

**IN THE FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY**

No. V621 of 2005

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

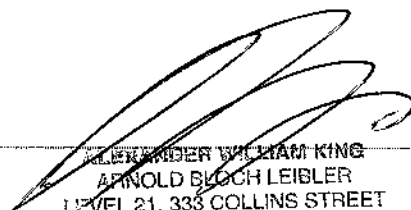
and

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

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "**MAK-31**" produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit dated 12 September 2005.

Before me:


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

**Exhibit "MAK-31"
Affidavit of Leon Zwier sworn 20 September 2002
(excluding exhibits)**

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIAN DISTRICT REGISTRY

NO. V 3051 of 2001

IN THE MATTER OF:

HAZELTON AIR CHARTER PTY LIMITED (A.C.N. 065 221 356), HAZELTON AIR SERVICES PTY LIMITED (A.C.N. 000 242 928) and HAZELTON AIRLINES LIMITED (A.C.N. 061 965 642) (All Administrators Appointed)

AND

MICHAEL JAMES HUMPHRIS in his capacity as administrator of HAZELTON AIR CHARTER PTY LIMITED (A.C.N. 065 221 356), HAZELTON AIR SERVICES PTY LIMITED (A.C.N. 000 242 928) and HAZELTON AIRLINES LIMITED (A.C.N. 061 965 642) (All Administrators Appointed)

Plaintiff

AND

MARK FRANCIS XAVIER MENTHA AND MARK ANTHONY MARK KORDA in their capacities as administrators of the companies listed in the Schedule attached (All Administrators Appointed)

Defendants

AFFIDAVIT OF LEON ZWIER

DEPONENT: Leon Zwier
SWORN: 20 September 2002

On 20 September 2002, I, **LEON ZWIER**, Solicitor of Level 21, 333 Collins Street, Melbourne in the State of Victoria say on oath:

1 I am a Partner of Arnold Bloch Leibler, Solicitors in Melbourne. Dany Merkel and I have the care and conduct of this matter on behalf of the Defendants. I

Prepared by:
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
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MELBOURNE VIC 3000

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Ref: LZ:DMM:1205150

am authorised to make this Affidavit on behalf of the Defendants. I make this Affidavit in support of the Application of the Defendants for the relief sought in this Application.

2 Save where I say to the contrary, the matters deposed to in this Affidavit are deposed to from my own personal knowledge of the facts. Where I depose to matters from information or belief, I believe those matters to be true.

3 I have read the following Affidavits filed in these proceedings:

- (a) Affidavit of Michael James Humphris and Exhibits sworn 29 May 2002 ("Humphris' 11th affidavit").
- (b) Affidavit of David Beaumont Andrews and Exhibits sworn 29 May 2002 ("Andrews' affidavit").
- (c) Draft Affidavit of Mark Anthony Korda (to be sworn and filed in this proceeding) and Exhibits ("Mark Korda's affidavit").

BACKGROUND TO THE LETTER OF COMFORT

4 On 21 August 2002, I wrote to the lawyers for Air New Zealand Ltd ("Air NZ"), Bell Gully, requesting them to provide copies of the Air NZ board papers relating to the letter of comfort from Air NZ to three named Ansett companies dated 8 August 2001 ("Letter of Comfort") for the purpose of these Court proceedings.

5 Now produced and shown to me and marked "LZ1" is a copy of the letter from Arnold Bloch Leibler to Bell Gully dated 21 August 2002.

6 After making further inquiries, Bell Gully provided me with access to extracts of Air NZ board minutes and papers relating to the Letter of Comfort on the condition that I request this Honourable Court to make an order that they be kept confidential to the Judge and the lawyers for the parties to the proceedings.

7 Now produced and shown to me and marked "LZ2" is a copy of a facsimile from Bell Gully to Arnold Bloch Leibler dated 23 August 2002 with enclosures. I respectfully request that this exhibit be kept confidential in accordance with the request of Air NZ.

8 I have read the materials provided by Bell Gully. I set out in the attached confidential exhibit, which is now produced and shown to me and marked "LZ3", a summary of what I consider to be the relevant matters arising from my review of the materials. I respectfully request that this exhibit be kept confidential in accordance with the request of Air NZ.

PARTICIPATION OF HAZELTON ADMINISTRATOR IN MOU

9 I was present at the meeting with representatives of Air NZ held at Arnold Bloch Leibler on Sunday, 23 September 2001. This meeting is referred to in paragraphs 47 to 50 of Mark Korda's affidavit ("the Sunday meeting"). At the Sunday meeting (which lasted an entire day), neither the Hazelton Administrator nor the Hazelton companies were mentioned by any of the persons present at the meeting.

10 I refer to a handwritten memorandum from myself to Alan Galbraith QC dated 23 September 2001 enclosing a handwritten draft Memorandum of Understanding, which forms Exhibit "MAK8" to Mark Korda's affidavit. Neither the Hazelton Administrator nor the Hazelton companies were parties to the initial handwritten draft MOU provided to Air NZ.

11 On 24 September 2001, I informed David Crawford, a special advisor to the Commonwealth of the agreement in principle with Air NZ.

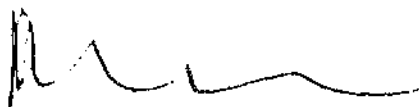
12 On 24 and 25 September 2001, I had a number of telephone conversations with Jim Farmer QC relating to the draft MOU. No mention was made of the Hazelton Administrator or the Hazelton companies during these telephone discussions. On the afternoon of Tuesday, 25 September 2001, I received a

facsimile addressed to Mark Mentha from Nathan Gedye of Bell Gully, solicitors for Air NZ, attaching a typewritten MOU which, among other things, had a reference to "Hazelton [specify]" as a potential party to the MOU.

- 13 Now produced and shown to me and marked "LZ4" is a copy of a facsimile from Bell Gully to Mark Mentha containing draft typed MOU for discussion purposes.
- 14 Later on 25 September 2001, I received a handwritten note from Alan Galbraith QC by way of facsimile advising that a further "better" version of the draft MOU would be provided the following day.
- 15 Now produced and shown to me and marked "LZ5" is a copy of a facsimile from Alan Galbraith QC to me dated 25 September 2001.
- 16 On 25 September 2001, I had a further telephone conversation with Alan Galbraith QC and Nathan Gedye of Bell Gully. We agreed that I would arrange for Arnold Bloch Leibler to retype the Sunday night draft MOU I had handwritten as a typed up document on our system.
- 17 On 26 September 2001, Mark Mentha, Mark Korda and I met with representatives of the Commonwealth, including advisors to the departments of the Prime Minister and Cabinet, Transport and Treasury to inform them of the commercial principles of the draft MOU with Air NZ.
- 18 I believe that Mark Mentha and I also informed Australian Securities and Investments Commission ("ASIC") of the commercial principles of the draft MOU in that week.
- 19 On 28 September 2001, I sent to Nathan Gedye by way of facsimile (and email) a further draft MOU typed up on Arnold Bloch Leibler's word processing system. This document specifically excluded the Hazelton companies as parties to the MOU.



