

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

No. 2097 of 2003
F.5628

BETWEEN:

**ANSETT AUSTRALIA LIMITED (SUBJECT TO DEED OF COMPANY
ARRANGEMENT) (ACN 004 209 410)**

Plaintiff

-and-

FLIGHT CENTRE LIMITED (ACN 003 377 188) and Others
(According to the attached schedule)

Defendants

(by original proceeding)

AND BETWEEN:

FLIGHT CENTRE LIMITED (ACN 003 377 188) and Others
(According to the attached schedule)

Plaintiffs

-and-

**ANSETT AUSTRALIA LIMITED (SUBJECT TO DEED OF COMPANY
ARRANGEMENT) (ACN 004 209 410)**

Defendant

(by counterclaim)

REPLY AND DEFENCE TO COUNTERCLAIM

Date of document:
Filed on behalf of:
Prepared by:
Arnold Bloch Leibler
Lawyers and Advisers
333 Collins Street
Melbourne Victoria 3000

26 March 2004
The Plaintiff
Solicitors Code: 00054
DX: 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9925
Ref: LRT:JTV:1252417
(Leonie Thompson)

By way of reply and defence to the defendants' defence and counterclaim dated 4 March 2003 (sic), Ansett says as follows (with terms defined in the statement of claim having the same meanings when used herein):

REPLY

1. As to sub-paragraph 11(b):
 - (a) Subject to production of the PSAA at trial and reference to its full terms and effect, it admits the allegations in sub-paragraph 11(b)(i).
 - (b) Save that it says that sub-paragraph 15.1 of the PSAA refers to "transportation or other ancillary services provided by the Carrier pursuant to a sale made by the Agent hereunder", and subject to production of the PSAA at trial and reference to its full terms and effect, it admits the allegations in sub-paragraph 11(b)(ii).
 - (c) It does not admit the allegations in sub-paragraph 11(b)(iii).
 - (d) It denies each and every allegation in sub-paragraph 11(b)(iv).
 - (e) It denies each and every allegation in sub-paragraph 11(b)(v).
 - (f) It denies each and every allegation in sub-paragraph 11(b)(vi).
 - (g) It denies each and every allegation in sub-paragraph 11(b)(vii).
 - (h) It denies each and every allegation in sub-paragraph 11(b)(viii).
 - (i) It denies each and every allegation in sub-paragraph 11(b)(ix).
2. As to sub-paragraph 15(c):
 - (a) It does not admit the allegations in sub-paragraph 15(c)(i).
 - (b) It admits that it has provided the transportation or other services to which the individual amounts comprising the Flight Centre Aailed Moneys (as that term is defined in the defence and counterclaim) related, but otherwise denies each and every allegation in sub-paragraph 15(c)(ii).
3. Save for the admissions made therein, to the extent that sub-paragraph 16(a) contains allegations against Ansett, it denies each and every of those allegations.

4. As to sub-paragraph 16(c):
 - (a) It denies each and every allegation in sub-paragraph 16(c)(i).
 - (b) It denies each and every allegation in sub-paragraph 16(c)(ii).
 - (c) It denies each and every allegation in sub-paragraph 16(c)(iii).
 - (d) It denies each and every allegation in sub-paragraph 16(c)(iv).
 - (e) In further answer to sub-paragraph 16(c), it says that the first defendant ("Flight Centre") has no standing to allege, alternatively, it is no defence to Ansett's claims against Flight Centre herein for Flight Centre to allege, that as between Ansett and third parties, the third parties have a paramount title to the First Moneys held by Flight Centre in trust for Ansett under the First Trust (which paramount title is denied).

5. As to sub-paragraph 16(d):
 - (a) It denies each and every allegation in sub-paragraph 16(d)(i).
 - (b) It denies each and every allegation in sub-paragraph 16(d)(ii).
 - (c) It denies each and every allegation in sub-paragraph 16(d)(iii).
 - (d) In further answer to sub-paragraph 16(d), it says that Flight Centre has no standing to allege, alternatively, it is no defence to Ansett's claims against Flight Centre herein for Flight Centre to allege, that as between Ansett and third parties, the third parties have a paramount title to the First Moneys held by Flight Centre in trust for Ansett under the First Trust (which paramount title is denied).

6. As to sub-paragraph 16(e):
 - (a) It denies each and every allegation in sub-paragraph 16(e)(i).
 - (b) It denies each and every allegation in sub-paragraph 16(e)(ii).
 - (c) In further answer to sub-paragraph 16(e), it says that Flight Centre has no standing to allege, alternatively, it is no defence to Ansett's claims against Flight Centre herein for Flight Centre to allege, that as between Ansett and third parties, the third parties have a paramount

title to the First Moneys held by Flight Centre in trust for Ansett under the First Trust (which paramount title is denied).

7. As to sub-paragraph 16(f):
 - (a) It denies each and every allegation in sub-paragraph 16(f)(i).
 - (b) To the extent that sub-paragraph 16(f)(ii) contains allegations against it, it denies each and every of those allegations.
 - (c) In further answer to sub-paragraph 16(f)(ii) it says that if any of the First Moneys have been "refunded" to the Flight Centre Payors (as that term is defined in the defence and counterclaim), that refunding constituted a breach of the First Trust by Flight Centre.
 - (d) To the extent that sub-paragraph 16(f)(iii) contains allegations against it, it denies each and every of those allegations.
 - (e) In further answer to sub-paragraph 16(f)(iii), it refers to and repeats sub-paragraph 7(c) above.

8. As to sub-paragraph 18(c):
 - (a) It does not admit the allegations in sub-paragraph 18(c)(i).
 - (b) It admits that it has provided the transportation or other services to which the individual amounts comprising the ITG Aailed Moneys (as that term is defined in the defence and counterclaim) related, but otherwise denies each and every allegation in sub-paragraph 18(c)(ii).

9. Save for the admissions made therein, to the extent that sub-paragraph 19(a) contains allegations against Ansett, it denies each and every of those allegations.

10. As to sub-paragraph 19(c):
 - (a) It denies each and every allegation in sub-paragraph 19(c)(i).
 - (b) It denies each and every allegation in sub-paragraph 19(c)(ii).
 - (c) It denies each and every allegation in sub-paragraph 19(c)(iii).
 - (d) It denies each and every allegation in sub-paragraph 19(c)(iv).

- (e) In further answer to sub-paragraph 19(c), it says that the second defendant ("ITG") has no standing to allege, alternatively, it is no defence to Ansett's claims against ITG herein for ITG to allege, that as between ITG and third parties, the third parties have a paramount title to the Second Moneys held by ITG in trust for Ansett under the Second Trust (which paramount title is denied).
11. As to sub-paragraph 19(d):
- (a) It denies each and every allegation in sub-paragraph 19(d)(i).
 - (b) It denies each and every allegation in sub-paragraph 19(d)(ii).
 - (c) It denies each and every allegation in sub-paragraph 19(d)(iii).
 - (d) In further answer to sub-paragraph 19(d), it says that ITG has no standing to allege, alternatively, it is no defence to Ansett's claims against ITG herein for ITG to allege, that as between Ansett and third parties, the third parties have a paramount title to the Second Moneys held by ITG in trust for Ansett under the Second Trust (which paramount title is denied).
12. As to sub-paragraph 19(e):
- (a) It denies each and every allegation in sub-paragraph 19(e)(i).
 - (b) It denies each and every allegation in sub-paragraph 19(e)(ii).
 - (c) In further answer to sub-paragraph 19(e), it says that ITG has no standing to allege, alternatively, it is no defence to Ansett's claims against ITG herein for ITG to allege, that as between Ansett and third parties, the third parties have a paramount title to the Second Moneys held by ITG in trust for Ansett under the Second Trust (which paramount title is denied).
13. It denies each and every allegation in sub-paragraph 19(f)(i).
14. As to sub-paragraph 21(c):
- (a) It does not admit the allegations in sub-paragraph 21(c)(i).

