NSW CASINO CONTROL AUTHORITY

REPORT OF PUBLIC INQUIRY PURSUANT TO SECTION 143(4) OF THE NEW SOUTH WALES CASINO CONTROL ACT, 1992

DECEMBER 1994

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GLOSSARY OF TERMS

Act	NSW Casino Control Act, 1992
Authority	NSW Casino Control Authority
BIRC	Royal Commission Into Productivity in the Building Industry in New South Wales
DCL	Darling Casino Limited
DGE	Division of Gaming Enforcement, New Jersey, USA
LCPL	Leighton Contractors Pty Limited
LHL	Leighton Holdings Limited
LPPL	Leighton Properties Pty Limited
NJCCC	New Jersey Casino Control Commission
Opposition	NSW Parliamentary Opposition Party
Preferred Applicant	Applicant for the casino licence nominated as the preferred applicant of those applicants for the casino licence
Resorts	Resorts International Inc - a USA based casino operator
SAPL	Showboat Australia Pty Limited
SCM	Sydney Casino Management Pty Limited
SHC	Sydney Harbour Casino Pty Limited
SHCH	Sydney Harbour Casino Holdings Limited
Showboat	Showboat Inc
Special Fees	A term referred to in the Holland Report (Exhibit 4)
UTFs	Unsuccessful Tenderers' Fees - A term used in the Holland Report (Exhibit 4)

1. INTRODUCTION

1.1 On 16 August 1994, the New South Wales Casino Control Authority (Authority) determined pursuant to Section 143(4) of the Casino Control Act 1992 (Act), that an Inquiry be conducted into the probity of the Showboat Group of Companies (Showboat), and its business associates.

1.2 Showboat, through one of its subsidiaries, is a shareholder in Sydney Harbour Casino Pty Limited (SHC) which was nominated by the Authority on 6 May 1994, as Preferred Applicant for a casino licence in Sydney.

1.3 The other shareholder of SHC is Leighton Properties Pty Limited (LPPL), a wholly owned subsidiary of Leighton Holdings Limited (LHL) a publicly listed construction company. Those companies, together with Leighton Contractors Pty Limited (LCPL) form part of the Leighton Group of Companies (LHL Group).

1.4 The Terms of Reference for the Inquiry related to:

1.4.1 the suitability of any Showboat Group corporation to be concerned in or associated with the management and operation of the Sydney Casino in terms of its repute having regard to its character, honesty and integrity;

1.4.2 the repute of any person, body or association who has any business association with any Showboat Group corporation having regard to any such person's, body's or association's character, honesty and integrity; and

1.4.3 the financial sources of any person, body or association who has any business association with any Showboat Group Corporation.

1.5 The Terms of Reference required an assessment of the probity of both the Showboat and the LHL Group.

1.6 The Authority determined that it was appropriate for the Inquiry to be conducted by me as the member of the Authority with special legal qualifications as defined in section 135 of the Act.

1.7 I have been assisted in the conduct of the Inquiry by Mr R Allaway QC as Counsel Assisting and by Mr R Travers from the Authority's legal advisers, Clayton Utz, as Solicitor Assisting.

1.8 On 20 August 1994, the Authority advertised for submissions, with a closing date for their receipt of 31 August 1994. Three submissions were received, two of which were significant in content. These were received from the New South Wales Opposition and the "underbidder" for the casino licence, Darling Casino Limited (DCL).

1.9 The Inquiry commenced formal hearings on 31 August 1994, sat on 24 occasions, examined 8 witnesses and received 105 exhibits. The Inquiry completed its formal hearings on 28 November 1994. The transcript of the Inquiry comprised 2168 pages.

1.10 The Inquiry was conducted on the basis that it should be as open as possible so that the public could hear as much of the oral evidence and gain access to as much of the documentary exhibits as possible.

1.11 Accordingly, restrictions on the public release of evidence and exhibits were very limited. However, so as to ensure that confidential evidence or exhibits were dealt with appropriately, the legal representatives of the parties involved in the Inquiry were given access to as much of the confidential material brought forward as possible.

1.12 Those who gave evidence before the Inquiry did so on a voluntary basis as I hold no power to compel the giving of evidence or the production of documents. It is fair to say that some of those persons had to endure the ignominy of adverse publicity. Nonetheless, the fact that they gave evidence and the manner in which they gave it assisted the process greatly.

1.13 It will be seen that I have made findings with respect to certain persons and organisations some of which are critical of them. Having said that, I should also state that the community would not be well served by any departure from the fundamental presumption of innocence to which every citizen is entitled. Accordingly, any person mentioned adversely in evidence before the Inquiry, or in my findings, is innocent of any breach of the law unless and until proven guilty in a competent court or tribunal which must make such a finding in the proper discharge of its functions and in accordance with the law. The process I undertook in the Inquiry was not limited by such things as the legal rules of evidence and was, as a consequence, quite different from the process undertaken by such a court or tribunal.

1.14 To the extent that findings of fact are necessary for the purposes of the Report I go no further than to record findings based on available facts. I do not, nor am I empowered to, reach conclusions as to the commission (or otherwise) of any criminal or other offence or any breach of the law by any person or organisation.

1.15 It should be noted that my findings do not bind the Authority in any way. It is the Authority's responsibility under the Act to satisfy itself as to the suitability or otherwise of applicants for a casino licence and their close associates. My report is intended merely to assist the Authority in its deliberations.

2. BACKGROUND

2.1 The Casino Control Authority was established on 23 September 1992, following the passage of the Casino Control Act earlier in that year.

2.2 The legislation was introduced into Parliament following receipt of a report by the State's former Chief Justice, Sir Laurence Street, entitled "Inquiry Into the Establishment And Operation of Legal Casinos In New South Wales".

2.3 In commenting on the then draft Casino Control Bill, Sir Laurence said, in relation to the casino operator selection process:

" I am of the view that sound policy requires that an independent authority have responsibility for the selection of an operator. The provisions of the draft Bill are demonstrably and commendably clear in assigning this responsibility to the Casino Control Authority". (para 7.4.1)

2.4 Sir Laurence also said that the casino operator selection process should be structured so as to minimise pressures from commercial and political interests. Sir Laurence's views were accepted by the Parliament of New South Wales when it passed the Casino Control Act 1992.

2.5 The Act sets out clear and unequivocal objects with which the Authority must comply.

2.6 Section 140 of the Act provides that the Authority is required to maintain and administer systems for the licensing, supervision and control of a casino for the purpose of:

2.6.1 ensuring that the management and operation of the casino remains free from criminal influence or exploitation; and

2.6.2 ensuring that gaming in the casino is conducted honestly; and

2.6.3 promoting tourism, employment and economic development generally in the State; and

2.6.4 containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families.

2.7 In the determination of applications for a casino licence, section 18 of the Act provides that the Authority is to determine an application by either granting a casino licence or declining to grant a licence.

2.8 Section 18 of the Act also provides that:

2.8.1 a licence may be granted subject to such conditions as the Authority thinks fit;

2.8.2 the Authority is not required to give reasons for its decisions on an application but may give reasons if it thinks fit; and

2.8.3 if a licence is granted, it is granted on the terms (including a term as to the period for which it is in force), subject to the conditions and for the location specified in the licence.

2.9 The Act provides that the determination of an application be free from political influence in that the Government, through the responsible Minister, is prohibited from issuing any direction to the Authority which might influence the Authority's decision.

2.10 The Act sets out a regime with which the Authority must comply in determining applications and this is set out in section 11. One of the requirements of that provision is to place the responsibility on the Authority to assess the suitability of applicants and their close associates upon criteria contained in section 12.

2.11 Section 12 of the Act provides that the Authority must not grant an application for a casino licence unless satisfied that the applicant, and each close associate of the applicant, **is a suitable person to be concerned in or associated with the management and operation of a casino** and for that purpose the Authority is to consider whether:

2.11.1 each of those persons is of good repute, having regard to character, honesty and integrity; and

2.11.2 each of those persons is of sound and stable financial background; and

2.11.3 in the case of an applicant that is not a natural person, it has or has arranged a satisfactory ownership, trust or corporate structure; and

2.11.4 the applicant has or is able to obtain financial resources that are both suitable and adequate for ensuring the financial viability of the proposed casino; and

2.11.5 the applicant has or is able to obtain the services of persons who have sufficient experience in the management and operation of a casino; and

2.11.6 the applicant has sufficient business ability to establish and maintain a successful casino; and

2.11.7 any of those persons has any business association with any person, body or association who, in the opinion of the Authority, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial sources; and

2.11.8 each director, partner, trustee, executive officer and secretary and any other officer or person determined by the Authority to be associated or connected with the ownership, administration or management of the operations or business of

the applicant or a close associate of the applicant is a suitable person to act in that capacity.

2.12 The meaning of "close associate" is contained in Section 13 of the Act and includes a person who holds or will hold any relevant financial interest or be able to exercise any relevant power in respect of the casino business of the licence applicant or holder in circumstances whereby the person by virtue of that interest or power is or will be able (in the opinion of the Authority) to exercise a **significant influence** over or with respect to the **management or operation of that casino business**.

2.13 It is also important to understand the definition in Section 13 of the Act of **"relevant financial interest"** and **"relevant power"**. A person is regarded as having a relevant financial interest in the casino business of the licence applicant or holder if the person has, or will have:

2.13.1 any share in the capital of the business; or

2.13.2 any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.

2.14 A person is regarded as having a relevant power with respect to the casino business of the licence applicant or holder where the power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others, enables that person:

2.14.1 to participate in any directorial, managerial or executive decision; or

2.14.2 to elect or appoint any person to any relevant position.

2.15 The Act describes a person who holds a relevant position as being a person who is a director, manager, or holder of other executive positions and secretary, however those positions are designated.

3. ANNOUNCEMENT OF PREFERRED APPLICANT

3.1 On 6 May 1994, the Authority announced that SHC had been awarded Preferred Applicant status for the casino licence. It is important to note that the nomination of a Preferred Applicant is not recognised in the Act but was an administrative decision of the Authority to nominate a casino licence applicant to whom it would grant a licence, subject to compliance by that applicant with all relevant legal, administrative and statutory requirements and obligations.

3.2 Following the Authority's 6 May 1994 announcement it was assumed by some that the nomination of a Preferred Applicant effectively brought the selection process to an end. However, at the Authority's media conference on 6 May 1994, it was made clear that the Preferred Applicant would not be granted a licence until development consent had issued for the temporary and permanent casinos and no other relevant issues arose, **"such as any probity issues"**, in the interim.

3.3 The fact that the Authority did not determine the application of DCL as being unsuccessful on 6 May 1994 was further evidence of the fact that the selection process was not then finalised.

3.4 The Authority also recognised at 6 May that large corporate entities regularly change senior personnel, their business structures, and business associates. For example, a number of additional personnel who became involved with the Preferred Applicant and related companies (since nomination of the Preferred Applicant) have been the subject of probity assessment. Changes have also occurred in the corporate structure and business associations of DCL since 6 May 1994.

3.5 Up to the date of nomination of the Preferred Applicant there had been little media or other adverse comment with respect to the members of the SHC consortium although that consortium had been announced as being a licence applicant on 26 August 1993, as being one of three remaining applicants on 23 November 1993, and as being appointed to a short list of two applicants on 24 January 1994.

3.6 Within two weeks of the announcement of the Preferred Applicant, articles and commentary began to appear in the print and radio media relating to the naming of LCPL, a wholly owned subsidiary of LHL and its building construction arm in the Royal Commission into Productivity in the Building Industry in New South Wales (BIRC) which commenced in 1990 and concluded in 1992.

3.7 On 26 May 1994, an article appeared in the Australian Financial Review, a newspaper circulating around Australia, from which it was evident that the media had received material relating to LCPL.

3.8 On 14 July 1994, the Authority wrote to Mr R Carr, the Leader of the New South Wales Opposition (Opposition), and the Shadow Chief Secretary , Mr R Face, seeking urgent advice as to whether they held, or were aware of persons who may have held, information which may have related to the Authority's ongoing obligation to investigate the probity of the Preferred Applicant and persons or organisations associated with it. The Authority also asked Mr Carr and Mr Face to inform it immediately should they receive any information relating to probity matters.

3.9 On 27 July 1994, the Authority received a letter from Mr Carr stating that **"If the Opposition uncovers probity matters relevant to the casino licence we will raise them in Parliament on September 13".**

3.10 On 10 August 1994, Mr Carr was reported to have announced publicly that he held material regarding SHC, that further research would be undertaken and the matters would be raised when Parliament resumed on 13 September 1994.

3.11 On 11 August 1994, the Authority wrote to Mr Carr asking him to make any material he held available to the Authority and indicating that if the Authority determined to hold an inquiry into the matter (which it was then minded to do) any person producing material would be entitled to the defence of absolute privilege from defamation.

3.12 On 12 August 1994, an article appeared in the Sydney Morning Herald, a newspaper circulating in New South Wales. The article raised questions about the probity of Mr Louie Roussel III, (Roussel III) a partner of Showboat in a Louisiana riverboat casino.

3.13 In the afternoon of 12 August 1994, Mr Carr held a media conference during which he released what the Authority already knew to be part of a confidential report by the Louisiana State Police who had undertaken a probity assessment of Roussel III and Showboat prior to issuing a riverboat casino licence to their joint venture company in August 1993.

3.14 At the media conference, and on subsequent occasions, Mr Carr indicated that he held additional material relevant to the matter, but it was unclear to the Authority what that material might be and when that material might be released.

3.15 It was obvious to the Authority that, as the body established by Parliament to be responsible for the proper control of casino gaming, it should be responsible for assessing any allegations relating to the Preferred Applicant. The Authority thus determined that the public interest dictated that an opportunity should be given for any person to raise matters of concern regarding the Preferred Applicant for the casino

licence so that those concerns could be examined, in public, investigated and resolved.

3.16 On 16 August 1994, the Authority decided that the promotion of public confidence in the integrity of casino gaming in the State dictated that an inquiry should be held to clear the air and expose the casino applicant selection process, as far as possible, to public scrutiny. The proposal to hold the Inquiry was announced to the media on 17 August 1994.

4. GENERAL APPROACH TO THE INQUIRY

4.1 CONSIDERATION OF TERMS OF REFERENCE

4.1.1 The Terms of Reference for the Inquiry were drafted so as to permit the public to bring forward information on a broad range of issues. They were also drafted so as to be wide enough to accommodate consideration of any additional material which Mr Carr or anyone else might bring forward.

4.1.2 I should make it clear that the Terms of Reference do not require me to conduct a full reassessment of the probity of the Preferred Applicant, but require me to deal only with those matters brought forward for my consideration in the Inquiry.

4.1.3 Accordingly, the Authority, when making a decision whether or not to grant a licence to SHC, will be required to consider reports from the Director of Casino Surveillance, the Authority's Development Advisory Panel and Commercial Advisory Panel, the Commissioner of Police as well as this Report.

4.1.4 Terms 1 and 2 require the Inquiry to receive submissions as to **the repute** of any Showboat Group Corporation and any business associate of a Showboat Group Corporation having regard to its **character, honesty and integrity.**

4.1.5 No submissions have been received relevant to the third Term of Reference going to the financial sources of any business associate of any Showboat Group Corporation.

4.2 **SUGGESTIONS OF BIAS**

4.2.1 From the time the Inquiry was announced there have been suggestions that I and the Authority would exhibit a bias towards SHC given the decision of the Authority on 6 May 1994 to grant that company the status of Preferred Applicant.

4.2.2 It should be appreciated that the decision to afford SHC Preferred Applicant status was a step, but not a final step, in the process of considering its application. The Authority made it clear at the time that the suitability of the Preferred Applicant in terms of Section 12 (1) of the Act would be an ongoing process, and so it has been. It is also clear that the Authority is under no statutory or legal obligation to grant a licence to any applicant.

5. SUMMARY OF FINDINGS OF THE INQUIRY

5.1 I here record the findings which appear in various parts of this Report. I do this by way of summary. In doing so, I caution the reader not to draw any conclusions without reading the full text of this Report so as to place my words within the context of the evidence before the Inquiry.

5.2 Having said that I find as follows:

5.2.1 For the purpose of section 12 of the Act, I find that neither Mr W King nor Mr V Vella are of good repute, having regard to character, honesty and integrity (para 10.10.1).

5.2.2 In view of the influence that each of King and Vella exercises with respect to the day to day affairs of Leighton Holdings Limited on the one hand and Leighton Properties Pty Limited

on the other, it must follow and I also find for the purpose of section 12(2)(a) of the Act that neither of those companies is of good repute (para 10.10.2).

