclusion of Sir
Peter Abeles fulfilling a decisive role in the deter-
mination of this dispute.

Opposing contentions of Ampol and Millers

The core of this whole contest is Ampol's claim that the allotment was for the purpose of reducing the proportion of shares held by Ampol and Bulkships with the attendant consequence of facilitating the take-over by Howard Smiths. In denying this, the defendants

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contend that the issue was made to meet a capital need of Millers. It is also contended by the defendants that even if, contrary to their main submission, it be held against them that the primary purpose was directed to the facilitation of Howard Smiths' takeover offer, this itself was a valid purpose.

The onus of proof of the allegation that the directors were not acting bona fide in the interest of the company as a whole rests throughout on Ampol. There were but two purposes of the board's action one or other or both of which was or were operative in the minds of the directors. The defendants assert that the decisions were made primarily for the purpose of meeting a financial need. If this was the substantial object, the accomplishment of which formed the real ground of the directors' action, then the allotment will be valid. It is accordingly necessary to canvass the material relied upon by the defendants in support of this defensive allegation. 10 20

Millers' need of capital

A tremendous amount of detailed evidence was directed to establishing that Millers was, as at 6th July, 1972, in a financially straitened position. The validity of the directors' action is not to be judged by whether or not their opinion was correct in fact. The defendants seek to prove this objective factual state as a persuasive context within which to evaluate the affirmative statements made in the witness-box by each of Messrs. Taylor, Nicholl, Balhorn and Anderson to the effect that the primary purpose of the allotment was to obtain money to meet a capital need. 30

It is clear on the evidence that Millers was as at 6th July, 1972, in a position of tight liquidity. It did not have within its own funds sufficient money to cover its present and foreseeable financial commitments. It had, however, been in a position of tight liquidity for many months before 6th July, 1972. There is a history of a series of financial crises; but at the same time there is a trend of improvement during the months preceding the meeting of 6th July. 40

The primary cause of the position of tight liquidity was the capital commitment involved in

the construction of the two 66,000 ton tankers. The construction of the first of these tankers had almost been completed during the lifetime of the late Sir Roderick Miller, and the construction of the second had been commenced shortly after his death. The planning of the tankers had been essentially the province of Sir Roderick Miller. He had followed during his lifetime a policy of not issuing shares to cover the construction costs. He had preferred to cover the construction costs by loans. Operating figures in respect of "Amanda Miller" (which was delivered on 31st August, 1971) and projections for the operations of "Robert Miller" (which is due for delivery in the first half of 1973) indicate the practicability of paying off long term loans for construction finance out of current earnings of these tankers within a reasonably short period. It is an obvious concomitant of this policy that there will be continuing liquidity crises until such time as the anticipated earnings are translated into reality and the tankers are ultimately paid off. The method of financing envisaged involved short term borrowings to cover the actual construction costs whilst building is in progress, and longer term finance to take the place of the short term borrowings once the tanker is in service and earning profits.

I have no hesitation in finding that as at 6th July, 1972, Millers did have a capital need, and, indeed, a capital need of no mean order. This capital need had, however, existed for some time past. Millers' policy in Sir Roderick Miller's lifetime had been to meet such capital need from borrowings rather than from an issue of shares. This policy had been continued after Sir Roderick Miller's death, and tremendous efforts had been made both by Mr. Taylor and Mr. Koch to procure through borrowings the necessary capital, to cover Millers' operations and planned future development - in particular, the construction costs of the tankers. The financing of major capital developments from borrowed money, particularly short term borrowings, is necessarily fraught with a greater degree of uncertainty than financing development through share issues. I can readily appreciate the force of the observation made by so many of the defendants' witnesses in the present case that "a loan is not a loan until the money is in the bank".

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It is clear that the alarms and strains of such a policy were constantly before, and well-known to, and understood by, the directors. These strains were still very much present on 6th July, 1972. At the same time, however, this had been Sir Roderick Miller's policy and there is clearly discernible trend of increasing optimism in the management reports presented at board meetings and other documents coming forward from Millers up to 6th July, 1972.

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I shall not go in detail to the management reports. Particular reference has been made to those for the months of September and November 1971 and March and May of 1972. These reports bear witness to the diligent persistence of Mr. Taylor and Mr. Koch, and they convey a pattern of consolidation and of achievement in respect of the arrangement of Millers' financial affairs. I repeat that the reports do not negative the continuing existence of a capital need. But they do provide some justification for anticipating that the current policy of obtaining capital through loans was proving to be workable. All the directors had confidence in and accepted the management reports as they came forward from meeting to meeting. The contents of these reports can be taken as an indication that the directors had reason to feel that the position was steadily improving. The last report from management received by the board prior to the meeting of 6th July was that prepared for the month of May. The tenor of that report, particularly so far as concerns finance, was in contrast with the tenor of Mr. Koch's statements at that meeting.

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In association with the management reports, the chartered accountants' report, obtained in connection with the Ampol takeover offer, provides further material which might be said to justify confidence in the policy of obtaining capital through loan finance. The report does not convey any note of impending doom, still less of any need to revise the financial policies thus far followed by Millers.

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A further document to which some reference has been made in the course of evidence is the Part C statement issued with the unanimous assent of the

board of Millers dated 27th June, 1972, in reference to the Ampol takeover offer. The last balance-sheet issued before 27th June, 1972, was that as at 30th June, 1971. The Part C statement dated 27th June, 1972, states in para. 2(g):

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"2(g). There have been material changes in the financial position of this Company and wholly owned subsidiary companies since the last balance sheet namely:

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(i) There has been a substantial increase in Group trading profits before and after income tax since 30th June 1971.

(ii) Subsidiary companies have sold freehold properties since 30th June 1971 with the result that the Group has derived substantial capital profits on the sale thereof,

(iii) A subsidiary company has concluded negotiations for and has received long term finance on the security of the vessel M.T. "Amanda Miller".

(iv) The Company is currently negotiating short, medium and long term finance on the security of assets owned by the Group.

(v) Since 30th June, 1971, subsidiary companies have expended considerable sums on tanker progress payments and colliery development."

I think it fair to make some legitimate discount against the optimism expressed in para. 2(g) having regard to the context within which that statement was issued. But, even after making all legitimate allowances, the tenor of para. 2(g)

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the terms of which had been before the board and approved by it along with the rest of the Part C statement of 23rd June, 1972, is confirmatory of what I regard as a developing optimism on the part of the directors of Millers for the future of their company in the light of its existing policies.

I have said earlier that the examination of the objective state of Millers' financial position is relevant only insofar as the existence of a capital need is relied upon by the defendants as establishing a context giving weight and probability to the assertions of the defendant directors, that they made the allotment for the purpose of meeting a capital need. In an objective sense the evidence does not establish a capital need as extreme as the defendants now suggest. The evidence, although voluminous, is lacking in some respects. The latest balance-sheet tendered in evidence was that as at 30th June, 1971. The accountant who prepared the comprehensive report dated 21st June, 1972, was not called. A great mass of what might be described as basic financial material was canvassed in evidence. But it is not easy to deduce from this a clear picture of the exact financial position of Millers on 6th July or on any date in that vicinity. The basic material may well all be in evidence, particularly in the form of the accountant's report of 21st June. There is, however, room for argument, indeed, there has been strong contest, upon the significance of various aspects of this basic material. Ultimately the evidence makes a valid case of an existing and continuing need for outside funds. But, in association with establishing this need, the evidence also establishes the long-standing nature of such need, the gradual progress made in meeting such need by obtaining loan capital rather than share capital, and a real basis for Millers being reasonably confident of the future. I cannot accept as reliable the picture of gloom that Millers' management team prepared for the board meeting on 6th July. Mr. Conway's script, for example, provided for Mr. Taylor saying that the company could be at

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10 risk in the near future, and for mention being made of avoiding "the possibility of a forced liquidation." Mr. Taylor did not in fact go to this length at the board meeting, but the document reflects the atmosphere of advocacy as distinct from balanced presentation, that underlay the promotion of this proposal, by the management of Millers. Mr. Koch's participation at the board meeting was cast undisguisedly in the character of advocacy.

20 In short, I am satisfied that as at 6th July, 1972, there was a need for capital. I am satisfied that this need had been recognised for many months past and that a policy had been followed of meeting it by loan capital rather than by share capital. I am satisfied that progress was being made in meeting this need by this policy. I am not satisfied that the company's financial affairs were at crisis point due to unavailability of capital, or that there was a pressing need to obtain cash funds by a share issue.

Directors' evidence on purpose of allotment

30 The defendants have to some extent fallen short of establishing the critical or desperate need for a share issue urged on their behalf during the hearing. This does not, however, necessarily strengthen the plaintiff's case. The main substance of the defendants' case rests upon the oral evidence by each of the four directors who voted in favour of the allotment. The test by which these proceedings are to be determined is not the objective need for capital. It is whether the directors, in making the allotment, were acting in good faith for the benefit of the company as a whole. Even if the defendants were wrong in their beliefs and assessments, if they allotted the shares primarily for the purpose of meeting what they honestly believed to be a pressing or critical financial need then 40 the plaintiff would fail in its challenge. For this reason the evidence of the directors themselves could be of decisive significance.

Mr. Glass, Q.C., has contended that ultimately the resolution of this contest comes down to a

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straightforward question of credit - are the four majority directors to be believed in their evidence when they assert, as each of them did, in terms, that the allotment was made primarily to meet a capital need? I shall quote from the evidence of each of these four directors some of the passages that are relied upon by Mr. Glass

In Mr. Taylor's evidence in-chief the following appears.

Q. Now I ask you, Mr. Taylor, what were your reasons for voting in favour of the allotment of 4½ million 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 ..."

In cross-examination he said:

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."

Mr. Nicholl was asked in-chief whether he heard Mr. Koch's recommendation in favour of the placement. The transcript continues.

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"Q. What was the state of your mind in regard to that recommendation?

A. I was always conscious of the company's need, present need, for capital, and it was my belief that this was a means of solving these problems and getting over the company's difficulties.

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Q. What were your purposes, or what was your purpose, in voting for the allotment?

A. I voted in favour of the allotment to get a capital infusion into the company of \$10 million.

Q. Did you have any other purpose?

A. That was my prime purpose in doing it.

Q. Was there any other matter in your mind?

A. I was aware of the fact that as a result of making this placement to Howard Smith, that it could result in the shareholders still having available to them the opportunity of accepting Howard Smith's takeover offer or any other takeover offer that might be made in the meantime.

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Q. Was that a factor in the thinking?

A. It was a factor, but not the prime factor."

Mr. Balhorn also had his attention directed in-chief to Mr. Koch's recommendation. I quote from his evidence:

30 "Q. What, according to your recollection, did he recommend?

A. He strongly recommended acceptance of the Howard Smith proposal as a means of overcoming our desperate liquid financial position.

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Q. What was your state of mind in regard to that recommendation?

A. I agreed with it.

Q. What were your reasons in voting as you did?

A. Well, I believed it was a golden opportunity to overcome our immediate liquidity problems to get the company out of a, what was a stagnant situation, to implement sound plans that the company had and had been pigeon-holed and virtually get ourselves off the hook where at that time all assets of the company were mortgaged.

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Q. What was your belief as to the company's liquid position on that date?

A. Critical.

Q. What was your belief as to what its liquid position had been in the past?

A. Critical."

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And, in cross-examination?

"Q. And, as I understand from what you told his Honour, the desirability of the Howard Smith offer remaining open played no significant part at all in your purpose in voting for that resolution?

A. Not a major consideration, no.

Q. Not even a significant consideration?

A. No."

In Mr. Anderson's evidence in-chief the following appears:

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"Q. What was your state of mind with regard to Mr. Koch's recommendation?

A. Well, I thoroughly concurred with his recommendation because I had previously formed my own conclusion and he confirmed my conclusion.

Q. What was the conclusion on your part which he confirmed?

10 A. That we badly needed over \$10-million to meet these loans falling due.

Q. And you voted in favour of the allotment?

A. Yes.

Q. And I ask what were your purposes or what was your purpose in voting for the allotment?

A. The urgent need to obtain something over \$10-million to ease the liquidity problems of the company.

Q. Was there any other purpose beside that?

20 A. That was the paramount purpose but I did also consider the position of shareholders as a whole being in a position to accept Howard Smith's offer.

Q. What did you feel about that?

A. Well, I felt that the shareholders should be in a position not only to accept Howard Smith's offer but any other higher offer which may come along."

Considerations affecting decision on directors' purpose

30 Each of these directors was strongly cross-examined upon his claim that the primary purpose of the allotment was to meet a capital need. So far as concerns Mr. Nicholl, Mr. Balhorn and Mr. Anderson, they may by now believe that this was their primary purpose. In the light of the overwhelming context to the contrary I am unable to accept that this was their primary purpose on 6th July. There are inevitably uncertainties that enter into deciding the

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nature of a particular intention at a particular point of time. The person whose intention is in question can give oral evidence on the point, and this is always a powerful source from which to judge of intention. Considerable weight must also however, be given to contemporaneous actions and statements. There is inevitably a risk of reconstruction and perhaps self-justification clouding the reliability of subsequent oral evidence of a particular intention. A further difficulty is the ultimate impossibility of demonstrating definitively what was or what was not a particular intention. The question is one which involves inference as distinct from confident recognition of an objective fact. The demeanour of the witness, his involvement in the matter under consideration, and the extent of his reliability and understanding are all factors which must be weighed. These are amongst the considerations that I have taken into account in weighing and evaluating the evidence given by these four directors.

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The whole of the events leading up to the meeting of 6th July are pervaded by an atmosphere of apprehension on the part of Millers in relation to the actions of Ampol and Bulkships. In the eyes of the directors, the shareholders, as far back as May, were divided into a majority bloc and minority shareholders. The activities of the Millers' management team in negotiating with Howard Smiths leaves no room for doubt upon the point. The primary objective so far as the management team was concerned was to issue shares to Howard Smiths so as to enable the Howard Smiths' takeover to proceed. This appears unmistakably through the evidence of Mr. Conway.

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Discussion of Directors' purpose

Mr. Taylor, as managing director, and thus the head of the Millers' management team, was closely involved in the negotiations with Howard Smiths and with the ultimate decision to recommend the allotment to the board. The terms of the letter of 6th July from Howard Smiths provide a clear indication of what, in Howard Smiths' understanding, were the factors influencing Mr. Taylor's approach. His conduct throughout the whole of the relevant time is directly in the teeth of his having intended on 6th July to make the allotment primarily to meet a capital need. The narrative

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as I have set it out in detail speaks for itself, and I need not go back over it to pick out specific elements substantiating an intention on Mr. Taylor's part to make this allotment in order to destroy the majority bloc, and thereby to keep the Howard Smiths' takeover offer alive. Mr. Taylor was in the witness-box for a considerable time, and he was cross-examined strongly. Perhaps he now believes that the meeting of a capital need was his real purpose in voting in favour of this allotment on 6th July. But I find myself unable to accept his evidence to this effect. The whole pattern of events points too strongly to the contrary, and I am persuaded that his primary purpose was related to the destruction of the majority bloc and the consequent facilitation of the Howard Smiths' takeover.

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The remaining three of the majority directors were not implicated in the same way in the negotiations with Howard Smiths. But their evidence is also at variance with the context. There is to be seen an early concern of the directors with the interests of what were described as the minority shareholders. Their satisfaction at the prospect of a takeover by Howard Smiths is evident from the narrative, as is their apprehension at the prospect of a takeover by Ampol. Their acceptance, virtually without question, of the legitimacy of the reasoning in the Howard Smiths' letter of 6th July points towards this reasoning according with their own individual views. The line of reasoning in that letter stands out clearly as being a commendation of the allotment primarily by reason of its consequential effect in enabling Howard Smiths to keep its takeover offer on foot. The financial element so far as Millers is concerned receives but passing mention. I hesitate to go so far as to use the word suggested by counsel for the plaintiff in reference to the events at the meeting of 6th July - a charade. But there is an element of unreality in treating the events of that meeting as evidencing a genuine intention on the part of the majority directors to issue shares primarily for the purpose of meeting a capital need.

To a large extent, of course, the management of the whole affair derived from Mr. Taylor - the haste with which the matter was brought forward (Mr. Taylor having pressed Mr. Howard-Smith in this regard), the preconsideration given to the course of proceedings at the meeting in the manner of

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advocacy of the proposal, the preparation of the administrative steps to consummate the issue of shares forthwith, all point to a planned campaign on Mr. Taylor's part. The other three of the majority were not a party to these matters. But Mr. Nicholl, at least, could not have failed to appreciate the paucity of information before the board and the desirability of careful and comprehensive deliberation if the exercise upon which the board was engaged was in truth and substance one directed to a decision primarily related to the company's financial need. Mr. Koch was invited to address the meeting "to fortify" the directors. The whole course of discussion is consistent with Millers' capital requirement being a subsidiary, although no doubt welcome, concomitant of Howard Smiths' proposal. The drift of the discussion at the meeting was only too apparent to Mr. Cameron, and was remarked upon by him during the course of the meeting. His question as to why a share issue could not be made to existing shareholders, and the answer given by Mr. Taylor to the effect that such an allotment would only increase the shareholding of the existing majority, speaks volumes as to the primary consideration occupying the board's intention.

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The significance of the decision made on 6th July was that \$10 million would be fed into the company by way of the share issue in lieu of obtaining it from loans. It is unnecessary to develop the fundamental distinction between the meeting of a capital need by loans and a meeting of a capital need by a share issue. The diminution or "watering" of the equity of existing shareholders is one element in this difference. It will be recalled that the directors had been advised, indeed they had themselves advised the shareholders, that the asset backing of the shares was in excess of \$3.70. An increase of capital by 50% by issuing to an outsider for a price of \$2.30 would appear to need the most careful and deliberate evaluation in this regard. A further important element in the difference is the taxation position. the taxation reasons pointing against an issue of share capital and in favour of loan capital were convincingly brought out in the course of evidence. This element, also, would necessitate careful consideration being given to a decision to issue shares. Cash flow projections and

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profit forecasts must inevitably have a direct relevance to the forming of any opinion upon the company's future in the light of its loan commitments. This is particularly so in view of the clear practicability demonstrated in the evidence of paying off loan capital spent on the construction of a tanker out of current earnings. A comprehensive statement of the whole of the company's financial position would also seem to have been desirable to have been placed before the directors for careful and deliberate consideration prior to the making of a decision of such great importance as that made on 6th July. Yet none of these matters - the watering of the shareholders' equity, the taxation position, cash flow projections, a comprehensive statement of the current overall position - appear to have come to the fore in the minds of the directors. Moreover, the decision involved a reversal of the policy followed during and since the days of Sir Roderick Miller. The subject of an issue of shares as a means of obtaining capital had been but lightly touched on prior to 6th July, and no serious consideration had ever been given to it before the events under challenge in the present proceedings.

The directors appear to have given little, if any, consideration to the general effect on Millers of allotting the shares and signing of the agreement. Protestations were made to the effect that, by destroying the majority, this was leaving it open to Ampol and to any other party to come in with yet a further takeover bid. In effect it was sought to suggest that the marketability of Millers as a takeover proposition was thrown wide open. But such protestations can be seen to have little, if any, substance.

In the first place, the allotment to Howard Smiths of 4,500,000 shares at \$2.30 was to be followed by Howard Smiths keeping on foot a takeover offer at \$2.50. Any competing takeover offer would accordingly have to be in excess of \$2.50. It would follow that not only would such a competitor have to pay more than another \$11,250,000 for Millers (that is to say, half as much again as before the allotment), but, in addition, Howard Smiths would stand to make a clear profit of something upwards of 20 cents per share for its 4,500,000 shares if it accepted a competitor's offer. The fact is that the directors gave no

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consideration whatever to consequences of this sort, the reason, of course, being that they intended, by allotting shares, to bring the whole matter to conclusion and to enable the Howard Smiths' takeover offer to go forward with what the directors obviously believed to be the certain prospect of success.

And in the second place the fetters imposed on Millers under the agreement, accepted, it seems, with hardly a fleeting glance by the directors, placed Howard Smiths in a position of considerable strength in the takeover market. The real significance attaching to this agreement is not so much the particular nature of the restraints imposed thereby, but rather that the manner in which the agreement was dealt with at the meeting; this provides strong corroboration that the directors regarded the allotment to Howard Smiths as virtually concluding a takeover of Millers by Howard Smiths. The directors were concerned to achieve the fact of an allotment rather than to investigate and deliberate upon the terms for which Howard Smiths stipulated. Indeed the terms, even the price, appear to have been accepted without analysis. This lack of concern with important detail is consistent with an attitude on all sides that the allotment of the shares would conclude the takeover battle in Howard Smiths' favour and that the end of the independent existence of Millers was at hand.

The acceptance by the directors that a takeover was imminent would render the financial strengthening of the company by the acquisition of these capital funds much less important than the procuring of a higher takeover price. The prospect of being taken over, and the pursuit by the directors of a line of conduct directly linked on to the obtaining of a takeover offer which they regarded as attractive, makes it somewhat unreal for the directors to say at the same time that they were concerned primarily to obtain \$10 million to meet the company's capital needs. A satisfactory takeover offer being procured, the success of that takeover offer, foreseeable in the relatively near future, would make the obtaining of the \$10 million of little real significance so far as the directors were concerned. They had found themselves enmeshed in a takeover struggle. The greater part, if not the whole, of their thinking in the critical days up to and including 6th July was directed to this takeover situation. It is

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unreal and unconvincing to hear them assert in the witness-box that their dominant purpose was to obtain capital rather than to promote the Howard Smiths' takeover offer, and I do not believe these assertions.

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10 Mr. Nicholl's participation at the meeting was directly related to the existence of a majority bloc of shares. Mr. Balhorn's contribution recognised that it would be more advantageous to the shareholders to have the Howard Smiths' offer open than to be "locked in" with only the Ampol offer. Mr. Anderson, apart from moving the motion, does not appear to have participated to any significant extent in the discussion. The concurrence of the directors in the reasoning set forth in Howard Smiths' letter, evidenced by the publication of that letter in full in the press, and the circulation of this advertisement amongst shareholders, 20 points strongly towards the intention of these directors being primarily directed to keeping on foot Howard Smiths' takeover offer by means of destroying the proportionate strength of the combined Ampol-Bulkships shareholding.

Each of Mr. Nicholl, Mr. Balhorn and Mr. Anderson was cross-examined upon his assertion as to his primary intention. Each maintained his assertion throughout. But one of the three conveyed to my mind the conviction that the primary 30 purpose of the issue was to meet a capital need. I should make it plain that it is not necessary that I make, nor do I make, any reflections upon their integrity. I simply do not accept as reliable their presently stated recollection of the substantial object which they sought to achieve by allotting shares to Howard Smiths. Their recollection is inevitably overshadowed by the intensity of the preparation of the defence in these proceedings, by the soul searching inextricably 40 associated therewith and by their recognition of the critical importance of the refinements inherent in distinguishing between a dominant and a subsidiary purpose. The word "justification" was used frequently on the defendants' side of the record in connection with the issue of the shares. I have the distinct impression that, possibly subconsciously or unintentionally, each of these three directors sought in his evidence to justify

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on a clearly valid ground his action in voting in favour of the allotment. It is reconstruction and not recollection that they have given in evidence.

Mr. Anderson was perhaps the least convincing of the defendants' witnesses due, to no small extent, to his limited understanding of the details of the major matters involved. I need make no reflection upon his integrity. He alone of the directors of Millers, other than Mr. Taylor, had, until relatively recently, been an officer of the company. I have no doubt that he was an old and loyal servant of Millers, and that he was a trusted personal assistant of the late Sir Roderick Miller. In the general context of apprehension concerning Ampol and Bulkships, and of enthusiasm for Howard Smiths' offer, it seems to me far more likely that Mr. Anderson was swayed by these considerations rather than by an exercise of independent judgment on his part that the policy followed by the late Sir Roderick Miller should be departed from. I do not believe that he formed any such independent judgment. By the time he came to give his evidence he had embraced the approach put forward by the defendants. But I am satisfied that, at the time of the meeting, the matter which was to the forefront of his mind was that which stood to the forefront of Howard Smiths' letter, namely the prospect of keeping Howard Smiths' offer open.

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Finding on Directors' purpose

The conclusion that I have reached is that the primary purpose of the four directors in voting in favour of this allotment was to reduce the proportionate combined shareholding of Ampol and Bulkships in order to induce Howard Smiths to proceed with its takeover offer. There was a majority bloc in the share register. Their intention was to destroy its character as a majority. The directors were, and had for some weeks been, concerned at the position of strength occupied by Ampol and Bulkships together. They were aware that in the light of the attitude of these two shareholders Howard Smiths could not be expected to proceed with its takeover offer that these directors regarded as attractive. They issued the shares so as to reduce the interest of these two shareholders to something significantly less than that of a majority. This was the immediate purpose. The ultimate purpose was to procure the continuation

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by Howard Smiths of the takeover offer made by that company.

Consideration of invalidity of purpose of destroying majority bloc

I turn, then, to consider Ampol's claim that this is a purpose foreign to the directors' power to issue capital, and that in consequence the allotment is invalid. The defendants, in an alternative defence, deny that the pursuit of such a purpose lies outside the legitimate scope of their powers.

The power to issue shares was the subject of recent consideration in the High Court in Harlowe's Nominees Pty. Limited v. Woodside (Lakes Entrance) Oil Company (121 C.L.R. 483). At p.493 in the joint judgment of Barwick, .C.J., McTiernan, J. and Kitto, J., their Honours said:

"The principle is that although primarily the power is given to enable capital to be raised when required for the purposes of the company, there may be occasions when the directors may fairly and properly issue shares for other reasons, so long as those reasons relate to a purpose of benefiting the company as a whole, as distinguished from a purpose, for example, of maintaining control of the company in the hands of the directors themselves or their friends. An inquiry as to whether additional capital was presently required is often most relevant to the ultimate question upon which the validity or invalidity of the issue depends; but that ultimate question must always be whether in truth the issue was made honestly in the interests of the company. Directors in whom are vested the right and the duty of deciding where the company's interests lie and how they are to be served may be concerned with a wide range of practical considerations, and their judgment, if exercised in good faith and not for irrelevant purposes, is not open to review in the courts. Thus in the present case it is not a matter for judicial concern, if it be the fact, that the allotment to Burmah would frustrate the ambitions of

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someone who was buying up shares as opportunity offered with a view to obtaining increased influence in the control of the company, or even that the directors realised that the allotment would have that result and found it agreeable to their personal wishes."

For the defendants reliance has been placed upon a passage in the judgment of Menzies, J. in *Ashburton Oil N.L. v. Alpha Minerals N.L.* (45 A.L.J.R. 162 at 167):

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"The misconception is that a majority shareholding or a controlling interest is a right of property and ought to be preserved against any action on the part of the company in which the shares are held. A shareholder who would be affected by the exercise of a company's powers is entitled to demand and enforce that the company's power should be exercised lawfully; such a shareholder is, however, not entitled to prevent any exercise of that power. The advantage of a controlling interest in the shareholding of a company is not property that a shareholder is entitled to have preserved by the intervention of the court to prevent the allotment of any shares that would disturb it. It may often be the case, of course, that the holding of a majority of shares puts the shareholder in a position of being able to protect his majority by the exercise of his voting strength in accordance with the company's memorandum and articles of association, but to acknowledge this is merely to recognise that the right and powers of shareholders are governed by the constitution of the Company and that every shareholder holds his shares subject to that constitution. It affords no justification for conferring upon a majority shareholder rights which the constitution of the company does not give him in order to secure his position."

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Consistently with this statement of law it can be recognised that Ampol and Bulkships, acting together as the holders of a 55% interest in Millers, had no direct right or power to impose their wishes on the board or to demand of the board subservience to their wishes. The rights inherent in their majority shareholding could be exercised by the removal of the existing directors and reconstitution of the board. In a practical sense it may be that the existence of such rights in a majority shareholder is frequently sufficient to influence a board of directors in a particular course of action. But what Menzies, J. was at pains to point out was that the practicality of such influence cannot be translated into existence of a legally recognisable right.

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It by no means follows that directors have it within their power to issue shares for the direct purpose of destroying an existing majority bloc. And this, whether or not there be an indirect or consequential objective that they believe to be for the benefit of the company. Some of the observations of Myers, J. in Ansett v. Butler Air Transport Limited (75 W.N. 299 at 302-303) are relevant in this regard:

"What they were doing and what they intended to do was to prevent a body of shareholders which either could then, or might in the immediate future, command a majority of votes, from gaining the advantages to which the rules of the company entitled them. In other words, they intended to secure themselves and their policy of management against the majority of shareholders whether that majority existed at that time or whether it should come into existence in the future. They considered that they knew what was best for the company and intended to make sure that that was what the company should have, whether any existing or future majority of shareholders should agree with them or not. ... Whatever directors might think, however, the majority of the shareholders are entitled to use their majority in any legitimate manner to give effect to their views and the directors have no right to

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issue shares with the object of preventing a majority doing so by enabling the directors and their supporters to outvote them. Whether the directors believed their policy to be the best or not, and whether their policy was in fact the best or not, I am satisfied that their only purpose in issuing the shares was to ensure that there would always be a majority in the company to carry out the policy which the directors thought would be the best. This is precisely what directors cannot do."

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It is always a delicate exercise for directors to issue shares. Particularly is this so where an issue is made otherwise than on a basis of equality to existing shareholders. Even more particularly is this so where the issue is made otherwise than to existing shareholders, and in a situation in which it is foreseeable that there can be real prejudice to existing shareholders or an identifiable group of existing shareholders.

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Stock Exchange Rules

Not only does commonsense point strongly to a risk in issuing shares other than proportionately to existing shareholders, but there is a specific rule in the Stock Exchange requirements governing a situation such as the present. It is common ground that Millers was bound by contract to the Stock Exchange to observe this rule. Equally it is common ground that the rule was infringed. The terms of the Stock Exchange rules are as follows:

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"(11)(a) Except -

- (i) when the issue is offered to all shareholders in proportion to their holdings (other than the holders of preference shares entitled to a fixed rate of dividend only) or
- (ii) when the issue is made pursuant to a takeover scheme in accordance with the

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Companies Act -

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10 the Company will not in any finan-
cial year or within the period of
six months from the date of its
most recent allotment of shares
allot shares or grant options
over equity capital the nominal
amount of which in the aggregate
exceeds 10% of the nominal
amount of its issued capital at
the end of such period of six
months unless the precise terms
and conditions of the proposed
issue have first been approved
by the Company in general
meeting.

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20 (b) Where the Directors of the
Company have received notice of
an actual or potential takeover
scheme affecting the company
(whether such notice complies
with any relevant statutory
requirements or not) the Company
will not for a period of three
months from the date of receipt
of such notice by the Directors
allot shares or grant options
over any of its share capital
30 unless the proposed issue has
first been approved by the
company in general meeting or
unless the issue is offered
to all shareholders (other than
the holders of preference shares
entitled to a fixed rate of
dividend only) in proportion
to their holdings."

40 In what they did in the present case the direc-
tors were in breach of both Rule 11(a) and (b).
This serves to underline the imprudence of their
action, even though of itself it does not
establish invalidity. The Stock Exchange makes
its rules in protection of the public interest
and in promotion of due and orderly dealings
in shares. Persons buying shares in listed
companies are entitled to expect directors

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faithfully to abide by Stock Exchange rules. Directors who knowingly commit a breach of those rules, particularly a breach of the importance of that in the present case, are to be criticised. In the present case the four majority directors (Messrs. Taylor, Nicholl, Balhorn and Anderson), and those whose advice encouraged them to disregard the requirements of the Stock Exchange rules, are deserving of censure for their deliberate repudiation of the restraints placed upon them by these rules.

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Finding of Invalidity of purpose

The directors claim to have taken the ingenuous approach that the allotment to Howard Smiths was really in the interests of all shareholders because it would procure a higher take-over price. They attempt to assert that the allotment was really in the interest not only of the minority shareholders but also of Ampol and Bulkships, inasmuch as Ampol and Bulkships could accept the higher offer if they chose. It is one thing to say that the majority holding is not as such a right of property. But it is quite another for directors to assert that they can validly negate the advantages of a majority by issuing shares for the purpose of destroying the effect of a majority bloc. It is wrong for directors no matter how greatly they may regret the existence of a majority bloc, to issue shares for the purpose of destroying a majority bloc, or of denying to a majority bloc the enjoyment of its constitutional powers under the articles.

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Even if one attempts to take an extravagant rather than a precise view of the directors' powers, there is no basis made out in the present case of any actual or apprehended likelihood of abuse by the majority of their power in the company or of oppressive conduct towards the minority shareholders or towards the company itself. The evidence does not establish any actual or threatened infringement of the requirements of the law which fetter majority shareholders in the exercise of the power that is inherent in their majority. The actions of the majority may not have been to the liking of the

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10 directors or of the minority shareholders. But it is to my mind unacceptable to assert, as the defendants do, that if a majority denies success to what is thought by directors to be an attractive takeover, the benefits of the takeover can be obtained by the directors issuing shares so as to destroy the majority. That is what the defendants seek to justify in this case. It is a proposition with far-reaching implications, and it is, to my mind, unfounded.

For the foregoing reasons I find that the resolution passed by a majority of the directors of Millers at the board meeting on 6th July to the effect that 4,500,000 shares be allotted to Howard Smiths and that the agreement with Howard Smiths be executed was not within the powers of the directors, and that those resolutions were accordingly invalid.

Howard Smiths' knowledge of invalid purpose

20 The next question in the case is to determine whether, as against Howard Smiths, the plaintiff is entitled to have the allotment declared void. In the statement of claim it is alleged that Howard Smiths was at the time of the allotment aware that the directors had voted for an inadmissible purpose that rendered the allotment invalid. Such awareness, or notice of the invalidity, will entitle Ampol to have the allotment avoided and the shares cancelled.

30 No oral evidence was called by Howard Smiths. There is some material before the Court in the form of answers to interrogatories, but these do not assist greatly on this issue. The course of negotiations with Howard Smiths establishes that those negotiating on behalf of Millers were concerned primarily, if not solely, to arrange for an issue of shares to Howard Smiths so as to destroy the majority bloc and thus to preserve the Howard Smiths' takeover offer. This is demonstrated by the suggestion that Millers should purchase Howard Smiths' tankers in return for an issue of shares. Indeed, the extent to which Millers were negotiating simply for a basis for allotting shares as an element in facilitating Howard Smiths' takeover

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was made abundantly clear by Mr. Maxwell's statement to Mr. Conway on 4th July: in rejecting the suggestion that Howard Smiths should sell its ships to Millers in connection with a share issue, Mr. Maxwell said:

"No, that is just no good, because if we sell you the ships then we would have to buy them back again if we did not succeed in our takeover bid."

The inference that I draw is that both the representatives of Millers and the representatives of Howard Smiths were negotiating with a view to arriving at a formula which would enable an issue of shares to be made, thereby destroying the majority bloc, and in consequence enabling Howard Smiths' takeover offer to be kept on foot.

The most compelling evidence of Howard Smiths' anticipation of the purposes which the directors of Millers were seeking to achieve is in terms of the letter of 6th July. Howard Smiths sent a draft of this letter to Mr. Taylor on 5th July for the purpose of seeing whether the reasons urged by Howard Smiths in favour of the allotment were acceptable to Millers. No doubt the primary purpose of sending the draft was to record the specific contractual terms of Howard Smiths' approach. But Mr. Conway's amendment of the general part of the letter, and Mr. Maxwell's assent to that amendment, indicate an approach on the part of the representatives of both companies that the reasons urged in the letter should be those which would commend the proposal to the directors of Millers. The letter itself sought the making of the allotment. Upon an ordinary reading of the letter it puts forward the need to destroy the majority bloc as a prerequisite to the Howard Smiths' takeover offer going forward. The capital need of Millers receives but a passing mention. Howard Smiths sought the allotment, and supported its application by advocacy of a specific reason associated with the destruction of the majority bloc and the facilitation of its own takeover offer. This reasoning advanced by Howard Smiths having found favour with Millers' board, Howard Smiths cannot be heard to disclaim knowledge of the factors which rendered the decision of the Millers' directors invalid. It is fixed with

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notice that Millers' board were predominantly influenced by an inadmissible purpose.

Finding in favour of challenge to validity against Miller and Howard Smiths

10 For the foregoing reasons I find that the plaintiff has made good its challenge to the validity of the decision of the directors of Millers on 6th July, and it has established an entitlement as against Howard Smiths to have the issue declared void and the appropriate consequential steps taken in order to correct Millers' share register.

Mr. Taylor's ruling disqualifying Sir Peter Abeles

Having reached this conclusion, the challenge made by Ampol to Mr. Taylor's disqualification of Sir Peter Abeles is not decisive upon the question of validity. This aspect was, however, vigorously contested, and I shall deal with it briefly. Article 97 of Millers' articles provides:

20 "97. No Director shall be disqualified by his office from contracting with the Company either as vendor or otherwise nor shall any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way interested be avoided nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by

30 any such contract or arrangement by reason of such director holding that office or of the fiduciary relation thereby established but the nature of his interest must be disclosed by him at the meeting of Directors at which the contract or arrangement is determined on if his interest then exists or in any other case at the first meeting of the Directors after the acquisition of his interest and no

40 Director shall as a Director vote in respect of any contract or arrangement between the Company and himself personally or between the Company and any firm in

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which he is a partner and if he do so
vote his vote shall not be counted but
subject thereto a Director may vote in
respect of any contract or arrangement
in which he is interested."

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The delicacy of Sir Peter Abeles' position in participating at board meetings of Millers, if at the same time Bulkships was planning or seeking to carry through a takeover of Millers, is obvious. In such a situation the terms of the articles of association of the company would always have significance. But, over and above the articles, there are conventions within board rooms that recognise the inadvisability, if not impropriety, of a director participating in or remaining present at a discussion or decision upon a matter relating either to his own affairs or to the affairs of some other company or person with whom he is closely associated. The Court will strain to recognise and sustain boardroom conventions of ethics and propriety. Dependent upon the terms of the articles, these conventions may or may not be of legally binding force. But it would be regrettable if they were to be weakened by a director asking himself: "Is my action technically valid?", rather than asking himself "Is my action in accordance with the requirements of ethics and propriety?". Upon the present facts, however, whilst Sir Peter Abeles might have been in a delicate position if Bulkships were in fact engaged on an exercise hostile to Millers as a company, the evidence falls short of establishing this.

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On the other side of the record, a chairman of a directors' meeting should exercise the greatest of care before taking the extreme step of debarring a director from participating in discussion or from voting upon issues coming before the board. I do not intend to examine the existence and extent of such a power in a chairman. It is sufficient for present purposes to advert to the far-reaching nature of such action on the part of a chairman. In the present case, even if these were grounds

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10 justifying concern by the chairman as to an apparent ambiguity in Sir Peter Abeles' position, the very factors which have invalidated the directors decision could well have justified Sir Peter Abeles in discarding what would otherwise have been normal boardroom conventions and in falling back upon a technical entitlement to participate. It might well have been difficult to criticise him on grounds of ethics or propriety in joining the battle within the boardroom with a view to preventing what, upon the findings I have made, was a decision made by the board for a purpose foreign to the power vested in it under the articles.

Finding that Mr. Taylor's ruling was wrong - cross-claim not dealt with

20 In my view Mr. Taylor's ruling precluding Sir Peter Abeles from taking part in the discussion and from voting was wrong in law. I refrain from going further to discuss the effect of this error. The cross-claim seeks a discretionary dispensation preventing such error from invalidating the allotment. The finding I have already made upon the main contest invalidates the allotment. There is accordingly no occasion to examine the effect of the error or to embark upon the wide discretionary considerations opened up by the cross-claim.

Rejection of discretionary defence

It remains only to note that the matters put forward by Millers as amounting to a discretionary defence against the granting of relief to Ampol do not, in the view which I have taken, provide a ground for denying to the plaintiff the relief to which it is entitled. There is no basis upon which a finding could be made that Ampol, Bulkships and Sir Peter Abeles were embarked upon a conspiratorial course of conduct of such a nature as to induce the Court to withhold from Ampol relief to which it would otherwise be entitled to the effect of cancelling shares. The discretionary defence is not made out and I discard it.

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Before making the formal order, I should refer again to the essential nature of this case. The dispute involves the scope of the directors' powers. Nothing I have said is to be taken as amounting to a preference for the Ampol takeover offer as against the Howard Smiths offer. It is not relevant, so far as this case is concerned, to make any such comparative evaluation. The Court does not exercise a general supervision over takeovers as such; its proper function is to mark out the limits of directors' powers and enforce due compliance with the requirements of the law. The important economic and national consequences of takeovers are matters for the legislature or the Government to consider. The Court cannot, as the law stands, take regard of these considerations in a context such as the present. The fiduciary obligations of directors are not to be distorted by permitting directors, in an attempt to defend their company against takeover, to exceed the proper limits of their powers.

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At the request of all parties I shall not deal at this stage with costs. I shall now make the formal orders to which the plaintiff is entitled and stand the matter over for further consideration upon the question of costs.

I make declarations and orders as follows:

(1) I declare that the purported allotment and issue of a parcel of 4,500,000 ordinary \$1.00 shares in the capital of the defendant R.W. Miller (Holdings) Limited made on 6th July 1972, to Howard Smith Limited was invalid.

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(2) I declare that the name of the defendant Howard Smith Limited has been without sufficient cause entered into the register of members of the defendant R.W. Miller (Holdings) Limited as a member of that company in respect of the said shares.

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(3) I order that the defendant R.W. Miller (Holdings) Limited forthwith repay to the defendant Howard Smith Limited the amount paid by that company to the defendant R.W. Miller (Holdings) Limited in respect of the said shares.

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10 (4) I order that the defendant Howard Smith Limited forthwith deliver up to the defendant R.W. Miller (Holdings) Limited for cancellation the share certificate or certificates issued to and received by it in respect of the said shares or any parcel thereof.

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(5) I order that the register of members of the defendant R.W. Miller (Holdings) Limited be rectified by removing therefrom the name of the defendant Howard Smith Limited as a member of the defendant R.W. Miller (Holdings) Limited in respect of the said parcel of 4,500,000 ordinary shares.

