

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL LIST
COMMERCIAL AND EQUITY DIVISION

2001 No. 2115

BETWEEN

ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION PLAN PTY LTD (ACN 065 590 178) (as trustee of the Ansett Australia Ground Staff Superannuation Plan) & OTHERS (according to attached Schedule of Parties)

Plaintiffs

and

ANSETT AUSTRALIA LIMITED (Administrator Appointed) (ACN 004 209 410) & OTHERS (according to attached Schedule of Parties)

Defendants

AFFIDAVIT OF JAMES HERBERT HENNESSY

Date of document: 8 July 2002

Filed on behalf of: The Fourth Defendant

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I, **JAMES HERBERT HENNESSY**, of 11 Rosslyn Avenue, Seaford, in the State of Victoria, MAKE OATH AND SAY as follows:

1. I am a licensed Aircraft Engineer, Avionics, employed within Ansett Aviation Engineering Services ("**AAES**") by Ansett Australia Limited (subject to deed of company arrangement) ("**Ansett Australia**").

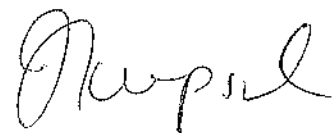

Employment History

2. I commenced employment with Ansett Australia (then Ansett Transport Industries (Operations) Pty Ltd) on 7 January 1985. I was first employed as a Licensed Aircraft Engineer at Mascot Airport (Sydney) within the Engineering



Division. Our task was to turn around aircraft and carry out minor maintenance tasks by day, and by night to carry out scheduled aircraft servicing.

3. Before commencing my employment I completed an Application for Employment. Now produced and shown to me and marked with the letters "JHH 1" is a true copy of my Application of Employment. After an interview, I was offered employment by letter dated 14 December 1984 from the personnel manager, NSW. Now produced and shown to me and marked with the letters "JHH 2" is a true copy of letter from Ansett Airlines of Australia offering me a position dated 14 December 1984.
4. I remained in my position in Sydney until July 2001 when I requested a transfer to Melbourne. I was transferred to the Aircraft Wiring – Heavy Engineering Division at Tullamarine Airport, Melbourne, commencing on 6 August 2001. At that time I was required to sign a letter setting out the terms and conditions of my employment with Ansett Australia. That letter was dated 18 July 2001. Now produced and shown to me and marked with the letters "JHH 3" is a true copy of the letter from Air New Zealand Limited dated 18 July 2001 signed on 20 July 2001.
5. The task of the Aircraft Wiring department was to carry out scheduled heavy maintenance checks and maintenance on Ansett aircraft.
6. Since Ansett Australia ceased its flying operations in March 2002 our task has changed. The aircraft which we now service are mostly "static" aircraft – that is, they are not involved in flying operations. Consequently, we are chiefly carrying out major maintenance projects on aircraft as well as carrying out necessary routine maintenance for aircraft which are not operating. Further, we undertake major checking procedures on aircraft which are being prepared for sale or lease.
7. There are other Divisions and Departments of Ansett Australia which continue to operate or partly operate. At a meeting of employees on 3 July 2002 addressed by Mr Ken Drover, Chief Executive Officer of AAES, we were



informed that there are currently some 670 people still employed by Ansett Australia. Other than those in Aircraft Wiring, there are people employed in other departments such as Mechanical Engineering, Engine Shop, Idle Maintenance, Painters, Cleaning, Stores, Accounts, and so on.

I am a member of the Australian Licenced Aircraft Engineers Association ("ALAEA"). ALAEA is a party to the Collective Bargaining Agreement (document 4.2.70 in the plaintiffs' index). Like all other members of unions or associations party to that agreement, I received a copy of that agreement when it was made in or about 1999.

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Superannuation Plan Membership

9. When I commenced employment in January 1985 there was a two year eligibility period before an employee could join the superannuation plan offered by the company.
10. I believe, however, from dates shown on my member benefit statements, that I joined the Ansett Australia Ground Staff Superannuation Plan on 1 July 1986. I have not kept all the documents provided to me in respect of the Plan over the years. I do not have, for example, any copy of a Member's Booklet that may have been provided to me. I have seen examples of Member Booklets for members joining the Plan before January 1987 (2.1.20) and after January 1987 (2.1.30). Although I do not specifically recall those documents, it is more than likely that I received them but have since mislaid them.
11. I did receive Member Benefit Statements applicable to myself every year in the Plan. I have retained copies of those statements, at least since the early 1990s. Those statements are currently in the form of the sample statements at 2.4.10 in the plaintiff's index. Earlier versions were in a different format, but contained similar information.
12. I also received, annually, a copy of the Annual Report for the Plan. Copies of the reports for 1994 to 2000 are at 5.6.10 to 5.6.50, and 5.3.5, of the plaintiffs' index. Now produced and shown to me and marked with the letters "JHH 4"

James Heanessy

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is a true copy of the 2001 Report. In addition, as a member I received periodical Updates and Newsletters. Examples of these are at 5.3.10 to 5.3.60 of the plaintiffs' index.