5.2.3 I also find for the same purpose, that Leighton Contractors Pty Limited is not of good repute, having regard to character, honesty and integrity. This finding is inevitable given the company's previous direct involvement in the practice of false invoices and the fact that those involved at that time are still in a position to exert significant influence on the company's operations.

5.2.4 I find that the matters raised about John Gaughan during the 1986 New Jersey licence application of Showboat do not impact upon the repute of either Gaughan or Showboat (para 12.2.1).

5.2.5 I do not regard the negotiation and entry into of the Lease by Showboat with Resorts as impacting in any way upon the repute of Showboat. I thus find that the existence of the Lease between Showboat and Resorts governing Showboat's Atlantic City casino property does not impact adversely on the repute of Showboat (para 12.4.1).

5.2.6 I am satisfied that there is no credible material before me which establishes as a matter of notoriety or otherwise any links between Roussel III and organised crime figures. Equally, I do not entertain any real or sensible doubt that would warrant a finding that Roussel III is not of good repute, having regard to his character, honesty and integrity (para 12.6.1).

5.2.7 I find that there is nothing in Showboat's involvement with Waterfront with respect to the casino licence application for East Chicago, Indiana which impacts upon the good repute of Showboat (para 12.8.1).

5.2.8 I make the following findings regarding Mr H.G. Nasky:

5.2.8.1 Nasky was a credible witness; (para 12.11.1.1)

5.2.8.2 Nasky's evidence does not impact adversely upon his good repute: rather it confirms it (para 12.11.1.2).

5.2.8.3 The extent of Nasky's due diligence inquiries with respect to the Leighton Group does not impact upon the repute of himself or Showboat (para 12.11.1.3).

5.2.9 I find that there is nothing in the Nevada gaming contraventions of Showboat which impacts negatively upon the character, honesty or integrity of Showboat or upon its repute (para 12.13.1).

5.2.10 I find that there is nothing in the incomplete copyright infringement litigation which impacts on the character, honesty or integrity of Showboat or upon its repute (para 12.15.1).

5.3. MATTERS FOR CONSIDERATION BY THE AUTHORITY

5.3.1 In light of my findings with respect to the repute of King, Vella and the Leightons Group, it is for the Authority to decide what effect, if any, those findings have upon:

5.3.2 The application of the Preferred Applicant (Sydney Harbour Casino Pty Limited) for the casino licence.

5.3.3 The holding of Leighton Properties Pty Limited of its 15% equity interest in the partnership between it and Showboat Australia Pty Limited in Sydney Casino Management Pty Limited.

5.3.4 The retention by Leighton Properties Pty Limited of its 4.95% interest in the share capital of Sydney Harbour Casino Holdings Limited.

5.3.5 The Leighton Group as the proposed builder and developer of the casino complex, and

5.3.4 The foregoing issues to be addressed by the Authority need to be considered solely from the viewpoint of the requirements of sections 11 and 12 of the Act. The application of the Preferred Applicant is complex and multi-faceted. The probity of its participants needs to be considered in that context. Of course, no person or company who relevantly fails probity in terms of the management and operation of a casino can be permitted to be concerned in or associated therewith. Section 12(1) requires no less.

5.3.5 My findings with respect to King, Vella and the Leightons Group do not necessarily, although they may, require immediate rejection of the application as a whole. Whether they do or not may well depend on the licence being conditioned (or some other equivalent steps taken) to ensure that any party whose probity is found to be unacceptable is effectively excluded from being concerned in or associated with the management and operation of the casino itself. In particular, that party may be confined to no more than a business association with the applicant and its close associates which association does not adversely reflect upon the suitability of the applicant and its close associates to be concerned in or associated with the management and operation of the casino.

5.3.6 It would, however, be quite wrong to require my findings to be considered in terms of punishing King, Vella or the Leightons Group or otherwise imposing sanctions upon Showboat for having associated with them. To approach my findings in terms of rewards or punishments, as has been suggested by some, would be inconsistent with the true objectives of the Authority under the Act. Concepts of rewards and punishment in the present context are alien to the Authority's statutory duties under the Act.

5.3.7 Provided it properly performs those duties and the result conforms with the statutory objectives for which it is bound to strive, then the fact that that result may be perceived by some to be a reward or a punishment (depending on their point of view) would be irrelevant and misconceived.

6. AUTHORITY'S RESPONSIBILITY TO BE SATISFIED

6.1 In essence, the issues raised before the Inquiry relate to the repute of the major participants in the Preferred Applicant, and certain of their executives, having regard to their character, honesty and integrity within the meaning of Section 12 of the Act.

6.2 Whether or not the Authority possesses the necessary degree of satisfaction referred to in Section 12 (1) of the Act is a matter for it. In particular, it is the Authority which must decide whether the Preferred Applicant is, and each close associate of the Preferred Applicant is, suitable to be concerned in or associated with the management and operation of the Sydney casino.

6.3 Section 12 (2) (a) of the Act requires the Authority to consider, for the purpose of Section 12(1), whether each of the Preferred Applicant and its close associates **is of good repute** having regard to character, honesty and integrity. Section 12 (2) (g) contemplates the Authority forming an opinion as to whether any person who has a business association with the Preferred Applicant or its close associates **is not of good repute** having regard to character, honesty and integrity. The Authority is then required to consider whether that business association reflects upon the suitability of the Preferred Applicant and each close associate to be concerned in or associated with the management and operation of a casino.

6.4 My task, as I perceive it, requires me to make findings as to the extent to which, if at all, the resolution of the issues raised

before the Inquiry impact upon the repute of the relevant parties, having regard to character, honesty and integrity.

6.5 As I have noted in paragraph 6.3 above, the lack of good repute of a person or corporation (whose probity has been put in issue in the Inquiry) and who is not proposed to be concerned in or associated with the management and operation of the casino may still impact upon the probity of someone who is. Thus the relevance of any business association between such persons or corporations.

6.6 Whether or not the persons and corporations in question have the necessary good repute will depend, in turn, upon their character, honesty and integrity as I find it to be in the light of the issues that have been raised in the Inquiry and which are asserted to reflect adversely thereon.

6.7 An important consideration is the necessity, consistent with the objects of the Authority set forth in section 140 of the Act, to ensure that the management and operation of the casino remains free from criminal influence or exploitation and that gaming in the casino is conducted honestly. There is, it seems to me, no room for risk in relation to the achievement of these objectives. By that I mean that where there remains a real or appreciable risk, based on credible material that the level of honesty and integrity of a participant in the management and operation of a casino may not achieve the objectives referred to, or either of them, then that participant will not have established the level of honesty and integrity and consequent repute required.

7. ISSUES AS TO CHARACTER, HONESTY AND INTEGRITY

7.1 The Macquarie Dictionary confirms that the concepts of character, honesty and integrity tend to overlap. Thus, "character" is defined as the "aggregate of qualities that

distinguishes one person or thing from others" and as "good moral constitution or status". "Honesty" is defined as the "quality or fact of being honest; uprightness, probity or integrity" whereas the word "integrity" is defined as "soundness of moral principle and character; uprightness; honesty".

7.2 Reputation on the one hand and character (including honesty and integrity) on the other may diverge. The reputation of a person in the eyes of the community may be better or worse than his or her proved character, honesty and integrity would justify. In my opinion, even when the reputation of an applicant for a licence or its associates is regarded in the community as good, the phrase "good repute, having regard to character, honesty and integrity" in Section 12(2)(a) of the Act is to be construed as including repute as a matter of reality. Accordingly, the actual repute, having regard to **proved** character, honesty and integrity of the Preferred Applicant and its associates is to be determined as it is a matter of reality. However, regard is also to be had to community perception of their general reputation for honesty and integrity even though this form of repute may differ from the other to which I have referred.

8. THE ISSUES FOR CONSIDERATION

8.1 As already observed, there were, relevantly, three parties who made submissions to the Inquiry as to the probity of the Preferred Applicant and its close and business associates. Those submissions went to the probity of Showboat, principally in relation to its association, through wholly owned subsidiaries, with other parties in joint venture or proposed joint venture casinos in the United States of America (USA) and to LHL with particular reference to Mr W King (King), Chief Executive of LHL, Mr V Vella (Vella), Managing Director of LPPL and to LCPL.

8.2 LPPL is of particular relevance as it proposes to be the holder of 4.95% of the issued share capital of Sydney Harbour Casino Holdings Limited (SHCH) , of which SHC is a wholly owned subsidiary. Further, LPPL has entered into a partnership agreement with Showboat Australia Pty Limited (SAPL), a wholly owned subsidiary of Showboat under which LPPL has a 15% interest in Sydney Casino Management Pty Limited (SCM) which is the company proposed to be responsible for the management and operation of the casino pursuant to a management agreement entered into between SCM and SHC.

8.3 So far as the submission of the Opposition is concerned (Exhibit 2), it focused on the probity of Showboat and, in particular, upon the alleged links of Showboat's partner in the Star Casino in Louisiana, Roussel III, to the Marcello family who are alleged to be involved in organised crime in Louisiana, USA. The submission called upon the Authority to require Showboat to sever its links with Star Casino Inc, which is 100% owned by Roussel III.

8.4 The Opposition's submission also raised an issue concerning the suitability of the LHL Group arising out of a program (7.30 Report) which was televised by the Australian Broadcasting Corporation on 25 August 1994, wherein it was reported that a Task Force established to investigate alleged wrongdoing arising out of the BIRC was continuing investigations into LCPL as a result of the BIRC report of Commissioner Holland QC (Exhibit 4). The Opposition's submission called upon the Authority to **" fully investigate material <u>now</u> coming to light about Leighton"**. It is fair to say, however, that the major thrust of the Opposition's submission was aimed at Showboat.

8.5 I should add that the Opposition's submission also sought from the Authority answers to a number of questions posed with respect to the knowledge the Authority had, prior to 6 May 1994, of Showboat's relationship with Roussel III, and seeking information as to the investigations which it had made with respect thereto prior to the announcement on 6 May of

SHC as the Preferred Applicant. Those questions are outside my terms of reference and many of them go to the confidential investigations conducted by or on behalf of the Authority at the time and since. They are also matters upon which, for the most part, there was no evidence before the Inquiry.

8.6 A written submission was also received from a Mr J H Henderson (Exhibits 1 and 1A). The thrust of that submission was that LCPL, King and Vella lacked probity in view of the findings of the BIRC through the report of Commissioner Holland QC on Collusive Tendering. That report became Exhibit 4 in the Inquiry (the Holland Report).

8.7 While the submission of Mr Henderson focused on the probity of LCPL, King and Vella arising out of the Holland Report and while the submission of the Opposition focused upon the relationship between Showboat and Roussel III, the opening oral and documentary submissions of DCL ranged more widely.

8.8 As well as attacking the probity of LCPL, King and Vella, based on the findings of the Holland Report, DCL sought to raise the matter of the payment of alleged false invoices by LCPL in respect of work done for a Mr William Service, an employee of LCPL, and dealt with in Volume 4 of the BIRC Report (in paragraph 3.2.12 on pages 121-123 thereof).

8.9 Further, DCL sought to raise, in private hearing, an unrelated matter concerning a LHL subsidiary.

8.10 Each of the last two mentioned matters was the subject of oral and documentary evidence with the result that in its final submissions DCL expressly abandoned these two matters. I therefore do not address them further.

8.11 With respect to its submissions on the probity of Showboat, DCL also initially raised a number of issues which were later abandoned in its final submissions. However, as these issues

were also raised in the submission of the Opposition I will deal with them shortly at the end of that part of this report dealing with the probity of Showboat .

8.12 As well as supplementing the Opposition's submission on the relationship between Showboat and Roussel III, DCL raised a number of other issues concerning Showboat. They were as follows:

8.12.1 The relationship between Showboat and Waterfront Entertainment and Development Inc. (Waterfront), its joint venture partner in an application for a riverboat casino licence in East Chicago, Indiana;

8.12.2 The relationship between Showboat and Resorts International Inc (Resorts) with respect to the lease by Showboat from Resorts of land upon which Showboat's Atlantic City casino stands;

8.12.3 The fact of current Grand Jury investigations in Louisiana as to the licensing of riverboat casinos generally and concerning that State's Governor Edwin Edwards, the latter's alleged relationship with Roussel III and alleged corruption by Governor Edwards with respect to the granting of riverboat casino licences, including the licence granted to the partnership of Showboat and Roussel III with respect to the Showboat Star Casino;

8.12.4 A copyright infringement action to which Showboat and a large number of other casino operators in the State of Nevada are defendants;

8.12.5 A regulatory violation by Showboat with respect to the operation of the "Sports Book" at its Las Vegas casino operation;

8.12.6 Probity issues arising out of Showboat's 1986 casino licence application in New Jersey with particular reference to Mr John

Gaughan (Gaughan), a non-executive director of Showboat as well as of SAPL.

8.13 In its final submissions, DCL pressed in detail its submissions with respect to the probity of Gaughan on the one hand and Showboat's business relationship with Resorts on the other.

8.14 DCL did not quite abandon its submissions with respect to the relationship between Showboat and Roussel III or between Showboat and Waterfront. It submitted that each of those relationships had been properly raised as requiring investigation, and that the investigations to date (of which DCL was aware) "had been inconclusive" (that is, they proved nothing good nor bad about Showboat) as a consequence of which the Authority should remain concerned about them.

8.15 DCL did, however, expressly abandon its opening submissions with respect to the copyright infringement action to which Showboat is a party and the relevance of the regulatory violation relating to the "Sports Book" section of Showboat's Las Vegas casino operation.

8.16 However, arising out of the evidence given at the Inquiry by Mr Gregg Nasky (Nasky), a director of various Showboat Group corporations as well as the Managing Director of the Preferred Applicant, it was submitted that Nasky lacked credibility in terms of the evidence given by him to the Inquiry and that, as a consequence, the Authority should not be satisfied as to his and, therefore, Showboat's probity.

8.17 The submissions of the Opposition and Mr Henderson and the opening and closing submissions of DCL have assisted in distilling and defining the live issues remaining for my consideration and which have been debated before the Inquiry within the otherwise broad parameters of my Terms of Reference.

8.18 The issues as so defined fall obviously into two main categories: those relating to the LHL Group and those relating to Showboat. I have written this Report to deal with the issues in this manner.

9. LEIGHTON ISSUES

9.1 BACKGROUND

9.1.1 The LHL Group, Australia's largest publicly listed construction group, operates through various subsidiaries and associated companies in Australia and Asia. Founded in 1949 in Melbourne as a privately owned civil engineering firm, LHL was listed on the stock exchange in 1962.

9.1.2 The LHL Group's business activities comprise building and civil engineering design and construction, project management, contract mining, property development, specialist engineering and environmental services. The LHL Group employed 7,137 people as at 30 September 1994 and annual revenue totalled over $1.80 billion at 30 June 1994. Total assets at 30 June 1994 were $1.05 billion and capital and reserves totalled $316 million.

9.1.3 LPPL was incorporated in 1972 and is 100% owned by LHL. LPPL is intended to be development manager for the Sydney casino project. LPPL has developed, and currently manages, the LHL Group's commercial, industrial and residential property projects in Australia.

9.1.4 LCPL is the original construction arm of the LHL Group established in 1949 and is 100% owned by LHL. LCPL is intended to be responsible only for the design and construction of the Sydney Harbour Casino complex, and will have no involvement in the management and operation of the casino.

9.1.5 LCPL is a broad-based contractor which operates throughout Australia in building, civil engineering, and contract mining. Annual turnover is $500-$600 million. LCPL employs around 1,300 people through a network of fully resourced branch offices in major Australian cities. In addition, LCPL owns and

maintains one of the largest fleets of modern plant and equipment in Australia.

9.2 RELATIONSHIP OF THE LHL GROUP WITH THE PREFERRED APPLICANT

9.2.1 Exhibit 53C is a schematic chart representing the proposed corporate structure of the Preferred Applicant for the casino project as at 23 November 1994.

9.2.2 The proposed shareholdings of the relevant parties after a public float would see LPPL holding 4.95% (subject to options) of the issued share capital of SHCH. SAPL will hold 26.73% (subject to options) of the issued capital whereas the balance of 68.32% will be held by institutional investors, both Australian and overseas. Following a "claw back" arrangement after the proposed public float, the likely Australian equity in the casino will be around 45-50%.

9.2.3 LPPL holds 15% of the partnership business conducted by SCM; the other 85% is held by SAPL.

9.2.4 LPPL has the right to appoint one member to the Board of SCM and one member (out of a minimum of four) to the Management Committee which is to manage and operate the casino pursuant to the management contract entered into between SHC and SCM.

