

IN THE FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY

No. V621 of 2005

IN THE MATTER OF ANSETT AUSTRALIA LIMITED
(ACN 004 209 410) & ORS (in accordance with the
Schedule attached) (All Subject to a Deed of
Company Arrangement)

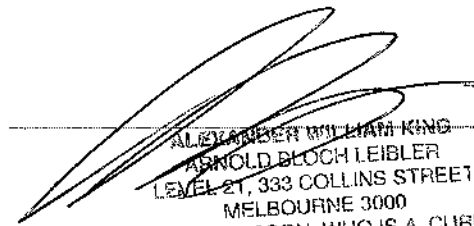
and

MARK ANTHONY KORDA and MARK FRANCIS
XAVIER MENTHA (as Deed Administrators of the
Companies)

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "**MAK-27**" produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit dated 12 September 2005.

Before me:



ALEXANDER WILLIAM KING
ARNOLD BLOCH LEIBLER
LEVEL 21, 333 COLLINS STREET
MELBOURNE 3000
A NATURAL PERSON WHO IS A CURRENT
PRACTITIONER WITHIN THE MEANING OF
THE LEGAL PRACTICE ACT 1996

Exhibit "MAK-27"
Affidavit of Mark Francis Xavier Mentha
sworn 8 October 2001 (excluding exhibits)

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIAN DISTRICT REGISTRY

NO. V 3045 of 2001

IN THE MATTER OF:

ANSETT AUSTRALIA LIMITED (A.C.N. 004 209 410) & ORS (in accordance with
the Schedule attached) (All Administrators Appointed)

And

MARK FRANCIS XAVIER MENTHA AND MARK ANTHONY MARK KORDA (as
Administrators of the Companies)

Plaintiffs

AFFIDAVIT OF MARK FRANCIS XAVIER MENTHA

DEPONENT: Mark Francis Xavier Mentha
SWORN: 8 October 2001

On 8 October 2001, I **MARK FRANCIS XAVIER MENTHA**, Chartered Accountant, of
360 Elizabeth Street, Melbourne in the State of Victoria, say on oath:

1 I am a Chartered Accountant and a member of the firm Andersen, Chartered
Accountants ("Andersen"). I am a senior partner of its Corporate Recovery
Services Division. I am a registered official liquidator. I am a member of the
Insolvency Practitioners Association of Australia and was previously
secretary of that Association in Victoria. I am a member of the Institute of
Chartered Accountants. I have been practising in the area of corporate

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insolvency, receivership and financial reconstructions for a period of approximately 19 years. I have been a partner at Andersen for 12 years.

APPOINTMENT OF ADMINISTRATORS TO ANSETT GROUP

- 2 On 17 September 2001, Mark Korda and I (together "the Administrators") were appointed Voluntary Administrators of the companies identified in the schedule which is attached to this Application other than Air New Zealand Engineering Services Ltd (ACN 089 520 696) ("ANZES") (together "the Ansett Group"). Those appointments followed the resignations on 17 September 2001 of Messrs Peter Hedge, Greg Hall and Allan Watson who were appointed Voluntary Administrators to the above-mentioned companies variously on 12 and 14 September 2001. On 4 October 2001, Mark Korda and I were appointed Voluntary Administrators of ANZES.

Now produced and shown to me and marked "MFXM1" is a copy of the consents of Mark Korda and I to act as the Administrators of the Ansett Group including ANZES.

APPOINTMENT OF ADMINISTRATORS TO HAZELTON GROUP

- 3 On 17 September 2001, Michael Humphris was appointed the Voluntary Administrator of the Hazelton companies comprising Hazelton Airlines Limited (ACN 061 965 642), Hazelton Air Services Pty Ltd (ACN 000 242 928) and Hazelton Air Charter Pty Ltd (ACN 065 221 356) (together "the Hazelton Group").




Now produced and shown to me and marked "MFXM2" is a true copy of the consents of Michael Humphris to act as the Administrator of the Hazelton Group.

EXPERIENCE OF ANSETT ADMINISTRATORS

4 Over the previous twelve years, whilst partners of Andersen, Mark Korda and I have had involvement in numerous large scale insolvency administrations and workouts including:

- (a) Budget Rent a Car Group;
- (b) Jennings Group of Companies;
- (c) Collings Real Estate Group of Companies;
- (d) Walter Wright Group of Companies;
- (e) Brash Holdings Group of Companies;
- (f) Bradmill Undare Group of Companies; and
- (g) Estate Mortgage Group.

5 Mark Korda and I were involved in the first seven voluntary administrations in Australia:

6 Save as specifically set out below, the matters deposed to in this Affidavit are deposed to from my own personal knowledge of the facts:

- (a) In paragraphs 8-19 inclusive, I relied on information provided to me by Captain Trevor George Jensen, Chief Operating Officer of the




Ansett Group since September 2001 and prior to that, senior vice-president of Operations of the Ansett Group. Captain Jensen is a pilot by training with over 30 years experience and the nominated Chief Executive for the Air Operator's Certificate and holder of Certificates of Approval for all Ansett Group airlines;

Where I depose to matters from information provided to me by others, I believe those matters to be true. I am authorised by Mark Korda to make this Affidavit on his behalf.

PURPOSE OF APPLICATION

7 I make this affidavit in support of an Application seeking orders or directions pursuant to sections 447A and 447D of the *Corporations Act* and the inherent jurisdiction of the Court that:

- (a) The Court approve the terms of the agreement entitled "memorandum of understanding" between the Ansett Group and the Air New Zealand Group and others ("Memorandum of Understanding") which is now produced and shown to me and marked "MFXM3"; and
- (b) Further or alternatively to paragraph (a) hereof, that the Plaintiffs may properly perform and give effect to the Memorandum of Understanding.

dd

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HISTORY OF ANSETT

- 8 Ansett was founded by Sir Reginald Myles Ansett and operated its first air service in February 1936 flying a single-engined, open cockpit, six-seater Fokker Universal from Hamilton in western Victoria to Essendon Airport in Melbourne. This was the beginning of a regular weekday service.
- 9 In 1937, Ansett moved its base and flying school to Essendon Airport and launched new services to Broken Hill, Sydney, and from Sydney to Adelaide with fuelling stops in Mildura and Narrandera. In its first year, Ansett flew a total of 895,983 miles (approximately 1,441,636 kilometres) and carried 12,624 passengers.
- 10 During World War II, Ansett performed important contracts with Australian and American defence departments and contributed significantly to the war effort. The airline assisted in the evacuations of Darwin and Broome following Japanese bombings in 1942. After World War II, Ansett expanded its routes and acquired Australian National Airways in 1957.
- Now produced and shown to me marked "MFXM4" is a copy of a document entitled "Ansett Australia Milestones" outlining the history of Ansett from 1936 to 2000.
- 11 In the course of 60 years, Ansett became an Australian icon, rapidly expanding to include in 1947 the first development of holiday resorts in the Whitsundays, the introduction of flying boat services in Queensland in 1953 and the first airport to city helicopter service in Melbourne in 1960. In 1964, Ansett introduced the first jet airliner, the Boeing 727, to Australian service

and in the same year achieved the status of Australia's largest domestic airline. By 1967, Ansett had established operations in New South Wales, South Australia, Western Australia, the Northern Territory, Papua New Guinea and Lord Howe Island. Ansett moved its operations to Tullamarine Airport in 1972 and in 1974, Ansett assisted in the evacuation of people from Darwin after the devastation of Cyclone Tracy.

- 12 In 1979, Ansett was taken over by TNT and News Limited, with Sir Reginald Ansett remaining Chairman until his death in 1981. In 1983 Ansett began using Boeing 767 planes, each of which accommodated 211 passengers.
- 13 Ansett changed its name to Ansett Australia just prior to the deregulation of the domestic airline industry on 31 October 1990. It then expanded internationally with its first flight to Bali in 1993. In late 1996, Air New Zealand purchased TNT's 50 per cent stake in Ansett and in June 2000, it purchased News Limited's remaining 50 per cent shareholding in Ansett. Consequently, Air New Zealand attained full ownership of Ansett and its subsidiaries in June 2000.
- 14 Ansett was the first Australian airline to introduce features such as e-ticket and e-check in, SMS, WAP services, the Golden Wing Lounge and the frequent flyer program, Global Rewards.

ANSETT GROUP OPERATIONS

- 15 In 1999, Ansett became a full member of Star Alliance. Star Alliance is the world's largest airline network, with connecting services through its 15 member airlines to 894 destinations in 129 countries worldwide. The Star

Alliance agreements provide for members of each airlines' own frequent flyer scheme to redeem points with other Star Alliance member airlines.

16 Prior to the appointment of Administrators to Ansett on 12 September 2001:

- (a) the Ansett Group employed a total of approximately 16,000 people;
- (b) the total wages and salaries paid by the Ansett Group per annum as at February 2001 was approximately \$963 million;
- (c) the Ansett Group served over 130 domestic destinations and made approximately 900 flights per day across the Australian network;
- (d) the Ansett Group had approximately 130 planes in its total group flying fleet. In the 2000 financial year, Ansett carried over 14.04 million passengers, 13.35 million of these on domestic routes;
- (e) the Ansett Group contributed approximately \$73.3 million in tax for the financial year ending 30 June 2000;
- (f) the Ansett Group played an integral role in the air freight and cargo industry, carrying 111,147 tonnes of cargo per year.

17 The Ansett Group was particularly vital to regional and rural areas serving remote mining communities and distant towns in far Western Queensland and Western Australia through its subsidiaries Kendell, Hazelton, Skywest and Aeropelican. In Western Australia, the Northern Territory, New South Wales and Queensland, Ansett had 111 intrastate destinations alone. Ansett's commitment to regional Australia was illustrated by its sponsorship

Old *Star*

of community and sporting events and showcasing of local produce such as regional wines.

- 18 Nationally, Ansett was the official airline of the 2000 Sydney Olympics, the Australian Cricket Board, the Australian Rugby League and sponsored the Australian Football League.
- 19 From its long history in the airline industry, Ansett has built up public good will, created jobs for tens of thousands of people and provided a valuable service for the travelling public of Australia.

