



Australian Government

Takeovers Panel

**Reasons for Decision
Ambassador Oil and Gas Limited 01
[2014] ATP 14**

Catchwords:

Off-market takeover bid – pre-bid stake – association – relevant agreement – understanding – acting in concert – relevant interest – voting power – intention statements – declaration – orders – divestment – competing bids – scrip bid – superior proposal – truth in takeovers – bid implementation agreement – share purchase deed – matching right – lock-up device

Corporations Act 2001 (Cth), sections 12(2), 53, 606, 657A, 657D, 657E

Corporations Regulations 2001 (Cth), reg 1.0.18

Australian Securities and Investments Commission Act 2001 (Cth), section 172(4)

Tinkerbelle Enterprises Pty Limited as Trustee for The Leanne Catelan Trust v Takeovers Panel (2012) 208 FCR 266

ASIC Regulatory Guide 25 – Takeovers: False and misleading statements

Warrnambool Cheese and Butter Factory Company Holdings Limited [2013] ATP 16, Touch Holdings Limited [2013] ATP 3, Alesco Corporation Limited 03 [2012] ATP 18, Ludowici Limited [2012] ATP 3, Ludowici Limited 01R [2012] ATP 4, Viento Group Limited [2011] ATP 1, Ross Human Directions Ltd [2010] ATP 8, MYOB Limited [2008] ATP 27, Rinker Group Limited 02R [2007] ATP 19, Rinker Group Limited 02 [2007] ATP 17, Summit Resources Limited [2007] ATP 9, Australian Leisure & Hospitality Group Limited 03 [2004] ATP 25, Novus Petroleum Limited 02 [2004] ATP 9, BreakFree Limited 04R [2003] ATP 42, BreakFree Limited 04 [2003] ATP 39 and Anaconda Nickel Limited 18 [2003] ATP 18

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
Yes	Yes	Yes	Yes	Yes	No

INTRODUCTION

1. The Panel, Martin Alciaturi, David Friedlander and Nora Scheinkestel (sitting President), made a declaration of unacceptable circumstances in relation to the affairs of Ambassador. The Panel found that Drillsearch, which made an off-market bid for Ambassador, and certain shareholders of Ambassador were associates and Drillsearch had breached s606¹ in acquiring a 19.9% pre-bid stake. The Panel made orders including the reversal of acceptances by shareholders who made intention statements. Orders giving withdrawal rights to all other Ambassador shareholders who had accepted Drillsearch’s offer were also made.

2. In these reasons, the following definitions apply.

Accepting IS Shareholders	Mrs Fotoula Hatziladas, Eye Investment, Mr Giustino Guglielmo and Mr David Shaw
Ambassador	Ambassador Oil and Gas Limited
Drillsearch	Drillsearch Energy Limited

¹ References are to *Corporations Act 2001 (Cth)* unless otherwise indicated

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Eye Investment	Eye Investment Fund Ltd
Intention Statement (IS)	A public statement by an Ambassador shareholder that they intend to accept Drillsearch's offer within 14 days of the opening of the offer, in the absence of a superior offer
Magnum	Magnum Hunter Resources Corporation
Selling Shareholder	An Ambassador shareholder who sold Ambassador shares to Drillsearch as part of its pre-bid stake under a share purchase deed dated 28 May 2014

FACTS

3. Ambassador is an ASX listed company (ASX code: AQO).
4. Mrs Fotoula Hatziladas is the largest shareholder in Ambassador, holding 11.65%.
5. On 28 May 2014, Drillsearch and Ambassador jointly announced:
 - (a) Drillsearch's intention to make a recommended conditional off-market bid for Ambassador, offering 1 Drillsearch share for every 5.4 Ambassador shares
 - (b) that Drillsearch had *"entered into acquisition agreements with several Ambassador shareholders [ie, the Selling Shareholders] under which it has agreed to acquire a total of 19.9% of Ambassador at an offer price of 1 Drillsearch share for every 5.4 Ambassador shares (i.e. the same consideration as under the Offer)"*²
 - (c) that two substantial holders had made Intention Statements as follows: *"Mrs Hatziladas and Eye Investment Fund Ltd, who collectively hold 17.6% of Ambassador, have advised that they intend to accept the Offer within 14 days from the opening of the Offer, in the absence of a superior offer"* and
 - (d) that the two companies had entered into a bid implementation agreement, which provided that (among other things) Drillsearch had a five day matching right and board representation rights upon its offer becoming unconditional and it acquiring a relevant interest of 35% (2 directors) and 50% (majority of directors).
6. Also on 28 May 2014, Ambassador separately announced the directors of Ambassador had made Intention Statements as follows: *"all the directors have today advised Ambassador that they intend to accept the Offer within 14 days of the opening of the Offer Period, in the absence of a superior proposal"*.
7. At 28 May 2014, the directors' Ambassador shareholdings were as follows:

² 32 shareholders in total

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Director	Shares held by	Sold pre-bid to Drillsearch	Subject of Intention Statement
Mr Giustino Guglielmo	Guglielmo Investments A/C	2,000,000 (1.41%)	
	Miller Anderson Pty Ltd		8,000,000 (5.63%)
	Giustino Guglielmo jointly (atf Nicola Guglielmo Family Trust)		100,000 (0.07%)
	Giustino Guglielmo		1
Mr David Shaw	David Shaw	Nil	1,000,000 (0.7%)
Mr Emmanuel Correia	Emmanuel Correia and Nyree Correia <Blenheim Superfund a/c>		62,500 (0.04%)
	Cardrona Energy Pty Ltd		62,500 (0.04%)
	Peleton Capital Pty Ltd ³	1,500,000 (1.1%)	1,250,000 (0.88%)

8. On 10 June 2014, Magnum announced its intention to make an off-market bid for Ambassador. The offer consideration comprised 1 share of Magnum common stock for every 27.8 Ambassador shares.
9. On 16 June 2014, Drillsearch increased its offer by adding 5 cents cash per Ambassador share, declared its offer unconditional and announced that accepting shareholders would receive the offer consideration within 10 business days. The Ambassador board announced that the revised offer was superior to Magnum's offer.
10. Also on 16 June 2014, the Accepting IS Shareholders (collectively holding approximately 24%) accepted Drillsearch's revised offer.
11. On 17 June 2014, Magnum increased its bid by offering 1 share of Magnum common stock for every 23.6 Ambassador shares and declared its bid unconditional.
12. Also on 17 June 2014, Drillsearch processed acceptances of its offer by Mrs Hatziladas, Mr Guglielmo, Mr Shaw and Macquarie Bank Limited (which held approximately 8% of Ambassador). Eye Investment's acceptance was not processed.

³ Mr Correia is a director of Peleton Capital Pty Ltd and has or had a relevant interest in Ambassador shares held by Peleton. It is unclear if Mr Correia had a relevant interest in those shares at 28 May 2014

APPLICATION

Declaration sought

13. By application dated 18 June 2014, Magnum sought a declaration of unacceptable circumstances. Magnum submitted that (among other things):
- (a) prior to the acquisition of the 19.9% pre-bid stake by Drillsearch, there was an agreement, arrangement or understanding between Drillsearch, Mr Hatziladas and each of the Accepting IS Shareholders evidenced by the parties' behavior in relation to Drillsearch's offer and the giving of the Intention Statements. Alternatively, the parties were acting in concert
 - (b) as a result of the agreement, arrangement or understanding – or acting in concert – Drillsearch had voting power in the shares held by the Accepting IS Shareholders and therefore acquired the 19.9% pre-bid stake in breach of s606
 - (c) in accepting Drillsearch's offer early, the Accepting IS Shareholders acted contrary to their Intention Statements in breach of ASIC's truth in takeovers policy under Regulatory Guide 25 - *Takeovers: False and misleading statements* and
 - (d) the five day matching right in the bid implementation agreement "*was deliberately structured to ensure that no change in recommendation could be made by the Ambassador directors before the expiry of the 14 days in which*" each shareholder who made an Intention Statement had to accept in accordance with their statement.
14. Magnum submitted that the effect of the circumstances was that the acquisition of control over Ambassador shares was not taking place in an efficient, competitive and informed market.

