Case No. D20/91

Profits tax – cessation of original business – interest income – whether owning shares in subsidiary and placing money on deposit constitute carrying on business – sections 14 and 15(1)(f) of the Inland Revenue Ordinance.

Panel: Anthony F Neoh QC (chairman), Richard J Mills-Owens QC and Ronny Wong Fook Hum QC.

Dates of hearing: 6 December 1989, 22 and 23 January 1990.
Date of decision: 20 June 1991.

The taxpayer was a company incorporated in Hong Kong which previously carried on business as a freight forwarding agent. The taxpayer established a subsidiary company in Hong Kong, transferred the freight forwarding business to the subsidiary and itself ceased carrying on business as a freight forwarder. The taxpayer held shares in the subsidiary, received dividends from it and lent money to it. It made deposits in banks of its accumulated profits and dividends for the purpose of earning interest. This interest was assessed to profits tax and the taxpayer appealed to the Board of Review.

Held:

The Board found as a fact that the taxpayer was carrying on business in Hong Kong and accordingly for the years of assessment 1984/85 and 1985/86 tax was payable regardless of whether or not the deposits were offshore deposits (proviso to section 15(1)(f) of the Inland Revenue Ordinance). As to the years of assessment 1986/87 and 1987/88 tax was only payable on deposits made in Hong Kong and as it had been conceded on behalf of the Commissioner that certain interest income was not taxable, the case was referred back to the Commissioner to revise the assessments in accordance with the concessions he had made.

Appeal allowed in part.

Cases referred to:

De Beers Consolidated Mines Ltd v Howe 5 TC 198
Sao Paulo (Brazilian) Railway Co Ltd v Carter 3 TC 407
CIR v Korean Syndicate Ltd [1921] 3 KB 258
American Leaf Blending Co v Director General of Inland Revenue [1978] STC 561
D15/87, IRBRD, vol 2, 373

D17/88, IRBRD, vol 3, 232
Louis Kwan-nang KWONG, Carlos Kwok-nang KWONG v CIR 2 HKTC 541
LAM Woo-shang v CIR 1 HKTC 123
D26/88, IRBRD, vol 3, 299
IRC v The Incorporated Council of Law Reporting 3 TC 105

Lee Kang Bor for the Commissioner of Inland Revenue.
Leung Wo Ping of Glass Radcliffe & Co for the taxpayer.

Decision:

The Taxpayer appeals against the Commissioner's determination upon consideration of its objection to the profits tax assessments raised on it for the years of assessment 1985/86, 1986/87 and 1987/88. The Taxpayer claimed that it had ceased business since early 1984 and interest income it received since then from bank deposits should not be treated as business receipts under section 15(1)(f) of the Inland Revenue Ordinance ('the Ordinance').

2. Prior to early 1984, the Taxpayer's sole business was that of a freight forwarding agent. Upon cessation of its business, it transferred this business to a subsidiary, and thereafter its only income consisted of dividends from this subsidiary and interest income from bank deposits. As the Taxpayer is relieved of taxation in respect of its dividend income by virtue of section 26 of the Inland Revenue Ordinance, the assessor raised assessments on the interest income only in respect of the years set out above.

3. By letters dated 11 April 1986, 2 February 1987, 12 August 1988 and 28 January 1989, the tax representatives objected respectively to the years of assessment 1984/85, 1985/86, 1986/87 and 1987/88 on the grounds that the Taxpayer did not carry on a business during any of the four years in question and was therefore outside the scope of profits tax.

4. The representatives set out in their letter dated 3 July 1989 detailed contentions as to why they were of the opinion that the Taxpayer was not subject to profits tax. They claimed that the Taxpayer's 'real' business activities were that of a forwarding agency and that as from early 1984 no business was carried on. Apart from one director they stated that the other five directors were stationed outside Hong Kong. Given this, any business activity of the Taxpayer would be located where the management and control of the Taxpayer resided which, in this case, so they say, was outside Hong Kong.

5. Notwithstanding this point the representatives further argued that the mere placing of deposits could not amount to a business activity because there was no deliberate investment policy. They further argued that the correct test in taxation is that substance is paramount over form, and the substance of the business receipt of interest does not create a

business, and in any event the mere placing of funds on deposit could not be regarded as compatible with a profit-making business.

