

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)

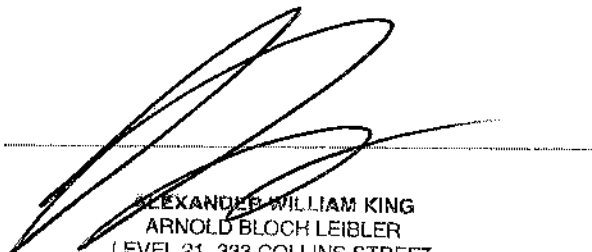
and

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

**CERTIFICATE IDENTIFYING EXHIBIT**

This is the exhibit marked "**MAK-38**" 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-38"**  
**Affidavit of Mark Anthony Korda sworn**  
**3 December 2001 (excluding exhibits)**

1 MAK-38

IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIAN DISTRICT REGISTRY

NO. V3083 of 2001

IN THE MATTER OF:

**ANSETT AUSTRALIA LIMITED (A.C.N. 004 209 410) & ORS** (in accordance with the  
Schedule attached) (All Administrators Appointed)

and

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

Plaintiffs

**AFFIDAVIT OF MARK ANTHONY KORDA**

**DEPONENT:** Mark Anthony Korda

**SWORN:** 3 December 2001

On 3 December 2001, I **MARK ANTHONY KORDA**, Chartered Accountant, of  
360 Elizabeth Street, Melbourne in the State of Victoria, say on oath:

1 I am a Chartered Accountant and a member of the firm Andersen, Chartered  
Accountants ("Andersen"). I am a senior partner of its Corporate Recovery  
Services Division. I am a registered official liquidator. I am a member of the  
Insolvency Practitioners Association of Australia. I am a member of the Institute

Date of document: 3 December 2001

Prepared by:  
**ARNOLD BLOCH LEIBLER**  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE VIC 3000

Solicitor's Code: 54  
DX 455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: LZ:DMM:1213873

of Chartered Accountants. I have been practising in the area of corporate insolvency, receivership and financial reconstructions for in excess of 14 years.

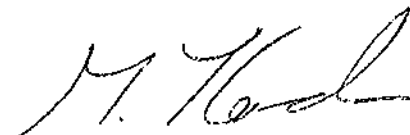
- 2 Save where I say to the contrary, the matters deposed to in this Affidavit are deposed to from my own knowledge of the facts. Where I depose to matters from information and belief, I believe those matters to be true. I am authorised by Mark Francis Xavier Mentha to make this Affidavit on his behalf.

### **COLLAPSE OF ANSETT**

- 3 On 17 September 2001 Mark Mentha and I (together "**the Administrators**") were appointed Voluntary Administrators of the companies identified in the schedule which is attached to this Application other than Air New Zealand Engineering Services Ltd (ACN 089 520 696) ("**ANZES**") (together "**the Ansett Group**"). Those appointments followed the resignations on 17 September 2001 of Messrs Peter Hedge, Greg Hall and Allan Watson who were appointed Voluntary Administrators to the above-mentioned companies variously on 12 September 2001 and 14 September 2001. On 4 October 2001, Mark Mentha and I were appointed Voluntary Administrators of ANZES.

### **PRIME MINISTERS PRESS CONFERENCE**

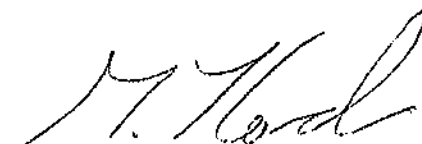
- 4 Following the collapse of the Ansett Group on 14 September 2001, the Prime Minister held a press conference in which the Prime Minister made it clear that Government intended to protect employees of Ansett who were denied their entitlements. The commitment made by the Prime Minister was that the



entitlements of Ansett employees for wages, leave and payment in lieu of notice, as well as for redundancies up to the community standard of eight weeks, would be met by Government to the extent that these are not able to be met by the assets of Ansett. The commitment of Government was to advance moneys for employees entitlements only to the extent that they are not able to be met out of the assets of Ansett. Now produced and shown to me marked "MAK-1" is a copy of a letter from the Honourable John Anderson MP Deputy Prime Minister to me dated 7 October 2001 which refers to, amongst other things, the Prime Minister's press conference and Government policy ("Government's First Letter"). (The Government's First Letter was written shortly after settlement of certain disputes with Air New Zealand by the payment of \$150M. Government desired the settlement sums to be applied to meet payments to priority creditors).