Interim orders sought

15. Magnum sought interim orders including to the effect that:
- (a) Drillsearch be restrained from processing any acceptances, including the acceptances of each Accepting IS Shareholder
 - (b) each Accepting IS Shareholder's acceptance of Drillsearch's offer be withdrawn
 - (c) each Accepting IS Shareholder be restrained from accepting Drillsearch's offer until the later of the dispatch of the target's statement and final orders
 - (d) the matching right in the bid implementation agreement be amended so that a 'fiduciary out' would apply and
 - (e) withdrawal rights be given to all shareholders who had accepted Drillsearch's offer.

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16. On 19 June 2014, the Acting President made interim orders (Annexure A) to the effect that Drillsearch not appoint any directors to the Ambassador board⁴ and not process any further acceptances.
17. On 23 June 2014, the Panel accepted undertakings (Annexure B) from Mrs Hatziladas, Miller Anderson Pty Ltd (an entity controlled by Mr Guglielmo) and Mr Shaw not to dispose of, transfer or grant a security interest over any shares in Drillsearch issued to them or any associate as a result of accepting the bid by Drillsearch until the earlier of an order of the Panel or the determination of the Panel proceedings.

Final orders sought

18. Magnum sought final orders including to the effect that:
 - (a) Drillsearch be restrained from appointing directors to the Ambassador board in accordance with the bid implementation agreement
 - (b) Drillsearch divest its 19.9% pre-bid stake or, in the alternative, Drillsearch be required to accept Magnum's offer if instructed to by the relevant shareholder and
 - (c) the matching right in the bid implementation agreement be amended so that a 'fiduciary out' would apply.

DISCUSSION

ASSOCIATION

Preliminary findings

19. Having considered the issue of association raised in the application and submissions and rebuttals, we made preliminary findings in relation to the association and invited comments on them. Our conclusions on this follow consideration of the comments.
20. We considered the cumulative effect of the material and drew appropriate inferences. In doing so we had in mind that we must be satisfied by logical and probative material and the potential seriousness of a finding of association.

Association test

21. Section 12 sets out the tests for association as they apply to Chapter 6. There are two relevant tests here:
 - (a) s12(2)(b) - which provides, in essence, that B is an associate of A if (and only if) B is a person with whom A has, or proposes to enter into, a relevant agreement for the purpose of controlling or influencing the composition of a company's board or conduct of its affairs and

⁴ Magnum also submitted that the director appointment right in the bid implementation agreement was unacceptable but we did not form any final view as to this

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- (b) s12(2)(c) - which provides, in essence, that B is an associate of A if (and only if) B is a person with whom A is acting or proposing to act in concert in relation to the company's affairs.
22. The reference to the company's affairs extends to the ownership of shares and dispositive rights over shares under s53.⁵
23. Circumstances which are relevant to establishing an association include:
- (a) actions which are uncommercial
 - (b) structural links
 - (c) common investments and dealings
 - (d) prior collaborative conduct
 - (e) a shared goal or purpose and
 - (f) common knowledge of relevant facts.⁶
24. The Panel is a peer review body⁷ established as "*a specialist body largely comprised of takeover experts*".⁸ When making an assessment of all the material in this matter we have relied on our skills, knowledge and experience as practitioners (which has been made known to the parties) and as members of the sitting Panel.⁹

Mr Kleo Hatziladas

25. For more than 12 months prior to the announcement of Drillsearch's offer, Ambassador had been undertaking an informal sale process. The process included an approach to Drillsearch in April 2013 by Mr Kleo Hatziladas, who was an adviser to Ambassador (see paragraph 30), although nothing eventuated at that time.
26. In April 2014, while at a trade fair, Mr Alex Hunter, GM Business Development at Drillsearch, and Mr Guglielmo, managing director of Ambassador, discussed whether Drillsearch might be interested in a change of control transaction involving Ambassador.
27. On 7 May 2014, Mr Bradley Lingo, managing director of Drillsearch, and Mr Hunter met with Mr Hatziladas to discuss the possibility of a change of control transaction in respect of Ambassador. Following this meeting, Ms Vicky Mitsianis (Mr Hatziladas' assistant) sent the contact details for Mr David Shaw, Ambassador's Chairman, to Mr Lingo and Mr Hunter and requested that they "*forward all correspondence direct to Mr Shaw and Kleo will liaise and obtain any information that is required to assist Drillsearch*". The evidence did not show that this instruction was followed.

⁵ *Corporations Regulations 2001 (Cth)*, reg 1.0.18

⁶ *Viento Group Limited* [2011] ATP 1 at [120]

⁷ Section 172(4) of the *Australian Securities and Investments Act 2001 (Cth)*

⁸ Paragraph [7.16] of the Explanatory Memorandum for the *CLERP Bill 1998*

⁹ *Tinkerbell Enterprises Pty Limited as Trustee for The Leanne Catelan Trust v Takeovers Panel* (2012) 208 FCR 266 at [114]

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28. Mr Hatziladas put Drillsearch's initial proposal to Mr Shaw on 22 May 2014. Between this date and 24 May 2014, Mr Hatziladas and Mr Hunter negotiated terms.
29. It is unclear the capacity in which Mr Hatziladas acted when he met Mr Lingo and Mr Hunter on 7 May. Whilst Mr Hatziladas held a role as Business Development/Public Relations Manager of Ambassador and acted as corporate adviser to Ambassador, Mr Hatziladas' submission¹⁰ says he was acting in his capacity as a major shareholder of Ambassador. Drillsearch submitted that at all times it operated under the assumption that Mr Hatziladas was a representative of Ambassador, based on representations made by Mr Hatziladas, which included the information above.
30. We were not provided with evidence showing that Mr Hatziladas had formal authority to negotiate with Drillsearch. The Ambassador directors individually and as a board had only a very limited role.
31. The majority of Drillsearch's communications in relation to the offer were with Mr Hatziladas. Drillsearch submitted that there was no-one else for Drillsearch to deal with other than Mr Hatziladas. While we accept that Ambassador is a relatively small company with one asset and one full-time employee (its managing director, Mr Guglielmo), we do not accept that Mr Hatziladas was the only person Drillsearch could have dealt with. There were three directors of Ambassador who could have dealt with Drillsearch, including its chairman who was identified in an early email as the person to deal with.
32. We infer that Mr Hatziladas was, in relation to the Drillsearch bid, the directing mind of Ambassador. He was either its controller or was acting with implied or express authority.