- 20 Now produced and shown to me and marked "LZ6" is a copy of a facsimile dated 28 September 2001 to Bell Gully enclosing draft typewritten MOU.
- 21 At about 7:15pm on Friday, 28 September 2001, I received an email from Nathan Gedye attaching marked up amendments to the draft MOU I had provided him. Bell Gully's marked up amendments did not include Hazelton as a party to the MOU. However, in the covering email, Bell Gully advised that they wanted Hazelton included in the MOU and asked whether this could be done by Monday and whether there would be separate but identical MOUs or whether Hazelton would be a party to the existing MOU.
- 22 Now produced and shown to me and marked "LZ7" is a copy of the email received at approximately 7:15pm on Friday, 28 September 2001 from Nathan Gedye to me attaching marked up amendments to the draft MOU.
- 23 On Sunday, 30 September 2001 I had a telephone conversation with Alan Galbraith QC about a number of matters relating to the MOU. During that conversation, I acknowledged Air NZ's request for the Hazelton companies to be a party to the MOU and advised that I would obtain instructions.
- 24 On Sunday, 30 September 2001 at approximately 1:40pm, I sent a further email to Nathan Gedye of Bell Gully listing a number of matters that required further discussion. One of the ten matters listed was "the joinder of Hazelton and Humphris" to the MOU.
- 25 Now produced and shown to me and marked "LZ8" is a copy of the email from me to Nathan Gedye dated Sunday, 30 September 2001.
- 26 On the morning of Monday, 1 October 2001, I telephoned Michael Humphris at the offices of Sims Lockwood and left an urgent message for him to return my call. Some time later that morning, Michael Humphris returned my call. I told Michael Humphris about the MOU settlement reached with Air NZ. I explained that Air NZ was in serious financial difficulty and that if a settlement could not be finalised Air NZ may be placed in statutory management. I then arranged for



the latest draft of the MOU (in which the Hazelton companies were included as parties) to be sent to Michael Humphris by email.

27 Now produced and shown to me and marked "LZ9" is a copy of an email dated 1 October 2001 to Michael Humphris attaching latest version of the MOU in which the Hazelton companies were included as parties.

28 At approximately 10.00 am on Monday, 1 October 2001, I received a facsimile from Alan Galbraith QC, expressing concerns about the accurate reflection in the MOU of the agreement reached at the Sunday meeting and reiterating the urgency required to have the MOU executed in a timely fashion.

29 Now produced and shown to me and marked "LZ10" is a copy of the facsimile from Alan Galbraith QC to myself dated 1 October 2001. The facsimile stated, among other things:

"We agreed in our negotiations that any Letter of Comfort liability would be settled on payment of \$150M and Air New Zealand giving up its rights to claim in the Administration. The justification was that without such an agreement, Air NZ was unlikely to obtain Government support to continue trading, would therefore go into statutory management and nothing would be recovered under the Letter of Comfort."

30 On the same day I wrote a "without prejudice" letter to Alan Galbraith QC explaining the reasons for the delay in executing the MOU.

31 Now produced and shown to me and marked "LZ11" is a copy of my "without prejudice" facsimile to Alan Galbraith QC dated 1 October 2001

32 On 1 October 2001, I telephoned Nathan Gedye, Jim Farmer QC and Allan Galbraith QC. Jim Farmer QC and Allan Galbraith QC acknowledged that both sides were working under pressure to have the MOU finalised and approved by that evening.

33 On 2 October 2001, I caused a further draft of the MOU to be faxed to Michael Humphris.



- 34 Now produced and shown to me and marked "LZ12" is a copy of a facsimile to Michael Humphris dated 2 October 2001 attaching further draft MOU.
- 35 The draft MOU provided to Michael Humphris on 1 and 2 October 2001 contained a clause requiring the Ansett and Hazelton Administrators to recommend that each of the Ansett and Hazelton companies enter into Deeds of Company Arrangement that recommended "pooling". The intent was that creditors of all Ansett and Hazelton companies would be treated equally.
- 36 I had a telephone conversation with Michael Humphris early on the morning of 3 October 2001. I cannot recall the exact words of the telephone conversation. I did say that the Ansett and Hazelton Administrators would have to subsequently reach agreement about what portion (if any) the Hazelton companies would receive from the settlement proceeds from Air NZ. Because of the speed at which the Administrations were happening, Michael Humphris and I often spoke directly to one another.
- 37 At approximately 11.48 am on 3 October 2001, I received a facsimile from David Andrews of Holding Redlich, Michael Humphris' lawyer, advising that he would require further information before recommending to his client whether to execute the MOU provided to Michael Humphris. A copy of that facsimile forms Exhibit "DBA3" to Andrews' Affidavit.
- 38 Upon receipt of the facsimile from David Andrews, I telephoned David Andrews. I told him that the basis of the compromise with Air NZ was for Ansett to receive a lump sum payment from Air NZ before Air NZ collapsed. I explained the operation of the MOU including the difference between a breach of duty of good faith and negligence and the ASIC carve out. I explained the representations the Air NZ directors were giving in relation to the affidavit material to be filed by them in the MOU proceedings. At about 12.42 pm on 3 October 2001 I caused a facsimile to be sent to David Andrews which provided as follows (omitting formal parts):



"Thank you for your fax of 3 October 2001. As you know the Ansett Group is one of Hazelton's largest creditors.

As you may also know, Michael Humphris and I spoke briefly this morning at about 6.40am prior to his departure to Sydney. I explained the general background to the MOU. I also indicated that there will a meeting of the Committee of Creditors at 4.00pm which Michael Humphris should join by telephone. In doing so, Michael Humphris will receive a full background briefing. The time was set to suit Michael Humphris.

Our clients appreciate your concerns about the matter. However, the Voluntary Administrators of the Ansett Group have suggested that perhaps Michael Humphris can withhold signing the MOU but agree to do so if the Court approves its terms. This will provide the best protection for your client. Moreover, all stakeholders will be heard. In other words, Michael Humphris will abide the order of the Court.

