

**SUPREME COURT OF QUEENSLAND**

REGISTRY: Brisbane  
NUMBER: S 3125 of 2001

In the matter of Roadships Limited [ACN 090 772 151]

Applicant: **ROADSHIPS LIMITED [ACN 090 772 151]**

AND

First Respondent: **AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION**

**AFFIDAVIT**

I, **MICHEAL PETER NUGENT** of 64 Christina Ryan Way, Arundel, Queensland,  
Company Director, state on oath :


1. I have at all times since 2<sup>nd</sup> December 1999 and with best efforts and intentions, complied with the Corporations Law, the ASC Law and the Australian Securities and Investments Commissions Act 2001 albeit in certain circumstances this has involved a complete 180 degree turnaround.
2. I have at no time demonstrated an intent to defraud any person, company or entity associated with Roadships Limited.


*Injunctions – 5<sup>th</sup> April 2001*

3. I refer to the Ex-parte injunctions of the 5<sup>th</sup> April 2001 and I do verily believe that the Supreme Court of Queensland, the Honourable Mr. Justice Muir residing, was intentionally and deliberately allowed to draw the inference that no disclosure document existed or had been lodged to the ASIC.

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SHEET 1

  
Deponent

  
Justice of the Peace

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**AFFIDAVIT** of Micheal Peter Nugent

4. On the 28<sup>th</sup> February 2002, I obtained a copy of the Transcript of Proceedings from the State Reporting Bureau and refer to Page 2 Paragraph 40 of this transcript which reads:-

HIS HONOUR: And what is the disclosure that's required under this part?

MR CONRICK: Under section 706, your Honour, or 702, I'm sorry, I think it is, has the.....

HIS HONOUR: I've got your Act.

MR CONRICK: You have, your Honour has my Act.

HIS HONOUR: Mmm.

MR CONRICK: There has to be, depending upon the scale of the offer, either a prospectus, a short form prospectus, some other document which escapes me or an offer information statement.....

HIS HONOUR: I see, so there's a full disclosure, a short form prospectus, a profile statement, and anyway, there's the material disposed of – none of that's happened.

MR CONRICK: And the material discloses that no document has – has been....

HIS HONOUR: All right.

MR CONRICK: ...accepted.

HIS HONOUR: Now what steps were – why – why aren't these respondents being served?


MR CONRICK: Your Honour, the basis on which this application is being brought ex parte is that there is a fear that if notified, the funds which are presently in the bank accounts will be dissipated.

HIS HONOUR: What's the basis of that fear?

MR CONRICK: Your Honour, the basis of that fear is that there is really a smell of fraud about these activities.

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Deponent

  
Justice of the Peace

5. Exhibit "MP-1" to this affidavit is a copy of the Transcript of Proceedings No. 3125 of 2001.
6. On the 19<sup>th</sup> December 2000, Mr. Tony McDiarmid, Company Secretary, attended the office of the ASIC at the Gold Coast and lodged an Offer Information Statement which was accepted over the counter, date stamped and forwarded to the Brisbane office of the ASIC and then vetted. I refer to exhibit "FA-27" of the affidavit of Frances Clare Anderson sworn the 5<sup>th</sup> April 2001.
7. On the 3<sup>rd</sup> January 2001, I received notice under Sections 30 and 33 of the ASIC Law for the production of books. The notices made no reference to the Offer Information Statement and stated, "*the notice should not be construed as an indication by ASIC that a contravention of the law has occurred, nor should it be considered a reflection upon any person or entity.*" I refer to exhibit "FA-1" of the affidavit of Frances Clare Anderson sworn the 5<sup>th</sup> April 2001.
8. On the 15<sup>th</sup> January 2001, a Mr. Ian Proctor and Ms. Andrea Osborne visited our offices in Biggera Waters and collected material under ASC Seal No. B00013507 including our Offer Information Statement with the date 19<sup>th</sup> December 2000. This is also listed in the affidavit of Frances Clare Anderson in paragraph 9 section (e). At the time I asked Mr. Proctor who I had previously met, "what is this about and what can I do to help?". Mr. Proctor replied, "it is a simple investigation. Just give us what you can." I refer to exhibit "FA-28" of the affidavit of Frances Clare Anderson sworn 5<sup>th</sup> April 2001.
9. Exhibit "MP-2" to this affidavit is a copy of Activity Number: 29486/00.
10. I refer to exhibit "FA-2" of the affidavit of Frances Clare Anderson sworn 5<sup>th</sup> April 2001 which further acknowledges that the ASIC was in the possession of an Offer Information Statement lodged in December 2000.