9.2.5 LPPL would initially have the right to appoint one member to the Board of SHCH. Its continued representation on the Board of that company will depend on the continuing support of shareholders.

9.3 ROYAL COMMISSION INTO PRODUCTIVITY IN THE BUILDING INDUSTRY IN NEW SOUTH WALES

9.3.1 By Letters Patent issued on 27 March 1991, Commissioner Holland QC was asked to inquire into a number of matters in connection with the building industry in New South Wales.

9.3.2 On 3 May 1991, the terms of reference of Commissioner Holland QC were expanded to allow him to inquire into:

"The existence of collusive conduct and practices in or in relation to tendering for building contracts in New South Wales from 1 January, 1986 to date and continuing. " (Holland Report p.1)

9.3.3 On 27 June 1991 the terms of reference of Commissioner Holland QC were extended to include:

" practices, conduct or activities in or in relation to tendering for civil construction contracts".

9.3.4 In so far as is presently relevant, the Holland Report examined the involvement of LCPL with respect to Special Fees and Unsuccessful Tenderers' Fees (UTFs).

9.3.5 Special Fees are described in the Holland Report as relating to the payment by construction companies to relevant industry associations of fees which are said to be for member services provided to construction companies by those associations. It was stated in the Holland Report that the fees paid were often higher than the normal or customary fees provided for in the constitutions of those associations.

9.3.6 Unsuccessful Tenderers' Fees (UTFs) are described in the Holland Report as payments made or to be made by the successful tenderer for a project to the unsuccessful tenderers for the same project pursuant to a prior agreement made between tenderers that if one of them was successful in being awarded the contract for the project, that one would pay to

each of the others an agreed amount said to be related to the cost of preparing tenders.

9.3.7 Commissioner Holland found that the Special Fee and UTF practices were endemic in the building industry and had been so for many years. However, they were condemned by him because it was likely that the cost of payment of UTFs and Special Fees was passed on to the client of the successful tenderer and the cost hidden (in the case of UTFs) through the creation of false invoices or through contras. Commissioner Holland QC regarded these practices, if proved in individual circumstances, as illegal. The involvement of LCPL in the receipt and payment of UTFs is contained in Schedule 10 to the Holland Report.

9.3.8 However, Commissioner Holland QC (vol 2, page 160) made it clear that the subject of illegality dealt with in his report related only to the impugned conduct and practices considered in general, and was not directed to individual projects, persons, contractors or associations.

9.3.9 He also emphasised that in individual cases the provable facts will be critical to questions of illegality, particularly with respect to the question of whether, in each case of an agreement for payment of a Special Fee or UTF, the evidence available proves a legally admissible way and according to the requisite standard of proof, the existence of an agreement or understanding to add the relevant fee to the tender price.

9.3.10 Commissioner Holland QC also stated that:

"Where no agreement to add on is able to be proved in relation to a project, it would appear to be difficult to establish a conspiracy to cheat and defraud or an offence under S.178BA of the Crimes Act, the reason being that a mutual agreement to pay without more may be put into effect without any consequential economic detriment to the client or any obtaining of money or financial advantage from the client.

Such an agreement leaves it open to the tenderers to choose whether to add on or not. Even a high degree of probability

in fact and in the minds of the parties to the agreement that the fees will be added on to the price or somehow provided for out of the proceeds of the project could be argued to be insufficient to constitute the crime because, whilst that probability stems from the existence of the agreement to pay, it can be said to do so merely by logical expectation or practical common sense without the existence of any express or implied agreement by the parties.

Whilst the law treats parties as intending the natural consequences of their acts, an argument that adding the fees to tenders should be considered a natural consequence of an agreement to pay them would seem to be insufficient to satisfy the requirements of the criminal law in relation to the offences under consideration" (vol 2, page 165).

9.3.11 The Commissioner also concluded that the absence in any particular case of proof of an agreement to add on leaves open the question whether the agreement to pay, by itself, would contravene Section 45(2) of the Trade Practices Act. He thus observed:

"The absence in any particular case of proof of an agreement to add on leaves the question of whether the agreement to pay, of itself, would contravene s45(2). In section 16.5.4 of this report the conclusion was reached, for the reasons there given, that where there was an agreement to pay there was a high degree of probability that in one way or another the fees, in whole or in part, would be added on by all tenderers so as to be passed on to the client.

The question is whether it would be open to conclude, therefore, that an agreement to pay would be likely to have the effect of substantially lessening competition or of fixing or controlling the price in virtually the same way as an agreement to add on would do.

It must be considered doubtful that an affirmative answer could be given to this question because the lack of an express or implied agreement to add on leaves the agreement to pay having only an influential or indirect operation upon the degree of competition between the tenderers and the pricing of their tenders." (Vol 2, page 170).

9.3.12 During the course of my Inquiry a number of specific issues were examined with regard to LCPL and its involvement in UTFs and Special Fees which were not examined in detail during the BIRC.

10. LHL GROUP PROBITY ISSUES INCLUDING KING AND VELLA

10.1 BACKGROUND OF MR W KING AND MR V VELLA

10.1.1 King, who is Chief Executive of the LHL Group and a director of LCPL, had been involved directly with operational issues involving LCPL up to 1983, although he has remained as a director of LCPL since that time. At all material times up until 15 November 1994, Vella was a director of SHCH, SHC, SHCP and SCM. On that day he tendered his resignation from each of those companies. The reason given for Vella's resignation was that it " should facilitate some of the issues which are before the Inquiry (T1374)". Vella had been a manager with LCPL up to about October 1988 when he became managing director of LPPL, a position he still holds.

10.2 ISSUES FOR CONSIDERATION

10.2.1 A number of issues relating to the LHL Group, King and Vella fall for consideration. I will deal with them in the following sections of the Report.

10.3 THE ADD-ON ISSUE

10.3.1 The evidence does not satisfy me that, in relation to the projects referred to in Schedule 10 of the Holland Report and in respect of which there was supposedly an agreement to pay UTFs or Special Fees to which LCPL was a party, those fees were directly added in as a cost of the project and thus formed part of the tender price submitted to the client by LCPL.

10.3.2 However, each of King and Vella accepted that the fact that there was an agreement to pay the fees and, therefore, a moral obligation to do so if successful in the tender bid, was a factor that was taken into account by them in the assessment of the gross profit margin to be applied to the tender. Neither was able to say whether the taking into account of the obligation to pay UTFs and Special Fees necessarily translated itself into an inflated profit margin that was to compensate for the requirement to meet that obligation and which would have been less had there been no such obligation.

10.4 THE NON-DISCLOSURE ISSUE

10.4.1 The evidence of King and Vella is clear that whether or not there was an allowance in the profit margin for the obligation to pay the fees the client was not informed about it. Further, they conceded that they took no steps to ascertain in cases where LCPL was the unsuccessful tenderer and was proposing to submit false invoices to the successful tenderer, whether the latter had added on to its contract price for the job an allowance to compensate for the payment of UTFs and Special Fees in which event it would follow that the client would be paying for something which it had not anticipated.

10.4.2 Serious questions arise as to whether the practice of taking the obligation to pay UTFs and Special Fees into account in the determination of profit margins was nothing more than a method of covering up the true situation, namely, that the

fees had been added on because they were clearly a direct cost of the job. The difficulty with which I am faced is that there is a paucity of evidence available for the jobs in respect of which LCPL was the successful tenderer. What the available evidence indicates is that although it may well be that estimators involved in the preparation of tender prices for LCPL added in the fees for UTFs and/or Special Fees as a cost, it was deleted by management and, if reflected at all in the final tender price, was subsumed in the profit margin determined by management as appropriate for the job.

10.4.3 However, this evidence leaves no doubt that there was a realisation that the practice of UTFs and Special Fees was, at the very least, contrary to proper standards of commercial fair dealing between LCPL and its clients. It reflects adversely on the character and integrity of those who were aware of the practice and failed to do anything about it, being in a position to do so.

10.5 THE FALSE INVOICING ISSUE

10.5.1 The evidence indicates that King and Vella were involved with and had knowledge of the practice of the payment of special fees and the payment and receipt of UTFs by means of false invoices or contras in respect of selected projects.

10.5.2 At T441 King, in answer to a question by Counsel Assisting accepted that the use of false invoices was dishonest.

The fact that he accepted "that the lights have been turned on" (T443) at the time of the BIRC indicates to me that he did not, apparently, have the strength of character to identify the problem at an earlier point of time.

10.5.3 Both King and Vella admitted that, with the benefit of hindsight, they now regard the payment of Special Fees and UTFs by means of false invoices as dishonest and the practice of UTFs as not acceptable by current community standards.

10.5.4 The level and extent of the involvement of King and Vella in these matters, and their admission as to its dishonesty, were not revealed to the Authority's investigators during the course of interviews with both of them in March 1994, although they had the opportunity to do so.

10.5.5 In so far as King is concerned, I am not entirely satisfied that he truly accepts even now that the practice of the false invoices was dishonest. The following exchange took place at T442-443:

> **"It appears, as I understand it, that at all times both before and after 1983, you were aware of this practice and you were aware that it was facilitated by the raising of false invoices? Is that not correct?--- Well, if you can call them false invoices, yes.**
>
> **Well, can you call them anything else?--- False invoices.**
>
> **And a fair minded observer may take the view that you were doing it that way in order to hide something that you regarded as wrong?... Well, with the benefit of hindsight, that interpretation can be put upon it, and I accept that as maybe one interpretation.**
>
> **Well, what other interpretation ----?----I would----**
>
> **---could ever but put upon it ?---Well, I would put to you that its - it was the culture that was - and custom that had been longstanding in the industry and I seek as - as I said- I seek not to justify it. It was a custom longstanding in the industry that had been handed on for years. It was handed on to me and the organisation, and by custom, it just continued.**
>
> **You are asking the Authority to be satisfied with Leighton's integrity, honesty and character for the purpose of granting it a casino licence. It may well be that there are practices in the casino industry, no doubt of which you may not be aware, that would be regarded**
>
> **as other than honest that are part of the culture. You are not suggesting, I assume that your company, even if it saw those practices, would be seeking to perpetuate them in the event that Sydney Harbour Casino was granted the subject licence?---I think it is fair to say, after this whole embarrassing situation, that the lights have been turned on".**

10.5.6 The foregoing exchange causes me some concern as to whether King really accepts that the invoices were relevantly

false. Reference was also made in submissions to the interviews conducted by officers of the Authority with King and Vella on 16 and 17 March respectively (Exhibits 64 and 71). A close re-reading of the interview with King confirms, in my opinion, that as at March 1994, he had not accepted the obvious dishonesty of the practice of raising false invoices. It is clear that King had the opportunity to volunteer that he regarded the practice of raising false invoices as dishonest. Thus, at page 14 of the transcript of interview (Exhibit 71), King was asked-

> **"So why was it then that so many of the firms went to such great lengths to disguise the unsuccessful tender fees?"**

10.5.7 In my opinion, and on further reflection, King's answer to that question was not as responsive as it could have been. Then, at pages 18-19 of the record of interview, King had the opportunity of conceding the dishonesty of the practice involving falsification of records of LCPL but failed to do so. In fact, although observing that there was **"a body of opinion out there that says its shady",** one could not be confident that King agreed without reservation with that sentiment.

10.5.8 Vella was also given the opportunity in his interview of expressing his view that the practice of raising false invoices was dishonest. He failed to do so: see Exhibit 64 pp 21-22 and 23-24. In the last mentioned reference Vella said:

> **"I mean that just gives you some of the - you know, you've got to look at it from two sides of the fence; don't look at it from one side of the fence because it is easy when you are the client you say, well, that's my money that you have taken but it isn't really, I mean I understand the practices is probably. - ..... not right and it shouldn't happen but it is an industry problem .... it came up because of the industry not because people were out there to do someone over"**

10.5.9 If it be the case that by this answer Vella was indicating that he merely "understood" the practice to be "probably not right", then this would indicate a lack of appreciation by him that the practice of raising false invoices was inherently and obviously

dishonest to anyone who sat back and gave it a moment's thought.

10.5.10 The evidence now before me as to their participation in and knowledge of the practices associated with the payment and receipt of Special Fees and UTFs, exhibited at the relevant time (1983 - King, 1988 - Vella) serious lapses in character on the part of both King and Vella in that they did not address the practices even though they were long established in the industry.

10.5.11 The position of King and Vella must be considered in the context of my assessment of the probity of the LHL Group as the evidence establishes that King and Vella have the potential ability to influence the day to day operations of the Group as a whole.

10.6 THE CREDIBILITY OF KING AND VELLA

10.6.1 It was debated in submissions before me whether King and Vella were deliberately being untruthful when they swore that they did not appreciate at the time when they were involved in the practice of UTFs and Special Fees that the use of false invoices was dishonest or that they did not have reason to turn their minds to whether it was dishonest or not.

10.6.2 It was submitted that I should not accept as truthful the explanation of King and Vella for not focusing on what was said to be the obvious. I am asked to find that when they gave their explanation in the witness box, they were not telling the truth, that in fact they had focussed upon the issue and they had made a deliberate decision that the system should remain notwithstanding that they must have realised that the preparation of any false documents was a totally unacceptable practice.

10.6.3 A finding that men, who occupy highly responsible positions with a well known and outwardly respected public

corporation and who are held in high esteem in the community, have deliberately not told me the truth in their sworn testimony would be a serious matter indeed and would be a finding that I would not make lightly unless I was convinced that it was correct. I am not so convinced.

10.6.4 The evidence establishes that each of King and Vella was extremely busy and had many different matters to deal with and calls upon their time and energy.

10.6.5 I accept, as did Commissioner Holland in his report, that the practice of paying UTFs and Special Fees was endemic in the industry as was the method of its implementation. Further, it is apparent that other construction contractors simply did not question the practice which each had inherited (Exhibit 4 pp 115-116).

10.6.6 Those facts do not assist King and Vella in terms of whether or not their involvement in the practice of false invoices evidences a defect in character which reflects adversely upon their repute. But in my opinion they are relevant to my assessment of what, as a matter of reality at the time, might have been occupying the minds of King and Vella when they were irregularly informed that these fees were agreed and/or some false invoices came across their desk and were referred on for processing as a matter of course.

10.6.7 At the end of the day I am not sufficiently satisfied that King and Vella were so lacking in candour with respect to the evidence that they gave on this issue that I should reject it as untruthful. Accordingly, I am not prepared to find adversely to King and Vella on this issue.

10.7 BENNETT ISSUES

10.7.1 My findings with respect to this issue will form a confidential addendum to this Report.

10.8 THE TAXATION ISSUE

10.8.1 This issue which arises with respect to LHL's probity relates to the taxation implications of the practice of the payment of UTFs on presentation of false invoices.

10.8.2 The expert taxation opinions expressed in Exhibits 92, 92A , 98, and 99 make it sufficiently apparent that the raising of false invoices may well have involved LCPL in a breach of section 262A (1) (and possibly section 262A (3)) of the Income Tax Assessment Act and of sections 8L and 8Q of the Taxation Administration Act. Further, it is also apparent that there may also have been breaches by King prior to 1983 and Vella prior to 1988 of section 8 of the Taxation Administration Act.

10.8.3 On the other hand, Exhibits 89, 98 and 99 are unanimous in their view that LCPL was acting in accordance with the provisions of the Income Tax Assessment Act in bringing to account as income the UTFs received by it and by claiming as deductions the UTFs and Special Fees paid by it. Accordingly, even if there have been breaches of the provisions of the Income Tax Assessment Act and the Taxation Administration Act in the respect referred to, those breaches are mitigated by the fact that they have not contributed to the avoidance by LCPL of its liability to tax. As Mr A. H. Slater QC states in Exhibit 98:

> **A false statement which results in, or is made with a view to achieving, an evasion or avoidance of a tax liability will attract prosecution and penalty. A false statement - such as the incorrect identity of the recipient - which makes no difference to the liability of the author of the statement to tax, and does not contribute to avoidance or evasion by the recipient, ordinarily will not.**

10.8.4 It is, however, to be noted that between 1992-1994 LHL was subjected to an income tax audit by the Australian Taxation Office which audit included the tax years covered by the Holland Report. The unchallenged evidence is that no action has been taken by the Australian Taxation Office either to

disallow deductions claimed by LCPL in respect of the payment of UTFs or Special Fees ; nor has any prosecution been launched for breaches of the Income Tax Assessment Act and/or the Taxation Administration Act arising out of the creation of false invoices. The last mentioned fact supports the views expressed by Mr Slater to which I have referred.

