

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

No. ²⁰⁹⁷ of 2003

F5628

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

WRIT

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

4 December 2003
The Plaintiff
Solicitors Code: 00054
DX: 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9925
Ref: LRT:JAT:1252417
(Leonie Thompson)

TO THE DEFENDANTS

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITORS may file the appearance. An appearance is filed by:

- (a) filing a "Notice of Appearance" in the Prothonotary's office, in the Supreme Court Registry, 436 Lonsdale Street, Melbourne or, where the writ has been

filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and

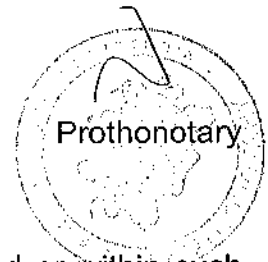
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

THE PROPER TIME TO FILE AN APPEARANCE is as follows -

- (a) where you are served with the writ in Victoria, within 10 days after service;
(b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
(c) where you are served with the writ in New Zealand or in Papua New Guinea, within 28 days after service;
(d) where you are served with the writ in any other place, within 42 days after service.

FILED: 4 December 2003

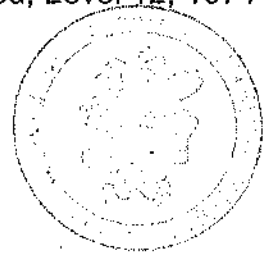


THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

Arnold Bloch Leibler
Solicitors for the Plaintiff

Indorsement of Claim annexed hereto.

- 1 Place of trial - Melbourne
- 2 Mode of trial - Judge alone
- 3 This writ was filed for the plaintiff by Arnold Bloch Leibler, Lawyers and Advisers, of 333 Collins Street, Melbourne, Victoria, 3000.
- 4 The address of the plaintiff is Level 4, 350 Collins Street, Melbourne, Vic, 3000.
- 5 The address for service of the plaintiff is C/- Arnold Bloch Leibler, Level 21, 333 Collins Street, Melbourne, Victoria, 3000; DX 455 Melbourne.
- 6 The address of the first defendant is Level 12, 157 Ann Street, Brisbane, QLD 4000.
- 7 The address of the second defendant is Flight Centre Limited, Level 12, 157 Ann Street, Brisbane, QLD 4000.
- 8 The address of the third defendant is Flight Centre Limited, Level 12, 157 Ann Street, Brisbane, QLD 4000.



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

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

No. of 2003

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

STATEMENT OF CLAIM

Date of document:	4 December 2003
Filed on behalf of:	The Plaintiff
Prepared by:	Solicitors Code: 00054
Arnold Bloch Leibler	DX: 38455 Melbourne
Lawyers and Advisers	Tel: 9229 9999
333 Collins Street	Fax: 9229 9925
Melbourne Victoria 3000	Ref: LRT:JAT:1252417
	(Leonie Thompson)

- 1 The plaintiff ("**Ansett**") is and was at all relevant times a company incorporated according to law.
- 2 The first defendant is and was at all relevant times a company incorporated according to law.
- 3 The second defendant is and was at all relevant times a company incorporated according to law.

4 The third defendant is and was at all relevant times a company incorporated according to law.

5 At all relevant times:

- (a) Ansett was a member of the International Air Transport Association ("IATA");
- (b) the first defendant was an IATA accredited agent located in Australia;
- (c) the second defendant was an IATA accredited agent located in Australia;
- (d) the third defendant was an IATA accredited agent located in Australia.

THE PASSENGER SALES AGENCY AGREEMENT

6 At all relevant times:

- (a) the first defendant has been a party to a Passenger Sales Agency Agreement ("**the PSAA**") between the first defendant (called "Agent") and each IATA member (called "Carrier") which appoints the Agent.

PARTICULARS

The PSAA was in writing and was signed by the first defendant and the Director-General of IATA acting for and on behalf of each Carrier which appoints the first defendant as Agent.

- (b) the second defendant has been a party to a Passenger Sales Agency Agreement ("**the PSAA**") between the second defendant (called

"Agent") and each IATA member (called "Carrier") which appoints the Agent.

PARTICULARS

The PSAA was in writing and was signed by the second defendant and the Director-General of IATA acting for and on behalf of each Carrier which appoints the second defendant as Agent.

