
ON APPEAL

**FROM THE HIGH COURT
OF AUSTRALIA**

COURT OF COMMONS
LONDON
1968

11, ABINGDON SQUARE
LONDON, W.C.1

Between

CAR OWNERS' MUTUAL INSURANCE COMPANY LIMITED

Appellant

and

THE TREASURER OF THE COMMONWEALTH OF AUSTRALIA

Respondent

RECORD OF PROCEEDINGS

INGLEDEW BROWN BENNISON
& GARRETT
51 Minories
LONDON
Solicitors for the Appellant

COWARD CHANCE & COMPANY
St. Swithin's House
Walbrook
LONDON
Solicitors for the Respondent

ON APPEAL

**FROM THE HIGH COURT
OF AUSTRALIA**

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ON APPEAL FROM THE HIGH COURT OF AUSTRALIA

BETWEEN CAR OWNERS' MUTUAL INSURANCE
COMPANY LIMITED

Appellant

AND THE TREASURER OF THE
COMMONWEALTH OF AUSTRALIA

Respondent.

TRANSCRIPT RECORD OF PROCEEDINGS

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AFFIDAVIT OF LAWRENCE JAMES ADLER

In the High
Court of
Australia
New South
Wales
Registry

ON the 31st day of August 1967 LAWRENCE JAMES ADLER of 10 Fitzwilliam Road Vaucluse in the State of New South Wales Company Director being duly sworn makes oath and says as follows:-

NO.1
Affidavit of
Lawrence James
Adler

31st Aug. 1967

1. I am the Managing Director of Car Owners' Mutual Insurance Company Limited (hereinafter called "the Prosecutor").

10 2. The present application for an order nisi for a writ of mandamus directed to the Assistant Secretary Budget and Accounting Branch of the Commonwealth of Australia (hereinafter called "the Respondent") is made by the Prosecutor as prosecutor.

20 3. The Prosecutor carries on in the Commonwealth of Australia an insurance business and has made and maintains a deposit pursuant to the provisions of the Insurance Act 1932-1960 (hereinafter called "the Act").

4. I am also the Managing Director of Fire & All Risks Insurance Company Limited (hereinafter called "Fire & All Risks").

5. Fire & All Risks carries on in the Commonwealth of Australia an insurance business and has made and maintains a deposit pursuant to the provisions of the Act.

30 6. By letter dated 30th March, 1966, Fire & All Risks requested the Respondent to apply the provisions of Section 14 of the Act to the Prosecutor and to return the deposit lodged by the Prosecutor. Fire & All Risks no longer has a copy of such letter in its possession but I believe that the said letter is in the possession of the Respondent.

40 7. Shown to me at the time of swearing this Affidavit are copies of subsequent correspondence passing between the Prosecutor and its Solicitors and the Respondent or persons on his behalf. The said copies are the exhibits to this Affidavit marked with the letters "A" to "J" inclusive.

8. The Prosecutor respectfully requests that this Honourable Court order the Respondent to show cause why he should not:-

In the High Court of Australia New South Wales Registry

NO.1 Affidavit of Lawrence James Adler

31st Aug.1967

10 (a) Certify by writing under his hand that the deposit now made and maintained by Fire & All Risks Insurance Company Limited pursuant to the provisions of the Insurance Act 1932-1960 is a sufficient compliance by the Prosecutor with the requirements of the said Act; or alternatively

20 (b) Certify by writing under his hand that a deposit made and maintained by Fire & all Risks Insurance Company Limited pursuant to the provisions of the Insurance Act 1932-1960 to a value equal to the value of the deposit that would be required by the said Act if it carried on the business of the Prosecutor in addition to its own business is a sufficient compliance by the Prosecutor with the requirements of the said Act; or alternatively

(c) Certify by writing under his hand that Fire & All Risks Insurance Company Limited has become the beneficial owner of the shares of the Prosecutor.

30 SWORN by the Deponent)
at SYDNEY this 31st)
day of August 1967,)
before me:)

A Justice of the Peace

EXHIBIT "A"

Exhibit A
to Affidavit
of Lawrence
James
Adler.

Letter from First Assistant Secretary to the
Treasury to Fire & All Risks Insurance Co.
Limited.

COMMONWEALTH TREASURY,
CANBERRA, A.C.T.
Reference No. BA 65/105
17th May, 1966.
18 May 1966

10 Dear Sir,

Insurance Act 1932-1965

Following the receipt of your letter
(Ref. CMA/JEH) of 30th March, 1966, consid-
eration has been given to the Company's re-
quest that the provisions of Section 14 of
the above Act be applied and that the secur-
ities held by the Treasurer as a deposit on
behalf of the Car Owners' Mutual Insurance
Company Ltd. be returned.

20 It is within the discretion of the
Treasurer whether or not to apply the pro-
visions of section 14. Since the effect of
his certificate under section 14(1) would be
the return of the deposit held for the bene-
fit of the policy owners of The Car Owners'
Mutual Insurance Company Ltd., it is
essential that the Treasurer be assured that
the group has made adequate provision to
meet its liabilities (including contingent
30 liabilities) to policy owners in the Common-
wealth - vide section 20A(2)(c).

For this purpose, a complete investigat-
ion would have to be made of the affairs of
the Company and its subsidiary by a firm of
Chartered Accountants selected by the
Treasurer and at the cost of the Company. It
would be necessary for the investigating
accountants to prepare a complete Consoli-
dated Balance Sheet as at the date of their
40 acceptance of the assignment and to certify
to the correctness thereof. They would also
be required to provide separate explanatory
statements in relation to -

- (a) the basis (in detail) upon which
the provision for Unexpired Risks
was calculated, and

Company's request for the return of the securities. It is possible, of course, that further information might subsequently be required.

Exhibit A
to Affidavit
of Lawrence
James
Adler.

Yours faithfully,

A. Harris

First Assistant Secretary

10 The Principal Officer,
Fire & All Risks Insurance Company Limited,
FAI House,
34-36 King Street,
SYDNEY. N.S.W.

THIS AND the preceding Two (2) pages comprises the exhibit marked "A" produced and shown to LAWRENCE JAMES ADLER at the time of swearing his affidavit at SYDNEY this 31st day of August 1967, before me:

A Justice of the Peace

EXHIBIT "B"

Exhibit B
to Affidavit
of Lawrence
James
Adler.

Letter from First Assistant Secretary to the
Treasury to Fire & All Risks Insurance Co.
Limited.

COPY ONLY

COMMONWEALTH TREASURY
CANBERRA. A.C.T.

Reference No. 65/105
63/4651

10 Dear Sir,

Insurance Act 1932-1965

Reference is made to your letters of
11th October and 12th December, 1966, con-
cerning the Certificates of Title to the
property situated at 40-48 Woodlark Street,
Lismore, which were lodged as the additional
deposits required under the Insurance Act on
behalf of Fire and All Risks Insurance Co. Ltd.
and Car Owners' Mutual Insurance Co. Ltd.

20 The property at 40-48 Woodlark Street
(Volume 2353, Folio 142 and Volume 2357,
Folio 155) has now been valued by the Deputy
Commissioner of Taxation, and you are advised
that the Treasurer is prepared to accept the
property at \$38,000.

30 The proposal contained in your letter of
11th October, 1966, for the substitution of
certain securities to meet the deposit require-
ments of both Fire and All Risks and Car Owners
under the Insurance Act has been examined. It
is suggested, however, that the following re-
arrangement of securities might be appropriate:-

Fire and All Risks Insurance Co. Ltd.
(deposit of \$160,000 required)

	Certificate of Title Volume 7581, Folios 207/ 208 (34-36 King Street, Sydney)	\$60,000
	" of Title Volume 9172, Folios 25/ 26 (10 Fitzwilliam Road, Vaucluse)	50,000
40	" " " Volume 6298, Folio 8 (Clarinda Street, Parkes)	14,000
	" " " Volume 2353, Folio 142 and Volume 2357 Folio 155 (40-48 Woodlark St. Lismore)	<u>38,000</u>
		\$162,000

Car Owners' Mutual Insurance Co.Ltd.
(deposit of \$16,000 required)

Exhibit B
to Affidavit
of Lawrence
James
Adler.

