IN THE HIGH COURT OF AUSTRALIA
PERTH REGISTRY

No. P18 of 2013

BETWEEN:

Westpac Banking Corporation
ACN 007 457 141

First Appellant

SG Australia Ltd
ACN 002 093 021

Second Appellant

National Australia Bank Ltd
ACN 004 044 937

Third Appellant

HSBC Bank Australia Ltd
ACN 006 434 162

Fourth Appellant

Standard Chartered Bank
ARBN 097 571 778

Fifth Appellant

Commonwealth Bank of Australia
ACN 123 123 124

Sixth Appellant

Lloyds TSB Bank plc

Seventh Appellant

Banco Espirito Santo SA

Eighth Appellant

SEB AG

Ninth Appellant

Bank of Scotland plc

Tenth Appellant

Credit Agricole SA

Eleventh Appellant

UniCredit Bank Austria AG

Twelfth Appellant

Credit Lyonnais

Thirteenth Appellant

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Commerzbank AG
Fourteenth Appellant

KBC Bank Verzekerings Holding NV
Fifteenth Appellant

Skopbank
Sixteenth Appellant

DZ Bank AG Deutsche Zentral-Genossenschaftsbank
Seventeenth Appellant

Calyon
Eighteenth Appellant

Gentra Ltd
Nineteenth Appellant

The Gulf Bank KSC
Twentieth Appellant

AND

The Bell Group Ltd
ACN 008 666 993 (In Liq)
First Respondent

The Bell Group Ltd
ACN 008 666 993 (In Liq)
as trustee separately for each of

Dolfinne Pty Ltd
ACN 009 134 516 (In Liq)

Industrial Securities Pty Ltd
ACN 008 728 792 (In Liq)

Maranoa Transport Pty Ltd
ACN 009 668 393 (in liq)

Neoma Investments Pty Ltd
ACN 009 234 842 (In Liq)
Second Respondent

Bell Group Finance Pty Ltd
ACN 009 165 182 (In Liq)
(Receiver and Manager Appointed)
Third Respondent

Bell Group (UK) Holdings Ltd (In Liq) (In Administrative Receivership)
Fourth Respondent

Bell Publishing Group Pty Ltd
ACN 008 704 452 (In Liq)
Fifth Respondent

Ambassador Nominees Pty Ltd
ACN 009 105 800 (In Liq)
Sixth Respondent

Belcap Enterprises Pty Ltd
ACN 009 264 537(In Liq)
Seventh Respondent

Bell Bros Pty Ltd
ACN 008 672 375 (In Liq)
Eighth Respondent

Bell Equity Management Ltd
ACN 009 210 208 (In Liq)
Ninth Respondent

Dolfinne Pty Ltd
ACN 009 134 516 (In Liq)
Tenth Respondent

Great Western Transport Pty Ltd
ACN 009 669 121 (In Liq)
Eleventh Respondent

Harlesden Finance Pty Ltd
ACN 009 227 561 (In Liq)
Twelfth Respondent

Industrial Securities Pty Ltd
ACN 008 728 792 (In Liq)
Thirteenth Respondent

Maradolf Ltd
ACN 005 482 806 (In Liq)
Fourteenth Respondent

Maranoa Transport Pty Ltd
ACN 009 668 393 (In Liq)
Fifteenth Respondent

Wanstead Pty Ltd
ACN 008 775 120 (In Liq)
Sixteenth Respondent

Western Transport Pty Ltd
ACN 009 666 308 (In Liq)
Seventeenth Respondent

Wigmores Tractors Pty Ltd
ACN 008 679 221 (In Liq)
Eighteenth Respondent

W & J Investments Ltd
ACN 000 068 888 (In Liq)
Nineteenth Respondent

Dolfinne Securities Pty Ltd
ACN 009 218 142 (In Liq)
Twentieth Respondent

Neoma Investments Pty Ltd
ACN 009 234 842 (In Liq)
Twenty-first Respondent

TBGL Enterprises Ltd
ACN 008 669 216 (In Liq)
Twenty-second Respondent

Wanstead Securities Pty Ltd
ACN 009 218 160 (In Liq)
Twenty-third Respondent

WAON Investments Pty Ltd
ACN 008 937 166 (In Liq)
Twenty-fourth Respondent

Western Interstate Pty Ltd
ACN 000 224 395 (Provisional Liquidator Appointed)
Twenty-fifth Respondent

Geoffrey Frank Totterdell
in his capacity as liquidator (with ALJ Woodings) of each of the First, Sixth, Seventh, Eighth, Tenth, Fourteenth, Fifteenth, Sixteenth, Eighteenth, Nineteenth, Twenty-first, Twenty-second and Twenty-fourth Respondents

Twenty-sixth Respondent

Antony Leslie John Woodings
in his capacity as sole liquidator of the Third, Fifth, Ninth, Eleventh, Twelfth, Thirteenth, Seventeenth, Twentieth and Twenty-third Respondents

and as liquidator (with GF Totterdell) of each of the First, Sixth, Seventh, Eighth, Tenth, Fourteenth, Fifteenth, Sixteenth, Eighteenth, Nineteenth, Twenty-first, Twenty-second and Twenty-fourth Respondents

Twenty-seventh Respondent

The Law Debenture Trust Corporation plc
as trustee of the BGNV Trusts as defined in the schedule to the Writ of Summons in CIV 1464 of 2000

Twenty-eighth Respondent

COMBINED CHRONOLOGICAL INDEX OF PRIMARY FACTUAL FINDINGS

To the extent possible, this index adopts the terms appearing in the Glossary at Attachments 1 and 2 of *Westpac Banking Corporation v The Bell Group Ltd (No 3)* [2012] WASCA 157 (AB9/4472-4478). A reference to an appellant or "Bank" means one of the appellants. Numerical references are references to paragraph numbers of *The Bell Group (in liq) v Westpac Banking Corporation (No 9)* [2008] WASC 239, and paragraph references commencing with "A" are references to [2012] WASCA 157.

No	Date	Event	Reference
1.	1970s-mid 1980s	TBGL was a listed public company controlled (until mid 1988) by RHáC. It was the holding company of a large wholly owned group. BGF was incorporated in 1986 to act as the treasury entity for the group. A further subsidiary was BGUK, which was, in turn, the holding company for a group of UK based entities. TBGL owned about 39 % of BRL, which was itself a listed company. Until mid December 1989, BRL was managed by, and under the effective control of, TBGL.	22-24
2.	Mid-1970s	TBGL begins a period of spectacular growth under the chairmanship of RHaC that continues into the mid-1980s; [71]-[73].	
3.	1980 to 1984	TBGL and subsidiaries borrow monies from various banks supported by negative pledge arrangements and thereafter extend those banking arrangements; [159]-[282].	
4.	Nov-Dec 1985	BGNV incorporated as a TBGL subsidiary to issue bonds to overseas investors and meet requirements of s128F ITAA 1936. **The first BGNV bond issue and TBGL bond issue** • BGNV issued $75m convertible subordinated bearer bonds (**first BGNV bond issue**); subordinated guarantee by TBGL; term of 10 years; 11% interest payable on 10 December each year. Proceeds on-loaned to TBGL. • TBGL issued $75m convertible subordinated registered bonds to RHáC interests (**TBGL bond issue**). The term, interest rate and payment date were identical to the first BGNV bond issue.	75 77 309 313 A16 A2689
5.	Dec 1985	The Bell group makes the first two of five convertible subordinated bond issues. The others are made in 1987; [308]-[313], [316]. The total value is $585m; [27]. Three of the bond issues are by BGNV with proceeds being on-loaned to TBGL and BGF; [309]-[311]. The amount of the on-loans is $435m; [2551]. The bondholders are subordinated upon a liquidation of BGNV.	

No	Date	Event	Reference
		Outside of a liquidation the bondholders' rights, including to interest, are not subordinated; [331]-[332], [4337]-[4339]. LDTC, the trustee of the bond issues, has the right to demand immediate repayment if certain conditions are met; [8774]-[8775], [8905]. There are no statements in the accounts of TBGL, BGF or BGNV to the effect that the on-loans are subordinated [2888], [2889]. The ordinary course of inter-company lending within the Bell group is on an unsubordinated basis and there is nothing to suggest that the on-loans are otherwise; [3258], [AJ:288][1]. BGNV has no substantial creditors other than the bondholders; [6024], [8925].	
6.	11 Feb 1986	BGF is incorporated as a subsidiary of TBGL to act as internal financier of TBGL; [75].	
7.	1986	BGUK draws down the whole of a £60m syndicated loan pursuant to an agreement with Lloyds Bank, with TBGL as guarantor; [283]-[305].	
8.	May 1987	**The second BGNV bond issue and BGF bond issue** • BGNV issued $175m convertible subordinated bearer bonds (**second BGNV bond issue**); subordinated guarantee by TBGL; term of 10 years; 10% interest payable on 7 May each year. Proceeds on loaned to BGF. • BGF issued $75 million convertible subordinated registered bonds to RHáC interests (**BGF bond issue**); subordinated guarantee by TBGL. The term, interest rate and payment date were identical to the second BGNV bond issue.	310 316 A2689
9.	May 1987	The DCT has issued income tax assessments against Bell Bros ($29.99m), Bell Bros Holdings ($2.94m) and Maranoa Transport ($1.34m); [2009]. These give rise to liabilities to the DCT in the amounts stated on the notices; [2014].	
10.	July 1987	**The third BGNV bond issue:** BGNV issued £75m subordinated convertible bonds (**third BGNV bond issue**); TBGL subordinated guarantee; 10 year term; 5% interest payable on 14 July each year. Proceeds on loaned to BGF.	311 A2689

[1] The majority of the Court of Appeal found that the on-loans were not subordinated; [AJ:333], [AJ:334], [AJ:343], [AJ:344], [AJ:1296].

No	Date	Event	Reference
11.	Oct 1987	After the stock market crash, the share value of TBGL and BRL falls by about 65%; [78]. TBGL and BRL commence an extensive program of asset sales in order to reduce debt; [83].	
12.	1988	BCHL is a large conglomerate controlled by Alan Bond through a family company Dallhold, in which he has a substantial interest; [157]-[158]. Bond, Oates, Mitchell, and Beckwith control the affairs of BCHL and have access to and control all accounting information; [5071], [5549]-[5555], [5561], [5568]. BCHL has liquidity problems and is having difficulty attracting funds from conventional sources; [1700], One of the major assets of TBGL and its subsidiaries is its substantial shareholding in BRL which, by reason of asset sales, has liquid and cash assets of about $2 billion hence its attraction to BCHL; [111], [1700]-[1701].	
13.	3 Jun 1988	Following an inquiry by NCSC into the circumstances in which BCHL acquired 19.9% of TBGL from RHaC, BCHL agrees to make a full bid for TBGL, [112]-[113]. The bid is made by a BCHL subsidiary in July; [120].	
14.	5 June 1988	BCHL launches takeover bid for TBGL. Mitchell had discussions with RHáC re subordinated bonds.	115 5379
15.	Aug 1988	Some of the banks express concern that assets or funds from the Bell group might be removed and transferred for use by BCHL companies; [128].	
16.	2 Aug 1988	Oates and Mitchell appointed non-executive directors of TBGL (and other Bell group companies), remaining as such until October 1990 and January 1991 respectively.	121 134 136-137
17.	2 August 1988	Mitchell and Oates are appointed as directors of TBGL; [121]. In the BCHL group, Mitchell is head of corporate planning and development and Oates is responsible for financing and treasury functions; [136], [137], [5480].	
18.	4 Aug 1988	TBGL writes to the Australian banks noting the acquisition by BCHL and the appointment of Mitchell and Oates to the board; [129]. TBGL offers additional covenants not to lend money in excess of $25m without the consent of the banks and to maintain cash within those Bell companies which had entered into a negative pledge with the banks; [131]-[132].	
19.	29 Aug	TBGL takeover closes, BCHL owning 68% of TBGL.	125

No	Date	Event	Reference
	1988		
20.	29 Aug 1988	The BCHL group begins to strip cash from BRL and by December 1988 the amount owed by BCHL companies to BRL is $870.2m; [1705]-[1708].	
21.	Late Aug 1988	BCHL is entitled to 59% of the issued share capital of TBGL and, apart from RHaC, Mitchell and Oates, its board resigns; [123]. JNTH and BRL announce changes in the composition of their boards to reflect BCHL control; [123]. BCHL controls BRL through both its shareholding in TBGL (which controls 39% of the ordinary shares in BRL) and its 14% stake in BRL; [1505], [1700]. By November 1988, a BCHL subsidiary announces a takeover offer for the remaining shares in JNTH (at that time the BCHL group held 99.4% of the ordinary shares and 68.1% of the preference shares in JNTH); [1431].	
22.	13 Oct 1988	Aspinall is appointed managing director of TBGL and director of almost all of TBGL's subsidiaries.	A962 A2750
23.	13 Oct 1988	Aspinall is appointed by BCHL as a TBGL director to be involved in the day to day operations of the publishing assets, as other assets are to be sold off: [4983], [4986], [5072], [5146]. At Beckwith's instruction, Aspinall makes the publishing assets his focus; [134], [4991]. There are no separate meetings of the board of TBGL; the meetings are incorporated in the overall BCHL group board meetings; [4991].	
24.	24 Oct 1988	RHáC resigns from board of TBGL.	134
25.	Nov 1988	BCHL is on the back foot and in crisis management and things do not improve in 1989; [1569].	
26.	31 Dec 1988	Aspinall is appointed CEO and COO of BPG and its subsidiaries, including WAN (the publishing companies); [4983].	
27.	1989	Asset sales by Bell companies continue and, from 1 July 1988 to May 1989, $803m is used to reduce bank debt (though no repayments are made to the Lloyds syndicate banks); [373], [379]. In the same period, BCHL's financial position is not sound and from time to time cash assets of Bell companies are transferred to other companies in the BCHL group for their use; [368],	

