

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 26/10/2020 9:45:25 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
File Number:	NSD714/2020
File Title:	WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION (AS OWNER TRUSTEE) & ANOR v VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 27/10/2020 4:30:12 PM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59
Rule 29.02(1)

Affidavit

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations List

No. NSD 714 of 2020

IN THE MATTER OF VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS

**WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION (AS OWNER TRUSTEE)
AND ANOTHER NAMED IN SCHEDULE 1**

Applicants

**VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 AND OTHERS
NAMED IN SCHEDULE 2**

Respondents

Affidavit of: Salvatore Algeri
Address: 447 Collins Street, Melbourne, Victoria 3000
Occupation: Registered Liquidator and Chartered Accountant
Date: 26 October 2020

Annexure	Document	Paragraph	Page
A	Letter from Clayton Utz to Norton Rose Fulbright dated 11 September 2020	9	11
B	Email from Norton Rose Fulbright to Clayton Utz dated 14 September 2020	12	14
C	Founders Logistics Air freight invoice dated 8 October 2020	13	16
D	Virgin Tech invoice dated 22 October 2020	16	17
E	Letter from Clayton Utz to Norton Rose Fulbright dated 22 October 2020	18	18
F	Email from Andrew Symons to Derych Warner dated 8 October 2020	19	26
G	Letter from Norton Rose Fulbright to Clayton Utz dated 22 October 2020	21	35
H	Letter from Clayton Utz to Norton Rose Fulbright dated 26 October 2020	22	38

Filed on behalf of (name & role of party) The Applicants
 Prepared by (name of person/lawyer) Timothy James Sackar
 Law firm (if applicable) Clayton Utz
 Tel +61 2 9353 4000 Fax +61 2 8220 6700
 Email kaadams@claytonutz.com
Address for service Level 15, 1 Bligh Street, Sydney NSW 2000
 (include state and postcode)

[Version 3 form approved 02/05/2019]

Annexure	Document	Paragraph	Page
I	Letter from Norton Rose Fulbright to Clayton Utz dated 26 October 2020	22	43
J	Email from Clayton Utz to Norton Rose Fulbright dated 26 October 2020	22	48

I, Salvatore Algeri, of Deloitte Touche Tohmatsu (of which Deloitte Financial Advisory Pty Ltd is a wholly owned subsidiary) (**Deloitte**), of 447 Collins Street, Melbourne, Victoria 3000, Registered Liquidator and Chartered Accountant, say on oath:

1. I am a partner in the Financial Advisory Group of the professional services firm trading as Deloitte. I am a Chartered Accountant and a Registered Liquidator and I practise as an accountant specialising in corporate restructuring and insolvency-related matters, with key experience in the consumer business, retail and transport sectors.
2. I, together with Mr Vaughan Strawbridge, Mr John Greig and Mr Richard Hughes, am one of the four joint and several deed administrators (together, the **Deed Administrators** and each an **Deed Administrator**) of the First, Second and Fourth Respondents and the other 38 companies set out in Schedule 3 to this affidavit (collectively, the **Virgin Companies**), pursuant to deeds of company arrangement executed by the Virgin Companies on 25 September 2020. Mr Strawbridge, Mr Greig and Mr Hughes are also partners of Deloitte. The Deed Administrators are the Third Respondents in the proceeding.
3. I am authorised by Mr Strawbridge, Mr Greig and Mr Hughes to make this affidavit on behalf of the Deed Administrators.
4. Unless otherwise stated, I make this affidavit based on my own knowledge and belief and from information staff members at Deloitte and I have obtained in connection with my role as a former voluntary administrator and Deed Administrator of the First, Second and Fourth Respondents and the other Virgin Companies, which I believe to be true.
5. This is the fifth affidavit I have made in these proceedings. In this affidavit, I refer to:
 - (a) my affidavit sworn 5 August 2020 (**Second Algeri Affidavit**); and
 - (b) Exhibit DP-3 to the affidavit of Dean Poulakidas sworn 19 October 2020 (**Exhibit DP-3**),
 each filed in these proceedings.
6. I make this affidavit in support of the Respondents' interlocutory process dated 26 October 2020.

Entry into deeds of company arrangement

7. On 25 September 2020, each of the Virgin Companies executed a deed of company arrangement. A copy of the Administrators' circular to creditors confirming the execution of the deeds of company arrangement is at pages 576 to 580 of Exhibit DP-3.

Reimbursement of the Respondents' costs of complying with the Court's orders

8. On 3 September 2020, the Court made orders requiring the Respondents to deliver the aircraft objects identified in Schedule 2 to the orders to Coconut Creek, Florida by 15 October 2020 in accordance with certain specified steps (**Redelivery**).
9. On 11 September 2020, my solicitors sent a letter to the Applicants' solicitors stating that, in order to effect Redelivery, the Respondents would be required, by no later than 14 September 2020, to incur estimated costs of US\$100,000 to US\$150,000 for air freight of two engine stands in Atlanta to Melbourne. A copy of that letter is annexed to this affidavit and marked "**Annexure A**".
10. The letter stated (at paragraph 7):

The purpose in identifying for your clients the very significant costs which are being incurred in complying with the Orders in order to meet the Redelivery Deadline, in circumstances where your clients opposed a stay of the Orders pending the determination of the appeal, is to enable your clients to be apprised of the quantum of the claim which will be made against them, should the appeal be allowed.

11. The letter also offered the Respondents the opportunity to agree to a stay of the orders or an extension of the Redelivery deadline to prevent costs from being incurred.
12. On 14 September 2020, the Applicants' solicitors sent an email in response to the letter, which is annexed to this affidavit and marked "**Annexure B**".
13. Also on 14 September 2020, the Respondents instructed Delta Air Lines, Inc to transport the two engine stands in Atlanta to Melbourne by air freight to enable the Redelivery to be achieved by the stipulated deadline. Annexed to this affidavit and marked "**Annexure C**" is a copy of an invoice issued to the First Respondent in respect of the cost of that air freight in the amount of US\$110,000. At the exchange rate on 8 October 2020, the date of the invoice, which was about AU\$1.39 to US\$1.00, the cost of that air freight to the First Respondent was AU\$152,900.
14. As explained more fully in the Second Algeri Affidavit at paragraph 21, the First Respondent is a special purpose leasing entity that does not carry on any business. Accordingly, having regard to order 4 of the orders made on 3 September 2020, the Deed Administrators caused the First Respondent to engage Virgin Tech Pty Limited

(subject to a deed of company arrangement) (**Virgin Tech**) to perform the work required to effect Redelivery.

15. The work required to be done by Virgin Tech to effect Redelivery, until the orders requiring Redelivery were stayed on 22 September 2020, consisted of:
 - (a) conducting a ferry flight from Adelaide to Melbourne;
 - (b) removing the Applicants' engines from airframes and placing them on stands;
 - (c) conducting borescopes;
 - (d) repositioning the Applicants' engines from Virgin-owned stands to stands owned by the Applicants;
 - (e) installing exhaust plugs and rerating engines;
 - (f) installing quick engine change units and accessories identified at Appendix A to Schedule 2 of the orders;
 - (g) preserving and bagging the Applicants' engines; and
 - (h) generating and preparing records in relation to each of the steps set out above.
16. Annexed to this affidavit and marked "**Annexure D**" is an invoice rendered by Virgin Tech to the First Respondent in the amount of AU\$80,033.25 including GST for the work done by Virgin Tech in the course of the Redelivery.
17. The sum of the principal costs described above and incurred by the First Respondent in the course of the Redelivery is AU\$232,933.25 (being AU\$152,900 plus AU\$80,033.25).
18. On 22 October 2020, my solicitors sent a letter to the Applicants' solicitors quantifying the Respondents' costs of Redelivery and legal costs. A copy of that letter is annexed to this affidavit and marked "**Annexure E**".

Failure to take possession

19. After the decision of the Full Court of the Federal Court in proceedings NSD 994 of 2020, the Respondents invited the Applicants to take possession of their property by way of an email sent on 8 October 2020 by Andrew Symons, Leader, Technical Assets, at the Second Respondent, to Derych Warner of the Second Applicant. A copy of that email is annexed to this affidavit and marked "**Annexure F**".
20. On 11 October 2020, my solicitors sent a letter to the Applicants' solicitors in relation to (among other things) Mr Symons' email, the steps taken by the Respondents to give possession of the Applicants' property and the Respondents' failure to take possession of that property. A copy of that letter is at pages 680 to 685 of Exhibit DP-3. At pages

756 to 760 of Exhibit DP-3 is a copy of a chain of emails subsequently passing between the parties' solicitors between 12 October 2020 and 16 October 2020.

21. On 22 October 2020, the Applicants' solicitors sent a letter to my solicitors, a copy of which is annexed to this affidavit and marked "**Annexure G**".
22. On 26 October 2020, the parties' solicitors exchanged further correspondence, being:
 - (a) a letter from Clayton Utz to Norton Rose Fulbright annexed to this affidavit and marked "**Annexure H**";
 - (b) a letter from Norton Rose Fulbright to Clayton Utz annexed to this affidavit and marked "**Annexure I**"; and
 - (c) an email from Clayton Utz to Norton Rose Fulbright annexed to this affidavit and marked "**Annexure J**".

Swearing of this affidavit

23. I have not been able to swear this affidavit in proper form at the time that I have signed it due to the measures I have taken to minimise the spread of COVID-19.
24. I have been informed by Orfhlaith Maria McCoy, as the proposed witness to this affidavit, and believe, that the relaxation of formality with respect to the unsworn nature of this affidavit does not diminish the need for me to satisfy myself that the contents of this affidavit are true and correct. I have satisfied myself that that is the case.
25. I will formally swear this affidavit when circumstances allow and will instruct Clayton Utz to file the sworn version with the Court.