ANSETT GROUP STRUCTURE

- 20 After Air New Zealand Group acquired 100% ownership of the Ansett Group on about 20 June 2000, a new trans Tasman, Australasian executive structure was announced.

Now produced and shown to me marked "MFXM5" is a copy of the "Ansett Group Structure".

- 21 All of the Directors of the holding companies in the Ansett Group were at all relevant times also directors of Air New Zealand Limited, the holding company in the Air New Zealand Group.

Now produced and shown to me and marked "MFXM6" is a copy of the list of directors of the Ansett Group prior to the Administration of the Ansett Group.

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PRESENT FINANCIAL POSITION OF ANSETT (POST ADMINISTRATION)

22 Set out below is a general summary of the major assets of the Ansett Group available to the Administrators on our appointment as Administrators:

(a) Cash – Nil

(The First Administrators caused airline operations to cease at 2:00am on Friday, 14 September 2001. In these circumstances there was no cash available to the Administrators on our appointment and little likelihood of any being generated.)

(b) Debtors – book value AUD \$400 million

Although the book value of the debtors appears to be high the Administrators have assessed the realisable value of the debtors to be between AUD \$60 & AUD \$80 million because of charge backs and airline tickets not honoured.

(c) Equity in leased aircrafts – incapable of precise quantification at this time.

Following the terrorist attack in New York, it is difficult to obtain any precise valuations of aircraft assets.

(d) Miscellaneous other fixed and aviation assets – incapable of precise quantification at this time.

Mark Korda and I are in the process of obtaining more precise valuations for the major assets. However, this financial information is highly confidential

and commercially sensitive particularly as we have advertised many of the Ansett businesses for sale. Mark Korda and I have nevertheless provided one of our stakeholders with what was then our best estimate of the unencumbered value of the entire assets of the Ansett Group. Now produced and shown to me and marked "MFXM6A" is a copy of a letter dated 26 September 2001 in which, the Administrators have set out a fair estimate of the present value of the unencumbered assets of the Ansett Group (excluding any amount we may recover from Air New Zealand) and a draft Balance Sheet of the Ansett Group dated 4 October 2001. I humbly request that this exhibit be kept confidential as it is commercially sensitive and was provided to the recipient on that basis.

LIABILITIES OF THE ANSETT GROUP

23 Set out below is a general summary of the major liabilities of the Ansett Group following our appointment as Administrators:

- (a) Employee entitlements (including wages, unpaid superannuation, annual leave, long service leave, sick pay, rostered days off and redundancies) – AUD \$686 million.
- (b) Of the total employee entitlements of AUD \$686 million, set out below is a more detailed break down of its calculation:

(i) Unpaid superannuation -	\$11 million
(ii) Long service leave -	\$105 million
(iii) Annual leave -	\$85 million
(iv) Redundancy payments (uncapped) -	\$485 million

AUD \$686 million

(The Commonwealth Government's proposed Employee Entitlement Scheme ("EES") funded by the airline ticket tax is intended to guarantee a payment to all employees of their priority entitlements save that their redundancy payments are capped at eight weeks and that employees will be given four weeks' notice of their termination. Mark Korda and I presently estimate that the maximum exposure of the Commonwealth Government under the EES may be as high as AUD \$351 million);

- (c) The holders of unrepresented airline tickets (the "Coupon Creditors") – AUD \$300 - \$ 400 million;
- (d) National Australia Bank – AUD \$100 million;
- (e) Air New Zealand Group Loan Balance – AUD \$81 million;

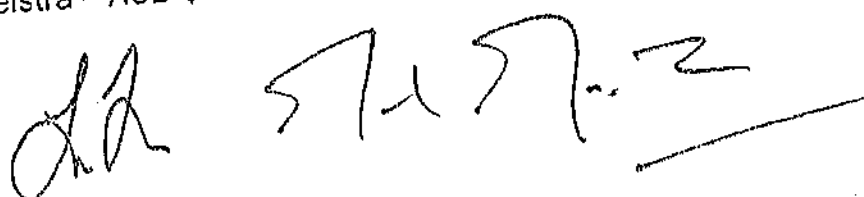
(Air New Zealand Group claimed to be entitled to vote at the first meeting of creditors for an amount in the sum of AUD \$110 million);

- (f) Credit Lyonnais (an aircraft lessor) – AUD \$420 million

However, Credit Lyonnais is the owner of a number of aircraft which if assigned or sold will reduce that claim significantly;

- (g) Caltex Australia Limited and BP Australia (suppliers of fuel) – AUD \$16 million;

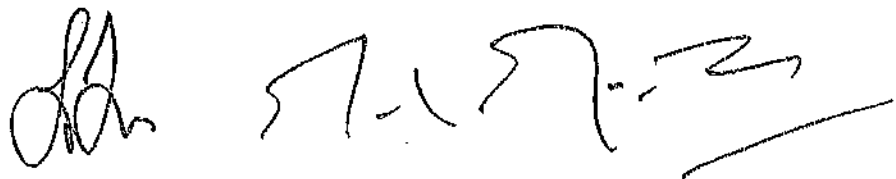
- (h) Telstra – AUD \$16 million



- 24 Mark Korda and I presently believe that total unsecured liabilities of the Ansett Group after allowing a fair value for the leased aircraft assets is approximately AUD \$2.0 billion.

INTANGIBLE ASSETS

- 25 The aviation assets of the Ansett Group have been significantly harmed by the cessation of operations. In the view of the Administrators, once Ansett ceased to fly it lost the confidence of its customer base, key clients, the public and other key stakeholders. Mark Korda and I regarded it as imperative to recommence flying operations as soon as practicable to minimise the damage to the goodwill of the business.
- 26 Mark Korda and I also believed that if Ansett was to recommence flying it had to do so from its own terminals using its own facilities. We took the view that if it commenced flying from Qantas facilities, this too would further erode its goodwill.
- 27 The task of recommencing flying operations for Ansett presented almost insurmountable problems for Mark Korda and me. From the time that the Administrators commenced this appointment we focused on strategies for immediately starting up Ansett operations. This project became known as "Ansett Kick-Start". Initially we sought to do so by entering into an agreement with Qantas to fly Qantas passengers from Ansett terminals, using Ansett staff, but this transaction could not be consummated.



ANSETT KICK-START

- 28 The aim of Ansett Kick-Start was to recommence flying of a limited number of aircraft on the main trunk routes so as to preserve the name, mark and goodwill of "Ansett".

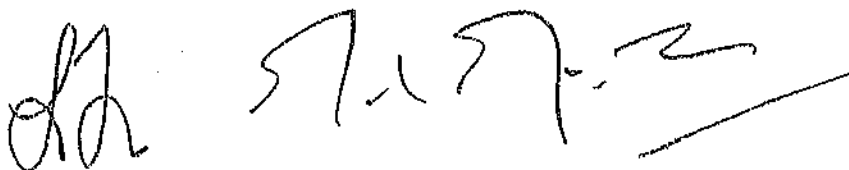
Now produced and shown to me and marked "MFXM6B" is a copy of the Ansett Kick-Start Business Plan. I humbly request that this exhibit be kept confidential as it contains commercially sensitive information.

- 29 Ansett Kick-Start is confined initially to the flying of eleven A320 aircraft. Agreement was reached with the employees to limit the employees working conditions to the revenue to be generated from the limited operations. The employees agreed to this.

- 30 A critical aspect of Ansett Kick-Start was Commonwealth Government support for the public to purchase tickets from the Administrators. The Commonwealth Government agreed to provide this support to the public to assist Ansett Kick-Start.

Now produced and shown to me and marked "MFXM6C" is a copy of the Memorandum of Agreement for Commonwealth support for the re-establishment of operations of Ansett. I humbly request that this exhibit be kept confidential.

- 31 Ansett Kick-start will operate at a trading loss. Mark Korda and I are of the view that the budgeted trading losses are worth incurring for the following reasons:

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- (a) The value of the name, reputation and goodwill of Ansett will be preserved;
- (b) If the Ansett aviation assets are sold on a "liquidation basis", their realisable value diminishes significantly and in an amount far greater than the projected trading losses;
- (c) The objects of Part 5.3A of the Corporations Act (pursuant to which Mark Korda and I have been appointed) are to maximise the chances of the Ansett business remaining in existence but if this is not possible, to maximise the return to creditors on a sale of the business assets. Ansett Kick-Start, in our view, meets the objects of Part 5.3A;
- (d) Although Ansett Kick-start is a project which would be justified as a stand-alone project, it is also part of a larger project to reconstitute Ansett in a new but reduced form. This second phase has been referred to us from time to time as **"Ansett Mark II"**.

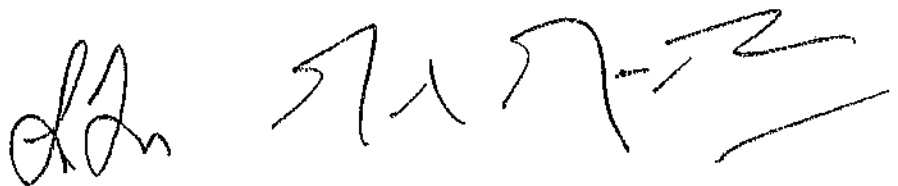
32 The fixed cost of Ansett in continuing any operations including the Ansett Kick-Start is significant. For example, the costs of the licences to utilise the intellectual property required to maintain the ticketing and billing systems of Ansett is about \$5M per month (reduced from \$22M per month pre-administration). The Ansett Group cannot operate without that ticketing system. The software will support a far larger operation than that of Ansett Kick-Start. In addition, certain leased aviation assets must be preserved. The Ansett maintenance facilities whilst pruned down in terms of variable

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costs are also significant to maintain. These fixed costs are being incurred without reference to Ansett Kick-Start.