I telephoned Frances Anderson and confirmed that we would assist them with any further material upon their planned visit the next day. I again telephoned Frances Anderson a half hour later and asked her what she expected of us the next day and what could I have prepared for her. Her reply was words to the effect that:-

*"just give us whatever you can. This is a scam. These ships won't work."*

This contradicts the role of ASIC as described in a transcript of a speech on October 2001 by Gillian Segal, Deputy Chair, ASIC in which it states in part:-

*"It is not ASIC's role to evaluate the "merits" of a particular company's business plan or investment scheme."*

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SHEET 3

  
Deponent

  
Justice of the Peace

I refer to paragraph 3 (i) of the affidavit of Frances Clare Anderson sworn 20 March 2002 which in part states:-

*“...I specifically deny the following allegations:-*

- (i) *That I had any telephone conversation with Micheal Nugent on 20 February 2001 or otherwise in relation to the Offer Information Statement attempted to be lodged with ASIC by Roadships on 18 December 2001.*

On the 8<sup>th</sup> March 2002, I confirmed with Telstra the existence of these telephone calls.

I refer to “FA-23” of the affidavit of Frances Clare Anderson which contains in part:-

*“How much is transported b/w East Coast & WA?. How much more efficient would it be, how much \$\$ would be saved?”*


11. Exhibit “MP-3” to this affidavit is a copy of this statement.
12. Exhibit “MP-4” to this affidavit is a copy of the diary note and telephone records.
13. On the 21<sup>st</sup> February 2001, Frances Clare Anderson and Kerry Law attended our offices in Biggera Waters and collected more material. In providing this material, I asked Frances Anderson again with words to the effect, “*what can I provide to help your investigation?*” to which she replied with words to the effect, “*just give us everything.*” My response to this was, “*well we are here in the office and everything is here. If you can give me some sort of idea of what you are looking for, we can take care of it now.*” Frances Anderson again replied, “*just give us everything.*” I replied, “*well, back the truck up and we’ll start loading.*” Frances Anderson replied, “*we don’t do that.*”


At that point I removed bundles of files from a shelf and handed them to Kerry Law. Included in these files were share applications for the amount of \$110,000 from Vaughn Henry and his friends which we had refused to accept. At the meeting, I asked Frances Anderson why she thought the ships would not work in reference to her comment of the previous day. Her reply to this was words to the effect:-

*“I would not have said that.”*

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Deponent

  
Justice of the Peace

14. Exhibit "MP-5" to this affidavit is a copy of Activity Number 1970/01.
15. Exhibit "MP-6" to this affidavit is a copy of Valuation of Roadships provided to ASIC on the 21<sup>st</sup> February 2001.
16. On the 22<sup>nd</sup> February 2001, I received by facsimile a letter from Frances Anderson seeking additional bank statements which could not be provided as the dates requested were prior to the opening of these accounts.
17. Exhibit "MP-7" to this affidavit is a copy of facsimile dated 22<sup>nd</sup> February 2001.
18. On the 26<sup>th</sup> February 2001, I received by facsimile a letter from Frances Anderson seeking further files which were delivered to the ASIC on the 27<sup>th</sup> February 2001. Whilst I provided these files, I had no knowledge of the content as they were from a third party.
19. Exhibit "MP-8" to this affidavit is a copy of facsimile dated 26<sup>th</sup> February 2001.
20. On the 6<sup>th</sup> April 2001, I received notification of the orders granted ex-parte to the ASIC in the Supreme Court of Queensland on the 5<sup>th</sup> April 2001. I sent a facsimile to Frances Anderson explaining the position that this put our operations in. I then telephoned ASIC and spoke with Kerry Law . I asked her if she had received my facsimile and her reply was, "*we don't care.*" I refer to "FA-3" of the affidavit of Frances Clare Anderson sworn 8<sup>th</sup> April 2002.
21. Exhibit "MP-9" to this affidavit is a copy of facsimile dated 6<sup>th</sup> April 2001.
22. On the 21<sup>st</sup> March 2002, I was served an Interlocutory Application set down for the 11<sup>th</sup> April 2002 in the Supreme Court Brisbane. Since that time, many shareholders have sent letters to the Company.
23. Exhibit "MP-10" to this affidavit is 90 copies of letters from shareholders.
24. On the 10<sup>th</sup> April 2002, I accessed the ASIC database and downloaded a copy of the documents lodged with ASIC.
25. Exhibit "MP-11" to this affidavit is a copy of this document.
26. On the 2<sup>nd</sup> April 2002, I was contacted by David Abrahams, a shareholder, who had raised the matter with Steven Ciobo's office (Federal Member of Parliament) and he requested that I make contact with a lawyer named Mark on 5591 1011. I did so and he informed me that he had been in contact with Greg Tanze, the Regional Commissioner for ASIC. Greg Tanze had relayed to him words to the effect:-

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Justice of the Peace


*"I am aware of the situation with Roadships but to the best of my knowledge, no offer document exists and I am not aware that one was lodged."*