Shares controlled by Mr Hatziladas

33. Mr Hatziladas did not hold Ambassador shares in his own name. However, 16,550,000 shares (11.65%) were registered in the name of his wife, Mrs Fotoula Hatziladas. We were provided with an email dated 15 June 2014 from Mr Guglielmo, which said that "*I will be at Kleo's [Mr Hatziladas] to pick up his acceptance about 730 EST*" (emphasis added).
34. Magnum submitted that Mrs Hatziladas failed to disclose what negotiations or discussions took place in relation to her making an Intention Statement. The Ambassador submission does not identify at all the role Mrs Hatziladas played, despite the legal advisers lodging it on her behalf also. We infer that she played no role.
35. Drillsearch submitted that it had no information as to Mr Hatziladas' relationship to, or control over, his wife's shareholding. However, Mr Hatziladas did represent

¹⁰ The submission was made on behalf of Ambassador, Mr Guglielmo, Mr Shaw, Mr Hatziladas and Mrs Hatziladas (**Ambassador submission**)

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to Drillsearch that he could speak for the “*family shareholding*”, which was accepted by Drillsearch without further questioning or investigation.

36. We infer that the shareholding in the name of Mrs Hatziladas was controlled by Mr Hatziladas and we infer that, at least, Drillsearch understood that Mr Hatziladas spoke for it.

Arranging the Intention Statements

37. On 22 May 2014, Mr Hunter met Mr Hatziladas and explained that Drillsearch required a pre-bid stake in Ambassador of up to 19.9%. Mr Hatziladas advised that certain shareholders representing 19.9% may be prepared to sell and that other shareholders would be very supportive of the bid and would publicly support it. In response, Mr Hunter said that Drillsearch could have no further agreement with shareholders if Drillsearch was to acquire a 19.9% pre-bid stake but that, alternatively, such shareholders could make an intention statement.
38. On 23 May 2014, Mr Hunter emailed Mr Hatziladas. No words were contained in the email, only an attachment which was an example of a shareholder intention statement from a previous Drillsearch bid. The example stated:
- [Shareholder] has advised Drillsearch that it intends to accept the Offer ... on the earlier of:*
- *21 days from the announcement of the Offer; and*
 - *Drillsearch obtaining a Relevant Interest in [Target] shares representing 35% of all [Target] shares,*
- subject to there being no superior offer at that time.*
39. The lack of communication in the email seems unusual. Perhaps Mr Hunter was seeking to avoid using language that might suggest an agreement, arrangement or understanding – or an acting in concert. By reason of all the circumstances, Drillsearch did not, in our view, avoid it.
40. Drillsearch submitted that it did not initiate contact or have discussions with any Ambassador shareholders regarding any Intention Statement. This is not surprising given its concern to avoid a breach of s606. However, Drillsearch did not simply sit passively; it took steps to ‘lock in’ various shareholdings. In fact, Mr Hunter encouraged the Intention Statements when he told Mr Hatziladas that Intention Statements “*would be beneficial to Drillsearch’s offer*”, although the making of Drillsearch’s offer was never conditional upon Intention Statements being made.
41. Between 23 and 27 May 2014, Mr Hatziladas engaged with some of Ambassador’s shareholders to see whether they would be willing to provide Intention Statements if Drillsearch was to announce its offer and enter into a bid implementation agreement.
42. On 27 May 2014:
- (a) the directors of Ambassador approved the form of an ASX announcement containing their recommendation of Drillsearch’s offer and their Intention Statements and

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- (b) consent was provided to Ambassador by each of Mrs Hatziladas and Eye Investment to being named in an ASX announcement as having made Intention Statements.
43. Eye Investment submitted that it had no communication with Drillsearch, Mr Hatziladas, Mrs Hatziladas or Mr Shaw regarding its Intention Statement or otherwise. Eye Investment did communicate with Mr Guglielmo on 27 May 2014 when Mr Guglielmo informed it that:
- (a) Drillsearch intended to make a bid
 - (b) the Ambassador directors would likely support the offer in the absence of a superior proposal
 - (c) a number of shareholders had indicated an intention to accept within 14 days of the offer opening in the absence of a superior proposal and
 - (d) Drillsearch was expecting shareholders to enter into pre-bid agreements for 19.9%.
44. Mr Guglielmo then asked if Eye Investment would make a similar statement of intention.
45. The form of the Intention Statements given was significantly more favourable to Drillsearch than the example provided by Mr Hunter to Mr Hatziladas on 23 May 2014 (see paragraph 38). No reason was given why the Intention Statements were not in the form provided by Mr Hunter. We infer that the more favourable form reflects a desire on the part of Mr Hatziladas, and possibly the Ambassador directors, to ensure that Drillsearch's offer was made and then succeeded; that is, that Drillsearch obtained effective control.
46. The Intention Statements are 'truth in takeover' statements that attract ASIC Regulatory Guide 25 (see paragraphs 66 to 75). It is legitimate for shareholders who wish to make a supporting statement to indicate their intention, even in a way that binds them under the ASIC policy. It is not legitimate if this is the mechanism used when some agreement, arrangement or understanding has been reached, or the parties are acting in concert, to achieve an end.
47. In our view, the Intention Statements were part of an agreement, arrangement or understanding, or acting in concert. They were intended to deliver control to Drillsearch. This is supported by the events and circumstances leading up to the acceptances by the Accepting IS Shareholdings accepting Drillsearch's offer, including the following:
- (a) On 12 June 2014, the date on which Drillsearch's offer opened, Mr Hunter met Mr Hatziladas to discuss Magnum's offer. Mr Hunter tested improving Drillsearch's offer. Mr Hatziladas indicated that certain Ambassador shareholders may be attracted to the revised terms and asked for Drillsearch to provide Ambassador with acceptance forms for these shareholders. As the forms were personalised, we query how Mr Hatziladas knew which shareholders and, in any event, query why it was necessary to get them at

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that time and not wait. Drillsearch provided Mr Hatziladas with the acceptance forms on Saturday 15 June and Sunday 16 June 2014.

- (b) On 13 June 2014, Mr Hunter advised Mr Hatziladas of Drillsearch's intention to increase its offer. Mr Hatziladas then told Mr Guglielmo. There was no correspondence provided to us. In fact, there was little correspondence provided for the events which occurred in June and it is, in our experience, extremely unlikely for there to be so little documentation in the absence of a level of orchestration.
- (c) At Drillsearch's request, Mr Hatziladas sought the views of each shareholder who made an Intention Statement other than Eye Investment. Eye Investment was contacted by Mr Hunter on 13 June 2014 and Mr Guglielmo on 14 June 2014. Mr Guglielmo informed Eye Investment that:

"other [Ambassador] major shareholders were planning to accept into the Revised Drillsearch Offer, so Drillsearch already had the requisite support it needed to effect a change of control and replace the [Ambassador] board."

This was prior to any acceptances and in the knowledge of a competing bid. Mr Guglielmo could not have known that major shareholders were planning to accept Drillsearch's bid in the absence of a significant degree of orchestration.

- (d) On 15 June 2014, the Ambassador board met. Mr Hatziladas was in attendance. He informed the board that Drillsearch was prepared to announce the revised bid *"on the basis that a number of pre-identified shareholders have communicated their support of the proposed revised offer and their willingness to accept the revised bid if it was announced"*. This supports the inference we draw of Drillsearch's involvement in the orchestration.
- (e) On 16 June 2014, following Drillsearch announcing its revised offer, Mrs Hatziladas, Eye Investment, Mr Guglielmo and Mr Shaw accepted Drillsearch's offer. That they all gave their acceptances early and virtually at the same time supports the inference we draw that this was orchestrated.

48. Even if the Intention Statements helped encourage a rival bid by signalling to the market that Ambassador was 'in play', the early acceptances were uncommercial in our view. Early acceptance removed the optionality available to each of these shareholders in a substantially scrip deal (where there was no consequence of holding the consideration securities earlier, such as a dividend record date) and in the knowledge that there were potentially other bidders.