ANSETT MARK II

- 33 Mark Korda and I and the Andersen team have also been analysing the methods by which we can establish a new long term profitable and viable business from the old Ansett business. This project is known as "Ansett Mark II".
- 34 The key elements of Ansett Mark II are set out below:
- (a) Capital Injection either from settlement proceeds or elsewhere (amount to be determined);
 - (b) Introduction of a major airline operator to develop and "stress test" the business plan in consultation with the Administrators and manage the airline operations;
 - (c) Equity participation either by institutional or private investors or a combination;
 - (d) Reduce employee numbers to those necessary to operate with a market share of about 20% of the Australian domestic airline market;
 - (e) Reinstate the Star Alliance and if possible, give some recognition to frequent flyer members (about 2.7 million people) in the Scheme;

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- (f) Maintain inter-line relationships with Air New Zealand and S.I.A.
(this is critical to maintain and enhance load factors);
 - (g) Negotiate new terms and conditions of employment;
 - (h) Reduce aircraft to fewer types of aircraft (as opposed to numerous types pre-administration);
 - (i) Examine modernisation of aircraft fleet; and
 - (j) Analyse the positioning of the modified airliner ie: between "first class" "economy plus" ("economy") or "no-frills low cost" operator;
- 35 Mark Korda, the Andersen team and I have been working on the development of the business plan for Ansett Mark II concurrently with the pursuit of sale strategies.
- 36 Ansett Mark II is likely to attract interest from overseas airline operators. It is unlikely that overseas airline operators will commit to take a position in the Ansett Mark II without some indication of support from the Commonwealth Government and in particular the Prime Minister, the Deputy Prime Minister and Minister for Transport and the Treasurer. This issue has become more complicated as Australia is now in a pre-election period. An indication of support is now also required from the Leader of the Opposition and the Deputy Leader of the Opposition and Shadow Treasurer.

FIRST MEETINGS OF CREDITORS

- 37 At the First Meetings of Creditors which were held on Tuesday, 18 September 2001 (together "the First Meeting"), I advised those in

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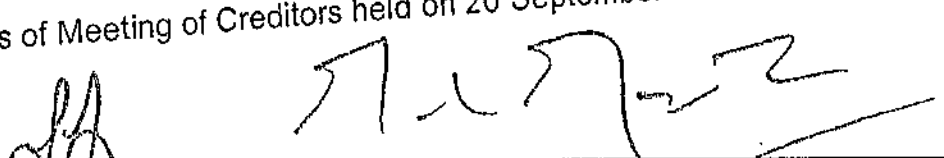
attendance that it would be in the interests of the creditors if Committees of Creditors were formed for the major trading entities in the Ansett Group and that it was my intention that the Committees of Creditors' meetings would be held concurrently to save time and money. The Hazelton Group meetings would also be held concurrently by Michael Humphris. I also advised the meeting that the Committees of Creditors should comprise one or more individuals representing each of the main creditor interest groups including unionised and non-unionised employees, aircraft and equipment lessors, suppliers and trade creditors, airport licensors and other financial institutions.

- 38 At the First Meeting, the creditors appointed Committees of Creditors in the Administration of each of the companies in the Ansett Group (together "Committees of Creditors").

Now produced and shown to me and marked "MFXM7" is a copy of the Minutes of Meetings of the First Creditors' Meeting held on 18 September 2001.

- 39 In accordance with Section 436E of the Corporations Act, the first meetings of Creditors of the remaining twenty-eight companies in the Ansett Group were held on 20 September 2001. As there were only quorums for seven of the companies, the meetings for the remaining twenty-one companies were adjourned until 28 September 2001. Given the only creditors in attendance at the seven meetings were intercompany creditors, no separate Committees of Creditors were appointed to this meeting.

Now produced and shown to me and marked "MFXM8" is a true copy of the Minutes of Meeting of Creditors held on 20 September 2001.



COMMITTEES OF CREDITORS

- 40 There are thirty-two different members of the Committees of Creditors in the entire Ansett Group. The Committees of Creditors comprise the following major creditors of the Ansett Group:

CREDITOR REPRESENTATIVE	CREDITOR ORGANISATION	EXPOSURE AUD
DAVE OLIVER	Australian Manufacturing Workers' Union	
ALAIN CHRUN	Credit Lyonnais	420,890,000
BILL SHORTEN	The Australian Workers' Union	12,500,000
COLIN MASON	Caltex Australia Limited	12,000,000
SCOTT KERSHAW	Qantas Airways	9,960,001
DAVID BROWN	QBE Insurance (Australia) Ltd	-
DAVID COX	AAT Kings	-
DENNIS TEEN	Australia Post	450,000
DOUG DUNLOP	Ansett Pilots Association	-
FOTIOS EGGLEZOS	BP Australia	3,460,848
GEOFF ARTHUR	National Express Group (Australia)	-

	Pty Ltd	
GEORGE PROOS	Avis Australia	1,481,165
GRANT SABIN	Bureau of Meteorology	31,000
IAIN LANG	Australian Licensed Aircraft Engineers Association	-
JOHN ALLEN	Transport Workers' Union	140,100,000
JOHN MIRANDA	CPM Aust Pty Ltd	-
JOHN PYERS	Transport Industries Insurance	1,420,000
COLIN COAKLEY	Flight Attendants Association of Australia	74,500,000
KEVIN POTTER	National Australia Bank	99,580,000
STEVE WIDDOP	Mobil Oil Australia Pty Ltd	4,100,000
LINDA WHITE	Australian Services Union	-
MARK BISSET	Future Brand FHA	764,291
PETER ALLEN	JS McMillan Pty Ltd	-



PETER DUFFY	Unsecured Creditor - Non Union Employee	59,000
PETER HOLLOWAY	Freehills/Air New Zealand	-
SAMANTHA SHARIF	Airservices Australia	1,245,337
STEPHEN BYRON	Canberra International Airport	385,962
STEPHEN PARBERY	Prentice Parbery Barilla	-
TONY WHEELENS	Commonwealth Department of Transport and Regional Services	70,003
VICTORIA CHESSE	Telstra	15,868,000
LAWRIE COX	Australian Federation of Air Pilots	-
PETER BYRNE	Australian Airports Association	-
TOTAL		AUD 798,865,607

- 41 The Committees of Creditors cumulatively represent an aggregate of approximately AUD \$800 million or 40% of total of unsecured creditors (after deduction of the estimated value of security of Lessors) by value (This estimate may change depending on the claims and valuation of aircraft assets of aircraft lessors and the number and value of unrepresented ticket holders).

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42 There are approximately 17,000 presently identified creditors of the entire Ansett Group in number leaving aside:

- (a) Frequent flyer members who have accumulated unused frequent flyer points. (I have not yet determined whether these persons are creditors); and
- (b) The holders of unpresented airline tickets with a face value of between AUD \$300 million and AUD \$400 million ("the Coupon Creditors"). The number of Coupon Creditors is incapable of estimation at this time, however it may be as large as 500,000 plus in number. This may depend upon how many coupons were purchased on credit cards..

43 I am told by Joshua Bornstein of Maurice Blackburn Cashman, who acts on behalf of, inter alia, the ACTU, that approximately 14,500 of Ansett employees are represented by a total of thirteen unions.

44 The Committees of Creditors represents directly and indirectly over the entire Ansett Group approximately 15,000 creditors by number (most of whom are represented by the unions) (other than Coupon Creditors and holders of frequent flyer points) or 90% of the presently identified creditors of Ansett Group on a cumulative basis. (Of course there may be hundreds of thousands of Coupon Creditors).

EXTENSION OF CONVENING PERIOD FOR SECOND MEETING OF CREDITORS

45 Pursuant to Section 439A(5) of the Corporations Act, the Administrators were required to convene a Second Meeting of Creditors of each of the

Ansett Group companies on or before 2 October 2001 unless an extension under Section 439A(6) of the Corporations Act is granted.

46 The creditors of the Ansett Group may at the Second Meeting of Creditors resolve pursuant to Section 439C of the Corporations Act that:

- (a) the Ansett Group execute a Deed of Company Arrangement;
- (b) the Administration should end; or
- (c) the Ansett Group be wound up.

47 Pursuant to Section 439A(4) of the Corporations Act, the Notice convening the Second Meeting of Creditors must be accompanied by a copy of:

- (a) A report by the Administrators about the Ansett Group's business, property, affairs and financial circumstances;
- (b) A statement setting out the Administrators' opinion about each of the following matters:
 - (i) whether it would be in the creditors' interests for the Ansett Group to execute a Deed of Company Arrangement;
 - (ii) whether it would be in the creditors' interests for the Administration to end;
 - (iii) whether it would be in the creditors' interests for the Ansett Group to be wound up and the Administrators' reasons for those opinions; and

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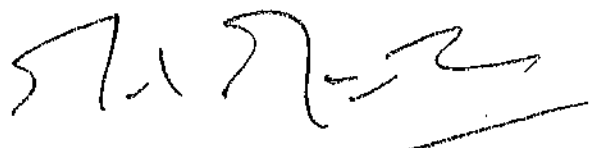
- (iv) if a Deed of Company Arrangement is to be proposed, a statement setting out details of the proposed Deed.

48 On 1 October 2001, Mark Korda and I applied to the Federal Court pursuant to Section 439A(1) of the Corporations Act to extend the convening period for the second meeting of creditors because due to the complexity of the Administration, we required more time to:

- (a) clarify the financial position of each of the 40 Ansett Group companies in Administration;
- (b) determine the quantum of unsecured creditors' claims;
- (c) quantify the employee entitlements of some 16,000 employees including unpaid wages, superannuation, annual leave, long service leave and potential redundancy payments; and
- (d) determine the position of unencumbered and encumbered assets (including some 300 aircraft, 574 property leases and as yet unknown number of other leases including IT leases.

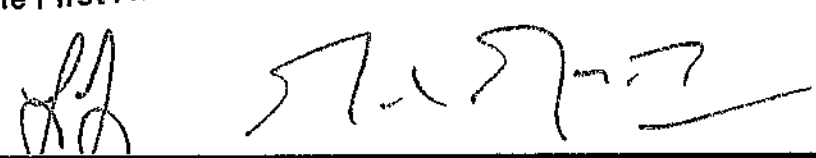
Now produced and shown to me and marked "MFXM9" is a copy of my Affidavit sworn 28 September 2001 in support of the Application (excluding Exhibits).

