# 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-36" produced and shown to MARK ANTHONY KORDA at the time of swearing his affidavit dated 12 September 2005.

Before me:

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

EXAMPLE WHITAM KING

Exhibit "MAK-36" Further Hazelton Terms of Settlement

#### TERMS OF SETTLEMENT

TERMS OF SETTLEMENT dated & May 2003 between:

1. MICHAEL JAMES HUMPHRIS and LAURENCE ANDREW FITZGERALD in their capacity as Liquidators of HZL LIMITED (IN LIQUIDATION) (FORMERLY HAZELTON AIRLINES LIMITED) (A.C.N. 061 965 642) of Level 15, 461 Bourke Street, Melbourne, Victoria 3000

The Hazelton Liquidators

2. MARK FRANCIS XAVIER MENTHA and MARK ANTHONY KORDA in their capacity as Administrators of the Ansett Companies

The Ansett Administrators

#### RECITALS

- A. Humphris in his capacity as Administrator of the Hazelton Companies commenced the Hazelton Proceeding against the Ansett Administrators.
- B. The Ansett Administrators commenced the Ansett Proceeding against Humphris on 2 November 2001.
- C. The Hazelton Liquidators and the Ansett Administrators have agreed to settle the Hazelton Proceeding and the Ansett Proceeding in the manner and on the terms and conditions set out in these Terms of Settlement.

IT IS AGREED as follows.

- 1. DEFINITIONS AND INTERPRETATIONS
- 1.1 Definitions

The following definitions apply unless the context requires otherwise.

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"Ansett Companies" means the companies listed in the Schedule attached.

"The relevant Ansett Debt" means the amount of \$135,282.18 comprising items 1.1, 1.2, 1.4 and 1.5 (1.3 having been paid) in the letter from Ansett to Hazelton dated 12 July 2002 a copy of which is annexed hereto, which debt is disputed by Hazelton;

"The Ansett Proceeding" means the Federal Court of Australia Victorian District Registry Proceeding No. V3060 of 2001;

"The MOU Apportionment Claim" means the claim brought by Humphris in the Hazelton Proceeding on behalf of the Hazelton Companies for a share of the sum of \$150m (including a claim for a share of interest accruing on that sum) paid to the Ansett Administrators as Administrators of the Ansett Companies pursuant to the Memorandum of Understanding dated 3 October 2001 approved by the Order of the Honourable Justice Goldberg on 12 October 2001

"The Hazelton Companies" means HZL Ltd (In Liquidation) (formerly Hazelton Airlines Limited) (A.C.N. 061 965 642), Hazelton Air Services Pty Ltd (A.C.N 000242928) and Hazelton Air Charter Pty Ltd (A.C.N 065 221 356);

"The relevant Hazelton Debt" means the amount of \$66,664.59 comprising items 2.1 and 2.2 in the said annexed letter, which debt is disputed by Ansett;

"The Hazelton Proceeding" means Federal Court of Australia Victorian District Registry Proceeding No. V3051 of 2001 dated 19 October 2001;

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"Humphris" means Michael James Humphris in his capacity as
Administrator and subsequently as Deed Administrator of the Hazelton
companies;

"Settlement Sum" means the sum of \$3,245,000;

"The solicitor for the Hazelton Liquidators" means Holding Redlich, Solicitors of 350 William Street, Melbourne, Victoria 3000;

### 1.2 Interpretations

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise:

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a body corporate, an unincorporated body or other entity and conversely.
- (e) A reference to a Clause or Schedule is to a clause of or schedule to these Terms of Settlement.
- (f) A reference to any party to these Terms of Settlement or any other agreement or document includes the party's successors and permitted assigns.

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- (g) Mentioning anything after include, includes or including does not limit what else might be included.
- (h) A reference to conduct includes any omission, representation, statement or undertaking, whether or not in writing.

# 2. PAYMENT BY THE ANSETT ADMINISTRATORS

#### 2.1 Payment

The Ansett Administrators shall pay to the Hazelton Liquidators the Settlement Sum.

### 2.2 Acknowledgment

The Hazelton Liquidators acknowledge prior receipt from the Ansett Administrators of the amount of \$2,545,000 as at the date of these Terms of Settlement.