49. Mrs Hatziladas, Mr Guglielmo and Mr Shaw submitted that they accepted Drillsearch's offer as a result of (among other things): it being unconditional and more certain than Magnum's offer, it including 5 cents cash per share, it being open for immediate acceptance and a shared view that it was superior to Magnum's offer. However, we do not consider this adequately explains the early acceptances given the ongoing possibility of an alternative increased or cash bid. In addition, no party has provided evidence, as a reason for accepting, that they were

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in immediate need of the cash consideration. It appears therefore that there was no reason not to have waited before accepting.

50. In saying this we make no comment about the attractiveness of the counterbid by Magnum.
51. By accepting so soon after the opening of Drillsearch's offer, the Accepting IS Shareholders:
 - (a) precluded their own opportunity to take advantage of the optionality afforded by the time remaining in the offer period and
 - (b) importantly for the benefit of other shareholders, precluded the opportunity of a counterbid arising from a third party who wanted control of Ambassador.
52. In our experience, larger shareholders do not tend to accept offers in the first few days of an offer period even where there has been an increase in the offer price post-announcement.

The pre-bid stake

53. Drillsearch submitted that it was provided with a list of potential selling shareholders on 23 May 2014, which was updated on 26 and 27 May 2014.
54. On 24 and 25 May 2014, Mr Hatziladas and his assistant, Ms Mitsianis, contacted Ambassador shareholders asking about their preparedness to enter share purchase deeds. In the end, 32 shareholders did so including Mr Guglielmo, a company connected with Mr Correia, Mr Hatziladas' son, Mr Hatziladas' assistant, and one of Ambassador's legal representatives in these proceedings.
55. On 27 and 28 May 2014, share purchase deeds were provided to Drillsearch on behalf of, and signed by, the 32 Selling Shareholders (collectively holding 19.9% of Ambassador). The deeds:
 - (a) effected a sale of each Selling Shareholder's shares for consideration of 1 Drillsearch share for every 5.4 Ambassador shares and
 - (b) required the Selling Shareholder to provide a certificate that the seller was a sophisticated investor.
56. We note that 22 of the 32 sellers supplied 'sophisticated investor' certification.¹¹ But 21 of them were from one accountant and in identical form dated 5 May 2014. We regard this as a remarkable coincidence, even accepting that amongst the Selling Shareholders were Mr Hatziladas' assistant, his son, two directors of Ambassador and its lawyer.
57. At the Ambassador board meeting on Tuesday 27 May 2014, Mr Guglielmo confirmed that:

¹¹ We were not provided with certificates in respect of the other 10 Selling Shareholders

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in the last few days, [Drillsearch] in conjunction with [Mr Hatziladas] had accumulated, by way of off market share transfers, a 19.99% shareholding stake in the Company. (Emphasis added)

58. If Drillsearch desired a 19.9% pre-bid stake, that could have been provided by the shareholding of Mrs Hatziladas and Ambassador's directors. However, those parties did not provide the pre-bid stake (noting that Mr Guglielmo did sell in respect of 1.41%, being approximately 20% of his holding). The 19.9% pre-bid stake was provided instead by the 32 Selling Shareholders, each of whom executed a form of agreement that did not protect them against missing out on any upside in the bid (ie, not by an escalator but by the option to accept into the bid). On the other hand, Mrs Hatziladas and the directors (in respect of some or all of their shares) made Intention Statements, protecting themselves by retaining the upside of an improved bid whilst enabling Drillsearch to limit the cost of its pre-bid stake.

Conclusion on association

59. In our view, there appears to have been a desire on the part of Mr Hatziladas, and possibly the Ambassador directors, to ensure that Drillsearch's offer was made and then succeeded; that is, that Drillsearch obtained effective control. Despite Drillsearch's submissions to the contrary, we infer that this was because Drillsearch was looking for a 'done deal'. By reason of the pre-bid stake and acceptances by the Accepting IS Shareholders, putting to one side the acceptance by Macquarie (which when added to the others took Drillsearch above 50%), Drillsearch obtained over 40% of Ambassador. Moreover, pursuant to the bid implementation agreement, it had board appointment rights at 35%.
60. There is, in our view, clearly a shared goal or purpose of effecting a control transaction in Ambassador. There are board, family and employment links. There appears to be common knowledge of relevant facts, although we were unable to test this properly by reason of a combined submission from Ambassador, two of its directors, and Mr and Mrs Hatziladas. There are actions which are uncommercial.
61. Considering the whole of the material, and drawing appropriate inferences, we consider that Drillsearch had an agreement, arrangement or understanding with each of Mr Hatziladas, Mrs Hatziladas, Mr Guglielmo, Mr Shaw and Mr Correia for the purpose of controlling or influencing the conduct of Ambassador's affairs. In the alternative, we infer they were acting in concert to this end.
62. In particular, we reached this conclusion having regard to:
- (a) the high level of orchestration which led to Mr Hatziladas arranging the Intention Statements following discussions with Drillsearch and arranging the pre-bid stake at Drillsearch's request
 - (b) the circumstances surrounding the making of the Intention Statements by Mrs Hatziladas and the directors of Ambassador
 - (c) the way in which the circumstances unfolded, the timing of the bid announcements and the Intention Statements, the timing of the revised bid

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and the haste in accepting Drillsearch's offer by the Accepting IS Shareholders and

- (d) the way in which the directors of Ambassador acquiesced in the role played by Mr Hatziladas in arranging the pre-bid stake and Intention Statements, negotiating the offer with Drillsearch and the way in which they let the transaction unfold generally.
63. On balance, we are not prepared to draw an inference that Eye Investment had an agreement, arrangement or understanding or was acting in concert with Drillsearch.
64. We note that on:
- (a) 27 May 2014, Mrs Hatziladas and Eye Investment consented to their Intention Statements being made and the directors approved the form of their Intention Statements to be lodged with ASX and
 - (b) 28 May 2014, Drillsearch countersigned the share purchase deeds (although the deeds contain dates between 24 and 27 May 2014).¹²
65. Accordingly, Drillsearch had voting power of approximately 19.55% of Ambassador prior to acquiring the 19.9% pre-bid stake, comprising:
- (a) approximately 11.65% from Mrs Hatziladas
 - (b) approximately 7.1% from Mr Guglielmo
 - (c) approximately 0.7% from Mr Shaw and
 - (d) at least 0.088% from Mr Correia.¹³
66. As a consequence, its acquisition of the 19.9% pre-bid stake increased its voting power above 20% otherwise than in accordance with Chapter 6.

INTENTION STATEMENTS

67. ASIC's truth in takeovers policy in RG 25 applies to substantial shareholders. It encompasses statements that a substantial holder will accept a bid.¹⁴ As noted in RG 25:

*Other holders may rely on the statement by a substantial holder that it will or will not accept because the substantial holder is a large and reputable institution, as well as because of the size of its holding. Other holders may be influenced by the substantial holder's commercial judgement.*¹⁵