13. It has always been my belief and expectation, based upon the documents described above, that my entitlements provided for in the superannuation plan would be paid as a matter of course. I recall thinking carefully about superannuation about 3 years ago after heart surgery. I was contemplating retirement but realized that, not then being 55 years of age, I would suffer a significant taxation disadvantage in respect to my superannuation entitlements if I ceased work. I continued working, and having turned 55, found myself able to continue working. (I was born on 6 February 1945.) I have maintained a watchful eye on the steady growth in my expected superannuation benefits which has been of relevance in the continuance of my employment.

Future of Employment

14. As I have stated, I believe that there are currently 670 remaining employees of Ansett Australia. At the meeting on 3 July 2002 Mr Drover outlined what is projected to occur for the remaining workforce. Now produced and shown to me and marked with the letters "JHH 5" is a true copy of an AAES Update dated 4 July 2001 which was published containing information about projected revisions to the structure of the continuing business. My understanding from what we were told is that on the 19th of this month further employment terminations will occur. It is possible that the business may obtain a contract to undertake scheduled maintenance on one or two 737 aircraft which are currently leased by Ansett prior to the aircraft being returned to the lessor, in which case the number of employees required to continue will be about 320. If that contract is not obtained, the number required will be only 217. In any event, after 19 July 2002 the remaining workforce will be progressively reduced to about 70 employees over another 24 months. At the end of that 24 months, the final 70 employees will also have their employment terminated.

James Hennessy

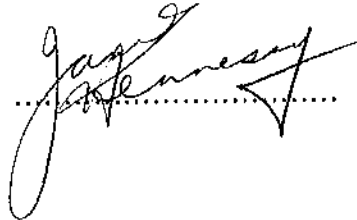
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15. I have not been told whether I am to be discharged on 19 July or kept on. To the best of my knowledge, nobody has been told who is to be kept on.

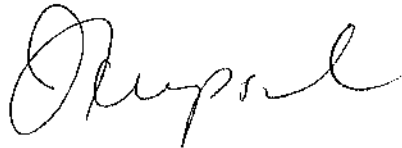
SWORN by **JAMES HERBERT HENNESSY**)

at MELBOURNE in the State of Victoria)

this 8th day of July 2002)

A handwritten signature in cursive script, appearing to read 'James Hennessy', written over a horizontal dotted line.

Before me:

A handwritten signature in cursive script, appearing to read 'Jane Elizabeth Kupsch', written in black ink.

JANE ELIZABETH KUPSCH
Piper Alderman Lawyers
Level 9, 60 Collins Street Melbourne
A current practitioner under
the Legal Practice Act 1996

SCHEDULE OF PARTIES

FIRSTNAMED PLAINTIFF	ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION PLAN PTY LTD (as trustee of the Ansett Australia Ground Staff Superannuation Plan) (ACN 065 590 178)
SECONDNAMED PLAINTIFF	ANSETT AUSTRALIA PILOTS/MANAGEMENT SUPERANNUATION PLAN PTY LTD (as trustee of the Ansett Transport Industries Limited Pilots/Management Superannuation Plan) (ACN 065 590 043)
THIRDNAMED PLAINTIFF	ANSETT FLIGHT ENGINEERS' SUPERANNUATION PLAN PTY LTD (as trustee of the Ansett Transport Industries Limited Pilots/Management Superannuation Plan) (ACN 065 589 979)
FIRSTNAMED DEFENDANT	ANSETT AUSTRALIA LIMITED (Administrator Appointed) (ACN 004 209 410)
SECONDNAMED DEFENDANT	MARK FRANCIS XAVIER MENTHA and MARK ANTHONY KORDA
THIRDNAMED DEFENDANT	RUSSEL THOMAS BOOTH
FOURTHNAMED DEFENDANT	JAMES HERBERT HENNESSY