

2/85

IN THE PRIVY COUNCIL

NO. 16 of 1984

O N A P P E A L
FROM THE SUPREME COURT OF WESTERN AUSTRALIA

B E T W E E N :

EAGLE STAR INSURANCE COMPANY LIMITED
ENNA INSURANCE COMPANY (UK) LIMITED
ASSURANCES GENERALES de FRANCE (London Branch)
PRUDENTIAL ASSURANCE COMPANY LIMITED
A.A. MUTUAL INTERNATIONAL INSURANCE CO LIMITED
EQUINE & LIVESTOCK INSURANCE CO LIMITED and
UNION ATLANTIQUE d'ASSURANCES S.A.

Appellants

AND

NATIONAL WESTMINSTER FINANCE AUSTRALIA LIMITED

First Respondent

AND

JOSEPH MAXIM GOLDBERG and
VIVIENNE GOLDBERG t/a 'SHAMROCK PARK'

Second Respondent

AND

AUSTRALIAN INSURANCE BROKERS LIMITED

Third Respondent

SUPPLEMENTAL RECORD OF PROCEEDINGS

BARLOW LYDE & GILBERT
1 FINSBURY AVENUE,
LONDON EC2M 2PJ.

Solicitors for the
Appellants

LINKLATERS & PAINES
BARRINGTON HOUSE
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Solicitors for the
Second Respondent

REYNOLDS PORTER CHAMBERLAIN
CHICHESTER HOUSE
278/282 HIGH HOLBORN
LONDON WC1V 7HA

Solicitors for the
Third Respondent

O N A P P E A L
FROM THE SUPREME COURT OF WESTERN AUSTRALIA

B E T W E E N :

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SUPPLEMENTAL RECORD OF PROCEEDINGS

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(19)

No: 1
Telex from Don Booker
to Mal Brown
11 March 1981

*
ALCOP AA92612
MMACL AA27781

4A

11.3.81

FOR MAL BROWN

11 MAR 1981

HOW IS 'ASIAN BEAU' DOING?
I THINK I AM STILL IN A STATE OF SHOCK AFTER BEING WOKEN
AT 1 AM.

AGDS DON
*
ALCOP AA92612

Ali Shamush

I CERTIFY that this is a true copy of
the document of which it purports to be
a copy.

Dated the 2nd day of

October 1984
Police Division
REGISTRAR



No: 2
Telex from Mal Brown
to Bert Clark
5 March 1982

T3

HULANG AA25025
ALCOP 442612

5/3/82, A1317459

8.30 A.M.

ATT BERTCLARKE

RE ASIAN EAU

ASIAN EAU STALLION DIED LAST NIGHT WHILST WITH MURDOCH VETS
PLUS JOE McDERMOTT WHO I ARRANGED TO REPRESENT YOU. FULL POST
MORTEM DONE AND REPORTS WILL FOLLOW.

I RANG BUT YOU AND MALCOLM WILLIS WERE OUT.

REGARDS,

MAL BROWN.
⊕
HULANG AA25025

I CERTIFY that this is a true copy of
the document of which it purports to be
a copy.

Dated the 2nd day of October 1984.



Malcolm Brown
DEPUTY REGISTRAR

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

No. 3
Writ of Summons with Statement
of Claim
2 July 1982
No. 1987 of 1982

B E T W E E N

LOMBARD AUSTRALIA LIMITED First Plaintiff
JOSEPH MAXIM GOLDBERG AND VIVIENNE GOLDBERG,
t/a "SHAMROCK PARK". Second Plaintiffs

and

EAGLE STAR INSURANCE COMPANY LIMITED
ENNIA INSURANCE COMPANY (UK) LIMITED
ASSURANCES GENERALES de FRANCH
(London Branch)

PRUDENTIAL ASSURANCE COMPANY LIMITED
A A MUTUAL INTERNATIONAL INSURANCE
COMPANY LIMITED

EQUINE & LIVESTOCK INSURANCE
COMPANY LIMITED

UNION ATLANTIQUE d'ASSURANCES S.A. First Defendants

and

AUSTRALIAN INSURANCE BROKERS LIMITED Second Defendant

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and
Her other Realms and Territories, Head of the Commonwealth.

TO: EAGLE STAR INSURANCE COMPANY LIMITED
OF: 1, Threadneedle Street, London E.C.2.

and

TO: ENNIA INSURANCE COMPANY (UK) LIMITED
OF: Fountain House, 136 Fenchchurch Street, London E.C.3.

and

TO: ASSURANCES GENERALES de FRANCH (London Branch)
OF: 87 Rue de Richelieu, Paris.

and

TO: PRUDENTIAL ASSURANCE COMPANY LIMITED
OF: Equine Underwriting Agencies Ltd., Marlow House,
610-616 Chiswick High Road, London W.4.

and

TO: A A MUTUAL INTERNATIONAL INSURANCE COMPANY LIMITED
OF: c/- Equine Underwriting Agencies Ltd. aforesaid

and

TO: EQUINE & LIVESTOCK INSURANCE COMPANY LIMITED
OF: c/- Equine Underwriting Agencies Ltd. aforesaid

and

TO: UNION ATLANTIQUE d'ASSURANCES S.A.
OF: Rue Belliard 7 Brussels 1040.

(The First Defendants)

and

TO: AUSTRALIAN INSURANCE BROKERS LIMITED
OF: 3-5 Bennett Street Perth in the State
of Western Australia

(The Second Defendant)

No. 3

Writ of Summons with Statement
of Claim

2 July 1982 (continued)

Mr William Nicholas
Plaintiff's Solicitor
Perth

WE COMMAND you, the first defendants that within ¹⁰~~20~~ days and you the second defendant that within 10 days after the Service of this writ on you, exclusive of the day of such service, you cause an appearance to be entered for you in our Supreme Court in an action at the suite of the abovenamed plaintiff; and take notice that in default of your so doing the plaintiff may proceed therein and judgment may be given in your absence.

Witness:

Chief Justice of Western Australia THE HONOURABLE SIR
FRANCIS BURT, K.C.M.G.

the *2nd* day of July, 1982.

NOTE:

This writ may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

A defendant may appear to this writ by entering an appearance either personally or by solicitor at the Central Office of the Supreme Court at Perth.

NOTE: If the defendant enters an appearance, then unless a summons for judgment is served on him in the meantime, he must also file a defence at the Central Office of the Supreme Court at Perth, and serve such defence on the solicitor for the plaintiff, within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.

2 July 1982

STATEMENT OF CLAIM

(continued)

1. The first plaintiff is LOMBARD AUSTRALIA LIMITED, a company incorporated in New South Wales of 251 Adelaide Terrace, Perth in the State of Western Australia.
2. The second plaintiffs are JOSEPH MAXIM GOLDBERG and VIVIENNE GOLDBERG, trading as "Shamrock Park".
3. The first defendants are -
 - (a) Eagle Star Insurance Company Limited a company incorporated in England, of 1 Threadneedle Street, London EC2.
 - (b) Ennia Insurance Company (UK) Limited a company similarly incorporated of Fountain House, 136 Fenchurch Street, London EC3.
 - (c) Assurances Generales de France (London Branch) a company incorporated in France, of 87 Rue de Richelieu, Paris.
 - (d) Prudential Assurance Company Limited a company incorporated in England, of care of Equine Underwriting Agencies Ltd, Marlow House, 610-616 Chiswick High Road, London W4.
 - (e) A A Mutual International Insurance Company Limited a company similarly incorporated, of care of Equine Underwriting Agencies Ltd aforesaid.
 - (f) Equine & Livestock Insurance Company Limited a company similarly incorporated, of care of Equine Underwriting Agencies Ltd aforesaid.

Writ of Summons with
Statement of Claim

2 July 1982 (continued)

(g) Union Atlantique d'Assurances S.A. a company incorporated in Belgium, of Rue Belliard 7 Brussels 1040.

4. The 'second defendant is AUSTRALIAN INSURANCE BROKERS LIMITED, a company incorporated in the State of New South Wales, whose head office is at 3-5 Bennett Street, Perth aforesaid.
5. At all material times the first plaintiff was the owner of a stallion known as "Asian Beau".
6. By a lease in writing the first plaintiff leased the said horse to the second plaintiffs for a term of 36 months at a monthly rental of \$18,696.76, totalling \$676,083.36, plus the amount of stamp duty totalling \$10,096.20 payable by the second plaintiffs to the first plaintiff in reimbursement of the stamp duty paid by the latter. The said term commenced on 23rd May 1980.

At the trial of this action the plaintiffs will refer to the said lease for its full terms and effect.

7. The second plaintiffs covenanted in the said lease inter alia to insure the said horse and to keep it insured during the period of the lease for its full insurable value.
8. By a "Companies Combined Policy" comprising policies issued by the first defendants in or about October and November, 1981, in consideration for a total premium of \$40,692.00,

Writ of Summons with
Statement of Claim
2 July 1982
(continued)

they severally agreed each for the proportion set out against its name to indemnify, inter alia the first plaintiff and the second plaintiffs, as to their respective interests in the said horse, against loss inter alia by reason of all risks of mortality, accident, sickness and disease. The sum assured was \$1,000,000.00.

At the trial of this action the plaintiffs will refer to the said policies for their full terms and effect.

9. Under the said policies (issued on identical printed forms) the defendants agreed to share the said total premium and liability for the said sum assured among them in the following proportions -

| | | |
|--|-----|-----|
| Eagle Star Insurance Company Limited | | 20% |
| Ennia Insurance Company (UK) Limited | | 10% |
| Assurances Generales de France (London Branch) | | 30% |
| Prudential Assurance Company Limited | 40% |) |
| A A Mutual International Insurance Co. Ltd. | 40% |) |
| Equine & Livestock Insurance Co. Ltd. | 20% |) |
| Union Atlantique d'Assurances S.A. | | 20% |

10. The second defendants duly paid the said total premium.
11. During the currency of the said policies, during late February and early March, 1982, the said horse suffered from colic resulting in generalised peritonitis, and on 4th March, 1982 he was properly put down by the veterinary surgeons attending him.
12. The death of the said horse resulted from risks insured against under the said policies, and the plaintiffs are entitled to indemnity under the policies.

Writ of Summons with
Statement of Claim

2 July 1982
(continued)

13. At the material time the loss of the value of the said horse was at least \$1,000,000.00.
14. Alternatively, the loss of the value of the said horse and the value of the loss of its use were at least \$1,000,000.00.
15. The second plaintiffs were entitled to the use of the said horse.
16. The first defendants have refused wrongfully to indemnify the plaintiffs or any of them in respect of the said loss.
17. If and to the extent that the first defendants are not liable to indemnify the plaintiffs or one or more of them in respect of the said losses the plaintiffs plead as follows as against the second defendant, in the alternative to their respective claims to indemnity under the said policies.
18. At all material times the second defendant has been the second plaintiff's insurance broker in relation to the insuring of horses against the risk of loss by divers perils.
19. In July, 1981, there subsisted a policy of insurance in respect of the said horse, in favour of the first plaintiff and the second plaintiffs, procured by the second defendant, the sum insured being \$650,000.00.
20. At all material times the second defendant well knew (as were the facts) -
 - (a) that the first plaintiff was the owner of the said horse;

2 July 1982

(continued)

- (b) that the second plaintiffs were the lessees of the said horse;
 - (c) that the said horse was a stud stallion whose use was valuable to the second plaintiffs;
 - (d) that the second plaintiffs were interested in the value of the said horse as at the end of the said lease.
21. In or about July, 1981, at the instance of the second plaintiffs, the second defendant requested the then insurers of the said horse to agree to renew the insurance at an increased sum assured of \$1,000,000.00 plus loss of use.
22. Such insurers declined the said request.
23. On or about 23rd July, 1981 the second defendant by letter advised the second plaintiffs' manager, one Wright, that it had found an underwriter who would insure the said horse for \$1,000,000.00 from 1st August, 1981 to 1st November, 1982, and requested him urgently to sign and return a proposal for such insurance, which had been completed, save for the signature thereto by or on behalf of the second plaintiffs.
24. The said proposal was signed by the said Wright on behalf of the second plaintiffs and returned by him to the second defendant forthwith, without having noticed the errors mentioned hereinafter.
25. In or about July or August, 1981, the second defendant purported to issue a policy of insurance on behalf of certain insurance companies, in respect of the said horse,

Writ of Summons with
Statement of Claim

2 July 1982 (continued)

the sum insured purportedly being \$1,000,000.00 plus loss of use, the period of insurance purportedly being 1st August, 1981 to 1st November, 1982.

26. The second defendant was not authorised to issue the said policy.
27. In or about July, 1981 the second defendant requested Hudig Langeveldt Pty. Ltd. of Sydney in the State of New South Wales to arrange for the insurance of the said horse for \$1,000,000.00 plus loss of use, from 1st August, 1981 to 1st November, 1982, on behalf of the second plaintiffs as lessees thereof, on the basis that they were leasing the said horse from the first plaintiff.
28. At such time the second defendant well knew that the second plaintiffs had covenanted with the first plaintiff to keep the said horse properly insured during the currency of the said lease.
29. On or about 31st July, 1981, the second defendant sent the said proposal to Hudig Langeveldt Pty. Ltd.
30. Hudig Langeveldt thereupon arranged for the said policies to be issued.
31. The said proposal prepared by the second defendant, its servants or agents, contained inter alia answers -
 - (a) that the said horse had not suffered from any defects or ailments, illness or disease in the previous twelve months;
 - (b) that no insurer had ever declined or refused to renew the second plaintiffs' livestock insurance;

2 July 1982
(continued)

(c) that the said horse was not insured and had not been insured previously.

32. To the knowledge of the second defendant -

(a) the said horse had suffered from colic in or about March, 1981; and

(b) the said horse was currently insured by insurers who had declined to renew the insurance at a sum insured of \$1,000,000.00.

33. The first defendants have repudiated liability to the plaintiffs by reason of the matters mentioned in paragraph 31(a) and (b).

34. It was the duty of the second defendant owed to the plaintiffs or alternatively to the second plaintiffs to exercise reasonable care and skill in preparing the said proposal and in checking the same before despatching it to Hudig Langeveldt as aforesaid.

35. In breach of the said duty, the second defendant, its servants or agents, negligently failed to exercise reasonable or any care and skill in preparing or checking the said proposal.

Particulars of Negligence

(a) Inserting incorrect information in the proposal which the second defendant, its servants or agents, knew to be incorrect, as aforesaid.

(b) Failing to check, properly or at all, for errors in the said proposal before despatching the same to Hudig Langeveldt Pty. Ltd.

2 July 1982
(continued)

36. In consequence of the said negligence, the plaintiffs or alternatively the second plaintiffs have suffered damages, in that they are unable to enforce their claims to indemnity under the said policies as against the first defendants and the second plaintiffs have not been secured against their full liability to the first plaintiff under the said lease.

Particulars of damages calculated as at the date of trial will be furnished before trial.

Further or in the alternative -

37. At all material times the second defendants were the second plaintiffs' insurance brokers pursuant to an agreement entered into between them in or about 1977.

38. It was an implied term of the said agreement that the second defendant would exercise reasonable care and skill in preparing proposals including the said proposal and in the case of the said proposal in checking the same before despatching the same to Hudig Langeveldt Pty. Ltd., arising from the premises and the following further facts -

- (a) at all material times the second defendant was well acquainted with the facts relevant to the insuring of horses owned or leased by the second plaintiffs;
- (b) the second defendant had in the past, as in the instant case, assumed responsibility for preparing correctly proposals, for signature by or on behalf of the second plaintiffs;
- (c) the second defendant well knew (as was the fact) that the second plaintiffs relied upon the second

defendant, its servants and agents, to prepare correctly for signature by them or on their behalf, proposals (including the said proposal) for the insurance of horses owned or leased by them.

39. In breach of the said implied term the second defendant, its servants and agents, negligently failed to exercise reasonable or any care in the preparation of the said proposal or in checking it before despatching it to Hudig Langeveldt Pty. Ltd.

Particulars of Negligence

- (a) Inserting incorrect information in the proposal which the second defendant, its servants or agents, knew to be incorrect, as aforesaid.
- (b) Failing to check, properly or at all, for errors in the said proposal before despatching the same to Hudig Langeveldt Pty. Ltd.
40. By reason of the said breaches of duty, the second plaintiffs have suffered damages, in that they are unable to enforce their claim to indemnity under the said policies as against the first defendants.

Particulars of damages calculated as at the date of trial will be furnished before trial.

41. All the said damages sustained by reason of breaches of contract as aforesaid were in the contemplation of the parties thereto at the time such contracts were made, as being liable to be sustained by reason of the breach thereof by the second defendant.

Writ of Summons with
Statement of Claim

2 July 1982 (continued)

42. On or about 8th June, 1982, notice was given to the defendants, in terms of Section 32 of the Supreme Court Act, of the plaintiffs' intention to claim interest.

AND the first and second plaintiffs claim as against the first defendants in the said proportions the sum of \$1,000,000.00 together with interest pursuant to statute,

ALTERNATIVELY

A. The first plaintiff claims -

(1) As against the first defendants -

(a) a declaration that they are obliged to indemnify it under the said policies;

(b) indemnity, in the said proportions, in respect of its interest under the said policies;

(c) interest pursuant to statute.

(2) Alternatively, as against the second defendant, damages and interest pursuant to statute.

B. The second plaintiffs claim -

(3) As against the first defendants -

(a) a declaration that they are obliged to indemnify the second plaintiffs under the said policies;

(b) indemnity, in the said proportions, in respect of their interest under the said policies;

2 July 1982

(c) interest pursuant to statute. (continued)

- (4) Alternatively, as against the second defendant,
damages and interest pursuant to statute.

A. H. D. Pringle for J. K. Anderson
COUNSEL

I CERTIFY that this is a true copy of
the document of which it purports to be
a copy.

Dated the 9th day of July 1984.

M. J. [Signature]
DEPUTY REGISTRAR

11

0119c

No. 3

Writ of Summons with
Statement of Claim

2 July 1982

(continued)

Place of Trial: Perth

If, within the time allowed for entering an appearance, the defendant pays to the plaintiff or to his solicitor or into Court the amount claimed, together with the sum of \$ _____ being the costs incurred by the plaintiff up to and including the service of this writ, further proceedings will be stayed: Provided that the defendant may notwithstanding the payment of such costs have the same taxed by the Taxing Officer of the Court and if more than one sixth be disallowed the plaintiff shall pay the costs of taxation.

