

SUNDAY TIMES AS
GONL CONLAN

Crown Office Ref. No.

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

B E T W E E N :

REGINA

and

SECRETARY OF STATE FOR TRADE

EX PARTE ERIC DAVID JACOBS

AFFIDAVIT OF
GERHARD ADOLF WEISS

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the Applicant

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I, GERHARD ADOLF WEISS of 163 The Quadrangle, Cambridge Square, London W.2. MAKE OATH and say as follows:

1. I am a fellow of the Institute of Chartered Accountants in England and Wales having qualified as a Chartered Accountant in 1947. I am a Founder Member, Past Chairman and present Council Member of the Insolvency Practitioners Association. I am a consultant member of the Insolvency Law Review Committee under the Chairmanship of Sir Kenneth Cork, G.B.E., set up by the Secretary of State for Trade in 1977 and Chairman of that Committee's Accountants Panel.

2. I have been a Partner in the firm of W.H.Cork Gully & Co., since 1954 and am now also a Partner in the firm of Coopers & Lybrand. I have specialised in all aspects of Insolvency including Receiverships and Liquidations since 1952.

3. I have had considerable experience in attempting to judge whether the business of a company or a particular part of its business is economic as a going concern and (in the case of part of a business) as a separate business. When a Receiver and Manager is appointed to a company which is still operating a business it will invariably be his first function to consider whether that business can be sold as a going concern. If the Receiver concludes that for one reason or another this may not be possible, either because it is likely to be too big for a purchaser or because some parts of it are obviously uneconomic, it would then be expected of him to examine as alternatives the possibility of either selling the business in separate parts or closing part of it, but nevertheless trying to sell as a going concern such portions as he may consider economic and saleable.

4. For the purpose of this exercise the Receiver will
and analyse such accounts as may be available.

In the case of the disposal of a part of a business of a company the records may not be such as to disclose all the information which a Receiver would ideally wish to have. He may have to make certain assumptions about such matters as to allocation of overheads and other costs to the best of his ability.

5. The Receiver will endeavour to form a view about whether the business or part of the business is economic as a going concern by looking at the records of past trading and using them to make an assessment of future profitability. It is in my opinion unrealistic to base one's assessment entirely upon the performance of the business during the past year, half-year or any particular period. It is necessary to examine the history of the business for several years, consider whether the results in any particular period are attributable to causes which are unlikely to persist in the future and then form a view about whether the business is likely to be profitable.

6. Different views may be held on whether a business is economic as a going concern because owners may differ in the extent to which they are willing to accept short-term losses in the expectation of medium or long-term profits, but in my opinion a business can certainly be considered economic as a going concern if its continuance is unlikely to involve the injection of substantial sums of cash to finance losses in the short-term and if the business is likely to produce a profit (calculated according to normal accounting principles) in the medium term. It may be for example that a business is currently making a loss, calculated according to normal accounting principles, which make a proper provision for depreciation. But provision for depreciation does not involve the expenditure of cash and such a business is in my opinion economic as a going concern, if it is likely in the medium term to generate enough income to produce a profit calculated according to normal accounting principles.

7. In order to enable me to express a view in this case I have examined the following documents which are now produced and shown to me as exhibits:-

- (a) Information memorandum issued by SG Warburg to approved prospective purchasers of all or part of Times Newspapers Limited ("the Warburg Memorandum")(GAW 1).
- (b) Management accounts of Times Newspapers Limited for the month and year ended 31 December 1980 ("the 1980 unaudited accounts") (GAW 2).
- (c) a comparative statement prepared by Times Newspapers Limited of the unaudited final 1980 results (draft) and the forecast in the Warburg Memorandum (GAW 3).
- (d) draft management plan for The Sunday Times (including magazine) for 1981 and 1982 (GAW 4).

