

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 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
Transport Industries Limited Pilots/Management Superannuation Plan

Plaintiffs

and

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

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 15 March 2002
Filed on behalf of: The plaintiffs

Prepared by:
DEACONS
Lawyers
385 Bourke Street
MELBOURNE VIC 3000

Solicitors code: 370
DX 445
Tel: (03) 8686 6000
Ref: P E Cash

This is the document marked "PEC2" produced and shown to **Peter Edmund Cash** at the time of swearing his affidavit on 15 March 2002.

Before me:


ABIGAIL RUTH MCGREGOR

385 Bourke Street
Melbourne, Victoria

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

Exhibit "PEC2"

**Copy email dated 14 March 2002 and draft
amended motion**

"PEC 2"

Cash, Peter

From: Cash, Peter
Sent: Thursday, 14 March 2002 7:58 PM
To: Paul Chiappi (E-mail); Andrew Cox (E-mail); Andrew Stops (E-mail); Simone Bingham (E-mail); Mark Wollan (E-mail)
Subject: ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION PLAN PTY LTD & ANOR
 V ANSETT AUSTRALIA LIMITED (ADMINISTRATORS APPOINTED) & ORS



Docs_mel_520943_2.DOC

We refer to our letter dated 14 March 2002 (addressed to Paul Chiappi).
 As foreshadowed in that letter, we attach a marked up copy of the second amended originating motion.

Regards

Peter Cash

Deacons
 385 Bourke Street
 Melbourne Vic 3000
 Ph (03) 8686 6672
 Fax (03) 8686 6505
 Mobile 041 6067377
 email peter.cash@deacons.com.au

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

No. 2115 of 2001

F. 5382
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
Transport Industries Limited Pilots/Management Superannuation Plan) Plaintiffs

and

ANSETT AUSTRALIA LIMITED (Administrators Appointed) (ACN 004 209 410)
AND OTHERS ACCORDING TO THE SCHEDULE ATTACHED Defendants

SECOND AMENDED ORIGINATING MOTION BETWEEN PARTIES
Amended pursuant to the order of the Honourable Justice Warren
made on 2002

Date of document:
Filed on behalf of:

2002
The plaintiffs

Prepared by:
DEACONS
Lawyers
385 Bourke Street
MELBOURNE VIC 3000

Solicitors code: 370
DX 445
Tel: (03) 8686 6000
Ref: P E Cash

TO THE DEFENDANTS:

TAKE NOTICE that this proceeding by originating motion has been brought against you
by the plaintiffs for the relief or remedy set out below.

IF YOU INTEND TO DEFEND the proceeding you must attend before the Court at the
time and place named in the summons served with this originating motion.

FILED

Prothonotary

THIS ORIGINATING MOTION is to be served within 1 year from the date it is filed or within such further period as the Court orders.

The plaintiffs' claim is annexed to this originating motion

REMEDIES AND RELIEF SOUGHT BY THE PLAINTIFFS

The plaintiffs seek the following remedies and relief:

Answers to the following questions, declarations and orders.

1. Have there been retrenchments of members for the purposes of the Ansett Australia Ground Staff Superannuation Plan so as to entitle them to retrenchment benefits under Rule 1.13 of the First Schedule to the said Plan's Trust Deed dated 17 August 1999 made between the first defendant ("Ansett") and Ansett Ground Staff Superannuation Plan Pty Ltd, pursuant to letters dated 17 October 2001 and 9 November 2001 sent by the second defendants ("Administrators") to employees of Ansett who are members of the said Plan?
2. Have there been retrenchments of members for the purposes of the Ansett Transport Industries Limited Pilots/ Management Superannuation Plan so as to entitle them to retrenchment benefits under Rule 1.11(a) of Schedule 1 or Rule 2.12(1) of Schedule 2 to the said Plan's Trust Deed Dated 10 April 1991 made by Ansett (as amended), pursuant to letters dated 17 October 2001 and 9 November 2001 sent by the Administrators to employees of Ansett who are members of the said Plan?
3. ~~Have there been retrenchments of members for the purposes of the Ansett Transport Industries Limited Flight Engineers Superannuation Plan so as to entitle them to retrenchment benefits under Rule 1.12(1)(a) of Schedule 1 to the said Plan's Trust Deed dated 15 September 1992 made between Ansett and Ansett Flight Engineers Superannuation Plan Pty Ltd (as amended), pursuant to letters dated 17 October 2001 and 9 November 2001 sent by the Administrators to employees of Ansett who are members of the said Plan?~~
4. Are the Administrators:
 - (a) entitled; or
 - (b) obliged

to give any necessary declaration under the Ansett Australia Ground Staff Superannuation Plan so as to entitle members to retrenchment benefits under Rule 1.13 of the First Schedule to the Plan's Trust Deed dated 17 August 1999,

pursuant to letters dated 17 October 2001 and 9 November 2001 sent by the Administrators to employees of Ansett who are members of the said Plan?

5. Are the Administrators:

(a) entitled; or

(b) obliged

to give any necessary declarations under the Ansett Transport Industries Limited Pilots/Management Superannuation Plan so as to entitle members to retrenchment benefits under Rule 1.11(a) of Schedule 1 or Rule 2.12(1) of Schedule 2 to the Plan's Trust Deed dated 10 April 1991 pursuant to letters dated 17 October 2001 and 9 November 2001 sent by the Administrators to employees of Ansett who are members of the said Plan?