- (b) It admits that it has provided the transportation or other services to which the FFPL Aailed Moneys (as that term is defined in the defence and counterclaim) related, but otherwise denies each and every allegation in sub-paragraph 21(c)(ii).
15. Save for the admissions made therein, to the extent that sub-paragraph 22(a) contains allegations against Ansett, it denies each and every of those allegations.
16. As to sub-paragraph 22(c):
- (a) It denies each and every allegation in sub-paragraph 22(c)(i).
 - (b) It denies each and every allegation in sub-paragraph 22(c)(ii).
 - (c) It denies each and every allegation in sub-paragraph 22(c)(iii).
 - (d) It denies each and every allegation in sub-paragraph 22(c)(iv).
 - (e) In further answer to sub-paragraph 22(c), it says that the third defendant ("FFPL") has no standing to allege, alternatively, it is no defence to Ansett's claims against FFPL herein for FFPL to allege, that as between Ansett and third parties, the third parties have a paramount title to the Third Moneys held by FFPL in trust for Ansett under the Third Trust (which paramount title is denied).
17. As to sub-paragraph 22(d):
- (a) It denies each and every allegation in sub-paragraph 22(d)(i).
 - (b) It denies each and every allegation in sub-paragraph 22(d)(ii).
 - (c) It denies each and every allegation in sub-paragraph 22(d)(iii).
 - (d) In further answer to sub-paragraph 22(d), it says that FFPL has no standing to allege, alternatively, it is no defence to Ansett's claims against FFPL herein for FFPL to allege, that as between Ansett and third parties, the third parties have a paramount title to the Third Moneys held by FFPL in trust for Ansett under the Third Trust (which paramount title is denied).

18. As to sub-paragraph 22(e):
 - (a) It denies each and every allegation in sub-paragraph 22(e)(i).
 - (b) It denies each and every allegation in sub-paragraph 22(e)(ii).
 - (c) In further answer to sub-paragraph 22(e), it says that FFPL has no standing to allege, alternatively, it is no defence to Ansett's claims against FFPL herein for FFPL to allege, that as between Ansett and third parties, the third parties have a paramount title to the Third Moneys held by FFPL in trust for Ansett under the Third Trust (which paramount title is denied).
19. It denies each and every allegation in sub-paragraph 22(f)(i).
20. It denies each and every allegation in sub-paragraph 26(c).
21. It denies each and every allegation in sub-paragraph 27(c).
22. It denies each and every allegation in sub-paragraph 28(c).
23. It denies each and every allegation in sub-paragraph 31(a)(iv).
24. It denies each and every allegation in sub-paragraph 31(b)(iv).
25. It denies each and every allegation in sub-paragraph 31(c)(iv).
26. It denies each and every allegation in sub-paragraph 32(c).
27. It denies each and every allegation in sub-paragraph 32(f).
28. It denies each and every allegation in sub-paragraph 32(g).
29. It denies each and every allegation in sub-paragraph 32(h).
30. It denies each and every allegation in sub-paragraph 38(c).
31. It denies each and every allegation in sub-paragraph 39(c).
32. It denies each and every allegation in sub-paragraph 39(f).
33. It denies each and every allegation in sub-paragraph 39(g).
34. It denies each and every allegation in sub-paragraph 39(h).

35. It denies each and every allegation in sub-paragraph 45(c).
36. It denies each and every allegation in sub-paragraph 46(c).
37. It denies each and every allegation in sub-paragraph 46(f).
38. It denies each and every allegation in sub-paragraph 46(g).
39. It denies each and every allegation in sub-paragraph 46(h).
40. It denies each and every allegation in sub-paragraph 52(c).
41. Subject to production of the First Commercial Agreement at trial and reference to its full terms and effect, it admits paragraph 54.
42. As to paragraph 55:
 - (a) Subject to production of the First Commercial Agreement at trial and reference to its full terms and effect, it admits the allegations in sub-paragraph 55(a).
 - (b) As to sub-paragraph 55(b):
 - (i) It says that clause 4 of the First Commercial Agreement provides:

"Ansett will pay Base Commission to the Agent at rates notified by Ansett from time to time. The rate of Base Commission may be revised by Ansett giving 30 days notice in accordance with the Passenger Sales Agency Agreement between Ansett and the Agent contained in IATA Resolutions 016A".
 - (ii) It otherwise does not admit the allegations in sub-paragraph 55(b).
 - (c) Subject to the production of the First Commercial Agreement at trial and reference to its full terms and effect, it admits the allegations in sub-paragraph 55(c).
 - (d) It does not admit the allegations in sub-paragraph 55(d).

- (e) Subject to production of the First Commercial Agreement at trial and reference to its full terms and effect, it admits the allegations in sub-paragraph 55(e).

43. As to paragraph 56:

- (a) It admits that, for the purpose of the PSAA, the relevant rate of base commission notified by Ansett to Flight Centre from time to time was 5% with respect to domestic travel and 9% with respect to international travel.
- (b) It otherwise denies each and every allegation in paragraph 56.

44. As to paragraph 57:

- (a) It denies that any override commission for international services is payable by Ansett to Flight Centre as alleged.
- (b) It further says that if any override commission for international services is payable by Ansett to Flight Centre (which is denied):
 - (i) It is not payable pursuant to the PSAA.
 - (ii) Further or in the alternative, it is not a commission to which Flight Centre is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and accordingly is not deductible under sub-paragraph 7.2 from remittances required to be made by Flight Centre to Ansett thereunder.
 - (iii) Further or in the alternative, override commission is not an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA as it is not a commission calculable at the point of sale by reference to the amount collected by Flight Centre for the sale of transportation or other services sold by Flight Centre on behalf of Ansett, and accordingly, override commission is not deductible under sub-paragraph 7.2 from remittances required to be made by Flight Centre to Ansett thereunder.
 - (iv) Further and in the alternative, if override commission is payable pursuant to the PSAA and is a commission to which

Flight Centre is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and is an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA (all of which is denied):

- (A) Ansett, as it was entitled to do pursuant to sub-paragraph 7.2 of the PSAA, instructed Flight Centre, inter alia, that it was not entitled to deduct from remittances due and unpaid under sub-paragraph 7.2 any commissions or other moneys payable by Ansett to Flight Centre ("the Instruction"), and accordingly no override commission is deductible from such remittances (being the remittances in respect of the First Traffic Documents).

PARTICULARS

The Instruction was in writing and was given in letters dated 8 May 2002 from Andersen Legal, and 13 September 2002 from Arnold Bloch Leibler, solicitors for Ansett.

- (B) Further and in the alternative, only such part of the override commission as is "applicable" to the First Traffic Documents or moneys collected for the First Traffic Documents is deductible pursuant to sub-paragraph 7.2 of the PSAA from remittances required to be made by Flight Centre to Ansett in respect of the First Traffic Documents under sub-paragraph 7.2, namely, such part of the override commission (determined in accordance with the terms of any agreement for the payment of override commission) as relates to and is calculated by reference to the First Traffic Documents and the moneys collected for the First Traffic Documents.

45. As to paragraph 58, it admits that it has not paid to Flight Centre the amount set out in paragraph 58 and says further that it was and is under no obligation to pay that (or any other) amount to Flight Centre.

46. It denies each and every allegation in paragraph 59.

47. It does not admit the allegations in paragraph 60.
48. It does not admit the allegations in paragraph 61.
49. It does not admit the allegations in paragraph 62.
50. As to sub-paragraph 63(a):
- (a) It does not admit that any base commission is payable by Ansett to Flight Centre as alleged.
 - (b) It further says that if any base commission is payable by Ansett to Flight Centre (which is not admitted):
 - (i) Ansett, as it was entitled to do pursuant to sub-paragraph 7.2 of the PSAA, instructed Flight Centre, inter alia, that it was not entitled to deduct from remittances due but unpaid under sub-paragraph 7.2 any commissions or other moneys payable by Ansett to Flight Centre, and accordingly no base commission is deductible from such remittances (being the remittances in respect of the First Traffic Documents).

PARTICULARS

The instruction is the instruction referred to in sub-paragraph 44(b)(iv)(A) above.

- (ii) Further and in the alternative, only such part of the base commission as is "applicable" to the First Traffic Documents or moneys collected for the First Traffic Documents is deductible pursuant to sub-paragraph 7.2 of PSAA from remittances required to be made by Flight Centre to Ansett in respect of the First Traffic Documents under sub-paragraph 7.2, namely, such part of the base commission (determined in accordance with the terms of any agreement for the payment of base commission) as relates to and is calculated by reference to the First Traffic Documents and the moneys collected for the First Traffic Documents.
51. As to sub-paragraph 63(b):
- (a) It denies that any override commission for Ansett domestic services is payable by Ansett to Flight Centre as alleged.