This writ was issued by MUIR WILLIAMS NICHOLSON & CO., of 9th Floor, Law Chambers, Cathedral Square, Perth, whose address for service is as above, solicitors for the plaintiff, who resides at 251 Adelaide Terrace, Perth, (1st Plaintiff) and 263 Adelaide Terrace, Perth (2nd Plaintiff).

This writ was served by me at _____
on _____ (the defendant or one of the defendants)
on the _____ day of _____ 19____
Indorsed the _____ day of _____ 19____
(Signed).....
(Address).....

This writ was served by me at _____
on _____ (the defendant or one of the defendants)
on the _____ day of _____ 19____
Indorsed the _____ day of _____ 19____
(Signed).....
(Address).....

No. 4

Defence of Second
Defendant

20 August 1982

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

No. 1957 of 1982

BETWEEN:

LOMBARD AUSTRALIA LIMITED

First Plaintiff

and

JOSEPH MAXIM GOLDBERG AND
VIVIENNE GOLDBERG t/a
"SHAMROCK PARK"

Second Plaintiffs

and

EAGLE STAR INSURANCE COMPANY
LIMITED, ENNIA INSURANCE
COMPANY (UK) LIMITED,
ASSURANCES GENERALES de
FRANCH (London Branch),
PRUDENTIAL ASSURANCE COMPANY
LIMITED, A A MUTUAL
INTERNATIONAL INSURANCE
COMPANY LIMITED, EQUINE &
LIVESTOCK INSURANCE COMPANY
LIMITED and UNION ATLANTIQUE
d'ASSURANCES S.A.

First Defendants

and

AUSTRALIAN INSURANCE BROKERS
LIMITED

Second Defendant

DEFENCE OF SECOND DEFENDANT
DATED AND FILED 26. August 1982

1. Paragraphs 1, 2 and 4 of the statement of claim are admitted.
2. The second defendant makes no admissions as

1.

Defence of Second Defendant
20 August 1982
(continued)

regards the allegations concerning the incorporation and addresses of the first defendants as set out in paragraph 3 of the statement of claim.

3. The second defendant does not plead to the allegations made in paragraphs 5 to 16 of the statement of claim as those allegations relate to the plaintiffs' claim against the first defendants only. The second defendant makes no admissions as regards any such allegations.
4. Paragraphs 18, 19 and 20 of the statement of claim are admitted.
5. (a) Paragraph 21 of the statement of claim is denied.
(b) In or about July 1981, at the instance of the second plaintiffs, the second defendant requested the then insurers of the said horse to agree to increase the insurance cover in respect of the horse to the sum of \$1,000,000.00 plus loss of use.
6. The second defendant admits paragraphs 22 and 23 of the statement of claim.
7. As regards paragraph 24 of the statement of claim the second defendant admits that the said proposal was signed by the said Wright on behalf of the second plaintiffs and returned by him to the second defendant forthwith. The second

20 August 1982

defendant does not know ^(continued) whether the said Wright noticed the errors referred to therein and does not admit that he did not notice them.

- 7A. The second defendant does not plead to paragraphs 25 and 26 of the statement of claim, as they are not relevant to the matters in issue between the parties, and makes no admission in relation thereto.
8. The second defendant admits paragraph 27, 28 and 29 of the statement of claim.
9. As regards paragraph 30 of the statement of claim:
- (a) On 27 July 1981, the second defendant (acting on behalf of the plaintiffs) requested Hudig Langeveldt Pty Ltd (acting on behalf of unknown principals being insurance companies not yet identified) to provide insurance cover for the said horse for \$1,000,000.00 as from 1 August 1981.
 - (b) On 28 July 1981, Hudig Langeveldt (acting as aforesaid) informed the second defendant (representing the plaintiffs as aforesaid) that insurance cover in respect of the said horse had been placed with effect from 1 August 1981 to 1 November 1982 at a rate of 3.25% with the sum insured of \$1,000,000.00.
 - (c) By letter dated 31 July 1981, the second

defendant (acting as aforesaid) sent to Hudig Langeveldt (acting as aforesaid) the said proposal form and a veterinary certificate relating to the said horse.

(d) On 31 July 1981, prior to receipt of the said proposal, Hudig Langeveldt (acting as aforesaid) issued a cover note relating to the said horse which reflected that the said horse was insured for \$1,000,000.00 with effect from 1 August 1981 to 1 November 1982; the said cover note further set out the amount payable in respect of the said insurance.

(e) Hudig Langeveldt sent the said cover note to the second defendant.

(f) The amount payable in respect of the said insurance was duly paid.

(g) At a date not known to the second defendant Hudig Langeveldt arranged for the said policies to be issued. The said policies were not delivered to the second defendant or the plaintiffs until after the horse had died.

10. Paragraph 31 of the statement of claim is admitted.

11. As regards paragraph 32 of the statement of claim:

(a) The second defendant admits that it knew

20 August 1982

(continued)

that the said horse had suffered from colic in or about March 1981.

(b) The second defendant knew that prior to August 1981 the horse was insured by insurers who had declined to increase the insurance to a sum of \$1,000,000.00; accordingly paragraph 32(b) is denied.

12. As regards paragraph 33 of the statement of claim.

(a) The second defendant admits that the first defendants have repudiated liability to the plaintiffs by reason of the matters mentioned in paragraph 31(a) of the statement of claim.

(b) The second defendant denies that the first defendants have repudiated liability by reason of the matters mentioned in paragraph 31(b) of the statement of claim.

(c) For the reasons set out in sub-paragraphs (d) to (f) below the second defendant denies that the the first defendants are entitled to repudiate liability to the plaintiffs by reason of the matters referred to in paragraphs 31(a) and (b) of the statement of claim.

(d) By reason of the facts set out in paragraph 9 above the proposal form did not form the basis of and had no bearing on the contract

of insurance between the plaintiffs and the first defendants.

(e) Alternatively to sub-paragraph (d) above

- (i) the cover note referred to in paragraph 9(d) above stipulated that the insurance provided in terms thereof was to be "subject to the terms and conditions of the insuring company's policy";
- (ii) the said cover note provided that the insurer was to be "Lloyds-Chandler Hargreaves Whittal & Company";
- (iii) in the premises the insurance cover provided by the said cover note was subject to the terms and conditions of the appropriate insurance policy usually issued by Lloyds-Chandler Hargreave Whittal & Company;
- (iv) the said terms and conditions contained in the insurance policy usually issued by Lloyds-Chandler Hargreaves Whittal & Company do not contain a provision making the proposal form the basis of the insurance;
- (v) the matters referred to in paragraphs 32(a) and 32(b) were not material to the risk.

(f) Alternatively, if it is held that the insurance provided by the said cover note was not subject to the terms and conditions of the Lloyds-Chandler Hargreaves Whittal & Company policy but subject to some other policy or policies which stipulate that the proposal form is the basis of the contract of insurance between the parties, the second defendant avers that;

(i) by reason of the facts set out in paragraph 9 above such a stipulation that the proposal is the basis of the contract between the parties is not applicable to the particular insurance provided by the said cover;

(ii) by reason of the facts set out in paragraph 9 above it was implicit in the contract between the parties that such a stipulation would have no effect.

(iii) the second defendant repeats paragraph (e)(v) above.

13. As regards paragraph 34 of the statement of claim the second defendant denies that it had any duty whatever to the plaintiffs which arose other than in terms of the agreement between the parties. In the circumstances this paragraph is denied.

14. The second defendant denies paragraphs 35 and 36

of the statement of claim.

15. Alternatively, the second defendant says that the cause of any damage suffered by the plaintiffs was their own negligence in signing the proposal without noticing the errors therein.
16. The second defendant admits paragraph 37 of the statement of claim.
17. As regards paragraph 38 of the statement of claim:
 - (a) The second defendant admits that it was an implied term of the said agreement that the second defendant would exercise reasonable care and skill in preparing proposals including the said proposal.
 - (b) The second defendant denies that it was an implied term of the said agreement that, in the case of the said proposal, it would check the proposal after it had been signed on behalf of the plaintiffs and before dispatching it to Hudig Langeveldt.
 - (c) The second defendant admits paragraph 38(a) of the statement of claim.
 - (d) The second defendant denies paragraphs 38(b) and (c) of the statement of claim.
18. As regards paragraph 39 of the statement of claim
 - (a) The second defendant denies the allegations contained therein;
 - (b) (i) It was the duty of the plaintiffs, as

20 August 1982

(continued)

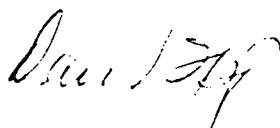
proposers for insurance, to ensure that the information given in the proposal was correct.

(ii) In breach of that duty, the plaintiffs failed to rectify any erroneous answers inserted in the form by the second defendant.

(iii) In the premises the sole and effective cause of the plaintiffs' loss is their own breach of duty.

19. The second defendant denies paragraphs 40 and 41 of the statement of claim.

20. The second defendant admits paragraph 42 of the statement of claim.



I CERTIFY that this is a true copy of the document of which it purports to be a copy.

Dated the 9th day of JULY 1984.



DEPUTY REGISTRAR

FILED by PARKER & PARKER of Floor 23, A.M.P. Building, 140 St George's Terrace, Perth solicitors for the second defendant.

Telephone : 322 0321 Reference : CDS:AUSD824031:
(16121/PMS)

Defence of First Defendants
undated

IN THE SUPREME COURT)
OF WESTERN AUSTRALIA)

No. 1957 of 1982

B E T W E E N :

LOMBARD AUSTRALIA LIMITED

First Plaintiff

and

JOSEPH MAXIM GOLDBERG and
VIVIENNE GOLDBERG, T/as
"SHAMROCK PARK"

Second Plaintiffs

and

EAGLE STAR INSURANCE COMPANY
LIMITED, ENNIA INSURANCE
COMPANY (UK) LIMITED,
ASSURANCES GENERALES de FRANCH
(London Branch), PRUDENTIAL
ASSURANCE COMPANY LIMITED, A
MUTUAL INTERNATIONAL INSURANCE
COMPANY LIMITED, EQUINE &
LIVESTOCK INSURANCE COMPANY
LIMITED, UNION ATLANTIQUE
d'ASSURANCES S.A.

First Defendants

and

AUSTRALIAN INSURANCE BROKERS
LIMITED

Second Defendants

DEFENCE OF FIRST DEFENDANTS

1. The first defendants admit paragraphs 1, 2, 3, 4, 10, 13 and 14 of the statement of claim.
2. The first defendants do not know and therefore do not admit any of the allegations contained in paragraphs 5, 6, 7, 11, 15 and paragraphs 18 to 42 inclusive.
3. Each and every allegation contained in paragraphs 12 and 16 is denied.

(continued)

4. The first defendants admit that the plaintiffs and the defendants were parties to a contract of insurance issued by the first defendants in or about October and November 1981 which contract was wholly in writing the full force and effect of which will be referred to at trial. Each and every other allegation contained in paragraphs 8 and 9 is denied.

5. It was a condition of the contract of insurance that all terms clauses and conditions of the then policy of the Australian Bloodstock Insurance Pool should be incorporated.

6. It was a condition of the then Australian Bloodstock Insurance Pool policy that the plaintiffs had completed a written proposal and declaration dated 30th July 1981 which should be the basis of the contract of insurance and be considered as incorporated therein.

7. The proposal and declaration dated 30th July 1981 contained the following questions which were answered by the plaintiff as indicated hereunder.

"3(a) Are the animals sound and healthy? ANSWER Yes.

(b) Give full particulars of defects of ailments, illness or disease, during last 12 months. ANSWER No.

6(a) Are the animals now insured or have they been insured previously? If so give details including names of insurers. ANSWER No.

(b) Has any insurer declined or refused to renew your livestock insurance? If so, give details.

ANSWER No.

9. Are there any other circumstances within your knowledge or opinion not already disclosed,

affecting or likely to affect the proposed insurance? ANSWER Two dashes were inserted.

DECLARATION

I/WE, the undersigned, hereby propose to insure the animals noted on the Schedule herein and owned by me/us, subject to the terms and conditions of the policy to be insured, and I/we declare that the same animals are sound and in good health and that to the best of my/our knowledge and belief the above statements are true and complete and I/we have not withheld any material information ...".

8. In fact "Asian Beau" had:
 - (a) suffered from an ailment or illness during the preceding 12 months, and had been hospitalised at Murdoch University from 11th March 1981 to 16th March 1981, suffering from severe abdominal pain, gaseous distension of the large bowel, and severe intermittent intestinal spasm, and had been found to have large amounts of sand in its manure.
 - (b) been previously insured and the previous insurer had declined to renew the insurance for the sum then proposed by and on behalf of the plaintiffs.
9. The plaintiffs did not prior to the time of making the contract of insurance disclose to the first defendants certain material facts which were facts likely to have affected the judgment of a prudent insurer in deciding whether or not to accept the insurance then proposed on behalf of the plaintiffs, and if so, upon what terms and at what premium, by reason whereof the first defendants avoided the policy.

Defence of First Defendants
undated

PARTICULARS (continued)

The plaintiffs did not disclose to the defendant the fact that the "Asian Beau" had suffered the ailments or illnesses described above in paragraph 8.

10. When all relevant information was made available to the first defendants they elected to and did avoid the policy.

11. The plaintiffs are not entitled to the relief claimed or any relief.

C.J.L. PULLIN

I CERTIFY that this is a true copy of the document of which it purports to be a copy.

Dated the 9th day of July 1984.


DEPUTY REGISTRAR

THIS DEFENCE was filed on the day of 1982
by Northmore Hale Davy & Leake, Solicitors for the First and
Second Defendants whose address for service is 29th Floor,
Allendale Square, 77 St. George's Terrace, Perth.

No. o

Reply to the Defence of the
First Defendants

8 November 1982

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

B E T W E E N :

No. 1957 of 1982.

LOMBARD AUSTRALIA LIMITED

First Plaintiff

JOSEPH MAXIM GOLDBERG and VIVIENNE
GOLDBERG trading as "SHAMROCK PARK"

Second Plaintiffs

-and-

EAGLE STAR INSURANCE COMPANY LIMITED

ENNIA INSURANCE COMPANY (UK) LIMITED

ASSURANCES GENERALES de FRANCH
(London Branch)

PRUDENTIAL ASSURANCE COMPANY LIMITED

A A MUTUAL INTERNATIONAL INSURANCE
COMPANY LIMITED

EQUINE & LIVESTOCK INSURANCE
COMPANY LIMITED

UNION ATLANTIQUE d'ASSURANCES S.A.

First Defendants

AUSTRALIAN INSURANCE BROKERS LIMITED

Second Defendants

REPLY TO THE DEFENCE
OF THE FIRST DEFENDANTS

1. As to paragraphs 5 and 6 of the defence of the first defendants the plaintiffs admit that in or about July or August, 1982, the second defendants purported to issue a policy of insurance purporting to have been effected through the Australian Bloodstock Insurance Pool (hereinafter called "the purported policy") but:-

8 November 1982

(continued)

- (a) say that the purported policy and the purported issue by the second defendants of a cover note issued in advance of the purported policy were of no force and effect, because the first defendants had not given any authority to the second defendants to issue the said cover note or the purported policy and the same was not in fact issued through the Australian Bloodstock Pool;
 - (b) deny that the purported policy or the then Australian Bloodstock Insurance Pool Policy contained a condition that the plaintiffs or one or more of them had completed a written proposal and declaration dated 30th July 1981 as alleged or at all;
 - (c) deny that it was a condition of the contract of insurance between the plaintiffs and the first defendants that all terms, clauses and conditions of the purported policy or the then Australian Bloodstock Insurance Pool Policy or any of them were incorporated in the contract of insurance between the plaintiffs and the first defendants;
 - (d) the cover note dated 31st July 1981 duly issued by Hudig Langeveldt Pty. Ltd. as agents for and with the authority of the first defendants provided that the contract of insurance would be upon the terms of and conditions of the appropriate policy customarily issued by Lloyds-Chandler Hargreave Whittle & Company which contained no provision making either the proposal or declaration the basis of the contract.
2. The plaintiffs admit that the proposal and declaration dated 30th July 1981 contained questions which were answered and made respectively on behalf of the second

Reply to the Defence of the
First Defendants

8 November 1982 (continued)

plaintiffs as alleged in paragraph 7 of the defence of the first defendants but otherwise deny each and every allegation therein.

3. The plaintiffs admit the allegations in paragraph 8 of the defence of the first defendants save that it is denied that the previous insurer had declined to renew the insurance for the sum then proposed by and on behalf of the plaintiffs.
4. As to paragraph 9 the plaintiffs say that:-
 - (a) prior to the making of the said contract of insurance the first defendants did not require the first plaintiff to make any proposal or declaration in relation thereto;
 - (b) the first defendants thereby impliedly represented to the first plaintiff that they did not require the first plaintiff to make any proposal or disclose material or any facts to them for the purposes of the said contract of insurance;
 - (c) the first plaintiff acted upon the said representation by refraining from making any proposal or any disclosure to the first defendants or taking any steps to propose any alternative insurance;
 - (d) the first defendants are estopped from asserting against the first plaintiff non-disclosure as alleged or at all;
 - (e) they do not admit that the second plaintiffs acted on behalf of the first plaintiff in obtaining the said policy;

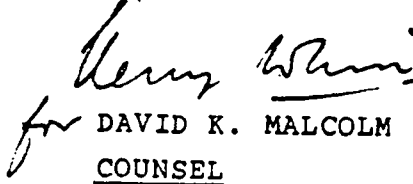
Reply to the Defence of the
First Defendants

8 November 1982

(continued)

- (f) they do not admit that the fact that "Asian Beau" suffered the said ailments or illnesses was material;
- (g) the first defendants were not entitled to avoid the policy;
- (h) save as aforesaid, they admit the allegations in paragraph 9 of the defence of the first defendants.
5. As to paragraph 10 of the defence of the first defendants the plaintiffs say that:-
- (a) after the death of "Asian Beau", the first defendants required the second defendants insurance broker to account to them for the premium paid under the said policy, and through their agents, Hudig Langeveld Pty. Ltd., informed the said brokers that the sum insured would be paid;
- (b) they admit that the first defendants subsequently purported to avoid the policy;
- (c) save as aforesaid, they do not admit the allegations in paragraph 10 of the defence of the first defendants.

DATED the 8th day of ~~NOVEMBER~~ 1982.

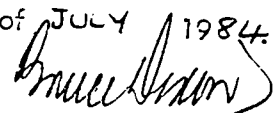

for DAVID K. MALCOLM
COUNSEL

THIS REPLY was filed and served by MUIR WILLIAMS NICHOLSON of 9th Floor Law Chambers Cathedral Square Perth, Solicitors for the Plaintiffs. Ref: RP:GOLD1850-006. I CERTIFY that this is a true copy of the document of which it purports to be a copy.