### **Restraining Orders**

27. I was managing Roadships Transport Pty. Ltd. subject to the orders set down on the 9<sup>th</sup> April 2001, Section 1 (f), *provided nothing in this injunction shall restrain the use of the assets referred to in paragraph 19 of the Affidavit of Michael Peter Nugent filed herein within Australia for the transport of goods pursuant to contracts for the carriage of goods entered into or to be entered into by Roadships Ltd. or Roadships Transport Pty. Ltd.*
28. Exhibit "MP-12" to this affidavit is a copy Court Orders 9<sup>th</sup> April 2001.
29. On the 16<sup>th</sup> May 2001, I received a letter from Frances Anderson via Thynne & MaCartney which alleged a breach of the Court Orders 9<sup>th</sup> April 2001 with respect to purported conversations between Roadships Ltd. shareholders and the ASIC. Since receiving this letter, no correspondence has been sent to shareholders until a letter which was drafted on 2<sup>nd</sup> April 2002 and posted on Friday 5<sup>th</sup> April 2002.
30. Exhibit "MP-13" to this affidavit is a copy of the letter dated 16<sup>th</sup> May 2001 and a receipt for postage 5<sup>th</sup> April 2002.
31. On the 9<sup>th</sup> July 2001, I was served with notices for Roadships Ltd. and Roadships Transport Pty. Ltd. for the production of documents of not less than 33 different items that may indicate, assist or determine the current financial position of each company.
32. Exhibit "MP-14" to this affidavit is a copy of the notices served 9<sup>th</sup> July 2001.
33. On the 12<sup>th</sup> July 2001, Thynne & MaCartney being our legal counsel, contacted Mr. John Tracy of the Queensland Law Society and questioned the legal ethics of Frances Anderson.
34. Exhibit "MP-15" to this affidavit is a copy of letter dated 12<sup>th</sup> July 2001 to the Queensland Law Society.
35. After communication between Thynne & MaCartney, the ASIC and the Queensland Law Society, I required an extension of time due to a staffing issue in Adelaide.
36. Exhibit "MP-16" to this affidavit is copies of letters; Thynne & MaCartney & ASIC.

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Deponent

  
Justice of the Peace


37. On the 23<sup>rd</sup> July 2001, I attended the offices of ASIC and delivered in ring binders audit trails, bank statements, share registry updates and financial statements. I was accompanied by Roseanne Wilson of Thynne & MaCartney.
38. Exhibit "MP-17" to this affidavit is a copies of Reference Number B00051282 and Reference Number B00051283.
39. On the 25<sup>th</sup> July 2001, I received a letter for the production of more material due to the fact that most of the requested material related to transaction prior to the 30<sup>th</sup> June 2000 which was at the accountants, Cooper Reeves.
40. Exhibit "MP-18" to this affidavit is a copy of the letter dated 25<sup>th</sup> July 2001.
41. On the 23<sup>rd</sup> August 2001, I picked up from Cooper Reeves the documents in question and delivered them to the offices of ASIC.
42. Exhibit "MP-19" to this affidavit is a copy of Reference Number B00051406.
43. On the 27<sup>th</sup> August 2001, I was served notice requiring appearance at an examination or reasonable assistance in connection with an investigation.
44. Exhibit "MP-20" to this affidavit is a copy of notices dated 27<sup>th</sup> August 2001.
45. On the 4<sup>th</sup> September 2001, Thynne & MaCartney issued a letter to ASIC raising the question of abuse of power in s.19 and a refusal to provide procedural fairness.
46. Exhibit "MP-21" to this affidavit is a copy of letter dated 4<sup>th</sup> September 2001.
47. On the 5<sup>th</sup> September 2001, I received by way of facsimile a letter from Jan Speirs, Assistant Director Enforcement North East with ASIC, to Thynne & MaCartney which states in part:-


*"In contrast, ASIC has not concluded its investigation into the activities of Roadships and its officers as specified in the abovementioned Notice. Whilst the Notice to Produce dated 3 January 2001 was issued pursuant to section 28 of the ASIC Act 2001, the present formal investigation commenced pursuant to section 13 of the ASIC Act 2001 on 28 March 2001.*

*I am not obliged to provide you with further details of the investigation but can confirm that ASIC is investigating other issues which are not directly related to the current civil proceedings."*

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Justice of the Peace

48. Exhibit "MP-22" to this affidavit is a copy of the letter dated 5<sup>th</sup> September 2001.
49. On the 6<sup>th</sup> September 2001, Thynne & MaCartney replied. This letter states in part:-

*"Our client essentially capitulated for the sole purpose of saving the available funds in order to reach a settlement with the ASIC and the shareholders, which would enable our client to restructure the company and proceed with a disclosed fund raising.*

*The ASIC's actions, however, are causing Mr. Nugent to expend further funds on legal fees and, if the ASIC persists, our client will have to apply to the Court to allow it to spend some of the preserved funds in our client's defence."*


50. Exhibit "MP-23" to this affidavit is a copy of the letter dated 6<sup>th</sup> September 2001.
51. On the 7<sup>th</sup> September 2001, Thynne & MaCartney received a letter by facsimile transmission from Kerry Law for Frances Anderson, ASIC, which states in part:-


*"Your client is of course free to apply to the Court for release of the funds frozen in the accoutns pursuant to paragraph 1(e) of the Order dated 9 April 2001. ASIC will resist any such application including the ground that as a result of the terms of paragraph 1(f) of that Order, Mr. Nugent derives income from his activities as a director of Roadships Transport Pty. Ltd."*