# 2.3 Payment of Balance of Settlement Sum

The Ansett Administrators must pay to the Hazelton Liquidators the balance of the Settlement sum of \$700,000 within 7 days of the date of these Terms of Settlement by payment to the solicitor for the Hazelton Liquidators.

#### 2.4 Settlement

The Hazelton Liquidators and the Ansett Administrators agree that the payment of the Settlement Sum is made in full and final settlement of the MOU Apportionment Claim, the relevant Ansett Debt and the relevant Hazelton Debt.

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#### 3. RELEASES

#### 3.1 Release by Hazelton Liquidators and Ansett Administrators

Upon payment of the balance of the Settlement Sum, Humphris, the Hazelton Liquidators and the Hazelton Companies on the one hand and the Ansett Administrators and the Ansett Companies on the other forever release and discharge each other from:

- (a) the MOU Apportionment Claim;
- (b) the relevant Hazelton Debt; and
- (c) the relevant Ansett Debt.
- 3.2 For the avoidance of doubt the parties do not release each other from claims made or matters referred to in the Hazelton Proceeding or the Ansett Proceeding other than those referred to in paragraph 3.1.

In particular, there is no release of any claim:

- (a) the Hazelton Liquidators may have against the Ansett

  Administrators in relation to loans under the Commonwealth

  Rapid Route Recovery Program;
- (b) the Ansett Companies or any of them or the Ansett

  Administrators may have relating to the sale of shares and assets
  of or in any of the Hazelton Companies or any of the Ansett

  Companies, or relating to the Deed of Settlement dated 28 June
  2002 other than insofar as that Deed dealt specifically with the
  settlement of the MOU Apportionment Claim.
- 3.3 The parties' intent is that their rights and obligations hereafter shall be entirely unaffected save as to the specific matters released and that in relation to all other matters their rights and obligations should be and be adjudicated upon in the same manner as they would have been if this

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settlement had not been reached. Nothing in this settlement shall be relied upon as constituting an impediment directly or indirectly to the obtaining of any order or other relief in any subsequent proceeding save in a proceeding which claims or seeks to recover one of the released claims.

#### 4. COURT APPROVAL

- 4.1 These Terms of Settlement are subject to and are conditional upon the approval of the terms and conditions of these Terms of Settlement by the Honourable Justice Goldberg or any other duly appointed officer of the Federal Court of Australia pursuant to Section 506 (1A) of the Corporations Act 2001.
- 4.2 The granting of Court approval of these Terms of Settlement is a condition precedent to these Terms of Settlement and if Court approval is not granted these Terms of Settlement shall be of no effect whatsoever.

#### 5. DISCONTINUANCE OF PROCEEDINGS AND COSTS

#### 5.1 Discontinuance

The parties agree to seek from the Court orders by consent dismissing the Hazelton Proceeding and the Ansett Proceeding with no order as to costs.

#### 5.2 Costs

Each party shall bear its and his own costs of the Hazelton Proceeding and the Ansett Proceeding.

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# 6. JUDGMENT IN DEFAULT

If the Ansett Administrators default in payment of the balance of the Settlement Sum pursuant to clause 2.3, the Ansett Administrators hereby consent to judgment being entered against them by the Hazelton Liquidators for:

- (a) the sum of \$700,000; and
- (b) the Hazelton Liquidators' costs of and incidental to entry of that judgment.

Counsel for Humphris, the Hazelton Liquidators and the Hazelton Companies

Counsel for the Ansett Administrators and the

**Ansett Companies** 

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#### **SCHEDULE**

ANSETT AUSTRALIA LIMITED (ACN 004 209 410)

501 SWANSTON STREET PTY LTD (ACN 005 477 618)

AEROPELICAN AIR SERVICES PTY LTD (ACN 000 653 083)

AIRPORT TERMINALS PTY LTD (ACN 053 976 444)

ALDONG SERVICES PTY LIMITED (ACN 000 258 113)

ANSETT AIRCRAFT FINANCE LIMITED (ACN 008 643 276)

ANSETT AUSTRALIA HOLDINGS LIMITED (ACN 004 216 291)