~~6. Are the Administrators:~~

~~(a) entitled; or~~

~~(b) obliged~~

~~to give any necessary declaration under the Ansett Transport Industries Limited Flight Engineers Superannuation Plan so as to entitle members to retrenchment benefits under Rule 1.12(1)(a) of Schedule 1 to the Plan's Trust Deed dated 15 September 1992, pursuant to letters dated 17 October 2001 and 9 November 2001 sent by the Administrators to employees of Ansett who are members of the said Plan?~~

7. Are the plaintiffs each entitled to determine as Trustee under their respective said Plans that the said members who received the said letters are entitled to receive retrenchment benefits as described above?

8. A declaration by the Court itself of a reduction of staff for the purposes of the Rules of the Ansett Australia Ground Staff Superannuation Plan so as to entitle those members of the Defined Benefit Section whose service ceased pursuant to the said letters of 17 October 2001 and 9 November 2001 to retrenchment benefits under Rule 1.13 of the First Schedule.

9. A declaration by the Court itself for the purposes of the Rules of the Defined Benefit Section for Pilots in the Ansett Australia Transport Industries Limited

Pilots/Management Superannuation Plan, in relation to members who ceased service pursuant to the said letters of 17 October 2001 and 9 November 2001, as follows:

- i. a declaration by the Court of a reduction of staff for the purposes of the said Rules;
- ii. a declaration by the Court for the purposes of the said Rules that the members ceased to be in their Employer's Service on account of retrenchment as the result of a re-organization or re-arrangement of staff for business policy reasons.

10. A declaration by the Court itself of a reduction of staff for the purposes of the Rules of the Defined Benefit Section of the Ansett Australia Transport Industries Limited Pilots/Management Superannuation Plan for Executive Managers, in relation to members who ceased service pursuant to the said letters of 17 October 2001 and 9 November 2001.

~~11. A declaration by the Court itself of a reduction of staff as a result of a re-organization or re-arrangement of staff for business policy reasons for the purposes of the Rules of the Defined Benefit Section of the Ansett Transport Industries Limited Flight Engineers Superannuation Plan, in relation to members who ceased service pursuant to the said letters of 17 October 2001 and 9 November 2001.~~

11A Is Regulation 7(c) of the Regulations for the Ansett Transport Industries Ltd Pilots' Superannuation Plan comprised in the Deed made 9 July 1973 by Ansett Transport Industries (Operations) Proprietary Limited now valid and in force for the purposes of the Defined Benefit Section for Pilots of the Ansett Transport Industries Limited Pilots/Management Superannuation Plan?

12. Declarations as to whether Ansett is obliged to make further contributions, and if so what further contributions, to:

- a. the Ansett Australia Ground Staff Superannuation Plan;
- b. the Ansett Australia Transport Industries Limited Pilots/Management Superannuation Plan.

13. In the event that Ansett is not under any obligation to make further contributions to the said Plans:

- a. does it have a power to make further contributions?
- b. is that power exercisable by the Administrators?
- c. can the Court compel any such power under (a) or (b) to be exercised?
- d. can the Court compel the power to be exercised in a particular way?
- e. can the Court exercise such a power itself?
- f. if the answer to (c) and (d) is yes, an order compelling the exercise of such power so as adequately to fund the payment of benefit entitlements under the said Plans, as required.
- g. if the answer to (e) is yes, an order exercising the power so as adequately to fund the payment of benefit entitlements under the said Plans, as required.

14. Declarations as to whether any such further contribution is a superannuation contribution within the meaning of section 556(1)(e) of the Corporations Act 2001, in relation to:

- a. the Ansett Australia Ground Staff Superannuation Plan;
- b. the Ansett Australia Transport Industries Limited Pilots/Management Superannuation Plan.

~~15. Leave to bring this proceeding under section 440D of the Corporations Act 2001.~~

~~16. An order appointing a person as the third defendant to represent all members of the said Plans who received letters dated 17 October and 9 November 2001 from the Administrators.~~

~~17. An order appointing a person as the fourth defendant to represent all members of the said Plan who did not receive letters dated 17 October and 9 November 2001 from the Administrators.~~

18. Orders as to costs and any other necessary or further orders.

Dated: 2002

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Solicitors for the plaintiffs

1. Place of trial: Melbourne
2. This originating motion was filed for the plaintiffs by Deacons, solicitors, of 385 Bourke Street, Melbourne, Victoria.
3. The address of the plaintiffs is Level 17, 501 Swanston Street, Melbourne, Victoria.
4. The address for service of the plaintiffs is c/- their solicitors, Deacons of 385 Bourke Street, Melbourne, Victoria.
5. The addresses of the defendants are:
First defendant: 501 Swanston Street, Melbourne, Victoria.
Second defendants: Level 35, The Tower, Melbourne Central, 360 Elizabeth Street, Melbourne, Victoria.
Third defendant: 40 Trethowan Avenue, West Melton, Victoria.
Fourth defendant: 4 Fortescue Avenue, Seaford, Victoria.

SCHEDULE OF PARTIES

Ansett Australia Ground Staff Superannuation Plan Pty Ltd (ACN 065 590 178) (as trustee of the Ansett Australia Ground Staff Superannuation Plan)	First plaintiff
Ansett Australia Pilots/Management Superannuation Plan Pty Ltd (ACN 065 590 043) (as trustee of the Ansett Transport Industries Limited Pilots/Management Superannuation Plan)	Second plaintiff
Ansett Australia Flight Engineers' Superannuation Plan Pty Ltd (ACN 065 589 979) (as trustee of the Ansett Transport Industries Limited Pilots/Management Superannuation Plan)	Third plaintiff
Ansett Australia Limited (Administrators Appointed) (ACN 004 209 410)	First defendant
Mark Francis Xavier Mentha and Mark Anthony Korda	Second defendants
Russell Thomas Booth	Third defendant
James Herbert Hennessy	Fourth defendant

DATED 2002

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Solicitors for the plaintiffs