- (c) the third defendant has been a party to a Passenger Sales Agency Agreement ("**the PSAA**") between the third defendant (called "Agent") and each IATA member (called "Carrier") which appoints the Agent.

PARTICULARS

The PSAA was in writing and was signed by the third defendant and the Director-General of IATA acting for and on behalf of each Carrier which appoints the third defendant as Agent.

7 Paragraph 1 of the PSAA provides that:

- (a) the PSAA shall become effective between the Agent and the Carrier upon appointment of the Agent by such Carrier in accordance with the Sales Agency Rules in effect in the country(ies) of the Agent's Location(s);
- (b) upon coming into effect the PSAA, including any amendments thereto, shall have the same force and effect between the Carrier and the Agent as though they were both named in the PSAA and had both subscribed their names as parties thereto.

8 At all relevant times Ansett, as Carrier, in accordance with the Sales Agency Rules in effect in Australia, had appointed as its agent:

- (a) the first defendant;
- (b) the second defendant;
- (c) the third defendant.

PARTICULARS

On or about 13 November 1980 Ansett deposited with IATA a "Statement of General Concurrence" pursuant to which Ansett agreed that upon a travel agent becoming an IATA Accredited Agent, that Agent was appointed as an Agent by Ansett.

The "Statement of General Concurrence" is in writing. A copy may be inspected by appointment at the offices of Ansett's solicitors.

9 Upon the appointment of:

- (a) the first defendant referred to in sub-paragraph 8(a) above:
 - (i) the PSAA became effective as between Ansett as Carrier and the first defendant as Agent;
 - (ii) the PSAA, including any amendments thereto, had the same force and effect between Ansett as Carrier and the first defendant as Agent as though each were named in the PSAA and each had subscribed its name as party thereto;

(b) the second defendant referred to in sub-paragraph 8(b) above:

- (i) the PSAA became effective as between Ansett as Carrier and the second defendant as Agent;
 - (ii) the PSAA, including any amendments thereto, had the same force and effect between Ansett as Carrier and the second defendant as Agent as though each were named in the PSAA and each had subscribed its name as party thereto;
- (c) the third defendant referred to in sub-paragraph 8(c) above:
- (i) the PSAA became effective as between Ansett as Carrier and the third defendant as Agent;
 - (ii) the PSAA, including any amendments thereto, had the same force and effect between Ansett as Carrier and the third defendant as Agent as though each were named in the PSAA and each had subscribed its name as party thereto.

10 There were terms of the PSAA, amongst others, that:

- (a) the terms and conditions governing the relationship between the Carrier and the Agent are set forth in the Resolutions (and other provisions derived therefrom) contained in the Travel Agent's Handbook ("**the Handbook**") as published from time to time under the authority of the Agency Administrator and attached to the PSAA. The Handbook incorporates:
 - (i) the Sales Agency Rules;

- (ii) the Billing and Settlement Plan rules, where applicable, as set forth in the BSP Manual for Agents;
 - (iii) such local standards as may be provided for under the Sales Agency Rules;
 - (iv) other applicable IATA Resolutions (sub-paragraph 2.1(a));
- (b) such Rules, Resolutions and other provisions as amended from time to time are deemed to be incorporated into the PSAA and made part thereof and the Carrier and the Agent agree to comply with them (sub-paragraph 2.1(b));
- (c) the Agent acknowledges that it has received a copy of the current edition of the Handbook and has acquainted itself with the contents thereof. The Agent specifically acknowledges that it has read and understands the contents of the Handbook, including but not limited to those dealing with: indemnities and waiver; custody, issuance and security of Traffic Documents; the reporting and remitting procedures; and the arbitration procedures (sub-paragraph 2.2);
- (d) the Agency Administrator shall provide the Agent with subsequent editions of the Handbook and all amendments thereto. The Agent shall be notified by the Agency Administrator of any amendments to the contents of the Handbook and such amendments shall be deemed to be incorporated into the PSAA unless within 30 days of receipt of such notification the Agent terminates the PSAA by notice in writing to the Agency Administrator (sub-paragraph 2.3);