I have also considered the weekly management accounts of The Sunday Times and Sunday Times Magazine for July to 21st December, 1980, the monthly reports to the Board of Times Newspapers Ltd and the results of the Sunday Times (including magazine) for August to December 1980 and various other information memoranda and discussion papers concerning the 1980 results and cash flow and the prospects for 1981. These documents are not specifically referred to in the remainder of this affidavit.

8. I have noted the disclaimer in the Introduction to the Warburg Memorandum and the 1980 accounts to which I have referred remain unaudited. But I have to form an opinion upon the available material and so far as I am aware, more precise figures have not been available to anyone.

9. This information included details of the trading results of The Sunday Times and Sunday Times magazine (referred to in the following paragraphs as "The Sunday

Times") based on their advertising and circulation revenues, costs directly incurred by them or allocated from common "Newspaper" departments (production management, marketing, advertising, sales support) and an apportionment of the overhead costs of Times Newspapers Limited.

The apportionment of overhead costs of Times Newspapers Limited between the various titles is based on fixed percentages which were determined in 1975 by reference to the space occupied by each title or the production levels or number of employees involved. It is not possible to determine from the information available whether this allocation is reasonable or what increases or reductions would result from the separate publication of The Sunday Times. There is no material upon which one could form the opinion that separate publication would result in overheads greater than those presently allocated to the Sunday Times.

10. An examination of the above mentioned information shows that according to the Management Accounts The Sunday Times can be regarded as having made a profit of £685,000 for the calendar year 1980 before taking into account (a) income from other sources (b) interest on capital employed (c) depreciation. There is now produced and shown to me marked (GAW 5) a calculation showing how this figure is determined.

11. Income from other sources which can be regarded as reasonably attributable to The Sunday Times totals £752,000 which is made up of :-

	Revenue	Trading profit
	£'000	£'000
Guardian contract	1,562	447
Selective Marketplace	3,056	305
		<u>752</u>

The income from the Guardian contract comprises payments for the week day use of three of The Sunday Times presses and is disclosed separately in the management accounts. The income from Selective Marketplace has been assumed reasonably to relate solely to The Sunday Times. Selective

Marketplace is explained on page 12 of the Warburg Memorandum and is almost entirely associated with The Sunday Times. The income has been calculated on the basis of the revenue forecast in the Warburg information memorandum and a 10% profit margin. The actual net profit earned is likely to have been higher than the £305,000 shown.

12. On the basis of the assumptions in paragraph 11 the profit earned by The Sunday Times would be increased to £1,437,000.

13. Interest on working capital is calculated for the purpose of this statement on an assessment of what would reasonably be required for The Sunday Times as a separate operation. We have taken this as meaning that four weeks stocks of newsprint and consumables would be carried and that debtors' accounts would be paid after an average of eight weeks, whereas the company would pay its own creditors after four weeks. This involves a net working capital requirement of £7.2 million. If this has to be borrowed on current account, an interest rate of 16% per annum may have to be applied.

14. For the purposes of calculating an interest charge on fixed capital I have assumed a fixed capital requirement of £7 million, the figure shown in the Warburg information memorandum for the net book value of Times Newspapers Limited's fixed assets funded as to £5 million equity and £2 million loan capital. A higher gearing would obviously bring a corresponding increase in the interest charge relating to fixed capital. No deduction has been made for fixed assets which might be attributed to The Times alone and the actual requirement might therefore be less. This may compensate for any increase in overhead allocation which might be necessary in view of what I say in paragraph 9.

15. On the basis of the calculations in paragraphs 13 and 14 above the total interest requirement for 1980 attributable to The Sunday Times would have been

£1,400,000. Whilst it is known that Times Newspapers Limited do not pay any interest on advances by the parent company it is recognised that in considering the economic viability of an ordinary commercial business standing on its own the requirement to pay interest cannot be overlooked. The notional interest will therefore reduce the profit to £37,000.