Certificate of Title Volume 7037, Folio
37 (Main Street, Blacktown) \$17,200

10 If the above proposal is acceptable to you,
the fixed deposits to the value of \$6,800
would be returned to Fire and All Risks, and
all the securities at present held by the
Treasurer in respect of Car Owners Mutual
Insurance Co.Ltd., namely \$8,700 in fixed
deposits and \$3,300 in Commonwealth Govern-
ment Inscribed Stock, would be returned to
Car Owners.

Before the above action is taken, it will,
of course, be necessary to receive your written
agreement to the course proposed and for Fire
and All Risks Insurance Company Limited to exe-
cute a Deed in accordance with the attached
draft and return it to this office.

20 The expenses of the valuation of the prop-
erty situated at 40-48 Woodlark Street, Lismore,
amounted to \$23.20. You are requested to remit
this amount to the Receiver of Public Moneys,
Commonwealth Treasury, Canberra.

Yours faithfully,

(Sgd) A. Harris

(A. HARRIS)

Encl. First Assistant Secretary

30 The Principal Officer,
Fire & All Risks Insurance Co.Ltd.,
34-36 King Street,
SYDNEY. N.S.W.

THIS IS the exhibit marked "B" produced and
shown to LAWRENCE JAMES ADLER at the time of
swearing his Affidavit at SYDNEY this 31st
day of August 1967, before me:

A Justice of the Peace

EXHIBIT "C"

Exhibit C
to affidavit
of Lawrence
James
Adler.

Copy letter from Fire & All Risks Insurance
Co. Limited to The First Assistant Secretary
to the Treasury.

LJA:mas

The First Assistant Secretary,
Commonwealth Treasury,
CANBERRA, A.C.T.

17th January, 1967.

10 Dear Sir,

RE: THE INSURANCE ACT 1932-1965 RE THIS
COMPANY AND CAR OWNERS MUTUAL INSURANCE
COMPANY LIMITED DEPOSITS PURSUANT TO THE
INSURANCE ACT

Reference is made to your undated letter -
65/105 - 63/4651 relating to the re-arrangement
of securities.

20 It is noted from your letter and from pre-
vious correspondence that a deposit of \$16,000
is required for Car Owners Mutual Insurance
Company Limited. Such has already been depos-
ited with you, but with respect, it is consid-
ered that the interpretation of Section 14 of
the Insurance Act, 1932-1965 does not enable
you to call for any deposit from Car Owners
Mutual Insurance Company Limited. Our inter-
pretation of this Section is that the Treasur-
er need only be satisfied that Car Owners
30 owned subsidiary of Fire & All Risks Insurance
Company Limited, and, pursuant to the issue of
a certificate to this effect, no deposit is
required to be maintained by the subsidiary
company.

40 However, in order that the re-arrangement
of the securities will not be delayed, the draft
deed forwarded with your letter, has been duly
executed under the Common Seal of The Fire & All
Risks Insurance Company Limited and the original
is returned herewith, but the forwarding of the
Deed is not to be taken as an acknowledgement
that the Treasurer's right to demand a deposit
from Car Owners Mutual Insurance Company Limited
is admitted.

10

In pursuance of the above, it is requested that you kindly re-examine this matter, and let us know, whether in the light of a reconsideration of Section 14 of the Act, you are still of the opinion that full deposits must be lodged in pursuance of the Act for Car Owners Mutual Insurance Company Limited as a separate corporation. In this regard, Car Owners Mutual Insurance Company Limited is a wholly owned subsidiary of Fire & All Risks Insurance Company Limited and whatever evidence in support as may be required by you can be furnished.

Subject as above, would you kindly proceed with the re-arrangement of the securities. Would you kindly also let us have your advices in reply to the remainder of this letter as soon as convenient.

Yours faithfully,

20

L.J. Adler
CHAIRMAN

THIS AND the preceding One (1) page comprises the exhibit marked "C" produced and shown to LAWRENCE JAMES ADLER at the time of swearing his Affidavit at SYDNEY this 31st day of August 1967, before me:

A Justice of the Peace

EXHIBIT "D"

Letter from First Assistant Secretary to the
Treasury to Fire & All Risks Insurance Co.
Limited.

Exhibit D
to Affidavit
of Lawrence
James
Adler.

COMMONWEALTH TREASURY
CANBERRA. A.C.T.
Reference No. 65/105
3 Feb 1967

Dear Sir,
10 Insurance Act 1932-1965

Reference is made to your letter of 17th
January, 1967, and the accompanying deed in
respect of Certificate of Title Volume 7037,
Folio 37.

In the light of your agreement to the re-
arrangement of deposits held by the Treasurer
in respect of your company and Car Owners'
Mutual Insurance Co.Ltd. the property at 40-48
20 Woodlark Street, Lismore (Volume 2353,Folio 142
and Volume 2357, Folio 155) has been accepted as
a deposit under the Insurance Act by Fire and
All Risks Insurance Company Limited at a value
of \$38,000. The Chief Finance Officer, Common-
wealth Sub-Treasury, Sydney has been requested
to return to you the fixed deposits to the value
of \$6,800. With the transfer of the deposit of
the property at Blacktown to Car Owners' Mutual
Insurance Co. Ltd. the Chief Finance Officer,
30 Mutual Insurance Co. Ltd. the fixed deposits
to the value of \$8,700 and the \$3,300 in Common-
wealth Government Inscribed Stock.

A new Certificate of Deposit and Receipt
recording the total deposit lodged by your
company under the Insurance Act 1932-1965 is
enclosed and it would be appreciated if you
would return the Certificate dated 16th
March, 1964 to this Office for cancellation.

Your request that the provisions of
40 Section 14 of the Insurance Act 1932-1965 be
applied to your company and Car Owners'
Mutual Insurance Co. Ltd. so that the deposit
held by the Treasurer on behalf of Car Owners'
Mutual Insurance Co. Ltd. may be returned,

has been noted. You are reminded however, that in the Treasury letter of 17th May, 1966 you were advised that if certain information was provided further consideration would be given to the return of the securities. Treasury has had no reply to that letter.

Exhibit D
to Affidavit
of Lawrence
James
Adler.

Yours faithfully,

A. Harris
First Assistant Secretary.

Encl.

10 The Principal Officer,
Fire and All Risks Insurance Co.Ltd.,
34-36 King Street,
SYDNEY. N.S.W.

EXHIBIT "D"

Exhibit D
To Affidavit
of Lawrence
James
Adler.

Certificate of Deposit and Receipt from
Commonwealth Treasury to Fire & All Risks
Insurance Co. Limited

COMMONWEALTH TREASURY
CANBERRA. A.C.T.
Reference No. 65/105
3 Feb 1967

10

COMMONWEALTH OF AUSTRALIA
INSURANCE REGULATIONS

FORM 7

Regulation 11.

CERTIFICATE OF DEPOSIT AND RECEIPT

This is to certify that FIRE AND ALL RISKS INSURANCE COMPANY LIMITED has lodged with the Treasurer in pursuance of the Insurance Act 1932-19 a deposit comprising approved securities as set out in the following table:-

20	<u>Nature of Securities</u>	<u>Value</u>
		\$
	<u>CERTIFICATES OF TITLE</u>	
	Volume 7581, Folios 207/208 (34-36 King Street, Sydney)	60,000
	Volume 9172, Folios 25/26 (10 Fitzwilliam Road, Vaucluse)	50,000
	Volume 6298, Folio 8 (Clarinda Street, Parkes)	14,000
30	Volume 2353, Folio 142 and Volume 2357, Folio 155 (40-48 Woodlark Street, Lismore)	<u>38,000</u>
	Total amount of deposit	\$162,000 =====

The receipt of the abovementioned deposit is hereby acknowledged.

