

**FORM 1**

Section 16

*Service and Execution of Process Act 1992*

**NOTICE TO DEFENDANT**

**READ THIS NOTICE AND THE ATTACHED DOCUMENT VERY  
CAREFULLY**

**IF YOU HAVE ANY TROUBLE UNDERSTANDING THEM YOU SHOULD  
GET LEGAL ADVICE AS SOON AS POSSIBLE**

Attached to this notice is a writ and statement of claim ("the attached process") issued out of the Supreme Court of Victoria. Service of the attached process outside Victoria is authorised by the Service and Execution of Process Act 1992.

**YOUR RIGHTS**

If a court of a State or Territory other than Victoria is the appropriate court to determine the claim against you set out in the attached process, you may be able to apply to the Supreme Court in Victoria to have the proceeding transferred to another Supreme Court, or another superior court.

If you think the proceeding should be stayed or transferred you should get legal advice as soon as possible.

**CONTESTING THIS CLAIM**

If you want to contest this claim, you must take any action set out in the attached process as being necessary to contest the claim.

If you want to contest this claim, you must also file an appearance in the Supreme Court of Victoria. You have only 21 days after receiving the attached process to do so.

The appearance must contain an address in Australia where documents can be left for you or sent to you.

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

No. 2073 of 2002

F 5476

BETWEEN:

**ANSETT AUSTRALIA LIMITED** (Subject to Deed of Company Arrangement)  
(ACN 004 209 410) Plaintiff

-and-

**WESTPAC BANKING CORPORATION** (ABN 33 007 457 141) Defendant

**WRIT**

Date of document: 17 September 2002  
Filed on behalf of: the Plaintiff  
Prepared by: **Arnold Bloch Leibler**  
Lawyers & Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 455 Melbourne  
Tel: 9229 9999  
Ref: ZM:JAT:1251212  
(Zaven Mardirossian)

**TO THE DEFENDANT**

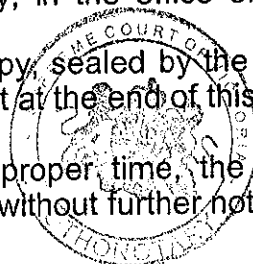
TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

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.

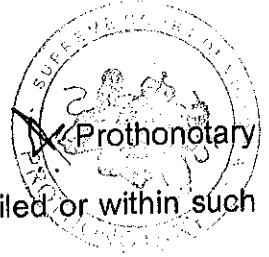
IF YOU FAIL to file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.



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: 17 September 2002



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

*Arundel & Co. Solicitors*  
.....  
Solicitors for the plaintiff

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

No. of 2002

BETWEEN:

**ANSETT AUSTRALIA LIMITED** (Subject to a Deed of Company  
Arrangement)  
(ACN 004 209 410)

Plaintiff

-and-

**WESTPAC BANKING CORPORATION** (ABN 33 007 457 141)

Defendant

**STATEMENT OF CLAIM**

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Date of document:	September 2002
Filed on behalf of:	The Plaintiff
Prepared by:	Solicitors Code: 00054
Arnold Bloch Leibler	DX: 455 Melbourne
Lawyers and Advisers	Tel: 9229 9999
333 Collins Street	Fax: 9229 9900
Melbourne Victoria 3000	Ref: Zaven Mardirossian

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- 1 The plaintiff ("**Ansett**") is and was at all relevant times a company incorporated according to law.
- 2 The defendant ("**Westpac**") is and was at all relevant times a company incorporated according to law.
- 3 From about August 1991, and at all relevant times, Ansett conducted a frequent flyer reward program called Global Rewards ("**the GR Program**").

## PARTICULARS

The GR Program was governed by Global Rewards Terms and Conditions. A copy of those Terms and Conditions is in the possession of Ansett's solicitors and may be inspected by prior appointment.

- 4 On or about 9 April 2001 Ansett and Westpac entered into a Participation Agreement ("**the Participation Agreement**").

## PARTICULARS

The Participation Agreement is in writing and is dated 9 April 2001. A copy of it is in the possession of Ansett's solicitors and may be inspected by prior appointment.