6. In conclusion the representatives state that funds placed offshore by the various banks could not in any event be assessable as the provision of credit must have taken place offshore.

The Commissioner's Determination

7. Upon consideration of the Taxpayer's arguments and the facts thereupon based, the Commissioner made the following determination:

(a) That the years of assessment 1984/85, 1986/87 and 1987/88 be confirmed.

(b) That the year of assessment 1985/86 be reduced as follows:

Interest income	US$56,381
Less: Expense 2,363 x 56,381 / 356,381	374
	US$56,007
Converted @7.7794	HK$435,700
Tax payable	HK$80,604

Agreed Facts

8. The following facts were agreed:

(1) The Taxpayer was incorporated as a private company in Hong Kong in 1978.

(2) In its profits tax return and in its accounts for the year of assessment 1983/84, the Taxpayer's business was described as 'forwarding agent (until) [date of cessation mentioned], after that date only to invest its funds'.

(3) The Taxpayer's memorandum of association declares that its objects include:

' (a) Lending and advancing money (clause 20)

(b) Carrying on the business of an investment company (clause 22)

(c) Holding for investment the securities of any corporation (clause 24).'

(4) In 1983 X Limited was incorporated (hereinafter referred to as the 'subsidiary' unless otherwise stated). It is a wholly owned subsidiary of the Taxpayer and took over the Taxpayer's business as forwarding agent; the Taxpayer's assets being transferred to the subsidiary during the year ended 31 March 1985 as follows:

	Cost
	US$
Motor Car	2,820
Furniture & Equipment	8,969
	US$11,789

(5) The investment in subsidiary and dividend income of the Taxpayer during each of the years of assessment was as follows:

	Year ended 31 March			
	1985	1986	1987	1988
	US$	US$	US$	US$
Investment in Subsidiary (1)	1,282	1,282	1,282	1,282
Investment in Subsidiary (2)	-	-	-	500
Due from Subsidiary	-	68,671	-	350
Dividend income	158,603	300,000	287,017	701,502
Profits since date of acquisition not included in the accounts of the Taxpayer	60,854	2,671	172,029	439,175

Name	Place of Incorporation	Equity Interst	Nature of Business

(1)	X Limited	Hong Kong	100%	Forwarding Agent
(2)	X Limited	Y Place	100%	Forwarding Agent

(6) The funds on bank deposits and the interest income of the Taxpayer during the years of assessment are as follows:

	Year ended 31 March			
	1985	1986	1987	1988
	US$	US$	US$	US$
Cash at Banks				
Current/Saving accounts	120,616	114,004	66,607	123,118
Fixed deposits	696,797	797,017	1,059,288	1,813,878
Interest income (See Note)	69,211.57	56,381.25	63,955.91	96,744
Note:				
Interest received from:	US$	US$	US$	US$
A Bank USD S/A	1,948.12	1,391.52	3,548.15	3,255
B Bank USD S/A	375.00	619.30	571.60	5,478
B Bank HKD S/A	51.99	-	-	-
C Bank	196.67	-	-	-
D Bank USD Time Deposit A/C	2.14	-	-	-
D Bank USD C/A	0.92	-	-	-
USD fixed deposit				

– A Bank	21,744.85	10,964.74	7,905.54	9,395
– B Bank	14,069.47	14,605.09	13,215.44	26,649
– D Bank	30,822.41	22,340.03	24,355.98	27,256
– E Bank	-	-	6,186.36	7,196
– F Bank	-	-	8,172.84	7,658
B Bank – GBP fixed deposit	-	-	-	9,857
Z Trust Co	-	6,460.57	-	-
	69,211.57	56,381.25	63,955.91	96,744

(7) The Taxpayer submitted a 'nil' return for each of the years of assessment 1984/85, 1985/86, 1986/87, and 1987/88. The assessor did not accept the returns and raised the following profits tax assessments on the Taxpayer:

	Year of Assessment			
	1984/85	1985/86	1986/87	1987/88
Date of issue	27.3.86	22.1.87	18.7.88	20.1.89
Interest received	US$69,211		US$63,956	US$96,745
Less: Expenses	658		1,486	2,419
Net profit	US$68,553		US$62,470	US$94,326
Conversion rate @	HK$7.8068		HK$7.7845	HK$7.7841
Assessable profits	HK$535,179	HK$800,000	HK$486,297	HK$734,243
Tax payable thereon	HK$99,008	HK$148,000 (under section 59 (3) of the IRO before the sub-	HK$89,964	HK$132,163

mission of
return)

