

CLINTON HART & CO.

ATTORNEYS-AT-LAW
PATENT & TRADE MARK AGENTS

CLINTON HART, O.B.E. (1927-1977)

PAUL A. HANNA
PATRICK W. FOSTER
RICHARD AYOUB

KATHERINE P.C. FRANCIS
KAMINA E. JOHNSON

YOUR REF:

OUR REF: *PWF/dw*

58 DUKE STREET,
P.O. BOX 234,
KINGSTON,
JAMAICA.

TELEPHONE: (876) 522-5674-7
(876) 567-2353-4
TELEFAX: (876) 522-4575

e-mail: clintonhart@cwjamaica.com

April 27, 2001

TO ALL BENEFICIARIES OF THE AIR JAMAICA PENSION FUND CASE

**Re: Suit by Joy Charlton, Clive Goodall, Barbara Clarke
vs. Air Jamaica, Life of Jamaica, et al**

As you are aware, the Trustees (CIBC Trust and Merchant Bank Ltd., Joy Charlton and Ian Blair) have been engaged in negotiations with the Government of Jamaica through the Ministry of Finance for the repayment of the surplus to which you are entitled in accordance with the terms of the decision handed down by the Judicial Committee of the Privy Council in this matter. To this end, a number of meetings have been held by the Trustees with representatives of the Ministry of Finance in order to bring this matter to a conclusion.

We advise with regret, that the negotiations have not yet been brought to a finality as there are two issues in dispute that have arisen between the Government and the Trustees. These issues relate to the rate of interest payable on the portion of the surplus to which you are entitled and a sum of \$22,118,021.00 which represents contributions that were not paid by the employer, Air Jamaica Limited, to the Pension Fund prior to its discontinuance. We will now try to briefly explain these matters for your information.

1. Rate of interest

The Court of Appeal ordered on the 29th July, 1997, that compound interest should be paid on the amount due by the Government to the beneficiaries at a rate of 29.47%. The Order made was clear and in our opinion, is not open to a different interpretation and for your benefit, we quote the relevant excerpt from the Order made by the Court of Appeal which states:-

April 27, 2001

TO ALL BENEFICIARIES OF THE AIR JAMAICA PENSION FUND CASE

Re: Suit by Joy Chariton, Clive Goodall, Barbara Clarke
vs. Air Jamaica, Life of Jamaica, et al

"Compound interest due on Trust Fund from 30th June, 1994, with yearly rests at 29.47%."

The Privy Council, when it heard the appeal from the decision from the Court of Appeal, did not change the award of interest made by that Court and it affirmed that the Government should repay to the Trustees, the members' portion of the surplus **"with compound interest at the rate specified by the Court of Appeal from the date of receipt by the Company to the date of payment."**

The Government has agreed to pay interest at the rate specified by the Court of Appeal but have stated that the interest rate from the 30th July, 1997 to the 30th April, 2001, should be based on the average treasury bill rates over that period. This would mean that the interest rate for that period would be lower than that which has been awarded by the Court, because the treasury bill rate has been falling since about 1998. The Order as given by the Court of Appeal and affirmed by the Privy Council, does not permit the Government to interpret it in that manner, and if they wish to have the interest rate varied to be in accordance with the treasury bill rate, they should, in our opinion, apply to the Court for that matter be considered and a decision made.

2. Treatment of the Sum of \$22,118,021.00

When the Pension Fund was discontinued on the 30th June, 1994, there was a sum of approximately \$22,118,021.00, which had not been paid to the Pension Fund by the employer and this sum was treated after the discontinuation of the Air Jamaica Pension Fund as a receivable or sum due and owing to the defunct Pension Fund. It appears that the Government intends to treat this sum separately and ascribe to it, an interest rate of 5% per annum. We do not believe that this approach is correct because it is in breach of the decision of the Privy Council and is not consistent with accepted accounting practices. It is however a very important issue because depending on how the sum is treated will affect the amount of surplus that is to be paid to the Trustees for distribution to the beneficiaries.

