

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

LIST E
S CI 2007 10077

IN THE MATTER OF AWB LIMITED
ACN 081 890 459

B E T W E E N:

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

- and -

TREVOR JAMES FLUGGE

Defendant

THIRD FURTHER AMENDED STATEMENT OF CLAIM

Date of Document: 23 September 2015

Filed on behalf of The Plaintiff

Prepared by:
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*Notes: The black text and **red mark-ups** reflect the contents of the plaintiff's Second Further Amended Statement of Claim dated 21 June 2013.*

*The **blue mark-ups** reflect matters taken from the plaintiff's Further Amended Response to the Defendant's Request for Further and Better Particulars dated 2 May 2013 and incorporated herein.*

*The **green mark-ups** reflect the amendments made on 23 September 2015.*

PARTIES

1. The Plaintiff (ASIC) is a body corporate:
 - (a) established by s 7 of the *Australian Securities and Investments Commission Act* 1989 (Cth);
 - (b) continued by s 261 of the *Australian Securities and Investments Commission Act* 2001 (Cth) (ASIC Act); and

- (c) able to sue in its corporate name by reason of s 8 of the *ASIC Act*.
2. AWB Limited (**AWB**) is and was at all material times:
- (a) a corporation duly incorporated; and
 - (b) from 22 August 2001 until 10 December 2010 listed on the Australian Securities Exchange.
3. AWB (International) Ltd (**AWBI**) was at all material times a corporation duly incorporated, and a wholly-owned subsidiary of AWB.
4. The defendant (**Flugge**) was:
- (a) from 1984 to 1999, a Director of the Australian Wheat Board, an Australian Government statutory authority, the predecessor of AWB before its public listing;
 - (b) from 1991 to April 1995, the Deputy Chairman of the Australian Wheat Board;
 - (c) from April 1995 to 1999, the Chairman of the Australian Wheat Board;
 - (d) from 1 May 1998 to 15 March 2002, a director of AWB;
 - (e) from 1 May 1998 to 15 March 2002, the Chairman of AWB.
5. By 15 March 2002 Flugge had the following significant experience and expertise relating to the sale of wheat in international markets, including Iraq:
- (a) Flugge had worked in the grain industry for approximately 40 years;
 - (b) Flugge had held senior positions in industry bodies including the positions of president of the Australian Wheat Growers Federation, Chairman of the State Wheat Industry Research Committee, a director of the Grains Research and Development Corporation and Chairman of the CSIRO Food Futures Flagship research and development programme advisory group;
 - (c) Flugge had received public recognition and awards for his contributions to grain research and international grain marketing including the Farrer Memorial Medal (1997), the Order of Australia (1999) and the Centenary Medal (2001);

Further and Better Particulars

The Farrer Memorial Medal is awarded to “a distinguished agricultural scientist for service rendered in the fields of research, education or administration”; Farrer Memorial Trust Annual Report 2001 at p 1. The recipient of the award is invited to deliver an oration on a topical subject of his or her own choice.

Flugge's oration was entitled "Innovations in Agricultural Product Marketing - The Australian Wheat Industry's Experience".

The fact that Flugge's Order of Australia was awarded for his contribution to international grain marketing is recorded in the award itself, which was stated to be "for service to the Australian grains industries in the areas of industry reform, research and development, and international grains marketing".

The Centenary Medal awarded to Flugge in 2001 was stated to be "for service to Australian agriculture".

- (d) Flugge had visited Iraq as part of AWB's delegations on several occasions including in 1996, April 1998, October 1999 and June 2001;

Further and Better Particulars

The visits to Iraq relied upon took place on or about 9-10 July 1996, 15-16 April 1998, 8-10 October 1999 and 20-22 June 2001.

The members of the delegation for the 1996 visit were Flugge, Mark Emons and Greg Harvey.

The members of the delegation for the 1998 visit were Flugge, Mark Emons and Dominic Hogan.

The members of the delegation for the 1999 visit were Flugge, Murray Rogers and Dominic Hogan.

The members of the delegation for the 2001 visit were Flugge and Charles Stott.

- (e) at various times between 1999 and 2002 Flugge was closely involved in AWB's trading operations in the Iraq market.

Particulars

The Plaintiff relies upon the matters at paragraphs 35 to 43 below. Further particulars of Flugge's involvement in AWB's trading operations in the Iraq wheat market are given in Schedule A.

FLUGGE'S RESPONSIBILITIES AS DIRECTOR AND CHAIRMAN OF AWB

6. By reason of his position as Director and Chairman of AWB and the matters alleged in paragraphs 4 and 5 above, during the period from 1 May 1998 to 15 March 2002, Flugge's responsibilities relevantly included the following:
- (a) to oversee the overall strategic direction of AWB;

- (b) to select matters and documents to be brought to the attention of, and to be addressed by, AWB's Board;
 - (c) to take reasonable steps to ensure that he and the other members of AWB's Board were properly informed in respect of all matters which could materially adversely impact upon AWB's financial performance, commercial position, standing or reputation;
 - (d) to take reasonable steps to ensure that AWB was represented with integrity to national governments, the media, institutions, analysts and other stakeholders;
 - (e) to oversee, counsel, review, assist, mentor and advise the Chief Executive Officer of AWB; and
 - (f) to lead the AWB Board in the oversight and monitoring of AWB's senior management and officers, including the consideration and implementation of appropriate policies and procedures to enable the Board to detect and assess any material adverse development affecting or potentially affecting AWB.
7. During the period from 1 May 1998 to 15 March 2002, as a director of AWB Flugge owed a duty to AWB to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they:
- (a) were an officer of a corporation in AWB's circumstances; and
 - (b) occupied the office held by Flugge and had the same responsibilities as Flugge.

Particulars

The duty arises by reason of s 180 of the *Corporations Act 2001*.

8. During the period from 1 May 1998 to 15 March 2002, as a director of AWB Flugge owed a duty to AWB to exercise his powers and discharge his duties:
- (a) in good faith in the best interests of AWB; and
 - (b) for a proper purpose.

Particulars

The duty arises by reason of s 181 of the *Corporations Act 2001*.

UNITED NATIONS RESOLUTIONS ON TRADE WITH IRAQ

9. By resolution 661 of the United Nations Security Council adopted on 6 August 1990 (**Resolution 661**), the Security Council, *inter alia*:

- (a) decided that member states should prevent the sale or supply by their nationals or from their territories of any commodities or products to any person or body in Iraq or to any person or body for the purposes of any business carried on in or operated from Iraq but not including supplies intended for strictly medical purposes and, in humanitarian circumstances, foodstuffs;
- (b) decided that all member states should not make available to the Government of Iraq or its instrumentalities any funds or any other financial or economic resources and should prevent their nationals and any persons within their territories from removing from their territories or otherwise making available to the Government of Iraq or its instrumentalities any such funds or resources; and
- (c) established a Committee of the Security Council that became known as the 661 Committee (**661 Committee**).

Particulars

Resolution 661 is in writing and is available for inspection on reasonable notice.

10. By resolution 687 of the United Nations Security Council adopted on 3 April 1991, the Security Council determined, *inter alia*, that the prohibitions on the sale of commodities or products and prohibitions on financial transactions related thereto contained in Resolution 661 should not apply to foodstuffs notified to the 661 Committee.

Particulars

Resolution 687 is in writing and is available for inspection on reasonable notice.

11. By resolution 986 of the United Nations Security Council adopted on 14 April 1995 (**Resolution 986**), the Security Council, *inter alia*:
- (a) authorised member states to permit the importation of petroleum and petroleum products originating in Iraq, notwithstanding Resolution 661, of a value not exceeding one billion US dollars every 90 days;
 - (b) required the funds paid for the purchase of Iraqi petroleum and petroleum products to be paid into an escrow account to be established for the purposes of Resolution 986 (**the UN Escrow Account**); and
 - (c) decided that the funds in the UN Escrow Account should be used to meet the humanitarian needs of the Iraqi population, including to finance the export to Iraq

of foodstuffs in accordance with the procedures established by the 661 Committee.

Particulars

Resolution 986 is in writing and is available for inspection on reasonable notice. The initiative established by Resolution 986 became known and is hereafter referred to as the “**Oil-for-Food Programme**”.

12. Resolution 986 authorised the operation of the Oil-for-Food Programme for an initial period of 180 days. Subsequent resolutions of the United Nations Security Council extended the operation of the Oil-for-Food Programme for further periods of up to 180 days.

Particulars

The initial period of 180 days was referred to as Phase I of the Oil-for-Food Programme. Subsequent resolutions adopted by the United Nations Security Council extending the operation of the programme were as follows:

Phase	Resolution	Date adopted
Phase II	Resolution 1111	4 June 1997
Phase III	Resolution 1143	4 December 1997
Phase IV	Resolution 1153	20 February 1998
Phase V	Resolution 1210	24 November 1998
Phase VI	Resolutions 1242, 1275, 1280	21 May 1999, 19 November 1999, 3 December 1999
Phase VII	Resolution 1281	10 December 1999
Phase VIII	Resolution 1302	8 June 2000
Phase IX	Resolutions 1330, 1352	5 December 2000, 1 June 2001
Phase X	Resolution 1360,	3 July 2001
Phase XI	Resolution 1382	29 November 2001
Phase XII	Resolutions 1409, 1443	14 May 2002, 25 November 2002
Phase XIII	Resolution 1447	4 December 2002

The resolutions are in writing and are available for inspection on reasonable notice.

13. By resolution 1472 of the United Nations Security Council adopted on 28 March 2003 (**Resolution 1472**), the Security Council, *inter alia* approved adjustments to the Oil-for-Food Programme and authorised:

- (a) the review of the approved funded and non-funded contracts concluded by the Government of Iraq to determine the relative priorities of the contracts; and
- (b) the negotiation and agreement on necessary adjustments in the terms or conditions of these contracts and their respective letters of credit.

Particulars

Resolution 1472 is in writing and is available for inspection on reasonable notice. Subsequent resolutions of the United Nations Security Council extended the operation of Resolution 1472 as follows. Resolution 1476 was adopted on 24 April 2003 and extended the operation of Resolution 1472 until 3 June 2003. Resolution 1483 was adopted on 22 May 2003 and extended the operation of Resolution 1472 for a further 6 months from 3 June 2003, transferred responsibility for the Oil-for-Food Programme to the Coalition Provisional Authority and required the termination of the Oil-for-Food Programme at the end of that period. The Oil-for-Food Programme was terminated on 21 November 2003. Copies of these resolutions may be inspected upon reasonable notice.

14. At all material times on and after 15 October 1997:

- (a) in order to obtain payment from the UN Escrow Account, exporters of foodstuffs to Iraq were required to submit to the United Nations Office of the Iraq Programme (**OIP**) the concluded contract for each transaction in respect of which payment was sought;
- (b) each concluded contract was required to be submitted through the exporter's United Nations embassy;
- (c) the contracts were examined by the OIP for, *inter alia*, price and value; and
- (d) if the OIP approved the relevant contract, the exporter became eligible for payment from the UN Escrow Account.

Particulars

The procedures for obtaining payment from the UN Escrow Account were initially established by the 661 Committee on or about 8 August 1996 and are contained in a letter from the Chairman of the 661 Committee to the President of the United Nations Security Council of that date. A copy of the letter is available for inspection on reasonable notice.

The OIP was established by the United Nations Secretary General on or about 15 October 1997 and was responsible for, *inter alia*, managing the activities of the United Nations Secretariat pursuant to Resolution 986 and Resolution 661.

The procedures were varied by United Nations Security Council resolution 1284 (adopted on 17 December 1999), resolution 1382 (adopted on 29 November 2001), resolution 1409 (adopted on 14 May 2002) effective 30 May 2002 and resolution 1454 (adopted on 30 December 2002). Copies of these resolutions are available for inspection on reasonable notice.

As a matter of practice, at all times from October 1997 until the termination of the Oil-for-Food Programme on 21 November 2003, the OIP reviewed contracts for price and value and payments were not made from the UN Escrow Account without the relevant contract having received approval from the OIP.

15. As a signatory of the United Nations Charter, each of the resolutions alleged above (**UN Resolutions**) bound Australia and all other nations which were signatories, including relevantly Canada and the United States of America.

Particulars

Australia was bound at all material times by Art 25 of the UN Charter to take steps to implement resolutions of the UN Security Council.

16. Further and alternatively, by reason of each of the UN Resolutions, the United Nations called upon its member states—including Australia—to ensure that their nationals (including corporations registered in each member state) acted in accordance with the UN Resolutions, including by:
- (a) preventing the payment by their nationals of currency other than Iraqi Dinars (hereafter, **internationally traded currency**) to the Government of Iraq or its instrumentalities; and
 - (b) ensuring that their nationals obtained payment from the UN Escrow Account only on account of goods supplied to the people or Government of Iraq under the Oil-for-Food Programme, to meet the humanitarian needs of the people of Iraq (**OFFP humanitarian goods**).
17. In compliance with Australia's obligations as alleged in paragraph 15 above, or alternatively in response to the United Nations' call upon its member states alleged in paragraph 16 above, the Commonwealth Parliament *inter alia* passed into law regulation 13CA of the *Customs (Prohibited Exports) Regulations 1958* (Cth) (**Customs Regulation**).
18. Pursuant to the *Customs Regulation*, at all material times prior to 9 May 2003, AWB was prohibited from exporting wheat to Iraq unless it received permission for the export of wheat from the Minister of Foreign Affairs and Trade or his authorised representative.

AWB'S SALES OF WHEAT TO IRAQ, THE INLAND TRANSPORTATION FEES & THE AFTER SALES SERVICE FEES

19. At all material times, AWB's wheat sales to Iraq constituted a substantial part of AWB's overall annual wheat sales and were highly profitable for AWB, and therefore Iraq was a very important market for AWB.