16. In my opinion a potential purchaser of the Sunday Times, if he had regard to the 1980 figures at all, would consider this position, that is before anything is charged for depreciation, as an important feature in arriving at a decision. An adequate charge for depreciation is obviously of vital importance and I do not seek here to decry it. On the other hand a buyer of a business which he thinks is running and may continue to run at a loss until he has had an opportunity to re-organise it to a profitable basis, will initially look at his short-term cash requirements rather than at a profit or loss arrived at on proper and orthodox accounting principles.

17. Obviously no rational purchaser will buy a business unless he regards it as an economic and profitable proposition in the long run. However, for the period pending re-organisation I am of the opinion that depreciation can be left out of account. If any major items require replacement within the first year or two these will in any event require additional capital or borrowing and would not have been allowed for by a normal depreciation charge. Such charge, while having to be made, need not in my view be regarded as an important consideration for immediate and short-term purposes.

18. For the purpose of a longer term consideration of the position I consider it reasonable to assume a charge for depreciation for The Sunday Times alone equivalent to TNL's full depreciation charge of £1,373,000. As I have said in paragraph 14 in relation to interest it is not apparent from the information available how much of this relates to fixed assets which relate wholly to The Times and would not be required by

a separate Sunday Times and consequently this depreciation charge may be over prudent.

19. Adjusted on this basis the final loss attributable to The Sunday Times alone for the year 1980 but subject to all the qualifications made above and based solely on a rapid examination of the information made available as listed in paragraph 7 above would be £1,236,000.

20. As I have said in paragraphs 4 to 6 the fact that such a loss has been incurred during this year does not necessarily determine whether The Sunday Times is economic as a going concern. Besides the questionable relevance of depreciation in the short-term, the notional liability for interest depends entirely upon the assumption one makes about the sums which would have to be borrowed as opposed to subscribed as equity capital. In my opinion the most significant question is the estimate of the future profitability of The Sunday Times. Until the closure in 1979 it had consistently traded as a profitable newspaper. In 1977 it made a profit (before interest) of £2,278,000 and in the 11 months to the 30th November 1979 it made a profit (also before interest) of £2,850,000, reduced to £645,000 by the December shutdown. There is evidence in the affidavit sworn by Mr Jacobs in these proceedings to suggest that 1980 was an exceptional year of recovery from the closure during most of 1979.

21. The forecast included in the Warburg information memorandum for 1981, 1982 and 1983 indicate potential profits for those years of £5,921,000, £13,240,000 and £14,495,000 respectively before taking into account income from other sources, interest and depreciation. On this basis, it might be expected that substantial profits would be earned in each of these years even after taking into account interest and depreciation and that there would be a positive cash flow.

22. I understand from the reports and notes supporting the Warburg figures that the estimates for 1981, 1982 and 1983 have been prepared on the basis of certain

- assumptions particularly as to
- (a) manning and related cost reductions
- (b) aggressive pricing policies, and
- (c) no production losses due to disputes.

23. It is difficult for me to say whether or not these assumptions are over-optimistic. I note, that the draft management plan produced by The Sunday Times Executive Committee in September 1980 (GAW 4) shows profit figures which are somewhat lower but nevertheless substantial. Since then, the profit figures for the last quarter have been encouraging. The conclusion I would draw is that The Sunday Times is likely to be increasingly profitable in the medium term although the amount of profit likely to be earned in 1981 and 1982 cannot be predicted with any accuracy until there is more solid information on how far the assumptions in the Warburg Memorandum are likely to be justified.

24. On these figures and assumptions, I consider that The Sunday Times is economic as a going concern and as a separate newspaper. I certainly could not be satisfied that it was not economic as a going concern. On the contrary, if I were receiver of Times Newspapers Limited and decided to close down The Sunday Times instead of continuing it and trying to dispose of it as a going concern, I should expect a claim against me for negligence as a receiver.

SWORN AT

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this 7th day of February, 1981

BEFORE ME

W. J. B. Cooper
Secretary