Sworn by the deponent
at Melbourne
in Victoria
on 26 October 2020
Before me:

)
)
)
)
)

Signature of Salvatore Algeri

Signature of witness
Orfhlaith Maria McCoy, solicitor.

SCHEDULE 1

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations List

No. NSD 714 of 2020

**IN THE MATTER OF VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 &
ORS**

Applicants

First Applicant: Wells Fargo Trust Company, National Association (as owner trustee)

Second Applicant: Willis Lease Finance Corporation

SCHEDULE 2

Federal Court of Australia
 District Registry: New South Wales
 Division: Commercial and Corporations List

No. NSD 714 of 2020

IN THE MATTER OF VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS

Respondents

First Respondent:	VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741
Second Respondent:	Virgin Australia Airlines Pty Ltd (Administrators Appointed) ACN 090 670 965
Third Respondent:	Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes, in their capacity as joint and several voluntary administrators of the First and Second Respondents
Fourth Respondent:	Tiger Airways Australia Pty Limited (Administrators Appointed) ACN 124 369 008

SCHEDULE 3

Federal Court of Australia
 District Registry: New South Wales
 Division: Commercial and Corporations List

No. NSD 714 of 2020

IN THE MATTER OF VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS

Virgin entities subject to a deed of company arrangement

1. Virgin Australia Holdings Ltd (subject to deed of company arrangement) ACN 100 686 226
2. Virgin Australia International Operations Pty Ltd (subject to deed of company arrangement) ACN 155 859 608
3. Virgin Australia International Holdings Pty Ltd (subject to deed of company arrangement) ACN 155 860 021
4. Virgin Australia International Airlines Pty Ltd (subject to deed of company arrangement) ACN 125 580 823
5. Virgin Australia Airlines (SE Asia) Pty Ltd (subject to deed of company arrangement) ACN 097 892 389
6. Virgin Australia Airlines Holdings Pty Ltd (subject to deed of company arrangement) ACN 093 924 675
7. VAH Newco No.1 Pty Ltd (subject to deed of company arrangement) ACN 160 881 345
8. Tiger Airways Australia Pty Limited (subject to deed of company arrangement) ACN 124 369 008
9. Virgin Australia Airlines Pty Ltd (subject to deed of company arrangement) ACN 090 670 965
10. VA Borrower 2019 No. 1 Pty Ltd (subject to deed of company arrangement) ACN 633 241 059
11. VA Borrower 2019 No. 2 Pty Ltd (subject to deed of company arrangement) ACN 637 371 343
12. Virgin Tech Pty Ltd (subject to deed of company arrangement) ACN 101 808 879
13. Short Haul 2018 No. 1 Pty Ltd (subject to deed of company arrangement) ACN 622 014 831
14. Short Haul 2017 No. 1 Pty Ltd (subject to deed of company arrangement) ACN 617 644 390
15. Short Haul 2017 No. 2 Pty Ltd (subject to deed of company arrangement) ACN 617 644 443
16. Short Haul 2017 No. 3 Pty Ltd (subject to deed of company arrangement) ACN 622 014 813
17. VBNC5 Pty Ltd (subject to deed of company arrangement) ACN 119 691 502

18. A.C.N. 098 904 262 Pty Ltd (subject to deed of company arrangement) ACN 098 904 262
19. Virgin Australia Regional Airlines Pty Ltd (subject to deed of company arrangement) ACN 008 997 662
20. Virgin Australia Holidays Pty Ltd (subject to deed of company arrangement) ACN 118 552 159
21. VB Ventures Pty Ltd (subject to deed of company arrangement) ACN 125 139 004
22. Virgin Australia Cargo Pty Ltd (subject to deed of company arrangement) ACN 600 667 838
23. VB Leaseco Pty Ltd (subject to deed of company arrangement) ACN 134 268 741
24. VA Hold Co Pty Ltd (subject to deed of company arrangement) ACN 165 507 157
25. VA Lease Co Pty Ltd (subject to deed of company arrangement) ACN 165 507 291
26. Virgin Australia 2013-1 Issuer Co Pty Ltd (subject to deed of company arrangement) ACN 165 507 326
27. 737 2012 No.1 Pty. Ltd (subject to deed of company arrangement) ACN 154 201 859
28. 737 2012 No. 2 Pty Ltd (subject to deed of company arrangement) ACN 154 225 064
29. Short Haul 2016 No. 1 Pty Ltd (subject to deed of company arrangement) ACN 612 766 328
30. Short Haul 2016 No. 2 Pty Ltd (subject to deed of company arrangement) ACN 612 796 077
31. Short Haul 2014 No. 1 Pty Ltd (subject to deed of company arrangement) ACN 600 809 612
32. Short Haul 2014 No. 2 Pty Ltd (subject to deed of company arrangement) ACN 600 878 199
33. VA Regional Leaseco Pty Ltd (subject to deed of company arrangement) ACN 127 491 605
34. VB 800 2009 Pty Ltd (subject to deed of company arrangement) ACN 135 488 934
35. VB Leaseco No 2 Pty Ltd (subject to deed of company arrangement) ACN 142 533 319
36. VB LH 2008 No. 1 Pty Ltd (subject to deed of company arrangement) ACN 134 280 354
37. VB LH 2008 No. 2 Pty Ltd (subject to deed of company arrangement) ACN 134 288 805
38. VB PDP 2010-11 Pty Ltd (subject to deed of company arrangement) ACN 140 818 266
39. Tiger International Number 1 Pty Ltd (subject to deed of company arrangement) ACN 606 131 944
40. VAH Newco No. 2 Pty Ltd (subject to deed of company arrangement) ACN 160 881 354

41. VB Investco Pty Ltd (subject to deed of company arrangement) ACN 101 961 095

Email

11 September 2020

Mr Noel McCoy and Ms Safiyya Khan
Norton Rose Fulbright
Level 5, 60 Martin Place
Sydney NSW 2000

This and the following 2 pages are Annexure A referred
to in the affidavit of Salvatore Algeri

noel.mccoy@nortonrosefulbright.com
safiyya.khan@nortonrosefulbright.com

Sworn on

Before me

Dear Mr McCoy and Ms Khan

VB Leaseco Pty Ltd (Administrators Appointed) & Ors v Wells Fargo Trust Company, National Association (as Owner Trustee) & Anor: Full Federal Court of Australia Proceedings NSD994/2020 (Proceeding)

1. We refer to our clients' application for a stay of Orders 5, 6, 8 and 12 made by the Court on 7 September 2020 (**Orders**) pending resolution of their appeal (**Stay Application**), which was opposed by your clients and dismissed by the Court on 8 September 2020.
2. Given that our clients have not been excused from compliance with the Orders and remain subject to a deadline of 15 October 2020 to complete redelivery in accordance with Schedule 3 (**Redelivery Deadline**), our clients must continue to progress the redelivery simultaneously with the appeal (which we assume was your clients' objective in opposing the Stay Application).
3. As you will appreciate from the evidence filed in the first instance proceeding, this will require our clients to take irreversible steps that involve considerable expense. In that regard, noting that the redelivery proposal in Mr Dunbier's affidavit was formulated prior to 5 August 2020 (anticipating that the process would commence shortly after that date) and final orders were not made until one month later, for our clients to have any prospect of meeting the Redelivery Deadline, they will need to undertake a number of the steps on an urgent basis and incur unavoidable costs in doing so.
4. With respect to your clients' engines, as outlined in our email to the Associate to Middleton J dated 24 August 2020, our clients have already caused Engine 894902 to be transferred by ferry flight from Adelaide to Melbourne. They have incurred costs in that exercise. They have also caused Virgin Tech Pty Ltd, a third party, to undertake borescopes of each of the engines, incurring further costs.
5. With respect to your clients' engine stands, as your clients are aware, two of Willis' engine stands are located at the Delta Facility in Atlanta, USA. In that regard, our clients and the Virgin companies have endeavoured to acquire compliant replacement stands in the Southern Hemisphere, without success. Given the disruptions caused by the Covid-19 pandemic, there are simply no appropriate engine stands available within the domestic market. Accordingly, in order to meet the Redelivery Deadline, our clients will therefore need to instruct Delta to air freight to Australia the two Willis engine stands currently located at the Delta facility in the United States by no later than Monday, 14 September 2020 (anticipating a 7-10 day delivery period for that air freight). A quote from Delta is pending, but our clients have consulted with Virgin staff, who estimate the cost of the air freight from Delta to transport the two stands at between **US\$100,000** and **US\$150,000**. We will forward you a copy of the quote (which is expected during the course of Friday working hours in the United States), once received.
6. Upon the two Willis engine stands arriving in Melbourne, our clients will then place each of the four Willis engines on a Willis engine stand in accordance with Schedule 3 of the Orders. As

Mr Noel McCoy / Ms Safiyya Khan, Norton Rose Fulbright

11 September 2020

foreshadowed in our email to the Associate to Middleton J and in the affidavit of Salvatore Algeri sworn 7 September 2020, it is no longer feasible to transport the Willis engines by ferry flight to the USA. They must all now be transported via air freight. Accordingly, once the engines are placed on Willis' engine stands, it will be necessary to prepare the engines for transport, and to arrange for all four to be air-freighted back to the Delta Facility in Atlanta, for final inspection before being transferred by road transport to Florida. In order to transport the engines to the Delta Facility in Atlanta, our clients will need to charter a Boeing 777 aircraft from Emirates. Virgin has sought cost estimates from Emirates for that purpose. The indicative estimate provided was US\$350,000 but a final estimate will not be available until the purchase order is issued in the next 7 days. We will write to you to provide you with further details of that expenditure in due course.