Particulars

In the period 1 October 1999 to 30 September 2002, Iraq was consistently the largest or one of the largest markets in the world for wheat exported by AWB under the single desk. The table below summarises the quantity of wheat exported to Iraq and Iraq's ranking in relation to AWB's other international wheat export markets:

AWB financial year (1 Oct – 30 Sept)	Tonnes exported to Iraq by AWB	Iraq export market ranking for AWB
1999-2000	2,701,000	1
2000-2001	2,303,000	1
2001-2002	2,220,000	2

20. Between 1 May 1998 and 15 March 2002, AWB entered into several contracts with the Grain Board of Iraq (**IGB**) for the sale of wheat under the Oil-for-Food Programme.

Particulars

Particulars of relevant contracts are in Schedule B and Schedule D.

21. In the period between 1996 and June 1999, AWB and the IGB entered into at least 20 contracts for the sale of wheat and each of those contracts provided that the contractual basis on which AWB sold wheat to the IGB was either:

- (a) "C and F Umm Qasr" or "C&F Free Out Umm Qasr", which meant that the price per tonne for which the wheat was sold included:

(i) the price of the wheat; and

(ii) the cost of the carriage of the wheat from Australia to the port of Umm Qasr, Iraq;

or

- (b) “CIF Umm Qasr” or “CIF Free Out Umm Qasr”, which meant that the price per tonne for which the wheat was sold included:
- (i) the price of the wheat;
 - (ii) the cost of the carriage of the wheat from Australia to the port of Umm Qasr, Iraq; and
 - (ii) the cost of insuring the shipment against the risk of loss of or damage to the wheat during its carriage to Iraq.

Particulars

Each of the contracts was in writing, comprising an AWB-created 'short-form' contract and, in most instances, an IGB-created 'long-form' contract. The dates and material terms of each of the twenty contracts are particularised in Schedule C. Copies of the contracts are available for inspection upon reasonable notice.

22. In and after June 1999 the IGB imposed a fee on AWB:

- (a) that was described as an “inland transportation” or “trucking” fee in relation to the supply of wheat by AWB to Iraq;
- (b) in amounts that were:
 - (i) denominated in US dollars, Euros or another internationally traded currency;
 - (ii) fixed by the IGB from time to time in steadily increasing amounts, ranging from US\$12 to US\$51.15 per metric tonne of wheat; and
 - (iii) not negotiated with, or otherwise explained or justified to, AWB by reference to any costs actually incurred in transporting wheat within Iraq;
- (c) that was payable in cash in an internationally traded currency to an entity nominated by Iraq, and not to the IGB; and
- (d) that was not a genuine fee for transport services provided to or by AWB;

(the inland transportation fee).

Particulars

The inland transportation fee was an express condition of supply to Iraq in each of the wheat tenders issued by the IGB after June 1999. Copies of the wheat tenders are available for inspection upon reasonable notice.

23. In and after November 2000 the IGB also imposed a fee on AWB:
- (a) that was described as a payment for "after sales service" in relation to the supply of wheat by AWB to Iraq;
 - (b) in an amount that was:
 - (i) fixed by the IGB at the rate of 10% of the total price per tonne of all wheat shipped to Iraq by AWB (including the inland transportation fee);
 - (ii) expressed as an increase in the inland transportation fee; and
 - (iii) not negotiated with, or otherwise explained or justified to, AWB by reference to any costs actually incurred in the provision of "after sales service" in relation to wheat supplied by AWB to Iraq; and
 - (c) that was payable in cash in an internationally traded currency to an entity nominated by Iraq, and not to the IGB; and
 - (d) that was not a genuine fee for any service provided to or by AWB;

(the after sales service fee).

(The inland transportation fee and the after sales service fee are together referred to hereafter as the "**IGB fees**")

Particulars

The after sales service fee, and the fact that it would be incorporated into the inland transportation fee, is referred to in an email from Dominic Hogan (**Hogan**) of AWB to various AWB employees dated 2 November 2000. A copy of the email is available for inspection upon reasonable notice.

24. The written terms of each contract for the sale of wheat entered into between AWB and the IGB after June 1999 under the Oil-for-Food Programme (**the OFFP Contracts**) used expressions which suggested that AWB had an obligation to deliver or transport wheat to all silos within all Governorates of Iraq (**the inland transport obligation**).

Particulars

The inland transport obligation was implied by the use of various terms in the OFFP Contracts such as "FIT", "FOT", "Free into Truck", "Free Onto Truck", "Free into Truck to all silos within all governorates of Iraq" and the imposition of the inland transportation fee by the means alleged in paragraph 22 above and the particulars thereto.

Each of the OFFP Contracts was in writing, comprising an AWB-created 'short-form' contract and an IGB-created 'long-form' contract. The dates and material terms of each of the OFFP Contracts are alleged in Schedule D. Copies of the contracts are available for inspection upon reasonable notice.

25. The inland transport obligation was a sham, in that, contrary to the written terms of the OFFP Contracts, neither AWB nor the IGB ever intended or expected that AWB would deliver or transport, or arrange to deliver or transport, any AWB wheat within Iraq.

Particulars

The absence of an intention on the part of AWB and the IGB that AWB would deliver or transport wheat within Iraq is to be inferred from the fact that prior to July 2003 AWB did not deliver, or transport, or arrange to deliver or transport, any wheat to any silo within any Governorate of Iraq.

26. The price payable to AWB pursuant to each of the OFFP Contracts entered into after June 1999 included the amount of the IGB fees.

27. In respect of the OFFP Contracts entered into after June 1999:

- (a) AWB was paid out of the UN Escrow Account amounts that reflected the full contract price agreed between the IGB and AWB in respect of each such contract, inclusive of the IGB fees;

Particulars

Details of payments obtained in respect of contracts A1111 and A1112 (given by way of example) are particularised in Schedule B.

Further and Better Particulars

Details of each payment are set out in an AWB spreadsheet entitled "United Nations Oil for Food Program—AWB Contracts with Iraq Grain Board", a copy of which is available for inspection by the defendant.

- (b) AWB did not deliver or transport, or arrange to deliver or transport, any wheat to any silo within any Governorate of Iraq; and
 - (c) neither AWB nor any other person provided any "after sales service" to anybody (including AWB or IGB) in consideration for AWB's receipt from the UN Escrow Account of the after sales service fees.
28. In and after June 1999 AWB agreed to pay the IGB fees to or at the direction of the IGB.

Particulars

AWB's agreement to pay the IGB fees in relation to contracts A1111 and A1112 (given by way of examples) was in writing, and is recorded in the following documents (copies of which are available for inspection upon reasonable notice):

- A. Undated IGB Wheat tender addressed to AWB, seeking tender offers by 18 December 2001;
- B. Facsimile dated 20 December 2001 from Yousif Abdul Rahman (Yousif) of the IGB to AWB entitled "Australian wheat tender phase - 11";
- C. Email dated 20 December 2001 from Hogan of AWB to Yousif entitled "Confirmation – 1 million tonnes Australian Hard Wheat"; and
- D. Email dated 21 December 2001 from Hogan to Andrew Lindberg of AWB (**Lindberg**) and others entitled "IRAQ – 1 MILLION TONNES".

Further and Better Particulars

AWB's agreement to pay the IGB fees in respect of each contract is in writing and is recorded in the following documents:

<u>Phase</u>	<u>Contract No.</u>	<u>Particulars</u>
<u>VI</u>	<u>A4653</u>	<u>The agreement in relation to contract A4653 is recorded in the following documents:</u> <u>A: A cable from AWB to the IGB dated 14 July 1999 (AWB.0058.0437)</u> <u>B: the contract dated 14 July 1999</u>

- VI A4654 The agreement in relation to contract A4654 is recorded in the following documents:
A: A cable from AWB to the IGB dated 14 July 1999 (AWB.0058.0437)
B: the contract dated 14 July 1999
- VI A4655 The agreement in relation to contract A4655 is recorded in the following documents:
A: A cable from AWB to the IGB dated 14 July 1999 (AWB.0058.0437)
B: the contract dated 14 July 1999
- VI A4822 The agreement in relation to contract A4822 is recorded in the following documents:
A: Fax from Borlase to the IGB dated 11 October 1999 (AWB.0058.0079)
B: Fax from IGB to AWB dated 17 October 1999 (AWB.0058.0078)
- VII A4970 The agreement in relation to contracts A4970,
VII A4971 A4971 and A4972 is recorded in a fax from
VII A4972 Emons to the IGB dated 20 January 2000
(AWB.0136.0133)
- VIII A0265 The agreement in relation to contracts A0265,
VIII A0266 A0266 and A0267 is recorded in the following
VIII A0267 documents:
A: Wheat tender from the IGB seeking tender offers by 7 July 2000 (AWB.0137.0452)
B: Export sales notes in respect of each contract (AWB.0061.0554, AWB.0061.0553, AWB.0061.0552)
- VIII A0430 The agreement in relation to contract A0430 is recorded in the following documents:
A: An email from the IGB to Charles Stott dated 25 October 2000 (AWB.5004.0175)
B: Fax dated 30 October 2000 from Hogan to the IGB (AWB.0137.0327)
C: File note of Dominic Hogan

(AWB.0185.0333_R)

D: Email from Hogan to Morison, Scales, Stott and others dated 2 November 2000 (AWB.0137.0370)

- IX A0552 The agreement in relation to contract A0552 is recorded in a fax from Hogan to the IGB dated 2 February 2001 (AWB.0061.0192)
- IX A0553 The agreement in relation to contract A0553 is recorded in a fax from Hogan to the IGB dated 2 February 2001 (AWB.0090.0068)
- IX/X A0784 The agreement in relation to contracts A0784 and
IX/X A0785 A0785 is recorded in a fax from Hogan to the IGB dated 7 June 2001 (AWB.0143.0317)
- XI A1111 A: Undated IGB Wheat tender addressed to
XI A1112 AWB, seeking tender offers by 18
December 2001 (AWB.0139.0273);
B: Facsimile dated 20 December 2001 from
Yousif Abdul Rahman (Yousif) of the IGB
to AWB entitled "Australian wheat tender
phase -11" (AWB.0062.0255);
C: Email dated 20 December 2001 from
Hogan of AWB to Yousif entitled
"Confirmation – 1 million tonnes
Australian Hard Wheat"
(AWB.002.003.0408); and
D: Email dated 21 December 2001 from
Hogan to Andrew Lindberg of AWB
(Lindberg) and others entitled "IRAQ –
1 MILLION TONNES
(AWB.0139.0246)".
- XII A1441 A: an email from Nigel Edmonds-Wilson
dated 27 June 2002 (AWB.0060.0475);
B: a fax from Dominic Hogan of AWB to Mr
Yousif of the IGB dated 2 July 2002
(AWB.0060.0474).
- XIII A1670 A: an email from Chris Whitwell to Yousif of

the IGB dated 9 December 2002
(AWB.0439.0178);

B: a fax from Chris Whitwell to Yousif of the
IGB dated 11 December 2002
(AWB.0060.0392);

C: an email from Yousif of the IGB to
Dominic Hogan dated 18 December 2002
(AWB.0129.0215).

XIII A1680

A: a fax from Chris Whitwell to Yousif of the
IGB dated 11 December 2002
(AWB.0060.0392);

B: an email from Chris Whitwell to Yousif of
the IGB dated 12 December 2002
(AWB.0440.0348; and

C: an email from Mr Yousif of the IGB to
Hogan dated 18 December 2002
(AWB.0129.0215).

29. By reason of the matters alleged in paragraphs 22 to 28 above, the purpose and effect of the payment of the IGB fees and the inclusion of the inland transport obligation in AWB's contracts with the IGB, were:

(a) to enable the Government of Iraq to obtain payments of internationally traded currency from AWB, disguised as amounts payable by AWB in respect of the IGB fees, which payments the United Nations had called on its member states to prevent, as alleged in sub-paragraph 16(a) above; and

(b) to enable AWB to inflate the contract prices in the OFFP Contracts by amounts equal to the IGB fees paid to or at the direction of the IGB, and thereby to enable AWB to recover from the UN Escrow Account the amount of the IGB fees paid, such recovery constituting payments that the United Nations had called on its member states to prevent, as alleged at sub-paragraph 16(b) above.

30. At all material times, Alia for Transportation & General Trade (**Alia**) was a company partly owned by the Iraq Ministry of Transport.

Particulars

Alia was incorporated in Jordan in 1994 as a joint venture between Sheik Hussain Al-Khawam and the Iraqi Ministry of Transport. In the period between July 1999 and November 2003, the Iraq Ministry of Transport held a forty-nine

percent shareholding in Alia. The Plaintiff also refers to and relies on a letter dated October 2004 from Alia to Chris Whitwell (**Whitwell**) of AWB. A copy of this letter is available for inspection upon reasonable notice.

31. At all material times, there was no agreement (whether in writing or otherwise) between AWB and Alia in relation to the supply of transport or other services by Alia to AWB, or AWB's payment for such services, other than the agency appointment alleged in paragraph 33 below.
32. At all material times, other than as specified in the agency appointment alleged in paragraph 33 below:
 - (a) Alia played no role in the purchase, importation or transportation of the wheat delivered in respect of the OFFP Contracts—including Contracts A1111 and A1112—and Alia was not entitled to any amount on account of such purchase, importation or transportation; and
 - (b) Alia's only role was to collect the IGB fees on behalf of the Iraqi State Company for Water Transport (**ISCWT**) and remit such fees to the ISCWT, an instrumentality of the government of Iraq.

Particulars

On or about 13 November 1999, Alia entered into a written agreement with the ISCWT to collect inland transportation fees on behalf of the ISCWT (the **collection agreement**). A copy of the collection agreement is available for inspection upon reasonable notice. Pursuant to the collection agreement, between late 1999 and mid 2003, Alia:

- A. notified the ISCWT upon receipt of IGB fees (including any inland transportation fees or after sales service fees) which were deposited into Alia's bank account; and
 - B. remitted the amount of such fees, less Alia's commission, to the ISCWT's bank account at the Al-Rafidain Bank in Jordan.
33. On or around 17 April 2000, AWB appointed Alia as its protective agent in respect of vessels carrying AWB wheat upon their arrival at Umm Qasr (**agency appointment**).