¹² Drillsearch substantial holder notice lodged 30 May 2014

¹³ This figure does not include the shares held by Peleton

¹⁴ See RG 25.31

¹⁵ RG 25.32

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68. The Intention Statements are statements to which ASIC's truth in takeovers policy applies. It follows that the Accepting IS Shareholders should be held to their Intention Statements.¹⁶
69. Magnum submitted that *"the natural reading of the Intention Statements, coupled with an understanding of what sound commercial judgement would dictate, is that each of the [shareholders who made an Intention Statement] would wait and see if a superior proposal emerged before accepting the Drillsearch Offer or the Revised Drillsearch Offer, particularly in the context of a contest for control and at a time when the Drillsearch Offer was unconditional"*. Similarly, ASIC submitted that the Intention Statements may imply that the makers of the Intention Statements would not immediately accept the offer but would leave a period of time for the purpose of determining whether one or more rival bids would emerge.
70. Ambassador submitted that the Intention Statements *"make it clear that acceptance is 'within 14 days of the opening of the Offer'"* [original emphasis] leaving it open for the Accepting IS Shareholders to accept Drillsearch's offer at any time during the 14 day period. The Accepting IS Shareholders also had commercial reasons for accepting when they did, specifically that they considered that any potential increased scrip offer from Magnum would not have been attractive to them. Ambassador also submitted that it would be inappropriate and overly restrictive to require sophisticated and experienced shareholders to delay accepting an offer on the basis that a revised offer may be proposed by another bidder.
71. Drillsearch and Eye Investment also submitted that the Intention Statements were clear that acceptance could be within 14 days in the absence of a superior proposal.
72. We do not agree with Ambassador, Drillsearch and Eye Investment. The purpose of specifying a time period and the qualification must be to wait in the hope that a superior proposal emerges. This is also the more natural reading and what (in our view, based on our experience) a reasonable market participant would likely interpret the Intention Statements to mean.
73. The Accepting IS Shareholders waited effectively four days (two trading days) before accepting on the morning of the 5th day of the offer period, not the 14 days, to see if Magnum (or someone else) would improve its bid.¹⁷ By accepting the revised Drillsearch offer when they did the Accepting IS Shareholders acted contrary to their Intention Statements.

¹⁶ See *Warrnambool Cheese and Butter Factory Company Holdings Limited* [2013] ATP 16, *Alesco Corporation Limited* 03 [2012] ATP 18, *Ludowici Limited* [2012] ATP 3 at [38], *Ludowici Limited* 01R [2012] ATP, *Rinker Group Limited* 02R [2007] ATP 19, *Rinker Group Limited* 02 [2007] ATP 17, *Summit Resources Limited* [2007] ATP 9, *Australian Leisure & Hospitality Group Limited* 03 [2004] ATP 25, *Novus Petroleum Limited* 02 [2004] ATP 9, *BreakFree Limited* 04R [2003] ATP 42, *BreakFree Limited* 04 [2003] ATP 39 and *Anaconda Nickel Limited* 18 [2003] ATP 18

¹⁷ See *MYOB Limited* [2008] ATP 27 at [21]

Is 14 days sufficient?

74. ASIC submitted that, in its experience, it was becoming increasingly common for shareholders to make intention statements to accept an offer specifying a 14 day period.
75. In *MYOB Limited*,¹⁸ after finding a breach of s606, the Panel made orders releasing certain institutional shareholders who made intention statements from any commitment to accept the bidder's offer and restricted the institutional shareholders from accepting the offer or committing to do so prior to a date that was 21 days after the bidder's offer opened. The Panel in *MYOB Limited* considered 21 days sufficient time to allow a superior proposal to emerge.¹⁹
76. While we understand a bidder's desire for bid momentum, we do not consider there is any harm in a shareholder waiting up to 21 days from the opening of an offer before acting on a stated intention to accept an offer or a superior offer (as the case may be). With the statutory minimum bid period being one month, we do not see any urgency that would necessitate accepting an offer, or a superior offer, until such time. In fact, by waiting up to 21 days from the opening of an offer, shareholders may be able to make their decision on what constitutes a superior offer with the benefit of the bidder's notice of the status of defeating conditions.²⁰ It is open to parties to stipulate a shorter period than 21 days but the time specified, and allowed for, must provide a meaningful opportunity for other bids to materialise in the circumstances of the particular bid.

BID IMPLEMENTATION AGREEMENT

77. Both Magnum and ASIC submitted that the five day matching right in the bid implementation agreement, when combined with the Intention Statements, was anti-competitive and unacceptable.
78. The five day matching right was contained in clause 5.8 of the bid implementation agreement and relevantly provided:
- (a) *Drillsearch will have the right, but not the obligation, at any time during the period of five Business Days following receipt of a Relevant Notice (Matching Right Period) to amend the terms of the Offer (including, but not limited to, increasing the amount of consideration offered under the Bid or proposing any other form of transaction (each a Counter Proposal)), and if it does so then the Ambassador Directors must review the Counter Proposal in good faith....*
- (b) *During the Matching Right Period:*
- (i) *no Ambassador Director is permitted to change his or her recommendation of the Offer or to make any public statement to the effect that he or she may do so at some further point in time; and ...*

¹⁸ [2008] ATP 27

¹⁹ The Panel made its orders early in the offer period, unlike here where Magnum made its application after the offer period had opened and the Accepting IS Shareholders had accepted Drillsearch's offer

²⁰ Which must be given not more than 14 days and not less than 7 days before the end of the offer period: see s630(1)

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Reasons – Ambassador Oil and Gas Limited 01 [2014] ATP 14

79. The matching right was not subject to a ‘fiduciary out’ that would allow the directors to act consistently with their fiduciary duties but inconsistently with the terms of the matching right.
80. Magnum submitted that it could take more than 14 days from the opening of Drillsearch’s offer by the time a rival bidder made an offer that resulted in a director of Ambassador changing his recommendation and the five day matching right process being completed. Accordingly, the effect of the matching right was that a rival bidder would be “locked out” until after the date on which the shareholders who made Intention Statements were required to accept Drillsearch’s offer in accordance with their statements.
81. Magnum also submitted that clause 5.8(b)(i) was unacceptable because, in essence, it allowed Drillsearch to “hold the benefit of a recommendation for an offer that is considered by at least one member of the target board to be inferior and not in the best interests of shareholders for a full week before the rival bidder’s transaction is either announced or matched”. ASIC was similarly concerned that clause 5.8(b)(i) inappropriately fettered the discretion of the Ambassador board in a manner that did not assist an informed market.
82. Drillsearch submitted that the matching right was not unacceptable and was consistent with market practice. Further, the bid implementation agreement was not anti-competitive; and Magnum had made its offer when on notice of the matching right.
83. The Panel has previously stated that “a matching right cannot be for a duration that removes any practical likelihood that a potential competing bidder will be prepared to put a proposal to the target”.²¹
84. Given our orders in relation to the acceptances by the Accepting IS Shareholders, we do not need to deal with this, but we would be likely to enforce a matching right only if it was consistent with a target director’s fiduciary duties. Accordingly, we would have, if necessary, applied a ‘fiduciary out’ to clause 5.8(b).

DECISION

Declaration

85. It appears to us that the circumstances are unacceptable:
 - (a) having regard to the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on the control, or potential control, of Ambassador
 - (b) having regard to the purposes of Chapter 6 set out in s602 and
 - (c) because they constitute or give rise to contraventions of s606.

²¹ *Ross Human Directions Ltd* [2010] ATP 8 at [28]

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86. Accordingly, we made the declaration set out in Annexure C and considered that it was not against the public interest to do so. We had regard to the matters in s657A(3).