- (e) the Agent is authorised to sell air passenger transportation on the services of the Carrier and on the services of other air carriers as authorised by the Carrier, and such ancillary and other services as the Carrier may authorise (sub-paragraph 3.1);
- (f) on the issue by the Agent of a Traffic Document on behalf of the Carrier, or on the issue by the Agent of its own Transportation Order drawn on the Carrier, the Agent, irrespective of whether it collects a corresponding amount, shall be responsible for payment to the Carrier of the amount payable for the transportation or other service to which the Traffic Document or Transportation Order relates (sub-paragraph 7.1);
- (g) except as otherwise provided in sub-paragraph 7.1, the Agent shall collect the amount payable for the transportation or other service sold by it on behalf of the Carrier. All moneys collected by the Agent for transportation and ancillary services sold under the PSAA, including applicable commissions which the Agent is entitled to claim thereunder, shall be the property of the Carrier and shall be held by the Agent in trust for the Carrier or on behalf of the Carrier until satisfactorily accounted for to the Carrier and settlement made. The Carrier may, subject to applicable currency regulations, designate the currencies in which remittances are to be made. Unless otherwise instructed by the Carrier, the Agent shall be entitled to deduct from remittances the applicable commission to which it is entitled under the PSAA (sub-paragraph 7.2);

- (h) the Agent shall remit to the Carrier such moneys at such times and under such conditions as the Carrier may designate from time to time in accordance with the provisions of the Sales Agency Rules (sub-paragraph 7.3);
- (i) a Traffic Document shall be issued immediately money is received by the Agent for specified passenger air transportation or ancillary services sold under the PSAA and the Agent shall be responsible for remittance to the Carrier of the amount payable in respect of such Traffic Document (sub-paragraph 7.4);
- (j) moneys for sale against which an Agent issues Standard Traffic Documents shall be deemed due by the Agent to the Member of IATA participating in the IATA Billing and Settlement Plan (BSP) when such Standard Traffic Documents are issued and shall be settled in accordance with the provisions of section 6 of the Sales Agency Rules (sub-paragraph 6.1.1 of the Sales Agency Rules, incorporated into the PSAA by sub-paragraph 2.1(b) of the PSAA);
- (k) in circumstances where an Agent collects full or part payment for transportation in respect of which reservations have been made on the services of a Member of IATA participating in the BSP, such Agent shall issue an appropriate Traffic Document. Thereupon moneys for such sale shall be deemed due and settlement shall be made in accordance with sub-paragraph 6.1.1 of the Sales Agency Rules (sub-paragraph 6.1.2 of the Sales Agency Rules, incorporated into the PSAA by sub-paragraph 2.1(b) of the PSAA);

- (l) moneys for any sales against which an Agent issues a Member's Traffic Document shall be deemed due by the Agent to the Member of IATA not participating in the BSP when such Traffic Document is issued and shall be settled in accordance with the provisions of section 7 of the Sales Agency Rules (sub-paragraph 7.1.1 of the Sales Agency Rules, incorporated into the PSAA by sub-paragraph 2.1(b) of the PSAA);
- (m) in circumstances where an Agent collects full or part payment for transportation in respect of which reservations have been made on the services of a Member of IATA not participating in the BSP, such Agent shall issue an appropriate Traffic Document. Thereupon moneys for such sale shall be deemed due and settlement shall be made in accordance with sub-paragraph 7.1.1 of the Sales Agency Rules (sub-paragraph 7.1.2 of the Sales Agency Rules, incorporated into the PSAA by sub-paragraph 2.1(b) of the PSAA).

11 At all relevant times prior to 14 September 2001 Ansett was a participant in the IATA Billing and Settlement Plan Australia ("the BSP").

12 On 14 September 2001 Ansett was suspended from the BSP.

TRUST CLAIMS

13 In the period 27 August 2001 to about 14 September 2001 the first defendant issued Traffic Documents on behalf of Ansett and/or Transportation Orders drawn on Ansett ("**the First Traffic Documents**").

PARTICULARS

Particulars of the First Traffic Documents are set out in Schedule A.

- 14 On or after 27 August 2001 the first defendant collected amounts payable for the transportation or other services sold by it on behalf of Ansett in respect of the First Traffic Documents during the period 27 August to about 14 September 2001 in the sum of \$2,995,283.08 ("**the First Moneys**").

PARTICULARS

The amounts collected are particularised in Schedule A.

- 15 The First Moneys collected by the first defendant became on collection, and remain, the property of Ansett and are held by the first defendant in trust for Ansett until satisfactorily accounted for to Ansett and settlement made ("**the First Trust**").