7. The purpose in identifying for your clients the very significant costs which are being incurred in complying with the Orders in order to meet the Redelivery Deadline, in circumstances where your clients opposed a stay of the Orders pending the determination of the appeal, is to enable your clients to be apprised of the quantum of the claim which will be made against them, should the appeal be allowed. As was ventilated in the hearing on 8 September 2020, and as is made clear in the orders sought in our clients' Notice of Appeal, our clients will seek to recover in full their costs and expenses incurred in complying with the Orders (including the importation of the stands and the airfreight of the engines and stands to the USA) if the appeal is successful.
8. The first very significant expense (the purchase order to Delta to pay for the redelivery of the stands to Australia) needs to be incurred on Monday 14 September 2020. Thereafter, further costs including the purchase order to Emirates, will be incurred as our clients continue to comply with the Orders.
9. Notwithstanding your clients' position on the stay, having regard to the mounting costs and our clients' position in the event the appeal is successful, we have been instructed to give your clients a further opportunity to consent to a stay of the Orders or, alternatively, agree to an extension to the Redelivery Deadline to a date falling one month after the determination of the appeal, to prevent such costs accruing to their account if the appeal is allowed. Please let us know by no later than **9am Monday, 14 September 2020** whether your clients are prepared to consent to a stay of the Orders until the determination of the appeal or otherwise agree to an extension of the Redelivery Deadline to a date falling one month following the determination of the appeal.
10. If your clients decline to consent to a stay or extension of the Redelivery Deadline and (in line with their opposition to the Stay Application) compel our clients to continue to incur costs in progressing redelivery notwithstanding the appeal, we are instructed to put your clients on notice that our clients intend to seek reimbursement of all costs incurred in complying with the Orders, including significant costs associated with redelivering your clients' property on an urgent basis prior to the Redelivery Deadline.

Mr Noel McCoy / Ms Safiyya Khan, Norton Rose Fulbright

11 September 2020

11. Our clients reserve their rights to make an application to tender fresh evidence in the appeal, including this letter, together with your reply and any further correspondence in relation to the question of the costs of complying with the Orders.

Yours sincerely



Orla McCoy, Partner
+61 2 9353 4240
omccoy@claytonutz.com

Mikhail Glavac, Senior Associate
+61 2 9353 4614
mglavac@claytonutz.com

Your ref 4015052
Our ref 13236/17882/81005835

Gardner, Tom

From: McCoy, Noel <noel.mccoy@nortonrosefulbright.com>
Sent: Monday, 14 September 2020 11:48 AM
To: McCoy, Orla; Khan, Safiyya
Cc: Glavac, Mikhail; Gardner, Tom; Project Volar
Subject: RE: VB Leaseco Pty Ltd (Administrators Appointed) & Ors v Wells Fargo Trust Company, National Association (as Owner Trustee) & Anor: Full Federal Court of Australia Proceedings NSD994/2020 [CU-Legal.FID3025483] (4015052)[NRF-APAC.FID2541150]

Dear Orla

I refer to your letter (received after business hours requiring a reply before business hours the next business day).

Our clients do not agree to your clients' request for a stay or extension of the redelivery deadline.

Our clients expect to be successful on appeal, but in the unlikely event that they are not, they reserve their right to oppose the payment of any unreasonable costs. We also note, contrary to the assertion in paragraph 10 of your letter, it is not our clients who compel redelivery but the orders of the Court.

Our clients do not propose to respond to the balance of your letter as much of it has been traversed on your clients' unsuccessful stay application or otherwise does not call for a response. Our clients' silence should not be taken as agreement with or acquiescence to the matters you have asserted and our clients reserve their rights.

Kind regards

This and the following page are Annexure B referred to in the affidavit of Salvatore Algeri

Noel McCoy | Partner
 Norton Rose Fulbright Australia
 Level 5, 60 Martin Place, Sydney, Australia
 Tel +61 2 9330 8133 | Mob +61 414 764 525 | Fax +61 2 9330 8111
 noel.mccoy@nortonrosefulbright.com

Sworn on

Before me

NORTON ROSE FULBRIGHT

Law around the world
nortonrosefulbright.com

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From: McCoy, Orla <omccoy@claytonutz.com>
Sent: Friday, 11 September 2020 6:17 PM
To: McCoy, Noel <noel.mccoy@nortonrosefulbright.com>; Khan, Safiyya <safiyya.khan@nortonrosefulbright.com>
Cc: Glavac, Mikhail <mglavac@claytonutz.com>; Gardner, Tom <tgardner@claytonutz.com>; Project Volar <Volar@claytonutz.com>
Subject: VB Leaseco Pty Ltd (Administrators Appointed) & Ors v Wells Fargo Trust Company, National Association (as Owner Trustee) & Anor: Full Federal Court of Australia Proceedings NSD994/2020 [CU-Legal.FID3025483]

Dear Noel and Safiyya,

Please see the **attached** letter.

Kind regards

Mikhail Glavac, Senior Associate
Clayton Utz

Orla McCoy, Partner
Clayton Utz

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4240 | F +612 8220 6700
omccoy@claytonutz.com | www.claytonutz.com

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FOUNDERS

LOGISTICS

16

INVOICE S00004731

Page 1 of 1

DELTA TECH OPS
ATTENTION: THIAGO GUSAMO
(VENDOR # 10053522 - FOUNDERS LOGISTICS LLC)
1775 M H JACKSON SERVICE RD
ENGINES TOC GATE 0 // PARTS GATE 4
ATLANTA GA 30354

INVOICE DATE 08-Oct-20

CUSTOMER ID DELTECATL

SHIPMENT S00004731

DUE DATE 22-Nov-20

TERMS 45 days from Inv. Date

SHIPMENT DETAILS

PRINTED BY: Cristhian

SHIPPER	CONSIGNEE
DELTA TECH OPS	VIRGIN AUSTRALIA AIRLINES

ORDER NUMBERS / OWNER'S REFERENCE

SN:MCC150728-1-4, SN:MCC150728-1-3, 3EA:SHIPPING:STANDS

GOODS DESCRIPTION

EMPTY ENGINE STANDS

IMPORT CUSTOMS BROKER	WEIGHT	VOLUME	CHARGEABLE	PACKAGES
	4190.000 KG		4190.000 KG	2 PCE

MAWB	HAWB
	S00004731

ORIGIN	ETD	DESTINATION	ETA
USATL = Atlanta, United States	16-Sep-20	AUMEL = Melbourne, Australia	26-Sep-20

CHARGES

DESCRIPTION

CHARGES IN USD

International Freight: 2 x Empty Engine Stands

110,000.00

This is Annexure C referred to in the affidavit of
Salvatore Algeri

Sworn on

Before me

TOTAL CHARGES

Please contact us within 7 days should there be any discrepancies.

SUBTOTAL 110,000.00

TOTAL USD 110,000.00

CUSTOMER ID DELTECATL

Invoiced

USD 110,000.00

BALANCE DUE

USD 110,000.00

PAYMENT METHOD Bank Transfer

DUE DATE

22-Nov-20

Transfer Funds To:

ABA 122000247

SWIFT WFBUS6S

Account 1185549332

WELLS FARGO

15056 ROSECRANS AVE, LA MIRADA CA. 90638

Address:

FOUNDERS LOGISTICS, LLC
3156 FOOTHILL BLVD, STE H
LA CRESCENTA CA 91214
UNITED STATES

Pay Ref DELTECATL S00004731 00004509

This is Annexure D referred to in the affidavit of
Salvatore Algeri



australia

Sworn on

Before me

Tax Invoice
125694

21-OCT-20

Virgin Tech Pty Ltd

ABN: 37 101 808 879

PO Box 1034

SPRING HILL 4004

Phone : 07 3295 3000

Email: accounts.receivable@virginaustralia.com

Invoice To:

Attn: Accounts Payable
VB Leaseco Pty Ltd
cc Virgin Australia Airlines Pty Ltd
PO Box 1034
SPRING HILL 4004

Payment Terms: 7 DAYS

Line No	Description	Amount
1	Virgin Tech manhours for Engine removal into WFLC titled Stands, QEC installation, preservation & borescope. Ground Handling Fees, Airport Movement Charges ADL-MEL, Flight Crew charges and Fuel. ESN897193 ESN888473 ESN894902 ESN896999	72,757.50
	GST	7,275.75
	Invoice Total: \$AUD	80,033.25

Remittance Bank Account:

Australia and New Zealand Banking Group Limited: BSB # 014002 Account # 838238725
SWIFT # ANZBAU3M VIRGIN AUSTRALIA AIRLINES PTY LTD (ADMINISTRATORS
APPOINTED)

Sworn on

Before me

Email

noel.mccoy@nortonrosefulbright.com

22 October 2020

Mr Noel McCoy and Ms Safiyya Khan
Norton Rose Fulbright
Level 5, 60 Martin Place
Sydney NSW 2000

safiyya.khan@nortonrosefulbright.com

Dear Mr McCoy and Ms Khan

VB Leaseco Pty Ltd (Subject to Deed of Company Arrangement) & Ors v Wells Fargo Trust Company, National Association (as Owner Trustee) & Anor - Federal Court of Australia Proceedings NSD714/2020 (Primary Proceedings) and Federal Court of Australia Proceedings NSD994/2020 (Appeal Proceedings)