Particulars

The agency appointment was by a letter of appointment dated 17 April 2000, a copy of which is available for inspection upon reasonable notice.

34. In the period between July 1999 and March 2003, AWB paid \$223 million in IGB fees to Alia.

Particulars

AWB's payments of IGB fees on a contract-by-contract basis are set out in Schedule D. All payments of IGB fees made by AWB over the life of the OFFP are set out in spreadsheets prepared by Ferrier Hodgson on behalf of AWB. The spreadsheets are available for inspection upon reasonable notice.

FLUGGE'S INVOLVEMENT IN EVENTS AND TRANSACTIONS CONCERNING THE IGB FEES

35. In or around June-July 1999, Flugge had a number of discussions regarding the Iraq market with Mark Emons (**Emons**) of AWB, the material effect of which was that:
- (a) the IGB intended to impose an inland transport fee of USD12.00 per tonne on future contracts for the sale of wheat by AWB to the IGB;
 - (b) it was probable that payments of the inland transport fee would go either directly or indirectly to the Iraq Government, and payment of any US currency to Iraq would be a breach of US law; and
 - (c) there were various ways to facilitate the payment of the inland transport fee through indirect means, including by paying the inland transport fee via shipping companies engaged by AWB.

Particulars

The discussions took place at AWB's Melbourne office.

36. During the discussions alleged in paragraph 35, Flugge said to Emons that, as long as the inland transport fee did not cost AWB money, AWB had to find a way to pay the fee.
37. In around mid to late 1999, Nigel Officer (**Officer**) had discussions with Flugge about the imposition of the inland transportation fee, the material effect of which was that:
- (a) Officer expressed the view that AWB had no choice but to pay the \$12 fee imposed by the IGB, otherwise AWB would lose wheat sales to their competitors;

- (b) Flugge expressed the view that AWB's role was to maximise the returns to wheat farmers; and
- (c) Flugge did not express any disagreement with the proposition that AWB would have to pay the inland transportation fee.

38. In early October 1999, Flugge led an AWB delegation to Iraq, which ~~included~~ comprised Flugge, Murray Rogers (**Rogers**) and Dominic Hogan (**Hogan**). Whilst in Iraq, prior to meeting with the Director General of the IGB, Mr Zuhair Al Daoud (**Zuhair**), Flugge was briefed by Hogan on the issues likely to arise at the meeting, including the payment of the inland transport fee and the mechanism and timing by which such payments were to occur.

Further and Better Particulars

The visit to Iraq took place on or about 8-10 October 1999. As a director and the Chairman of AWB, Flugge was the most senior officer within the AWB delegation.

39. Whilst in Iraq, Flugge, Rogers and Hogan had a meeting with Zuhair, in which they had discussions in relation to the inland transport fee as follows:
- (a) Zuhair informed the AWB delegation that a contract for the supply of 200,000 metric tonnes of wheat under the next phase of the OFFP would include in its price an inland transport fee of US\$12 per metric tonne;
 - (b) Hogan suggested to Zuhair that an alternative barter system be employed, whereby AWB would supply additional wheat to the IGB instead of paying the proposed inland transport fee;
 - (c) Zuhair rejected Hogan's suggestion referred to in sub-paragraph (b) above and stated that the payment of inland transport fee was as a result of Presidential decree and that if it was not paid, ships would not be unloaded in Iraq;
 - (d) Zuhair stated that the inland transport fee would be payable in advance, based on the weight of the wheat as shown on the Bill of Lading at the point of loading;
 - (e) Hogan objected to the means of calculation and payment of the inland transport fee referred to in sub-paragraph (d) above due to the foreseeable delay in AWB

obtaining payment in relation to the inland transport fee from the UN Escrow Account; and

- (f) Zuhair stated he would advise AWB of the details of a bank account in Jordan into which the inland transport fee should be paid.

Particulars

The discussions are recorded in:

- (a) a facsimile dated 11 October 1999 from Darryl Borlase to Zuhair, the subject of which was "Wheat Offer";
- (b) an email dated 10 October 1999 from Hogan to Emons and others, the subject of which was "Note from Iraq", and
- (c) an email dated 11 October 1999 from Hogan to Emons and others, the subject of which was "Iraq - FIT".

Copies of these emails are available for inspection upon reasonable notice.

Further and Better Particulars

The meeting occurred on or about 9 October 1999.

40. While in Iraq, following the meeting with Zuhair referred to in paragraph 39, Flugge discussed the matters alleged in the previous paragraph further with Hogan and Rogers.

Further and Better Particulars

The discussion occurred on or about 9 October 1999. During the discussion, Rogers asked Hogan to explain again the barter system proposed by Hogan as alleged at paragraph 39(b) above, and Hogan explained the barter system again to Rogers and Flugge.

41. On or about 9 March 2000, Flugge, accompanied by Andrew McConville (**McConville**) and Timothy Snowball (**Snowball**) of AWB, met and had a discussion with Alistair Nicholas (**Nicholas**) of the Australian Trade Commission in Washington DC. The discussion was to the following effect:

- (a) the United Nations had concerns about alleged irregularities in AWB's contracts and dealings with Iraq under the Oil-for-Food Programme.
- (b) Nicholas advised that another country had alleged to the United Nations that AWB was making irregular payments at the request of the IGB;

- (c) Nicholas informed Flugge, Snowball and McConville that it was important for AWB to provide to the UN all contractual terms that existed between AWB and the IGB, and that a failure to provide the information sought by the UN could jeopardise future sales under the Oil-For-Food Programme;
- (d) Nicholas further informed Flugge, Snowball and McConville that if the matter were not resolved the other country (referred to in subparagraph (b) above) could raise a formal complaint and then it would become a much bigger issue; and
- (e) Flugge informed Nicholas that his request would be taken very seriously and a full response would be provided to the UN Office of the Iraq Programme.

Particulars

The meeting is recorded in an email from Snowball dated 15 March 2000 which was sent to Emons and in a telex dated 11 March 2000 sent by Alistair Nicholas, copies of which are available for inspection upon reasonable notice.

42. In late March or early April 2000, Flugge told Emons that AWB should continue paying the inland transport fee and should be accommodating to the Iraqis so that AWB's business in Iraq did not come under threat.

Particulars

The discussion is recorded in an email dated 4 April 2000 sent by Emons to Michael Watson, a copy of which is available for inspection upon reasonable notice.

43. On 7 February 2001, Flugge received an email from Darryl Borlase of AWB attaching a document titled "*Iraq Trip Report*" prepared by Hogan and Borlase which included the following:

Trucking Fee/Services Fee – The trucking fee is now USD25.00 pmt all Governates [sic] of Iraq with a 10% service fee on the entire FIT value of the contract. We believe the increase in trucking fee and addition of the service charge is a mechanism of extracting more dollars from the escrow account. AWB have agreed to remit the trucking fee in a foreign currency other than US Dollars (most likely in DM) in 2 instalments...

Particulars

A copy of the email and attached trip report is available for inspection upon reasonable notice.

THE SINGLE DESK AND THE RISK OF HARM TO AWB IF IT WAS LOST

44. At all material times, AWB and its wholly-owned subsidiary AWBI held a statutory monopoly for the export of wheat from Australia, which monopoly was known as the “single desk”.

Particulars

The statutory monopoly was established pursuant to s 57 of the *Wheat Marketing Act 1989* (Cth). The term “single desk” is a shorthand description for the legislated position conferred on AWB to be the sole exporter of bulk shipments of Australian wheat.

From 1 July 1999, AWBI held the single desk export rights under the *Wheat Marketing Act*.

45. The single desk was of great financial and commercial value to AWB.

Particulars

- (a) The single desk enabled AWB to aggregate the output of thousands of wheat producers across Australia, market those outputs strategically to around 50 countries worldwide and manage the risks associated with this process.
- (b) Under the single desk, AWB was responsible for marketing all bulk exports of Australian wheat that growers delivered to the National Pool.
- (c) The role of a single desk was to maximise net returns to wheat growers who delivered to the National Pool while providing a management fee to AWB for the provision of certain services to operate the National Pool. From 2001, the management fee was performance-based, comprising a base fee and an out-performance incentive. AWB’s revenue from the management fee (including both the base fee and out-performance incentive) was as follows in each financial year from 2002 to 2007:

Financial Year	Management Fee (AUD\$)
2002	\$68.3 million
2003	\$77.1 million
2004	\$98.5 million
2005	\$100.9 million
2006	\$92.4 million
2007	\$ 46.3 million

- (d) From 2001 until the single desk was abolished in July 2008, around 90% of all bulk wheat exported from Australia was exported by AWBI under the single desk or equivalent arrangements. The single desk ensured that AWB was able to sell Australia’s wheat crop at premium prices into world markets that were distorted by the high levels of subsidies by the governments of other exporting nations. In 2002, a study of AWB National Pool prices by Econtech found that, as the

single desk manager, AWB achieved on average a premium of \$13 per tonne on National Pool export sales. It also ensured that AWB did not face any competition in the international wheat markets from any other source in Australia. Australia is one of the largest wheat producers and exporters in the world. The AWB single desk facilitated the export of up to 17 million tonnes of wheat valued at up to \$5 billion annually.

- (e) Managing exports through the single desk marketing system also enabled AWB to deliver value other than simple market premiums. This value related to research and development, logistics capacity and efficiency, superior information, economies of scope and scale, integration of the value chain, strong customer relationships, continuity of supply, consistent quality, reliable performance and effective risk management.
- (f) The single desk achieved a level of international market power that individual growers in Australia could not achieve.
- (g) The value to AWB of the single desk also included a variety of indirect benefits including:
 - a. a benefit due to reduced financing costs for the activities of AWB and its subsidiary AWB Harvest Finance Ltd;
 - b. a likely benefit due to the economies of scope between AWB's operations as manager of the single desk and its other grain trading operations such as its domestic trading operations;
 - c. a likely benefit due to increased profitability of AWB's harvest financing operations; and
 - d. a likely benefit due to AWB achieving supra-competitive profits through the self-supply of inputs used in the wheat export supply chain.

46. By reason of the matters alleged in paragraphs 44 and 45 above, the risk of harm or substantial threat to AWB's standing or reputation as an exporter of wheat constituted a risk to AWB's right to operate the single desk and was therefore a serious threat to AWB as a whole.

HARM ARISING OUT OF REVELATION OF AWB'S CONDUCT

47. Revelation of AWB's conduct of the sorts alleged in paragraphs 24 to 29 and 34, and referred to in the trip report alleged at paragraph 43 herein was likely to cause and in fact caused substantial and enduring harm to AWB.

Particulars

- (A) Trade with Iraq worth as much as US\$470 million per annum was forfeited following the decision by the Iraqi Government in 2006 to

suspend purchases of AWB wheat during the Inquiry into Certain Australian Companies in relation to the United Nations Oil-for-Food Programme conducted by Commissioner the Hon Terence RH Cole AO, RFD, QC (**Cole Inquiry**). A copy of the AWB announcement of the suspension to the Australian Securities Exchange dated 13 February 2006 is available for inspection on reasonable notice.

- (B) On 20 December 2006, the United States Department of Agriculture (**USDA**) announced the immediate suspension and debarment of AWB and its affiliates from participating in US government programs and contracting with the US government. In a letter dated 28 November 2005 from Lindberg on behalf of AWB to Deputy Prime Minister Vaile, Lindberg referred to a previous decision by the USDA to so suspend AWB (which decision had been reversed with the assistance of the Australian government) and acknowledged that the suspension had caused significant problems for AWB. A copy of this letter is available for inspection on reasonable notice.
- (C) The revelation that AWB had engaged in the very conduct which the UN Resolutions called on member states to prevent resulted in the resignation of Lindberg as Managing Director in 2006, the departures of Charles Stott (**Stott**) (resigned on 15 June 2006), Paul Ingleby (**Ingleby**) (redundant on 30 October 2006), James Cooper (**Cooper**) (resigned on 15 April 2006) and Peter Geary (**Geary**) (redundant on 3 November 2006), substantially harmed AWB employee morale and led to an increase in voluntary turnover requiring a workforce re-engagement programme being implemented within AWB.
- (D) AWB incurred significant costs associated with the Cole Inquiry. For the 2006 financial year, AWB reported costs of \$23.7 million associated with the Cole Inquiry in its accounts and a further \$6.6 million in the 2007 financial year.
- (E) In addition to costs associated with the Cole Inquiry, AWB incurred substantial costs in responding to investigations and litigation arising out of the revelation that AWB had engaged in the very conduct which the UN Resolutions called on member states to prevent. In the 2008 financial year, those costs were \$13.4 million. In the 2009 financial year those costs were \$18.6 million. In the half year ended 31 March 2010, those costs were \$6.525 million.
- (F) AWB was required to undertake significant remedial work to improve, and restore investor confidence in, its governance practices, internal reporting structures, corporate practices and international marketing activities; namely:
 - a. During 2006, KPMG was engaged by AWB to consider the current governance, internal reporting structures and practices of AWB which engagement resulted in a report by KPMG recommending fundamental changes to corporate practices within AWB including changes to promote ethical and responsible decision making within the Board and executive management of AWB; and
 - b. During 2006, PWC was engaged by AWB to conduct a review into AWB's international marketing activities

- (G) As a result of AWB's conduct as alleged herein and the revelation of that conduct, legal proceedings were commenced against AWB in Australia and overseas, including:
- a. *Watson v AWB Limited* (Federal Court) NSD 2020/2007 which proceeding was settled on terms including that AWB paid the applicant and group members the sum of \$39.5 million in damages, interest and costs; and
 - b. *The Republic of Iraq v ABB AG et al* (US District Court for the Southern District of New York) 08-CV-05951 (SHS).
- (H) AWB's share price and market capitalisation declined significantly after the revelations of the fact that AWB engaged in the conduct alleged herein. When Commissioner Cole was initially given his powers on 10 November 2005, the opening share price for AWB was \$5.37. When the Cole Inquiry's public hearings commenced on 16 January 2006, the opening share price for AWB was \$6.26. When Commissioner Cole presented his report on 24 November 2006, the opening share price for AWB was \$2.59. AWB's share price did not subsequently recover — on Friday 13 August 2010, AWB's closing share price was \$1.095; on 16 August 2010, following an announcement by AWB of a proposal by Agrium Inc (a Canadian company) to acquire all of the issued capital of AWB for \$1.50 per share, AWB's share price opened at \$1.41. AWB was ultimately taken over by Agrium at a price of \$1.50 per share, and was delisted on 10 December 2010.
- (HA) Standard & Poor's (S&P) revised its credit rating and outlook for AWB as a result of the Cole Inquiry and the implications for AWB's business of the risk of loss of the single desk:
- a. On 4 April 2006, S&P affirmed AWB's 'BBB' long-term corporate credit rating, however it revised the outlook for AWB from 'stable' to 'negative', citing factors including the ongoing Cole Inquiry as having heightened the risk of a possible deterioration in AWB's credit quality.
 - b. On 28 November 2006, following the release of the Cole Inquiry report, S&P placed AWB's 'BBB' corporate credit rating and the corporate credit rating of AWB Harvest Finance Ltd (AWBHF) (a subsidiary company which conducted AWB's crop financing business) on "CreditWatch with negative implications" as a result of the risk that AWB would lose the single desk;
 - c. On 11 January 2007, AWB's 'BBB' corporate credit rating was affirmed, and both AWB and AWBHF were removed from CreditWatch, however S&P retained a 'negative' outlook for both companies; and
 - d. On 24 August 2007, S&P lowered AWB's long-term corporate credit rating from 'BBB' to 'BBB minus', with a 'negative' outlook, citing the risk that at least some contestable wheat-export services would be provided by grain marketers/handlers other than AWB, thereby reducing the certainty of contributions of service fees and dividends from AWB's export operations.