- (b) It further says that if any override commission for Ansett domestic services is payable by Ansett to Flight Centre (which is denied):
- (i) It is not payable pursuant to the PSAA.
 - (ii) Further or in the alternative, it is not a commission to which Flight Centre is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and accordingly is not deductible under sub-paragraph 7.2 from remittances required to be made by Flight Centre to Ansett thereunder.
 - (iii) Further or in the alternative, override commission for Ansett Domestic services is not an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA as it is not a commission calculable at the point of sale by reference to the amount collected by Flight Centre for the sale of transportation or other services sold by Flight Centre on behalf of Ansett, and accordingly, override commission for Ansett domestic services is not deductible under sub-paragraph 7.2 from remittances required to be made by Flight Centre to Ansett thereunder.
 - (iv) Further and in the alternative, if override commission for Ansett domestic services is payable pursuant to the PSAA and is a commission to which Flight Centre is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and is an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA (all of which is denied):
 - (A) Ansett, as it was entitled to do pursuant to sub-paragraph 7.2 of the PSAA, instructed Flight Centre, inter alia, that it was not entitled to deduct from remittances due and unpaid under sub-paragraph 7.2 any commissions or other moneys payable by Ansett to Flight Centre, and accordingly no override commission for Ansett domestic services is deductible from such remittances (being the remittances in respect of the First Traffic Documents).

PARTICULARS

The instruction is the Instruction referred to in sub-paragraph 44(b)(iv)(A) above.

- (B) Further and in the alternative, only such part of the override commission for Ansett domestic services as is "applicable" to the First Traffic Documents or moneys collected for the First Traffic Documents is deductible pursuant to sub-paragraph 7.2 of the PSAA from remittances required to be made by Flight Centre to Ansett in respect of the First Traffic Documents under sub-paragraph 7.2, namely, such part of the override commission for Ansett domestic services (determined in accordance with the terms of any agreement for the payment of override commission) as relates to and is calculated by reference to the First Traffic Documents and the moneys collected for the First Traffic Documents.

52. As to sub-paragraph 63(c):

- (a) It denies that any override commission for Ansett international services is payable by Ansett to Flight Centre as alleged.
- (b) It further says that if any override commission for Ansett international services is payable by Ansett to Flight Centre (which is denied):
 - (i) It is not payable pursuant to the PSAA.
 - (ii) Further or in the alternative, it is not a commission to which Flight Centre is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and accordingly is not deductible under sub-paragraph 7.2 from remittances required to be made by Flight Centre to Ansett thereunder.
 - (iii) Further or in the alternative, override commission for Ansett international services is not an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA as it is not a commission calculable at the point of sale by reference to the amount collected by Flight Centre for the sale of transportation

or other services sold by Flight Centre on behalf of Ansett, and accordingly, override commission for Ansett international services is not deductible under sub-paragraph 7.2 from remittances required to be made by Flight Centre to Ansett thereunder.

(iv) Further and in the alternative, if override commission for Ansett international services is payable pursuant to the PSAA and is a commission to which Flight Centre is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and is an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA (all of which is denied):

(A) Ansett, as it was entitled to do pursuant to sub-paragraph 7.2 of the PSAA, instructed Flight Centre, inter alia, that it was not entitled to deduct from remittances due and unpaid under sub-paragraph 7.2 any commissions or other moneys payable by Ansett to Flight Centre, and accordingly no override commission for Ansett international services is deductible from such remittances (being the remittances in respect of the First Traffic Documents).

PARTICULARS

The instruction is the Instruction referred to in sub-paragraph 44(b)(iv)(A) above.

(B) Further and in the alternative, only such part of the override commission for Ansett international services as is "applicable" to the First Traffic Documents or moneys collected for the First Traffic Documents is deductible pursuant to sub-paragraph 7.2 of the PSAA from remittances required to be made by Flight Centre to Ansett in respect of the First Traffic Documents under sub-paragraph 7.2, namely, such part of the override commission for Ansett international services (determined in accordance with the terms of any agreement for the payment of override commission) as relates to and is calculated by reference to the First

Traffic Documents and the moneys collected for the
First Traffic Documents.

53. As to sub-paragraph 63(d):

- (a) It denies that any incentive commission is payable by Ansett to Flight Centre as alleged.
- (b) It further says that if any incentive commission is payable by Ansett to Flight Centre (which is denied):
 - (i) It is not payable pursuant to the PSAA.
 - (ii) Further or in the alternative, it is not a commission to which Flight Centre is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and accordingly is not deductible under sub-paragraph 7.2 from remittances required to be made by Flight Centre to Ansett thereunder.
 - (iii) Further or in the alternative, incentive commission is not an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA as it is not a commission calculable at the point of sale by reference to the amount collected by Flight Centre for the sale of transportation or other services sold by Flight Centre on behalf of Ansett, and accordingly, incentive commission is not deductible under sub-paragraph 7.2 from remittances required to be made by Flight Centre to Ansett thereunder.
 - (iv) Further and in the alternative, if incentive commission is payable pursuant to the PSAA and is a commission to which Flight Centre is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and is an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA (all of which is denied):
 - (A) Ansett, as it was entitled to do pursuant to sub-paragraph 7.2 of the PSAA, instructed Flight Centre, inter alia, that it was not entitled to deduct from remittances due and unpaid under sub-paragraph 7.2

any commissions or other moneys payable by Ansett to Flight Centre, and accordingly no incentive commission is deductible from such remittances (being the remittances in respect of the First Traffic Documents).

PARTICULARS

The instruction is the Instruction referred to in sub-paragraph 44(b)(iv)(A) above.

- (B) Further and in the alternative, only such part of the incentive commission as is "applicable" to the First Traffic Documents or moneys collected for the First Traffic Documents is deductible pursuant to sub-paragraph 7.2 of the PSAA from remittances required to be made by Flight Centre to Ansett in respect of the First Traffic Documents under sub-paragraph 7.2, namely, such part of the incentive commission (determined in accordance with the terms of any agreement for the payment of incentive commission) as relates to and is calculated by reference to the First Traffic Documents and the moneys collected for the First Traffic Documents.

54. It admits that it has not paid to Flight Centre the amounts set out in paragraph 64 and further says that it was and is under no obligation to pay those (or any other) amounts to Flight Centre.
55. It denies each and every allegation in paragraph 65.
56. As to sub-paragraph 66(a):
- (a) It denies each and every allegation in sub-paragraph 66(a).
- (b) In further answer to sub-paragraph 66(a) it says that if Flight Centre would have become entitled to additional override commission as alleged (which is denied):
- (i) That entitlement would not have been an entitlement "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and accordingly would not have been deductible under sub-

paragraph 7.2 from remittances required to be made by Flight Centre to Ansett thereunder.

- (ii) Further or in the alternative, any additional override commission would not have been an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA as it would not have been a commission calculable at the point of sale by reference to the amount collected by Flight Centre for the sale of transportation or other services sold by Flight Centre on behalf of Ansett, and accordingly any additional override commission would not have been deductible under sub-paragraph 7.2 from remittances required to be made by Flight Centre to Ansett thereunder.
- (iii) Further and in the alternative, if the additional override commission would have been a commission to which Flight Centre was entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and would have been an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA (all of which is denied):

- (A) Ansett, as it was entitled to do under sub-paragraph 7.2 of the PSAA, instructed Flight Centre, inter alia, that it was not entitled to deduct from remittances due and unpaid under sub-paragraph 7.2 any commissions or other moneys payable by Ansett to Flight Centre, and accordingly no additional override commission is or would be deductible from such remittances (being the remittances in respect of the First Traffic Documents).

PARTICULARS

The instruction is the Instruction referred to in sub-paragraph 44(b)(iv)(A) above.

- (B) Further and in the alternative:
 - (1) only such part of the additional override commission as would have been "applicable" to the First Traffic Documents or moneys collected for the First Traffic Documents would have been

deductible pursuant to sub-paragraph 7.2 of the PSAA from remittances required to be made by Flight Centre to Ansett in respect of the First Traffic Documents under sub-paragraph 7.2, namely, such part of the additional override commission (determined in accordance with the terms of any agreement for the payment of override commission) as relates to and is calculated by reference to the First Traffic Documents and the moneys collected for the First Traffic Documents;

- (2) no part of the additional override commission would have been calculated by reference to the First Traffic Documents or moneys collected for the First Traffic Documents and accordingly no part of the additional override commission is or would have been deductible from remittances required to be made by Flight Centre to Ansett in respect of the First Traffic Documents under sub-paragraph 7.2 of the PSAA.