Based on calculations done by the Trustees the total surplus due to the beneficiaries was, at the 28th February, 2001, the sum of \$1,379,411,687.00 and the sum that is being offered by the Government is \$927,214,746.34. This difference, we believe, is due to the two matters we have referred to above.

April 27, 2001

TO ALL BENEFICIARIES OF THE AIR JAMAICA PENSION FUND CASE

Re: *Suit by Joy Charlton, Clive Goodall, Barbara Clarke
vs. Air Jamaica, Life of Jamaica, et al*

We enclose, for your information, copies of correspondence between the Ministry of Finance and the Attorneys for the Trustees:-

- (a) Letter dated April 11, 2001, from the Ministry of Finance and Planning to Messrs. Dunn, Cox, Orrett & Ashenheim;*
- (b) Letter dated April 11, 2001, from Messrs. Dunn, Cox, Orrett & Ashenheim to the Ministry of Finance and Planning;*
- (c) Letter dated April 19, 2001, from Messrs. Dunn, Cox, Orrett & Ashenheim to the Ministry of Finance and Planning and,*
- (d) Letter dated April 25, 2001, from Messrs. Dunn, Cox, Orrett & Ashenheim to the Ministry of Finance and Planning.*

*In order to properly discuss these and other issues important to you, the Trustees have fixed a meeting which is to be held on **Wednesday, the 2nd May, 2001 at 5:30 p.m.** at Le Meridian Jamaica Pegasus Hotel, Montego Suite and we ask that you attend.*

Yours faithfully,
CLINTON HART & CO.

PER: *P. W. Foster*
PATRICK W. FOSTER



ANY REPLY OR SUBSEQUENT REFERENCE SHOULD BE
ADDRESSED TO THE CHIEF CLERK AND THE
FOLLOWING REFERENCE NUMBER CITED:

Telephone No. 32-2444116
E-mail: head@mt.gov.jm

OFFICE OF THE MINISTER OF
FINANCE AND PLANNING
30 NATIONAL HEROES CIRCLE
P.O. BOX 512
KINGSTON
JAMAICA

April 11, 2001

Messrs. Dunn, Cox, Orrett & Ashenheim
Attorneys-at-Law
48 Duke Street
Kingston.

Attention: Mr. Donovan Walker

Gentlemen:

Re: Air Jamaica 1968 Pension Trust Fund

I refer to the above captioned matter and our ongoing discussions on the same. Arising from our last meeting it was agreed that we would put to you our proposal for settlement of this matter which would include the bases of our calculations and a total figure. This we now do.

As previously indicated to you our calculations are made in accordance with our interpretation of the order of the Judicial Committee of the Privy Council ("the JCPC") dated April 28, 1999, which stated at pp. 15 and 19 of the advance copy:

Destination of the Surplus

Contributions were payable by the Members with matching contributions by the Company. In the absence of evidence that this is not what happened in practice, the surplus must be treated as provided as to one half by the Company and as to one half by the Members.

Conclusion

(iv) that so much of the surplus as is attributable to the contributions made by Members and was paid to the Company should be forthwith repaid to the trustees by the Crown in accordance with the undertaking of the Attorney General together with compound interest at the rate specified by the Court of Appeal from the date of receipt by the Company to the date of payment"

We have already received legal advice on the meaning to be attributed to the Privy Council's order and in accordance with our interpretation of that ruling we have done our calculations. These are set out in the attached Table 1.

Total Payments to Company

You will note from the calculations that interest on the total of \$450M which was withdrawn from the fund between November, 1994 and May, 1996 was accrued using the rate of 29.47% per annum from the date of withdrawal up to July 29, 1997 as ordered by the Court of Appeal and approved by the Privy Council. From July 30, 1997 to April 30, 2001, average treasury bill rates with annual rests are applied.