1. We refer to:
 - (a) our letter dated 11 October 2020 in respect of the outcome of the Appeal Proceedings;
 - (b) your email dated 14 October 2020, in which you stated that you had received instructions to make an application for special leave to the High Court (**Special Leave Application**); and
 - (c) your client's interlocutory application filed on 21 October 2020.
2. As your client is aware, the likely costs of the return of your client's aircraft objects to Florida are approximately AU\$1.5m. As your client is also aware, our clients have, since June 2020, been urging and attempting to have your client collect its aircraft objects. It has steadfastly elected not to do so, including in the face of the clear and unanimous decision in the Appeal Proceedings, despite the disproportionality of the costs of that strategy when compared to simply collecting its aircraft objects. For each day that your client does not collect its aircraft property, it fails to properly mitigate its loss and damage under the leases. In addition to the prejudice to other creditors which flows from your client's preferred litigation strategy in respect of costs not recoverable, any future adjudication of a proof of debt lodged by your client will clearly need to have regard to, inter alia, the failure to mitigate.
3. The purpose of this letter is to put your client on notice of the amounts that your client will need to pay our clients in respect of (i) the legal costs and disbursements of the Primary Proceedings (**Primary Costs**), (ii) the legal costs and disbursements of the Appeal Proceedings (**Appeal Costs**) and (iii) the expenses incurred by our clients in complying with the Primary Orders (**Compliance Expenses**) so that it can more fully evaluate the cost of its litigation strategy.
4. As you would be aware, costs-related issues in the Federal Court of Australia are subject to the Costs Practice Note (GPN-COSTS). The Court's preference, wherever it is practicable and appropriate to do so, is for the making of a lump-sum costs order supported by a 'Costs Summary' of no more than 5 pages in length which is "*clear, concise and direct and [does] not resemble a bill of costs in taxable form*". In accordance with Annexure A to GPN-COSTS, the Costs Summary requires a summary to be provided of the work fairly and reasonably incurred in the conduct of the litigation.

Mr Noel McCoy / Ms Safiyya Khan, Norton Rose Fulbright

22 October 2020

5. To that end:
- (a) the table set out at Annexure A summarises, in a manner resembling a formal Costs Summary, the costs of the work fairly and reasonably incurred by our clients in the Primary Proceedings. The total of the Primary Costs is **\$563,789.99**; and
 - (b) the table set out at Annexure B summarises, in a manner resembling a formal Costs Summary, the costs of the work fairly and reasonably incurred by our clients in the Appeal Proceedings. The total of the Appeal Costs is **\$349,227.73**.
6. To the extent that a formal application is ultimately required to quantify either or both of the Primary Costs and the Appeal Costs, our clients intend to claim an uplift of 15% for Skill, Care and Responsibility, having regard to (i) the complexity, difficulty and novelty of the legal and factual issues raised by your clients' application (noting that the proceedings represented the first time that Art XI.2 of Cape Town Protocol had been considered by a Court, in Australia or any other jurisdiction), (ii) the skill, specialised knowledge and responsibility involved, and the time and labour expended, (iii) the number and importance of the documents prepared and read by the parties, (iv) the amount or value of money or property involved and (v) the short time within which the matter was conducted.
7. Additionally, for the reasons set out in paragraphs 22 to 24 of our letter dated 11 October 2020, our clients consider it to be inevitable that your clients will be ordered to pay the Compliance Costs in full. We **attach**, for your clients' reference, the invoice in the amount of US\$110,000 issued by Founders Logistics in respect of shipping your clients' stands from Delta in Atlanta to Melbourne (this is in line with the estimate of US\$100,000 to US\$150,000 set out in our letter to you dated 11 September 2020). We also **attach** an invoice issued by Virgin Tech Pty Ltd (**Virgin Tech**) in respect of the costs it has incurred to date in relation to preparing your client's aircraft objects in compliance with the Primary Orders (in the sum of \$80,033.25. At current exchange rates, this amounts to a total of approximately AU\$235,323.84 in respect of Compliance Costs (including freight costs).
8. Adding together the Primary Costs, Appeal Costs and Compliance Costs, your client's present liability for our clients' costs is approximately **AU\$1,148,341.56** (omitting any uplift for Skill, Care and Responsibility). That liability is, of course, increasing based on the continuing litigation issued by your client and as further costs are incurred.
9. As foreshadowed in our letter dated 11 October 2020, our clients will seek appropriate orders in respect of the Primary Costs and Compliance Costs (which they expect to receive). Our clients otherwise reserve all of their rights in relation to recovery of the Primary Costs, Appeal Costs and Compliance Costs and all other costs occasioned as a consequence of your client's actions.

Yours sincerely



Orla McCoy, Partner
+61 2 9353 4240
omccoy@claytonutz.com

Mikhail Glavac, Senior Associate
+61 2 9353 4614
mglavac@claytonutz.com

Our ref 13236/17882/81005835

Mr Noel McCoy / Ms Safiyya Khan, Norton Rose Fulbright

22 October 2020

Annexure A Primary Costs

Table 1 - Primary Costs		
<u>Category of Work</u>	<u>Date</u>	<u>Amount</u>
<ul style="list-style-type: none"> • Attending initial hearing before Jagot J • Initial consideration of originating process and supporting affidavit • Initial correspondence with Norton Rose Fulbright • Initial conferences with Counsel regarding application 	30 June 2020	\$10,994.55
<ul style="list-style-type: none"> • Considering the relief sought in the originating application and amended originating application • Briefing and conferring with Counsel • Developing case theory and strategy • Analysing the applicants' evidence and submissions • Preparing the respondents' evidence and submissions • Assisting Counsel with preparation of oral submissions • Witness preparation • Work in connection with the statement of agreed facts • Work in connection with the respondents' interlocutory process and amended interlocutory process • Work in connection with the court book, bundle of authorities, and short minutes of order • Correspondence with the Court and Norton Rose Fulbright before trial 	1 July 2020 to 30 July 2020	\$240,407.29
<ul style="list-style-type: none"> • Attending the hearing • Preparing on the day of the hearing and attending to matters arising from the hearing 	31 July 2020	\$43,732.30
<ul style="list-style-type: none"> • Settlement negotiations 	10 July 2020 to 26 August 2020	\$31,563.30

Mr Noel McCoy / Ms Safiyya Khan, Norton Rose Fulbright

22 October 2020

<ul style="list-style-type: none"> • Work in connection with carrying out the orders made by the primary judge and effecting redelivery • Preparing schedule of status of orders • Work relating to correspondence between Virgin and Willis after primary judgment • Other correspondence with Norton Rose Fulbright and the Court after trial • Work in connection with the resumed hearings in August including: <ul style="list-style-type: none"> ◦ preparing evidence; ◦ preparing submissions; ◦ developing a redelivery proposal and preparing a form of orders. 	2 August 2020 to 2 October 2020	\$88,115.90
<ul style="list-style-type: none"> • Preparing for and attending resumed hearings in August 	11 and 17 August 2020	\$18,037.00
	<i>Subtotal</i>	\$432,850.34
	Disbursements - Counsel	\$129,462.50
	Disbursements - Other	\$1,477.15
	<u>TOTAL</u>	\$563,789.99

Mr Noel McCoy / Ms Safiyya Khan, Norton Rose Fulbright

22 October 2020

Annexure B Appeal Costs

Table 2 - Appeal Costs		
<u>Category of Work</u>	<u>Date</u>	<u>Amount</u>
<ul style="list-style-type: none"> Briefing Justin Gleeson SC Conferences with Counsel and research for Counsel Preparing the notice of appeal Stay and expedition applications, including: <ul style="list-style-type: none"> conferring with Counsel; preparing evidence; preparing submissions; preparing interlocutory process and interlocutory application; attend hearing of stay application; Attending handing down of primary judgment Considering primary judgment Correspondence with the Court and Norton Rose Fulbright in relation to the appeal Preparing chronology Preparing appeal book Preparing bundle of authorities Preparing appeal submissions and reply submissions Assisting Counsel with preparing oral submissions Analysing respondents' submissions and chronology Preparing 18 September and 21 September affidavits of Salvatore Algeri 	3 August 2020 to 24 September 2020	\$212,054.63
<ul style="list-style-type: none"> Preparing for and attending hearing of the appeal Work arising from hearing and conferences with client and Counsel as to hearing 	22 September 2020	\$30,214.60
<ul style="list-style-type: none"> Work while Full Court judgment was reserved, including advice in connection with stay orders and conferring with Counsel 	23 September 2020 to 6 October 2020	\$2,117.50
<ul style="list-style-type: none"> Attending handing down of Full Court judgment Considering judgment Conferences with client and Counsel as to judgment 	7 October 2020	\$10,447.40
<ul style="list-style-type: none"> Work in connection with remitter and consequences of Full Court judgment Correspondence with Norton Rose Fulbright after Full Court judgment 	8 October 2020	\$1,832.60
	<i>Subtotal</i>	\$256,666.73
	Disbursements - Counsel	\$90,250.00

Mr Noel McCoy / Ms Safiyya Khan, Norton Rose Fulbright

22 October 2020

	Disbursements - Other	\$2,311.00
	<u>TOTAL</u>	\$349,227.73

FOUNDERS²⁴

LOGISTICS

INVOICE S00004731

Page 1 of 1

DELTA TECH OPS
ATTENTION: THIAGO GUSAMO
(VENDOR # 10053522 - FOUNDERS LOGISTICS LLC)
1775 M H JACKSON SERVICE RD
ENGINES TOC GATE 0 // PARTS GATE 4
ATLANTA GA 30354

INVOICE DATE	08-Oct-20
CUSTOMER ID	DELTECATL
SHIPMENT	S00004731
DUE DATE	22-Nov-20
TERMS	45 days from Inv. Date