49 On 1 October 2001, the Honourable Justice Goldberg made orders, inter alia, extending the convening period for the second meetings of creditors of each of the Ansett Group pursuant to Section 439A(1) of the Corporations Act until 12 December 2001;

Now produced and shown to me and marked "MFXM10" is a copy of the General Form of Order of the Honourable Justice Goldberg made 1 October 2001.

AIR NEW ZEALAND

- 50 As set out above Air New Zealand is the holding company of the Ansett Group.
- 51 On 8 August 2001, Air New Zealand wrote to the directors of Ansett Holdings Limited, Ansett International Limited and Ansett Australia Limited as the ultimate parent company to confirm that the wholly owned subsidiaries of the three Ansett companies are able to meet their debts as they fall due. The letter also provides that Air New Zealand will make available on request in writing from time to time advances for the sole purpose of enabling the three Ansett companies to pay working capital liabilities incurred by them in respect of property or services purchased or sold in the "ordinary course" of business. The letter contained certain conditions including a statement that the maximum aggregate amount of all such advances shall not exceed AUD \$400 million ("**the Letter of Comfort**").
- 52 On 12 September 2001, the directors of the Ansett Group resolved that in the opinion of the directors the companies were insolvent or likely to become insolvent at some future time and that an Administrator of each company should be appointed. As a result of the resolution, the voluntary administration of the Ansett Group commenced on 12 September 2001 and Messrs Hall Watson, Hall & Hedge were appointed as voluntary administrators ("**the First Administrators**").
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53 On 14 September 2001 at 2:00am the First Administrators resolved that the Ansett Group should cease airline operations and, the majority of the Ansett Group employees were stood down.

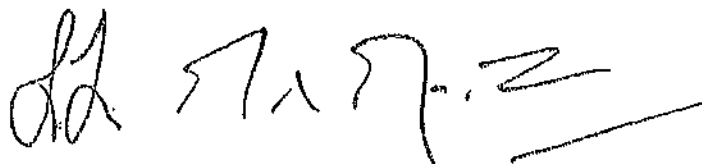
54 The First Administrators resigned on 17 September 2001 and, Mark Korda and I were appointed as voluntary administrators in their stead at about 6.00pm that day.

BACKGROUND TO NEGOTIATIONS WITH AIR NEW ZEALAND

55 Prior to the appointment of Mark Korda and myself as Voluntary Administrators of the Ansett Group on 17 September 2001, the first Administrators had instructed solicitors to make demand upon Air New Zealand to make further advances of the balance of AUD \$400 million namely AUD \$380 million under the Letter of Comfort dated 8 August 2001 (the "Letter of Comfort") failing which the previous Administrators intended to commence legal proceedings against Air New Zealand. (Air New Zealand had paid AUD \$20 million to the First Administrators for wages).

56 Before deciding whether to pursue a litigation strategy against Air New Zealand, I made enquiries of other Andersen personnel in New Zealand to obtain a general financial background to Air New Zealand.

57 Based on those enquiries and the rapidly deteriorating share price of Air New Zealand shares following Air New Zealand's NZ\$1.2 billion write-off of its Ansett investment, Mark Korda and I decided that it may be counter productive for us to issue legal proceedings seeking hundreds of millions of dollars from Air New Zealand at a time when it was financially distressed.



We were concerned that to do so, may lead to Air New Zealand being placed into an insolvency administration under New Zealand law thereby "killing off" any prospect of a "cash" settlement from Air New Zealand. We also formed the preliminary view that Air New Zealand could only survive if it could "disentangle" itself from Ansett quickly.

58 Mark Korda and I realised that the Ansett Group also needed to resume flying (Ansett Kick-Start) and required cash to do so, as well as develop a longer term strategy "Ansett Mark II".

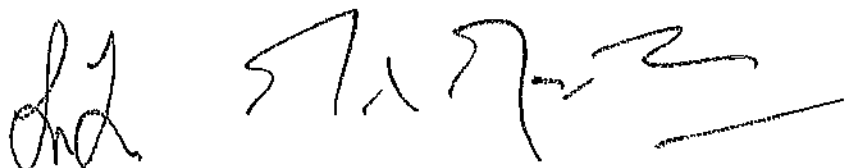
59 In all the circumstances, we concluded that if we could negotiate a speedy commercial settlement of the Ansett Group claims against Air New Zealand under the Letter of Comfort, Ansett had the best chance of remaining in existence or if it could not, maximising the return to creditors.

IDENTIFICATION OF CLAIMS AGAINST AIR NEW ZEALAND

60 Prior to commencing any discussions with Air New Zealand, I instructed the Administrators' lawyer, Leon Zwier of Arnold Bloch Leibler, to identify in a vacuum the broad types of theoretical claims that the Ansett Group may have against Air New Zealand or its directors. We appreciated that if there was to be a disentanglement we had to understand some of the theoretical legal issues.

61 Mark Korda and I were advised by Leon Zwier that:

- (a) the Ansett Group had claims against Air New Zealand arising out of the Letter of Comfort;




(b) the Directors of Ansett (who were at all relevant times also directors of Air New Zealand) may theoretically have breached their duties to the Ansett Group either for:

- (i) failing to exercise the requisite degree of care and diligence (Section 180 of the Corporations Act); or
- (ii) failing to act in good faith in the best interests of the Ansett Group and for a proper purpose (Section 181 of the Corporations Act); or
- (iii) having acted negligently or recklessly;

(c) because the Ansett Group was managed out of New Zealand by Air New Zealand, Air New Zealand itself may be deemed to be a director of the Ansett Group pursuant to the extended definition of a director in Section 9 of the Corporations Act;

(d) the directors may have breached the provisions of the Trade Practices Act 1974 (Cth) concerning misleading and deceptive conduct;

(e) if the Ansett Group is placed into liquidation, other claims may arise against directors for insolvent trading (Section 588G of the Corporations Act) and against Air New Zealand as the Ansett Group's ultimate holding company (Section 588V of the Corporations Act).



62 Mark Korda and I were advised that until all of our investigations into the business, property and financial circumstances of the Ansett Group are completed, it was not possible to obtain detailed advice in relation to the theoretical claims referred to above, apart from claims arising out of the Letter of Comfort and even then our instructions were limited.

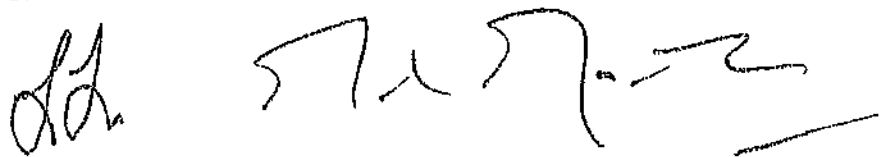
63 On 26 September 2001, Arnold Bloch Leibler provided written advice to Mark Korda and me about our prospects of successfully prosecuting proceedings against Air New Zealand based on the Letter of Comfort.

Now produced and shown to me and marked with the letters "MFXM11" is a copy of that written advice. I humbly request this exhibit be kept confidential as it is privileged and contains commercially sensitive information ("the ABL letter of advice").

64 I also instructed Leon Zwier to obtain Australian Senior Counsel's opinion directed to the ABL letter of advice. I have been told by Leon Zwier that Australian Senior Counsel has advised that he agrees with the legal opinions expressed in the ABL letter of advice.

65 I also instructed Leon Zwier to obtain initially oral, and subsequently written, advice from Senior Counsel in New Zealand about our prospects of successfully prosecuting proceedings against Air New Zealand based on the Letter of Comfort. (I did so because the Letter of Comfort is said to be governed by the laws of New Zealand).

Now produced and shown to me and marked with the letters "MFXM12" is a copy of a letter of advice of New Zealand Senior Counsel dated 5 October

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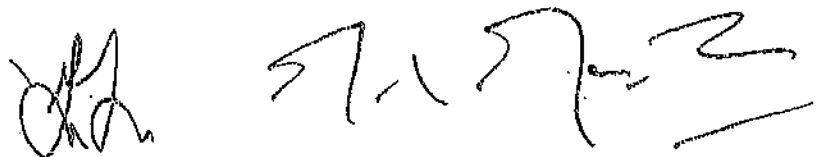
2001. I humbly request that this exhibit be kept confidential as it is privileged and contains commercially sensitive information.

INITIAL DISCUSSIONS WITH AIR NEW ZEALAND

- 66 Shortly after our appointment, I met with members of the Air New Zealand board to initially arrange access to the Ansett Group's books and records which were located in New Zealand.
- 67 On Friday, 22 September 2001, Jim Farmer, the Acting Chairman of Air New Zealand, called me and suggested that it may be useful if Mark Korda and I met with some of the Air New Zealand Board to discuss a number of pressing issues. I agreed that we should all do so on Sunday 24 September 2001. Jim Farmer asked me to keep the fact of our proposed meeting confidential to us and our legal advisors, as Jim Farmer said he was concerned that if his trip to Melbourne to meet us was publicised it would attract media interest and potential disputation. Accordingly the meeting was arranged to take place at the offices of Arnold Bloch Leibler (as opposed to the Ansett premises) and apart from Air New Zealand parties, and those told of it by the Air New Zealand parties, only Mark Korda, Leon Zwier and I knew of it. Jim Farmer also suggested that a representative of Singapore Airlines ("S.I.A.") should be invited to observe the meeting. I readily agreed to this.