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20 (6) I declare that the agreement made on 6th July, 1972, between the defendant R.W. Miller (Holdings) Limited and the defendant Howard Smith Limited was invalid in that the terms thereof were and are not binding upon the parties thereto.

(7) I order that the cross-claim be dismissed.

(8) I reserve consideration of all questions of costs.

(9) I reserve consideration of such further consequential relief to which the plaintiff may be entitled.

(10) The proceedings are to stand over to a date to be fixed for determination of the orders to be made for costs.

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(11) General liberty to apply to all parties
on two days' notice.

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No. 9

Formal Court Order

dated 14th December 1972

1240 of 1972

AMPOL PETROLEUM LIMITED

Plaintiff

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

Defendants

R.W. MILLER (HOLDINGS) LIMITED

Cross Claimant

AMPOL PETROLEUM LIMITED & ORS.

Cross Defendants

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O R D E R

THE COURT:

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(1) DECLARES that the purported allotment and issue of 4,500,000 ordinary ~~1~~ shares in the capital of the Defendant R.W. Miller (Holdings) Limited made on 6th July 1972 to the Defendant Howard Smith Limited was invalid.

(2) DECLARES that the name of the Defendant Howard Smith Limited has been without sufficient cause entered in the register of members of the Defendant R.W. Miller (Holdings) Limited as a member of that company in respect of the said shares.

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(3) ORDERS that the Defendant R.W. Miller (Holdings) Limited forthwith repay to the Defendant Howard Smith Limited the amount paid by that company to R.W. Miller (Holdings) Limited in respect of the said shares.

(4) ORDERS that the Defendant Howard Smith Limited forthwith deliver up to the Defendant R.W. Miller (Holdings) Limited for cancellation the share certificate, or certificates issued to and received by it in respect of the said shares or any parcel thereof.

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- (5) ORDERS that the register of members of the Defendant R.W. Miller (Holdings) Limited be rectified by the removing therefrom the name of the Defendant Howard Smith Limited as a member of the Defendant R.W. Miller (Holdings) Limited in respect of the said shares.
- (6) DECLARES that the agreement made on 6th July 1972 between the Defendant R.W. Miller (Holdings) Limited and the Defendant Howard Smith Limited was invalid in that the terms thereof were and are not binding on the parties thereto. 10
- (7) ORDERS that the cross claim be dismissed.
- (8) RESERVES consideration of all questions of costs.
- (9) RESERVES consideration of such further consequential relief to which the Plaintiff may be entitled.
- (10) ORDERS that the proceedings stand over to a date to be fixed for determination of the Orders to be made for costs. 20
- (11) RESERVES general liberty to apply to all parties on two days' notice.
- (12) ORDERS a stay of proceedings up to and including 20 December 1972.
- (13) RESTRAINS any dealings with the said shares during the currency of the said stay of proceedings.

ORDERED 14 December 1972

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CHIEF JUDGE IN EQUITY.

ENTERED 7 March 1973

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No. 10

Order for costs and granting Conditional
leave to appeal to the Privy Council to
the Defendants Howard Smith Limited
20th December 1972

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AMPOL PETROLEUM LIMITED 1240 of 1972
Plaintiff

No. 10

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

Order for costs
and granting
Conditional
leave to Appeal
to the Privy
Council to the
Defendants
Howard Smith
Limited

Defendants

R.W. MILLER (HOLDINGS) LIMITED

Cross Claimant

AMPOL PETROLEUM LIMITED & ORS.

20th December
1972

Cross Defendants

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O R D E R

THE COURT:

- (1) ORDERS that the defendants R.W. Miller (Holdings) Limited and Howard Smith Limited do each pay one half of the Plaintiff's costs of the main proceedings including costs of this day.
- (2) ORDERS that the cross claimant pay the costs of the cross defendants of the Cross Claim.
- 20 (3) ORDERS that the defendant R.W. Miller (Holdings) Limited pay the costs of the Defendants, Lady Elizabeth Miller, Evan Duff Cameron and Sir Emil Herbert Peter Abeles of the main proceedings.
- (4) RESERVES for further consideration the question whether any and if so what apportionment of time occupied on the hearing as between the main proceedings and the Cross Claim should be made for the guidance of the taxing officer,
- 30 (5) ORDERS that leave to appeal to Her Majesty' in Her Majesty's Privy Council from the Judgment, Declarations and Orders of the Court made herein on 14 and 20 December 1972 be granted to the defendant Howard Smith Limited UPON CONDITION that the said Defendant do within two months from the date of this Order give good and sufficient security to the satisfaction of the Master

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Equity Division

No. 10

Order for costs
and granting
Conditional
leave to Appeal
to the Privy
Council to the
Defendants
Howard Smith
Limited

20th December
1972

in Equity in the sum of \$1,000.00 for the due prosecution of the Appeal and the payment of all such costs as may become payable to the plaintiff in the event of the defendant Howard Smith Limited not obtaining an order granting its final leave to Appeal, or of the Appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the thirteenth defendant to pay the plaintiff's costs of the Appeal as the case may be AND UPON FURTHER CONDITION that the defendant Howard Smith Limited do within two months from the date of this Order take out and proceed upon all such appointments and take all such other steps as may be necessary for the purpose of settling the Index to the transcript record and enabling the Master in Equity or in his absence the Registrar in Equity to certify that the said Index has been settled and that conditions hereinbefore referred to have been duly performed AND UPON FURTHER CONDITION that the said defendant do obtain a Final Order of this Court granting to it leave to appeal as aforesaid.

10

20

(6) ORDERS that the costs of all parties of the said application for leave to appeal and of the preparation of the said transcript record and of all other proceedings hereunder and of the said Final Order be reserved for the decision of Her Majesty's Privy Council or the further Order of this Court up to and including the said Final Order or under any of the Rules next hereinafter mentioned that is to say Rules 16 17 20 and 21 of the Rules of 2 April 1909 regulating appeals from this Court to Her Majesty in Council.

30

40

(7) ORDERS that it be referred to the Registrar or Deputy Registrar or Chief Clerk in Equity to tax and certify the costs incurred in New South Wales payable under the terms hereof or under any Order of the Privy Council by any party or parties to these proceedings to any other party or parties thereto or otherwise AND that the said costs

50

when so taxed and certified as aforesaid be paid by the party or parties by whom to the party or parties to whom the same shall be certified to be payable within fourteen days after service upon the first-mentioned party or parties of an office copy of the Certificate of such taxation or be otherwise paid as may be ordered.

In the Supreme
Court of New
South Wales
Equity Division

No. 10

Order for costs
and granting
Conditional
leave to Appeal
to the Privy
Council to the
Defendants
Howard Smith
Limited

20th December
1972

- 10 (8) ORDERS that so much of the said costs as become payable by the defendant Howard Smith Limited under this Order or any subsequent Order of this Court or any Order made by Her Majesty in Council in relation to the said Appeal may be paid out of any moneys paid into Court as such security as aforesaid so far as the same shall extend AND that after such payment out (if any) the balance (if any) of the said moneys be paid out of Court to the defendant Howard Smith Limited.
- 20 (9) RESERVE liberty to all parties to apply as they may be advised.
- (10) ORDERS a stay of proceedings on Orders 3, 4 and 5 made on 14 December 1972 pending the determination of the appeal to the Privy Council or the further Order of this Court.
- 30 (11) RESERVES liberty to all parties to apply in respect of matters arising with respect to Declaration 6 made on 14 December 1972 pending the determination of the Appeal to the Privy Council.
- (12) ORDERS that the first defendant be restrained by its officers, servants or agents pending the determination of the Appeal to the Privy Council or until further order from:
- 40 (a) counting at any meeting of members of the defendant R.W. Miller (Holdings) Limited any votes cast in respect of the parcel of 4,500,000 ordinary \$1.00 shares in the capital of the said defendant purportedly allotted and issued to the defendant Howard Smith Limited on 6 July 1972 (hereinafter called the "parcel of shares") or any part thereof:

In the Supreme
Court of New
South Wales
Equity Division

No. 10

Order for costs
and granting
Conditional
leave to Appeal
to the Privy
Council to the
Defendants
Howard Smith
Limited

20th December
1972

- (b) paying any dividends to, making any bonus issues of shares to, or otherwise permitting the defendants Howard Smith Limited to rank equally with other shareholders of the defendant R.W. Miller (Holdings) Limited in respect of the said parcel of shares or any part thereof:
- (c) taking any step or further step to cause, permit or effect the registration of the defendant Howard Smith Limited in the Register of Members of the first defendant and/or in any Branch Register of Members kept by the defendant R.W. Miller (Holdings) Limited in any part of the Commonwealth or of the United Kingdom as a member of the said defendant in respect of the said parcel of shares or any part thereof. 10
- (d) allotting, issuing or attempting to allot or issue to the defendant Howard Smith Limited any further shares in the unissued capital of the defendant R.W. Miller (Holdings) Limited in substitution for the purported allotment and issue of the said parcel of shares or any part thereof: 20
- (13) ORDERS that the defendant Howard Smith Limited be restrained by its officers, servants and agents pending the determination of the Appeal to the Privy Council or until further Order of this Court from:- 30
- (a) selling, transferring, charging, mortgaging or otherwise dealing in any way with the said parcel of shares or any part thereof;
- (b) casting or purporting to cast any vote at any meeting of the Company in respect of any of the said shares; 40
- (c) making an application to the defendant R.W. Miller (Holdings) Limited either by itself or by some nominee for the allotment or issue of any other shares in the unissued capital of the defendant R.W. Miller (Holdings) Limited in substitution for the said parcel of shares or any part thereof:

ORDERED 20 December 1972

CHIEF JUDGE IN EQUITY

ENTERED 7 March 1973

NO. 11

Order granting final leave to appeal
to Her Majesty in Council to the
Defendants Howard Smith Limited
dated 16th March 1973

1240 of 1972

AMPOL PETROLEUM LIMITED

Plaintiff

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

Defendants

R.W. MILLER (HOLDINGS) LIMITED

Cross Claimant

AMPOL PETROLEUM LIMITED & ORS.

Cross Defendants

In the Supreme
Court of New
South Wales
Equity Division

No. 11

Order granting
final leave to
Appeal to
Her Majesty in
Council to the
Defendants
Howard Smith
Limited

16th March,
1973

10

ORDER

THE COURT ORDERS that:-

1. Final leave to appeal to Her Majesty in Her Majesty's Privy Council from the Judgment, Declarations and Orders of the Court made herein on 14 and 20 December, 1972 be granted to the Defendant Howard Smith Limited.

20

ORDERED 16 March, 1973

(Sgd) L.W. Street
CHIEF JUDGE IN EQUITY

AND ENTERED

Plaintiffs
Exhibits
Exhibit B

Plaintiffs Exhibits
Exhibit B

Application
of Miller
(Holdings)
Ltd. for
Sydney Stock
Exchange
listing
20th June 1962

Application of Miller (Holdings) Ltd.
for Sydney Stock Exchange listing
dated 20th June 1962

Australian Associated Stock Exchanges

Agreement to be made part of application
for official listing

R.W. Miller (Holdings) Limited
(Name of Company)

10

In consideration of the official listing on the Sydney Stock Exchange of the securities covered by this application, agrees with the Committee of such Stock Exchange that the company shall remain on the Official List, subject to the pleasure of the Committee, and as follows :-

1. To post or deliver to the shareholder or his agent share or stock certificates within one month of allotment or of the date of lodgment of a transfer and to issue balance certificates, if required, within the same period. 20
2. To pay any stamp duty that may be incurred on the issue of share, stock or debenture certificates.
3. (A) To issue either -
 - (a) Letters of entitlement, application forms and renunciation forms and to forward a supply of renunciation forms promptly to each Stock Exchange on which the company is listed, or 30
 - (b) Provisional allotment letters incorporating the right of renunciation on a "Nil Paid" basis.

within seven days (or such further agreed period) of the date upon which the company's transfer books close to determine shareholders entitled to participate in a new capital issue 40

offered to shareholders. Every letter of entitlement or provisional allotment letter shall show the number of shares held, the register on which they are held, the number of shares comprising the entitlement and the address and telephone number where the share register of the shares to be allotted will be maintained.

Plaintiffs
Exhibits

Exhibit B

Application
of Miller
(Holdings)
Ltd. for
Sydney Stock
Exchange
listing

20th June 1962
(continued)

10

(B) On request, to endorse any renunciation form when executed by a shareholder, "Renunciation No..... noted for.....shares on the.... Register," or other similar marking to the same effect.

20

4. To fix the closing date for a new issue of capital, in which shareholders are given the right to participate, not earlier than twenty-five days after the date on which transfer books close to determine such rights.

30

5. To endorse transfers, on production of the necessary documents by shareholders or by Members of the Stock Exchange, "Power of Attorney Exhibited" and/or "Probate Exhibited," and on lodgment of relative certificates, to endorse transfers to the following effect:-
"Certificate No..... is held in the company's office against this transfer No.....for.....shares (stock units) on the.....Register. This transfer must be completed and returned within 42 days from this date.

(Name of Company).....

(Official(s) Signature(s)).....

Date"

40

6. To have the company's share register and branch registers (if any) audited at intervals of not more than three months.

7. To notify the Stock Exchange without delay -

(i) of any changes in the Directorate;

Plaintiffs
Exhibits
Exhibit B

(ii) of any proposed change in the general character or nature of the business of the company or of any subsidiary thereof.

Application
of Miller
(Holdings)
Ltd. for
Sydney Stock
Exchange
listing

20th June 1962
(continued)

8. To notify to the Stock Exchange by letter, telegram or telephone immediately the Board Meeting has been held to decide the same -
- (i) all dividends and/or cash bonuses recommended or declared, or the passing of any dividend; 10
 - (ii) short particulars of any issue or new capital whether to be issued as a bonus or by way of right to shareholders or debenture holders;
 - (iii) short particulars of any other alterations of capital including calls.
9. To notify to the Stock Exchange by letter, telegram or telephone, simultaneously with announcement of declaration, or of recommendation, or of the passing of the final ordinary dividend, the net profit figures (or aggregate net profit figures if a holding company) as determined for the year (with comparison with previous year) even if this calls for the qualification that such profit figures are provisional, or subject to audit. 20
10. To forward to the Stock Exchange as soon as possible after the first six months of each financial year a report by the directors concerning the company's activities for that period, stating inter alia the relationship of volume of sales (or revenue) compared with the volume of sales (or revenue) in the corresponding period in the previous year, and any unusual factors affecting the earning capacity of the company. 30
11. To notify the Stock Exchange promptly of any other material information necessary to avoid the establishment of a false market in the shares. 40

12. To supply promptly (without application and free of cost) to the Stock Exchange all periodical and special reports, and two copies of the Balance Sheet of the company, as soon as issued, and at least seven days before date of meeting.
13. To supply, upon application, reports and Balance Sheets to Members of the Stock Exchange.
- 10 14. To publish periodical Statements of Account and Balance Sheets in a form complying with the Listing Requirements of the Stock Exchange, and in particular -
- (i) To set out separately in the company's Balance Sheet, and in the Balance Sheet of any subsidiary company or companies, the amount of intangible assets.
- 20 (ii) Where an option exists over unissued shares, to append to the Balance Sheet a foot-note showing the number of shares under option, the price of issue, and the date of expiration of such option, any right of participation in issues of securities by the company during the currency of the option and the basis upon which the option may be exercised.
- 30 (iii) Where the company has a controlling interest in another company or companies, to annex to the company's accounts -
- (a) A separate Balance Sheet and Profit and Loss Account of each subsidiary company; or
- 40 (b) A consolidated Balance Sheet and a consolidated Profit and Loss Account of the company and of its subsidiary company or companies, eliminating all inter-company transactions and containing a statement of the total losses (if any)

Plaintiffs
Exhibits
Exhibit B

of the subsidiary company
or companies.

Application
of Miller
(Holdings)
Ltd. for
Sydney Stock
Exchange
listing
20th June 1962
(continued)

(iv) Where the company does not own the whole of the capital of a subsidiary company or companies, to disclose in any consolidated Balance Sheet and Profit and Loss Account the extent of the interest of outside shareholders in capital, reserves and profits. 10

15. To state separately in the Profit and Loss Account (or, in the case of a holding company, in the consolidated Profit and Loss Account) the amount charged to revenue by way of -

(i) Provision for depreciation, renewals and diminution in value of fixed assets.

(ii) Provision for and/or payment of income tax. 20

16. To have the accounts of each present and future subsidiary company audited and to have requirements to the following effect embodied in the Articles of every such subsidiary -

(i) No person shall be appointed or act as auditor for the subsidiary company unless his qualifications would permit of his appointment as auditor for the parent company. 30

A Director or officer of the parent company or of the subsidiary company or a partner in any business with an employer or employee of any such Director or officer shall not be capable of being appointed or of acting as auditor of the subsidiary Company. 40

(ii) No Director (other than a Managing or other executive Director) shall be remunerated by a commission on or percentage of

profits or of turnover, and no Director shall be remunerated by a commission on or percentage of turnover.

Plaintiffs
Exhibits
Exhibit B

- (iii) No Director, except a Managing Director, shall be appointed for a fixed term, and in the case of a Managing Director, a fixed term appointment shall not exceed five years.

Application
of Miller
(Holdings)
Ltd. for
Sydney Stock
Exchange
listing

10

17. Should the company hold as its main asset shares in another company or companies, to furnish shareholders at time of issue of the company's Balance Sheet with the latest Balance Sheet and Profit and Loss Account of such company or companies.

20th June 1962
(continued)

18. (i) To advertise in the Press and to give to the Stock Exchange at least fourteen days' notice of intention to close transfer books for interest or dividend payments, new issues or any other purpose (or, where transfer books are not to be closed, of the date up to which transfers will be received for registration), stating the time and date of closure, and the period and purpose or purposes for which the books are to be closed. Where the closure is for the purpose of paying a dividend the amount of the dividend must be advised to the Stock Exchange at least seven days before the date on which transfer books will close.

20

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- (ii) Subject to the right of refusal to register a transfer in accordance with provisions contained in the company's Articles of Association, to register every duly completed transfer of shares, stock or debentures that is lodged at the company's office up to the advertised time of closure of books, and to defer registration, until the books have

40

Plaintiffs
Exhibits
Exhibit B

re-opened, of any transfer which
may be received after such
closing time.

Application
of Miller
(Holdings)
Ltd. for
Sydney Stock
Exchange
listing
20th June 1962
(continued)

19. To accept for registration transfers of the company's shares which may be executed on the common form of transfer. 10
20. To permit the Stock Exchange to make available immediately to the Press and to its Members, any information supplied by the company in compliance with any of the above-mentioned Requirements. 10
21. To furnish to the Stock Exchange, on demand, such reasonable information regarding the company as may be required.
22. To give the Stock Exchange prompt notification of intention to alter the capitalisation or to amend the Articles of Association of any subsidiary company. 20
23. To forward to the Stock Exchange within seven days of lodgment of the company's annual return a statement setting out the number of ordinary shareholders, together with the number of holders of any other class of security carrying full voting rights, and a statement of percentage of the total voting rights held by, or on behalf of, the twenty largest shareholders at the date of the last annual meeting. 30
24. To submit a recommendation to shareholders, in event of the company falling within the classification of a "private" company for taxation purposes, as a result of share transfers subsequent to Official Listing, that the existing scale of voting rights be modified in order that the company may revert to the status of a "public" company. 40

25. To pay the prescribed annual listing fee not later than 31st January in each year.

Plaintiffs
Exhibits
Exhibit B

26. To comply within a reasonable time with such further Requirements as may, subsequent to the company's listing, be promulgated by the Stock Exchange as a general Requirement for new listings, or, failing compliance with any such new Requirement to request the Stock Exchange to de-list the company.

Application
of Millers
(Holdings)
Ltd. for
Sydney Stock
Exchange
listing

10

The Seal of the Company is (Sgd.).....
hereto affixed in the presence of :- Chairman

20th June 1962
(continued)

(Sgd.).....
Director

Dated..... (Sgd.).....
Secretary

Plaintiffs
Exhibits
Exhibit C

Official
listing
requirement
of Sydney
Stock
Exchange
January 1972
amendment

Plaintiffs Exhibits

Exhibit C

Official listing requirement of
Sydney Stock Exchange January 1972
Amendment

A.A.S.E. Listing Manual

- (9) Documents for overseas shareholders shall be forwarded by air-mail.
- (10) Any sale or disposal by the directors of the company's main undertaking shall be subject to ratification by shareholders in general meeting. 10
- (11) (a) Except -
- (i) when the issue is offered to all shareholders in proportion to their holdings (other than the holders of preference shares entitled to a fixed rate of dividend only) or
- (ii) when the issue is made pursuant to a takeover scheme in accordance with the Companies Act - 20
- the company will not in any financial year or within the period of six months from the date of its most recent allotment of shares allot shares or grant options over equity capital the nominal amount of which in the aggregate exceeds 10% of the nominal amount of its issued capital at the end of such period of six months unless the precise terms and conditions of the proposed issue have first been approved by the Company in general meeting.
(see Company Secretary's Guide page 2) 30
- (b) Where the Directors of the Company have received notice of an actual or potential takeover scheme affecting the company (whether such notice complies with any relevant statutory requirements or not) the company will 40

not for a period of three months from the date of receipt of such notice by the Directors allot shares or grant options over any of its share capital unless the proposed issue has first been approved by the company in general meeting or unless the issue is offered to all shareholders (other than the holders of preference shares entitled to a fixed rate of dividend only) in proportion to their holdings.

10

(c) In the above paragraphs (a) and (b) "shareholders" includes holders of convertible securities when applicable.

20

(d) Where the holder or beneficial owner of more than 50% of the issued capital of the Company notifies the Company in writing that he intends to call a general meeting to appoint Directors nominated by him to the Board (whether in place of existing Directors or otherwise) the Company will not for a period of two months from the date of such notice issue any further shares without the prior approval of the Company in general meeting. The person giving the notice need not be registered as a shareholder in respect of the shares but in such case his notice must be accompanied by a statutory declaration verifying his beneficial ownership. This requirement shall not apply to prevent an issue of shares in accordance with the Company's obligations under a written contract entered into prior to the date of receipt of the notice.

30

40

Plaintiffs
Exhibits
Exhibit C

Official
listing
requirement
of Sydney
Stock
Exchange

January 1972
amendment
(continued)

Plaintiffs
Exhibits
Exhibit D

Plaintiffs Exhibits
Exhibit D

Letter
R.W. Miller
(Holdings) Ltd.
to Ampol
Petroleum Ltd.
dated 16 May
1972 and
announcement
Ampol
Petroleum Ltd.
to Sydney Stock
Exchange
dated 12 May
1972

Letter R.W. Miller (Holdings) Ltd. to
Ampol Petroleum Ltd. dated 16th May
1972 and Announcement Ampol Petroleum
Ltd. to Sydney Stock Exchange dated
12th May 1972

R.W. MILLER (HOLDINGS) LIMITED
Head Office: Scottish House,
19 Bridge Street,
Sydney, 2000
16 May 1972

10

The Chairman of Directors,
Ampol Petroleum Limited,
84 Pacific Highway,
NORTH SYDNEY. N.S.W. 2060

Dear Sir,

At a meeting of Directors of R.W. Miller
(Holdings) Limited held late yesterday, the
Board resolved that certain questions should be
directed to your Company following your Company's
announcement of the acquisition of a substantial
shareholding in R.W. Miller (Holdings) Limited.

20

In accordance with the Board's resolution
the questions referred to were transmitted to
you this morning by telex, and for confirmation
purposes the text of our telex message is repro-
duced hereunder -

"TO ENABLE THIS COMPANY TO FURNISH APPROPRIATE
ADVICE TO THE AUSTRALIAN ASSOCIATED STOCK
EXCHANGES, WE ADDRESS TO YOU THE FOLLOWING
QUESTIONS:

30

1) IT HAS BEEN ANNOUNCED THAT YOUR COMPANY
HAS CONTRACTED TO PURCHASE FROM ROMANDA PTY.
LTD. ITS TOTAL SHAREHOLDING OF 2,144,871
SHARES IN R.W. MILLER (HOLDINGS) LTD.
(REFERRED TO FOR CONVENIENCE HEREIN AS
'HOLDINGS'). IS THIS PURCHASE AN INVEST-
MENT OR HAS YOUR COMPANY OTHER INTENTIONS
IN RESPECT OF 'HOLDINGS'?

40

2) HAS YOUR COMPANY OR ANY PARTY ON ITS
ACCOUNT OBTAINED ANY OPTION OVER ANY OTHER
SHARES OR HAS IT OR ANY PARTY ON ITS
ACCOUNT ENTERED INTO ANY FURTHER AGREEMENT
FOR THE PURCHASE OF SHARES IN 'HOLDINGS'?

1216.

- 3) IS YOUR COMPANY OPERATING ON ITS OWN ACCOUNT OR IS IT ACTING IN CONCERT WITH ANY OTHER PERSON OR COMPANY IN THE ACQUISITION OR PROPOSED FURTHER ACQUISITION OF SHARES IN 'HOLDINGS'?
- 4) IF THE PURCHASE OF SHARES IN 'HOLDINGS' IS NOT MERELY AN INVESTMENT, WHAT ARE YOUR COMPANY'S INTENTIONS IN RESPECT OF THE SHAREHOLDERS AND STAFF OF 'HOLDINGS'?
- 10 5) IS IT YOUR COMPANY'S INTENTIONS TO MAKE ALL OTHER SHAREHOLDERS IN 'HOLDINGS' AN OFFER OF PURCHASE OF NOT LESS VALUE THAN THE PRICE AGREED WITH ROMANDA PTY. LTD?
- 6) PRIOR TO ENTERING INTO THE AGREEMENT WERE YOU AWARE OF THE FACT THAT EARLIER THIS YEAR THE COMPANY'S AUDITORS HAD PLACED AN ASSET BACKING PER SHARE SUBSTANTIALLY IN EXCESS OF \$3.00?"

Plaintiffs
Exhibits
Exhibit D

Letter
R.W. Miller
(Holdings) Ltd.
to Ampol
Petroleum
Limited dated
16th May 1972
and announce-
ment Ampol
Petroleum Ltd.
to Sydney
Stock Exchange
dated 12th May
1972
(continued)

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

(SGD.) H.S. Ellis-Jones

Secretary

1217.

Plaintiffs
exhibits
Exhibit D

Exhibit D (continued)

ANNOUNCEMENT AMPOL PETROLEUM LTD. TO
SYDNEY STOCK EXCHANGE DATED 12th MAY 1972

Announcement
Ampol
Petroleum Ltd.
to Sydney
Stock Exchange
dated
12th May 1972

IMMEDIATE RELEASE

AMPOL PETROLEUM LTD.
84 PACIFIC HIGHWAY
NORTH SYDNEY 2060

Phone No. : 929 6222

May 12, 1972

The Chairman of the Board of Ampol Petroleum Limited (Mr. W.M. Leonard) announced today that 10 the Company had entered into an agreement for the purchase of the shares held by Romanda Pty. Limited, in the capital of R.W. Miller (Holdings) Limited.

The purchase price is \$2.25 per share provided that, if certain provisions of the agreement are complied with by the 19th May, the price will be increased to \$2.27 per share.

1218
Plaintiffs Exhibits
Exhibit E

Announcement by Ampol Petroleum
Ltd. and telex Miller (Holdings)
Ltd. to Sydney Stock Exchange
both dated 22nd May 1972

Plaintiffs
Exhibits
Exhibit E
ANNOUNCEMENT
by Ampol
Petroleum Ltd.
and telex
Miller
(Holdings) Ltd.
to Sydney
Stock Exchange
both dated
22nd May 1972
(continued)

IMMEDIATE RELEASE

AMPOL PETROLEUM LIMITED
84 PACIFIC HIGHWAY,
NORTH SYDNEY 2060

PHONE NO. : 929 6222

May 22, 1972

10 The Chairman of the Board of Ampol Petroleum
Limited (Mr. W.M. Leonard) announced today
that the Company had entered into an agreement
for the purchase of an additional 536,770
shares in the capital of R.W. Miller (Holdings)
Limited at the price of \$2-27 per share. The
vendor is Miller Services Pty. Limited. In
consequence, the provisions of the agreement
referred to in the advice to the Stock Exchange
on May 12, 1972, have been complied with and the
20 price to be paid to Romanda Pty. Ltd. for its
shares in the capital of R.W. Miller (Holdings)
Limited is now \$2-27 per share.

This latest acquisition gives Ampol Petroleum
Limited a holding of 2,681,641 shares in the
capital of R.W. Miller (Holdings) Limited
representing 29.8% of the issued capital of that
Company.

30 Mr. Leonard further announced that Ampol
Petroleum Limited had decided to extend its
offer of \$2.27 per share to all holders of
ordinary shares in R.W. Miller (Holdings)
Limited. Formal Notice of Intention will be
given to the Chairman of R.W. Miller (Holdings)
Limited within the next few days.

1219

Plaintiffs
Exhibits

Exhibit E

Telex
R.W. Miller
(Holdings) Ltd.
to Sydney
Stock Exchange
dated
22nd May 1972

Exhibit E
(continued)

Telex R.W. Miller (Holdings) Ltd.
to Sydney Stock Exchange dated
22nd May 1972

STOCKEX AA20630
STANDBY CONF

STOCKEX AA20630*
STOCKEX AA20630*
STOCKEX AA20630
CONF CONN GA PLS

TO: STOCKEX ADELAIDE
BRISBANE
HOBART
MELBOURNE
SYDNEY

10

FROM: MILLCO SYDNEY

SYD 705 22/5/72 1215

IT IS ANNOUNCED THAT A TELEX HAS BEEN RECEIVED
FROM AMPOL PETROLEUM LIMITED ANNOUNCING ITS
INTENTION TO EXTEND ITS OFFER OF DOLLARS 2.27
PER SHARE TO ALL HOLDERS OF ORDINARY SHARES IN
R W MILLER (HOLDINGS) LIMITED AND THAT FORMAL
NOTICE OF INTENTION WILL BE GIVEN TO THE
CHAIRMAN OF THIS COMPANY WITHIN THE NEXT FEW
DAYS.

20

THE PRESENT ASSET BACKING PER SHARE AS CERTIFIED
BY THE COMPANY'S AUDITORS STANDS AT DOLLARS 3.71.

SHAREHOLDERS ARE ADVISED THAT AS PREVIOUSLY
INDICATED THIS COMPANY IS IN THE COURSE OF
HAVING ITS ASSETS REVALUED AND THAT SUCH RE-
VALUATION IS NOT COMPLETE.

30

AS SOON AS THE FORMAL OFFER IS RECEIVED FROM
AMPOL PETROLEUM LIMITED IT WILL BE CONSIDERED
BY THE BOARD OF THIS COMPANY AND A STATEMENT
ISSUED IN ACCORDANCE WITH THE COMPANY'S OBLIG-
ATIONS UNDER THE COMPANIES ORDINANCE (ACT)

IN THE MEANTIME SHAREHOLDERS ARE RECOMMENDED
NOT TO SELL SHARES UNTIL THE BOARD IS IN A
POSITION TO TENDER FURTHER ADVICE IN REGARD
TO THE OFFER ULTIMATELY MADE.

A N TAYLOR
CHAIRMAN OF DIRECTORS
R W MILLER (HOLDINGS) LIMITED

MESSAGE ENDS
PLS ACK

Plaintiffs Exhibits
Exhibit F
Notice by Ampol Petroleum Ltd.
to R.W. Miller (Holdings) Ltd.
of takeover scheme dated
24th May 1972

Plaintiffs
Exhibits
Exhibit F
Notice by
Ampol
Petroleum Ltd.
to R.W. Miller
(Holdings) Ltd.
of take-over
scheme
24th May 1972

AMPOL PETROLEUM LIMITED
84 PACIFIC HIGHWAY
NORTH SYDNEY 2060

May 24, 1972

10 R.W. Miller (Holdings) Limited,
11th Floor,
A.M.P. Building,
Hobart Place,
CANBERRA CITY. A.C.T. 2601

NOTICE OF TAKE-OVER SCHEME

AMPOL PETROLEUM LIMITED (a Company duly incor-
porated in the State of New South Wales) hereby
gives notice pursuant to Section 184 of the
Companies Ordinance 1962 (as amended) of the
20 Australian Capital Territory, of a take-over
scheme involving the making of offers by it to
acquire the whole of the issued capital of
R..W. MILLER (HOLDINGS) LIMITED not already
owned by it namely 6,319,145 fully paid ordinary
shares of \$1.00 each. Ampol Petroleum Limited
has already purchased from Romanda Pty. Limited
and Miller Services Pty. Limited a total of
2,681,641 ordinary shares for \$2.27 per share.
30 Particulars of the terms of the take-over
offers to be made under the scheme are contained
in the form of offer which is annexed hereto
which form of offer constitutes part of this
notice. The statement required by Section
184 (2)(a) to be given with this notice is
attached.

40 THE COMMON SEAL of AMPOL
PETROLEUM LIMITED was)
hereunto affixed by) (Sgd.)
authority of the directors)
in the presence of:) DIRECTOR

(Sgd.)

GENERAL SECRETARY

Plaintiffs
Exhibits
Exhibit "F"
Notice by
Ampol Petroleum
Ltd. to
R.W. Miller
(Holdings) Ltd.
of take-over
scheme
24th May 1972
(continued)

STATEMENT BY AMPOL PETROLEUM LIMITED (herein
called "AMPOL") PURSUANT TO SECTION 184(2)(a)
OF THE COMPANIES ORDINANCE 1962 (AS AMENDED)
OF THE AUSTRALIAN CAPITAL TERRITORY

1. The names and descriptions and addresses
of the directors of AMPOL are as follows:

Walter McEllister Leonard 51 Cutler Road, Clontarf, N.S.W.	Chairman and Chief Executive Officer	
Albert Edward Harris, 5 Fitzwilliam Road, Vaucluse, N.S.W.	Managing Director	10
Sir Allen Fairhall, 7 Parkway Avenue, Newcastle, N.S.W.	Company Director	
Wilfred Gillman Hall, 21 Crest Avenue, Balwyn, Victoria	Company Director	
Richard Chapman Hope Mason, 7 Burns Road, Wahroonga, N.S.W.	Chief General Manager	20
William Keith Olver, 28 Otterington Grove, East Ivanhoe, Victoria	Company Director	
Charles Donald Saxton, 22 Billyard Avenue, Elizabeth Bay, N.S.W.	Company Director	
Robett Duncan Somervaille, 19 Karoo Avenue, East Lindfield, N.S.W.	Solicitor	30
Stuart Walter Thorpe 10 Burrawong Avenue, Clifton Gardens, N.S.W.	Company Director	

- 10
2. The principal activities of AMPOL are the refining, distribution and marketing of petroleum products, the operation of oil tankers, including its own and chartered vessels, and the holding of shares in subsidiary companies which are engaged in the search for and production of crude oil and natural gas, the operation of taxi and hire car fleets, the search for minerals and property development.
- 20
3. 2,681,641 ordinary shares of \$1.00 in the capital of R.W. MILLER (HOLDINGS) LIMITED (herein called "MILLER") are held by or on behalf of AMPOL. No other marketable securities in the capital of MILLER are held by or on behalf of AMPOL.
- 30
4. The cash consideration for the acquisition of the shares in the capital of MILLER will be provided from internal resources of AMPOL and from borrowings which are being arranged through AMPOL'S banking connections.
- 40
5. It is not proposed in connection with the take-over scheme that any payment or other benefit shall be made or given to any director of MILLER or any corporation which is by sub-section (5) of Section 6 of the Companies Ordinance 1962 of the Australian Capital Territory deemed to be related to MILLER, as compensation for the loss of office or as consideration for or in connection with his retirement from office.
6. No agreement or arrangement has been made between AMPOL and any of the directors of MILLER in connection with or conditional upon the outcome of the scheme.
7. Apart from changes by reason of subsequently earned profits, there has not been within the knowledge of AMPOL any material change in the financial position of MILLER since the date of the last balance sheet laid before MILLER in general meeting.

Plaintiffs
Exhibits:
Exhibit F
Notice by
Ampol Petroleum
Ltd. to
R.W. Miller
(Holdings) Ltd.
of take-over
scheme
24th May 1973
(continued)

Plaintiffs
 Exhibits
 Exhibit F
 Notice by
 Ampol Petroleum
 Ltd. to
 R.W. Miller
 (Holdings) Ltd.
 of take-over
 scheme

24th May 1972
 (continued)

However, following recent publication by Miller of reports on the progress of a revaluation of MILLER'S assets, the asset backing of each MILLER share as shown by the next balance sheet of MILLER may be in excess of the asset backing based on the last balance sheet.

8. There is no agreement or arrangement whereby any shares in the capital of MILLER acquired by AMPOL in pursuance of the scheme will or may be transferred to any other person.

10

DATED the 24th day of May, 1972

For and on behalf of
 AMPOL PETROLEUM LIMITED

Exhibit F (continued)

TO: THE HOLDERS OF THE ORDINARY
SHARES IN THE CAPITAL OF
R.W. MILLER (HOLDINGS) LTD.
(herein called "Miller").

Plaintiffs
Exhibits
Exhibit F
Notice by
Ampol Petroleum
Ltd. to
R.W. Miller
(Holdings) Ltd.
of take-over
scheme

Dear Shareholder,

O F F E R

24th May 1972

(continued)

10 AMPOL PETROLEUM LIMITED (hereinafter called
"Ampol") a Company duly incorporated in the
State of New South Wales, and having its
registered office at 84 Pacific Highway, North
Sydney in that State, hereby offers to acquire
all of the ordinary shares of \$1.00 in the
capital of Miller held by you for the considera-
tion and on and subject to the terms and condi-
tions as set out below:

1. This offer is made pursuant to a take-over
scheme (herein called "the Scheme") under
which identical offers are being made to
the holders of all of the ordinary shares
20 of \$1.00 in the capital of Miller (here-
inafter referred to as "Miller Shares")
other than the 2,681,641 shares already
owned beneficially by Ampol who are
registered as members at 5 p.m. on the
third day from date of this offer and
also to the persons who derive title to
any of those shares from any such person
while the offer remains open for acceptance.
2. The consideration for the acquisition of
30 Miller shares is \$2.27 cash for each
Miller share.
3. The offer is made upon and subject to the
fulfilment or observance of the following
conditions:
 - (1) That acceptance of offers made under
the Scheme shall be received by
Ampol in respect of not less than
5,687,230 Miller shares (being
approximately 90 per cent of the
40 issued Miller shares not already
owned beneficially by Ampol). This
condition is referred to as "the
minimum acceptance condition".

Plaintiffs
Exhibits
Exhibit F
Notice by
Ampol Petroleum
Ltd. to
R.W. Miller
(Holdings) Ltd.
of take-over
scheme

24th May 1972

(continued)

- (2) That between the date on which the notice of the Scheme was given to Miller and the date on which the minimum acceptance condition is fulfilled or waived by Ampol:
- (a) Miller will not:
- (i) issued or allot grant options over or otherwise make any commitment with respect to any of its shares or stock or effect any alteration in its capital structure or issue or agree to issue any convertible notes. 10
 - (ii) alter its memorandum or articles of association or pass any special resolution.
 - (iii) mortgage or charge any property or borrow money (otherwise than by way of overdraft accommodation from its bankers in the ordinary course of business). 20
 - (iv) sell lease transfer or dispose of any of its assets except in the ordinary course of business.
 - (v) make any change in the basis of remuneration of any of its directors or executive officers or appoint additional directors.
 - (vi) incur any liability for provident fund or other retirement benefits other than those for which liability already exists.
 - (vii) pay or agree to pay to any employee or director any unusual bonus or special or extra remuneration or any substantial increase in remuneration.

Plaintiffs
Exhibits
Exhibit F.
Notice by
Ampol Petroleum
Ltd. to
R.W. Miller
(Holdings) Ltd.
of take-over
scheme

24th May 1972

(continued)

10

(viii) make any retirement pay-
ment to any director or an
employee except in each
case as required by law.

(ix) enter into any long term or
onerous contract or commit-
ment.

(x) enter into any contract
of service with executive
officers or vary any
existing contract of
service with existing
executive officers or
directors.

20

(xi) have had threatened or
commenced against it any
claim or proceedings in
any Court the existence
of which had not been dis-
closed to Ampol prior to
the date of this offer.

(xii) conduct its business other-
wise than in the normal
and usual course or make
any change which has a
materially adverse affect
on its business or pros-
pects.

30

(b) Miller and its subsidiaries will
carry on business in the usual
way, and

(c) Miller will not declare or pay
any dividend or bonus or make
any other distribution of its
profits or assets.

40

(3) That between the 30th day of June,
1971 and the date on which the
minimum acceptance condition shall be
fulfilled or waived there will not
have been any change in the assets
and liabilities of Miller which
substantially or materially adversely
affects the financial position of
Miller.

Plaintiffs
Exhibits

Exhibit F

Notice by
Ampol Petroleum
Ltd. to
R.W. Miller
(Holdings) Ltd. of take-over
scheme

24th May 1972

(continued)

PROVIDED however that Ampol may waive or dispense with the fulfilment or observance of any of the foregoing conditions in whole or in part by written notice to Miller.

4. (a) Forthwith after the minimum acceptance condition has been fulfilled Ampol shall declare the offer free from the minimum acceptance condition by giving notice to that effect to Miller and to those Australian Associated Stock Exchanges on which Miller shares are listed. 10
- (b) Forthwith after the minimum acceptance condition has been fulfilled the directors of Miller and of each of its subsidiaries will cause the boards of directors of Miller and each of its subsidiaries to be reconstituted in such manner as Ampol requests. 20
- (c) At any time after this offer has been declared free from the minimum acceptance condition Ampol may by notice to Miller declare this offer unconditional and upon that notice being given all the conditions set forth in this offer shall be deemed to have been satisfied.
5. In accordance with the requirements of Section 184 of the Companies Ordinance 1962 (as amended) of the Australian Capital Territory it is stated: 30
- (a) This offer is conditional upon acceptances of offers made under the Scheme being received in respect of the minimum number of Miller shares stated in paragraph 3(1) of this offer.