Contributions Receivable

In relation to the employer's and employees' outstanding contributions, the Government of Jamaica regards the amount outstanding of \$23,445,793 as the amount for which it is legally liable. We have considered your request to impute a rate of interest to this amount and we have used a figure of 5% per annum.

Loan by Accountant General

In relation to the amount totalling \$121,522, 680, which represents a portion of the sum which has been held by Life of Jamaica for the account of Government, we have used the applicable treasury bill rates prevailing at the time to calculate the outstanding amount due to the Fund.

Trust Fund Residue

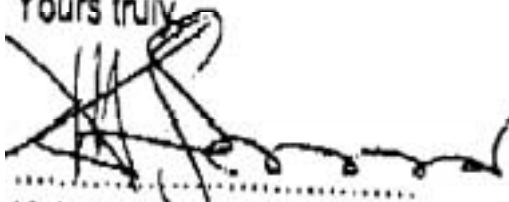
The remaining balance of approximately Twenty Million Dollars (\$20M) will be divided in accordance with the ratio of 56% Employer, 44% Employees.

The attached Table represents the bases on which our calculations were done. Based on this we propose paying to you the sum of Nine Hundred and Twenty Seven Million, Two Hundred and Fourteen Thousand, Seven Hundred and Forty Six Dollars and Thirty-Four cents (\$927,214,746.34). This sum will be adjusted for taxed costs and

income tax. This adjusted sum we now offer to you in full and final settlement of the Government of Jamaica's obligation to the employees of the Air Jamaica 1968 Pension Fund pursuant to the ruling of the JCPC. If you find it acceptable, I would further recommend that we give the appropriate instructions to our respective lawyers in order that they may settle the necessary documentation reflecting our agreement.

We are aware that the continued delay in having this matter resolved is likely to affect the potential beneficiaries negatively. In view of this, the Government of Jamaica is committed to bringing closure to this matter within the shortest possible time. We regret the delay in providing you with the attached calculations and anticipate hearing from you early. Should you have any queries, please do not hesitate to contact me.

Yours truly,

A handwritten signature in black ink, appearing to be 'Keith Senior', written over a dotted line.

Keith Senior
Team Leader

TABLE 1
AIR JAMAICA 1988 PENSION TRUST FUND
SUIT NUMBER E. 338 OF 1994 - PRIVY COUNCIL RULING
REPLENISHMENT OF SURPLUS, ACCUMULATED TO 2001 APRIL 30

	Amounts as at 2001 April 30 (£)	Divisible Employer 56%, Employees 44% Employer (£)	Employees (£)
(1) Total Payments to Company (1994 November - 1998 May)	450,000,000	252,000,000	198,000,000.00
(2) Compound Interest as per Court Ruling	1,201,775,012	728,994,046	572,781,036.08
(3) Payments Accumulated with Interest	1,751,775,012	980,994,046	770,781,036.08
(4) Contributions Receivable	23,445,793	13,129,644	10,316,148.92
(5) Interest from 1994 July 1 to 2001 April 30 @ 5% p.a.	9,277,511	5,195,482	4,082,148.70
(6) Contributions Receivable Accumulated with 5% p.a. Interest	32,723,404	18,325,108	14,398,297.62
Payments to Accountant General			
(7) Principal	121,522,680	88,052,701	53,469,979.20
(8) Compound Interest at Average Treasury Bill Rates	201,265,078	112,719,643	88,555,433.44
(9) Principal Accumulated with Interest	322,807,758	190,772,343	142,035,412.64
(10) GRAND TOTAL (3) + (5) + (9)	2,107,208,242	1,110,251,495	977,214,746.34

April 11, 2001

BY FAX (922-8804) & BY BEARER

URGENT & IMMEDIATE

The Minister of Finance and Planning
Ministry of Finance and Planning
30 National Heroes Circle
Kingston

Attention: The Hon. Dr. Omar Davies, M. P.