SHIPMENT DETAILS

PRINTED BY: Cristhian

SHIPPER	CONSIGNEE
DELTA TECH OPS	VIRGIN AUSTRALIA AIRLINES

ORDER NUMBERS / OWNER'S REFERENCE
SN:MCC150728-1-4, SN:MCC150728-1-3, 3EA:SHIPPING:STANDS

GOODS DESCRIPTION
EMPTY ENGINE STANDS

IMPORT CUSTOMS BROKER	WEIGHT	VOLUME	CHARGEABLE	PACKAGES
	4190.000 KG		4190.000 KG	2 PCE

	MAWB	HAWB
		S00004731

ORIGIN	ETD	DESTINATION	ETA
USATL = Atlanta, United States	16-Sep-20	AUMEL = Melbourne, Australia	26-Sep-20

CHARGES

DESCRIPTION	CHARGES IN USD
-------------	----------------

International Freight: 2 x Empty Engine Stands 110,000.00

TOTAL CHARGES

Please contact us within 7 days should there be any discrepancies.	SUBTOTAL	110,000.00
	TOTAL USD	110,000.00

CUSTOMER ID DELTECATL	Invoiced	USD 110,000.00	BALANCE DUE	USD 110,000.00
PAYMENT METHOD Bank Transfer			DUE DATE	22-Nov-20

Transfer Funds To:	Address:
ABA 122000247	FOUNDERS LOGISTICS, LLC
SWIFT WFBUS6S	3156 FOOTHILL BLVD, STE H
Account 1185549332	LA CRESCENTA CA 91214
WELLS FARGO	UNITED STATES
15056 ROSECRANS AVE, LA MIRADA CA. 90638	
Pay Ref DELTECATL S00004731 00004509	



Tax Invoice
125694

21-OCT-20

Virgin Tech Pty Ltd

ABN: 37 101 808 879

PO Box 1034

SPRING HILL 4004

Phone : 07 3295 3000

Email: accounts.receivable@virginaustralia.com

Invoice To:

Attn: Accounts Payable
VB Leaseco Pty Ltd
cc Virgin Australia Airlines Pty Ltd
PO Box 1034
SPRING HILL 4004

Payment Terms: 7 DAYS

Line No	Description	Amount
1	Virgin Tech manhours for Engine removal into WFLC titled Stands, QEC installation, preservation & borescope. Ground Handling Fees, Airport Movement Charges ADL-MEL, Flight Crew charges and Fuel. ESN897193 ESN888473 ESN894902 ESN896999	72,757.50
	GST	7,275.75
	Invoice Total: \$AUD	80,033.25

Remittance Bank Account:

Australia and New Zealand Banking Group Limited: BSB # 014002 Account # 838238725
SWIFT # ANZBAU3M VIRGIN AUSTRALIA AIRLINES PTY LTD (ADMINISTRATORS
APPOINTED)

This is and the following 8 pages are Annexure F
referred to in the affidavit of Salvatore Algeri

Sworn on

Before me

From: Andrew Symons <Andrew.Symons@virginaustralia.com>

Sent: Thursday, 8 October 2020 6:26 PM

To: 'Derych Warner' <dwarner@willislease.com>

Cc: Boulton, Ian <iboulton@deloitte.com.au>; Darren Dunbier <Darren.Dunbier@virginaustralia.com>

Subject: [EXT]Engine Update

Dear Derych

Given that the appeal judgment has now been handed down, and we are no longer proceeding by reference to Court orders (which have been set aside), we thought it would be timely to provide you with a general update as to the status of the engines, records, stands and QEC kits so that Willis can let us know what it intends to do to collect its property.

1. Engines

The table **below** indicates the current status of the engines as at today's date:

Engine serial number	Location	Status
888473	Melbourne Airport	Removed and on a Virgin stand. To shortly be repositioned onto its titled Willis stand (estimated 11 October 2020).
897193	Melbourne Airport	Removed and on a Virgin stand. To shortly be repositioned onto its titled Willis stand (estimated 11 October 2020).
896999	Melbourne Airport	Removed and on its titled Willis stand.
894902	Melbourne Airport	Removed and on its titled Willis stand.

Virgin will shortly reposition engines 888473 and 897193 onto their titled stands. Virgin is prepared not to seek recovery of the costs of doing this realignment from Willis.

2. Stands

The table **below** indicates the current status of the Engine cradles and stands as at today's date:

Stand serial numbers.	Location	Status
Cradle: P/N D71CRA00005G02, S/N MCC150728-1-3; Base: P/N D71TRO00005G03, S/N MCC150728-1-3	Melbourne Airport	Cleared customs and COVID quarantine on 6 October 2020. Engine 888473 shortly to be installed.
Cradle: P/N D71CRA00005G02, S/N MCC150728-1-4; Base: P/N D71TRO00005G03, S/N MCC150728-1-4	Melbourne Airport	Cleared customs and COVID quarantine on 6 October 2020. Engine 897193 shortly to be installed.
P/N D71CRA00005G02, S/N MCC170335-1-1; Base: P/N D71TRO00005G03, S/N MCC170335-1-	Melbourne Airport	Engine 896999 is installed.
Cradle: P/N AM-2811-4800, S/N 769; Base: P/N AM2563-200, S/N 1216.	Melbourne Airport	Engine 894902 is installed.

3. QEC Kits

The units and accessories for engines 888473, 894902 and 897193 have been reinstalled to the configuration in which they were first received from Willis. The units and accessories for 896999 are currently being reinstalled by Virgin. Virgin will not seek recovery of the costs of this work from Willis.

4. Records

The remaining outstanding records per the outstanding items listed per your email dated 7 October will be able to be provided by the 16th October 2020, once the final repositioning of engines to titled stands has been complete, and exhausts installed. For ease of reference I have attached the most recent Records Open Item List you provided on 7 October, with the remaining documents to be provided by Virgin highlighted in yellow.

5. Next steps

We look forward to hearing from you by no later than Monday, 12 October in relation to how and when you intend to proceed to collect your property in light of the above. We are happy to assist with any logistical arrangements you are making, including in respect of any freight flight to the United States, to be undertaken at Willis's cost.

Regards,

Andy



Andy Symons | Leader, Technical Assets

Virgin Australia Airlines

T 07 3622 5741 M 0457 561 257

E andrew.symons@virginaustralia.com

Please consider the environment before printing this email.

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Willis Lease Finance Corporation
Power to Spare – Worldwide®

RECORDS OPEN ITEMS LIST

ESN: 888473

HEAD LESSEE: VB LeaseCo Pty Ltd

SUBLESSEE: Virgin Australia Airlines Pty Ltd

Operator: Tigerair Australia

REVISION: 6

Last updated: 6/10/2020

NOTE THAT THERE ARE FOUR TABS TO THIS DOCUMENT

OPERATOR RECORDS: Tigerair Australia				
Item #	Documents	Status	Willis Lease Comments	Virgin Australia Airlines Pty Ltd/VB LeaseCo Pty Ltd & Tigerair Comments
9	Engine Conversion Documents	OPEN	Require WLFC-supplied plug reinstalled (B24)	
12	Preservation Tag & PTR Task Card at removal	OPEN		
27	Preservation Monitoring 24 March 2020 - Removal	OPEN		



Willis Lease Finance Corporation
Power to Spare – Worldwide®

RECORDS OPEN ITEMS LIST

ESN: 894902

HEAD LESSEE: VB LeaseCo Pty Ltd

SUBLESSEE: Virgin Australia Airlines Pty Ltd

Operator: Virgin Australia Airlines Pty Ltd

REVISION: 6

Last updated: 6/10/2020

NOTE THAT THERE ARE FOUR TABS TO THIS DOCUMENT

OPERATOR RECORDS: Virgin Australia Airlines Pty Ltd				
Item #	Documents	Status	Willis Lease Comments	Virgin Australia Airlines Pty Ltd/VB LeaseCo Pty Ltd Comments
5	LLP Status		see Discrepancy Summary Report for details	Disc Sheet Supplied
11	Preservation Tag & PTR Task Card at removal	OPEN		
27	Preservation Monitoring 27 March 2020 - Ferry Flight	OPEN		



Willis Lease Finance Corporation
Power to Spare – Worldwide®

RECORDS OPEN ITEMS LIST

ESN: 896999

HEAD LESSEE: VB LeaseCo Pty Ltd

SUBLESSEE: Virgin Australia Airlines Pty Ltd

Operators: Tigerair Australia & Virgin Australia Airlines

REVISION: 6

Last updated: 6/10/2020

NOTE THAT THERE ARE FOUR TABS TO THIS DOCUMENT

1st OPERATOR RECORDS: Tigerair Australia				
Item #	Documents	Status	Willis Lease Comments	Tigerair Comments
5	LLP Status		Template provided for Tigerair Signature	See Virgin Australia Installation

2nd OPERATOR RECORDS: Virgin Australia Airlines				
Item #	Documents	Status	Willis Lease Comments	Virgin Australia Airlines Pty Ltd/VB LeaseCo Pty Ltd Comments
27	Engine Removal Work Order	OPEN		Not performed yet
28	Preservation Work order & tag at final removal	OPEN		Not performed yet
44	Preservation Monitoring 24 March 2020 - Removal	OPEN		



Willis Lease Finance Corporation
Power to Spare – Worldwide®

RECORDS OPEN ITEMS LIST

ESN: 897193
HEAD LESSEE: VB LeaseCo Pty Ltd
SUBLESSEE: Virgin Australia Airlines Pty Ltd
Operator: Virgin Australia Airlines Pty Ltd
REVISION: 6
Last updated: 6/10/2020