52. Exhibit "MP-24" to this affidavit is a copy of the letter dated 7<sup>th</sup> September 2001.
53. On the 10<sup>th</sup> September 2001, I attended the offices of ASIC with Mr. Ross Kilmurray of Thynne & MaCartney for the purpose of examination. The examination commenced at 9:30a.m. and was adjourned at 5:30 p.m. and has never been reconvened. In the course of this examination I questioned Frances Anderson with respect to the Offer Information Statement lodged with the Gold Coast Office of ASIC on 19<sup>th</sup> December 2000. Frances Anderson confirmed with me that the document had been lodged and was then transferred to Brisbane. I asked Frances Anderson if she made the markings on the document and she replied with words to the effect "No and you don't need to know who did." During the examination, a copy of the Valuation of Roadships was identified as being in their possession, however, I cannot recall when this document was delivered to them. At 5:30 p.m., I requested to take the examinees copy of one of the folders prepared by the ASIC used for reference during the examination. Frances Anderson approved the release of the folder. The folder consists of a lead sheet and is followed by an index entitled **Financial Records – Roadships**. Referring to section J of this index, Cooper Reeves letter dated 28/5/01 B00012561 and accompanying Profit & Loss Statement and Balance Sheet RL (pagination nos 30 and 31) In section J of the accompanying

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documents, the letter of Cooper Reeves is dated 28<sup>th</sup> May 2001 and was the cover letter that was previously attached to the engagement proposal which was delivered to ASIC on 23<sup>rd</sup> August 2001. The Profit & Loss Statement and Balance Sheet that is stapled to the letter of Cooper Reeves is a print out from the in-house MYOB accounting program printed on the 30/7/01 at 11:25:54 a.m. and 11:24:30 a.m. For the purpose of copying this document I have removed the staple and the plastic alphabetical index dividers.

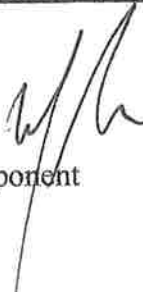
54. Exhibit "MP-25" to this affidavit is a copy of the index and Section J extracted from the examinees copy of the ASIC file.
55. On the 2<sup>nd</sup> October 2001 at 1:00 a.m., I received a telephone call from Norman Nixon, the principal of Freedom Ship Inc. of Sarasota Florida. He said words to the effect, "*what are you doing down there. We've been contacted by a lady in the Government that says you've been raising money and selling shares on our project.*" I then explained to him that it was an investigation into the activities of Roadships Ltd. and that I had not acted with any impropriety towards his project. He said that he would furnish me with a copy of the e-mail sent to Freedom Ship in an open forum by Frances Anderson of the ASIC. He told me that he would contact Frances Anderson that day and discuss the matter with her.
56. Exhibit "MP-26" to this affidavit is a copy of the e-mail from Norman Nixon dated 2<sup>nd</sup> October 2001.
57. On the 3<sup>rd</sup> October 2001, I accessed the Freedom Ship website and found that my name and contact details had been removed and were replaced with the details of Capricorn Ltd., a New Zealand company. On the same day, Norman Nixon left a message on my Messagebank informing me that he had spoken to Frances Anderson and she said words to the effect, "*to her knowledge you're not guilty of anything.*" I taped this message and I am still in the possession of this tape. To this day, I have not been reinstated as the Freedom Ship Australian Representative. My involvement with Freedom Ship Inc. commenced in April 1998 with the support of the South Australian Government. In a letter from the Honourable John Olsen, Premier of South Australia, he states:-


*"Your attempt to secure this construction activity for South Australia is commendable..."*

58. Exhibit "MP-27" to this affidavit is a copy of transcript of recorded message from Norman Nixon and a copy of a letter from the Honourable John Olsen, Premier of South Australia.

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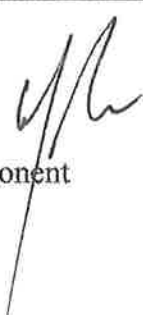
  