No	Date	Event	Reference
		[380]-[384][2]. $228m in cash is transferred from BGF (Bell) to BCF (BCHL) in breach of undertakings given to the banks; [1538]. BCHL centrally manages the funds of all subsidiaries, including the Bell companies, as a single pool; [144], [4992], [5556].	
28.	Early 1989	Promises to all banks of payment from asset sales are broken, leading to dissatisfaction and hostility on the part of the banks; [29], [187]-[190], [207]-[209], [227]-[231], [248]-[250], [258]-[263], [273]-[278], [394], [5019], [5021], [6422], [6455], [6818]-[6823], [7410], [7467], [7551]- [7553], [7562], [7681], [8601]-[8602], [8743]. Expectations on the part of the Australian banks that TBGL would repay the facilities in January and March 1989 are not fulfilled; [387], [414], [6454]. The banks "are not entirely amused at this turn of events"; [414]. Various proposals are put for a club facility involving all Australian banks. The proposed facility involves lending against the publishing assets of the Bell group for an initial amount of $350m, which is reduced over a series of proposals to $200m. The Lloyds syndicate banks refuse to release the negative pledge to permit the facility to proceed; [388]-[391].	
29.	Jan-Apr 1989	Negotiations between TBGL and Banks led by Oates. Banks told their debts would be paid. Banks were offered a 'club facility'.	386, 388 390 A2692
30.	Apr 1989	In the transaction known as the "BRL Strip", the BCHL group has by now become indebted to BRL in an amount totalling about $1.2 billion; [1060], [1704]-[1705], [1710]. As a director of BRL, Aspinall becomes aware of the size of the BRL loan to BCHL and that it is for a fixed period, unsecured and has exceeded its limits; [5126], [5129]-[5130]. Aspinall tells Oates he thinks Oates has lied to him about the facility; [5132]. Beckwith tells Aspinall that the facility cannot be repaid, there is little security available and that any security provided would not be "first ranking"; [5131], [5133]. Aspinall accepts security which he is told is valued around $300m to $400m on the basis that it is better than nothing; [5134], [5136].	
31.	May 1989	BCHL borrowed $996m from BRL. BCHL decided to sell BBHL to BRL and convert the loans into a deposit.	32 1720
32.	18 May	BCHL announces that BRL will acquire all of BCHL's brewing	

[2] See Bell Tables P2128A [MISP.00031.095.001], accepted at [368] and P2092A [MISP.00033.013.001], accepted at [382].

No	Date	Event	Reference
	1989	assets for $3.5 billion and the $1.2 billion loan will become a deposit on the transaction; [1705]-[1713], [5134].	
33.	Mid-1989	From this time, the directors of BGUK and TBGIL are Bond, Birchmore, Mitchell and Edwards. The directors of BIIL are Edwards and Whitechurch. Whitechurch is also company secretary of BGUK and TBGIL; [5765]- [5770], [AJ:2965].	
34.	June 1989	SocGen writes to BGF saying that there had been a transfer of funds in breach of the undertakings given to the banks; [1538].	
35.	2 Jun 1989	TBGL writes to SocGen denying the breach, even though various officers within the company know there is a breach; [1538], [1540].	
36.	Late Jun 1989	By a "contrivance", steps are taken to backdate the companies' records to bring the transfer of finds to BCHL under the $25m level agreed in the undertaking to the banks; [1539]-[1545].	
37.	29 Jun 1989	Oates writes a letter for distribution to the Lloyds syndicate banks. There is a meeting at which Lloyds Bank expresses its displeasure at the poor level of communication from the Bell group; [6841]-[6842].	
38.	30 Jun 1989	Current assets of JNTH are $214.1m (most of which are Bond related receivables), which compares to a cash position of $205.3m at 30 June 1988; [1449], [1450].	
39.	June-July 1989	Further negotiations with Banks led by Oates. By June 1989, the 'club facility' proposal was for an advance of $200m for 3 years secured over the publishing assets. By July 1989, the relevant officers had come to the view that the club facility could not be arranged.	391-392
40.	July 1989	The idea of a club facility is abandoned by TBGL; [388]-[391]. Beckwith puts Aspinall in charge of the Bell group's refinancing; [5014]. Simpson, Aspinall's assistant, works closely with him; [4948], [5488]-[5491], [AJ:997]. The Bell group has two main assets: the publishing company assets and the BRL shares; [1690].	
41.	July 1989	Stokes offers $300m-$325m, News Corp offers $425m and Maxwell offers $450m for the publishing assets.	1864 5096
42.	July 1989	**Aspinall becomes involved in Bank negotiations** After the failure of the BPG club facility negotiations, Aspinall is told to take over negotiations with Banks. He would be	5014-5017 5019-5020

No	Date	Event	Reference
		assisted by Simpson. Aspinall familiarised himself with the Bell group's banking arrangements. He understood the financial structure, including that all the facilities were held by BGF, acting as the Australian Treasury, and by BGUK, acting as the UK Treasury. He understood that BGF's banking arrangements comprised separate facilities secured by way of a negative pledge agreement held with each of the Australian banks in a total amount of $130m. BGUK's facilities comprised a syndicated facility in the amount of approximately £60m also secured by a negative pledge agreement held by the Lloyds syndicate banks. In particular he knew that BGF's and BGUK's debts to the banks were guaranteed by TBGL by means of the negative pledge guarantees. In the case of the Australian banks, the facilities were repayable on demand and, in the case of the Lloyds syndicate banks' facility, on 19 May 1991 or earlier if there was default in any one of the Australian banks' facilities. Simpson was Aspinall's executive assistant. They worked closely together from July 1989. Simpson conducted most of the early negotiations with the Banks and sent them information about the group. He reported regularly to Aspinall.	138 5014-5015 5039 5044 5169
43.	13 Jul 1989	LDTC (trustee for the bond issues) writes to Bell companies that are issuers and guarantors of the bonds, requesting certificates be provided with assurances of solvency and compliance with the trust deeds; [8785]-[8790].	
44.	17 Jul 1989	Tagliaferri, who works for Oates in Finance and Administration, responds to LDTC by stating that she finds the requests for certificates of solvency "more than a little surprising" and asking for more information about the expressed concerns of LDTC; [8792].	
45.	17-20 July 1989	**Simpson meets with Australian Banks, reports to Aspinall** Aspinall received and read a memorandum from Simpson on the outcome of his meetings with the Australian banks. Aspinall then spoke with Simpson. Simpson had asked the Australian banks to defer their rights to demand repayment of the facilities until 30 June 1991. Simpson did not offer any security. Simpson told him that the banks' reaction was hostile. Simpson believed that Oates had annoyed the banks and that certain undertakings said by the banks to have been given by Oates, to reduce debt to the banks from sale of capital assets, had not been honoured. After this conversation with Simpson, Aspinall formed the view	391-395 5019-5020

No	Date	Event	Reference
		that if new arrangements were to be achieved, security would have to be offered in return.	
46.	21 July 1989	Aspinall went with Simpson to see Westpac to ask if a 'club arrangement' could be considered as a means of extending the Australian banks' facilities. This is a single facility with several banks participating in it. The bank officers were not receptive to such an idea and, furthermore, their attitude and manner was hostile. This was the first time that Aspinall became personally aware of the extent of the problems with the Australian banks. Aspinall did not understand why they were so aggressive. Aspinall thought that they were angry about unfulfilled promises regarding the reduction of the Bell group's outstanding debts from the sale of some of the non core assets. SCBAL tells TBGL that it would not extend its facility. Aspinall believed that security would have to be offered in order to change their minds.	5021-5022
47.	25 Jul 1989	Tagliaferri provides certificates of compliance with the trust deeds for the bond issues that are in much narrower terms than those sought by LDTC [8796].	
48.	25 July 1989	Simpson sends Aspinall a memorandum that outlined two scenarios for refinancing arrangements. Aspinall's preferred proposal was for security over all the issued shares in BPG. In return, the Banks would release the NP guarantees. The second scenario had a broader range of securities including over BRL and JNTH shares. Aspinall realised that securities would have to be offered to the banks to induce them to participate in the refinancing but that the Bell group should try to restrict the range of securities.	395 5023-5026
49.	26-27 July 1989	Aspinall holds separate meetings with Westpac, CBA, HKBA and SocGen. CBA said that if it was not repaid, then they may proceed to issue a notice of demand. Aspinall told CBA that it was not possible for the Bell group to repay the facility at that time. He explained that his strategy for the Bell group was to concentrate on the newspaper and publishing assets. He explained the need to bed down borrowings for, say, two years on a secured basis. He said that at the end of that period they would renegotiate or refinance the existing bank facilities in an environment where the banks had confidence in the performance of the Bell group. He told them the newspaper and publishing business would have grown and would show profitability. He told them that there was a realistic basis for refinancing the Bell group based on the publishing assets in a secured facility quite separate from the	5027-5029

No	Date	Event	Reference
		Bond group.	
50.	27 or 28 July 1989	Aspinall sends a draft terms sheet to CBA and NAB. The draft terms sheet included security being an equitable charge over BPG ending in May 1991 shared equally between the Australian banks and the Lloyds syndicate banks. Aspinall understood that the Lloyds syndicate banks' consent would have to be obtained for the grant of security because of the NP guarantees, and they would not consent unless they shared equally in any security.	395 5032
51.	28 July 1989	Aspinall writes to SocGen enquiring if SocGen would assume CBA's part of the lending in any refinancing.	5033
52.	End Jul 1989	TBGL officers, or at least Aspinall, come to the view that BGF cannot afford to repay the Australian banks and they need to refinance what are, by then, on demand facilities and to do this they need to grant security over the publishing assets which is not possible without the consent of the Lloyds syndicate banks; [33], [417]-[418].	
53.	By end July 1989	Aspinall believes only way for Bell group to survive was to "de-Bond" ie disassociate from BCHL; BGF could not repay the Australian banks' on-demand facilities; and Bell group would need to refinance on a fixed term, including giving security over the publishing assets, including for the Lloyds syndicate banks to share equally in the security.	416-417 4989 A2748
54.	Aug 1989 - Sept 1989	Negotiations between Aspinall and Simpson and the Banks continue. SocGen did not want to increase its exposure. Aspinall realises that neither CBA nor SCBAL were keen to participate but he hoped that they could be persuaded to do so if they were offered satisfactory security; they were satisfied that the Bell group was independent of BCHL; and he could convince them that the publishing assets had very good potential. While Aspinall and Simpson were dealing with the Australian banks, Oates was dealing with Lloyds Bank as agent for the Lloyds syndicate banks.	5035 5037 5038-5040
55.	4 Aug 1989	LDTC again requests all issuers and guarantors of the bond issues to provide certificates that address the fundamental issue of solvency; [8798].	
56.	22 Aug 1989	Simpson writes to Lloyds Bank, explaining that TBGL's banking arrangements needed to be placed on a medium term basis so as to allow the group to get on with running its businesses in the knowledge that its banking arrangements are settled. Simpson also said that proceeds from the sale of the	1655 6859 7790 A2789

No	Date	Event	Reference
		Bell group's non publishing assets were intended to be used to reduce the domestic lenders position and to use any remaining moneys for working capital and payment of the subordinated debt.	
57.	30 Aug 1989	Hambros writes to Aspinall detailing a proposal, on behalf of O'Reilly, for the purchase of WAN. The price offered was $480m to $576m, on a debt free basis.	1865 5097
58.	Sep 1989	CBA issues formal demands for recovery of its loan; [398], [5041], [7407], [7413]. LDTC wants to negotiate with the Bell companies as to the bondholders' position, but cannot force the issue due to the absence of an event of default; [8817], [8889], [8911].	
59.	4 Sep 1989	A cash flow is prepared for the Bell companies and distributed to all banks; [1170]. It is the last cash flow provided to the banks before entry into the Transactions (even though further cash flows are prepared); [1170]-[1171][3]. The banks become less concerned to receive financial information as negotiations with the Bell companies progress; [8603].	
60.	6 Sept 1989	**CBA demands commence**: CBA issues a notice of demand on BGF for $12.8m, the date for repayment is 13 September 1989.	5041
61.	11 Sept 1989	TBGL issued a revised term sheet, in which security was to be taken over the publishing assets. Lloyds Bank prepared its own sheet: security was to be taken over all assets of all holding companies, including BPG and WAN.	6716
62.	11 Sep 1989	Simpson addresses the Lloyds syndicate banks prompting widespread concerns amongst those banks about the Bell group's solvency; [6872]- [6880]. TBGL proposes a terms sheet for refinancing with the banks, with security being a fixed and floating charge over the Bell publishing group; [6716]. Lloyds Bank prepares its own terms sheet for refinancing; [6715].	
63.	13 Sep 1989	Westpac sends to TBGL a terms sheet that is prepared for a syndicated facility with shared securities covering the Lloyds	

[3] See the graphical representation of the closing balances projected in selected Bell group cashflows from 4 September 1989 to 19 February 1990 at Bell Table P2029 [MISP.00002.157], accepted at [1188].