For the avoidance of any doubt, I have been told by the [sic] Air New Zealand that the MOU must be consummated today failing which it is likely that the Air New Zealand Group will be placed in statutory management. If this occurs, there is no prospect of the Ansett Group receiving \$AUD 150M and the other benefits referred to. Plainly, it is not in the interest of any of the stakeholders for this opportunity to be missed.

Would you please call me as a matter of urgency."

- 39 This facsimile forms Exhibit "DBA4" to Andrews' Affidavit.
- 40 At approximately 1:30pm on Wednesday, 3 October 2001, I caused to be sent by way of email to David Andrews a further draft MOU.
- 41 Now produced and shown to me and marked "LZ13" is a copy of the email attaching further draft MOU.
- 42 I also caused to be sent to David Andrews on 3 October 2001 a copy of the Letter of Comfort and a copy of an advice written by Arnold Bloch Leibler to Mark Korda and Mark Mentha in relation to prospects of successfully suing under the Letter of Comfort.

- 43 At approximately 2:15pm on 3 October 2001 I caused a further revised draft MOU to be faxed to Michael Humphris at Sims Lockwood.
- 44 Now produced and shown to me and marked "LZ14" is a copy of the facsimile to Michael Humphris dated 3 October 2001 enclosing further revised MOU.
- 45 On 3 October 2001 I telephoned David Andrews. I told him that I was concerned about Hazelton's position. I told him that I had also spoken directly to Michael Humphris. I pointed out to David Andrews the damage that the parties may suffer if the MOU was not executed and Air NZ was placed into statutory management. I explained the nature of the Air NZ settlement and that both the Australian and New Zealand Governments understood its terms and did not oppose it. David Andrews told me that he would seek instructions from Michael Humphris and call me back.
- 46 Some time later on the same day, I received a telephone call from David Andrews advising me that Michael Humphris would be willing to execute the MOU provided that we reached agreement on the apportionment. He also said that failing agreement, Michael Humphris may not sign. I responded that the Ansett Administrators would not be commercially "squeezed" and that Hazelton's claim (if any) under the Letter of Comfort or under the MOU was minimal. I pointed out that the Hazelton companies were not addressees in the Letter of Comfort and that the only reason Air NZ required the Hazelton companies to be a party to the MOU was that they did not want to leave the matter open. I explained that Mark Korda and Mark Mentha would not pay an extortionate sum. I told him that Hazelton probably did not even know of the existence of the Letter of Comfort.
- 47 At 4:00pm on the afternoon of 3 October 2001, a meeting of the Committees of Creditors of the Ansett and Hazelton companies was held to update creditors of the proposed settlement with Air NZ. The meeting was convened as a joint meeting of the Ansett and Hazelton committees of creditors. Michael Humphris and David Andrews were in attendance at the meeting. The meeting was

chaired by Mark Mentha. Mark Mentha outlined the negotiations with Air NZ and his view that the MOU was in the best interests of creditors. Mark Mentha then asked me to outline the MOU to the meetings on a clause by clause basis, which I did. At the outset, I apologised to Michael Humphris at the meeting for not having involved him at an earlier stage in the negotiations with Air NZ.

48 Now produced and shown to me and marked "LZ15" is a copy of the Minutes of Meeting of Committee of Creditors of the Ansett and Hazelton groups held 3 October 2001. The Minutes are incorrectly dated 2 October 2001.

49 Following the conclusion of the meeting of Committee of Creditors, David Andrews advised me of a number of amendments his client required to be made to the MOU. One of those amendments was the removal of the recommendation to "pool" for the Hazelton companies. I do not know the reason why Michael Humphris refused to participate in the proposed "pooling" of the Ansett companies. However, the requested amendment was made.

50 On 4 October 2001, I caused a further final draft MOU to be forwarded by way of facsimile to all the parties including Michael Humphris and David Andrews.

51 On the morning of 5 October 2001, I attended a meeting with Michael Humphris, Mark Korda and David Andrews. Michael Humphris made it clear that he wanted a defined portion of the \$150M. I said that I had no instructions from the Ansett Administrators (by that time Mark Korda had left the meeting) to do anything in relation to the \$150M fund other than to agree to conduct negotiations in good faith. I also said that at that time, the Ansett Administrators had not given consideration as to how the \$150M fund would be distributed amongst the Ansett companies. I accepted the wording of a statement prepared by David Andrews at that meeting which I agreed could be read to the Court in the MOU approval proceedings.

52 Later that day, Michael Humphris and David Andrews attended the offices of Arnold Bloch Leibler where Michael Humphris executed the MOU.

- 53 In my view, the MOU could have been executed without Michael Humphris or the Hazelton companies being a party to the MOU. However, Mark Korda, Mark Mentha and I formed the view that it was proper for Michael Humphris and the Hazelton companies to be a party to the MOU on the basis that the Hazelton companies would have been a party to the MOU had Mark Mentha and Mark Korda been the Administrators of them.
- 54 Between the Sunday meeting on 23 September 2001 and the time the MOU was executed by the parties on 4 and 5 October 2001, numerous draft versions of the MOU were prepared and scrutinised by lawyers and representatives for each of:
- (a) the Ansett Administrators;
 - (b) Air NZ;
 - (c) The Air NZ and Ansett directors;
 - (d) The Commonwealth Government;
 - (e) The New Zealand Government;
 - (f) The ACTU and 13 unions;
 - (g) The Ansett and Hazelton Committees of Creditors;
 - (h) The Hazelton Administrator.
- 55 The MOU was negotiated and drafted in a short time frame on the basis that Air NZ had repeatedly told me that if the matter was not brought to a speedy resolution, Air NZ may be placed into statutory management. In the limited time available, Michael Humphris and his lawyers were involved in finalisation of the MOU, including the presentation to the Ansett and Hazelton Committees of creditors.



PROPOSED SALE OF KENDELL & HAZELTON TO AWA

- 56 On 7 May 2002, Kendell (Australia) Pty Ltd ("Kendell") announced that Australiawide Airlines Pty Ltd ("AWA") had been appointed as the preferred bidder for the purchase of Kendell.
- 57 The background to the sale of Kendell is set out in the affidavit of Mark Korda sworn 23 July 2002 in proceeding V 3125 of 2002 which forms Exhibit "MAK27" to Mark Korda's affidavit.
- 58 Initially and because of difficulties with obtaining an assignment of the Kendell Air Operating Certificate ("AOC") to AWA, from the Civil Aviation Safety Authority ("CASA"), AWA intended to acquire from Bodas Pty Ltd ("Bodas") all of Kendell's issued share capital rather than acquiring the business and agreed assets of Kendell. Bodas owned 100% of the shares in Kendell.
- 59 AWA also expressed an intention to purchase the shares in Hazelton Air Services Pty Ltd and Hazelton Air Charter Pty Ltd from Hazelton Airlines Limited ("Hazelton") because of the same difficulties and to merge the Hazelton and Kendell airlines into one regional airline. AWA would only proceed on the basis of acquiring control of both Hazelton and Kendell.
- 60 With the proposed sale of shares in Kendell and Hazelton to AWA, an opportunity had arisen to compromise these Court proceedings with the Hazelton Administrator. From 7 May 2002, negotiations took place between representatives of Kendell, Hazelton, AWA and representatives from the Commonwealth Department of Transport and Regional Services in an effort to reach agreement on these matters.