- e. As at 17 November 2010 (AWB's last published accounts released immediately prior to delisting), AWB's long-term corporate credit rating remained at 'BBB minus'.

Copies of the S&P Research Updates for the above revisions are available for inspection on reasonable notice.

- (I) On 5 March 2008, the Minister for Agriculture, Fisheries and Forestry, Hon. Tony Burke, released proposed legislation to:
 - a. abolish AWB's statutory monopoly over bulk wheat exports and the single desk;
 - b. repeal the *Wheat Marketing Act 1989* (Cth); and
 - c. introduce a new accreditation scheme for all Australian bulk wheat exporters, requiring *inter alia* that the relevant company be fit and proper.

A copy of the Minister's announcement is available for inspection on reasonable notice.

- (J) On 30 June 2008, the *Wheat Export Marketing Act 2008* was assented to. That Act:
 - a. abolished AWB's statutory monopoly over bulk wheat exports and the single desk;
 - b. repealed the *Wheat Marketing Act 1989*; and
 - c. introduced a new accreditation scheme for all Australian wheat exporters, whereby any appropriately qualified company might be accredited to export bulk wheat from Australia.

But for the revelation of AWB's conduct of the sort alleged in paragraphs 24 to 28 and 34 herein such legislation abolishing AWB's monopoly over bulk wheat exports is unlikely to have been introduced so soon, if at all.

- (K) As a result of the abolition of AWB's statutory monopoly over wheat exports and the introduction of the new accreditation scheme under the *Wheat Export Marketing Act 2008*, AWB faced significant competition in the export of bulk wheat from Australia:
 - a. As at 30 September 2010, there were 27 accredited wheat exporters including two subsidiaries of AWB, AWB Harvest Finance Limited and AWB (Australia) Limited.
 - b. In the period 1 October 2008 to 30 September 2009, approximately 12.3 million tonnes of bulk wheat was exported from Australia, AWB's share of which was 27.9%.
 - c. In the period 1 October 2009 to 30 September 2010, approximately 12.1 million tonnes of bulk wheat was exported from Australia, AWB's share of which was 24.4%.
 - d. In the period 1 October 2010 to 30 September 2011, approximately 16.3 million tonnes of bulk wheat was exported from Australia, AWB's share of which was 16.2%.

- e. In the period 1 October 2011 to 30 September 2012, approximately 22 million tonnes of bulk wheat was exported from Australia, AWB's share of which was 2.0%.

The Plaintiff relies on:

- a. the *Report for Growers* for the 2009/10 and 2011/12 marketing years published by the Wheat Export Authority on its website at www.wea.gov.au; and
- b. information contained in spreadsheets provided to the Plaintiff by the Wheat Export Authority. Copies of these spreadsheets are available for inspection upon reasonable notice.

FLUGGE'S KNOWLEDGE

48. At all material times, Flugge knew the following facts:

- (a) each of the matters alleged in paragraphs 44 to 46 inclusive above;

Particulars

Flugge's knowledge is to be inferred from the matters alleged in paragraphs 4 to 6 above ~~35 to 43 above, from the matters alleged as to his knowledge of and experience in the grain market in Iraq at paragraph 5 above~~ and from the matters particularised in paragraphs 9 and 11 of Schedule A. His knowledge was cumulative and commenced no later than June 1999.

- (b) that AWB's wheat sales to Iraq constituted a substantial part of AWB's overall annual wheat sales and were highly profitable for AWB and, therefore, commercially, Iraq was a crucial market for AWB;

Particulars

Flugge's knowledge is to be inferred from the matters alleged as to his position and responsibilities at AWB at paragraphs 4 and 6 above, from the matters alleged as to his knowledge of and experience in the grain market in Iraq as in paragraph 5 above, and from the matters particularised in Schedule A. His knowledge was cumulative and commenced no later than June 1999.

- (c) that the United Nations had called on Australia, as a member state, to ensure that Australian nationals (including corporations registered in Australia) acted in accordance with the UN Resolutions, including by:

- (i) preventing the direct or indirect payment by Australian nationals of internationally traded currency to the Government of Iraq or its instrumentalities; and

- (ii) ensuring that Australian nationals obtained payment from the UN Escrow Account only on account of OFFP humanitarian goods;

Particulars

Flugge's knowledge is to be inferred from the matters alleged as to his position and responsibilities at AWB at paragraphs 4 and 6 above, from the matters alleged as to his knowledge of and experience in the grain market in Iraq as in paragraph 5 above, from his participation in the meeting alleged at paragraph 41 above, and from the matters particularised in Schedule A (other than paragraphs 6, 9, 11, 15 and 17). His knowledge was cumulative and commenced no later than June 1999.

- (d) that AWB's sales of wheat to Iraq under the Oil-for-Food Programme were subject to scrutiny and authorisation by the United Nations;

Particulars

Flugge's knowledge is to be inferred from the matters alleged as to his position and responsibilities at AWB at paragraphs 4 and 6 above, from the matters alleged as to his knowledge of and experience in the grain market in Iraq as in paragraph 5 above, from his participation in the meetings alleged at paragraphs 39 and 41 above, from the Trip Report alleged at paragraph 43 and from the matters particularised in Schedule A. His knowledge was cumulative and commenced no later than June 1999.

- (e) that the IGB imposed the IGB fees on AWB and that those fees were included in the contract prices in AWB's contracts for the sale of wheat to the IGB;

Particulars

Flugge's knowledge is to be inferred from the matters alleged as to his knowledge of and experience in the grain market in Iraq at paragraph 5(d) and (e) above, from the matters alleged in paragraphs 35 to 43 above and the particulars thereto and from the matters particularised in Schedule A (other than paragraphs 9, 11 and 15). His knowledge was cumulative and commenced no later than June 1999.

- (f) that the United Nations had made enquires about allegations that AWB had made irregular payments at the request of the IGB;

Particulars

Flugge's knowledge is to be inferred from the matters alleged in paragraph 41 above and the particulars thereto and from the matters particularised in paragraph 9A of Schedule A.

- (g) that the IGB fees were not identified or referred to in AWB's contracts for the sale of wheat to the IGB that were submitted to the Department of Foreign Affairs and Trade (DFAT) and the OIP for approval of payment from the UN Escrow Account;

Particulars

Flugge's knowledge is to be inferred from the matters alleged as to his knowledge of and experience in the grain market in Iraq at paragraph 5(d) and (e) above, from the matters alleged in paragraphs 35 to 43 above and the particulars thereto and from the matters particularised in Schedule A (other than paragraphs 9, 11 and 15). His knowledge was cumulative and commenced no later than July 1999.

- (h) that AWB had made and was continuing to make payments of the IGB fees in connection with its trade with the IGB;

Particulars

Flugge's knowledge is to be inferred from the matters alleged as to his knowledge of and experience in the grain market in Iraq at paragraph 5(d) and (e) above, from the matters alleged in paragraphs 35 to 43 above and the particulars thereto and from the matters particularised in Schedule A (other than paragraphs 9, 11 and 15). His knowledge was cumulative and commenced no later than December 1999.

- (i) that the purpose and effect of the payment of the IGB fees and the inclusion of the inland transport obligation in AWB's contracts with the IGB were as alleged at subparagraphs 29(a) and 29(b) above.

Particulars

Flugge's knowledge is to be inferred from the matters alleged as to his knowledge of and experience in the grain market in Iraq at paragraph 5(d) and (e) above, from the matters alleged in paragraphs 35 to 43 above and the particulars thereto and from the matters particularised in Schedule A (other than paragraphs 9, 11 and 15). His knowledge was cumulative and commenced no later than July 1999.

- (j) that revelation of any conduct by AWB that resulted in:
- (i) the direct or indirect payment of internationally traded currency to the Government of Iraq or its instrumentalities; or
 - (ii) the receipt by AWB of payment from the UN Escrow Account other than on account of OFFP humanitarian goods;

would cause, or would be likely to cause, substantial and enduring harm to AWB of the kind alleged at paragraph 47 above.

Particulars

Flugge's knowledge is to be inferred from the matters alleged at subparagraphs 48(c) to (i) above and the particulars thereto. His knowledge is cumulative and commenced no later than June 1999.

DUTIES OF FLUGGE

49. By reason of his positions as a Director and Chairman of AWB, the matters alleged in paragraphs 4 to 8 above, the circumstances pertaining to AWB alleged in paragraphs 9 to 46 above, and his knowledge alleged in paragraph 48 above, at all times from June 1999 to March 2002, Flugge had duties to:
- (a) take reasonable steps to ensure that when AWB was selling and exporting wheat to Iraq and obtaining payments from the UN Escrow Account, AWB was not engaging in conduct that the UN Resolutions had called on member states to prevent and in particular conduct that would, or would be likely to, result in:
 - (i) the direct or indirect payment of internationally traded currency to the Government of Iraq or its instrumentalities; or
 - (ii) the receipt by AWB of payment from the UN Escrow Account other than on account of OFFP humanitarian goods;
 - (b) take reasonable steps to prevent AWB from entering into or carrying out contracts for the sale of wheat with the IGB where the contract price included an amount in respect of the IGB fees or where the contract enabled AWB to obtain funds from the UN Escrow Account in respect of the IGB fees;
 - (c) take reasonable steps to ascertain whether or not AWB had informed the UN ~~had been~~ informed of, and whether the UN had approved, the payment or proposed payment by AWB of the IGB fees and the obtaining of funds by AWB from the UN Escrow Account in respect of the IGB fees;
 - (d) take reasonable steps to
 - (i) make enquiries of AWB's senior management, including the managing director, about each of the matters alleged in subparagraphs 48(a) to 48(i) above;

- (ii) ensure that he, and the AWB Board and/or the Group Corporate Risk Committee and/or the audit committee, were properly informed of those matters;
- (iii) ensure that he, and the AWB Board and/or the Group Corporate Risk Committee and/or the audit committee, took appropriate action to ensure that the steps described in subparagraph ~~49(b)~~50(b) above were carried out.

FLUGGE'S CONTRAVENTIONS

50. ~~In breach of the duties alleged in paragraph 49 above~~ At all times from June 1999 to March 2002:
- I. June 1999 to 18 December 2001; and
 - II. 19 December 2001 to 15 March 2002 inclusive:
- (a) Flugge took no or no reasonable steps to ensure that when selling and exporting wheat to Iraq and obtaining payments from the UN Escrow Account AWB did not engage in conduct that the UN Resolutions had called on member states to prevent, and in particular, conduct that resulted in:
 - (i) the direct or indirect payment of internationally traded currency to the Government of Iraq or its instrumentalities; or
 - (ii) the receipt by AWB of payment from the UN Escrow Account other than on account of OFFP humanitarian goods;
 - (b) Flugge took no or no reasonable steps to prevent AWB from entering into or carrying out wheat sale contracts to Iraq where those contracts included an amount in respect of the IGB fees and enabled AWB to obtain funds from the UN Escrow Account in respect of the IGB fees;
 - (c) Flugge took no or no reasonable steps to ascertain whether or not AWB had informed the UN ~~had been informed~~ of, and whether the UN had approved, the payment or proposed payment by AWB of the IGB fees and the obtaining of funds by AWB from the UN Escrow Account in respect of IGB fees;
 - (d) Flugge took no or no reasonable steps to:

- (i) make enquiries of AWB's senior management, including the managing director, about each of the matters alleged in subparagraphs 48(a) to 48(i) above;
- (ii) ensure that he, and the AWB Board and/or the Group Corporate Risk Committee and/or the audit committee, were properly informed of those matters;
- (iii) ensure that he, and the AWB Board and/or the Group Corporate Risk Committee and/or the audit committee, took appropriate action to ensure that the steps described in subparagraph (b) above were carried out.

50A. By his omissions as alleged in paragraph 50(II), in the period between 19 December 2001 and 15 March 2002 inclusive, Flugge breached each of the corresponding duties alleged in paragraph 49.