10.8.5 I do not consider that the possibility or even the probability that LCPL and/or its relevant officers (including King and Vella) may have committed a breach of the provisions of the Income Tax Assessment Act and/or the Taxation Administration Act to which I have referred carries the issue of their respective probity any further. It is their knowledge of and participation in the practice of raising false invoices which reflects adversely upon their character, honesty and integrity irrespective of whether that conduct constitutes a breach of the legislation referred to.

10.9 **THE EVIDENCE OF NASKY**

10.9.1. Mr H.G. Nasky gave evidence that any system of false invoicing would be regarded as anathema in the gaming industry and that anyone who had been directly involved in such a practice and who held a responsible position so as to be able to prevent it had the person chosen to do so would not be employed by him in the management or operation of a casino. His evidence in this regard is worth setting out in full (T 1453):

> **"I explained to him (Vella) that the false invoice matter created a cloud or taint over him.....but from just the information available to me and despite the phenomenal relationship that I've developed with him over the last year, that this was concerning me because in the casino business everyone involved in a responsible position has to have uncompromising honesty and integrity. Faithful adherence to record keeping practices is essential. One's ability to have independent moral judgment in reviewing business practices in assessing them without any interference by commercial motivations is very important and that's whether the person is a director, a key**

employee or significant shareholder or whatever. So I said that this, I was having a great difficulty with him fitting the mould when he had just admitted to the degree of his involvement and knowledge of false invoices as part of the UTF practices. "

10.9.2 When questioned further as to his opinion of Vella, (T 1606-7), Nasky agreed that he was conveying to Vella that because of his direct involvement in the falsification of invoices he could no longer be seen as a person of uncompromising honesty and integrity in that he had failed to have regard to faithful adherence to record keeping practices which he, Nasky, regarded as an essential feature of any person being concerned or contemplating being concerned in the operation of a casino. He also agreed that Vella's evidence indicated to him at least a doubt as to whether or not he, Vella, could exercise independent moral judgments with respect to business practices.

10.9.3 Nasky agreed that similar comments could be made with respect to King at least as at 1983 when he, King, ceased to be managing director of LCPL. I am of the opinion that the same comments can and should be made of King now bearing in mind, firstly, his acknowledgment that he was aware that the practices continued after he ceased to be managing director of LCPL in 1983 and, secondly, the obvious fact that he had the power as Chief Executive of LHL to bring the practice to an end but did not turn his mind to doing so until 1991.

10.9.4 There is one further matter that currently reflects adversely on Vella's character, honesty and integrity. Early in their relationship Nasky required Vella to inform him of any "blemishes" which the LHL Group possessed which might be relevant to its probity or that of its directors. It is clear from the evidence that Vella failed on this occasion and thereafter to disclose to Nasky the true extent of LCPL's involvement in the practice of UTF's and, in particular, the fact that the practice involved the use of false invoices. Further, he neglected to disclose the extent of his personal involvement in those

practices. In the context of a proposal to form a joint venture to apply for a casino licence, Vella must, or at least ought to, have appreciated that the issue of probity would be high on the agenda of the Authority as the licence issuing body. Further, he must, or at least ought to, have appreciated the significance of that issue to Showboat as the proposed operator of the casino.

10.9.5 It may be argued that King and Vella, after their experience with respect to their involvement in the Sydney casino project and of this Inquiry, would not fail to adhere to the high standards of honesty and integrity with respect to the management and operation of the casino if they and the LHL Group were permitted to be concerned in or associated therewith.

10.9.6 It also appears to me that King and Vella are, generally speaking, honest, industrious and honourable men doing their best in a highly competitive industry and who are generally respected and held in high regard in the commercial and personal circles within which they move. Unfortunately, they had one blind spot which has now fully come to light and which I am unable to ignore.

10.9.7 Although each of King and Vella ceased to be associated with LCPL at an operational level (King remained as a director) and, therefore, with the practices associated with UTFs in 1983 and 1988 respectively, each was aware that the practice constituted by the agreement to pay UTFs was continuing (or at least had no reason to believe the contrary). Further, each had no reason to doubt that the implementation of the practice by way of raising invoices which were palpably false on their face was also continuing.

10.9.8 Between 1976 and 1983 King was managing director of LCPL whereas between 1983 and 1988 Vella was branch manager of that company; each was in a position and had the opportunity during those periods to recognise the practice for what it was

and had the power to put a stop to it. Each, at least unconsciously, ignored the practice.

10.9.9 Each of King and Vella conceded in their evidence that the practice of raising false invoices was dishonest. Each asserted that they did not appreciate that fact at the time because they did not realise or appreciate that, or turn their minds to whether, the practice was honest or dishonest.

10.9.10 The involvement of King and Vella in UTFs and Special Fees on the one hand and their knowledge of and participation in the practice of raising false invoices on the other, coupled with their failure to turn their mind to and recognise the dishonesty of that practice and to bring it to an end before it was publicly exposed in early 1991, reflects adversely upon their character, honesty and integrity.

10.10 FINDINGS

10.10.1 For the purposes of section 12 of the Act I find that neither King nor Vella are of good repute, having regard to character, honesty and integrity.

10.10.2 In view of the influence that each of King and Vella exercises with respect to the day to day affairs of Leighton Holdings Limited on the one hand and Leighton Properties Pty Limited on the other, it must follow and I also find for the purpose of section 12(2)(a) of the Act that neither of those companies is of good repute.

10.10.3 I also find for the same purpose, that Leighton Contractors Pty Limited is not of good repute, having regard to character, honesty and integrity. This finding is inevitable given the company's previous direct involvement in the practice of false invoices and the fact that those involved at that time are still in a position to exert significant influence on the company's operations.

11. SHOWBOAT

11.1 BACKGROUND

11.1.1 Showboat was established in Nevada in 1954 and it was the second casino operator to be publicly traded in 1968. It was listed on the New York Stock Exchange in 1984.

11.1.2 Showboat operates casino facilities in three different States in the USA which cater for high rollers, tourists, day trippers and local residents.

11.1.3 Showboat Casino Hotel, Atlantic City, New Jersey

Located on 10.5 acres of leased land at the eastern end of the Boardwalk, the Atlantic City Showboat replicates turn-of-the century New Orleans.

Key Statistics

- 3,065 slot machines
- 116 gaming tables
- 800 room hotel
- Major conference facilities

11.1.4 Showboat Hotel, Casino and Bowling Centre, Las Vegas, Nevada

The Las Vegas Showboat covers 26 acres and is approximately 4 kms from both the "strip" and downtown Las Vegas.

Key Statistics

- 1,937 slot machines
- 33 tables
- 484 room hotel
- Major conference facilities
- 106 lane bowling centre

11.1.5 Star Casino, Lake Pontchartrain, New Orleans

This riverboat casino opened on 8 November 1993 and operates on Lake Pontchartrain.

Key Statistics

- 762 slot machines
- 41 tables

12. SHOWBOAT ISSUES

12.1 REPUTE OF GAUGHAN

12.1.1 Gaughan is a non-executive director of a number of Showboat companies as well as SAPL. He has been a director of Showboat since approximately 1978. He is now aged 73 years. He has been licensed to operate casinos in the State of Nevada for many years and is involved with seven casinos in Las Vegas.

12.1.2 Gaughan figured significantly in Showboat's 1986 Atlantic City licence application. As a director of Showboat he was required under the New Jersey Casino Control Act to affirmatively establish, by clear and convincing evidence, his good character, honesty and integrity. The Statement of Issues filed with the NJCCC by the Division of Gaming Enforcement (DGE), which is the New Jersey equivalent to this State's Director of Casino Surveillance, asserted a number of matters which it was alleged reflected adversely on Gaughan's good character, honesty and integrity. Those matters extended over the period from 1936 to 1978, although one matter (the Delmont association) was still continuing. At the end of the evidence before the NJCCC, the DGE pressed five allegations against Gaughan which related to:

12.1.2.1 his alleged involvement with illegal bookmaking from 1936 to 1951;

12.1.2.2 his alleged criminal associations arising out of his ownership of a minority interest (3%) in the Flamingo Hotel and Casino, Las Vegas from 1951 to 1967;

12.1.2.3 his alleged knowledge of a multi-million dollar skim of casino revenues from the Flamingo Casino between 1960 and 1967;

12.1.2.4 his receipt of loans arranged by a Benny Binion in 1976 and 1978, Binion being a person of disreputable character; and

12.1.2.5 his long standing business and personal relationship with one, Steve Delmont, who was convicted in 1973 on a charge arising

from his active participation in the Flamingo skim between 1963 and 1967.

12.1.3 After an extensive hearing the NJCCC, on 11 February 1987, unanimously concluded that Gaughan had met the burden of establishing by clear and convincing evidence his good character, honesty and integrity as a consequence of which it found him qualified under the New Jersey Casino Control Act. In so doing it rejected the DGE's allegations.

12.1.4 DCL submitted that the Authority, through myself, was required by the Act to make an independent determination of Gaughan's probity as a director of SAPL. It is to be noted that he is not proposed as a director of any company within the Sydney Harbour Casino group. However, as already observed, SAPL is anticipated to hold a 26.73% interest in SHCH and a 85% interest in SCM, the management vehicle proposed with respect to the operation of the casino. Accordingly, as the ability of the directors of SAPL to influence the management and operation of the casino is manifest, it was asserted by DCL that due to the serious allegations made by the DGE against Gaughan in 1986, I should independently evaluate those allegations in the light of the totality of the evidence presented to the NJCCC on the five allegations against Gaughan enumerated above and that I should place no weight upon the opinion of the NJCCC which rejected those allegations. It is further submitted that I am disadvantaged in assessing the probity of Gaughan as he has not come forward and presented himself to this Inquiry where, no doubt, leave would have been sought by DCL to cross-examine him on the same allegations upon which he gave evidence and was cross-examined by the DGE before the NJCCC in 1986.

12.1.5 It is noteworthy that, apart from his association with Steve Delmont which was still in existence as of 1986, the DGE's allegations against Gaughan were confined to the period ending in 1978, some 16 years ago. There is no suggestion of

any untoward conduct on the part of Gaughan since 1978 which would require the further investigation of the Authority; nor is it suggested that since 1986 Gaughan has been the subject of any further investigation by the DGE with respect to matters which occurred prior to his licensure in 1986. As I have already observed, he was found by the NJCCC to be qualified to be associated with Showboat in 1987 and that qualification still stands. Equally, he has been found qualified to hold a casino licence in the State of Nevada which qualification is also current.

12.1.6 Having considered the material in Exhibit 39, I do not accept the submission of DCL that I should give no weight to the opinion of the NJCCC in relation to Gaughan's probity. A fair reading of that material provides a cogent basis upon which the NJCCC was entitled to come to the decision it did. No justifiable reason has been put to me why I should seek to depart from a carefully reasoned decision which, in my opinion, has a proper basis in the evidence before the NJCCC and which, no doubt, was the subject of close scrutiny and consideration before it was rendered.

12.1.7 Further, it is to be noted that there was no appeal by the DGE from the decision of the NJCCC to the Superior Court of New Jersey, Appellate Division. The test adopted by that court for review of decisions of the NJCCC is whether the latter's findings of fact could have been reasonably reached on sufficient credible evidence present in the record, considering the proofs as a whole, with due regard for the opportunity of the commissioners who heard the witnesses to judge of their credibility: see **In re Boardwalk Regency Corporation** (1981) 180NJ Supr324.

12.1.8 In my view, in light of my findings with respect to the weight I should accord the decision of the NJCCC and the lack of substance in DCL's submissions, I would regard it as unnecessary to subject Gaughan to further questioning upon such matters.

12.1.9 In my opinion, as the following short reasons indicate, the evidence before the NJCCC was more than sufficient to justify its rejection of the DGE's allegations (the transcript and exhibit references which follow are references to the transcript being part Exhibit 39).

Gaughan and Alleged Illegal Bookmaking

12.1.10 The DGE alleged that Gaughan was knowingly involved in illegal bookmaking activities in Nebraska from 1936 to 1951 (T1585-T1586; T1659-T1661). I note that he was never convicted of any illegal activity.

12.1.11 The NJCCC found that his involvement in illegal bookmaking activities was not to be condoned, but matters of that nature which took place 35 and more years ago (now over 40 years) were not of great significance (T1659-T1661). References from the hearing transcripts supporting this finding include T837; T1229-1233; T1239; T1249-T1251; T1254.

Criminal Associations

12.1.12 The DGE alleged that Gaughan's long term interest in the Flamingo Casino gave him a direct involvement with criminal figures and/or associates of criminal figures (T1586-T1587).

The NJCCC found that nothing in the evidence indicated that Gaughan had any knowledge of the criminal connections of any of the other shareholders in the Flamingo Casino at any time (T1669). References from the hearing transcripts supporting this finding include T1235-T1237; T1242-T1244; T1256; T1258; T1259-T1260; T1267; T1279-T2183; T1291; T1303; T1372; T1489-T1493; and T1495. It is to be noted that the DGE did not allege any ongoing business associations by Gaughan with persons alleged to be involved in organised crime after the Flamingo was sold in 1967, now some 27 years ago.

12.1.13 The submissions of DCL on how Gaughan came to invest in the Flamingo and that the NJCCC failed to consider the reputation of his then partners are mere conjecture and appear not to be supported by the evidence.

The Flamingo Skim

12.1.14 The DGE alleged that Gaughan was involved in the Flamingo Casino during the 1960s during which time (1960-1967) the major interest holders in the casino and the casino manager engaged in a long term "skim operation" netting an estimated US $27 million over approximately 7 years. In particular the DGE claimed that:

12.1.14.1 Because of his 3% interest and his extensive knowledge of casinos he should have been aware that a skim operation was on foot;

12.1.14.2 Gaughan should have been put on notice of the likelihood that the turnover of the casino was not being accurately recorded in or reflected by the accounts being kept, during negotiations for the "Japanese Sale", which he failed to adequately follow up; and

12.1.14.3 Gaughan's failure to sue any of the participants in the skim operation was evidence of his awareness of and/or involvement in that operation (T1673-1674).

12.1.15 The NJCCC found that Gaughan did not have a significant or management interest in the Flamingo Casino (T1662). References from the hearing transcripts supporting this finding include T274-T275; T328; T702-T703; T1085; T1164; T1258; T1275; T1292; T1304-T1305; T1307; T1443. It also found that Gaughan did not participate in or have contemporaneous knowledge of the skim. This was consistent with the fact that Gaughan had little, if any, influence in the running or management of that casino (T1665-T1668). References from the hearing transcripts supporting this finding include T674;

T921; T1085; T1087; T1089; T1090; T1097; T1103; T1164-T1165; T1198; T1273; T1279-T1283; T1309; T1312-T1313; T1318; T1335; T1392; T1449-T1451; T1538-1539 (References to evidence of the skim operation are at T1094ff).

12.1.16 I am not persuaded that DCL's submission that there is credible evidence indicating that Gaughan knew or should have known about the skim, has a sufficient foundation which would warrant me departing from the NJCCC's decision on this issue.

12.1.17 The NJCCC also found that, at the highest, it was unsatisfactory that Gaughan had not pursued the allegation that the Flamingo was making money which was not represented in the company books beyond speaking to Barrick about it, but no adverse inference could be drawn from Gaughan's inaction (T1670-T1671; T1673-T1674). References from the hearing transcripts supporting this finding include T1428; T1431-T1434; T1436-T1437. References supporting the Commission's finding with respect to Gaughan's court action against Lansburgh's estate re the skim operation are at T1315-T1317; T1320; T1321; T1532-1534.

12.1.18 DCL, however, submits that Gaughan's behaviour with respect to his failure to pursue that action was suspect. In my opinion Gaughan's explanation was adequately tested in cross-examination by the DGE and properly accepted by the NJCCC. DCL's suspicion is hardly a safe foundation for an adverse finding on any issue.

Loans From Benny Binion

12.1.19 The DGE alleged that Gaughan obtained two loans in the 1970's from Benny Binion, a person who was not a person qualified to hold a gaming licence in Nevada (T1586).

12.1.20 The NJCCC found that the loans were obtained by Gaughan from Benny Binion's son, Jack, operator of the Horse Shoe Club. These loans were found to be ordinary short term business loans taken out by Gaughan to overcome a temporary cash flow problem and were fully secured and were fully repaid within 90 to 120 days. It found that the loans were not, in any case, loans created by or obtained from Benny Binion himself (T1679Z). References from the hearing transcripts supporting this finding include T343-T344; T736-T737; T795-T796; T817; T869; T893; T1345-T1349 and Exhibit G112.