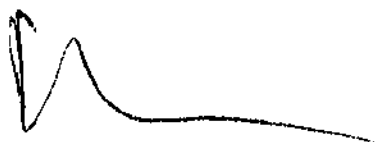
13 JUNE 2002 MEETING

- 61 On 13 June 2002, Mark Mentha, Brad Fowler of KordaMentha, who assisted Mark Mentha and Mark Korda in the Kendell Administration, Michael Jones of



AWA, John Morrison of Sims Lockwood and I had a meeting in Canberra with Roger Fisher and other representatives of the Commonwealth Department of Transport and Regional Services. The purpose of the meeting was to discuss the proposed sale of Kendell and Hazelton to AWA and settlement of the Court proceedings relating to the apportionment of the settlement proceeds from Air NZ ("the 13 June 2002 meeting").

- 62 At the 13 June 2002 meeting, an agreement in principle was reached between the parties concerning the sale of both airlines, settlement of these Court proceedings and forgiveness of a \$3M and a \$3.5M Rapid Route Recovery Loan by the Commonwealth to the Hazelton Administrator and the Kendell Administrators, respectively ("RRP Loans"). Both RRP Loans were repayable on demand.
- 63 At the 13 June 2002 meeting, Mr Fisher advised that the Commonwealth could assign the RRP Loans to AWA and AWA could forgive or waive repayment of the RRP Loans provided the Hazelton and Kendell Administrators proceeded with completion of the sales to AWA and settlement of these court proceedings.
- 64 The value of the assets of Hazelton notionally being purchased by AWA (\$400,000) were not as large as the Hazelton RRP Loan being transferred to AWA and forgiven (\$3M). This created a problem. The Kendell Administrators could not allow the Kendell assets to be used to subsidise the Hazelton sale by the \$3M forgiveness of the Hazelton RRP loan.
- 65 Accordingly, at the 13 June 2002 meeting, I proposed an arrangement whereby the Hazelton assets not being sold to AWA, namely, aircraft deposits (\$1.45M), plant and equipment (\$400,000), spares (\$500,000), airport land (\$200,000) and a notional allowance for settlement of the Air NZ claim (\$500,000) would be transferred to Kendell in consideration for which the Kendell assets equal to a like value could be used at settlement to offset the \$3M reduction in the Kendell purchase price to AWA. The proposal was subject to a "rise and fall" adjustment to ensure that the employee priority creditors of the Hazelton and



Kendell Administrations would be treated equally. I set out this matter on the whiteboard and demonstrated why the solution was reasonable.

66 Now produced and shown to me and marked "LZ15A" is a copy of the print out from the white board of my proposal at the 13 June 2002 meeting.

67 John Morrison communicated constantly with Michael Humphris on the telephone throughout the 13 June 2002 meeting. John Morrison was concerned that the Hazelton creditors may not understand the commercial rationale for this complicated transaction. Accordingly, I suggested that the parties seek a direction from this Honourable Court to the effect that the parties may properly perform and give effect to the agreement and/ or the transactions contemplated by the agreement. The Kendell Administrators did not otherwise require a Court direction.

68 Subject to documentation, the Commonwealth, the Hazelton Administrator, and the Kendell Administrators agreed to this proposal.

COMPROMISE WITH HAZELTON

69 Following the 13 June 2002 meeting, on 14 June 2001, I set out in a "without prejudice" letter to the Hazelton Administrator the basis of the settlement proposal of the litigation between the Ansett and Hazelton Administrators. The proposal contained the following features:

Critical Assumptions

- The transaction was conditional upon Austwide purchasing the shares in Hazelton and Kendell and for those companies to terminate their respective Deeds of Company Arrangement ("DOCAs").
- The purchase price paid by Austwide would be made up as follows :-

(a) Property

\$ 650,000




(b)	Plant and Equipment	\$ 3,750,000
(c)	Access to spare parts and rotables*	
(d)	Return of aircraft bonds	\$ 1,440,000 (Kendall) \$ 1,450,000 (Hazelton)
(e)	Acquisition of aircraft Seven metro 3F saabs \$26,650,000 (less 10% \$2,665,000)	\$21,300,00
(f)	Assumption of Employee entitlements	
(g)	Assumption of Federal Governments RRP (\$6,500,000)	

- The Commonwealth would assign the right to recovery of the RRP Loans of \$6.5M to Austwide and/or release the Administrators, Hazelton and Kendall from repaying those advances.
- The Federal Government will provide a further \$5M to Austwide.
- The sale to Austwide will be completed by 30 June 2002.
- The Hazelton Administrators will never pay a return to ordinary unsecured creditors of the administration.

The Settlement Proposal

- From the proceeds of the sale of shares received by the Hazelton companies, the Hazelton companies will pay to Kendall the following:-
 - Released aircraft deposits \$1,450,000
 - Plant and Equipment \$400,000
- Hazelton will contemporaneously with the AWA sale assign all of its right, title and interest to the airport land valued at \$200,000 to Kendall for no consideration.




- Hazelton will contemporaneously with the AWA sale assign its inventory of spares parts to Kendell valued at \$500,000 for no consideration.
- The Ansett Administrators will acknowledge that an additional notional sum of \$500,000 is provided to the Hazelton Administrator in full and final settlement of all actions, claims or demands arising out of or related to or connected with the Air NZ settlement and the Hazelton Administrator will acknowledge that it has received that sum by receiving from AWA the proceeds of sale of the Hazelton shares to AWA without the need for further adjustment of the proceeds between the Hazelton and Kendell administrations.
- The Hazelton/Ansett court proceeding will be dismissed with no order as to costs (i.e. each party will bear its own costs).
- The priority employee creditors in each of the Kendell and the Hazelton Administrations will receive the same dividend. To the extent that an adjustment is required between the Administrators to ensure this parity, each Administrator will covenant to the other to make that adjustment.
- The "rise and fall" adjustment is intended to align the dividend to be paid to priority employee creditors in the Kendell and Hazelton Administrations irrespective of whether or not Hazelton is "pooled" with other Ansett companies.
- If there is any surplus beyond the payment of priority creditors in the Hazelton administration, such surplus will be paid to the Kendell Administrators.
- The settlement will be conditional upon an appropriate court direction.