Dear Sirs:

Re: The Defunct Air Jamaica Pension Fund
Suit by Joy Charlton, Clive Goodall et al
vs. Air Jamaica Limited, Life of Jamaica Limited et al

You will recall that we represent CIBC Trust & Merchant Bank Limited, Joy Charlton and Ian Blair, the Court appointed Trustees of the defunct air Jamaica Pension Fund. We refer to our previous meeting herein and your appointment of a high level ministry team to work with the Trustees and their advisors to expeditiously determine the surplus due to the members and to facilitate repayment by the Government of Jamaica of the surplus to the Trustees.

Since November 2000 the Trustees and their advisors, Messrs. PricewaterhouseCoopers, Messrs. Watson, Wyatt & Duggan and Messrs. Dunn, Cox, Orrett & Ashenheim have met on occasion with members of your team at your Ministry offices.

April 11, 2001

Page: 2

By letter dated March 5, 2001 we advised (inter alia) that as at 28th February, 2001, the total surplus due to the contributors (employees) \$1,379,411,687.00 with interest accruing thereafter. We enclose a copy of this letter for your ease of reference. We were eventually able to meet with your team on Wednesday, 4th April, 2001. At that meeting several issues were raised by your team. These issues are highlighted below.

Our clients have requested that we express their concern about the issues raised by your team and the fact that your team would seek to raise issues which (we submit) are incorrect, have no basis in law and appear to be designed to frustrate the obvious and clear intention of the Judicial Committee of the Privy Council that "...the surplus as is attributable to the contributions made by members and paid to the company should be forthwith repaid to the Trustees by the Crown in accordance with the undertaking of the Attorney General together with compound interest at the rate specified with the Court of Appeal from the date of receipt by the company to the date of payment...".

The issues raised by your client include the following:

1. Issue 1 - The rate of interest applicable in determining the compound interest chargeable from the date of receipt by the company of the funds to the date of payment

The Privy Council states clearly in their conclusions as follows:-

- A. "...the orders made by the Court of Appeal should be set aside, and in lieu thereof it should be declared... that so much of the surplus ... should be forthwith repaid to the Trustees with compound interest at the rate specified by the Court of Appeal". Mr. Keith Senior, by letter dated November 28, 2000 verified and confirmed the applicable rate of interest when he states that "... the applicable rate of interest as prescribed by the Court is 29.47% compounded annually". We enclose a copy of the aforesaid letter from Keith Senior to the above effect. Our client were extremely surprised and disappointed that Mr. Leys at the meeting asserted that it was his opinion that the rate referred to in the Privy Council judgment is in fact the average of the Treasury Bill rates not only for 1994, 1995 and 1996 (being the 29.47%) but should also include the average of the Treasury Bill rates for 1997 through to 2001 inclusive. A rate sheet was provided by your team indicating what the average rates were between 1997 and 2001 (copy enclosed). Your team therefore proposed that the interest rate to be used is the average annual treasury bill rate between 1994 and 2001 inclusive (and not 29.47%). This argument we submit is incorrect for five (5) reasons:-
 - (i) The wording of the Privy Council judgment speaks of "the rate specified by the Court of Appeal". The Privy Council judgment (replacing and superseding the Court of Appeal ruling) is clear in its reference to the rate used by the Court of Appeal. That rate is 29.47% . The Privy Council judgment does not refer to the method of calculation used by the Court of

Appeal nor does it refer to using an average of Treasury Bill rates until the date of repayment. The wording of the Privy Council judgment is clear and we submit should be followed.

- (ii) The Privy Council judgment states in its conclusion as follows:-

"That so much of the surplus as is attributable to the contribution made by members... "should be forthwith repaid to the Trustees..". This judgment was delivered on the 29th April, 1999. Almost two years have passed and no steps have been taken to repay the judgment or to identify and separate funds for repayment. To suggest, as has been by Mr. Leys, that the Treasury Bill rates for 1999, 2000 and 2001 should also be utilized where the Government of Jamaica has not complied with the Privy Council Order for over two (2) years is, we submit, self serving as, if the funds were repaid forthwith in 1999 this would not be an issue. The position put forward by your team is not in keeping with the direction in the Privy Council ruling that the monies should be forthwith repaid.