Employment Of Steve Delmont

12.1.21 The DGE alleged that Gaughan gave Steven Delmont (a participant in the Flamingo skim) a job in the early 1980's and thereafter involved Delmont in various of his enterprises - this association with Delmont was alleged to be evidence of Gaughan's knowledge of and/or involvement in the skim operation (T1589).

12.1.22 The NJCCC found that Gaughan's offer of a job to Delmont twelve or more years after the skim operation was not improper. Gaughan had simply given a second chance to someone who, at a young age, had become involved in an illegal activity from which he had not derived any personal gain (T1675-1678). In 1973 he received a 60 day gaol term and 305 days of probation for his part as a " gofer" in the skim operation. In 1986 he received a Presidential pardon for his role in the skim. References from the hearing transcripts supporting this finding include T821; T1080-T1083; T1115;

T1152; T1324; T1333; T1340; T1363-T1364; T1395-T1396; T1550-T1552.

12.1.23 The thrust of DCL's contentions with respect to Gaughan's association with Delmont is summarised in paragraphs 13 and 14 of its submission on this topic. Bearing in mind that the evidence was that Delmont was an unwilling participant in the skim and that he received no benefit therefrom. DCL's submission, based as it is on conjecture, loses its force and I do not accept it.

12.1.24 In my opinion there is no warrant for re-opening the matters ventilated at length before the NJCCC with respect to Gaughan in this Inquiry. The 1986 licence application heard evidence from many witnesses . The NJCCC was able to, and did, form a view as to their credibility. It is not suggested that the 1986 hearing miscarried. It is not suggested that anything adverse has come to light about Gaughan since the 1986 hearing concluded.

12.1.25 Gaughan did not give evidence in this Inquiry, nor was he requested to answer a Section 15 notice. His involvement was raised as an issue by DCL relatively late in the Inquiry. In either event, it would have been highly unlikely that I would have reached a different conclusion about his credibility as a witness to that found by the NJCCC in the 1986 New Jersey licence application.

12.1.26 Apart from Exhibit 39, the evidence before the Inquiry about Gaughan (albeit given by Nasky) suggests that he makes a strong contribution to the Showboat board. (T1431 - 1432; 1641 - 1642). Nasky's evidence was that Gaughan has the same exacting probity standards as himself (T.1454). I have no reason not to accept that opinion.

12.2 **FINDING**

12.2.1 I find that the matters raised about John Gaughan during the 1986 New Jersey licence application of Showboat do not impact upon the repute of either Gaughan or Showboat.

12.3 THE RELATIONSHIP BETWEEN SHOWBOAT AND RESORTS

12.3.1 Exhibit 75 tendered by Showboat contains a lengthy and detailed analysis of the Lease Agreement entered into between Showboat and Resorts on 26 October 1983 (the Lease). The Lease was required by law to be approved by the NJCCC which directed a number of amendments to be made thereto to ensure compliance with the New Jersey Casino Control Act. These included a requirement that the Lessor and Lessee be jointly and severally liable for all acts, omissions and violations of the New Jersey legislation each of them regardless of actual knowledge of such act, omission or violation. Each party was also required to hold either a casino licence or a casino service industry licence. Resorts have been continuously licensed by the NJCCC since 26 February 1979. As already observed in relation to the Gaughan issue, the NJCCC first licensed Showboat in 1987.

12.3.2 Exhibit 75 concludes that the Lease creates nothing more than an ordinary landlord and tenant relationship between Resorts and Showboat. In particular, it is asserted that it was neither intended to nor did establish some type of joint venture between Showboat and Resorts to operate the former's casino in Atlantic City. It is further contended that the Lease does not, on its true construction, provide for the sharing of revenues between Showboat and Resorts and that neither Resorts nor any person associated with that company has been or is entitled to be involved in either the management or operation of Showboat's Atlantic City casino or in the revenues generated thereby.

12.3.3 Exhibit 103 contains DCL's submissions on the Lease. I am asked to conclude that as a consequence of certain provisions of the Lease not referred to in Exhibit 75, it is clear that Resorts and Showboat were co-developers and that Resorts has greater control over Showboat than would be the case with a normal lessor.

12.3.4 One of the major planks of DCL's submission is a resolution of the NJCCC of 13 August 1986, that Resorts has the ability to exercise significant control over Showboat's facility as a consequence whereof it was required to obtain a casino licence pursuant to the New Jersey Casino Control Act (which it did). On its face, this assertion might be interpreted as suggesting that Resorts was in a position to exercise significant control over the operation by Showboat of its then proposed casino. However, such an interpretation would be incorrect as a reading of pages 3 and 4 of the NJCCC's Resolution No. 86-597 (Tab 31 of Exhibit 75) makes clear. In particular, the Chairman of the NJCCC, when delivering its findings which formed the basis for Resolution No. 86-597, observed as follows:

> "**While there is nothing in this Lease which would give Resorts control over the casino operations of Showboat**, the Lease provisions do give Resorts **significant control over Showboat's use of its building**, and, thus, control of its proposed hotel casino facility. The most obvious examples are 3.1 and 5.1 which limits the number of hotel rooms which Showboat may construct, and as a redeveloper of the Urban Renewal Tract, Resorts controls the allocation of 4000 hotel rooms which may be constructed on the Tract…Since the size of a casino room is determined, in part, by the number of sleeping units within the facility, the room cap provisions limit (the Lease provided for a limit of 527 hotel rooms) not only the number of hotel rooms to be constructed but also control of the **maximum size of Showboat's casino room".**(emphasis added)

In the light of the foregoing, I am firmly of the view that the Lease did not relevantly empower Resorts to exercise any direct or indirect control over the management and operation of Showboat's proposed casino.

12.3.5 Some further provisions of the Lease are relied upon by DCL to support the conclusion that Resorts and Showboat were co-developers or joint venturers. It is true that there were certain common physical facilities which they were to jointly develop, but these were external to the proposed building and had nothing to do with the proposed casino as such. Reliance is also placed on various other provisions of the Lease which were required in accordance with New Jersey law to be included therein but, when properly analysed as they have been in Exhibit 75, I do not regard them as providing any support for the conclusion for which DCL contends. Finally, I do not accept the submission made in paragraph 7 of Exhibit 103 on this issue. In the physical context in which the development works were taking place, including the development by Resorts of its own casino/hotel/complex adjacent to that proposed by Showboat, I would regard the relevant provisions relied upon by DCL as normal commercial provisions which one would expect to find in a long term lease where the lessee was obliged to construct a building on undeveloped land and where the lessor owned adjacent land upon which it also was developing a complex.

12.3.6 In its final submissions DCL did not seek to assert that the rental provisions of the Lease were a sham or otherwise constituted some sharing between Resorts and Showboat of the revenues to be generated by Showboat's proposed casino. It confined its submissions to the contention that Resorts and Showboat were co-developers and that, accordingly, Resorts had greater control over Showboat than would be the case with a normal lessor. In the context of the development by both Resorts and Showboat of what was then undeveloped land, I do not accept that submission. In my view, at all material times the relationship between Resorts and Showboat was and still is strictly that of landlord and tenant.

12.3.7 DCL also questioned the probity of Resorts notwithstanding that it was first licensed by the NJCCC in 1979 and that its licence has been renewed ever since in accordance with New

Jersey law. The basis of the attack, as I understand it, was that Showboat was prepared to enter into a business association in October 1983 with a company whose reputation at that time, although licensed to operate casinos in New Jersey, was alleged to be unacceptable. Nasky was cross-examined as to his knowledge of Resorts' reputation at the time he was charged with negotiating the terms of the Lease. His evidence was that he was not aware of anything adverse to its reputation and that he relied, in particular, upon the fact that the NJCCC had licensed Resorts in 1979 and that that licence had at all times since been renewed. I accept Nasky's evidence. Further, Nasky gave unchallenged evidence (T1473) that in terms of the availability of suitable land on which to build a casino at Atlantic City, the only large acreage available was that owned by Resorts which the latter had purchased from the Atlantic City Housing Authority and which was known as the Uptown Urban Renewal Tract which Resorts could only lease but not sell. I accordingly reject the submission of DCL that the Lease began life as some sort of sham to mask a joint venture between Showboat and Resorts.

12.3.8 It is further to be noted that since the Lease was executed in October 1983, the ownership of Resorts has changed hands twice, the first time in 1985 some two years after the Lease was executed. With two irrelevant exceptions, the major personnel involved in Resorts in 1983 and whose reputation was challenged have long ceased to be involved with that company (Exhibit 95). Further, the rights of Resorts under the Lease have been assigned by it to bond holders with the consequence that all rent is now payable to those bond holders (T1475).

12.4 **FINDING**

12.4.1 I do not regard the negotiation and entry into of the Lease by Showboat with Resorts as impacting in any way upon the repute of Showboat. I thus find that the existence of the Lease between Showboat and Resorts governing Showboat's Atlantic City casino property does not impact adversely on the repute of Showboat.

12.5 THE RELATIONSHIP BETWEEN SHOWBOAT AND ROUSSEL III AND THE IMPACT THEREON OF THE LOUISIANA CASINO LICENSING SYSTEM

GENERAL BACKGROUND

12.5.1 The allegations concerning these issues were raised by the Opposition in Exhibit 2 at pp 5-19 and in Annexure 4 - a document entitled "Background Investigation of Star Casino Inc" prepared by three members of the Louisiana State Police, Riverboat Gaming Division. DCL also raised them in Exhibit 3 pars 1 and 2.3 and in its opening submission.

12.5.2 It should be noted at the outset that the Louisiana State Police investigators, who were the authors of the document which was obtained by the Opposition and referred to in the preceding paragraph as Annexure 4 to Exhibit 2, concluded that Star Casino Inc, Roussel III, and the Showboat subsidiaries, Lake Pontchartrain Showboat Inc and Showboat Star Partnership Inc were all suitable for the role proposed for them in the Showboat Star Partnership (Exhibit 2, Annexure 4, Part IX). They were duly licensed by the Riverboat Gaming Division of the Louisiana State Police on 19 August 1993 pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act enacted by the Louisiana legislature in 1991.

12.5.3 On 15 July 1994, Roussel III was accepted for licensing by the Louisiana Economic Development and Gaming Corporation (a body which is independent of the State Police) as one of a group of ten investors which, together with the casino operator Harrahs, would develop Louisiana's only land based casino.

12.5.4 In spite of this, it was contended that this Inquiry should investigate allegations going to the following four principal issues:

> the alleged association of Roussel III with the Marcello crime family;
>
> the alleged involvement of Roussel III with dishonest practices in the management of the National American Bank and Trust Company;
>
> the alleged investigation of Roussel III by a Baton Rouge Grand Jury; and
>
> the alleged corruption of Governor Edwin Edwards and of the Louisiana casino licensing system.

12.5.5 By the time Counsel and Solicitor Assisting travelled to Louisiana, DCL had reduced its questions for Roussel III to writing (Exhibit 65A). Other matters had emerged from the ongoing investigations of the Authority's own investigators, both in respect of follow-up matters relating to the Star Casino riverboat to the July 1994 licensing of the Harrahs/Jazzville group which involved Roussel III. These matters were put to Roussel III at an interview in New Orleans on 6 October 1994. The transcript of that interview is Exhibit 65 and comprises some 256 pages and two volumes of Annexures being documents referred to in the transcript upon which Roussel III was interrogated. The interrogation of Roussel III by Counsel Assisting extended over approximately 5 hours and he swore

to the truth of his answers as recorded in the transcript thereof.

12.5.6 In considering the Roussel III material, a subtle difference in the spelling of the names of Roussel III and his father should be noted. Roussel III's father is Louis Roussel, Jr. and Roussel III is Louie Roussel III. This distinction is important as in many instance persons commentating on the activities of Roussel Jr and Roussel III have used the names interchangeably which has led to some confusion as to the matters Roussel III is alleged to have been involved in.

Alleged Association of Roussell III with the Marcello Family

12.5.7 Roussel III was said to be corrupt, or potentially corrupt by reason of his association with the Marcello family (T66-68(6 September); Exhibit 20 Grand Jury indictment). He was said to be associated with the Marcello family:-

> via John Matassa, Joseph Matassa, Carlos Marcello and Joseph C Marcello in connection with the Merchants Trust and Savings Bank in Kenner, Louisiana (Exhibit 2 p6-7);
>
> via Joe Segretto (Exhibit 2 p12-15); and
>
> via his father, Roussel Jr (Exhibit 2 p15-18), in particular, via his association with his father in the National American Bank and Trust Company (T68-69(6 September 1994); Exhibit 21 Venture Article; Exhibit 2 Annexure 4 Report of Louisiana State Police).

12.5.8 Roussel III admitted that John Matassa was President of the Merchants Trust and Savings Bank, Kenner when he purchased the Bank (Exhibit 65, p181); denied that Joseph Marcello was a director of the Bank (Exhibit 65, p181); denied that Joseph Marcello was in any way connected with the Bank in any kind of official capacity (Exhibit 65, p181-182); did not

know whether Joseph Marcello was a brother or the son of Carlos Marcello, but knew that, by repute, Carlos Marcello was an organised gang man (Exhibit 65, p182); knew that John Matassa was the brother of Joe Matassa, but had no knowledge of Joe Matassa's business interests (Exhibit 65, p182); denied any involvement with Joe Matassa (Exhibit 65, p180); knew that John Matassa was the President of Merchants Trust and Savings Bank but denied that he was ever a member of the Board of Directors of Mutual Savings Life Insurance Company or that he held any office with that company (Exhibit 65, p183); whilst he knew something of John Matassa, denied knowing anything about Joe Matassa (Exhibit 65, p184); denied having done any form of business with the Pelican Tomato Company (Exhibit 65, p185); and denied knowing whether Joe Matassa was the Managing Director of the Pelican Tomato Company (Exhibit 65, p185).

12.5.9 Roussel III further denied that his father (who was now 88 years old) was an associate of Carlos Marcello (Exhibit 65, p158). Assuming that Carlos Marcello did business with the Merchants Trust and Savings Bank, Roussel III said that there was nothing inappropriate about him opening a deposit account, unless he received some advantage in treatment from the Bank. He denied that this had occurred (Exhibit 65, p162). Roussel III said he would not know whether, in fact, Carlos Marcello, who is now dead, was the senior Mafia figure in Louisiana. (Exhibit 65, p165-166).

12.5.10 Roussel III himself would not do and had not done any business with Carlos Marcello; he had never been to his home; Marcello had never been to Roussel III's home; Roussel III has never been to dinner with him (Exhibit 65, p166).

12.5.11 Roussel III knew of the Marcello indictment (Exhibit 65, p166-167), but his knowledge of those mentioned in the indictment was limited (Exhibit 65, p167-180).

12.5.12 Roussel III admitted that he knew Joe Segretto and that he was alleged to be an associate of the Marcello family but said that he had no knowledge beyond what he had read in the newspaper. Roussel III said he had no direct business dealings with Segretto. He knew him only as the maitre'd of a restaurant where he dined and considered him "a very nice gentleman" (Exhibit 65, p191-192).

12.5.13 Roussel III gave evidence that, through New Orleans Development Corporation, he owns 3.4% of the stock of Harrah's Jazz Company, which hopes to be granted a licence for a land based casino in New Orleans (Exhibit 65, p244-247). However, he will not be a member of the Board of Directors of that company (Exhibit 65, p245). He denied that Joe Segretto held stock or shares in Harrah's Jazz Company (Exhibit 65, p194); said that he did not know that Segretto had been in jail (Exhibit 65, p194); denied he knew that Segretto had a 25% share holding in a restaurant called Broussards (Exhibit 65, p196, see also Exhibit 65, Tab 12 - affidavit verifying that Segretto is not involved with Harrah's Jazz Company).

12.5.14 Roussel III explained satisfactorily to Counsel Assisting the answers he had given in a television interview with Steve Liebmann (Exhibit 2, Annexure 10, Exhibit 65, p200-205). He admitted an association with Nick Mosca, but denied that the association was in any way improper (Exhibit 65, p205-207). He further admitted knowing Mr Roy Anselmo but denied any impropriety in his association with him (Exhibit 65, p207-209). Roussel III said that Ronnie LaMarque was a "star boarder" who stayed in his house and admitted that he had lent money to Mr LaMarque on several occasions (Exhibit 65, p209-212).

12.5.15 In response to a question suggested by DCL as to whether the Marcello family had paid for his wedding (which was in 1972) Roussel III said that he did not know who had paid for the wedding and was in two minds as to whether he had paid for it or part of it himself (Exhibit 65, p140-141; p157).

Subsequent inquiries indicate that the wedding was paid for by his former wife's father.

Dishonest Practices at the National American Bank and Trust Company

12.5.16 It was alleged that Roussel III was involved in dishonest practices in the National American Bank and Trust Company (Exhibit 2 p18-19).