PARTICULARS

Sub-paragraph 7.2 of the PSAA.

- 16 In the period 27 August 2001 to about 14 September 2001 the second defendant issued Traffic Documents on behalf of Ansett and/or Transportation Orders drawn on Ansett ("**the Second Traffic Documents**").

PARTICULARS

Particulars of the Second Traffic Documents are set out in Schedule B.

- 17 On or after 27 August 2001 the second defendant collected amounts payable for the transportation or other services sold by it on behalf of Ansett in respect

of the Second Traffic Documents during the period 27 August to about 14 September 2001 in the sum of \$887,233.74 ("**the Second Moneys**").

PARTICULARS

The amounts collected are particularised in Schedule B.

- 18 The Second Moneys collected by the second defendant became on collection, and remain, the property of Ansett and are held by the second defendant in trust for Ansett until satisfactorily accounted for to Ansett and settlement made ("**the Second Trust**").

PARTICULARS

Sub-paragraph 7.2 of the PSAA.

- 19 In the period 27 August 2001 to about 14 September 2001 the third defendant issued Traffic Documents on behalf of Ansett and/or Transportation Orders drawn on Ansett ("**the Third Traffic Documents**").

PARTICULARS

Particulars of the Third Traffic Documents are set out in Schedule C.

- 20 On or after 27 August 2001 the third defendant collected amounts payable for the transportation or other services sold by it on behalf of Ansett in respect of the Third Traffic Documents during the period 27 August to about 14 September 2001 in the sum of \$180,044.07 ("**the Third Moneys**").

PARTICULARS

The amounts collected are particularised in Schedule C.

- 21 The Third Moneys collected by the third defendant became on collection, and remain, the property of Ansett and are held by the third defendant in trust for Ansett until satisfactorily accounted for to Ansett and settlement made ("the Third Trust").

PARTICULARS

Sub-paragraph 7.2 of the PSAA.

- 22 Ansett has demanded, alternatively hereby demands, that the first defendant as Trustee, pay the First Moneys to it.

PARTICULARS

The demands were made in writing in the following letters:

- (a) a letter from Ansett to the first defendant dated 21 December 2001 demanding payment of the portion of the First Moneys representing availed travel;
- (b) a letter from Ansett to the first defendant dated 15 January 2002 demanding payment of the portion of the First Moneys representing availed travel;
- (c) a letter from Andersen Legal on behalf of Ansett to the first defendant dated 19 March 2002 demanding payment of the portion of the First Moneys representing availed travel;
- (d) a letter from Andersen Legal on behalf of Ansett to the first defendant dated 8 May 2002 demanding payment of the First Moneys;

- (e) a letter from Arnold Bloch Leibler on behalf of Ansett to the first defendant dated 13 September 2002 demanding payment of the First Moneys; and
- (f) a letter from Ansett to the first defendant dated 24 September 2002 demanding payment of the First Moneys.

Copies of the letters listed above may be inspected by appointment at the offices of Ansett's solicitors.

- 23 Ansett has demanded, alternatively hereby demands, that the second defendant as Trustee, pay the Second Moneys to it.

PARTICULARS

The demands were made in writing in the following letters:

- (a) a letter from Ansett to the second defendant dated 21 December 2001 demanding payment of the portion of the Second Moneys representing availed travel;
- (b) a letter from Ansett to the second defendant dated 15 January 2002 demanding payment of the portion of the Second Moneys representing availed travel;
- (c) a letter from Andersen Legal on behalf of Ansett to the second defendant dated 19 March 2002 demanding payment of the portion of the Second Moneys representing availed travel;

- (d) a letter from Andersen Legal on behalf of Ansett to the second defendant dated 10 May 2002 demanding payment of the Second Moneys; and
- (e) a letter from Arnold Bloch Leibler on behalf of Ansett to the second defendant dated 13 September 2002 demanding payment of the Second Moneys.

Copies of the letters listed above may be inspected by appointment at the offices of Ansett's solicitors.

- 24 Ansett has demanded, alternatively hereby demands, that the third defendant as Trustee, pay the Third Moneys to it.