- (iii) The Trustees' advisors (namely PricewaterhouseCoopers) have worked assiduously to determine the surplus attributable to the members based on a rate of 29.47%. Not only were they relying on the clear wording of the Privy Council judgment but on the aforesaid letter dated November 28, 2000 from Mr. Keith Senior of your Ministry team. Therein it is stated inter alia, "the applicable rate of interest as prescribed by the Court is 29.47% compounded annually". Our clients view with extreme suspicion the attempt to now side step what was stated by Mr. Senior on behalf of the Ministry that the correct rate is 29.47% as well as the wanton disregard of what is the clear wording of the Privy Council judgment.

- (iv) Our clients were appointed Trustees pursuant to the Court Order. One of their main mandates is to collect the surplus pursuant to the provisions of the Privy Council Judgment. It has been intimated by your team that perhaps the Trustees could negotiate or consider utilizing or accepting the variation of the Privy Council Order by considering the use of the rates proposed by your clients. You must appreciate that our clients are not in a position to do this. Our clients are obliged to carry out their mandate in strict compliance with the Privy Council judgment and it would not be prudent or permissible for them to make unilateral variations to the Privy Council ruling (particularly where such variation would be detrimental to the beneficiaries). In fact, for the Trustees to approve such a variation, they should properly seek the approval and consent of all 3,000 beneficiaries. It must be appreciated that our clients may find themselves personally liable for any departure from the Privy Council judgment where such departure is detrimental to the beneficiaries.

- (v) It was suggested by your team that the Trustees are obliged to seek variation or clarification of the Privy Council ruling if they so desire. We respectfully submit that this is out of order as the Privy Council ruling is clear. If the Government of Jamaica wishes to seek a variation from the clearly stated wording of the Privy Council judgment, then it is the obligation of the Government of Jamaica to seek the necessary variation (of course without prejudice to the accrual of interest in the interim and the beneficiaries possibly opposing your application).

Based on the above the Trustees have no power to vary the Privy Council judgment and can only carry out their mandate pursuant thereto. The proper and only rate of interest applicable pursuant to the judgment is 29.47%.

2. Issue 2 - The ratio of employers' and employees' contribution

In our aforesaid letter to the Ministry dated March 5, 2001, we set out in an attached schedule (copy enclosed) the ratio of employer and employee contribution, respectively. It is stated therein that the employer's contribution total 44.06% and employee's contribution total 55.94%. This is due to the fact that up to the date of termination of the fund there were unpaid contributions by the employers totaling \$22,118,021.00.

Your team proposes that the employer's contributions are in fact 54% and the employee's contributions are 46%. Your team's method of determining the employer's contribution and employee's contributions as aforesaid excludes the unpaid contributions of \$22,118,021.00. Your team produced a letter dated June 12, 1998 from the Ministry of Finance to DeLoitte & Touche wherein the Ministry accepts the obligation to pay to Air Jamaica an amount of approximately \$22,000,000.00 representing employers matching contribution to the fund as at June 1994. We submit that the ratio set out by the Trustees' advisors as to the allocation of the surplus is correct in inclusion of the unpaid contribution for the following reasons:

- (a) The unpaid contributions have to date never been repaid to the Pension Fund. This despite the letter of undertaking from the Ministry of Finance and Planning dated June 12, 1998 (copy enclosed for your ease of reference). They thus can be classified only as a receivable and are so classified in the final audited report of the Trust Fund in 1994.
- (b) The Privy Council in its judgment stated inter alia "... there were no contributing members after 30th June, 1994, with the result that the plan was discontinued on that date, that is to say before the 1994 amendments were made. Effectively the Trust Deed was at an end as the 30th June, 1994...". Based on the fact that the Privy Council judgment deemed the Trust as at an end in 1994 it is difficult to see the logic in treating receivables which have not been paid to date as having been contributed to the Fund.