The Relevant Statutory Provisions

9. The relevant portion of section 14 of the Ordinance states as follows:

> ' 14. Subject to the provisions of this Ordinance, profits tax shall be charged for each year of assessment at the standard rate on every person carrying on a trade, profession or business in Hong Kong in respect of his assessable profits arising in or derived from Hong Kong for that year from such trade, profession or business (excluding profits arising from the sale of capital assets) …'

10. For the years of assessment 1984/85 and 1985/86, the following version of section 15(1)(f) was applicable:

> ' 15(1) For the purposes of this Ordinance, the sums described in the following paragraphs shall be deemed to be receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong –
> …
>
> (f) sums received by or accrued to a corporation by way of interest arising through or from the carrying on by the corporation of its business in Hong Kong notwithstanding that the moneys in respect of which the interest is received or accrues are made available outside Hong Kong [the Board's underlining]; ...'

11. From 1 April 1986, by virtue of the Inland Revenue (Amendment)(No 2) Ordinance 1986, the underlined position of section 15(1)(f) as set out above was repealed and section 15(1)(f) then read as follows:

> ' 15(1)(f) sums received by or accrued to a corporation carrying on a trade, profession or business in Hong Kong by way of interest derived from Hong Kong; ...'

12. Futhermore, from 1 April 1986, the following provision was added to section 15 of the Ordinance:

> ' 15(5) The amendments to this section effected by the Inland Revenue (Amendment) (No 2) Ordinance 1986 (19 of 1986) shall apply to sums received or accrued by way of interest, gains or profits on or after 1 April 1986, and the provisions of this section in force immediately prior to the coming into force of that Ordinance shall continue to apply to such sums received or accrued prior to 1 April 1986 as if such amendments had not been enacted.'

The Taxpayer's Case

13. The Taxpayer's representative, Mr Leung, at the hearing made the following submissions on behalf of the Taxpayer:

(1) That the Taxpayer did not, in substance, carry on a business in Hong Kong because the management and control of the Taxpayer emanated from directors outside of Hong Kong. Mr Leung relied on two English tax cases dealing with the question of 'residence' of a corporation for English tax purposes: De Beers Consolidated Mines Ltd v Howe 5 TC 198 and Sao Paulo (Brazilian) Railway Co Ltd v Carter 3 TC 407.

(2) That although the activity of investment holding could in a technical sense constitute a business, the Taxpayer's holding of shares in its two subsidiaries was a 'strategic decision' to shield the Taxpayer's accumulated profits from massive claims risks arising from the freight forwarding business, rather than a profit-making scheme. Accordingly, the Taxpayer never intended to enter into any 'real' business activity after its cessation in early 1984 when it transferred its freight forwarding business to its Hong Kong subsidiary.

(3) That although passive receipt of income can in some situations (as for example the situations considered in CIR v Korean Syndicate Ltd [1921] 3 KB 258, and American Leaf Blending Co v Director General of Inland Revenue [1978] STC 561) amount to a business, the Taxpayer did not fall into any of such situations as it ceased business when its forwarding operations were transferred to its Hong Kong subsidiary. Furthermore, after cessation of such business, the Taxpayer merely placed undistributed earnings and dividends from its subsidiary, none of which formed part of the Taxpayer's circulating capital, into banks without pursuing any deliberate investment policy.

Accordingly, the fact that the memorandum of association of the Taxpayer allowed the Taxpayer to undertake an investment business, did not detract from the reality that the Taxpayer did not in fact undertake any 'real' business in Hong Kong.

(4) That profits tax is not payable on the interest earned by the Taxpayer for the years of assessment 1984/85 and 1985/86 because:

(a) The Taxpayer did not carry on a separate business of placing deposits as in Board of Review decision D15/87;

(b) The interest income was not derived from the circulating capital of the Taxpayer as in Board of Review decision D17/88.

(5) That interest derived from accumulated funds from the ceased business was in no way arising through or from the business of investment holding even if the Board were to hold that the Taxpayer undertook such business, because funds accumulated from the ceased freight forwarding business of the Taxpayer were completely divorced from the business of investment holding.