PARTICULARS

The demands were made in writing in the following letters:

- (a) letters from Ansett to the third defendant dated 21 December 2001 demanding payment of the portion of the Third Moneys representing availed travel;
- (b) letters from Ansett to the third defendant dated 14 January 2002 demanding payment of the portion of the Third Moneys representing availed travel;
- (c) a letter from Andersen Legal on behalf of Ansett to the third defendant dated 19 March 2002 demanding payment of the portion of the Third Moneys representing availed travel; and

- (d) letters from Arnold Bloch Leibler on behalf of Ansett to the third defendant dated 13 September 2003 demanding payment of the Third Moneys.

Copies of the letters listed above may be inspected by appointment at the offices of Ansett's solicitors.

- 25 The first defendant has failed and/or refused to pay the First Moneys to Ansett.
- 26 The second defendant has failed and/or refused to pay the Second Moneys to Ansett.
- 27 The third defendant has failed and/or refused to pay the Third Moneys to Ansett.
- 28 Accordingly:
- (a) the First Moneys have not been satisfactorily accounted for to Ansett;
 - (b) settlement of the First Moneys has not been made to Ansett;
 - (c) the Second Moneys have not been satisfactorily accounted for to Ansett;
 - (d) settlement of the Second Moneys has not been made to Ansett;
 - (e) the Third Moneys have not been satisfactorily accounted for to Ansett;
 - (f) settlement of the Third Moneys has not been made to Ansett.

29 In the premises:

- (a) the first defendant holds the First Moneys in trust for Ansett and Ansett is entitled to the First Moneys;
- (b) the first defendant is liable to account to Ansett for the First Moneys;
- (c) the second defendant holds the Second Moneys in trust for Ansett and Ansett is entitled to the Second Moneys;
- (d) the second defendant is liable to account to Ansett for the Second Moneys;
- (e) the third defendant holds the Third Moneys in trust for Ansett and Ansett is entitled to the Third Moneys;
- (f) the third defendant is liable to account to Ansett for the Third Moneys.

30 Further or in the alternative, the conduct of:

- (a) the first defendant in refusing and/or failing to pay the First Moneys to Ansett constitutes a breach of the First Trust by the first defendant for which Ansett is entitled to equitable compensation;
- (b) the second defendant in refusing and/or failing to pay the Second Moneys to Ansett constitutes a breach of the Second Trust by the second defendant for which Ansett is entitled to equitable compensation;

- (c) the third defendant in refusing and/or failing to pay the Third Moneys to Ansett constitutes a breach of the Third Trust by the third defendant for which Ansett is entitled to equitable compensation.

DEBT CLAIMS

- 31 Further or in the alternative, upon the issue by the first defendant of the First Traffic Documents, the first defendant became responsible for payment to Ansett of the amount payable for the transportation or other services to which the First Traffic Documents related and that amount became due by the first defendant to Ansett.

PARTICULARS

Sub-paragraph 7.1 of the PSAA and sub-paragraphs 6.1.1 and 6.1.2 and/or sub-paragraphs 7.1.1 and 7.1.2 of the Sales Agency Rules, incorporated into the PSAA by sub-paragraph 2.1(b) of the PSAA.

- 32 The amount payable for the transportation or other services to which the First Traffic Documents related is \$2,995,283.08 ("**the First Amount Payable**").

PARTICULARS

Particulars of the First Amount Payable are set out in Schedule A.

- 33 Further:
- (a) pursuant to sub-paragraph 7.3 of the PSAA, the first defendant was obliged to remit to Ansett the First Amount Payable in accordance with

the provisions of the Sales Agency Rules (which provisions are incorporated into the PSAA by sub-paragraph 2.1(b) of the PSAA);

- (b) the provisions of the Sales Agency Rules required the first defendant to remit the various amounts making up the First Amount Payable in or about September or October 2001.

PARTICULARS

Pursuant to sub-paragraphs 6.3.1 and 6.7.3(h) of the Sales Agency Rules, Chapter 14 of the BSP Manual and sub-paragraph 14.1 of the BSP Manual for Agents – Local Procedures, the first defendant was required to report sales of Traffic Documents and remit funds on a weekly basis while Ansett was participating in the BSP. Sub-paragraph 14.1 of the BSP Manual for Agents – Local Procedures is incorporated into the BSP Manual by Chapter 14 of the BSP Manual. The BSP Manual is incorporated into the PSAA by sub-paragraph 2.1(b) of the PSAA. Ansett participated in the BSP at all relevant times prior to 14 September 2001. Further, pursuant to sub-paragraph 7.3 of the Sales Agency Rules the first defendant was required to report sales of Traffic Documents and remit funds on a weekly basis while Ansett was not participating in the BSP.