Deponent


  
Justice of the Peace

59. On the 16<sup>th</sup> October 2001, I attended the offices of ASIC and met with Kerry Law. I gave her more documents which included account of expenditure , profit and loss statements, balance sheets, schedule of equipment and assorted other documents. I showed Kerry Law in lever arch files all of the source documents relating to expenditure for both Roadships Ltd. and Roadships Transport Pty. Ltd. and it was agreed by both parties to take them immediately to Cooper Reeves Accountants to be finalised and then to be audited by an independent auditor. I also requested a file of source documents already in their possession so as to forward these documents to the auditor. I still to this date have not received this file. I had in my possession but do not now have the records of the letter of engagement of Cooper Reeves Accountants as this letter has been provided to ASIC under Reference Number B00051406. The independent auditors of Williams Partners consent to act as an auditor was confirmed on the 3<sup>rd</sup> December 2001.
60. Exhibit "MP-28" to this affidavit is a copy of consent to act as auditor dated 3<sup>rd</sup> December 2001 and.
61. On the 7<sup>th</sup> November 2001, I received a telephone call from Mr. Oliver Douglas of Equity Alliance Finance Pty. Ltd. informing me that Frances Anderson of ASIC had contacted him in relation to the business activities of Roadships Transport Pty. Ltd. On the 8<sup>th</sup> November 2001, Oliver Douglas forwarded to me copies of notices served on him by ASIC for the production of material.
62. Exhibit "MP-29" to this affidavit is a copy of notices served on Oliver Douglas on the 8<sup>th</sup> November 2001.
63. On the 9<sup>th</sup> November 2001, I received a letter from Frances Anderson via Thynne & MaCartney in which she states, "*in my view Mr. Nugent has not produced all the necessary material.*" In this letter Frances Anderson requests another copy of the Valuation of Roadships prepared by Gatsi Trading Pty. Ltd.(Jim Boyd) when it was clearly identified during the examination of 10<sup>th</sup> September 2001 that ASIC had a copy of this document already in their possession under the cover of the receipt of 21<sup>st</sup> February 2001. This document was further identified under point six of the same letter having been delivered with the documents supplied on the 16<sup>th</sup> October 2001.
64. Exhibit "MP-30" to this affidavit is a copy of the letter dated 9<sup>th</sup> November 2001.
65. On the 13<sup>th</sup> November 2001, I received telephone calls from Colin Walters and Les Tucker being the directors of Success Freightlines Pty. Ltd. informing me that Frances Anderson of the ASIC had contacted them and threatened to serve notice on them in relation to Roadships Transport Pty. Ltd. While they were aware of my pending ASIC investigation as disclosed upon the commencement of our business relationship, they

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confirmed with me that this contact made them uneasy and they asked me, "do we need a lawyer for this?" On the same day, I further received a telephone call from Anthony Vallelonga being a director of Valtrans Pty. Ltd. and he informed me that Frances Anderson had contacted his office in Berri, South Australia, and threatened to serve notice in relation to Roadships Transport Pty. Ltd.


I was at the offices of Cubic Freighters Pty. Ltd. at 1435 Boundary Road, Wacol, when I received the above telephone calls. I attended the office of Michael Duniam, the director of Cubic Freighters Pty. Ltd., and he said words to the affect, "I've just had a phone call from Frances Anderson of the ASIC and she told me to go stand by the fax machine and wait for notices that she was about to serve." in relation to Roadships Transport Pty. Ltd. He also informed me that he was getting a lot of pressure applied on himself from Bradley Vincent Hellen of Calabro Partners and Andrew Fielding of Fielding & Associates to supply them with information and documents relating to Roadships Transport Pty. Ltd.

I returned to my office and telephoned Andrew Fielding of Fielding & Associates and I asked him, "I believe you have had contact from the ASIC." to which Andrew Fielding replied, "Oh yeah. Some how they got our number and just rang to find out what we were doing with Cubic and we just advised them of that and that's where we left it." I then asked him, "Was it a phone call for Cubic or a phone call for Micheal Nugent, Roadships?" Andrew Fielding answered, "Um, well it was a phone call on Cubic on the basis that I believe Cubic's tied up somewhere with um, there must be something in their records um tying Cubic up to Roadships because it was certainly re Roadships as to what's going on that the call was made..." The telephone conversation was taped and I am still in possession of this tape.

66. Exhibit "MP-31" to this affidavit is a copy of the transcript of the taped conversation.
67. On the 6<sup>th</sup> February 2002 at 9:51 a.m., I telephoned Kerry Law of ASIC and requested a meeting with the intentions of opening negotiations with the prospect of a settlement. Ten minutes later Kerry Law telephoned me on my mobile (0417 816 870) and a meeting was set down for the 7<sup>th</sup> February 2002 in the offices of ASIC.
68. Exhibit "MP-32" to this affidavit is a copy of the telephone record of the 6<sup>th</sup> February 2002.
69. On the 7<sup>th</sup> February 2002, I met with Kerry Law and Frances Anderson of ASIC. This meeting was taped by Kerry Law, however, I am not in possession of a copy of the tape or the transcripts of the tape. Amongst other things, I suggested the lodgement of an amended disclosure document which offered people who subscribed to the earlier offer the right to withdraw from the offer or receive a refund. In addition to this, I proposed the appointment of an experienced board. I was told by Frances Anderson

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SHEET 11

  
Deponent

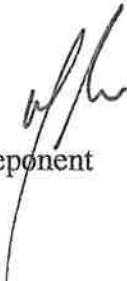
  
Justice of the Peace


words to the affect, *"The law would not allow you to put that in a document."* and *"none of the directors that you have proposed would be considered as independent directors and we would require independent directors"* and *"Roadships will never get a prospectus approved by ASIC"*.