NOTE THAT THERE ARE FOUR TABS TO THIS DOCUMENT

OPERATOR RECORDS: Virgin Australia Airlines Pty Ltd				
Item #	Documents	Status	Willis Lease Comments	Virgin Australia Airlines Pty Ltd/VB LeaseCo Pty Ltd Comments
11	Preservation tag	OPEN		
24	Preservation Monitoring 29 March 2020 - Removal	OPEN		
25	Engine Conversion Documents	OPEN	Require WLFC-supplied plug reinstalled (B24)	

This is and the following 2 pages are Annexure G referred to in the affidavit of Salvatore Algeri

22 October 2020

Sworn on

Before me

Orla McCoy
Clayton Utz
Level 15, 1 Bligh Street
Sydney NSW 2000

By email: omccoy@claytonutz.com

Dear Colleague

 **NORTON ROSE FULBRIGHT**

Norton Rose Fulbright Australia
ABN 32 720 868 049
Level 5, 60 Martin Place
SYDNEY NSW 2000
AUSTRALIA

Tel +61 2 9330 8000
Fax +61 2 9330 8111
GPO Box 3872, Sydney NSW 2001
DX 368 Sydney
nortonrosefulbright.com

Direct line
+61 2 9330 8133

Email
noel.mccoy@nortonrosefulbright.com

Your reference:

Our reference:
4015052

Wells Fargo Trust Company, National Association (as owner trustee) & Anor v VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741 & Ors (NSD714/2020) (Proceedings)

We refer to our clients' interlocutory process filed 21 October 2020 and listed for return on 27 October 2020 (**Application**).

We also refer to the email of the same date from Justice Middleton's chambers encouraging the parties to reach an interim arrangement before his Honour has availability to hear the Application on 9 November 2020.

The three issues arising from our clients' Application are (i) a stay of the remitter proceedings pending the outcome of an appeal to the High Court; (ii) an amendment to our client's originating application; and (iii) an interlocutory regime to maintain the status quo in respect of the aircraft objects.

Stay

Dealing first with the stay. In practical terms if nothing in respect of remitter will be advanced before the hearing of the Application on 9 November 2020, our clients are content that no interim order is required in respect of the stay. Please let us know if you are agreeable.

Amended pleading

As to our clients' proposed Further Amended Originating Application, we see no basis upon which your client could object to the filing of that document. Please identify any basis upon which your clients object to the filing of the document.

Interim maintenance of engines

Finally as to an interim arrangement in respect of the aircraft objects, we observe as follows:

- 1 our clients' Engines are presently insured. Pursuant to the **attached** confirmation dated 30 June 2020, we understand that our clients' engines are insured. Further, we understand that that the premium for that insurance was paid in about May 2020 in respect of the entire fleet of Virgin aircraft and engines at that time. We see no prejudice to your clients in respect of an obligation to maintain insurance at least until the end of the current policy term which we understand to be in May 2021; and

APAC-#115138891-v1

22 October 2020


NORTON ROSE FULBRIGHT

- 2 three of the four engines have already been preserved. It appears that each of engines 888473, 897193, 894902 have been readied for long term preservation. It is unclear whether engine 896999 has also been preserved but we understand that your clients are in the process of doing so.

Accordingly, there seems to be little, if any, additional costs associated with the insurance, and finalisation of preservation and storage of the Engines at the Virgin maintenance facility at least until 10 November 2020 when the Application can be heard.

Proposed orders

In light of the above, we propose the following orders be made by consent and without admission:

- 1 Grant leave to the Applicants to file a Further Amended Originating Application in the form annexed to the affidavit of Dean Poulakidas sworn 19 October 2020, within 2 days of the making of these orders.
- 2 Without admission as to any obligation to do so, until 6pm on Tuesday, 10 November 2020, the Respondents are to maintain:
 - (a) insurance cover over the aircraft objects identified in Schedule 2 of the Originating Application to the same or greater extent as was maintained at the date of appointment of the Third Respondent as administrators to the first, second and fourth respondents; and
 - (b) the Engines (identified in Schedule 2 of the Originating Application) by ensuring that each Engine is readied for long term preservation in accordance with the manufacturer's requirements and placed on its Engine Stand, and kept on the premises of the Respondents.
- 3 List the Interlocutory Process filed 21 October 2020 for hearing before Middleton J at 10.15 am on 10 November 2020 with an estimate of 2 hours.
- 4 The Applicants to serve written submissions on the Application by 5pm on 30 October 2020.
- 5 The Respondents to serve written submissions on the Application by 5pm on 4 November 2020.

If the above proposal is not agreed and it is necessary to list the matter to obtain orders to that effect, our clients reserve the right to rely on this letter in respect of costs.

We remain available to discuss.

Yours faithfully



Noel McCoy
Partner
Norton Rose Fulbright Australia



Insurance | Risk Management | Consulting

The St Botolph Building
138 Houndsditch
London EC3A 7AW
www.ajg.com

Willis Lease Finance Corporation

30 June 2020

Dear Sirs,

Re: **Insurance**

This is to confirm that we, Arthur J. Gallagher (UK) Limited have placed and issued insurance certificates in respect of the following Engines:

ESN 897193
ESN 896999
ESN 888473
ESN 894902

We confirm that as of the date of this letter the insurance remains valid and that no action has been taken to cancel the insurances for the above ESN's.

Yours faithfully,

Paul Curtis - Partner

Authorised Signatory - Arthur J. Gallagher (UK) Limited

This and the following 4 pages are Annexure H referred to in the affidavit of Salvatore Algeri

Sworn on

Before me

Email

26 October 2020

Mr Noel McCoy and Ms Safiyya Khan
Norton Rose Fulbright
Level 5, 60 Martin Place
Sydney NSW 2000
noel.mccoy@nortonrosefulbright.com
safiyya.khan@nortonrosefulbright.com

Dear Mr McCoy and Ms Khan

VB Leaseco Pty Ltd (Subject to Deed of Company Arrangement) & Ors v Wells Fargo Trust Company, National Association (as Owner Trustee) & Anor

Federal Court of Australia Proceedings NSD714/2020 (Primary Proceedings) and Federal Court of Australia Proceedings NSD994/2020 (Appeal Proceedings)

1. We refer to:

- (a) the deed of company arrangement executed by the First, Second and Fourth Respondents (**Corporate Respondents**) (among others) on 25 September 2020 (**DOCA**);
- (b) our letters dated 11 and 23 October 2020 (for convenience, this letter adopts terms defined in those letters); and
- (c) the interlocutory application filed in the Primary Proceedings on behalf of your clients on 21 October 2020 (**Interlocutory Application**), seeking:
 - (i) an order granting leave to file a further amended originating application to include a new prayer 6A (**Proposed Further Amended OA**);
 - (ii) orders to compel the Respondents to continue to preserve and maintain the Engines "*until further order of the Court*" (**Proposed Preservation and Maintenance Orders**); and
 - (iii) an order otherwise staying the Primary Proceedings, including in respect of the Remitter, also "*until further order of the Court*" (**Proposed Stay Order**);
- (d) the email from Middleton J's Associate dated 21 October 2020; and
- (e) your letter dated 22 October 2020, requesting that our clients agree to proposed consent orders in relation to the Interlocutory Application (**Proposed Consent Orders**).

2. For the following reasons, having regard to the Appeal Judgment and the DOCA, the Deed Administrators do not consider that the relief sought by your clients in the Interlocutory Application will be granted by the Court.

The DOCA

3. First, the DOCA is anticipated to complete and be fully effectuated in the coming weeks and before any (as yet unfiled) special leave application brought by your clients will be heard. This has a number of implications, including that:
 - (a) on and from the date the DOCA is effectuated, the deed administrators will cease to hold office in respect of each of the Corporate Respondents and will have no authority or power to deal with the Engines in any way. The deed administrators will also automatically cease to be parties to the Primary Proceedings, given that they have only been joined in their capacities as external administrators; and
 - (b) as of the effectuation of the DOCA, neither the deed administrators nor the Corporate Respondents will owe any obligations to your clients pursuant to the Aircraft Protocol, given that:
 - (i) the deed administrators will cease to be "*insolvency administrators*" (as defined in Article 1(k) of the Cape Town Convention) at that time. In this respect, Article XI.4 further clarifies that a reference "*to the 'insolvency administrator' shall be to that person in its official, not in its personal, capacity*"; and
 - (ii) the applicability of the Protocol is predicated on the existence of "*insolvency proceedings*" (as defined in Article 1 of the Cape Town Convention), which proceedings conclude upon the effectuation of the DOCA.
4. We also note that in relation to the Corporate Respondents, pursuant to section 444E(3)(a) of the Corporations Act, your clients cannot while the DOCA is in force "*begin or proceed with a proceeding against the company or in relation to any of its property*" except "*with the leave of the Court [...] in accordance with such terms (if any) as the Court imposes.*" The granting of any such leave will be opposed by our clients.

The Proposed Further Amended OA

5. Secondly, in the circumstances, our clients disagree with the suggestion in your letter that the Proposed Further Amended OA will be "uncontentious" and that there would be "*no basis upon which [our] client could object to the filing of that document*".
6. The new legal argument on which your clients seek to rely in prayer 6A has never before been raised or referred to by your clients in the Primary Proceedings. Even if it were capable of being pursued (which is doubtful having regard to paragraphs [103] to [105] of the Appeal Judgment), determining it would require another substantive hearing before Middleton J, which would occasion a significant waste of time and costs (which will likely not occur before the effectuation of the DOCA, leading to the complexities set out above and addressed further below). This is in circumstances where your clients obtained leave under section 440B of the Corporations Act to commence and proceed with litigation against the Corporate Respondents whilst they were in voluntary administration and could have brought (but elected not to) an essentially identical claim seeking specific performance of the Engine Leases or specific delivery of leased property at that time. To seek to bring this claim at this late stage in the Primary Proceedings appears to be an attempt by your clients to re-litigate the application that failed in the Appeal Proceedings. For those reasons, it is a claim that will be subject to an estoppel of the kind identified in *Port of Melbourne Authority v Anshun Pty Ltd* (1981) 147 CLR 589.