Particulars

A reasonable person in Flugge's position with the duties alleged at subparagraphs 49(a) and (b) above would have:

- A. moved and voted in favour of a resolution that the Board direct that AWB cease to:
 - a. engage in conduct that would, or would be likely to, result in:
 - i. the direct or indirect payment of internationally traded currency to the Government of Iraq or its instrumentalities; or
 - ii. the receipt by AWB of payment from the UN Escrow Account other than on account of OFFP humanitarian goods;
 - b. enter into or carry out contracts for the sale of wheat with the IGB where the contract price included an amount in respect of the IGB fees or where the contract enabled AWB to obtain funds from the UN Escrow Account in respect of the IGB fees;
- B. moved and voted in favour of a resolution that the Board direct senior management of AWB, including the managing director, to take all steps necessary to ensure that the resolution referred to at (A) above was put into effect; and
- C. if the resolutions referred to at (A) and (B) were not effective to prevent AWB engaging in the conduct referred to at (A)—moved and voted in favour of a resolution that the Board engage external advisors to audit and/or implement the response of AWB's

management to the resolution referred to at (A) above to ensure that resolution had been complied with.

- D. Further or alternatively, taken any other step reasonably within his power to ensure that AWB ceased to engage in the conduct referred to at (A) above.

A reasonable person in Flugge's position with the duties alleged at subparagraph 49(c) above would have:

- E. made enquiries of AWB's senior management, including the managing director, as to whether AWB had informed the UN about, and whether the UN had approved, the IGB fees;
- F. called for the production by AWB's senior management of correspondence or other documentary evidence that AWB had informed the UN about, and that the UN had approved, the IGB fees;
- G. if the steps referred to at (E) and (F) were not effective in informing him regarding the matters referred to in 49(c)—written to the Australian Government—including DFAT and the Australian Trade Commission—enquiring as to whether AWB had informed the UN and whether the UN had approved, the IGB fees.
- H. Further or alternatively, taken any other step reasonably within his power to ensure that he ascertained the matters referred to in 49(c).

A reasonable person in Flugge's position with the duties alleged at subparagraph 49(d) above would have:

- I. informed the AWB Board and/or the AWB Group Corporate Risk Committee and/or the AWB audit committee of the matters known to him as alleged in paragraph 48 above;
- J. made enquiries of AWB's senior management, including the managing director, about each of the matters alleged in paragraph 48;
- K. if the steps referred to at (I) and (J) were not effective to fully inform him, the AWB Board and/or the AWB Group Corporate Risk Committee and/or the AWB audit committee of the matters alleged in paragraph 48—taken any other step reasonably within his power to ensure that he and they were so informed.

Further or alternatively to the steps referred to at (A) to (K) above, a reasonable person in Flugge's position with the duties alleged at subparagraphs 49(a), (b), (c) and (d) above would have ensured that the steps in (A) to (K) were taken by others.

51. Alternatively, if Flugge did not have knowledge of each of the matters alleged in paragraph 48 above, then:

- (a) Flugge had the means of knowledge of each of those matters; and

Particulars

The Plaintiff refers to and repeats the particulars to paragraph 48 above as the means of Flugge's knowledge.

- (b) by reason of his positions as a Director and Chairman of AWB, the matters alleged in paragraphs 4 to 8 above, and the circumstances pertaining to AWB alleged in paragraphs 9 to 46 above, at all times from June 1999 to March 2002 Flugge had duties to:
- (i) inform himself of each of the matters alleged in paragraph 48 above using the means of knowledge alleged at (a) above;
 - (ii) thereafter do each of the things alleged in paragraph 49 above.

52. ~~In breach of the duties alleged in sub-paragraph 51(b) above, Flugge~~ At all times from June 1999 to March 2002, Flugge:

- I. June 1999 to 18 December 2001; and
- II. 19 December 2001 to March 2002 inclusive:

- (a) Flugge failed to inform himself of the matters alleged in paragraph 48 above; and
- (b) Flugge failed to do each of the things alleged in paragraph 49 above.

52A. By his omissions as pleaded in paragraph 52(II), in the period between 19 December 2001 and 15 March 2002 inclusive, Flugge breached each of the corresponding duties alleged in paragraph 51.

Particulars

The plaintiff refers to and repeats the particulars subjoined to paragraph 50A above.

53. By engaging in the conduct alleged in paragraph 50A, alternatively paragraph 52A above, in the period 19 December 2001 to 15 March 2002 inclusive Flugge:

- (a) failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they:
 - (i) were an officer of a corporation in AWB's circumstances; and

- (ii) occupied the office held by Flugge and had the same responsibilities as Flugge; and
 - (b) breached the duty alleged in paragraph 7 above and thereby contravened s 180 of the *Corporations Act*.
54. Further or alternatively, by engaging in the conduct alleged in paragraph 50A, alternatively paragraph 52A above, in the period 19 December 2001 to 15 March 2002 inclusive Flugge:
- (a) failed to exercise his powers and discharge his duties in good faith in the best interests of AWB and for a proper purpose; and
 - (b) breached the duty alleged in paragraph 8 above and thereby contravened s 181 of the *Corporations Act*.

RELIEF

55. Flugge is liable to be the subject of a declaration in respect of each of the contraventions alleged in paragraphs 53 and 54 above, pursuant to s 1317E(1)(a) of the *Corporations Act*.
56. Further, the contraventions and each of them:
- (a) materially prejudiced the interests of AWB; or
 - (b) were serious;
- within the meaning of s 1317G(1) of the *Corporations Act*.

Further and Better Particulars

The plaintiff refers to and repeats the particulars subjoined to paragraph 47 above.

In relation to subparagraph 56(b), the plaintiff also refers to and repeats the responsibilities of the defendant as alleged at paragraph 6 above, the importance of the Iraq market as alleged at paragraph 19 above, and the importance of the single desk as alleged at paragraph 45 above.

57. In the premises, Flugge is liable to pay a pecuniary penalty pursuant to s 1317G(1) of the *Corporations Act* in respect of each contravention.

58. Further, the Plaintiff seeks an order pursuant to s 206C(1) of the *Corporations Act* to disqualify Flugge from managing a corporation for such period as the Court considers appropriate.

AND THE PLAINTIFF CLAIMS:

- A. A declaration pursuant to s 1317E of the *Corporations Act* that Flugge has contravened s 180 of that Act in respect of the matters alleged in paragraph 53 above.
- B. A declaration pursuant to s 1317E of the *Corporations Act* that Flugge has contravened s 181 of that Act in respect of the matters alleged in paragraph 54 above.
- C. An order pursuant to s 1317G of the *Corporations Act* that Flugge pay to the Commonwealth a pecuniary penalty in relation to each civil penalty contravention in such amount as the Court thinks fit.
- D. An order pursuant to s 206C(1) of the *Corporations Act* to disqualify Flugge from managing a corporation for such period as the Court considers appropriate.
- E. Costs.
- F. Such further or other relief as the Court thinks fit.

Dated: 23 September 2015

Norman O'Bryan SC

Jonathon Moore QC

Cam Truong

Christina Klemis



Savas Miriklis
Solicitor for the Australian
Securities and Investments
Commission

SCHEDULE A

PARTICULARS OF FLUGGE'S KNOWLEDGE OF MATERIAL MATTERS

The Plaintiff relies on the following matters to support an inference that Flugge knew the matters alleged in paragraph 48 of the ~~Second-Third~~ Further Amended Statement of Claim (**the matters alleged**).

Alternatively, if it is found that Flugge did not know the matters alleged, the Plaintiff relies on the following matters in support of the allegations in paragraph 51 of the ~~Second-Third~~ Further Amended Statement of Claim that Flugge had the means of knowledge of the matters alleged.

Copies of all documents referred to below are available for inspection on reasonable notice.

1. Flugge headed AWB delegations to Iraq in 1996, 1998, 1999 and 2001.

Further and Better Particulars

The plaintiff refers to and repeats the further and better particulars to paragraph 5(d) of the ~~Second-Third~~ Further Amended Statement of Claim.

As a director and the Chairman of AWB, Flugge was the most senior officer within each delegation.

2. The purpose of the 1996 visit by the AWB delegation led by Flugge, which visit was around the time of the commencement of the OFFP, was to re-establish contacts with the Government of Iraq and to attempt to secure sales of Australian wheat. The delegation met with representatives of the IGB and the Iraq Minister for Trade. As a result of these meetings, an in-principle agreement was reached between AWB and the IGB for AWB to supply wheat to Iraq under the OFFP.

The meetings attended by the AWB delegation to Iraq are recorded in a document entitled "*Report to the Australian Government by AWB marketing to Iraq 9 – 10 July 1996*".

Further and Better Particulars

The visit took place on 9 – 10 July 1996. The members of the AWB delegation were Flugge, Mark Emons and Greg Harvey. As a director and the Chairman of AWB, Flugge was the most senior officer within the AWB delegation.

The purpose of the visit, the meetings that took place during the visit and the in-principle agreement reached between AWB and the IGB are recorded in the document entitled "*Report to the Australian Government by AWB marketing to Iraq 9 – 10 July 1996*".

3. On 10 November 1997, Flugge wrote a letter to the Iraqi Minister for Trade which discussed issues pertaining to the supply of wheat to Iraq by AWB in the context of the OFFP, and specifically referred to:
- (a) AWB's commitment to continuing its supply of wheat to Iraq despite all the difficulties experienced by AWB and the IGB in operating "*under United Nations requirements*";
 - (b) the considerable delays in the receipt by AWB of payment from the UN caused by the payment arrangement imposed on AWB and the IGB by the UN; and
 - (c) AWB's recognition that the "*United Nations requirements create special circumstances for the people of Iraq*".

Further and Better Particulars

The plaintiff relies on the fact that Flugge's name appears as the author of the letter, and the fact that Flugge signed the letter.

4. On 2 April 1998, Flugge wrote to Tim Fischer, the then Deputy Prime Minister and Minister for Trade advising of a meeting scheduled with the Iraq Minister for Trade later that month. Flugge also noted statements by the Iraq Minister for Trade that in response to Australia's decision to place troops in the Gulf region, Iraq intended to cut Australian wheat imports and expressed concerns that Australian wheat imports would be replaced by imports from one of AWB's major competitors, France. Flugge requested that the Deputy Prime Minister provide AWB with a message to pass on to the Iraq Minister for Trade indicating, among other things, "the importance that is attached to the wheat trade between Australia and Iraq". In the letter, Flugge further stated:

...the AWB just wishes to see our sales continue under the United Nations arrangements as we endeavour to protect Australia's long-term trade interests in the Region.....

Further and Better Particulars

The plaintiff relies on the fact that Flugge's name appears as the author of the letter, and the fact that Flugge signed the letter.

5. In June 1999 at the International Grains Conference in London, Flugge and Emons attended a dinner at which they were seated at a table with representatives of Ronly, including Nori Bali. During the course of the dinner, the imposition of the inland transport fee by Iraq was discussed at the table in Emons' and Flugge's presence.

Further and Better Particulars

The dinner took place in London. The participants in the discussion (including those participants who were listening) were Flugge, Mark Emons, Nori Bali of Ronly and Erol Yahya of Ronly. The plaintiff alleges that the defendant heard the discussion.

According to the evidence that Emons gave at the Cole Inquiry (see Cole Report at [13.17] and the material reference there):

- a. one of the Ronly people present at the dinner said that Ronly could help AWB with the payment of the ITF; and
 - b. the trucking fee was discussed openly with those present at the dinner, including Flugge.
6. On 14 July 1999, Flugge received an email from Emons advising that the previous night AWB Limited concluded a sale with the IGB of 700,000 tonnes of wheat at a price of US\$155.00 "CIF Umm Qasr" per metric tonne. The email notes that the sale price equates (after the deduction of costs) to an FOB price of US\$120 per metric tonne, and compares that price to the FOB price per metric tonne of US\$103 of a sale contract with Jordan entered into around the same time.

Further and Better Particulars

Flugge's receipt of the email is to be inferred from the fact that the email records Flugge's name in the "To:" field.

7. In around late August 1999, Flugge received a document entitled "Chief Financial Officer's Report" prepared by Ingleby which referred to an AWB marketing delegation visiting Iraq at the request of the IGB to discuss in detail the changed terms and conditions being sought by Iraq in relation to supplies of food under the United Nations Oil-for-Food Programme. This report was discussed at a board meeting of AWB on or around 26 August 1999.

Further and Better Particulars

Flugge's receipt of the document is to be inferred from the fact that the document was discussed at a board meeting of AWB on or around 26 August 1999, and Flugge was at the time the Chairman of AWB's board of directors.

The discussion of the document is referred to in the minutes of the board meeting.

8. On 10 December 1999, Flugge wrote to Mark Vaile ("**Vaile**"), the then Minister for Trade, advising of his recent meeting in Baghdad with the Iraq Minister for Trade during which discussions were held on trade and future trade with Iraq.

Further and Better Particulars

The plaintiff relies on the fact that Flugge's name appears as the author of the letter, and the fact that Flugge signed the letter.

9. In the AWB 1999 Annual Report, there are material statements about the importance of the retention of the single desk and the national wheat pool.

Further and Better Particulars

The plaintiff relies on the following material statements:

- a. On page 1, under the heading "Corporate Objectives":

"to continue to manage the single export desk for wheat for the benefit of the industry and the Australian economy and in particular our grower suppliers."

- b. On page 5:

"Our participation in [the National Competition Policy review] process will be a major focus over the next 12 months as we demonstrate the benefits to the Australian economy of the single desk system of export marketing."

- c. On page 7:

"Q: The pool has always been the focus of AWB activities, will that continue with the privatised AWB Limited?"

MR: Management of the national pool is still the heart of AWB's business. With the end of Government underwriting of our borrowings we committed to providing growers with an 80 per cent harvest payment for the 1999/2000 season backed by a capital base of over \$600 million. We are also introducing new grain acquisition products around the pool, to give growers flexibility and an opportunity to better manage their business risk. The pool, coupled with the Single Desk marketing system is a successful combination for the Australian grain industry and we want to make sure we keep a system that works.