57. As to sub-paragraph 66(b):

- (a) It denies each and every allegation in sub-paragraph 66(b).
- (b) In further answer to sub-paragraph 66(b), it says that if Flight Centre would have become entitled to a domestic ticket travel fund or allowance as alleged (which is denied):
 - (i) That entitlement would not have been an entitlement "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and accordingly would not have been deductible under sub-paragraph 7.2 from remittances required to be made by Flight Centre to Ansett thereunder.
 - (ii) Further or in the alternative, any amount of domestic ticket travel fund or allowance would not have been an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA as it would not have been a commission calculable at the point

of sale by reference to the amount collected by Flight Centre for the sale of transportation or other service sold by Flight Centre on behalf of Ansett, and accordingly any amount of domestic ticket travel fund or allowance would not have been deductible under sub-paragraph 7.2 from remittances required to be made by Flight Centre to Ansett thereunder.

(iii) Further and in the alternative, if the domestic ticket travel fund or allowance would have been a commission to which Flight Centre was entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and would have been an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA (all of which is denied):

(A) Ansett, as it was entitled to do under sub-paragraph 7.2 of the PSAA, instructed Flight Centre, inter alia, that it was not entitled to deduct from remittances due and unpaid under sub-paragraph 7.2 any commissions or other moneys payable by Ansett to Flight Centre, and accordingly no domestic ticket travel fund or allowance is or would be deductible from such remittances (being the remittances in respect of the First Traffic Documents).

PARTICULARS

The instruction is the Instruction referred to in sub-paragraph 44(b)(iv)(A) above.

(B) Further and in the alternative:

(1) only such part of the domestic ticket travel fund or allowance as would have been "applicable" to the First Traffic Documents or moneys collected for the First Traffic Documents would have been deductible pursuant to sub-paragraph 7.2 of the PSAA from remittances required to be made by Flight Centre to Ansett in respect of the First Traffic Documents under sub-paragraph 7.2, namely, such part of the domestic ticket travel fund or allowance (determined in accordance

with the terms of any agreement for the provision of the domestic ticket travel fund or allowance) as relates to and is calculated by reference to the First Traffic Documents and the moneys collected for the First Traffic Documents;

- (2) no part of the domestic ticket travel fund or allowance would have been calculated by reference to the First Traffic Documents or moneys collected for the First Traffic Documents and accordingly no part of the domestic ticket travel fund or allowance is or would have been deductible from remittances required to be made by Flight Centre to Ansett in respect of the First Traffic Documents under sub-paragraph 7.2 of the PSAA.

58. It denies each and every allegation in paragraph 67.
59. It denies each and every allegation in paragraph 68.
60. It admits that it has not paid to Flight Centre the amounts set out in paragraph 69 and says further that it was and is under no obligation to pay those (or any other) amounts to Flight Centre.
61. It admits that Flight Centre, by its defence and counterclaim herein, demands the amounts set out in paragraph 70, but otherwise denies each and every allegation in paragraph 70.
62. As to sub-paragraph 71(a):
 - (a) It refers to and repeats paragraphs 44, 50, 51, 52 and 56 above.
 - (b) It further says that if any Flight Centre Override Commission (as defined in paragraph 70 of the defence and counterclaim) is payable by Ansett to Flight Centre (which is denied), such commission was not part of the commission of Flight Centre for the sale of air transportation and ancillary services stated from time to time and

communicated to Flight Centre by Ansett as provided for in paragraph 9 of the PSAA.

(c) It otherwise denies each and every allegation in sub-paragraph 71(a).

63. As to sub-paragraph 71(b):

(a) It denies each and every allegation in sub-paragraph 71(b).

(b) In further answer to sub-paragraph 71(b) it refers to and repeats paragraphs 44, 50, 51, 52 and 56 above.

64. As to paragraph 72:

(a) It admits that pursuant to sub-paragraph 7.2 of the PSAA, as it was entitled to do, it gave the Instruction as alleged in sub-paragraph 44(b)(iv)(A) above.

(b) It otherwise denies each and every allegation in paragraph 72.

65. As to paragraph 73:

(a) It refers to and repeats paragraph 64(a) above.

(b) It otherwise does not admit the allegations in paragraph 73.

66. It denies each and every allegation in paragraph 74 and in further answer to that paragraph it says that:

(a) Prior to the giving of the Instruction, the only amount that Flight Centre was entitled to deduct from the remittances required to be made by it under sub-paragraph 7.2 of the PSAA in respect of the First Traffic Documents was the base commission that was applicable to the First Traffic Documents and moneys collected for the First Traffic Documents.

(b) Had Flight Centre remitted the First Amount Payable (as defined in the statement of claim) held in trust by it for Ansett in accordance with the terms of sub-paragraph 7.2 of the PSAA before the Instruction was given, Flight Centre would have been entitled to deduct the applicable base commission payable in respect of the First Amount Payable ("the Flight Centre Applicable Base Commission").

- (c) Flight Centre did not remit the First Amount Payable, or the First Amount Payable less the Flight Centre Applicable Base Commission, before the Instruction was given.
- (d) Accordingly, Flight Centre's right to deduct the Flight Centre Applicable Base Commission from the remittances required to be made by it under sub-paragraph 7.2 of the PSAA in respect of the First Traffic Documents terminated upon the giving of the Instruction.
- (e) Alternatively, if commissions other than the Flight Centre Applicable Base Commission were deductible under sub-paragraph 7.2 of the PSAA from the remittances required to be made by Flight Centre to Ansett under sub-paragraph 7.2 in respect of the First Traffic Documents (which is denied), Ansett repeats sub-paragraphs (b) to (d) inclusive above in relation to those other commissions.
- (f) Further or in the alternative, if (which is denied) any commissions or other amounts claimed by Flight Centre in its defence and counterclaim herein are payable by Ansett to Flight Centre, then to the extent that those commissions and other amounts relate to and are calculated by reference to Traffic Documents or moneys collected for Traffic Documents other than the First Traffic Documents, those commissions and other amounts are not deductible pursuant to sub-paragraph 7.2 of the PSAA or otherwise from the remittances required to be made by Flight Centre to Ansett under sub-paragraph 7.2 in respect of the First Traffic Documents.

67. It denies each and every allegation in paragraph 75.

68. It denies each and every allegation in paragraph 76.

69. It denies each and every allegation in paragraph 77.

70. It denies each and every allegation in paragraph 78.

71. It denies each and every allegation in paragraph 79 and in further answer to that paragraph it refers to and repeats paragraphs 44, 50, 51, 52 and 56 above.

72. It does not admit the allegations in paragraph 80.

73. It denies each and every allegation in paragraph 81.
74. As to paragraph 82:
- (a) It admits that it has not paid to Flight Centre the amount of the alleged Flight Centre Merchant Amount (as defined in paragraph 80 of the defence and counterclaim).
 - (b) It further says that:
 - (i) It was and is under no obligation to pay to Flight Centre the alleged Flight Centre Merchant Amount, or any other amount in respect of merchant chargeback.
 - (ii) Flight Centre has not made any previous demand on Ansett for the payment of the alleged Flight Centre Merchant Amount, or any other amount of merchant chargeback.
75. Save that it admits that by its defence and counterclaim herein, Flight Centre demands the amount of the alleged Flight Centre Merchant Amount from Ansett, it denies each and every allegation in paragraph 83.
76. As to paragraph 84:
- (a) It does not admit that any amount in respect of the alleged Flight Centre ACMs (as defined in paragraph 84 of the defence and counterclaim) is payable by Ansett to Flight Centre as alleged.
 - (b) In further answer to paragraph 84, it says that Flight Centre is indebted to Ansett for agency debit memos ("ADMs") issued by Ansett to Flight Centre and that in calculating the net adjustments as between Ansett and Flight Centre in respect of agency credit and debit memos the amount of ADMs must be deducted from the amount of any Flight Centre ACMs.

PARTICULARS

Further particulars of the ADMs will be provided prior to trial.