S.I.A. BACKGROUND

- 68 Mark Korda and I were aware from our investigations into Air New Zealand that S.I.A. was a 29% owner of Air New Zealand and Brierley a 30% owner of Air New Zealand, each with representatives on the Board of Ansett Group

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and Air New Zealand. Mark Korda and I had also formed the view that if Ansett Mark II is to be developed, it must be managed by a leading airline operator. S.I.A. is one of the world's leading airline operators. S.I.A. is also a Star Alliance partner. An S.I.A./Ansett relationship may also lead to increased load out through-put of passengers to Ansett (interlining). We also knew from our investigations that S.I.A. (and Brierley) was in the process of undertaking a "due diligence" examination of Air New Zealand before deciding on whether to inject further capital (with the New Zealand Government) into Air New Zealand. Without a capital injection, there was no prospect of Air New Zealand paying 'cash' to Ansett pursuant to the Letter of Comfort. We also could not envisage circumstances by which any investor, let alone S.I.A., would inject capital into Air New Zealand whilst Air New Zealand was at risk of large and significant liability to the Ansett Group arising out of the Letter of Comfort, and the other potential claims described above.

THE SUNDAY 23 SEPTEMBER 2001 MEETING ("SUNDAY MEETING")

69 On Sunday 23 September 2001, Mark Korda, Leon Zwier and I met with:

- (a) Jim Farmer, Acting Chairman, Air New Zealand;
- (b) John Waller, PriceWaterhouseCoopers, Air New Zealand's advisor;
- (c) Allan Galbraith Q.C., Air New Zealand legal advisor;
- (d) Roger France, Air New Zealand financial advisor; and
- (e) Mark Swee Wah, S.I.A observer.

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 [Signature] [Signature] [Signature]

at the offices of Arnold Bloch Leibler.

70 We agreed at the outset that Sunday's meeting was a "without prejudice" meeting.

71 Mark Korda and I suggested that the following items should be dealt with in the agenda for the meeting:

- (a) Full and final settlement;
- (b) Background to Air New Zealand;
- (c) ASIC;
- (d) Management support:
 - (i) S.I.A.
 - (ii) Air New Zealand;
- (e) Realisation of Assets;
- (f) Ansett transfers – Air New Zealand and Ansett;
- (g) Tender Arrangements – Preferred Alliance;
- (h) Use of Systems and Records;
- (i) Process and Legal Issues;
- (j) Proposal.

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72 During the course of the "without prejudice" meeting Mark Korda, Leon Zwier and I were told by the Air New Zealand Group the following statements of fact:

- (a) Air New Zealand had 13 directors, 6 of whom are independent of the New Zealand Government, S.I.A. and Brierley;
- (b) The Ansett Group had been losing money at a rate of AUD \$1.3 million EBIT for each day of operation prior to the administration;
- (c) The Ansett Group had jeopardised the ongoing financial security and viability of Air New Zealand;
- (d) Air New Zealand's debt to equity ratio was 87% (and increasing);
- (e) Prior to the Ansett Group write-off, Air New Zealand had assets of \$4 billion and liabilities of \$2.1 billion;
- (f) Air New Zealand is too highly geared and cannot survive without a capital injection;
- (g) Air New Zealand cannot expect any capital injection unless it can resolve its position with the Ansett Group;
- (h) Air New Zealand's banking syndicate is made up of seven bankers including the National Australia Bank ("NAB"), HongKong Shanghai Bank ("HSB"), Bank of New Zealand ("BNZ") and others (the "NZ Banking Syndicate");

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- (i) The NZ Banking Syndicate is a negative pledge lender to Air New Zealand, and is closely monitoring the financial position of Air New Zealand;
- (j) The Air New Zealand Group have NZ\$500 million on deposit, however, it has financial obligations and budgeted losses that will entirely erode its cash on hand;
- (k) The New Zealand Government may consider, if satisfied with a business plan, lending money to Air New Zealand as a lender of last resort at a coupon rate of 9% (that is, 9% above the Bank interest rate);
- (l) Air New Zealand cannot afford to borrow money from the New Zealand Government at that coupon rate;
- (m) Unless Air New Zealand could make significant progress to settle its disputes with Ansett by 3.00pm that day, (5.00pm New Zealand time) the directors of Air New Zealand would apply to the New Zealand Government to appoint a statutory manager that day;
- (n) If Air New Zealand is placed into statutory management Ansett will not recover any money from Air New Zealand arising out of the Letter of Comfort claims;
- (o) Unless the Air New Zealand Group honestly believed that a settlement with the Administrators was likely and that was a reasonable view to hold, they would support placing Air New

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Zealand into statutory management because there was a "substantial risk of loss to creditors" of Air New Zealand;

- (p) S.I.A. will not assist in the management of Ansett Group unless and until the disputes between Air New Zealand and Ansett are resolved;
- (q) S.I.A. will only assist in the management of the Ansett Group if all the stakeholders want and invite S.I.A. to do so and then only at S.I.A.'s discretion.

73 We discussed the commercial issues at length.

74 Jim Farmer at all times denied that the Board of Air New Zealand had ever acted:

- (a) other than with a reasonable degree of care and diligence;
- (b) dishonestly; or
- (c) recklessly.

Jim Farmer also said that he and his board would fully co-operate with ASIC in relation to any of its or the Administrator's investigations as he and the other board members had nothing to fear.

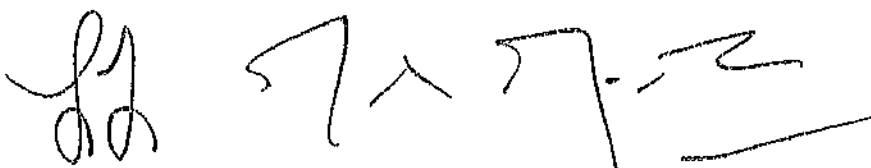
75 I told the Air New Zealand Group that the Voluntary Administrators favoured a commercial resolution of the issues, if it was at all possible to do so. Any such settlement would require the involvement of stakeholders (ASIC, the Commonwealth Government, the Priority Creditors) and based on Leon

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Zwier's advice in all the circumstances, it had to be the subject to the Court's supervision.

76 Mark Korda and I were asked to and did provide to the Air New Zealand Group a general overview of "Ansett Mark II". I said that all of the liabilities incurred prior to the commencement of the voluntary administration of the Ansett Group were "frozen" and that we could hive down (transfer) into a new wholly owned subsidiary of the Ansett Group the key assets required for the operation of a new airline, including the Airline Operating Certificate ("AOC") subject to CASA approval, airplane leases, landing rights, terminals and transfer employees (subject to resolving their claim to entitlements) and introduce capital to establish a new properly capitalised and well structured airline. However, Mark Korda and I said that it would require a recognised airline company to operate it, a significant capital injection to ensure financial strength, a reinstatement of the Star Alliance to preserve goodwill and interlining relationship, with S.I.A. and Air New Zealand. (We have been informed by the Victorian Premier's Office that the New Zealand tourist market is an important market to Australia in general and to Victoria in particular). In essence we summarised the earlier description of Ansett Mark II.

77 Mark Korda and I both acknowledged that the model for Ansett Mark II had to be "stress" tested by airline operators. Mark Korda and I both emphasised the urgent need for significant injection of cash to enable Ansett to commence Kick-Start.

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THE INITIAL SETTLEMENT PROPOSAL

78 Shortly after lunch, Roger France and John Waller commenced outlining the initial Air New Zealand offer. Before discussing dollars, they reiterated that Air New Zealand was in severe financial difficulty.

79 John Waller then explained that Air New Zealand's Letter of Comfort was not intended to and could never be treated as a "letter of credit" with a cap of AUD \$400 million. John Waller also said that Air New Zealand should be treated as having paid or credited as paid the following sums from any possible liability under the Letter of Comfort, namely:

- | | AUD |
|--|-------|
| (a) Wages paid by Air New Zealand to the Ansett Group
post administration (subject to a priority) (the first \$20m
of which had already been paid to the first Administrators) | \$32M |
| (b) payments arising out of Air New Zealand guarantee of
an Ansett A320 Airbus tax liability | \$9M |
| (c) payments arising out of Ansett International Air Landing
slots at Narita Airport Japan | \$32M |
| (d) payments made to a US subsidiary of the Ansett Group
concerning spare parts (Transpacific Inc - US\$14m) | \$30M |

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(e) balance of the Ansett/Air New Zealand loan account \$81M
 ie. debts due by Ansett Group to Air New Zealand

Total \$184M

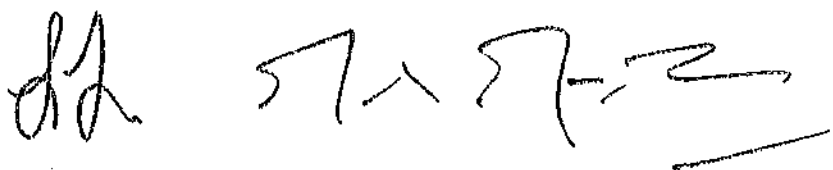
- 80 John Waller said that the maximum amount due by the Air New Zealand Group to the Ansett Group arising out of the Letter of Comfort was therefore AUD \$216 million. Mark Korda, and I each disputed this but "agreed to disagree" to encourage John Waller and Roger France to continue with their proposal.
- 81 At about 7.00pm Roger France came to our meeting room and told us that after much caucusing, Air New Zealand offered to pay a cash component of AUD \$150 million and no more. Roger France said the Air New Zealand Banking Syndicate will not allow a greater sum to be paid to the Ansett Group. Roger France also said that if we pushed for more money, the Air New Zealand Group would collapse.
- 82 Mark Korda, Leon Zwier and I then discussed the proposal in detail. We weighed up the advantages and disadvantages one last time and Mark Korda and I concluded that the whole proposal including a cash component of AUD \$150 million should be accepted subject to the previous conditions. We conveyed this to the Air New Zealand Group at about 7.30pm.
- 83 Alan Galbraith QC requested Leon Zwier to commence preparation of the documentation to record the agreement in principle as soon as possible, which Leon Zwier agreed to do.

84 The lawyers also discussed the making of this application. Leon Zwier specifically asked the Air New Zealand representatives to give consideration to the preparation of material in support of this application. Leon Zwier requested the Air New Zealand lawyers to commence the preparation of affidavits which will deal with the following issues:

- (a) Air New Zealand's precarious financial position;
- (b) Air New Zealand will not, but for the settlement with the Ansett Group, remain as a going concern;
- (c) detailed particulars of all of the amounts claimed by Air New Zealand to be offset against any liabilities arising under the Letter of Comfort;
- (d) Senior Counsel's advice in relation to the prospects of Air New Zealand successfully defending a claim brought against it under the Letter of Comfort;
- (e) Air New Zealand's cash offer was the maximum amount it could pay.