ANSETT AVIATION EQUIPMENT PTY LTD (ACN 008 559 733)

ANSETT CARTS PTY LIMITED (ACN 055 181 215)

ANSETT EQUIPMENT FINANCE LIMITED (ACN 006 827 989)

ANSETT FINANCE LIMITED (ACN 006 555 166)

ANSETT HOLDINGS LIMITED (ACN 065 117 535)

ANSETT INTERNATIONAL LIMITED (ACN 060 622 460)

ANSETT AUSTRALIA AND AIR NEW ZEALAND ENGINEERING SERVICES

LTD (ACN 089 520 696)

BODAS PTY LTD (ACN 002 158 741)

BRAZSON PTY LIMITED (ACN 055 259 008)

EASTWEST AIRLINES (OPERATIONS) LTD (ACN 000 259 469)

EASTWEST AIRLINES LIMITED (ACN 000 063 972)

KENDALL AIRLINES (AUST) PTY LTD (ACN 000 579 680)

MORAEL PTY LTD (ACN 003 286 440)

NORTHERN AIRLINES LIMITED (ACN 009 607 069)

NORTHERN TERRITORY AERIAL WORK PTY LIMITED (ACN 009 611 321)

ROCK-IT-CARGO (AUST) PTY LTD (ACN 003 004 126)

SHOW GROUP PTY LTD (ACN 002 968 989)

SKYWEST AIRLINES PTY LTD (ACN 008 997 662)

SKYWEST AVIATION LIMITED (ACN 004 444 866)

SKYWEST HOLDINGS PTY LTD (ACN 008 905 646)

SKYWEST JET CHARTER PTY LTD (ACN 008 800 155)

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SOUTH CENTRE MAINTENANCE PTY LTD (ACN 007 286 660)

SPACA PTY LTD (ACN 006 773 593)

TRAVELAND INTERNATIONAL (AUST) PTY LIMITED (ACN 000 275 936)

TRAVELAND INTERNATIONAL PTY LIMITED (ACN 002 275 936)

TRAVELAND NEW STAFF PTY LTD (ACN 080 739 037)

TRAVELAND PTY LIMITED (ACN 000 240 746)

WALGALI PTY LTD (ACN 055 258 921)

WESTINTECH LIMITED (ACN 009 084 039)

WESTINTECH NOMINEES PTY LTD (ACN 009 302 158)

WHITSUNDAY AFFAIRS PTY LTD (ACN 009 694 553)

WHITSUNDAY HARBOUR PTY LIMITED (ACN 010 375 470)

WRIDGWAY HOLDINGS LIMITED (ACN 004 449 085)

WRIDGWAYS (VIC) PTY LTD (ACN 004 153 413)

(All Administrators Appointed)

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# Ansett

12 July 2002

Mr Andrew Ralph Sims Lockwood Deed Administrators Hazelton Airlines P.O. Box 807 Mascot, NSW 1460

By facsimile: 02 9317 4255

Dear Mr Raiph

Not intercompany position between Hazelton Airlines Ltd (Subject to Deed of Company Arrangement) ("Hazelton") and Ansett Australia Ltd (Subject to Deed of Company Arrangement) ("Ansatt")

Detailed below is a summary of outstanding charges between Hazelton and Ansett for the period from 12 September 2001 to 11 July 2002. Refer Appendix 1 for a breakdown of the charges by invoice. A copy of the invoices for amounts owing to Ansett can be provided upon request.

# Amounts owing to Ansett

A A Madie Hostino Charges	118,575.60
1.1 Merlin Hosting Charges 1.2 Sydney Airport Rental AS	\$12,257.75
man a contract discon	4\$6,985.00 - paid
- 4 0)	A\$1,854.00
1.4 Security Charges  1.5 Miscellaneous Unpaid Travel Charges	4\$2,59 <u>4.83</u> _
1.5 Miscellaneous Unpaid Travel Charges  Total owing to Ansett  A\$1	142,267.18

Item 1.1: Represent a monthly charge for the use of Ansett's flight reservation system, Merlin. Charges relate to the months of October 2001 to February 2002.