(6) That the US dollar deposits which were situated offshore and interest derived therefrom cannot be assessable to profits tax by virtue of the 'provision of credit rule' for the years of assessment 1986/87 and 1987/88, the amount of such offshore interest being US$16,995 and US$24,238 respectively.

14. A director of the Taxpayer, Mr A, was called to give evidence on its behalf. Mr A has been a director of the Taxpayer since mid-1987. He stated that he was not a resident director of the Taxpayer, and the two resident directors, Mr and Mrs B, were the persons who had direct knowledge of the operations of the Taxpayer in the years in question. Neither of the two resident directors were called. To the extent necessary, the Board will refer to Mr A's evidence.

The Revenue's Case

15. Mr Lee, for the Revenue, made the following submissions:

(1) That the Taxpayer's primary contention that after cessation of its freight forwarding business in early 1984 (by transferring the same to its Hong Kong subsidiary), the Taxpayer did not carry on any business, was neither supported by fact nor by law.

Mr Lee argued as follows:

(a) That the definition of 'business' in section 2 of the Ordinance does not restrict the meaning of 'business' which is a word capable of wide import: Louis Kwan-nang KWONG, Carlos Kwok-nang KWONG v CIR 2 HKTC 541 and LAM Woo-shang v CIR 1 HKTC 123.

(b) That prima facie, in the case of a company incorporated for the purpose of making profits for its shareholders any gainful use to which it puts any of its assets amounts to the carrying on of a business: per Lord Diplock in American Leaf Blending Co v Director General of Inland Revenue [1978] STC 561.

(c) That based on the following activities of the Taxpayer after its cessation in 1984, the Taxpayer did carry on a business in Hong Kong during the years in question:

(i) Holding shares in X Limited ('the subsidiary') which was promoted and incorporated by the Taxpayer to takeover the Taxpayer's profitable business of forwarding agent, for which the Taxpayer received no compensation save for the written down cost of a motor car and furniture (see agreed fact (4) at paragraph 8 above).

(ii) Participation in the management of the subsidiary through the directors of the Taxpayer all of whom were also directors of the subsidiary.

(iii) Making advances to the subsidiary when the latter was in need of funds, in the amounts of US$18,914 and US$68,671 as shown in balance sheets of the Taxpayer for the periods ended 31 March 1984 and 31 March 1986 respectively.

(iv) Collecting dividends from the subsidiary in Hong Kong.

(v) Holding board and shareholders' meetings in Hong Kong. [Note: Mr Leung on behalf of the Taxpayer indicated to the Board that such meetings were 'paper meetings' but the directors did not come to Hong Kong. Mr A in answer to a question by a member of the Board said that directors' meetings were held overseas. As will be seen later in this decision, the Board does not accept Mr A's evidence in this regard.]

(vi) Promoting and incorporating in the Y Place subsidiary, the purpose of which was not made clear in evidence.

(vii) Placing a total of 125 deposits in banks, amounting to US$696,797 as at 31 March 1985 and US$1,813,878 as at 31 March 1988.

(viii) Managing the portfolio of deposits, including interest rates and currency fluctuations, moving from one bank to another, all such activities being done in Hong Kong.

(ix) Keeping records and accounts in Hong Kong.

(x) Declaring and paying dividends to shareholders of the Taxpayer in Hong Kong.

(xi) All of the above activities were carried out by Hong Kong staff of the Taxpayer under the supervision and management of the two resident directors, Mr and Mrs B.

(xii) That in practice, the Taxpayer was still carrying on a freight forwarding business through the vehicle of the subsidiary.

(2) That the Taxpayer's first submission that the Taxpayer did not carry on a business in Hong Kong because its management and control emanated from directors outside of Hong Kong proceeds from an erroneous interpretation of section 14(1) of the Ordinance.

Mr Lee relied on Board of Review decision D26/88 to support his contention that the 'mind and management concept' was not relevant for Hong Kong taxation purposes.

He further submitted that the two English tax cases (see paragraph 13(1) above) relied on by Mr Leung were of no assistance to the Board since they dealt with the question of 'residence' of a corporation under English tax legislation which is different from the scheme of taxation laid down by section 14 of the Ordinance.

Mr Lee further pointed out that if the Taxpayer's submissions were right then any corporation doing business in Hong Kong would be able to avoid Hong Kong tax by the simple expedient of having the management directing the activities of the corporation from overseas. Tax, in Mr Lee's words, would then be 'optional'.