- 5 The Recitals of the Participation Agreement provide:

- "A. *Ansett conducts a frequent flyer reward program called Global Rewards under which those people who join Global Rewards accrue points based on their consumption of goods and services supplied by Ansett, the Participant [Westpac] and other participants in Global Rewards and can then exchange those Points for specified goods and services.*
- B. *The parties have developed a Global Rewards Westpac Visa Card.*
- C. *The Participant [Westpac] wishes to participate in Global Rewards in respect of the use by a Member of the Global Rewards Westpac Visa Card in accordance with the terms and conditions set out in this Agreement."*

- 6 There were terms of the Participation Agreement as follows:

- "Ansett Calendar Month" means the 28 or 35 day billing periods implemented by Ansett (clause 1.1);
- "Bonus Points" means Points earned by a Cardholder pursuant to the Global Rewards Westpac Visa Card Bonus Partner Program,

when using a Global Rewards Westpac Visa Card to purchase goods or services from a Bonus Partner, in addition to Points credited pursuant to Clause 6 (clause 1.1);

- "Cardholder" means a person who has a Global Rewards Westpac Visa Card (clause 1.1);
- "Commencement Date" means 1 January 2001 (clause 1.1);
- "Global Rewards Program Terms and Conditions" means the terms and conditions which govern a Member's membership in Global Rewards (clause 1.1);
- "Global Rewards Westpac Visa Card" means the Visa credit card issued by the Participant (Westpac) which is branded with the names and logos of the Participant and Ansett (clause 1.1);
- "Global Rewards Westpac Visa Card Bonus Partner Program" means the program operated by the Participant (Westpac) pursuant to which Members are credited Bonus Points in relation to Qualifying Purchases from Bonus Partners (clause 1.1);
- "GR" means Global Rewards, a frequent flyer reward program conducted by Ansett (clause 1.1);
- "Member" means a natural person who is a member of GR but does not include an executor, administrator or legal representative or assignee of such person (clause 1.1);
- "Points" means GR points accrued by Members based on their consumption of goods and services supplied by Ansett, the Participant (Westpac) and other participants in GR (clause 1.1);
- "Qualifying Purchase 1" means the acceptance by the Participant (Westpac) of a Member's application for a Global Rewards Westpac

Visa Card (regardless of whether that Member applies for membership of GR at the same time as making the application for a Global Rewards Westpac Visa Card or otherwise) and subsequent issue of a Global Rewards Westpac Visa Card to a Member (clause 1.1);

- "Qualifying Purchase 2" means the total amount charged to a Global Rewards Westpac Visa Card credit card account issued by the Participant (Westpac) and billed on their monthly statement of account provided to the Member by the Participant, excluding fees, interest charges, card fees, cash advances, government charges and payments, and transactions that are excluded from the accrual of Points by the Global Rewards Program Terms and Conditions, and after deduction of credit returns and adjustments (including disputed transaction) (clause 1.1);
- "Rewards" means the specified goods and services for which Points accrued by Members can be exchanged in GR (clause 1.1);
- The Participant (Westpac) will participate in GR under the Terms and Conditions set out in the Participation Agreement (clause 2(a));
- The term of the agreement is from the Commencement Date until it is terminated in accordance with Clause 19 (clause 3(a));
- The Participant (Westpac) will be responsible for the Global Rewards Westpac Visa Card's function (clause 5(a)).

7 Clause 6 of the Participation Agreement provides inter alia:

*"6. Point Accrual*

- (a) *For every Qualifying Purchase 1 by a Member, Ansett will credit the Member with 1000 Points.*

- (b) Unless otherwise agreed, for every Qualifying Purchase 2 by a Member, Ansett will credit the Member with one Point for every dollar charged.
- (c) The Participant will pay Ansett for every Point credited to a Member:
  - (i) from the Commencement Date until 30 September 2001, at a rate of \$0.0085 per Point;
  - (ii) from 1 October 2001 until 31 December 2003, at a rate of \$0.01 per Point; and
  - (iii) thereafter, at a rate per Point to be agreed by the parties from time to time.
- (d) The Participant is only required to pay Ansett for Points actually credited to a Member's GR account.
- (e) ...
- (f) The obligations of Ansett to credit Points to a Member and for the Participant to pay for those Points will be subject to the Member complying with the Global Rewards Program Terms and Conditions."