Represent a monthly charge for the use of Ansett's terminal space at Item 1.2: Sydney Airport. Charge relate to the months of October 2001 to February 2002, and the monthly charge is broken down as follows:

> A\$1,666.60 Terminal Office Space Engineering Stores Area Bay 32 A\$2,451.55 Total owing to Ansett

> > 501 Swanston Street, Melbourne Vic 3000 Telephone 03 9623 3333

Ansett Australia Limited (Subject to Deed of Company Arrangement) ABN 37-004-209-410

A\$684.95

A\$100.00

61 3 9229 9900

- Item 1.3: Represent charges for the use of Ansett's flight simulator facility. Amount owing relate to the period from 3 June 2002 to 7 July 2002.
- Item 1.4 Represent security charges paid by Ansett on behalf of Hazelton, for the period 12 23 September 2001.
- Represents travel charges owing to Ansett, as a result of the Prepald Travel Arrangement between Hazelton and Ansett. Charges relate to the month of February 2002. Refer Appendix 2 for a listing of the passengers and date of travel.

# Owing to Hazelton

2.1	Statement 12341	A\$40,296.02
	Less disputed amounts	(A\$9,052.14) (A\$17,901.27)
	Less pre-administration Net - Statement 12341	A\$13,342.61
	Statement 12343 and 12344	A\$26,368.57
2.2	Total owing to Hazelton	A\$39,711.18

Item 2.1: Based on a review of statement 12341for March 2002, a number of items were rejected. Details of these items have been previously provided to you. In addition, a number of items were also identified as relating to the pre-administration period. As such, these charges are not payable by the administrators. Refer Appendix 3 for a breakdown of the rejected items and amounts relating to the pre-administration period.

Overall, the net amount owing to Ansett from Hazelton for the period up to 11 July 2002 is A\$102,556.00. This amount is payable immediately to Ansett Australia Ltd (Subject to Deed of Company Arrangement). Please note that Hazelton will be invoiced for any further amounts that are identified.

Should you have any queries in relation to the above letter or the attached documentation please contact Amanda Healy on 0412 740 413.

Yours sincerely

DAVID MERRYWEATHER

FOR MARK F MENTHA

Deed Administrator

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# ANSETT AUSTRALIA LTD (Subject to Deed of Company Arrangement) HAZELTON AIRLINES RECEIVABLE/(FAYABLE) AS AT 11/06/2002

# Amounts Receivable from Hazelton to AAL

Net Amount Receivable From Hazellon		102,556.00
and the second of the second o	• •	
Total Amount Payable	39,711.16	39,711.18
Statement-12344	22,628.57	50 mai 4 40
Statement-12343	3,740.00	
<del></del>	13,342.61	
Less Pre-Admin Involces	(17,901,27)	
Less Ami Rejected	(9,052.14)	
Statement-12341 (Mar-92)	40,296.02	
Amounts Payable to Hazelton from AAL	•	
Total Amount Receivable	· · · · · ·	142,201,10
		142,267,18
Miscellaneous Unpaid Travel Charges	2,594.83	2,594,83
	1,854.00.	1,854.00
Less Credit Note	(2,700.00)	4 054 80
GRP4 Security 12-23 Sept. Inv. 6005 000203.	4,554.00	
Saculity Charges		
1.	6,985.00	6,985.00
01/07 - 07/07 Inv. 7000003202	1,050.00	
24/05 - 26/06 Inv. 7000003177	1,450.DQ	
17/06 - 23/08 Inv. 7000003088	2,000.00	
10/05 - 15/05 Inv. 7000003032	1,540.00	
Flight Simulator Hire 03/06 - 09/06 Inv. 7000003022	945.00	
Eliah I Simulator Hire		
· · · · · · · · · · · · · · · · · · ·	12,257,75	12,257.75
Feb-02 Inv. 6005 001877	2,451.55	40 057 75
Jan-02 Inv. 6005 001318	2,451.55	
Dec-01 Inv. 6005 000833	2,451.55	
Nov-01 Inv. 6005 000320	19 <b>0.00</b>	
Nov-01 Inv. 6005 000329	1,566.60	•
Nov-01 Inv. 6005 000328	684.95	
Oct-01 Inv. 5005 000043	2,451,55	
Sydney Airport Rental		
<del></del>	110,010,00	, , , , , ,
Mar&Apr-02 Inv. 6005 003279	21,029.37 118,575.60	118,575.60
Feb-02 Inv. 6005 003099	••	
Jan-02 Inv. 6005 002781	23,722.90 22,622.93	
Dec-01 Inv. 8005 002770	26,523.50	
Nov-01 Inv. 6005 002778	9,642,90	
Oct-01 Inv. 6005 002777	15,634,00	
Merlin Hosting Charges	46 074 00	