(A. HARRIS)

First Assistant Secretary

40

THIS AND the preceding page comprises the exhibit marked "D" produced and shown to LAWRENCE JAMES ADLER at the time of swearing his Affidavit at SYDNEY this day of _____ 1967, before me:

A Justice of the Peace

EXHIBIT "E"

Exhibit E
to Affidavit
of Lawrence
James
Adler.

Letter from Fire & All Risks Insurance Co.
Limited to First Assistant Secretary to
the Treasury

February 21, 1967

The First Assistant Secretary,
Commonwealth Treasury,
CANBERRA. A.C.T.

Dear Sir,

10 Insurance Act 1932 - 1965
 Your Reference - 65/105

We note the contents of the last paragraph of
your letter of 3rd instant, and advise that
our letter to you of January 17, 1967 referred
to previous correspondence, and, in so far as
our letter of January 17, 1967, related to
Section 14 of the Insurance Act, was intended
as a reply to your letter of May 17, 1966.

20 As indicated in our letter of January 17,
1967, this Company pursuant to advice given
by senior counsel, interprets Section 14 of
the Insurance Act to the effect that the
Treasurer need only be satisfied that Car
Owners' Mutual Insurance Company Limited is
a wholly owned subsidiary of Fire & All Risks
Insurance Company Limited, and pursuant to
the issue of a certificate to this effect, no
deposit is required to be maintained by the
30 subsidiary company. It follows therefore,
that there is no legislative sanction for any
of the demands referred to in your letter of
May 17, 1966, since such have no application
to the exercise of discretion.

40 We would again point out that our letter of
January 17, 1967, mentioned that the deed was
executed and forwarded only to save delay.
This Company wishes to pursue its contention
that no deposit is legally payable by Car
Owners' Mutual Insurance Company Limited. The
above is directed to this issue.

Accordingly therefore, would you kindly now
let us have your formal reply to the penulti-
mate paragraph of our letter to you of

January 17, 1967.

Yours faithfully,

Exhibit E
to Affidavit
v. Lawrence
James
Adler.

Lawrence J. Adler
Chairman

THIS IS
the exhibit marked "E" produced and shown
to LAWRENCE JAMES ADLER at the time of
swearing his Affidavit at SYDNEY this
day of 1967, before me:

10

A Justice of the Peace

EXHIBIT "F"

Letter from First Assistant Secretary to the
Treasury to Fire & All Risks Insurance Co.
Limited.

Exhibit F
to Affidavit
of Lawrence
James
Adler.

COMMONWEALTH TREASURY
CANBERRA. A.C.T.
Reference No. 65/105
23 Mar 1967

Dear Sir,

10 Insurance Act 1932-65 -
Section 14

Reference is made to your letter dated
21st February, regarding the above matter.

20 The Commonwealth Crown Solicitor has ad-
vised that, in his opinion, the power of the
Treasurer to certify under Section 14 of the
Insurance Act 1932-65 is discretionary. Act-
ing in accordance with this advice, the Treas-
urer decided not to comply with the request
that the concession referred to in that Sec-
tion be granted to Fire and All Risks Insur-
ance Co.Ltd., and its subsidiary company, Car
Owners' Mutual Insurance Co. Ltd. The decis-
ion was taken for reasons within the scope
and purpose of the Act and not on grounds
irrelevant, capricious or arbitrary. In
these circumstances, Treasury is unable to
agree with the contentions in the second para-
graph of your letter under reply.

30 You are again advised however that if the
steps referred to in the Treasury letter
addressed to Fire and All Risks Insurance Co.
Ltd., on 17th May, 1966 are taken, and all the
necessary information supplied, the question
whether the Section 14 concession should be
granted will receive further consideration.

Yours faithfully,

A. Harris
First Assistant Secretary

40 The Chairman,
Car Owners' Mutual Insurance Co.Ltd.,
34-36 King Street,
SYDNEY. N.S.W.

THIS IS the exhibit marked "F" produced and shown
to LAWRENCE JAMES ADLER at the time of swearing
his Affidavit at SYDNEY this day of
1967, before me:

A Justice of the Peace

EXHIBIT "G"

Exhibit G
to Affidavit
of Lawrence
James
Adler.

Letter from Messrs. Holman Webb & Co. to
First Assistant Secretary to the Treasury.

JDH:RS. 5310

7th April, 1967.

The First Assistant Secretary,
Commonwealth Treasury,
CANBERRA. A.C.T.

Dear Sir,

10

Your Ref: 65/105

RE: FIRE & ALL RISKS INSURANCE COMPANY
LIMITED AND CAR OWNERS MUTUAL INSURANCE
CO. LIMITED

We act for the abovementioned companies
which have referred to us your letter dated
23rd March, 1967, to Car Owners Mutual In-
surance Co. Limited, together with previous
correspondence.

20

Our client's contention in this matter
is that the Treasurer has no discretion pur-
suant to Section 14 of the Insurance Act 1932
as amended, other than as to being satisfied
that any particular company is a wholly owned
subsidiary. Our client's contention is that
the Treasurer's discretion does not extend to
any other matter.

30

Our client is of the opinion that it is
improper in the circumstances for the Treasur-
er to request any investigation of the affairs
of a company and its subsidiaries as is indic-
ated in your letter to Fire & All Risks Insur-
ance Co. Limited of 17th March, 1967, in con-
nection with the exercise of the discretion
pursuant to Section 14.

40

Apart from this however, any investigat-
ion of the nature suggested by you would be
unnecessarily expensive and would involve
considerable time and effort on the part of
any company and our client cannot agree that
this would in any way assist.

Accordingly therefore, under all of the
circumstances herein, we now hereby formally
advise you that our client proposes to com-
mence proceedings in the appropriate Court

with a view to obtaining judicial interpretation of Section 14 and for a subsequent direction to the Treasurer to confine enquiries only to whether or not Car Owners Mutual Insurance Company Limited is a wholly owned subsidiary of Fire & All Risks Insurance Company.

Exhibit G
to Affidavit
of Lawrence
James
Adler.

10 The commencement of such proceedings will, as you will appreciate, take some small amount of time. It may be that in the interim, the Treasurer may reconsider his views with the consequent saving of time and expense to both parties.

Yours faithfully,
HOLMAN, WEBB & CO.

20 THIS and the preceding One (1) page comprises the exhibit marked "G" produced and shown to LAWRENCE JAMES ADLER at the time of swearing his Affidavit at SYDNEY this day of 1967, before me:

A Justice of the Peace

EXHIBIT "H"

Exhibit H
to Affidavit
of Lawrence
James
Adler.

Letter from First Assistant Secretary to
the Treasury to Messrs. Holman Webb & Co.

COMMONWEALTH TREASURY.
CANBERRA. A.C.T.

Reference No. 65/105

Dear Sir,

10

Insurance Act 1932-65 - Section
14 - Fire and All Risks Insurance
Co.Ltd. - Car Owners Mutual
Insurance Co. Ltd.

Reference is made to your memorandum
dated 7th April regarding the above matter.

The advice that your client intends to
commence legal proceedings has been noted.

Yours faithfully,

A. Harris
First Assistant Secretary

20

Messrs. Holman, Webb and Co.,
Solicitors,
Commercial Union House,
109 Pitt Street,
SYDNEY. N.S.W.

THIS IS the exhibit marked "H" produced and
shown to LAWRENCE JAMES ADLER at the time of
swearing his Affidavit at SYDNEY this
day of 1967, before me:

A Justice of the Peace

EXHIBIT "I"

Exhibit I
to Affidavit
of Lawrence
James
Adler.