0482c

4

Dated the 9th day of JULY 1984.


DEPUTY REGISTRAR

No. 7

Request for Further Particulars
of Claim

25 November 1982

IN THE SUPREME COURT)
OF WESTERN AUSTRALIA)

No. 1957 of 1982

B E T W E E N :

LOMBARD AUSTRALIA LIMITED

First Plaintiff

JOSEPH MAXIM GOLDBERG and
VIVIENNE GOLDBERG trading as
"SHAMROCK PARK"

Second Plaintiffs

and

EAGLE STAR INSURANCE COMPANY
LIMITED

ENNIA INSURANCE COMPANY (UK)
LIMITED

ASSURANCES GENERALES de FRANCE
(London Branch)

PRUDENTIAL ASSURANCE COMPANY
LIMITED

A A MUTUAL INTERNATIONAL
INSURANCE COMPANY LIMITED

EQUINE & LIVESTOCK INSURANCE
COMPANY LIMITED

UNION ATLANTIQUE d'ASSURANCES
S.A.

First Defendants

AUSTRALIAN INSURANCE BROKERS
LIMITED

Second Defendant

REQUEST FOR FURTHER PARTICULARS OF CLAIM

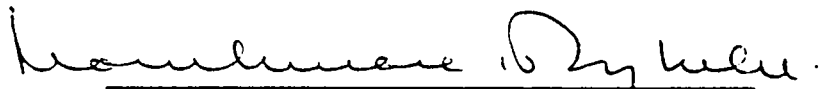
TAKE NOTICE that the first defendants require the
plaintiffs to supply the following further and better parti-
culars within one day of the date hereof:-

With respect to paragraph 8 of the plaintiffs' particu-
lars of claim served on the first defendants on 9 July 1982
that the plaintiff:

25 November 1982
(continued)

1. Identify
 - (a) the number of and
 - (b) the policy numbers ofthe "Companies Combined Policies" pleaded as having been issued by the plaintiffs in or about October and November 1981.
2. Identify all documents or parts thereof of whatsoever nature which the plaintiffs allege are incorporated in the said policies by reference therein and supply the first defendants with copies of the same.
3. Identify any other documents or parts thereof of whatsoever nature other than those revealed in paragraphs 1 and 2 above which the plaintiffs allege form part of the contract of insurance between the plaintiffs and the first defendants.
4. Supply the first defendant with copies of all documents disclosed in the answers hereto.

DATED the 25th day of November 1982.

Solicitors for the First Defendants

TO: The Plaintiffs

AND TO: Their Solicitors
Muir Williams Nicholson
Austmark Centre
15-17 William Street
PERTH, W.A. 6000

No. 7

Request for Further Particulars
of Claim

3

25 November 1982

(continued)



I CERTIFY that this is a true copy of
the document of which it purports to be
a copy.

Dated the 9th day of JULY 1984.

Bruce Adams
DEPUTY REGISTRAR

THIS REQUEST FOR FURTHER PARTICULARS is filed by Northmore
Hale Davy & Leake Solicitors for the First Defendants whose
address for service is 29th Floor Allendale Square, 77 St.
George's Terrace, Perth.

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

B E T W E E N :

No. 8

Further and Better Particulars
of the Statement of Claim

26 November 1982
No. 1957 of 1982

LOMBARD AUSTRALIA LIMITED

First Plaintiff

JOSEPH MAXIM GOLDBERG and
VIVIENNE GOLDBERG trading as
"SHAMROCK PARK"

Second Plaintiffs

-and-

EAGLE STAR INSURANCE COMPANY
LIMITED

ENNA INSURANCE COMPANY (UK)
LIMITED

ASSURANCES GENERALES de FRANCE
(London Branch)

PRUDENTIAL ASSURANCE COMPANY
LIMITED

A A MUTUAL INTERNATIONAL
INSURANCE COMPANY LIMITED

EQUINE & LIVESTOCK INSURANCE
COMPANY LIMITED

UNION ATLANTIQUE d'ASSURANCES
S.A.

First Defendants

AUSTRALIAN INSURANCE BROKERS
LIMITED

Second Defendant

FURTHER AND BETTER PARTICULARS OF THE
STATEMENT OF CLAIM

Of paragraph 8 of the statement of claim:

1. The policy number of each of the "Companies Combined Policies" is 514/B1/0542Z.
2. The plaintiffs allege that no other documents or parts of other documents were incorporated in the said policies by reference.
3. The plaintiffs allege that no other documents or parts thereof other than the said "Companies Combined Policies" formed part of the contract of

No. 8

Further and Better Particulars
of the Statement of Claim

26 November 1982

(continued)

insurance between the plaintiffs and the first defendants.

4. Copies of the "Companies Combined Policies" are being supplied separately.

DATED the 26 day of November, 1982.

Muir Williams Nicholson
Solicitors for the plaintiffs

TO: The First Defendants

AND TO: Their Solicitors
Messrs. Northmore Hale Davy & Leake,
77 St. George's Terrace,
Perth, W.A. 6000.

I CERTIFY that this is a true copy of
the document of which it purports to be
a copy.

Dated the 9th day of July 1984.

Bruce [Signature]
DEPUTY REGISTRAR

THESE FURTHER AND BETTER PARTICULARS are filed by Muir Williams Nicholson of 9th
Floor, Austmark Centre, 15-17 William Street, Perth, W.A. 6000.

Telephone: 327.5777

Reference: RHP.mjr.GOLD1850-006

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

B E T W E E N :

No. 9

Order of the Master for
Directions

29 November 1982

NO. 1957 OF 1982

LOMBARD AUSTRALIA LIMITED

First Plaintiff

JOSEPH MAXIM GOLDBERG and
VIVIENNE GOLDBERG trading as
"SHAMROCK PARK"

Second Plaintiff

and

EAGLE STAR INSURANCE COMPANY
LIMITED

ENNIA INSURANCE COMPANY (UK)
LIMITED

ASSURANCES GENERALES de FRANCE
(London Branch)

PRUDENTIAL ASSURANCE COMPANY
LIMITED

A A MUTUAL INTERNATIONAL
INSURANCE COMPANY LIMITED

EQUINE & LIVESTOCK INSURANCE
COMPANY LIMITED

UNION ATLANTIQUE d'ASSURANCES
S.A.

First Defendants

AUSTRALIAN INSURANCE BROKERS
LIMITED

Second Defendant

BEFORE THE MASTER IN CHAMBERS
THE 29th DAY OF NOVEMBER 1982

UPON the application of the second plaintiffs by summons dated
the 29th day of October, 1982 and UPON HEARING the solicitors
for the parties IT IS ORDERED THAT

1. The orders made the 9th and 25th days of November 1982
be and are hereby recalled.

No.9

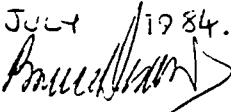
Order of the Master for
Directions

29 November 1982
(continued)

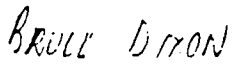
2. Subparagraph (d) of paragraph 1 of the reply dated the 8th day of November 1982 and filed herein to the defence of the first defendants be deleted, and service of the amended reply be dispensed with.
3. The first defendants have leave to file and serve a rejoinder on or before the 1st day of December, 1982.
4. The action be entered for trial on or before the 8th day of December, 1982.
5. There be inspection of documents within 14 days of the date hereof.
6. The parties have leave to administer interrogatories after entry for trial.
7. The action be listed for hearing on the 21st day of February, 1983, and the hearing date be vacated if the action is not entered for trial on or before the 8th day of December, 1982.
8. The number of expert witnesses be limited to four for each party.
9. Any party proposing to adduce expert evidence at trial do disclose in writing to the other parties the substance of such evidence not later than 21 days prior to the date of trial.
10. The costs of the application be costs in the cause.

I CERTIFY that this is a true copy of
the document of which it purports to be
a copy.

Dated the 9th day of July 1984.


DEPUTY REGISTRAR

BY THE COURT


DEPUTY REGISTRAR

THIS ORDER was extracted by Muir Williams Nicholson, Solicitors,
Austmark Centre, 15-17 William Street, Perth, W.A. 6000.
Telephone: 327-5777. Reference: RHP:GOLD1850-006

IN THE SUPREME COURT)
OF WESTERN AUSTRALIA)

undated

No. 1957 of 1982

B E T W E E N :

LOMBARD AUSTRALIA LIMITED

First Plaintiff

JOSEPH MAXIM GOLDBERG and
VIVIENNE GOLDBERG trading as
"SHAMROCK PARK"

Second Plaintiffs

and

EAGLE STAR INSURANCE COMPANY
LIMITED

ENNIA INSURANCE COMPANY (UK)
LIMITED

ASSURANCES GENERALES de FRANCE
(London Branch)

PRUDENTIAL ASSURANCE COMPANY
LIMITED

AA MUTUAL INTERNATIONAL
INSURANCE COMPANY LIMITED

EQUINE & LIVESTOCK INSURANCE
COMPANY LIMITED

UNION ATLANTIQUE d'ASSURANCES
S.A.

First Defendants

AUSTRALIAN INSURANCE BROKERS
LIMITED

Second Defendant

REJOINDER TO PLAINTIFFS' REPLY
TO FIRST DEFENDANTS' DEFENCE

1. As to paragraph 1 of the reply the first defendant does not rely on the policy which the second defendants issued without authority or on any policy other than the four policies referred to in paragraph 8 of the statement of claim particulars of which have been given by the plaintiffs

Rejoinder to Plaintiffs' Reply
to First Defendants' Defence
undated (continued)

("the policies") and in consequence paragraph 1(a) of the reply is irrelevant to the issues between the plaintiffs and the first defendants.

2. The schedule to the policies contained a clause which provided that the policies were subject to all terms clauses and conditions as the policy issued by the Australian Bloodstock Insurance Pool which is the condition pleaded in paragraph 5 of the first defendants' defence. On a proper construction of the policies this clause meant that the terms clauses and conditions of the then standard policy of the Australian Bloodstock Insurance Pool were incorporated in the policies.

3. In the alternative if the policies did not incorporate by reference the terms clauses and conditions of the then standard policy of the Australian Bloodstock Insurance Pool then the policies are void for uncertainty.

4. The first defendants will apply to strike out paragraph 3 which is inconsistent with paragraph 32(b) of the statement of claim.

5. As to paragraph 4(a) the first defendants' agent did receive the proposal and declaration (referred to in paragraphs 23 and 24 of the statement of claim and in paragraph 7 of the defence) before the policies issued and in consequence whether or not the first defendants "required" the plaintiffs to make a proposal or declaration is irrelevant.

6. With respect to paragraph 4(b) the first defendants denies making the representation alleged or any representation.

7. If as the plaintiffs plead in paragraph 4(e) of the reply the second plaintiffs did not act on behalf of the

Rejoinder to Plaintiffs' Reply
to First Defendants' Defence
undated (continued)

first plaintiffs in obtaining the policies then there was no common intention of the first plaintiff and the first defendants to enter into contractual relations and the policies are unenforceable by the first plaintiff. In the alternative the paragraph 4(e) is inconsistent with paragraph 8 of the statement of claim.

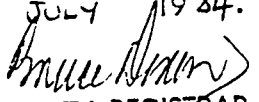
8. The first defendants will apply to strike out paragraph 5(a) which is inconsistent with the plea in paragraph 33 of the statement of claim and which is in any event irrelevant to the issues between the parties.

9. The first defendants otherwise join issue with the plaintiffs on their reply.


C.J.L. PULLIN

I CERTIFY that this is a true copy of the document of which it purports to be a copy.

Dated the 9th day of JULY 1984.


DEPUTY REGISTRAR

THIS REJOINDER is filed on the _____ day of _____ 1982 by Northmore Hale Davy & Leake, Solicitors for the First Defendants whose address for service is 29th Floor, Allendale Square, 77 St. George's Terrace, Perth.

Request for Further Particulars
of the Plaintiffs' Reply to
the Defence of the First Defendants
1 December 1982

IN THE SUPREME COURT)
OF WESTERN AUSTRALIA)

No. 1957 of 1982

B E T W E E N :

LOMBARD AUSTRALIA LIMITED

First Plaintiff

JOSEPH MAXIM GOLDBERG and
VIVIENNE GOLDBERG trading as
"SHAMROCK PARK"

Second Plaintiffs

and

EAGLE STAR INSURANCE COMPANY
LIMITED

ENNIA INSURANCE COMPANY (UK)
LIMITED

ASSURANCES GENERALES de FRANCE
(London Branch)

PRUDENTIAL ASSURANCE COMPANY
LIMITED

AA MUTUAL INTERNATIONAL
INSURANCE COMPANY LIMITED

EQUINE & LIVESTOCK INSURANCE
COMPANY LIMITED

UNION ATLANTIQUE d'ASSURANCES
S.A.

First Defendants

AUSTRALIAN INSURANCE BROKERS
LIMITED

Second Defendant

REQUEST FOR FURTHER AND BETTER
PARTICULARS OF THE PLAINTIFFS' REPLY
TO THE DEFENCE OF THE FIRST DEFENDANTS

1. As to paragraph 4(a) of the reply specify when the
"contract of insurance" was made by identifying:

(a) the offer; and

1 December 1982

(b) the acceptance

(continued)

(c) the communication of such acceptance

constituting such contract such particulars to include the date of the offer, of the acceptance and the communication thereof, whether each was oral in writing or implied, if oral the persons engaging in the conversation, if in writing by identifying the document and if implied by stating the facts giving rise to the implication.

2. As to paragraph 4(b) specify why the proposal referred to in paragraphs 23 and 24 of the statement of claim is not a proposal for the purposes of the "contract of insurance".

3. With respect to paragraph 4(c):

(a) what steps would have been taken to arrange alternative insurance;

(b) what other insurance was available, which companies could have offered such insurance and on what terms.

DATED the *1st* day of *December* 1982

Northmore Hale Davy & Leake

Solicitors for the First Defendants

TO: The Plaintiffs

AND TO: Their Solicitors
Muir Williams Nicholson,
8th Floor, Law Chambers,
Cathedral Square,
PERTH.

I CERTIFY that this is a true copy of the document of which it purports to be a copy.

Dated the 9th day of JULY 1984.

Muir Williams Nicholson
DEPUTY REGISTRAR

THIS REQUEST is filed by Northmore Hale Davy & Leake, Solicitors for the First Defendants whose address for service is 29th Floor, Allendale Square, 77 St. George's Terrace, Perth.

No. 12

Further and Better Particulars of
the Reply to the Defence of the
First Defendants
7 December 1982

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

NO. 1957 OF 1982

B E T W E E N :

LOMBARD AUSTRALIA LIMITED
First Plaintiff

JOSEPH MAXIM GOLDBERG and
VIVIENNE GOLDBERG trading as
"SHAMROCK PARK"

Second Plaintiff

- and -

EAGLE STAR INSURANCE COMPANY
LIMITED

ENNIA INSURANCE COMPANY (UK)
LIMITED

ASSURANCES GENERALES de FRANCE
(London Branch)

PRUDENTIAL ASSURANCE COMPANY
LIMITED

A A MUTUAL INTERNATIONAL
INSURANCE COMPANY LIMITED

EQUINE & LIVESTOCK INSURANCE
COMPANY LIMITED

UNION ATLANTIQUE d'ASSURANCES
S.A.

First Defendants

AUSTRALIAN INSURANCE BROKERS
LIMITED

Second Defendant

FURTHER AND BETTER PARTICULARS OF THE REPLY
TO THE DEFENCE OF THE FIRST DEFENDANTS

1. Of paragraph 4(a) of the reply:

As it is common cause that the four "Combined Companies Policies" constitute the contract of insurance, the first defendants are not entitled to particulars requested.

2. Of paragraph 4(b):

Ex facie the proposal, it is not a proposal by the first plaintiff.

7 December 1982

3. Of paragraph 4(c):

(continued)

The first defendants are not entitled to these particulars.

DATED the day of December, 1982.

A. B. Pringle for J. K. Malcolm
Counsel

TO: The first defendants,

AND TO: Their solicitors,
Messrs. Northmore, Hale, Davy & Leake,
97 St. George's Terrace,
PERTH. W.A. 6000

I CERTIFY that this is a true copy of
the document of which it purports to be
a copy.

Dated the 9th day of July 1984

Bruce Dixon
DEPUTY REGISTRAR

THESE FURTHER AND BETTER PARTICULARS are filed by Muir Williams
Nicholson, of 15-17 William Street, Perth, Solicitors for the
plaintiff.

No. 13

Order of the Master for Leave
to amend the Statement of Claim
11 February 1983

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

No. 1957 of 1982

B E T W E E N:

LOMBARD AUSTRALIA LIMITED

First Plaintiff

- and -

JOSEPH MAXIM GOLDBERG AND
VIVIENNE GOLDBERG t/a
"SHAMROCK PARK"

Second Plaintiffs

- and -

EAGLE STAR INSURANCE COMPANY
LIMITED, ENNIA INSURANCE
COMPANY (UK) LIMITED,
ASSURANCES GENERALES DE
FRANCE (LONDON BRANCH),
PRUDENTIAL ASSURANCE COMPANY
LIMITED, A.A. MUTUAL
INTERNATIONAL INSURANCE
COMPANY LIMITED, EQUINE &
LIVESTOCK INSURANCE COMPANY
LIMITED and UNION ATLANTIQUE
D'ASSURANCES S.A.

First Defendants

- and -

AUSTRALIAN INSURANCE BROKERS
LIMITED

Second Defendant

BEFORE THE MASTER IN CHAMBERS THE 11TH DAY OF FEBRUARY 1983

UPON THE APPLICATION of the plaintiffs by Summons dated the
1st day of February 1983 and upon hearing the solicitors for
the parties and by consent IT IS ORDERED THAT:-

1. The plaintiffs have leave to amend the statement of claim
herein in accordance with the amended minute of orders
dated the 11th day of February 1983 and filed herein within
2 days of the date hereof.

1541c

1

11 February (continued)

2. The plaintiffs have leave to amend the further and better particulars of the statement of claim filed herein the 26th day of November, 1982 in accordance with the said amended minute - within 2 days of the date hereof.
3. The first and second defendants have leave to file and serve further amended defences within 7 days of the date hereof.
4. The plaintiffs have leave to file and serve an amended reply to the defence of the first defendants and the further and better particulars thereof within 3 days after service on them of the amended defences.
5. The plaintiffs have leave to file and serve a reply to the amended defence, of the second defendant within 3 days after service on them of the amended defence.
6. The second defendant have leave to file and serve a rejoinder on the other parties.
7. The first defendants have leave to file and serve an amended rejoinder.
8. The application do otherwise stand adjourned.
9. As between the plaintiffs and the first defendant the costs incurred and thrown away by the amendment and the costs of any consequent amendment be the first defendants in any event.
10. As between the plaintiffs and the second defendant the

No. 13

Order of the Master for Leave
to amend the Statement of Claim

11 February 1983 (continued)

costs of the application be costs in the cause.