8 Clause 9 of the Participation Agreement provides inter alia:

"9. Global Rewards Westpac Visa Card Bonus Partner Program

- (a) The Participant must obtain Ansett's consent in writing to the appointment of any Bonus Partner (such consent to be at the sole discretion of Ansett).
- (b) ....
- (c) ....
- (d) ....
- (e) For every Qualifying Purchase by a Member from a Bonus Partner:
  - (i) Ansett will credit the Member with one Bonus Point for every dollar charged; and
  - (ii) the Participant will pay Ansett for each Bonus Point credited to a Member:
    - (A) in respect of the Bonus Partners listed in Schedule 3, at a rate of \$0.01 per Bonus Point;



(B) *in respect of the Bonus Partners listed in Schedule 4, at a rate of \$0.015 per Bonus Point; and*

(C) *in respect of all other Bonus Partners, at a rate per Bonus Point to be agreed, such rate to be no less than \$0.015 per Point. . .*  
”

9 Clause 10 of the Participation Agreement provides:

*“10. Invoicing*

*Ansett will invoice the Participant at the end of each Ansett Calendar Month. Payment must be made by the Participant no later than 30 days after the date of the invoice in such manner as Ansett may notify the Participant from time to time.”*

10 In the Ansett Calendar Month of August 2001, pursuant to and in accordance with the terms of clauses 6(a), 6(b) and 9 (e) (i) of the Participation Agreement, Ansett credited Members of the GR Program with Points and Bonus Points for Qualifying Purchases made by those Members (**“the August Credited Points”**).

#### **PARTICULARS**

Particulars of the August Credited Points are set out in Schedule A hereto.

11 Pursuant to clause 6(c)(i) of the Participation Agreement, Westpac was and is obliged to pay Ansett for every such Point credited to a Member pursuant to clauses 6(a) and 6(b) of the Participation Agreement at the rate of \$0.0085 per Point.

12 Further, pursuant to clause 9(e)(ii) of the Participation Agreement, Westpac was and is obliged to pay Ansett for each such Bonus Point

credited to a Member pursuant to clause 9(e)(i) of the Participation Agreement at the rate specified in sub-clauses 9 (e)(ii) (A), (B) and (C).

- 13 In the premises, Westpac is indebted to Ansett in the sum of \$9,164,100.45 in respect of the August Credited Points.

#### **PARTICULARS**

Particulars of this indebtedness are set out in Schedule A hereto.

- 14 Further, in the Ansett Calendar Month of September 2001, pursuant to and in accordance with the terms of clauses 6(a), 6(b) and 9(e)(i) of the Participation Agreement, Ansett credited Members of the GR Program with Points and Bonus Points for Qualifying Purchases made by those Members ("**the September Credited Points**").

#### **PARTICULARS**

Particulars of the September Credited Points are set out in Schedule B hereto.

- 15 Pursuant to clause 6(c)(i) of the Participation Agreement, Westpac was and is obliged to pay Ansett for each and every such Point credited to a Member pursuant to clauses 6(a) and 6(b) of the Participation Agreement at the rate of \$0.0085 per Point.
- 16 Further, pursuant to clause 9(e)(ii) of the Participation Agreement, Westpac was and is obliged to pay Ansett for each such Bonus Point credited to a Member pursuant to clause 9(e)(i) of the Participation Agreement at the rates specified in sub-clauses 9(e)(ii) (A), (B) and (C).

- 17 In the premises, Westpac is further indebted to Ansett in the sum of \$7,290,695.78 in respect of the September Credited Points.

**PARTICULARS**

Particulars of this further indebtedness are set out in Schedule B hereto.