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172930 / 911 Xeens Hazelton Air Services P/L 2880 08AHGE

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Doc Date Due		22.02.02 26.03.	22.02.02 26.03	122.02.02 27.03.	22.02.02 26.03.	~	22.02.02 26.03.	2	22.02.02 26.03.02	122.02.02 26.03.0	22.02.02 26.03.	22.02.01 26.03.0	22.02.02 26.03.0	24.02.02 26.03.0	25.02.02 26.03.
Doc Date		177.64 22.02.02 26.03.	93.82 22.02.02 26.03	4 122.02.02	72 22.02.02	22.02.02	34 22.02.02	122.02.02	14 22.02.02	1  22.02.02	.64 22.02.02	221.64   22.02.02   26.03.0	.64  22.02.02	303.82 24.02.62 26.03.0	25.02.02
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# BILLINGS SUMMARY

Statement 12341 (Mar-02)

IINZEELI	<b>3</b> 11		· i	PRE ADMIN	ADMIN
Invoice	Amt Billed	Amount Payable	Amt Rejected	ACTUAL	TO PAY
15450	6,877.58	5,663.19	1,214.39	5,663.19	
15451	1,523.31	1,203.91	319.40	1,203.91	
2100 547B	24:2444 81:50	00.00 TO THE PROPERTY OF THE PARTY OF THE PA	海路到海湖 81:56	19:29 MAR 0:00	20.00 Here
15479	1,771,73	1,079.34	692.39	1,079.34	
15480	953.87	125.70	828.17	125.70	
15504	188.48	189,49	0.00	189.49	
155C5	256.42	91,05	165.37	91.05	
15506	251.24	121.96	129,28	121.96	
155CB	355.50	355.60	0.00	355.60	
15509	1.037.48	767.44	270.04	767.44	
15511	:::5:×786.70	principal principal 0.00	26041785.7D	0.00	2,534 . 0.00
15512	127,29	127.29	0.00	127,29	
15583	241.31	240.87	0.44	240.87	
15587	213,18	203.18	10.00		203.18
15612	117.80	117.80	0.00	117.80	
15613	08.238	869.80	0.00	869,80	
15608		567.00	0.00		567.00
15623	<u> </u>	324.54	0.00	324.54	
15746		0.00	241.38	0.00	0.00
15714	261.53	62.75	198.78		62.75
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7,1025		165.38			
7.1026		1,615.05			
7 1027	4 475 17	4,027.47	447.70	4,027.47	
Jan 15853	金属信息209.22	FEMERAL METALO 00	1663 mil 209:22	· 英語 20:00	<i>ક</i> હેਵਾਂ
15783		171.97	0.00	<u> </u>	171,97
15788	310.80			<del> </del>	248.65
15801	85.45			<del></del>	85.45
15822				<del></del>	163.43
15823	71.50				
15845		the same of the sa		<del></del>	562.27
-15847			<del> </del>	<del> </del>	235.33 2,678.87
15875				· <del>•</del>	138.74
15902					0.08
15903					1,428.39
15904		1			807.74
1592		<u> </u>			0.00
15924					924.85
15951					1,397.83
15978				<del></del>	
15982					675.69
16001					91,20
16027					1,267.88
1602					91.20
16049				<del></del>	826,45
16076					513.73
160/6	40,296.02		<del></del>		
L	40,290.04	1 21,245.00	-1	1	1

TOTALS	40,296.02	31,243.88	9,052.14	17,901.27	13,342.61
ILO IVES	70,200.00				

Original document not received - Ansett has no record of sale document. (Pre Admin ?)

Copy of Invoice required

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TOTAL P.09