Plaintiffs
Exhibits

Exhibit F

Notice by
Ampol
Petroleum Ltd.
to
R.W. Miller
(Holdings)
Ltd. of take-
over scheme

24th May 1972

(continued)

10 (b) The cash payable as consideration for the Miller shares will be paid by cheque posted to you at the address shown on the form of acceptance and transfer signed by you and will be paid not later than twenty-eight days after the date on which Ampol is registered in the register of members as the holder of the shares transferred to it provided that a payment will be not made until after the transfer enclosed with this offer has been fully signed and has been received by or on behalf of Miller together with the relevant certificate or certificates.

20 (c) The latest date on which Ampol can declare the offer to have become free from the minimum acceptance condition is September 23, 1972, and the offer will remain open for acceptance after that declaration is made for a further period of seven days or such longer period as Ampol may from time to time by notice to Miller specify.

30 (d) Except insofar as this offer and all other take-over offers made under the Scheme may be totally withdrawn and every person released from any obligation incurred thereunder (which right of withdrawal is hereby reserved by Ampol) this offer will remain open for acceptance for at least one month after the date.

40 6. By accepting this offer you shall be deemed to have represented and warranted to Ampol that all the shares which you transfer to Ampol or its nominees shall at the date of transfer thereof be free from all charges mortgages liens and encumbrances of every description.

Plaintiffs
Exhibits

Exhibit F

Notice by
Ampol Petroleum
Ltd. to
R.W. Miller
(Holdings) Ltd.
to take-over
scheme

24th May 1972

(continued)

7. Any notice nomination or other intimation to be given by Ampol to Miller hereunder shall be deemed to be duly given if it is in writing and is signed or purports to be signed on behalf of Ampol by any of its directors or its general secretary and is delivered at or sent by post in a pre-paid envelope addressed to the registered office of Miller in Australian Capital Territory. 10
8. All costs and expenses of the preparation and circulation of the offers and stamp duty payable in respect of acceptances and transfers will be paid by Ampol.
9. Acceptance of this offer shall be made upon the form of acceptance and transfer forwarded herewith or in such other manner as may be agreed by Ampol. By accepting this offer you shall be deemed to have authorised Ampol to complete the date of purchase in the form of acceptance and transfer and to rectify errors therein or omissions therefrom. 20

DATED at Sydney this 15th day of June, 1972.

For and on behalf of
AMPOL PETROLEUM LIMITED

CHAIRMAN OF DIRECTORS.

1230.

Plaintiffs Exhibits

Exhibit G.

TELEX R.W. MILLER (HOLDINGS)
LTD. TO SYDNEY STOCK EXCHANGE
25th MAY 1972.

Plaintiffs
Exhibits

Exhibit G

STOCKEX AA20630
STANDBY CFCE PLS
STOCKEX AA20638
CFCE CONN GA PLS

Telex R.W.
Miller
(Holdings) Ltd
to Sydney Stock
Exchange dated
25th May 1972

TO: STOCKEX ADELAIDE
BRISBANE
HOBART
MELBOURNE
SYDNEY

10 FROM: MILLCO SYDNEY
SYD 724 25/5/72 1100

ADVICE IS GIVEN THAT LATE YESTERDAY AFTERNOON
AMPOL PETROLEUM LIMITED DELIVERED A NOTICE OF
TAKE OVER SCHEME INVOLVING THE MAKING OF OFFER
BY AMPOL PETROLEUM LIMITED FOR THE ACQUISITION
OF 6,319,145 FULLY PAID ORDINARY SHARES IN THE
R.W. MILLER (HOLDINGS) LIMITED (REPRESENTING ALL
SHARES IN THIS COMPANY OTHER THAN THOSE ALREADY
PURCHASED BY AMPOL PETROLUUM LIMITED) FOR A
20 CONSIDERATION OF DOLLARS 2.27 CASH FOR EACH
SHARE.

1231.

Plaintiffs
Exhibits
Exhibit G

Telex R.W.
Miller
(Holdings) Ltd.
to Sydney Stock
Exchange dated
25th May 1972.

(continued)

THE DIRECTORS OF R W MILLER (HOLDINGS)
LIMITED ARE CONSIDERING THE TAKE-OVER
SCHEME, AND THE BOARD WILL ISSUE A
STATEMENT AND MAKE A RECOMMENDATION TO
SHAREHOLDERS AS SOON AS PRACTICABLE.

R W MILLER (HOLDINGS) LIMITED

MESSAGE ENDS
PLS ACK

STOCKEX AA30550/
4594.55*50*

3 = 30550
TOOO RSN NR GE OR
ADN ETO
AAWRP
KADF YRGETO
AJID 1OYV
STOCCOORPJE AL40264

STOCKEX AA40264
STOCKEX AA20630
STOCKEX AA58111

I THINK YOU ARE ALL THERE
SOMEWHERE SO BI
MILLCO AA20170T

11.17

Plaintiffs Exhibits

EXHIBIT H.

LETTER R.W. MILLER (HOLDINGS)
LTD. TO AMPOL PETROLEUM LTD.
29th MAY 1972

Plaintiffs
Exhibits

Exhibit H

Mr. W.M. Leonard
Chairman of Directors
Ampol Petroleum Limited
Ampol Building
84 Pacific Highway
NORTH SYDNEY N.S.W.

Letter R.W.
Miller
(Holdings) Ltd.
to Ampol
Petroleum Ltd.
Dated
29th May 1972

Dear Sir,

Referring to the Notice of Takeover Scheme dated May 24th, 1972, and served on this Company on that date, to enable the Board of this Company in the interests of shareholders to give proper consideration to the terms of the proposed offer in accordance with its obligations at law, I have been directed by the Board to request that you furnish us with the following additional information:

1. An audited copy of the Company's last Balance Sheet and Trading Accounts together with an up-dating thereof, (not necessarily audited) to the latest date to which you have reliable figures. As your Company's activities are varied, it would be appreciated if separate figures could be supplied in respect of each of the activities.
2. It is noted that the cash consideration for the acquisition of the shares is to be provided from your Company's internal resources and from borrowings which are being arranged through your bankings connections. Bearing in mind the provisions of Clause 3 of Part B of the Tenth Schedule to the Companies Ordinance 1962 (A.C.T.) would you please advise:

10

20

30

Plaintiffs
Exhibits
Exhibit H

Letter R.W.
 Miller
 (Holdings) Ltd.
 to Ampol
 Petroleum Ltd.
 Dated
 29th May 1972
 (continued)

- a. The extent of such proposed borrowings.
 - b. The term or terms of repayment.
 - c. The rate or rates of interest involved.
3. In the event of such borrowings being of a short term nature, does your Company propose to meet the liability from its own resources or with the assistance of liquidation of assets of R.W. Miller (Holdings) Limited and/or its subsidiaries. In the context of this question "short term" may be taken as a term of three years or less. 10
 4. In the event of your Company proposing to liquidate some or all of the borrowings by the sale of assets of this Group, what type of assets does your Company have in mind. In particular is it intended that your Company dispose of the collieries and/or hotels to overseas or other interests. 20
 5. Have there been any discussions or arrangements of a formal or informal nature between your Company and any other party relative to the sale of assets of this Company or its subsidiaries in the event of the takeover bid succeeding. 30
 6. In particular what plans has your Company for the utilisation of the tankers presently owned by this Group, and the officers and crews thereof, and for the M.T. "Robert Miller" presently building. You would be aware of the existing charter over the M.T. "Amanda Miller" and we formally advise you that, so far as the M.T. "Robert Miller" is concerned, a binding letter of commitment to charter the vessel upon handover for a term of five years is held from The Shell Company of Australia Limited. 40

7. What is your Company's intention in regard to the staff of the Group in the event of the takeover bid succeeding. In particular in this regard:

a. Is it intended that retrenchments will take place only as retirements occur.

10

b. In the event of the sale by your Company of any activity of the Group involving the employment of labour, will your Company ensure as a condition of such sale that the staff affected will be employed on terms no less favourable than they presently enjoy.

c. Will your Company continue to contribute to the Staff Superannuation Fund on terms not less favourable to the members than those at present enjoyed by them.

20

In this regard you are advised that the Fund is a managed fund administered by the City Mutual Life Assurance Society Limited and has been approved by the Commissioner of Taxation.

30

Reference is made in particular to Clause 3 (2) (a) (iii) relating to the mortgaging or charging of property or the borrowing of money and you are advised that arrangements have been in train for some time past covering the borrowing of money otherwise than by way of overdraft accommodation. Such borrowings form an integral part of this Group's planned development and it is essential for the continued progress of the Group that these matters be pursued and, whilst we do not in any way suggest that your stipulation is either unreasonable or unusual, we consider that it is essential to notify you now of our intention to continue to pursue these matters and in due course, when it becomes necessary for us to communicate with our shareholders, we will advert specifically to this aspect of the matter.

40

Plaintiffs
Exhibits

Exhibit H

Letter R.W.
Miller
(Holdings) Ltd.
to Ampol
Petroleum Ltd.
Dated
29th May 1972
(continued)

We would appreciate early replies to the questions set out above so that the Board may then meet fortified with adequate information to enable it to formulate its recommendations to the shareholders.

Yours faithfully,

H.V. ELLIS-JONES
GENERAL SECRETARY.

Plaintiffs Exhibits

Exhibit J.

LETTER AMPOL PETROLEUM LTD. TO
R.W. MILLER (HOLDINGS) LTD.
31st MAY 1972 AND ENCLOSURE THERETO.

10

Plaintiffs
Exhibits

Exhibit J

Letter Ampol
Petroleum Ltd.
to R.W. Miller
(Holdings)
Ltd. 31st May
1972 and
enclosure
thereto

Chairman of Directors,
R.W. Miller (Holdings) Limited,
Scottish House,
19 Bridge Street,
SYDNEY 2000

Dear Mr. Taylor,

I acknowledge receipt of a letter dated May 29 20 addressed to me by your General Secretary.

Although I am sure you have a copy of our last Annual Report (which includes the last Balance Sheet produced) I attach hereto an additional copy. Today, we released to the Stock Exchange our half-yearly results, for the six months ended March 31, and a copy of this is enclosed for your information.

It is not the Policy of the Board of this Company to reveal to any party, information over and above that which it provides its shareholders. In any case, as this is a cash offer, with adequate finance available, details of our borrowings, etc., are irrelevant and I don't propose to reveal them.

30

There have been no discussions or arrangements with any party to dispose of the assets of your Company. Indeed, Ampol would have no desire to dispose of any assets that produced satisfactory profits and an adequate return on the value of the investment. 40

Plaintiffs
Exhibits

Exhibit J

Letter Ampol
Petroleum Ltd.
to R.W. Miller
(Holdings)
Ltd. 31st May
1972 and
enclosure
thereto
(continued)

Ampol believes the most important asset that any company has is people and, as a substantial and responsible employer, acts and will act accordingly. All rights of existing staff and employees (subject to the usual rights of an employer) will be respected, including the contribution to the Staff Superannuation Fund.

10 With regard to the utilisation of the tankers, I think you answer the question yourself when you inform us that "Amanda Miller" and "Robert Miller" are chartered, or committed to be chartered and, obviously, such chartering arrangements must be honoured. In any event, Federal Government Policy provides for priority usage for Australian built and owned vessels and I do not visualise any variation of the operation and utilisation of the tankers on the Australian coast.

Yours sincerely,

20

"W.M. LEONARD"

Exhibit J.

ANNUAL REPORT OF AMPOL PETROLEUM LTD.
DATED 31st MAY 1972, ENCLOSURE TO
PREVIOUS LETTER

FOR IMMEDIATE RELEASE

Ampol Petroleum Limited,
84 Pacific Highway,
NORTH SYDNEY 2060

'PHONE: 929 6222

May 31, 1972

Exhibit J

Annual Report
of Ampol
Petroleum Ltd.
dated 31st
May 1972
enclosure to
previous
letter

30

HALF-YEARLY RESULTS

40 The Chairman of the Board of Ampol Petroleum Limited (Mr. W.M. Leonard) announced today that the Group Consolidated Profit, after Tax, for the half-year ended March 31, 1972, after excluding Profit attributable to Minority Interests, amounted to \$3.285 million - an increase of \$461,000, or 16% compared with the corresponding period last year. The Profit includes Capital Profits of only \$8,000 compared with Capital Profits of \$791,000 for the corresponding period last year.

Plaintiffs
Exhibits

Exhibit J

Annual Report
of Ampol
Petroleum Ltd.
dated 31st
May 1972
Enclosure
previous
letter

(continued)

This was arrived at after provisions for income tax of \$3.9 million (last year \$1.7 million) being current \$3.8 million and future \$0.1 million, and depreciation of \$4.9 million (last year \$4.4 million) and payment of interest on Debentures and Term Loans of \$1.9 million (last year \$1.65 million). The depreciation includes an initial provision of \$115,000 for buildings not previously depreciated.

Sales and other Revenue totalled \$80 million compared with \$73.5 million last year - an increase of 8.9% 10

The improved performance of our three major Operating Divisions - Refining, Transportation and Marketing, all of which operated efficiently and exceeded estimates for the six months - was the principal factor contributing to the Profit increase.

The Federal Government has still not resolved the inequity in freight equalisation which continues to deprive the Company of substantial profits. 20

At the Annual General Meeting in February this year, shareholders were informed that a meeting of the Industry was being convened in March by the Minister for Customs and Excise to endeavour to resolve the matter. The meeting was abortive and virtually achieved nothing.

Since then there have been further discussions with the Minister for Customs and Excise and his Departmental Officers, and within the last two weeks with the Prime Minister who promised that the Government will now decide the issue promptly, and such decision is expected at any moment. 30

The Lytton Refinery exceeded a production rate of 41,000 barrels per day. Costs of production were lower than Budget, and the Profit for the half-year was in excess of budget.

Likewise our Company-owned tankers performed efficiently and exceeded our budgeted projections. "P.J. Adams" was employed solely in the carriage of Gippsland crude oil from Westernport to Lytton, while "William G. Walkley" continued to distribute products to northern ports on the Queensland coast. 40

The keel of our new tanker to replace "William G. Walkley" was laid at Whyalla on February 16, 1972, and she is projected to be delivered to us early in 1973.

Our chartered vessel, "Oceanic Grandeur", operated satisfactorily.

Marketing conditions throughout Australia remained fiercely competitive. In particular, profits were again eroded by the price war in Victoria. However, since the end of the financial period under review, and especially during the last week or two, there are some heartening indications that the war is waning and the market becoming more stable.

10

Sales of crude oil from Barrow Island totalled 7,561,000 barrels for the half-year, or an average of 41,317 barrels per day, compared with 8,431,599 barrels, or an average of 46,327 barrels per day, for the same period last year.

20

Exploration activities, both on-shore and off-shore, will increase during the second half of this year. A number of critical wells will be drilled during this period commencing, in the first half of June, with the spudding of the off-shore well North Tryal Rocks No. 1. The joint Wapet-Union well, Wonnerup No. 1 near Busselton in south Western Australia, is drilling below 9,500 feet. When this well is completed, the rig will be transported to Barrow Island for a deep exploratory test with a programmed depth of 16,000 feet and an anticipated "spud in" date of September.

30

Walyering No. 3, which was drilling at the time of the Annual Meeting was abandoned at 13,738 feet as a non-commercial gas well. Tests on the gas zones indicated tight formations with corresponding small gas flows.

40

Sales of Dongara gas commenced on schedule in October 1971 and totalled, for the six months, 4,600 million cubic feet, averaging 30.4 million cubic feet per day. Currently, sales have risen to a daily average of 56 million cubic feet.

Mineral exploration during the period centred principally in the Ravensthorpe area of Western Australia where a number of nickel anomalies are being assessed.

Plaintiffs
Exhibits

Exhibit J

Annual Report
of Ampol
Petroleum Ltd.
dated 31st
May 1972
Enclosure
previous
letter
(continued)

The Savege River Project has shown no improvement in its profitability - in fact the position has deteriorated. Discussions with the Japanese buyers for a price increase for pellets commenced in March and are continuing.

Ampol Property Development has completed plans to erect, at a cost exceeding \$1 million, an office building on land owned by Ampol at Frankston in Victoria. This will be the first project of the new subsidiary.

10

On May 24, 1972, the Board gave Notice of Intention of a takeover offer for all of the ordinary shares in the capital of R.W. Miller (Holdings) Limited, having on May 22, 1972, announced that 2,144,871 shares had been acquired from Romanda Pty. Limited and 536,770 shares had been acquired from Miller Services Pty. Limited, totalling 2,681,641 shares or 29.8% of the issued capital of R.W. Miller (Holdings) Limited.

20

The Board declared an interim dividend of 5% or 2.5 cents per share (including seven-tenths of a cent per share which would be exempt from Australian Income Tax pursuant to Section 44 (2)(d)(ii) per share) amounting to \$2,938,018 on the 117,520,737 fifty cents stock units. The dividend is payable on July 28, 1972. The registers will close at 5 p.m. on June 27, 1972, and re-open at 9 a.m. on June 29, 1972.

Plaintiffs
Exhibits

Exhibit K

Letter R.W.
Miller(Holdings)
Ltd. to Ampol
Petroleum Ltd.
dated 6th June
1972

Plaintiffs Exhibits
Exhibit K.

LETTER R.W. MILLER (HOLDINGS) LIMITED TO AMPOL
PETROLEUM LTD. DATED 6th JUNE, 1972.

6th June, 1972

W.M.Leonard Esq.,
Chairman of Directors,
Ampol Petroleum Limited
84 Pacific Highway
North Sydney 2060.

Dear Mr. Leonard,

Your letter to me of May 31st 1972 is acknowledged and was placed before the Board of this Company. I invite particular attention to the third paragraph in which you state:

"...as this is a cash offer with adequate finance available details of our borrowings etc. are irrelevant and I don't propose to reveal them".

30

40

Plaintiffs
Exhibits

Exhibit K

Letter R.W.
Miller (Holding)
Ltd. to Ampol
Petroleum Ltd.
dated 6th June
1972
(continued)

10 Although the offer proposed to be made by your Company is a cash offer, it is suggested that the normal principles relating to a cash offer do not apply as this Company is in a somewhat unique position that at least 55% of its issued capital is in the hands of two shareholders, both of whom are major companies. You will, of course, realise that the Board owes an obligation to all its shareholders, both large and small.

Whilst the statement under Part C of the Tenth Schedule of the Companies Ordinance has not, as yet, been drawn, it is felt that, with the information presently available and bearing in mind the substantial asset backing per share which has been announced, it would be difficult, to say the least, to justify any recommendation for acceptance of your offer.

20 The Board must also consider the situation which could arise should Bulkships accept your offer or enter into some arrangement with your Company whereby effective control of this Company passes either to your Company's hands or to the hands of your Company and Bulkships. If either of these events were to happen, then any shareholder who rejected your offer would be placed in the situation of being a shareholder in a company subsidiary to your Company on the one hand or a minority shareholder in a company
30 completely dominated by your Company and Bulkships.

The possibility of such a situation arising makes it essential to alert our shareholders to the difficulties of their position in such a circumstance. Furthermore, the possibility that Miller assets will be used to replenish the sources of your own liquid funds, as opposed to being used solely in the best interests of
40 Miller shareholders must be a matter of grave concern to any shareholder faced with the decision to accept or reject your offer.

Against this background, in order to enable our shareholders to be properly advised, I again ask that you make available the information requested. If such information is not forthcoming consideration would have to be given to other alternatives including, perhaps, as has been suggested by some of our shareholders, the calling of public tenders in respect of the

Plaintiffs
Exhibits

Exhibit K

Letter R.W.
Miller (Holding)
Ltd. to Ampol
Petroleum Ltd.
dated 6th June
1972
(continued)

disposal of each of the Group's activities separately and/or collectively as a means of measuring the fairness or otherwise of the price your Company proposes to offer.

On further reflection you will, I am sure, appreciate that the position is not quite as simple as at first might appear and that the shareholders of this Company have not only a vital but a very valid interest in being supplied with the information which was explicitly sought in Paragraphs 2, 3 and 4 of our letter to you dated May 29th, 1972.

10

Yours sincerely,

A.N. Taylor
Chairman of Directors.

Plaintiffs
Exhibits

Exhibit L

Letter R.W.
Miller
(Holdings)
Ltd. to Sydney
Stock Exchange
14th June 1972
and enclosure

Plaintiffs Exhibits

EXHIBIT L

LETTER R.W. MILLER (HOLDINGS) LTD.
TO SYDNEY STOCK EXCHANGE LIMITED,
DATED 14th JUNE 1972 AND ENCLOSURE

20

14th June 1972

The Secretary,
Sydney Stock Exchange Ltd.,
20 O'Connell Street,
Sydney 2000.

Dear Sir,

In confirmation to our telex announcement transmitted to you today, we enclose copy of letter mailed today to all of the Company's shareholders.

30

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

H.J. Ellis-Jones
Secretary

Enc.

Exhibit L (continued)

ENCLOSURE TO LETTER R.W. MILLER
(HOLDINGS) LTD. TO SYDNEY STOCK
EXCHANGE DATED 14th JUNE, 1972.

Plaintiffs
Exhibits

Exhibit L

Enclosure to
letter R.W.
Miller (Holdings)
Ltd. to Sydney
Stock Exchange
14th June 1972
(continued)

Dear Shareholder,

10 By the time you receive this letter you will have received or shortly thereafter you will receive from Ampol Petroleum Limited an offer for the purchase of your entire shareholding in this Company at the cash price of £2.27 per share.

Your attention is drawn to Clause 5 (d) of the offer from Ampol stating that their offer will remain open for your acceptance for a period of AT LEAST ONE MONTH FROM 15th JUNE 1972.

20 This clause has been inserted by Ampol to meet legal requirements, therefore there is no immediate hurry for you to make up your mind whether to accept or reject Ampol's offer, and we urge you to take advantage of this benefit given to you by law for the following reasons:-

(1) If during the period of one month in which Ampol's offer remains open for your acceptance, a counter take-over offer were to be made on more favourable terms than the Ampol offer, then you would be free to consider acceptance of the counter take-over offer.

30 (2) You will receive from the Board of Directors of R.W. Miller (Holdings) Limited not later than 29th June 1972, a statement containing the advices and information required by law, and it will also contain the Board's recommendation and the fullest possible information to enable you to form a considered judgment as to whether it will be in your best interests to accept or
40 reject Ampol's offer.

Plaintiffs
Exhibits

Exhibit L

Enclosure to
letter R.W.
Miller
(Holdings) Ltd.
to Sydney Stock
Exchange
14th June 1972
(continued)

To sum up your position clearly and
concisely, YOU HAVE NOTHING TO LOSE by taking
full advantage of the period of one month that
Ampol's offer remains open for your acceptance.

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

A.N. TAYLOR
CHAIRMAN OF DIRECTORS

Plaintiffs Exhibits
EXHIBIT M

10

Plaintiffs
Exhibits

OFFER BY AMPOL PETROLEUM LTD. TO PURCHASE
ALL ORDINARY SHARES IN R.W. MILLER (HOLDINGS)
LTD. DATED 15th JUNE, 1972.

Exhibit M

Offer by Ampol
Petroleum Ltd.
to purchase
all Ordinary
Shares in R.W.
Miller
(Holdings)
Ltd.
15th June 1972

OFFER BY
AMPOL PETROLEUM LIMITED
to purchase all the Ordinary Shares in
R.W. MILLER (HOLDINGS) LIMITED
in accordance with the offer set out
herein

"AMPOL"

20

To accept the offer, please complete the
enclosed Form of Acceptance and Transier
and send it with your Share Certificates
to Ampol Petroleum Limited, Box 66, Post
Office, Balmain, 2041 in the enclosed
postage prepaid envelope as soon as
possible.

AMPOL PETROLEUM LIMITED
84 Pacific Highway,
North Sydney, N.S.W. 2060

May 24, 1972

R.W. Miller (Holdings) Limited,
11th Floor,
A.M.P. Building,
Hobart Place,
CANBERRA CITY, A.C.T. 2601

Plaintiffs
Exhibits
Exhibit M

Offer by Ampol
Petroleum Ltd.
to purchase
all Ordinary
Shares in R.W.
Miller
(Holdings) Ltd.
15th June 1972
(continued)

10 NOTICE OF TAKE-OVER SCHEME

AMPOL PETROLEUM LIMITED (a Company duly
incorporated in the State of New South Wales)
hereby gives notice pursuant to Section 184 of
the Companies Ordinance 1962 (as amended) of
the Australian Capital Territory, of a take-over
scheme involving the making of Offers by it to
acquire the whole of the issued capital of
R.W. MILLER (HOLDINGS) LIMITED not already owned
by it namely 6,319,145 fully paid ordinary
20 shares of \$1.00 each. Ampol Petroleum Limited
has already purchased from Romanda Pty. Limited
and Miller Services Pty. Limited a total of
2,681,641 ordinary shares for \$2.27 per share.

Particulars of the terms of the take-over offers
to be made under the scheme are contained in the
form of offer which is annexed hereto which form
of offer constitutes part of this notice. The
statement required by Section 184 (2) (a) to
be given with this notice is attached.

30 THE COMMON SEAL of AMPOL)
PETROLEUM LIMITED was)
hereunto affixed by) (sgd.) W.M.
authority of the Directors) LEONARD
in the presence of:) Director

(sgd.) R.M. BINSTED
General Secretary.

Plaintiffs
Exhibits

Exhibit M (continued)

Exhibit M

Offer by Ampol
Petroleum Ltd.
to purchase
all Ordinary
Shares in R.W.
Miller
(Holdings) Ltd.
15th June 1972

STATEMENT BY AMPOL PETROLEUM LIMITED (herein
called "AMPOL") PURSUANT TO SECTION 184 (2)
(a) OF THE COMPANIES ORDINANCE 1962 (AS
AMENDED) OF THE AUSTRALIAN CAPITAL TERRITORY.

1. The names and descriptions and addresses
of the Directors of AMPOL are as follows:

WALTER McELLISTER LEONARD, Chairman and
51 Cutler Road, Chief Executive
Clontarf, N.S.W. Officer 10

ALBERT EDWARD HARRIS, Managing Director
5 Fitzwilliam Road,
Vaucluse, N.S.W.

SIR ALLEN FAIRHALL, Company Director
7 Parkway Avenue,
Newcastle, N.S.W.

WILFRED GILLMAN HALL Company Director
21 Crest Avenue,
Balwyn, Victoria.

RICHARD CHAPMAN HOPE MASON Chief General 20
7 Burns Road, Manager
Wahroonga, N.S.W.

WILLIAM KEITH OLVER, Company Director
28 Otterington Grove,
East Ivanhoe, Victoria.

CHARLES DONALD SAXTON Company Director
22 Billyard Avenue,
Elizabeth Bay, N.S.W.

ROBERT DUNCAN SOMERVILLE Solicitor 30
19 Karoo Avenue,
East Lindfield, N.S.W.

STUART WALTER THORPE Company Director
10 Burrawong Avenue,
Clifton Gardens, N.S.W.

2. The principal activities of AMPOL are
the refining, distribution and marketing of
petroleum products, the operation of oil
tankers, including its own and chartered
vessels, and the holding of shares in sub-
sidiary companies, which are engaged in the
search for and production of crude oil and
natural gas, the operation of taxi and hire
car fleets, the search for minerals and
property development. 40

3. 2,681,641 ordinary shares of \$1.00 in the capital of R.W. MILLER (HOLDINGS) LIMITED (herein called "MILLER") are held by or on behalf of AMPOL. No other marketable securities in the capital of MILLER are held by or on behalf of AMPOL.

Offer by Ampol
Petroleum Ltd.
to purchase
all Ordinary
Shares in R.W.
Miller
(Holdings) Ltd.
15th June 1972
(continued)

10

4. The cash consideration for the acquisition of the shares in the capital of MILLER will be provided from internal resources of AMPOL and from borrowings which are being arranged through AMPOL'S banking connections.

20

5. It is not proposed in connection with the take-over scheme that any payment or other benefit shall be made or given to any director of MILLER or any corporation which is by subsection (5) of Section 6 of the Companies Ordinance 1962 of the Australian Capital Territory deemed to be related to MILLER, as compensation for the loss of office or as consideration for or in connection with his retirement from office.

6. No agreement or arrangement has been made between AMPOL and any of the directors of MILLER in connection with or conditional upon the outcome of the scheme.

30

7. Apart from changes by reason of subsequently earned profits, there has not been within the knowledge of AMPOL any material change in the financial position of MILLER since the date of the last balance sheet laid before MILLER in general meeting. However, following recent publication by MILLER of reports on the progress of a revaluation of MILLER'S assets, the asset backing of each MILLER share, as shown by the next balance sheet of MILLER may be in excess of the asset backing based on the last balance sheet.

40

8. There is no agreement or arrangement whereby any shares in the capital of MILLER acquired by AMPOL in pursuance of the scheme will or may be transferred to any other person.

DATED the 24th day of May, 1972

For and on behalf of
AMPOL PETROLEUM LIMITED
(sgd.) W.M. LEONARD
CHAIRMAN OF DIRECTORS.

Plaintiffs
Exhibits

Exhibit M

Offer by Ampol
Petroleum Ltd.
to purchase
all Ordinary
Shares in R.W.
Miller (Hold-
ings) Ltd.
15th June 1972
(continued)

To: The Holders of the Ordinary Shares in the
Capital of
R.W. MILLER (HOLDINGS) LIMITED (herein
called "Miller")

Dear Shareholder,

O F F E R

AMPOL PETROLEUM LIMITED (hereinafter called
"Ampol") a Company duly incorporated in the
State of New South Wales, and having its
registered office at 84 Pacific Highway, North
Sydney in that State, hereby offers to acquire all
of the ordinary shares of \$1.00 in the capital
of Miller held by you for the consideration and
on and subject to the terms and conditions as
set out below:-

10

1. This offer is made pursuant to a take-
over scheme (herein called "the Scheme")
under which identical offers are being
made to the holders of all of the ordinary
shares of \$1.00 in the capital of Miller
(hereinafter referred to as "Miller
Shares") other than the 2,681,641 shares
already owned beneficially by Ampol who
are registered as members at 5 p.m. on
the third day from date of this offer and
also to the persons who derive title to
any of those shares from any such person
while the offer remains open for accep-
tance.

20

2. The consideration for the acquisition of
Miller shares is \$2.27 cash for each
Miller share.

30

3. The offer is made upon and subject to the
fulfilment or observance of the following
conditions:-

(1) That acceptance of offers made under
the Scheme shall be received by Ampol in
respect of not less than 5,687,230 Miller
shares (being approximately 90 per cent
of the issued Miller shares not already
owned beneficially by Ampol). This
condition is referred as "the minimum
acceptance condition".

40

(2) That between the date on which the notice of the Scheme was given to Miller and the date on which the minimum acceptance condition is fulfilled or waived by Ampol:

Plaintiffs
Exhibits

Exhibit M

Offer by Ampol
Petroleum Ltd.
to purchase
all Ordinary
Shares in R.W.
Miller
(Holdings) Ltd.
15th June 1972
(continued)

(a) Miller will not:

10

(i) issue or allot grant options over or otherwise make any commitment with respect to any of its shares or stock or effect any alterations in its capital structure or issue or agree to issue any convertible notes.

20

(ii) alter its memorandum of articles of association or pass any special resolution.

(iii) mortgage or charge any property or borrow money (otherwise than by way of overdraft accommodation from its bankers in the ordinary course of business).

(iv) sell lease transfer or dispose of any of its assets except in the ordinary course of business.

(v) make any change in the basis of remuneration of any of its directors or executive officers or appoint additional directors.

30

(vi) incur any liability for provident fund or other retirement benefits other than those for which liability already exists.

(vii) pay or agree to pay to any employee or director any unusual bonus or special or extra remuneration or any substantial increase in remuneration.

40

(viii) make any retirement payment to any director or an employee except in each case as required by law.

(ix) enter into any long term or onerous contract or commitment.

Plaintiffs

Exhibits

Exhibit M

Offer by Ampol
Petroleum Ltd.
to purchase
all Ordinary
Shares in R.W.
Miller
(Holdings) Ltd.
15th June 1972
(continued)

(x) enter into any contract of service with executive officers or vary any existing contract of service with existing executive officers or directors.

(xi) have had threatened or commenced against it any claim or proceedings in any Court the existence of which had not been disclosed to Ampol prior to the date of this offer.

10

(xii) conduct its business otherwise than in the normal and usual course or make any change which has a materially adverse affect on its business or prospects.

(b) Miller and its subsidiaries will carry on business in the usual way, and

(c) Miller will not declare or pay any dividend or bonus or make any other distribution of its profits or assets.

20

(3) That between the 30th day of June, 1971, and the date on which the minimum acceptance condition shall be fulfilled or waived there will not have been any change in the assets and liabilities of Miller which substantially or materially adversely affects the financial position of Miller. PROVIDED however that Ampol may waive or dispense with the fulfilment or observance of any of the foregoing conditions in whole or in part by written notice to Miller.

30

4. (a) Forthwith after the minimum acceptance condition has been fulfilled Ampol shall declare the offer free from the minimum acceptance condition by giving notice to that effect to Miller and to those Australian Associated Stock Exchanges on which Miller shares are listed.

40

(b) Forthwith after the minimum acceptance condition has been fulfilled the directors of Miller and of each of its subsidiaries will cause the boards of directors of Miller and each of its subsidiaries to be reconstituted in such manner as Ampol requests.

(c) At any time after this offer has been declared free from the minimum acceptance condition Ampol may by notice to Miller declare this offer unconditional and upon that notice being given all the conditions set forth in this offer shall be deemed to have been satisfied.

Offer by Ampol
 Petroleum Ltd.
 to purchase
 all Ordinary
 Shares in R.W.
 Miller
 (Holdings) Ltd.
 15th June 1972
 (continued)

10 5. In accordance with the requirements of Section 184 of the Companies Ordinance 1962 (as amended) of the Australian Capital Territory it is stated:

(a) This offer is conditional upon acceptances of offers made under the Scheme being received in respect of the minimum number of Miller shares stated in paragraph 3 (1) of this offer.

20 (b) The cash payable as consideration for the Miller shares will be paid by cheque posted to you at the address shown on the form of acceptance and transfer signed by you and will be paid not later than twenty-eight days after the date on which Ampol is registered in the register of members as the holder of the shares transferred to it provided that a payment will not be made until the transfer enclosed with this offer has been fully signed and has been received by or on behalf of Miller together with the relevant certificate or certificates.

30 (c) The latest date on which Ampol can declare the offer to have become free from the minimum acceptance condition is September 23, 1972, and the offer will remain open for acceptance after that declaration is made for a further period of seven days or such longer period as Ampol may from time to time by notice to Miller specify.

40 (d) Except insofar as this offer and all other take-over offers made under the Scheme may be totally withdrawn and every person released from any obligation incurred thereunder (which right of withdrawal is hereby reserved by Ampol) this offer will remain open for acceptance for at least one month after the date hereof.

Plaintiffs
Exhibits

Exhibit M

Offer by Ampol
Petroleum Ltd.
to purchase
all Ordinary
Shares in R.W.
Miller
(Holdings) Ltd.
15th June 1972
(continued)

6. By accepting this offer you shall be deemed to have represented and warranted to Ampol that all the shares which you transfer to Ampol or its nominees shall at the date of transfer thereof be free from all charges mortgages liens and encumbrances of every description.

7. Any notice nomination or other intimation to be given by Ampol to Miller hereunder shall be deemed to be duly given if it is in writing and is signed or purports to be signed on behalf of Ampol by any of its directors or its general secretary and is delivered at or sent by post in a prepaid envelope addressed to the registered office of Miller in Australian Capital Territory.

10

8. All costs and expenses of the preparation and circulation of the offers and stamp duty payable in respect of acceptances and transfers will be paid by Ampol.

9. Acceptance of this offer shall be made upon the form of acceptance and transfer forwarded herewith or in such other manner as may be agreed by Ampol. By accepting this offer you shall be deemed to have authorised Ampol to complete the date of purchase in the form of acceptance and transfer and to rectify errors therein or omissions therefrom.

20

DATED at Sydney this 15th day of June, 1972.

For and on behalf of
AMPOL PETROLEUM LIMITED

30

(sgd.) W.M. Leonard
CHAIRMAN OF DIRECTORS

Plaintiffs
Exhibits
Exhibit M

THIS DOCUMENT IS IMPORTANT - If you do not understand it you should consult your Bank Manager, Stockbroker, or other Professional Adviser immediately.

Offer by Ampol
Petroleum Ltd.
to purchase
all Ordinary
Shares in R.W.
Miller
(Holdings) Ltd.
15th June 1972
(continued)

FORM OF ACCEPTANCE AND TRANSFER

ORDINARY SHAREHOLDERS OF R.W. MILLER (HOLDINGS)
LTD.

To Ordinary Shareholders in R.W. Miller
(Holdings) Limited:

10 If you wish to accept the offer made by Ampol Petroleum Limited to purchase all the Ordinary Shares of \$1 each held by you in R.W. Miller (Holdings) Limited for \$2.27 per share, you should complete and sign this form on the reverse side and forward it promptly with your share certificate(s) in the enclosed reply paid envelope to Ampol Petroleum Limited, P.O. Box 66, Balmain, N.S.W. 2041.

20 If the share certificate(s) is not presently available, complete and forward this form immediately, and advise when the share certificate(s) will be available.

AMPOL PETROLEUM LIMITED

YOUR PRESENT HOLDING	DUE ACCEPTANCE OF THIS
IN R.W. MILLER	OFFER WOULD ENTITLE
(HOLDINGS) LTD.	YOU TO \$
IS SHARES	IN CASH

To Accept, please sign on Reverse Side

Plaintiffs
Exhibits
Exhibit M

TO: AMPOL PETROLEUM LIMITED

Offer by Ampol
Petroleum Ltd.
to purchase
all Ordinary
Shares in R.W.
Miller
(Holdings) Ltd.
15th June 1972
(continued)

Insert Name I/WE Mr.
(Block Letters) Mrs.....
Insert Address Miss
(Block Letters)
.....

Insert number am/are the registered holder(s)
of Ordinary of Ordinary Shares
Shares of £1 each in the issued capital
of R.W. Miller (Holdings) Ltd.

10

1. I/WE HEREBY IRREVOCABLY ACCEPT in respect
of all the Ordinary Shares of £1 each held by
me/us. the offer dated 15th JUNE 1972, of
Ampol Petroleum Limited to purchase the
Ordinary Shares of £1 each upon the conditons
set out therein, and agree to sell all my/our
said Ordinary Shares of £1 each specified above
to Ampol Petroleum Limited in consideration
of £2.27 for each fully paid Share of £1.

and

20

2. I/WE ENCLOSE or undertake to forward
share certificate(s) in respect of the
Ordinary Shares of £1 each in R.W. Miller
(Holdings) Ltd.

and

3. SUBJECT to payment of the abovementioned
consideration, I/We HEREBY TRANSFER all the
Ordinary Shares of £1 each standing in my/our
name(s) to Ampol Petroleum Limited.

and

30

4. I/We request that the cheque for the
consideration payable to me/us be posted to
me/us at my/our address shown above.

If this form is signed under a Power of
Attorney, I/We declare that I/We have not
received any notice of revocation of such
Power.

Please sign and
insert date

Signed by the abovenamed
shareholder(s) this)
day of 1972)

Plaintiffs
Exhibits
Exhibit M

Offer by Ampol
Petroleum Ltd.
to purchase
all Ordinary
Shares in R.W.
Miller
(Holdings) Ltd.
15th June 1972
(continued)

In the case of jointholders all must sign.

Power of Attorney, if not already noted by
Ampol Petroleum Limited should be forwarded to
the Company for that purpose.

10 A Corporation shareholder must affix its seal
or sign by attorney if authorised.

PLEASE DO NOT FORGET TO ENCLOSE YOUR ORDINARY
SHARE CERTIFICATE(S) IF NOT READILY AVAILABLE,
PLEASE COMPLETE THIS FORM IMMEDIATELY AND POST
IN THE ENCLOSED ENVELOPE, FORWARD THE
CERTIFICATE(S) AS SOON AS POSSIBLE TO AMPOL
PETROLEUM LIMITED.

20 ALTERNATIVELY: A SHAREHOLDER MAY LODGE HIS
ACCEPTANCE THROUGH A MEMBER OF A
RECOGNISED STOCK EXCHANGE.

Plaintiffs
Exhibits

Exhibit N

Letter Howard
Smith Ltd. to
R.W. Miller
(Holdings) Ltd.
22nd June 1972

1255-1256.

Plaintiffs Exhibits
Exhibit N

LETTER HOWARD SMITH LTD. TO R.W. MILLER (HOLDINGS) LTD.
AND LETTER R.W. MILLER (HOLDINGS) LTD. TO HOWARD SMITH
LTD. BOTH DATED 22nd June, 1972.

Mr. A.N. Taylor,
Chairman of Directors,
R.W. Miller (Holdings) Ltd.
19 Bridge Street, Sydney.

22nd June 1972.

Dear Mr. Taylor,

This is to inform you that as soon as the necessary documentation can be prepared it is the intention of Howard Smith Limited to make an offer to acquire all of the issued shares of R.W. Miller (Holdings) Limited.

The offer will be on the alternative bases of:-

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

OR

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

and will contain the usual stipulations regarding the status of your Company during the period of the offer.

My Board recognises that the interests of the two companies are complementary in many respects and if the offer from Howard Smith Limited is accepted, it is our intention that as far as is practicable the operations of the R.W. Miller (Holdings) Limited group should continue as at present.

Yours faithfully,
for HOWARD SMITH LIMITED

(W. Howard-Smith)
CHAIRMAN OF DIRECTORS.

Letter R.W.
Miller
(Holdings) Ltd.
to Howard
Smith Ltd.
22nd June 1972

Mr. W. Howard-Smith,
Chairman of Directors,
Howard Smith Limited,
269-271 George Street,
Sydney, N.S.W.

22nd June 1972

Dear Mr. Howard-Smith,

I wish to acknowledge receipt of your letter of June 22nd, 1972, wherein you advise that it is your company's intention to make an offer to acquire all of the issued shares of R.W. Miller (Holdings) Limited.

I have notified all of the Directors of this Company of your intention and, upon receipt of your formal offer, this matter will be discussed by the Board and a recommendation made to the shareholders.

I will advise you of the decision of the Board in due course.

Yours faithfully,

A.N. TAYLOR
CHAIRMAN OF DIRECTORS.

