



From the Secretary of State

CONFIDENTIAL

John Coles Esq
Private Secretary to the Prime Minister
10 Downing Street
London
SW1

30 March 1983

Dear John

THE LAKER SUIT

Parallel with the Grand Jury investigation about which the Prime Minister has written to the President, there is a civil action taken by the Laker liquidator in the United States Courts against BCal, BA and others. The reason why the liquidator is proceeding in the American Courts is that (1) United States lawyers will act on a "splitting of the spoils" basis - something which used to be a criminal offence in this country - and (2) they can claim triple damages.

2 It is very important that we should not be seen to intervene in a way which would unfairly prejudice Laker's creditors who include large numbers of people who had booked and paid for tickets and are not covered by an indemnity scheme. Nevertheless, it is highly objectionable that the liquidator should be proceeding in the American Courts on what is essentially a British matter simply because the American system permits procedures repugnant in this country and contrary to public policy.

3 The threat of triple damages poses a serious threat to our own airlines and particularly BCal. The airlines are taking proceedings in our own Courts for an injunction preventing the Laker liquidator from proceeding further in the United States Courts. Sir Adam Thomson has, as you know, written to the Prime Minister asking that the Attorney General should intervene.

4 The Attorney General has indeed offered to intervene and the Judge has indicated that he would wish to hear arguments from the Government before final judgement (the case ended yesterday with a reserved judgement). The Attorney General would elaborate on the public policy arguments and state HMG's view about the relevance to the proceedings of the Bermuda 2 Air Services Agreement.

CONFIDENTIAL



From the Secretary of State

CONFIDENTIAL

5 There was a further development yesterday. Mr Justice Parker had given a temporary injunction against the liquidator pending the hearing. Although he has reserved judgement, he has nevertheless now discharged the injunction. This means that the liquidator is free to pursue the United States civil action against our airlines forthwith (including discovery of documents). But the Judge has suspended his order until 4 pm today, giving the airlines time to appeal. We understand that the airlines indicated that they would go to the Court of Appeal if the Attorney General was also present to explain the latest inter-governmental developments, ie our request for consultations under Bermuda 2. The Attorney General has indicated that he would wish to be represented in the Court of Appeal and Lord Cockfield very much welcomes this.

6 Lord Cockfield, who has throughout supported the intervention of the Attorney General, is strongly of the view that any allegations by Laker should be pursued not in the United States Courts, but in the English Courts, where any genuine mischief suffered by Laker has a proper and just remedy from which any appropriate damages could be recovered for the benefit of Laker's creditors. Such remedies and damages would necessarily not be as extensive as anti-trust remedies and treble damages available under United States law. There is the further point that if more documents are produced in the civil litigation they would then be available in the Federal case if the United States Department of Justice proceeds down that road despite the Prime Minister's letter to the President.

7 Lord Cockfield feels therefore that any documents located in the United Kingdom, which are required either in the civil or criminal proceedings in the United States, should be protected by means of the Protection of Trading Interests Act from production in the United States Courts.

8 The timing of any use of the PTI Act powers to block the release of documents to the United States needs careful consideration: Lord Cockfield has decided to delay use of the powers if at all possible until the response to the Prime Minister's personal message to the President is known to avoid risk of prejudice to that approach. But it might be necessary to act earlier if the President's response were delayed. The risk is increased if the injunction is not continued in the Court of Appeal. We would then have a few days to play with as compliance with an American subpoena would take a little time. But Lord Cockfield is ready to use his powers if at any time the point is reached where documents in the United Kingdom would have to be produced.

CONFIDENTIAL



From the Secretary of State

CONFIDENTIAL

.... 9 I enclose a draft reply to Sir Adam Thomson's letter of 28 March to the Prime Minister.

10 I am copying this to Roger Bone (FCO) and to Henry Steel (Law Officers' Department).

*Yours sincerely
John Whitlock*

JOHN WHITLOCK
Private Secretary

CONQUEROR
IN
LONDON

CONFIDENTIAL