BY THE COURT

BEUCE DIXON
DEPUTY REGISTRAR

I CERTIFY that this is a true copy of
the document of which it purports to be
a copy.

Dated the 9th day of July 1984

Muir Williams
DEPUTY REGISTRAR

THIS ORDER was extracted by Muir Williams Nicholson of 9th
Floor, Austmark Centre, 15-17 William Street, Perth, solicitors
for the plaintiffs.
Telephone: 327-5777

Ref: RHP:GOLD1850-006.

18 February 1983

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

No. 1957 of 1982

BETWEEN:

LOMBARD AUSTRALIA LIMITED

First Plaintiff

and

JOSEPH MAXIM GOLDBERG AND
VIVIENNE GOLDBERG t/a
"SHAMROCK PARK"

Second Plaintiffs

and

EAGLE STAR INSURANCE COMPANY
LIMITED, ENNIA INSURANCE
COMPANY (UK) LIMITED,
ASSURANCES GENERALES de
FRANCH (London Branch),
PRUDENTIAL ASSURANCE COMPANY
LIMITED, A A MUTUAL
INTERNATIONAL INSURANCE
COMPANY LIMITED, EQUINE &
LIVESTOCK INSURANCE COMPANY
LIMITED and UNION ATLANTIQUE
d'ASSURANCES S.A.

First Defendants

and

AUSTRALIAN INSURANCE BROKERS
LIMITED

Second Defendant

AMENDED DEFENCE OF SECOND DEFENDANT

DATED AND FILED 18 February 1983

1. Paragraphs 1, 2 and 4 of the statement of claim are admitted.
2. The second defendant makes no admissions as regards the allegations concerning the

1.

Amended Defence of Second
Defendant
18 February 1983
(continued)

incorporation and addresses of the first defendants as set out in paragraph 3 of the statement of claim.

~~3. The second defendant does not plead to the allegations made in paragraphs 5 to 16 of the statement of claim as those allegations relate to the plaintiffs' claim against the first defendants only. The second defendant makes no admissions as regards any such allegations.~~

3. (a) Save that the second defendant requested Hudig Langeveldt Pty Ltd to obtain insurance for the plaintiffs on the said terms of the telex dated 23rd July 1981 from the second defendant to Hudig Langeveldt Pty Ltd and by a telephone conversation which took place between about 16 July 1981 and 23 July 1981 between Malcolm Brown (on behalf of the second defendant) and Malcolm Willis (on behalf of the Australian Bloodstock Insurance Pool alternatively Hudig Langeveldt Pty Ltd), the second defendant admits paragraphs 7A and 7B of the statement of claim.

(b) As regards paragraph 8 of the statement of claim the second defendant denies that as at the date the horse died, the plaintiffs had agreed to accept the said policies, and

18 February 1983 (continued)

accordingly denies that the plaintiffs were insured under the policies as at the said date.

(c) As regards the further allegations made in paragraphs 5 to 16 of the statement of claim the second defendant does not plead thereto as those allegations relate to the plaintiffs' claim against the first defendants only. The second defendant makes no admissions as regards any such allegations."

4. Paragraphs 18, 19 and 20 of the statement of claim are admitted.
5. (a) Paragraph 21 of the statement of claim is denied.
(b) In or about July 1981, at the instance of the second plaintiffs, the second defendant requested the then insurers of the said horse to agree to increase the insurance cover in respect of the horse to the sum of \$1,000,000.00 plus loss of use.
6. The second defendant admits paragraphs 22 and 23 of the statement of claim.
7. As regards paragraph 24 of the statement of claim the second defendant admits that the said proposal was signed by the said Wright on behalf of the second plaintiffs and returned by him to the second defendant forthwith. The second

Amended Defence of Second
Defendant
18 February 1983 (continued)

defendant does not know whether the said Wright noticed the errors referred to therein and does not admit that he did not notice them.

7A. The second defendant does not plead to paragraphs 25 and 26 of the statement of claim, as they are not relevant to the matters in issue between the parties, and makes no admission in relation thereto.

~~8. The second defendant admits paragraph 27, 28 and 29 of the statement of claim.~~

8. (a) The second defendant admits paragraph 27 of the statement of claim save that the second defendant requested the Australian Bloodstock Insurance Pool alternatively Hudig Langeveldt Pty Ltd to arrange for the insurance for the horse as alleged.

(b) The second defendant admits paragraphs 28 and 28A of the statement of claim.

(c) As regards paragraph 29 of the statement of claim, on or about 31 July 1981 the second defendant sent the said proposal to the Australian Bloodstock Insurance Pool alternatively Hudig Langeveldt Pty Ltd."

~~9. As regards paragraph 30 of the statement of claim:~~

~~(a) On 27 July 1981, the second defendant (acting on behalf of the plaintiffs) requested Hudig Langeveldt Pty Ltd (acting~~

18 February 1983 (continued)

- on behalf of unknown principals being insurance companies, not yet identified) to provide insurance cover for the said horse for \$1,000,000.00 as from 1 August 1981.
- (b) On 28 July 1981, Hudig Langeveldt (acting as aforesaid) informed the second defendant (representing the plaintiffs as aforesaid) that insurance cover in respect of the said horse had been placed with effect from 1 August 1981 to 1 November 1982 at a rate of 3.25% with the sum insured of \$1,000,000.00.
- (c) By letter dated 31 July 1981, the second defendant (acting as aforesaid) sent to Hudig Langeveldt (acting as aforesaid) the said proposal form and a veterinary certificate relating to the said horse.
- (d) On 31 July 1981, prior to receipt of the said proposal, Hudig Langeveldt (acting as aforesaid) issued a cover note relating to the said horse which reflected that the said horse was insured for \$1,000,000.00 with effect from 1 August 1981 to 1 November 1982; the said cover note further set out the amount payable in respect of the said insurance.
- (e) Hudig Langeveldt sent the said cover note to the second defendant.

18 February 1983 (continued)

- ~~(f) The amount payable in respect of the said insurance was duly paid.~~
- ~~(g) At a date not known to the second defendant Hudig Langeveldt arranged for the said policies to be issued. The said policies were not delivered to the second defendant or the plaintiffs until after the horse had died.~~
9. As regards paragraph 30 of the statement of claim the second defendant admits that the Australian Bloodstock Insurance Pool or Hudig Langeveldt Pty Ltd arranged for the policies to be issued after 31 July 1981.
10. Paragraph 31 of the statement of claim is admitted.
11. As regards paragraph 32 of the statement of claim:
- (a) The second defendant admits that it knew that the said horse had suffered from colic in or about March 1981.
- (b) The second defendant knew that prior to August 1981 the horse was insured by insurers who had declined to increase the insurance to a sum of \$1,000,000.00; accordingly paragraph 32(b) is denied.
- (c) The second defendant denies paragraphs 32(c) and (d) of the statement of claim.

12. As regards paragraph 33 of the statement of claim:

- (a) The second defendant admits that the first defendants have repudiated liability to the plaintiffs by reason of the matters mentioned in paragraph 31(a) of the statement of claim.
- (b) The second defendant denies that the first defendants have repudiated liability by reason of the matters mentioned in paragraph 31(b) of the statement of claim.
- ~~(c) For the reasons set out in sub-paragraphs (d) to (f) below the second defendant denies that the the first defendants are entitled to repudiate liability to the plaintiffs by reason of the matters referred to in paragraphs 31(a) and (b) of the statement of claim.~~
- (d) By reason of the facts set out in paragraph 9 above the proposal form did not form the basis of and had no bearing on the contract of insurance between the plaintiffs and the first defendants.
- (e) Alternatively to sub-paragraph (d) above
 - (i) the cover note referred to in paragraph 9(d) above stipulated that the insurance provided in terms thereof was to be "subject to the terms and

Amended Defence of Second
Defendant
18 February 1983
(continued)

conditions of the insuring company's
policy";

- (ii) the said cover note provided that the insurer was to be "Lloyds-Chandler Hargreaves Whittal & Company";
- (iii) in the premises the insurance cover provided by the said cover note was subject to the terms and conditions of the appropriate insurance policy usually issued by Lloyds-Chandler Hargreave Whittal & Company;
- (iv) the said terms and conditions contained in the insurance policy usually issued by Lloyds-Chandler Hargreaves Whittal & Company do not contain a provision making the proposal form the basis of the insurance;
- (v) the matters referred to in paragraphs 32(a) and 32(b) were not material to the risk.

(c) The second defendant admits that the first defendants have repudiated liability on the grounds of its alleged non-disclosure of the matters referred to in paragraph 33(a) of the statement of claim.

(d) Save as aforesaid paragraph 33 of the statement of claim is denied.

18 February 1983 (continued)

(e) The second defendant denies that the first defendants are entitled to repudiate liability to the plaintiffs."

(f) Alternatively, if it is held that the insurance provided by the said cover note was not subject to the terms and conditions of the Lloyds-Chandler Hargreaves Whittal & Company policy but subject to some other policy or policies which stipulate that the proposal form is the basis of the contract of insurance between the parties, the second defendant avers that;

(i) by reason of the facts set out in paragraph 9 above such a stipulation that the proposal is the basis of the contract between the parties is not applicable to the particular insurance provided by the said cover;

(ii) by reason of the facts set out in paragraph 9 above it was implicit in the contract between the parties that such a stipulation would have no effect.

(iii) the second defendant repeats paragraph (e)(v) above.

13. As regards paragraph 34 of the statement of claim the second defendant denies that it had any duty whatever to the plaintiffs which arose other than

in terms of the agreement between the parties.

In the circumstances this paragraph is denied.

~~14. The second defendant denies paragraphs 35 and 36
of the statement of claim.~~

14. (a) The second defendant denies paragraphs 35
and 36 of the statement of claim.

(b) In any event the second defendant denies
that the first defendants are entitled to
deny liability as:

(i) the second defendant denies that the
said illness or ailment of the horse
during 1981 was material;

(ii) the second defendant denies that the
previous insurance of the horse and
the refusal of the previous insurer
to insure the horse for \$1,000,000
were material;

(iii) in any event the second defendant
informed the Australian Bloodstock
Insurance Pool and/or Hudig
Langeveldt Pty Ltd, the first
defendants' agents, by telex dated
16 July 1981 that there was an
existing underwriter in respect of
the horse who had refused to
increase the insurance cover then
existing which was for an amount of

Amended Defence of Second
Defendant

18 February 1983 (continued)

\$650,000. This information was also
given orally by Malcolm Brown (on
behalf of the second defendant) to
Malcolm Willis (on behalf of the
Australian Bloodstock Insurance Pool
and/or Hudig Langeveldt Pty Ltd)
between 16 July 1981 and 23 July
1981.

(c) Further and alternatively if it is held that
the debit note from Hudig Langeveldt Pty Ltd
to the second defendant dated 31 July 1981
formed part of the contract of insurance:

(i) the debit note stipulated that the
insurance provided in terms thereof
was to be "subject to the terms and
conditions of the insuring company's
policy";

(ii) the said debit note provided that
the insurer was to be
"Lloyds-Chandler Hargreaves Whittal
& Company";

(iii) in the premises the insurance cover
provided by the said debit note was
subject to the terms and conditions
of the appropriate insurance policy
usually issued by Lloyds-Chandler
Hargreaves Whittal & Company Limited;

18 February 1983
(continued)

- (iv) the said terms and conditions contained in the insurance policy usually issued by Lloyds-Chandler Hargreaves Whittal & Company Limited do not contain a provision making the proposal form the basis of the insurance;
- (v) Alternatively to subparagraph 14(c)(iv) above an appropriate insurance policy is not usually issued by Lloyds-Chandler Hargreaves Whittal & Company Limited; accordingly the provision referred to in sub-paragraph 14(c)(i) above was meaningless and of no effect;
- (vi) the matters referred to in paragraphs 31, 32 and 33 were not material to the risk.
- (d) In the further alternative, as regards the said policies:
- (i) the second defendant denies that the plaintiffs were, at the date of the horse's death, entitled to an indemnity under the said policies as the plaintiffs had not agreed to accept those policies; alternatively
- (ii) the second defendant denies that it was a term of the policies that the proposal form was the basis thereof;

18 February 1983 (continued)

(iii) further alternatively, the first defendants agreed to insure the plaintiffs prior to the receipt by them of the proposal form; accordingly the proposal form did not form the basis of and had no bearing on the policies.

(e) Further alternatively if it is held that the insurance relating to the horse was governed by a contract containing a stipulation that the proposal form was the basis of the contract of insurance between the parties the second defendant avers that:

(i) As the insurance cover was granted before receipt of the proposal form such a stipulation was inapplicable to the cover in question.

(ii) It was implicit in the contract of insurance that such a stipulation would have no effect.

(iii) The matters referred to in paragraphs 31, 32 and 33 were not material to the risk.

15. Alternatively, the second defendant says that the cause of any damage suffered by the plaintiffs was their own negligence in signing the proposal without noticing the errors therein.

18 February 1983 (continued)

16. The second defendant admits paragraph 37 of the statement of claim.

17. As regards paragraph 38 of the statement of claim:

(a) The second defendant admits that it was an implied term of the said agreement that the second defendant would exercise reasonable care and skill in preparing proposals including the said proposal.

(b) The second defendant denies that it was an implied term of the said agreement that, in the case of the said proposal, it would check the proposal after it had been signed on behalf of the plaintiffs and before dispatching it to Hudig Langeveldt Pty Ltd.

(c) The second defendant admits paragraph 38(a) of the statement of claim.

(d) The second defendant denies paragraphs 38(b) and (c) of the statement of claim.

18. As regards paragraph 39 of the statement of claim

(a) The second defendant denies the allegations contained therein;

(b) (i) It was the duty of the plaintiffs, as proposers for insurance, to ensure that the information given in the proposal was correct.

(ii) In breach of that duty, the plaintiffs failed to rectify any

Amended Defence of Second Defendant

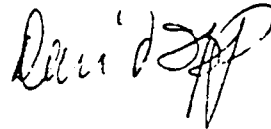
18 February 1983 (continued)
erroneous answers inserted in the form by the second defendant.

(iii) In the premises the sole and effective cause of the plaintiffs' loss is their own breach of duty.

(c) Alternatively the second defendant repeats paragraph 15 above."

19. The second defendant denies paragraphs 40 and 41 of the statement of claim.

20. The second defendant admits paragraph 42 of the statement of claim.



I CERTIFY that this is a true copy of the document of which it purports to be a copy.

Dated the 9th day of JULY 1984



DEPUTY REGISTRAR

FILED by PARKER & PARKER of Floor 23, A.M.P. Building, 140 St George's Terrace, Perth solicitors for the second defendant.

Telephone : 322 0321 Reference : 45CDS:AUS824031
42651/TT

No. 15

Amended Statement of Claim
10 March 1983

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

No. 1957 of 1982

B E T W E E N:

LOMBARD AUSTRALIA LIMITED

First Plaintiff

- and -

JOSEPH MAXIM GOLDBERG AND VIVIENNE
GOLDBERG t/a "SHAMROCK PARK"

Second Plaintiffs

- and -

EAGLE STAR INSURANCE COMPANY
LIMITED, ENNIA INSURANCE COMPANY
(UK) LIMITED, ASSURANCES GENERALES
DE FRANCE (LONDON BRANCH),
PRUDENTIAL ASSURANCE COMPANY
LIMITED, A.A. MUTUAL INTERNATIONAL
INSURANCE COMPANY LIMITED, EQUINE
& LIVESTOCK INSURANCE COMPANY
LIMITED and UNION ATLANTIQUE
D'ASSURANCES S.A.

First Defendants

- and -

AUSTRALIAN INSURANCE BROKERS
LIMITED

Second Defendant

Amended Statement of Claim

Amended the 10th day of March, 1983

Pursuant to the Order of the Master in
Chambers on the 11th day of February, 1983.

1. The first plaintiff is LOMBARD AUSTRALIA LIMITED, a company incorporated in New South Wales of 251 Adelaide Terrace, Perth in the State of Western Australia.
2. The second plaintiffs are JOSEPH MAXIM GOLDBERG and VIVIENNE GOLDBERG, trading as "Shamrock Park".
3. The first defendants are -
 - (a) Eagle Star Insurance Company Limited a company incorporated in England, of 1 Threadneedle Street, London EC2.
 - (b) Ennia Insurance Company (UK) Limited a company similarly incorporated of Fountain House, 136 Fenchurch Street, London EC3.
 - (c) Assurances Generales de France (London Branch) a company incorporated in France, of 87 Rue de Richelieu, Paris.
 - (d) Prudential Assurance Company Limited a company incorporated in England, of care of Equine Underwriting Agencies Ltd, Marlow House, 610-616 Chiswick High Road, London W4.
 - (e) A A Mutual International Insurance Company Limited a company similarly incorporated, of care of Equine Underwriting Agencies Ltd aforesaid.
 - (f) Equine & Livestock Insurance Company Limited a company similarly incorporated, of care of Equine Underwriting Agencies Ltd aforesaid.

10 March 1983 (continued)

(g) Union Atlantique d'Assurances S.A. a company incorporated in Belgium, of Rue Belliard 7 Brussels 1040.

4. The second defendant is AUSTRALIAN INSURANCE BROKERS LIMITED, a company incorporated in the State of New South Wales, whose head office is at 3-5 Bennett Street, Perth aforesaid.
5. At all material times the first plaintiff was the owner of a stallion known as "Asian Beau".
6. By a lease in writing the first plaintiff leased the said horse to the second plaintiffs for a term of 36 months at a monthly rental of \$18,696.76, totalling \$676,083.36, plus the amount of stamp duty totalling \$10,096.20 payable by the second plaintiffs to the first plaintiff in reimbursement of the stamp duty paid by the latter. The said term commenced on 23rd May 1980.

At the trial of this action the plaintiffs will refer to the said lease for its full terms and effect.

7. The second plaintiffs covenanted in the said lease inter alia to insure the said horse and to keep it insured during the period of the lease for its full insurable value.

7A. During or about July, 1981, the plaintiffs, (represented by the second defendant) for their respective interests in the said horse, entered into a contract of insurance with the first defendants (represented by Hudig Langeveldt Pty. Ltd. and/or by the Australian Bloodstock Insurance Pool) whereby the first defendants agreed to indemnify the plaintiffs against loss arising inter alia from the death

10 March 1983 (continued)

of the said horse in the sum of \$1,000,000.00 plus loss of use, for the period 1st August, 1981 to 1st November, 1982, at a premium equivalent to 3.25% per annum on the said sum of \$1,000,000.00.