## SEESA

- 5 The Special Employment Entitlement Scheme for Ansett group employees ("SEESA") was established for the purposes of providing a safety net to ensure certain payments which would not otherwise be made to Ansett employees from asset realisation will be paid to them. In other words, the SEESA is a scheme which was established for the purposes of making payments to Ansett employees only if there is a shortfall in asset realisations. In my view the asset realisations may take up to two (2) years to complete, particularly following the terrorist attacks in the USA on 11 September 2001. The delay in the realisation

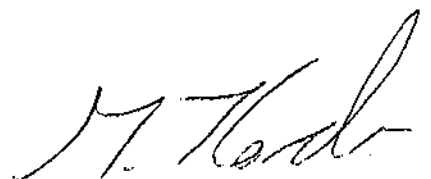


as a precondition to safety net payments by SEESA would create hardship for employees, most of whom have been stood down since 14 September 2001.

- 6 Mark Mentha and I were concerned that SEESA would not facilitate payments to all of the retrenched employees for some time. Accordingly, between 7 October 2001 and 12 October 2001, Mark Mentha, Leon Zwier and I had numerous discussions with Government and its advisor, David Crawford to discuss a special arrangement for Ansett employees to ensure that they receive their entitlements as soon as possible.
- 7 On Friday 12 October 2001 I sent a draft proposal to Government based on an assumption that 8,600 employees will be made redundant by the Administrators. I sought that the Federal Government pay the annual leave, long service leave, arrears of wages and redundancies capped at eight weeks (estimated to be about \$195M) of the 8,600 redundant employees and that the Administrators pay 4-5 weeks of payment in lieu of notice (estimated to be about \$35M). Now produced and shown to me marked "MAK-2" is a copy of the draft proposal ("the Proposal").

#### GOVERNMENT ASSISTS EMPLOYEES

- 8 On Saturday 13 October 2001 and Sunday 14 October 2001 I had further discussions with Government and agreed to proceed with payment of redundancies by Government and the Administrators on the following basis :-



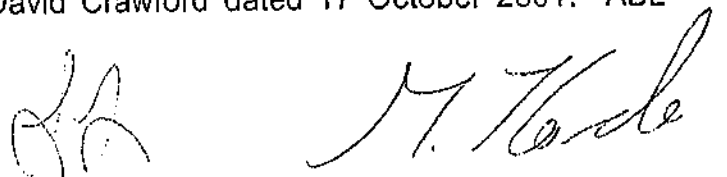
- On Wednesday 17 October 2001 Mark Mentha and I would write to employees giving them a week to advise whether they wished to accept voluntary redundancy;
- Mark Mentha and I would calculate the four week payment in lieu of notice payment which would be paid to employees who wished to accept redundancy from 29 October 2001;
- Mark Mentha and I would complete the calculation of the balance of payments due by 19 November 2001 to enable Government to fund the balance of employee entitlements in accordance with SEESA from that time.

This agreement marked a substantial shift in Government's position to assist employees.

Now produced and shown to me marked "MAK-3" is a copy of an e-mail from Lynelle Briggs to me dated 14 October 2001 which evidences our agreement.

9 On 15 October 2001 Mark Mentha and I released a statement to the press to give notice of our agreement with Government. Now produced and shown to me marked "MAK-4" is a copy of the press release.

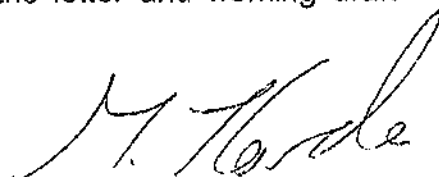
10 On 17 October 2001 Arnold Bloch Leibler ("ABL") wrote to David Crawford and provided him with copies of a number of documents evidencing the agreement made with Government. Now produced and shown to me marked "MAK-5" is a copy of the letter from ABL to David Crawford dated 17 October 2001. ABL



also sent a copy of the letter to David Crawford to Leslie Riggs (Group Manager, Workplace Relations Implementation, Department of Employment, Workplace Relations and Small Business).