No	Date	Event	Reference
		syndicate banks and the Australian banks; [398].	
64.	13 Sept 1989	Aspinall tries to get CBA to withdraw its demand.	5041
65.	14 Sept 1989	CBA serves notice of demand on TBGL as guarantor, requiring payment no later than 21 September 1989.	192
66.	14 Sept 1989	Westpac proposes refinancing proposal to TBGL, including security given by BPG.	277 5042
67.	18 Sept 1989	Garven (BPG, later TBGL) prepares a 5 year financial forecast for BPG. He predicted a very substantial increase in earnings before interest and tax up to the year ending 30 June 1994.	5118 A2769
68.	19 Sep 1989	Westpac drafts a terms sheet which, in addition to security over the Bell publishing group, provides for inter-company loans to be subordinated and asset sales to related companies to be restricted. There is a condition requiring an opinion from TBGL as to whether the banks will obtain a preference by the grant of security; [6718].	
69.	20 Sept 1989	CBA withdraws its formal demands; [398], [5042]-[5043], [7414]-[7417], [7442]-[7443].	
70.	20 Sept 1989	CBA withdraws demands but reserves the right to demand payment. CBA decides to participate in the refinancing.	193
71.	21 Sept 1989	Lloyds Bank sends its own term sheet to Westpac, with security over the publishing assets and the JNTH and BRL shares.	399
72.	22 Sep 1989	Lloyds Bank prepares a further version of its terms sheet for an advance by all banks to repay the existing facilities; [399]. It has provisions requiring asset sale proceeds to be used to pay down bank debt, an opinion as to preferences and a certificate of solvency signed by two directors; [6719].	
73.	Oct 1989	LDTC receives certificates from bond issuers and guarantors within the Bell group stating that they are able to meet their debts and their obligations under the trust deeds as and when they fall due; [8833]-[8836].	
74.	4 Oct 1989	At a meeting between representatives of all banks and the Bell group companies, Lloyds Bank raises the risk of "double jeopardy" if there is a payout of existing bank debts and relending (that is, both the payout and the security for the relending may be preferences); [5634]-[5638], [6693], [6720],	

No	Date	Event	Reference
		[6751]-[6752], [8697]. Simpson seeks clarification that the banks would accept a preference problem; [6750], [6752].	
75.	9 Oct 1989	Westpac circulates a terms sheet that seeks greater security and adds a requirement for an opinion from TBGL that addresses the double jeopardy issue; [5045], [6721].	
76.	9-11 Oct 1989	Westpac sends revised terms sheet to Banks, changing the terms of the proposed lending facility. The revised terms required security of a greater extent over the Bell group assets. Aspinall considered that the Banks wanted this security because of BCHL's link to the Bell group.	401 5045
77.	13 Oct 1989	MSJL and A&O (lawyers for the Lloyds syndicate banks) prepare a draft opinion concerning alternative structures for refinancing bearing in mind the double jeopardy problem. The opinion deals with the need for the directors of each Bell company to justify to themselves, on reasonable grounds, that the transaction to be entered into is in the best interests of the company concerned; [5638]-[5644]. Thereafter, the draft is revised after consultation with P&P (Westpac's lawyers); [5645].	
78.	17-20 Oct 1989	Meeting of the board of Directors of TBGL was held to approve the terms of TBGL's preliminary final statement for the year ended 30 June 1989, including the following: *The Group has been negotiating the refinancing of its facilities on a secured basis and expects a medium term facility to be in place shortly. This will enable the Directors to plan ahead with greater confidence knowing the financing base of the Group is sound, and that there is defined capacity to undertake new projects.*	8845 A2790
79.	23 Oct 1989	Simpson wrote to Westpac commenting on the terms sheet. He rejects the proposal to take security over the JNTH and BRL shares. He said that the condition concerning asset sales was unacceptable as then worded. Simpson's response was not well received by the Banks.	1660-1661 5045
80.	26 Oct 1989	The banks seek advice from Hayne QC and Burnside; [5656], The advice is given without full instructions as to the inter-company loan arrangements within the Bell group; [5663]. After the conference, a note is made by one of the lawyers present which says "Corporate Benefit test can be used to our advantage. Should attempt to recite our way into an advantage with the Corporate Benefit Test"; [5758]. One of the lawyers in	

No	Date	Event	Reference
		London speaks by telephone with one of the lawyers who was at the conference and notes "Dress up in recitals"; [5759]. The gravamen of these notes is put into effect; [57091], [5758]-[5760], [8745.11]. Thereafter, no-one from the banks actually asks the directors of the Bell companies to assure the banks that they, the directors, are *bona fide* acting in the best interests of each company; [5682].	
81.	Late Oct 1989	Counsel's advice is communicated to the Australian banks and Lloyds Bank; [5664]-[5666].	
82.	Nov 1989	There is "frenetic negotiation and production of the term sheets" for refinancing; [5670].	
83.	Early Nov 1989	Concerns are raised by the Bell group with the banks about inflexibility and restriction of use of proceeds from asset sales in terms sheet provisions. The banks reject those concerns; [6726]-[6727], [6739].	
84.	6 Nov 1989	Meeting between Aspinall, Simpson, and Armstrong and Latham of Lloyds Bank. Simpson and Aspinall protest about the asset sale restriction. Latham's note of the meeting records Armstrong saying that the Banks would be 'not be unreasonable'.	1663, 5170
85.	7 Nov 1989	Latham and Simpson meet Creditanstalt. Simpson said that TBGL would not accept less than $500m for BPG.	6901
86.	Around 13 Nov 1989	Before signing accounts referring to tax, Aspinall's usual practice was to speak to an expert to satisfy himself as to the entries in the account. The relevant tax expert was Pepper (BCHL). Aspinall recalled that Pepper conveyed to him his confidence that there would be no liability.	5157
87.	13 Nov 1989	Meeting of Directors to approve TBGL Annual Report for period ending 30 June 1989. Key matters include: • same disclosure about refinancing as contained in preliminary final statement; • valuation of publishing assets at $626m, qualified by auditors by $125m, implying a value of about $500m; and • no provision had been made for the disputed tax matters, *'as they will be subject to objection and the directors are confident that the objection will be successful'*. The	A2791 5084 6438 A2803 1805, 6446 2046-2047 5158 A2853

No	Date	Event	Reference
		treatment was not subject to a qualification by the auditors.	
88.	13 Nov 1989	The Bell companies raise with the banks difficulties with giving solvency certificates; [6728].	
89.	15 Nov 1989	There is a lot of press coverage of the release of the BCHL annual report, with emphasis on the auditor's going concern qualification; [6232].	
90.	Mid-Nov 1989	The BCHL group releases its annual report. It paints a "bleak picture for BCHL and the Bond group". The auditors express some doubt as to whether the BCHL group will be able to continue as a going concern; [6448]. A working capital deficit of $1.36 billion is reported; [6449]. The publication of the annual report sets in train or exacerbates many problems for BCHL, including claims by its bondholders, events of default under a NAB facility, an application by Adsteam to appoint a receiver to BRL, complications with the brewery sale from BCHL to BRL and petitions to wind-up BCHL; [1570]-[1571]. All the banks are aware that the financial condition of the BCHL group is precarious; [6452]. LDTC informs bondholder representatives that there is no evidence of an event of default under the trust deeds for the bond issues; [8809].	
91.	22 Nov 1989	The banks limit the requirement in the terms sheets for solvency certificates to TBGL, BGF, BGUK, BPG and other nominated entities; [6729].	
92.	24 Nov 1989	NAB reserves its rights to withdraw from refinancing if refinancing not executed by 30 November 1989.	5047

No	Date	Event	Reference
93.	29 Nov 1989	Auditors (C&L) issue NP report to Banks. Key matters include: • total "liabilities", for the purposes of this report, did not include the domestic bonds of TBGL and BGF or the on loans from BGNV to TBGL and BGF; and • re the tax disputes, C&L's report contained a note similar to the Directors' note in the TBGL 1989 Annual Report.	2963 6403 2965 A212 2046
94.	Dec 1989	Latham told Simpson in a telephone conversation "that although the Lloyds syndicate banks would have control over all asset sale proceeds, if a properly argued business case was presented for use of such funds then [the Lloyds bank representatives] thought the Lloyds syndicate banks would act sensibly and not insist on the funds being used for prepayment."	A2787 (referring to Latham's statement)
95.	4 Dec 1989	The Australian press "has a field day" about the misfortunes of the BCHL group; [6233]-[6234].	
96.	4 Dec 1989	**SCBAL issues a notice of termination and demand on BGF**	262, 406 5048-5049
97.	4-11 Dec 1989	SCBAL issues formal demands to BGF and TBGL, followed by s364 notices; [262, [5048-[5049], [7016]-[7018], [7722], [8904], [AJ:808]-[AJ:809].	
98.	7 Dec 1989	A notice of demand on BGF was issued by SCBAL	262 5049 A2813
99.	8 Dec 1989	SCBAL issues a notice of demand on TBGL as guarantor of the debt owed by BGF	5049
100.	8 Dec 1989	Adsteam petitions for the appointment of a receiver to BRL; [408], [5690], [6547]. A lawyer acting for Lloyds Bank learns that there is no evidence of any inter-company loan from BGF to BPG (the subsidiary that controls the publishing assets proposed to be offered as the principal security); [5683]. The lawyer redrafts recitals to refer to inter-company indebtedness, but another lawyer notes that this can't be done; [5686]. This gives rise to advice that the banks are at risk in respect to the corporate benefit test; [5687], In drafting the recitals the necessary financial information to establish the existence of corporate benefit is not received; [5689]. The recitals record the fact of indirect financial support between certain companies when this is not the case; [5698], [5700].	

No	Date	Event	Reference
101.	9 Dec 1989	P&P recommends to Westpac that security be taken immediately with some banks prepared to demand immediate repayment unless security is given; [408], [5691]-[5695], [6209], [6547], [7839]-[7842]. Oates tells Westpac that the Bell group would be willing to grant security immediately; [5699], [6548], [6730]. There are "intense events" over the "panic weekend" in relation to the drafting of documents; [409], [5691]- [5695], [5713], [6219], [6730], [6906]. The documents drafted include in recitals the directors' belief in the corporate benefit of giving securities (even though there is no evidence that any of the directors hold or subsequently form a *bona fide* belief that the proposal was for the benefit of each Bell company and no evidence that their minds had ever been directed to the need to have such a belief); [5700]. P&P drafts the minutes and resolutions for board meetings of the Bell companies; [5715], [6374], [6381], [8660], [AJ:2395]. They are drafted to lessen the risk of the Transactions being set aside and to cover the corporate benefit point; [8723], [8688], [AJ:2388], [AJ:2396]-[AJ:2397]. They draw on and refer to the recitals and this is significant because the recitals are "dressed-up"; [6051.1]. The urgency of the situation is over in days because of the withdrawal of the Adsteam proceedings[4], but the recitals to the documents, drafted urgently, remain thereafter; [5702].	
102.	10 Dec 1989	The Bell group has insufficient cash to pay \$6.6m on the first BGNV bond issue and \$8.25m on the TBGL bond issue and that interest is paid by unusual means from the proceeds of the Academy and Actraint Transactions[5], rather than from more usual recurrent forms of revenue [1493]-[1495], [1586]. Later, in January 1990, Henson of BRL asks for the transaction to be reversed and Oates tells him that would be difficult; [1491].	
103.	11 Dec 1989	SCBAL serves s 364 notice on TBGL seeking payment of \$15 million within three weeks. Aspinall was deeply troubled by this turn of events and appreciated the urgency of the situation that was upon him at this point.	5049-50 A2807

[4] The Adsteam proceedings settle when BCHL agrees to the appointment of an independent BRL board; [6586].

[5] Prior to 1 December 1989, Academy owned 13,053,600 shares in JNTH and on about 1 December 1989 TBGL sells all the shares it holds in Academy to a BRL subsidiary for \$100,401 and Academy obtains a loan from BRF of \$26.1m which it uses to repay a loan to TBGL; [1490]. At the same time, there is a similar transaction involving the transfer of JNTH shares held by BCHL through its subsidiary Actraint No 85 Pty Ltd; [1490].

No	Date	Event	Reference
104.	11 Dec 1989	BCHL and Adsteam reach agreement (with NCSC approval) that the BRL board would change to consist of two representatives of each of BCHL and Adsteam and an independent chairman.	407
105.	12 Dec 1989	Lawyers acting for the Bell companies in relation to the review of the Transactions are instructed to let anything through unless it is going to be the cause of incredible pain ("only absolute nut breakers"); [5711].	
106.	14 Dec 1989	Aspinall raises with SCBAL the prospect that the on-loans by BGNV may not be subordinated and that the bondholders would rank at the same level or ahead of existing bank debt in a receivership or liquidation; [5051]- [5057]. This causes a flurry of activity as the news spreads from bank to bank; [5058], [7024], [7100]-[7101], [7104]-[7106], [AJ:554], The possibility that the bonds may not be effectively subordinated frightens the banks and makes them determined to proceed with the refinancing; [9723] [AJ:555]-[AJ:556].	
107.	14 Dec 1989	Aspinall tells SCBAL that unless its notices are withdrawn, an event of default would occur with the Lloyds syndicate banks, Australian banks and the private bond issue.	5051
108.	Around 15-18 Dec 1989	The BRL board is changed to reflect the agreement between BCHL and Adsteam. Hill (BRL) is appointed the chairman of BRL. The other directors appointed to the board are Bond and Mitchell (BCHL) and Kent and Henson (Adsteam). Aspinall and Oates resign as directors of BRL.	139 407 1513 5137
109.	18 Dec 1989	A letter to SCB, signed by Aspinall, raises issues regarding the possibility that a liquidator might look at the rights of "all creditors including the bondholders before any decision was taken as to creditor entitlement". It goes on to say that one of the purposes for the extension of the existing facilities is to enable the banks to become secured creditors, "a position all view as more preferable"; [5053]. The SCBAL demands are withdrawn; [7025]-[7026], [7112], [AJ:810], The position of the bondholders is a persuasive factor in SCBAL's decision to withdraw them; [7026], [7108]-[7110], [7112][6]. LDTC is not aware of the SCBAL demands or the fact that they have been withdrawn; [9011].	

