

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

F. 5382

No. 2115 of 2001

BETWEEN:

**ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION PLAN PTY LTD
(ACN 065 590 178) (as Trustee of the Ansett Australia Ground Staff
Superannuation Plan) and ANSETT AUSTRALIA PILOTS/MANAGEMENT
SUPERANNUATION PLAN PTY LTD (ACN 065 590 043) (as trustee of the Ansett
Australia Pilots/Management Superannuation Plan)**

Plaintiffs

and

**ANSETT AUSTRALIA LIMITED (Administrators Appointed) (ACN 004 209 410)
AND OTHERS**

Defendants

AFFIDAVIT OF JOHN IAN CANN

Date of document:
Filed on behalf of:

7 May 2002
The plaintiffs

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I, **John Ian Cann** of 215 Spring Street, Melbourne, Victoria, manager, make oath and say as follows:

1. I am the manager, member services of Telstra Super Pty Ltd. I swear this affidavit from my own knowledge, save where the contrary is indicated.
2. I commenced employment at AMP on 4 February 1974 as a superannuation administration officer. In about 1986 I became the manager of the corporate superannuation section of AMP. In this role, I had overall responsibility for all corporate superannuation plans administered by AMP, including each of the Ansett Staff Superannuation Plans.
3. In June 1993 I resigned from AMP (where I had become a superannuation consultant). I then commenced employment at Ansett as the national superannuation manager. I remained in that position (although my title changed in about 1997 to national manager remuneration and superannuation) until late



1998, when I became the manager HR shared services. I resigned from Ansett in March 2001 and I am now employed by Telstra Super Pty Ltd.

4. From 1993 until about 1997, I was the fund secretary of each of the Ansett Staff Superannuation Plans.
5. In each of the positions that I held at AMP and at Ansett, my responsibilities included ensuring that the appropriate contributions were made to the respective plans by Ansett. In the case of the defined benefit plans, including those of which the plaintiffs are the trustees, this involved liaising with the consulting actuaries to the Plans to co-ordinate their bi-annual actuarial reviews. Once the actuaries had made their recommendations as to the appropriate level of contributions to be made to the Plans by Ansett for each two year period, their recommendations were conveyed both to the trustees of the plans and to Ansett Management. After I commenced employment with Ansett, one of my responsibilities was to take the actuaries' reports to the superannuation policy committee of Ansett, which was a committee comprised of senior executives. The Committee had overall responsibility for superannuation policy matters across Ansett. The superannuation policy committee considered the actuaries' recommendations and, at least in my experience, always accepted them. That having occurred, I then arranged for the appropriate level of contributions to be made by Ansett to the respective superannuation plans.
6. I can recall only one occasion on which contributions to a plan were required other than in accordance with the normal bi-annual actuarial recommendation. This occurred in about 1994 when, as a result of the retirement of some senior Ansett executives, additional contributions were required to ensure that the Pilots/Management Plan was adequately funded. I recall that a schedule for these additional contributions was established with payments made over two or three years. I believe that the requirement for these additional contributions was identified in an actuarial investigation of the time. The document numbered **5.8.140** in the plaintiffs' index of documents is a copy of a letter from Paul Francis of AMP to me which refers to the arrangement for additional contributions.
7. When I was at AMP, I had no direct involvement in the management or processing of benefit payments to members who had ceased to be employees of Ansett.

8. At the time when I commenced employment with Ansett, and over the time of my employment the process for arranging the payment of benefits to members of the Ansett plans, including the Ground Staff Plan and the Pilots/Management Plan was as follows:
- Ansett's payroll section provided a "payroll termination advice" to the superannuation department of Ansett on behalf of the trustee of the relevant plan. The documents numbered 3.3.1 – 3.3.40 in the plaintiffs' index of documents are examples of those advices.
 - Ansett's superannuation department, on behalf of the trustee of the relevant plan, would then complete a "notification of exit" form or a "benefit payment request" form addressed to AMP. The Ansett superannuation department was specifically authorised by each of the plan trustees to complete these forms on their behalf. The document numbered 3.5.1 in the plaintiffs' index of documents is an example of a "notification of exit" form. The documents numbered 3.5.2, 3.5.3 and 3.5.3A in the plaintiffs' index of documents are examples of the "benefit payment request" forms.
 - On the "notification of exit" form, it was necessary to tick a box to indicate the type of exit of the member. On the "benefit payment request" form it was necessary to circle the type of benefit that was payable. The box that was ticked, or the type of benefit circled, by the Ansett superannuation department depended upon the information contained in the payroll termination advice form. If that advice form indicated that the reason for termination was "redundancy", "retrenchment" or under a program such as the "business recovery plan" which meant that the employee had been made redundant, AMP was advised that the employee was entitled to be paid the retrenchment benefit. I am now unable to recall how this was indicated on the "notification of exit" forms and "benefit payment request" forms.
 - After the forms had been processed by AMP, cheques payable either to the member or to a rollover fund (or both) were returned to Ansett superannuation department, and we then forwarded those cheques to the appropriate place.
9. In or about 1995 I decided that it would be more appropriate for the benefit payment process to be documented using specific Ansett forms, rather than the

generic AMP forms that had been used previously. As a result of that decision, Ansett forms were designed under which the members could indicate, amongst other things, the superannuation fund to which they wished to rollover any preserved and non-preserved benefits. In addition, there was a form by which the Ansett superannuation department (on behalf of the relevant trustee) advised AMP of the termination of employment and the level of benefit to be paid. My recollection is that, at one stage, this advice was printed as part of the "benefit payment request" form (of which documents numbered 3.5.4, 3.5.5, 3.5.6, 3.5.7, 3.5.8 and 3.5.10 in the plaintiffs' index are examples), while at other times it appeared in a separate form.

- 10. Throughout this period, however, the only form of advice from Ansett to the trustees of the Plans was the "payroll termination advice" form, referred to in paragraph 8 above. To the best of my knowledge, information and belief, at no time from 1993 until March 2001 was any formal declaration made by Ansett of a reduction of staff for the purposes of the Ground Staff Superannuation Plan rules or for the purposes of the Pilots/Management Plan rules in the exact terminology of the definition of "retrenchment" in the rules contained in the schedules to those plans.

Sworn at Melbourne, Victoria on
7th May 2002

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John Ian Cann

Before me:



DEAN ROBERT KAMBOVSKI

385 Bourke Street
Melbourne, Victoria

A natural person who is a current
practitioner within the meaning of the
Legal Practice Act 1996

This affidavit is filed on behalf of the plaintiffs