PARTICULARS OF THE CONTRACT

- (i) By a telex dated 23rd July, 1981 from the second defendant to Hudig Langeveldt Pty. Ltd. (hereinafter referred to as "Hudig") the latter was requested to obtain insurance for the plaintiffs on the said terms.
- (ii) Hudig obtained such insurance cover from Chandler Hargreaves Whittal & Co. of London (hereinafter referred to as "Chandlers"), and by telex dated 28th July, 1981, offered such cover to the second defendant.
- (iii) By a telex dated 30th July, 1981, the second defendant notified Hudig that such insurance was accepted.
- (iv) Hudig was Chandlers agent for the purpose of receiving the said acceptance, and the plaintiffs' agent for the purpose of ascertaining who the insurers of the said horse were.
- (v) A contract of insurance on the said terms was thereby concluded between the plaintiff and Chandlers.
- (vi) Chandlers had entered into the said contract of insurance without disclosing (as was the fact) that it had been acting as the agent for the first defendants.

(vii) On or about 25th August, 1981, Chandlers issued a cover note addressed to the Australian Insurance Blood Stock Pool received by Hudig, disclosing the identities of the first defendants, and their respective proportionate liabilities as set out in paragraph 7B below.

7B. By the said cover/debit note the first defendants notified the second defendant, as agent for the plaintiff, of the percentages in which they undertook to indemnify the plaintiffs in relation to the said sum insured, namely:

| | |
|--|-------------|
| <u>Prudential Assurance Co. Ltd.</u> | <u>8%</u> |
| <u>A. A. Mutual International Insurance Co. Ltd.</u> | <u>8%</u> |
| <u>Equine & Livestock Insurance Co. Ltd.</u> | <u>4%</u> |
| <u>Eagle Star Insurance Co. Ltd.</u> | <u>20%</u> |
| <u>Union Atlantique D'Assurances S.A.</u> | <u>20%</u> |
| <u>Assurances Generales de France</u> | <u>30%</u> |
| <u>Ennis Insurance Company (U.K.) Limited</u> | <u>10%</u> |
| | <u>100%</u> |

8. Alternatively to paragraph 7 by a "Companies Combined Policy" comprising policies issued by the first defendants in or about October and November, 1981, but delivered to the second defendant on behalf of the plaintiffs in June, 1982 in consideration for a total premium of \$40,692.00, they severally agreed each for the proportion set out against its name to indemnify inter alia the first plaintiff and the second plaintiffs, as to their respective interests in the said horse, against loss inter alia by reason of all risks of mortality, accident, sickness and disease. The sum assured was \$1,000,000.00 plus loss of use.

10 March 1983

(continued)

At the trial of this action the plaintiffs will refer to the said policies for their full terms and effect.

9. Under the said policies (issued on identical printed forms) the defendants agreed to share the said total premium and liability for the said sum assured among them in the following proportions -

| | | |
|--|-----|-------|
| Eagle Star Insurance Company Limited | | 20% |
| Ennia Insurance Company (UK) Limited | | 10% |
| Assurances Generales de France (London Branch) | | 30% |
| Prudential Assurance Company Limited | 40% |) |
| A A Mutual International Insurance Co. Ltd. | |) 20% |
| | 40% |) |
| Equine & Livestock Insurance Co. Ltd. | 20% |) |
| Union Atlantique d'Assurances S.A. | | 20% |

10. The second defendants duly paid the said total premium.
11. ~~During the currency of the said policies~~ during late February and early March, 1982, the said horse suffered from colic resulting in generalised peritonitis, and on 4th March, 1982 he was properly put down by the veterinary surgeons attending him.
12. The death of the said horse resulted from risks insured against under the said contract of insurance or alternatively under the said policies, and the plaintiffs are entitled to indemnity under the said contract of insurance or alternatively under the policies.
13. At the material time the loss of the value of the said horse was at least \$1,000,000.00.

Amended Statement of Claim

10 March 1983 (continued)

14. Alternatively, the loss of the value of the said horse and the value of the loss of its use were at least \$1,000,000.00.

15. The second plaintiffs were entitled to the use of the said horse.

16. The first defendants have wrongfully refused ~~wrongfully~~ to indemnify the plaintiffs or any of them in respect of the said loss.

17. If and to the extent that the first defendants are not liable to indemnify the plaintiffs or one or more of them in respect of the said losses the plaintiffs plead as follows as against the second defendant, in the alternative to their respective claims to indemnity under the said contract of insurance or alternatively under the said policies.

18. At all material times the second defendant has been the second plaintiff's insurance broker in relation to the insuring of horses against the risk of loss by divers perils.

19. In July, 1981, there subsisted a policy of insurance in respect of the said horse, in favour of the first plaintiff and the second plaintiffs, procured by the second defendant, the sum insured being \$650,000.00.

20. At all material times the second defendant well knew (as were the facts) -
 - (a) that the first plaintiff was the owner of the said horse;

 - (b) that the second plaintiffs were the lessees of the said horse;

- (c) that the said horse was a stud stallion whose use was valuable to the second plaintiffs;
- (d) that the second plaintiffs were interested in the value of the said horse as at the end of the said lease.
21. In or about July, 1981, at the instance of the second plaintiffs, the second defendant requested the then insurers of the said horse to agree to renew the insurance at an increased sum assured of \$1,000,000.00 plus loss of use.
22. Such insurers declined the said request.
23. On or about 23rd July, 1981 the second defendant by letter advised the second plaintiffs' manager, one Wright, that it had found an underwriter who would insure the said horse for \$1,000,000.00 from 1st August, 1981 to 1st November, 1982, and requested him urgently to sign and return a proposal for such insurance, which had been completed, save for the signature thereto by or on behalf of the second plaintiffs.
24. The said proposal was signed by the said Wright on behalf of the second plaintiffs and returned by him to the second defendant forthwith, without having noticed the errors mentioned hereinafter.
25. In or about July or August, 1981, the second defendant purported to issue a policy of insurance on behalf of certain insurance companies, in respect of the said horse, the sum insured purportedly being \$1,000,000.00 plus loss of use, the period of insurance purportedly being 1st August, 1981 to 1st November, 1982.

26. The second defendant was not authorised to issue the said policy.
27. In or about July, 1981 the second defendant requested Hudig Langeveldt Pty. Ltd. of Sydney in the State of New South Wales to arrange for the insurance of the said horse for \$1,000,000.00 plus loss of use, from 1st August, 1981 to 1st November, 1982, on behalf of the second plaintiffs as lessees thereof, on the basis that they were leasing the said horse from the first plaintiff.
28. At such time the second defendant well knew that the second plaintiffs had covenanted with the first plaintiff to keep the said horse properly insured during the currency of the said lease.
- 28A. During or about July, 1981, the said contract of insurance was concluded as aforesaid.
29. On or about 31st July, 1981, the second defendant sent the said proposal to Hudig Langeveldt Pty. Ltd.
30. Hudig Langeveldt thereupon arranged for the said policies to be issued.
31. The said proposal prepared by the second defendant, its servants or agents, contained inter alia answers -
- (a) that the said horse had not suffered from any defects or ailments, illness or disease in the previous twelve months;
 - (b) that no insurer had ever declined or refused to renew the second plaintiffs' livestock insurance;

10 March 1983 (continued)

- (c) that the said horse was not insured and had not been insured previously.

32. To the knowledge of the second defendant -

(a) the said horse had suffered from colic in or about March, 1981:

(b) the said horse was currently insured by insurers who had declined to renew the insurance at a sum insured of \$1,000,000.00;

(c) the plaintiffs would not themselves be making any disclosure to the first defendants of any material facts;

(d) the plaintiffs were relying upon the second defendant to disclose material facts within its knowledge to the first defendants and to check the correctness of any relevant proposal.

33. The first defendants have repudiated liability to the plaintiffs by reason of the matters mentioned in paragraph 31(a) and (b) and further that there had not been disclosed to the first defendants facts alleged to have been material to the risks accepted by the first defendants, namely, that -

(a) the said horse had suffered from an ailment or illness during the preceding 12 months, had been hospitalised at Murdoch University from 11th March, 1981, to 16th March, 1981, suffering from severe abdominal pain, gaseous distension of the large bowel and severe intermittent intestinal spasm, and had been found to have large amounts of sand in his manure;

10 March 1983

(continued)

(b) the said horse had been previously insured and that the previous insurer had declined to renew the insurance for the sum of \$1,000,000.00.

34. It was the duty of the second defendant owed to the plaintiffs or alternatively to the second plaintiffs to exercise reasonable care and skill in preparing the said proposal and in checking the same before despatching it to Hudig Langeveldt as aforesaid and further to disclose to the first defendants on behalf of the plaintiff any facts within their knowledge material to the risks to be accepted by the first defendants.

35. In breach of the said duty, the second defendant, its servants or agents, negligently failed to exercise reasonable or any care and skill in preparing or checking the said proposal and neglected to disclose to the first defendants material facts within its knowledge.

Particulars of Negligence

(a) Inserting incorrect information in the proposal which the second defendant, its servants or agents, knew to be incorrect, as aforesaid.

(b) Failing to check, properly or at all, for errors in the said proposal before despatching the same to Hudig Langeveldt Pty. Ltd.

(c) Failing to disclose to the first defendants the said facts concerning the said illness or ailment of the said horse during 1981 and the said refusal to renew the said previous insurance which facts were material.

10 March 1983

(continued)

36. In consequence of the said negligence, the plaintiffs or alternatively the second plaintiffs have suffered damages, in that they are unable to enforce their claims to indemnity under the said contract of insurance or alternatively under the said policies as against the first defendants and the second plaintiffs have not been secured against their full liability to the first plaintiff under the said lease.

Particulars of damages calculated as at the date of trial will be furnished before trial.

Further or in the alternative -

37. At all material times the second defendants were the second plaintiffs' insurance brokers pursuant to an agreement entered into between them in or about 1977.
38. It was an implied term of the said agreement that the second defendant would exercise reasonable care and skill in preparing proposals including the said proposal and in the case of the said proposal in checking the same before despatching the same to Hudig Langeveldt Pty. Ltd., and in making disclosure to the first defendants of material facts arising from the premises and the following further facts -
- (a) at all material times the second defendant was well acquainted with the facts relevant to the insuring of horses owned or leased by the second plaintiffs;
 - (b) the second defendant had in the past, as in the instant case, assumed responsibility for preparing correctly proposals, for signature by or on behalf of the second plaintiffs;

10 March 1983

(continued)

(c) the second defendant well knew (as was the fact) that the second plaintiffs relied upon the second defendant, its servants and agents, to prepare correctly for signature by them or on their behalf, proposals (including the said proposal) for the insurance of horses owned or leased by them and in disclosing material facts to insurers on their behalf.

39. In breach of the said implied term the second defendant, its servants and agents, negligently failed to exercise reasonable or any care in the preparation of the said proposal or in checking it before despatching it to Hudig Langeveldt Pty. Ltd. and in making disclosure to the first defendants of material facts.

Particulars of Negligence

(a) Inserting incorrect information in the proposal which the second defendant, its servants or agents, knew to be incorrect, as aforesaid.

(b) Failing to check, properly or at all, for errors in the said proposal before despatching the same to Hudig Langeveldt Pty. Ltd.

(c) Failing to disclose to the first defendant the said facts concerning the said illness or ailment of the said horse during 1981 and the said refusal to renew the said insurance which facts were material.

40. By reason of the said breaches of duty, the second plaintiffs have suffered damages, in that they are unable to enforce their claim to indemnity under the said contract of insurance or alternatively under the said policies as against the first defendants.

10 March 1983

(continued)

Particulars of damages calculated as at the date of trial will be furnished before trial.

41. All the said damages sustained by reason of breaches of contract as aforesaid were in the contemplation of the parties thereto at the time such contracts were made, as being liable to be sustained by reason of the breach thereof by the second defendant.
42. On or about 8th June, 1982, notice was given to the defendants, in terms of Section 32 of the Supreme Court Act, of the plaintiffs' intention to claim interest.

AND the first and second plaintiffs claim as against the first defendants in the said proportions the sum of \$1,000,000.00 together with interest pursuant to statute,

ALTERNATIVELY

A. The first plaintiff claims -

(1) As against the first defendants -

- (a) a declaration that they are obliged to indemnify it under the said contract of insurance or alternatively under the said policies;
- (b) indemnity, in the said proportions, in respect of its interest under the said contract of insurance or alternatively under the said policies;
- (c) interest pursuant to statute.

10 March 1983

(continued)

(2) Alternatively, as against the second defendant, damages and interest pursuant to statute.

B. The second plaintiffs claim -

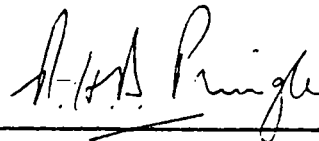
(3) As against the first defendants -

(a) a declaration that they are obliged to indemnify the second plaintiffs under the said contract of insurance or alternatively under the said policies;

(b) indemnity, in the said proportions, in respect of their interest under the said contract of insurance or alternatively under the said policies;

(c) interest pursuant to statute.

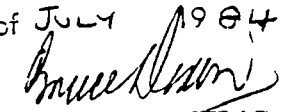
(4) Alternatively, as against the second defendant, damages and interest pursuant to statute.



COUNSEL

I CERTIFY that this is a true copy of the document of which it purports to be a copy.

Dated the 9th day of JULY 1984



DEPUTY REGISTRAR

Amended Further and Better
Particulars of the Statement of
Claim

10 March 1983

No. 1957 of 1982

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

B E T W E E N:

LOMBARD AUSTRALIA LIMITED

First Plaintiff

- and -

JOSEPH MAXIM GOLDBERG AND VIVIENNE
GOLDBERG t/a "SHAMROCK PARK"

Second Plaintiffs

- and -

EAGLE STAR INSURANCE COMPANY
LIMITED, ENNIA INSURANCE COMPANY
(UK) LIMITED, ASSURANCES GENERALES
DE FRANCE (LONDON BRANCH),
PRUDENTIAL ASSURANCE COMPANY
LIMITED, A.A. MUTUAL INTERNATIONAL
INSURANCE COMPANY LIMITED, EQUINE
& LIVESTOCK INSURANCE COMPANY
LIMITED and UNION ATLANTIQUE
D'ASSURANCES S.A.

First Defendants

- and -

AUSTRALIAN INSURANCE BROKERS
LIMITED

Second Defendant

AMENDED
FURTHER AND BETTER PARTICULARS OF THE
STATEMENT OF CLAIM

Amended the 10th day of March, 1983

Pursuant to the Order of the Master in
Chambers on the 11th day of February, 1983

Of paragraph 8 of the statement of claim:

1. The policy number of each of the four "Companies Combined Policies" is 514/B1/0542Z.

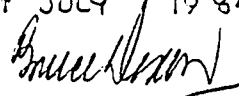
10 March 1983 (continued)

2. The plaintiffs allege that no other documents or parts of other documents were incorporated in the said policies by reference.
3. In the alternative to the averment that the contract of insurance was entered into as alleged in paragraph 7A. of the amended statement of claim the plaintiffs allege that no other documents or parts thereof other than the said "Companies Combined Policies" formed part of the contract of insurance between the plaintiffs and the first defendants.
4. Copies of the "Companies Combined Policies" are being supplied separately.

Muir Williams Nicholson
Solicitors for the plaintiffs

I CERTIFY that this is a true copy of
the document of which it purports to be
a copy.

Dated the 9th day of JULY 1984


DEPUTY REGISTRAR

Chamber Summons to fix date
for trial

IN THE SUPREME COURT)
OF WESTERN AUSTRALIA)

21 March 1983
No. 1957 of 1982

B E T W E E N :

LOMBARD AUSTRALIA LIMITED
First Plaintiff

and

JOSEPH MAXIM GOLDBERG and
VIVIENNE GOLDBERG t/a
"SHAMROCK PARK"
Second Plaintiffs

and

EAGLE STAR INSURANCE COMPANY
LIMITED, ENNIA INSURANCE
COMPANY (UK) LIMITED,
ASSURANCES GENERALES de
FRANCH (London Branch),
PRUDENTIAL ASSURANCE COMPANY,
A A MUTUAL INTERNATIONAL
INSURANCE COMPANY LIMITED,
EQUINE & LIVESTOCK INSURANCE
COMPANY LIMITED and UNION
ATLANTIQUE d'ASSURANCES S.A.
First Defendants

and

AUSTRALIAN INSURANCE BROKERS
LIMITED
Second Defendant

LET ALL PARTIES attend before the Master in Chambers
on TUES day the 29th day of MARCH 1983
at 10.00 o'clock in the FORE noon on the hearing of
an application by the Plaintiffs for orders:-

1. Allocating a date for the trial of this action.
2. For any further directions the Court considers necessary.

DATED the 21st day of MARCH 1983.

No. 17

Chamber Summons to fix date for
trial

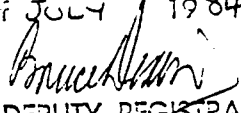
21 March 1983 (continued)

TO: The First Defendants and their Solicitors
Jackson, McDonald & Co.,
6 Sherwood Court
PERTH, W.A.

TO: The Second Defendant and its Solicitors
Parker & Parker
Floor 23 AMP Building
140 St. George's Terrace
PERTH, W.A. 6000

I CERTIFY that this is a true copy of
the document of which it purports to be
a copy.

Dated the 9th day of JULY 1984.


DEPUTY REGISTRAR

This SUMMONS was filed by Muir Williams Nicholson of 9th Floor,
Austmark Centre, 15-17 William Street, Perth. Solicitors for
the Plaintiffs.

Telephone: 327 5777 Reference: RD:GOLD:1850-006

Amended Reply to the Defence of
the First Defendants

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

undated
No. 1957 of 1982.