[6] The Court of Appeal concludes that these events provide a firm foundation for concluding that the real or actual intent of the banks was to remove the right of creditors to participate in a rateable distribution;

No	Date	Event	Reference
110.	18 Dec 1989	Aspinall believed that unless he could get SCBAL to withdraw the notice of demand, the refinancing would not proceed and the Bell group was doomed. Aspinall believed the bondholders and the on-loans were subordinated. Aspinall had no information to cause him to think, nor did he think, that the bonds or the on-loans were unsubordinated.	5053-5060
111.	19 Dec 1989	Aspinall received a letter from MSJA confirming SCBAL's notices had been withdrawn.	262, 406 5055
112.	20 Dec 1989	Simpson told Edwards (BGUK) that the solvency of the Bell group – including BGUK – was threatened by the inability to renew the facilities. In that case, BGUK would not realise the Western Interstate investment because the Lloyds syndicate banks would call their facility.	5800
113.	21 Dec 1989	Aspinall commences enquiries to find out if there are any documents concerning whether the on-loans by BGNV are subordinated. Initial enquiries reveal no evidence of subordination; [7131]-[7133]. Aspinall fails to carry through an investigation; [5057], [6047]-[6049], Aspinall has represented to the banks that the disposition of assets to the banks and the avoidance of the liquidations would eliminate the risk that the banks may face competition from the bondholders of BGNV; [AJ:995]. He seeks no advice on the issue; [AJ:997]-[AJ:998], This is a deliberate decision not to enquire; [6047]-[6048]; [AJ:996]-[AJ:999], [AJ:2087]-[AJ:2088]. There are numerous discussions between BCHL executives, including Oates and Mitchell, about the potential for cross-defaults into BCHL facilities and convertible bonds caused by a failure in any one part of the BCHL group; [5570]. A failure in the Bell group would give rise to a potential for cross-default into the facilities which had financed the takeover of the Bell group. If the Bell group was to collapse, the security for the facilities (BCHL's shares in the Bell group) would become worthless, resulting in an immediate cross-default; [5571], Mitchell, Oates and Bond are well aware of these problems; [5572][7].	
114.	21 Dec 1989	TBGL's Annual General Meeting. Oates addresses meeting about refinancing, saying that the Bell group's current bank	A2792

[7] The trial judge does not give a date for this finding, but it is understood to relate to this period when issues of cross-defaults arose following the publication of the annual report.

No	Date	Event	Reference
		debt was being re-negotiated to be on a term basis and it was the board's intention for non-profit producing assets to be sold so that the group can concentrate on the publishing business.	
115.	21 Dec 1989	BRL's Annual General Meeting. Hill says his current view is for BRL to pursue the brewery transaction with BCHL.	1731-1732
116.	28 Dec 1989	BCHL and BRL announced that they had agreed to proceed with the sale of the Australian brewing assets for $2 billion.	1733-1734
117.	29 Dec 1989	Supreme Court of Victoria (at the initiative of NAB ex parte) appoints receiver to BBHL.BRL shares suspended from trading.	240, 410 5128
118.	31 Dec 1989	Aspinall appointed CEO and COO of BPG and its subsidiaries.	135
119.	31 Dec 1989	Mitchell and Oates meet with Fisher (BDW) and Ferrier (Ferrier Hodgson). Fisher and Ferrier advised that if the directors believed that carrying on the companies as a going concern would produce a better return for stakeholders than liquidation, then that was the course the directors should take.	5418
120.	Mid Dec - Jan 1990	Edwards deals with the Transactions on behalf of the UK directors and companies; [5774]. Edwards has no role in the negotiation of the Transactions generally. His role relates to the giving of securities by the UK group companies; [5777]. The UK directors receive legal advice that they will need to convince themselves that it is in each company's best interests to sign the various documents under discussion and advice should be obtained from counsel; [5788], [5790]. Counsel provides oral advice to the UK directors about the duty to act in the best interests of each company as distinct from other companies in the group or the interests of the group as a whole; [5794]. The lawyers advise the UK directors that they must consider whether it is crucial to the UK companies carrying on business that security is given to the banks; [5796]. Further legal and accounting advice explains that the UK directors need to be satisfied that the UK companies can rely on an enforceable letter of comfort from TBGL and that TBGL will be able to honour its commitments, including reliable financial information and details of how TBGL will fund its obligations; [5801]-[5802], [5813]-[5821], [5829], [5831]-[5833], [5838]-[5843], [5853], [5856]-[5857], [5865]-[5867], [5872], [AJ:1056], [AJ:2096]. Reliance on simple assurances will not be sufficient; [5866], [5919]-[5920], [AJ:1056].	

No	Date	Event	Reference
121.	Jan 1990	Draft company resolutions for the borrowing companies - prepared by the banks - are simply adopted by lawyers acting for the Bell companies (S&W); [5748]. S&W propose that other resolutions remove the reference to the directors taking into account the interests of creditors (on the stated basis that there are no external creditors); [5716]. The banks' lawyers object and require the reference to the interests of creditors to be reinstated (on the basis that the assertion concerning external debt is contrary to the information provided by Bell); [5749]. The banks' lawyers advise that the Bell group subsidiaries are not all in the same position and that the minutes need to recognise this; but this is not done; [5718]-[5720]. P&P and S&W both express the view that there is no corporate benefit for the companies in the subordination arrangements by which inter-company indebtedness (including the on-loans) are subordinated to the position of the banks; [8718]-[8719], [AJ:2400].	
122.	Up to and including Jan 1990	Aspinall and Simpson had taken the running in the bank negotiations concerning the form of the documentation. Simpson was primarily responsible and he was reporting to Aspinall. The Australian directors and the UK directors were seasoned, perhaps even hardened, commercial campaigners. They were experienced business people who had been in various sectors of commerce for a long time. They had access to in-house and external lawyers and accountants. In the negotiations, Simpson could be "quite feisty" "when he needed (or wanted) to be" and "[w]hen push came to shove, Aspinall was no shrinking violet". "In some aspects of the negotiations they gave as good as they got." There were discussions from time to time with Oates and, to a much lesser extent, with Mitchell. A store of knowledge about the Transactions and the documents was being built up during the negotiations. The store of knowledge caused the Directors to form the view that TBGL and BGF had to be 'in' the deal. For that to happen, BGUK and WAN and the other Bell Participants also had to be 'in'.	5604-5605 8978-8979, 9756
123.	In Jan 1990	Aspinall, Mitchell and Oates expected that BGUK would receive a final ITC payment of something less than £10m.	A2367
124.	2 Jan 1990	BBHL commences Court action challenging receiver appointment.	244 5420

No	Date	Event	Reference
125.	4 Jan 1990	NAB confirms it will join the Bell group refinancing.	410
126.	2-4 Jan 1990	NAB reconsiders its participation in the refinancing and decides not to participate. SocGen tells NAB it would be better off entering the Transactions in view of concerns regarding subordination of the on-loans. NAB discusses this with Westpac and decides to proceed with the Transactions; [7581]-[7584].	
127.	12 January 1990	Memo from Stack (Q-Net) to Aspinall outlining strategy for the proposed sale of Q-Net by TBGL.	5184
128.	16 Jan 1990	The last terms sheet is prepared with the requirement for solvency certificates deleted and no requirement for an opinion on preferences; [6732]. The requirement for solvency certificates is dropped without plausible explanation (from the banks); [6740]-[6741], [AJ:2282], This is done even though it is normal banking practice to seek solvency certificates, especially where there is some doubt about the financial health of the customer; [6747].	
129.	19 Jan 1990	Mitchell and Oates hold 2 hour meeting with Watson (S&W) (solicitors retained by the Bell group on the Transactions) and Simpson during which they went through the Transactions.	5418 A2751
130.	19 Jan 1990	Legg (C&L London) sends a letter to Simpson requesting information for UK directors. Simpson advises Legg that a response is being prepared.	5850
131.	22 Jan 1990	Following negotiations [5825], [5831]-[5832], [5849], Simpson sends a draft of a solvency letter to be provided by TBGL to the UK directors; [5852]. Edwards responds, reiterating the request for letters of comfort for each of the BGUK companies together with the information to support them; [5076], [5852]-[5857]. Legg of C&L (advising the UK directors) has a conversation with Montgomery of C&L in Perth. There is no evidence that the UK directors see the note of the conversation or that it influences or contributes to their decision; [5859]-[5864].	
132.	22 Jan 1990	Legg telephoned Montgomery (C&L Perth), TBGL's auditor. Legg asked Montgomery's views on the position of the Bell group. Montgomery said he was unaware of any significant changes from the position recorded in 30 June 1989 accounts. Montgomery said that he 'did not believe there would be a problem on solvency' and referred to the profitability of the	5859-5862 A2773

No	Date	Event	Reference
		publishing business, the options for disposal of parts of that business and options for realising the investment in BRL. Montgomery referred to conversations he had had with Aspinall, which indicated that the Bell group 'had plans' to be more efficient, to consolidate the publishing business and to pay off the group's borrowings, after disposal of the BRL shares. Montgomery was of the view that this approach would generate 'more for value' for Bell group shareholders (and creditors) than the appointment of a receiver and forced disposal of the assets. Montgomery expressed the view that the Bell group could stand alone from BCHL and that there was only a relatively 'low level' of inter group borrowings. Legg recorded in his note of the conversation: *This is all consistent with Michael Edwards' assessment of the position and with the information that BGUK are receiving from its parent company. Nothing arises which suggests that Michael Edwards would be ill advised to approve the granting by BGUK of additional security on the basis of advice he has been given.*	
133.	22 Jan 1990	Simpson sends BGUK a draft letter from the TBGL Directors. Edwards asked Legg to draft a note to Simpson setting out the information that Legg thought necessary to the UK directors. Legg sent his draft to Edwards (cc S&M). Some amendments were made at Fink's (S&M) suggestion.	5852-3
134.	22 Jan 1990	Edwards then sends 2 faxes to Simpson. One is based on Legg's draft. That fax set out information that UK directors required. The UK directors would need to be satisfied that BGUK was solvent. They would also need to be satisfied that it was in the interests of BGUK's shareholders, and 'more particularly its creditors, that they will not be prejudiced by the granting of the security that is sought by the banks'. He referred to the draft solvency letter sent by Simpson, and said that the letter was satisfactory subject to the amendments that he wanted made (see next para). The fax asked to be told "in outline, what strategy is to be adopted by TBGL in the foreseeable future" and stated "the position should be stated briefly in writing for the record". In the other fax, Edwards asked that Simpson amend the solvency letter to refer specifically to the refinancing repaying all lenders to TBGL and to BGUK; and asked that the letter refer to the comfort letter being unlimited in time.	5076 5853-5855 5858
135.	23 Jan 1990	Draft minutes are prepared of a meeting of the UK directors in	

No	Date	Event	Reference
		which reference is made to the directors' assessment of evidence supplied by TBGL of its plans for the foreseeable future as a going concern; [5881] The draft is provided to Simpson; [5886], Simpson provides a very brief statement in response; [5887]. Whitechurch (on Legg's advice) tries to have some amendments made to Simpson's response, but Edwards says to him "it had been enough of a struggle to get those letters out of TBGL as they were and he would rather just let it be"; [5589].	
136.	23 Jan 1990	Simpson circulated to Aspinall, Oates and Mitchell, with a copy of Edwards' fax to Simpson of 22 January 1990, draft letters to be sent by Australian directors to UK directors. Simpson sent these drafts to Edwards cc Thornhill (S&M)	5886 5889
137.	24 Jan 1990	S&W does not address the issue of corporate benefit with the Australian directors; [5708], [5717]. S&W writes to the directors recording that they have given no advice on corporate benefit; [5752], [AJ:2399], The UK directors meet with Bond and Mitchell on speakerphone[8]; [5891]- [5893]. The position is stated at the meeting that to rely on the letter of comfort being provided by TBGL, the directors have to form the view that TBGL has the financial capacity to meet its obligations under the proposed transactions; [5902]. The advice to the directors is that specific financial information is required; [5903]. They need more information; [5905]. There is no information to enable the UK directors to identify the benefit to individual companies of giving the securities; [5907], The UK directors know that this information is necessary; [5919]-[5920], [5923], [AJ:10561 [AJ:1058], [AJ:1060], [AJ:1068], [AJ:2096], Bond and Mitchell assert that they are confident that the Bell group, over time, will be in a position to meet its liabilities and pay its debts; [5906]. There is no discussion of cash flow or any other financial assessments; [5907], The assurances given by Bond and Mitchell are without foundation; [5473], [5474], [6098], [AJ:1047]-[AJ:1048], [AJ:1050], [AJ:1052], [AJ:1054], [AJ:2096]. In giving the assurances, Bond and Mitchell are focusing on the survival of BCHL and Dallhold; [5873]-[5877], [5924], [6098], [6101], [AJ:1048], [AJ:1050]-[AJ:1051], [AJ:1053], [AJ:1054],	