(3) That the Taxpayer's second submission that it never intended to engage in any 'real' business activity intended as a profit-making scheme after cessation of the freight forwarding business was unsupported by fact and law.

Mr Lee argued:

(a) that profit-making is not a necessary ingredient to the conduct of a business: IRC v The Incorporated Council of Law Reporting 3 TC 105.

(b) that in the case of a corporation, there is a presumption that the putting to gainful use of any of its assets amounted to the carrying on of a business: see sub-paragraph (1)(b) above.

(c) that on the facts, not only was this presumption not displaced, but there was also ample support for the conclusion that the Taxpayer, after transferring its freight forwarding operation to its Hong Kong subsidiary, continued in an integral business of investment and management of subsidiaries together with the depositing of money. Mr Lee cites the fact that the Taxpayer invested in subsidiaries, participated through its directors and employees in the management of the Hong Kong subsidiary while making available funds to the latter to ensure the

successful running of its business, and at the same time, the Taxpayer deposited its moneys to produce interest income. All such activities were accommodated by the memorandum of association of the Taxpayer.

(d) that if the depositing of money for the purpose of earning interest income was not found to be part and parcel of the business of the Taxpayer, it was capable of and was itself a business conducted by the Taxpayer having regard to the frequent, numerous and sizeable deposits of the Taxpayer and the efforts devoted to the management of the deposits portfolio.

(4) That the Taxpayer's third submission is untenable in that the Taxpayer was clearly continuing with an integral business of investment in subsidiaries and deposit of moneys for interest, alternatively a separate business of deposit of money for interest, for reasons given in sub-paragraphs (1) and (2) above.

(5) That the Taxpayer's fourth submission is also untenable in that:

(a) the Taxpayer was clearly continuing with an integral business of investment in subsidiaries and deposit of moneys for interest alternatively, a separate business of making deposits for interest for the reasons given in sub-paragraphs (1) and (2) above.

(b) furthermore, the fact that the Taxpayer had mixed the accumulated funds of the past with dividend income from its subsidiary and putting the entire fund to gainful use both by making deposits and by making loans to the subsidiary showed that these funds were not intended to be divorced from the Taxpayer's operations.

(6) That the fifth submission was untenable because the interest derived from deposits made in the years of assessment 1984/85 and 1985/86 is deemed to be taxable income notwithstanding that they were earned outside of the geographic boundaries of Hong Kong: Board of Review decision D26/88.

(7) That in relation to the sixth submission, the Revenue was willing to concede that interest income in the amounts of US$16,995 and US$24,238 for the years of assessment 1986/87 and 1987/88 respectively was derived 'offshore' and was therefore not taxable.

Conclusions

16. In order to decide whether or not the interest income for which profits tax has been assessed was within the charging provisions of section 14 and section 15(1)(f) of the Ordinance, the Board has to take into account the following considerations:

(1) Whether the Taxpayer carried on any business at all after transfer of its freight forwarding business to the subsidiary.

(2) If the answer to (1) is 'no', then there is no question of any tax being payable.

(3) If the answer to (1) is 'yes', then the question will arise as to whether or not the interest income for which the profits tax assessments in issue have been raised arise 'through or from the carrying on by the corporation of the business in Hong Kong'.

(4) If the answer to (3) is 'no', then no tax is payable.

(5) If the answer to (3) is 'yes', then:

(i) As to the years of assessment 1984/85 and 1985/86, tax is payable whether or not the deposits are 'offshore' in view of the provisions of section 15(1)(f) (as to which see paragraphs 10 and 12 above).

(ii) As to the years of assessment 1986/87 and 1987/88, tax is payable on deposits made in Hong Kong only (as to which see paragraphs 11 and 12 above).

17. We answer question (1) affirmatively for the following reasons:

(i) Although the Taxpayer did cease to operate its previous freight forwarding business after early 1984, it nonetheless put its assets to gainful use in:

(a) holding the shares of, receiving dividends from and making advances to its Hong Kong subsidiary.

(b) making deposits in banks of its accumulated profits and dividends.