12.5.17 In July 1974, Roussel III and his father were served with a notice of intention to remove officers or directors of the Bank under the Federal Financial Institution Supervisory Act (Exhibit 65 Tab 2).

12.5.18 Roussel III's evidence was that the allegations in that document referred to his father and not to him (Exhibit 65 p23-25). The proceedings were settled on the basis that Roussel Jnr (he was then 69 years old) consented to an order of prohibition under which he was prevented from acting as a director, officer, employee, agent, consultant or adviser of the Bank as from 30 June 1975. All proceedings against Roussel III were dropped (Exhibit 65, Tab 3). Hence, whilst the proceedings led to the demotion of Roussel Jnr, they also led, with the knowledge and tacit approval of the relevant Federal banking regulatory authorities, to the promotion of Roussel III to the position of Chairman of the Board of Governors of the Bank (Exhibit 65, p49-50).

12.5.19 Roussel III strongly disputed the allegations against him in the notice (Exhibit 65, p34-36). He was supported in this by the documents in Exhibit 65, Tab 4 - letter, and in an affidavit of Gerald J Gallinghouse, a former US Attorney (United States Department of Justice) and concurred in by John Volz, US Attorney, Eastern District of Louisiana.

Baton Rouge Grand Jury Investigation

12.5.20 It was also alleged that Roussel III was under investigation by a Louisiana Grand Jury (Exhibit 2 p9).

12.5.21 The deliberations of Grand Juries are by law secret and information relating to their operations or deliberations is not even available to law enforcement agencies. Roussel III denied that he had been subpoenaed to give evidence before the Grand Jury investigation in Baton Rouge into the granting of casino licences in Louisiana (Exhibit 65, p145-147). Independent inquiries by the Authority confirm that this is so. The fact that he has not been subpoenaed to give evidence before the Grand Jury to this point is capable of leading to the inference that the Grand Jury's investigations are not currently concerned with him.

Governor Edwin Edwards And The Louisiana Casino Gaming Licensing System

12.5.22 It was alleged that the Governor of Louisiana, Edwin Edwards, may be corrupt; or may not run a "clean" licensing system (T63(6 September 1994); Exhibit 19-"60 Minutes" interview of Governor Edwards); and that the Louisiana casino licensing system was suspect (T70-74(6 September 1994); Exhibit 22 Press Clippings). These allegations were tested from the standpoint that Roussel III may have benefited in his Star Casino licence application from administrative laxity or corruption in Louisiana.

12.5.23 Roussel III conceded that his father had always been a major supporter of Governor Edwards (Exhibit 65, p103) but denied that this association had necessarily helped his father (Exhibit 65, p103-108). He admitted that he was a friend of Governor Edwards and had contributed to his campaigns (Exhibit 65, 137-138) but that such donations were limited by Louisiana

law. He denied that this had facilitated the grant of a casino licence to his company (Exhibit 65, p138-139).

12.5.24 Roussel III admitted giving many political donations (Exhibit 65 Tab 11 contains a list of his donations). He also makes large donations to charitable institutions. He denied that there was anything untoward in connection with his political donations as his actions accorded with the political norms prevailing in the United States (Exhibit 65, p111.19-125.4). He denied making a large ($1million+) contribution to Governor Edwards' re-election fund (Exhibit 65, p88-89).

12.5.25 When questioned about whether the award of a riverboat gaming licence was the product of political patronage from Governor Edwards, Roussel III pointed out that the riverboat gaming licence legislation had been introduced during the administration of Governor Roemer, whose election Roussel III had opposed (Exhibit 65, p126-127). He further pointed out (Exhibit 65, p.155-156) that although Governor Edwards may have appointed the members of the relevant Louisiana casino regulatory authorities, those appointments were required to be confirmed by the Louisiana State Senate. This is confirmed by Exhibit 83 (A Comparison of the Regulatory Systems for Louisiana Riverboat Casinos and New Jersey Casinos, p.1)

12.5.26 Questions were asked designed to show that Roussel III had committed himself to the contract for the construction of the riverboat used for gaming on Lake Pontchartrain *before* the casino licence was awarded by the Riverboat Gaming Enforcement Division of the Louisiana State Police (Exhibit 65, p128-134). These were answered satisfactorily when the true dates of the relevant events were established. It became clear during the Inquiry that Roussel III had all necessary approvals to justify him entering into a contract to build the riverboat even though the actual casino licence was not issued until some months later and that no adverse inference could be drawn from this last mentioned fact. I also note that the process of constructing hotel premises in which a casino may

be located prior to licensure is common in the United States, particularly in jurisdictions like New Jersey.

12.5.27 Roussel III was also questioned as to whether the doubling in value of his shares in the Fairgrounds Corporation between 1970 and 1990 (Exhibit 65, p85) could be attributed to favourable treatment by Governor Edwards (Exhibit 65, p87-99).

He admitted that he had lobbied different representatives for the introduction of off-track betting (Exhibit 65, p94-95) and that the introduction of off-track betting was a factor in justifying the $75 sale price for Fairground shares (Exhibit 65, p95) but the special circumstances of the purchaser were more important (Exhibit 65, p95-96) and there were many other factors which justified the Louisiana legislature introducing off-track betting (Exhibit 65, p142).

12.5.28 He denied that he had awarded a $1 million contract relating to a riverboat casino to Governor Edwards' brother (Exhibit 65, p142).

12.5.29 There was no credible evidence before me that the Louisiana casino licensing system was suspect, let alone corrupt. This issue was only raised by DCL (T70-74(6 September 1994)). Although there is currently a Grand Jury investigation into that system there is no proper basis on which to conclude that investigation is specifically concerned with Roussel III or with the circumstances concerning the grant in August 1993 of the Star Casino riverboat licence. In fact, the District Attorney conducting the investigation has stated that the Grand Jury investigation deals with the licensing of riverboats generally. The Louisiana land based and riverboat casino licensing systems are compared in detail to the casino licensing system of New Jersey in Exhibit 81 and Exhibit 83.

Other Matters put to Roussel III.

12.5.30 Roussel III was also asked about a shareholders' derivative action brought by shareholders of Mutual Savings Life Insurance Company against, inter alia, Roussel Jnr and himself, alleging various breaches of fiduciary duty. The initiating process is Exhibit 65, Tab 6. Mutual Savings Life Insurance Company appointed a committee of Independent Directors to investigate and report on the proceedings. Their report is Exhibit 65, Tab 5. Roussel III maintained his innocence of all allegations (Exhibit 65, p57.62).

12.5.31 A commercial settlement was proposed between Roussel III and the plaintiff company in the shareholders action. The settlement required approval of a United States District Court Judge. That approval was given on 5 June 1992 (Exhibit 65, Tab 7) over the strenuous objection of some, but not all, of the shareholders who originally instituted the action (Exhibit 65, Tab 8). The amount of the settlement was US $1.65 million (Exhibit 65, Tab 8 p1). The suit was otherwise dismissed against Roussel III. No adverse inferences affecting the character, honesty and integrity of Roussel III can be drawn from this litigation.

12.5.32 Roussel III was also asked about his involvement in Superfine Oil and Gas Company. The questions involved his failure to collect moneys due to him by his father, Roussel Jnr, in respect of a transaction involving that company. He explained the transaction by reference to his desire to protect his mother following the divorce of his parents after 59 years of marriage (Exhibit 65, p80-84).

12.5.33 Roussel III admitted that he had been involved in a series of misdemeanours in the course of his occupation as one of the leading horse trainers in the USA (Exhibit 65, p212.21-227.9). They were satisfactorily explained by him and no relevant adverse inference can be drawn therefrom. His numerous horse training licences in the USA are in good standing.

12.5.34 In order to complete the record, a number of supplementary questions were asked of Roussel III. These were answered in writing (Exhibit 66).

General Commentary as to Relationship Between Showboat And Roussel III.

12.5.35 Showboat Star Casino is in good standing with the Louisiana regulators (Exhibit 67, Showboat/Star Casino regulatory references).

12.5.36 The management of the Showboat Star Casino is vested in Showboat through a subsidiary company. The management agreement is at Exhibit 65 Tab 15. The partnership agreement between Showboat and Roussel III is Exhibit 65 Tab 16. Roussel III agreed that he would not be able to influence in any way decisions taken by Showboat (Exhibit 65, p227-242) with respect to any casino in which it had or proposed to have an interest. I am informed by Counsel and Solicitor Assisting that, in terms of his demeanour, he was an impressive witness and appeared credible. In approximately 5 hours of questioning on a wide range of issues covering 25 years of his life and detailed aspects of his not inconsiderable business career, he gave careful, comprehensive and considered answers. He gave them his full cooperation.

12.5.37 He answered each of the four principal allegations against him. His answers withstood testing against all the information in the Inquiry's possession. Counsel Assisting is not aware, on the basis of information currently available, of any reason to disbelieve his answers. Nor am I.

12.5.38 In the foregoing circumstances, I accept Roussel III's denial of any involvement with the Marcello crime family and of any involvement in dishonest practices in the management of the National American Bank and Trust Company.

12.5.39 Because of the secrecy surrounding Grand Jury investigations, it is not possible to confirm positively by independent inquiries that any individual is not being investigated by a Grand Jury. I see no reason why I should not accept his evidence that he has not been called before the Baton Rouge Grand Jury and the inference available therefrom that he is not, at least currently, the particular subject of its investigation.

12.5.40 Roussel III is obviously actively involved in Louisiana State politics. He made no secret of his involvement, nor of the fact that he had made contributions to the campaign funds of many elected officials. This is not an unusual practice in the United States, nor Australia. He made no secret of his association with Governor Edwards or of his friendship with Governor Edwards' son. There is no credible evidence which could persuade me that Roussel III's involvement in Louisiana politics affects his character, honesty and integrity.

12.5.41 On the basis of the evidence in Exhibit 65, DCL's final submission was that the investigations to date of Roussel III and the state of health of the Louisiana casino licensing system are not yet conclusive. I am also of the view that there is no credible evidence to support the submission that the Louisiana casino licensing system is suspect, let alone corrupt. Nevertheless, for the sake of caution, I would regard the fact that Showboat is the holder of a riverboat casino licence in Louisiana as no more than a neutral factor when determining its character, honesty and integrity.

12.6 FINDING

12.6.1 I am satisfied that there is no credible material before me which establishes as a matter of notoriety or otherwise any links between Roussel III and organised crime figures. Equally, I do not entertain any real or sensible doubt that would warrant a finding that Roussel III is not of good repute, having regard to his character, honesty and integrity.

12.7 THE EAST CHICAGO CONNECTION

12.7.1 DCL first raised this issue at T74 (6th September 1994) in the following terms:-

> As I would understand it the applications in East Chicago Indiana are made through the Mayor's office and also require a referendum of some sort .... I am instructed that when Circus Circus were looking at East Chicago for a casino, Mr Sloan the general counsel of Circus Circus was called on the phone by the Mayor's son and told that they, that is the relevant authorities, had a deal for Circus Circus whereby an appropriate local partner or partners would be identified for Circus Circus and the local partner or partners would then arrange to get the licence.

12.7.2 The evidence of what the Mayor's son had allegedly said to Sloan was given in hearsay evidence by Mr G Cubbin, the Finance Director of Consolidated Press Holdings Limited, on the basis of a telephone conversation he had with Sloan. Sloan has thrice denied Cubbin's version of the conversation (Exhibit 25 letter Sloan to Nasky; Exhibit 47 Statement of Sloan 14/10/94; Exhibit 77 letter Sloan to Harrex). A preliminary question of credit therefore arises.

12.7.3 The conversation between Sloan and Cubbin was private (Exhibit 25 letter Sloan to Nasky). When he gave evidence, Cubbin knew that Sloan was only prepared to give evidence about his conversation with the Mayor's son if the evidence could be given in private (Exhibit 52 fax Cubbin to Brown; T307). With knowledge of this, Cubbin gave the evidence in public (T307). His admitted intention in obtaining information from Sloan was to frustrate the granting of the licence to the Preferred Applicant (T305) and to gain commercial advantage for DCL (T305). His motive of preferring DCL was agreed by him to be very strong (T308).

12.7.4 I have no hesitation in accepting Sloan's version of the conversation to that given by Cubbin notwithstanding that there was no opportunity for Sloan to be cross-examined. It was not suggested by DCL that he should be although, as

General Counsel of Circus Circus, a partner in DCL, it was open for DCL to call him. Sloan's evidence is that there was never any suggestion that the East Chicago licence would be guaranteed (Exhibit 25 p2). He did not find anything untoward or inappropriate in the remarks of the Mayor's son but rather found him to be acting in a "completely professional" manner in responding to a request from Circus Circus (Exhibit 47 paragraph 5). I have no doubt that the allegation of DCL as originally articulated through Cubbin is and always was flimsy. It was regrettable that this issue was raised by DCL and was not based on something more substantial. The only evidence later tendered by DCL to support the allegation was a bundle of press clippings.

12.7.5 Notwithstanding at least its initial lack of substance, Showboat has responded fully to the allegation. In the evidence of Pannos and Bonner (Exhibit 76 Statement of Pannos; T925 - 976 (Pannos); Exhibit 73 Statement of Bonner; T 977 - 1052 (Bonner); Exhibit 78 (Transcript of Bonner's interview with the Authority's officers) and in Exhibit 74 (Overview of Indiana Riverboat Gambling Regulatory System), Showboat have exposed in detail the circumstances surrounding the deal which they made in order to go into partnership with Waterfront in East Chicago, Indiana. Although both Pannos and Bonner were cross-examined vigorously by counsel for DCL to suggest that there was some underhand dealings between the two partners and that untoward political influence involving the Mayor of East Chicago had been sought and obtained, I have no hesitation in accepting Pannos and Bonner as witnesses of truth and rejecting DCL's allegations and innuendo.

12.7.6 In its final outline of submissions (Exhibit 100) DCL made the following submission:

"So far as East Chicago is concerned, the commercial deal entered into there by Showboat is remarkable for a number of reasons. Whether that is a result of the over-powering advantage which the local group Waterfront had in the

negotiations, and whether in turn that is linked to anything suspicious, is not known on the present evidence".

As I have already observed, mere suspicion is hardly a safe foundation on which to make an adverse finding.

12.7.7 In accepting the evidence of Pannos and Bonner I also accept that the terms of the partnership agreement entered into between Showboat and Waterfront was negotiated at arms length and that it was regarded by Showboat as commercially acceptable.

12.7.8 There is nothing in the present evidence that would support any inference which would adversely impact upon Showboat's character, honesty and integrity concerning the East Chicago venture. In the present case, I do not consider that there is even anything suspicious about the transaction.

12.8 FINDING

12.8.1 I find that there is nothing in Showboat's involvement with Waterfront with respect to the casino licence application for East Chicago, Indiana which impacts upon the good repute of Showboat.

12.9 THE RELATIONSHIP OF SHOWBOAT AND THE LEIGHTON GROUP - THE CREDIBILITY OF NASKY

12.9.1 In its opening submission DCL submitted that Showboat's repute was also tainted by its association with LHL. It was, in effect, submitted that the fact that Showboat was prepared to enter into a joint venture with the LHL Group with knowledge of the criticism of LCPL in the Holland Report reflected adversely upon Showboat's probity. This submission, which sought to reflect the position at least prior to September 1994, was eventually not pressed in its original form.

12.9.2 In its final submission, DCL contended that Showboat, via its Australian representative, Nasky, remained willing, after September 1994, to be a partner of the LHL Group notwithstanding the admitted dishonesty in record keeping of King and Vella which Nasky accepted was central to proper casino operations. It was submitted that even upon the basis that the LHL Group was rejected by Showboat as a close associate, nonetheless any continued relationship between Showboat and the LHL Group indicated that the former was not prepared to adhere to its own allegedly high probity standards in the face of legally binding arrangements which were to its commercial advantage .

12.9.3 It was also submitted that the level of Showboat's due diligence at the commencement of its relationship with the LHL Group in 1993 and which was supervised by Nasky could best be described as perfunctory and, when taken in conjunction with the continued presence on the board of Showboat of Gaughan, its continued relationship with Resorts under the Lease and its relationship with Waterfront with respect to the East Chicago casino licence application, raised a real doubt as to whether Showboat could be trusted as an organisation. As I have rejected DCL's submissions with respect to Gaughan, the Lease with Resorts and the East Chicago licence application, the foundation for this last submission falls away.