10

20

30

40

50

Plaintiffs Exhibits
Exhibit O

Minutes of Meeting of Directors of
R.W. Miller (Holdings) Ltd., on
23rd June, 1972

R.W. MILLER (HOLDINGS) LIMITED

MINUTES OF MEETING OF DIRECTORS OF
R.W. MILLER (HOLDINGS) LIMITED HELD
IN THE BOARD ROOM, "SCOTTISH HOUSE",
19 BRIDGE STREET, SYDNEY, AT 10 A.M.
ON FRIDAY, JUNE 23rd, 1972

Exhibit O

Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
23rd June 1972

10

Mr. A. N. Taylor Lady Miller Sir Peter Abeles Mr. R. I. Nicholl Mr. E. D. Cameron Mr. A. V. Balhorn	Chairman Alternate Director for Mr. P.J. Duncan Alternate Director for Mr. K.B. Anderson
--	--

Present:

20

Mr. L.D. Koch Mr. H.V. Ellis-Jones Miss M.J. Hill	General Manager Secretary
---	------------------------------

In Attendance

The Minutes of the Meeting of Directors held on June 9th, 1972, were tabled, confirmed by the Meeting and signed by the Chairman as a true record of the proceedings thereat.

Confirmation
of Minutes of
previous
Directors
Meeting

The Minutes of the Share Transfer Committee Meeting held on June 9th, 1972, were confirmed.

Confirmation
of Minutes of
Share Transfer
Committee
Meeting:

30

Merchant Banks, etc.:

The Chairman advised the Board that there had been no further approach made by Ord.-B.T. Co. Limited and also there were no further developments following the interview with Mr. John Sweeney, Stockbroker, at which the Group's colliery interests had been discussed.

Business
Arising from
Minutes of
previous
Directors'
Meeting

40

Colliers:

The Chairman reported that Mr. N. Rogers of Banks Bros. & Street had been asked for a valuation of the Group's two colliers. Mr. Rogers had advised that it was difficult to assess their value as at the present time numbers of coastal bulk carriers were idle due to lack of

Plaintiffs
Exhibits
Exhibit O

1258

Minutes of
Meeting of
Directors of
R.W.(Holdings)
Ltd.

23rd June 1972

(continued)

cargoes and Mr. Rogers had, therefore, suggested that book values be adopted for valuation purposes.

Sir Peter Abeles commented that, if a ship was idle and could not be sold, the only basis on which it could be valued would be on a scrap value basis.

Old Tankers:

The Chairman stated that the Group's old tankers were possibly facing redundancy in the Australian coastal trade. Therefore, investigations were being made on the possibility of employing these vessels out of Hong Kong on a tramp basis and John Manners & Co. Pty. Ltd. were being considered as Agents in a venture of this nature. 10

Bass Point:

The General Meeting informed the Board of Pioneer Concrete Services Ltd. had at last commenced construction of loading facilities at Bass Point for the loading and sea transport of blue metal aggregate. 20

M.T. "Amanda Miller":

The General Manager also informed the Board that he had spoken to the Secretary of the Australian Shipbuilding Board and requested him to arrange for a meeting between Company officials and The Broken Hill Pty. Co. Ltd. to discuss the Company's claim for late delivery of M.T. "Amanda Miller". 30

Howard Smith
Limited:

The Board received and considered the notice from Howard Smith Limited of its intention to make a take-over offer for all of the issued share capital of R.W. Miller (Holdings) Limited and also the Chairman's reply to Howard Smith Limited acknowledging receipt of the Notice.

Part C
Statement

The draft Part C Statement to be issued to the Company's shareholders in reply to the take-over offer made by Ampol Petroleum Limited was considered by the Board. 40

In recommending that shareholders should reject the take-over offer made by Ampol, the draft statement made reference to the fact that the Chairman of Ampol Petroleum Limited had not furnished certain information considered essential by the Company in the interests of its shareholders.

Sir Peter Abeles, supported by Mr. E.D. Cameron, moved that the reference to the Chairman of Ampol should be deleted on the grounds that the subject matter was irrelevant to the cash offer and the questions asked were of such a nature that Ampol could quite properly refuse to answer them.

Minutes of
Meeting of
Directors of
R.W. (Holdings)
Ltd.

10 Mr. W.A. Conway, supported by Mr. R.I. Nicholl, sought to have the Part C. Statement remain unchanged on the grounds that the questions had been asked with the interests of minority shareholders in mind, particularly those minority shareholders choosing not to accept Ampol's offer.

23rd June 1972
(continued)

Mr. Conway further stated that the Company had the right to ask any question it deemed appropriate and equally he recognised the right of Ampol if it chose not to answer any question directed to it.

20 After further debate it was decided by a consensus of opinion that reference to the Chairman of Ampol Petroleum Limited should be deleted from the Part C. Statement.

30 The Board then unanimously resolved that the amended Part C Statement should be printed and mailed to all shareholders, advising that the Board recommended that Ampol's offer should be rejected on the grounds that the price offered by Ampol was inadequate and, further, that Howard Smith Limited had announced its intention to make a take-over offer on more favourable terms than the price offered by Ampol.

The Secretary was instructed to make the necessary arrangements for printing and mailing the Part C. Statement and also to immediately make known the Board's recommendation to the relevant Stock Exchanges and to the Press.

40 The Chairman remarked that he wished to place on record his appreciation of the efforts of the Staff in preparing the Part C. Statement for consideration and approval by the Board, and instructed the Secretary to record his commendation in the Minutes of the Meeting.

Plaintiffs
Exhibits

Exhibit O

Minutes of
Meeting of
Directors of
R.W. (Holdings)
Ltd.

Sir Peter Abeles informed the Board that he was leaving for overseas on Sunday, July 9th, 1972. Therefore, he would do his utmost to ascertain from Bulkships Ltd. their intention in respect of their shareholding in the face of Ampol's offer and the intended offer by Howard Smith Limited.

23rd June 1972
(continued)

Sir Peter also stated that he would see Ampol Petroleum Limited to ascertain their intention and in this case Sir Peter said that he would be acting in the capacity of an individual and not as a Board member.

10

Sir Peter also stated that he would like to resolve these matters before departing for overseas as the interests of small shareholders had to be considered, also the present situation was unsettling on the Group's staff.

Any other
Business:

Revaluation of Group's Assets:

Mr. E.D. Cameron commented that the revaluation of the Group's assets would have to be completed in the near future for the Board's guidance as sooner or later the information would be required to enable the offer from Howard Smith Limited to be considered and a recommendation made accordingly by the Board to the Company's shareholders.

20

Mr. Cameron also offered his opinion that the Group's assets revaluation would have to be considered on the basis of valuations made and also on an earnings basis.

30

There being no further business to be transacted by the Board, the Meeting was then declared closed by the Chairman.

CONFIRMED

(Sgd.)

CHAIRMAN

1261

Plaintiffs Exhibits

Exhibit P

Circular R.W. Miller (Holdings) Ltd.
to its shareholders 27th June 1972

RECOMMENDATION TO REJECT TAKE-OVER OFFER
MADE BY AMPOL PETROLEUM LIMITED

The Board of Directors of R.W. MILLER (HOLDINGS) LIMITED recommends in the strongest possible terms that YOU SHOULD REJECT the take-over offer made by Ampol Petroleum Limited for your shares in this Company on the following grounds:

- 10
- (1) The price offered to you is INADEQUATE, HAVING REGARD TO THE VALUABLE ASSETS OWNED BY YOUR COMPANY AND THEIR FUTURE EARNING CAPACITY.

FURTHERMORE

- 20
- (2) HOWARD SMITH LIMITED HAVE ANNOUNCED THEIR INTENTION TO MAKE A TAKE-OVER OFFER FOR YOUR SHARES ON MORE FAVOURABLE TERMS THAN THE OFFER MADE BY AMPOL PETROLEUM LIMITED.

IMPORTANT

Your Board of Directors has the interests of all shareholders at heart in making this recommendation.

Please read carefully the more detailed information contained overleaf in this Statement and, if necessary, discuss it with your Solicitor, Stockbroker, Accountant or other Professional Adviser.

MEANWHILE

D O N O T A C C E P T A M P O L O F F E R

Plaintiffs
Exhibits
Exhibit P

Circular
R.W. Miller
(Holdings) Ltd.
to its
shareholders

27th June 1972

Plaintiffs
Exhibits

Exhibit P

Circular
R.W. Miller
(Holdings) Ltd.
to its
shareholders

27th June 1972

(continued)

R. W. Miller (Holdings) Limited

Head Office: Scottish House, 19 Bridge Street
Sydney, 2000

27th June 1972

Dear Shareholder,

On 14 June, 1972, I wrote to you on behalf of your Board of Directors pointing out that the offer by Ampol Petroleum Limited to purchase your shareholding in this Company at the cash price of \$2.27 per share had to remain open for your acceptance for a period of AT LEAST ONE MONTH FROM 15 JUNE, 1972. 10

The letter urged you to take advantage of this waiting period for the following reasons:

1. "If during the period of one month in which Ampol's offer remains open for your acceptance, a counter takeover offer were to be made on more favourable terms than the Ampol offer then you would be free to consider acceptance of the counter takeover offer. 20
2. You will receive from the Board of Directors of R.W. Miller (Holdings) Limited not later than 29 June, 1972, a statement containing the advices and information required by law, and it will also contain the Board's recommendation and the fullest possible information to enable you to form a considered judgment as to whether it will be in your best interests to accept or reject Ampol's offer." 30

The wisdom of this advice is now apparent as on Thursday, 22 June, 1972, the Company received notice from Howard Smith Limited that it intended to make an offer to acquire all of the issued ordinary shares in the capital of R.W. Miller (Holdings) Limited. 40

THE TEXT OF THE HOWARD SMITH LTD. NOTIFICATION
IS QUOTED HEREUNDER

22nd June 1972

Mr. A. N. Taylor,
Chairman of Directors,
R.W. Miller (Holdings) Ltd.
19 Bridge Street,
SYDNEY

Plaintiffs
Exhibits
Exhibit P

Circular
R.W. Miller
(Holdings) Ltd.
to its
shareholders

27th June 1972
(continued)

Dear Mr. Taylor,

10 This is to inform you that as soon as the
necessary documentation can be prepared it is
the intention of Howard Smith Limited to make
an offer to acquire all of the issued shares of
R.W. Miller (Holdings) Limited.

The offer will be on the alternative bases
of -

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

OR

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

and will contain the usual stipulations regarding
the status of your Company during the period of
the offer.

30 My Board recognises that the interests of the
two companies are complementary in many respects
and if the offer from Howard Smith Limited is
accepted, it is our intention that as far as is
practicable the operations of the R.W. Miller
(Holdings) Limited group should continue as at
present.

Yours faithfully,
for HOWARD SMITH LIMITED
(Signed) W. HOWARD-SMITH
(W. HOWARD-SMITH)
Chairman of Directors

This Company immediately notified relevant Stock
Exchanges and the Press of the terms of this notice
from Howard Smith Limited, in order that the share-
holders and the public should be fully informed.

Plaintiffs
Exhibits

1264

Exhibit P

Circular
R.W.Miller
(Holdings) Ltd.
to its
shareholders

27th June 1973
(continued)

After carefully considering the offer made by Ampol Petroleum Limited and the notice received from Howard Smith Limited, YOUR BOARD OF DIRECTORS HAS NO HESITATION IN RECOMMENDING THAT YOU SHOULD NOT ACCEPT THE AMPOL OFFER.

YOUR BOARD'S RECOMMENDATION IS BASED PRINCIPALLY, BUT NOT EXCLUSIVELY, ON THE FOLLOWING GROUNDS:-

- (1) The price of \$2.27 offered by Ampol Petroleum Limited for your shares is by any standard inadequate. 10
- (2) The inadequacy of the Ampol offer is highlighted by comparison with the offer proposed to be made by Howard Smith Limited.

Your Board will carefully consider the formal notice of Takeover Scheme immediately it is received from Howard Smith Limited and advise you of its recommendation. 20

THEREFORE IN YOUR OWN INTEREST
DO NOT ACCEPT AMPOL OFFER

Yours faithfully,
For and on behalf of the Board of Directors

(SIGNED) A. N. TAYLOR
Chairman

STATEMENT BY R. W. MILLER (HOLDINGS) LIMITED
PURSUANT TO SECTION 184 OF THE COMPANIES
ORDINANCE 1962 (AS AMENDED) OF THE AUSTRALIAN
CAPITAL TERRITORY

Exhibit P

Circular
R.W. Miller
(Holdings) Ltd.
to its
shareholders

1. The Board of Directors of this Company does NOT recommend the acceptance of the take-over offers made under the takeover scheme.

27th June 1973
(continued)

2. (a) The number, description and amount of marketable securities in this Company held by or on behalf of each director of this Company are as follows:

10

Mr. A. N. Taylor - 1,000 ordinary \$1.00 shares.

Mr. F. M. Murphy (alternate director for Mr. A. N. Taylor) - 1,000 ordinary \$1.00 shares.

20

Lady Miller - 52360 ordinary \$1.00 shares. Lady Miller is a director of Rellim Pty. Limited which holds 35,000 ordinary \$1.00 shares in the Company and she is also a Trustee of and beneficiary under the Will of the late Sir Roderick William Miller whose estate holds 1,200 ordinary \$1.00 shares in this Company.

30

Mr. P. J. Duncan is the holder of 6,000 ordinary \$1.00 shares in the Company. Mr. Duncan is also a director of Alliance Industries & Shippers Pty. Ltd. which acts as agent in Japan for R.W. Miller & Company Pty. Limited.

Mr. A.V. Balhorn (alternate director for Mr. P. J. Duncan) holds no marketable securities in the Company.

Mr. K. B. Anderson is the holder of 1,000 ordinary \$1.00 shares in the capital of the Company.

Mr. W. A. Conway (alternate director for Mr. K. B. Anderson) holds no marketable securities in the Company.

Plaintiffs
Exhibits

Exhibit P

Circular
R.W. Miller
(Holdings) Ltd.
to its
shareholders

27th June 1973
(continued)

Mr. R.I. Nicholl is the holder of 1,000 ordinary \$1.00 shares in the capital of the Company.

Sir Peter Abeles is the holder of 1,000 ordinary \$1.00 shares in the capital of the Company.

Mr. E.D. Cameron is the holder of 1,000 ordinary \$1.00 shares in the capital of the Company.

Mr. C. J. Watt (alternate director for Mr. E. D. Cameron) holds no marketable securities in the Company.

10

(b) No director or alternate director presently intends to accept the takeover offer made by Ampol Petroleum Limited in pursuance of the takeover scheme in respect of his or her shares.

(c) A family company of Sir Peter Abeles owns 25,000 ordinary 50 cents Stock Units in Ampol Petroleum Limited, Mr. F. M. Murphy owns 621 ordinary 50 cents Stock Units in Ampol Petroleum Limited. No marketable securities of Ampol Petroleum Limited are held by or on behalf of any of the remaining directors or their alternates.

20

(d) It is not proposed by this Company in connection with the takeover scheme that any payment or other benefit shall be made or given to any director of this Company or of any other company which is deemed to be related to it as compensation for loss of office or as consideration for or in connection with such director's retirement from office.

30

(e) All directors and alternate directors have individually stated that there is no agreement or arrangement made between himself or herself and any other person in connection with or conditional upon the outcome of the takeover scheme.

40

(f) All directors and alternate directors have individually stated that neither himself nor herself has any interest in any contract entered into by Ampol Petroleum Limited.

Plaintiffs
Exhibits
Exhibit P
Circular
R.W. Miller
(Holdings) Ltd.
to its
shareholders
27th June 1973
(continued)

(g) There have been material changes in the financial position of this Company and wholly owned subsidiary companies since the date of the last Balance Sheet namely:

(i) There has been a substantial increase in Group trading profits before and after income tax since 30 June, 1971.

10

(ii) Subsidiary companies have sold freehold properties since 30 June, 1971, with the result that the Group has derived substantial capital profits on the sale thereof.

(iii) A subsidiary company has concluded negotiations for and has received long term finance on the security of the vessel M.T. "Amanda Miller".

20

(iv) The Company is currently negotiating short, medium and long term finance on the security of assets owned by the Group.

(v) Since 30 June, 1971, subsidiary companies have expended considerable sums on tanker progress payments and colliery development.

For and on behalf of the
Board of Directors

30

(Signed) A. N. TAYLOR

Dated 27 June, 1972

Chairman

Exhibit Q
Joint Announcement by Ampol Petroleum
Ltd. and Bulkships Limited 27th June 1972

Plaintiffs
Exhibits
Exhibit Q
Joint Announce-
ment by Ampol
Petroleum Ltd.
and Bulkships
Ltd.
27th June 1972

FOR IMMEDIATE RELEASE

Ampol Petroleum Ltd.
84 Pacific Highway,
NORTH SYDNEY 2060
'PHONE 929-6222
June 27, 1972.

40

The Chairman of the Board of Ampol Petroleum Limited, Mr. W.M. Leonard, and the Chairman of the Board of Bulkships Limited, Sir Ian Potter,

Plaintiffs
Exhibits

Exhibit Q

Joint Announce-
ment by Ampol
Petroleum Ltd.
and Bulkships
Ltd.

27th June 1972
(continued)

announced tonight that following discussions that took place today agreement has been reached for the two companies to act jointly in relation to the future operation of R.W. Miller (Holdings) Limited.

Accordingly, they both have decided to reject any offer for their shares whether from Howard Smith Limited or from any other source.

Ampol Petroleum Limited and Bulkships Limited between them, control in excess of 55% of the issued shares of R.W. Miller (Holdings) Limited.

10

Plaintiffs
Exhibits

Exhibit R

Letter R.W.
Miller (Holdings)
Ltd. to Ampol
Petroleum Ltd.

3rd July 1972

Exhibit R
Letter R.W. Miller (Holdings) Ltd.
to Ampol Petroleum Ltd. dated 3rd July 1972

R. W. MILLER (HOLDINGS) LIMITED

Head Office: Scottish House
19 Bridge Street, Sydney 2000

3 July 1972

W.M. Leonard Esq.
Chairman of Directors,
Ampol Petroleum Ltd.
84 Pacific Highway,
NORTH SYDNEY. N.S.W. 2060

20

Dear Mr. Leonard,

I have read with concern recent press statements attributed to your Company and Bulkships Limited, which quoting from The Australian Financial Review of 28th idem, were as follows:-

"Yesterday's announcement from the Chairman of Ampol, Mr. W.M. Leonard, and the Chairman of Bulkships, Sir Ian Potter, was short and to the point.

30

It said that following discussions which took place yesterday, agreement had been reached for the two companies to act jointly in relation to Miller's future operation.

Accordingly, they had both decided to reject any offer for their shares, whether from Howard Smith or any other source."

I consider that, as a matter of courtesy,

my Company should have been supplied with a copy of the text of your announcement immediately the Stock Exchange had been notified.

Plaintiffs
Exhibits

Exhibit R

Letter
R.W. Miller
(Holdings) Ltd.
to Ampol
Petroleum Ltd.

3rd July 1972

(continued)

10 Having regard to the market price of my Company's shares before the joint statement and the subsequent dramatic fall in this price, it would appear that your actions have not been in the best interests of our minority shareholders who own approximately some 45% of the capital in R.W. Miller (Holdings) Limited.

On two occasions, namely 29th May and the 6th June we requested answers to certain questions which we felt were pertinent and of considerable importance to our shareholders. You chose briefly to answer our first letter but have totally ignored our following letter.

20 Quite apart from our letters to which I have referred I would have expected that you would have been prompt to advise me of your proposals for the future of the Company if your takeover was successful. - I think you owe this to shareholders and staff alike.

30 In view of the current circumstances surrounding this matter, there is extensive speculation in commercial circles that negotiations have already been initiated concerning the sale of certain assets of my Company and in this regard I refer particularly to our Coal and Hotel interests, possible buyers of which have been freely mentioned in the press.

Bearing in mind the reply you made to our letter of 29th May indicating your attitude to the disposal of assets this speculation must tend to place your Company in an equivocal position.

40 The only information I have received has been in unofficial discussions with Sir Peter Abeles, and I consider that in the interests of shareholders and staff alike, I can no longer leave matters in such an unsatisfactory and uncertain state, and I now must ask that you let me have formal and full answers to the following questions, so that my Board may be fortified with official confirmation or otherwise of your Company's and Bulkships' plans by the time of its next Meeting on Thursday next 6th instant.

Plaintiffs
Exhibits
Exhibit R
Letter
R.W. Miller
(Holdings) Ltd.
to Ampol
Petroleum Ltd.
3rd July 1972
(continued)

- (1) Is it your Company's and Bulkships intention to reconstitute the Board, and if the answer is in the affirmative would you kindly advise the composition of the proposed new Board and the date which it would become effective? 10
- (2) Is it your Company's and Bulkships intention to sell or otherwise dispose of:
- (a) the hotels or a substantial number thereof:
 - (b) the collieries or any of them and if so the extent and proposed timing of such dispositions.
- (3) As Bulkships will not accept the takeover offer for its shares, then your Company cannot obtain the number of shares set by it as a condition precedent to its proceeding with its takeover offer. So that shareholders may clearly understand their position in this regard, what lesser number of shares in my Company is now your Company's target figure? 20
- (4) Is it true that as reported in the Press your Company intends, if its bid succeeds, to sell shares to Bulkships to bring about an equal ownership? If so when was such arrangement made and at what price per share will such a sale be made? 30
- (5) On what date was the joint arrangement between your Company and Bulkships as announced by you and Sir Ian Potter arrived at? 40

You are aware of our Board's recommendation to shareholders. However, in view of the changed prevailing circumstances your offer to shareholders will again be considered by my Board on Thursday, 6th July.

I would therefore appreciate receiving your reply to the above by Wednesday, 5th July 1972.

Yours sincerely,

(SGD.)

CHAIRMAN OF DIRECTORS

Plaintiffs
Exhibits
Exhibit R
Letter
R.W. Miller
(Holdings) Ltd.
to Ampol
Petroleum Ltd.
3rd July 1972
(continued)

10

Plaintiffs Exhibits
Exhibit S
Letter Ampol Petroleum Ltd. to
R.W. Miller (Holdings) Ltd. dated
5th July 1972

AMPOL PETROLEUM LIMITED
AMPOL BUILDING

84 Pacific Highway, North Sydney
N.S.W.

5th July 1972

Plaintiffs
Exhibits
Exhibit S
Letter Ampol
Petroleum Ltd.
to R.W. Miller
(Holdings) Ltd.
5th July 1972

20

Mr. A.N. Taylor,
Chairman of Directors,
R.W. Miller (Holdings) Ltd.
Scottish House,
19 Bridge Street,
SYDNEY 2000

Dear Mr. Taylor,

I acknowledge receipt of your letter of July 3 and enclose copy of the release to the Stock Exchange of June 27.

Plaintiffs
Exhibits
Exhibit S
Letter Ampol
Petroleum Ltd.
to R.W. Miller
(Holdings) Ltd.
5th July 1972
(continued)

You refer to speculation in commercial circles that negotiations have already been initiated concerning the sale of certain assets in R.W. Miller (Holdings) Limited. I would suggest that speculation has been rife since Ampol first commenced negotiations for the purchase of R.W. Miller shares held by Romanda Pty. Limited and the source in itself is an interesting topic of speculation in many circles.

Speculation, though, should be regarded for what it is and treated accordingly. 10

The Board of Ampol Petroleum Limited has not considered any of the questions 1 to 4 raised by you because it is obviously premature to do so. I can only again refer you to my letter of May 31 and specifically draw your attention to paragraphs 4 and 5 of that letter.

In regard to question 5, the joint announcement between Bulkships Limited and ourselves was made immediately it was agreed, i.e. on the same day. 20

I do suggest that continual exchange of correspondence doesn't serve any good purpose and that it would be much better if we met to discuss the future. I am available at any time.

Yours sincerely,

(SIGNED)

Encl.

Plaintiffs Exhibits
Exhibit T

Letter Howard Smith Ltd. to R.W. Miller
(Holdings) Ltd. dated 6th July 1972 and
Agreement (2) enclosed therewith dated
6th July 1972

HOWARD SMITH LIMITED

6th July 1972

Plaintiffs
Exhibits

Exhibit T

Letter
Howard Smith;
Ltd. to R.W.
Miller(Holdings)
Ltd. dated
6th July 1972
and agree-
ment enclosed
therewith
dated
6th July 1972

10 Mr. A.N. Taylor,
Chairman of Directors,
R.W. Miller (Holdings) Limited,
19 Bridge Street,
SYDNEY

Dear Mr. Taylor,

20 I refer to my letter of 22nd June, 1972,
in which I informed you of my Company's
intention to make an offer to acquire all of
the issued shares of R.W. Miller (Holdings)
Ltd. and also to the joint statement on
27th June on behalf of Ampol Petroleum
Limited and Bulkships Limited in which those
two companies stated their intention "to act
jointly in relation to the future operations
of R. W. Miller (Holdings) Limited".
According to Press reports the two companies
announced also that they would reject any
offer for their shares whether from Howard
Smith Limited or any other source.

30 You will be aware that Ampol Petroleum
Limited has informed the Sydney Stock
Exchange that its bid of \$2.27 per share
will remain open despite the much higher
offer which Howard Smith Limited will make
and which is currently in course of
preparation.

This combination by the two largest
shareholders of your Company would in the
present circumstances effectively deprive

Plaintiffs
Exhibits
Exhibit T
Letter Howard
Smith Ltd. to
R.W. Miller
(Holdings) Ltd.
dated 5th July
1972 and
agreement (2)
enclosed
therewith
dated
6th July 1972
(continued)

the very large number of minority shareholders of R.W. Miller (Holdings) Ltd. of the opportunity of securing a substantially higher price for their shares. My Board would be most reluctant to proceed with a bid which, even if every shareholder other than Ampol or Bulkships accepted, could only result in Howard Smith Limited being the largest individual shareholder in a company the future operations of which would be controlled by a combination of two smaller shareholders.

10

We believe that your Board is conscious of the injustice being suffered by your smaller shareholders and we submit for your consideration a proposal which, if it meets with the approval of your Board, would enable Howard Smith Limited to proceed with its intended offer thereby restoring to your minority shareholders the right to sell their shares to the highest bidder, and would give Ampol Petroleum Limited and Bulkships Limited a similar opportunity.

20

Our proposal is that R.W. Miller (Holdings) Limited should forthwith make to Howard Smith Limited an allotment of 4,500,000 ordinary \$1 shares at a premium of \$1.30 per share, on the basis that such shares should not participate in any dividend paid in respect of profits derived in the year ended 30th June, 1972, but ranking pari passu with existing shares in all other respects.

30

If the Board of your Company is prepared to consider our application favourably we would propose that the form of application should be lodged during your Board Meeting of 6th July and the shares be issued forthwith. Our application would be accompanied by our cheque for \$1,035,000 representing application monies of 23 cents

40

per share, with the balance of \$2.07 per share to be paid on 30th September, 1972, but on condition that such balance will be accepted at an earlier date if tendered by Howard Smith Limited.

Plaintiffs
Exhibits

Exhibit T

Letter Howard
Smith Ltd. to
R.W. Miller
(Holdings) Ltd.
dated 5th July
1972 and
agreement (2)
enclosed
therewith
dated
6th July 1972
(continued)

10 As an earnest of the good faith of both companies we would ask that your Board should execute an agreement providing for the under-mentioned matters. When lodging its application form and cheque Howard Smith Limited will hand to you a similar agreement executed by Howard Smith Limited in exchange for the agreement executed by your Board.

The matters to be covered in detail in the agreement which has been drawn up by our Solicitors are -

- 20 (i) R.W. Miller (Holdings) Limited shall on 6th July, 1972, make an allotment of ordinary shares to Howard Smith Limited.
- (ii) Howard Smith Limited shall proceed with its offer to acquire all the issued shares of R.W. Miller (Holdings) Limited, as mentioned in Howard Smith Limited's letter of 22nd June, subject to Howard Smith Limited having the right to withdraw its offer at any time.
- 30 (iii) R.W. Miller (Holdings) Limited shall not make any further share issues for a period of six months.
- (iv) Provisions regulating the status of R.W. Miller (Holdings) Limited until Howard Smith Limited shall withdraw its bid or declare it to be unconditional.

Notwithstanding the current circumstances I believe that the opportunity of placing such a large parcel of shares at a substantial premium is likely to be of considerable benefit

1976

Plaintiffs
Exhibits
Exhibit T

Letter Howard
Smith Ltd. to
R.W. Miller
(Holdings) Ltd.
dated 5th
July 1972 and
agreement (2)
enclosed
therewith
dated
6th July 1972
(continued)

to your Company. The infusion of \$10,350,000 cash is likely to ease the financing problems your Company has faced in recent years, and enable you to re-arrange your borrowings with the prospect of interest savings.

My Board recognises and respects the right of your Directors to concern themselves with the intentions of a company which has indicated its intention of making a takeover bid, and subject to due allowance being made for unforeseen circumstances which may arise in the future, I can inform you that it is the intention of the Board should it achieve a dominant shareholding in your Company, to maintain R.W. Miller (Holdings) Limited intact as a trading organisation. Some degree of rationalisation may in the future be unavoidable on common sense grounds, but I give you an assurance that this will be kept to an absolute minimum and where it is necessary, the utmost care will be taken to see that humane principles are observed. In the past eleven years Howard Smith Limited has taken over several companies and we are justly proud of our treatment of the men and women affected. As a Board we have always recognised that our best asset is our employees.

10

20

If our bid succeeds we shall naturally expect changes to be made in the Board of R.W. Miller (Holdings) Limited to reflect the altered shareholdings, but minority shareholder representations will be maintained to an equitable extent.

30

As the terms of our proposed bid provide for the alternatives of a share and cash, and a cash only bid we cannot estimate with any degree of accuracy what our final cash commitment is likely to be. We have had preliminary talks with our Bankers but apart from this, we feel certain that an examination of our last published balance sheet will convince your fellow Directors that we shall have no difficulty in raising such funds as may be required.

40

Yours faithfully
for HOWARD SMITH LIMITED

(SGD.) W. HOWARD-SMITH
CHAIRMAN OF DIRECTORS.

Plaintiffs Exhibits

Exhibit T

Agreement Howard Smith Ltd. and
R.W. Miller (Holdings) Ltd. dated
6th July 1972 enclosed in preceding
letter of the same date

Plaintiffs
Exhibits

Exhibit T

Agreement
Howard Smith
Ltd. and
R.W. Miller
(Holdings)
Ltd. dated
6th July 1972
enclosed
in preceding
letter of
the same
date

(continued)

10 THIS DEED is made the 6th day of July 1972
BETWEEN HOWARD SMITH LIMITED a company incor-
porated in Victoria having its head office at
269-271 George Street Sydney (hereinafter
called "Howard Smith") of the one part AND
R.W. MILLER (HOLDINGS) LIMITED a company incor-
porated in the Australian Capital Territory
having its head office at 19 Bridge Street
Sydney (hereinafter called "Miller") of the
other part.

WITNESSES THAT

20 In consideration of Howard Smith agreeing
to proceed with an offer to acquire all the
issued shares in the capital of Miller (other
than shares to which Howard Smith is or becomes
entitled) and to apply forthwith and subscribe
for an allotment of shares in the capital of
Miller.

Miller HEREBY UNDERTAKES to Howard
Smith that :

30 1. For a period of six months from the date
hereof not to issue or allot (except upon the
application of Howard Smith hereinbefore
referred to) grant options over or otherwise
make any commitment with respect to any of its
shares or stock or effect any alteration in
its capital structure or issue or agree to
issue any convertible notes.

40 2. From the date hereof until the date on
which the offer to be made by Howard Smith is
declared to be unconditional or until the date
on which that offer is withdrawn (whichever
date is earlier) not to do any of the following
without first obtaining the consent in writing
of Howard Smith :

- Plaintiffs
Exhibits
Exhibit T
Agreement
Howard Smith
Ltd. and
R.W. Miller
(Holdings) Ltd.
dated 6th July
1972 enclosed
in preceding
letter of
the same date.
(continued)
- (a) Alter its memorandum or articles of association or pass any special resolution;
 - (b) Mortgage or charge any property or borrow money (otherwise than by way of overdraft accommodation from its bankers in the ordinary course of business);
 - (c) Sell lease transfer or dispose of any of its assets except in the ordinary course of business; 10
 - (d) make any change in the basis of remuneration of any of its directors or executive officers or appoint additional directors;
 - (e) incur any liability for provident fund or other retirement benefits other than those for which liability already exists;
 - (f) pay or agree to pay any employee or director any unusual bonus or special or extra remuneration or any substantial increase in remuneration; 20
 - (g) make any retirement payment to any director or an employee except in each case as required by law;
 - (h) enter into any long term or onerous contract or commitment; 30
 - (i) enter into any contract of service with executive officers or vary any existing contract of service with existing executive officers or directors; and
 - (j) conduct its business otherwise than in the normal and usual course or make any charge which has a materially adverse effect on its business or prospects. 40

3. Miller FURTHER UNDERTAKES to Howard Smith that during the period of time which applies under Clause 2 hereof:

- (a) Miller and its subsidiaries will carry on business in the usual way; and
- (b) Miller will not declare or pay any dividend or bonus or make any other distribution of its profits or assets.

Plaintiffs Exhibits Exhibit T Agreement Howard Smith Ltd. and R.W. Miller (Holdings) Ltd. dated 6th July 1972 enclosed in preceding letter of the same dated (continued)

10 4. In Clause 2 hereof "offer" includes the offer of which Howard Smith gave notice by letter to Miller dated 22nd June 1972 with any variations thereto which Howard Smith may decide to make and where that offer is withdrawn if at the time of withdrawing the offer Howard Smith gives notice to Miller that it is withdrawing that offer for the purpose of making a new offer then provided Howard Smith gives to Miller a statement in accordance with
 20 Part A of the Tenth Schedule to the Companies Ordinance 1962-1971 of the Australian Capital Territory within 14 days from the date of the notice referred to the date of withdrawal for the purposes of Clause 2 hereof shall be the date on which the new offer is withdrawn.

IN WITNESS whereof the parties hereto have hereunto set their hands and affixed their seals on the day and year first abovementioned.

30 THE COMMON SEAL of HOWARD SMITH LIMITED was hereunto duly affixed in the presence of:)

THE COMMON SEAL of R.W. MILLER (HOLDINGS) LIMITED was hereunto duly affixed in the presence of)

Agreement
Howard Smith
Ltd. and
R.W. Miller
(Holdings) Ltd.
dated 6th
July 1972
and enclosed
in preceding
letter of the
same date

Second Agreement forming part of Exhibit T is
identical to the first Agreement in this
exhibit.

1281 - 1283.

Plaintiffs Exhibits

Exhibit U

Memorandum of R.W. Miller (Holdings) Ltd.
dated 6th July 1972 "The Script"

R.W. MILLER (HOLDINGS) LIMITED

MEETING 10 A.M. THURSDAY, 6TH JULY, 1972

Plaintiffs
Exhibits
Exhibit U

Memorandum of
R.W. Miller
(Holdings) Ltd.
6th July 1972
"The Script")

CHAIRMAN:

10 I declare this Meeting open and thank you for your attendance thereat. Mr. John Aston of Barkell & Peacock, Solicitors, and the Company's legal officer, Mr. Conway, are present at my invitation. You all have Agenda in front of you and we will now proceed to the first item therein, namely, the confirmation of the Minutes of the Meetings of Directors held on 23rd and 30th ultimo respectively.

Will somebody please move that I sign the Minutes as a correct record of the proceedings on those occasions.

20 We come now to the confirmation of Minutes of Share Transfer Committee Meetings held on 16th and 23rd ultimo and I will ask Mr. K. B. Anderson to give details thereof.

CHAIRMAN: Would someone please move that I sign the Minutes as a correct record of the proceedings on the abovementioned occasions?

30 CHAIRMAN: The third item listed on your Agenda is the consideration of the joint announcement made on 27th June 1972 by Ampol Petroleum Limited and Bulkships Limited, my reply thereto and of any further statement which may be made by Howard Smith Limited. In view of a development which has occurred only this morning I propose to defer this item until we have dealt with this further matter. I should like to read to you a letter to me from the Chairman of Howard Smith Limited relating to their proposed Takeover Offer and I table the Agreement referred to in that letter. I am informed by the Company's Legal Officer and also by Mr. John Aston of Barkell & Peacock that there is no provision in the Companies Act which precludes the Board from making such an allotment of shares but that the allotment would constitute

40

Plaintiffs
Exhibits

Exhibit U

Memorandum of
R.W. Miller
(Holdings) Ltd.
6th July 1972
"The Script"
(continued)

a breach of the Stock Exchange regulations which the Exchange of course has power to waive but which, if not waived, could result in the suspension or de-listing of this Company for some period. I am also advised that under the law the Directors are required to use their powers bona fide for the benefit of the Company which means the shareholders as a whole, that they cannot justify the exercise of their powers for the benefit of themselves or some only of the shareholders. As you know, both Mr. Conway and Mr. Aston are present so that if any legal questions arise we may have the benefit of their advices. 10

Turning to Sir Peter Abeles:

Sir Peter, as a Director of Bulkships Limited and bearing in mind the joint announcement recently made by that Company and Ampol Petroleum Limited as to their joint intentions in regard to this Company it appears to me that there arises a clear conflict between your duty as a Director of this Company and your interest in Bulkships Limited. In such circumstances I invite you to disqualify yourself from taking part in the discussion of this letter and Agreement and in voting in respect thereof. 20

(NOTE: If Sir Peter Abeles challenges this statement hear him out and then say:

"As Chairman I rule that there is a conflict of interest and duty and that you are not entitled to take part in the debate or to vote on this subject.") 30

CHAIRMAN: So that the matter may be discussed would somebody move that the form of agreement with Howard Smith Limited be entered into and executed under the Company's Seal and the 4,500,000 shares issued to Howard Smith Limited on the terms thereof on receipt of the appropriate application and cheque.

CHAIRMAN: So that you may be fortified in discussing this matter with the present financial position of the Company I will ask the General Manager to give you a concise summary of recent events leading to the discharge of our substantial indebtedness to the Commonwealth of Australia and 40

the present financial position of the Company.

CHAIRMAN: You will see from what the General Manager has said that so far as the short term securities are concerned the Company could be at risk in the very near future and that from the Company's point of view, if it is to avoid the possibility of a forced liquidation, it is essential that adequate provision be made to cover the liabilities as and when they fall due.

Memorandum of
R.W. Miller
(Holdings) Ltd.
6th July 1972
"The Script"
(continued)

10 Now does anybody wish to make any comment on this matter?

I will now put the motion that the form of agreement with Howard Smith Limited be entered into and executed under the Company's Seal and that the 4,500,000 shares be issued to Howard Smith Limited on the terms thereof.

CHAIRMAN: Does anyone wish to make any comment on the joint announcement made on 27th June 1972 by Ampol Petroleum Limited and Bulkships Limited?

20 (There would seem to be little point in discussing this matter but you may care to say:

Personally I deplore the action of Ampol and Bulkships in forming an alliance to act jointly in the future operations of this Company as I feel that such an announcement can only make things extremely difficult for the minority shareholders and could have led them already to take action which they might now be regretting in view of Howard Smith's intention to proceed with its offer.)

30 CHAIRMAN: May I take it that in view of the letter received from Howard Smith Limited and tabled here today that this Board now re-affirms its advice to shareholders that they reject the Ampol bid?

CHAIRMAN: The next item on the Agenda is the consideration of the estimated Group results for the 11 months ended 27th May 1972.

40 (Deal with this item and after any comment thereon ask whether any member has any further business to bring up and if there is no further business brought up the Meeting may then be closed.)

Plaintiffs
Exhibits
Exhibit U

Exhibit U (continued)

Memorandum of R.W. Miller (Holdings) Ltd.
dated 7th July 1972. Added to exhibit U

Memorandum of
R.W. Miller
(Holdings) Ltd.
dated 6th July
1972
Added to
Exhibit U

R. W. MILLER (HOLDINGS) LIMITED

MEETING 10 A.M. THURSDAY, 6TH JULY, 1972

- CHAIRMAN: I declare this Meeting open and thank you for your attendance thereat. Mr. John Aston of Barkell & Peacock, Solicitors, and the Company's legal officer, Mr. Conway, are present at my invitation. You all have Agenda in front of you and we will now proceed to the first item 10
- (1) therein, namely, the confirmation of the Minutes of the Meetings of Directors held on 23rd and 30th ultimo respectively.
- Will somebody please move that I sign the Minutes as a correct record of the proceedings on those occasions.
- (2)
- We come now to the confirmation of Minutes of Share Transfer Committee Meetings held on 16th and 23rd ultimo and I will ask Mr. K.B. Anderson to give details thereof. 20
- (3) CHAIRMAN: Would someone please move that I sign the Minutes as a correct record of the proceedings on the abovementioned occasions?
- CHAIRMAN: The third item listed on your Agenda is the consideration of the joint announcement made on 27th June 1972 by Ampol Petroleum Limited and Bulkships Limited, my reply thereto and of any further statement which may be made by Howard Smith Limited. In view of a development which has occurred only this morning I propose 30
- (4) to defer this item until we have dealt with this further matter. I should like to read to you a letter to me from the Chairman of Howard Smith Limited relating to their proposed Takeover Offer and I table the Agreement referred to in that letter.
- (5) I am informed by the Company's Legal Officer and also by Mr. John Aston of Barkell & Peacock that there is no provision in the Companies Act which precludes the Board from making such an allotment of shares but that the allotment would constitute a breach of the Stock Exchange 40

10 regulations which the Exchange of course has power to waive but which, if not waived, could result in the suspension or de-listing of this Company for some period. I am also advised that under the law the Directors are required to use their powers bona fide for the benefit of the Company which means the shareholders as a whole, that they cannot justify the exercise of their powers for the benefit of themselves or some only of the shareholders. As you know, both Mr. Conway and Mr. Aston are present so that if any legal questions arise we may have the benefit of their advices.

Turning to Sir Peter Abeles:

20 Sir Peter, as a Director of Bulkships Limited and bearing in mind the joint announcement recently made by that Company and Ampol Petroleum Limited as to their joint intentions (6) in regard to this Company it appears to me that there arises a clear conflict between your duty as a Director of this Company and your interest in Bulkships Limited. In such circumstances I invite you to disqualify yourself from taking part in the discussion of this letter and Agreement and in voting in respect thereof.