70

Now produced and shown to me and marked "LZ16" is a copy of the "without prejudice" letter from Arnold Bloch Leibler to the Hazelton Administrator dated 14 June 2002.




71 There followed a number of "without prejudice" discussions and correspondence between the lawyers for the Kendell and Hazelton Administrators. The commercial rationale for this settlement transaction was based upon a number of critical factors. These were as follows:

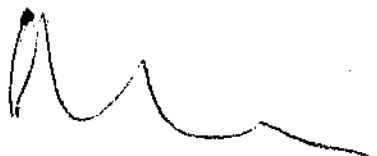
- (a) the purchaser, AWA, insisted that certain adjustments against Hazelton for the liabilities of transferring employees should be adjusted at settlement;
- (b) because of the Hazelton RRP Loan, there would never be any return to Hazelton's ordinary unsecured creditors;
- (c) the Kendell Administrators could not use the Kendell RRP Loan for the benefit of Hazelton.

EXECUTION BY HAZELTON & KENDELL OF SHARE SALE CONTRACTS WITH AWA

72 Between 13 June 2002 and 28 June 2002, extensive negotiations took place between representatives of Kendell, Hazelton, AWA and representatives from the Commonwealth Department of Transport and Regional Services. Dominic Emmet, formerly of Andersen Legal and now of Corrs Chambers Westgarth, acted for the Kendell Administrators in drafting the Kendell Share Sale Contract and associated documents.

73 On 28 June 2002, a contract of sale of shares was entered into to sell the shares in Kendell to AWA. Completion was expected to occur on about 23 July 2002 (this date was subsequently extended to 31 July 2002 by agreement). The Kendell Share Sale Contract was conditional upon, among other things, AWA purchasing the shares in Hazelton Airlines Limited.

74 Now produced and shown to me and marked "LZ17" is a copy of the executed Kendell Share Sale Contract.



- 75 The Hazelton share sale contract was also executed on 28 June 2002 and was similarly conditional upon completion of the sale of shares of Kendell to AWA. Clause 3.1(a) of the Hazelton Share Sale Contract provided that completion of the sale and purchase of shares in the relevant Hazelton companies is subject to Bodas Pty Ltd executing the Share Sale Agreement for Kendell.
- 76 Now produced and shown to me and marked "LZ18" is a copy of the executed Hazelton Share Sale Contract.

EXECUTION BY HAZELTON ADMINISTRATOR OF SETTLEMENT DEED

- 77 On Thursday 27 June 2002, I caused to be sent to Michael Humphris and David Andrews of Holding Redlich, by way of facsimile a working draft deed of settlement. It was stressed in the cover facsimile that Mark Mentha and Mark Korda had not had an opportunity to review the working draft deed at that time.
- 78 Now produced and shown to me and marked "LZ19" is a copy of facsimile dated 27 June 2002 together with initial "working draft" deed of settlement.
- 79 At approximately 10.56 a.m. on Friday 28 June 2002, a further "working draft" of the Settlement Deed was faxed directly to Michael Humphris at Sims Lockwood as the previous fax had gone to Sims Lockwood's general fax number and Michael Humphris had not seen it.
- 80 At approximately 11.30 a.m. on the morning of Friday 28 June 2002, my personal assistant received a telephone message from Bill Karvela of Holding Redlich requesting that as David Andrews was away, all further correspondence should be directed to Bill Karvela at the same fax number.
- 81 At approximately 1.12 p.m. on Friday 28 June 2002 I caused a further "working draft" of the Settlement Deed to be emailed to Michael Humphris, John Morrison of Sims Lockwood, and Bill Karvela of Holding Redlich (in David Andrews' absence).



82 Now produced and shown to me and marked "LZ20" is a copy of the email from Arnold Bloch Leibler to the Hazelton Administrator and the Hazelton lawyers enclosing further "working draft" Settlement Deed.

83 At approximately 2.00 p.m. on Friday 28 June 2002, I had a telephone conversation with Michael Humphris about the contents of the "working draft" Settlement Deed. John Morrison was also on the speaker phone. Certain changes were made to the Settlement Deed to accommodate Michael Humphris' concerns, only after Mark Korda had given his assent in principle to them.

84 Following that telephone conversation, at 2.54 p.m. on Friday 28 June 2002, I caused further marked up "working draft" Settlement Deed to be emailed to Bill Karvela, John Morrison, Michael Humphris and others.

85 Now produced and shown to me and marked "LZ21" is a marked up "working draft" Settlement Deed emailed to Michael Humphris, Bill Karvela and others at 2.53pm on Friday 28 June 2002.

86 This further "working draft" incorporated the following specific amendments required by Michael Humphris:

- (a) The payment and transfer of the Airport Land, the Proceeds of Sale of the Plant and Equipment and the Spare Parts Inventory by the Hazelton Administrator to the Ansett Administrators was to be subject to the Hazelton Administrator paying all of the costs and expenses of the Hazelton Administration in full and the Bodas Administrators paying the adjustment contemplated in Clause 8 of the Deed (namely payment of employee priority creditors in full) (Clause 5);
- (b) Deletion of the following "representations" by the Hazelton Administrator:



- (a) that the Hazelton Administrator has sufficient assets to pay all of the costs and expenses of the Hazelton Administration in full and between 90 cents and 100 cents in the dollar for the Employee Priority Creditors from assets;
- (b) the maximum liability of the Kendell Administrator pursuant to Clause 7.2.2 (adjustment for employee priority creditors) is \$2 M;
- (c) the Hazelton Administrator will use its reasonable endeavours to minimise the cost and expenses of the Hazelton Administration;
- (d) if the sale of the Hazelton shares and the Kendell shares pursuant to the Share Sale Agreements is completed on Completion there will be sufficient assets available to ensure that the Hazelton Employee Priority creditors are paid in full.

87 At approximately 5.30 p.m. on Friday 28 June 2002, I received a facsimile from Hazelton enclosing Settlement Deed duly signed and executed by Michael Humphris and Lawrence Fitzgerald, Deed Administrators of the Hazelton companies. From that time, Mark Korda continued to regard himself as bound by that settlement.

88 Now produced and shown to me and marked "LZ22" is a copy of a facsimile from Hazelton attaching Settlement Deed duly executed by Michael Humphris and Lawrence Fitzgerald.

89 On Monday 1 July 2002, I caused further execution copy of the Settlement Deed to be sent to Holding Redlich enclosing schedules. The Settlement Deed previously executed by Michael Humphris did not include the Schedules. I suggested that for the avoidance of doubt, the Deed be re-executed containing the Schedules.