B E T W E E N :

LOMBARD AUSTRALIA LIMITED
First Plaintiff

JOSEPH MAXIM GOLDBERG and VIVIENNE
GOLDBERG trading as "SHAMROCK PARK"
Second Plaintiffs

-and-

EAGLE STAR INSURANCE COMPANY LIMITED
ENNIA INSURANCE COMPANY (UK) LIMITED
ASSURANCES GENERALES de FRANCE
(London Branch)
PRUDENTIAL ASSURANCE COMPANY LIMITED
A A MUTUAL INTERNATIONAL INSURANCE
COMPANY LIMITED
EQUINE & LIVESTOCK INSURANCE
COMPANY LIMITED
UNION ATLANTIQUE d'ASSURANCES S.A.
First Defendants

AUSTRALIAN INSURANCE BROKERS LIMITED
Second Defendants

REPLY TO THE DEFENCE OF FIRST DEFENDANTS
AMENDED PURSUANT TO THE ORDER OF THE MASTER
DATED THE 11TH DAY OF FEBRUARY, 1983

| | |
|--|--|
| <p>1. As to paragraphs 5 and 6 of the defence of the first defendants the plaintiffs admit that in or about July or August, 1982, the second defendants purported to issue a policy of insurance purporting to have been effected through the Australian Bloodstock Insurance Pool (hereinafter called "the purported policy") but:-</p> <p>(a) say that the purported policy and the purported issue by the second defendants of a cover note issued in advance of the purported policy were of no force and effect, because the first defendants had</p> | <p>6 of the defence of the first defendants the plaintiffs admit that in or about July or August, 1982, the second defendants purported to issue a policy of insurance purporting to have been effected through the Australian Bloodstock Insurance Pool (hereinafter called "the purported policy") but:-</p> <p>(a) say that the purported policy and the purported issue by the second defendants of a cover note issued in advance of the purported policy were of no force and effect, because the first defendants had</p> |
|--|--|

Amended Reply to the Defence of
the First Defendants
undated (continued)

not given any authority to the second defendants to issue the said cover note or the purported policy and the same was not in fact issued through the Australian Bloodstock Pool;

(b) deny that the purported policy or the then Australian Bloodstock Insurance Pool Policy contained a condition that the plaintiffs or one or more of them had completed a written proposal and declaration dated 30th July 1981 as alleged or at all;

(c) deny that it was a condition of the contract of insurance between the plaintiffs and the first defendants that all terms, clauses and conditions of the purported policy or the then Australian Bloodstock Insurance Pool Policy or any of them were incorporated in the contract of insurance between the plaintiffs and the first defendants;

1. The plaintiffs deny the allegations in paragraph 5 of the amended Defence.
2. The allegations in paragraph 6 are not admitted.
- ~~2.~~3. The plaintiffs admit that the proposal and declaration dated 30th July 1981 contained questions which were answered and made respectively on behalf of the second plaintiffs as alleged in paragraph 7 of the defence of the first defendants but otherwise deny each and every allegation therein.
- ~~3.~~4. The plaintiffs admit the allegations in paragraph 8 of the defence of the first defendants save that it is denied that the previous insurer had declined to renew the insurance for the sum then proposed by and on behalf of the plaintiffs.

undated

(continued)

14.5. As to paragraph 9 the plaintiffs say that:-

- (a) prior to the making of the said contract of insurance the first defendants did not require the first plaintiff to make any proposal or declaration in relation thereto;
- (b) the first defendants thereby impliedly represented to the first plaintiff that they did not require the first plaintiff to make any proposal or disclose material or any facts to them for the purposes of the said contract of insurance;
- (c) the first plaintiff acted upon the said representation by refraining from making any proposal or any disclosure to the first defendants or taking any steps to propose any alternative insurance;
- (d) the first defendants are estopped from asserting against the first plaintiff non-disclosure as alleged or at all;
- (e) they do not admit that the second plaintiffs acted on behalf of the first plaintiff in obtaining the said policy;
- (f) they do not admit that the fact that "Asian Beau" suffered the said ailments or illnesses was material;
- (g) the first defendants were not entitled to avoid the policy;
- (h) save as aforesaid, they admit the allegations in paragraph 9 of the defence of the first defendants.

Amended Reply to the Defence
of the First Defendants

undated (continued)

5.6. As to paragraph 10 of the defence of the first defendants the plaintiffs say that:-

- (a) after the death of "Asian Beau", the first defendants required the second defendant's insurance broker to account to them for the premium paid under the said policy, and through their agents, Hudig Langeveld Pty. Ltd., informed the said brokers that the sum insured would be paid;
- (b) they admit that the first defendants subsequently purported to avoid the policy;
- (c) save as aforesaid, they do not admit the allegations in paragraph 10 of the defence to the first defendants.

7. Save for admissions set out above the plaintiffs do not admit the allegations in the amended defence of the first defendants and join issue thereon.



R.H.B. PRINGLE

COUNSEL

THIS AMENDED REPLY is filed by Muir Williams Nicholson
of 9th Floor, Austmark Centre, 15-17 William Street, Perth

Tel: 327 5777

Ref: GOLD1850-006

I CERTIFY that this is a true copy of
the document of which it purports to be
a copy.

Dated the 9th day of JULY 1984.



DEPUTY REGISTRAR

Second Defendant's Interrogatories
for the examination of the
Plaintiffs

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

12 May 1983

No. 1957 of 1982

BETWEEN:

LOMBARD AUSTRALIA LIMITED

First Plaintiff

and

JOSEPH MAXIM GOLDBERG AND
VIVIENNE GOLDBERG t/a
"SHAMROCK PARK"

Second Plaintiffs

and

EAGLE STAR INSURANCE COMPANY
LIMITED, ENNIA INSURANCE
COMPANY (UK) LIMITED,
ASSURANCES GENERALES de
FRANCH (London Branch),
PRUDENTIAL ASSURANCE COMPANY
LIMITED, A A MUTUAL
INTERNATIONAL INSURANCE
COMPANY LIMITED, EQUINE &
LIVESTOCK INSURANCE COMPANY
LIMITED and UNION ATLANTIQUE
d'ASSURANCES S.A.

First Defendants

and

AUSTRALIAN INSURANCE BROKERS
LIMITED

Second Defendant

SECOND DEFENDANT'S INTERROGATORIES FOR
EXAMINATION OF THE PLAINTIFFS

DATED & FILED 12th May 1983

TAKE NOTICE that pursuant to paragraph 3 of the Order
of the Master in Chambers made 9 November 1982, the
second defendant requires the plaintiffs to answer on
oath within 10 days from the date of service hereof
the following interrogatories:

Second Defendant's Interrogatories
for the examination of the
Plaintiffs 12 May 1983
(continued)

1. On what date or dates did each of the plaintiffs first receive the following policies issued by the first defendants in October 1981:
 - (a) second defendant's discovery document No. 29,
 - (b) second defendant's discovery document No. 30,
 - (c) second defendant's discovery document No. 31,
 - (d) first defendants' discovery document No. 102?
2. On what date or dates did each of the plaintiffs first become aware of the terms and conditions contained in the policies referred to in interrogatory 1?
3. (a) Specify the date/dates at which the plaintiffs informed the first defendants, and/or Hudig Langeveldt Pty Ltd and/or Chandler Hargreaves Whittal & Co. Ltd of their offer for insurance cover for "Asian Beau" in accordance with the policies set out in interrogatory No. 1 hereof.
 - (b) Indicate whether that offer was made orally or in writing or by conduct.
 - (c) If oral:-
 - (i) who represented the parties when the offer was made;
 - (ii) give the substance of the conversation which took place when the offer was made;
 - (iii) to whom on behalf of the first defendants and/or Hudig Langeveldt Pty Ltd and/or

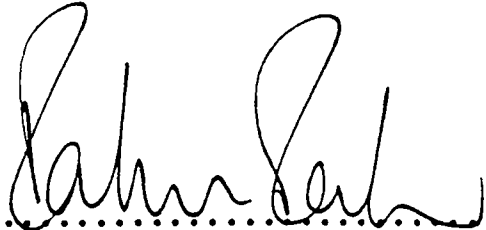
12 May 1983 (continued)
Chandler Hargreaves Whittal & Co. Ltd was

the oral offer communicated.

- (d) If in writing, identify and make available for inspection the relevant documents.
 - (e) If by conduct, particularize fully the conduct concerned.
4. (a) Specify the date/dates at which the plaintiffs informed the first defendants, and/or Hudig Langeveldt Pty Ltd and/or Chandler Hargreaves Whittal & Co. Ltd of their acceptance of insurance cover for "Asian Beau" in accordance with the policies set out in interrogatory No. 1 hereof.
- (b) Indicate whether that acceptance was made orally or in writing or by conduct.
- (c) If oral:-
- (i) who represented the parties when the acceptance was made;
 - (ii) give the substance of the conversation which took place when the acceptance was made;
 - (iii) to whom on behalf of the first defendants and/or Hudig Langeveldt Pty Ltd and/or Chandler Hargreaves Whittal & Co. Ltd was the oral acceptance communicated.
- (d) If in writing, identify and make available for inspection the relevant documents.

Second Defendant's Interrogatories
for examination of the Plaintiffs
12 May 1983 (continued)

(e) If by conduct, particularize fully the
conduct concerned.


.....
Solicitors for the Second Defendant

TO: The Plaintiffs,
AND TO: Their Solicitors,
Messrs Muir Williams Nicholson,
9th Floor,
Austmark Centre,
15-17 William Street,
PERTH WA 6000

I CERTIFY that this is a true copy of
the document of which it purports to be
a copy.

Dated the 9th day of JULY 1984.


DEPUTY REGISTRAR

FILED by PARKER & PARKER of Floor 23, A.M.P.
Building, 140 St George's Terrace, Perth solicitors
for the Second Defendant.

Telephone : 322 0321 Reference : 45CDS:AUS824031
39641/PMS

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

12 May 1983

No. 1957 of 1982

BETWEEN:

LOMBARD AUSTRALIA LIMITED

First Plaintiff

and

JOSEPH MAXIM GOLDBERG AND
VIVIENNE GOLDBERG t/a
"SHAMROCK PARK"

Second Plaintiffs

and

EAGLE STAR INSURANCE COMPANY
LIMITED, ENNIA INSURANCE
COMPANY (UK) LIMITED,
ASSURANCES GENERALES de
FRANCH (London Branch),
PRUDENTIAL ASSURANCE COMPANY
LIMITED, A A MUTUAL
INTERNATIONAL INSURANCE
COMPANY LIMITED, EQUINE &
LIVESTOCK INSURANCE COMPANY
LIMITED and UNION ATLANTIQUE
d'ASSURANCES S.A.

First Defendants

and

AUSTRALIAN INSURANCE BROKERS
LIMITED

Second Defendant

SECOND DEFENDANT'S INTERROGATORIES FOR
EXAMINATION OF THE FIRST DEFENDANTS

DATED & FILED 12th May 1983

TAKE NOTICE that pursuant to paragraph 3 of the Order
of the Master in Chambers made 9 November 1982 the
second defendant requires the first defendants to

Second Defendant's Interrogatories
for examination of the First
Defendants
12 May 1983 (continued)

answer on oath within 10 days from the date of
service hereof the following interrogatories:

1. State whether the first defendants admit that each of the following telexes were sent and received:-
 - (a) Telex dated 16 July 1981, second defendant's discovery document number 17.
 - (b) Telex dated 23 July 1981, first defendants' discovery document number 4.
 - (c) Telex dated 27 July 1981, first defendants' discovery document number 6.
 - (d) Telex dated 27 July 1981, first defendants' discovery document number 5.
 - (e) Telex dated 27 July 1981, first defendants' discovery document number 7.
 - (f) Telex dated 28 July 1981, first defendants' discovery document number 10.
 - (g) Telex dated 28 July 1981, first defendants' discovery document number 9.
 - (h) Telex dated 28 July 1981, first defendants' discovery document number 8.
 - (i) Telex dated 30 July 1981, first defendants' discovery document number 11.
2. (a) Do the first defendants admit that Bert Clarke authorized the sending of the telex dated 27 July 1981, first defendants' discovery document number 5?

12 May 1983 (continued)

- (b) If the answer to interrogatory 2(a) is in the affirmative, was Bert Clarke himself authorised by
- (i) The Australian Bloodstock Insurance Pool, and/or
 - (ii) Hudig Langeveldt Pty Ltd,
to send the said telex?
- (c) If the answer to either part of interrogatory 2(b) is the affirmative,
- (i) what were the terms and extent of the authority given to Bert Clarke by either the Australian Bloodstock Insurance Pool and/or Hudig Langeveldt Pty Ltd?
 - (ii) was that authority conferred orally, in writing or by conduct?
 - (iii) If oral:
 - (1) who represented the Australian Bloodstock Insurance Pool, and/or Hudig Langeveldt Pty Ltd when the authority was conferred;
 - (2) on what date was that authority conferred;
 - (3) give the substance of the conversation which took place when the authority was conferred.
 - (4) if in writing, identify and make available for inspection the relevant documents.

Second Defendant's Interrogatories
for examination of the First
Defendants
12 May 1983 (continued)

- (5) if by conduct particularise the
conduct concerned.
- (d) If the answer to interrogatory 2(a) is in
the affirmative
- (i) to whom did Bert Clarke send the said
telex?
- (ii) if the answer to interrogatory 2(c)(i)
is P. Trend,
- (1) give P. Trend's full name and
occupation
- (2) by whom is P. Trend employed.
3. (a) Do the first defendants admit that the telex
dated 27 July 1981, first defendants'
discovery document number 7, was sent?
- (b) If the answer to interrogatory 3(a) is in
the affirmative,
- (i) name the party on whose behalf the said
telex was sent?
- (ii) to whom was it sent?
- (iii) if the answer to interrogatory 3(b)(i)
is Chandler Hargreaves Whittal & Co.
Ltd, was Chandler Hargreaves Whittal &
Co. Ltd acting on behalf of the first
defendants in sending the said telex?
- (iv) if the answer to interrogatory
3(b)(iii) is in the negative, on whose
behalf was Chandler Hargreaves Whittal

12 May 1983 (continued)

& Co. Ltd acting in sending the said
telex?

- (c) If the answer to interrogatory 3(b)(i) is Chandler Hargreaves Whittal & Co. Ltd and the answer to interrogatory 3(b)(ii) is Bert Clarke, did Chandler Hargreaves Whittal & Co. Ltd intend sending the telex to Bert Clarke as a representative of:-
- (i) The Australian Bloodstock Insurance Pool and/or
 - (ii) Hudig Langeveldt Pty Ltd.
- (d) If the answer to interrogatory 3(b)(i) is Chandler Hargreaves Whittal & Co. Ltd and the answer to interrogatory 3(b)(ii) is Bert Clarke, did Bert Clarke in fact receive the telex on behalf of
- (i) The Australian Bloodstock Insurance Pool and/or
 - (ii) Hudig Langeveldt Pty Ltd.
4. (a) Do the first defendants admit that the telex dated 28 July 1981, first defendants' discovery document number 9, was sent?
- (b) If the answer to interrogatory 4(a) is in the affirmative,
- (i) what party authorized the sending of the said telex?
 - (ii) to whom was it sent?

Second Defendant's Interrogatories
for examination of the First
Defendants
12 May 1983
(continued)

- (iii) if the answer to interrogatory 3(b)(i) is Chandler Hargreaves Whittal & Co. Ltd, was Chandler Hargreaves Whittal & Co. Ltd acting on behalf of the first defendants in sending the said telex?
- (iv) if the answer to interrogatory 3(b)(iii) is in the negative, on whose behalf was Chandler Hargreaves Whittal & Co. Ltd acting in sending the said telex?
- (c) If the answer to interrogatory 3(b)(i) is Chandler Hargreaves Whittal & Co. Ltd and the answer to interrogatory 3(b)(ii) is Bert Clarke, did Chandler Hargreaves Whittal & Co. Ltd intend sending the telex to Bert Clarke as a representative of:-
 - (i) The Australian Bloodstock Insurance Pool and/or
 - (ii) Hudig Langeveldt Pty Ltd.
- (d) If the answer to interrogatory 3(b)(i) is Chandler Hargreaves Whittal & Co. Ltd and the answer to interrogatory 3(b)(ii) is Bert Clarke, did Bert Clarke in fact receive the telex on behalf of
 - (i) The Australian Bloodstock Insurance Pool and/or
 - (ii) Hudig Langeveldt Pty Ltd.

5. (a) Do the first defendants admit that the telex dated 28 July 1981, first defendants' discovery document number 8, was sent?
- (b) If the answer to interrogatory 5(a) is in the affirmative, on whose behalf was the said telex sent?
- (c) If the answer to interrogatory 5(a) is in the affirmative, to whom was the said telex sent?
- (d) If the answer to interrogatory 5(b) is Bert Clarke, on whose behalf was Bert Clarke acting when he sent the said telex, was it:-
- (i) The Australian Bloodstock Insurance Pool and/or
 - (ii) Hudig Langeveldt Pty Ltd.
 - (iii) the first defendants.
 - (iv) another party and if so, identify that party.
- (e) Was Bert Clarke an authorized representative of:
- (i) The Australian Bloodstock Insurance Pool and/or
 - (ii) Hudig Langeveldt Pty Ltd, and/or
 - (iii) the first defendants.
- to send the said telex on their behalf?
- (f) If the answer to any part of interrogatory 5(e) is in the affirmative

Second Defendant's Interrogatories
for examination of the First
Defendants
12 May 1983
(continued)

- (i) what were the terms and extent of the authority given by
 - (1) The Australian Bloodstock Insurance Pool
 - (2) Hudig Langeveldt Pty Ltd
 - (3) the first defendants to Bert Clarke
- (ii) was that authority given orally, in writing or by conduct?
- (iii) If oral:
 - (1) who represented the Australian Bloodstock Insurance Pool, and/or Hudig Langeveldt Pty Ltd when the authority was given;
 - (2) on what date was the authority given;
 - (3) give the substance of the conversation which took place when the authority was given.
 - (4) if in writing identify and make available for inspection the relevant documents.
 - (5) if by conduct particularise all the relevant conduct concerned.
- (g) If the answer to interrogatory 5(d) is the first defendants, on behalf of which of the first defendants did Bert Clarke send the said telex.

12 May 1983 (continued)

- (h) (i) what is meant by the word "cover" in paragraph 2, line 2 of the said telex?
- (ii) by whom was the cover placed
- (iii) for whom was the cover placed
- (iv) for what period of time was the cover placed
- (v) on what terms was the cover placed
- (vi) explain the meaning of "WEF" in line 2 of the said telex and "rate 3.25% S.I. \$1,000,000.00".
6. (a) What were the terms and extent of the authority, if any, given by the first defendants to Chandler Hargreaves Whittal & Co. Ltd in regard to the negotiation and effecting of livestock insurance on their behalf, including the issuing of cover notes and the perusal of proposal forms?
- (b) Was that authority given orally, in writing or by conduct.
- (c) If oral:-
- (i) who represented the parties when the authority was given
- (ii) on what date was the authority given
- (iii) give the substance of the conversation/s which took place when the authority was given

Second Defendant's Interrogatories
for examination of the First
Defendants
12 May 1983

(continued)

- (d) If the authority was given in writing, identify and make available for inspection the relevant documents.
 - (e) If the authority was conferred by conduct, particularise fully the conduct concerned.
7. (a) What were the terms and extent of the authority, if any, given by the first defendants to Hudig Langeveldt Pty Ltd in regard to the negotiation and effecting of livestock insurance on their behalf, including the issuing of cover notes and the perusal of proposal forms?
- (b) Was that authority given orally, or in writing or by conduct.
 - (c) If oral:-
 - (i) who represented the parties when the authority was given
 - (ii) on what date/s was the authority given
 - (iii) give the substance of the conversation/s which took place when the authority was given
 - (d) If the authority was given in writing, identify and make available for inspection the relevant documents.
 - (e) If the authority was given by conduct, particularise fully the conduct concerned.