(NOTE: If Sir Peter Abeles challenges this statement hear him out and then say:

30 "As Chairman I rule that there is a conflict of interest and duty and that you are not entitled to take part in the debate or to vote on this subject.")

CHAIRMAN:

So that the matter may be discussed would somebody move that the form of agreement with Howard Smith Limited be entered into and executed under the Company's Seal and the 4,500,000 shares issued to Howard Smith Limited on the terms thereof on receipt of the appropriate application and cheque.

40 CHAIRMAN: So that you may be fortified in discussing this matter with the present financial position of the Company I will ask the General Manager to give you a concise summary of recent events leading to the discharge of our

Memorandum of
R.W. Miller
(Holdings) Ltd.
dated 6th July
1972
Added to
exhibit U
(continued)

substantial indebtedness to the Commonwealth of Australia and the present financial position of the Company.

CHAIRMAN: You will see from what the General Manager has said that so far as the short term securities are concerned the Company could be at risk in the very near future and that from the Company's point of view, if it is to avoid the possibility of a forced liquidation, it is essential that adequate provision be made to cover the liabilities as and when they fall due. 10

Now does anybody wish to make any comment on this matter?

I will now put the motion that the form of agreement with Howard Smith Limited be entered into and executed under the Company's Seal and that the 4,500,000 shares be issued to Howard Smith Limited on the terms thereof.

CHAIRMAN: Does anyone wish to make any comment on the joint announcement made on 27th June 1972 by Ampol Petroleum Limited and Bulkships Limited? 20

(There would seem to be little point in discussing this matter but you may care to say:

Personally I deplore the action of Ampol and Bulkships in forming an alliance to act jointly in the future operations of this Company as I feel that such an announcement can only make things extremely difficult for the minority shareholders and could have led them already to take action which they might now be regretting in view of Howard Smith's intention to proceed with its offer.) 30

CHAIRMAN: May I take it that in view of the letter received from Howard Smith Limited and tabled here today that this Board now re-affirms its advice to shareholders that they reject the Ampol bid?

CHAIRMAN: The next item on the Agenda is the consideration of the estimated Group results for the 11 months ended 27th May 1972. (Deal with this item and after any comment thereon ask whether any member has any further business to bring up and if there is no further business brought up the Meeting may then be closed.) 40

Plaintiffs Exhibits
Exhibit V

Plaintiffs
Exhibits
Exhibit V

Minutes of meeting of Directors of
R.W. Miller (Holdings) Ltd. dated
6th July 1972 plus Agenda

Minutes of
meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
6th July 1972
plus Agenda

R.W. MILLER (HOLDINGS) LIMITED

AGENDA FOR MEETING OF DIRECTORS OF R.W.MILLER
(HOLDINGS) LIMITED, TO BE HELD IN THE BOARD
ROOM, "SCOTTISH HOUSE", 19 BRIDGE STREET,
SYDNEY, AT 10.00 A.M. ON THURSDAY, 6TH JULY,
1972

10

1. Confirmation of Minutes of Meetings of
Directors held on the following dates:-

23rd June 1972
30th June 1972

2. Confirmation of Minutes of Share Transfer
Committee Meetings held on the following dates:-

16th June 1972
23rd June 1972

20

3. Consideration of joint announcement made on
27th June 1972 by Ampol Petroleum Limited and
Bulkships Limited, the Chairman's reply thereto,
and of any further statement which may be made
by Howard Smith Limited.
4. Consideration of estimated Group Results for
11 months ended 27th May 1972.
5. Any other business.

Plaintiffs
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Exhibit V

R.W. MILLER (HOLDINGS) LIMITED

Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
6th July 1972
plus Agenda
(continued)

MINUTES OF MEETING OF DIRECTORS OF R.W. MILLER
(HOLDINGS) LIMITED HELD IN THE BOARD ROOM,
"SCOTTISH HOUSE", 19 BRIDGE STREET, SYDNEY,
AT 10.15 A.M. ON THURSDAY, JULY 6TH, 1972.

PRESENT: Mr. A. N. Taylor Chairman
Lady Miller
Mr. R.I. Nicholl
Mr. K.B. Anderson
Mr. A.V. Balhorn Alternate Director for 10
Mr.P.J.Duncan
Mr. E.D. Cameron
Sir Peter Abeles

IN ATTENDANCE: Mr. L.D. Koch General Manager
Mr. H.V. Ellis-Jones Secretary
Mr. W.A. Conway Legal Officer
Mr. John Aston
Miss M.J. Hill

DELAY IN COMMENCEMENT OF MEETING: Prior to the time set for the 20
commencement of the Meeting, namely
10 a.m., the Secretary had reported
to the Chairman that Mr. E.D. Cameron's
secretary had telephoned and advised
the Secretary that Mr. Cameron would
be approximately ten minutes late in
arriving at the Meeting.

At 10 a.m. at the Chairman's sugges- 30
tion, morning tea was taken whilst
awaiting the arrival of Mr. Cameron
and to avoid adjourning the Meeting
later whilst morning tea was taken.

Mr. E.D. Cameron joined the assembled
Board members at approximately 10.10
a.m., followed later by Sir Peter
Abeles who apologised for his late
arrival. The Board members took
their seats and the business of the
Meeting commenced at 10.15 a.m.

CONFIRMATION OF MINUTES OF PREVIOUS DIRECTORS' MEETING: The Chairman declared the Meeting 40
open, thanked all present for their
attendance and advised that Mr. John
Aston of Barkell & Peacock, Solicitors,
and Mr.W.A. Conway, the Group's Legal

Officer, were both present at his invitation

The Minutes of the Meetings of Directors held on June 23rd, 1972, and June 30th, 1972, were then tabled, confirmed by the Meeting and signed by the Chairman as a true record of the proceedings thereat.

Minutes of Meeting of Directors of R.W. Miller (Holdings) Ltd. 6th July 1972 plus Agenda (continued)

10 CONFIRMATION
OF MINUTES
OF SHARE
TRANSFER
MEETINGS:

The Minutes of Meetings of the Share Transfer Committee held on the following dates were confirmed:

- June 16th, 1972
- June 23rd, 1972

20

It was decided that, in future, the formality of confirming the Minutes of Share Transfer Committee Meetings would not be followed and that it would be left to the Secretary to report to the Board any significant share transfers registered.

HOWARD SMITH
LIMITED:

30

The Chairman said that the third item listed on the Agenda for the Board's consideration was the joint announcement made on June 27th, 1972, by Ampol Petroleum Ltd. and Bulkships Limited, the Chairman's reply thereto and of any further statement which may have been made by Howard Smith Limited.

In view of a development which had only occurred this morning, the Chairman stated that he proposed to defer consideration of this item on the Agenda until the new development had been dealt with.

40

The Chairman then read to the Board a letter from Howard Smith Limited dated July 6th, 1972, which had been delivered to the Chairman by hand at 9.30 a.m. this morning. The letter detailed terms under which Howard Smith Limited proposed the allotment to them of 4,500,000

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Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
6th July 1972
plus Agenda
(continued)

HOWARD SMITH
LIMITED:
(CONTINUED)

ordinary \$1 shares in the capital of R.W. Miller (Holdings) Limited at a premium of \$1.30 per share.

After the Chairman had read the above letter, he requested Mr. W.A. Conway to read to the Board the agreement to be entered into by R.W. Miller (Holdings) Limited with Howard Smith Limited, in accordance with the proposals detailed in the above letter read to the Board by the Chairman. 10

The Chairman then said that he had discussed the proposal by Howard Smith Limited with Mr. W.A. Conway and Mr. J. Aston and had been informed that there was no provision in the Companies Act precluding the Board from making such an allotment of shares. However, the allotment would constitute a breach of the Stock Exchange regulations which the Stock Exchange had the power to waive but, if not waived by the Stock Exchange, the allotment could result in the Company's shares being suspended from trading or delisted for some period. 20

The Chairman also stated that he had been further advised that by law the Directors were required to use their powers bona fide for the benefit of the Company, which meant the shareholders as a whole, and the Directors could not justify the exercise of their powers for their own benefit or for the benefit of only some of the shareholders. 30

The Chairman drew attention to the presence of Mr. Conway and Mr. Aston and said that, if any legal questions arose, the Board could avail itself of the benefit of their advices.

At the invitation of the Chairman, Mr. W.A. Conway said that it was to be anticipated that the Company would be taken over eventually and the 40

HOWARD SMITH
LIMITED:
(CONTINUED)

Company delisted. If the proposed allotment was to be made there was the possibility of being delisted. However, delisting would not greatly affect the shareholders in the present case as the Company's shareholders would have alternative take-over offers to accept.

Plaintiffs
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 Exhibit V

Minutes of
 Meeting of
 Directors of
 R.W. Miller
 (Holdings) Ltd.
 6th July 1972
 plus Agenda
 (continued)

10

Mr. Conway further stated that it was the Board's duty to consider the Howard Smith Limited proposal on its merits and, if the Board decided that it was in the interests of all shareholders to accept it, in his view the Board should do so. If the Board did not consider it was in the interests of all shareholders to accept the proposal, it should, in his view, not do so.

20

Also at the Chairman's invitation, Mr. J. Aston advised the Board that, if they chose to allot the shares to Howard Smith Limited, it would be a legal action and a valid exercise of the Board's powers and he considered that the question of a possible delisting of the Company's shares was a secondary consideration.

30

Mr. J. Aston further stated that he knew of about fifteen instances in the last twelve months in which companies had breached Stock Exchange regulations without incurring the penalty of being delisted.

Sir Peter Abeles then asked the amount involved in the proposed issue and was informed by the Chairman that the proposed issue price was \$2.30 per share.

40

Sir Peter Abeles then stated that he believed that the Chairman had previously made statements to the effect that the asset backing of the Company's shares was more than \$3.70

Plaintiffs
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Exhibit V

Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
6th July 1972
plus Agenda
(continued)

HOWARD SMITH
LIMITED:
(CONTINUED)

1294.

per share, yet as a Board it was argued today that the Board should issue shares at \$2.30 per share. Sir Peter Abeles further stated that the Board would be diluting the Company's share capital in considering an offer to issue shares at a price which was less than the asset backing previously stated by the Board.

The Chairman replied that he noted 10
the comments made by Sir Peter Abeles, whereon Sir Peter requested that his remarks should be recorded in the Minutes of the meeting.

The Chairman then informed Sir Peter Abeles that, as Sir Peter was a Director of Bulkships Limited and bearing in mind the joint announcement recently made by Bulkships Limited and Ampol Petroleum Limited 20
as to their joint intentions in regard to R.W. Miller (Holdings) Limited, he considered that there arose a clear conflict between Sir Peter's duty as a Director of R.W. Miller (Holdings) Limited and his interest in Bulkships Limited.

The Chairman then invited Sir Peter to disqualify himself from taking part in the discussion of the proposal from Howard Smith Limited and the related agreement, and voting in respect thereof, on the grounds of his conflict of duty and interest. 30

Sir Peter Abeles refused to disqualify himself from taking part in discussion of the proposal and voting thereon, saying that he had always declared his interests, whereon the Chairman ruled that Sir Peter was subject to conflict of interest and duty and, therefore, he was not entitled to take part in the debate or to vote on the subject. 40

Sir Peter Abeles sought the opinion

HOWARD SMITH
LIMITED:
(CONTINUED)

of Mr. J. Aston on the Chairman's ruling and was informed that the Chairman's ruling and contention was correct and supported by precedent extending back over a period of one hundred years.

10 Sir Peter then said that, in view of the Chairman's ruling, he requested that the meeting be adjourned, stating that he wanted to have legal representation immediately, and also requested that his legal adviser be permitted to attend the meeting when it was reconvened after the adjournment.

20 The Chairman refused to adjourn the meeting and denied Sir Peter's request for legal representation. However, the Chairman informed Sir Peter that he was free to leave the meeting at any time to telephone for legal advice on the understanding that the meeting would continue in his absence.

30 Sir Peter Abeles enquired whether the Company's Articles of Association gave the Chairman the power to disqualify him from voting and, on receiving a negative answer, Sir Peter requested that his question and the answer given should be recorded in the Minutes of the Meeting.

At this point in the proceedings, Sir Peter Abeles absented himself from the Meeting saying that he intended to telephone for legal advice.

40 In order that the matter could be discussed, the Chairman asked for a motion that the form of agreement with Howard Smith Limited be entered into and executed under the Company's Seal and that 4,500,000 shares mentioned therein be allotted to

Plaintiffs
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Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
6th July 1972
plus Agenda
(continued)

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Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
6th July 1972
plus Agenda
(continued)

HOWARD SMITH
LIMITED:
(CONTINUED)

Howard Smith Limited in the terms of the agreement on receipt of the appropriate application and cheque. This motion was moved by Mr. K.B. Anderson and seconded by Mr. R.I. Nicholl.

The Chairman then requested Mr. L.D. Koch, General Manager, to give the Board a summary of recent events leading to the discharge of a substantial indebtedness to the Commonwealth of Australia and the present financial position of the Company in respect of short-term borrowings, in order that the Board could consider this financial data and its bearing on the matter under discussion.

10

Mr. Koch then read to the Board the relevant portion of a letter from the Minister of Shipping dated June 15th, 1972, threatening legal proceedings unless all outstanding progress payments due on construction of M.T. "Robert Miller" were paid by June 30th, 1972, together with accrued interest.

20

Details of the short-term borrowings of the R.W. Miller Group were then given by Mr. Koch and in this context Mr. Koch defined short-term borrowings as being borrowings falling due for repayment within the next twelve months. These borrowings in summary form were as follows:-

30

SUMMARY OF CURRENT SHORT TERM
BORROWINGS:

<u>Due Dates:</u>	<u>Amounts</u>
Mitsui loan repayable	
\$100,000 per month,	
terminating February,	
1973	\$800,000
At Call	406,900
Due August, 1972	500,000
Due September, 1972	1,285,000

40

HOWARD SMITH
LIMITED:
(CONTINUED)

Due Dates:Amounts

Plaintiffs
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Due October, 1972	£1,000,000
Due December, 1972	1,100,000
Due January, 1973	200,000
Due February, 1973	500,000
Due March, 1973	500,000
Due June, 1973	4,450,000
	<u>£10,741,900</u>

Minutes of
 Meeting of
 Directors of
 R.W. Miller
 (Holdings) Ltd.
 6th July 1972
 plus Agenda
 (continued)

10

Commenting on £4.8-million borrowed from Tricontinental Corporation Limited, Mr. Koch said that these borrowings could possibly be renewed on maturity by the lender. However, one of the conditions of a deed securing these borrowings was that, if control of the Company changed from its present form, renewal of the borrowings could be refused at the option of the lender.

20

On or about this time Sir Peter Abeles returned to the meeting.

Mr. Koch then reminded the Board of the serious position that the Company found itself in during April last year, as a result of its extensive borrowings on the short term money market.

30

Mr. Koch also informed the Board that the R.W. Miller Group had no further security to offer any further lenders as all available property had been pledged as security. Therefore, he strongly recommended the allotment of 4,500,000 shares to Howard Smith Limited as a means of gaining an infusion of £10.3-million to relieve a serious deficiency of capital.

40

Mr. E.D. Cameron said that the Board has to consider the rights of all shareholders and also said that Board Members would be aware that he had been very disturbed over the

Plaintiffs
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Minutes of
Meeting of
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R.W. Miller
(Holdings) Ltd.
6th July 1972
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(continued)

HOWARD SMITH
LIMITED:
(CONTINUED)

1298.

past few months insofar as the rights of small shareholders were concerned.

Mr. Cameron also made mention of previous references by other Board Members to the Company being delisted if the proposed issue of shares was made and stated that the Stock Exchange listing requirements were very clear and, should a share issue be made, it should be done by a special extraordinary meeting of members of the Company. 10

Mr. Cameron also stated that the listing requirements were provided for a good reason, namely to protect the rights of all shareholders so that, if the listing requirements were ignored, it was being done for a reason, perhaps other than for the good of all shareholders. 20

Mr. Cameron went on to say that the proposed share issue should be made in the normal course of events, which would mean putting the matter before all the Company's shareholders, and the Board would do so knowing that the proposal would fail because 55% of the Company's shareholders would vote against it. In addition, Mr. Cameron stated that the present shareholders of the Company could remove all the present members of the Board by means of a special meeting. 30

In reply to questions, Mr. Cameron was informed that the maximum number of Directors permitted under the Company's Articles of Association was seven and also that a holder of partly paid shares would have full voting rights. 40

Mr. Cameron said that he could not agree that the Board would not be harming the rights of shareholders if the Company was delisted as, in his

HOWARD SMITH
LIMITED:
(CONTINUED)

opinion, the shareholders would be harmed.

10 Mr. Cameron went on to say that the Board had rejected the offer from Ampol Petroleum Limited and now had the offer from Howard Smith Limited to consider. The Board had the right to recommend to shareholders not to accept either offer and to retain their shareholdings as, in his opinion, Ampol and Bulkships Limited would still have the responsibility to act in the best interests of the Company and, therefore, all shareholders and he thought that they would have to treat these duties very seriously.

20 In regard to the proposal from Howard Smith Limited, Mr. Cameron stated that 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.

30 Mr. Cameron went on to say that the present Board had been aware for twelve months that a liquidity crisis had existed and had done nothing to consider a share issue to shareholders and that, whilst the Company could not at the present time make a share issue to shareholders at an issue price of \$2.30 per share, it was still possible to make an issue to shareholders at a substantial premium.

40 Mr. Cameron said that he must repeat at this stage that he was concerned that the Board was suggesting a share issue to get over financial problems.

Mr. Cameron then asked Mr. L.D. Koch if finance from the United Kingdom on the hand-over of the M.T. "Robert Miller" was certain and Mr. Koch replied that the letter of commitment

Plaintiffs
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Minutes of
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Minutes of
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(continued)

HOWARD SMITH
LIMITED:
(CONTINUED)

1300.

from Hambros Bank Limited contained a provision that a change in the Company's control could nullify the loan.

Sir Peter Abeles informed the Meeting that he had confirmation from Hambros Bank Limited that, in a case of change of ownership of the Company, the Bank would increase its loan. Mr. Koch then enquired why the Company had not received this notification from the Bank and was told by Sir Peter Abeles that the Bank's confirmation was not an official notification in writing but he had been informed by the Bank that, if the Company's major shareholders were prepared to stand behind it, the Bank was prepared to increase the loan.

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20

Mr. Cameron stated that he had studied a report prepared by Cooper Bros. & Co., Chartered Accountants, under instructions from Barkell & Peacock, and based on the report he thought that serious consideration would have to be given to recommending a take-over offer such as that made by Howard Smith Limited and he agreed with the point made in the report that the asset backing of the Company's shares was not a major consideration as the report made it clear that the future operations of the Company would be far more profitable than its present operations.

30

The Chairman then quoted the action of Ampol Petroleum Limited and Bulkships Limited in joining forces and placing the Company's shareholders in a position where Ampol's offer of \$2.27 per share was the only offer open to them. The Chairman also said that, if the Board accepted the proposal from Howard Smith Limited, the major shareholders would have received

40

HOWARD SMITH
LIMITED:
(CONTINUED)

consideration as they could accept the offer made for their shares by Howard Smith Limited.

Mr. Cameron again posed the question to the Board in general as to why a share issue could not be made to existing shareholders.

10 Sir Peter Abeles said that he noted that the proposal from Howard Smith Limited conferred on them the right to withdraw their take-over offer and Mr. Aston advised Sir Peter that this was a statutory obligation contained in the Companies Act which was imposed on all offeror corporations.

20 Mr. Cameron then said that he was not opposed to the proposal made by Howard Smith Limited but wanted its implications to be seriously considered. He said also that he would like to hear comment by the other Directors.

30 Mr. R. I. Nicholl said that a share issue and placement to solve the Group's liquidity problems had been previously discussed by the Board. Mr. Nicholl said also that the Group was pledged to the limit and he doubted whether an issue could be made to shareholders at an issue price of \$2.30 per share and Mr. Cameron agreed with the latter statement.

Sir Peter Abeles said words to the effect that "this would depend on who the underwriters were".

40 Mr. Nicholl further stated that, having regard to the alternate situation where you had two major shareholders together, he would rather face the Company's shareholders having to accept the fact of being in breach of the Stock

Plaintiffs
 Exhibits
 Exhibit V

Minutes of
 Meeting of
 Directors of
 R.W. Miller
 (Holdings) Ltd.
 6th July 1972
 plus Agenda
 (continued)

Plaintiffs
Exhibits
Exhibit V

HOWARD SMITH
LIMITED:
(CONTINUED)

Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
6th July 1972
plus Agenda
(continued)

Exchange rules if the proposal from Howard Smith Limited was accepted.

Mr. A.V. Balhorn said that he agreed with the remarks made by Mr. Nicholl, as the Company's shareholders would receive \$2.75 for their shares if the Board accepted the proposal from Howard Smith Limited rather than being locked in with only Ampol's offer of \$2.27 to accept.

10

Mr. Balhorn said that he had been a little late in joining the Board Meeting at its commencement as he had made an urgent telephone call to Mr. P.J. Duncan in Tokyo to acquaint him of the sudden proposal from Howard Smith Limited and the viewpoint and opinion expressed by him earlier was in accord with Mr. Duncan's own wishes and opinion.

20

Mr. L.D. Koch stated that he was dubious if the Stock Exchange would delist the Company's shares if the Howard Smith proposal was accepted.

Lady Miller stated that she was not happy with the proposal before the Board and would have liked more time to consider the proposal before making up her mind on it. Furthermore, she did not like the thought of the Company being delisted.

30

Mr. Conway said that the Stock Exchange had a discretion in these matters similar to the Equity Court and he considered that the Stock Exchange would seek clarification from the Company before proceeding to delist the Company's shares and would only delist in the case of a blatant breach of the spirit of its rules.

40

Mr. Aston said that the accounts of Ampol Petroleum Limited and Bulkships Limited disclosed that these two

HOWARD SMITH
LIMITED
(CONTINUED)

companies could not provide the necessary finance to help overcome the serious liquidity problem shown in the accounts of the R.W. Miller Group.

Mr. Aston also expressed the opinion that minority shareholders not accepting Ampol's offer would be in a poor position as, if they were locked in, the value of their investment would be depreciated.

The motion was then put to the Meeting and carried, the voting being as follows:

For the motion: Mr. A.V. Balhorn
 Mr. K.B. Anderson
 Mr. R.I. Nicholl
 Mr. A.N. Taylor

Against the motion: Mr. E.D. Cameron
 Lady Miller

Sir Peter Abeles did not vote on the motion and requested that the fact that he had been disqualified from voting by a ruling made by the Chairman should be recorded in the Minutes.

Sir Peter Abeles stated that he had received legal advice that the Chairman did not have the right to disqualify him from voting and the Chairman's action would be challenged. Sir Peter also stated that the Board's action in this respect could be considered fraudulent and that he had been refused a vote.

After the motion had been carried, Mr. Cameron said he imagined that the Board had laid itself open to an injunction being taken out within the next twenty four hours and could find itself in a very serious situation. Mr. Cameron expressed his concern about this aspect.

Plaintiffs
 Exhibits
 Exhibit V

Minutes of
 Meeting of
 Directors of
 R.W. Miller
 (Holdings) Ltd.
 6th July 1972
 plus Agenda
 (continued)

10

20

30

40

Plaintiffs
Exhibits
Exhibit V

Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
6th July 1972
plus Agenda
(continued)

CONSIDER-
ATION OF
GROUP RESULTS:

The Board considered and discussed the estimated Group Results for the eleven months ended May 27th, 1972.

In reply to a question from Mr. E.D. Cameron, the Secretary stated that the Group trading profit, before income tax, for the financial year ended June 30th, 1972, was estimated to be in the vicinity of \$2-million, with capital profits and extra-ordinary items contributing approximately a further \$1-million.

10

ANY OTHER
BUSINESS:

JAPANESE SHIPPING STRIKE:

Mr. R.I. Nicholl asked to what extent coal exports had been affected by the current Japanese seamen's strike.

The Chairman replied that the Group's exports had been seriously affected in June, 1972, and that, if the strike continued, production at collieries would have to be curtailed to avoid an excessive build-up in coal stockpile. However, whilst the strike continued, the reserve coal stockpiles held in Japan will be rapidly depleted and our coal exports should be buoyant once the Japanese seamen returned to work.

20

FUTURE PROSPECTS FOR COAL:

The Chairman commented that the Australian coal industry was passing through a difficult period at present and both the Minister of Mines and the Joint Coal Board had expressed the opinion that the present would not be an opportune time to consider disposing of our colliery interests.

30

Authoritative reports and opinions on the future prospects of the Australian coal industry were being prepared by independent authorities and these would be submitted to the Board for consideration at the earliest opportunity.

40

ANY OTHER
BUSINESS:
(CONTINUED)

M.T. "AMANDA MILLER" CLAIM:
Mr. L. D. Koch advised the Board that, following payment of all overdue amounts to the Commonwealth of Australia, our claim for late delivery of M.T. "Amanda Miller" would be pressed and satisfactory settlement of the claim was anticipated.

Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
6th July 1972
plus Agenda
(continued)

10

MT. "ROBERT MILLER":

The Board was informed that the vessel's launching was scheduled for November, 1972, and, in reply to a question from Mr. Cameron whether the vessel would be delivered on time, Mr. Koch stated that in our opinion the vessel would not be handed over until June, 1973, despite announcements by the builder that the vessel would be delivered on time in March, 1973.

20

APPOINTMENT OF ALTERNATE DIRECTORS:

Sir Peter Abeles informed the Board that he wished to nominate Sir Ian Potter to act as his alternate during his impending absence overseas and the Board agreed to this appointment being made.

30

TAVERNS:

The Chairman reported that police approval had been obtained for a drive-in bottle department in the T.N.T. Redfern building project.

POOL TABLES:

The Chairman advised the Board that a survey was being carried out on the income being derived from the installation of pool tables in the Group's hotels and, whilst the survey was not yet completed, it indicated at this stage that tenders should be called from principals wishing to install the tables in the hotels.

40

In reply to a question, the Chairman

1306.

Plaintiffs
Exhibits
Exhibit V

Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
6th July 1972
plus Agenda
(continued)

ANY OTHER
BUSINESS:
(CONTINUED)

advised Mr. A.V. Balhorn that the tables in our hotels at the present time were leased and Mr. Balhorn stated that in Melbourne the trend is for the tables to be owned by the hotel owner. The Chairman assured Mr. Balhorn that this aspect was also being studied in the survey now being carried out.

NEXT BOARD
MEETING:

It was decided that the next Board Meeting would be scheduled to be held on Thursday, July 27th, 1972. 10

CLOSE OF
MEETING:

There being no further business to be transacted, the Meeting then was declared closed by the Chairman.

CONFIRMED:

CHAIRMAN:

Plaintiffs
Exhibits
Exhibit W

Letter,
Howard Smith
Ltd. to R.W.
Miller
(Holdings) Ltd.
6th July 1972
and share
certificate
for 4,500,000
Ordinary shares

Plaintiffs Exhibits
Exhibit W

Letter, Howard Smith Ltd. to
R.W. Miller (Holdings) Ltd. dated
6th July 1972 and share certificate
for 4,500,000 Ordinary shares

20

HOWARD SMITH LIMITED

6th July, 1972.

The Directors,
R.W. Miller (Holdings) Limited,
19 Bridge Street,
SYDNEY.

Dear Sirs,

We hereby apply for 4,500,000 ordinary shares of \$1.00 each in the capital of R.W. Miller (Holdings) Limited at a premium of \$1.30 per share. 30

Payment is to be made as follows:

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

The Common Seal of Howard Smith Limited was affixed hereto by order of the Directors in the presence of

10 HOWARD SMITH
(Illegible)

Share certificate for 4,500,000 Ordinary shares in R.W. Miller (Holdings) Ltd. (part of exhibit W.)

20 R.W. MILLER (HOLDINGS) LIMITED
Incorporated under the Companies Ordinance 1954
of the Australian Capital Territory
Registered Office: Suite 705, 7th Floor, C.M.L.
Building, 31 University Avenue,
Canberra City, A.C.T. 2601.
Head Office: Scottish House, 19 Bridge Street,
Sydney, N.S.W.
SHARE REGISTRARS: SECURITY SHARE SERVICES PTY.
LIMITED
Sydney: Mansfield Street, Balmain, N.S.W.2041
Melbourne: 792 Elizabeth Street, Melbourne, Vic.
Canberra: Suite 705, 7th Floor, C.M.L. Building,
31 University Avenue, Canberra City,
A.C.T.2601

30 ORDINARY SHARE CERTIFICATE No. 52981

AUTHORISED CAPITAL	-	Sydney Register
	\$15,000,000	<hr/>
Divided into	15,000,000 Ordinary	
Shares of	\$1.00 each	

Plaintiffs
Exhibits
Exhibit W

Letter,
Howard Smith
Ltd. to
R.W. Miller
(Holdings) Ltd.
6th July 1972
and share
certificate
for 4,500,000
Ordinary shares
(continued)

(continued)

Plaintiffs
Exhibits
Exhibit W

Letter,
Howard Smith
Ltd. to
R.W. Miller
(Holdings) Ltd.
6th July 1972
and share
certificate
for 4,500,000
Ordinary shares
(continued)

DIVIDEND RANKING

Shares comprised in this Certificate do not participate in any dividend paid in respect of profits derived in the year ended 30th June 1972, but rank pari passu with existing shares in all other respects.

THIS IS TO CERTIFY THAT

On this date	By Transfer or Allotment No.	The Under-mentioned	On Certificate No.	Acquired	
6th July 1972	Allotted pursuant to Resolution of Directors	HOWARD SMITH LIMITED	52981	4,500,000 Ordinary Shares	10

and is the registered holder of FOUR MILLION FIVE HUNDRED THOUSAND Ordinary Shares of \$1.00 each paid to ten (10) cents per share in R.W. Miller (Holdings) Limited, subject to the provisions of the Memorandum and Articles of Association of the Company.

GIVEN under the Common Seal of the Company.

H.V. ELLIS-JONES

Secretary

A. N. TAYLOR

Director

No transfer of any of the shares comprised in this Certificate will be registered unless accompanied by this Certificate.

Plaintiffs
Exhibits
Exhibit X

Advertisement
by R.W. Miller
(Holdings) Ltd.
in "Australian
Financial
Review"
7th July 1972

Plaintiffs Exhibits

Exhibit X

Advertisement by R.W. Miller (Holdings) Ltd.
in "Australian Financial Review" 7th July 1972

R.W. MILLER (HOLDINGS) LIMITED
Incorporated in the Australian Capital Territory

Head Office: SCOTTISH HOUSE, 19 BRIDGE STREET,
SYDNEY, 2000. Phone: 27-4361

Please Address all correspondence to:
Box 1580, G.P.O., SYDNEY, 2001

Set out hereunder is the text of a letter received by Mr. A. N. Taylor, Chairman of R.W. Miller (Holdings) Ltd., from Mr. W. Howard-Smith, Chairman of Howard Smith Limited, just prior to the holding of a meeting on Thursday, July 6, of the Miller Board:

20

30

40

"

6th July, 1972.

Plaintiffs
Exhibits
Exhibit X

Mr. A.N. Taylor,
Chairman of Directors,
R.W. Miller (Holdings) Limited,
19 Bridge Street,
Sydney.

Advertisement
by R.W. Miller
(Holdings) Ltd.
in "Australian
Financial
Review"
7th July 1972
(continued)

Dear Mr. Taylor,

10 I refer to my letter of 22nd June, 1972, in
which I informed you of my Company's intention to
make an offer to acquire all of the issued shares
of R.W. Miller (Holdings) Limited and also to the
joint statement on 27th June on behalf of Ampol
Petroleum Limited and Bulkships Limited in which
those two companies stated their intention "to act
jointly in relation to the future operations of
R.W. Miller (Holdings) Limited." According to
Press reports the two companies announced also
20 that they would reject any offer for their shares
whether from Howard Smith Limited or any other
source.

You will be aware that Ampol Petroleum Limited
has informed the Sydney Stock Exchange that its bid
of \$2.27 per share will remain open despite the
much higher offer which Howard Smith Limited will
make and which is currently in course of preparation.

30 This combination by the two largest share-
holders of your Company would in the present
circumstances effectively deprive the very large
number of minority shareholders of R.W. Miller
(Holdings) Limited of the opportunity of securing
a substantially higher price for their shares. My
Board would be most reluctant to proceed with a bid
which, even if every shareholder other than Ampol
or Bulkships accepted, could only result in Howard
Smith Limited being the largest individual share-
holder in a company the future operations of which
would be controlled by a combination of two
smaller shareholders.

40 We believe that your Board is conscious of
the injustice being suffered by your smaller
shareholders and we submit for your consideration
a proposal which, if it meets with the approval of
your Board, would enable Howard Smith Limited to

Plaintiffs
Exhibits
Exhibit X

Advertisement
by R.W. Miller
(Holdings) Ltd.
in "Australian
Financial
Review"
7th July 1972
(continued)

proceed with its intended offer thereby restoring to your minority shareholders the right to sell their shares to the highest bidder, and would give Ampol Petroleum Limited and Bulkships Limited a similar opportunity.

Our proposal is that R.W. Miller (Holdings) Limited should forthwith make to Howard Smith Limited an allotment of 4,500,000 ordinary \$1 shares at a premium of \$1.30 per share, on the basis that such shares should not participate in any dividend paid in respect of profits derived in the year ended 30th June, 1972, but ranking pari passu with existing shares in all other respects.

10

If the Board of your Company is prepared to consider our application favourably we would propose that the form of application should be lodged during your Board Meeting on 6th July and the shares be issued forthwith. Our application would be accompanied by our cheque for \$1,035,000 representing application monies of 23 cents per share, with the balance of \$2.07 per share to be paid on 30th September, 1972, but on condition that such balance will be accepted at an earlier date if tendered by Howard Smith Limited.

20

As an earnest of the good faith of both companies we would ask that your Board should execute an agreement providing for the under-mentioned matters. When lodging its application form and cheque Howard Smith Limited will hand to you a similar agreement executed by Howard Smith Limited in exchange for the agreement executed by your Board.

30

The matters to be covered in detail in the agreement which has been drawn up by our Solicitors are:

- (i) R.W. Miller (Holdings) Limited shall on 6th July, 1972, make an allotment of ordinary shares to Howard Smith Limited.
- (ii) Howard Smith Limited shall proceed with its offer to acquire all the issued shares of R.W. Miller (Holdings) Limited, as mentioned in Howard Smith Limited's letter of 22nd June, subject to Howard Smith Limited having the right to withdraw its offer at any time.

40

(iii) R.W. Miller (Holdings) Limited shall not make any further share issues for a period of six months.

(iv) Provisions regulating the status of R.W. Miller (Holdings) Limited until Howard Smith Limited shall withdraw its bid or declare it to be unconditional.

10 Notwithstanding the current circumstances I believe that the opportunity of placing such a large parcel of shares at a substantial premium is likely to be of considerable benefit to your Company. The infusion of \$10,350,000 cash is likely to ease the financing problems your Company has faced in recent years, and enable you to re-arrange your borrowings with the prospect of interest savings.

20 My Board recognises and respects the right of your Directors to concern themselves with the intentions of a company which has indicated its intention of making a takeover bid, and subject to due allowance being made for unforeseen circumstances which may arise in the future, I can inform you that it is the intention of my Board should it achieve a dominant shareholding in your Company, to maintain R.W. Miller (Holdings) Limited intact as a trading organisation. Some degree of rationalisation may in the future be unavoidable on commonsense grounds, but I give you an assurance that this will be kept to an absolute minimum, and where it is necessary, the utmost care will be taken to see that humane principles are observed. In the past eleven years Howard Smith Limited has taken over several companies and we are justly proud of our treatment of the men and women affected. As a Board we have always recognised that our best asset is our employees.

30

40 If our bid succeeds we shall naturally expect changes to be made in the Board of R.W. Miller (Holdings) Limited to reflect the altered shareholdings, but minority shareholder representation will be maintained to an equitable extent.

As the terms of our proposed bid provide for the alternatives of a share and cash, and a cash only bid we cannot estimate with any degree of

Plaintiffs
Exhibits
Exhibit X

Advertisement
by R.W. Miller
(Holdings) Ltd.
in "Australian
Financial
Review"
7th July 1972
(continued)

accuracy what our final cash commitment is likely to be. We have had preliminary talks with our Bankers, but, apart from this, we feel certain that an examination of our last published balance sheet will convince your fellow Directors that we shall have no difficulty in raising such funds as may be required.

Yours faithfully,
for HOWARD SMITH LIMITED

(Signed) W. Howard-Smith

CHAIRMAN OF DIRECTORS.

" 10

The letter was considered by the Board which resolved that it issue 4,500,000 shares in the capital of the Company at a premium of \$1.30 per share. The voting of the Board was four to two in favour of the resolution, the Chairman having ruled that Sir Peter Abeles was ineligible to vote in view of a conflict of duty and interest because of his membership of the Board of Bulkships Limited which had announced that it would act jointly with Ampol Petroleum Limited in relation to the future operations of R.W. Miller (Holdings) Limited. 20

The Board also reaffirmed its previous advice to shareholders to reject the Ampol bid.

A. N. Taylor

CHAIRMAN OF DIRECTORS

Plaintiffs
Exhibits
Exhibit Y

Circular
letter by
R.W. Miller
(Holdings) Ltd.
to shareholders
7th July 1972

Plaintiffs Exhibits

Exhibit Y

Circular letter by R.W. Miller (Holdings)
Limited to shareholders dated 7th July 1972

R.W. MILLER (HOLDINGS) LIMITED
Incorporated in the Australian Capital
Territory

Head Office: Scottish House, 19 Bridge Street,
Sydney, 2000. Phone: 27-4361

Please address all correspondence to:
Box 1580, G.P.O., Sydney 2001

7 July 1972

Plaintiffs
Exhibits
Exhibit Y

Dear Shareholder,

Circular
letter by
R.W. Miller
(Holdings) Ltd.
to shareholders
7th July 1972
(continued)

For your information I am enclosing a print of a statement which appeared in The Australian Financial Review on 7th July 1972, and you will see that a placement of 4,500,000 shares had been made by your elected Board. This issue is at a premium of \$1.30 per share, making a total price of \$2.30 per share, which is 5 cents above the Market Price of Thursday last, and 3 cents above the Ampol offer of \$2.27.

This means an injection of \$10,350,000 cash into Millers' shareholders' funds, thereby immensely strengthening the financial situation of our Company.

Following this allotment of shares, Howard Smith Ltd. will now proceed with its proposed offer to all shareholders. We are advised that the formal notice thereof, which by law has to be served on this Company, will issue next week. By law Howard Smith Ltd. must then wait for 28 days before sending to shareholders the offer to purchase their shares. You can, therefore, expect to receive the offer from Howard Smith in approximately 5 weeks' time.

Much has been made in the Press of the suspension by The Australian Associated Stock Exchanges of trading in Miller shares. However, we believe this inconvenience will be only minor when compared with the freedom of decision which you now enjoy. Irrespective of such suspension, you are now in a position to assess any further offers which may be made, as well as to consider the offer which you will receive from Howard Smith Ltd.

The proposed offer by Howard Smith Ltd. is in the following terms:-

- either (1) \$2.50 in cash for each share of R.W. Miller (Holdings) Limited
- or (2) Two ordinary \$1.00 shares of Howard Smith Ltd. issued as fully paid plus \$6.00 in cash for every five shares of R.W. Miller (Holdings) Limited.

Plaintiffs
Exhibits
Exhibit Y

IN THE MEANTIME, AS YOU ARE AWARE THE DIRECTORS HAVE
RE-AFFIRMED THEIR RECOMMENDATION TO YOU TO REJECT
THE AMPOL BID.

Circular
letter by
R.W. Miller
(Holdings) Ltd.
to shareholders
7th July 1972
(continued)

Yours sincerely,

(Signed) A. N. Taylor

CHAIRMAN OF DIRECTORS

Plaintiffs Exhibits

Exhibit Z

Exhibit Z

Interrogatory
22 of Howard
Smith Ltd. and
the answers
(against Howard
Smith Ltd.)
Undated

Interrogatory 22 of Howard Smith Ltd.
and the answers (against Howard Smith Ltd.)
Undated

10

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

(a) If so:-

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

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

20

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

30

At this meeting the Chairman of Howard Smith referred to the telephone message that had been received concerning the possibility of a

Plaintiffs
Exhibits
Exhibit Z

10 placement being favourably considered by the Miller board. The Chairman of Miller said he thought his board would agree to a placement to Howard Smith. Reference was made by Howard Smith representatives to the possibility of a placement of three million shares in Miller at a price of \$2.00 per share. During a meeting, held at the offices of Howard Smith on 5th July 1972, Mr. Maxwell was called to take a telephone call from Mr. Conway, Legal Officer of Miller. In this conversation, Mr. Conway told Mr. Maxwell that Miller could justify a placement of shares for a total price of \$10 million. Mr. Maxwell then told Mr. Conway that the Howard Smith board had already decided to apply for 4½ million at a price of \$2.30 per share.