Letter from Messrs. Holman Webb & Co. to
First Assistant Secretary to the Treasury

JDH:RS. 5310

28th June, 1967.

The First Assistant Secretary,
Commonwealth Treasury,
CANBERRA. A.C.T.

Dear Sir,

Your Ref: 65/105

10

RE: FIRE & ALL RISKS INSURANCE COMPANY
LIMITED AND CAR OWNERS' MUTUAL
INSURANCE COMPANY LIMITED

We refer to previous correspondence as to
the application of Section 14 of the Insurance
Act. We have been instructed by Car Owners'
Mutual Insurance Company Limited to seek approp-
riate relief in the High Court, by way of man-
damus and the necessary documents are in the
course of being settled by Counsel.

20

For the purpose of narrowing the issues
and arguments before the Court to the matters
of principle involved, Counsel retained by our
client has suggested that these can be raised
without any prejudice to the position of either
party if for the purpose only of these proceed-
ings the Treasurer would be prepared to admit
the following facts:-

1. That Fire & All Risks Insurance Company
Limited has become the beneficial owner
of the shares of Car Owners' Mutual
Insurance Company Limited.
2. That the deposit presently made and
maintained by Fire & All Risks Insurance
Company Limited pursuant to the provis-
ions of the Act, is of a value equal to
the value of the deposit that would be
required by the Act if it carried on the
business of Car Owners' Mutual Insurance
Company Limited in addition to its own
business.

30

40

Would you please inform us whether the
Treasurer would be prepared to make these ad-
missions.

Would you also kindly advise whether the Treasurer has, pursuant to Section 5A of the Act, delegated his function under Section 14 of the Act to any other person. If so, would you be good enough to advise the name of such person and provide us with formal details of the delegation.

Exhibit I
to Affidavit
of Lawrence
James
Adler.

10 It is our client's wish that the matter be brought before the Court at its next sittings, and we would be glad if you could let us have an early reply to this letter.

Yours faithfully,
HOLMAN, WEBB & CO.

THIS and the preceding One (1) page comprises the exhibit marked "I" produced and shown to LAWRENCE JAMES ADLER at the time of swearing his Affidavit at Sydney this day of
1967, before me:

A Justice of the Peace

EXHIBIT "J"

Exhibit J
to Affidav.
of Lawrence
James
Adler.

Letter from First Assistant Secretary to
the Treasury to Messrs. Holman Webb & Co.

COMMONWEALTH TREASURY.

CANBERRA. A.C.T. 2600

Reference No. 65/105

4 Aug 1967

Dear Sir,

Insurance Act 1932-1966

10 Reference is made to your letter JDH:RS
5310 of 28 June 1967 concerning the appli-
cation of Section 14 of the Insurance Act to
Fire and All Risks Insurance Company Limited
and Car Owners' Mutual Insurance Company
Limited.

20 In order that the issue before the
Court may be confined to the principles in-
volved, the Treasurer is prepared to admit
that Fire and All Risks Insurance Company
Limited has become the beneficial owner of
the Shares of Car Owners' Mutual Insurance
Company Limited and that the deposit present-
ly made and maintained by Fire and All Risks
Insurance Company Limited pursuant to the
provisions of the Act, is of a value equal to
the value of the deposit that would be re-
quired by the Act if it carried on the busi-
ness of Car Owners' Mutual Insurance Company
Limited in addition to its own business.

30 It is advised that the Treasurer has
delegated his function under Section 14 of
the Act to the Assistant Secretary, Budget
and Accounting Branch and an extract of the
formal delegation is enclosed.

Yours faithfully,

A. Harris.

Encl. First Assistant Secretary.

40 Messrs. Holman, Webb & Co.,
Solicitors,
Commercial Union House,
109 Pitt Street,
SYDNEY. N.S.W. 2000

THIS and the following Two (2) pages com-
prises the exhibit marked "J" produced and
shown to LAWRENCE JAMES ADLER at the time of
swearing his Affidavit at SYDNEY this
day of 1967, before me:

A Justice of the Peace

EXHIBIT "J"

Delegation from Treasurer to the Assistant
Secretary, Budget and Accounting Branch

Exhibit J
to Affidavit
of Lawrence
James
Adler.

INSURANCE ACT 1932-1965 AND REGULATIONS UNDER
THE INSURANCE ACT 1932-1965

Delegations by the Treasurer to Officers of
the Department of the Treasury

10 I, William McMahon, Treasurer of the
Commonwealth, delegate such of my powers and
functions as are specified in the second col-
umn hereunder, to the persons for the time
being occupying the positions specified in
the third column against those powers and
functions. The occupant of any of the posit-
ions specified may exercise any power or funct-
ion which has been delegated to the occupant
of a subordinate position, provided that any
power specified hereunder may be exercised by
20 the occupant of the positions of Secretary to
the Treasury, Deputy Secretary (Supply and
General) or First Assistant Secretary, Budget
and Accounting Branch.

Section of In- surance Act 1932-1965	Power or Function	Position
30 14(1) WM 3/5/66	To certify that a deposit by a company which has acquired the share capital of another company is a sufficient compliance with the Act and that no deposit is required from the sub- sidiary company.	Assistant Secretary, Budget and Accounting Branch.
40 14(2)(a)	To return deposits to sub- sidiary companies.	Assistant Secretary Budget and Accounting Branch.
14(2)(d) and (e)	To extend the time within which a final judgment shall be satisfied.	Assistant Secretary Budget and Accounting Branch.

14(4) To determine whether a parent company has ceased to be the beneficial owner of the shares issued by a subsidiary company, and to notify the subsidiary company, accordingly.

Assistant Secretary Budget and Accounting Branch.

Exhibit J
to Affidavit
of Lawrence
James
Adler.

10 The written approval "for the Treasurer" by any of the abovementioned delegates shall be accepted as the exercise of his authority under this delegation.

I hereby revoke all previous delegations of my powers and functions under the abovementioned provisions of the Insurance Act and Insurance Regulations.

William McMahon
3rd May, 1966

ORDER NISI FOR WRIT OF MANDAMUSBEFORE HIS HONOUR THE CHIEF JUSTICE SIR
GARFIELD BARWICK IN CHAMBERS.FRIDAY THE 1ST DAY OF SEPTEMBER 1967

UPON APPLICATION made this day at Sydney by
 Counsel on behalf of the abovenamed Prosecutor
 Car Owners' Mutual Insurance Company Limited
AND UPON READING the Affidavit of Lawrence
 10 James Adler sworn the 31st day of August 1967
 and filed herein and the exhibits thereto
AND UPON HEARING Mr. R.V. Gyles of Counsel
 for the Prosecutor AND UPON it appearing by
 the said Affidavit of Lawrence James Adler
 and the exhibits thereto particularly Exhibit
 J that the Treasurer of the Commonwealth of
 Australia is satisfied that Fire & All Risks
 Insurance Company limited has become the
 beneficial owner of the shares of the Prose-
 20 cutor IT IS ORDERED that the abovenamed
 Respondent, The Treasurer of the Common-
 wealth of Australia SHOW CAUSE before a Full
 Court of the High Court of Australia at
 Sydney on Tuesday the 31st October at the
 hour of 10.15 o'clock in the forenoon or as
 soon thereafter as Counsel can be heard WHY
 a Writ of Mandamus should not issue out of
 the Court directed to the Respondent command-
 30 ing that he under his own hand or that of
 his delegate, certify that the deposit made
 and maintained by Fire & All Risks Insurance
 Company Limited with the Treasury of the
 Commonwealth of Australia is of a value
 equal to the value of the deposit that would
 be required by the Insurance Act 1932-1960
 to be made and maintained by that Company if
 it carried on the business of the Prosecutor
 in addition to its own business and that the
 making and maintenance of that deposit by
 40 Fire & All Risks Insurance Company Limited
 is a sufficient compliance by the Prosecutor
 with the requirements of the Act UPON THE
GROUNDS that:-