7. In any case, the claim articulated in paragraph 6A is based on a misunderstanding of section 444D(3) of the Corporations Act and is unsustainable on both the clear words of the provision itself and having regard to the applicable case law. Notwithstanding that your clients voted against the DOCA, the effect of section 444D(1) is that your clients are bound by the DOCA in relation to "*claims arising on or before*" the date of our clients' appointment as voluntary administrators of the Corporate Respondents on 20 April 2020 (**Claims**). This includes any and all Claims arising under the Engine Leases. Pursuant to clause 6.4 of the DOCA, all Claims will be "*extinguished and released*" on completion of the DOCA. It is trite law that section 444D(3) is confined to preserving a right "*in relation to*" leased property, such as a right to take possession, and does not preserve any of a lessor's rights under a lease (see, for example, *Henaform Pty Ltd v Strathfield Group Ltd* (2009) 72 ACSR 240 and *Re Bluenergy Group Ltd (Subject to a Deed of Company Arrangement) (Admin Apptd)* (2015) 107 ACSR 373). Neither Article 12 of the Cape Town Convention nor Article XI.10 of the Protocol assist your clients in any way. Your clients' reliance on Article 12 repeats an argument, which failed in the Appeal Proceedings. It overlooks the qualifying words "*permitted by the applicable law*", which make clear that the domestic law (in this case, section 444D of the Corporations Act, which provides that the DOCA is binding on your clients) prevails over the terms of the Engine Leases. Article XI.10 is also irrelevant, given that it is not the 'modification' of the Engine Leases which is in issue but the degree to which they are enforceable (which is a matter of domestic law).
8. We further query the prospects of your clients obtaining the relief sought in paragraph 6A having regard to the basic principle that a Court will only order specific performance (or specific delivery of a chattel) in circumstances where damages are an inadequate remedy (see, for example, *Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd* [1998] AC 1 at [11]). Clearly, your clients could collect their Engines and then claim the costs of doing so as damages (noting that the Administrators' section 75-225 Report confirms that the estate has sufficient funds to meet such costs). Indeed, it is unclear to the Deed Administrators why a decree of specific performance or suit for specific delivery could possibly be appropriate - this is not particularised in paragraph 6A. It would be without precedent for relief of that nature to be granted against external administrators, who are not parties to or bound by pre-appointment contracts, in relation to redelivery of leased property.
9. Finally, a further difficulty with prayer 6A is that it is effectively predicated on a DOCA being on foot and deed administrators being in office. As you will be aware, neither of those predicates will be in existence at the time prayer 6A arises for consideration.

The Proposed Preservation and Maintenance Orders and the Proposed Stay Orders

10. Thirdly, the Proposed Preservation and Maintenance Orders constitute an attempt to compel, solely for the benefit of your clients' continued pursuit of this litigation, the deed administrators and the Corporate Respondents to deal with the Engines at their expense for an indefinite period. Similarly, the Proposed Stay Order needlessly elongates the Primary Proceedings and prolongs (for no benefit to any party) the period in which our clients will remain in physical possession of the Engines, in circumstances where (i) for the reasons set out in our letter dated 11 October 2020, the Appeal Judgment puts beyond doubt that our clients gave possession of the Engines to your clients by no later than 18 June 2020 (and, on any view, must have given possession of them by now) and (ii) our clients are entitled to the Primary Costs and Compliance Costs and should have them paid promptly for the benefit of the Corporate Respondents' unsecured creditors. Both the Proposed Preservation and Maintenance Orders and the Proposed Stay Order also entirely ignore that, for the reasons set out above, upon the effectuation of the DOCA our clients will lack any authority, capacity or legal obligation to continue to deal with the Engines in any way.

11. Our clients also take issue with the evidence of Mr Poulakidas, in particular his apparent concern as to the preservation of the Engines. In circumstances where any concerns genuinely held by Mr Poulakidas could be immediately dispelled by your clients collecting the Engines, and (as outlined below the costs of doing so are immaterial relative to the value of the Engines), that evidence seems disingenuous. Further, as your clients are aware, our clients have maintained, preserved and insured the Engines (despite having no continuing obligation to do so) and have responded to multiple emails received from your clients as regards the status of the Engines and records since making those items available for your clients to repossess in June.
12. As noted in our letter dated 22 October 2020, our clients have incurred costs and expenses of more than AU\$1.1 million to date in responding to the litigation initiated by your clients, and are continuing to incur further costs. Those costs are being borne from funds which would otherwise be available to creditors of the Corporate Respondents.
13. In circumstances where:
 - (a) the full costs of transporting the Engines from Melbourne to Florida (including all engine shop work at Delta) is on the order of AU\$1.5 million (a figure your clients dispute and claim could be achieved for less);
 - (b) the cost of airfreighting the Engines directly to Florida (without engine shop work), is (on the estimates obtained by our clients) AU\$594,773; that is, approximately 0.87% of the value of the Engines. On your clients' estimates for airfreight, those costs are 0.5% of the value of the Engines; and
 - (c) your clients' elected stance means the Engines are not being re-leased and generating revenue,

the costs of your clients' litigation strategy are becoming grossly disproportionate to the commercial scale of the dispute. Our clients must therefore conclude that your clients' refusal to simply collect their Engines following the Appeal Judgment (or at any earlier time) and instead to pursue a special leave application in the High Court is, at least in part, a contrivance to achieve the perceived precedential value of a further judgment for collateral purposes, namely to further your clients' broader business of leasing aircraft property. Clearly, our clients consider it to be highly inappropriate to continue expending creditors' money in dealing with your clients' property and resisting proceedings that your clients may be bringing for purposes other than expeditious resolution of the direct commercial dispute.

Proposed Consent Orders

14. For all of the above reasons, the Proposed Consent Orders, which, we note, contain no element of compromise, no acknowledgement of liability or agreement to bear any of the costs or other burden of the proposal put, and provide no undertaking as to damages or any security for your clients' mounting liabilities to the Respondents, are unreasonable and unacceptable to our clients.

Next steps

15. Having regard to the need for the issue of physical possession of the Engines to be solved prior to effectuation of the DOCA, our clients propose the following:
 - (a) your clients:

Mr Noel McCoy / Ms Safiyya Khan, Norton Rose Fulbright

26 October 2020

- (i) collect the Engines from Melbourne Airport by no later than **6 November 2020**; or
 - (ii) pre-pay by no later than **30 October 2020** for our clients to freight the Engines to the Delta facility or to your clients' address in Florida, as directed by your clients; or
 - (iii) arrange for long-term storage of the Engines at Melbourne Airport. Our clients have, in that respect, obtained a quote from DB Schenker for storage in their warehouse of \$1,000 per week for four Engines (plus fees of \$1,500 for acceptance and discharge of the Engines). Our clients are happy to assist in suggesting suitable storage services but any contract will be between your clients and the storage provider. Our clients will not be responsible for the Engines in any way following their delivery to the storage provider; and
- (b) if your clients undertake to take possession of the Engines in accordance with one of the options set out at (a), our clients will agree for the Remitter to be stayed pending the outcome of the special leave application.
16. Our clients consider this proposal to be a commercially sensible way forward in circumstances where it should not be to the account of our clients and the unsecured creditors of the Corporate Respondents to preserve the status quo to facilitate further litigation brought by your clients. We also note that your clients should of course also be attempting to mitigate their loss and seeking to re-lease their Engines.
17. To the extent that your clients reject our clients' proposal, our clients reserve their rights to seek urgent relief in relation to dealing with the Engines and will seek to have the Remitter listed at the same time. Our clients reserve their rights to bring this letter to the Court's attention in relation to any such application.

Yours sincerely



Orla McCoy, Partner
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Mikhail Glavac, Senior Associate
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Your ref 4015052
Our ref 13236/17882/81005835

This and the following 4 pages are Annexure I
referred to in the affidavit of Salvatore Algeri
26 October 2020

Sworn on

Before me

Orla McCoy
Clayton Utz
Level 15, 1 Bligh Street
Sydney NSW 2000

By email: omccoy@claytonutz.com

Dear Colleague

Wells Fargo Trust Company, National Association (as owner trustee) & Anor v VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741 & Ors (NSD714/2020) (Proceedings)

We refer to your letter dated 26 October 2020.

In our letter dated 22 October 2020, we proposed consent orders for an interim arrangement to maintain the status quo until his Honour Justice Middleton is available to hear our client's application on 10 November 2020, consistent with his Honour's indication.

Unfortunately, your letter, in rejecting our clients' proposed short minutes of order, does not propose alternative orders. Otherwise, your letter speaks to the substantive issues on the interlocutory application.

If necessary, we will respond to the substantive matters you have raised by way of correspondence (and in the meantime reserve all of our clients' rights). However, our proposed consent orders provide an appropriate way to deal with the substantive issues by way of submission.

For the purposes of the mention before his Honour Justice Middleton tomorrow, we note that storage appears to be the immediate practical issue:

- 1 We are instructed that all of the Engines have been preserved. We also understand (and if our understanding is incorrect, please immediately advise) that the Engines are on each of their Engine Stands. As such, we understand that the Engines can remain in that state at the Respondents' facilities without any further steps to be taken by the Respondents. It is not apparent and no explanation has been provided as to why third party storage might be required.
- 2 Nevertheless, and without admission, our clients undertake that, if they are unsuccessful on their application to the High Court of Australia for special leave or their alternative claim as articulated in paragraph 6A of the proposed Further Amended Originating Application, they will meet any reasonable storage costs incurred from tomorrow onwards. We have updated the consent orders, see **attached**, which now include a form of orders which reflects this undertaking (see paragraph 6).