77. As to paragraph 85:
- (a) It admits that it has not paid to Flight Centre the amount of the alleged Flight Centre ACMs (as defined in paragraph 84 of the defence and counterclaim).
 - (b) It further says that:
 - (i) It was and is under no obligation to pay to Flight Centre the alleged Flight Centre ACMs or any other amount in respect of agency credit memos.
 - (ii) Flight Centre has not made any previous demand on Ansett for the payment of the alleged Flight Centre ACMs, or any other amount in respect of agency credit memos.
78. Save that it admits that by its defence and counterclaim herein, Flight Centre demands the amount of the alleged Flight Centre ACMs from Ansett, it denies each and every allegation in paragraph 86.
79. As to paragraph 87:
- (a) It denies each and every allegation in paragraph 87.
 - (b) In further answer to paragraph 87 it refers to and repeats paragraphs 44, 50, 51, 52, 56, 57, 74 and 76 above.
 - (c) It further says that if Flight Centre alleges in paragraph 87 that its entitlement to deduct the alleged Flight Centre Merchant Amount and alleged Flight Centre ACMs is pursuant to sub-paragraph 7.2 of the PSAA, then:
 - (i) Ansett specifically denies that allegation.
 - (ii) Ansett further says that neither the alleged Flight Centre Merchant Amount nor the alleged Flight Centre ACMs are commissions to which Flight Centre is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and accordingly

neither the alleged Flight Centre Merchant Amount nor the alleged Flight Centre ACMs is deductible under sub-paragraph 7.2 from remittances required to be made by Flight Centre to Ansett thereunder.

- (iii) Further or in the alternative, neither the alleged Flight Centre Merchant Amount nor the alleged Flight Centre ACMs is an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA as it is not a commission calculable at the point of sale by reference to the amount collected by Flight Centre for the sale of transportation or other services sold by Flight Centre on behalf of Ansett, and accordingly, neither the alleged Flight Centre Merchant Amount nor the alleged Flight Centre ACMs is deductible under sub-paragraph 7.2 from remittances required to be made by Flight Centre to Ansett thereunder.

- (iv) Further and in the alternative, if the Flight Centre Merchant Amount and the Flight Centre ACMs are commissions to which Flight Centre is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and are "applicable commissions" for the purpose of sub-paragraph 7.2 of the PSAA (all of which is denied):
 - (A) Ansett, as it was entitled to do pursuant to sub-paragraph 7.2 of the PSAA, instructed Flight Centre, inter alia, that it was not entitled to deduct from remittances due and unpaid under sub-paragraph 7.2 any commissions or other moneys payable by Ansett to Flight Centre, and accordingly the Flight Centre Merchant Amount and the Flight Centre ACMs are not deductible from such remittances (being the remittances in respect of the First Traffic Documents).

PARTICULARS

The instruction is the Instruction referred to in sub-paragraph 44(b)(iv)(A) above.

(B) Further and in the alternative, only such part of the Flight Centre Merchant Amount and the Flight Centre ACMs as is "applicable" to the First Traffic Documents or the moneys collected for the First Traffic Documents is deductible pursuant to sub-paragraph 7.2 of the PSAA from remittances required to be made by Flight Centre to Ansett in respect of the First Traffic Documents under sub-paragraph 7.2, namely, such part of the Flight Centre Merchant Amount and the Flight Centre ACMs (determined in accordance with the terms of any agreement for the payment of Flight Centre Merchant Amount and the Flight Centre ACMs) as relates to and is calculated by reference to the First Traffic Documents and the moneys collected for the First Traffic Documents.

80. It denies each and every allegation in paragraph 88.

81. It denies each and every allegation in paragraph 89.

82. As to paragraph 90:

(a) It denies that Flight Centre has any entitlement of set-off as alleged.

(b) To the extent that paragraph 90 contains allegations against Ansett, it denies each and every of those allegations.

83. It denies each and every allegation in paragraph 91.

84. It denies each and every allegation in paragraph 92.

85. As to paragraph 93:

(a) It denies that Flight Centre has any entitlement of set-off as alleged.

(b) To the extent that paragraph 93 contains allegations against Ansett, it denies each and every of those allegations.

86. As to paragraph 94:

(a) It denies that Flight Centre has any entitlement of set-off as alleged.

- (b) To the extent that paragraph 94 contains allegations against Ansett, it denies each and every of those allegations.
- 87. It denies each and every allegation in paragraph 95.
- 88. It denies each and every allegation in paragraph 96.
- 89. It denies each and every allegation in paragraph 97.
- 90. As to paragraph 98
 - (a) It denies that Flight Centre has any entitlement of set-off as alleged.
 - (b) To the extent that paragraph 98 contains allegations against Ansett, it denies each and every of those allegations.
- 91. As to paragraph 99:
 - (a) It admits that, for the purpose of the PSAA, the relevant rate of base commission notified by Ansett to ITG from time to time was 5% with respect to domestic travel and 9% with respect to international travel.
 - (b) It otherwise denies each and every allegation in paragraph 99.
- 92. As to sub-paragraph 100(a):
 - (a) It does not admit that any base commission is payable by Ansett to ITG as alleged.
 - (b) It further says that if any base commission is payable (which is not admitted):
 - (i) Ansett, as it was entitled to do pursuant to sub-paragraph 7.2 of the PSAA, instructed ITG, inter alia, that it was not entitled to deduct from remittances due but unpaid under sub-paragraph 7.2 any commissions or other moneys payable by Ansett to ITG ("the ITG Instruction"), and accordingly no base commission is deductible from such remittances (being the remittances in respect of the Second Traffic Documents).

PARTICULARS

The ITG Instruction was in writing and was given in letters dated 10 May 2002 from Andersen Legal, and 13 September 2002 from Arnold Bloch Leibler, solicitors for Ansett.

- (ii) Further and in the alternative, only such part of the base commission as is "applicable" to the Second Traffic Documents or moneys collected for the Second Traffic Documents is deductible pursuant to sub-paragraph 7.2 of the PSAA from remittances required to be made by ITG to Ansett in respect of the Second Traffic Documents under sub-paragraph 7.2, namely, such part of the base commission (determined in accordance with the terms of any agreement for the payment of base commission) as relates to and is calculated by reference to the Second Traffic Documents and moneys collected for the Second Traffic Documents.

93. As to sub-paragraph 100(b):

- (a) It denies each and every allegation in sub-paragraph 100(b).
- (b) It further says that if any override commission is payable by Ansett to ITG (which is denied):
 - (i) It is not payable pursuant to the PSAA.
 - (ii) Further or in the alternative, it is not a commission to which ITG is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and accordingly is not deductible under sub-paragraph 7.2 from remittances required to be made by ITG to Ansett thereunder.
 - (iii) Further or in the alternative, override commission is not an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA as it is not a commission calculable at the point of sale by reference to the amount collected by ITG for the sale of transportation or other services sold by ITG on behalf of Ansett, and accordingly, override commission is not deductible under sub-paragraph 7.2 from remittances required to be made by ITG to Ansett thereunder.

(iv) Further and in the alternative, if override commission is payable pursuant to the PSAA and is a commission to which ITG is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and is an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA (all of which is denied):

(A) Ansett, as it was entitled to do pursuant to sub-paragraph 7.2 of the PSAA, instructed ITG, inter alia, that it was not entitled to deduct from remittances due and unpaid under sub-paragraph 7.2 any commissions or other moneys payable by Ansett to ITG, and accordingly no override commission is deductible from such remittances (being the remittances in respect of the Second Traffic Documents).

PARTICULARS

The instruction is the ITG Instruction referred to in sub-paragraph 92(b)(i) above.

(B) Further and in the alternative, only such part of the override commission for Ansett domestic services as is "applicable" to remittances in respect of the Second Traffic Documents or moneys collected for the Second Traffic Documents is deductible pursuant to sub-paragraph 7.2 of the PSAA from remittances required to be made by ITG to Ansett in respect of the Second Traffic Documents under sub-paragraph 7.2, namely, such part of the override commission (determined in accordance with the terms of any agreement for the payment of override commission) as relates to and is calculated by reference to the Second Traffic Documents and moneys collected for the Second Traffic Documents.

94. It admits that it has not paid to ITG the amounts set out in paragraph 101 and further says that it was and is under no obligation to pay those (or any other) amounts to ITG .