1. As the deposit presently made and main-
 tained by Fire & All Risks Insurance
 Company Limited (hereinafter called
 "Fire & All Risks") pursuant to the pro-
 visions of the said Act is of a value
 equal to the value of the deposit that

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 of
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would be required by the said Act if it carried on the business of Prosecutor in addition to its own business he has by virtue of Section 14 of the Insurance Act 1932-1960 a public duty to either:-

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- 10 (a) certify by writing under his hand that the deposit now made and maintained by Fire & All Risks pursuant to the provisions of the Insurance Act 1932-1960 is a sufficient compliance by the Prosecutor with the requirements of the said Act or alternatively,
- 20 (b) certify by writing under his hand that a deposit made and maintained by Fire & All Risks pursuant to the provisions of the Insurance Act 1932-1960 to the value equal to the value of the deposit that would be required by the said Act if it carried on the business of the Prosecutor in addition to its own business is a sufficient compliance by the Prosecutor with the requirements of the said Act or alternatively,
- 30 (c) certify by writing under his hand that Fire & All Risks has become beneficial owner of the shares of the Prosecutor YET he has refused to perform any such duty and the Prosecutor is a party interested in the relief sought.

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for Writ
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2. That the Respondent has wrongfully acted upon the view that he had an unfettered discretion whether or not to apply Section 14 of the said Act to the Prosecutor.
3. That the Respondent has refused to perform his duty under Section 14 of the said Act except upon requiring the Prosecutor to do acts which the Respondent is not by law entitled to require or consider in performing his said duty.
- 40 4. That the Respondent when purporting to perform his duty under Section 14 of the said Act has wrongfully acted upon the view that he may take into account questions other than that whether Fire & All Risks have become the beneficial owner of the shares in the Prosecutor.

5. That the Respondent when purporting to perform his duty under Section 14 of the said Act has wrongfully acted upon the view that he may take into account questions other than firstly whether Fire & All Risks has become the beneficial owner of the shares of the Prosecutor and secondly whether the deposit made and maintained by Fire & All Risks pursuant to the said Act at the relevant time is of a value equal to the value of the deposit that would be required by the said Act to be made and maintained by Fire & All Risks if it carried on the business of the Prosecutor in addition to its own business.

10

6. That in purporting to exercise his duty under Section 14 of the said Act the Respondent has not acted in accordance with law.

20

AND IT IS FURTHER ORDERED that service of this ORDER NISI upon the Respondent may be effected by leaving a copy thereof at the office of the Commonwealth Crown Solicitor, 119 Phillip Street Sydney, AND IT IS FURTHER ORDERED that the costs of this Application be costs in the Motion to make this ORDER NISI absolute AND IT IS CERTIFIED that this was an Application proper for the attendance of Counsel at Chambers.

30

H. Cannon

District Registrar

In the High
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Registry

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Order Nisi
for Writ
of
Mandamus
(Continued)

1st Sept.1967

ORDER DISCHARGING ORDER NISI FOR WRIT OF
MANDAMUS

BEFORE THEIR HONOURS THE CHIEF JUSTICE SIR
GARFIELD BARWICK, MR. JUSTICE McTIERNAN AND
MR. JUSTICE MENZIES

MONDAY THE 11TH DAY OF MARCH 1968

10 THE ORDER NISI for Writ of Mandamus granted by his Honour The Chief Justice Sir Garfield Barwick, on the 1st day of September 1967 directed to the abovenamed Respondent to show cause before a Full Court of this Court WHY a Writ of Mandamus should not issue out of this Court directed to the Respondent commanding that he under his own hand or that of his delegate, certify that the deposit made and maintained by Fire & All Risks Insurance Company Limited with the Treasury of the Commonwealth of Australia is of a value equal to

20 the value of the deposit that would be required by the Insurance Act 1932-1960 to be made and maintained by that Company if it carried on the business of the Prosecutor in addition to its own business and that the making and maintenance of that deposit by Fire & All Risks Insurance Company Limited is a sufficient compliance by the Prosecutor with the requirements of the Act coming on for hearing before this Court at Sydney on the 9th and 10th days of November 1967 UPON READING

30 the transcript record of proceedings herein AND UPON HEARING Mr. Ellicott of Queen's Counsel and Mr. Gyles of Counsel for the Prosecutor and Mr. Byers of Queen's Counsel and Mr. Sheppard of Counsel for the Respondent THIS COURT DID ORDER on the said 10th day of November 1967 that this matter should stand for judgment and the same standing for judgment this day accordingly at Sydney

40 THIS COURT DOTH ORDER that the said Order Nisi for Writ of Mandamus be and the same is hereby discharged AND THIS COURT DOTH FURTHER ORDER that it be referred to the proper Officer of this Court to tax and certify the costs of the Respondent of this matter and that such costs when so taxed and certified be paid by the Prosecutor to the Respondent or to his Solicitor, the Crown Solicitor for the Commonwealth of Australia.

BY THE COURT
DISTRICT REGISTRAR

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NO.3
Order Dis-
charging
Order Nisi
for Writ of
Mandamus

11th Mar. 1968

REASONS FOR JUDGMENT

A.

THE QUEEN AGAINST THE TREASURER OF THE
COMMONWEALTH OF AUSTRALIA EX PARTE CAR
OWNERS' MUTUAL INSURANCE COMPANY LIMITED

10 Car Owners' Mutual Insurance Company
Limited (the Prosecutor) moves to make abso-
lute an order nisi for a writ of Mandamus
directed to the Treasurer of the Commonwealth
of Australia (the Treasurer) commanding him
under his own hand or under that of his deputy
to certify that the deposit made and maintained
with him by Fire and All Risks Insurance Com-
pany Limited (the parent company) is of a
value equal to the value of the deposit that
would be required by the Insurance Act 1932-
1965 of the Commonwealth of Australia (the
Act) to be made and maintained by that com-
pany if it carried on the business of the
20 Prosecutor in addition to its own business.

The Prosecutor is incorporated in a
State of Australia and carries on business
within the meaning of sec. 9 of the Act. As
required by the Act, it has lodged and main-
tained with the Treasurer securities of a
value which conform, and which the Treasurer
has accepted as conforming, to the require-
ments of the Act (see secs. 11 and 13). The
parent company, also locally incorporated
and carrying on such a business, has done
likewise. However, the parent company be-
came and now is the beneficial owner of the
shares of the Prosecutor. For such an
event, the Act makes provision in sec. 14
as follows :

40 "14. (1) Where the Treasurer is satis-
fied that a company (in this sect-
ion referred to as 'the parent
company') has become the beneficial
owner of the shares of another com-
pany (in this section referred to
as 'the subsidiary company'), a
deposit made and maintained by the
parent company of a value equal to
the value of the deposit that would
be required by this Act to be made
and maintained by the parent com-
pany if it carried on the business
of the subsidiary company in addi-
50 tion to its own business is, if the

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Treasurer, by writing under his hand, so certifies, a sufficient compliance by the subsidiary company with the requirements of this Act, and, where the parent company makes and maintains such a deposit, a deposit is not required to be made and maintained by the subsidiary company.