- 90 Now produced and shown to me and marked "LZ23" is a copy of the cover letter from Arnold Bloch Leibler to Holding Redlich dated 1 July 2002 enclosing further execution copies of the Settlement Deed.

POST-SETTLEMENT EVENTS

- 91 In a Circular to the Hazelton Committee of Creditors dated 4 July 2002, Michael Humphris provided a summary to creditors of the Hazelton Share Sale Contract with AWA followed by a summary of the settlement reached with the Ansett Administrators. The relevant extract from the Circular provides:

"Deed of Settlement Between the Hazelton and Ansett Group Administrators Arising from the Air New Zealand Claim

On 13 June 2002 representatives of both Administrations attended a meeting convened by the Federal Government to provide a status report and to discuss the continued funding of the Hazelton Administration and the sale processes with Australiawide. In attendance were representatives of the Department of Transport and Regional Services, the Hazelton Administrator, the Kendell and Ansett Administrators and Australiawide....

The Federal Government also advised that it did not support further litigation between the Administrators in the event that there was a sale of the businesses and accordingly encouraged the Administrators to settle the matter. Furthermore it was a condition of the Governments continued support of Hazelton and its administration that a sale be completed and the litigation settled.

In light of the sale and the above, Kendell submitted a proposal that included the settlement of the \$150 million Air New Zealand dispute in return for facilitating that all the Hazelton costs and expenses of the Administration are paid in full and that the priority creditors ("employee entitlements") are also paid in full or alternatively equal to the amounts paid to the Kendell priority creditors. ("employee entitlements").




Thereafter, all cash and other assets within the Hazelton Administration would be available to the Kendell Administration. This proposal was supported by the Federal Government as a pre condition to the continued financial support of the Hazelton Administration and the forgiveness/release of the obligations of each Administrators repayment obligations under the Federal Government Loans.

It was a condition of this settlement that:

- The sale of the businesses to Australiawide is completed.
- That direction from the Federal Court that this settlement may be properly performed is sought."

92 Now produced and shown to me and marked "LZ24" is a copy of the Circular to the Hazelton Committee of Creditors dated 4 July 2002.

93 In a further circular to Hazelton Creditors on 11 July 2002, Michael Humphris informed the general body of Hazelton creditors of the compromise as follows:

"Settlement of Air New Zealand Litigation

A dispute exists over the distribution of the settlement sum of \$150 million advanced to the Ansett Administrators by Air New Zealand. It has been agreed that funds will be provided to the Hazelton Group so as to ensure that the costs and expenses of the Hazelton Administration are paid in full and that the claims of employees will be paid in full or in equal amount to the employees of Kendell. This proposal is supported by the Federal Government as a condition of its support of the Administration and the release of my obligations to the Federal Government to repay loan funds that have been provided during the course of the Administration."

94 On 5 July 2002, I received a facsimile from Holding Redlich which provided (omitting formal parts):




"We refer to the version of the proposed Settlement Deed forwarded under cover of your letter of 1 July 2002.

We advise we are in the process of considering its terms further to ensure they record the agreement reached between the parties and will revert to you further in that regard early next week."

- 95 On 8 July 2002, I caused a facsimile to be sent by reply to Holding Redlich and copy to Mark Mentha, Mark Korda and Michael Humphris. That letter provided as follows (omitting formal parts):

"As you know, the Settlement Deed forwarded to your office on 1 July 2002 was not a "proposed" Settlement Deed. It was the final Deed which records the bargain reached between the Hazelton and Kendell Deed Administrators. As you know, Messrs Humphris and Fitzgerald have already executed the Deed in that form. For the avoidance of doubt, we enclose Deed duly executed by the Hazelton Deed Administrators. As agreed with both Bill Karvela and Rhadika Kanhai of your office on 1 July 2002, the only reason for resending the Deed for re-execution was for completeness so as to include the schedules.

Time is of the essence. Neither the Kendell Deed Administrators nor any other party will entertain any further amendments to the Deed which has been duly executed."

- 96 Now produced and shown to me and marked "LZ25" are copies of the facsimile from Holding Redlich to Arnold Bloch Leibler dated 5 July 2002 and the facsimile from Arnold Bloch Leibler to Holding Redlich dated 8 July 2002.
- 97 On 9 July 2002 I caused to be sent by facsimile to Holding Redlich a letter seeking advice by return as to whether the Hazelton Administrator intended to issue an application for directions from the Court approving the settlement as required by Clause 3 of the Settlement Deed.




- 98 Now produced and shown to me and marked "LZ26" is a copy of a facsimile dated 9 July 2002 from Arnold Bloch Leibler to Holding Redlich.
- 99 Later in the evening of 9 July 2002, I received a facsimile in reply from Holding Redlich advising that it was "premature at this stage to seek directions from the Court".
- 100 Now produced and shown to me and marked "LZ27" is a copy of a letter from Holding Redlich to Arnold Bloch Leibler dated 9 July 2002.
- 101 On 11 July 2002, I caused to be sent by facsimile to Holding Redlich a letter enclosing by way of service Notice of Motion in proceeding No.V3060 of 2001 and supporting affidavit and requesting Holding Redlich to issue a similar application in the Hazelton proceeding as required to do by Clauses 3.1 and 4 of the Settlement Deed.
- 102 Now produced and shown to me and marked "LZ28" is a copy of the Arnold Bloch Leibler facsimile and court documents of 11 July 2002.
- 103 On 19 July 2002, I received a facsimile from Holding Redlich advising that Michael Humphris and Mark Korda were meeting on the following Monday to discuss whether there was any need to apply to the Court to seek directions in relation to the settlement of proceedings and suggesting that in the interim, the application to approve the compromise be adjourned.
- 104 Now produced and shown to me and marked "LZ29" is a copy of a letter from Holding Redlich to Arnold Bloch Leibler dated 19 July 2002.
- 105 The Application for approval of the compromise was adjourned by consent. As I deposed to earlier, the Kendell Administrators never required the compromise to be approved by the Court. Clause 3.1.3 of the Settlement Deed was included to appease the Hazelton Administrator. I am told by Mark Korda that in the event, Michael Humphris waived the requirement for Court approval.