- (c) As at the 30th June, 1994 \$22,118,021.00 was not repaid to the Trust by the employer or the Government of Jamaica. We submit any attempt at this stage or in 1998 or at all to replenish the fund is too late as the Trust Fund and the particular receivable remains outstanding. The Privy Council ruling in its conclusion refers to "contributions made" by either the members or the company. As at the date of the Privy Council judgment it is clear that the contribution of \$22,118,021.00 was not in fact made. We fail to see how a receivable of \$22,118,021.00 to a defunct pension fund can be properly treated as a contribution made. This position is further strengthened by the standard accounting practices used and applied when booking a receivable. Generally, where booking a receivable is appropriate (which we do not submit is the case here) the issue of appropriate valuation would arise which at the very least would require significant discounting. We respectfully submit that recording the receivable as a contribution made at this stage is wholly inappropriate and the Trustees view with suspicion this wrongful attempt to further whittle away at the surplus payable as a result of the Privy Council judgment.

In conclusion, our clients affirm their advisors opinion that the sum of \$22,118,021.00 should be deducted from employers contributions as such contribution was not made as at the date of the termination of the fund nor has payment ever been made. Again, the Trustees have no discretion to negotiate this particular point as the wording of the Privy Council judgment is clear and the Trustees are not prepared to run the risk of becoming personally liable to contributors who may feel that their position has been unnecessarily compromised and depletion of the funds encouraged or supported by the Trustees.

3. **Issue 3 - Promised Correspondence**

At our meeting with your team on the 4th April, 2001, we were promised a response to our letter dated March 6, 2001 on or before April 9, 2001. Despite several assurances, up to 4:00 p.m. this afternoon, we have received no written response as promised.

Generally, our clients are extremely concerned as to the length of time this matter is taking and the fact that to date no attempt has been made to make any payment to our clients in relation to the surplus and compound interest thereon. Our clients are also concerned about the above issues raised by members of your team which they feel are out of line with the Privy Council judgment, are generally incorrect and will only serve to further delay this longstanding matter. Not only does interest continue to accrue daily but the impatience and frustration of the contributors to the fund also increases.

You must appreciate that the 3,000 former employees of Air Jamaica as well as their families observe the progress herein with great concern and anxiety and are demanding of the Trustees and your offices that closure be brought to this matter. They feel that their monies have been rightly returned to them by the Privy Council ruling and view with suspicion lengthy negotiations to repay what is, we submit, to be a clear Order of the highest Court of Jamaica. Given the above

The Ministry of Finance & Planning

April 11, 2001

Page: 6

you no doubt will agree that this matter must be brought to a closure.

Our clients' advisors, Messrs. PricewaterhouseCoopers, have advised that as at the 31st March, 2001 the present sum refundable to the employees now stands at \$1,411,504,653.00 and interest accrues daily at the per diem rate of \$1,139,644.79. On behalf of our client we hereby make formal demand for the immediate repayment of the sum of \$1,411,504,653.00 (due as at 31st March, 2001) together with the per diem interest of \$1,139,644.79 thereafter up to the 30th April, 2001. After that date, we shall receive another refund computation from Messrs. PricewaterhouseCoopers and provide same to you. We anticipate early receipt of the aforesaid sum.

Kindly make your cheque payable to "The Trustees - Defunct Air Jamaica Pension Fund". Upon your advice this writer will attend upon you to collect the cheque on behalf of our clients.

In the interim and out of courtesy, we advise that our clients are compelled (given the enormous pressure upon them to advise the former employees and the general public of the happenings in this matter) to hold a press conference to be held during the week of Monday, 23rd April, 2001.

Hopefully you would be in a position to respond favorably to our request by that date.