34 Further or alternatively to paragraph 33:

- (a) after Ansett was suspended from BSP on 14 September 2001, the first defendant was required to remit the First Amount Payable directly to Ansett forthwith upon being advised by the Manager, BSP Australia pursuant to IATA Resolution 850, Attachment 'F' (being an applicable

IATA Resolution incorporated into the PSAA by sub-paragraph 2.1(a) of the PSAA) that Ansett had been suspended from the BSP and that the first defendant was required to settle any sales, refunds or other credit/debit transactions directly with Ansett;

- (b) on or about 14 September 2001, the Manager, BSP Australia advised the first defendant in writing pursuant to IATA Resolution 850 Attachment 'F' that:
- (i) Ansett has been suspended from BSP Australia;
 - (ii) the first defendant should settle any sales, refunds or other credit/debit transactions directly with the Administrator of Ansett.

PARTICULARS

The advice was given in a facsimile dated 14 September 2001 from the Manager, BSP Australia to all IATA accredited agents in Australia, including the first defendant. A copy may be inspected by appointment at the offices of Ansett's solicitors.

- 35 By reason of the matters set out in paragraphs 31-34 above, the First Amount Payable is, and has been since about September or October 2001, due and payable by the first defendant to Ansett.
- 36 Ansett has demanded, alternatively hereby demands, that the first defendant pay to it the First Amount Payable.

PARTICULARS

The plaintiff refers to and repeats the particulars to paragraph 22.

37 In breach of sub-paragraphs 7.1 and 7.3 of the PSAA and/or sub-paragraphs 6.1.1 and 6.1.2 of the Sales Agency Rules and/or sub-paragraphs 7.1.1 and 7.1.2 of the Sales Agency Rules and/or IATA Resolution 850 Attachment 'F' (incorporated into the PSAA by sub-paragraph 2.1(a) of the PSAA), the first defendant has refused and/or failed:

- (a) to pay to Ansett the First Amount Payable;
- (b) to remit to Ansett the First Amount Payable in accordance with the provisions of the Sales Agency Rules or at all.

38 Further or in the alternative, upon the issue by the second defendant of the Second Traffic Documents, the second defendant became responsible for payment to Ansett of the amount payable for the transportation or other services to which the Second Traffic Documents related and that amount became due by the second defendant to Ansett.

PARTICULARS

Sub-paragraph 7.1 of the PSAA and sub-paragraphs 6.1.1 and 6.1.2 and/or sub-paragraphs 7.1.1 and 7.1.2 of the Sales Agency Rules, incorporated into the PSAA by sub-paragraph 2.1(b) of the PSAA.

39 The amount payable for the transportation or other services to which the Second Traffic Documents related is \$887,233.74 ("**the Second Amount Payable**").

PARTICULARS

Particulars of the Second Amount Payable are set out in Schedule B.

40 Further:

- (a) pursuant to sub-paragraph 7.3 of the PSAA, the second defendant was obliged to remit to Ansett the Second Amount Payable in accordance with the provisions of the Sales Agency Rules (which provisions are incorporated into the PSAA by sub-paragraph 2.1(b) of the PSAA);
- (b) the provisions of the Sales Agency Rules required the second defendant to remit the various amounts making up the Second Amount Payable in or about September or October 2001.

PARTICULARS

Pursuant to sub-paragraphs 6.3.1 and 6.7.3(h) of the Sales Agency Rules, Chapter 14 of the BSP Manual and sub-paragraph 14.1 of the BSP Manual for Agents – Local Procedures, the second defendant was required to report sales of Traffic Documents and remit funds on a weekly basis while Ansett was participating in the BSP. Sub-paragraph 14.1 of the BSP Manual for Agents – Local Procedures is incorporated into the BSP Manual by Chapter 14 of the BSP Manual. The BSP Manual is incorporated into the PSAA by sub-paragraph 2.1(b) of the PSAA. Ansett participated in the BSP at all relevant times prior to 14 September 2001. Further, pursuant to sub-paragraph 7.3 of the Sales Agency Rules the second defendant was required to report sales of Traffic Documents and remit funds on a weekly basis while Ansett was not participating in the BSP.