85 Leon Zwier also requested the Air New Zealand Group to set out in their affidavit the estimate of value of the intangible benefits of the settlement.

86 Mark Korda, Leon Zwier and I remained at the office of Arnold Bloch Leibler for a few hours further to commence setting out the general terms and conditions in a memorandum of understanding which ultimately is encapsulated in the Memorandum of Understanding.

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NO DELAYS IN BRINGING MATTER TO FINALITY

87 Mark Korda, Leon Zwier and I have been working steadfastly since Sunday, 22 September 2001 to bring this settlement to finality. However, we have all been engaged in other pressing activities which may have caused some delay.

STAKEHOLDER ISSUES

88 Leon Zwier and Ross Patterson, another partner of Arnold Bloch Leibler commenced drafting the Memorandum of Understanding.

89 Between 24 September 2001 and 2 October 2001, Mark Korda and I commenced informing key stakeholders, including the Commonwealth Government and the priority creditors of the proposed terms of the Memorandum of Understanding.

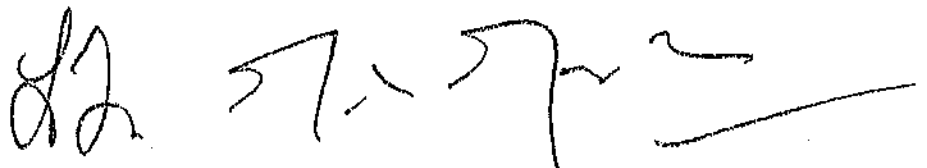
90 The Memorandum of Understanding was drafted and redrafted on numerous occasions. Each modification of and redraft to the Memorandum of Understanding required all interested parties, in addition to stakeholders, to express their views. The process of reaching final settlement has been cumbersome and not made any easier by the large number of legal, financial and insolvency advisors for the various interested parties and stakeholders. At one point I explained to the Air New Zealand solicitors that each word change takes at least one hour to negotiate with stakeholders.

91 I am told by Leon Zwier that throughout the process, the Air New Zealand solicitors stated that time was of the essence and in the absence of bringing this matter to a speedy resolution, Air New Zealand may yet collapse.

dh 57-8 57-72

Leaving aside the obvious pressures that this created, it also created a fear for Mark Korda and me that if we are to receive any payment from Air New Zealand and Air New Zealand should become insolvent, we may be required to disgorge that payment as a preference. Accordingly, Mark Korda and I were not prepared to settle the disputes with Air New Zealand without the payment emanating from the New Zealand Government in a form to be agreed, or alternatively, without appropriate indemnity to us from the New Zealand Government. This additional request also took time to negotiate. When initially Air New Zealand solicitors said to Leon Zwier that the New Zealand Government would not provide such comfort, Mark Korda and I threatened to "walk away" from the settlement. Had it not been forthcoming we would have done so. Fundamentally we are compromising the Letter of Comfort claims because we genuinely believe that if we do not, Ansett may not recover any money from Air New Zealand because Air New Zealand will collapse. The Government indemnity is therefore a vital part of the transaction.

- 92 Air New Zealand also insisted that certain Unions that had commenced industrial relations claims against them should withdraw and terminate those claims before we complete with the Memorandum of Understanding. This required direct discussions between Air New Zealand and the Union's solicitor.
- 93 We also dealt with representatives of S.I.A. to obtain mutually agreeable statements of intent from S.I.A..

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- 94 By very late 3 October 2001, all issues of principle between the parties and stakeholders and all drafting issues had been resolved.

Now produced and shown to me and marked "MFXM13" are copies of letters from the Honourable Dr Michael Cullen, Treasurer, Minister of Finance and Minister of Revenue to Mark Korda and me dated 3 October and 4 October 2001 together with Power of Attorney dated 22 July 1997.

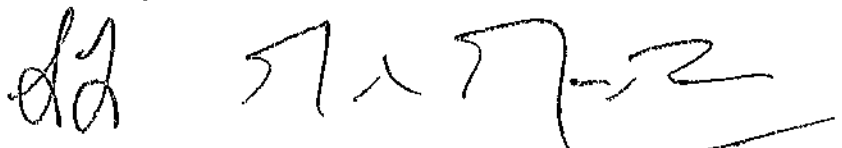
Now produced and shown to me and marked "MFXM14" is a copy of a letter from the ACTU to the Voluntary Administrators dated 3 October 2001, setting out the ACTU's conditional consent to the Memorandum of Understanding.

Now produced and shown to me and marked "MFXM15" is a copy of a letter from Maurice Blackman Cashman to Bell Gully dated 3 October 2001 withdrawing the Union industrial relations claim against Air New Zealand.

ASIC

- 95 On Thursday morning, 4 October 2001, Leon Zwier and I met with the directors of ASIC and provided ASIC with a copy of then most recent draft of the Memorandum of Understanding and a general background to its terms. I stressed that the Memorandum of Understanding could not and does not in any way limit or affect ASIC's rights. I did point out that it was proposed that the Ansett Group's claims in relation to the Letter of Comfort would be finally resolved by the Memorandum of Understanding.

- 96 I also informed ASIC that the Memorandum of Understanding does not (and could never) limit the Voluntary Administrator's investigatory powers under

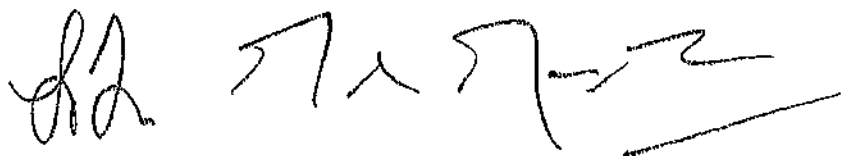
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Section 438D of the Corporations Act. Mark Korda and I are required to report to ASIC any breaches of the Corporations Act should we discover them. To date, we have not done so. However, our investigations are of a preliminary nature. ASIC indicated that it would consider its position further. Leon Zwier informed ASIC of our intention to issue this Application on Friday, 5 October 2001 and to mention the matter to the Court in the afternoon. Leon Zwier also informed ASIC that a meeting of the Committees of Creditors would take place in the afternoon of 4 October 2001, and that the Committees could also be informed of the Memorandum of Understanding.

- 97 I also informed ASIC that despite rumours of wrong doing by the Air New Zealand Group and the directors, I have not presently found any evidence of it.

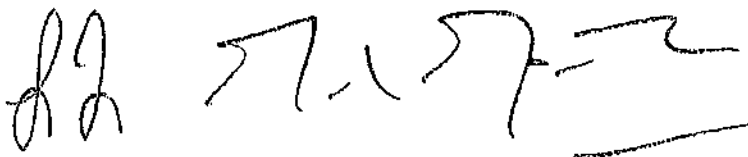
COMMITTEE OF CREDITORS

- 98 On 4 October 2001, I convened an urgent meeting of the Committees of Creditors to take place concurrently at the office of the Ansett Group at 501 Swanton Street, Melbourne or by telephone link from Canberra and Sydney from Andersens offices in those cities.
- 99 As stated above, the Committees of Creditors were intended to and met as one concurrent meeting.
- 100 There are 32 different members in total of all the Committees of Creditors. Only 30 of them were present at the meeting which took place at 4.00pm on 4 October 2001. Two members were unable to attend and apologised. Air

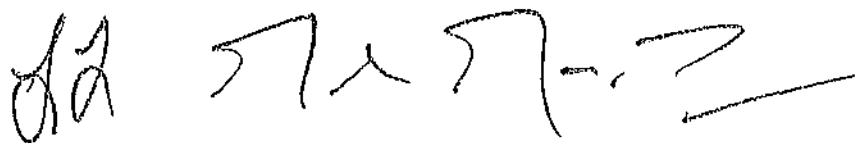


New Zealand, one of them, thought it was inappropriate to attend. I also apprehended a potential conflict of interest if Qantas remained, so I asked the Qantas representatives to absent himself from that meeting.

101 I commenced the meeting by explaining the general commercial background to the Memorandum of Understanding. Initially many members of the Committee were not happy about the short notice of the meeting and their inability to obtain advice about the terms of the Memorandum of Understanding. Leon Zwier, at my request, explained to them the purpose and functions of the Committees. The Committees were intended to receive reports from time to time from the Voluntary Administrators and consult with the Voluntary Administrators. The Committees cannot give us directions, other than to request a report. Leon Zwier also confirmed that all Committee Members would be served with this application, and affidavits in support and that any creditor or any member of the Committees may attend the Court hearing and express their dissatisfaction with the terms of the Memorandum of Understanding if they wished to do so. Leon Zwier also explained that the Voluntary Administrators were under an obligation by the Memorandum of Understanding to convene the Committees of Creditors meeting as soon as practicable, hence the short notice, and in any event the Voluntary Administrators desired to give the Committees as much notice as possible of the terms of the Memorandum of Understanding particularly given that the Air New Zealand solicitors had told him that it was likely that the Memorandum of Understanding would become a "public document" the following day.



- 102 I told the Committees that they should not be concerned about the short notice, that they could consent to the terms of the orders now being sought, not oppose the orders now being sought, or oppose the making of the orders and that irrespective of how a member might vote now, the creditors' rights to appear at the hearing would be unaffected and unfettered. I also told the Committees that a member may refrain from voting if that member chose to do so.
- 103 A number of the Committee members said that they had to report to others in the organisation before they could vote one way or another and therefore were unhappy with the short notice and would be unable to vote. Leon Zwier said that these matters will all be brought to the attention of the Court and stressed that the members of the Committee could refrain from voting if they wished to do so.
- 104 Leon Zwier handed out a copy of the Memorandum of Understanding to all members of the Committees who were present in Melbourne. I arranged for copies to be circulated in the other States and Canberra, save that those copies did not have the execution pages and schedules of parties. Leon Zwier then explained to the Committees the meaning and operation of each clause in the Memorandum of Understanding, answering questions that were raised from time to time.
- 105 At the conclusion of the explanation, I invited the Committees to ask questions. Mark Korda, Leon Zwier and I, answered them. Mark Korda and I when asked directly about whether or not we recommended the terms of the Memorandum of Understanding to Creditors, both said that we did so for



the reasons set out in this affidavit. We also said that it is our belief that the Memorandum of Understanding is the best commercial result that can be achieved with Air New Zealand in the present circumstances. I expressed my concerns about compromising, in a limited way, claims against the directors of the Air New Zealand Group and the Ansett Group without any investigation. However, I stressed that the rights and powers of ASIC were unaffected and that the directors were required to give broad warranties, which if breached, makes the conditional releases inoperative.