Yours faithfully,

DUNN, COX, ORRITT & ASHENHEIM

ORIGINAL SIGNED BY

DONOVAN C. WALKER

Per: _____

DONOVAN C. WALKER

cc: Mr. Ian Blair
cc: Ms. Joy Charlton
cc: CIBC Trust & Merchant Bank Limited
(Attention: Mr. Raymond Campbell)
cc: PricewaterhouseCoopers
cc: Watson, Wyatt, Duggan
cc: Attorney General's Department
(Attention: Mr. Douglas Leys)
cc: Ministry of Finance & Planning
(Attention: Mr. Keith Senior)
cc: Ministry of Finance & Planning
(Attention: Ms. Carina Cockburn)

DCW/jab

April 19, 2001

BY FAX (922-8804) & BY BEARER

URGENT & IMMEDIATE

The Minister of Finance and Planning
Ministry of Finance and Planning
30 National Heroes Circle
Kingston

Attention: The Hon. Dr. Omar Davies, M. P.

Dear Sirs:

**Re: The Defunct Air Jamaica Pension Fund
 Suit by Joy Charlton, Clive Goodall et al
 vs. Air Jamaica Limited, Life of Jamaica Limited et al**

We acknowledge receipt of yours dated 17th April, 2001 received by this writer on the 19th April, 2001.

In response to the specific clarification sought in your aforesaid letter, we advise that on the date we delivered our letter of April 11, 2001 to your offices we had not received the letter from Keith Senior of the Ministry of Finance & Planning also dated April 11, 2001.

This writer received a fax of Mr. Senior's letter on April 12, 2001 and we have yet to receive the "hard copy" of same.

The Ministry of Finance & Planning

April 19, 2001

Page: 2

Your Ministry's aforesaid letter of April 11, 2001 has been delivered to the Trustees who are in the process of reviewing same.

In the interim, we would appreciate an urgent review of the content of your letter of the 11th April, 2001 in light of the very serious concerns and issues raised in our letter of April 11, 2001 (as to why your final offer of settlement contained in your aforesaid letter is unacceptable and out of line with the Privy Council Judgment).

We are willing to meet with you and your advisors at your earliest convenience in keeping with our stated mutual desire to facilitate an expeditious payover of funds to the Trustees to enable distribution of the surplus to the members of the defunct Trust Fund.

Yours faithfully,
DUNN, COX, ORRETT & ASHENHEIM

Per: DONOVAN C. WALKER

cc: Mr. Ian Blair
cc: Ms. Joy Charlton
cc: CIBC Trust & Merchant Bank Limited
(Attention: Mr. Raymond Campbell)
cc: PricewaterhouseCoopers
cc: Watson, Wyatt, Duggan
cc: Attorney General's Department
(Attention: Mr. Douglas Leys)
cc: Ministry of Finance & Planning
(Attention: Mr. Keith Senior)
cc: Ministry of Finance & Planning
(Attention: Ms. Carina Cockburn)

Copy.

DCW/jab

April 25, 2001

BY FAX (922-8804) & BY BEARER

WITHOUT PREJUDICE

URGENT & IMMEDIATE

The Minister of Finance and Planning
Ministry of Finance and Planning
30 National Heroes Circle
Kingston

Attention: The Hon. Dr. Omar Davies, M. P.

Dear Sirs:

**Re: The Defunct Air Jamaica Pension Fund
Suit by Joy Charlton, Clive Goodall et al
vs. Air Jamaica Limited, Life of Jamaica Limited et al**

Regarding the abovecaptioned matter, we acknowledge receipt of your letters dated April 11, 2001, April 17, 2001, April 23, 2001 and April 25, 2001, respectively.