41 Further or alternatively to paragraph 40:

- (a) after Ansett was suspended from BSP on 14 September 2001, the second defendant was required to remit the Second Amount Payable directly to Ansett forthwith upon being advised by the Manager, BSP Australia pursuant to IATA Resolution 850, Attachment 'F' (being an applicable IATA Resolution incorporated into the PSAA by subparagraph 2.1(a) of the PSAA) that Ansett had been suspended from the BSP and that the second defendant was required to settle any sales, refunds or other credit/debit transactions directly with Ansett;
- (b) on or about 14 September 2001, the Manager, BSP Australia advised the second defendant in writing pursuant to IATA Resolution 850 Attachment 'F' that:
 - (i) Ansett has been suspended from BSP Australia;
 - (ii) the second defendant should settle any sales, refunds or other credit/debit transactions directly with the Administrator of Ansett.

PARTICULARS

The advice was given in a facsimile dated 14 September 2001 from the Manager, BSP Australia to all IATA accredited agents in Australia, including the second defendant. A copy may be inspected by appointment at the offices of Ansett's solicitors.

- 42 By reason of the matters set out in paragraphs 38-41 above, the Second Amount Payable is, and has been since about September or October 2001, due and payable by the second defendant to Ansett.
- 43 Ansett has demanded, alternatively hereby demands, that the second defendant pay to it the Second Amount Payable.

PARTICULARS

The plaintiff refers to and repeats the particulars to paragraph 23.

- 44 In breach of sub-paragraphs 7.1 and 7.3 of the PSAA and/or sub-paragraphs 6.1.1 and 6.1.2 of the Sales Agency Rules and/or sub-paragraphs 7.1.1 and 7.1.2 of the Sales Agency Rules and/or IATA Resolution 850 Attachment 'F' (incorporated into the PSAA by sub-paragraph 2.1(a) of the PSAA), the second defendant has refused and/or failed:
- (a) to pay to Ansett the Second Amount Payable;
 - (b) to remit to Ansett the Second Amount Payable in accordance with the provisions of the Sales Agency Rules or at all.

- 45 Further or in the alternative, upon the issue by the third defendant of the Third Traffic Documents, the third defendant became responsible for payment to Ansett of the amount payable for the transportation or other services to which the Third Traffic Documents related and that amount became due by the third defendant to Ansett.

PARTICULARS

Sub-paragraph 7.1 of the PSAA and sub-paragraphs 6.1.1 and 6.1.2 and/or sub-paragraphs 7.1.1 and 7.1.2 of the Sales Agency Rules, incorporated into the PSAA by sub-paragraph 2.1(b) of the PSAA.

- 46 The amount payable for the transportation or other services to which the Third Traffic Documents related is \$180,044.07 ("**the Third Amount Payable**").

PARTICULARS

Particulars of the Third Amount Payable are set out in Schedule C.

- 47 Further:

- (a) pursuant to sub-paragraph 7.3 of the PSAA, the third defendant was obliged to remit to Ansett the Third Amount Payable in accordance with the provisions of the Sales Agency Rules (which provisions are incorporated into the PSAA by sub-paragraph 2.1(b) of the PSAA);
- (b) the provisions of the Sales Agency Rules required the third defendant to remit the various amounts making up the Third Amount Payable in or about September or October 2001.

PARTICULARS

Pursuant to sub-paragraphs 6.3.1 and 6.7.3(h) of the Sales Agency Rules, Chapter 14 of the BSP Manual and sub-paragraph 14.1 of the BSP Manual for Agents – Local Procedures, the third defendant was required to report sales of Traffic Documents and remit funds on a weekly basis while Ansett

was participating in the BSP. Sub-paragraph 14.1 of the BSP Manual for Agents – Local Procedures is incorporated into the BSP Manual by Chapter 14 of the BSP Manual. The BSP Manual is incorporated into the PSAA by sub-paragraph 2.1(b) of the PSAA. Ansett participated in the BSP at all relevant times prior to 14 September 2001. Further, pursuant to sub-paragraph 7.3 of the Sales Agency Rules the third defendant was required to report sales of Traffic Documents and remit funds on a weekly basis while Ansett was not participating in the BSP.