[8] Whitechurch (who was also a director of BIIL) was present at the meeting in his capacity as secretary and asked no questions; [5942]

No	Date	Event	Reference
		[AJ:2078], [AJ:2096]. Bond is not concerned with determining whether execution of the Transactions by BGUK and TBGIL is in the interests of those companies or whether the interests of creditors of those companies have been addressed in the manner advised by counsel; [5875], [5876], [6098], [AJ:1047]- [AJ:1048], [AJ:1050], [AJ:1051], [AJ:2078], [AJ:2096], Mitchell is in the same position; [5877]. The other UK directors rely on the assurances given by Bond and Mitchell and the UK directors resolve to enter into the facility agreements and thereby commit to enter into all of the Transactions; [5918], [5921], [5923], [6101], [AJ:1050], [AJ:1054], [AJ:1057], [AJ:1067], [AJ:1068], [AJ:2096],	
138.	24 Jan 1990	Letters from Oates and Aspinall to BGUK and TBGIL Directors, namely: • Letters of comfort from TBGL to BGUK and TBGIL: this contained a contractual undertaking to ensure that TBGL would 'procure that each of you has sufficient financial resources in order to enable you to pay your debts as they fall due'. • A letter of solvency: this confirmed that TBGL was solvent; that no material adverse change in its financial position had occurred since 30 June 1989; that it was able to pay its liabilities as they fell due; and that it intended to refinance TBGL prior to May 1991, which would enable repayment to all lenders to the Bell group including BGUK (as requested by Edwards). The letter referred to the comfort letter being unlimited in time (as requested by Edwards). • Strategy letter: It said the Bell group's principal assets were WAN and the BRL shares. The Directors intended to rationalise BPG and sell off Bell Press to News for $25m. It expressed confidence that value will be returned to BRL and when that occurred 'it would be our aim to review our shareholding in that asset and deal with it in the most appropriate manner'. It noted it was owed $25m by BCHL and associates.	5077-5081 5887-5890 5910
139.	24 Jan 1990	TBGIL and BGUK Directors approve Transactions UK directors told that the Australian banks threatened to call up their loans unless BGUK approved the Transactions that day. If the Westpac syndicate did call up their loans, this would set in train the winding up of the whole group. Bond and Mitchell told the UK directors that they had received	5891-5909

No	Date	Event	Reference
		legal advice that they would succeed in setting aside the receivership of BRL and they were confident that the sale of the breweries to BRL would then proceed. They said this would take some months but when it occurred it would return value to BRL and the Bell group's shareholding in BRL. Mitchell said it was the intention of the TBGL Directors to realise other assets. Bond and Mitchell said that they were confident that the Bell group, over time, would be in a position to meets its liabilities and repay its debts. Directors resolved unanimously that it was in the best interests of shareholders and creditors to proceed "on the ground that the ability of the company to meet its creditors would be enhanced by giving TBGL more time to repay the Westpac facility."	
140.	25 Jan 1990	**Aspinall, Oates and Mitchell resolved that BGF, TBGL and WAN enter into the Transactions.** At the meetings, the documents and the minutes were available and were presented to the Directors and the Directors met, considered, and decided. The minutes record the relevant resolution in these terms: *It was resolved that the execution by the Company of the Company's Transaction documents would be:* *(a) in the best interests of the Company as a whole after taking into account both its members' and creditors' interests; and* *(b) something of real and substantial benefit to the Company.*	5577-5578 5590 5604 Sch 38.16 A2752 A2756
141.	25 Jan – 12 Feb 1990	Minutes record meetings of Bell companies on 25 January 1990, 31 January and 12 February 1990; [5577]. It is inherently unlikely that they are a faithful record of what occurred; [5482], [5594]. No financial information is tabled or discussed at the meetings; [5604], [5747]. The minutes adopt a notional meetings procedure followed within the BCHL group. The practice within the BCHL group is that directors of subsidiary companies, including for this purpose the Bell companies, do not meet and make recorded decisions as a group. Rather, the responsible director is named as the chairman; the other directors listed as present are those present in BCHL's Perth office on that date. Minutes are given to the chairman for signing. Only if the chairman is not familiar with the transactions does Baker (the company secretary) send the chairman the documents concerned. Other directors do not normally receive minutes; [5727]-[5729], [5735], [5737],	

No	Date	Event	Reference
		[5742]. The minutes and the recitals are a triumph of form over substance; [5760], [6051], [8689], [AJ:2389].[9]	
142.	26-Jan-1990	*Insolvency* Except for Ambassador Nominees, Belcap Enterprises, Maradolf and (possibly) W&J Investments, the Bell companies are insolvent, their financial position being one of "insurmountable, endemic illiquidity"; [1949]-[1954], [AJ:989]. This is a fact that would have been recognised by a prudent businessman charged with supervision of the affairs of the Bell companies at the time; [AJ:989]. WAN is also solvent; [1899]-[1903]. The four cash flows produced in January 1990 show negative monthly closing balances increasing to a deficiency of $72.4m by December 1990; [1170]-[1173], [1182]- [1184], As at 26 January 1990, the Bell group companies face a recurring annual deficiency of cash inflows from ongoing business operations of approximately $61.6m; [1934]-[1935], [1590], [1593], The consolidated cash flow position flows through to individual group companies; [1948]. Between February and May 1990, the group needs to find $46.9m to meet refinancing costs, bank interest and bondholder interest. After allowing for available cash in-flows, the shortfall is in excess of $22.5m; [1937]-[1938].[10] There is no reasonable prospect of the publishing assets being able to service the bank and bondholder debt; [6057]. *Balance sheet* The Bell group is in trouble and potential purchasers of its assets are aware of that fact; [1853]. If the directors wish to realise the publishing assets, they could do so within 7 to 9 months and the sale would generate $269m (being a forced sale value because of the position of the companies at the time)[11]; [1853], [1875]-[1876].	

[9] The content of the recitals and the minutes can be of no comfort to the banks in the litigation; [5762], In the appeal below, the banks ignored the trial Judge's findings in section 25.8 and at [8687-8689] which were soundly based in the evidence. The banks did not challenge the findings at [5760], [5761], [AJ:2237].

[10] The Bell group's cash flow position before the Transactions is recorded at Schedule 38.9 of the trial judgment. The position after the Transactions is recorded at Schedule 38.10.

[11] Owen J accepted the reasoning of the respondents' expert, Norman [Crt: WITP.00002.006.001.T at 16.1-16.5.1829-1830, 1844.2, 1861, 1868, 1875].

No	Date	Event	Reference
		Expressions of interest in the publishing assets ($300m to $350m from Australian Capital Equity Pty Ltd, $425m from News Corporation and $360m to $480m through Hambros) are not terribly significant; [1863]- [1865]. None of the 'expressions of interest' for the publishing assets are offers in the contractual sense and have little if anything to say about the forced sale scenario; [1866]-[1867]. Note: The publishing assets are sold in December 1991 for $268.8m; [642]- [643]. The funds received equal the amount that would have been received as a result of a fire sale; [1876, Table 22], There are many hurdles to the brewery transaction (upon which the value of the BRL shares depends); [1792]-[1798]. At this time, even if the brewery transaction had been brought to fruition quickly, it would have taken some time to return BRL to operating profitability and there was no realistic prospect of any material appreciation in the capital value of the BRL shares in the short to medium term. The shares are recorded at a value of $1 80 per share which is unrealistic (and was never realized on their eventual sale by the banks); [1527], [1776], [1796], [1798]-[1799], [AJ:2246], [AJ:2258]-[AJ:2259]. Note: The liquidator's estimates of the balance sheet position of the Bell group companies as at 26 January 1990 were accepted and on a consolidated basis the group had a demonstrated insufficiency of realisable value in its assets to meet its liabilities; [2001]. As a result, the interests of a corporation with creditors for whom no provision had been made or, as a result of the Transactions, could be made, would diverge significantly from the interests of the group; [AJ:952]. *BGUK* As at 26 January 1990 (and at all material times during the negotiation of the Transactions), BGUK is dependent on financial support from TBGL to meet its liabilities [5799] in the form of intercompany loans to UK Bell companies (including the loan of £237m from BIIL) which have direct or indirect external creditors; [493], [5898], [5931], [AJ:1065], [AJ:2096]. *Transactions* The Parties enter into the ABSA, ABFA and LSA No 2; [435]. The LSA No 2 has as an appendix, the RLFA No 2, being a restated form of the Lloyds Facility Agreement; [436], Together these are the main facility agreements. They are designed to: • change the status of the Australian banks' respective facilities from on demand to term loans expiring 31 May	

No	Date	Event	Reference
		1991; • bring the Australian banks into a syndicate arrangement; • extend the term of the Lloyds syndicate banks' facility from 19 May [33] to 31 May 1991; • create an equality of position between all the banks; and • convert what had previously been unsecured facilities into secured facilities; [437]. The extension of time is not intended to permit the Bell companies to conduct their affairs as going concerns with the object of maintaining or improving solvency, but to provide time for the banks to utilise the provisions of the Scheme to have the assets of the companies liquidated and have all funds remitted to the banks; [AJ:601]-[AJ:607]. There is no access to further finance under the Transactions; [AJ:992]. In addition to the main facilities agreements, the parties enter into (a) charging documents by which all worthwhile assets of the Bell companies are mortgaged to secure BGF, BGUK and TBGL's bank liabilities; (b) deeds of guarantee and indemnity by which the Bell participants guarantee repayment of the bank debt; and (c) deeds subordinating intra-group indebtedness; [423], [435], [461]. By entering into the Transactions, the banks take security over all worthwhile assets of the Bell companies; [6052], [6055], [8745.9], [8750], [AJ:555], [AJ:945], [AJ:1088], [AJ:2076], [AJ:2169], [AJ:2336], [AJ:2430], [AJ:3175], [AJ:3185]. Clause 17.12 of each of the ABFA and RLFA No 2 entitles the banks to receive the proceeds from the sale of assets by the Bell companies and apply them as prepayments of the principal amounts owing to the banks; [516].[12] Key aspects of the cl 17.12 regime are: • with some exceptions (see below), all proceeds from the sale of assets are required to be passed to the banks as a pre-payment of the facilities; [834], [1595], [1598], This obligation applies unless all banks agree otherwise; • the exceptions allow each of TBGL and the BPG group to retain $1m from any individual asset sale transaction up to $5m in a six month period; [1671]-[1673]; • consent is given to sell some assets, but with the exception	

[12] The clause 17.12 regime captures the Bell Press proceeds, Q-Net and the proceeds of sale of the New York apartment; [1646], [1648], [1654].

No	Date	Event	Reference
		of £5m from proceeds of sale of the assets of a particular company (Bryanston) allocated to pay UK company creditors, all proceeds of the asset sales are to be dealt with according to the cl 17.12 regime; [1606]-[1608]; • proceeds from "small disposals" (not permitted to exceed $100,000 for the group in a six month period) are allowed to be retained; [1612]; • proceeds of asset sales distributed to the banks as pre-payment of the facilities cannot be re-borrowed; • inter-company debt can only be assigned with the consent of the Security Agent acting for the banks; [1613]; and • no other financial indebtedness is permitted without the prior written consent of all the banks. The cl 17.12 regime places a fetter on the Bell companies' ability to gain access to their assets and diminishes the interests of the companies in their property; [9205], There is no basis for any expectation that the banks will release proceeds of any asset disposal if those proceeds are required; [1667]- [1673], [4314]-[4315], [4335], [5183], [6058]-[6059], [AJ:607], [AJ:2411], In addition, under the floating component of the mortgage debentures, the chargors cannot deal with property (other than stock in trade) other than with the consent of the banks; [AJ:700], [AJ:701], [AJ:2513], The Transactions are entered into by the Bell companies with intent to defraud creditors; [AJ:547]-[AJ:556], [AJ:2513]. The directors have no concern for the non-bank creditors in entering into the Transactions; [AJ:559],[AJ:2513]. There is no value to the claimed consideration provided by the banks; [AJ:599]-[AJ:603], [AJ:605]-[AJ:608], [AJ:2513]. No real benefit is provided to the Bell companies; [AJ:992], [AJ:2349]; [AJ:2409]. The Transactions do not afford time to devise and implement any restructure; [4314], [4958], [AJ:601], [AJ:607]. The extension of time is of no (or, at best, nebulous), value to the Bell companies; [4309], [4314], [6067], [6110.2], [8672], [AJ:602]-[AJ:603]. The Transactions deliver to the banks control over the timing and terms of any restructure proposal; [8994 8], [9053], [AJ:607], [AJ:806], [AJ:992]. The Bell companies are in default of the facility immediately following implementation of the Transactions; [9214], [AJ:605], [AJ:606], [AJ:2513]. The Transactions condemn the Bell companies to a position where they are not able to pay their liabilities as they fall due; [901], [1951], [AJ:947], Upon entering the Transactions or as	