- 12 May 1983 (continued)
8. (a) What were the terms and extent of the authority, if any, given by the first defendants to Australian Bloodstock Insurance Pool in regard to the negotiation and effecting of livestock insurance on their behalf, including the issuing of cover notes and the perusal of proposal forms?
- (b) Was that authority given orally, in writing or by conduct.
- (c) If oral:-
- (i) who represented the parties when the authority was given
- (ii) on what date/s was the authority given
- (iii) give the substance of the conversation/s which took place when the authority was given
- (d) If the authority was given in writing, identify and make available for inspection the relevant documents.
- (e) If the authority was given by conduct, particularise fully the conduct concerned.
9. When did the following parties first receive the proposal form (or a copy thereof):-
- (a) the first defendants?
- (b) Hudig Langeveldt Pty Ltd and/or Australian Bloodstock Insurance Pool?
- (c) Chandler Hargreaves Whittal & Co Ltd?

Second Defendant's Interrogatories
for examination of the First
Defendants

12 May 1983

(continued)

10. When did any person on behalf of the first defendants first consider the information contained in the proposal form, (first defendants' discovery document number 12)?
11. What is the name of the person who considered the information contained in the said proposal form?
12. Were the policies which were issued in October 1981, first defendants' discovery documents numbers 100, 101 99 and 102, or copies thereof, sent to:
 - (a) the plaintiffs, and
 - (b) the second defendant?
13. If any part of the answer to interrogatory 12 is in the affirmative:
 - (a) when were the said policies or copies thereof first sent to:
 - (i) the plaintiffs, and
 - (ii) the second defendant?
 - (b) who sent the said policies (and/or copies thereof):
 - (i) the plaintiffs, and
 - (ii) the second defendant.
 - (c) to what addresses were the said policies (or copies thereof) sent:
 - (i) the plaintiffs, and
 - (ii) the second defendant?

12 May 1983 (continued)

14. Do the first defendants admit that the note issued by Hudig Langeveldt Pty Ltd and/or Australian Bloodstock Insurance Pool on 31 July 1981, first defendants' discovery document number 14, is a cover note?
15. (a) On what date was the said note, first defendants' discovery documents number 14, sent by Hudig Langeveldt Pty Ltd to:
- (i) the plaintiffs and/or
 - (ii) the second defendant?
- (b) Do the first defendants admit that the insurer named in the said note was Lloyds-Chandler Hargreaves Whittal & Co. Ltd.
- (c) If the answer to interrogatory 15(b) is in the affirmative, did Lloyd Chandler Hargreaves Whittal & Co. Ltd:-
- (i) issue a policy
 - (ii) if the answer to interrogatory 15(c)(i) is in the affirmative, on what date was the policy issued, and on what dates was the policy sent to
 - (1) the plaintiffs and/or
 - (2) the second defendant
- (d) If the answer to interrogatory 15(b) is in the affirmative, identify and make available for inspection the said policy and/or the terms and conditions contained therein.

Second Defendant's Interrogatories
for examination of the First
Defendants

12 May 1983

(continued)

- (e) If the answer to interrogatory 15(a) is in the affirmative,
 - (i) who signed the said note on behalf of Hudig Langeveldt Pty Ltd
 - (ii) what is the position of the signatory with Hudig Langeveldt Pty Ltd
 - (iii) on what date was the said note signed.
- 16. (a) Do the first defendants admit that the cover/debit note, first defendants' discovery document number 15, and dated 25 August 1981 was issued by Chandler Hargreavess Whittal & Co. Ltd.
- (b) If the answer to interrogatory 16(a) is in the affirmative,
 - (i) on what date was the said cover/debit note issued
 - (ii) to whom was it issued
- (c) Identify and make available for inspection, all documents relating to the agreement of the Australian Bloodstock Insurance Pool to be a co-assured as stated in the said cover/debit note.
- (e) On what date did Chandler Hargreaves Whittal & Co. Ltd send the said debit note or a copy thereof to the Australian Bloodstock Insurance Pool.

12 May 1983 (continued)

- (f) Was Chandler Hargreaves Whittal & Co. Ltd authorised on behalf of the first defendants to send the said cover/debit note to the Australian Bloodstock Insurance Pool?
- (g) If the answer to interrogatory 15(e) is in the affirmative
- (i) what were the terms and extent of the authority given to Chandler Hargreaves Whittal & Co. Ltd and/or Australian Bloodstock Insurance Pool by the first defendants?
- (ii) was that authority given orally, in writing or by conduct?
- (iii) If oral:
- (1) who represented the Australian Bloodstock Insurance Pool, and/or Hudig Langeveldt Pty Ltd when the authority was given;
 - (2) on what date was the authority given;
 - (3) give the substance of the conversation/s which took place when the authority was given.
 - (4) if in writing identify and make available for inspection the relevant documents.

Second Defendant's Interrogatories
for examination of the First
Defendants

12 May 1983

(continued)

(5) if by conduct particularise fully
the conduct concerned.

(h) On what date was the said cover/debit note
sent to

(i) the plaintiffs and/or

(ii) the second defendants

(i) Who sent the cover/debit note to

(i) the plaintiffs and/or

(ii) the second defendant

17. (a) Do the first defendants admit that the
Australian Bloodstock Insurance Pool issued
a policy to:

(i) the plaintiffs and/or

(ii) the second defendant

(b) If the answer to interrogatory 17(a) is in
the affirmative, on what date was the policy
issued.

18. Does Hudig Langeveldt Pty Ltd and/or Australian
Bloodstock Insurance Pool have a general policy
with regard to the insurance of horses in Western
Australia that have suffered from colic? If so,
identify with precision that policy?

19. In the last 3 years, in how many instances has a
prospective insured disclosed to Hudig Langeveldt
Pty Ltd and/or Australian Bloodstock Insurance
Pool that the horse to be insured has suffered or
is suffering from colic?

12 May 1983 (continued)

20. In relation to the instances in interrogatory 19, in how many of these instances did Hudig Langeveldt Pty Ltd and/or Australian Bloodstock Insurance Pool, as a consequence of this disclosure:
- (a) increase the premium of the insurance,
 - (b) alter its standard or usual conditions of insurance, or
 - (c) refuse to insure the horse which had suffered or was suffering from colic?
21. In relation to the instances in interrogatory 19, in how many of these instances did this disclosure not affect the subsequent contract of insurance?
22. Do the first defendants rely in avoiding payment upon the plaintiffs' non-disclosure in the proposal form, (second defendant's discovery document number 23), of:
- (a) prior insurance, and
 - (b) a refusal of the earlier insurer, Livestock Underwriters of Australia to increase the insurance from \$650,000.00 to \$1,000,000.00?
23. Do the first defendants admit that they were advised by Hudig Langeveldt Pty Ltd in its telex of 16 July 1981, first defendants' discovery document number 1, that there was an existing underwriter who would not increase the insurance from the cover of \$650,000.00?

Second Defendant's Interrogatories
for examination of the First
Defendants

12 May 1983

(continued)

24. Was Hudig Langeveldt Pty Ltd and/or Australian Bloodstock Insurance Pool authorised on behalf of the first defendants to consider the proposal form and to decide whether any answer or thing contained therein was material to the proposed contract of insurance?
25. Was it Hudig Langeveldt Pty Ltd and/or Australian Bloodstock Insurance Pool's duty to advise Chandler Hargreaves Whittal & Co Ltd or the first defendants if they acquired knowledge of or disclosure was made to them of any matter that was material to the proposed contract of insurance?
26. Was it Chandler Hargreaves Whittal & Co Ltd's duty to advise the first defendants if they acquired knowledge of or disclosure was made to it of any matter that was material to the proposed contract of insurance?
27. Did Hudig Langeveldt Pty Ltd and/or Australian Bloodstock Insurance Pool advise Chandler Hargreaves Whittal & Co Ltd or the first defendants that "Asian Beau" had been insured by another insurer who had refused to increase the insurance from \$650,000.00 to \$1,000,000.00? If so:
- (a) when was such advice given;
 - (b) was such advice given orally or in writing?

Second Defendant's Interrogatories
for examination of the First
Defendants

28. If Hudig Langeveldt Pty Ltd and/or Australian Bloodstock Insurance Pool gave Chandler Hargreaves Whittal & Co Ltd the information referred to in interrogatory 27 hereof did Chandler Hargreaves Whittal & Co Ltd advise the first defendants thereof? If so:
- (a) when were the first defendants advised;
 - (b) how were the first defendants advised?
29. (a) On behalf of whom is Malcolm Willis employed?
- (b) What is his position with his employer?
 - (c) What were the terms and extent of the authority given to Malcolm Willis by his said employer in relation to the negotiations of and the acceptance of proposals for insurance of race horses?
 - (d) was that authority given orally, in writing or by conduct?
 - (e) If oral:
 - (i) who represented the Australian Bloodstock Insurance Pool, and/or Hudig Langeveldt Pty Ltd when the authority was given;
 - (ii) on what dated was the authority given;
 - (iii) give the substance of the conversation/s which took place when the authority was given.

Second Defendant's Interrogatories
for examination of the First
Defendants

12 May 1983

(continued)

- (d) if in writing identify fully and make available for inspection the relevant documents.
 - (e) if by conduct particularise fully the conduct concerned.
30. (a) Do the first defendants admit that Malcolm Brown, telephoned Malcolm Willis on or about 16 July 1981 to discuss the placing of insurance for "Asian Beau"?
- (b) If the answer to interrogatory 30(a) is in the affirmative, give the substance of the conversation including
- (i) the terms of the insurance to cover "Asian Beau"
 - (ii) the value of the insurance
 - (iii) the duration of the insurance
 - (iv) the preliminary requirements before insurance cover could be effected for "Asian Beau".
31. If the answer to interrogatory 30(a) is in the affirmative
- (a) do the first defendants admit that Malcolm Willis told Bert Clarke the substance of the said conversation with Malcolm Brown
 - (b) if the answer to interrogatory 31(a) is in the affirmative

Second Defendant's Interrogatories
for examination of the First
Defendants 12 May 1983 (continued)

- (i) on what date did Malcolm Willis tell Bert Clarke
 - (ii) give the substance of the conversation between Malcolm Willis and Bert Clarke.
32. (a) if the answer to interrogatory 31(a) is in the affirmative, do the first defendants admit that Bert Clarke told a representative of Chandler Hargreaves Whittal & Co. Ltd of the said conversation?
- (b) If the answer to interrogatory 32(a) is in the affirmative
- (i) whom did Bert Clarke so tell
 - (ii) by what means did Bert Clarke tell, orally or in writing
 - (1) if oral, give the substance of the conversation
 - (2) if in writing identify and make available for inspection the relevant document/s.
33. (a) Do the first defendants admit that Bert Clarke told a representative of Chandler Hargreaves Whittal & Co. Ltd of the contents of the telex dated 16 July 1981, first defendants' discovery document number 1.
- (b) If the answer to interrogatory 33(a) is in the affirmative
- (i) whom did Bert Clarke so tell

Second Defendant's Interrogatories
for examination of the First
Defendants

12 May 1983

(continued)

- (ii) by what means did Bert Clarke tell,
orally or in writing
 - (1) if oral, give the substance of the
conversation
 - (2) if in writing identify and make
available for inspection the
relevant documents.
34. (a) Do the first defendants admit that Chandler
Hargreaves Whittal & Co. Ltd issued the
cover/debit note, first defendants'
discovery document number 15?
- (b) What is the meaning of the term "Co-Assured"
used in the said cover/debit note?
 - (c) With whom was the Australian Bloodstock
Insurance Pool co-assured?
 - (d) What were the terms of the co-assurance?
 - (e) Did the Australian Bloodstock Insurance Pool
pay any moneys to Chandler Hargreaves
Whittal & Co. Ltd in respect of:
 - (i) its co-assurance
 - (ii) the assurance of the plaintiffs
 - (f) If the answer to interrogatory 34(e) is in
the affirmative, specify
 - (i) the sum or sums of moneys paid
 - (ii) the date or dates upon which they were
paid

Second Defendant's Interrogatories
for examination of the First
Defendants

12 May 1983 (continued)

- (g) Did the Australian Bloodstock Insurance Pool receive any moneys from the plaintiffs which the plaintiffs intended the Australian Bloodstock Insurance Pool to pay to Chandler Hargreaves Whittal & Co. Ltd?
- (h) If the answer to interrogatory 34(g) is in the affirmative, specify
- (i) the sum or sums of moneys paid
 - (ii) the date or dates upon which it was paid.
- (i) If the answer to either interrogatories 33(e) or (g) is in the affirmative, identify and make available for inspection
- (i) any documents relating to the debiting of premiums
 - (ii) any receipts relating to the payments of these moneys.
- (j) If the answer to interrogatory 34(a) is in the affirmative but the answer to either 34(f) or (h) is in the negative
- (i) why were no moneys paid by the plaintiffs to the Australian Bloodstock Insurance Pool, and/or
 - (ii) why were no moneys paid by the Australian Bloodstock Insurance Pool to Chandler Hargreaves Whittal & Co. Ltd.

Second Defendant's Interrogatories
for examination of the First
Defendants

12 May 1983

(continued)

35. (a) Do the first defendants admit that a contract of co-assurance was made between the Australian Bloodstock Insurance Pool and the plaintiffs?
- (b) If the answer to interrogatory 35(a) is in the affirmative, was that contract made orally, or in writing.
- (c) If oral:
- (i) who represented the parties when the contract was made
 - (ii) on what date was the contract made
 - (iii) give the substance of the conversation which took place when the contract was made
- (d) If in writing, identify and make available for inspection, the relevant documents.
36. (a) Do the first defendants admit that a contract of insurance was made between the Australian Bloodstock Insurance Pool and any of the first defendants?
- (b) If the answer to interrogatory 36(a) is in the affirmative,
- (i) identify the first defendants with whom the contract was made
 - (ii) the date or dates upon which it was made
- (c) If the answer to interrogatory 36(a) is in the affirmative

Second Defendant's Interrogatories
for examination of the First
Defendants

12 May 1983 (continued)

- (i) who represented the parties when the contract was made
 - (ii) on what date was the contract made
 - (iii) was the contract made orally or in writing
 - (iv) if oral, give the substance of the conversation/s which took place when the contract was made.
- (d) If in writing, identify and make available for inspection, the relevant documents.
- (e) Explain why the cover/debit note, first defendants' discovery document number 28, was sent by Chandler Hargreaves Whittal & Co. Ltd to the Australian Bloodstock Insurance Pool.
- (f) What were the "terms, clauses and conditions, additional premiums and return premiums" of the Australian Bloodstock Insurance Pool policy/
- (g) What does the term "and to follow their settlements" on page 2 of the said cover/debit note mean?
37. (a) Specify the date or dates at which the first defendant and/or Hudig Langeveldt Pty Ltd and/or Chandler Hargreaves Whittal & Co. Ltd became aware of the plaintiffs' offer for insurance cover for "Asian Beau" in the

Second Defendant's Interrogatories
for examination of the First
Defendants

12 May 1983

(continued)

precise terms of the four companies combined
policies numbered 514/B1/0542Z.

(b) Indicate whether that offer as received was
made orally or in writing or was made by
conduct.

(c) If oral:-

(i) who represented the parties when the
offer was made and received;

(ii) give the substance of the
conversation/s which took place when
the said offer was made and received;

(iii) identify the employee, to whom on
behalf of the first defendants and/or
Hudig Langeveldt Pty Ltd and/or
Chandler Hargreaves Whittal & Co. Ltd
the said oral offer from the plaintiffs
was communicated to and received by.

(d) If in writing, identify and make available
for inspection the relevant offer as
received.

(e) If the said offer was made by conduct,
particularise fully that conduct as
communicated to the first defendant and/or
Hudig Langeveldt Pty Ltd and/or Chandler
Hargreaves Whittal & Co. Ltd.

38. (a) Specify the date or dates at which the first defendant and/or Hudig Langeveldt Pty Ltd and/or Chandler Hargreaves Whittal & Co. Ltd informed the plaintiff of the acceptance of an offer for insurance cover for "Asian Beau" in the precise terms of the four companies combined policies numbered 514/B/0542Z. ^{12 May 1983. (continued)}
- (b) Indicate whether that acceptance was communicated to the plaintiffs orally or in writing or by conduct.
- (c) If oral:-
- (i) who represented the respective parties when the said acceptance was communicated;
 - (ii) give the substance of the conversation/s which took place when the said acceptance was communicated;
 - (iii) to whom on behalf of the plaintiffs was the said acceptance communicated.
- (d) If in writing, identify and make available for inspection the relevant documents indicating the communication of such acceptance.
- (e) If by conduct, particularize fully the conduct concerned which indicates the

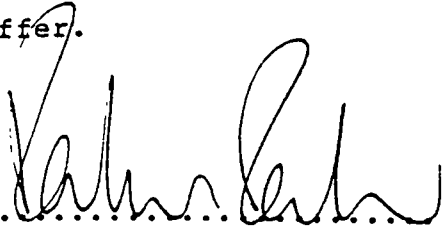
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Second Defendant's Interrogatories
for examination of the First
Defendants

12 May 1983

(continued)

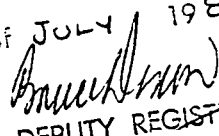
communication of acceptance of the
plaintiffs' offer.


.....
Solicitors for the Second Defendant

TO: The First Defendants,

AND TO: Their Solicitors,
Messrs Jackson McDonald & Co.
Sherwood Court
PERTH WA 6000

Attention : Mr T. McAuliffe

I CERTIFY that this is a true copy of
the document of which it purports to be
a copy.
Dated the 9th day of JULY 1984

DEPUTY REGISTRAR

FILED by PARKER & PARKER of Floor 23, A.M.P.
Building, 140 St George's Terrace, Perth solicitors
for the Second Defendant.