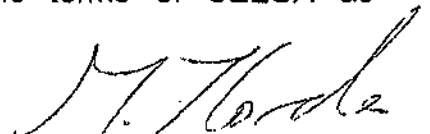
11 On 24 October 2001 Leslie Riggs (Group Manager, Workplace Relations Implementation, Department of Employment, Workplace Relations and Small Business) wrote to Leon Zwier of ABL and provided him with a copy of the Minister for Employment, Workplace Relations and Small Business Determination under sub-section 22(1) of the *Air Passenger Ticket Levy (Collection Act) 2001* ("the Levy Act"). In the letter of 24 October 2001 Government again advised that SEESA payments, once made, should be repaid with the same priority as all other employee entitlements. Now produced and shown to me marked "MAK-6" is a copy of the letter dated 24 October 2001 and the Determination. Leslie Riggs also wrote directly to me on 26 October 2001, repeating the matters set out in her earlier letter of 24 October 2001 to ABL.

12 On 31 October 2001 Leon Zwier sent to Leslie Riggs (Group Manager, Workplace Relations Implementation, Department of Employment, Workplace Relations and Small Business) a working draft Deed relating to the SEESA payments. A copy of the letter was also sent to David Crawford, Ken Matthews (Secretary, Department Transport and Regional Services), and Peter Langhorne (Chief of Staff, Office of the Deputy Prime Minister). Now produced and shown to me marked "MAK-7" is a copy of the letter and working draft Deed.



THE ANSETT SOLUTION PROPOSAL

- 13 On 31 October 2001 I sent a proposal, entitled "Ansett Solution", to Government requesting that Government considers one of two options to subordinate in whole or in part the repayment of the SEESA payments. Now produced and shown to me marked "MAK-8" is a copy of the Ansett Solution.
- 14 Between 31 October 2001 and 9 November 2001 Mark Mentha, Leon Zwier and I made numerous submissions to Government in support of the Ansett Solution submission. Throughout that period, Government maintained that it expected repayments of advances made under SEESA to rank to an equal priority with all other employee entitlements. Now produced and shown to me marked "MAK-9" and "MAK-10" are copies of letters from Mark Mentha to Peter Langhorne dated 6 November 2001.
- 15 On 2 November 2001 I received a letter from Ken Matthews (Secretary, Department Transport and Regional Services) (dated 1 November 2001) requesting, amongst other things, details of bids received for the Ansett business. Now produced and shown to me marked "MAK-11" is a copy of the letter from Ken Matthews.
- 16 On 6 November 2001 Leon Zwier received a letter from Leslie Riggs (Group Manager, Workplace Relations Implementation, Department of Employment, Workplace Relations and Small Business) in response to the draft Deed that had been sent to Government advising that it would be entirely "inappropriate" to enter into any agreement inconsistent with the terms of SEESA as





determined by the Minister. Now produced and shown to me marked "MAK-12" is a copy of the letter from Leslie Riggs.

### SUBORDINATION BY DEED

17 A number of Creditors asked me whether the Government's repayment of SEESA payments could be subordinated by a Deed of Company Arrangement approved by a majority in number and value of the Ansett Creditors. I told Creditors that the priority of all payments, including the SEESA repayment is established by a Deed of Company Arrangement and that, in theory, it may be possible for Creditors by a majority in number and value to force Government into a subordinated position for its repayment. I also told those Creditors that there are safeguards in the *Corporations Act* to ensure that if a Creditor suffers substantial injustice by the terms of the proposed Deed of Company Arrangement the Court may set it aside. In my discussions with Government I told Government that this issue of subordination had been raised by ordinary unsecured creditors. I thought it was better to be "upfront" with Government rather than to allow the matter to be "sprung" upon Government during the course of the Second Meeting of Creditors.



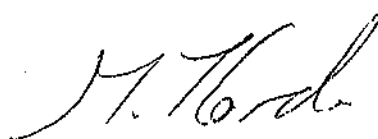
## MEETING WITH DEPUTY PRIME MINISTER

- 18 On Tuesday 13 November 2001 Mark Mentha, Leon Zwier and I met with the Deputy Prime Minister and Peter Langhorne (the Deputy Prime Minister's Chief Advisor) to make oral submissions to Government concerning the Ansett Solution. Whilst the Deputy Prime Minister was sympathetic, he maintained that SEESA had not been established for the benefit of ordinary unsecured creditors of the Ansett Group and that Government would consider our submissions further.