48 Further or alternatively to paragraph 47:

- (a) after Ansett was suspended from BSP on 14 September 2001, the third defendant was required to remit the Third Amount Payable directly to Ansett forthwith upon being advised by the Manager, BSP Australia pursuant to IATA Resolution 850, Attachment 'F' (being an applicable IATA Resolution incorporated into the PSAA by sub-paragraph 2.1(a) of the PSAA) that Ansett had been suspended from the BSP and that the third defendant was required to settle any sales, refunds or other credit/debit transactions directly with Ansett;
- (b) on or about 14 September 2001, the Manager, BSP Australia advised the third defendant in writing pursuant to IATA Resolution 850 Attachment 'F' that:
 - (i) Ansett has been suspended from BSP Australia;
 - (ii) the third defendant should settle any sales, refunds or other credit/debit transactions directly with the Administrator of Ansett.

PARTICULARS

The advice was given in a facsimile dated 14 September 2001 from the Manager, BSP Australia to all IATA accredited agents in Australia, including the third defendant. A copy may be inspected by appointment at the offices of Ansett's solicitors.

- 49 By reason of the matters set out in paragraphs 45-48 above, the Third Amount Payable is, and has been since about September or October 2001, due and payable by the third defendant to Ansett.
- 50 Ansett has demanded, alternatively hereby demands, that the third defendant pay to it the Third Amount Payable.

PARTICULARS

The plaintiff refers to and repeats the particulars to paragraph 24.

- 51 In breach of sub-paragraphs 7.1 and 7.3 of the PSAA and/or sub-paragraphs 6.1.1 and 6.1.2 of the Sales Agency Rules and/or sub-paragraphs 7.1.1 and 7.1.2 of the Sales Agency Rules and/or IATA Resolution 850 Attachment 'F' (incorporated into the PSAA by sub-paragraph 2.1(a) of the PSAA), the third defendant has refused and/or failed:
- (a) to pay to Ansett the Third Amount Payable;
 - (b) to remit to Ansett the Third Amount Payable in accordance with the provisions of the Sales Agency Rules or at all.

52 By reason of the breaches referred to in paragraphs 37, 44 and 51 above, Ansett has suffered and continues to suffer loss and damage.

PARTICULARS

- (i) Ansett has not been paid the First, Second and Third Amounts Payable, to which it is entitled.
- (ii) Loss of use of money.

AND THE PLAINTIFF CLAIMS AGAINST THE FIRST DEFENDANT:

- A. A declaration that the first defendant holds the First Moneys in trust for the plaintiff.
- B. An order that the first defendant account to the plaintiff for the First Moneys.
- C. An order that the first defendant pay to the plaintiff the First Moneys.
- D. Further or alternatively, equitable compensation.
- E. Further or alternatively, payment of the sum of \$2,995,283.08.
- F. Further or alternatively, damages.
- G. Interest pursuant to statute and/or in accordance with equitable principles.
- H. Costs.
- I. Such further or other relief as the Court deems fit, including orders for any necessary accounts or enquiries.

AND THE PLAINTIFF CLAIMS AGAINST THE SECOND DEFENDANT:

- A. A declaration that the second defendant holds the Second Moneys in trust for the plaintiff.
- B. An order that the second defendant account to the plaintiff for the Second Moneys.
- C. An order that the second defendant pay to the plaintiff the Second Moneys.
- D. Further or alternatively, equitable compensation.
- E. Further or alternatively, payment of the sum of \$887,233.74.
- F. Further or alternatively, damages.
- G. Interest pursuant to statute and/or in accordance with equitable principles.
- H. Costs.
- I. Such further or other relief as the Court deems fit, including orders for any necessary accounts or enquiries.

AND THE PLAINTIFF CLAIMS AGAINST THE THIRD DEFENDANT:

- A. A declaration that the third defendant holds the Third Moneys in trust for the plaintiff.
- B. An order that the third defendant account to the plaintiff for the Third Moneys.
- C. An order that the third defendant pay to the plaintiff the Third Moneys.
- D. Further or alternatively, equitable compensation.

- E. Further or alternatively, payment of the sum of \$180,044.07.
- F. Further or alternatively, damages.
- G. Interest pursuant to statute and/or in accordance with equitable principles.
- H. Costs.
- I. Such further or other relief as the Court deems fit, including orders for any necessary accounts or enquiries.

DATED: 4 December 2003

S.P. WHELAN

M.C. GARNER

K. DAWSON



.....
Arnold Bloch Leibler
Solicitors for the Plaintiff

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