Having said that it's important for our grower shareholders that our pool operations are completely separate from the rest of the business. They are run through AWB (International) Limited and all returns go straight back to the growers who deliver to the national pool.

Q: Retaining Single Desk marketing of the Australian wheat crop has been debated widely and is due for review in 2000, what are your thoughts?"

MR: The Single Desk marketing system is in place indefinitely. However, it will be reviewed in 2000 under National Competition Policy, and in 2004 the new Wheat Export Authority will report to the Government on AWB (International) Limited's management of the Single Desk System.

In the meantime, I share a real passion along with the Board and management of AWB that we have the best and most appropriate method for marketing the crop.

My visits to wheat growing areas across the country have convinced me that growers also strongly support the Single Desk and want us to stand up for it. In fact our market research has shown that an overwhelming majority of growers support the System we have. It works in the market place for good reasons and we are committed to showing growers and the wider community that the system we know and work with every day is the best for Australia."

- d. On page 11, under the heading "Corporate Performance":

"AWB (International) Limited is focused on the international wheat market and maximising returns through the national pool. It incorporates global sales and marketing activities, logistical support and quality assurance.

AWB (International) Limited manages the export of wheat on behalf of Australian wheat growers through the Single Desk system. This integrated wheat marketing system enables Australian wheat growers to extract a premium for their wheat and put on a united front in the international market place. It is a system of marketing that allows AWB to take wheat from the paddock to the end customer in the most efficient way possible."

- e. On page 26, under the heading "National Pool Operations":

"The national wheat pools are the 'engine room' of the business, central to the organisation's core business and setting the agenda for acquisition, financial, value-adding and sales and marketing activities."

- 9A. On or about 4 or 5 April 2000, Flugge read and signed a letter to the Iraqi Minister for Trade, Mohammed Saleh, which relevantly stated:

"While in Baghdad I will ask AWB to discuss the recent communication from United Nations concerning trucking fees. As you are aware both the Canadian and American Governments have raised this issue with the United Nations. It is our intention to remain committed to the terms of trade agreed between IGB and AWB. The Australian government equally supports this commitment to our trade."

The letter was written in whole or in part by Emons. The signed letter was collected by Emons from Flugge's secretary, and carried to Iraq by AWB General Manager Edward Laskie.

10. On 26 April 2000, Emons sent an email to Joanne Martin, copied to Flugge and three others, reporting on various comments made to Emons by the Iraq Minister of Trade during Emons' recent visit to Iraq. In the email, Emons noted the following:

** Minister was appreciative of AWB handling of contractual and quality issues as compared to [the Canadian Wheat Board].*

11. In the *Chairman and Chief Executive's Report* published in the AWB 2000 Annual Report, Flugge (together with Lindberg) stated that, by means of the single desk, AWB was able to sell Australia's wheat crop at premium prices into a world market which was distorted by the high levels of subsidies by governments of other exporting nations. The AWB 2000 Annual Report also contained material statements concerning the importance and value of the single desk, AWB's fees in connection with services to the National Pool, and the size and value of the Iraq trade.

Further and Better Particulars

In addition to the matters summarised at Schedule A paragraph 11, the plaintiff relies on the following material statements:

- a. At page 4, under the heading "Operational Highlights":
"AWB charges an arms length pool service fee to the National Pool for commercial services provided by AWB ... Of AWB's profit, 10% was derived from the pool service charge."
- b. At page 5, under the heading "Single Desk Review":
"The review of the Single Desk by the National Competition Committee is a major issue and a reminder of the importance of the Single Desk System to Australian growers, their families and rural communities."

...
We have demonstrated, by our performance, the benefits of the current Single Desk system."
- c. At page 7, under the heading "AWB's National Pool":
Maximise net returns to grain growers who deliver to the National Pool through the Single Desk system
In excess of 18 million tonnes of wheat exported in 1999 - 2000
National Competition Policy review of Single Desk

...
Reduction of more than 5% of supply chain and handling and storage charges

...
Further reduction in supply chain costs
- d. At page 26, under the heading "financing":
"The pool service charge represents the arms length cost to the National Pool for commercial services provided by AWB. These services include all

administrative, human resources, marketing, risk management, funding and treasury services involved in the export of Australia's wheat. ...

The pool service charge was \$50.70 million or equal to approximately \$2.65 per tonne."

- e. At page 44, under the heading "The Single Desk Marketing System":
"Managing exports through the Single Desk marketing system enables AWB International to deliver value over and above simple market premiums. This value relates to research and development, logistics capacity and efficiency, superior information, economies of scope and scale, integration of the value chain, strong customer relationships, continuity of supply, consistent quality, reliable performance and effective risk management."
- f. At page 46, under the heading "International Sales and Marketing":
AWB provides international sales and marketing services to AWB International to maximize returns to growers who deliver to the National Pool.
The last four years have seen exports exceed 15 million tonnes each year.
The very large grain volumes, coupled with the variability of seasonal quality has ensured AWB adopts an aggressive approach to marketing.
This has resulted in large volumes of discretionary tonnage being sold to the highest bidding markets such as Egypt, Indonesia, Iran and Iraq.

12. On 20 October 2000, Flugge wrote a letter to Vaile in which he said:

- (a) Iraq is extremely important to the returns of Australian wheat growers, with the market representing approximately 15% of Australia's wheat export program, and being Australia's largest wheat export destination in the 1999/00 marketing year;
- (b) AWB representatives met with the Iraq Minister for Trade in Baghdad who requested that AWB pass on the to the Australian Government that Australia should not become complacent about its status as Iraq's major wheat supplier and that the Australian Government should do more to officially recognise the importance of Australia's wheat trade with Iraq by lifting its profile in Iraq;
- (c) the Minister's comments indicate that the Iraq Government is frustrated at what they perceive as a lack of official dialogue between the two governments and a lack of recognition of the important role the Iraq market plays in Australia's wheat export program;
- (d) AWB is concerned that if the perception is allowed to continue it is likely to seriously affect AWB's trade with "this important market", and the issue appears to be gaining momentum to the point where it may begin to impact on AWB's sales program;

- (e) AWB wishes to see its sales continue under the United Nations arrangements as it endeavours to protect Australia's long term interests in the Iraq market and the region more widely; and
- (f) AWB would be appreciative if the Australian Government would "*give consideration to taking steps to engage with the Iraqi Government.*"

Further and Better Particulars

The plaintiff relies on the fact that Flugge's name appears as the author of the letter, and the fact that Flugge signed the letter.

13. On 10 March 2001, Flugge wrote a letter to Vaile in which he said that Iraq was a particularly important market for Australian wheat exports, that the importance of the Iraq market had resulted in a strong business relationship between the IGB and AWB and that the Director-General of the IGB recently wrote to Flugge raising the issue of the Australian Government's attitude towards Iraq and requesting that AWB help facilitate an improvement in relations between Australia and Iraq. Flugge urged the Australian Government not to overlook the importance of the Iraq market to AWB and Australian growers and trade and further said:

AWB would therefore hope that the Australian Government remain aware of Iraq's importance and demonstrate understanding regarding what the Iraq Government perceives as a rather unjust political climate.

Further and Better Particulars

The plaintiff relies on the fact that Flugge's name appears as the author of the letter, and the fact that Flugge signed the letter.

14. On 21 June 2001, Flugge met with Iraq officials in Baghdad along with Charles Stott, the General Manager of ISM. Among the issues discussed with the Iraqis was a dispute between AWB and Iraq in relation to exchange rates regarding AWB's contracts with Iraq. Flugge later discussed his visit to Iraq with Glenn Miles ("**Miles**"), a senior DFAT officer stationed at the Australian Embassy in Jordan. Flugge reported to Miles that the exchange rate dispute with the Iraqis had been resolved, that the issue had been caused by Iraq's decision to deal in Euros and that he suspected that the Iraqis had used the opportunity provided by his impending visit to re-open negotiations.

The discussion with Miles is recorded in a cable sent to DFAT Canberra by Miles, a copy of which is available for inspection on reasonable notice

Further and Better Particulars

The cable is dated 10 July 2001. The discussion between Flugge and Miles took place sometime between 21 June 2001 and 10 July 2001.

15. In a chairman's letter to investors dated 6 July 2001 contained in AWB's Prospectus lodged with the Australian Securities Exchange on or about 25 July 2001, Flugge noted that:

- (a) AWB was one of the world's largest wheat management and marketing companies; and
- (b) through its wholly-owned subsidiary, AWBI, AWB was Australia's monopoly bulk wheat exporter, and AWB earned a management fee for the provision of services to AWBI.

The Prospectus stated that the single desk was not scheduled for legislative review until 2010 and contained material further statements concerning the importance and value of the single desk and AWB's fees in connection with services to the National Pool.

16. On 20 July 2001, Flugge along with DFAT representatives met with the United Nations Treasurer in New York and discussed the issue of delay in payments from the UN escrow account for AWB's sales to Iraq under the OFFP and the allocation of bank fees to AWB for the transactions.

The meeting is recorded in an AWB internal report entitled "*Chairman's Visit to Brussels, Washington and New York 15-22 July 2001*" and in a cable sent by Bronte Moules of the Australian Mission to the UN to DFAT Canberra on 1 August 2001.

17. On 16 January 2002, Flugge sent a letter to Minister Saleh, Ministry of Trade in Iraq the material effect of which was that the IGB had requested a reduction in the price agreed for the sale of one million tonnes of wheat under Contracts A1111 and A1112, and that there would be substantial costs to AWB if the contracts had to be renegotiated.

Further and Better Particulars

The plaintiff relies on the fact that Flugge's name appears as the author of the letter, and the fact that Flugge signed the letter.

18. On or about 8 February 2002, Flugge travelled to New York to attend meetings with UN Treasury and OIP officials regarding AWB's trade with Iraq and delays in the receipt by

AWB in payments from the UN Escrow account. Prior to the meetings, Flugge was briefed by DFAT officials on progress in the development of a "smart sanctions regime" in relation to Iraq which was to replace the existing sanction regime. During all of these meetings, Flugge emphasised AWB's "*overall satisfaction with the conduct of its wheat trade with Iraq, its biggest export market.*"

These meetings are recorded in a cable [dated 13 February 2002](#) sent to DFAT Canberra by Paul Stephens of the Australian Mission to the UN.

19. On or about 16 September 2002, Flugge contacted Long and had a discussion with him about AWB's use of Ronly to pay the inland transportation fees to Alia. During the conversation, Flugge told Long that he wanted to '*distance himself*' from the arrangement between AWB and Ronly. The conversation is detailed in an email from Long to Geary dated 16 September 2002.

Further and Better Particulars

[The discussion between Flugge and Long took place by telephone.](#)

20. In April 2003, Flugge had a discussion with Ric Wells, an employee of DFAT, the material effect of which was that Flugge informed Wells that an arrangement had been made by AWB with Iraqi officials whereby AWB would pay the cost of freight separately to the Iraqi officials and the cost of land freight was built into the AWB wheat contracts with Iraq.

Further and Better Particulars

[The discussion took place at the Presidential Palace in Baghdad on or about 30 April 2003.](#)

21. On 5 May 2003, Flugge told Scott Dawson, the then Deputy Director General of AusAid, that "*American officials examining the OFF [Oil-for-Food Programme] contracts will find that the AWB contracts include a variation to normal grain contracts*" and that "*AWB contracts include a component for land freight, for which AWB was paid under the OFF and from which AWB then made payments to Iraqi representatives to organise freight*". The conversation is recorded in an email from Dawson to Wells dated 5 May 2003.

Further and Better Particulars

[The conversation between Flugge and Dawson took place by telephone.](#)

22. In a *curriculum vitae* dated 17 December 2003, Flugge lists his achievements while Chair of AWB as including the following:

- (a) assisted shaping world trade opinion through ongoing lobbying, trade representations and negotiations, which helped expand AWB's international profile and improved access to key markets in Asia and the Middle East while allowing it to retain the single desk;
 - (b) furthered Australian agribusiness interests while building and maintaining lasting business and political relationships throughout the world, including (relevantly) the Middle East; and
 - (c) successfully advocating Australian grains interests in various forums in the world.
23. On 30 April 2004, Flugge told Chris Quennell (Blake Dawson Waldron) and Jim Cooper (AWB general counsel) that:
- (a) Flugge had discussed the inland transport fee with Emons;
 - (b) The inland transport fee was included in AWB's contracts with the IGB;
 - (c) AWB paid the fee to the IGB, which was responsible for inland transport;
 - (d) AWB paid the fee to Ronly, who then paid it to Alia. Later AWB paid the fee directly to Alia;
 - (e) Flugge had no idea where the money for the inland transport fee actually went, but some of it would have been spent on inland transport;
 - (f) Flugge thought that the inland transport fee was approved by the United Nations; and
 - (g) Flugge considered that AWB's payment of the inland transport fee was a management issue and not an issue for the Board of AWB.

The above admissions are recorded in a file note dated 30 April 2004 prepared by Chris Quennell of Blake Dawson Waldron.

24. On 2 March 2005, Flugge told investigators from the Independent Inquiry Committee that he had been aware that AWB contracts with Iraq had included a transport component. The conversation is recorded in Notes of Interview between Independent Inquiry Committee personnel and Flugge on 2 March 2005.

SCHEDULE B

CONTRACTS A1111 and A1112 TERMS AND PAYMENTS MADE AND RECEIVED BY AWB IN CONNECTION WITH EACH CONTRACT

Copies of all documents referred to below are available for inspection on reasonable notice.

Contract A1111

1. On or about 20 December 2001, AWB entered into contract number A1111 with the IGB for the supply by AWB to the IGB of 500,000 tonnes of wheat (**Contract A1111**).