95. Save that it admits that ITG, by its defence and counterclaim herein, demands the amounts set out in paragraph 102, it denies each and every allegation in paragraph 102.
96. It does not admit the allegations in paragraph 103.
97. It does not admit the allegations in paragraph 104.
98. It does not admit the allegations in paragraph 105.
99. It does not admit the allegations in paragraph 106.
100. As to paragraph 107:
 - (a) It denies that any subvention amount is payable by Ansett to ITG as alleged.
 - (b) It further says that if any subvention amount is payable by Ansett to ITG (which is denied):
 - (i) It is not payable pursuant to the PSAA.
 - (ii) Further or in the alternative, it is not commission to which ITG is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and accordingly is not deductible under sub-paragraph 7.2 from remittances required to be made by ITG to Ansett thereunder.
 - (iii) Further or in the alternative, any subvention amount is not an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA as it is not a commission calculable at the point of sale by reference to the amount collected by Flight Centre for the sale of transportation or other services sold by Flight Centre on behalf of Ansett, and accordingly, any subvention amount is not deductible under sub-paragraph 7.2 from remittances required to be made by ITG to Ansett thereunder.
 - (iv) Further and in the alternative, if any subvention amount is payable pursuant to the PSAA and is a commission to which ITG is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and is an "applicable commission" for the

purpose of sub-paragraph 7.2 of the PSAA (all of which is denied):

- (A) Ansett, as it was entitled to do pursuant to sub-paragraph 7.2 of the PSAA, instructed ITG, inter alia, that it was not entitled to deduct from remittances due and unpaid under sub-paragraph 7.2 any commissions or other moneys payable by Ansett to ITG, and accordingly no subvention amount is deductible from such remittances (being the remittances in respect of the Second Traffic Documents).

PARTICULARS

The instruction is the ITG Instruction referred to in sub-paragraph 92(b)(i) above.

- (B) Further and in the alternative, only such part of the subvention amount as is "applicable" to the Second Traffic Documents or moneys collected for the Second Traffic Documents is deductible pursuant to sub-paragraph 7.2 of the PSAA from remittances required to be made by ITG to Ansett in respect of the Second Traffic Documents under sub-paragraph 7.2, namely, such part of the subvention amount (determined in accordance with the terms of any agreement for the payment of the subvention amount) as relates to and is calculated by reference to the Second Traffic Documents and moneys collected for the Second Traffic Documents.

101. As to paragraph 108, it admits that it has not paid to ITG the amount set out in paragraph 107 and further says that it was and is under no obligation to pay that (or any other) amount to ITG.

102. Save that it admits that ITG, by its defence and counterclaim herein, demands the amount set out in paragraph 107, it denies each and every allegation in paragraph 109.

103. As to sub-paragraph 110(a):

- (a) It refers to and repeats paragraphs 92, 93 and 100 above.

- (b) It further says that if any ITG Override Commission (as defined in paragraph 102 of the defence and counterclaim) and ITG Subvention Amount (as defined in paragraph 107 of the defence and counterclaim) is payable by Ansett to Flight Centre (which is denied), such commission and such amount were not part of the commission of ITG for the sale of air transportation and ancillary services stated from time to time and communicated to ITG by Ansett as provided for in paragraph 9 of the PSAA.
 - (c) It otherwise does not admit the allegations in sub-paragraph 110(a).
- 104. As to sub-paragraph 110(b):
 - (a) It denies each and every allegation in sub-paragraph 110(b).
 - (b) In further answer to sub-paragraph 110(b) it refers to and repeats paragraphs 92, 93 and 100 above.
- 105. As to paragraph 111:
 - (a) It admits that, pursuant to sub-paragraph 7.2 of the PSAA, as it was entitled to do, it gave the ITG Instruction as alleged in sub-paragraph 92(b)(i) above.
 - (b) It otherwise denies each and every allegation in paragraph 111.
- 106. As to paragraph 112:
 - (a) It refers to and repeats paragraph 105 above.
 - (b) It otherwise does not admit the allegations in paragraph 112.
- 107. It denies each and every allegation in paragraph 113 and in further answer to that paragraph it says that:
 - (a) Prior to the giving of the ITG Instruction, the only amount that ITG was entitled to deduct from the remittances required to be made by it under sub-paragraph 7.2 of the PSAA in respect of the Second Traffic Documents was the base commission that was applicable to the Second Traffic Documents and moneys collected for the Second Traffic Documents;

- (b) Had ITG remitted the Second Amount Payable (as defined in the statement of claim) held in trust by it for Ansett in accordance with the terms of sub-paragraph 7.2 of the PSAA before the ITG Instruction was given, ITG would have been entitled to deduct the applicable base commission payable in respect of the Second Amount Payable ("the ITG Applicable Base Commission").
- (c) ITG did not remit the Second Amount Payable, or the Second Amount Payable less the ITG Applicable Base Commission, before the ITG Instruction was given.
- (d) Accordingly, ITG's right to deduct the ITG Applicable Base Commission from the remittances required to be made by it under sub-paragraph 7.2 of the PSAA in respect of the Second Traffic Documents terminated upon the giving of the ITG Instruction.
- (e) Alternatively, if applicable commissions other than the ITG Applicable Base Commission were deductible under sub-paragraph 7.2 of the PSAA from the remittances required to be made by Flight Centre to Ansett under sub-paragraph 7.2 in respect of the Second Traffic Documents (which is denied), Ansett repeats sub-paragraphs (b) to (d) inclusive above in relation to those commissions.
- (f) Further or in the alternative, if (which is denied) any commissions or other amounts claimed by ITG in its defence and counterclaim herein are payable by Ansett to ITG, then to the extent that those commissions and other amounts relate to Traffic Documents other than the Second Traffic Documents, those commissions and other amounts are not deductible pursuant to sub-paragraph 7.2 of the PSAA or otherwise from the remittances required to be made by Flight Centre to Ansett under sub-paragraph 7.2 in respect of the Second Traffic Documents.

108. It denies each and every allegation in paragraph 114.

109. It denies each and every allegation in paragraph 115.

110. It denies each and every allegation in paragraph 116.

111. It denies each and every allegation in paragraph 117.

112. As to paragraph 118:

- (a) It denies each and every allegation in paragraph 118.
- (b) It refers to and repeats paragraphs 92, 93 and 100 above.

113. As to paragraph 119:

- (a) It does not admit that any amount in respect of the alleged ITG ACMs (as defined in paragraph 119 of the defence and counterclaim) is payable by Ansett to ITG as alleged.
- (b) In further answer to paragraph 119, it says that ITG is indebted to Ansett for agency debit memos ("ADMs") issued by Ansett to ITG and that in calculating the net adjustments as between Ansett and ITG in respect of any agency credit and debit memos the amount of ADMs must be deducted from the amount of any ITG ACMs.

PARTICULARS

Further particulars of the ADMs will be provided prior to trial.

114. As to paragraph 120:

- (a) It admits that it has not paid to ITG the amount of the alleged ITG ACMs.
- (b) It further says that:
 - (i) It was and is under no obligation to pay to ITG the amount of the alleged ITG ACMs or any other amount in respect of agency credit memos.
 - (ii) ITG has not made any previous demand on Ansett for the payment of the alleged ITG ACMs, or any other amount in respect of agency credit memos.

115. Save that it admits that, by its defence and counterclaim herein, ITG demands the amount of the alleged ITG ACMs from Ansett, it denies each and every allegation in paragraph 121.

116. As to paragraph 122:

- (a) It denies each and every allegation in paragraph 122.
- (b) In further answer to paragraph 122 it refers to and repeats paragraphs 92, 93 and 100 above.
- (c) It further says that if ITG alleges in paragraph 122 that its entitlement to deduct the amount of the alleged ITG ACMs is pursuant to sub-paragraph 7.2 of the PSAA, then:
 - (i) Ansett specifically denies that allegation.
 - (ii) Ansett further says that if any amount in respect of agency credit memos is payable by Ansett to ITG (which is not admitted):
 - (A) It is not payable pursuant to the PSAA.
 - (B) Further or in the alternative, it is not commission to which ITG is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and accordingly is not deductible under sub-paragraph 7.2 from remittances required to be made by ITG to Ansett thereunder.
 - (C) Further or in the alternative, any amount in respect of agency credit memos is not an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA as it is not a commission calculable at the point of sale by reference to the amount collected by ITG for the sale of transportation or other services sold by ITG on behalf of Ansett, and accordingly, no amount in respect of agency credit memos is deductible under sub-paragraph 7.2 from remittances required to be made by ITG to Ansett thereunder.
 - (D) Further and in the alternative, if any amount in respect of agency credit memos is payable pursuant to the PSAA and is commission to which ITG is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and is an "applicable commission" for the

purpose of sub-paragraph 7.2 of the PSAA (all of which is denied):

- (1) Ansett, as it was entitled to do pursuant to sub-paragraph 7.2 of the PSAA, instructed ITG, inter alia, that it was not entitled to deduct from remittances due and unpaid under sub-paragraph 7.2 any commissions or other moneys payable by Ansett to ITG, and accordingly no amount in respect of agency credit memos is deductible from such remittances (being the remittances in respect of the Second Traffic Documents).