- 106 I proposed that the Committees pass a resolution that the Committees of Creditors not oppose the orders being sought in this application. Such a resolution satisfies the condition precedent clause 6.2 of the Memorandum of Understanding. The resolution was carried without any creditor voting against it. 24 of the persons present voted in favour of that resolution. 4 abstained from voting.

Now produced and shown to me and marked "MFXM16" is a copy of the Minutes of the Committees of Creditors meeting and marked with the letters "MFXM17" is a copy of the resolution that was passed.

EXECUTION OF MEMORANDUM OF UNDERSTANDING

- 107 About midnight in Melbourne Australia on 4 October 2001 I executed the Memorandum of Understanding on behalf of Mark Korda and me and the Ansett Group. In the early hours of the morning of 5 October 2001 in New Zealand (which is 2 hours ahead of Australian Eastern Standard Time) I am told by Leon Zwier that the Air New Zealand Group did likewise.

HAZELTON VOLUNTARY ADMINISTRATOR

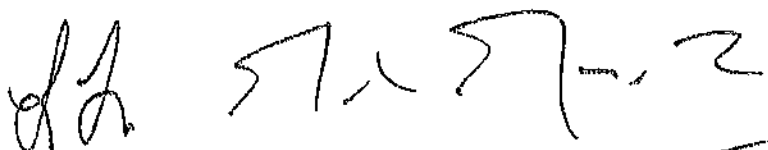
108 Unfortunately due to the haste with which Mark Korda, Leon Zwier and I had been working on this matter, we had overlooked bringing Michael Humphris into the settlement negotiations. This mean that Michael Humphris was at first unable to agree to the terms of the Memorandum of Understanding without a full briefing. Leon Zwier apologised to him for this oversight during the Committees of Creditors Meeting. Michael Humphris as the Voluntary Administrator of the Hazelton companies and I have now agreed to seek to resolve how the settlement proceeds from New Zealand will be applied (if this application is successful) across the Ansett Group, and we both agree that if it cannot be resolved this is a matter which may be determined by the Court. We also agreed that a statement should be made to the Court in agreed form at the first mentioned date. This statement was read last Friday 5 October 2001.

Now produced and shown to me and marked "MFXM18" is a copy of the transcript of the hearing on 5 October 2001.

109 Michael Humphris has now signed the Memorandum of Understanding on his own behalf and on behalf of the Hazelton companies.

NEW ZEALAND GOVERNMENT

110 The New Zealand Government has now agreed to make the payment to us in accordance with clause 9 of the Memorandum of Understanding and thereby satisfied the third condition of the conditions precedent to the Memorandum of Understanding. However this approval is conditional upon

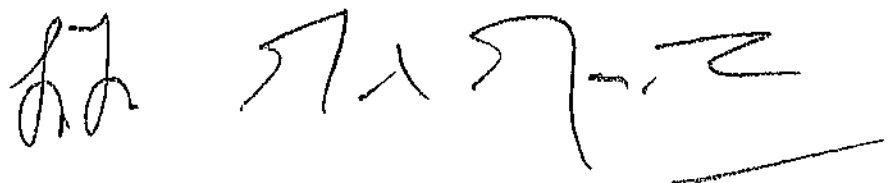
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this Court making the orders and directions contemplated in clause 6.1 of the Memorandum of Understanding by 12 October 2001. I do not believe that there is any real prospect of extending this date.

- 111 The New Zealand Government has also provided a letter of undertaking thereby satisfying the fourth condition precedent. The only condition precedent unfulfilled relates to this Application.

MEMORANDUM OF UNDERSTANDING

- 112 Set out below is a very general summary of how the Memorandum of Understanding operates. However, I would strongly recommend to all stakeholders to take the time to read each and every one of the clauses of the Memorandum of Understanding.
- 113 The Memorandum of Understanding provides a basis for the compromise of certain claims which the Ansett Group has or may have against the Air New Zealand Group and the Directors of the Air New Zealand Group and the Ansett Group. Under the Memorandum of Understanding, the Ansett Group will receive from the Air New Zealand Government a significant payment of funds which it might not be able to recover from the Air New Zealand Group itself. The settlement of the relevant claims or potential claims of the Ansett Group ensures the recovery of significant funds without recourse to lengthy costly and uncertain litigation and without the danger that those funds might subsequently be "clawed back" if the Air New Zealand Group subsequently goes into liquidation or a similar insolvency regime.



114 The principal terms of the Memorandum of Understanding can be summarised as follows:

- (a) Air New Zealand Group will procure the New Zealand Government to immediately pay, on behalf of the Air New Zealand Group, to Ansett AUD \$150 million net of all New Zealand taxes, in a way whereby the payment will not have to be disgorged should the Air New Zealand Group go into liquidation or a similar insolvency regime.
- (b) Air New Zealand Group and the Directors will not prove in the Administration or liquidation of the Ansett Group and will waive all entitlements to be repaid funds advanced, outstanding trade debts or any other money owed to it by the Ansett Group currently estimated to be AUD \$160 million.
- (c) The Air New Zealand Group and the Directors will also release the Ansett Group, the Administrators and the Voluntary Administrator of the Hazelton Group from all claims whatsoever (other than in relation to the return of aircraft assets and documents belonging to the Air New Zealand Group).
- (d) In return for the matters outlined above, the Administrators of the Ansett Group and the Administrator of the Hazelton Group will conditionally release the Air New Zealand Group, the Air New Zealand Group Directors and the Ansett Group Directors from certain potential legal claims in relation to the management or affairs of the Ansett Group and other matters (other than in relation

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to the return of aircraft assets and documents belonging to the Ansett Group). However the conditional releases are not limited to claims in relation to a Letter of Comfort from Air New Zealand to Ansett dated 8 August 2001, negligence claims and Trade Practices Act claims (misleading and deceptive conduct but includes other claims). However, the releases do not cover:

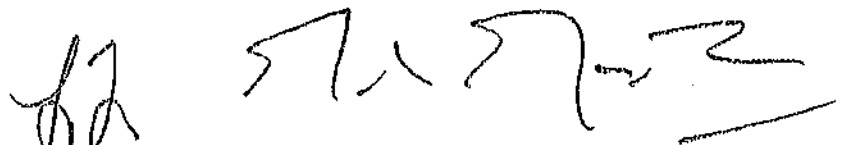
- (i) Failure by the Air New Zealand Group or the Directors to exercise their powers and discharge their duties in good faith in the best interests of the Ansett Group and for a proper purpose (within the meaning of Section 181 of the Corporations Act) or reckless conduct or improper use of position; and
- (ii) Insolvent trading type claims against the Directors, the Air New Zealand Group as "holding company" if the Ansett Group is placed into liquidation (Sections 588M and 588V of the Corporations Act);

Moreover, as a result of the warranties given by the directors, if I have been misled about say, the financial position of Air New Zealand, the conditional release becomes inoperative.

- (e) The releases will also not prevent the Voluntary Administrators from bringing any action against auditors or other advisers to the Ansett Group (not including the Directors of Air New Zealand or the Ansett Group).

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- (f) The Memorandum of Understanding also does not affect any current or future investigations or legal claims against Air New Zealand or its Directors by the Australian Securities and Investment Commission ("**ASIC**").
- (g) The parties to the Memorandum of Understanding are the Ansett Group (represented by the Administrators), Michael Humphris as the Voluntary Administrator of the Hazelton Group, the Air New Zealand Group and the Directors and former Directors of the Ansett Group and the Air New Zealand Group. Creditors are not a party to the Memorandum of Understanding.
- (h) The Memorandum of Understanding is conditional upon:
- (i) The Federal Court of Australia approving the terms of the Memorandum of Understanding or making Orders or Directions to the same effect on or before 12 October 2001 or such other date as all the parties agree;
 - (ii) The consent or non-opposition of the Committee of Creditors being obtained on or before 5 October 2001;
 - (iii) Approval by the end of 3 October 2001 by the New Zealand Government of an Agreement providing for the New Zealand Government's payment of the AUD \$150 million;
 - (iv) Provision to the Voluntary Administrators of an indemnity from the New Zealand Government to cover



any requirement for any of the Voluntary Administrators to repay or otherwise disgorge all or any part of the payment of the AUD \$150 million.

The last three of the above conditions precedent have already been satisfied.

- (i) Finally, the Voluntary Administrators are required to use their best endeavours to ensure that the priority creditors are paid all their entitlements in full.

115 Specifically Clause 13 of the Memorandum of Understanding does conditionally release directors from the following claims:

"Claims and demands arising out of and/or relating directly or indirectly to:

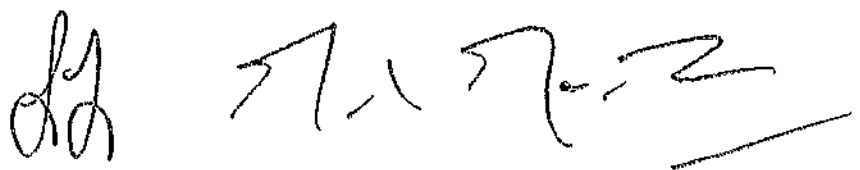
- (a) the management or affairs of the Ansett Group;
- (b) any claims arising at common law, in equity or pursuant to statute including but not limited to the Corporations Act, the Corporations Law and the Trade Practices Act;
- (c) any claims arising in the administration of the Ansett Group;
- (d) any transactions or dealings between any company in the Ansett Group and any company in the Air New Zealand Group

in all cases whether or not any company in the Ansett Group or the Voluntary Administrators are presently aware of the existence of such action, claim or demand.