No	Date	Event	Reference
		their consequence, 18 plaintiff Bell companies remain or are rendered insolvent and BPG, Western Interstate and Wanstead are also rendered insolvent;[13] [1952], [4285.4], [4308(c)]. By the Transactions, the Bell companies are immediately placed at the mercy of the banks and are unable, without all banks' consent, to meet their known commitments; [4309], [6041]-[6042], [6110.2], [AJ:607], [AJ:2513]. Bell companies not previously indebted to the banks undertake new obligations, including BGF guaranteeing and charging its assets as security for BGUK's debt to the Lloyds syndicate banks; [2142]-[2143], [9367], [AJ:593]-[AJ:594], [AJ:600]. Each Bell participant puts its assets in jeopardy in the interests of insolvent borrowers, providing a probable prospect of loss and no probable prospect of benefit. Each relevant Bell participant suffers prejudice; [4310]-[4322]. *Effect on the necessary financial restructure* Despite the Transactions, a financial restructure is still required to reduce debt levels to manageable proportions; [8994.8], [9053], [AJ:806]. It cannot be reasonably contemplated at this time that a financial restructure is feasible without a reduction in the gross indebtedness to the bondholders; [4334]-[4335], [6062]. Liquidation and the Transactions are not the only two available alternatives; [4300]. There is an asset/debt structure capable of consideration for reconstruction; [4303]-[4306] and legal means to do so; [4307]. The precise Transaction terms are not essential to a restructure; [4308]. The grant of security forecloses any prospect of a resolution by a scheme of arrangement or composition of debts unless the banks agree to release securities and participate in a scheme; [6082], [AJ:992]. Avoidance of liquidation is not of automatic benefit; [4297]-[4299]. *The Transactions constitute a Scheme* The Transactions constitute a Scheme, the principal object of which is to transfer control of the Bell companies' assets to the banks for the conduct of an informal work out to the banks' advantage, and further to avoid a formal administration in which other creditors would rank equally; [6063], [9723], [AJ:555]-[AJ:556], [AJ:583], [AJ:600-]-[AJ:602], [AJ:805],	

[13] WAN gives a guarantee to the banks [9462]-[9464] and it follows that it is also rendered insolvent, but it was not necessary for the trial judge so to find because WAN was not a plaintiff.

No	Date	Event	Reference
		[AJ:811]-[AJ:812], [AJ:945], [AJ:984], [AJ:1088], [AJ:2079], [AJ:2513]. A purpose of the Scheme is to avoid the risk that in a liquidation BGNV would rank *pari passu* with the banks; [7130], [7142], [9723], [AJ:555]-[AJ:556], [AJ:805]. *Prejudice to creditors* The Transactions cause prejudice to all creditors other than the banks; [4308], [AJ:559], [AJ:917], [AJ:1007], [AJ:1016], [AJ:2079], including the DCT; [4323]-[4331], [AJ:956], [2328]-[2329] and the bondholders; [4334]-[4335], [4338], [AJ:559], [AJ:587]. If (as the Court of Appeal found to be the case) the on-loans are unsubordinated, then the prejudicial and detrimental effect of the Transactions is overwhelming and it is all over bar the shouting; [4283], [4287]-[4288], [6047]-[6049] [AJ:582], [AJ:996], [AJ:2086], [AJ:2088]. BGNV could have proved in a liquidation of BGF *pari passu* with the banks for $339m — more than the banks' debt; [AJ:987]. There is no foundation for the representation of the Australian directors in the 1989 Bell group consolidated accounts that the objections to the tax assessments would be successful. Provision ought to have been made for these amounts in the 1989 accounts; [AJ:964], [AJ:980] [AJ 2085], [AJ:2009]-[AJ:2073], *Other gains to the banks* The Transactions provide gains to the banks in the form of: • interest payments; [9493]; • bank fees and legal fees; [9547]; • stamp duty; [9546]; and • payments received from asset sales; [9563], [9567], *The Australian Directors* As at this time, the Australian directors: • know that the financial position of the companies is such that they are of doubtful solvency or they are nearly insolvent; [4966], [5422], [6035]-[6037], [6041], [6046], [9742], [AJ:2246], [AJ:2257]- [AJ:2260], [AJ:2264]; • have no more than a mere hope that the banks would, if requested, release the proceeds of asset sales; [1666], [1675]-[1682], [1687]-[1688]; • fail to carry out the necessary investigations to ensure that for each company there is a corporate benefit arising from the Transaction; [6033], [6039], [6040], [6043]-[6045], [6051], [6064], [6074], [6080], [6099], [6110.1], [6100.3],	

No	Date	Event	Reference
		[AJ:2074]-[AJ:2075]; • do not consider the individual financial circumstances of each Bell group company at all; [5602]-[5605], [5747], [6040]-[6045], [6051.3]; • do not identify the creditors of each Bell company [6040] and give no attention to the interests of creditors other than the banks, particularly the status of the bonds and the on-loans (which are not investigated) and the liabilities to the DCT; [5157]-[5158], [5161], [6047], [6050], [6051.2], [6065], [6080], [AJ:976], [AJ:979]-[AJ:980], [AJ: 995], [AJ:998], [AJ:2085], [AJ:2087]-[AJ:2088]; • appreciate that there is a need for a restructure, but, lacking any plans as to how it may be implemented, commit the companies to Transactions which cede control of all the assets to the banks leaving them nothing with which to effect a compromise with the bondholders and other creditors; [1686], [4314]-[4315], [4967], [6052]-[6068], [6082], [6088], [AJ:559], [AJ:2076], [AJ:2412]-[AJ:2415]; • cause companies that do not have an existing indebtedness to the banks to undertake such an obligation by entering into the Transactions; [4312], [4965], [6041]. ***Aspinall*** Aspinall receives Bell group cash forecasts from August 1989; [5152] and is aware of the serious deterioration in the cash flow position between September 1989 and 26 January 1990; [5153], [5200]. It is obvious to Aspinall before 26 January 1990 that TBGL is unable to service its debt commitments and that the solution has to involve reduction in debt levels; [1594], [1936], [5284], As at 26 January 1990, the interest payable to the banks on the facilities is \$43.6m per year; [1929]. The prediction of cash receipts from BPG is about \$22.2m; [1593], There is a shortfall even before taking into account the annual interest commitment of \$48m to the bondholders [1929], which is abundantly clear to Aspinall; [1593]. He is well aware that the publishing assets could not produce sufficient cash to meet bank interest and is also well aware of the parlous financial circumstances of the group; [6086], [AJ:990]. Aspinall is aware of the loss of \$271.8m disclosed in the TBGL annual report and that the Bell group's current liabilities of \$524m exceeds current assets by \$177m; [5156]. Aspinall said that he believed that the Bell group had non-core assets which could be sold which gave him about 12 months to	

No	Date	Event	Reference
		organise a restructuring of the Bell group; [1133], [1135], [5083], [5089], [5165], [5362]. There is little ground for confidence in January 1990 that a substantial part of these assets will ever produce any cash [AJ:2353]. Of the non-core assets which Aspinall said would generate $80.79m, about $49m were caught by cl 17.12; [1646], [1648], [1654], [5163], [5177], [AJ:2352] and Aspinall does not even know about one potential asset (the ITC contract payment which he said was worth $17m) prior to 26 January 1990; [1137], [5195]- [5198]. Aspinall said that he believed that the clause 17.12 regime was to prevent leakage of funds to the BCHL group and not to prevent the Bell group from utilising asset sales for its own purposes; [5167]. This expectation is not supported by any contemporaneous document or other evidence; [5168]. It is not realistic; [5174]-[5176], [5180], [5183]. Had there been any real meeting of minds with the banks it would have been openly negotiated. There is nothing more than a hope and certainly nothing approaching a contract, understanding or reasonable expectation that asset sale proceeds would be released; [5175]-[5176], [5371], [AJ:2351], There was ample evidence to support all these findings; [AJ:2081]-[AJ:2084]. Aspinall has been negotiating the sale of the Bell Group Press printing operations to News Corporation from September 1989. The proceeds of sale are critical to the continuing operation of TBGL after January 1990; [5142]- [5144]. Aspinall does not have restructuring proposals in mind and his evidence that there were reasonable prospects of developing and implementing a restructure is of concern; [5088], [5089], [AJ:951], [AJ:2095]. Aspinall agreed that if the publishing assets were to be retained, debt would have to be reduced to around $200m, which was the amount that could comfortably be serviced from the WAN free cash flow; [6060]-[6061], Aspinall had to deal with (among other liabilities and provisions) about $260m of bank debt and $580m of bondholder debt; [6057]. Aspinall has ideas and confidence but no plan; [5282], [5361]-[5369], [5369], [5371], [5499], [AJ:2351]. Aspinall's belief that the Transactions may allow him to 'right the ship' is without rational foundation; [AJ:988]. Aspinall's evidence detracted from his general explanation that he had available tools to effect a restructure; [1137], [5163]-5165], [5175], [5195]-[5198], [5224]. Aspinall's view that the publishing assets could be sold for $500m to $600m is an optimistic view with no discounts or reservations for adverse factors or events; [5092], [5124]. Aspinall could not think that such a price could be achieved by,	

No	Date	Event	Reference
		for example, May 1990; [5092], [5125].	
		Aspinall has little knowledge of the brewery deal and relies upon Mitchell for information about it, although he appreciates its innate complexity; [5128], [5141]. He understands that this must have an effect on both the extent and timing of any return to value in the BRL shares and cannot have had any realistic expectation that the shares would be returned to value in time to assist in the payment of bondholder interest in May and July 1990 nor that BRL would be a source of management fees or dividends in that time; [1799], [5141], [6057], [AJ:2246].	
		Aspinall is aware that he must consider the interests of creditors; [AJ-990]. Aspinall makes no enquiry and seeks no advice as to how the interests of the DCT are to be addressed; [AJ:995]. No attention is given to the interests of creditors other than the banks; [6051.2], [AJ:995], [AJ:1001], [AJ:2079].	
		Aspinall's understanding about subordination does not extend beyond the bonds to the on-loans; [AJ:997], [AJ:2088] and Aspinall is well aware of the significance of the on-loans; [AJ:2089]-[AJ:2094]. He neither seeks nor obtains any advice on the status or effect of the BGNV on-loans or the obligations of TBGL and BGF to BGNV; [AJ:998], [AJ:2087].	
		Aspinall does not understand and is confused about the concept of corporate benefit and nobody addresses the concept of corporate benefit with him; [5065]-[5068], [5482], [5755]-[5764], [AJ: 1001], [AJ:2079].	
		Aspinall's evidence that the minuted resolutions accurately reflected his view at the time that the refinancing was in the best interests of each of the companies in the Bell group was not credible; [5066].	
		Aspinall sees the disposition of assets to the banks as a task to be undertaken as a matter of urgency and the means by which the banks could be persuaded to withhold demands for the repayment of moneys advanced; [AJ:991], [AJ:2091]. That is the limit of the benefit to be obtained from the Transactions; there is no access to further finance to replace working capital, the grant of security forecloses any prospect of a scheme of arrangement or composition unless the banks agree and the passing of proceeds of asset sales to the banks relinquishes the only alternative source of additional funds; [AJ:992]. The asserted belief by a director that such a course of action met the best interests of a company cannot be accepted as rational; [AJ:993], [AJ:994].	
		Mitchell	
		Mitchell's evidence was of marginal utility and unreliable;	

No	Date	Event	Reference
		[5373], [5440]. Mitchell has no day to day involvement in the operation of the Bell group and relies on Aspinall [5372], [5378], [5432]. He sees his role in relation to TBGL as limited; [5374]. Mitchell pays minimal attention to the affairs of the Bell group; [5389]- [5390], [5456], [5475]-[5477], [5603], [6091], [AJ:1002]-[AJ:1004]. He does not pay close attention to the valuation of proposals or negotiations for the sale of the publishing assets; [5392], [5395], [5396], It is not his responsibility to monitor TBGL cash flows and he knows little about them; [5387], [5432], [5437], [5453]-[5455], [5476]. He pays no particular attention to the tax issues; [5445]. He never turns his mind to the subordination of the on-loans and it does not occur to him that the bondholders' claims might not be practically subordinated; [5381]-[5382]. Mitchell is not involved in dealings with the banks or the refinancing and there is little evidence that he paid particular attention to the Transactions and their consequences; [5432], [5453], [5464]. He has no regard to corporate benefit; [5474]; [5482]. His primary interests and responsibilities revolve around the BCHL group; [5373], [5441]. From 21 December 1989 to 19 January 1990, Mitchell is overseas or interstate, involved in the problems of NAB's appointment of a receiver to BBHL; [5447]. He does not fulfill his functions properly; [5374], [5396], [AJ:1002]. All of Mitchell's plans concern the BCHL group and only incidentally mention or affect the Bell group. Mitchell's plans are "Bond-centric", denoting a preparedness to prejudice the interests of non-bank creditors of Bell companies by the provision of preferences to the banks to stave off demands and avoid the catastrophic impact on BCHL that would follow. A common feature of the BCHL restructuring plans is the purchase of the convertible bonds at a discount to face value. No proposal advances beyond the conceptual phase and nothing concrete comes of them; [5426]-[5428], [5430], [5431], [5461], [5502]-[5539], [6069]-[6070], [AJ:1002], [AJ:1006]. Mitchell has arranged the sale of BBHL's brewing assets to BRL for $3.5 billion with a $1.2 billion deposit; [5398]-[5399]. He is not involved to any great extent in the brewery transaction in or after January 1990; [5416]. Mitchell has a general knowledge of the Bell group's income and obligations over the next few months and realises that it is not possible to carry on indefinitely using asset sales to cover interest shortfalls; [1134].	

