

McCloy, Madeleine

From: Adams, Cassandra
Sent: Wednesday, 13 May 2020 9:22 AM
To: McCoy, Noel; Khan, Safiyya
Cc: Tucker, Graeme; Casellas, Kate; Casellas, Kate; Casamento, Vittorio
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) (4030007)[NRF-APAC.FID2771231] [CU-Legal.FID3017446]

Dear Noel,

I hope the below answers your queries:

1. The form of words for the limitation of liability clause is to reflect the form of the orders proposed in the interlocutory application;
2. As I understand it, the Aircraft Protocol with your clients are being discussed and we have not received any comments from your clients on the current Aircraft Protocol other than letters to reflect your high level concerns. The form of the limitation of liability clause will reflect the orders proposed.

Kind regards,

Kassandra Adams, Senior Associate
Clayton Utz

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From: McCoy, Noel <noel.mccoy@nortonrosefulbright.com>
Sent: Tuesday, 12 May 2020 11:18 PM
To: Adams, Cassandra <kaadams@claytonutz.com>; Khan, Safiyya <safiyya.khan@nortonrosefulbright.com>
Cc: Sackar, Timothy <tsackar@claytonutz.com>; Tucker, Graeme <gtucker@claytonutz.com>; Casellas, Kate <KCasellas@claytonutz.com>; Casellas, Kate <KCasellas@claytonutz.com>; Casamento, Vittorio <vittorio.casamento@nortonrosefulbright.com>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) (4030007)[NRF-APAC.FID2771231] [CU-Legal.FID3017446]

Kassandra

To clarify, our queries below seek to understand with sufficient precision the scope of the orders limiting the administrators liability relative to any standstill agreement with lessors.

Among other matters, to the extent that any such orders operate with respect to an agreement on the terms of a particular draft or an agreement substantially in accordance with that draft, that will necessarily limit the scope of any negotiations of the terms of the standstill agreement as presumably the administrators will not enter an agreement to which the Court orders do not apply.

From the below, we understand the administrators' position to be:

1. the administrators' application seeks protection from personal liability in respect of an agreement on the terms of, or substantially in accordance with the Aircraft Protocol circulated on 1 May 2020 (being the version that will be put before the Court) but it is expected that the actual terms of the Aircraft Protocol to be entered into with lessors, at least the form of words limiting liability (being the subject matter of the orders) will be different to the version of the Aircraft Protocol before the Court;
2. at the same time, the administrators have provided a revised form of limitation of liability wording that is substantially different to the wording contained in the Aircraft Protocol circulated on 1 May 2020 and is intended to be included in the actual terms of the Aircraft Protocol to be entered into with lessors but this form of revised wording is not being put before the Court on the application.

Please kindly let us know if our understanding is correct, or if it is not, please kindly clarify.

Kind regards

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From: Adams, Cassandra <kaadams@claytonutz.com>
Sent: Tuesday, 12 May 2020 6:21 PM
To: Khan, Safiyya <safiyya.khan@nortonrosefulbright.com>
Cc: Sackar, Timothy <tsackar@claytonutz.com>; Tucker, Graeme <gtucker@claytonutz.com>; Casellas, Kate <KCasellas@claytonutz.com>; Casellas, Kate <KCasellas@claytonutz.com>; McCoy, Noel <noel.mccoy@nortonrosefulbright.com>; Casamento, Vittorio <vittorio.casamento@nortonrosefulbright.com>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) (4030007)[NRF-APAC.FID2771231] [CU-Legal.FID3017446]

Dear Safiyya,

As described in the IP and the Affidavit, we are seeking an order that it be an agreement on the terms of, or substantially in accordance with the Aircraft Protocol circulated on 1 May 2020.

This does not mean that it needs to remain the same just substantially in the same form. I also note that the order will only apply if your client enters into the agreement, not if they don't. The purpose of the order is to alleviate the need to attend Court every time an agreement is entered into in order to limit the administrators personal liability. The form of limitation of liability to ultimately be included in the Aircraft Protocol will be one that is consistent with the orders, rather than the version included in the circulation of 1 May 2020.

Kind regards,

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From: Khan, Safiyya <safiyya.khan@nortonrosefulbright.com>
Sent: Tuesday, 12 May 2020 3:42 PM
To: Adams, Cassandra <kaadams@claytonutz.com>
Cc: Sackar, Timothy <tsackar@claytonutz.com>; Tucker, Graeme <gtucker@claytonutz.com>; Casellas, Kate <KCasellas@claytonutz.com>; McCoy, Noel <noel.mccoy@nortonrosefulbright.com>; Casamento, Vittorio <vittorio.casamento@nortonrosefulbright.com>
Subject: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) [CU-Legal.FID3017446] (4030007)[NRF-APAC.FID2771231]

Hi Kassandra

Thank you for your email below.

With respect to the Aircraft Protocol contained at Tab 12 of the Strawbridge Affidavit, we note that this document contains the limitation of liability provisions included in the first draft of this document circulated by Clayton Utz on 1 May 2020. Pursuant to Kate's email to us on 11 May 2020 at 9.20 pm, we understood that the intention was for the new limitation of liability provisions contained in the **attached** rider to the Aircraft Protocol (**Rider**) to replace clauses 1.3, 1.4 and 1.5 of the draft Aircraft Protocol.