Orders

87. Following the declaration, we made the final orders set out in Annexure D. Under s657D the Panel's power to make orders is very wide. The Panel is empowered to make 'any order'²² if 4 tests are met:

- (a) it has made a declaration under s657A. This was done on 28 July 2014.
- (b) it must not make an order if it is satisfied that the order would unfairly prejudice any person. For the reasons below, we are satisfied that our orders do not unfairly prejudice any person.
- (c) it gives any person to whom the proposed order would be directed, the parties and ASIC an opportunity to make submissions. This was done on 15 July 2014. Each party made submissions and (other than Eye Investment) rebuttals.
- (d) it considers the orders appropriate to either protect the rights and interests of persons affected by the unacceptable circumstances, or any other rights or interests of those persons, or ensure that a takeover or proposed takeover proceeds as it would have if the circumstances had not occurred. The orders do this by:
 - (i) affording all Selling Shareholders a right to reverse²³ their share purchase deeds. The Selling Shareholders would then be free to accept Drillsearch's offer, Magnum's offer or any competing offer
 - (ii) reversing the acceptances by the Accepting IS Shareholders and requiring that they wait 14 days after the date of dispatch of a supplementary bidder's statement before deciding whether to accept Drillsearch's offer
 - (iii) affording all Ambassador shareholders who have accepted Drillsearch's offer, other than the Accepting IS Shareholders, a right to withdraw their acceptances
 - (iv) requiring Drillsearch to issue and dispatch a supplementary bidder's statement to Ambassador shareholders, including the Selling Shareholders and all shareholders (other than the Accepting IS Shareholders)²⁴ who have accepted the bid

²² Including a remedial order but other than an order requiring a person to comply with a provision of Chapters 6, 6A, 6B or 6C

²³ The definition of 'remedial order' in s9 includes declaring an agreement voidable

²⁴ They were parties to the proceedings

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- (v) requiring Drillsearch to notify each Selling Shareholder and Ambassador shareholder who accepted Drillsearch's offer of their right to withdraw/reverse their relevant agreement with Drillsearch and
- (vi) requiring Drillsearch's offer not to close earlier than 21 days after the date of dispatch of the supplementary bidder's statement to Ambassador shareholders.

Reversal rights for Selling Shareholders

88. As Drillsearch's acquisition of the 19.9% pre-bid stake was in breach of s606, Magnum submitted that the appropriate order would be for the pre-bid stake shares to be divested to ASIC for sale. Alternatively, the pre-bid stake shares should be accepted by Drillsearch into the Magnum offer.
89. ASIC submitted that our proposed order was appropriate even though an order to address a breach of s606 would ordinarily involve divestment.²⁵
90. ASIC also submitted, and we agree, that a divestment order gave rise to practical difficulties in this case because:
- (a) the contest for control of Ambassador and the delays necessarily involved in the vesting and sale process would mean a significant portion of Ambassador would be unavailable to both bidders for some time and
 - (b) as both bids involved scrip consideration, acceptance of either bid would not be an option available to a broker running an ASIC sell-down process.
91. We did not consider an order requiring Drillsearch to accept the pre-bid stake shares into Magnum's offer to be appropriate in the circumstances.

Reversal of acceptances by Accepting IS Shareholders

92. Drillsearch and Ambassador submitted that a withdrawal right for the Accepting IS Shareholders would be more efficient, equitable and practical than reversal.
93. ASIC submitted that a withdrawal right was inappropriate as it did not have the effect of holding the Accepting IS Shareholders to their respective Intention Statements. We agree, and our orders directed at the Accepting IS Shareholders are made with the objective of requiring the Accepting IS Shareholders to conform to their statements.
94. Accepting IS Shareholders must, of course, repay Drillsearch any cash consideration received.

Withdrawal rights for accepting shareholders

95. We ordered that all Ambassador shareholders who had accepted Drillsearch's offer on or before the date of our orders, other than the Accepting IS Shareholders, had a right to withdraw their acceptances. We consider this order was necessary to

²⁵ For example, see *Touch Holdings Limited* [2013] ATP 3 at [124(a)]

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address the fact that these shareholders accepted Drillsearch's offer in a misinformed market.

Other matters

96. On 16 June 2014, Drillsearch announced that its offer was unconditional and subject to accelerated payment terms (ie, payment of the offer consideration within 10 business days of acceptance). Ambassador separately announced that the Accepting IS Shareholders had accepted Drillsearch's offer.
97. At 8:40am on 17 June 2014, Norton Rose Fulbright (Magnum's legal adviser) sent a letter to Ashurst (Drillsearch's legal adviser) by email in which Drillsearch was notified that (among other things) Magnum intended to make an application to the Takeovers Panel in relation to circumstances connected with Drillsearch's offer. No grounds for a Panel application were set out in the letter. Magnum requested that Drillsearch undertake to Magnum not to process any acceptances received under Drillsearch's revised offer on the basis that the acceptances would be the subject of the application. The reply on the same evening stated that Drillsearch refused to comply with the request on the basis that no grounds for a Panel application were given.
98. At 10:18am on 17 June 2014, Drillsearch's legal adviser sent an email (with subject heading, "*Drillsearch – urgent assistance required*") to Drillsearch's share registry instructing it, on Drillsearch's behalf, to process the CHES acceptances received on 16 June 2014 as soon as possible and to, if possible, pay the offer consideration to all shareholders who had accepted the offer by close of business that day. As a result of the registry's action, the acceptances of Macquarie and the Accepting IS Shareholders (other than Eye Investment) were processed and the offer consideration paid, including the issue of new Drillsearch shares.
99. It seems clear to us that the processing of the acceptances was in response to the request not to process acceptances.
100. Drillsearch had a 10 business day period within which to process acceptances. It could, and should, have informed Magnum that it had (at least) 24 hours to make an application before processing would occur if it refused to give the undertaking requested.
101. This issue became the subject of submissions on costs thrown away, but we did not need to pursue it.

Nora Scheinkestel
President of the sitting Panel
Decision dated 28 July 2014
Reasons published 14 August 2014

Takeovers Panel

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Advisers

Party	Advisers
Ambassador, Mr Giustino Guglielmo, Mrs Fotoula Hatziladas, Mr Kleo Hatziladas and Mr David Shaw	Johnson Winter Slattery
Drillsearch	Ashurst
Eye Investment	Arnold Bloch Leibler
Magnum	Norton Rose Fulbright



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ANNEXURE A

CORPORATIONS ACT SECTION 657E INTERIM ORDER

AMBASSADOR OIL AND GAS LIMITED

Magnum Hunter Resources Corporation made an application to the Panel dated 18 June 2014 in relation to the affairs of Ambassador Oil and Gas Limited (**Ambassador**).

The Panel ORDERS:

1. Drillsearch Energy Limited (**Drillsearch**) must not take any further steps to process any acceptances received under its bid for Ambassador.
2. Drillsearch must not appoint directors to the board of Ambassador pursuant to clause 7.3 of the bid implementation agreement between Drillsearch and Ambassador dated 28 May 2014.
3. These interim orders have effect until the earliest of:
 - (a) further order of the Panel
 - (b) the determination of the proceedings and
 - (c) 2 months from the date of this interim order.

Alan Shaw
Counsel
with authority of Dr Nora Scheinkestel
Acting President
Dated 19 June 2014



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ANNEXURE B

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A UNDERTAKING

AMBASSADOR OIL AND GAS LIMITED

Fotoula Hatziladas undertakes to the Panel that she will not dispose of, transfer or grant a security interest over any shares in Drillsearch Energy Limited (Drillsearch) issued to her or any associate as a result of accepting the bid by Drillsearch for Ambassador Oil and Gas Limited until the earlier of:

- (a) an order of the Panel or
- (b) the determination of proceedings.

Signed by Fotoula Hatziladas
Dated 20 June 2014



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**AUSTRALIAN SECURITIES AND
INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A
UNDERTAKING**

AMBASSADOR OIL AND GAS LIMITED

Miller Anderson Pty Ltd undertakes to the Panel that it will not dispose of, transfer or grant a security interest over any shares in Drillsearch Energy Limited (Drillsearch) issued to it or any associate as a result of accepting the bid by Drillsearch for Ambassador Oil and Gas Limited until the earlier of:

- (a) an order of the Panel or
- (b) the determination of proceedings.