70. On the 1<sup>st</sup> March 2002, I perused the ASIC website as I regularly do and came upon the media release dated 25<sup>th</sup> February 2002 of Nugget Resources Australia Ltd. In paragraph 4 it states, *"Under the Corporations Act a company is required to offer people who subscribe to an earlier offer, a right to withdraw from the offer or receive a refund. Nugget Resources failed to offer these options"*. I found this to be a contradiction to the statement made by Frances Anderson.
71. Exhibit **"MP-33"** to this affidavit is a copy of the media release by ASIC dated 25<sup>th</sup> February 2002.
72. On the 1<sup>st</sup> March 2002, I received a telephone call from Kerry Law urging me to agree to a previously canvassed proposed settlement of Frances Anderson. I informed her that this was not acceptable and she said words to the effect, *"o.k. Well, think about it and we will be here until 5:00 p.m. today."* I then received a message on Messagebank on my mobile telephone requesting me to call Ken Bull of the ASIC. I telephoned Ken Bull and he inquired as to whether he could confer with my legal counsel. I informed him that he could not at this time, however, he could speak to me. He said words to the affect, *"You have the proposed settlement from Frances Anderson and that is our offer."* I replied, *"I might as well jump off a cliff."* to which he replied, *"Then we will man the Bastille."*
73. I refer to exhibit **"FA-4"** of the affidavit of Frances Clare Anderson sworn 20<sup>th</sup> March 2002 proposing that both parties comply with the Orders of the 9<sup>th</sup> April 2001 using different dates of similar timeframes. This letter states in part:-
- "If you are in agreement with proceeding in this manner, please advise by close of business this Friday, 8 March 2002. If I do not hear from you by that date, ASIC will list this matter for a Directions Hearing as soon as possible thereafter."*
74. On the 16<sup>th</sup> March 2002, I contacted the Australian Federal Police and after a conversation with Mr. Alan Longmore, I forwarded to him by way of facsimile a formal complaint.
75. Exhibit **"MP-34"** to this affidavit is a copy of the letter dated 16<sup>th</sup> March 2002.

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Deponent

  
Justice of the Peace

76. On the 18<sup>th</sup> March 2002, I telephoned Mr. Alan Longmore to enquire as to whether he had received the material. He informed me that he had created and would maintain a file on the matter, however, as the matter was before the Courts, the Australian Federal Police would not intervene until the Court action had been finalised. A letter of response was received by mail.
77. Exhibit "MP-35" to this affidavit is a copy of the letter received from the Australian Federal Police dated 18<sup>th</sup> March 2002.
78. On the 21<sup>st</sup> March 2002, I was served an interlocutory application filed in the Supreme Court of Queensland on the 20<sup>th</sup> March 2002. This application is seeking orders from the Court to appoint Andrew Fielding of Fielding & Associates, Level 3, 31 Sherwood Road, Toowong, Queensland as Receiver and Manager to the property of Roadships Ltd., the Receiver having the following powers:-
- 3 (b) (i) *to enter into possession and take control of all property both real and personal and choices in action of the first respondent*
  - (ii) *to take possession of all books and records of the first respondent, including (but not limited to) all books and records delivered up to ASIC by the first respondent pursuant to notices issued to it by ASIC pursuant to sections 30 and 33 of the ASIC Act.*
  - (iii) *to deal with any monies held by, or on behalf of first respondent, being monies received from, in relation to, or employed in the operation of, the issue/sale of shares in the first respondent.*
79. On the 23<sup>rd</sup> March 2002, I again sent a letter to Mr. Alan Longmore of the Australian Federal Police bringing to his attention that there is a real possibility that the ASIC has conspired against myself and my Company. In this letter I state, "*Ms. Anderson is applying to the Courts to get Andrew Fielding specifically appointed when she has full knowledge that a conflict of interest exists.*" Mr. Longmore further informed me that the position of the Australian Federal Police remained the same, however, he recommended that I contact and forward the information to the Queensland Major Fraud Squad. He then relayed to me their contact details as such; telephone (07) 3364 6549 and fax (07) 3364 4120.
80. Exhibit "MP-36" to this affidavit is a copy of the letter dated 23<sup>rd</sup> March 2002.
81. On the 23<sup>rd</sup> March 2002, I sent a letter to Thynne & McCartney inquiring as to our alleged non-compliance with the Orders of 9<sup>th</sup> April 2001.
82. Exhibit "MP-37" to this affidavit is a copy of the letter 23<sup>rd</sup> March 2002.

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SHEET 13

  
Deponent

  
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83. On the 26<sup>th</sup> March 2002, I received a letter from Thynne & MaCartney and paragraphs 3 & 4 state, "After our telephone conversations on 6<sup>th</sup> June 2001 with Ms. Anderson of ASIC, you were advised by telephone on that day by the writer that the ASIC was agreeable to commencing discussions with yourself with respect to a possible resolution of this matter. ASIC's letter of 7 June 2001 merely confirmed our telephone discussions.