- 116 At the time of swearing this my affidavit I have not conducted any adequate investigation of those claims. Although in the limited investigations to date, Mark Korda and I are not aware of any wrongdoing by the directors. In these circumstances Mark Korda and I have balanced the competing advantages and disadvantages of the proposed settlement. We believe that on balance particularly have regard to Air New Zealand's financial position, it is in all creditors interests to perform the terms of the Memorandum of Understanding.
- 117 There are however safeguards in the Memorandum of Understanding that have helped us in the balancing exercises. For example, all of ASIC's rights are unfettered. ASIC in its own right or in the name of the Ansett Group may sue the directors for conduct referred to in clause 13. Moreover, all of our investigative powers are unfettered. In addition, the directors have warranted that they have not acted other than in good faith within the meaning of Section 181 of the Corporations Act and that they have not acted dishonestly within the meaning of Section 184 of the Corporations Act and that they have not acted recklessly, where reckless is defined to mean acting or not acting without regard to consequences. If these warranties are materially incorrect, the conditional release is inoperative.

BENEFITS TO ANSETT KICK-START OF SETTLEMENT

- 118 The proposed settlement with Air New Zealand Group will provide a much needed cash injection to enable Ansett Kick-Start to continue. But for that cash injection Mark Korda and I may be compelled to enter into an agreement to sell the Ansett mainline business or other businesses as



quickly as possible without fully exploring the possibility of enhancing their values before doing so. Of course, Mark Korda and I have advertised the businesses for sale because we cannot continue operations without a significant capital injection. If this Honourable Court is unable to make orders or directions then the opportunities to develop a larger phased operation for resale or recapitalisation may be lost.

BENEFITS TO ANSETT MARK II OF SETTLEMENT

- 119 Ansett Mark II may take some time to develop. In these circumstances and given the expenses that the Administrators are incurring as Voluntary Administrators, coupled with the trading losses, it is critically important to receive the cash settlement payable pursuant to the terms of the Memorandum of Understanding as soon as possible. If we are unable to obtain this cash settlement, it is unlikely that we can fully develop Ansett Mark II which may force a fire sale of the assets of the Ansett Group. (I expect that some of the present interested parties will understand this commercial reality).
- 120 As a matter of commercial prudence, we have been compelled to advertise the sale of Ansett Australia and have attracted the interest of five serious parties. Now produced and shown to me and marked "MFXM18A" is a true copy of the Presentation prepared by Andersens in relation to the sale of Ansett assets. I humbly request that this exhibit be kept confidential.
- 121 Ansett Mark II has a real prospect of not only enhancing the value for the Ansett Group assets, but will minimise claims to be made in the administration by potentially creating employment for 5,000-8,000 employees depending

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upon the financial model and the (to be negotiated) terms and conditions of employment.

122 Mark Korda and I are genuinely concerned that if we are unable to obtain the Air New Zealand settlement, we will lose the confidence and support of aircraft lessors, interested airline operators, government and union and non-union employees. Fragmentation of interest may lead to a liquidation of the Ansett assets.

123 The proposed AUD \$150 million cash payment is therefore fundamental to our longer term goal.

124 If Mark Korda and I are unable to satisfy the conditions precedent to the Memorandum of Understanding then we will have little choice but to pursue the sale process and not a recapitalisation or combination of recapitalisation and/or sale.

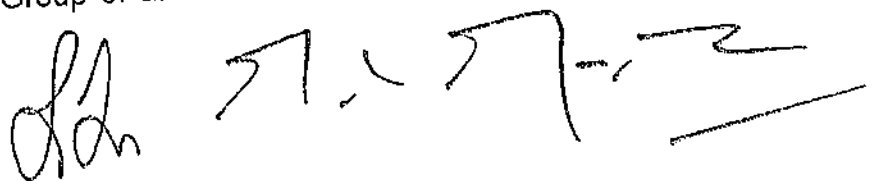
ADVANTAGES OF MEMORANDUM OF UNDERSTANDING TO ANSETT

125 Set out below are the advantages of the Memorandum of Understanding to the Ansett Group and its stakeholders:

- (a) Even if Ansett Kick-Start ceases and Ansett Mark II does not eventuate, the recovery of AUD \$150 million from Air New Zealand in circumstances where it would otherwise be placed into an insolvency administration and pay nothing to Ansett Group is the overriding commercial advantage of the Memorandum of Understanding. Moreover, the New Zealand Government is paying

the money and has indemnified it against any possible disgorgement;

- (b) The immediate injection of AUD \$150 million will provide funding of the Ansett Kick-Start trading losses and longer term assist in the creation of Ansett Mark II;
- (c) If the Ansett Group assets can be sold as a going concern, as opposed to a liquidation of the constituent parts, it will achieve a better realisation price for all stakeholders;
- (d) Ansett Mark II may provide employment for between 5000 and 8000 of the present employees. This continued employment will reduce priority payments to employees of an amount in excess of AUD \$235 million and create a greater window of opportunity for ordinary unsecured creditors;
- (e) If Air New Zealand has mislead me, then the Ansett Group rights are preserved and I have an opportunity for 60 days to examine the Air New Zealand Group, books and records;
- (f) The settlement opens the way for further discussion with S.I.A;
- (g) The payment by Air New Zealand of AUD \$32 million would rank to priority repayment but for the Memorandum of Understanding not to prove;
- (h) Air New Zealand's payment for the Narita slots may add value to the Ansett Group of an amount greater than AUD \$20 million (Air



New Zealand paid AUD \$32 million) for which Ansett will pay nothing;

- (i) The reduction of Air New Zealand's rights to prove (AUD \$160 - \$32 million) in the administration or liquidation of Ansett Group increases the likelihood and amount of a dividend for unsecured creditors;
- (j) Ongoing cooperation with Air New Zealand will assist the operations sale process and allow for further secondment of management;
- (k) Avoids the costs of litigation;
- (l) Avoids the vagaries of litigation;
- (m) ASIC's rights are preserved;
- (n) The directors releases are conditional upon the accuracy of statements about their conduct;

126 Set out below are my concerns about the Memorandum of Understanding:

- (a) I have not examined in any detail or at all whether the directors have breached their duty of due care and diligence or any of the other claims being conditionally released;
- (b) I am not satisfied that Air New Zealand is entitled to claim it has paid or ought to be credited for AUD \$160 million from its liability under the Letter of Comfort;

- (c) I do not know all the circumstances surrounding the giving of the Letter of Comfort;
- (d) I have not independently satisfied myself that of all of Air New Zealand's representations about its financial position are true;
- (e) I have not publicly examined any of the directors or advisors;
- (f) The settlement is predicated on the honesty of the Air New Zealand director's representations to us; and
- (g) It is always safer and prudent for an insolvency practitioner not to settle claims without a thorough investigation.

RECENT EVENTS

127 As set out above it is critical to attract S.I.A. to assist in the management of Ansett's future operations. I have previously requested time to meet with senior S.I.A. personnel to discuss this matter. On Friday 5 October 2001 I accepted a proposal that Mark Korda Leon Zwier and I meet with representatives of S.I.A. in Singapore on Saturday 6 October 2001. Accordingly, Mark Korda Leon Zwier and I flew to Singapore in the early hours of Saturday morning. Overnight we worked on the preparation of this Affidavit. We spent all afternoon with representatives of S.I.A. and have requested S.I.A. to provide consulting advice to us. S.I.A. has agreed to do so on confidential terms still to be finalised. Now produced and shown to me marked "MFXM19" is an S.I.A. Press Release to this effect.

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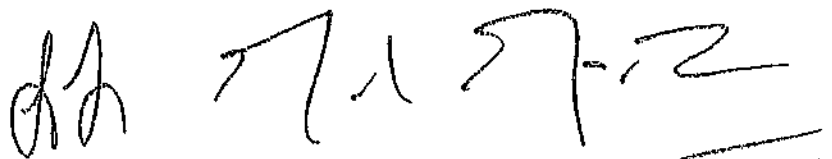
- 128 We concluded our discussions late on Saturday evening and worked on the preparation of this Affidavit on Sunday morning and during the plane trip to Melbourne. Unfortunately in the time available it has not been possible for us to examine the Board Minutes of Directors Meetings of Ansett Group to the extent those Minutes are available or, press articles from 1 March 2001 to the present time of and concerning Air New Zealand Group and Ansett Group in most Australian and New Zealand newspapers.

RECOMMENDATION

- 129 When balancing all of the advantages and disadvantages and having regard to the objects of Part 5.3A of the Corporations Act, namely to try and keep Ansett's business in existence if it is at all possible to do so, or if not, to maximise the return to creditors, I have no doubt it is in the interests of all Ansett stakeholders for this transaction to proceed. I am concerned that I am releasing claims that I have not fully investigated. However, in all the circumstances and subject to court direction to the contrary, I have done all I can do to ameliorate the risks involved and I believe this is the best commercial outcome for all creditors.

- 130 I presently intend to use the proceeds to meet the objectives of Part 5.3A of the Corporations Act notwithstanding that some interested parties may seek to limit the use of those funds if this settlement is performed. However I intend to deal with these issues more fully.

Now produced and shown to me and marked "MFXM20" is a copy of the letter dated 7 October 2001 from the Minister for Transport to Mark Korda

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and me. I humbly request that this letter be kept confidential. I have not had an opportunity to respond to it.

131 In the premises I humbly request orders and directions in accordance with the terms of the Application.

SWORN by MARK FRANCIS XAVIER
MENTHA at Melbourne in the State of
Victoria this 8th day of October 2001

Before me:




LEON ZWIER

Arnold Bloch Leibler
Level 21 333 Collins Street
Melbourne VIC 3000

A natural person who is a current practitioner
within the meaning of the Legal Practice Act
1996