Interrogatory
22 of Howard
Smith Ltd. and
the answers
(against Howard
Smith Ltd.)
Undated
(continued)

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

Plaintiffs Exhibits

Exhibit AA

30 Two letters from R.W. Miller (Holdings) Ltd. to The Sydney Stock Exchange Ltd. dated 7th July 1972 and 11th July 1972

R.W. MILLER (HOLDINGS) LIMITED

Head Office: Scottish House, 19 Bridge Street,
Sydney 2000

7 July 1972

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

Plaintiffs
Exhibits
Exhibit AA

Two letters
from R.W. Miller
(Holdings) Ltd.
to The Sydney
Stock Exchange
Ltd. dated 7th
July 1972 and
11th July 1972

Plaintiffs
Exhibits
Exhibit AA

Dear Sir,

Two letters
from R.W.Miller
(Holdings) Ltd.
to The Sydney
Stock Exchange
Ltd. dated 7th
July 1972 and
11th July 1972
(continued)

We refer to the suspension of trading in the shares of this Company which was announced yesterday 6th July, and would, with the utmost respect, submit to the Committee of the Exchange that the Board of this Company believes that the manner in which the suspension was effected did not do justice either to the Board or to the Shareholders of this Company. With respect, we would have expected a request from your Committee for the facts and reasons surrounding the action of the Board, before acting to suspend trading. 10

The Board of this Company is fully aware of, and conversant with, the rules, regulations and by-laws of the Australian Associated Stock Exchanges. The fact that the Board's action yesterday would lead to a technical breach of one or more of such rules and regulations was present in the minds of all Board members at all material times. However, as you must undoubtedly be aware, the primary obligation of the Board is to its Shareholders, followed by its obligations to the Exchanges and to the Nation at large. In this last regard, you would know that the continued existence of R.W. Miller (Holdings) Limited as an independent carrier of petroleum products on the Australian coast is in accord with the guide lines laid down by the Commonwealth Government for the direct benefit of all Australians. 20

This Company, like many others, has experienced liquidity problems for some time. This fact has been apparent to Shareholders and to the Exchanges, and was perfectly well known by the managements of Bulkships, Ampol and Howard Smith. 30

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 the liquidity problems. However, in view of the loyalty felt to its Shareholders, and with deference to the Commonwealth Government policy, the Board, in keeping with its tradition as a wholly-owned Australian Company, deliberately abstained from pursuing this course. 40

The offer from Howard Smith was in excess of the market value of this Company's securities, was

in excess of the amount offered to Shareholders by Ampol, and was in excess of any sum which could have been raised by a placement to existing Shareholders or Institutions.

Two letters from R.W. Miller (Holdings) Ltd. to The Sydney Stock Exchange Ltd. dated 7th July 1972 and 11th July 1972 (continued)

10 May we also point out that this Company has, in recent times, approached numerous lending institutions in the country for suitable long term finance without success. The cash infusion was justified, not only by its necessity simpliciter, but also by the fact that a survey carried out by an independent firm of Chartered Accountants confirmed that the profit potential of the Company was sufficient to service this additional capital.

20 Adverting to the takeover situation, we note with regret that the joint announcement by Ampol and Bulkships, which effectively denied to Shareholders a basic right - a right which we had at all times assumed it was, at least to some extent, your responsibility to maintain - was not made the subject of any criticism, interference, or any action whatsoever by your Committee. With respect, it would appear, to us at least, that the joint announcement by Bulkships and Ampol could only lead to a gross and flagrant abuse of the interests of minority Shareholders. This we feel would be the view of the average lay investor, let alone persons with expertise such as your own.

30 We would stress that, in our view, the action of Howard Smith, in making their offer, was ethical and eminently honourable, and that their Notice of Intention to pursue their earlier indicated offer, amounts to conduct which accords with the highest ethical standards.

40 In the circumstances, in the interests of all of our Shareholders who, after all, are the persons primarily affected by your suspension, we would request that the Committee reconsider its decision to suspend trading in shares of this Company. You are assured that any further information which you require, or any interviews which your Committee may wish to have with Officers of this Company, will promptly be made available.

In conclusion, might we state that the decision taken by the Board of this Company to make

Plaintiffs
Exhibits
Exhibit AA

Two letters
from R.W. Miller
(Holdings) Ltd.
to The Sydney
Stock Exchange
Ltd. dated 7th
July 1972 and
11th July 1972

an allotment was made only after the fullest possible debate, with all members being given full rights to state their views. The motion was spoken to by all Directors, and the decision of the Board was taken on the ground that to make the allotment was in the best interests of all Shareholders of the Company.

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

(Signed) A. N. TAYLOR

10

A.N. Taylor
CHAIRMAN OF DIRECTORS

Exhibit AA

Exhibit AA (continued)

The second
letter from
R.W. Miller
(Holdings) Ltd.
to The Sydney
Stock Exchange
Ltd.
11th July 1972

The second letter from R.W. Miller
(Holdings) Ltd. to The Sydney Stock
Exchange dated 11th July 1972

R.W. MILLER (HOLDINGS) LIMITED

Head Office: Scottish House, 19 Bridge Street,
Sydney, 2000

11 July 1972

20

G.W. Beames Esq.,
Manager - Companies,
The Sydney Stock Exchange Limited,
20 O'Connell Street,
SYDNEY. N.S.W. 2000

Dear Sir,

We have for acknowledgment your letter dated 7 July, and refer to our letter to you of the same date. The questions asked in sub-paragraphs (a) and (b) were we think anticipated and answered in our letter of 7 July, but if there is any elaboration required would you please let us know.

30

In regard to the question posed in sub-paragraph (c) of your letter, we would advise that on receipt of the Ampol takeover offer, we had an investigation of this Company's position carried out independently by Messrs. Cooper Bros. and the report with which we were furnished indicated that

this Company will have no difficulty in maintaining its present dividend rate in respect of the increased capital.

We attach hereto a copy of further correspondence sent to the Chairman of Directors of Ampol on the 3 July, and his subsequent reply on the 5 July, and also a letter addressed to the Chairman of Directors of Bulkships Limited, to which we have received no written reply.

10 Sir Peter Abeles advised the Chairman of our Company, Mr. A.N. Taylor, on the 4 July that Bulkships did not have to reply to this letter as they were not in a takeover situation, and Ampol only had to comply with statutory requirements.

We trust that this further information will be of assistance to your Committee in the consideration of the matter of the suspension of trading of our Company's shares.

Yours faithfully,

20 H.V. Ellis-Jones
SECRETARY

Attachments.

Plaintiffs Exhibits
Exhibit BB

Letter Sydney Stock Exchange Ltd. to R.W. Miller (Holdings) Ltd. dated 7 July 1972

THE SYDNEY STOCK EXCHANGE LIMITED

20 O'Connell Street, Sydney, N.S.W. 2000

7th July, 1972

30 The Secretary,
R.W. Miller Holdings Limited,
19 Bridge Street,
SYDNEY, 2000.

Plaintiffs
Exhibits
Exhibit AA

—
The second letter from R.W. Miller (Holdings) Ltd. to The Sydney Stock Exchange Ltd.
11th July 1972
(continued)

Plaintiffs
Exhibits
Exhibit BB

—
Letter Sydney Stock Exchange Ltd. to R.W. Miller (Holdings) Ltd. dated 7 July 1972

Plaintiffs
Exhibits
Exhibit BB

Attention: Mr. H. Ellis-Jones, Company Secretary.

Letter Sydney
Stoxk Exchange
Ltd. to R.W.
Miller
(Holdings) Ltd.
dated 7 July
1972
(continued)

Dear Sir,

In view of the allotment of 4,500,000 shares in your Company, to Howard Smith Limited, I am directed to advise that in the opinion of the Committee, the issue contravenes Stock Exchange Listing Requirements in that shareholders' approval has not been obtained.

You are requested to advise the Exchange as to your Board's intentions in respect of the issue being approved by your shareholders.

10

In addition, would you please inform the Exchange immediately as to:-

- (a) The reasons for the decision of your Board to raise \$10.35 million on the 6th July, 1972, without reference to shareholders.
- (b) The purpose for which the new funds will be employed, and,
- (c) The Company's future dividend policy on the increased capital.

Yours faithfully,

20

(Signed) G.W. Beames

G.W. Beames
Manager - Companies

GWB:MJT

Plaintiffs Exhibits
Exhibit CC

Plaintiffs
Exhibits
Exhibit CC

Letter
R.W. Miller
(Holdings) Ltd.
to Security
Share Services
(Pty.) Ltd.
6th July 1972
and enclosure
thereto

Letter R.W. Miller (Holdings) Ltd.
to Security Share Services (Pty) Ltd.
6th July 1972 and enclosure thereto

R.W. MILLER (HOLDINGS) LIMITED

Head Office: Scottish House, 19 Bridge Street,
Sydney, 2000

30

6th July 1972

The Manager,
Security Share Services Pty. Limited,
Buchanan Street,
BALMAIN. 2041

Dear Sir,

At a Meeting of the Board of Directors of R.W. Miller (Holdings) Limited this morning, the Board resolved to allot 4,500,000 ordinary \$1 Shares in the Capital of this Company to Howard Smith Limited.

10

The shares have been issued at a premium of \$1.30 per share and the company has received 23¢ (being 10¢ capital and 13¢ premium) per share as application monies thereon.

Would you please arrange for the enclosed register entry to be filed in our Register of Members.

Thanking you in anticipation.

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

(Sgd.) H.V. Ellis-Jones

H. V. ELLIS-JONES
Secretary.

Encl.

Exhibit CC

Enclosure to letter R.W. Miller (Holdings) Ltd. to Security Share Services Pty. Ltd. 6th July 1972

HOWARD SMITH LIMITED
269-271 GEORGE STREET
SYDNEY. N.S.W. 2000

DATE: 6.7.72
Allotment
REG N 52981
CERT
ACQUIRED 4,500,000
TRANSF'D
TOTAL 4,500,000
(Paid to
ten (10)
cents per
share)

Plaintiffs
Exhibits
Exhibit CC

Letter
R.W. Miller
(Holdings) Ltd.
to Security
Share Services
(Pty.) Ltd.
6th July 1972
and enclosure
thereto
(continued)

Exhibit CC

Enclosure to
letter R.W.
Miller
(Holdings) Ltd.
to Security
Share Services
Pty. Ltd.
6th July 1972

Plaintiffs
Exhibits
Exhibit DD

Plaintiffs Exhibits
Exhibit DD

Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
dated 14th
July 1972

Minutes of meeting of Directors of
R.W. Miller (Holdings) Ltd. dated
14th July 1972

R.W. MILLER (HOLDINGS) LIMITED

MINUTES OF MEETING OF DIRECTORS OF R.W. MILLER
(HOLDINGS) LIMITED HELD IN THE BOARD ROOM,
"SCOTTISH HOUSE", 19 BRIDGE STREET, SYDNEY, AT
10 A.M. ON FRIDAY, JULY 14TH, 1972

PRESENT: Mr. A.N. Taylor Chairman 10
Lady Miller
Mr. E.D. Cameron
Mr. R.I. Nicholl
Mr. K.B. Anderson
Sir Ian Potter Alternate Director
for Sir Peter Abeles
Mr. A.V. Balhorn Alternate Director
for Mr. P.J. Duncan

IN
ATTENDANCE: Mr. L.D. Koch General Manager
Mr. H.V. Ellis- Secretary 20
Jones
Mr. W.A. Conway Legal Officer
Mr. J.L. Aston Barkell & Peacock
Miss M.J. Hill

COMMENCEMENT
OF MEETING: Speaking on behalf of all Board
members, the Chairman welcomed Sir
Ian Potter to the meeting. Sir Ian
Potter tabled his consent to act as
Alternate Director for Sir Peter Abeles.

The Chairman advised the Board that
Mr. W.A. Conway and Mr. J.L. Aston 30
were present at the meeting at his
invitation and that Mr. L.D. Koch,
General Manager, was also present by
invitation in accordance with the
usual custom.

REPORT BY
CHAIRMAN ON
INITIATION &
PROGRESS OF
LITIGATION: The Chairman reported that on Friday
last, 7th inst., the Secretary had
received a telephone call from Mr.
Emmott of Dawson Waldron, Solicitors,
advising that Mr. Justice Lee had 40
that afternoon made a series of inter-
locutory injunctions against the

Company, its Directors, Howard Smith Limited and Security Share Services Pty. Ltd.

Plaintiffs
Exhibits
Exhibit DD

—
Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
dated 14th
July 1972

The effect of the orders was to freeze the position existing as at the date the orders were made insofar as the share issue to Howard Smith Ltd. was concerned.

10

On Saturday, 8th inst., a copy of the orders made by Mr. Justice Lee, a summons returnable for Wednesday, 12th inst., and two supporting affidavits, one by the General Secretary of Ampol Petroleum Limited and the other by Mr. E.D. Cameron, were served on the Chairman and a number of the Directors.

20

On Monday, 10th inst., copies of these documents were formally served on the Company by being handed to the Secretary and Mr. A.V. Balhorn was also similarly served on that day.

30

The Chairman then was advised by Mr. W.A. Conway that a firm of solicitors and senior and junior counsel should be retained at once and, acting on this advice, the Chairman had authorised the issue of instructions to W.P. McElhone & Co., Solicitors, and also to Mr. D.L. Mahoney, Q.C., with Mr. A.J. Rogers as his junior.

The Directors of the Company named as Defendants with the exception of Sir Peter Abeles, Lady Miller and Mr.E.D. Cameron, also desired representation by the same solicitors and counsel.

40

Lady Miller had also requested that she be represented by the Company's solicitors and counsel and accordingly the appropriate form of Appearance was filed in the Court by Messrs. W.P. McElhone & Co. on 11th inst.. However, late that afternoon at a conference with the solicitors and

Plaintiffs
Exhibits
Exhibit DD

Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
dated 14th
July 1972
(continued)

senior and junior counsel, senior counsel had indicated that he would prefer that the Company's solicitors and counsel should not represent either Lady Miller or Mr. E.D.Cameron.

The matter was heard before Mr. Justice Jenkyn on 12th inst. and both sides had indicated that they desired the matter to be stood over to come on before Mr. Justice Street on Tuesday, 10 18th inst.. The injunctions were not continued but certain undertakings were given to the Court by various parties.

The Chairman also advised that it was not anticipated that the matter would be finally disposed of on 18th inst. but rather that the Judge would fix a time and date for the hearing.

A motion that the Board should ratify 20 the Chairman's action in authorising the retaining of the solicitors and counsel previously mentioned was moved by Mr. R.I. Nicholl, seconded by Mr. A.V. Balhorn and carried unanimously.

UNDERTAKING
TO PAY PROPER
LEGAL EXPENSES
OF DIRECTORS
SEPARATELY
LEGALLY
REPRESENTED:

The Chairman said that, in view of the advice of senior counsel that he would prefer not to appear on behalf of Lady Miller or Mr. E.D. Cameron, 30 the question arose as to the responsibility for the costs of these Directors or any other Director who might choose to be separately legally represented.

The Chairman advised the Board that Mr. Cameron had indicated that he intended to be represented at the hearing and the Chairman further advised that Mr. Cameron desired to 40 make it clear that he would have been content to have been represented by the Company's solicitors and counsel.

Lady Miller then confirmed the Chairman's remark that she also stood in the same position as Mr. Cameron in the matter under discussion.

The Chairman stated that in these circumstances he considered that it was only fair that the proper legal expenses of any Director or Directors named in the proceedings who may be separately legally represented should be met by the Company and that senior counsel had advised that this would be a proper course of action to adopt.

Sir Ian Potter enquired if any other Directors had sought separate legal advice and the Chairman replied that he did not have the knowledge to answer the question but considered it likely that Sir Peter Abeles had consulted Mr. F.W. Millar in the matter.

Mr. E.D. Cameron raised the position of his Alternate Director, Mr. C.J. Watt, and was assured by the Chairman that Mr. Watt would also be covered by the Company's undertaking.

Mr. R.I. Nicholl explained at this point that the matter of separate legal representation was not dictated by personalities but by the desire to avoid possible future embarrassment.

On a motion by Mr. R.I. Nicholl and seconded by Mr. K.B. Anderson, the following resolution was then passed unanimously:

RESOLVED: That, upon the request of the Director or Directors in question, this Company should meet the proper legal expenses of any Director or Directors named in the proceedings presently pending who may be separately legally represented therein.

RATIFICATION
OF CORRES-
PONDENCE ETC.
TO SYDNEY
STOCK
EXCHANGE,
PRESS AND
SHAREHOLDERS:

The Chairman referred Board members to folders in their possession containing copies of telex messages and correspondence which had passed between the Company and Sydney Stock Exchange, copies of certain press releases and a copy of a circular to shareholders to which was attached an advertisement

10

20

30

40

Plaintiffs
Exhibits
Exhibit DD

Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
dated 14th
July 1972
(continued)

which had appeared in the "Australian Financial Review", all having been issued since the conclusion of the last Board Meeting.

The Chairman then sought ratification by the Board for his action in inserting the advertisement in the "Australian Financial Review" and an appropriate motion was moved by Mr. K.B. Anderson and seconded by Mr. A.V. Balhorn. 10

Sir Ian Potter asked the reason for inserting the advertisement in the "Australian Financial Review" and was advised by the Chairman that a sub-committee had been formed to frame a reply to the Stock Exchange and it had been decided to use this media to fully inform the Company's shareholders as quickly as possible and reprints of the advertisement had also been mailed to shareholders. 20

Mr. Conway commented that the letter from Howard Smith Ltd. was a lengthy letter and, as not every shareholder would read the "Australian Financial Review", the advertisement containing the full text of the letter had been mailed to all shareholders.

Mr. A.V. Balhorn commended the Chairman on the advertisement as he considered it to be a straightforward statement of facts and, in agreeing with Mr. Balhorn's comment, Mr. E.D. Cameron stated that he was prepared to ratify the Chairman's action. 30

The motion was then passed without dissent with Sir Ian Potter abstaining from voting on the grounds that he was not present at the last Board Meeting. 40

CONSIDERATION
OF DRAFT
REPLY TO
STOCK
EXCHANGE:

The Board considered a copy of a letter dated July 12th, 1972, addressed by The Sydney Stock Exchange Limited to the Company and a proposed reply by the Company prepared in draft form.

The Chairman asked a member to move that the reply as drafted be sent to the Sydney Stock Exchange to enable the Board to discuss the matter and this motion was moved by Lady Miller and seconded by Mr. K.B. Anderson.

10 Sir Ian Potter said that he would prefer the statement in the final paragraph of the draft letter that 'in the event of the share issue being upheld, if the Exchange so requires, the Company would be prepared to consider calling an Extraordinary General Meeting of shareholders for the purpose of considering the matter' should be changed to convey a definite assurance that the Company would, in fact, call the meeting.

20 In reply to Sir Ian, Mr. W.A. Conway stated that the only problem was the nature of the matter in endeavouring to answer the Stock Exchange without pointing out that it was an impossibility to meet their requirements in the present situation.

30 Mr. Conway pointed out that, if the Company lost the Court action, the necessity for calling the meeting did not arise or on the other hand, if the Company won the Court action, it would not matter if the shareholders expressed disapproval as the shareholders' disapproval could not affect the Board's decision.

40 Sir Ian Potter pointed out to the Board his intimate knowledge of the Stock Exchange rules and regulations having, as he said, helped to frame most of them and suggested that, if the Board did not intend to call the required meeting, it should clearly say so.

Mr. Conway remarked that the last position he would like to see would

Plaintiffs
Exhibits
Exhibit DD

Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
dated 14th
July 1972
(continued)

be the Board evading the matter and Sir Ian Potter commented that, if the Board was subject to any criticism, it should face the shareholders.

Mr. E.D. Cameron stated that the question as to whether Howard Smith Limited could vote at such a meeting was a matter for legal determination and Mr. R.I. Nicholl stated that the question of any breach of law would be considered by the Equity Court. 10

Sir Ian Potter finally commented that the Company had made a contract with The Stock Exchange under which the Company was precluded from making an issue of its shares in excess of 10% of issued capital, other than to its existing shareholders, without the approval of its shareholders in general meeting. 20

It was then resolved unanimously that the draft letter as tabled should be sent to the Stock Exchange with the proviso that the following paragraph should be substituted for the final paragraph appearing in the draft letter:

"However, in the event of the issue being upheld, and if your Committee so requires, then we would be prepared to convene an Extraordinary General Meeting of shareholders for the purpose of seeking approval by the shareholders of the Board's action in making the issue." 30

RATIFICATION
OF CORRES-
PONDENCE ETC.:

Mr. E.D. Cameron raised the point that, when dealing with this item earlier in the meeting, the Chairman had only sought ratification of his action in inserting the advertisement in the "Australian Financial Review" and that the question of ratifying other correspondence had not been dealt with. Upon Mr. Cameron's suggestion that the Chairman's and Secretary's actions in these matters 40

should also be ratified, a motion to this effect was moved by Mr. R.I. Nicholl and seconded by Mr. K.B. Anderson.

Mr. E.D. Cameron stated that, whilst he was prepared to vote for the requested ratification, he considered that the statements should not have been made without the Board's approval.

10

Mr. Cameron quoted the statement made in the Company's letter dated July 7th 1972, to The Sydney Stock Exchange Limited wherein it was said that all Board Members had been given full right to state their views and said that this did not apply in the case of Sir Peter Abeles. Mr. Cameron said that he would like his remarks on this matter recorded in the Minutes.

20

Sir Ian Potter enquired whether it was intended in future to consult Board members in matters of this area and the Chairman replied that, in the instances under review, speed was essential and this had dictated the actions taken.

The Chairman suggested to avoid Board Meetings being called at short notice to consider urgent matters of this nature that a sub-committee be formed.

30

Sir Ian Potter said that he was trying to ascertain his duties as, in his extensive experience, it was the first time that matters of this nature had been decided upon without reference to the Board.

It was then agreed that Lady Miller and Mr. E.D. Cameron, with Mr. F.M. Murphy as the Chairman's Alternate, and such other Directors as may be readily available could act as a Committee in matters of the nature

40.

Plaintiffs
Exhibits
Exhibit DD
—
Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
dated 14th
July 1972
(continued)

1330.

referred to above, with Mr. W.A. Conway and Mr. J. Aston tendering any legal advice required.

HOWARD SMITH
LTD. TAKE-
OVER OFFER:

In reply to a question from Mr. Cameron, the Chairman said that the formal notice of take-over scheme had not yet been served on the Company by Howard Smith Limited.

Mr. Cameron asked whether the Board would have 28 days after service in which to consider the offer and Mr. Conway gave advice on this aspect. 10

Mr. Cameron then enquired whether the Board could legally act on the take-over offer by Howard Smith Limited in view of the current legal proceedings and was advised by Mr. Conway that Counsel's opinion would be sought on this aspect of the matter. 20

OTHER
BUSINESS:

Mr. E.D. Cameron asked Mr. L.D. Koch to repeat the summary of the Group's short term borrowings given to the Board at the last meeting.

At this point Sir Ian Potter declared his interest in the matter under discussion as Chairman of Directors of Tricontinental Corporation Limited and offered to leave the Board Room whilst the matter was discussed. 30

Mr. Koch then sought legal advice saying that in his opinion he could see no objection to Sir Ian Potter hearing the financial summary given at the Board Meeting held on July 6th, 1972.

After conferring with Mr. Conway, the Chairman said that it would not be necessary for Sir Ian to leave the Meeting. 40

Mr. Koch then stated that the position

given to the Board on July 6th, 1972, was that, although payment of overdue amounts had been made to the Commonwealth of Australia on June 30th, 1972, the Group's position in relation to short term borrowings was grave, if not critical.

Mr. Koch then gave the following figures on short term borrowings:

Plaintiffs
Exhibits
Exhibit DD

Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
dated 14th
July 1972
(continued)

	<u>(Millions)</u>
Due to Tricontinental Corporation Limited	\$4.75
Due to Bank of New South Wales	4.20
Other short term borrowings	1.79
	<hr/> \$10.74

Mr. Koch reported that the advances from Tricontinental Corporation Ltd. fell due for payment within the next 12 months and that the advance from the Bank of New South Wales was due for repayment on June 30th, 1973. Mr. Koch further reported that all of the Group's securities were fully taken up with the result that there was no further security available for further borrowing and also that the loan of U.S. \$8.8-million to be received from Hambros Bank Limited was fully committed.

Mr. E.D. Cameron enquired if the loan of U.S. \$8.8-million was to be received on handover of M.T. "Robert Miller" and Mr. Koch replied in the affirmative, saying that, whilst handover was due in March, 1973, the delivery of the vessel was expected in June, 1973.

Sir Ian Potter remarked that arrangements would have to be made to extend bridging facilities.

Mr. R.I. Nicholl asked Mr. Koch if the

Plaintiffs
Exhibits
Exhibit DD

Minutes of
Meeting of
Directors of
R.W. Miller
(Holdings) Ltd.
dated 14th
July 1972
(continued)

borrowings quoted included any finance for future expansion, e.g. tavern developments. Mr. Koch replied in the negative and the Chairman added that the Group may have to use leasing for tavern development, although Tooheys Ltd. may be a possibility for finance. Mr. Koch remarked that Tooheys had not provided finance to the Group in 10 the past and could not be relied upon to do so in the future. Sir Ian Potter asked if the Group was committed in this field, saying that, if not, the finance would not be required if the development was not proceeded with.

The Chairman replied that the lack of finance was restricting the Group's expansion and Mr. E.D. Cameron said 20 that in fact hotels had been sold to provide finance.

CLOSE OF
MEETING:

In saying that the date of the next Board Meeting had been fixed for 10 a.m. on Thursday, July 27th, 1972, at a previous Board Meeting, the Chairman said that it was likely that it would be necessary to call a Board Meeting before that date.

There being no further business to be transacted, the Meeting was declared closed by the Chairman at 11.10 a.m.

CONFIRMED:

(Sgd.) A.N. Taylor

CHAIRMAN.

Plaintiffs Exhibits
Exhibit EE

Plaintiffs
Exhibits
Exhibit EE

Letter The Sydney Stock Exchange Ltd. to R.W. Miller (Holdings) Ltd. dated 12th July 1972. Draft suggested reply thereto and reply thereto dated 12th July 1972 and 14th July 1972

Letter The Sydney Stock Exchange Ltd. to R.W. Miller (Holdings) Ltd. dated 12th July 1972. Draft suggested reply thereto and the reply thereto dated 12th July 1972 and 14th July 1972

THE SYDNEY STOCK EXCHANGE LIMITED

20 O'Connell Street, Sydney, N.S.W. 2000

12th July, 1972

10 The Secretary,
R.W. Miller Holdings Limited,
19 Bridge Street,
SYDNEY. 2000.

Attention: Mr. H. Ellis Jones, Company Secretary.

Dear Sir,

I refer to letters of 7th July, 1972, from your Chairman and 11th July, 1972, under your signature, which were considered by my Committee.

The committee considered that the Exchange's request of 7th July, 1972 -

20 "You are requested to advise the Exchange as to your Board's intention in respect of the issue being approved by your shareholders"

has not been satisfactorily answered. The Committee noted that Australian Associated Stock Exchanges Listing Requirement 3.H.11(a) and (b) specifically requires approval of shareholders to an issue of shares in excess of 10% of the issued capital of the Company or to an issue of shares during the period of a takeover offer.

30 The Exchange would be pleased to receive your reply.

Yours faithfully,

(Signed) G.W. Beames

G.W. Beames
Manager - Companies.

Plaintiffs
Exhibits
Exhibit EE

Plaintiffs Exhibits
Exhibit EE

Draft suggested
reply to Letter
from The Sydney
Stock Exchange
Ltd. undated

Draft suggested reply to Letter from
The Sydney Stock Exchange Ltd. undated

SUGGESTED DRAFT OF REPLY TO SYDNEY
STOCK EXCHANGE LETTER OF 12TH JULY

We acknowledge receipt of your letter of 12th instant and note the contents thereof. As you are aware, the question of the validity of the issue to Howard Smith Limited is at the moment the subject of proceedings in the Equity Division of the Supreme Court and is, therefore, sub judice. In the event of the issue being set aside then there would remain no question to be put to a general meeting of shareholders. However, in the event of the issue being upheld, and if your Exchange so requires, then we would be prepared to consider calling an Extraordinary General Meeting of shareholders for the purpose of considering the matter.

10

Reply by R.W.
Miller
(Holdings) Ltd.
to letter from
The Sydney
Stock Exchange
Ltd. 11th July
1972

Reply by R.W. Miller (Holdings) Ltd.
to letter from The Sydney Stock
Exchange Ltd. dated 14th July 1972

20

R.W. MILLER (HOLDINGS) LIMITED

Head Office: Scottish House, 19 Bridge Street,
Sydney 2000

14 July 1972

G.W. Beames Esq.,
Manager - Companies,
The Sydney Stock Exchange Limited,
20 O'Connell Street,
SYDNEY. N.S.W. 2000

30

Dear Sir,

We acknowledge receipt of your letter of 12th instant and note the contents thereof.

As you are aware, the question of the validity of the issue to Howard Smith Limited is at the moment the subject of proceedings in the Equity Division of the Supreme Court and is, therefore, sub judice.

In the event of the issue being set aside

40

then there would remain no question to be put to a general meeting of shareholders.

However, in the event of the issue being upheld, and if your Committee so requires, then we would be prepared to convene an Extraordinary General Meeting of shareholders for the purpose of seeking approval by the shareholders of the Board's action in making the issue.

Plaintiffs
Exhibits
Exhibit EE

Reply by
R.W. Miller
(Holdings) Ltd.
to letter from
The Sydney
Stock Exchange
Ltd.
14th July 1972
(continued)

10

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

(Sgd.) H.V. Ellis-Jones

Secretary

Plaintiffs Exhibits
Exhibit FF

Plaintiffs
Exhibits
Exhibit FF

Letter Howard Smith Ltd. to The Sydney Stock Exchange Ltd. dated 7th July 1972, the reply thereto and Press Release

HOWARD SMITH LIMITED

7th July 1972

Letter Howard
Smith Ltd. to
The Sydney
Stock Exchange
Ltd. dated 7th
July 1972, the
reply thereto
and Press
Release

20

The Chairman,
Sydney Stock Exchange Limited,
SYDNEY.

Dear Sir,

We refer to the Notice posted at the Sydney Stock Exchange today advising that trading in this Company's shares had been suspended "pending clarification of the current situation".

30

While we do not concede the validity of the purported suspension, it is not the purpose of this letter to canvass that issue. The first point of immediate concern to this Company is the plain inference to which the wording of the Notice gives rise, that this Company has in some way breached the rules or regulations of the Exchange. This inference ought to be dispelled, because, as you must be well aware, it is both incorrect and damaging, particularly in the case of a Public Company of our seniority. In these circumstances, we request that as a matter of urgency you should,

Plaintiffs
Exhibits
Exhibit FF

Letter Howard
Smith Ltd. to
The Sydney
Stock Exchange
Ltd. dated 7th
July 1972, the
reply thereto
and Press
Release
(continued)

on behalf of Sydney Stock Exchange Limited, issue a public statement advising that this Company is not in breach of any rule or regulation of the Exchange in connection with yesterday's allotment of 4,500,000 shares in R.W. Miller (Holdings) Limited.

We have one further request to make at this stage: we ask that your Committee review, as a matter of extreme urgency, its decision to suspend trading in our shares. It seems that the legality or otherwise of the allotment will be tested in legal proceedings already to be commenced, if not already commenced, by Ampol. We submit that neither the public interest nor the interests of Members of this Company will be served by any further continuation of the suspension, pending the outcome of legal proceedings. On the contrary, the manifest inconvenience involved in the suspension of trading in this Company's shares for any length of time is so obvious as to require no elaboration. 10

Your early attention to the matter raised in this letter would be appreciated. 20

In view of the great importance of the issues to which this suspension gives rise, we are taking the course of making this letter public.

Yours faithfully,
for HOWARD SMITH LIMITED

(Sgd.) W. Howard-Smith

(W. Howard-Smith)
CHAIRMAN OF DIRECTORS.

Plaintiffs
Exhibits
Exhibit FF

Reply of The
Sydney Stock
Exchange Ltd.
to letter from
Howard Smith
Ltd. 7th July
1972

Exhibit FF
(continued)

Copy of The Sydney Stock Exchange Ltd. reply to Letter from Howard Smith Ltd. dated 7th July 1972

THE SYDNEY STOCK EXCHANGE LIMITED
20 O'Connell Street, Sydney, N.S.W. 2000
7th July, 1972

The Secretary,
Howard Smith Limited,
269-271 George Street,
SYDNEY. 2000.

Attention: Mr. Maxwell

1337.

Dear Sir,

As confirmed to you by telephone this morning the Committee of The Sydney Stock Exchange Limited has suspended trading in your Company's securities pending clarification of the current situation.

Yours faithfully,

(Sgd.) G.W. Beames

G.W. Beames
Manager - Companies.

10 GWB:MJT

Exhibit FF
(continued)

Press Release by Howard Smith Ltd.
dated 7th July 1972

HOWARD SMITH LIMITED

7th July, 1972.

PRESS RELEASE.

20

The Directors of Howard Smith Limited consider that the Committee of the Sydney Stock Exchange in suspending the trading in this company's shares has acted without regard to all the facts concerning the allotment of 4,500,000 shares by R.W. Miller (Holdings) Limited to this company.

The statement issued by Ampol Petroleum Limited and Bulkships Limited about their intentions to control the future operations of R.W. Miller (Holdings) and the further announcement that both those companies would not accept the Howard Smith offer had the effect that all the minority shareholders in R.W. Miller (Holdings) were in a position where their interests could be seriously prejudiced and the inference was obvious that they were being told there was nothing they could do but accept the offer which was being made by Ampol Petroleum Limited.

The Directors of Howard Smith Limited were interested to see what reaction the Committee of the Stock Exchange would have to the significance of the statement made by Ampol and Bulkships. So far as they are aware, there was no reaction, not even a

Plaintiffs
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Exhibit FF

Reply of The
Sydney Stock
Exchange Ltd.
to letter from
Howard Smith
Ltd.
7th July 1972
(continued)

Exhibit FF

Press Release
by Howard Smith
Ltd. dated
7th July 1972

Plaintiffs
Exhibits
Exhibit FF

Press Release
by Howard Smith
Ltd. dated
7th July 1972
(continued)

protest, about the position in which the minority shareholders of R.W. Miller (Holdings) had been placed.

The allotment of shares to Howard Smith will enable this company to proceed with the offer it had intended to make and thereby at least give the minority shareholders in R.W. Miller (Holdings) the opportunity of selling their shares at a better price than the one Ampol Petroleum and Bulkships were apparently trying to induce them to accept.

10

There has been no statement from the Committee of the Stock Exchange about this change in the position of the minority shareholders. Instead the Committee has suspended trading in the shares of both R.W. Miller (Holdings) and this company.

This company is one of the oldest listed companies in Australia and so far as the directors are aware there has been no breach of Stock Exchange requirements by Howard Smith. Nor have any of the events of yesterday given rise to any problems of a nature which would justify suspending the trading in Howard Smith shares.

20

Attached is a copy of a letter forwarded today to the Chairman of the Sydney Stock Exchange.

Plaintiffs
Exhibits
Exhibit GG

Transcript from
the shorthand
notes by the
witness Mabel
Janet Hill
taken at
meeting on
6th July 1972

Plaintiffs Exhibits

Exhibit GG

Transcript from the shorthand notes by the witness Mabel Janet Hill taken at meeting on 6th July 1972

R.W. MILLER (HOLDINGS) LTD.

MEETING OF DIRECTORS HELD ON THURSDAY, JULY 6TH,
1972

30

PRESENT:

A.N. Taylor
Lady Miller
K.B. Anderson
R.I. Nicholl
A.V. Balhorn
E.D. Cameron
Sir Peter Abeles

IN ATTENDANCE:

L.D. Koch
 H.V. Ellis-Jones
 J. Aston
 W.A. Conway
 Miss M.J. Hill

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 Exhibit GG

 Transcript from
 the shorthand
 notes by the
 witness Mabel
 Janet Hill
 taken at
 meeting on
 6th July 1972
 (continued)

OPENING OF MEETING:

(AS CHAIRMAN AS READING FROM TYPED NOTES (SEE
 ATTACHED) I DID NOT ATTEMPT TO TAKE NOTES -
 REFER PARAGRAPHS 1, 2 & 3)

10 "MR. ANDERSON ASKED THAT MR. W.A. CONWAY SPEAK
 ON HIS BEHALF AS HE WAS HIS ALTERNATE AT THE
 TWO MEETINGS TO BE CONFIRMED. MR. W.A. CONWAY
 CONFIRMED THAT THE MINUTES WERE CORRECT."

"SIR PETER MOVED AND SECONDED BY MR. CAMERON
 THAT THE MINUTES WERE CORRECT AND SIGNED BY
 THE CHAIRMAN."

20 "MR. ANDERSON HAS BEEN AWAY AND THERE HAS BEEN
 THE USUAL NUMBER OF SHARE TRANSFERS GOING
 THROUGH AS REPORTED BY H. ELLIS JONES. IT WAS
 FELT THAT THIS PROCEDURE WOULD BE DISCONTINUED
 AT THE MOMENT UNLESS SOME BIG TRANSFER DOES GO
 THROUGH IN THE FUTURE."

(AGAIN MR. TAYLOR READ FROM ATTACHED NOTES -
 PARAGRAPH 4.)

30 "THERE HAS BEEN A DRAMATIC DEVELOPMENT THIS
 MORNING FROM HOWARD SMITH HAND-DELIVERED TO
 ME AND I WOULD LIKE TO READ TO YOU THIS LETTER
 DATED 6 JULY FROM THE CHAIRMAN OF HOWARD
 SMITHS TO MR. A.N. TAYLOR, CHAIRMAN OF
 DIRECTORS OF MILLER HOLDINGS LIMITED."

LETTER READ OUT BY TAYLOR AND THE ACCOMPANYING
 AGREEMENT READ OUT BY W.A. CONWAY. MR. TAYLOR
 APOLOGISED THAT HE DID NOT HAVE COPIES OF
 THESE TO HAND TO THE BOARD BUT IT WAS ONLY
 RECEIVED AT 9.30 THAT MORNING.

40 TAYLOR ADVISED BY MESSRS. CONWAY & ASTON ON A
 QUICK ASSESSMENT OF THE SITUATION THAT THERE
 IS NO PROVISION IN THE COMPANIES ACT WHICH
 PRECLUDES THE BOARD FROM MAKING A -----
 (ANT'S NOTES - REFER PARA. 5)

Plaintiffs
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Transcript from
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6th July 1972
(continued)

CONWAY: I have only one other comment to make. It is necessarily very brief but, in regard to the question of delisting, it is of course anticipated that at some stage it is obvious that this company is going to be taken over. --- We will expect that the company will be delisted. This matter is extremely of importance to shareholders but not so important where there is a take-over offer or conflicting take-over offers before the markets because the parties have come ----- the shareholders: 10 still get their money so that, from the point of view of delisting, the delisting would last only for a short period but in any event I do not think there is any detriment from the delisting. Apart from that, the situation is as you state.

It is up to the Board to consider this situation of the offer from Howard Smith and in my view the Board should enter into it. If it is not in the interests of the shareholders, both minor and major, then the Board should not enter into this arrangement. 20

ASTON: No comment just simply to re-affirm that any decision to accept is a valid exercise to do this and it is completely unchallengeable. It is encumbant upon the Board to consider this matter in the best interests of the shareholders as a whole that this is a proposition which can be entered into without any fear of challenge.

SIR PETER: May I ask the money for this issue.

?: \$2.30

ABELES: I believe that, when the Chairman comes out with statements - with this statement that his asset backing is more than 3.70, as a Board we are agreeing here that we should issue shares at 2.30. We are devaluing the capital and considering an offer to issue shares at a price which is less than what the Board stated and far less than what the Board stated before. Please record all my comments today. 30

TAYLOR: I note your comment. Sir Peter, as a Director of Bulkships Limited and bearing in mind the --- (AGAIN TAYLOR READ FROM NOTES - PARA. 6) 40

ABELES: Well, I most certainly do not accept this because as a Director of this company I have always

declared my interest and I have always voted in favour of advising shareholders ----(COULD NOT HEAR REST OF SENTENCE). I am not disqualifying myself.

TAYLOR: I note that also but as Chairman of this meeting I rule ----- (REFER ATTACHED NOTES)

(HERE I WAS UNABLE TO GET ALL DOWN AS THEY WERE INTERJECTING TOO MUCH)

ABELES: You can only rule on this - you can only--

10 TAYLOR: I am not disqualifying you at all. I --- and you are not entitled to take -----

ABELES: YOU cannot rule on it.

ASTON: I advise that he can. Once an invitation has been tendered to you and -----

ABELES: In view of this I would like to have legal representation because I have the right and I and I want immediate legal representation.

TAYLOR: I cannot see that you any right to have legal representation.

20 ASTON: My view is that the Chairman's decision is binding both in relation to ----- It is not in the Articles and Memorandum of Association.

ABELES: It is not in the Articles of this Company that you can disqualify the Director. I maintain that there is no right to disqualify any Director from voting.

TAYLOR: I feel as Chairman I have this right and I suggest that you might have the right of legal representation. If you wish, seek the legal advice elsewhere.

30 ABELES: Would you kindly adjourn the meeting whilst I telephone.

TAYLOR: No - I propose to go on.

(HOWEVER MEETING WAS ADJOURNED)
(M. HILL OUT OF ROOM PHOTOSTATING
LETTERS ETC.)

Transcript from
the shorthand
notes by the
witness Mabel
Janet Hill
taken at
meeting on
6th July 1972
(continued)

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Transcript from
the shorthand
notes by the
witness Mabel
Janet Hill
taken at
meeting on
6th July 1972
(continued)

(L.D.K. - WHILST SIR PETER WAS OUT OF ROOM -
EXPLAINED THE SITUATION IN WHICH WE WERE IN
REGARDING SHORT TERMS PARTICULARLY IN REGARD TO
SHORT TERM SECURITIES.

M. HILL RETURNED JUST AS L.K. WAS SAYING "WE FEEL
THAT THERE IS A MOST DANGEROUS SITUATION AND FROM
THE POINT OF VIEW OF IT IS ESSENTIAL
THAT ADEQUATE PROVISION BE MADE TO COVER THE
LIABILITIES AS AND WHEN THEY FALL DUE.

TAYLOR: Does anybody wish to make any comment on 10
this situation in view of what the General Manager
has said regarding the dangerous cash liquidity
situation in which we now are in.

CAMERON: Firstly a number of people have said that
we must consider the rights of all shareholders.
I think you are aware over the last few months I
have been very disturbed about the rights of
small but I think the rights over the
minority shareholders against the rights of large 20
shareholders. I am not directing these comments to
the board.

Mention has also been made that we will also be
delisted. The listing requirements are fairly clear
that when we make an issue we should do so by a
special extraordinary meeting. Those listing
requirements are there for a good reason - there to
protect the rights of all the shareholders so that,
if we ignore those listing requirements we are doing
so for a reason perhaps other than for the good of 30
all shareholders. If we did make such a commitment
as is asked for here, we could not do so in the
normal course of events which would be that you put
this up to all shareholders and you would be doing
so, knowing that it would fail because 55% of the
shareholders would vote against it. The present
shareholders could remove all of the members of
the Board by means of a special meeting and could
remove all of us.