No	Date	Event	Reference
		Mitchell has no knowledge about the value of the Q-Net asset nor its financial affairs; [1386].	
		Mitchell's evidence in regard to the value of TBGL's shareholding in BRL as at 26 January 1990 lacked cogency; [5422].	
		Oates	
		Oates was not called to give evidence and his absence was not explained; [5478], [5487].	
		Oates is intimately involved in negotiations with the banks before July 1989, and thereafter continues to play a role; [5481]. Oates does not have a guiding role in relation to the Transactions; [5484].	
		Oates must have been aware of the cash flow and general financial problems of the Bell group, its precarious financial position and the need to gain access to asset sale proceeds; [5485], [AJ:2316].	
		Based on his position in the inner cabal of BCHL, and the evidence of other BCHL officers, Oates' primary concern is the survival of BCHL rather than the interests of individual companies within the Bell group. He fails to make any enquiries to identify creditors of the Bell companies and to consider the effect that the grant of securities to the banks will have on creditors; [5486], [6070], [AJ:1005]-[AJ:1006], [AJ:2079].	
		Note: The evidence of Corr, Swan and Baker was that Bond and Oates would have known that all of the restructure proposals were Bond-centric with little emphasis on the Bell group; [5568]. Corr (who reported to Mitchell) reviewed the BCHL restructure plans. His evidence supported the conclusion that prior to 26 January 1990 Aspinall and Mitchell had not developed any firm ideas for a restructure of the Bell group, and Mitchell's concentration was on BCHL not the Bell group; [5431], [5494]-[5497], [5499], [5515]-[5523].	
143.	26 Jan 1990	**Bell Group's key creditors as at 26 January 1990**	2096, with A2343-4
		• BGF owed the Australian banks \$130m on demand – guaranteed by TBGL.	5016
		• BGUK owed £60 million to Lloyds syndicate banks, due 19 May 1991 subject to repayment on demand should an event of default occur – guaranteed by TBGL.	
		• BGNV debt: BGNV owed \$398.9m to subordinated bondholders, with subordinated guarantee by TBGL: – TBGL owed \$60.4m to BGNV under "on-loan"	Lee AJA Sch 3

No	Date	Event	Reference
		– BGF owed $338.5m to BGNV under "on-loan" The bonds were trading at 20% of their face value.	A2852
		• Subordinated bonds owed to SGIC: – TBGL owed $75m on a subordinated basis; – BGF owed $75m on a subordinated basis, with subordinated guarantee by TBGL.	Lee AJA Sch 3
		• Tax disputes with DCT – all under objection: – Bell Bros: $29.99m; – Maranoa Transport: $1.34m; – Bell Bros Holdings (non plaintiff): $2.94m.	2096
		• Trade creditors.	5005-5006
144.	26 Jan 1990	**Key beliefs of Australian directors**	
		• **Solvency**: The Australian directors did not believe the Bell group was actually insolvent, albeit that they knew it was of doubtful solvency or that it was nearly insolvent.	6035.1 6086
		• **Alternative to Transactions – immediate liquidation**: • they believed that unless the Transactions were entered into one or more of the Australian banks would cause one or other or both of TBGL and BGF to be wound up. • Further, if either TBGL or BGF were wound up, each other company in the Bell group would be wound up;	1881, 4966 5055, 5900 6035.3 A2095 A2260 A2759-64
		• **Consequences of Liquidation**: • Aspinall and Mitchell believed a liquidator would dispose of the publishing assets and the BRL shares in a 'fire sale', well below the real value of the asset.	5018, 5438 A2804, A2863
		• Aspinall and Mitchell believed the Bell group had a surplus of assets over liabilities, particularly the value of the publishing assets and the BRL shares once the brewing deal was completed. However, its assets would not exceed liabilities if liquidators were appointed and the assets were sold in fire sales.	5018, 5436, A2901
		• Mitchell believed that a collapse of BCHL would result in the termination of the brewery deal with BRL to the disadvantage of TBGL.	5435-6 6035.3
		• **Entry into Transactions to avoid liquidation**: • The Australian directors knew that in order to avoid a winding up of the Bell group it was necessary to consider and implement a restructuring of the financial position of	4967

No	Date	Event	Reference
		each company in the group.	
		• Aspinall believed that the first step in any restructure, was to secure the refinancing. Aspinall believed that he had to achieve the refinancing to buy the 12 months' time that he considered he needed to plan and implement his ideas. He believed that "if he could get the Banks sorted out, he had about 12 months to right the ship".	5362 5367 6086 A2749 A2790
		• Aspinall and Mitchell believed that the security would have to be offered to the Banks to induce them to participate in the refinancing	5018, 5020 5434, 5452
		• **Prospects for companies if Transactions undertaken**	
		• The Australian directors also believed that it was possible to restructure the financial position of the Bell group so that the companies in the Bell group could meet their obligations as and when they fell due.	A2917-2922
		• Aspinall thought that once the refinancing was in place he had 12 months to plan and implement a restructure. Aspinall thought the refinancing would give him time to plan and implement a restructure, based on the 'tools' that he had available and the ideas that he had in his mind for utilising the tools.	1135, 5362 5367, 6086 A2081 A2351
		• Aspinall was determined to confront Bell group's problems and he was intent on securing its survival.	5074
		• Mitchell thought that by having its financing on a medium term basis, that the Bell group would be afforded time with which to enter into a restructure.	5438
		• Aspinall and Mitchell believed that the Bell group had a surplus of assets over liabilities, particularly the value of the publishing assets and the BRL shares once the brewing deal was completed.	5018 5436
		• **Publishing Assets**	
		• The Australian directors believed that the publishing businesses had real value.	6035.5
		• Aspinall held the view that the newspaper could be sold for between \$500m-\$600m. Mitchell believed that the Directors would be able to realise a full value for these assets if the Bell group had time to negotiate with interested parties.	5124 5436 A2770
		• Aspinall believed that the publishing assets could be used to raise equity and the potential for cash flow improvement could be managed so as to improve the	5083

No	Date	Event	Reference
		capability of the Bell group to sustain a level of debt for longer term bank financing.	
		• Aspinall realised that he would have to renegotiate the Bell group's financing arrangements some time before May 1991. He believed that the Banks would either want to be paid out or would want to renegotiate a term facility. He believed that the key to any renegotiation would be the strength of the publishing assets of the Bell group.	5083
		• **BRL shares – brewery transaction between BRL and BCHL**	
		• The Australian directors knew that the BRL shares had little realisable value in the short to medium term. The fate of BRL was tied to its capacity to complete the acquisition of an interest in the breweries or recover its deposit from BCHL. The Directors believed that if the brewery transaction were completed it would add considerably to the value of the BRL shares.	6035.4
		• Aspinall believed that the sale of the brewery assets would proceed and BRL's shares had the potential to be restored. Once the brewery sale agreement was concluded the shares would gradually rise to a value on the market at least in excess of $200m. Value would be restored by the end of 1990.	5128 5138-5140
		• Mitchell believed that the brewery deal would be completed. This would restore 'significant' value to TBGL's shareholding in BRL. Mitchell knew that $1 a share would be sufficient to pay out the bank debt.	5436
		• **Directors believed Transactions provided time**	
		• Aspinall believed the Transactions gave him 12 months to restructure the group.	5362, 5367 6057, 6086
		• While the Australian directors believed that the Bell group companies would need to sell assets and recover debts and utilise the proceeds to meet the shortfall:	6035.6, 5167-5168
		• Aspinall believed that the Banks would release the proceeds of asset sales;	5179 A2081
		• Mitchell believed that the Banks would allow the Bell group sufficient time to implement a restructure.	5456
		• The Australian directors believed they had the following assets (or "tools") available to assist in cash flow requirements, including:	5154 5163-5164 5906
		• $25m from the sale of Bell Press;	5179, 5436

No	Date	Event	Reference
		• More than $25m owing from BCHL related companies (BCF and JN Taylor);	1475, 5187 5190, 5456
		• The sale of Q-Net ($7.5m);	5184-5
		• The ITC receivable ($17m);	A2367
		• The New York apartment ($1.24m),	5199
		• improving cash flow from the publishing assets.	5083, 5117-5119 5121
		• **Overall benefit of Transactions**	
		• Aspinall and Mitchell believed that a restructure following the Transactions would be preferable, in the interests of all stakeholders, to the appointment of a liquidator because the liquidator would undertake a fire sale of assets.	5083 5438
		• Mitchell believed that there were significant benefits in proceeding with the refinancing. The single biggest benefit was the greater ability to realise assets at true values rather than have assets being sold on a distress basis by a liquidator. That benefit was one which largely accrued to the bondholders, being the subordinated creditors. It also was a benefit to shareholders of the Bell group. He did not perceive it as being a particular benefit to the Banks as he believed that even on a liquidation they would have received either a 100% or close to a 100% return.	5384 5438
		• Aspinall believed that by January 1990, the following had been achieved:	5082
		• A medium-term banking facility that had brought all 20 bankers to the Bell group together in one facility which now had the same maturity date, May 1991, and common terms and conditions. This facility also had the benefit of individual banks not being able to act unilaterally. A majority of the Banks would have to agree on any action that could be taken in relation to the facility.	
		• The Australian banks and the Lloyds syndicate banks had agreed to share security on common terms which had not been possible under the NP agreements prior to 1990.	
		• The security given together with the stringent terms and conditions of the refinancing documents gave the Banks comfort that there were strict controls to prevent leakage of money or assets to BCHL.	
		• An opportunity to prove to the Banks, over the term	

No	Date	Event	Reference
		of the extended facility, that the publishing assets could improve profitability and demonstrate independence of the Bell group from BCHL and thereby develop a relationship of trust and confidence with the Banks for the long-term benefit of the Bell group.	
		• The ability to concentrate on running the business of the Bell group without having to deal with the potential for a multitude of individual positions to be taken by any of the 20 Banks.	
		• **Position of creditors**	
		Subordinated bonds	
		• The Directors believed that the bonds and the on-loans were subordinated.	5057-5058 5060-5061 5380-5382
		• There was no evidence from any of the Bell group officers when RHáC had control that they believed the on loans were unsubordinated. Nor was there evidence that any such officers knew of information or passed on any information to their successors in office to that effect. Similarly, there was no evidence from any of BCHL affiliated officers that they formed that view prior to 26 January 1990.	5061
		• The Australian directors were aware that the convertible subordinated bonds were selling at 20% of their face value.	A2852
		• Mitchell believed that the bondholders would benefit from the continued existence of the Bell group, whereas liquidation would result in a nil return on their investment.	5384, 5438
		Tax claims	
		• The Australian directors believed that companies would be successful in the tax disputes.	5158 5442
		Trade creditors	
		• Aspinall and Mitchell believed that the giving of the security to the Banks did not affect the trade creditors' interests because the newspaper would continue as a going concern and these creditors amounted to a small proportion of the total debt owed by the Bell group.	5005-5006 5438 5470
145.	26 Jan 1990	Beliefs of independent BRL directors: Hill and Henson	
		• the interests of BRL were best served by proceeding with the brewery transaction;	1789
		• the brewery transaction would be completed and BRL's	

No	Date	Event	Reference
		financial problems would be resolved.	A2863
146.	26 Jan 1990	Duffett (LDTC) meets with Aspinall and Simpson. Duffett did not see significance of refinancing *"in view of the subordinated position of our bondholders".*	5289-5291 8852 A2774
147.	26 Jan 1990	**Banks, TBGL, BGF, WAN and BGUK execute main facilities agreements (ABSA, ABFA, LSA No 2).** Further documents in the package were executed over the ensuing days. Most of the documents were in place by 15 February 1990.	36 435-437 A2752
148.	30 Jan 1990	TBGIL received £5m from the sale of Bryanston.	355, 518
149.	31 Jan 1990	**Meetings between Aspinall, Mitchell and Oates for Australian 'security providers' to enter into their Transactions.** At the meetings, the documents and the minutes were available and were presented to the Directors. Same resolution as to *"best interests of the Company' and real and substantial benefit"* as for 25 January 1990 meetings.	5577-5580 5590 5604 Sch 38.16 A2752-5 A2756
150.	1 Feb 1990	**Australian guarantees and mortgages were executed.**	453-478 A2752
151.	2 Feb 1990	Westpac sends a facsimile to the Australian banks advising about a meeting with TBGL and referring to the fact that several banks have indicated that it would be worthwhile for the banks to meet to discuss ongoing involvement with TBGL with particular attention being given to inter-company loans and their "apparent" effect on the status of the subordinated bonds. The facsimile also states that the banks would be well advised to seek some indication from TBGL as to how the $25m interest payment on subordinated bonds will be covered in May 1990; [6768], [6815].	
152.	7 Feb 1990	The first formal meeting of directors of TBGL is held; [5449], [5746]. The directors are concerned about insolvent trading; [5746]. Aspinall, Mitchell and Oates discuss the immediate cash requirement for $25m and resolve, bearing in mind their obligations regarding insolvent trading, to obtain a more detailed cash flow; [1175], [5201]-[5202].	
153.	7 Feb 1990	TBGL Directors meeting. A cash flow noted a $10m deficit, which Oates said would be covered by ITC tax refunds.	1175 1315
154.	9 Feb 1990	The lawyers for the Bell companies write to their clients confirming that they have been "asked to make no comment" on	