12.9.4 Nasky gave evidence as to the extent of the inquiries he made on behalf of Showboat with respect to the probity of the LHL Group when Showboat was first approached to join in the proposed casino application. Although he was made aware by Vella of the fact that LCPL had been adversely referred to in the report, he was not provided with a copy of that Holland Report; nor did he seek to obtain one. In fact, it was only as a result of the Inquiry that he did obtain a copy of the Report and read it in mid-September 1994. On the other hand, it is clear that he relied upon Vella to explain to him LCPL's involvement in the practice of UTFs and Special Fees. As a

consequence of what he was told, particularly with respect to the steps that the LHL Group had taken to cease the practice, he was satisfied that he had been made aware of the true position. In fact, this was not so.

12.9.5 Although a reading of the Holland Report would have made clear to Nasky that the implementation of the practice of UTFs was by way of the raising of false invoices, it would not have informed him as to the extent to which, if at all, King and Vella had themselves been personally involved in that practice. The extent of that involvement he only ascertained upon listening to their evidence between 3 and 8 November 1994. As I have already observed, the failure of Vella to inform Nasky at a much earlier time as to the extent of his personal involvement in the practice of raising false invoices reflects adversely on Vella's repute.

12.9.6 In his evidence (T1546) Nasky indicated that he was surprised that he had not been told about the practice involving the exchange of false invoices and that he believed Vella should have been frank with him on that issue (T1594; T1681). It was also as a consequence of him hearing King's evidence as to his involvement in the dishonest practice of false invoices that caused Nasky to think less of him as well (T1603). Further, I think it reasonable to infer that Nasky, after he had learnt in early November after listening to Vella's evidence of the latter's personal involvement in the false invoice issue, would be justified in concluding that he had been misled by Vella, at least to some degree, as to the extent of the latter's involvement in the practices addressed by the Holland Report.

12.9.7 I accept (and it is not disputed) that Nasky first became aware of the false invoice issue in mid September 1994. The question therefore arises as to whether Showboat, or Nasky as its Australian representative, was remiss in failing to conduct more thorough inquiries about the LHL Group before committing to an association with it in the casino licence

application. Nasky described the inquiries he made about the LHL Group at T1429-1430;1447, 1512-1515. As I have already observed, he was aware of the fact of the BIRC, that it had investigated the practice of UTFs and that LCPL was involved in those practices and had been criticised therefor.

12.9.8 However, as Nasky indicated in his evidence, apart from the Metroplaza action, he was aware that the LHL Group had taken steps in early 1991 to cease the practice and that nothing further, in terms of action taken against LCPL, had occurred which would indicate to him a continuing negative impact of the BIRC's findings. He said, and I accept, that he relied on Vella to disclose any "blemishes" LCPL had as a consequence of the BIRC or otherwise. Further, he had made substantial inquiries about the LHL Group's reputation and those of its senior management and had received nothing but glowing reports.

12.10 SUMMARY OF NASKY EVIDENCE REGARDING THE LEIGHTON GROUP

12.10.1 I conclude that Nasky, on behalf of Showboat, made reasonable if not exhaustive inquiries about the Leighton Group and its senior management. If there be any criticism of those efforts, I do not regard them as impacting upon either his or Showboat's character, honesty and integrity.

12.10.2 DCL attacked the credibility of Nasky and, in particular, submitted that he was prepared to compromise his own expressed standards by failing, prior to 12 November 1994, to insist upon Vella resigning from the boards of the SHC Group of companies and from the management committee set up pursuant to the partnership agreement.

12.10.3 It was further submitted by DCL that in the light of his knowledge as at 8 November 1994 as to the extent of LHL's involvement in the false invoice issue and, in particular, of the personal involvement therein of King and Vella, his expressed

standards of probity required him to sever all connection between Showboat and the LHL Group. It was also submitted by DCL that the fact that that has not occurred indicates that Nasky is prepared to compromise his moral standards in order to pursue a commercial imperative.

12.10.4 Finally, it was submitted by DCL that in the light of Nasky's oral evidence, certain statements made by him in paragraph 7 of his statement to the Inquiry dated 8 November 1989 (Exhibit 79) required the conclusion that Nasky had not been truthful with the Inquiry.

12.10.5 It is obvious to me that Nasky is a person of considerable intelligence who answered carefully the questions asked of him. All in all, I found him an impressive witness and I accept that he was a witness of truth.

12.10.6 Nasky said that he took the decision that Vella should be removed from his position with SHC on the afternoon of 8 November 1994, after he had heard all of Vella's evidence. He said that he had not yet thought through the ramifications of the nomination of Moir to take Vella's place (T1456). He testified and I accept that he was not aware that LPPL **"was involved in any of this, that what was done was done by Leighton Contractors. We don't have anything to do directly with Leighton Contractors. There are there as a builder. They don't own anything here, they don't have any say and they're different. We are impressed with the Holding company, with what they've done, with their efforts to be on the leading edge of construction companies in Australia. They're very successful business operators and with this one area of moral lapse and apparently one or two instances of civil litigation. They've been going on for years and to the great credit of New South Wales and Australia and continue to. ..... They're a first class company".**

12.10.7 I accept this explanation as to why Nasky had not severed all connections between Showboat and the LHL Group by the

time he gave his evidence. It is a probable, sensible explanation and does not, in my assessment, damage his credibility in any way.

12.10.8 I am accordingly of the view that the manner in which Nasky dealt with the problem of the LHL Group which emerged in mid September 1994, bearing in mind that the Inquiry was then under way and the LHL Group was separately represented, cannot be fairly criticised. In my judgment he was justified, as he said, in waiting until the conclusion of Vella's testimony on 8 November before approaching Vella that afternoon and, in effect, requiring his resignation from the Preferred Applicant group (T1619-1620).

12.10.9 The fact that Nasky did not require the complete severance of Showboat's relationship with the LHL Group, particularly with respect to the partnership agreement, did not, in my opinion, involve some compromise of the part of Nasky of his high standards of probity. In the first place, he was subject to legal advice as to the effect of the partnership agreement and, in the second place, his concern was to ensure, consistently with the standards of probity he had articulated to the Inquiry, that neither the LHL Group, King nor Vella had any direct involvement in the management and operation of the casino; in particular, his concern was to ensure that neither the LHL Group, King nor Vella could be classified as a close associate of the Preferred Applicant. In my opinion, the fact that he did not go further and require severance of all business relationships between Showboat and the LHL Group, as submitted by DCL, did not involve a compromise of Nasky's standards: nor did it reflect adversely upon Nasky's character, honesty and integrity.

12.10.10 I do not accept that there is an inconsistency between Nasky's views as to the probity of Vella, (after he had heard the whole of Vella's testimony) and the contents of paragraph 7 of his statement (Exhibit 79). In my view that paragraph acknowledges the conduct of LCPL as revealed in the Holland

Report including the participation therein of King and Vella and then expresses the view that, but for that, Nasky, as a consequence of his own personal dealings with King and Vella during the preceding 12 months, had no concerns with respect to their probity.

12.11 FINDINGS

12.11.1 I make the following findings regarding Nasky:

12.11.1.1 Nasky was a credible witness;

12.11.1.2 Nasky's evidence does not impact adversely upon his good repute: rather it confirms it.

12.11.1.3 The extent of Nasky's due diligence inquiries with respect to the Leighton Group does not impact upon the repute of himself or Showboat.

12.12 THE NEVADA GAMING INFRINGEMENTS

12.12.1 This allegation is raised by the Opposition in Exhibit 2, Annexure 2, which is the Complaint and Stipulation for Settlement of the disciplinary action brought as a result of certain Nevada Gaming infringements. Showboat agreed to pay a fine of $100,000 in respect of eight counts of regulatory violations in connection with the operation of Showboat's Race and Sports Book. The answering material is Exhibit 80 (transcript of Nevada Gaming Commission hearings on 24 and 25 October 1990) and Nasky's evidence of T1468-1471.

12.12.2 The transcript (Exhibit 80) reveals that:-

12.12.2.1 **The infringements were "significant procedural violations, but ones that would not substantially affect the betting public or the State of Nevada insofar as the regulatory environment is concerned"** (Exhibit 80 p369.2-5);

12.12.2.2 It was Showboat's first conviction (Exhibit 80 p365.21-23 Prosecutor Friedman; p366.7 Prosecutor Friedman) in 36 years (Exhibit 80 p366.10);

12.12.2.3 The infringements were perpetrated by the manager of the Sports Book - there was no reason to believe that Showboat management had knowledge of the improprieties (Exhibit 80 p357.22-358.3, Prosecutor Friedman; p362.7-9 Prosecutor Friedman);

12.12.2.4 No patron lost money as a result of the infringement (Exhibit 80 p368.23-369.1, Chairman O'Reilly);

12.12.2.5 No taxes were evaded as a result of the infringement (Exhibit 80 p368.23-369.1, Chairman O'Reilly);

12.12.2.6 Showboat management co-operated fully with the investigation (Exhibit 80 p355.15-20).

12.12.2.7 Showboat management acted decisively to prevent any repeat of the problem (Exhibit 80 p361.16-362.6, Prosecutor Friedman- Showboat was "a model licensee", repeated by Chairman O'Reilly p368.10-16 and adopted by Commissioner Curran p371.7-11 " I think you should be commended".);

12.13 FINDING

12.13.1 I find that there is nothing in the Nevada gaming contraventions of Showboat which impacts negatively upon the character, honesty or integrity of Showboat or upon its repute.

12.14 THE COPYRIGHT ACTION

12.14.1 This allegation is also raised by the Opposition in Exhibit 2 (Annexure 4 Section IV paragraph A) and in Exhibit 3 paragraph 1. The answering material is found in Exhibit 82 (Status of ITSI litigation) and in T1471-1472 (Nasky).

12.14.2 Pursuant to an agreement dated 15 June 1987 (Appendix 1 to Exhibit 82) Showboat acquired from Sports Form, Inc. (SFI) the right to receive and utilise in its Las Vegas casino " live audio-visual signals" (ie, live television coverage of horse races) on certain Californian racetracks. The agreement contained recitals (i) that SFI, the licensor, was licensed by the Nevada Gaming Commission to disseminate horse-racing information; and (ii) that SFI had the right to distribute the coverage. Showboat duly received and utilised the coverage.

12.14.3 A Californian company, ITSI T.V. Productions, Inc, claims to own the copyright in the broadcast (and simulcast) of those races. It claims that the sale by SFI of the right to receive and utilise the coverage and the broadcast of the races breached its copyright. In an action to which Showboat was **not** a party, a first instance court in California has upheld its claim to own the copyright. An appeal is pending.

12.14.4 In the meantime, ITSI T.V. Productions, Inc. has commenced a second action for damages and an account of profits against 29 Nevada hotel/casinos, including Showboat, Inc. and Circus Circus (Appendix 3 to Exhibit 82 is the Complaint). The Nevada-based defendants have apparently taken objections to

jurisdiction (Exhibit 82, Appendices 4, 5 and 6), in consequence of which the second action has been stayed pending resolution of the liability issues in the first action (Exhibit 82, Appendix 5 is the order for a stay).

12.15 FINDING

12.15.1 I find that there is nothing in the incomplete copyright infringement litigation which impacts on the character, honesty or integrity of Showboat or upon its repute.

13. MATTERS FOR CONSIDERATION BY THE AUTHORITY

13.1 In light of my findings with respect to the repute of King, Vella and the Leightons Group, it is for the Authority to decide what effect, if any, those findings have upon:

13.1.1 The application of the Preferred Applicant (Sydney Harbour Casino Pty Limited) for the casino licence.

13.1.2 The holding of Leighton Properties Pty Limited of its 15% equity interest in the partnership between it and Showboat Australia Pty Limited in Sydney Casino Management Pty Limited.

13.1.3 The retention by Leighton Properties Pty Limited of its 4.95% interest in the share capital of Sydney Harbour Casino Holdings Limited,

13.1.4 The Leighton Group as the proposed builder and developer of the casino complex, and

13.2 The foregoing issues to be addressed by the Authority need to be considered solely from the viewpoint of the requirements of sections 11 and 12 of the Act. The application of the Preferred Applicant is complex and multi-faceted. The probity of its participants needs to be considered in that context. Of course, no person or company who relevantly fails probity in terms of

the management and operation of a casino can be permitted to be concerned in or associated therewith. Section 12(1) requires no less.

13.3 My findings with respect to King, Vella and the Leightons Group do not necessarily, although they may, require immediate rejection of the application as a whole. Whether they do or not may well depend on the licence being conditioned (or some other equivalent steps taken) to ensure that any party whose probity is found to be unacceptable is effectively excluded from being concerned in or associated with the management and operation of the casino itself. In particular, that party may be confined to no more than a business association with the applicant and its close associates which association does not adversely reflect upon the suitability of the applicant and its close associates to be concerned in or associated with the management and operation of the casino.

13.4 It would, however, be quite wrong to require my findings to be considered in terms of punishing King, Vella or the Leightons Group or otherwise imposing sanctions upon Showboat for having associated with them. To approach my findings in terms of rewards or punishments, as has been suggested by some, would be inconsistent with the true objectives of the Authority under the Act. Concepts of rewards and punishment in the present context are alien to the Authority's statutory duties under the Act.

13.5 Provided it properly performs those duties and the result conforms with the statutory objectives for which it is bound to strive, then the fact that that result may be perceived by some to be a reward or a punishment (depending on their point of view) would be irrelevant and misconceived.

APPENDIX 1

CASINO CONTROL AUTHORITY INQUIRY

LIST OF WITNESSES

Graham Alan Cubbin

Wallace Macarthur King

Vyril Vella

Micheal A Panos

Thomas Charles Bonner

Robert John Merkenhof

Keith Leslie Bennett

Harold Gregory Nasky

APPENDIX 2

CASINO CONTROL AUTHORITY INQUIRY

INDEX TO EXHIBITS

Exhibit

1. Submission Mr J H Henderson, undated.

lA. Further Submission of Mr J H Henderson, 8 September 1994.

2. Submission of NSW Opposition (refer separate volume).
Video of an interview by Geraldine Doogue on the ABC.

3. Letter from Mr Peter Kuner, Minter Ellison Morris Fletcher, to Mr Murray Tobias, QC.

4. Royal Commission into Productivity in the Building Industry, Volume 2.(see separate book)

5. Extracts of Transcript from Metroplaza Pty Limited v Girvan Bros NSW PtyLimited (In Liq) & Ors.

   -page 332
   -page 335
   -page 345
   -page 346 &
   -page 365

6. Copy of Further Amended Summons and a copy of Statement of Defence of third respondent filed 21 July 1993 in Metroplaza Pty Limited v Girvan NSW Pty Limited (In Liq).

7. Copy statement of Leon Dixon dated 17 June 1991.

   Letters from Leon Dixon to Casino Control Authority dated 27 October 1994 and 31 October 1994.

   Tender Summary Sheet prepared by Mr Dixon in respect to the Metroplaza Project.

8. Copy of Tender Summary of Girvan Bros (NSW) Pty Limited dated 1 July 1988.

9. Copy of minutes of meeting dated 21 October 1988.

10. (a) Copy of invoice from Girvan Bros (NSW) Pty Limited to Leighton Contractors Pty Limited dated 19 April 1989 (approximate date);

(b) Copy of cheque drawn by Girvan NSW Pty Limited in favour of Leighton Contractors Pty Limited dated 29 June 1989; and

(c) Extract from general ledger of Leighton Contractors Pty Limited.

11. Copies of invoices from Concrete Constructions (NSW) Pty Limited to Girvan NSW Pty Limited dated 1 May 1989, 31 August 1989 and 31 October 1989.

12. Copy of letter from Mr J W Twyford to Mr Vyril Vella, 23 April 1986.

13. Brief to Advise from Gilbert & Tobin to Mr J J Spigelman, QC and copy of Memorandum of Advice of Mr J J Spigelman, QC dated 16 August 1994.

14. Brief to Advise from Gilbert & Tobin to Mr R A Conti, QC and copy of Opinion of Mr R A Conti, QC dated 30 August 1994, Opinion of Mr R A Conti, QC dated 19 April 1991. Copy of Opinion of Mr R A Conti, QC dated 19 April 1991.

15. Media Releases by: Sydney Harbour Casino and Leighton Holdings Limited each dated 5 September 1994.

16. 1993 full Annual Reports to Securities Exchange Commission of Resorts International Inc and Showboat.

17. Executive Summary of and extracts from report of Police Investigation made between 1 January 1987 and 1 April 1987 of consortiums who tendered for the construction and operation of proposed casino at Darling Harbour, undated.