PARTICULARS

The instruction is the ITG Instruction referred to in sub-paragraph 92(b)(i) above.

- (2) Further and in the alternative, only such part of the amount in respect of agency credit memos as is "applicable" to the Second Traffic Documents or moneys collected for the Second Traffic Documents is deductible pursuant to sub-paragraph 7.2 of the PSAA from remittances required to be made by ITG to Ansett in respect of the Second Traffic Documents under sub-paragraph 7.2, namely, such part of the amount in respect of agency credit memos (determined in accordance with the terms of any agreement for the payment of agency credit memos) as relates to and is calculated by reference to the Second Traffic Documents and the moneys collected for the Second Traffic Documents.

117. It denies each and every allegation in paragraph 123.

118. It denies each and every allegation in paragraph 124.

119. As to paragraph 125:

- (a) It denies that ITG has any entitlement of set-off as alleged.

- (b) To the extent that paragraph 125 contains allegations against Ansett, it denies each and every of those allegations.
- 120. It denies each and every allegation in paragraph 126.
- 121. It denies each and every allegation in paragraph 127.
- 122. As to paragraph 128:
 - (a) It denies that ITG has any entitlement of set-off as alleged.
 - (b) To the extent that paragraph 128 contains allegations against Ansett, it denies each and every of those allegations.
- 123. As to paragraph 129:
 - (a) It denies that ITG has any entitlement of set-off as alleged.
 - (b) To the extent that paragraph 129 contains allegations against Ansett, it denies each and every of those allegations.
- 124. It denies each and every allegation in paragraph 130.
- 125. It denies each and every allegation in paragraph 131.
- 126. It denies each and every allegation in paragraph 132.
- 127. As to paragraph 133:
 - (a) It denies that ITG has any entitlement of set-off as alleged.
 - (b) To the extent that paragraph 133 contains allegations against Ansett, it denies each and every of those allegations.
- 128. As to paragraph 134:
 - (a) It admits that, for the purpose of the PSAA, the relevant rate of base commission notified by Ansett to FFPL from time to time was 5% with respect to domestic travel and 9% with respect to international travel.
 - (b) It otherwise denies each and every allegation in paragraph 134.

129. As to paragraph 135(a):

- (a) It does not admit that any base commission is payable by Ansett to FFPL as alleged.
- (b) It further says that if any base commission is payable by Ansett to FFPL (which is not admitted):
 - (i) Ansett, as it was entitled to do pursuant to sub-paragraph 7.2 of the PSAA, instructed FFPL, inter alia, that it was not entitled to deduct from remittances due but unpaid under sub-paragraph 7.2 any commissions or other moneys payable by Ansett to FFPL ("the FFPL Instruction"), and accordingly no base commission is deductible from such remittances (being the remittances in respect of the Third Traffic Documents).

PARTICULARS

The FFPL Instruction was in writing and was given in a letter dated 13 September 2002 from Arnold Bloch Leibler, solicitors for Ansett.

- (ii) Further and in the alternative, only such part of the base commission as is "applicable" to the Third Traffic Documents or moneys collected for the Third Traffic Documents is deductible pursuant to sub-paragraph 7.2 of PSAA from remittances required to be made by FFPL to Ansett in respect of the Third Traffic Documents under sub-paragraph 7.2, namely, such part of the base commission (determined in accordance with the terms of any agreement for the payment of base commission) as relates to and is calculated by reference to the Third Traffic Documents and moneys collected for the Third Traffic Documents.

130. As to sub-paragraph 135(b):

- (a) It denies that any override commission is payable by Ansett to FFPL as alleged.
- (b) It further says that if any override commission is payable by Ansett to FFPL (which is denied):

- (i) It is not payable pursuant to the PSAA.
- (ii) Further or in the alternative, it is not a commission to which FFPL is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and accordingly is not deductible under sub-paragraph 7.2 from remittances required to be made by FFPL to Ansett thereunder.
- (iii) Further or in the alternative, override commission is not an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA as it is not a commission calculable at the point of sale by reference to the amount collected by FFPL for the sale of transportation or other services sold by FFPL on behalf of Ansett, and accordingly, override commission is not deductible under sub-paragraph 7.2 from remittances required to be made by FFPL to Ansett thereunder.
- (iv) Further and in the alternative, if any override commission is payable pursuant to the PSAA and is a commission to which FFPL is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and is an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA (all of which is denied):
 - (A) Ansett, as it was entitled to do pursuant to sub-paragraph 7.2 of the PSAA, instructed FFPL, inter alia, that it was not entitled to deduct from remittances due and unpaid under sub-paragraph 7.2 any commissions or other moneys payable by Ansett to FFPL, and accordingly no override commission is deductible from such remittances (being the remittances in respect of the Third Traffic Documents).

PARTICULARS

The instruction is the FFPL Instruction referred to in sub-paragraph 129(b)(i) above.

- (B) Further and in the alternative, only such part of the override commission as is "applicable" to the Third Traffic Documents or moneys collected for the Third

Traffic Documents is deductible pursuant to sub-paragraph 7.2 of the PSAA from remittances required to be made by FFPL to Ansett in respect of the Third Traffic Documents under sub-paragraph 7.2, namely, such part of the override commission (determined in accordance with the terms of any agreement for the payment of override commission) as relates to and is calculated by reference to the Third Traffic Documents and moneys collected for the Third Traffic Documents.

131. It admits that it has not paid to FFPL the amounts set out in paragraph 136 and further says that it was and is under no obligation to pay those (or any other) amounts to FFPL.
132. Save that it admits that FFPL, by its defence and counterclaim herein, demands the amounts set out in paragraph 137, it denies each and every allegation in paragraph 137.
133. It does not admit the allegations in paragraph 138.
134. It does not admit the allegations in paragraph 139.
135. It does not admit the allegations in paragraph 140.
136. It does not admit the allegations in paragraph 141.
137. As to paragraph 142:
 - (a) It denies that any subvention amount is payable by Ansett to FFPL as alleged.
 - (b) It further says that if any subvention amount is payable by Ansett to FFPL (which is denied):
 - (i) It is not payable pursuant to the PSAA.
 - (ii) Further or in the alternative, it is not commission to which FFPL is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and accordingly is not deductible under sub-paragraph 7.2 from remittances required to be made by FFPL to Ansett thereunder.

- (iii) Further or in the alternative, any subvention amount is not an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA as it is not a commission calculable at the point of sale by reference to the amount collected by FFPL for the sale of transportation or other services sold by Flight Centre on behalf of Ansett, and accordingly, any subvention amount is not deductible under sub-paragraph 7.2 from remittances required to be made by FFPL to Ansett thereunder.
- (iv) Further and in the alternative, if any subvention amount is payable pursuant to the PSAA and is a commission to which FFPL is entitled "hereunder" for the purpose of sub-paragraph 7.2 of the PSAA and is an "applicable commission" for the purpose of sub-paragraph 7.2 of the PSAA (all of which is denied):
 - (A) Ansett, as it was entitled to do pursuant to sub-paragraph 7.2 of the PSAA, instructed FFPL, inter alia, that it was not entitled to deduct from remittances due and unpaid under sub-paragraph 7.2 any commissions or other moneys payable by Ansett to FFPL, and accordingly no subvention amount is deductible from such remittances (being the remittances in respect of the Third Traffic Documents).

PARTICULARS

The instruction is the FFPL Instruction referred to in sub-paragraph 129(b)(i) above.

- (B) Further and in the alternative, only such part of the subvention amount as is "applicable" to the Third Traffic Documents or moneys collected for the Third Traffic Documents is deductible pursuant to sub-paragraph 7.2 of the PSAA from remittances required to be made by FFPL to Ansett in respect of the Third Traffic Documents under sub-paragraph 7.2, namely, such part of the subvention amount (determined in accordance with the terms of any agreement for the payment of the subvention amount) as relates to and is

calculated by reference to the Third Traffic Documents and moneys collected for the Third Traffic Documents.