CRJ ISSUE

- 106 As a condition of the sale of Kendell to AWA, AWA required Kendell to dispose of its interest in 11 Canadair Regional Jet aircraft ("CRJ's") prior to settlement. The CRJ's were not being sold to AWA as part of the sale of Kendell. However, this could not be done without creating a potential liability for the security financiers of the CRJ aircraft in Canada, where 8 of the 11 CRJ aircraft were located.
- 107 The Kendell Administrators (who are also the Ansett Administrators) and the financiers of the CRJ aircraft devised a "solution". Kendell would assign its beneficial interest in the CRJ aircraft to a trust of which Kendell would be the trustee upon completion of the Kendell Share Sale Contract. The Court would then be requested on the "just and convenient" grounds to appoint Receivers over the assets of the CRJ/ Kendell Trust to dispose of the CRJ aircraft in an orderly fashion.
- 108 On 19 July 2002, an Application was made to this Honourable Court for the appointment of Receivers over the assets of the Kendell Trust. However, there were a number of difficulties with the Application. For example, AWA would not agree to include after the Kendell company name in every public document and negotiable instrument a statement that a receiver had been appointed as required by Section 428 of the Corporations Act. On 24 July 2002, the hearing of the matter was adjourned.
- 109 Now produced and shown to me and marked "LZ30" is a copy of the transcript of Federal Court Proceeding No. V3125 of 2002 for 24 July 2002.

DEVELOPMENTS IN THE KENDELL SALE TO AWA

- 110 On 25 July 2002, after it became apparent that there were commercial and legal obstacles to completion of the Kendell Share Sale Agreement, and as a result of the intervention of the Commonwealth Government, CASA agreed to assign



the AOC from Kendell to AWA to enable the Kendell sale to proceed by way of asset sale agreement.

- 111 As a result of these developments, the parties resolved to terminate the Kendell Share Sale Agreement and to achieve the same commercial outcome contemplated by the Kendell Share Sale Agreement by way of transfer of assets and certain liabilities.
- 112 On 26 July 2002, an Asset Sale Agreement between Kendell and AWA was executed by AWA.
- 113 Now produced and shown to me and marked "LZ31" is a copy of a facsimile from AWA to Michael Humphris and Mark Korda enclosing executed Kendell Asset Sale Agreement dated 26 July 2002.
- 114 I am told by Dominic Emmet that a further copy of the Kendell Asset Sale Agreement was executed by both AWA and Kendell on 1 August 2002. The terms of this Agreement were identical to the Asset Sale Agreement executed on 26 July 2002.
- 115 Now produced and shown to me and marked "LZ32" is a copy of the Kendell Asset Sale Agreement executed on 1 August 2002 and a letter from Kendell to AWA dated 1 August 2002.
- 116 Recital C of the Kendell Asset Sale Agreement provides:
- "The parties have agreed to achieve the commercial outcome contemplated by the Share Sale Agreement by way of transfer of assets and certain liabilities pursuant to this document and its annexures such that Australiawide will:
- (a) acquire from Kendell each of the Assets; and
 - (b) will assume from Kendell certain liabilities and obligations (but specifically excluding the CRJ Debt),



that Kendell or Australiawide would have acquired and assumed if the Share Sale Agreement had been completed."

117 Clause 3.1 of the Kendell Asset Sale Agreement provides:

"Subject to the provisions of this document, Kendell sells, and Australiawide purchases, with effect from 1 August 2002 ("the **Completion Date**") such right, title and interest as Kendell may have in the Assets so as to put Australiawide in the same position it would have been in if the Share Sale Agreement had been completed in accordance with its terms."

118 I am told by Mark Korda that at the time the parties agreed to execute the Kendell Asset Sale Agreement, he assumed that the Settlement Deed was binding and valid.

HAZELTON CHANGE OF POSITION

119 On 26 July 2002, following execution of the Kendell Asset Sale Agreement, I received a facsimile from Holding Redlich, asserting that as Completion (as defined in the Settlement Deed) would no longer occur, the Settlement Deed was "void and of no effect whatsoever".

120 Now produced and shown to me and marked "LZ33" is a copy of the facsimile from Holding Redlich dated 26 July 2002.

121 On 2 September 2002, I caused a letter to be sent by facsimile to Holding Redlich. In the letter, I confirmed the Ansett and Kendell Administrators primary position that completion has occurred under Clause 3 of the Settlement Deed.

122 Now produced and shown to me and marked "LZ34" is a copy of the facsimile from Arnold Bloch Leibler to Holding Redlich dated 2 September 2002.




COMPLETION OF KENDELL & HAZELTON SALES TO AWA

123 Clause 3.2 of the Kendell Asset Sale Agreement provides as follows:

"Condition of Completion

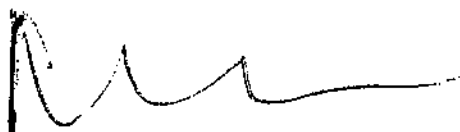
Notwithstanding any other provision in this Agreement, Australiawide will not be obliged to complete the acquisition or the purchase of the Assets as contemplated in this Deed unless the Administrator of Hazelton Air Services Pty Ltd (Administrator Appointed) and Hazelton Air Charter Pty Ltd (Administrator Appointed) has entered into a deed ("the Hazelton Deed") that is in all material respects identical to this Deed with the exception that references in this Deed to the Share Sale Agreement will, in the Hazelton Deed, be replaced with references to a share sale agreement dated 28 June 2002 to Hazelton Airlines Ltd, Australiawide, Michael James Humphris and Laurence Andrew Fitzgerald."

124 I am told by Mark Korda that for reasons to do with the commercial negotiations between the Hazelton Administrator and AWA, the Hazelton companies and the Hazelton Deed Administrators purportedly terminated the Hazelton Share Sale Contract with effect from 24 July 2002 and subsequently returned the \$250,000 deposit to AWA.

125 Now produced and shown to me and marked "LZ34A" is a copy facsimile from Mr Humphris to Mark Korda dated 24 July 2002.

126 In the facsimile of 24 July 2002 from Mr Humphris to Mark Korda, Mr Humphris advised Mark Korda of the termination of the Hazelton Share Sale Agreement and that the Settlement Deed would be "non existent" in this event and making a further proposal as follows:

"Should you wish to provide me with the capability of completing with AAL at some time in the future, I will require an indemnity for any shortfall that may arise after meeting the liabilities of the administration and full payment




of employee entitlements from the assets available. In consideration of this indemnity I will:

- (i) end my claim against the \$150 million Air New Zealand funds;
- (ii) not require payment of the \$2.5 million RRR Fund Federal Government monies allocated to Hazelton; and
- (iii) hand back to you any surplus assets, after fully discharging my liabilities and employee entitlements."

127 Now produced and shown to me and marked "LZ34B" is a copy facsimile from Mr Humphris to Mr Jones of AWA dated 25 July 2002 confirming that the Hazelton Share Sale Contract was terminated on 24 July 2002.