Are you able to please clarify whether the position with respect to the limitation of liability provisions outlined to us in the email we received yesterday (and as discussed on our call this morning) is being withdrawn or if the intention is still to seek orders that the administrators' personal liability is limited on the terms contained in the Rider at tomorrow's hearing.

Kind regards

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From: Adams, Cassandra [<mailto:kaadams@claytonutz.com>]
Sent: Tuesday, 12 May 2020 2:35 PM
To: McCoy, Noel <noel.mccoy@nortonrosefulbright.com>
Cc: Sackar, Timothy <tsackar@claytonutz.com>; Tucker, Graeme <gtucker@claytonutz.com>; Casellas, Kate <KCasellas@claytonutz.com>; Khan, Safiyya <safiyya.khan@nortonrosefulbright.com>; Casamento, Vittorio <vittorio.casamento@nortonrosefulbright.com>
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Dear Noel,

Reference to Tab 15 should be a reference to Tab 12.

In relation to the adjournment, there is an order providing an interested party to have liberty to apply to vary or discharge the orders on 1 business days' notice.

Kind regards,

Kassandra Adams, Senior Associate
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From: McCoy, Noel <noel.mccoy@nortonrosefulbright.com>
Sent: Tuesday, 12 May 2020 2:17 PM
To: Adams, Cassandra <kaadams@claytonutz.com>; Tucker, Graeme <gtucker@claytonutz.com>; Casellas, Kate <KCasellas@claytonutz.com>
Cc: Sackar, Timothy <tsackar@claytonutz.com>; Khan, Safiyya <safiyya.khan@nortonrosefulbright.com>; Casamento, Vittorio <vittorio.casamento@nortonrosefulbright.com>
Subject: RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) [CU-Legal.FID3017446] (4030007)[NRF-APAC.FID2771231]

Dear Kassandra

Thank you for your email received this morning.

We also refer to our telephone discussions with Graeme Tucker earlier today, yesterday and on 5 May 2020 and our correspondence sent to you yesterday and today on behalf of Perth Aircraft Leasing and Aviation Capital Group respectively.

We note that the administrators seek, at paragraph 14(a)(i) of the interlocutory process filed on 11 May 2020, an order pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, that Part 5.3A of the Corporations Act is to operate in relation to the administrators as if section 443A(1) of the Corporations Act provides that the liabilities of the administrators incurred with respect to any obligations arising out of, or in connection with, any future agreement on the terms of, or substantially in accordance with, the Aircraft Protocols document in the form exhibited at Tab 15 of Exhibit VNS-2 to the Strawbridge Affidavit.

We note that there is no Tab 15 of Exhibit VNS-2 as referred to in the affidavit (there is no Tab 15 in the exhibits we downloaded) and we do not otherwise seem to have received it. Would you kindly provide us with Aircraft Protocol document in the form intended to be exhibited at Tab 15 of Exhibit VNS-2.

In the meantime, we will not be in a position to deal with the application tomorrow. In that regard, we note that our clients are in different time zones which do not coincide easily with ours (Israel and US) and we do not anticipate being in a position to obtain meaningful instructions prior to tomorrow's proposed hearing.

In any event, from the conversations referenced above, we had understood that the administrators were seeking to negotiate with lessor creditors with a view to concluding negotiations by 20 May 2020 with any Court application to follow thereafter. The drafting of the Aircraft Protocol provided to us on 1 May 2020 also contemplated a Court application following entry into any such agreement. We have been conducting those discussions in good faith and on the understanding of a timeline which would not require us to deal with matters which we understood to be the subject of ongoing discussions and negotiations in such short order.

In the circumstances, would you kindly indicate whether the administrators would be prepared to consent to an adjournment of the application insofar as it affects the orders sought in clause 14(a)(i) for a period of one week?

Kind regards

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From: Adams, Cassandra <kaadams@claytonutz.com>

Sent: Tuesday, 12 May 2020 12:07 AM

To: john.mckean@aviationcapital.com; helen.zhu@aviationcapital.com; McCoy, Noel <noel.mccoy@nortonrosefulbright.com>; gayle.toney@aviationcapital.com; Casamento, Vittorio <vittorio.casamento@nortonrosefulbright.com>

Subject: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) [CU-Legal.FID3017446] (4030007)[NRF-APAC.FID2771231]

In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding)

We refer to the above matter and **attach** copies of the following documents:

1. interlocutory process filed in the Proceeding on 11 May 2020;

2. sealed affidavit of Vaughan Neil Strawbridge filed in the Proceeding on 11 May 2020;
3. a Mimecast Link to Exhibit "VNS-2", being a bundle of documents exhibited to the affidavit of Vaughan Neil Strawbridge filed in the Proceeding on 11 May 2020;
4. sealed supplementary affidavit of Vaughan Neil Strawbridge filed in the Proceeding on 11 May 2020; and
5. a Mimecast Link to Exhibit "VNS-3", being a bundle of documents exhibited to the supplementary affidavit of Vaughan Neil Strawbridge filed in the Proceeding on 11 May 2020.

We confirm that the Proceeding is listed for Hearing via Microsoft Teams (video-conference) in the Federal Court of Australia at **10:15am**, Wednesday **13 May 2020** before the Honourable Justice Middleton.

Details on how to attend the hearing are below:

Link: [Join Microsoft Teams Meeting](#)

Join by Phone

Phone: 02 9161 1229

Conference ID: 146 961 71#

Join with a video conferencing device

[862016018@t.plcm.vc](tel:862016018)

VTC Conference ID: 1371164547

Kind regards

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