Upon a review of the aforesaid letters, our clients have asked us to reiterate the positions as set out in our letter to you dated April 11, 2001 summarized as follows:

1. The rate of interest applicable in determining the compound interest chargeable from the date of receipt by Air Jamaica Limited of the funds to the date of repayment is 20.47%

- compounded annually;
2. That for the various reasons set out in our aforesaid letter the Trustees are not in a position to agree to any variation of the Privy Council Judgment;
 3. That the Privy Council Judgment states that the money should be forthwith repaid. To date, no monies have been repaid to the Trustees;
 4. Unpaid employer contributions (treated as a receivable in the audited accounts of Air Jamaica Limited as at June 30, 1994) which have yet to date to be paid over cannot be treated as a contribution made;
 5. The sum of \$22,118,021.00 should be deducted from employer's contributions as such contribution was not made as at the date of the termination of the Trust Fund nor has payment ever been made. The Trustees have no discretion to negotiate this particular point due to the clear wording of the Privy Council Judgment;
 6. As at the 30th April, 2001 the sum refundable to the employees will be \$1,445,693,997.00 with interest accruing daily at the rate of \$1,139,644.79. Pursuant to the Privy Council Judgment this sum remains outstanding to the Trustees (on behalf of the beneficiaries) less the deduction of legal costs as was ordered by the Judicial Committee of the Privy Council.

The Trustees position has not changed. The sum of \$1,445,693,997.00 remains due and owing from the Government of Jamaica as at April 30, 2001.

The Trustees have reviewed your letter of April 11, 2001 wherein you advised of your proposal to pay "...the sum of Nine Hundred and Twenty-seven Million Two Hundred and Fourteen Thousand Seven Hundred and Forty-six Dollars and Thirty-four Cents (\$927,214,746.34)..." In light of your proposal, our clients are prepared to receive from you an interim payment of \$927,214,746.34 pending the resolution of the issues raised in our letter to you dated April 11, 2001.

Our client would be accepting this payment as an interim payment and without prejudice to the claim for the amounts based on the principles and reasons clearly set out in the Privy Council Judgment and highlighted in our aforesaid letter of 11th April, 2001. Our clients, upon receipt of this interim payment, will take steps to disburse this interim payment to the beneficiaries and continue discussions with the Ministry of Finance and Planning regarding the payment of the balance claimed.

This interim payment will not only serve to relieve the hardships presently being faced by many of the beneficiaries who anxiously await final resolution of this matter, but will reduce the continued accrual of interest presently facing the Government of Jamaica. Further, this payment will indicate to the thousands of beneficiaries that the Government is truly committed to the expeditious repayment of sums due to the beneficiaries pursuant to the Privy Council Judgment.

Our clients are prepared to accept the interim payment of \$927,214,746.34 as aforesaid no later than Monday, 30th April, 2001.

Kindly make your cheque payable to the "Trustees - Defunct Air Jamaica Pension Fund". Upon your advice this writer will attend upon you to collect the cheque on behalf of our clients.

As you suggest, upon the completion of the annual budget debate and your overseas travel the

The Ministry of Finance & Planning

April 25, 2001

Page: 3

respective teams can meet on May 11, 2001 to focus on the issues raised in our letter dated April 11, 2001 with a view to hopefully resolving these issues no later than May 31, 2001.

Given our above proposal our clients deferred the holding of a Press Conference on 23rd April, 2001 but advise that they are compelled to advise their members and hold a Press Conference regarding the abovecaptioned issues at an early date.

In the interim, we look forward to your favourable response by the making of the aforesaid interim payment pending resolution of other issues involved herein.

Yours faithfully,

DUNN, COX, ORRETT & ASHENHEIM

Per: 

DONOVAN C. WALKER

cc: Mr. Ian Blair
cc: Ms. Joy Charlton
cc: CIBC Trust & Merchant Bank Limited
(Attention: Mr. Raymond Campbell)
cc: PricewaterhouseCoopers
cc: Watson, Wyatt, Duggan
cc: Attorney General's Department
(Attention: Mr. Douglas Leye)
cc: Ministry of Finance & Planning
(Attention: Mr. Keith Senior)
cc: Ministry of Finance & Planning
(Attention: Ms. Carina Cockburn)