Telephone : 322 0321 Reference : 45CDS:AUS824031
39661/TT

2 June 1983

IN THE SUPREME COURT)
OF WESTERN AUSTRALIA)

No. 1957 of 1982

B E T W E E N:

LOMBARD AUSTRALIA LIMITED

First Plaintiff

and

JOSEPH MAXIM GOLDBERG and VIVIENNE
GOLDBERG t/a "SHAMROCK PARK"

Second Plaintiffs

EAGLE STAR INSURANCE COMPANY LIMITED,
ENNA INSURANCE COMPANY (UK) LIMITED,
ASSURANCES GENERALES de FRANCH (London
Branch), PRUDENTIAL ASSURANCE COMPANY,
A A MUTUAL INTERNATIONAL INSURANCE
COMPANY LIMITED, EQUINE & LIVESTOCK
INSURANCE COMPANY LIMITED and UNION
ATLANTIQUE d'ASSURANCES S.A.

First Defendants

AUSTRALIAN INSURANCE BROKERS LIMITED

Second Defendant

AFFIDAVIT

I, KIMLEY JOHN LYONS, Solicitor of 37A Devon Road, Swanbourne in the State
of Western Australia, being duly sworn MAKE OATH AND SAY as follows:-

1. I am a solicitor employed by Messrs. Jackson McDonald & Co. solicitors for the first defendants and am authorised to make this affidavit.
2. On the 12th of April, 1983 the date for trial of this matter was fixed for 5 days not before the 20th June, 1983. It was further ordered that the plaintiffs file and serve a fresh Book of Pleadings within 7 days.
3. Messrs. Northmore Hale Davy & Leake were previously solicitors on the record for the first defendants. Their file was received by Messrs. Jackson McDonald & Co. on 7th April, 1983. On or about the 26th of April, 1983 the

HF0346q1

2 June 1983

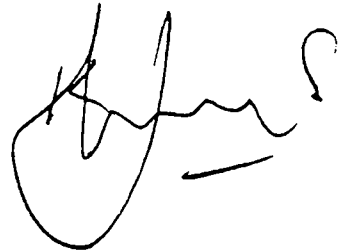
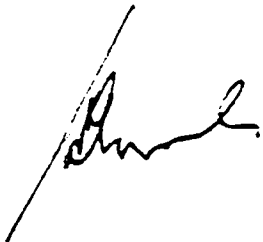
(continued) freshly amended Book of Pleadings was delivered to the offices of Messrs. Jackson McDonald & Co.

4. In my respectful opinion Hudig Langeveldt Pty. Limited of 8/12 Bridge Street, Sydney in the State of New South Wales and Chandler Hargreaves Whittall and Co. Limited of 37 Marshalsea Road, London are properly parties to this action. The first defendants will deny the authority of either company to act on their behalf as alleged in the Amended Statement of Claim or at all. Moreover, the first defendants will allege that the second named company misrepresented to them the nature of insurance being sought; representing the insurance sought to be re-insurance or co-insurance, rather than primary insurance.

5. Further, the first defendants proposed calling, inter alia, Dr. B.J. Hilbert at the trial of this action to give evidence. He had previously been subpoenaed to give evidence on behalf of the first defendants at the trial of this matter when listed for hearing not before the 21st day of February, 1983.

6. On the 31st day of May, 1983 I spoke to Dr. Hilbert. He informed me that on the 20th June, 1983 he was due to leave this State for the United States of America. He was in possession of a prepaid return air ticket purchased for him by an American university. The first defendants may be adversely affected by his non-attendance at trial.

7. In the premises I respectfully seek orders in the terms of the Chambers Summons in support of which this affidavit is filed.

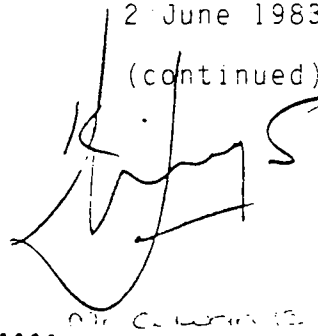


Affidavit of K.J. Lyons

2 June 1983

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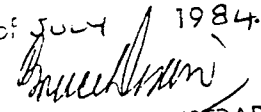
SWORN by the deponent)
at Perth)
in the State of Western)
Australia the 2nd)
day of June, 1983)
before me:



.....
A Commissioner of the Supreme Court of
Western Australia for taking Affidavits
~~A Justice of the Peace.~~

I CERTIFY that this is a true copy of
the document of which it purports to be
a copy.

Dated the 9th day of July 1984.


DEPUTY REGISTRAR

THIS AFFIDAVIT was filed by Messrs. Jackson McDonald & Co. of 6 Sherwood
Court, Perth. Solicitors for the Plaintiff. Tel: 325 0291.
Ref: KJL:

No. 22
Order of the Master
for answers to
Interrogatories IN THE SUPREME COURT

10 June 1983 OF WESTERN AUSTRALIA

No. 1957 of 1982

BETWEEN:

LOMBARD AUSTRALIA LIMITED

First Plaintiff

and

JOSEPH MAXIM GOLDBERG and
VIVIENNE GOLDBERG t/as
"Shamrock Park"

Second Plaintiffs

and

EAGLE STAR INSURANCE COMPANY
LIMITED, ENNIA INSURANCE
COMPANY (UK) LIMITED,
ASSURANCES GENERALES de FRANCH
(London Branch), PRUDENTIAL
ASSURANCE COMPANY LIMITED, A.A.
MUTUAL INTERNATIONAL INSURANCE
COMPANY LIMITED, EQUINE &
LIVESTOCK INSURANCE COMPANY
LIMITED and UNION ATLANTIQUE
d'ASSURANCES S.A.

First Defendants

and

AUSTRALIAN INSURANCE BROKERS
LIMITED

Second Defendant

BEFORE THE MASTER IN CHAMBERS
THE 10TH DAY OF JUNE 1983

UPON THE APPLICATION of the second defendant by summons dated
the 8th day of June 1983 and UPON HEARING Counsel for the
parties IT IS ORDERED that:-

1. Within 5 days of the date hereof the plaintiffs do file
and serve answers or objections on oath to the interroga-
tories administered by the second defendant by notice
dated the 12th day of May 1983 and filed herein.

2. Within 5 days of the date hereof the first defendants do file and serve answers to the interrogatories (other than interrogatory No. 11) administered by the second defendant by notice dated the 12th day of May 1983 and filed herein and that an affidavit verifying such answers be sworn and filed before trial.
3. The second defendant have leave to administer the further interrogatories numbered 1 and 4 and referred to in the letter of the second defendant's solicitors to the first defendants' solicitors dated the 30th day of May 1983 and that further service of the interrogatories be dispensed with.
4. Within 5 days of the date hereof the first defendants do file and serve answers to the interrogatories referred to in paragraph 3 hereof and that an affidavit verifying such answers be sworn and filed before trial.
5. On or before the 20th day of June 1983 the first defendants, by an authorised officer do give to the second defendant and to the plaintiffs discovery on oath of all documents they have or have had in their possession, custody or power relating to the matter in issue in this action, the first defendants' solicitors having undertaken to advise the plaintiffs' solicitors of the existence of further documents not appearing in the purported list of documents on or before the 15th day of June 1983.
6. The costs of the application be costs in the cause.

By the Court,

Erin Boyd
Deputy Registrar

No. 22

Order of the Master for answers
to Interrogatories

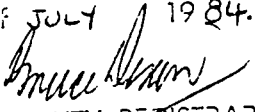
3.

10 June 1983

(continued)

I CERTIFY that this is a true copy of
the document of which it purports to be
a copy.

Dated the 9th day of JULY 1984.


DEPUTY REGISTRAR

Extracted by Messrs Parker & Parker of Floor 23, AMP Building
140 St George's Terrace, Perth, solicitors for the second
defendant.

Telephone: 322 0321

Reference: 106CDS:AUS824031

14 June 1983

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

No. 1957 of 1982

B E T W E E N :

LOMBARD AUSTRALIA LIMITED
First Plaintiff

JOSEPH MAXIM GOLDBERG and
VIVIENNE GOLDBERG t/a "Shamrock
Park"

Second Plaintiffs

-and-

EAGLE STAR INSURANCE COMPANY
LIMIED, ENNIA INSURANCE COMPANY
(U.K.) LIMITED, ASSURANCES
GENERALES de FRANCH (London
Branch), PRUDENTIAL ASSURANCE
COMPANY LIMITED, A.A. MUTUAL
INTERNATIONAL INSURANCE COMPANY
LIMITED, EQUINE & LIVESTOCK
INSURANCE COMPANY LIMITED and
UNION ATLANTIQUE d'ASSURANCES
S.A.

First Defendants

AUSTRALIAN INSURANCE BROKERS
LIMITED

Second Defendant

ANSWERS TO INTERROGATORIES

I, JOSEPH MAXIM GOLDBERG of 5th Floor, Town & Country Building
297 Murray Street, Perth in the State of Western Australia
Businessman having been duly sworn make oath and say as
follows:-

I am one of the second plaintiffs in this action. I am duly
authorised by the first plaintiff and Vivienne Goldberg, my
wife, to make the following answers to the interrogatories
administered by the second defendant herein for the examination
of the plaintiffs dated the 12th day of May 1983.

1. On what date or dates did each of the plaintiffs first
receive the following policies issued by the first
defendants in October 1981:-

2435c

Joseph Maxim Goldberg

Joseph Maxim Goldberg

14 June 1983

- (a) second defendant's discovery document No.29,
- (b) second defendant's discovery document No.30,
- (c) second defendant's discovery document No.31,
- (d) first defendants' discovery document No.102?

Answer

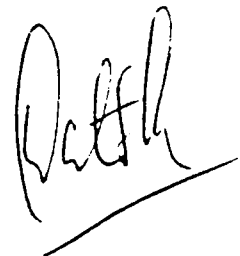
1. The plaintiffs believe that the policy documents were forwarded by Hudig Langeveldt to the second defendant on or about the 9th June 1982. The plaintiffs had not personally seen the policies prior to that date. I saw the policies shortly before this action was commenced.
2. On what date or dates did each of the plaintiffs first become aware of the terms and conditions contained in the policies referred to in interrogatory 1?

Answer

2. My solicitors received copies of three of the four policies by letter dated 4.6.82 and of the fourth by letter dated 7.12.82. A copy of one of these policies was sent to me on 9.6.82. Mrs. Goldberg has never seen any of the policies.
3. (a) Specify the date/dates at which the plaintiffs informed the first defendants, and/or Hudig Langeveldt Pty. Ltd. and/or Chandler Hargreaves Whittal & Co. Ltd. of their offer for insurance cover for "Asian Beau" in accordance with the policies set out in interrogatory No.1 hereof.

(b) Indicate whether that offer was made orally or in writing or by conduct.

(c) If oral:-



- (i) who represented the parties when the offer was made; (cont'd)
- (ii) give the substance of the conversation which took place when the offer was made;
- (iii) to whom on behalf of the first defendants and/or Hudig Langeveldt Pty. Ltd. and/or Chandler Hargreaves Whittal & Co. Ltd. was the oral offer communicated.
- (d) If in writing, identify and make available for inspection the relevant documents.
- (e) If by conduct, particularize fully the conduct concerned.

Answer

3. In July 1981 the second plaintiffs through their manager, Frank Wright, requested the second defendant to insure Asian Beau for \$1,000,000. By letter dated the 23rd July 1981 the second defendant advised that the cover would be placed. On or about the 30th July 1981 Mr. Wright signed and returned a proposal form sent to him for signature by the second defendant. The second plaintiffs had no further dealings in relation to this insurance until after the horse died and were not in communication with Hudig Langeveldt Pty. Ltd. nor with Chandler Hargreaves Whittal & Co. Ltd. nor with the first defendants direct. The second plaintiffs only became aware of the course of negotiations from the second defendant subsequently.
4. (a) Specify the date/dates at which the plaintiffs informed the first defendants, and/or Hudig Langeveldt Pty. Ltd. and/or Chandler Hargreaves Whittal & Co. Ltd. of their acceptance of insurance cover for "Asian Beau" in accordance with the policies set out in interrogatory No.1 hereof.

Second Plaintiff's Affidavit in
answer to Interrogatories of
Second Defendant

14 June 1983
(continued)

(b) Indicate whether that acceptance was made orally or in writing or by conduct.

(c) If oral:-

(i) who represented the parties when the acceptance was made;

(ii) give the substance of the conversation which took place when the acceptance was made;

(iii) to whom on behalf of the first defendants and/or Hudig Langeveldt Pty. Ltd. and/or Chandler Hargreaves Whittal & Co. Ltd. was the oral acceptance communicated.

(d) If in writing, identify and make available for inspection the relevant documents.

(e) If by conduct, particularize fully the conduct concerned.

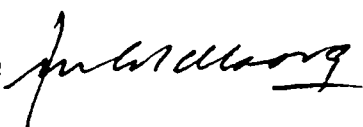
Answer

4. (a) The plaintiffs were never in communication with any of the companies mentioned.

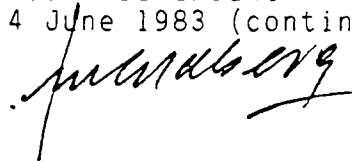
(b) The acceptance (if such was necessary) was by conduct on the part of the plaintiffs by making claim upon the first defendants through the second defendant and by commencing this action to enforce the policies.

(c) and (d) Not applicable.

(e) See above.



Second Plaintiff's Affidavit in answer to Interrogatories of Second Defendant
14 June 1983 (continued)



SWORN by the Deponent
at Perth in the said State
'this 14th day of June
1983. Before me:



W.A. Stanwyck J.P.

A Justice of the Peace/A
Commissioner of the Supreme Court
of Western Australia for taking
Affidavits

I CERTIFY that this is a true copy of
the document of which it purports to be
a copy.

Dated the 9th day of July 1984


DEPUTY REGISTRAR

These ANSWERS TO INTERROGATORIES were delivered by Muir
Williams Nicholson of 9th Floor, Austmark Centre, 15-17 William
Street, Perth. Solicitors for the Plaintiffs. Telephone:
327 5777 Reference: RD:GOLD1850-006

No. 24
Order of the Honourable
Mr. Justice Pidgeon
granting First
Defendants)
conditional)
leave to)
Appeal)

IN THE SUPREME COURT)
OF WESTERN AUSTRALIA)

APPEAL TO HER)
MAJESTY IN COUNCIL)

No. 1957 of 1982

1983

19 August
1983

B E T W E E N :



EAGLE STAR INSURANCE COMPANY LIMITED
ENNA INSURANCE COMPANY (UK) LIMITED
ASSURANCES GENERALES de FRANCE
(London Branch)
PRUDENTIAL ASSURANCE COMPANY LIMITED
A.A. MUTUAL INTERNATIONAL INSURANCE
COMPANY LIMITED
EQUINE & LIVESTOCK INSURANCE COMPANY
LIMITED and
UNION ATLANTIQUE d'ASSURANCES S.A.

Appellants
(First Defendants)

and

NATIONAL WESTMINSTER FINANCE
AUSTRALIA LIMITED

First Respondent
(First Plaintiff)

and

JOSEPH MAXIM GOLDBERG and VIVIENNE
GOLDBERG trading as "SHAMROCK PARK"

Second Respondents
(Second Plaintiffs)

and

AUSTRALIAN INSURANCE BROKERS LIMITED

Third Respondent
(Second Defendant)

BEFORE THE HONOURABLE MR. JUSTICE PIDGEON
THE 19TH DAY OF AUGUST 1983

UPON THE APPLICATION of the appellants (first defendants) by notice of motion dated 5th August 1983 and UPON HEARING the solicitors for the parties and the Court being satisfied that the matters in dispute on the appeal amounts to or is of the value of Five Hundred Pounds Sterling or upwards IT IS ORDERED that:

1. Subject to the due performance by the appellants (first defendants) of the conditions hereinafter mentioned and subject to the final order of the Court upon the due performance thereof the appellants (first defendants) have leave to appeal to Her Majesty in Council from the judgment herein of the Honourable Mr. Justice Wallace given in Court on the 15th day of July 1983 in which he adjudged and ordered that:-

- (1) The appellants (first defendants) do pay the first respondent (first plaintiff) \$433,500.19.
- (2) The appellants (first defendants) do pay the second respondents (second plaintiffs) \$731,704.81.
- (3) The first and second respondents' (plaintiffs') claim against the third respondent (second defendant) do stand dismissed out of the Court.
- (4) The appellants (first defendants) do pay the first and second respondents' (plaintiffs') costs of the action to be taxed according to the scale in the Fourth Schedule to the Rules of the Supreme Court without regard to the limit prescribed under Order 66 on the basis that the value of the subject matter of the first and second respondents' (plaintiffs') claims is the sum of \$1,165,205.00 with certificates for two Counsel and four and a half extra days.
- (5) The appellants (first defendants) do pay half the third respondent's (second defendant's) costs of the action to be taxed on the basis that the value of the subject matter of the action is the sum of \$1,165,205.00 with certificates for two Counsel and for four and a half extra days.
- (6) Execution of this judgment be stayed for 21 days.

UPON CONDITION that the appellants (first defendants) within a period of three months from the date hereof deposit on fixed deposit at Perth for a term of two months with any banking company carrying on business in Western Australia a sum equivalent to Five Hundred Pounds Sterling in the name of "Principal Registrar, Supreme Court of Western Australia" and delivering the receipt thereof to the Principal Registrar of this Honourable Court as security for the due prosecution of such appeal and the payment of all such costs as may become payable to the respondents in the event that the appellants (first defendants) do not obtain an order

No. 24
Order of the Honourable
Mr. Justice Pidgeon granting
First Defendants conditional
leave to appeal

19 August 1983
(continued)

- giving final leave to appeal or of the appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the appellants (first defendants) to pay the costs of all or some of the respondents (as the case may be).
2. Execution of the judgment be stayed until the second respondents (second plaintiffs) provide good and sufficient security to the satisfaction of the appellants (first defendants) and in the event that the said parties cannot reach agreement the second respondents (second plaintiffs) do provide good and sufficient security to the satisfaction of the Principal Registrar.
 3. The costs of this application and order hereon be costs of the appeal and that each party have liberty to apply.

By the Court

Bruce Dixon
Deputy Registrar

I CERTIFY that this is a true copy of the document of which it purports to be a copy.

Dated the 9th day of JULY 1984:

Bruce Dixon
DEPUTY REGISTRAR

THIS ORDER was extracted by Messrs. Jackson, McDonald & Co. of 6 Sherwood Court, Perth, Solicitors for the Appellants (First Defendants). Tel. 325-0291. (TMCA:BARL6100-001).