128 However, on 31 July 2002, the parties executed a Deed of Reinstatement reinstating the Hazelton Share Sale Contract with minor variations. On 19 September 2002, I received a copy of the Hazelton Deed of Reinstatement from Holding Redlich in response to my request of 6 September 2002.

129 Now produced and shown to me and marked "LZ35" is a copy of the Deed of Reinstatement executed 31 July 2002.

130 Clause 3.3 of the Hazelton Reinstatement Deed provides the Vendor has acknowledged the Purchaser has paid the Purchase Price of \$400,000 prior to completion which Purchase Price is to be adjusted in favour of the Vendor as follows:

- "(a) plus an amount equal to the value of the benefit of ~~the Aircraft Security Bond and the Security Bond~~ received by the Purchaser on or before Completion;




(b) *less an amount equal to 70% of the Accrued Employee Entitlements for the Retained Employees."*

131 In the Hazelton Circular to Creditors dated 1 August 2002, Michael Humphris states:

"I am pleased to advise that a sale of Hazelton Airlines Limited (subject to Deed of Company Arrangement) shareholding in Hazelton Air Services Pty Ltd and Hazelton Air Charter Pty Ltd (both subject to Deed of Company Arrangement) to Australiawide Airlines Limited in accordance with the Sale of Shares Agreement dated 28 June 2002, was successfully completed as of the close of business, 31 July 2002."

132 Mr Humphris also advised that the Deeds of Company Arrangement for each of the Hazelton companies was terminated upon completion and Hazelton Airlines Limited proceeded into liquidation.

133 I am told by Andrew Cochineas of Coudert Brothers, lawyers for AWA, that completion of the Hazelton Share Sale Contract and the Kendell Asset Sale Agreement took place simultaneously at the Sydney offices of Coudert Brothers on the night of 31 July 2002.

NON-PERFORMANCE BY HAZELTON ADMINISTRATOR OF OBLIGATIONS UNDER SETTLEMENT DEED

134 I am told by Brad Fowler that Hazelton would have received about \$1.4M from four different airport security lessors on or about 31 July 2002. The lessors of the Hazelton aircraft were SAAB, Macquarie Bank, Tyco and Commonwealth Bank of Australia. I am told by Mark Korda that the Bodas Administrators have not received from the Hazelton Administrators any of the amount realised from the release of the aircraft deposits as required by Clause 6 of the Settlement Deed (about \$1.4M).

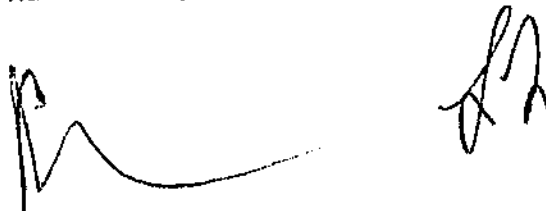



RECENT EVENTS

- 135 On 6 September 2002, I caused a facsimile to be sent to Holding Redlich requesting they provide us with copies of the following documents:
- (a) Executed Hazelton Share Sale Agreement with Austwide; and
 - (b) Any subsequent document or correspondence which amends, waives, clarifies or otherwise provides for the operation and completion of the Hazelton Share Sale Agreement with Austwide. In particular, we requested any understanding or arrangement in relation to completion of the Hazelton share sale to Austwide notwithstanding that the Kendell Sale proceeded by way of Asset sale.
- 136 The letter also proposed the timetable set by this Honourable Court for filing of affidavit material to be postponed by a week without upsetting the trial date to allow us further time to complete our affidavit material. Part of the delay was also the fact that our senior counsel was occupied in the superannuation matter in the Supreme Court, which went longer than expected.
- 137 Now produced and shown to me and marked "LZ36" is a copy of the facsimile to Holding Redlich dated 6 September 2002.
- 138 Later that day I received a facsimile in reply from Holding Redlich which stated (omitting formal parts):

"We refer to your fax of 6 September 2002.



We note that pursuant to the consent orders of the Honourable Mr Justice Goldberg on 20 August 2002 your clients agreed to file and serve any motion seeking to enforce any compromise and any material in support of the motion and the \$150m claim by 3 September 2002. As that date has now passed, we find it curious that it has taken you this long to request documents. We will consider our position and let you have our response on Monday."



- 139 Now produced and shown to me and marked "LZ37" is a copy of the facsimile from Holding Redlich dated 6 September 2002.
- 140 On 12 September 2002 I caused a facsimile to be sent to Holding Redlich requesting a reply to our letter of 6 September 2002.
- 141 Now produced and shown to me and marked "LZ38" is a copy of the facsimile to Holding Redlich dated 12 September 2002.
- 142 On 12 September 2002 I received from Holding Redlich a facsimile enclosing a further letter dated 9 September 2002 which I had not seen until then.
- 143 Now produced and shown to me and marked "LZ39" is a copy of the facsimile from Holding Redlich dated 12 September 2002 enclosing their facsimile dated 9 September 2002.
- 144 On 12 September 2002 I caused a further facsimile to be sent to Holding Redlich in response to their facsimile of 9 September 2002.
- 145 Now produced and shown to me and marked "LZ40" is a copy of the facsimile to Holding Redlich dated 12 September 2002.
- 146 On 13 September 2002 I received a facsimile from Holding Redlich stating (omitting formal parts):

"We acknowledge service at 4.20pm yesterday afternoon of a Notice of Motion in which you seek a declaration that:-

- (a) our clients are bound by the Settlement Deed;*
- (b) alternatively, they are estopped from denying they are bound by the Settlement Deed;*
- (c) alternatively, that our clients execute and be bound by a Settlement Deed which contains certain provisions as set out in paragraph 3 of the Notice of Motion dated 12 September 2002.*



We assume, therefore, that in response to the question put in our letter to you of 9 September 2002, your clients rely solely on settlement of the proceedings by virtue of the "Settlement Deed" executed on 28 June 2002. If that is not your client's sole "position" please let us know by return.


In the meantime, the documents you have requested are being forwarded to you."

147 Now produced and shown to me and marked "LZ41" is a copy of the facsimile from Holding Redlich dated 13 September 2002.


148 On 19 September 2002, I received a letter from Holding Redlich enclosing the documents requested in my facsimile of 6 September 2002.

149 Now produced and shown to me and marked "LZ42" is a copy of the letter from Holding Redlich dated 19 September 2002 and documents.

SWORN by LEON ZWIER at Melbourne
in the State of Victoria on 20 September
2002

) 
) _____
)

Before me:



SIMON JOHN DOLLARD
Arnold Bloch Leibler
Level 21 333 Collins Street
Melbourne VIC 3000

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