138. As to paragraph 143, it admits that it has not paid to FFPL the amount set out in paragraph 142 of the defence and counterclaim and further says that it was and is under no obligation to pay that (or any other) amount to FFPL.
139. Save that it admits that FFPL, by its defence and counterclaim herein, demands the amount set out in paragraph 142, it denies each and every allegation in paragraph 144.
140. As to sub-paragraph 145(a):
- (a) It refers to and repeats paragraphs 129, 130 and 137 above.
 - (b) It further says that if any FFPL Override Commission (as defined in paragraph 137 of the defence and counterclaim) or any FFPL Subvention Amount (as defined in paragraph 142 of the defendant and counterclaim) is payable by Ansett to FFPL (which is not admitted), such commission and such amount were not part of the commission of FFPL for the sale of air transportation and ancillary services stated from time to time and communicated to FFPL by Ansett as provided for in paragraph 9 of the PSAA.
 - (c) It otherwise does not admit the allegations in sub-paragraph 145(a).
141. As to sub-paragraph 145(b):
- (a) It denies each and every allegation in sub-paragraph 145(b).
 - (b) In further answer to sub-paragraph 145(b) it refers to and repeats paragraphs 129,130 and 137 above.
142. As to paragraph 146:
- (a) It admits that, pursuant to sub-paragraph 7.2 of the PSAA, as it was entitled to do, it gave the FFPL Instruction as alleged in sub-paragraph 129(b)(i) above.
 - (b) It otherwise denies each and every allegation in paragraph 146.

143. As to paragraph 147:
- (a) It refers to and repeats paragraph 142 above.
 - (b) It otherwise does not admit the allegations in paragraph 147.
144. It denies each and every allegation in paragraph 148 and in further answer to that paragraph it says that:
- (a) Prior to the giving of the FFPL Instruction, the only amount that FFPL was entitled to deduct from the remittances required to be made by it under sub-paragraph 7.2 of the PSAA in respect of the Third Traffic Documents was the base commission that was applicable to the Third Traffic Documents and the moneys collected for the Third Traffic Documents.
 - (b) Had FFPL remitted the Third Amount Payable (as defined in the statement of claim) held in trust by it for Ansett in accordance with the terms of sub-paragraph 7.2 of the PSAA before the FFPL Instruction was given, FFPL would have been entitled to deduct the applicable base commission payable in respect of the Third Amount Payable ("the FFPL Applicable Base Commission").
 - (c) FFPL did not remit the Third Amount Payable, or the Third Amount Payable less the FFPL Applicable Base Commission, before the FFPL Instruction was given.
 - (d) Accordingly, FFPL's right to deduct the FFPL Applicable Base Commission from the remittances required to be made by it under sub-paragraph 7.2 of the PSAA in respect of the Third Traffic Documents terminated upon the giving of the FFPL Instruction.
 - (e) Alternatively, if commissions other than the FFPL Applicable Base Commission were deductible under sub-paragraph 7.2 of the PSAA from the remittances required to be made by Flight Centre to Ansett under sub-paragraph 7.2 in respect of the Third Traffic Documents (which is denied), Ansett repeats sub-paragraphs (b) to (d) inclusive above in relation to those other commissions.
 - (f) Further or in the alternative, if (which is denied) any commissions or other amounts claimed by FFPL in its defence and counterclaim

herein are payable by Ansett to FFPL, then to the extent that those commissions and other amounts relate to Traffic Documents other than the Third Traffic Documents, those commissions and other amounts are not deductible pursuant to sub-paragraph 7.2 of the PSAA or otherwise from the remittances required to be made by FFPL to Ansett under sub-paragraph 7.2 in respect of the Third Traffic Documents.

145. It denies each and every allegation in paragraph 149.
146. It denies each and every allegation in paragraph 150.
147. It denies each and every allegation in paragraph 151.
148. It denies each and every allegation in paragraph 152.
149. As to paragraph 153:
 - (a) It denies each and every allegation in paragraph 153.
 - (b) It refers to and repeats paragraphs 129, 130 and 137 above.
150. It denies each and every allegation in paragraph 154 and in further answer to that paragraph, refers to and repeats paragraphs 129, 130 and 137 above.
151. It denies each and every allegation in paragraph 155.
152. It denies each and every allegation in paragraph 156.
153. As to paragraph 157:
 - (a) It denies that FFPL has any entitlement of set-off as alleged.
 - (b) To the extent that paragraph 157 contains allegations against Ansett, it denies each and every of those allegations.
154. It denies each and every allegation in paragraph 158.
155. It denies each and every allegation in paragraph 159.
156. As to paragraph 160:
 - (a) It denies that FFPL has any entitlement of set-off as alleged.

- (b) To the extent that paragraph 160 contains allegations against Ansett, it denies each and every of those allegations.
157. As to paragraph 161:
- (a) It denies that FFPL has any entitlement of set-off as alleged.
 - (b) To the extent that paragraph 161 contains allegations against Ansett, it denies each and every of those allegations.
158. It denies each and every allegation in paragraph 162.
159. It denies each and every allegation in paragraph 163.
160. It denies each and every allegation in paragraph 164.
161. As to paragraph 165:
- (a) It denies that FFPL has any entitlement of set-off as alleged.
 - (b) To the extent that paragraph 165 contains allegations against Ansett, it denies each and every of those allegations.
162. Save for the admissions made by Ansett herein, and save for the admissions made by the defendants in the defence, Ansett otherwise joins issue with the defence.

DEFENCE TO COUNTERCLAIM

163. As to paragraph 166, Ansett refers to and repeats such of its reply as relates to paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11(a), 12 and 13 of the defence.
164. As to paragraph 167, Ansett refers to and repeats such of its reply as relates to paragraph 15(a) of the defence.
165. As to paragraph 168, Ansett refers to and repeats such of its reply as relates to paragraphs 11(b), 15(c), 16(c), 16(d), 16(e), 16(f) and 54-98 (inclusive) of the defence.
166. As to paragraph 169:
- (a) It denies that Flight Centre has any entitlement of set-off as alleged.

- (b) To the extent that paragraph 169 contains allegations against Ansett, it denies each and every of those allegations.
167. As to paragraph 170, Ansett refers to and repeats such of its reply as relates to paragraph 18(a) of the defence.
168. As to paragraph 171, Ansett refers to and repeats such of its reply as relates to paragraphs 11(b), 18(c), 19(c), 19(d), 19(e), 19(f) and 99-133 (inclusive) of the defence.
169. As to paragraph 172:
- (a) It denies that ITG has any entitlement of set-off as alleged.
- (b) To the extent that paragraph 172 contains allegations against Ansett, it denies each and every of those allegations.
170. As to paragraph 173, Ansett refers to and repeats such of its reply as relates to paragraph 21(a) of the defence.
171. As to paragraph 174, Ansett refers to and repeats such of its reply as relates to paragraphs 11(b), 21(c), 22(c), 22(d), 22(e), 22(f) and 134-165 (inclusive) of the defence.
172. As to paragraph 175:
- (a) It denies that FFPL has any entitlement of set-off as alleged.
- (b) To the extent that paragraph 175 contains allegations against Ansett, it denies each and every of those allegations.
173. In further answer to the whole of the counterclaim, Ansett says that the defendants cannot bring their counterclaim against Ansett without leave of the Court pursuant to the section 444E of the *Corporations Act 2001 (Cth)* and that at the time of this defence to counterclaim no such leave has been granted by the Court.

DATED: March 2004

M.C. GARNER

K. DAWSON


.....

Arnold Bloch Leibler

Solicitors for the Plaintiff (by original proceeding)
and Defendant (by counterclaim)

SCHEDULE

**ANSETT AUSTRALIA LIMITED (SUBJECT TO DEED OF
COMPANY ARRANGEMENT)**
(ACN 004 209 410)

Plaintiff

-and-

FLIGHT CENTRE LIMITED
(ACN 003 377 188)

First Defendant

-and-

ITG PTY LTD
(ACN 003 279 534)

Second Defendant

-and-

FREQUENT FLYERS PTY LTD
(ACN 058 864 645)

Third Defendant