(MR. CAMERON THEN ASKED WHAT IS THE MAXIMUM NUMBER
OF DIRECTORS TO WHICH HE WAS ADVISED ?) What is 40
the situation with a shareholder which has partly
paid shares (ADVISED THEY HAVE FULL VOTING RIGHTS).
I cannot agree that we would not be harming the
rights of shareholders if we are delisted - I think
we are. We have our duties which are fairly clear.

I said that we should contact Howard Smith and demand ----- but in doing so I thought the Board had to decide dependent on what Howard Smith did.

Transcript from
the shorthand
notes by the
witness Mabel
Janet Hill
taken at
meeting on
6th July 1972
(continued)

10 When the Board rejected Ampol's offer, we had to decide whether we recommended to shareholders if they accept that offer. If we recommended that we had also the rights to say to shareholders that we did not accept any of the offers and hold on to your shares. Ampol and Bulkships still have the responsibility to act in the best interests of the company and, therefore, all shareholders and I think that they would have to treat these duties very seriously.

20 Now we have this present situation from Howard Smith and the situation contained therein. Yet today we attempt to justify making this placement on the basis that we have these serious financial problems and they are so serious that we should accept it. There is no suggestion of a cash issue to our own shareholders. ----- certain liabilities which we have made arrangements to cover so that we, as a Board, have been in this serious situation for 12 months and have not done anything about a share issue and now we have offer from outside party and we are using this as a justification. Admittedly we could do so at a substantial premium if we thought the company really needed the necessary to survive or to improve its performance over the
30 next few years.

I must repeat that I am concerned that it is at this stage that we are suggesting a share issue to get over our financial problems.

KOCH: ----- negotiations regarding the "Robert Miller" has been committed but there is clause the lender and the consortium have the right to withdraw from their commitment if a change of ownership would occur.

CONWAY: They have said that they have -----

40 ABELES: I have confirmation from Hambros that, in the case of change of ownership, that they would increase loan from the Hambros Bank.

KOCH: May I ask why have we not received this notification

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Transcript from
the shorthand
notes by the
witness Mabel
Janet Hill
taken at
meeting on
6th July 1972
(continued)

ABELES: It is not an official notification in writing but, if the major shareholders are prepared to stand behind it, they are prepared to increase the loan.

TAYLOR: ----- we have written four letters and we have only just got an acknowledgment from Ampol and, Mr. Cameron, I thank you most sincerely for your remarks.

(TELEPHONE - M. HILL ATTENDING)

ASTON: --- that the delisting endangers the position of shareholders but it might be argued that --- Howard Smith very clearly states that --- the situation could arise where ordinary shareholders have no offer on their hands in five minutes. 10

CAMERON: I am aware that Mr. Aston that you arranged for Cooper Bros. to carry out a valuation of the Company which I have read. I do not know how many other members have read it. Based on that report, a take-over offer of such as Howard Smiths, I think serious consideration would have to be given to accepting or recommending that offer. I agree with the Cooper Bros. report which indicates that really the asset backing of this company really is not a major consideration because of the fact that it is quite clear that the future operations of this company are going to be far more profitable than the present operation. --- the offer of 2.50 and 3.00 ---. The alternative would have been to reject the offer but I think the other offer would have been ---- that you recommend to hold on to your shares in view --- 20 30

TAYLOR: Ampol and Bulkships have stated that they would not sell their shares which means that minor shareholders have 2.73? or no alternative.

CAMERON: But they can hold on to their shares. Ampol and Bulkships would have to see that the minor shareholders would have to hold on to their rights. They would have serious responsibility.

TAYLOR: Ampol & Bulkships have refrained from answering in writing the questions posed to them and taking it as it is at the moment we have to consider the position as it is at the moment in spite of the fact that they may do this. Howard 40

Smith have stated their intention although we have not received their official take-over bid and the bid is also in the interests of major shareholders as they have the opportunity of accepting this high bid. ----- making quick capital profit ----- so I feel that the interests of the major shareholders have been considered ----- and it is our duty here to consider all of the shareholders and we are not here for the protection of minor shareholders but all of them, both major and minor.

10

CAMERON: What are the advantages of making a placement outside the company over a placement to our shareholders.

TAYLOR: Because the majority of shares 55% is held by two shareholders which would increase their shareholding.

ABELES: Howard Smith is an additional offer which they have the right to withdraw.

20

ASTON: --- By stature - no-one is permitted to make an offer excluding the right of withdrawal. This is -----

(TELEPHONE)

The expression of a possibility of withdrawal is a statutory obligation.

(M. HILL OUT OF ROOM)

TAYLOR: I would like a member of the Board -----
(REFER NOTES)

This has been done by Mr. K. Anderson and seconded by Mr. R.I. Nicholl.

30

CAMERON: I would like to hear from other members of the Board.

NICHOLL: This possibility of a share issue and share placement has been discussed previously as a method of solving our

(TELEPHONE)

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 where you have two major shareholders together and being aware of the fact that we are in breach of Stock Exchange regulations, I still feel that I would rather face the shareholders having to accept this situation and rather than fade away into the background. I am in favour of this at the moment subject to what is being said.

40

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Transcript from
the shorthand
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witness Mabel
Janet Hill
taken at
meeting on
6th July 1972
(continued)

BALHORN: 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.

LADY MILLER: I am not happy about it at all. I do not like to be delisted.

KOCH: Regarding the thought of being delisted. In view of our position and the reasons for wanting this infusion of capital of money into our organisation, I feel that the Stock Exchange would be very on delisting on these grounds. 10

(sic) CONWAY: It is not certain that the Stock Exchange would delist this company. The Stock Exchange have the discretion and I agree with Mr. Cameron that the Articles spell it out laid and clear but nevertheless the Stock Exchange has a discretion and I have no doubt that before they do this they would seek information from this company. I have no doubt that they would consider any representations which would be made by this company as to why and they would give very serious consideration --- unless the circumstances has been blatantly fraudulent. 20

ASTON: I think it has been mentioned before that this situation has existed for some time and no placement has been made. ----- We do not have any ultimate resolution.

(TELEPHONE)

Motion put to a vote.

LADY MILLER: Want a copy of the letter. 30

ABELES: Did not vote. My legal advice is that the Chairman has not the right to do it and we will challenge it. The Board's action in this respect could be considered as fraudulent. I have been refused a vote.

TAYLOR: I will now sign the agreement and Mr. Anderson will sign with me.

CAMERON: I would imagine that I would like to hear legal opinion on this. I imagine we leave ourselves open now to an injunction being taken out within the next 24 hours. We could find ourselves in a very serious situation. We could go to Court and we will have to. I am concerned about this aspect. 40

TAYLOR: In view of the course taken today, I would like to re-affirm to shareholders that they reject the Ampol bid.

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Exhibits
Exhibit GG

Transcript from
the shorthand
notes by the
witness Mabel
Janet Hill
taken at
meeting on
6th July 1972
(continued)

Exhibit GG
(continued)

Minutes of meeting of the Board of Directors of
R.W. Miller (Holdings) Limited 6th July 1972

MINUTES OF BOARD OF DIRECTORS OF R.W. MILLER
(HOLDINGS) LIMITED HELD AT 19 BRIDGE STREET, SYDNEY,
AT 10.15 AM ON THURSDAY, JULY 6TH, 1972

10

PRESENT: A.N. Taylor Chairman
 Lady Miller
 Sir Peter Abeles
 R.I. Nicholl
 A.V. Balhorn Alternate for P.J.Duncan
 E.D. Cameron
 K.B. Anderson

20

IN L.D. Koch
ATTENDANCE: H.V. Ellis Jones
 J. Aston
 W.A. Conway
 Miss M.J. Hill

30

TAYLOR: I declare this meeting open and thank you all for your attendance. Mr. John Aston of Barkell & Peacock, Solicitors, and the Company's legal officer, Mr. Conway, are present at my invitation. You all have the Agenda in front of you and we will now proceed to the first item therein, namely, the confirmation of the Minutes of the Meetings of Directors held on June 23rd and 30th.

Will somebody please move that I sign the Minutes as a correct record of the proceedings on those occasions?

Moved by Sir Peter and seconded by Mr. Cameron - signed by the Chairman.

We now come to the confirmation of Minutes of Share Transfer Committee Meetings held on 16th and 23rd June and I will ask Mr. Anderson to give details thereof. Mr. Anderson asked that Mr. Conway speak

Plaintiffs
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—
Transcript from
the shorthand
notes by the
Witness Mabel
Janet Hill
taken at
meeting on
6th July 1972
(continued)

on his behalf as he was his Alternate at the two meetings concerned. Mr. Conway confirmed that the Minutes were correct.

As Mr. Anderson had been absent on holidays, it was reported by Mr. Ellis Jones that nothing unusual had been going through by way of share transfers. It was felt that this procedure of share transfer meetings would be discontinued at the moment and a report submitted only when any transfer of an unusual nature occurs.

10

3. The third item listed on your agenda is the consideration of the joint announcement made on June 27th, 1972, by Ampol Petroleum Limited and Bulkships Ltd., my reply thereto and of any further statement which may be made by Howard Smith Ltd. In view of a development which has occurred only this morning I propose to defer this item until we have dealt with this further matter.

There has been a dramatic development this morning from Howard Smith Ltd. when they hand-delivered to me a letter dated July 6th signed by their Chairman and I would now like to read this letter out to you:

20

(QUOTE LETTER)

Mr. Taylor then apologised to the Board for the fact that they had not received copies of the above letter but it had only been received by him at 9.30 a.m. that morning. Mr. Taylor then asked Mr. Conway to read out to the Directors the agreement which accompanied the above letter.

Mr. Taylor stated that he had been advised by both Mr. Conway and Mr. Aston that there is no provision in the Companies Act which precludes the Board from making such an allotment of shares but that the allotment would constitute a breach of the Stock Exchange regulations which the Exchange, of course, has power to waive but which, if not waived, could result in the suspension or delisted of this company for some period. Mr. Taylor also advised that, under the law, the Directors are required to use their powers bona fide for the benefit of the company which means the shareholders as a whole, that they cannot justify the exercise of their powers for the benefit of themselves or some only of the shareholders. Both Messrs. Conway & Aston

30

40

are present at this meeting so that if any legal questions arise, we may have the benefit of their advices.

Transcript from
the shorthand
notes by the
Witness Mabel
Janet Hill
taken at
meeting on
6th July 1972
(continued)

10 CONWAY: I have only one other comment to make and it is necessarily very brief but, in regard to the question of delisting, it is of course anticipated that this company sooner or later will be taken over and if we accept this offer there is the possibility of the company being delisted. This matter is of extreme importance to shareholders.

20 (Refer W.A. Conway - he referred to the fact that, if the company is delisted, the shareholders will still get their money as the delisting would only be for a short period but in any event he did not think there would be any detriment from the delisting. It was up to the Board to consider this situation of the offer from Howard Smith Ltd. and in his view the Board should enter into it but, if the Board considers that it is not in the best interests of both the minority and majority shareholders, then the Board should reject the offer.

30 Mr. Aston then stated that he had no comment to make except to say that should the Board decide to accept this offer it would be a valid decision and he considered it was completely unchallengable. It is encumbant upon the Board to consider this matter in the best interests of the shareholders as a whole and he considered that this is a proposition which could be entered into without any fear of challenge.

SIR PETER: May I ask the amount involved in this issue

MR. TAYLOR: £2.30

40 SIR PETER: I believe that the Chairman has previously made statements to the effect that the asset backing of this company is more than £3.70, and yet as a Board we are agreeing here today that we should issue shares at £2.30. We are dealing with the capital and considering an offer to issue shares at a price which is less than what the Board stated and far less than what the Board stated before.

TAYLOR: I note your comments.

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Transcript from
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Janet Hill
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meeting on
6th July 1972
(continued)

SIR PETER: I want my remarks recorded in today's minutes.

TAYLOR: Sir Peter, as a Director of Bulkships Limited and bearing in mind the joint announcement recently made by that Company and Ampol Petroleum Limited as to their joint intentions in regard to this company, it appears to me that there arises a clear conflict between your duty as a Director of this company and your interest in Bulkships Ltd. In such circumstances, I invite you to disqualify yourself from taking part in the discussion of this letter and agreement and in voting in respect thereof.

10

SIR PETER: Well, I most certainly did not expect this because as a Director of this Company I have always declared my interests and I have always voted in favour of advising shareholders (?) I am not disqualifying myself.

TAYLOR: I note that also. However, as Chairman I rule that there is a conflict of interest and duty and that you are not entitled to take part in the debate or to vote on this subject.

20

Sir Peter objected to this but Mr. Taylor did not agree. Mr. Aston made the comment that he considered that Mr. Taylor would rightly debar Sir Peter from taking part in the debate and voting as, once the invitation had been tendered and refused, it was within the Chairman's power to disqualify Sir Peter.

SIR PETER: In view of this, I would like to have legal representation because I have that right and I want legal representation immediately.

30

TAYLOR: I cannot see that you have any right to have legal representation

A brief argument then took place between Mr. Aston and Sir Peter regarding rights as stated in the Memorandum & Articles of Association in which Sir Peter insisted that "it is not in the Articles of this company that you can disqualify a Director. I maintain that there is no right to disqualification of any Director from voting."

40

TAYLOR: I feel that, as Chairman, I have this right and suggest that you can have the right of

legal representation. If you wish to do so, you may seek legal advice elsewhere.

SIR PETER: Would you kindly adjourn the meeting whilst I telephone.

(OUT OF ROOM WHILST MAKING COPIES OF HOWARD SMITH LETTER)

L.D.K. ADVISED BOARD OF FINANCE SITUATION.

(CAME BACK INTO ROOM WHEN MR. CAMERON WAS SPEAKING ALONG THE LINES OF -

10 We must consider the rights of all shareholders. I think you are aware that over the past few months I have been very disturbed over the rights of small shareholders but I think we should consider all shareholders - both minority and large. Mention has also been made that we could be delisted. Listing requirements are very clear and, should an issue be made we should do so by a special extraordinary meeting. These listing requirements are therefor a good reason - they are to protect the

20 rights of all shareholders so that, if we ignore those listing requirements, we are doing so for a reason - perhaps other than for the good of all shareholders. If we did make such a commitment such as is asked here we should do so in the normal course of events which could be that you put this up to all shareholders and you would be doing so knowing that it would fail because 55% of the shareholders would vote against it. The present shareholders could remove all of the members of

30 this Board by means of a special meeting and all of us could be removed. May I ask what is the maximum number of directors - Mr. Cameron was advised "7". What is the situation with a shareholder which has partly paid shares - They have full voting rights. I cannot agree that we would not be harming the rights of shareholders if we are delisted - I think we are.

40 Mr. Cameron then went on to say that we had rejected Ampols offer and we now have this present offer from Howard Smiths to consider and we also have the right to say to shareholders that we do not accept any of the offers but to hold on to their shares. Ampol and Bulkships still have the responsibility to act in the best interests of

Plaintiffs
Exhibits
Exhibit GG

Transcript from
the shorthand
notes by the
witness Mabel
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taken at
meeting on
6th July 1972
(continued)

Plaintiffs
Exhibits
Exhibit GG

—
Transcript from
the shorthand
notes by the
witness Mabel
Janet Hill
taken at
meeting on
6th July 1972
(continued)

the company and, therefore, all shareholders and I think that they would have to treat these duties very seriously.

Now we have this present situation from Howard Smith and the situation arising from their offer. Yet today we attempt to justify making this placement on the basis that we have these serious financial problems and they are so serious that we should accept it. There is no suggestion of an issue to our own shareholders. We have had certain liabilities which we have made arrangements to cover so that we, as a Board, have had this serious situation for 12 months and have not done anything before about a share issue and now that we have an offer from an outside party we are using it as a justification. Admittedly we could do so at a substantial premium if we thought the company really needed it to survive or to improve its performance over the next few years. 10

I must repeat that at this stage I am concerned that we are suggesting an issue to get over our financial problems. 20

L.D. KOCH referred to negotiations regarding the "ROBERT MILLER" and referred to the fact that the consortium has the right to withdraw from their commitment if a change of ownership.

SIR PETER: I have confirmation from Hambros that in the case of change of ownership, they would increase the loan.

KOCH: May I ask why we have not received this notification. 30

SIR PETER: It is not an official notification in writing but I have been told that, if the major shareholders are prepared to stand behind it, they are prepared to increase the loan.

MR. TAYLOR then referred to the fact that he had written letters to Ampol and had only just received an acknowledgement and thanked Mr. Cameron for his comments on this situation.

(TELEPHONE RANG JUST AT TIME WHEN MR. ASTON WAS MAKING SOME COMMENT ON THE HOWARD SMITH OFFER) 40

10 CAMERON: I am aware that you have arranged for
Cooper Bros. to carry out a valuation of the company's
assets which I have read but I do not know how many
other members have read it. Based on that report,
a take-over offer such as Howard Smith, I think that
serious consideration would have to be given to
accepting or recommending that offer. I agree with
Cooper Bros. report which indicates that really the
asset backing of this company is not a major
consideration because it is quite clear that the
future operations of this company will be far more
profitable than the present operations. The alterna-
tive would be to reject the offer and recommend that
we hold on to the shares.

TAYLOR: Ampol & Bulkships have stated that they
would not sell their shares which means that the
minority shareholders would have to accept \$2.37.

(sic)

20 CAMERON: But they could hold on to their shares and
therefore hold on to their rights. Ampol and
Bulkships would have a serious responsibility.

30 MR. TAYLOR referred to the fact that Ampol and
Bulkships have refrained from answering the
questions posed to them and said that we have to
consider the position as it is at the moment.
Howard Smith have stated their intention although
we have not received their official takeover bid
and the bid is also in the interests of major
shareholders, as well as minority shareholders,
as they have the opportunity of accepting this high
bid and making a substantial profit so I feel that
the interests of major shareholders have been
considered and it is our duty here to consider all
of the shareholders and we are not here for the
protection of minor shareholders but all of them,
both major and minor.

CAMERON: What are the advantages of making a
placement outside the company other than a place-
ment to our shareholders.

40 TAYLOR: Because a 55% majority of our shares is
held by two shareholders which would increase
their shareholding.

SIR PETER referred to the fact that the Howard Smith
offer is a conditional one which they have the right
to withdraw.

Plaintiffs
Exhibits
Exhibit GG

Transcript from
the shorthand
notes by the
witness Mabel
Janet Hill
taken at
meeting on
6th July 1972
(continued)

ASTON stated that no-one is permitted to make an offer excluding the right of withdrawal. The expression of a possibility of withdrawal is a statutory obligation.

(PHONE -----)

TAYLOR: Asked that a member of the board move that the form of agreement with Howard Smith Ltd. be entered into and executed under the Company's seal and the 4,500,000 shares issued to Howard Smith Ltd. on the terms thereof on receipt of the appropriate application and cheque. 10

Messrs. K.B. Anderson and R.I. Nicholl.

CAMERON: I would like to hear from other members of the Board.

NICHOLL: This possibility of a share issue and share placement has been discussed previously as a method of solving our ---

(PHONE -----)

--- make an offer to your shareholders at \$2.30 per share ----- and being aware of the fact that we are in breach of stock exchange regulations. I still feel that I would rather face the shareholders accepting this present situation rather than fade away into the background. I am in favour of this at the moment. 20

BALHORN: I endorse Mr. Nicholl's remarks. I would be a little disturbed on the ethical side of this but Mr. Duncan said see what the Board generally thinks on this and go along with what they think.

LADY MILLER: I am not happy about it at all. I do not like the thought of being delisted. 30

KOCH: Regarding the thought of being delisted, in view of our present position and the reasons for wanting this infusion of capital of money into our organisation, I feel that the Stock Exchange would take a fair approach to the company being delisted.

CONWAY: It is not certain yet that the Stock Exchange would delist this company. The Stock Exchange has that discretion and I agree with Mr. Cameron that the Articles spell it out loud and 40

clear but nevertheless the Stock Exchange has the discretion and I have no doubt that, before they do this, they would seek information from us. I have no doubt that they would consider any representations which would be made by this company as to why we are taking this action and they would give serious consideration to the matter unless, of course, the circumstances prove to be blatantly fraudulent.

Transcript from
the shorthand
notes by the
witness Mabel
Janet Hill
taken at
meeting on
6th July 1972
(continued)

PHONE -----

10 Voting was taking place on return -----

SIR PETER: I did not vote. My legal advice is that the Chairman has not the right to do this and we will challenge it. The Board's action in this respect could be considered as fraudulent. I have been refused a vote.

TAYLOR: The voting has been "Aye - 4 and No - 2". I will now sign the agreement and Mr. Anderson will sign with me.

20 CAMERON: I would like to hear legal opinion on this. I imagine that we leave ourselves open now to an injunction being taken out within the next 24 hours. We could find ourselves in a very serious situation. We could have to go to court and we will all have to. I am concerned about this aspect.

TAYLOR: It has been recorded that you voted against this - You, Lady Miller and Sir Peter (PLEASE NOTE THAT MR. TAYLOR REFERRED TO SIR PETER VOTING NO WHEN HE IN FACT DID NOT HAVE THE RIGHT TO VOTE)

30 In view of the course taken today, I think we should re-affirm to shareholders that they reject the Ampol bid.

(M. HILL OUT OF ROOM FOR REST OF MEETING)

Plaintiffs
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Plaintiffs Exhibits
Exhibit HH

Transcript from
the shorthand
notes by the
witness Mabel
Janet Hill
(prepared
overnight)
7th September
1972

Transcript from the shorthand notes
by the witness Mabel Janet Hill
(prepared overnight) 7th September, 1972

MINUTES OF BOARD MEETING HELD AT 10 AM ON THURSDAY,
JULY 6th, 1972

PRESENT:

A.N.T.
LADY MILLER
K.B.A.
R.I.N.
A.V.B.
E.D.C.
SIR PETER

10

IN ATTENDANCE:

H.E.J.
L.D.K.
J. ASTON
M.H.
W.A.C.

OPENING OF MEETING: -----

1. Mr. A. Asked that Mr. WAC speak on his behalf
as he was his alternate at the two meetings to be
confirmed. Mr. W.A.C. confirmed that the minutes
were correct.

20

Sir P moved and seconded by Mr. E.C. that the
minutes were correct and signed by the Chairman.

2. Mr. A. has been away and there has been the
usual number of share transfers going through as
reported by Mr. H.E.J. It was felt that this
procedure would be discontinued at the moment unless
some big transfer does go through in the future.

30

3. There has been a dramatic development this
morning from H Smith hand-delivered to me and I
would like to read to you this letter dated 6 July
from the Chairman of H Smith to ANT Chairman of
Directors of Miller Holdings Ltd.

"in which I informed you of my company's intention
to acquire all of the ordinary shares -----"

Letter read out by Taylor and the accompanying agreement read out by Mr. W.A. Conway. Mr. Taylor apologised that he did not have copies of these to hand to the Board but it was only received at 9.30 that morning.

Transcript from
shorthand notes
by the witness
Mabel Janet
Hill
(prepared
overnight)
7th September
1972
(continued)

10 Taylor advised by Messrs C & A "on a quick assessment of the situation that there is no provision in the companies act that precludes the Board from making a ---- (Notes 5) ---- delisting of the company for some period. It is within their to delist is they so desire.

----- that they cannot justify the exercise of their powers for the benefit of themselves or for some only of the shareholders -----

A & C both present -----

20 C. I have only one other comment to make - it is necessarily very brief but, in regard to the question of delisting it is, of course, anticipated that at some stage it is obvious that this company is going to be taken over --- we will expect that the company will be delisted. This matter is extremely of importance to shareholders but not so important where there is a take-over offer or conflicting take-over offers before the markets because the parties have come ----- The shareholders still get their money so that, from the point of view of delisting, the delisting would last only for a short period but, in any event, I do not think there is any detriment from the delisting.

30 Apart from that, the situation is as you said. It is up to the Board to consider this situation of the offer from H Smith and, in my view the Board should enter into it. If it is not in the interests of shareholders both minor and major, then the Board should not enter into this arrangement.

40 ASTON: No comment - just simply to re-affirm that any decision to accept is a valid exercise to do this and it is completely unchallengeable. It is encumbent upon the Board to consider this matter in the best interests of the shareholders as a whole that this is a proposition which can be entered into without any fear of challenge.

SIR A: May I ask the money for this issue.

£2.30

Plaintiffs
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—
Transcript from
the shorthand
notes by the
witness Mabel
Janet Hill
(prepared
overnight)
7th September
1972
(continued)

A. I believe that, when the chairman comes out with statements - with this statement that his asset backing is more than \$3.70 - as a Board we are agreeing here that we should issue shares at 2.30. We are devaluing the capital and considering an offer to issue shares at a price which is less than what the Board stated and far less than what the Board stated before. Please record all my comments today.

TAYLOR: I note your comment. Sir Peter, as a Director of Bulkships Limited and bearing in mind ----- (notes) ----- as to their intention in regard to the company, it appears to me that there arises a clear conflict between ----- notes ----- in such circumstances I invite you to disqualify yourself. 10

A. Well, I most certainly do not accept this because, as a Director of this company, I have always declared my interest and I have always voted in favour of advising shareholders. I am not disqualifying myself. 20

TAYLOR: I note that also. As Chairman of this meeting, I rule ----- (notes)

A. You can only rule on this - you can only -----

T. I am not disqualifying you at all. --- you are not entitled to take -----

A. You cannot rule on it.

AST: I advised that he can. Once the invitation has been tendered to you and -----

A. In view of this, I would like to have legal representation because I have the right and I --- and I want immediate legal representation. 30

AST: My view is that the Chairman's decision is binding, both in relation to law

It is not in the Articles or memorandum of Association.

SIR: It is not in the Articles of this company that you can disqualify the director. I maintain that there is no right to disqualify any director from voting.

TAYLOR: I feel, as Chairman, I have this right and I suggest you have the right of legal representation. If you wish, seek legal advice elsewhere.

SIR A: Would you kindly adjourn the meeting whilst I telephone.

TAYLOR: No - I propose to go on.

However, the meeting was adjourned.

(Photostating letters etc.)

Transcript from
the shorthand
notes by the
witness Mabel
Janet Hill
(prepared
overnight)
7th September
1972
(continued)

10 LDK: Whilst Sir P was out of the room, explained the situation in which we are in regarding short terms, particularly in regard to the short term securities. We feel that there is a most dangerous situation and from the point of view --- It is essential that adequate provision be made to cover the liabilities as and when they fall due.

TAYLOR: Does anybody wish to make any comment on this situation in view of what the General Manager has said regarding the dangerous cash liquidity situation in which we now are in.

20 EC: Firstly a number of people have said that we must consider the rights of all shareholders. I think you are aware over the last few months I have been very disturbed about the rights of small ----- but I think that the rights have the consideration --- over the minor shareholders against the rights of large shareholders. I am not directing these notes to the Board. Mention has also been made that we will also be delisted. The listing requirements are clear that, when you
30 make an issue, you should do so at a special extraordinary meeting. Those listing requirements are there for a good reason - they are to protect the rights of all the shareholders so that, if we ignore those listing requirements, we are doing so for a reason, perhaps other than for the good of all shareholders. If we did make such a commitment as is asked for here, we could not do so in the normal course of events which would be that you put this up to all shareholders and you
40 would be doing so knowing that it would fail because 55% of the shareholders would vote against it. The present shareholders could remove all of the members of the Board by means of a special

Plaintiffs
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—
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1972
(continued)

meeting and could remove all of us. What is the maximum number of Directors - which is 7. What is the situation with a shareholders which has partly paid shares - they have full voting rights. I cannot agree that we would not be harming rights of shareholders if we are delisted - I think we are. We have our duties which are fairly clear. I think we should contact H Smith and demand ----- but in doing so I thought the Board had to decide dependent on what H Smith did. When Board has rejected Ampol's offer, we had to decide whether we recommended to shareholders if they accepted that offer. If we recommended that ----- we had also the rights to say to shareholders that we do not accept any of the offers and hold on to your shares. Ampol and Bulkships still have the responsibility to act in the best interests of the company and therefore, all shareholders and I think that they would have to treat these duties very seriously. Now we have this present situation from H Smith and the situation contained therein. Yet today we attempt to justify making this placement on the basis that we have these serious financial problems and they are so serious that we should accept it. There is no suggestion of a cash issue to our own shareholders ----- certain liabilities which we have made arrangements to cover so that we, as a Board, have been in this serious situation for 12 months and have not done anything about a share issue and now we have offer from outside party and we are using this as a justification. Admittedly we could do so at a substantial premium if we vote the company really needed the necessary to survive or to improve its performance over the next few years. I must repeat that I am concerned it is at this stage that we are suggesting a share issue to get over our financial problems.

LDK: ----- negotiations regarding the Robert Miller has been committed but there is clause, the lender and the consortium have the right to withdraw from their commitment if a change of ownership would occur.

C: They have said that they have -----

A. I have confirmation from Hambros that, in the case of change of ownership, they would increase the loan from the Hambros Bank.

K. May I ask why have we not received this notification.

A. It is not an official notification in writing but, if the major shareholders are prepared to stand behind it, they are prepared to increase the loan.

T. ----- We have written 4 letters and we have only just got an acknowledgment from Ampol. And Mr. C. I thank you most sincerely for your remarks.

Transcript from
the shorthand
notes by the
witness Mabel
Janet Hill
(prepared
overnight)
7th September
1972
(continued)

10 TELEPHONE ----- that we have all the
interests of shareholders.

AS: -- that the delisting endangers the position of shareholders but it could be argued that --- If the H Smith very clearly says that ----- so the situation could arise where ordinary shareholders have no offer on their hands in 5 minutes.

20 C. I am aware that, Mr. Aston, that you arranged for Cooper Bros. to carry out a valuation of the company which I have read. I do not know how many other members have read it. Based on that report, a take-over offer of such as H Smith, I think serious consideration would have to be given to accepting or recommending that offer. I agree with the Cooper Bros. report which indicates that really the asset backing of this company really is not a major consideration because of the fact that it is quite clear that the future operations of this company are going to be far more profitable than the present operation. ----- the offer of 2.50 or 3.00 -- The alternative would have been
30 to reject the offer but I think the other offer would have --- that you recommend to hold on to your shares.

TAYLOR: Ampol and Bulkships have stated that they would not sell their shares which means that minor shareholders have 2.73 or no alternative.

C. But they can hold on to their shares. Ampol and Bulkships would have to see that the minor shareholders would have to hold on to their rights. They would have serious responsibilities.

40 TAYLOR: A & B have refrained from answering in writing the questions posed to them and taking as it is at the moment we have to consider the position

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—
Transcript from
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(prepared
overnight)
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(continued)

as it is at the moment in spite of the fact that they may do this. Howard Smith have stated their intention although we have not received their official take-over bid and the bid is also in the interests of major shareholders as they have the opportunity of accepting this high bid --- making a quick capital profit ---- so I feel that the interests of the major shareholders have been considered and it is our duty here to consider all of the shareholders and we are not here for the protection of minor shareholders but all of them, both major and minor.

10

C. What are the advantages of making a placement outside the company over a placement to our shareholders.

TAYLOR: Because the majority of shares, 55%, is held by two shareholders which would increase their shareholding.

ABELES: H Smith is a conditional offer which they have the right to withdraw.

20

ASTON: By stature, no-one is permitted to make an offer excluding the right of withdrawal -----

TELEPHONE-- The expression of a possibility of withdrawal is a statutory obligation.

A. It is still the rights of H Smith offer shares at 2.30

----- (TELEPHONE AS ABOVE)

TAYLOR: I would like a member of the Board ---
(notes)

This has been done by Mr. KA and seconded by
Mr. N.

30

EC: I would like to hear from other members of the Board.

RN: This possibility of a share issue and share placement has been discussed previously as a method of solving our

TELEPHONE

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 this situation and rather than fade away into the background. I am in favour of this at the moment subject to what is being said.

Transcript from
the shorthand
notes by the
witness Mabel
Janet Hill
(prepared
overnight)
7th September
1972
(continued)

AB: I endorse Mr. N. comments. I would be a little disturbed on the ethical side of this but Mr. P.J.D. said see what the Board generally thinks of this and to go along with it on what they think.

LADY MILLER: I am not happy about it at all. I do not like to be delisted.

LK: Regarding the thought of being delisted. In view of our position and the reasons for wanting this infusion of capital of money into our organisation, I feel that the stock exchange would be very dubious on delisting on these grounds.

WAC: It is not certain that the Stock Exchange would delist this company. The Stock Exchange have the discretion and I agree with Mr. EC that the articles spell it out loud and clear but, nevertheless, the stock exchange has a discretion and I have no doubt that, before they do this, they would seek information from this company. I have no doubt that they would consider any representations which would be made by this company as to why ----- and they would give very serious consideration ----- unless the circumstances has been blatantly fraudulent.

ASTON: I think it has been mentioned before that this situation has existed for some time and no placement has been made ----- We do not have any ultimate resolution

PHONE

Motion put to a vote.

40 Aye 4 - No 2

LADY MILLER: I want a copy of the letter

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witness Mabel
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overnight)
7th September
1972
(continued)

ABE: Did not vote. My legal advice is that the Chairman has not the right to do it and we will challenge it. The Board action in this respect could be considered as fraudulent. I have been refused a vote.

TAYLOR: I will now sign the agreement and Mr. KBA will sign with me.

EC: I would imagine that I would like to hear legal opinion on this. I imagine we leave ourselves open now to an injunction being taken out within the next 24 hours. We could find ourselves in a very serious situation. We could go to Court and we will all have it. I am concerned about this aspect. 10

TAYLOR: In view of the course taken today, I would like to re-affirm to shareholders that they reject the Ampol bid.

Plaintiffs
Exhibits
Exhibit JJ

R.W. Miller
(Holdings) Ltd.
Management
Report for
May 1972
(undated)

Plaintiffs Exhibits
Exhibit JJ

R.W. Miller (Holdings) Ltd. Management
Report for May 1972 (undated)

20

FROM: General Manager
TO: Managing Director

MANAGEMENT REPORT - MAY 1972

1. FINANCE:

In previous reports it was mentioned that our negotiations with Hambros Bank in regard to the financing of M.T. "Robert Miller" was put to them in two parts:

- (a) Construction finance to meet progress payments made by the Commonwealth during the course of construction. 30
- (b) End financing for a period of 5 years from date of delivery.

The finance involved amounted to \$7.4 million.

As construction financing was foreign to Hambros and the other consortium members, they were

not prepared to go ahead unless we were able to secure a performance bond covering the delivery date of the vessel.

—
R.W. Miller
(Holdings) Ltd.
Management
Report for
May 1972
(undated)

10 Following the damaging statements made by the Chairman of Evans Deakin Industries Limited in April, whereby he stated that their shipyard would be forced out of business within weeks unless it obtained further orders for ships, the Underwriters withdrew their proposition for such a Bond. As a result of this action Hambros advised us that the consortium banks would not be prepared to go ahead with the construction finance.

We then approached Hambros and asked that if we were able to secure construction finance ourselves would they be prepared to commit themselves for the end take-out.

20 On the 25th May a Telex was received from them advising us that this was agreed to and a formal commitment letter outlining the terms and conditions would be sent to us within approximately one week.

Prior to this we had once again approached the Bank of New South Wales with a submission for bridging finance up to \$5 million until the date of delivery of M.T. "Robert Miller". On Friday 26th May we were advised that the Bank had agreed to make available bridging finance to the extent of \$4.2 million.

30 We might add at this stage that on the 18th May a meeting was held with the Minister for Shipping and Transport, the Honourable P.J. Nixon, giving him full details of the current position regarding our negotiations to obtain the above finance. Although he was most sympathetic towards us, he was quite explicit as to the position that would arise if we were unable to settle our account by the 30th June.

The current position regarding our liability towards the Commonwealth is as follows:-

40	Progress payments outstanding to date	£8,013,915
	Estimated interest payments due to the end of June 1972	<u>93,750</u>
		<u>£8,107,665</u>

Plaintiffs
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Exhibit JJ

Funds available from investments which will be realised progressively to 30th June 1972.

R.W. Miller
(Holdings) Ltd.
Management
Report for
May 1972
(undated)

Albion Hotel	500,000	
Bexley North Hotel	940,000	
Richmond Hotel	160,000	
Manly Vale Hotel	975,000	
Kingswood Hotel	280,000	
Merryfield Hotel	<u>130,000</u>	2,985,000

Additional funds available

Mortgage finance from
Commonwealth Superannuation
Fund estimated to be 3,000,000

10

Additional sum from repay-
ment of loan finance 800,000 3,800,000

Total funds available £6,285,000

This leaves a deficiency to the 30th June 1972 of approximately \$1.82 million which will be supplemented by our bridging arrangements by the Bank of New South Wales.

2. HOTELS:

20

The Metropole Tavern is now progressing and is expected to open in October. Planning is well advanced to provide the standard of service we desire and investigations are proceeding with a view to leasing the equipment including furniture.

Discussions have been held with Mitsui and Sapporo who are prominent restaurateurs in Japan with a view to opening a Japanese style restaurant in an additional area which is being reserved for the purpose. This proposal is still being investi- 30
gated by the Japanese, but the area in question will represent a compromise because of structural walls and some reservations must exist in this particular case.

The St. James Tavern is behind schedule, it now seems likely that this operation will be opening in February or March 1973.

Proposals are being pursued so that the

company may avail itself of the valuable opportunity of development in respect of many of its sites, particularly those occupied by -

Brighton Hotel
 Oceanic Hotel
 Sylvania Complex
 Riverwood Hotel
 The Hume Hotel

Plaintiffs
 Exhibits
 Exhibit JJ

 R.W. Miller
 (Holdings) Ltd.
 Management
 Report for
 May 1972
 (undated)
 (continued)

10 Plans are being progressed to improve the standards of our other hotels and to avail ourselves of the experience of Bexley North. In addition, the amendments to the Liquor Act, which became law on May 1st, provide favourable and extended trading opportunities for hotels of the Bexley North type.

Efforts are also under way to obtain approval for T.A.B. Agencies at North St. Marys and the Sundowner.

20 Our application for an hotel licence on the Warriewood site has been rejected on the grounds that the type of hotel planned would constitute a disturbance of the peace and good order of the neighbourhood. The Licensing Court found that requirement had been established. An amended application has immediately been lodged so as to preserve our priority for a hearing.

30 Results of trading in Hotels have been adversely affected by the inclement weather, particularly in April and this effect on trade has continued into May.

3. SHIPPING:

(1) M.T. "Amanda Miller"

At present this vessel is on Voyage 32 loading at Westernport Bay for Brisbane.

The vessel has been operating extremely satisfactorily and the Charterers have complimented us on the manner in which we are fulfilling our charter agreement.

40 It is pleasing to note that since the vessel went into service, the off-hire period amounts to only eight days.

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Exhibit JJ

(2) M.T. "Robert Miller"

R.W. Miller
(Holdings) Ltd.
Management
Report for
May 1972
(undated)
(continued)

Construction of this vessel is proceeding satisfactorily, although it is felt that delivery will be a few months after the contract delivery date. This has been refuted by Evans Deakin who stated that as far as they were concerned the delivery date would be met.

Following the adverse report mentioned above by Evans Deakin Industries Limited, the Chairman and the writer held a meeting with both the Chairman and the Managing Director of Evans Deakin. We expressed our concern at the reports made and advised them that in light of their contractual commitments, we are under certain obligations to the Charterers of the vessel relying upon their contractual commitment to deliver the ship by a certain time.

10

Their Chairman said that he fully appreciated our concern and subsequently forwarded a letter whereby he clarified his purported press statement and assured us that at the present time he could see no reason why the vessel would not be completed by the contract delivery date, namely 15th March 1973.

20

(3) M.V. "Millers McArthur" and M.V. "R.W. Miller"

These vessels continue to operate satisfactorily but it must be borne in mind that upon the completion of the Wag Pipeline a surplus tanker tonnage will in all probability eventuate.

We will then have to consider the employment of these vessels overseas.

30

4. COAL SECTION:

Coal sales for the month of April were as follows:-

Export coal	£1,035,684
Domestic Coal	<u>338,883</u>
	<u>£1,374,567</u>

During the months of May and June our export tonnage will be substantially reduced owing to a strike by the Japanese seamen.

40

Colliery Reports(1) Ayrfield:

Production in early May was lower than normal due to physical conditions and breakdowns. This has improved during the past fortnight and current production is brighter than normal due to improved underground haulage arrangements.

R.W. Miller
(Holdings) Ltd.
Management
Report for
May 1972
(undated)
(continued)

10 Erection of the new washery is proceeding and this plant should commence commissioning in late July or early August.

Work in the new entry has recommenced but is being hampered by poor roof conditions. Roof bolting has been introduced with good results and the first cut-through will be driven during the next two weeks.

(2) Belmont:

20 Production during the month has been halved due to poor physical conditions allied with large quantities of water in the seam. The section is now being enlarged to allow manoeuvring room which will give more flexibility and reduce losses due to bogging and pumping. Roof bolting is being carried out at roadway intersections and this practice is to continue until the roof strata improves.

(3) Wallsend Borehole:

30 Production has returned to normal since settlement of the strike. The No. 2 washery is in operation but Dravo are still completing the adjustments and alterations necessary before acceptance trials.

The raw and clean coal handling plants at No.2 have been commissioned and are operating satisfactorily.

5. EXPORT MARKETS:

Our competitors have for some time been more active in the promotion of export markets than has been the case with our company.

Plaintiffs
Exhibits
Exhibit JJ

—
R.W. Miller
(Holdings) Ltd.
Management
Report for
May 1972
(undated)
(continued)

Although recent trips made by both the Chairman and the writer have to a certain extent attempted to cover a limited range in this market, it would be appreciated by the Board that the principal reason for these visits has been on the matter of finance.

Over the past two years Clutha have regularly sent executives overseas on promotional trips, and their success is substantiated by the sale of over 500,000 tons of coal to Europe.

Utah, Gollins; and Austen and Butta are constantly travelling in this area, and as a result have sold substantial tonnages to Italy, Belgium, Spain, Portugal and the United Kingdom.

10

We have as many contacts overseas as they have but their distinct advantage is the fact that they are constantly following up previous discussions.

Unless we are prepared to adopt a similar policy, the entire market for both Europe and South America will undoubtedly fall in the hands of our competitors.