*Thus it became unnecessary to deliver points of contention, as the allegations were no longer in contention. Moreover, the ASIC was advised that you did not wish to waste funds defending the court proceedings which had been instituted."*

84. Exhibit "MP-38" to this affidavit is a copy of the letter dated 26<sup>th</sup> March 2002.
85. I refer to exhibit "FA-2" of the affidavit of Frances Clare Anderson sworn 8<sup>th</sup> April 2002. This letter states in part:-

*"It has come to ASIC's attention that there is a prior relationship between yourself, Roadships Ltd. and Roadships Transport Pty. Ltd. and the receiver proposed by ASIC, Andrew Fielding, arising out of Mr. Fielding's appointment as receiver and manager of Cubic Freighters Pty. Ltd."*

86. I refer to exhibit "FA-3" of the affidavit of Frances Clare Anderson sworn 8<sup>th</sup> April 2002. This letter states in part:-


*"I do not understand your statement whereby you say that "it has come to the attention of the ASIC that a relationship exists between Roadships Limited and Fielding & Associates" when in fact it was confirmed to the writer on the 13<sup>th</sup> November 2001 at 12:42 p.m. by Mr. Fielding personally that the ASIC made contact with his firm in regards to Roadships Limited and Roadships Transport Pty. Ltd...."*

87. I refer to exhibit "FA-3" of the affidavit of Frances Clare Anderson sworn 8<sup>th</sup> April 2002. This letter states in part:-

*"...It has further been confirmed by Mr. Michael Duniam of Cubic Freighters Pty. Ltd. that the ASIC has maintained a relationship with Fielding & Associates via a staff member of Fielding's named Julie who is supposedly a former employee of ASIC. Please explain to the writer how and why this relationship has come to your attention after you have filed an application in the Supreme Court of Queensland."*

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88. I refer to exhibit "FA-1" of the affidavit of Frances Clare Anderson sworn 8<sup>th</sup> April 2002. In a facsimile transmitted from Julie Williams of Fielding & Associates to Frances Anderson states in part:-

*"RE; ROADSHIPS LIMITED ACN 090 772151  
HILDAG PTY. LTD. ACN 089 096 864*

*As discussed please find a copy of the covering letter received by this office last Friday attached to which was a copy of ASIC's court application in regards to the abovementioned company's."*

Attached to this cover letter is two letters dated 4<sup>th</sup> & 19<sup>th</sup> February 2002 from Fielding & Associates to Roadships Transport Pty. Ltd.

89. I refer to exhibit "FA-2" of the affidavit of Frances Clare Anderson sworn 8<sup>th</sup> April 2002. This letter states in part:-

*"...Accordingly, at the hearing on 11 April 2002, ASIC will be seeking leave to amend paragraph 1 of its Interlocutory Application dated 20 March 2002, to refer to a proposed appointment of Maree Henry of Sims Lockwood, Level 3, 145 Eagle Street, Brisbane to act as receiver and manager of Roadships."*


90. I refer to exhibit "FA-3" of the affidavit of Frances Clare Anderson sworn 8<sup>th</sup> April 2002. This letter states in part:-

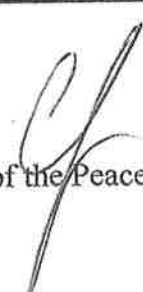
*"You now wish to exchange Fielding & Associates for Sims Lockwood when information that has been relayed to the writer is such that you have had communications with a Mr. Rick Andrews of Linehaul Australia, a fierce competitor of Roadships, knowing that he acts as a liquidator for Sims Lockwood and would relish the opportunity to put us out of business."*

91. On the 31<sup>st</sup> March 2002, I reported my complaints to Mr. David Cove of Queensland Major Fraud Squad.
92. Exhibit "MP-39" to this affidavit is a copy of the letter dated 31<sup>st</sup> March 2002.
93. On the 21<sup>st</sup> March 2002, I instructed Roscoe Fay, a solicitor of Pilgrim Geddes, 79 Price Street, Nerang, to advise and to issue proceedings against the following parties as necessary; Andrew Fielding, Calabro Partners and Cubic Freighters Pty. Ltd. for the recovery of monies owed. On the 2<sup>nd</sup> April 2002, the first statement of claim was filed and served on Andrew Fielding. Roadships Transport Pty. Ltd. has experienced frustration in the collection of the total debt of \$37,756.32.

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94. Exhibit "MP-40" to this affidavit is a copy of the statement of claim.
95. I refer to exhibit "FA-4" of the affidavit of Frances Clare Anderson sworn 8<sup>th</sup> April 2002. This letter states in part:-

*"Given that ASIC is no longer seeking to nominate Mr. Fielding as receiver and manager pursuant to paragraph 1 of its application filed on 20 March 2002, I do not believe it is necessary to enter into any further correspondence on that subject."*

96. I refer to exhibit "FA-5" of the affidavit of Frances Clare Anderson sworn 8<sup>th</sup> April 2002. This letter states in part:-

*"While you are of the belief that your request to give Roadships Limited and Roadships Transport Pty. Ltd. to Mr. Fielding requires "no further correspondence", the writer is of the view that given the fact that you have filed an application in the Supreme Court of Queensland, the Company is left with many unanswered questions that are of a material nature and could have an effect on the final outcome.*

*I refer to my letter of 27<sup>th</sup> March 2002 and once again I request an explanation of how and why this relationship has come to your attention after you have filed the application in the Supreme Court of Queensland."*

97. I refer to exhibit "FA-4" of the affidavit of Frances Clare Anderson sworn 8<sup>th</sup> April 2002. This letter states in part:-