- 18 On 30 August 2001 Ansett issued an invoice to Westpac for \$9,164,100.45 in respect of the August Credited Points (**"the August invoice"**).

**PARTICULARS**

A copy of the August Invoice is in the possession of Ansett's solicitors and may be inspected by prior appointment.

- 19 In breach of the Participation Agreement Westpac has failed and/or refused to pay:
- (a) the monies owing by it to Ansett in respect of the August Credited Points (\$9,164,100.45);
  - (b) the monies owing by it to Ansett in respect of the September Credited Points (\$7,290,695.78); or
  - (c) the August Invoice.
- 20 By reason of the said breaches of the Participation Agreement Ansett has suffered and continues to suffer loss and damage.

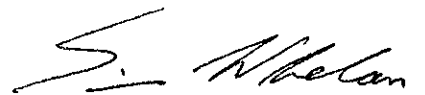
**PARTICULARS**

- (a) Loss of \$16,454,796.23
- (b) Loss of use of money.

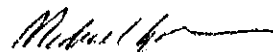
**AND THE PLAINTIFF CLAIMS:**

- A. \$16,454,796.23
- B. Further or alternatively, damages.
- C. Interest.
- D. Costs.
- E. Such further or other order as to the Court seems appropriate.

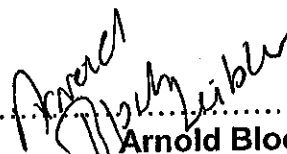
**Dated:** September 2002.



**SP Whelan**



**MC Garner**



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

SCHEDULE A

ANSETT GLOBAL REWARDS  
 WESTPAC BANKING CORPORATION PARTICIPATION  
 FOR THE MONTH OF AUGUST 2001  
 SUMMARY OF POINTS

	POINTS	RATE	AMOUNT	GST	TOTAL
<b>ACCRUED POINTS</b>					
<b>AUTO TRACKED</b>					
BASE POINTS-PRE 1/1/01		0.006	\$0.00		
BASE POINTS - POST 1/1/01	959,062,344	0.0085	\$8,152,029.92		
<b>PROMOTION POINTS</b>					
Pre 1/1/01 points					
@ a rate of 0.006		0.006	\$0.00		
@ a rate of 0.010		0.01	\$0.00		
@ a rate of 0.015		0.015	\$0.00		
Post 1/1/01 points					
@ a rate of 0.0085	16,794,434	0.0085	\$142,752.69		
@ a rate of 0.01	530,644	0.01	\$5,306.44		
@ a rate of 0.015	2,060,757	0.015	\$30,911.36		
	978,448,179		\$8,331,000.41	\$833,100.04	\$9,164,100.45

SCHEDULE B

ANSETT GLOBAL REWARDS  
 WESTPAC BANKING CORPORATION PARTICIPATION  
 FOR THE MONTH OF 26 AUGUST TO 17 SEPTEMBER 2001  
 SUMMARY OF POINTS

ACCURED POINTS  
AUTO TRACKED

BASE POINTS-PRE 1/1/01  
 BASE POINTS - POST 1/1/01

POINTS	RATE	AMOUNT	GST	TOTAL
	0.006	\$0.00		
755,843,278	0.0085	\$6,424,667.86		

PROMOTION POINTS

Pre 1/1/01 points

@ a rate of 0.006	0.006	\$0.00		
@ a rate of 0.010	0.01	\$0.00		
@ a rate of 0.015	0.015	\$0.00		

Post 1/1/01 points

@ a rate of 0.006	437,147	0.006	\$2,622.88	
@ a rate of 0.0085	15,803,000	0.0085	\$134,325.50	
@ a rate of 0.01	893,967	0.01	\$8,939.67	
@ a rate of 0.015	3,823,289	0.015	\$57,349.34	
<b>776,800,681</b>			<b>\$6,627,905.25</b>	<b>\$662,790.53</b>
				<b>\$7,290,695.78</b>



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 – 501 Swanston Street, Melbourne, Victoria, 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 defendant is – Level 25, 60 Martin Place, Sydney, NSW 2000.