In terms of other issues that need to be dealt with on an interim basis consistent with his Honour's indications:

- 1 Your statements about the applicability of the Protocol (in particular at paragraph 3(b)(ii) of your letter), if correct, necessitates the filing of our clients' alternative claim prior to the completion of the DOCA and we press for orders that it be filed. The matters you otherwise raise (about which our clients reserve their rights) go to any defence which your clients might have (which is not admitted) and are not a reason for opposition of the filing of that claim (particularly in circumstances where it is

APAC-#115169017-v1

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Email
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Your reference:

Our reference:

4015052

26 October 2020

 NORTON ROSE FULBRIGHT

proposed that any such claim is stayed pending the outcome our clients' application to the High Court of Australia for special leave, avoiding the supposed waste of costs you assert).

- 2 Your clients have again threatened unspecified action to deal with the Engines. Your clients' ongoing threats in that regard and refusal to provide particulars have been the trigger for seeking the status quo relief in our clients' interlocutory application. We again request that your clients indicate what steps they intend to take to deal with our clients' Engines.

Yours faithfully



Noel McCoy
Partner
Norton Rose Fulbright Australia

APPLICANTS' PROPOSED SHORT MINUTES OF ORDER

No. NSD714/2020

Federal Court of Australia
District Registry: New South Wales
Division: General

**Wells Fargo Trust Company, National Association (as owner trustee) and others
named in the schedule**

Applicants

**VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741 and others named
in the schedule**

Respondents

JUDGE: JUSTICE MIDDLETON

DATE OF ORDER: 27 October 2020

WHERE MADE: Melbourne

The Court orders, that:

1. Leave is granted for the Applicants to file a Further Amended Originating Application in the form annexed to the affidavit of Dean Poulakidas sworn 19 October 2020, within 2 days of the making of these orders.
2. Without admission as to any obligation to do so, until 6pm on Tuesday, 10 November 2020, the Respondents are to maintain:
 - (a) insurance cover over the aircraft objects identified in Schedule 2 of the Originating Application to the same or greater extent as was maintained at the date of appointment of the Third Respondent as administrators to the first, second and fourth respondents; and
 - (b) the Engines (identified in Schedule 2 of the Amended Originating Application) by ensuring that each Engine is on its Engine Stand (identified in Schedule 2 of the Amended Originating Application), and kept on the premises of the First, Second and Fourth Respondents.
3. The Interlocutory Process filed 21 October 2020 (**Application**) is listed for hearing before Middleton J at 10.15 am on 10 November 2020 with an estimate of 2 hours.
4. The Applicants to serve written submissions on the Application by 5pm on 30 October 2020.

5. The Respondents to serve written submissions on the Application by 5pm on 4 November 2020.

The Court notes that:

6. The Applicants undertake, in the event that they are unsuccessful on their application for special leave to appeal to the High Court of Australia, or their claim as articulated in paragraph 6A of the proposed Further Amended Originating Application, to meet the Respondents reasonable costs associated with storage of the Engines.

Schedule

No. NSD714/2020

Federal Court of Australia
 District Registry: New South Wales
 Division: General

Applicants

Second Applicant: **Willis Lease Finance Corporation**

Respondents

Second Respondent: **Virgin Australia Airlines Pty Ltd (Administrators Appointed) ACN 090 670 965**

Third Respondent: **Vaughan Neil Strawbridge, John Lethbridge Greig, Salvatore Algeri & Richard John Hughes (in their capacity as voluntary administrators of the First and Second Respondents)**

Fourth Respondent **Tiger Airways Australia Pty Limited (Administrators Appointed) ACN 124 369 008**

Gardner, Tom

From:	Glavac, Mikhail	Sworn on	Before me
Sent:	Monday, 26 October 2020 7:42 PM		
To:	'McCoy, Noel'; McCoy, Orla	_____	_____
Cc:	Khan, Safiyya; Lee, Veronica; Gardner, Tom; Project Volar		
Subject:	RE: NSD714/2020 Wells Fargo & Anor v VB Leaseco Pty Ltd (Subject to DOCA) & Ors (4015052)[NRF-APAC.FID2541150] [CU-Legal.FID3017446]		

Dear Noel

We refer to our letter of today's date, our discussion with you on 19 October 2020, your letter of today's date and your recent email to Middleton J's associate attaching submissions and proposed short minutes. We note that your clients have ignored the options identified in paragraph 15(a) of our letter and have proceeded to simply press for the relief sought in your clients' application.

Leaving the issues with your correspondence and the approach embodied in the proposed short minutes to one side, in our discussion on 19 October 2020 you identified that the reason your clients did not wish to collect their engines and other property (**Engines**) was because they were concerned that doing so may undermine their foreshadowed special leave application (viz, that a declaration as to whether possession had been given would be otiose if your clients had already retrieved their Engines). As outlined in our letter of today's date, maintaining the status quo is unworkable, and nor should that be our clients' responsibility in circumstances where the rationale for doing so is solely to facilitate a legal argument your clients may wish to bring.

We have reflected further on the practical and legal impasse and consider that, in addition to the alternative options outlined in paragraph [15](a) of our letter, there is the further alternative open to your clients to seek to have a court-appointed receiver appointed to take legal custody of your clients' Engines (only), which would resolve the issue of physical possession of the Engines pending your clients' foreshadowed application for special leave to appeal to the High Court. As you will know, pursuant to division 14.3 of the *Federal Court Rules 2011* (Cth), a regime could be implemented to the following effect:

1. a receiver is appointed to take possession of the Engines and to cause them to be preserved, maintained and insured in Australia in accordance with the Lease conditions, pending the outcome of the appeal. This could, for example, take the form of the receiver acting on directions from the Court in relation to entering into a contract with, for example, DB Schenker for storage of the Engines during that period, and supervising their preservation and maintenance, as well as any directions from the Court on the ultimate delivery of the Engines to your clients;
2. your clients to pay the receiver's costs and remuneration while the Engines are preserved, maintained and insured by the receiver in accordance with 1.;
3. if your clients' application for special leave or any subsequent appeal (if allowed) to the High Court is unsuccessful, your clients assume sole responsibility for collecting the Engines in accordance with the Court's orders, which orders would also include orders terminating the receiver's appointment; and
4. if your clients' application for special leave or any subsequent appeal (if allowed) to the High Court is successful, our clients will abide by any order or orders of the Courts in relation to costs,

(Court Appointed Receiver Option).

To the extent that your clients do not wish to collect their Engines, or make their own arrangements for them to be stored (as suggested in paragraph [15](a) of our letter), it is difficult to see how they could oppose such a regime, which is on any view a commercially sensible way forward. In particular, as noted in our letter, (i) neither our clients nor unsecured creditors of the Corporate Respondents should bear the costs of preserving the status quo in circumstances where your clients were wholly unsuccessful in the Full Court of the Federal Court of Australia and (ii) a resolution to the issue of physical possession of the engines must urgently be found in circumstances where the restructuring of the Corporate Respondents will soon be effectuated and our clients will cease to be officeholders. As with the other options set out in paragraph [15](a), if your clients agree to pursue the above suggested Court Appointed Receiver Option, subject to agreement as to the form of orders in relation to the scope of the receivership and the powers to be conferred on any Court appointed receiver, our clients will consent to a stay of the Remitter.

The Court Appointed Receiver Option would also obviate the need for any stay or preservation of the status quo and, on that basis, subject to the above caveats, would be acceptable to our clients. As with our letter, we reserve our rights to bring this email to the Court's attention on the question of costs, should your clients decide to also reject this option.

Kind regards,

Orla/Mikhail

Mikhail Glavac, Senior Associate

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From: McCoy, Noel

Sent: Monday, 26 October 2020 2:46 PM

To: McCoy, Orla

Cc: Khan, Safiyya ; Lee, Veronica ; Glavac, Mikhail ; Gardner, Tom ; Project Volar

Subject: RE: NSD714/2020 Wells Fargo & Anor v VB Leaseco Pty Ltd (Subject to DOCA) & Ors [CU-Legal.FID3017446] (4015052)[NRF-APAC.FID2541150]

External Email

Dear Orla

Please see attached our letter dated 26 October 2020.

Kind regards

Noel McCoy | Partner

Norton Rose Fulbright Australia

Level 5, 60 Martin Place, Sydney, Australia

Tel +61 2 9330 8133 | Mob +61 414 764 525 | Fax +61 2 9330 8111

noel.mccoy@nortonrosefulbright.com

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From: McCoy, Orla <omccoy@claytonutz.com>

Sent: Monday, 26 October 2020 10:03 AM

To: McCoy, Noel <noel.mccoy@nortonrosefulbright.com>

Cc: Khan, Safiyya <safiyya.khan@nortonrosefulbright.com>; Lee, Veronica

<veronica.lee@nortonrosefulbright.com>; Glavac, Mikhail <mglavac@claytonutz.com>; Gardner, Tom

<tgardner@claytonutz.com>; Project Volar <Volar@claytonutz.com>

Subject: NSD714/2020 Wells Fargo & Anor v VB Leaseco Pty Ltd (Subject to DOCA) & Ors [CU-Legal.FID3017446] (4015052)[NRF-APAC.FID2541150]

Dear Noel

Please see the **attached** letter.

Kind regards

Orla

Orla M. McCoy, Partner
Clayton Utz

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