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Judgment

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Sir Garfield
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(Continued)
—

10 (2) Where the parent company has made and maintains a deposit that, by virtue of the last preceding sub-section, is a sufficient compliance by the subsidiary company with the requirements of this Act -

 a) the Treasurer shall return to the subsidiary company any money or approved securities previously deposited by that company in accordance with this Act;

20

 The Treasurer has clearly indicated his satisfaction that the parent company has become the beneficial owner of the shares of the Prosecutor. He has also in a written admission made for the purposes of these proceedings conceded that in fact the deposit presently made and maintained by the parent company is of a value equal to the value of the deposit that it would be required by the Act to lodge and maintain if it carried on the business of the Prosecutor in addition to its own business. But, though this be the factual situation, the Treasurer refuses to give any certificate under his hand either of the fact that the securities lodged by the parent company are of such a value or that, being of such a value, they are a sufficient compliance with the Act. He takes the stand that he has an absolute discretion whether or not the benefit of the section shall be extended to the Prosecutor. The Prosecutor claims that, in the admitted circumstances of the case, the Treasurer is bound to certify that which is the fact, namely, that the parent company's deposit is of the required amount as specified in sec. 14 (1). The Prosecutor then says that upon the issue of such a certificate the benefit of the section will extend to it.

30

40

 The answer to the difference between the parties is to be found in the proper construction of a section drawn in the relevant

50

part with what might well be thought to be unnecessary and obscure brevity. To what does the expression "so certifies" refer? Does it refer to the fact of the extent of the deposit of the parent company, or does it refer to a determination by the Treasurer that, though of the required extent, that deposit is, as well, or should, in his opinion, be a sufficient compliance with the Act?

10 There are some matters which to my mind are of assistance in the construction of the section. In the first place, the question whether a deposit lodged by an insurance company measures up to the requirements of the Act calls for the determination of the premium income of the company so as to ascertain the nominal amount of the required deposit, and thereafter an opinion must be formed as to the value of the securities lodged by the company
20 so as to ascertain whether or not on current value they reach the required amount of deposit. The decision of both these matters is elsewhere committed to the Treasurer, finally except as to the first: see secs. 17 and 24. It would therefore not be surprising if in sec. 14 the certification of the fact of the extent of the parent company's deposit were committed to the Treasurer rather than left
30 for determination by some other, and that probably a litigious, process. Indeed, without the knowledge of the Treasurer's view of the current value of the securities, the fact of the relative extent of the deposit could not be established.

 Then it is quite apparent that the amount of the required deposit is set by the Act itself and not left to the discretion of the Treasurer. I will deal later with sec. 20A
40 which in its operation might be suggested to be an exception to the universality of that statement. The amount of the deposit is relative to the amount of the annual premium income: see secs. 13 and 13C. But there is a maximum deposit which may be required: see those sections. Of course, the purpose of requiring deposits is the protection of policy holders. No doubt the choice of the specified relationship of deposit to premium income as the means of securing that protection is the result of experience and of
50 actuarial calculations. I infer that in setting a maximum amount of deposit, the Parliament, having regard to the expert actuarial advice

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available to it through the Executive, considered that that amount sufficiently protected policy holders when the premium income exceeded the stated figure. Apparently after a certain premium income is exceeded, the protection of the policy holders is calculated to be adequate by the maintenance of a deposit of the stated maximum amount. Again, no discretion is given to the Treasurer in any circumstances to increase that maximum.

As I have mentioned, it might be thought that sec. 20A provides for a comparable occasion to that which sec. 14 covers and that it operates to allow the Treasurer to increase the amount of the required deposit. But, in my opinion, this is not the purpose or effect of sec. 20A. It gives the Treasurer an absolute discretion in any case to refuse to return any part of securities lodged as a deposit when at current values they represent an excess of value over the required amount if he is not satisfied that the company making the deposit has made adequate provision to meet its liabilities to policy holders in the Commonwealth. But the liabilities here referred to do not, in my opinion, include the contractual obligations of the company to policy holders where no liability, absolute or contingent, has arisen. Section 20A relates to a situation where the securities as lodged met the required amount of deposit. The occasion for its operation is some increase in this value which might be transient though possibly of longer duration, and the section assumes that some specific liabilities have accrued under some policies issued by the insurer. It thus allows the Treasurer to have regard not to the relationship of deposit to premium income but to current liabilities under policies. But perhaps the most noticeable feature of the section is that the discretion is expressly given to the Treasurer and the condition of its exercise precisely specified. Further, the Life Insurance Act 1945-1965 which contains in sec. 32 a substantial counterpart of sec. 14 (1) though without the extensive provisions of subsec. (2), has no provisions comparable with sec. 20A. The two Acts are sufficiently in pari materia in relation to such a provision as sec. 14 (1)

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that the construction of sec. 14 (1) should not be different from the meaning assigned to sec. 32. Consequently, one would not expect the construction of sec. 14 (1) to be affected by the presence or content of sec. 20A. However, in any case, to my mind, its influence upon that construction would tend against reading sec. 14 (1) as conferring a discretion upon the Treasurer to refuse to give his certificate, though the parent company's deposit were of the required amount. In other words, I do not think that sec.20A is really an exception from the clear policy of the Parliament itself to determine the amount of the required deposit, that is to say, to determine whether it be sufficient or not for the protection of policy holders generally.

There are then the detailed provisions of sec. 14 (2) which treat the business of the parent company and that of the subsidiary as one, making the parent company's deposit available to the policy holders of the subsidiary. They also require the parent company to keep its deposit up to the value that would be appropriate to the premium income of both businesses regarded as one whole.

In the event that both parent and subsidiary have lodged and maintained the maximum deposit, a refusal by the Treasurer to certify whatever it is that he is to certify, would mean that he has thereby doubled the maximum. I can find no trace in the Act of any policy or reason for the concession of such a discretion to the Treasurer. The Act, as I have said, as it seems to me, has worked out fully the amount of deposit to be required. If the maximum is sufficient for the business of the parent company when it reached in its own business the premium income now attained by the combined businesses, why should a greater sum be required simply because it conducts part of the business in the name of a wholly owned subsidiary? I fail to comprehend why when one company becomes the wholly owned subsidiary of another, the amount of the deposit required should come within the Treasurer's discretion. With due respect to those who have discovered some reason, I am bound to say I can find none. The provisions

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of subsecs. (2), (3) and (4) of sec. 14 rather suggest that there is no such reason rather than that there may be. The presence of sec. 14 in the Act even with the ambiguous expression with which this case is concerned does not suggest to my mind that there are any.

10 An instance was given during argument of a subsidiary being a foreign company, the maximum deposit for foreign companies being greater than that for domestic companies. However, upon the parent company, being a domestic company, becoming the owner of the subsidiary's shares, it seems to me that any reason for requiring the larger maximum deposit may have gone. The consequence for policy holders of foreign incorporation and therefore of possible foreign control would scarce obtain once the ownership and control
20 were vested in a domestic company. In addition, subsecs. (2), (3) and (4) give direct access by policy holders to the assets of the parent company. But, even if the instance raises difficulties, I prefer to think it a situation for which the draftsman has made no provision than to think that its possibility should control the meaning of the subsection.

30 As I have indicated, I can understand a provision that depends for its application upon the certification by the Treasurer of a fact particularly within his knowledge and competence. But I am somewhat at a loss to understand what he is to certify, if it is not the fact of the extent of the deposit of the parent company. If he is to certify that the adequate deposit is a sufficient compliance with the Act, that in one sense is no more than certifying its adequacy in point
40 of amount. But if the word "sufficient" is not used in that sense, by reference to what considerations is it to be regarded as a sufficient compliance with the Act? What are the elements in the sufficiency beyond the adequacy of the amount of the deposit? It is not, in my opinion, the sufficiency of a deposit of the stated amount as a security for policy holders which is committed to the Treasurer. That as I have said, is, in my
50 opinion, determined by the Parliament as a

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—

matter of policy.

10 I think it would be strange for a draftsman to use the expressions of this subsection if he desired to provide that the making and maintenance of a deposit, though it be of an amount appropriate to the totality of the premium income of both companies should only be deemed a sufficient compliance with the Act, if the Treasurer in his absolute discretion was of opinion that such a deposit ought in the circumstances to be regarded as sufficient compliance with the Act.