**Signed by Giustino Guglielmo of Miller Anderson Pty Ltd
with the authority, and on behalf, of
Miller Anderson Pty Ltd
Dated 20 June 2014**



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**AUSTRALIAN SECURITIES AND
INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A
UNDERTAKING**

AMBASSADOR OIL AND GAS LIMITED

David Shaw undertakes to the Panel that he will not dispose of, transfer or grant a security interest over any shares in Drillsearch Energy Limited (Drillsearch) issued to him or any associate as a result of accepting the bid by Drillsearch for Ambassador Oil and Gas Limited until the earlier of:

- (a) an order of the Panel or
- (b) the determination of proceedings.

**Signed by Giustino Guglielmo with the authority, and on behalf, of
David Shaw
Dated 20 June 2014**



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ANNEXURE C

**CORPORATIONS ACT
SECTION 657A**

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

**AMBASSADOR OIL AND GAS LIMITED 01
CIRCUMSTANCES**

1. Ambassador Oil and Gas Limited (**Ambassador**) is an ASX listed entity.
2. The directors of Ambassador have, or at all material times had, a relevant interest in Ambassador shares as follows:
 - (a) Mr Giustino Guglielmo, approximately 7.1%
 - (b) Mr David Shaw, approximately 0.7% and
 - (c) Mr Emmanuel Correia, at least approximately 0.088%.¹
3. On 28 May 2014, Drillsearch Energy Limited (**Drillsearch**) and Ambassador jointly announced:
 - (a) Drillsearch's intention to make a recommended conditional off-market bid for Ambassador, offering 1 Drillsearch share for every 5.4 Ambassador shares (an implied consideration of \$0.293 per share)
 - (b) that Drillsearch had "*entered into acquisition agreements with several Ambassador shareholders under which it has agreed to acquire a total of 19.9% of Ambassador at an offer price of 1 Drillsearch share for every 5.4 Ambassador shares (i.e. the same consideration as under the Offer)*"²
 - (c) that "*Mrs Hatziladas and Eye Investment Fund Ltd [**Eye Investment**], who collectively hold 17.6% of Ambassador, have advised Ambassador that they intend to accept the Offer within 14 days from the opening of the Offer, in the absence of a superior offer*" (**Intention Statement**)³ and
 - (d) that the two companies had entered into a bid implementation agreement.
4. Also on 28 May 2014, Ambassador separately announced that "*all the directors have today advised Ambassador that they intend to accept the Offer within 14 days of the opening of the Offer Period, in the absence of a superior proposal*" (also an **Intention Statement**).

¹ Peleton Capital Pty Ltd, of which Mr Correia is a director, has or had a relevant interest in additional shares but it is unclear if Mr Correia had a relevant interest in those shares

² 32 shareholders in total

³ Prior to 28 May 2014, each of Mrs Hatziladas, Eye Investment, Mr Guglielmo, Mr Shaw and Mr Correia advised Ambassador that they consented to or approved the making of the Intention Statement

The announcement also stated that the directors held a beneficial interest in approximately 7.4% of Ambassador.⁴

5. On 10 June 2014, Magnum Hunter Resources Corporation (**Magnum**) announced its intention to make a conditional off-market bid for Ambassador, offering 1 share of Magnum common stock for every 27.8 Ambassador shares (an implied consideration of \$0.34 per share).⁵
6. On 12 June 2014, Drillsearch lodged its bidder's statement with ASIC and its offer opened.
7. On 16 June 2014, Drillsearch increased its bid by adding 5 cents cash per Ambassador share (increasing the implied consideration to \$0.338) and declared its bid unconditional. Also on 16 June 2014, Mrs Hatziladas, Eye Investment, Mr Guglielmo and Mr Shaw accepted Drillsearch's offer.
8. Mr Kleo Hatziladas had a relevant interest in 11.65% of Ambassador shares through the holding registered in the name of his wife, Mrs Hatziladas.
9. Mr Hatziladas acts as corporate adviser to Ambassador.
10. Mr Hatziladas arranged Drillsearch's pre-bid stake at Drillsearch's request.
11. Mr Hatziladas arranged the Intention Statements following discussions with Drillsearch, other than for Eye Investment which had discussions with Mr Guglielmo.
12. The directors of Ambassador acquiesced in the role played by Mr Hatziladas in arranging the pre-bid stake and Intention Statements and negotiating the offer with Drillsearch generally.
13. The Panel considers that Drillsearch is associated with each of Mr Hatziladas, Mrs Hatziladas, Mr Guglielmo, Mr Shaw and Mr Correia under section 12(2)(b)⁶ for the purpose of controlling or influencing the conduct of Ambassador's affairs.
14. In the alternative, the Panel considers that Drillsearch is associated with each of Mr Hatziladas, Mrs Hatziladas, Mr Guglielmo, Mr Shaw and Mr Correia under section 12(2)(c) in relation to the affairs of Ambassador.

Pre-bid acquisition

15. On 28 May 2014, when Drillsearch acquired a relevant interest in Ambassador of approximately 19.9% under the acquisition agreements, it had voting power in at least approximately 19.55% of Ambassador and so the 19.9% was acquired in contravention of section 606.

Intention Statements

16. Further, the Intention Statements were statements to which ASIC's truth in takeovers policy under Regulatory Guide 25 *Takeovers: False and misleading statements* applied.

⁴ Mr Guglielmo and Mr Correia sold some shares as pre-bid sales

⁵ Magnum's offer was subsequently increased on 17 June 2014 to 1 share of Magnum common stock for every 23.6 Ambassador shares (an implied consideration of \$0.38)

⁶ References are to sections of the *Corporations Act 2001* (Cth) unless otherwise indicated.

17. By accepting Drillsearch's offer on 16 June 2014 (four days after the offer opened rather than the 14 days referenced in their Intention Statements) Mrs Hatziladas, Eye Investment, Mr Guglielmo and Mr Shaw departed from their Intention Statements such that:
- (a) the acquisition of control over Ambassador shares did not take place in an efficient, competitive and informed market and
 - (b) Ambassador shareholders were not given enough information to enable them to assess the merits of the proposal.

Unacceptable circumstances

18. It appears to the Panel that the circumstances are unacceptable:
- (a) having regard to the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of Ambassador or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Ambassador and
 - (b) having regard to the purposes of Chapter 6 set out in section 602 and
 - (c) because they constituted or constitute a contravention of a provision of Chapter 6.
19. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3).

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Ambassador.

Alan Shaw
Counsel
with authority of Nora Scheinkestel
President of the sitting Panel
Dated 28 July 2014



Australian Government

Takeovers Panel

ANNEXURE D

**CORPORATIONS ACT
SECTION 657D
ORDERS**

AMBASSADOR OIL AND GAS LIMITED

The Panel made a declaration of unacceptable circumstances on 28 July 2014.

