

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

F. 5382  
BETWEEN:

No. 2115 of 2001

**ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION PLAN PTY LTD**  
(ACN 066 590 178) (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 KELVIN THOMAS COSGRIFF**

Date of document:  
Filed on behalf of:

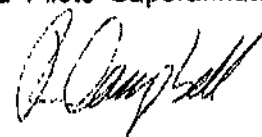
7 May 2002  
The plaintiffs

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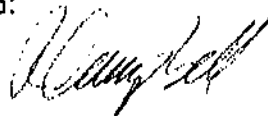
I, **Kelvin Thomas Cosgriff** of 535 Bourke Street, Melbourne, Victoria, Business Relationship Manager, make oath and say as follows:

1. I am Business Relationship Manager at AMP Financial Services ("AMP"). I swear this affidavit from my own knowledge, save where the contrary is indicated.
2. I have been employed by AMP since 10 February 1981. In 1987 I became a fund administrator in the superannuation section of AMP. One of my primary functions in that role was to manage the administration of the various Ansett Staff Superannuation Plans. I believe that AMP had managed the Ansett Staff Superannuation Plans for some decades earlier.
3. I believe that from in or about the 1940s Ansett had provided superannuation plans for all of its permanent staff, both airline staff and non-airline staff. I believe that until 1974 there were 3 primary plans: the Ansett Transport Industries Ltd Staff Superannuation Plan, the Ansett Transport Industries Ltd Pilots Superannuation

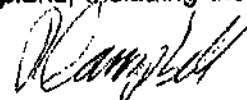


Plan and the Ansett Transport Industries Ltd Flight Engineers Superannuation Plan. I believe that on 1 March 1974 a separate Flight Attendants' Superannuation Plan was established. Prior to that date, I believe that flight attendants had been members of the Ansett Transport Industries Staff Superannuation Plan (sometimes referred to as the "Staff Plan").

4. The Ansett Transport Industries Ltd Staff Superannuation Plan provided for the payment of "defined benefits". That is, upon retirement from Ansett, a member was entitled to a payment as a "retirement benefit", which was calculated by reference to their final average salary, their years of employment or their years of membership of the plan. However, members who simply resigned (or were dismissed) from Ansett before reaching retirement age, received a "withdrawal benefit", which was calculated by reference to the amount of the contributions made in respect of that member. (Subsequent to January 1987, the withdrawal benefit was changed to be calculated on a defined benefit basis.) Members who were retrenched received a benefit that was calculated by reference to the amount of the individual member's contributions. The retrenchment benefit was sometimes higher than a withdrawal benefit.
5. Members of the plans were required to contribute 5% to the plan. This was in addition to the contributions payable by Ansett, as the employer.
6. Employees of Ansett were not automatically entitled to become members of the Staff Plan. There was a waiting period of, I believe, 7 years in the 1960s, which was subsequently reduced to 2 years. In 1987 the waiting period was removed.
7. At the time when I became involved in the management of the Ansett Superannuation Plans (in 1987), planning had commenced to restructure the plans. I believe that this had been prompted primarily by the Federal Government's decision to legislate for a compulsory employer superannuation contribution of 3% of each employee's gross salary and Ansett's desire to modernise the plans. Amongst other things, this meant that Ansett could not continue with any voluntary superannuation plans (as the Staff Plan had been). At the same time, a decision had been made by, I believe, Ansett management to have separate superannuation plans for airline staff, on the one hand, and non-airline staff, on the other hand.
8. As a result of these decisions, the following changes occurred, effective from 1 January 1987:
  - (a) The "Staff Superannuation Plan" was split into:

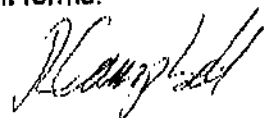


- The Ansett Transport Industries Ltd Staff (non-airline revised) Superannuation Plan;
  - The Ansett Transport Industries Ltd Staff (non-airline non-revised) Superannuation Plan (which was the "Staff Plan", with a new name);
  - The Ansett Transport Industries Ltd Management Superannuation Plan;
  - The Ansett Transport Industries Ltd Ground Staff Superannuation Plan;
- and
- (b) All new airline employees of Ansett after 1 January 1987 were required to become members of one or another of the Ground Staff Plan, the Pilots Plan, the Flight Engineers Plan, the Management Plan or the Flight Attendants Plan, depending upon the nature of their employment.
9. During 1987, all existing airline employees of Ansett who had not previously been a member of the Staff Plan, were sent letters offering to them the opportunity to join the Ground Staff Plan from that date. Those who did not do so, together with temporary and casual employees, became members of a further new plan, the Ansett Transport Industries Ltd Ground Staff Accumulation Plan. (In or about 1990, that plan was folded into the Ground Staff Plan, becoming the accumulation section of that plan.)
10. Booklets explaining the new superannuation arrangements from 1 January 1987 were provided to all existing and new employees. Copies of those booklets are documents 2.1.20 and 2.1.30 in the plaintiffs' index of documents filed in this proceeding.
11. In 1991 the Pilots Plan was merged with the Management Plan to form the Pilots/Management Plan. I believe this occurred because, following the extended pilots strike of 1989, there were insufficient remaining members of the Pilots Plan to justify the cost of administering it as a separate plan.
12. As the fund administrator, my responsibility involved managing the day to day financial and administrative issues that arose in relation to the various Ansett plans, including the Ground Staff Plan and the Pilots/Management Plan. Although I had some limited involvement with the client relationship between AMP and Ansett in connection with policy matters, they were primarily the responsibility of the superannuation consultant who was, until he left AMP to join Ansett as its superannuation manager in about 1993, John Cann. As from 31 December 1992 I ceased to be involved in the administration of superannuation plans, including the

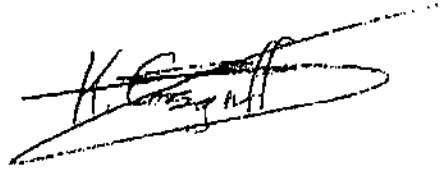


Ansett Plans. I transferred to another area within AMP, however in late 1993 I became the assistant superannuation consultant for the Ansett plans and I remained in this position until about 1996.

13. My responsibilities whilst administering the Ansett plans included administering the payment of benefits to members of the Ansett Plans. Until, I believe, some time during 1995, Ansett Superannuation Department (on behalf of the trustee of each plan) notified AMP that a member of a Plan had ceased to be an employee of Ansett by completing and forwarding to AMP a "notification of exit" or a "benefit payment request" form. 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. The type of benefit payable to the respective members was indicated by Ansett by ticking one or another of the boxes on the "notification of exit" form or circling the type of benefit payable in the "benefit payment request" form. If the box for "maximum withdrawal" in the "notification of exit" form was ticked (as in the document numbered 3.5.1 in the plaintiffs' index of documents), or "maximum withdrawal" was circled in the "benefit payment request" form then this meant that the member was entitled to be paid, and ultimately was paid, the retrenchment benefit, which was generally the highest level of benefit payable (although, sometimes, the withdrawal benefit could be higher, in which case that higher benefit would be paid). Sometimes, the forms arrived at AMP with an additional handwritten endorsement indicating "redundancy" or "retrenchment". I am now unable to recall, however, which of those words it was that sometimes appeared on the forms, or whether they both did from time to time. I did not regard those terms as having any different meaning and, in any event, it was of no consequence whether or not such handwritten endorsement was made on a form since, when calculating the member's benefit, AMP had regard only to which box had been ticked.
14. I believe that in about 1995 Ansett decided to create and use its own forms, rather than using the AMP form. The Ansett "benefit payment forms", which contained sections to be completed by Ansett Superannuation Department and the employee, were sent to AMP. Documents numbered 3.5.4, 3.5.5 and 3.5.5A, in the plaintiffs' index of documents are examples of the Ansett benefit payment forms.




Sworn at Melbourne, Victoria on  
7<sup>TH</sup> MAY 2002



Kelvin Thomas Cosgriff

Before me:



**RICHARD JAMES CAMPBELL**  
Level 24, 385 Bourke St, Melbourne 3000  
A natural person who is a current  
practitioner within the meaning of  
the Legal Practice Act 1998.

This affidavit is filed on behalf of the plaintiffs