## MEETINGS WITH COMMONWEALTH OFFICIALS AND ADVISORS

- 19 On 14 November 2001 Mark Mentha, Leon Zwier and I met with Commonwealth Officials and Advisors and made further submissions that Government subordinate its claims to repayment of SEESA payments. The Government Advisors, led by Max Moore-Wilton, informed us as follows :-

- SEESA was established for the benefit of employees and not ordinary unsecured creditors;
- SEESA should be viewed as a safety net for employees;
- As a matter of policy, Government has never made payments for the benefit of ordinary unsecured creditors as requested by the Administrators;



- The Ticket Levy is separate from and distinct to the repayment of SEESA payments;
- Government denies that it will engage in "double dipping". If the Ticket Levy is not required in full to make up any shortfall in repayment of the SEESA payments, then the Prime Minister has stated, as a matter of Government policy, that the surplus will be paid to the tourist industry.

In the meeting of 14 November 2001 Government maintained the position it had articulated from the outset namely, that it expected to be repaid the SEESA payments with an equal priority to that of other employee entitlements.

## THE FOX / LEW CONSORTIUM

20 On 8 November 2001 Mark Mentha and I agreed to accept an offer from the Fox/Lew Consortium to acquire certain of the Ansett assets and to assume certain of the Ansett liabilities. The following is an executive summary of that transaction :

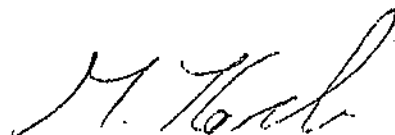
### EXECUTIVE SUMMARY OF TESNA SALE

#### PARTIES

- *Tesna Holdings Pty Ltd ("Tesna") the nominee of the Solomon Lew and Lindsay Fox consortium*

#### NATURE OF TRANSACTION

- *Sale by Ansett Group of Ansett assets to Tesna and assumption of liabilities by Tesna, the total value of which exceeds \$600M*
- *The Fox Lew consortium will inject \$400M cash into Tesna to ensure its long term viability and profitability*

- Maintain employment for 4,000 employees
- Acquire a new fleet of airbus A-320 aircraft

#### ASSETS TO BE SOLD

- All assets formerly used exclusively by the Ansett Group in conducting a domestic passenger airline business under the Ansett name ("the Mainline Airline")
- Specifically, the domestic airline terminals at Sydney, Melbourne, Brisbane, Perth, Coolangatta, Cairns, Townsville, Rockhampton, Adelaide, Hobart, Darwin, Alice Springs and Canberra
- The jet base and maintenance base at Tullamarine Airport
- The flight simulator centre and data centre located at Garden Drive Tullamarine
- The infrastructure assets located near some of the terminals
- All plant and equipment relating to the Mainline Airline
- All intangible assets such as the brand name "Ansett".
- Two call centres
- Ansett Head office located in Melbourne

#### FLEET

- Initially, Tesna will lease 18 airbus A-320 aircraft
- Tesna will replace these airbuses and lease others to increase the Ansett fleet to 29 new airbus A-320 aircraft
- The purchase price of the new 29 airbuses will exceed \$2.5B

#### ANSETT MARK II

- Tesna will operate a full service airline in accordance with the Administrators' Ansett Solution – Ansett Mark II

#### EMPLOYEES

- Tesna will employ up to 4,000 Ansett employees based on a new enterprise bargaining agreement to be negotiated with the ACTU and other relevant unions
- The sale of the Mainline Airline will enhance the prospect of a sale of all of the regional airlines there by preserving a further 2,500 jobs

- Maintenance services will continue to be provided from Melbourne Airport for a period of up to two years with the intention that in that period the maintenance business will be sold and additional jobs preserved

**MAINTENANCE**

- Maintenance services will continue to be provided from Melbourne Airport for a period of up to two years with the intention that in that period the maintenance business will be sold to a mutually acceptable purchaser

**CONDITIONS**

- The sale agreement is subject to a number of conditions including approval by all Ansett Group creditors at the Second Meeting of Creditors
- The agreement is also conditional upon Commonwealth and State Government support for the benefit of all stakeholders
- The sale agreement contains the usual conditions one would expect in a complex and substantial transaction of this type including, the provision of all necessary Government approvals and consents

**COMPLETION DATE**

- 31 January 2002

**PARTIES TO CO-OPERATE**

- Each of the parties will use their best endeavours and do all things within their power and control to complete the sale by 31 January 2002

**ANSETT KICK-START**

- Ansett Kick-Start will continue at the same level until the Completion Date

**PREVIOUS SUPPLIERS**

- Tesna will consider giving previous suppliers of the Ansett Group hurt by the collapse preferred supplier status

**OBJECTS OF PART 5.3A**

- On completion of the sale the administrators believe that they will maximise as much as possible of the Ansett business remaining in existence and thereby the return to creditors

21 The Tesna Offer is subject to a number of conditions precedent that need to be either satisfied or waived by a particular date ("**the Sunset Date**"). One of the


conditions precedent to the Tesna Offer was a requirement that Government subordinate the repayment of SEESA payments (estimated to be \$195M) by 24 November 2001 ("the \$195M Condition Precedent").