THE PANEL ORDERS

1. Disclosure

Drillsearch must as soon as reasonably practicable, in a form approved by the Panel:

- (a) lodge with ASIC, ASX and dispatch to Ambassador shareholders including Ambassador shareholders who have accepted the Offer, a supplementary bidder's statement disclosing:
 - (i) a summary of the Panel's findings set out in the declaration of unacceptable circumstances dated 28 July 2014
 - (ii) the effect of the reversal of acceptances of the Offer by the Intention Statement Shareholders
 - (iii) the effect of the right to withdraw acceptances by an Ambassador shareholder (other than the Intention Statement Shareholders)
 - (iv) the effect of the right to reverse a Share Purchase Deed by a Selling Shareholder
 - (v) that the offer period has been, or will be, extended so as to comply with order 6 and
 - (vi) a statement that the supplementary disclosure was required by the Panel
- (b) together with the supplementary bidder's statement, send a letter to the Intention Statement Shareholders, which explains the effect of order 3 including how the Intention Statement Shareholders may comply with order 3.3(a)
- (c) together with the supplementary bidder's statement, send a cover letter (which includes a withdrawal form and a reply paid self-addressed envelope) to each Ambassador shareholder who has accepted the Offer, other than the Intention Statement Shareholders, which:
 - (i) notifies the shareholder of the right to withdraw their acceptance under order 4
 - (ii) gives instructions as to what the shareholder must do to exercise that right and

(iii) states that if the shareholder exercises their right to withdraw their acceptance:

(A) any Drillsearch securities that have been issued to them as consideration will be cancelled and

(B) they will be free to deal with their Ambassador shares as they wish and

(d) together with the supplementary bidder's statement, send a letter (which includes a reversal form and a reply paid envelope self-addressed envelope) to the Selling Shareholders, which:

(i) notifies the Selling Shareholders of the right to reverse their Share Purchase Deed under order 5

(ii) gives instructions as to what they must do to exercise that right and

(iii) states that if a Selling Shareholder exercises their right to reverse their Share Purchase Deed:

(A) any Drillsearch shares that have been issued to them as consideration will be cancelled and

(B) they will be free to deal with their Ambassador shares as they wish including, for example, accepting the Offer or a competing offer.

2. Dealings by certain Intention Statement Shareholders

Mrs Fotoula Hatziladas, Miller Anderson Pty Ltd and Mr David Shaw must not dispose of, transfer or grant a security interest over any shares in Drillsearch issued to them or any associate as a result of accepting the Offer, except as will occur by order 3. This order 2 ceases on satisfaction of order 3.

3. Reversal of acceptances by Intention Statement Shareholders

3.1 This order 3 has effect on and after the date of dispatch of the supplementary bidder's statement under order 1.

3.2 The contract for acceptance of the Offer by each Intention Statement Shareholder is void and of no effect and, without any need for transfer, the legal title and beneficial ownership in the Ambassador shares re-vests in the respective Intention Statement Shareholder.

3.3 Drillsearch, Ambassador and each Intention Statement Shareholder must do all such acts as are reasonably necessary to give effect to order 3.2, including:

(a) each Intention Statement Shareholder must return to Drillsearch an amount equal to the cash consideration received no later than 14 days after the date of dispatch of the supplementary bidder's statement under order 1

(b) Drillsearch must notify Ambassador immediately upon each Intention Statement Shareholder returning the cash consideration and

(c) Ambassador must register each Intention Statement Shareholder as a member on its register in respect of that number of shares that re-vest within 1 business day of notification from Drillsearch.

- 3.4 In respect of each contract for acceptance that is void, the Drillsearch securities issued as consideration are cancelled.
- 3.5 Each Intention Statement Shareholder must wait 14 days after the date of dispatch of the supplementary bidder's statement under order 1 before deciding whether to accept the Offer. For avoidance of doubt, the Intention Statement Shareholders are free to accept the Offer after this period, and the decision as to what constitutes a "superior proposal" or "superior offer" is that of the Intention Statement Shareholder.

4. Withdrawal right for other accepting shareholders

- 4.1 This order 4 does not apply to the Intention Statement Shareholders.
- 4.2 All contracts for acceptance of the Offer on or prior to the date of these orders are voidable and each Ambassador shareholder who has accepted the Offer on or prior to the date of these orders has a right to withdraw their acceptance.
- 4.3 An Ambassador shareholder who wishes to exercise their right to withdraw under order 4.2 must:
 - (a) give Drillsearch notice (so that it is received no later than 14 days after the date of dispatch of the supplementary bidder's statement under order 1) in the form attached to the supplementary bidder's statement or complying with Corporations Regulation 6.6.01(1), as the case may be
 - (b) give Drillsearch any certificates and transfer documents needed to effect the return of the securities issued as consideration or complying with Corporations Regulation 6.6.01(2), as the case may be and
 - (c) where relevant, return to Drillsearch an amount equal to the cash consideration received together with the notice and other documents provided under orders 4.3(a) and 4.3(b).
- 4.4 Drillsearch must comply with Corporations Regulation 6.6.01(3) in relation to each Ambassador shareholder who withdraws their acceptance.
- 4.5 In respect of each acceptance withdrawn, the Drillsearch securities issued as consideration are cancelled.

5. Option to reverse Share Purchase Deeds

- 5.1 Subject to order 5.5, at the election of each Selling Shareholder, the Share Purchase Deed entered into by the Selling Shareholder is voidable and where a Selling Shareholder so elects, the Share Purchase Deed is of no effect and, without any need for transfer, the legal title and beneficial ownership in the number of Ambassador shares the subject of the Share Purchase Deed re-vests in the relevant Selling Shareholder.
- 5.2 A Selling Shareholder who wishes to exercise their right to avoid their Share Purchase Deed under order 5.1 must give Drillsearch notice (so that it is received no later than 14 days after the date of dispatch of the supplementary bidder's statement under order 1).
- 5.3 In respect of each Share Purchase Deed that is avoided, the number of Drillsearch securities equal to the number issued as consideration under the

Share Purchase Deed that are held by a Selling Shareholder who provides a notice under order 5.2 are cancelled.

5.4 Drillsearch and Ambassador must do all such acts as are reasonably necessary to give effect to order 5.1, including:

- (a) Drillsearch must notify Ambassador as soon as reasonably practicable upon each Selling Shareholder exercising its right under order 5.1 and
- (b) Ambassador must register each Selling Shareholder as a member on its register in respect of that number of shares that re-vest within 1 business day of notification from Drillsearch and remove a corresponding number of Ambassador shares from the register record of Drillsearch's shareholding in Ambassador.

5.5 The right under order 5.1 is only exercisable where the Selling Shareholder is, at the time the right is exercised, the registered holder of at least the number of Drillsearch shares issued as consideration under the Share Purchase Deed.

6. Extension of Drillsearch offer period

Drillsearch must do all things necessary to ensure that the offer period under its Offer closes on a date that is no earlier than 7.00pm on the date that is 21 days after the date that the supplementary bidder's statement is dispatched to Ambassador shareholders.

7. Definitions

In these orders the following terms have the following meanings:

Ambassador	Ambassador Oil and Gas Limited
Drillsearch	Drillsearch Energy Limited
Intention Statement Shareholder	<ul style="list-style-type: none">• Mrs Fotoula Hatziladas for 16,550,000 Ambassador shares• Miller Anderson Pty Ltd for 8,000,000 Ambassador shares• Mr David Shaw for 1,000,000 Ambassador shares and• Eye Investment Fund Ltd for 8,500,000 Ambassador shares
Offer	The off-market takeover offer for Ambassador shares by Drillsearch (Central) Pty Limited, a wholly owned subsidiary of Drillsearch, dated 12 June 2014
Selling Shareholder	Each of the shareholders who executed a Share Purchase Deed
Share Purchase Deed	A share purchase deed between a Selling Shareholder and Drillsearch dated 28 May 2014 under which each Selling Shareholder agreed to sell shares in Ambassador to Drillsearch, as disclosed by Drillsearch in its Notice of Initial

Substantial Holder lodged with ASX on 30 May 2014

Alan Shaw
Counsel
with authority of Nora Scheinkestel
President of the sitting Panel
Dated 28 July 2014