*"With respect to your objection to the proposed nomination of Sims Lockwood, I am informed that Mr. Rick Andrews is not an employee of, nor has any association with, that firm. I am also informed that Sims Lockwood has no association with the company Linehaul Australia."*


98. I refer to exhibit "FA-5" of the affidavit of Frances Clare Anderson sworn 8<sup>th</sup> April 2002. This letter states in part:-

*"Since receiving your letter of even date, the writer has confirmed with Sims Lockwood that a prior relationship with Rick Andrews exists in the handling of the sale of equipment for a company under the administration of Sims Lockwood. Information relayed to the writer is such that you have had communications with Rick Andrews...."*

On the 3<sup>rd</sup> April 2002, I telephoned Sims Lockwood and spoke with Glen Burrell enquired with words to the effect:-

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*"Do you still use Rick Andrews to handle the sale of your equipment?"*

He replied with words to the effect:-

*"Rick Andrews? No. He's just a truck driver."*

I then asked him with words to the effect:-

*"Doesn't John Irvine and Rick Andrews work together with the sale of the equipment for transport companies?"*

He replied with words to the effect:-

*"Yes. They do work together but Rick doesn't hold a liquidators licence."*

I then asked him with words to the effect:-

*"Did Sims Lockwood handle Active Haulage Australasia Pty. Ltd and was the equipment given to Rick Andrews to sell?"*

To which he replied with words to the effect:-

*"That's correct."*

99. Exhibit **"MP-41"** to this affidavit is a copy of the valuation of Mason Gray Strange under instructions from Mr. J. Irvine.

100. I refer to exhibit **"FA-7"** of the affidavit of Frances Clare Anderson sworn 8<sup>th</sup> April 2002. This letter states in part:-

*"I would also like to bring to your attention that the mere fact that you are canvassing receivers and administrators to the appointment of our companies is further casting aspersions and reducing our credibility in the market place given that the Court has not granted any orders of that nature to date."*

101. I refer to exhibit **"FA-9"** of the affidavit of Frances Clare Anderson sworn 8<sup>th</sup> April 2002. This letter states in part:-

*"...any communications between any ASIC officers and Mr. Rick Andrews are irrelevant to this issue.*

*ASIC will not respond to any further correspondence from yourself in relation to these matters."*

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102. I refer to exhibit "FA-8" of the affidavit of Frances Clare Anderson sworn 8<sup>th</sup> April 2002. This letter states in part:-

*"... The ASIC was granted the orders by deliberately misleading the judge and stated "there is a real smell of fraud here" in the Supreme Court of Queensland without the company being given the opportunity to defend the allegations."*

While this letter is dated the 2<sup>nd</sup> April 2002, this relates to day that I commenced to draft the letter. The letter was not circulated to shareholders until it was posted on Friday 5<sup>th</sup> April 2002 for delivery on the 8<sup>th</sup> April 2002 (exhibit "MP-12" to this affidavit). A copy of this letter was sent to ASIC by way of facsimile transmission on the 4<sup>th</sup> April 2002.

103. I refer to exhibit "FA-10" of the affidavit of Frances Clare Anderson sworn 8<sup>th</sup> April 2002. This letter states in part:-

*"You may be aware that Section 209 of the Supreme Court Act 1995 provides that in all matters and proceedings in the Supreme Court a party may appear in person or by a barrister or solicitor or by any person allowed by special leave of the judge.*

*Accordingly I am writing to advise the company that should Mr. Michael Nugent seek special leave for him to represent the company at the Directions Hearing scheduled for 11 April 2002, the Australian Securities & Investments Commission (ASIC) will oppose such application...."*

### ***The Appointment of a Receiver Manager***

104. The appointment of a receiver manager for the purpose of:-


- (a) ascertaining the amount of cash consideration received by the First Respondent with the respect to the issue/sale of shares in the First Respondent between 2 December 1999 and 5 April 2001;
- (b) identifying any distribution or use made of those funds by the First Respondent by its servants or agents;

This has already been supplied and qualified by way of statement of accounts, audit trails, share registry, and ASIC lodgement forms.

105. I have recognised a common thread with the receivers and managers associated with the ASIC.

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(a) **Andrew Fielding & Associates**


Andrew Fielding instructs Michael Duniam, a director of Cubic Freighters Pty. Ltd., to dispose of assets after he is appointed the official receiver of Cubic Freighters Pty. Ltd. The assets in question are;  
a Harley Davidson Motorcycle  
a road transport trailer


(b) **Sims Lockwood**

Rick Andrews, unlicensed liquidator, working with John Irvine instructs Reg Roberts, a director of Active Haulage Australasia Pty. Ltd., to dispose of assets after he is appointed the official receiver of Active Haulage Australasia Pty. Ltd. The assets in question are;

a black 1997 Holden Utility V8 S-pack (exhibit "MP-40" to this affidavit)

Sworn by Micheal Peter Nugent on 10 April 2002 at Brisbane in the presence of:

  
.....  
Deponent

  
.....  
Justice of the Peace