20 The use of the word "certifies", so appropriate to a state of fact and so inappropriate to the expression of a discretionary opinion, coupled with the words "is a sufficient compliance with the Act" also tends, in my mind, towards the view that the Treasurer's function under the subsection is to verify by his certificate the extent of the parent company's deposit in relation to the totality of the premium income of both parent and subsidiary. If the draftsman desired to make the applicability of the subsection to depend upon the judgment of the Treasurer that it should apply, he would, in my opinion, have used entirely different expressions.

30 In my opinion, the natural reading of the subsection associates the expression "if the Treasurer so certifies" with the fact of the extent of the parent company's deposit. According to its terms, the Treasurer is not to express an opinion or to exercise a discretion but to certify a fact - as I see it, a fact peculiarly within his own knowledge and of which the Act elsewhere makes him in substance the arbiter.

40 The subsection proceeds to say that where such a deposit is made and maintained by the parent company a deposit is not required by the subsidiary. This is not made contingent upon any discretion of the Treasurer even though "such a deposit" is a deposit which the Treasurer has certified as of the required amount. It is not, in my opinion, a reference to such a deposit as the Treasurer has certified in his opinion should be deemed to be a

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sufficient compliance with the Act. The Act provides, in my opinion, that the deposit is a sufficient compliance with its provisions and does not make its sufficiency dependent upon the exercise of any discretion of the Treasurer, apart of course from his opinion as to the current value of any securities lodged as part of a deposit.

10 Therefore, it seems to me that conform-
ably to the clear policy of the Act as to
the amount of a deposit, and the exclusion
from that policy of any discretion in the
Treasurer as to that amount, the subsection
should be read as providing that if the
Treasurer is satisfied as to the ownership
of the shares of the subsidiary and certi-
fies that the amount of the parent company's
deposit is equal to what it would be re-
quired to make and maintain if it did the
20 whole of the insurance business of both
companies, the making and maintenance of
that deposit is a sufficient compliance
with the Act and the subsidiary is freed
of the obligation itself to make and main-
tain a deposit so long as the parent company
maintains the amount of deposit appropriate
to the totality of the premium income of
both companies.

30 What the subsection does is to accom-
modate the formal situation of two entities,
of which one is wholly owned by the other,
conducting two businesses to the reality,
which is that of one beneficial owner con-
ducting its business in two departments. It
is not really a relaxation of the general
policy of the Act as to relationship of the
deposit required to the premium income of
the insurance business. The Act is con-
40 structed on the footing that deposits main-
tained according to that relationship ade-
quately protect policy holders. It is not
of course for the Court to consider how that
protection might be extended by the exercise
of an absolute discretion of the Treasurer.

To sum up, with respect to other views,
I have formed the clear opinion that upon
its proper construction the subsection by
the expression "if the Treasurer so certifies"

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—

10 commits no more to the Treasurer than the certification that the parent company's deposit is of that amount which it would be required to make and maintain if it carried on its own and the subsidiary's business. I am quite unable to discover any indication in the Act that, whereas in all other circumstances the amount of the deposit is determined by the Act itself, it should in this instance be in the absolute discretion of the Treasurer. I say "absolute discretion", for if the Treasurer has a discretion as to whether or not the companies shall have the benefit of the provisions of sec. 14, I can find no considerations indicated by the Act or to be inferred from it within which he should confine himself in its exercise. Nor were any suggested in argument.

20 Upon this construction of the subsection and upon the admissions made by the Treasurer, there arose in this case, in my opinion, a duty to certify that which is the fact. Accordingly, in my opinion, the order nisi for mandamus should to that extent be made absolute.

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Judgment
A.
His Honour
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(Continued)
—

B.

THE QUEEN AGAINST THE TREASURER OF THE
COMMONWEALTH OF AUSTRALIA: EX PARTE CAR
OWNERS' MUTUAL INSURANCE COMPANY LIMITED

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B.
His Honour
Mr. Justice
McTiernan
—

10 This case arises under s.14 of the Insur-
ance Act 1932-1966 of the Commonwealth of
Australia. It turns upon the use of the
words "if the Treasurer, by writing under
his hand, so certifies". In showing cause
against the order nisi Mr. Byers, who ap-
peared for the Treasurer, took the broad
ground that these words vest in the Treasur-
er a discretion to issue, or to refuse, a
certificate under the section. I am of
opinion that this proposition is right. It
appears from the affidavit on which the
prosecutor applied for the order nisi that
the Treasurer declined to accede to the
prosecutor's demand to put the provisions
20 of subsection one of that section in motion -
thereby exonerating the prosecutor from main-
taining the deposit which it had made with
the Treasurer - unless the prosecutor satis-
fied the Treasurer's requisition for further
information. I do not repeat the terms of
the requisition. In my opinion the inform-
ation sought was relevant to the exercise by
the Treasurer of the authority vested by the
words quoted above. No ground appears for
30 deciding that the Treasurer acted wrongfully
in not issuing a certificate pursuant to
that authority.

40 According to the terms of the order nisi
the writ of mandamus sought by the prosecutor
would command the Treasurer to certify that
the deposit of "the parent Company" is of the
extent set out in s. 14(1). I am of the
opinion that the insertion by the draftsman
of those words between "is" and the words "a
sufficient compliance" prevents ambiguity as
to the sense in which the word "so" is used.
It is not used to avoid repetition of what is
previously said in the subsection as to the
deposit of the "parent company". The result
of this construction is that there would be
no utility in the Treasurer's certifying
formally that the deposit of the "parent
company" is of the extent mentioned. A writ
of mandamus does not lie to command the

10 Treasurer to certify that. I am of the opinion that upon the true construction of s.14 (1) the authority which is vested in the Treasurer by the words under consideration is to certify that a deposit which has the attributes mentioned is a sufficient compliance by the subsidiary company with the requirements of the Act. This is a matter which the subsection leaves to the ministerial judgment and discretion of the Treasurer. Mandamus does not lie to command him to issue a certificate pursuant to the subsection unless it appears that he has formed a judgment that the deposit of the parent company is "a sufficient compliance by the subsidiary company" with the requirements of the Act. It is clear that the Treasurer has not reached such a conclusion. I would discharge the order nisi.

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Court of
Australia
New South
Wales
Registry

—
NO.4
Reasons for
Judgment
B.
His Honour
Mr. Justice
McTiernan
(Continued)

THE QUEEN AGAINST THE TREASURER OF THE
COMMONWEALTH OF AUSTRALIA: EX PARTE CAR
OWNERS' MUTUAL INSURANCE COMPANY LIMITED

In the High
Court of
Australia
New South
Wales
Registry

NO.4
Reasons for
Judgment
C.
His Honour
Mr. Justice
Menzies

10 The Insurance Act 1932-1960 (Cth) is
plainly a law for the protection of those who
insure in Australia against loss or damage
contingent upon the happening of a specified
event. Its central provisions require every
person carrying on such insurance business
in Australia to lodge and maintain with the
Treasurer approved securities to a value of
not less than £1,000 and not more than
£80,000 in the case of a person other than
a foreign company and not more than £100,000
in the case of a foreign company and within
these limits in the proportion of one to five
with its premium income (s.11) and make the
deposit so lodged available (1) to satisfy
20 judgments by policy holders against insurers
in respect of policies and (2) in the event
of the bankruptcy of an individual insurer
or the winding up of a company who is an in-
surer to meet liabilities under policies
issued in the Commonwealth (s.22). From the
generality of the requirement that every in-
surer must lodge and maintain a deposit s.
14 provides a particular relaxation. Section
14(1) and (2) (a) are as follows:

30 "14. (1) Where the Treasurer is satis-
fied that a company (in this section re-
ferred to as "the parent company") has
become the beneficial owner of the shares
of another company (in this section re-
ferred to as "the subsidiary company"),
a deposit made and maintained by the
parent company of a value equal to the
value of the deposit that would be re-
quired by this Act to be made and main-
40 tained by the parent company if it
carried on the business of the subsidi-
ary company in addition to its own busi-
ness is, if the Treasurer, by writing
under his hand, so certifies, a suffici-
ent compliance by the subsidiary company
with the requirements of this Act, and,
where the parent company makes and main-
tains such a deposit, a deposit is not
required to be made and maintained by

the subsidiary company.