22 The \$195M Condition Precedent was included in the Tesna Offer for a number of reasons including :-

- The Administrators desire to maximise the return in the Ansett administration to ordinary unsecured creditors;
- Tesna and the Administrators joint desire to create a groundswell of supplier and customer support for Ansett Mark II.

#### COMMITTEE OF CREDITORS

23 On 15 November 2001 the Committee of Creditors of the Ansett Group met and approved the Tesna Offer including the \$195M Condition Precedent.



## GOVERNMENT WILL NOT MAKE FURTHER CONCESSIONS

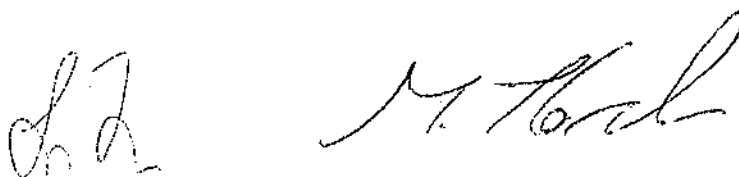
24 On 22 November 2001 the Deputy Prime Minister wrote to Mark Mentha and me and indicated, amongst other things, that Government would not accept a subordinated position as requested by us. Government also indicated that it required that SEESA payments rank to a priority equal to all other employee entitlements. Now produced and shown to me marked "MAK-13" is a copy of the letter from the Deputy Prime Minister.

## FURTHER COMMITTEE OF CREDITORS MEETING

25 On 28 November 2001 I convened and chaired a further Committee of Creditors Meeting and informed the Committee of Creditors that Government was not prepared to subordinate its SEESA payments and that Mark Mentha and I recommend that we should waive compliance with the \$195M Condition Precedent. The Committee of Creditors did not oppose us doing so.

## URGENCY

26 Whilst pursuing a strategy of the "Ansett Solution" with Government I also continued working with employees by calling for employees to apply for voluntary redundancies. Now produced and shown to me marked "MAK-14" is a standard form letter dated 17 October 2001 which was sent to all of the Ansett employees ("**the First Standard Form Letter**"). The First Standard Form



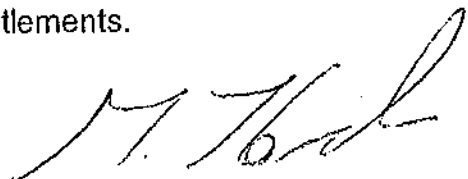
Letter was prepared by my staff and was sent out with the prior consent of Government.

27 On 30 October 2001 I also sent standard form redundancy letters to certain employees who could not be afforded the benefit of being able to apply for redundancy. Now produced and shown to me marked "MAK-15" is a copy of the standard form redundancy letter.

28 From 30 October 2001 about 4,000 employees have been made redundant. The employees who have been made redundant are in the processing of being paid by Mark Mentha and me all of their payment in lieu of notice as we agreed to do on 14 October 2001. Those employees however have not received their SEESA payments, and will not do so unless the Court makes directions and orders to ensure that Government's priority to repayment is enshrined and Mark Mentha and I protected appropriately. The redundant employees believe that their SEESA payments would be paid to them from about 24 November 2001.

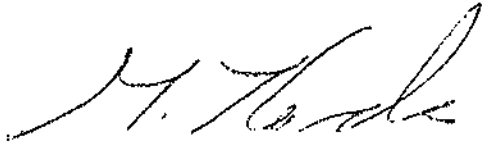
### THE SEESA DEED

29 Now produced and shown to me marked "MAK-16" is a copy of the proposed Deed which Mark Mentha and I wish to execute if this Court directs that we may properly and justifiably do so and, further, if the Court makes a direction to the effect that we will not be personally liable to repay the SEESA payments other than from the assets available to us and on the basis that such repayments will have a priority equal to all other employee entitlements.





SWORN by MARK ANTHONY KORDA )  
at Melbourne in the State of Victoria this )  
3rd day of December 2001 )



Before me:



**LEON ZWIER**

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