20

It is therefore our intention to become more active in the export trade and that overseas visits along similar lines to our competitors will be undertaken in the near future.

Although our coal sales at the present time are not returning the required profit margin, we are convinced that with a sound promotion policy, this aspect of our company can regain its former lucrative position.

(Signed) L. D. KOCH

30

L.D. Koch

1371.

Plaintiffs Exhibits

Exhibit KK

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

Plaintiffs
Exhibits

Exhibit KK

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

R. W. MILLER (HOLDINGS) LIMITED

A REPORT

BY

COOPER BROTHERS & CO.

TO

J. L. ASTON, ESQ.

Plaintiffs
Exhibits

1372.

Exhibit KK

Private and Confidential

21st June 1972

Report of Cooper
Brothers & Co.
of their review
of financial
position of
R.W. Miller
(Holdings) Ltd.

J.L. Aston, Esq.,
Barkell & Peacock,
Commercial Union House,
109 Pitt Street,
SYDNEY. N.S.W. 2000

Dear Sir

21st June
1972.
(Continued)

R. W. Miller (Holdings) Limited.

Acting on verbal instructions received from you we have carried out a review of the financial position of R. W. Miller (Holdings) Limited and its subsidiary companies (R.W.M.) 10

2. In preparing this report we have had access to the following sources of information:-

- (a) The published audited accounts of R.W.M. for the years ended 30th June 1970 and 1971.
- (b) The unaudited accounts of R.W.M. for the six months ending 31st December 1972. 20
- (c) The summary of results for the 10 months ended 30th April 1972.
- (d) R.W.M's profit projections for each of the three years ending 30th June 1974.
- (e) Advice from certain of R.W.M's management associated with the preparation of the profit projections. 30
- (f) Independent valuations of certain of the group's fixed assets.
- (g) Information supplied by the auditors of R.W.M.

- (h) Other relevant information which was available including that reported in the press.

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10 3. We have not performed an audit of R.W.M's accounts, nor have we examined the system of internal control. We have relied on the company's allocation of expenses and revenue to its various divisions, upon which the results for the 10 months ended 30th April 1972 and the profit projections for each of the three years ending 30th June 1974 were based.

4. Our comments and conclusions contained in this report have been based on information and explanations available from the sources listed in paragraph 2 and our assumptions have been drawn therefrom.

5. This report has been divided into the following sections:-

20	<u>Subject matter</u>	<u>Paragraphs</u>
	I PROFITS	6 - 49
	II ASSET BACKING PER SHARE	50 - 66
	III CONCLUSIONS	67 - 70

I PROFITS

30 6. We have set out in Appendix "A" the actual profits earned by R.W.M. for the years ended 30th June 1970 and 1971 and projected profits for the years ending 30th June 1972, 1973 and 1974. The net profits after tax and before extraordinary items attributable to the group are summarised as follows:-

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Exhibit KK <u>Report of Cooper Brothers & Co. of their review of financial position of R.W. Miller (Holdings) Ltd. 21st June 1972. (continued)</u>	Year ended 30th June	Total divisional profits \$000	Net over- heads \$000	Net profit before tax \$000	Current and deferred tax \$000	Net profit after tax \$000	
	Actual						
	1970	2,592	567	2,025	799	1,226	
	1971	2,012	669	1,343	394	949	
	Estimated						
	1972	3,424	1,315	2,109	923	1,186	10
	1973	4,490	1,011	3,479	1,425	2,054	
	1974	6,068	1,929	4,139	1,825	2,314	

7. Appendix "A" dissects R.W.M's past and projected future earnings to show divisional profit contributions from the main divisions, namely -

- (a) hotels;
- (b) tankers;
- (c) coal and haulage; and
- (d) miscellaneous,

20

and from the total of these contributions are deducted general overheads after allowing for interest and sundry other income received.

8. R.W.M's accounting system does not allow for a meaningful allocation of general overheads as a charge to each division. Therefore, the true profit contribution of each division cannot be easily determined and our comments on the divisional profits set out in paragraphs 28 to 44 are therefore qualified to the extent that each is overstated by the amount of general overheads that would be properly allocated to that division and subject to other observations contained in this report.

30

General overheadsExhibit KK

9. The company includes in general overheads those costs of the head office administration and accounting staff and costs of financing less interest received. These costs are easily budgeted for as they are largely fixed, however, since R.W.M. suffered a serious shortage of funds in late 1971. Interest, which is included in the general overheads, increased due to this shortage and is the major contribution to these fluctuations.

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10. In order to finance the "Amanda Miller" additional funds were borrowed during 1971 by R.W.M. and the interest thereon was capitalised. This tanker was delivering in August of 1971 and from that date all interest on the applicable borrowings was charged against operating profit of the group. This interest will account for the substantial increase in overheads for the year ending 30th June 1972.

11. In order to improve the company's liquid position, certain hotel properties were sold in the 1972 year and these funds used to repay certain short term borrowings. Furthermore, interest rates on current borrowings were reduced and, consequently, the interest charge for the 1973 year is estimated to show a significant reduction. In the 1974 year interest payable on borrowings to finance the construction of the "Robert Miller" will be charged against operating profits of that tanker and this will largely account for the increase in overhead expenses in that year.

Income Tax

12. Income tax for the 1970 and 1971 years has been based on the published accounts of R.W.M. and reflects the incidence of past carry forward tax losses recouped in those years.

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13. The charge for the 1972 year indicates a comparatively low current tax charge due to the proposed claim for tax purposes of approximately \$2,000,000 of coal mining capital expenditure (Division 10) and a claim for interest on loans required to finance the "Robert Miller" of approximately \$400,000 both of which, for accounts purposes, have been capitalised. In this year little benefit is derived from past carry forward trading losses as these have been substantially recouped. Consequently, a provision for deferred tax amounting to \$639,000 is required.

10

14. In arriving at group tax figures for 1972 the estimated results have been dissected over the various companies in the R.W.M. group and tax calculated thereon after taking into account the tax situation in each company. These figures have been summarised in Appendix "C".

20

15. For the two subsequent years, 1973 and 1974, it has been assumed that full tax rates will be applicable after calculating tax at current public company rates of $47\frac{1}{2}\%$ for Australian taxable income and 15% for Hong Kong taxable income. The quantum of deferred tax in these figures will be largely dependent upon Division 10 expenditure in those years.

Deferred tax

30

16. Deferred tax has been provided on the basis adopted by the group in the past being tax on the difference between net book values and tax values of fixed assets after deducting therefrom tax losses carried forward. The deferred taxable income giving rise to the provision for deferred tax consists of expenditure on coal mining, claimable under Division 10, and interest capitalised but claimable for tax during the construction periods of the "Amanda Miller" and the "Robert Miller".

40

17. In calculating the provision applicable to 1972 it was found that the group provision was understated by approximately

£58,000 in respect of past years, as shown in Appendix "C". This has not been adjusted against trading profits for that year.

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18. Furthermore, in calculating deferred tax, no account has been taken of tax paid provisions such as long service leave etc. At 30th June 1971 these provisions as disclosed by the R. W. Miller tax return, amounted to £383,000 made up as follows:-

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	£000
Land tax	72
Holiday and sick pay	150
Long service leave	135
Ships and repairs and maintenance	10
Doubtful debts	<u>16</u>
	<u>£383</u>

19. In these provisions were taken into account in calculating deferred tax the provision in R. W. Miller accounts would be reduced by approximately £180,000 and the group provision by any further additional amount relative to the provisions in other companies. However, the effect if any one year on the deferred tax charge is not likely to be significant.

Net profits after tax

20. The R.W.M. profits before and after tax (with the exception of 1969 year) have declined each year since 1967 as follows:-

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	1967	2,353	1,677
	1968	2,280	1,605
	1969	2,344	1,659
	1970	2,005	1,275
	1971	1,336	958

We have not analysed the reasons for this decline but understand that the principal reasons are:- 10

- (a) Declining profits from coal and shipping interests.
- (b) Increasing interest charges on borrowings required to finance the expansion of R.W.M's hotel interests.

In spite of this declining trend 1972 and subsequent years' profits are expected to show substantial increases. 20

21. The 1972 estimated earnings show a recovery from those of the previous year mainly due to the net income derived from operating the "Amanda Miller" from September 1971 and slightly improved results from coal. These figures have been based on the management accounts prepared as at 30th April 1972 adjusted as follows:-

	\$000	\$000	30
Consolidated profits before tax for the 10 months ended 30th April 1972 as per management accounts		1,363	
<u>Add Budgeted profits for</u> May and June 1972		<u>422</u>	
C/forward		1,785	

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 \$000 \$000

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B/forward

1,785

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Add Adjustments

10 (a) Deferment of the
 Hambros loan commit-
 ment fees written
 off in the April
 1972 accounts and to
 be written off over
 period of the loan 94

 (b) Profit on exchange
 relating to first
 repayment of Hambros
 loan 10

 (c) Estimated additional
 profit on Millers
 McArthur due to
 deferment of docking 70

20 (d) Estimated excess of
 provision for repairs
 and maintenance on
 "Amanda Miller" 200

374

2,159

Less Provision for contin-
 gencies

50

Adjusted consolidated profit
before tax

£2,109

30 The improved results for the months of May and
 June 1972 reflect improved results from the
 coal division.

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Extraordinary items

22. The 1972 results referred to above take no account of the extraordinary profit items which have arisen and will increase the profit available for distribution to shareholders. These are summarised as follows:-

	<u>Before tax</u> \$000	<u>Tax</u> \$000	<u>After tax</u> \$000	
Fire claim	166	31	135	10
Sale of properties	1,019	-	1,019	
	<u>\$1,185</u>	<u>\$31</u>	<u>\$1,154</u>	

23. During the year ended 30th June 1971 the company suffered a fire at the northern Rhondda colliery. As at that date the insurance claim had not been finalised and no amount was taken into account. The excess of the proceeds of this claim, which was received during the current year, over the book value of the equipment destroyed was \$166,039. We understand that 40% of this gain will be taxable and have, therefore, allowed tax of 47½% on \$66,000, resulting in a tax charge of \$31,000 as shown above.

20

24. In order to improve the company's cash position certain properties were sold during the year. Included in this profit of \$1,019,000 are two hotels for which contracts have been exchanged but the proceeds in respect of profits amounting to \$190,000 have not been received.

30

25. The 1973 and 1974 profits show significant increases due to the following factors:-

- (a) Improved results from the coal interests in both years.

- (b) The operations of the "Robert Miller" effectively from April 1973.

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These aspects are dealt with in our comments on the divisional profits.

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- 10 26. In summary, 1972 and subsequent years are anticipated to show significantly higher profits as the company's expansion plans in the tanker field, the modernisation of collieries and re-organisation of borrowings, resulting in reduced interest charges, take effect.

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27. Comments on the divisional profits are set out in the following paragraphs.

Hotel Division

- 20 28. R.W.M. operates approximately 25 hotels. Trading revenue of this division is predominately from sales of liquor and food, whilst expenses are mainly salaries and semi-fixed costs. Profit percentages, after deducting salaries, are relatively constant and as other expenses do not vary widely with sales, the profit arising from each revenue dollar can be projected with reasonable accuracy.

- 30 29. The projected figures for 1972, 1973 and 1974 are in line with the historic data for 1970 and 1971 and it is reasonable to expect that profit contribution of this division, as projected on Appendix "A", (and subject to unforeseen circumstances) should be achieved.

Tanker division

- 40 30. Projected profit contributions for this division for the three years ending 30th June 1974 are summarised on Appendix "B". These profits are arrived at before charging interest which has been included in general overheads and the extent to which that interests is allocable to borrowings raised

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to finance the acquisition of the tankers
has not been charged to tanker operations.

31. In September 1971 the company
took delivery of the "Amanda Miller" and her
sister ship, the "Robert Miller", although
due for delivery in April 1973 is expected to
be delivered on 1st July 1973. These vessels
are subject to long term charter contracts
and hence their profit contribution may be
reasonably projected.

10

32. The increase in earnings from 1971
to 1972 reflects the operations of the "Amanda
Miller". In respect of the 1972 earnings no
account has been taken of any penalties which
may be received resulting from the late
delivery of the "Amanda Miller". An amount
of \$196,000 was taken to account in the 1971
accounts representing a penalty of \$4,000
per day for 49 days to 30th June 1971 and a
further maximum claim of approximately
\$240,000, representing \$4,000 per day for
60 days to 31st August 1971, the date of
delivery, may possibly be substantiated but
negotiations with the Commonwealth Department
of Shipping & Transport have not been finalised.
As the amount of \$196,000, accrued in 1971,
has not yet been received we agree with the
company's management that it would be imprudent
to bring this further contingent amount to
account at this stage.

20

30

33. The "Robert Miller" is due for
delivery in April 1973 but it is not antici-
pated that actual delivery will be received
until 1st July 1973. In arriving at tanker
profits an amount of \$308,000 has been shown
as accrued income for this tanker and repre-
sents a late delivery penalty of \$4,000
per day for the period from the contracted
date of delivery to 30th June 1973 as the
company is confident that any claim arising
would be met. Operating profits are,
therefore, estimated to be earned from 1st
July 1973.

40

34. The operating costs related to the
"Robert Miller" have been based on the actual
and estimated costs for the 10 months ended

30th April 1972 incurred by her sister ship, the "Amanda Miller" and include the adjustment to provisions for repairs and maintenance referred to in paragraph 21.

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10 35. In preparing the forecasts it has been assumed that any increased costs will be passed on to the charterers. The charter contract outlines a movable base period which will be adjusted in accordance with price indices published by the Commonwealth of Australia in computing the increased costs to be recovered under the escalation clause. Therefore, the profit contribution will not vary year to year.

20 36. No attempt has been made to quantify the amount of the increased costs to be borne by the shipowner. Should these irrecoverable increases be material then the projected profit figures will be overstated.

Coal division

37. Coal profits have declined in recent years, however, the projected earnings for the current year ending 30th June 1972 show an improvement over the previous year and this improvement is expected to continue into the 1973 and 1974 years for which substantially increased results have been budgeted.

30 38. We have not reviewed in detail the results of the coal division in the 1970, 1971 and 1972 years to ascertain the reasons for the reduced profit contributions. However, we understand lower production levels during those years materially increased the cost of each ton of coal as the substantial fixed costs of the mining operation were not spread over large volume production. The selling price of coal could not be adjusted to reflect these adverse factors as it was dictated by the market or in export contracts and profits were thus reduced.

40

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39. The lower production levels were attributable to industrial disputes and lower export sales. All three years suffered from strikes, export markets began to fall off in 1970 and continued through 1971 until a partial recovery in the 1972 year.

40. In order to increase the efficiency and output of the mines R.W.M. has expended substantial amounts since 1970 and has further committed expenditure to modernise the mining facilities. The effect of this modernisation programme has been partly reflected in the 1972 results and provided increased output can be sold in subsequent years the company is confident that improved results will be achieved.

41. We have reviewed recent correspondence with Japanese Steel Mills which indicates that their coal consumption will increase during the coming year. Australia's Minister for National Development, Sir Reginald Swartz, was quoted on his return from a recent trip to Japan as saying "they (the Japanese) have also told me they are prepared to talk with a New South Wales group of companies, perhaps around September, and then will be prepared to negotiate contracts due to expire in 1973 and 1974". Volume levels and prices were not mentioned by the Minister. Although a substantial increase in export sales to Japan is not assured it is reasonable to assume that present levels will be maintained and could well be increased in future years.

42. We have been informed that the company is optimistic about its entry into markets, both in Europe and the United Kingdom, since coal mining has become very expensive in these areas. It is considered that Australian coal may be transported to these markets and sold more cheaply than it could be produced locally. In response to numerous enquiries from Europe and the United Kingdom company officials plan an extended sales trip to develop these markets. Similar export markets may develop in South America and the company is exploring this areas as well.

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10 43. In preparing the forecasts for the 1973 year the company has marginally reduced the quantity of export sales at slightly increased prices but has assumed lower production costs. This decrease in cost is due to a budgeted increase in production for which, at this stage, no firm contracts exist and it is anticipated a stockpile at the end of 1973 of approximately 300,000 tons valued at \$1,800,000 will be held by the group. The company accepts the fact that a stockpile of this nature will not be built up during the year unless there are reasonable expectations of its sale and, consequently, the 1973 profit budgets are conditional on further contracts being negotiated. A similar situation may exist in 1974.

20 44. Our review has indicated that domestic coal sales are unprofitable and the company considers that this situation will persist. Consequently, improved results in the coal division appear to be dependent on increased export sales.

30 45. In order to judge the effect of the estimated increased earnings on the market value of R.W.M's shares on the assumption that the takeover bid from Ampol had not been received we have compared, as at 30th April 1972, the dividend yield, price earnings (P/E) ratio and earnings rate for R.W.M. with a number of companies operating in similar fields. These comparisons are as follows:-

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	<u>Dividend yield</u> %	<u>P/E ratio</u>	<u>Earnings yield</u> %	<u>Price</u> £	
<u>Coal</u>					
Bellambi	5.0	16.7	6.0	1.00	
Coal & Allied Industries	6.0	9.9	10.0	0.99	
<u>Shipping</u>					
Adelaide Steamship	6.7	11.1	9.0	0.75	10
<u>Diversified</u>					
Smith (Howard)	3.7	16.4	6.1	4.10	
R.W. Miller	4.3	17.9	5.6	1.88	

46. At 30th April 1972 R.W.M. shares showed a price earnings ratio of 17.9 and a dividend yield of 4.3%. It could be argued that in comparison with other companies the price earnings ratio is high and dividend yield low due to the acknowledged potential of tanker earnings. Once these start being realised the price earnings rate could, in our opinion, reduce to 15.0 and dividend yield increase to say, 4.5% to 5.0%. 20

47. We set out in Appendix "D" a projected value of the R.W.M. shares based on price earnings ratios of 15.0 and 17.9 applied to the projected results for each of the three years ending 30th June 1974. Assuming dividend yields 4.5% and 5.0% this appendix also indicates the required dividend to service the range of values indicated. 30

48. On the basis of a price earnings ratio of 17.9 for 1972 reducing to 15.0 for each of the two subsequent years, when increased tanker profits are being earned, the projected value of R.W.M's shares could be -

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1972	£2.36
1973	£3.42
1974	£3.86

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10 However, if the market considers a dividend yield of 4.5% to 5.0% is reasonable and since the company's liquid position is likely to preclude payment of a dividend in excess of 12½% for 1973 and 15% for 1974, in our opinion the market price may stabilise at £2.90 to £3.00 in 1973 and £3.00 to £3.30 in 1974.

49. In view of the fact that -

- (a) asset backing, conservatively, is considered to be in excess of £2.50 per share (refer Section II of this report);
- (b) future earnings should, subject to unforeseen circumstances, show a substantial improvement; and
- (c) higher dividends are indicated,

20 a minimum current price of say, £2.50 is reasonable increasing by 1974 to say, £3,00 to £3.30.

II ASSET BACKING PER SHARE

30 50. The chairman of R.W.M. requested the group's auditors, Rettie & Vickery, to prepare a calculation showing a current net asset backing for each of the issued ordinary shares. The broad basis of their valuation is set out in their letter to the secretary dated 19th February 1972 which disclosed a calculation of the net asset backing value for each ordinary share of £3.71. The basis upon which this valuation was made is set out in Appendix "E".

51. Based on the method adopted by the auditors, we have prepared a valuation as at 31st December 1971 and, for the purposes

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of this valuation, the unaudited consolidated accounts as at that date were utilised as the base on which to calculate this asset backing. This valuation resulted in a value for each ordinary share of \$3.77. A comparison of these valuations is set out in Appendix "F".

52. In the following paragraphs we have set out -

- (a) the bases adopted for valuing the assets used to arrive at the values referred to above; 10
- (b) our opinion and comments on the bases adopted; and
- (c) our estimation of an asset backing per share.

Tankers

53. The valuations of the "Amanda Miller" and "Robert Miller" were based upon a recent offer received from H. C. Sleigh Limited to purchase one or both of these vessels. This offer was set out in a letter addressed to the company dated 15th February 1972. The increase in surplus between 30th June 1971 and 31st December 1971 is the net effect of depreciation provided on book values and further capital expenditure incurred for the period to 31st December 1971. The two other tankers, "Millers McArthur" and "R.W. Miller" have been valued at their respective book values as at 30th June 1971 and 31st December 1971. 20 30

Hotels, land, buildings and equipment

53. These assets were valued on a "walk-in walk-out" basis by an independent valuer, George Clubb & Sons Pty Limited, between May and August 1971 and the resultant valuation gave rise to a surplus of \$5,315,000 as at 30th June 1971. The valuation in the surplus arising between 30th June 1971 and 31st December 1971 is due to the effect of the sale of two hotels and further increases in 40

some hotel values related to offers to purchase received by R.W.M.

Exhibit KKDevelopment land

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54. Development land has been valued independently for the major part or assessed by reference to correspondence with the Department of Main Roads.

10 55. The increase over book value is \$1,039,000 of which \$885,000 is applicable to land held at Warriewood, on part of which R.W.M. plans to erect a hotel with the balance being subdivided as light industrial land. Richard Ellis, Sallman & Seward were retained as consultants and assessed a value as at 27th September 1971 of \$1,740,000 as follows:-

\$000

Assuming corner 5 acres is approved as a hotel site

653

20 Assuming residue is subdivided to light industrial sites, a gross realisation of

1,087

\$1,740

30 Although the necessary approvals for the hotel site and light industrial subdivision have not yet been received we have been informed that plans for the erection of a hotel are in the process of being approved by the local council and an application to the Licencing Court is pending. The company considers that a valuation of \$1,000,000 would be conservative and this figure has been used in the valuation of development land.

Collieries

56. On 30th October 1971 Warren D. Skelton valued the coal mining assets and coal reserves of R.W.M. This valuation gave rise to a surplus over book values as at 30th June 1971 of \$9,864,000.

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57. In preparing the valuation Mr. Skelton was assisted by the technical and engineering staff of R.W.M., particularly in relation to the estimated quantum of coal reserves on R.W.M's coal leases. In an interview with us Mr. Skelton stated that based on his knowledge of the area in which R.W.M. operates he was confident that the quantum of coal reserves stated in his valuation were conservative.

10

58. A summary of the valuations is as follows:-

	Book Value 30th June 1971	Valuation		
		30th October 1971	Surplus (decrease)	
	£000	£000	£000	
Plant, machinery etc.	3,703	2,770	(933)	20
Coal reserves (Appendix "G")	-	10,797	10,797	
	<u>£3,703</u>	<u>£13,567</u>	<u>£9,864</u>	

The valuation for plant and machinery was adjusted by the capital expenditure incurred between 1st July 1971 and 30th October 1971 in order to reflect the value as at 30th June 1971.

30

59. Coal reserves have been valued by the valuer at £10,797,000 and details of reserves on R.W.M's properties are set out in Appendix "G". This valuation has assumed an annual production rate of 1,970,000 tons which would only be achieved by -

- (a) incurring substantial additional capital expenditure to develop the Millfield leases for mining and to make the Ironbark colliery operative; and

40

- (b) further export orders being obtained to lift current production rate of approximately 900,000 tons per annum to an annual production of 1,970,000 tons.

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60. In our opinion the valuation of the R.W.M. coal interests at a figure of £13,567,000 as at 30th June 1971 is not, at present, realistic for the following reasons:-

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- 10 (a) The valuation is based on projected production figures of 1,970,000 tons per annum as compared with a current production rate from only three of the company's collieries of approximately 900,000 tons.
- (b) Orders for further export quantities have not been received to date to justify higher production.
- 20 (c) Further substantial funds would need to be invested to increase production or to bring mines into production to achieve an annual rate of 1,970,000 tons.
- (d) Anticipated profits from coal for 1973 and 1974 after allowing for tax are in the vicinity of £400,000 per annum calculated as follows:-

	<u>1973</u> <u>£000</u>	<u>1974</u> <u>£000</u>
Estimated divisional profit	957	1,027
<u>Less</u> Allocation of general overheads, say	200	200
	<u>757</u>	<u>827</u>
<u>Less</u> Current and deferred tax	360	392
	<u>397</u>	<u>435</u>
say	<u><u>400</u></u>	

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61. Under present conditions, profits of this order would not, in our view, support the valuation of \$13,567,000.

62. However, there appears to be a number of favourable factors to be taken into consideration in relation to the coal interests, these being:-

- (a) In past years considerable profits have been earned by the group from export sales and R.W.M. appears to have a sound reputation in this area. 10
- (b) Substantial sums have been or are being invested to increase production facilities and to reduce production costs, in particular the latter has not yet been reflected in R.W.M's results.
- (c) From correspondence and statements made by R.W.M's management improvements in export sales are expected in the foreseeable future. 20
- (d) Due to the financial problems of R.W.M. during the past year management has not been able to devote the necessary time to develop further export markets and increased efforts are planned in the current year. 30
- (e) R.W.M. suffered, in the 1971 year, a severe cut-back on coal deliveries under existing contracts with Japanese Steel Mills and any partial or full reinstatement of quantities to be delivered annually under these contracts would substantially improve results.

63. Therefore, in arriving at a value based on assets, it would be reasonable to argue that some value should be allowed for the future benefits which could be derived from the substantial coal reserves available for mining. 40

64. In Appendix "H" we summarise the net assets of R.W.M. as at 30th June 1971 and 31st December 1971 and asset backings per share as at those dates.

Exhibit KK

Report of Cooper
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10 65. By excluding the valuation of coal reserves in their entirety asset backing values per share are \$2.52 at 30th June 1971 and \$2.58 at 31st December 1971. These values increase to \$2.63 and \$2.68 per share respectively by including coal interests at book values only.

21st June
1972.
(continued)

66. After taking into consideration the factors mentioned in paragraph 65 above and assuming that coal reserves have some value, in our opinion, the value attributable to each share could be between say, \$2.70 and \$3.20.

III CONCLUSIONS

20 67. This report has been prepared in order to provide information to assist you in advising the board of R. W. Miller (Holdings) Limited regarding the recent takeover offer received from Ampol Petroleum Limited.

68. Our objective (in this report) has been to ascertain whether, in the light of the information available, the bid price of \$2.27 per share offered to shareholders is adequate, having regard to -

- 30 (a) the present profitability of the company;
- (b) the projected profitability for the years ending 30th June 1973 and 30th June 1974; and
- (c) the asset backing.

40 The bid price of \$2.27 per share would seem reasonable in the light of the published results for the year ended 30th June 1971 and the six months ended 31st December 1971 and the indicated dividend rate of 8%. However, based on information provided by

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R.W.M's management, it would appear that
1971 results are not indicative of the
company's future earnings.

69. In our opinion a reasonable
present value of the shares, based on projec-
ted earnings, would be \$2.50 increasing to
\$3.00 - \$3.30 in 1974 provided projected
results are achieved and the dividend rates
indicated to us of 10% for the 1972 year
increasing to 15% for the 1974 year are paid.
These values are, in our opinion, substan-
tially supported by the asset backing.

10

70. We would appreciate if you would
keep the contents of this report confiden-
tial. Information contained herein should
only be quoted in any document to be circulated
to any member of the public with our
approval.

Yours faithfully,

COOPER BROTHERS & Co.

Exhibit KK (continued)
R.W. MILLER (HOLDINGS) LIMITED

APPENDIX "A"

Exhibit KK

SCHEDULE OF GROUP TRADING PROFITS FOR THE FIVE YEARS ENDING 30TH JUNE, 1974
(BEFORE ALLOWING FOR CAPITAL PROFITS AND OTHER EXCEPTIONAL ITEMS)

Report of Cooper
Brothers & Co.
of their review
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	1970 £000	1971 £000	1972 £000	1973 £000	1974 £000
Profit (Loss) before charging taxation					
Divisions -					
Hotels	1,040	1,246	1,170	1,130	1,197
Tankers	853	* 911	2,035	2,331	3,772
Coal and haulage	565	(175)	155	957	1,027
Miscellaneous	<u>134</u>	<u>30</u>	<u>64</u>	<u>72</u>	<u>72</u>
	2,592	2,012	3,424	4,490	6,068
<u>Less</u>					
General overheads after deducting sundry income	771	830			
Deduct					
Net interest received	<u>204</u>	<u>567</u>	<u>161</u>	<u>669</u>	<u>1,315</u>
		2,025	1,343	2,109	3,479
<u>Less</u>					
Income tax - current	591	248	284		
deferred	<u>208</u>	<u>799</u>	<u>146</u>	<u>394</u>	<u>639</u>
			923	1,425	1,825
Net trading profit after tax and before extraordinary items attributable to the group	<u>1,226</u>	<u>949</u>	<u>1,186</u>	<u>2,054</u>	<u>2,314</u>

21st June
1972.
(continued)

*Includes Ananda Miller Fire Claim of £196,000 not yet received.

This schedule has been prepared on the following bases

- 1) Profits for the years ended 30th June, 1970 and 1971 have been based on the audited accounts of the individual group companies reconciled to the audited consolidated accounts for those years.
- 2) Profits for the year ended 30th June, 1972 have been based on the results shown by the unaudited management accounts for the ten months ended 30th April, 1972 and the company's annual budgets for the year ending 30th June, 1972.
- 3) Results for the years ending 30th June, 1973 and 1974 have been based on company forecasts for those years.

Divisional profits have been arrived at prior to inter company adjustments for the 1970 and 1971 years and before allowing for such adjustments in subsequent years.

APPENDIX "B"

Exhibit KK

R.W. MILLER (HOLDINGS) LIMITEDSCHEDULE OF FORECAST PROFITS FROM TANKERS
FOR THE THREE YEARS ENDING 30TH JUNE, 1974
(BEFORE CHARGING GENERAL OVERHEADS AND INTEREST)Report of Cooper
Brothers & Co.
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R.W. Miller
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(continued)

	R. W. Miller & McArthur £000	Amanda Miller £000	Robert Miller £000	Total £000
1972				
Revenue	<u>2,801</u>	<u>3,218</u>		<u>6,019</u>
Operating expenses	2,111	1,106		3,217
Depreciation	<u>102</u>	<u>665</u>		<u>767</u>
	<u>2,213</u>	<u>1,771</u>		<u>3,984</u>
Profit con- tributed before tax	<u>588</u>	<u>1,447</u>		<u>2,035</u>
1973				
Revenue	<u>2,824</u>	<u>3,654</u>	* <u>308</u>	<u>6,786</u>
Operating expenses	2,225	1,463		3,688
Depreciation	<u>102</u>	<u>665</u>		<u>767</u>
	<u>2,327</u>	<u>2,128</u>		<u>4,455</u>
Profit con- tributed before tax	<u>497</u>	<u>1,526</u>	<u>308</u>	<u>2,331</u>
1974				
Revenue	<u>2,824</u>	<u>3,654</u>	<u>3,940</u>	<u>10,418</u>
Operating expenses	2,225	1,463	1,420	5,108
Depreciation	<u>102</u>	<u>665</u>	<u>771</u>	<u>1,538</u>
	<u>2,327</u>	<u>2,128</u>	<u>2,191</u>	<u>6,646</u>
Profit con- tributed before tax general overheads and interest charges	<u>497</u>	<u>1,526</u>	<u>1,749</u>	<u>3,772</u>

* Represent loss of profits due to late delivery,
which will be paid as a penalty by the shipbuilders.

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Exhibit KK

APPENDIX "C"

Report of Cooper
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R.W. Miller
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21st June
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(continued)

R.W. MILLER (HOLDINGS) LIMITED
SUMMARY OF GROUP COMPANY ESTIMATED PROFITS
FOR THE YEAR ENDED 30TH JUNE, 1972

Company	Profit \$000	Current Tax \$000	Deferred tax 1972 \$000	1971 Adjustment \$000
R.W. Miller - Adelaide	(1)			
- Melbourne				
*R.W. Miller & Co.	1,042		483	25
Canopus General	49	16		
Jubilee Engineering	16	7		
Bulk Haulage	23	10		
Hong Kong Tankers	451	68		
Maitland Extended	(83)		(13)	
Millfield	6	3		
Northern Rhonda	357		169	33
Preston Coal (60%)	(59)			
Miller Steam- ship	5	2		
S.S. William McArthur	(75)			
	<u>1,731</u>	<u>104</u>	<u>639</u>	<u>58</u>
Hotels	<u>378</u>	<u>180</u>		
		<u>284</u>	<u>639</u>	
	<u>2,109</u>		<u>923</u>	<u>58</u>

APPENDIX "C"
(continued)Exhibit KK

R.W. Miller	-	(65)
Transfer Hotels		<u>792</u>
		727
Melbourne Loss		<u>20</u>
		707
Transfer Haulage		<u>81</u>
		788
*+ Adjustments		<u>254</u>
		<u>1,042</u>
		<u><u>1,042</u></u>

Report of Cooper
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of their review
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R.W. Miller
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21st June
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(continued)

Exhibit KK (continued)

APPENDIX "D"

R.W. MILLER (HOLDINGS) LIMITEDExhibit KKPROJECTED MARKET VALUES PER ORDINARY SHARE BASED ON 1972,
1973 AND 1974 PROJECTED EARNINGS

Report of Cooper
Brothers & Co.
of their review
of financial
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(continued)

Price Earnings Ratio:	15			17.9		
	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>
Year ended 30 June:	£000	£000	£000	£000	£000	£000
Net Profits after Tax:	1,186	2,054	2,314	1,186	2,054	2,314
Gross Market Capitalisation of issued ordinary shares at stated price earnings ratio:	17,790	30,810	34,710	21,229	36,767	41,421
	£	£	£	£	£	£
Estimated market value of each 9000786 issued ordinary share of £1 par value:	1.98	3.42	3.86	2.36	4.08	4.60
	£000	£000	£000	£000	£000	£000
Total dividends payable on the 9000786 issued ordinary shares of £1 par value:						
At 4.5 % yield	796	1,386	1,562	955	1,655	1,864
At 5% yield	885	1,540	1,736	1,061	1,838	2,071

Exhibit KK (continued)

APPENDIX "E"

R.W. MILLER (HOLDINGS) LIMITEDSUMMARY OF THE BASIS AND INFORMATION USED BY THE
GROUP AUDITORS IN ARRIVING AT AN ASSET BACKING
OF \$3.71 PER SHARE

1. R.W.M's auditors have calculated the asset backing by relating, where possible, valuations, to the specific fixed assets to which they are attached, or where no ready valuation was available the net book value of such fixed assets was used. Where necessary, adjustments were made for transactions between 30th June, 1971 and the various dates of valuation.

2. The assets and liabilities were valued as follows:-

(a) Coal mining assets

The major proportion of coal mining assets were valued in accordance with a valuation report dated 30th October, 1971 which had been prepared by Warren D. Skelton FCIV, REIV (Aust), QRV.

(b) Hotels

The valuation of hotels was based upon recent valuation reports prepared by George Clubb & Sons Pty. Limited and where applicable sale prices.

(c) Tankers

The valuation of the M.T. Amanda Miller and M.T. Robert Miller was based upon a firm offer received from H.C. Sleigh Limited, dated 15th February 1972, to purchase one or both of these tankers.

(d) Other assets and liabilities

Any fixed assets not included in the valuations used above were valued at net book values ascertained

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Exhibit KK

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Plaintiffs
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Exhibit KK

APPENDIX "E" (Continued)

Report of Cooper
Brothers & Co.
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of financial
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R.W. Miller
(Holdings) Ltd.

from the separate statutory accounts
of each company in the group.
Current assets and liabilities
were valued as shown in the published
consolidated balance sheet of
R.W. Miller (Holdings) Limited as
at 30th June, 1971.

21st June
1972.
(continued)

Exhibit KK (continued)

APPENDIX "F"

R.W. MILLER (HOLDINGS) LIMITEDSTATEMENT OF ASSET BACKING AS AT 30TH JUNE, 1971 AND 31ST DECEMBER, 1971
(Adjusted to reflect valuation of certain assets)

	30th June, 1971			31st December, 1971		
	Book Value	Surplus (decrease) on valuation	Total	Book Value	Surplus (decrease) on valuation	Total
FIXED ASSETS						
Amanda and Robert Miller	** 6,174	1,370	7,544	** 8,165	1,376	9,541
Other Tankers	652	-	652	595	-	595
	<u>6,826</u>	<u>1,370</u>	<u>8,196</u>	<u>8,760</u>	<u>1,376</u>	<u>10,136</u>
Hotels - land, buildings and equipment	12,377	5,315	17,692	11,528	5,399	16,927
Development Land	341	1,057	1,398	341	1,039	1,380
Collieries - Plant, machinery, buildings etc.	* 3,703	(933)	2,770	5,911	(914)	4,997
Coal in situ	-	10,797	10,797	-	10,667	10,667
	<u>3,703</u>	<u>9,864</u>	<u>13,567</u>	<u>5,911</u>	<u>9,753</u>	<u>15,664</u>
Other land and buildings	296	54	350	296	54	350
Other assets	1,385	-	1,385	1,456	-	1,456
TOTAL FIXED ASSETS	24,928	17,660	42,588	28,292	17,621	45,913
INVESTMENTS AND LOANS	3,548	-	3,548	3,184	-	3,184
CURRENT ASSETS	5,859	-	5,859	5,949	-	5,949
TOTAL ASSETS Carried Forward	<u>34,335</u>	<u>17,660</u>	<u>51,995</u>	<u>37,425</u>	<u>17,621</u>	<u>55,046</u>

Plaintiffs
Exhibits

Exhibit KK

Report of Cooper
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(continued)

	30th June, 1971			APPENDIX "F" (Continued) 31st December, 1971		
	Book Value	Surplus (decrease) on valuation	Total	Book Value	Surplus (decrease) on valuation	Total
TOTAL ASSETS Brought Forward	<u>34,335</u>	<u>17,660</u>	<u>51,995</u>	<u>37,425</u>	<u>17,621</u>	<u>55,046</u>
Deduct						
LIABILITIES						
Long term	1,972		1,972	7,984		7,984
Deferred tax	380		380	475		475
Current	<u>16,167</u>		<u>16,167</u>	<u>12,684</u>		<u>12,684</u>
TOTAL LIABILITIES	<u>18,519</u>		<u>18,519</u>	<u>21,143</u>		<u>21,143</u>
Net assets	<u>15,816</u>			<u>16,282</u>		
Net assets after adjusting for valuation			<u>33,476</u>			<u>33,903</u>
Net asset backing for each of the 9,000,786 shares of \$1 each	<u>\$1.76</u>		<u>\$3.71</u>	<u>\$1.81</u>		<u>\$3.77</u>

** Progress payments to date

* Adjusted for expenditure since 1st July, 1971 and date of valuation 30th October, 1971.

Plaintiffs
Exhibits

Exhibit KK

Report of Cooper
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R.W. Miller
(Holdings) Ltd.

21st June 1972
(continued)

Exhibit KK (Continued)

APPENDIX "G"

Exhibit KK

R.W. MILLER (HOLDINGS) LIMITED

SUMMARY OF COLLIERIES AND COAL LEASES OWNED BY R.W. MILLER SHOWING THE BASIS OF VALUATION PLACED UPON THE COAL IN SITU BY W.D. SKELTON AS AT 30TH OCTOBER, 1971 TOGETHER WITH R.W. MILLER'S PROJECTED PRODUCTION TONNAGES FOR 1972 AND 1973

	Present valuation of deferred coal 30.10.1971 \$000's	Considered recoverable and saleable		Estimated period of mining (years)	Value rate per ton	Discount Rate	Projected Production	
		Production per annum (000 tons)	Total Deposit (000 tons)				1972 (000 tons)	1973 (000 tons)
Millfield & Millfield North Colliery	1,510	230	6,800	30	£1.0	15%	-	-
Millfield & Millfield North Colliery	1,596	270	8,000	30	£1.0 less 10c royalty	15%	-	-
Ironbark Colliery	945	160	4,800	30	£1.0 less 10c royalty	15%	-	-
Ironbark Colliery	657	100	3,000	30	£1.0	15%	-	-
Wallsend Borehole Colliery	689	110	2,100	18	£1.0	15%	464	440
Wallsend Borehole Colliery	1,103	200	3,600	18	£1.0 less 10c royalty	15%		
Northern Rhondda Colliery	613	100	1,500	15	£1.0 less 10c royalty	12%	-	-
Ayrfield No. 3 Colliery	1,268	225	4,500	20	£1.0 less 10c royalty	15%	117	191
Northern No. 2 Belmont Colliery	1,512	345	2,400	7	£1.0 less 10c royalty	10%	276	231
Preston Extended (Gunnedah) Colliery	906	230	7,000	30	60c	15%	-	-
	<u>10,799</u>	<u>1,970</u>	<u>43,700</u>				<u>857</u>	<u>862</u>

The rate per ton used for the purposes of the valuation has been discounted annually by the percentage shown above.

The R.W. Miller group has a 60% interest in the Preston Extended (Gunnedah) Colliery which is reflected in the valuation.

Report of Cooper Brothers & Co. of their review of financial position for R.W. Miller (Holdings) Ltd.

21st June 1972.
(continued)

O N A P P E A L
 FROM THE SUPREME COURT OF NEW SOUTH WALES
 EQUITY DIVISION

B E T W E E N :

HOWARD SMITH LIMITED	<u>Appellant</u> (13th Defendant)
----------------------	--------------------------------------

- and -

AMPOL PETROLEUM LIMITED	<u>Respondent</u> <u>Plaintiff</u>
R.W. MILLER (HOLDINGS) LIMITED	(1st) Defendant
ARCHIBALD N. TAYLOR	(2nd) Defendant
SIR EMIL HERBERT PETER ABELES	(3rd) Defendant
ELIZABETH MILLER	(4th) Defendant
ROBERT I. NICHOLL	(5th) Defendant
EVAN DUFF CAMERON	(6th) Defendant
KENNETH B. ANDERSON	(7th) Defendant
WILLIAM A. CONWAY	(8th) Defendant
PETER J. DUNCAN	(9th) Defendant
ALAN V. BALHORN	(10th) Defendant
F.M. MURPHY (a male)	(11th) Defendant
C.J. WATT (a male)	(12th) Defendant
SECURITY SHARE SERVICES PTY. LIMITED	(14th) Defendant

RESPONDENTS

RECORD OF PROCEEDINGS

VOLUME IV

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

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