(2) Where the parent company has made and maintains a deposit that, by virtue of the last preceding sub-section, is a sufficient compliance by the subsidiary company with the requirements of this Act -

10 (a) The Treasurer shall return to the subsidiary company any money or approved securities previously deposited by that company in accordance with this Act."

20 The question before us is whether under this section the Treasurer can refuse his certificate notwithstanding that he is satisfied both that a parent company has become the beneficial owner of the shares in a subsidiary company and that the deposit made and maintained by the parent company is of a value equal to the value of the deposit that would be re-

30 quired if the parent company carried on the business of the subsidiary company in addition to its own business.

My conclusion that the Treasurer can so refuse rests principally upon the language and the grammatical construction of s.14(1). Both the interpolation of the qualifying provision "if the Treasurer, by writing under his hand, so certifies" between the words "is" and "a sufficient compliance" and the use of the word

30 "if" to introduce the qualification indicate that as a matter of grammar and language the required certificate is one that the parent company's deposit is a sufficient compliance by the subsidiary with the requirements of the Act, that is s.11. It seems to me that the section applies when, and only when, three conditions have been fulfilled: (1) that the Treasurer is satisfied that the parent company has become the beneficial owner of the shares

40 of the subsidiary company; (2) the fact is that the parent company's deposit is of the requisite value; and (3) the Treasurer certifies that the parent company's deposit is a sufficient compliance by the subsidiary with the requirements of the Act. It is to be observed that although the Treasurer must be satisfied of (1), no certificate particularly limited to that area of satisfaction is required. It is further to be observed that

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10 (2) is not expressed as a matter for the satisfaction of the Treasurer at all; it is expressed as a matter of fact, although an examination of the Act shows that in many cases, though not all, this will be a matter upon which the Treasurer will have to form an opinion. In any case where the deposit of the parent company is at the maximum sufficiency will be obvious. This review of the sub-
10 section itself reveals sound internal reason for reading it according to its natural sense and as requiring a certificate going to the full operation of the sub-section and so covering all conditions.

20 What I regard as the prima facie meaning of s.14(1) is, moreover, powerfully supported by a consideration of the policy of the Act as appears from its terms as a whole. The consequence of the operation of s.14(1)
20 is to take a subsidiary company outside the operation of s.11 and deprive its policy holders of the protection of a deposit by the Company with which they are insured while affording them the protection of the deposit made by that company's parent company. It is obvious, however, that in some circumstances the protection which the policy holders would gain would not be as valuable as the protection which they would lose if the subsidiary
30 company's deposit were to be returned to it. Thus if the parent company is not, but the subsidiary company is, a foreign company a maximum deposit of £80,000 for all business would replace a maximum deposit of £100,000 available to the subsidiary's own policy holders. This is something which the Legislature might well think should not happen automatically. A discretion given to the Treasurer to make sure
40 that policy holders are protected in such circumstances would be a safeguard for policy holders within the limits of the scope and purpose of the Act. Furthermore a more general field for the possible use of a discretion vested in the Treasurer may be indicated. If the subsidiary seeking the return of its deposit were in an insolvent condition, that is its liabilities exceeded the assets available to meet them, it would be a grave disadvantage to its policy holders if that com-
50 pany's deposit were to be returned to it and assets which might be worth as much as

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£100,000 would thereby cease to be available for policy holders in priority to any other claims. It is clear, moreover, that the deposit of the parent company, which would become available for the policy holders of the subsidiary company, might not be a full compensation for the disadvantage I have mentioned, for the parent company's deposit might be smaller than certainly be subject to a larger number of claims. That a discretion should be vested in the Treasurer to protect policy holders in such circumstances is clearly a matter that would be in keeping with the purposes of the Act. Finally the concern of the Treasurer, as revealed in the correspondence before the Court, that adequate provision has been made to meet the liabilities of a subsidiary, including its contingent liabilities, is in my opinion a matter properly to be taken into account in determining whether a certificate under s.14(1) should be given to release the deposit.

Accordingly in my opinion s.14(1) should be read not in a restricted sense but as widely as its terms permit to afford protection to policy holders.

In my opinion the order nisi for mandamus should be discharged.

In the High
Court of
Australia
New South
Wales
Registry

NO.4
Reasons for
Judgment

C,
His Honour
Mr. Justice
Menzies
(Continued)

ORDER IN COUNCIL GRANTING SPECIAL LEAVE TO
APPEAL TO HER MAJESTY IN COUNCIL.

AT THE COURT AT BUCKINGHAM PALACE

The 12th day of July, 1968

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

	Lord President	Mr. Marsh
	Sir Michael Adeane	Miss Jennie Lee
10	Mr. Robinson	Mr. Mason

In the
Privy Council
on Appeal from
the High Court
of Australia

NO.5
Order in
Council grant-
ing special
leave to appeal
to Her Majesty
in Council

12th July 1968

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 1st day of July 1968 in the words following, viz:-

Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble
 20 Petition of Car Owners' Mutual Insurance Company Limited in the matter of an Appeal from the High Court of Australia between the Petitioner and The Treasurer of the Commonwealth of Australia Respondent setting forth that the Petitioner desires to obtain special leave to appeal from an Order of the High Court of Australia dated the 11th March 1968 by which an Order Nisi for Writ of Mandamus directed to the Respondent and made on the relation of the Petitioner was discharged with costs: And humbly praying Your
 30 Majesty in Council to grant the Petitioner special leave to appeal from the said Order of the High Court of Australia dated the 11th March 1968 and for further and other relief:

"THE LORDS OF THE COMMITTEE in obedience of His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their
 40 Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute its Appeal against the Order of the High Court of Australia dated

the 11th March 1968 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs:

In the
Privy Council
on Appeal from
the High Court
of Australia

NO.5

Order in
Council grant-
ing special
Leave to appeal
to Her Majesty
in Council
(Continued)

12th July 1968

10 "AND Their Lordships do further report to Your Majesty that the proper officer of the said High Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

20 Whereof the Governor-General or Officer administering the Government of Commonwealth of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W.G. AGNEW.

CERTIFICATE OF THE DISTRICT [REDACTED] REGISTRAR
OF THE HIGH COURT OF AUSTRALIA VERIFYING THE
TRANSCRIPT RECORD OR PROCEEDINGS

In the
Privy Council
on Appeal from
the High Court
of Australia

NO.6
Certificate
The District
Court Registrar of the
High Court of
Australia
verifying the
transcript
record of
proceedings

I, Harold Oscar Frederick CANNON, District Registrar of the High Court of Australia New South Wales Registry DO HEREBY CERTIFY as follows:-

10 1. That this Transcript Record of Proceedings contains a true copy of all such Orders, Judgments and documents as have relation to the matter of this appeal and a copy of the Reasons for the respective Judgments pronounced in the course of the proceedings out of which the Appeal arose.

20 2. That the Respondent herein has received notice of the Order of Her Majesty in Council giving the Appellant leave to appeal to Her Majesty in Council AND has also received notice of the dispatch of the Transcript Record to the Registrar of the Privy Council.

Dated at Sydney in the State of New South Wales this SECOND day of DECEMBER One thousand nine hundred and sixty-eight.

H. CANNON
District Registrar of the
High Court of Australia