No	Date	Event	Reference
		the corporate benefit to any of the borrowers, security providers or subordinated creditors and stating that they have expressed no opinion on the issue of corporate benefit; [5743].	
155.	12 Feb 1990	**42 meetings of the remaining Bell participants resolving to enter into the Transactions.** The documents and the minutes were available and were presented to the Directors at the meetings.	5577, 5590 5604 Sch 38.16 A2752
156.	12 Feb 1990	Bell Press business and land sold to News. Proceeds of $20m paid by TBGL to Westpac escrow account.	366 519-520
157.	13 Feb 1990	BGUK and TBGIL execute the Transactions and give the necessary consents; [5913]-[5914], [AJ:2967]. Edwards and Birchmore have no more information and continue to rely on the assurances given by Bond and Mitchell; [5915]-[5917].	
158.	13 Feb 1990	Further meeting of BGUK and TBGIL Directors.	5914
159.	14 Feb 1990	Following Bank consent, TBGL withdraws $1.33m from the Bell Press proceeds to meet employee commitments.	520 A2364
160.	15 Feb 1990	£1.3m of the Bryanston proceeds used to meet TBGIL expenses and to pay BGUK's fees associated with the refinancing. The remaining £3.7m was transferred into a Westpac escrow account, which would meet the anticipated liabilities of TBGIL, with any balance being applied to repay Bank debt.	518
161.	15 Feb 1990	**Principal Subordination Deed executed.** Bell group companies (called subordinated creditors) that were creditors of the Australian security providers agreed to subordinate debts owed to them by those companies until the Banks' debts had been repaid.	489
162.	15 Feb 1990	BGUK and TBGIL execute mortgage over assets.	481
163.	15 Feb 1990	**All charging documents and guarantees contemplated by the recitals to the ICA, and as required by the conditions precedent to ABSA and LSA No 2, had been entered into**	487
164.	19 Feb 1990	The Garven cash flow is produced, it shows accumulated negative closing cash balances of $58.4m by December 1990 and $87.7m by May 1991; [1185]. The net negative change from the September cash flow is $154m; [1187].	
165.	20 Feb 1990	Garven prepares a cash flow. He states: *If we retain all proceeds from asset sales and are fully paid our loan balances*	5206

No	Date	Event	Reference
		by Bond Corp and JN Taylor we will have enough cash to last until 31/12/90.	
166.	21 Feb 1990	Full Court hears BBHL receivership appeal.	244 5420
167.	22-23 Feb 1990	The Garven cash flow is presented to the banks at meetings in Perth; [1176]. Aspinall tells the banks that the Bell group needs $53.9m to keep it from collapse and that it is of primary importance for the Bell group to retain asset sale proceeds instead of using them to repay the banks; [5209], [5210],	
168.	23 Feb 1990	Aspinall addressed meeting of Banks. Key matters: • TBGL had planned disposals, including Q-Net ($7.5m), a New York apartment ($1.25m), ITC payment (possibly £7.6m ($17m) but uncertain); • Management initiatives, such as cost cutting, cash management, Garven presented his cash flow; • TBGL wished to repay the bank debt as soon as possible and had resolved to sell the BRL shares as soon as they achieved optimal value; • the progress of the tax disputes; and • Request by TBGL for proceeds of asset sales to be retained by TBGL to meet its commitments.	521 5209-5210 6781-6794
169.	27 Feb 1990	The banks execute a letter of waiver to allow the Bell companies to pay fees relating to the transactions, a bank interest payment due on 28 February 1990; [522]-[523]. A major factor contributing to the banks' decision to release the proceeds is a resolve to preserve the hardening period; [6983]-[6990]; [AJ:2362]-[AJ:2368].	
170.	27 Feb 1990	Banks release $7.7m from escrow account to pay expenses, fees and Bank interest.	522 6915
171.	28 Feb 1990	Full Court orders that the receivers of BBHL be removed immediately and control be returned to BCHL.	39 244 5420
172.	1 Mar 1990	News Corp pays a further $5.77m to TBGL for Bell Press. Funds were paid to the Westpac escrow account.	366 519
173.	mid Mar 1990	Aspinall negotiates sale of WAN to Maxwell. The Chicago Tribune and Stokes were interested in proposals for the purchase of Bell group convertible bonds and for those bonds to then be exchanged for shares in TBGL.	5280

No	Date	Event	Reference
174.	20 Mar 1990	BRL and BCHL agree an extension for completion for the brewery purchase, and agree for BRL to purchase from BCHL 212.8m shares in BML for 40 cents per share. The purchase price was to be satisfied from the repayment to BRL of outstanding sums owed by BCHL.	1761
175.	28 Mar 1990	The High Court rejects NAB's application for leave to appeal the decision removing the receivers from BBHL.	244
176.	28 Feb 1990 to 30 Mar 1990	Banks release $7.7m from the escrow account to pay fees and stamp duty. All Banks defer distribution of balance of escrow account until April 1990.	523 525 6915
177.	6 Apr 1990	Aspinall writes a memo to Simpson and Garven, stating that NAB wants the Bell group to sell other assets, but there are no other assets to sell and anything they do sell is subject to cl 17.12; [5223], [5224].	
178.	27 Apr 1990	All Banks defer distribution of balance of escrow account until May 1990.	526
179.	Sometime in May 1990	Aspinall commences discussions with LCAS to advise TBGL in relation to a possible restructure.	535
180.	May 1990	By this time, there is nothing even remotely approaching a plan to restructure the bondholder indebtedness of the Bell companies; [5282], [6062].	
181.	4 May 1990	Aspinall writes to LDTC to advise that interest due that day on the bonds will not be paid; [5247].	
182.	7 May 1990	Interest of $7.5m under the BGF issue, and $17.5m under the second BGNV issue, is due.	338
183.	8 May 1990	Aspinall meets with the Lloyds syndicate banks about release of funds in escrow account.	5271 5281
184.	9 May 1990	Latham sends letter to Aspinall stating that the unanimity requirement of cl 17.12 was insisted upon, during the drafting, by only one of the Lloyds syndicate banks, and *"that arguably the 'all Banks' nature of the decision was being put to uses for which it was not ostensibly intended by the only bank which required it"*.	A2787
185.	11 May 1990	The banks agree (after four recalcitrant banks impose conditions on their consent) to release funds caught by the cl	

No	Date	Event	Reference
		17.12 regime to allow the payment of bondholder interest for May 1990; [5248]-[5250], [5254]. The waivers were designed, at least in part, to avoid precipitating an event of default which could lead to a liquidation within the six month preference period; [7066], [AJ:2362]-[AJ:2368].	
186.	11 May 1990	BGF pays $25m in interest under BGF bond issue and the second BGNV bond issue, funded by the balance of the Bell Press sale proceeds then held in the escrow account (approximately $17.45m) and $5.8m from BCF on 4 May 1990 in repayment of BCF's debt.	529 530
187.	14 May 1990	BIIL executes the BIIL Subordination Deed, notwithstanding the intervening change in the circumstances of TBGL; [5948]-[5949]. The BIIL directors have received the same advice as the directors of BGUK and TBGIL; [5927]-[5932], [5941], [5950], [AJ:1062]-[AJ:1068] [AJ:2096]. They enter into the BIIL subordination Deed without objective evidence of the ability of TBGL to meet its commitment to support BIIL. They receive nothing more than assurances; [5950], [6096], [AJ:1062]-[AJ:1068], [AJ:2096].	
188.	6-7 June 1990	TBGL enters into conditional letter of intent with the Mirror/Maxwell group for an interest in BPG. The proposal was to sell 50% (this became 49% later) for $175m in cash, $75m of assumed debt and a credit facility to repurchase the convertible bonds of the Bell group at a discount. That debt was then to be swapped for equity in TBGL.	5231 5293-5294 5280 5349 A2840-2841
189.	11 June 1990	Aspinall meets with the Lloyds syndicate banks. Aspinall discussed sale of BPG to Maxwell. He said the Banks would be paid out in three to four months and that the sale was subject to various approvals, including FIRB. Aspinall told the Banks that he had instructed LCAS to research two separate schemes concurrent with the Maxwell bid.	5295
190.	20 June 1990	TBGL and LCAS sign a mandate letter re conversion of Bell group bonds into equity.	535
191.	25 June 1990	ITC dispute resolved. Bell group would receive £4.6m.	531-532
192.	29 June, 2 July 1990	£4.6m received by Bell group re ITC agreement.	532 5299
193.	13 July	Interest on the third BGNV bond issue of £3.75 million due. It	338

No	Date	Event	Reference
	1990	was paid on this day from the ITC payment.	533 5299
194.	20, 25 July 1990	Net proceeds of sale of the New York apartment, approximately $1.15m, was received.	534
195.	31 July 1990	BGNV, TBGL, BGF and Westpac (as Security Agent for the banks) execute the BGNV Subordination Deed. The Deed provides that the parties to it agree that the on-loans and the rights of BGNV in respect of those liabilities are subordinated to any liabilities of the Bell companies to the banks; [5957].	
196.	31 July 1990	BGNV Subordination Deed executed.	38, 495, 540 A2696
197.	2 Aug 1990	The hardening period (six-month reference period) expires and is noted with relief and celebration in London, including a lunch the previous dav at Cafe du Marche; [542], [7898].	
198.	15 Aug 1990	BRL announces joint venture with Lion Nathan to acquire BBHL's Australian breweries. Meeting of BRL shareholders approves the brewery transaction.	544 6672
199.	27 Sept 1990	Aspinall meets with the Australian banks. He requested a 5 month moratorium on bank interest to allow time for LCAS to implement its restructuring proposals.	556 5305
200.	From late Sept 1990	Banks periodically agree to defer receipt of bank interest.	559-610
201.	1 Oct 1990	Aspinall tells Duffett he needed to agree with the bondholders to defer interest on their bonds. A meeting is scheduled for 5 December 1990.	5308
202.	2 Oct 1990	BRL brewery agreement completed. Around 88% of the BBHL bonds were repurchased at a discount of 42.6%. BRL's independent directors believed the deal contributed significantly to restoring value to BRL's shares.	563 6672 1796
203.	16 Nov 1990	Meeting of TBGL Board. LCAS believed that 'there is still a reasonable prospect that the restructure of the Group will proceed'.	5315
204.	5 Dec 1990	Proposal put to the BGNV bondholders for restructure and moratorium on interest. Meeting was inquorate and adjourned until 15 January 1991. Informal meeting then took place.	599 5308
205.	10 Dec	BGNV and TBGL defaulted on interest payable on the TBGL	602

No	Date	Event	Reference
	1990	bond issue and the first BGNV bond issue.	
206.	15 Jan 1991	The bondholders meet. The meeting postponed to consider TBGL's request for an interest moratorium.	603, 5309 5330
207.	Late Jan 1991	BRL expresses interest in restructure with TBGL/BPG.	604
208.	Feb 1991	C&L writes to BRL saying that they continued to hold the view that technical arguments supported the view that the taxpayers would prevail in the tax disputes.	2067
209.	28 Feb 1991	Robinson Cox (acting for SGIC) writes to LCAS rejecting the TBGL restructuring proposal.	610 5336
210.	6 Mar 1991	LDTC gave TBGL notice TBGL bonds were due and payable.	612, 5340
211.	13 Mar 1991	SGIC agrees to hold action in respect to its enforcement rights re overdue interest on its bonds.	5341
212.	12 Apr 1991	LCAS advised TBGL Directors that there was no reasonable prospect of a restructuring. It recommended that a provision liquidator be appointed to TBGL.	5346
213.	16 Apr 1991	Westpac as Security Agent served a notice of demand on WAN, BGF and BGUK.	41 629
214.	16-18 Apr 1991	TBGL Directors apply to be wound up and the appointment of a provisional liquidator. Receivers and managers were also appointed to BGF and BPG.	633-639 A2699
215.	19 Apr 1991	LDTC serves notices that bonds were due and repayable.	636
216.	24 July 1991	An order is made to wind-up TBGL; [90].	
217.	24 July 1991	TBGL winding up order made.	90
218.	Dec 1991	The Bell publishing assets are sold for $268.8m by receivers appointed by the banks and the proceeds are taken by the banks; [642]-[644].	
219.	31 Dec 1991	Sale of the publishing assets completed. Total consideration for the publishing assets was $271.5m. The net proceeds of $222.3m was paid to the Banks.	642 644 9557-9558
220.	May 1992	BRL shares are realised by the banks with proceeds of $59.9m	

No	Date	Event	Reference
		paid to Westpac; [646]-[647].	
221.	21 May 1992	Bell group's BRL preference and ordinary shares sold at around 25c per share. $59.9m proceeds paid to Westpac.	646 647
222.	3 Mar 1993	BGF goes into liquidation.	9686
223.	7 Dec 1995	Liquidator issues notices of avoidance for Ambassador Nominees, Belcap Enterprises, Bell Bros, Bell Equity, Great Western Transport, Harlesden Finance, Industrial Securities, Maradolf, Maranoa Transport and Western Transport.	Sch 38.23
224.	18 Dec 1995	The litigation commenced in the Federal Court of Australia.	55
225.	Jan 1996	The Liquidator issues notices of avoidance for Dolfinne Securities, Wanstead Securities, Wigmores Tractors and Neoma and Western Interstate.	Sch 38.23
226.	Oct 1996	Banks receive, pursuant to BGF mortgage debenture, $731,993 from Belcap Trading.	649