18. Report of Commission of Inquiry in the Bahamas, December 1984.

19. Videotape of 60 Minutes/CBN interview with Governor Edwin Edwards, undated.

20. Copy of Grand Jury Indictment against Carollo and others, filed 1994.

21. Article: Hofmeister, Sally, *"So Who Wants to Play Fair? "*, Venture, November 1987.

22. Bundle of US Press Clippings.

23. Compilation of extracts US Press Clippings titled *nShowboat in East Chicago.*

23A. Bundle of press clippings on which exhibit 23 was based.

24A. Notices issued pursuant to Section 15 of Casino Control Act - released to public. Responses to Notices issued pursuant to Section 15 of Casino Control Act - released to public (see separate volume).

24B. Notices issued pursuant to Section 15 of Casino Control Act.
Embargoed until the material raised confidentially by Mr Ellicott is lifted.
Responses to Notices issued pursuant to Section 15 of Casino Control Act - Embargoed until the material raised confidentially by Mr Ellicott is lifted (see separate volume).

25. Letter from Mr Mike Sloan, Circus Circus to Mr Gregg Nasky, Sydney Harbour Casino Pty Limited (14 September 1994)

26. Documents provided to the Royal Commission by Messrs Higgins, Vella and Merkenhof

27. Letter dated 27 June 1991 from Mr Neyhenhuys to Mr Higgins of Leighton Contractors, fax dated 11 July 1991 from Mr Merkenhof of Leighton Contractors to the Royal Commission and annexures to fax.

28. Statement of Mr Higgins to Royal Commission Officers dated 28 May 1991, plus attachments.

29. Statement by Mr V A Vella dated 9 March 1991.

30. Documents relating to 27 Leighton projects (see separate volume).

30A. Summary of Leighton Projects in exhibits 30 and 4 in which Mr Vella was involved prepared by Mr Allaway.

30B. Summary of Leighton Projects in exhibits 30 and 4 in which Mr Merkenhof and Mr Bennett were involved.

30C. List of Leighton Projects re Tenderers' Fees and Special Fees prepared by Mr Merkenhof to Royal Commission.

31. Section 15 notice and responses thereto by Sydney Harbour Casino Pty Limited.

32. Section 15 notice and responses thereto by Sydney Harbour Casino Holdings Limited.

33. Document entitled "People to be Interviewed re Showboat".

34. Summons and Order to Produce Documents number 786 issued by the Royal Commission to Leighton Contractors Pty Limited dated 22 April 1991, together with responses (see separate volume).

35. Summons and Order to Produce Documents number 1359 issued by the Royal Commission to Leighton Contractors Pty Limited dated 16 July 1991, together with responses (see separate volume).

36. Summons and Order to Produce Documents number 1569 issued by the Royal Commission to Leighton Contractors Pty Limited dated 26 July 1991, together with responses (see separate volume).

37. Lease Agreement between Resorts International Inc. and Ocean Showboat Inc. of 26 October 1983 (see separate volume).

38. Documents tendered by Mr Shand.

39. (See separate volumes)

Volume 1 Primary Documents - (Report by Attorney General, New Jersey (1986) re Licence Application under Examination and Opinion of the State of New Jersey Casino Control Commission

Volume II Transcript of hearing before New Jersey Casino Control Commission

Volume III Transcript of hearing before New Jersey Casino Control Commission

Volume IV Transcript of hearing before New Jersey Casino Control Commission

Volume V Transcript of hearing before New Jersey Casino Control Commission

Volume VI Exhibits Gl - G10

Volume VII Exhibits Gll - G26

Volume VIII Exhibits G27 - G29

Volume IX Exhibits G30 - G57

Volume X Exhibits G58 - G68

Volume XI Exhibits G69 - G 123

Volume XII Exhibits Dl - D4

Volume XIII Exhibits D6, D8, D9, D10, D68, D69, D70, D71, D87, D88

VolumeXIV Exhibits D7, D12, D12A, D65, D100, D101, D102, D104, D105, D108, D109

40. Royal Commission documents relating to William Service matter.

41A. Blue booklet - Code of Practice.

41B. Maroon booklet - Code of Practice.

41C. Orange booklet - Code of Practice.

42. Master Builders Association of New South Wales Code of Ethics and Philosophy.

43A. Leighton Group - reference - Fuji Xerox dated 31 August 1994.

43B. Leighton Group - reference - Darling Harbour Authority dated 2 September 1994.

43C. Leighton Group - reference - National Australia Bank dated 19 October 1994.

44. Statement of Claim and Application in *Trade Practices Commission v CC (New South Wales) Pty Ltd & Ors.*

45. Letter from Freehill Hollingdale & Page addressed to Clayton Utz dated 27 October 1994 and enclosing a Deed of Release and Deed of Indemnity in relation to the Metroplaza proceedings.

46. Statement of Mr Richard Francis Egerton-Warburton dated 21 September 1994.

47. Statement of Mr Sloan dated 14 October 1994.

48A. Tender Summary sheet prepared by Mr Dixon in respect to the Metroplaza Project.

48B. Tender Summary sheet prepared by Mr Rhind in respect to the News Ltd Chullora Project.

48C. Attachment to Tender Summary Sheet prepared by Mr Rhind in respect to the News Ltd Chullora Project.

49A. Statement of Mr Wallace MacArthur King.

49B. Embargoed part of the Statement of Wallace MacArthur King (Group Tendering Policy).

49C. Supplementary Statement of Wallace MacArthur King (2 volumes) (see separate volume).

50. Statement of Mr Vyril Vella (see separate volume).

51. Statement of Mr Robert John Merkenhof dated 29 October 1994.

52. Facsimile from Mr Cubbin to Minter Ellison Morris Fletcher dated 23 August 1994 including annexures (Exhibit 23).

53. Sydney Harbour Casino - Group Structure.

53A. Revised Sydney Harbour Casino - Group Structure (dated 27/10/94).

53B. Schematic Diagram showing relationship between the licensee, manager and partners to the Partnership Agreement.

53C. Revised Sydney Harbour Casino - Group Structure (dated 23/11/94)

54. Statement of Leighton Contractors' profits.

55. Statement of Graham Campbell dated 28 October 1994.

56. Statement of Brian Agnew dated 28 October 1994.

57. Statement of William Edwards dated 28 October 1994.

58. Statement of Lindsay Macallister dated 28 October 1994.

59. Statement of Tim Gammond dated 28 October 1994.

60. Statement of Richard Tween dated 28 October 1994.

61. Statement of George Bennett.

62. Letter from Rosenblum & Partners to LCPL dated 16 March 1992.
Letter from Maxam (LCPL) to Rosenblum & Partners dated 2 April 1992.

63. List of persons with access to embargoed exhibits.

64. Transcript of interview with Mr Vella by CCA OMcers dated 17 March 1994 (Confidential).

65. Transcript of interview of Louie Roussel III on 6 October 1994 with exhibits.

65A. Letter from Minter Ellison to Clayton Utz dated 30 September 1994 regarding questions to be put to Louie Roussel III.

65B. Folio of documents relating to companies identified in Exhibit 65A Question l.(see separate volume)

66. Letter from Mr Allaway to Mr Guste dated 13 October 1994; letter Mr Guste to Mr Allaway dated 28 October 1994; Affidavit of Louie Roussel III sworn 26 October 1994.

67. Showboat/Star Casino regulatory references:

A. Letter from Lieutenant Poullard to R L Harrex dated 22 July 1994.

B. Letter from Lietuenant Poullard to R L Harrex dated 30 September 1994.

68. Showboat regulatory references:

A. Letter from Michael E Sullivan to R L Harrex dated 28 February 1994.

B. Letter from Thomas N Auriemma to R L Harrex dated 19 October 1994.

C. Letter from Thomas N Auriemma to L G LeCompte dated 4 October 1994.

D. Letter from William A Bible to R L Harrex dated 29 April 1994.

E. Letter from William A Bible to R L Harrex dated 25 October 1994.

F. Letter from Bill Cullen to C S Curran dated 8 June 1994.

G. Resolution No 93-5-25 of the New Jersey Casino Control Commission.

69. Showboat references:

A. Letter from Steven Eisenberg to NSW Casino Control Authority dated
8 August 1994.

B. Letter from Richard E Squires to Kell Housells dated 29 August 1994.

C. Letter from Steven Ruggiero to NSW Casino Control Authority dated 29 August 1994.

D. Letter from Mark Manson to NSW Casino Control Authority dated 29 August 1994.

E. Letter from Frank Mah to NSW Casino Control Commission dated 30 August 1994.

F. Letter from Vincent J Giblin to Casino Control Authority dated 31 August 1994.

G. Letter from Bob Mille to NSW Casino Control Authority dated 31 August 1994.

H. Letter from Jan Laverty Jones to Casino Control Authority dated 31 August 1994.

I. Letter from William A Bible to John Brewer dated 2 September 1994.

J. Letter from James T Brennan to Showboat Casino dated 6 September 1994.

K. Letter from Ronald Rheaume to NSW Casino Control Authority dated
6 September 1994.

L. Letter from Robert Polisano to NSW Casino Control Authority dated 6 September 1994.

M. Letter from T Newton Ward to NSW Casino Control Authority dated 6 September 1994.

N. Letter from Regis Gangham to NSW Casino Control Authority dated 7 September 1994.

O. Letter from Stephen Labau to NSW Casino Control Authority dated 7 September 1994.

P. Letter from Thomas J McAdam to NSW Casino Control Authority dated 8 September 1994.

Q. Letter from Jerrold L Jacobs to NSW Casino Control Authority dated 12 September 1994.

70. Statutory declaration of Vicki Sanderson sworn 21 September 1994.

71. Transcript of interview with Mr King by CCA Officers on 16 March 1994.

72. Casino Control Authority media release dated 24 January 1994 and extract from ASC Notification of Change to Office Holders re Keith Bennett ceasing to hold office at Leighton Holdings Limited.

Extract from Resolution of Board of Directors of Leighton Holdings Limited dated 25 January 1994 re resignation of Keith Bennett.

73. Statement of Thomas C Bonner (see separate volume).

74. Overview of Indiana Riverboat Gambling regulatory system prepared by US Attorneys for Showboat.

75. The Landlord Tenant Relationship between Showboat Inc and Resorts International Inc (see 2 separate volumes).

76. Statement of Mr Michael Panos dated 7 November 1994.

77. Letter from Mr Sloan, Circus Circus to Ron Harrex, Casino Surveillance dated
7 November 1994.

78. Transcript of interview with Mr Bonner by CCA Task Force dated 10 October
l994

79. Statement of Greg Nasky.

80. Transcript Nevada Gaming Commission 24 and 25 October 1990 re Showboat
Sports book.

81. Comparison of Land Based Casino Regulatory System of Louisiana and New
Jersey.

82. Status of ITSI litigation.

83. Comparison of Regulatory Systems of Louisiana Riverboat Casino and New Jersey Casinos (see separate volume).

84. Page 435 of an unofficial transcript of Mr Vella's evidence.

85. Document headed "Summary of [Leighton] Tenders Submitted and Work Won"prepared by Mr Merkenhof.

86. Four statutory declarations entered into by Leighton Contractors with the Commonwealth of Australia and the Public Works Department of New South Wales.

87. Memorandum dated 23/4/91 re Agenda for LCPL Board.

88. Joint opinion of J D Heydon and C P Comans of Counsel dated 20/9/94.

89. Letter from KPMG to L Le Compte, CCA dated 8/11/94.

90. Two letters (dated 17/11/94) from Leighton Holdings Ltd to Casino Control Authority.

91. Statement of Ashley John Moir dated 16/1 l/94 **(WITHDRAWN).**

92. Memorandum of Advice from D H Bloom QC and Mr N J Williams dated 15/11/94.

92A. Supplemental Memorandum of Advice of Mr Bloom QC.

93. Letter to Sydney Morning Herald dated 3 November 1994 headed "Don't Include Us" by Edward Last, Austin Australia.

94. Extracts from Leightons Tendering Philosophy from the period 1987 - 1994 (only available to Mr Tobias, Counsel for Leightons and Counsel Assisting).

95. Document prepared by Mr Harrex to the Casino Control Authority dated 16 November 1994 re Resorts International - Current New Jersey Casino Licence.

96. Memo from Mira Zdrilic to Richard Travers dated 21 November 1994 and article from Louisiana Register dated 20 March 1993 re Certificates for Approval for Gaming in Louisiana.

97. Media release of the Casino Control **Authority dated** 18 May 1994.

98. Opinion of A H Slater QC dated 22 November 1994.

99. Letter from A Blaikie, Clayton Utz to Mr Le Compte, Casino Control Authority dated 24 November 1994.

100. Outline of DCL Submissions.

101. DCL Submission re Leightons (see separate volume).

102. DCL Submission re Showboat (see separate volume).

102A. DCL Submission re Showboat - Nasky Creditability (Transcript) (see separate volume).

103. DCL Submission re Resorts (see separate volume).

104. Outline of Showboat's Submissions.

105. Outline of Leighton's Submissions.

APPENDIX 3

CASINO CONTROL AUTHORITY INQUIRY

INDEX TO CONFIDENTIAL/EMBARGOED DOCUMENTS

FOLLOWING THE HEARING ON 28 NOVEMBER 1994

EX No.	DESCRIPTION	AVAILABLE TO DCL'S LAWYERS
16.	Full Annual Reports of Securities and Exchange Commission of Showboat and Resorts International.	**?**
17.	Executive Summary of and extracts from report of Police Investigation made between 1 January 1987 and 1 April 1987 of consortiums who tendered for the construction and operation of proposed casino at Darling Harbour, undated.	**YES**
24A.	Section 15 responses	**NO**
	SHC attached document	**YES**
	King (2 responses)	**YES**
	Trundle	**YES**
	Albrecht	**YES**
	Powers - answers 11-14	**YES**
	Gonski - 4 October notice - answers 11- 14	**YES**
	Boyd - answers 9-12	**YES**
	Packer - answers 3-4	**YES**
24B.	Section 15 responses. Embargoed until the material raised confidentially by Mr Ellicott is lifted.	**YES**
27.	Letter dated 27 June 1991 from Mr Neyhenhuys to Mr Higgins of Leighton Contractors, fax dated 11 July 1991 from Mr Merkenhof of Leighton Contractors to the Royal Commission and annexures to fax	**NO**
28.	Statement of Mr Higgins to Royal Commission Officers dated 28 May 1991, plus attachments.	**YES**
30.	Documents relating to 27 Leighton projects	**YES**

EX No.	DESCRIPTION	AVAILABLE TO DCL'S LAWYERS
34.	Summons and Order to Produce Documents number 786 issued by the Royal Commission to Leighton Contractors Pty Limited dated 22 April 1991, together with responses.	**YES**
35.	Summons and Order to Produce Documents number 1359 issued by the Royal Commission to Leighton Contractors Pty Limited dated 16 July 1991, together with responses.	**YES**
36.	Summons and Order to Produce Documents number 1569 issued by the Royal Commission to Leighton Contractors Pty Limited dated 26 July 1991, together with responses.	**YES**
38.	Documents tendered confidentially by Mr Shand.	**YES**
40.	Royal Commission documents relating to Service.	**YES**
43C.	Leighton Group - reference - National Australia Bank dated 19 October 1994.	**NO**
45.	Letter from Freehill Hollingdale & Page addressed to Clayton Utz dated 27 October 1994 and enclosing a Deed of Release and Deed of Indemnity in relation to the Metroplaza proceedings.	**NO**
48C.	Attachment to Tender Summary Sheet prepared by Mr Rhind in respect to the News Ltd Chullora Project headed "Profit and Overheads".	**YES**
49B.	Group Tendering Policy.	**YES**
50.	Annexures 2,3,4,5 & 10 Statement of V Vella.	**YES**
64.	Transcript of interview with Mr Vella by CCA officers dated 17 March 1994.	**YES**
94.	Extracts from Leightons Tendering Philosophy from the period 1987 - 1994 (only available to Mr Tobias, Counsel for Leightons and Counsel Assisting)	**NO**
101.	DCL Submission re Leightons	**YES**
103.	DCL Submission re Resorts (Part E)	**YES**

APPENDIX 4

CASINO CONTROL AUTHORITY INQUIRY:

TRANSCRIPT OF PROCEEDINGS

INDEX

20.	Transcript of Proceedings (Nasky)	18/11/94
21.	Transcript of Proceedings (Bennett/Nasky)	21/11/94
22.	Transcript of Proceedings (Nasky)	22/11/94
23.	Transcript of Proceedings (DCL's Closing Submission)	24/11/94
24.	Transcript of Proceedings (Showboat's Closing Submissions)	25/11/94
25.	Transcript of Proceedings (Leighton's Closing Submissions/Counsel Assisting's Closing Submissions)	28/11/94