(ii) Such activity constituted the undertaking of a business whether or not a profit-making scheme was intended: IRC v The Incorporated Council of Law Reporting 3 TC 105 in which Coleridge, CJ, made the following observations which we respectfully adopt:

> 'Now I took the freedom to ask early in the argument of the Solicitor General, what is it that these gentlemen do if they do not carry on a business. They carry on something, they do something, they are very actively engaged in something. What is it they are engaged in? I confess I should have thought it capable of strong argument that they were carrying on a trade, because it is not essential to the carrying on of trade that the people carrying it on should make a profit, nor is it even

necessary to the carrying on of trade that the people carrying it on should desire or wish to make a profit.'

(iii) That the memorandum of association of the Taxpayer encompassed these objectives and the Taxpayer was clearly incorporated with a view to making profit.

(iv) That prima facie the activities of the Taxpayer constituted the undertaking of a business. In this respect we take note of, and respectfully, adopt the following observations of Lord Diplock in American Leaf Blending Co v Director General of Inland Revenue [1978] STC 561:

> ' In the case of a private individual it may well be that the mere receipt of rents from property that he owns raises no presumption that he is carrying on a business. In contrast, in their Lordship's view, in the case of a company incorporated for the purpose of making profits for its shareholders any gainful use to which it puts any of its assets prima facie amounts to the carrying on of a business, ... The carrying on of 'business', no doubt, usually calls for some activity on the part of whoever carries it on, though, depending on the nature of the business, the activity may be intermittent with long intervals of quiescence in between ...' (also adopted by the Hong Kong High Court in Louis Kwan-nang KWONG, Carlos Kwok-nang KWONG v CIR 2 HKTC 541 at 559)

(v) That this presumption has not at all been displaced by the evidence, and in this regard we accept the Revenue's submissions set out at paragraph 15(1) above, and we find as facts the matters urged upon us at paragraph 15(1)(c) above.

(vi) That accordingly, we find as a fact, that the Taxpayer conducted an integral business of holding investment in subsidiaries and in the making of deposits after it ceased to operate as a freight forwarder. In this regard we adopt the following observations of a previous Board in D15/87:

> ' Having concluded that as a matter of both fact and tax law that the activity of depositing can constitute a business, the next question is whether the company's activities in this regard did constitute a business even though it is not a financial or money lending institution ... Quite obviously there are grey areas of uncertainty, however we take the view that regularity and size would be two ingredients which would weigh in the balance; there may well be others.'

18. We answer question (3) also affirmatively in that:

(1) The business which we have found had been undertaken by the Taxpayer, was conducted in Hong Kong because:

(a) The execution of all deposit making decisions (though made by Mr C who is not resident) were implemented by Mr and Mrs B, the two resident directors of the Taxpayer in Hong Kong.

(b) The subsidiary which is the Taxpayer's only source of dividend income is incorporated in Hong Kong and conducts its operations with Hong Kong as its base.

(c) All meetings of the Taxpayer, although they were paper meetings, purported to have been held in Hong Kong, and we do not accept Mr A's evidence that the meetings were held abroad.

(d) We find as facts the matters set out in (a) and (c) above.

(e) The fact that decision making was done overseas by Mr C overseas does not detract from the fact that the activities of the companies were conducted in Hong Kong. 'Management and control' in terms of decision making is not by itself a test for determining whether a business is conducted in Hong Kong. Were it to be so, then, tax would, in the words of the Revenue's representative, be 'optional'. That cannot be the result of any fair reading of section 15(1)(f).

(2) The interest derived from the deposits constituted interest derived from the business which was carried on in Hong Kong, as we have found:

(a) that the business carried on by the Taxpayer after the date of its cessation consisted of holding investments in subsidiaries and the making of deposits.

(b) that such business was carried on in Hong Kong.

19. We answer question (5) as follows:

(1) That in the light of our conclusions set out in paragraphs 16 to 18 above, the Taxpayer has failed to discharge the burden of displacing the assessments for the years of assessment 1984/85 and 1985/86, and to this extent the appeal fails.

(2) That in the light of the Revenue's concession set out in paragraph 15(7) above, we remit the matter to the Commissioner to raise revised assessments in accordance with the concessions made, but otherwise, the Taxpayer has failed to discharge its burden in displacing the assessments for the years of assessment 1986/87 and 1987/88, and to this extent the appeal also fails.

20. Finally the Board would like to place the record its appreciation of the assistance given to it by representative of both sides.