Particulars

Contract A1111 is in writing and is constituted by:

- (A) a document entitled "*AWB Limited – Australian Wheat CIF Contract*" dated 20 December 2001; and
- (B) a document entitled "*Ministry of Trade/Grain Board of Iraq – Contract for the Supply of 500,000 MT Australian Wheat*" dated 17 January 2002.

Copies of the documents are available for inspection on reasonable notice.

2. Contract A1111 contained terms including the following:
 - (a) AWB agreed to sell and the IGB agreed to buy 500,000 tonnes of Australian wheat (and 5 per cent more or less at AWB's option);
 - (b) the CIF Free in Truck price for the wheat was €263.08 per tonne;
 - (c) the wheat was to be discharged Free into Truck to all silos within all governorates of Iraq;
 - (d) AWB agreed to ship the wheat during the period 1 March 2002 to 31 July 2002, subject to receipt of appropriate UN approval;
 - (e) payment was to be made by a procedure which involved the Central Bank of Iraq requesting the bank holding the UN Escrow Account to open an irrevocable, non-transferable letter of credit in favour of AWB for payment from the UN Escrow Account; and

- (f) a copy of the 661 Committee letter stating that AWB was eligible for payment from the UN Escrow Account was required to effect payment.

Particulars

The terms are in writing and are contained in the document entitled "*AWB Limited – Australian Wheat CIF Contract*" dated 20 December 2001 and the document entitled "*Ministry of Trade/Grain Board of Iraq – Contract for the Supply of 500,000 MT Australian Wheat*" dated 17 January 2002.

3. The per tonne price of €263.08 agreed in Contract A1111 included the sum of €55.17 in respect of IGB fees.

Particulars

The inclusion of a sum in respect of the IGB fees is recorded in the following documents:

- (A) the summary sheet for the file relating to Contract A1111;
- (B) a fax from the IGB to AWB dated 20 December 2001;
- (C) an email from Hogan to Mr Yousif of the IGB dated 20 December 2001; and
- (D) an email from Hogan to Lindberg and other AWB employees dated 21 December 2001.

Copies of the above documents are available for inspection on reasonable notice.

4. On or about 22 January 2002, AWB submitted Contract A1111 to the Department of Foreign Affairs and Trade (DFAT) for on forwarding to the United Nations OIP for examination as to price and value in accordance with the procedures alleged in paragraph 14 of the ~~Second~~ Third Further Amended Statement of Claim, which submitted documents did not refer to the inland transportation fee or the after sales service fee.

Particulars

The submission was in writing and is constituted by a facsimile dated 22 January 2002 from Hogan to Don Cuddihy of DFAT together with a copy of each of the documents referred to in the particulars to paragraph 1 above and a copy of a document entitled "*Notification or Request to Ship Goods to Iraq*".

5. On or about 5 February 2002, the OIP determined that AWB was eligible for payment from the UN Escrow Account in relation to the sale of wheat pursuant to Contract A1111.

Particulars

The determination is evidenced by a document dated 4 February 2002 issued by Benon V Sevan (Executive Director) on behalf of the OIP on 5 February 2002, to the Permanent Representative of Australia to the United Nations. Provisional approval was given by a document dated 4 February 2002 from Farid Zarif on behalf of the OIP to the Australian Mission.

6. On or about the dates set out below, in accordance with the *Customs Regulation*, AWB received from DFAT permission to export the wheat sold under Contract A1111.

Particulars

The permissions to export are contained in several certificates issued by DFAT on or about the following dates:

Date	Vessel	DFAT Delegate
19/3/02	Silver Mei	Mr G Atkin
22/4/02	Man Hai	Mr G Atkin
26/4/02	Andromeda	Mr G Atkin
14/5/02	Pearl of Fujairah	Mr G Atkin
20/5/02	Tuo Hai	Mr G Atkin
28/5/02	Andros	Mr G Atkin
3/6/02	Tenacity	Mr G Atkin
3/6/02	Tai An Hai	Mr G Atkin
24/6/02	Panagia Kastrela	Mr G Atkin
11/7/02	Supersonic	Mr G Atkin
16/9/02	Captain George Tsangaris	Mr J Quinn

7. The following amounts were paid by AWB to Alia for IGB fees in relation to Contract A1111:

Date	Payment Request Amount EUR	Portion relevant to Contract A1111
18/4/02	€ 4,620,258.48	€ 2,293,458.48
14/5/02	€ 3,202,529.09	€ 415,965.60
24/5/02	€ 5,220,121.61	€ 2,317,140.00
11/6/02	€ 8,443,128.21	€ 2,758,534.21 and
11/6/02		€ 2,317,000.00
18/6/02	€ 3,238,259.26	€ 2,786,422.09 and
18/6/02		€ 2,317,140.00

Date	Payment Request Amount EUR	Portion relevant to Contract A1111
4/9/02	€ 2,867,827.63	€ 2,867,827.63
20/9/02	€ 5,539,629.63	€ 2,725,949.70 and
20/9/02		€ 2,813,679.93
15/10/02	€ 5,352,979.38	€ 2,649,428.91
8/11/02	€ 4,983,246.53	€ 2,656,446.53
	Total	€28,919,133.08

8. In the period 17 June 2002 to 19 December 2002, AWB received the following payments from the UN Escrow Account pursuant to Contract A1111, which payments were calculated by reference to the full tonne price of the wheat, inclusive of the IGB fees.

Remittance	Amount EURO
17/6/02	€ 12,647,087.88
9/7/02	€ 11,041,282.85
16/9/02	€10,998,979.90
16/9/02	€11,011,992.55
8/10/02	€ 13,154,033.11
10/10/02	€ 13,189,516.03
18/10/02	€ 13,675,262.48
24/10/02	€ 13,325,110.89
8/11/02	€12,962,687.14
3/12/02	€ 12,615,137.40
19/12/02	€ 12,667,224.62
Total	€137,288,314.85

Contract A1112

9. On or about 20 December 2001, AWB entered into Contract Number A1112 with the IGB for the supply by AWB to the IGB of 500,000 tonnes of wheat (**Contract A1112**).

Particulars

Contract A1112 is in writing and is constituted by:

- (A) a document entitled "*AWB Limited – Australian Wheat CIF Contract*" dated 20 December 2001; and

- (B) a document entitled "*Ministry of Trade Grain Board of Iraq – Contract of the Supply of 500,000 MT Australian Wheat*" dated 17 January 2002.

Copies of the documents are available for inspection on reasonable notice.

10. Contract A1112 contained terms including the following:

- (a) AWB agreed to sell and the IGB agreed to buy 500,000 tonnes of Australian wheat (and 5 per cent more or less at AWB's option);
- (b) the CIF Free in Truck price for the wheat was €265.68 per tonne;
- (c) the wheat was to be discharged Free into Truck to all silos within all governorates of Iraq;
- (d) AWB agreed to ship the wheat during the period 1 March 2002 to 31 July 2002, subject to receipt of appropriate United Nations approval;
- (e) payment was to be made by a procedure that involved the Central Bank of Iraq requesting the bank holding the UN Escrow Account to open an irrevocable, non-transferable letter of credit in favour of AWB for payment from the UN Escrow Account; and
- (f) a copy of the 661 Committee letter stating that AWB was eligible for payment from the UN Escrow Account was required to effect payment.

Particulars

The terms are in writing and are contained in the document entitled "*AWB Limited – Australian Wheat CIF Contract*" dated 20 December 2001 and the document entitled "*Ministry of Trade/Grain Board of Iraq – Contract for the Supply of 500,000 MT Australian Wheat*" dated 17 January 2002.

11. The price of €265.68 per tonne agreed in Contract A1112 included the sum of €55.40 in respect of IGB fees.

Particulars

The inclusion of a sum in respect of the IGB fees is recorded in the following documents:

- (A) the summary sheet for the file relating to Contract A1112;
- (B) a fax from the IGB to AWB dated 20 December 2001;

- (C) an email from Hogan to Mr Yousif of the IGB dated 20 December 2001; and
- (D) an email from Hogan to Lindberg and other AWB employees dated 21 December 2001.

Copies of the above documents are available for inspection on reasonable notice.

12. On or about 22 January 2002, AWB submitted Contract A1112 to DFAT for on forwarding to the OIP for examination as to price and value in accordance with the procedures set out in paragraph 14 of the ~~Second~~ Third Further Amended Statement of Claim, which submitted documents did not refer to the inland transportation fee or the after sales service fee.

Particulars

The submission was in writing and is constituted by a facsimile dated 22 January 2002 from Hogan to Don Cuddihy of DFAT together with a copy of each of the documents referred to in the particulars to paragraph 9 above and a copy of a document entitled "*Notification or Request to Ship Goods to Iraq*".

13. On or about 5 February 2002 the OIP determined that AWB was eligible for payment from the UN Escrow Account in relation to the shipment of wheat pursuant to Contract A1112.

Particulars

The determination is evidenced by a document dated 4 February 2002 issued by Benon V Sevan (Executive Director) on behalf of the OIP on 5 February 2002, to the Permanent Representative of Australia to the United Nations. Provisional approval was given by a document dated 4 February 2002 from Farid Zarif on behalf of the OIP to the Australian Mission.

14. On or about the dates set out below, in accordance with the *Customs Regulation*, AWB received from DFAT permission to export the wheat the subject of Contract A1112.

Particulars

The permissions to export are contained in several certificates issued by DFAT on or about the following dates:

Date	Vessel	DFAT Delegate
5/3/02	Supersonic	Mr G Atkin
22/3/02	Bei Hai	Mr G Atkin
28/3/02	Vitali	Mr G Atkin

Date	Vessel	DFAT Delegate
3/4/02	Heraklia	Mr G Atkin
11/4/02	Captain John L	Mr G Atkin
26/4/02	Ethnos	Mr G Atkin
15/5/02	Mani P	Mr G Atkin
20/5/02	North Duchess	Mr G Atkin
24/6/02	Azure	Mr G Atkin
17/7/02	Vitali	Mr G Atkin
25/7/02	Shou Chang Hai	Mr G Atkin
2/10/02	Macanudo	Ms C Birgin

15. The following amounts were paid by AWB to Alia for IGB fees in relation to Contract A1112:

Date	Payment Request Amount EUR	Portion relevant to Contract A1112
2/4/02	€ 7,700,743.08	€ 2,665,097.88
18/4/02	€ 4,620,258.48	€ 2,326,800.00
30/4/02	€ 2,843,848.20	€ 1,163,400.00
14/5/02	€ 3,202,529.09	€ 2,786,563.49
24/5/02	€ 5,220,121.61	€ 2,902,981.61
11/6/02	€ 8,443,128.21	€ 2,842,020.00
5/7/02	€ 2,731,626.08	€ 2,731,626.08
15/10/02	€ 5,352,979.38	€ 2,703,550.47
25/10/02	€ 2,880,800.00	€ 2,880,800.00
8/11/02	€ 4,983,246.53	€ 2,326,800.00
11/11/02	€ 2,908,500.00	€ 2,908,500.00
	Total	€28,238,139.53

16. In the period 24 May 2002 to 20 December 2002, AWB received the following payments from the UN Escrow Account pursuant to Contract A1112, which payments were calculated by reference to the full per tonne price of the wheat, inclusive of the IGB fees:

Date	Amount EURO
24/5/02	€ 12,537,599.45
13/6/02	€ 11,097,014.30

Date	Amount EURO
27/6/02	€13,353,288.42
3/7/02	€13,828,625.81
26/7/02	€ 5,558,965.18
26/7/02	€ 13,531,105.39
13/9/02	€ 13,000,231.14
27/11/02	€ 12,921,710.97
27/11/02	€ 13,750,017.52
12/12/02	€ 13,924,052.75
20/12/02	€ 11,158,430.00
Total	€134,661,040.93

SCHEDULE C — CHART OF PRE JULY 1999 WHEAT CONTRACTS

Doc ID	Date	Contract No	IBG/AWB	Amount of wheat (MT)	Price per tonne US\$	Form of clause
1a	19.12.1996	A3282	AWB	250,000	192.50	The C. and F. price per tonne of 1000 kilos is United States of America Dollars as follows:
1b	19.12.1996	W/1/96	IGB	250,000	192.50	C & F free out Um Qaser
2	22.01.1997	A3334	AWB	150,000	190.50	The C. and F. price per tonne of 1000 kilos is United States of America Dollars as follows:
3	02.02.1997	A3354	AWB	100,000	188.00	The C. and F. price per tonne of 1000 kilos is United States of America Dollars as follows:
4a	29.04.1997	A3479	AWB	100,000	212.00	The C. and F. price per tonne of 1000 kilos is United States of America Dollars as follows: ¹
4b	29.04.1997	W/16/6/97	IGB	100,000	212.00	C&F Free Out Um Qaser ²
5a	06.08.1997	A3630	AWB	150,000	187.50	The C.I.F. price per tonne of 1000 kilos is United States of America Dollars as follows:

¹ Note: C and F is crossed out and C.I.F substituted

² Note: Appears to be amended to CIF

SCHEDULE C — CHART OF PRE JULY 1999 WHEAT CONTRACTS

Doc ID	Date	Contract No	IBG/AWB	Amount of wheat (MT)	Price per tonne US\$	Form of clause
5b	04.08.1007	W/19/97	IGB	150,000	187.50	CIF Free Out Um Qaser
6a	19.08.1997	A3643	AWB	250,000	190.00	The C.I.F. price per tonne of 1000 kilos is United States of America Dollars as follows:
6b	20.08.1997	PH2/W1/1/1997	IGB	250,000	190.00	CIF Free Out Um Qaser
7a	09.09.1997	A3671	AWB	300,000	195.00	The C.I.F. price per tonne of 1000 kilos is United States of America Dollars as follows:
7b	10.09.1997	PH2/W2/10/1997	IGB	300,000	195.00	CIF Free out Um Qaser
8a	24.09.1997	A3698	AWB	150,000	192.00	The C.I.F. price per tonne of 1000 kilos is United States of America Dollars as follows:
8b	27.09.1997	PH2/W2/16/97	IGB	150,000	192.00	CIF Free Out Um Qaser
9a	24.01.1998	A3869	AWB	300,000	173.00	The C.I.F. price per tonne of 1000 kilos is United States of America Dollars as follows:

SCHEDULE C — CHART OF PRE JULY 1999 WHEAT CONTRACTS

Doc ID	Date	Contract No	IBG/AWB	Amount of wheat (MT)	Price per tonne US\$	Form of clause
9b	24.01.1998	PH3/W1/1/1998	IGB	300,000	173.00	CIF Free Out Um Qaser
10a	25.01.1998	A3870	AWB	150,000	173.00	The C.I.F. price per tonne of 1000 kilos is United States of America Dollars as follows:
10b	25.01.1998	PH3/W1/4/1998	IGB	150,000	173.00	CIF Free Out Um Qaser
11a	28.01.0998	A3879	AWB	250,000	173.00	The C.I.F. price per tonne of 1000 kilos is United States of America Dollars as follows:
11b	28.01.1998	PH3/W1/1/1/1998	IGB	250,000	173.00	CIF Free Out Um Qaser
12a	25.06.1998	A4083	AWB	150,000	147.50	The C.I.F. price per tonne of 1000 kilos is United States of America Dollars as follows:
12b	23.06.1998	E4/W1/1/1998	IGB	150,000	147.50	CIF Free Out Umm Qaser
13a	25.06.1998	A4084	AWB	300,000	147.50	The C.I.F. price per tonne of 1000 kilos is United States of America Dollars as follows:

SCHEDULE C — CHART OF PRE JULY 1999 WHEAT CONTRACTS

Doc ID	Date	Contract No	IBG/AWB	Amount of wheat (MT)	Price per tonne US\$	Form of clause
13b	23.06.1998	E4W1/2/1998	IGB	300,000	147.50	CIF Free Out Umm Qaser
14a	25.06.1998	A4085	AWB	150,000	147.50	The C.I.F. price per tonne of 1000 kilos is United States of America Dollars as follows:
14b	23.06.1998	E4W1/3/1998	IGB	150,000	147.50	CIF Free Out Umm Qaser
15	24.12.1998	A4331	AWB	100,000	143.00	The C.I.F. price per tonne of 1000 kilos is United States of America Dollars as follows:
16	24.12.1998	A4332	AWB	100,000	143.00	The C.I.F. price per tonne of 1000 kilos is United States of America Dollars as follows:
17a	24.12.1998	A4333	AWB	100,000	143.00	The C.I.F. price per tonne of 1000 kilos is United States of America Dollars as follows:
17b	24.12.1998	PH5/W1/4/1998	IGB	100,000	143.00	CIF Free Out Umm Qaser
18	24.12.1998	A4334	AWB	100,000	143.00	The C.I.F. price per tonne of 1000 kilos is United States of America Dollars as follows:

SCHEDULE C — CHART OF PRE JULY 1999 WHEAT CONTRACTS

Doc ID	Date	Contract No	IBG/AWB	Amount of wheat (MT)	Price per tonne US\$	Form of clause
19a	24.12.1998	A4335	AWB	100,000	143.00	The C.I.F. price per tonne of 1000 kilos is United States of America Dollars as follows:
19b	24.12.1998	PH5/W1/6/1998	IGB	100,000	143.00	CIF Free Out Umm Qaser
20	24.12.1998	A4336	AWB	100,000	143.00	The C.I.F. price per tonne of 1000 kilos is United States of America Dollars as follows:

**SCHEDULE D —
CHART OF WHEAT CONTRACTS JULY 1999 – DECEMBER 2002**

	Doc ID	Date	Contract No	IBG/ AWB	Amount of wheat (MT)	Price per tonne	IGB fee pmt ³	Total IGB fee paid ⁴	Form of clause
1a	AWB.0058.0414	14.07.1999	A4653 (short-form)	AWB	250,000	US\$155.00	US\$12.00	US\$3,148,542.66	The cargo will be discharged Free into Truck to all silos within all Governates of Iraq...The C.I.F., Free in Truck price per tonne of...
1b	AWB.0058.0427	18.07.1999	PH6/W1/1/1999	IGB					CIF F.O.T. to silo at all governerate of Iraq via Umm Quser Port
2a	AWB.0058.0415	14.07.1999	A4654 (short-form)	AWB	250,000	US\$155.00	US\$12.00	US\$3,143,272.97	The cargo will be discharged Free into Truck to all silos within all Governates of Iraq...The C.I.F., Free in Truck price per tonne of...
2b	AWB.0058.0432 ⁵	18.07.1999	PH6/W1/2/1999	IGB					CIF F.O.T. to silo at all governerate of Iraq via Umm Quser Port
3a	AWB.0058.0416	14.07.1999	A4655 (short-form)	AWB	200,000	US\$155.00	US\$12.00	US\$2,483,532.82	The cargo will be discharged Free into Truck to all silos within all Governates of Iraq...The C.I.F., Free in Truck price per tonne...

³ Sourced from Ferrier Hodgson spreadsheets (AWB.0130.0003 – AWB.0130.0046)

⁴ Sourced from Ferrier Hodgson spreadsheets (AWB.0130.0003 – AWB.0130.0046)

⁵ This is a copy of contract PH6/W1/1/1999. However, the Plaintiff contends that Contract PH6/W1/2/1999 was in exactly the same form.

**SCHEDULE D —
CHART OF WHEAT CONTRACTS JULY 1999 – DECEMBER 2002**

Doc ID	Date	Contract No	IBG/ AWB	Amount of wheat (MT)	Price per tonne	IGB fee pmt ³	Total IGB fee paid ⁴	Form of clause
3b	18.07.1999	PH6W1/3/1999	IGB					CIF F.O.T to silo at all governerate of Iraq via Umm Quser Port
4a	14.10.1999	A4822	AWB	200,000	US\$155.00	US\$12.00	US\$2,657,922.65	The cargo will be discharged Free into Truck to all silos within all Governates of Iraq...The C.I.F., Free in Truck price per tonne...
4b	16.10.1999	PH8W1/17/1999	IGB					CIF F.O.T to silo at all governerate of Iraq via Umm Quser Port
5a	20.01.2000	A4970	AWB	300,000	US\$163.00	US\$15.00	US\$4,722,570.00	The cargo will be discharged Free into Truck to all silos within all Governates of Iraq...The C.I.F., Free in Truck price per tonne of...
5b	20.01.2000	PH7W1/1/2000	IGB					CIF F.O.T to silo at all governerate of Iraq via Umm Quser Port
6a	20.01.2000	A4971	AWB	300,000	US\$163.00	US\$15.00	US\$4,718,653.95	The cargo will be discharged Free into Truck to all silos within all Governates of Iraq...The C.I.F., Free in Truck price per tonne...
6b	20.01.2000	PH7W1/2/2000	IGB					CIF F.O.T to silo at all Governerate of Iraq via Umm Quser Port.

**SCHEDULE D —
CHART OF WHEAT CONTRACTS JULY 1999 — DECEMBER 2002**

Doc ID	Date	Contract No	IBG/ AWB	Amount of wheat (MT)	Price per tonne	IGB fee pmt ³	Total IGB fee paid ⁴	Form of clause
7a	20.01.2000	A4972	AWB	300,000	US\$163.00	US\$15.00	US\$4,513,269.60	The cargo will be discharged Free into Truck to all silos within all Governates of Iraq...The C.I.F., Free in Truck price per tonne...
7b	20.01.2000	PH7/W1 /3/2000	IGB					ClF F.O.T to silo at all governerate of Iraq via Umm Quser Port
8a	16.07.2000	A0265	AWB	200,000	US\$175.00	US\$14.00	US\$2,940,000.00	The cargo will be discharged Free into Truck to all silos within all Governates of Iraq...The C.I.F., Free in Truck price per tonne...
8b	16.07.2000	PH8/W1/3/2000	IGB					C/F F.O.T to silo to all governerates of Iraq via Umm Quser Port
9a	16.07.2000	A0266	AWB	400,000	US\$175.00	US\$14.00	Us\$5,730,827.90	The cargo will be discharged Free into Truck to all silos within all Governates of Iraq...The C.I.F., Free in Truck price per tonne...
9b	16.07.2000	PH8/w1/4/2000	IGB					C/F F.O.T to silo to all governerates of Iraq via Umm Quser Port.

**SCHEDULE D —
CHART OF WHEAT CONTRACTS JULY 1999 – DECEMBER 2002**

Doc ID	Date	Contract No	IBG/ AWB	Amount of wheat (MT)	Price per tonne	IGB fee pmt ³	Total IGB fee paid ⁴	Form of clause	
10a	AWB.0061.0520	16.07.2000	A0267	AWB	400,000	US\$175.00	US\$14.00	US\$5,895,000.00	The cargo will be discharged Free into Truck to all silos within all Governates of Iraq...The C.I.F., Free in Truck price per tonne...
10b	AWB.0061.0540	16.07.2000	PH8/W1/5/2000	IGB				C/F F.O.T to silo to all governates of Iraq via Umm Quser Port	
11a	AWB.0069.0075	02.11.2000	A0430	AWB	300,000	DEM489.06	DEM101.46	DEM31,596,567.05	The cargo will be discharged Free into Truck to all silos within all Governates of Iraq...The C.I.F., Free in Truck price per tonne...
11b	AWB.0061.0256	02.11.2000	PH8/W1/19/2000	IGB				C/F F.O.T to silo to all governates of Iraq via Umm Quser Port	
12a	AWB.0111.0077	02.02.2001	A0552	AWB	500,000	DEM460.79	DEM96.45 and €34.24	DEM40,183,552.00 and €4,931,089.82	The cargo will be discharged Free into Truck to all silos within all Governates of Iraq...The C.I.F., Free in Truck price per tonne...
12b	AWB.0061.0180	Undated	09-F-604/PH9/w1/2/2001	IGB				CIF F.O.T to silo to all governates of Iraq via Umm Quser Port.	

**SCHEDULE D —
CHART OF WHEAT CONTRACTS JULY 1999 – DECEMBER 2002**

Doc ID	Date	Contract No	IBG/ AWB	Amount of wheat (MT)	Price per tonne	IGB fee pmt ³	Total IGB fee paid ⁴	Form of clause
13a	02.02.2001	A0553	AWB	500,000	DEM465.4 3	DEM96.87 and €49.53	DEM36,436,408.7 9 and €6,495,340.93	The cargo will be discharged Free into Truck to all silos within all Governates of Iraq...The C.I.F., Free in Truck price per tonne...
13b	14.02.2001	09-F- G?3/PH9W1/1/2001	IGB					CIF F.O.T to silo to all governates of Iraq via Umm Quser Port
14a	13.06.2001	A0784	AWB	500,000	€263.08	€55.17	€28,714,871.11	The cargo will be discharged Free into Truck to all silos within all Governates of Iraq...The C.I.F., Free in Truck price...
14b	13.06.2001	09-F- 659/PH9W1/30/2001	IGB					CIF F.O.T to silo to all governates of Iraq via Umm Quser Port
15a	13.06.2001	A0785	AWB	500,000	€265.68	€55.40	€29,010,790.04	The cargo will be discharged Free into Truck to all silos within all Governates of Iraq... The C.I.F., Free in Truck price per tonne:
15b	13.06.2001	09-F- BSB/PH9W1/2?/2001	IGB					CIF F.O.T to silo to all governates of Iraq via Umm Quser Port

**SCHEDULE D —
CHART OF WHEAT CONTRACTS JULY 1999 – DECEMBER 2002**

Doc ID	Date	Contract No	IBG/ AWB	Amount of wheat (MT)	Price per tonne	IGB fee pmt ³	Total IGB fee paid ⁴	Form of clause
16a	20.12.2001	A1111	AWB	500,000	€263.08	€55.17	€29,444,567.08	The cargo will be discharged Free into Truck to all silos within all Governorates of Iraq...The C.I.F., Free in Truck price per tonne...
16b	17.01.2002	11-F-/PH11/W1/2/2001	IGB					CIF F.O.T to silo to all governorates of Iraq via Umm Quser Port
17a	20.12.2001	A1112	AWB	500,000	€265.68	€55.40	€28,238,139.53	The cargo will be discharged Free into Truck to all silos within all Governorates of Iraq...The C.I.F., Free in Truck price per tonne...
17b	17.01.2002	11-F-/PH11/W1/1/2002	IGB					CIF F.O.T to silo to all governorates of Iraq via Umm Quser port...
18a	23.06.2002	A1441	AWB	500,000	€237.55	€48.53	€18,229,441.09	The cargo will be discharged Free into Truck to all silos within all Governorates of Iraq...The C.I.F., Free in Truck price per tonne...
18b	15.07.2002	12-F- 703/PH12/W1/3/2002	IGB					CIF F.O.T to silo to all governorates of Iraq via Umm Quser Port

**SCHEDULE D —
CHART OF WHEAT CONTRACTS JULY 1999 – DECEMBER 2002**

Doc ID	Date	Contract No	IBG/ AWB	Amount of wheat (MT)	Price per tonne	IGB fee pmt ³	Total IGB fee paid ⁴	Form of clause
19a	11.12.2002	A1670	AWB	500,000	€280.37	€51.33	n/a	The cargo will be discharged Free into Truck to all silos within all Governorates of Iraq...The C.I.F., Free in Truck price per tonne...
19b	14.12.2002	12-F- 714/PH12/w/1/13/2002	IGB					CIF F.O.T to silo to all governorates of Iraq via Umm Quser Port
20a	11.12.2002	A1680	AWB	500,000	€280.37	€51.33	n/a	The cargo will be discharged Free into Truck to all silos within all Governorates of Iraq...The C.I.F., Free in Truck price per tonne...
20b	14.12.2002	13-F-/PH13/w/1/1/2002	IGB					CIF F.O.T to silo to all governorates of Iraq via Umm Quser Port