

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

**COMMERCIAL AND EQUITY DIVISION
COMMERCIAL LIST**

No. 2115/01 F5382

BETWEEN:

**ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION PLAN PTY
LTD (ACN 065 590 178) (as Trustee of the ANSETT GROUND STAFF
SUPERANNUATION PLAN) & Ors**

Plaintiffs

and

**ANSETT AUSTRALIA LTD
(ADMINISTRATORS APPOINTED) (ACN 004 209 410) & Ors**

Defendants

Date of Document:

6 February 2002

Filed on behalf of:

The Plaintiffs

Prepared by:

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Ref: SLB

AFFIDAVIT OF SIMONE LOUISE BINGHAM

DEPONENT: SIMONE LOUISE BINGHAM

AFFIRMED: The 6th day of February 2002.

I, SIMONE LOUISE BINGHAM, of Level 10, 456 Lonsdale Street Melbourne in the State of Victoria, Solicitor, affirm and declare as follows:

1. I am a solicitor in the employ of Maurice Blackburn Cashman Lawyers ("MBC"), the solicitors for:

(i) The Australian Council of Trade Unions (ACTU)

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and the following trade unions:

- (ii) Transport Workers' Union of Australia ("TWU");
- (iii) Australian Municipal Administrative Clerical and Services Union ("ASU");
- (iv) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia ("CEPU");
- (v) Australian Federation of Air Pilots ("AFAP");
- (vi) Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union ("AMWU");
- (vii) National Union of Workers ("NUW");
- (viii) The Australian Licensed Aircraft Engineers' Association ("ALAEA");
- (ix) The Australian Workers' Union ("AWU");
- (x) The Association of Professional Engineers, Scientists and Managers Australia ("APESMA");
- (xi) Flight Attendants' Association of Australia ("FAAA");
- (xii) Ansett Pilots' Association ("APA"); and
- (xiii) Australian Liquor Hospitality and Miscellaneous Workers' Union ("LHMU"); and

Members of the abovenamed unions who were and are employed by Ansett Australia Limited (ACN 004 209 410),

2. Save where otherwise stated I make this Affidavit from my own knowledge. Except where otherwise indicated, where I depose to matters on the basis of information provided to me, I believe such information to be true and correct.

3. The ACTU is the peak body representing trade unions and their members in this country. The unions named in paragraph 1(ii) - (xiii) hereof are affiliated to the ACTU and are registered organisations pursuant to the Workplace Relations Act 1996 Cth. (as amended).

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Chronology – Superannuation Proceedings

4. On 28 November 2001 this firm was served with a Federal Court Application V3075/2001 made on behalf of the Defendants in these proceedings. A copy of the Federal Court Application V3075 of 2001 is now produced and shown to me and marked with the letters “SLB 1”.

5. I am informed by my principal, Mr Joshua Bornstein, and believe that the Application V0375 of 2001 was listed for a Direction before the Honourable Justice Goldberg on 29 November 2001. Mr Bornstein further informs me and I believe that Mr Beach QC and Mr Bernard Quinn of Counsel appeared at that Directions Hearing on behalf of the clients named in Paragraph 1 hereof. A copy of the Order of Justice Goldberg of 29 November 2001 is now produced and shown to me and marked with the letters “SLB 2”.

6. I am informed by Mr Bornstein and believe that on 4 December 2001 he received correspondence from Mr Peter Cash of Deacons Lawyers regarding the clients named in paragraph 1 hereof standing in the proceedings before the Federal Court in V.3075/01 . A copy of the correspondence of 4 December 2001 is now produced and shown to me and marked with the letters “SLB 3”.

7. In response to the facsimile transmission from Deacons, I am informed by Mr Bornstein and believe that he wrote to Mr Cash on or around 6 December 2001. A copy of the correspondence of 6 December 2001 is now produced and shown to me and marked with the letters “SLB 4”.

8. On 20 December 2001 Mr Beach QC and Mr Star of Counsel appeared on before the Honourable Justice Goldberg behalf of the clients referred to in Paragraph 1 hereof in V3075/2001. At the hearing of V3075/201, Counsel for the Plaintiffs in these proceedings sought an adjournment. Mr Santamaria QC as Counsel for the Trustees advised the court that “what we were proposing to do is have our Originating Motion issued in the Supreme Court

before the end of this week" (Line 31 Page 6, transcript of proceedings V3075/2001). A copy of the transcript of the proceeding of 20 December 2001 in V3075 of 2001 is now produced and shown to me and marked with the letters "SLB 5".

9. As a result of the advices given to court by Counsel for the Trustees, I expected that at least by way of courtesy the Supreme Court proceedings referred to would have been served on this firm or have been served personally on the clients referred to in paragraph 1 hereof.
10. With the hearing of V3075/2201 approaching on 1 February 2002 and the fact that I had not yet received copies of the Supreme Court proceedings, I contacted Mr Cash of Deacons on 17 January 2002. I left a voicemail message for Mr Cash requesting a copy of the Supreme Court documentation if it had been filed on behalf of his clients. I did not receive a response to that voicemail message.
11. On 22 January 2002 I caused to be forwarded by way of facsimile transmission to Mr Peter Cash of Deacons Lawyers correspondence requesting a copy of the Supreme Court proceedings if such proceedings had been issued, or advices regarding if and when such proceedings were to be issued on behalf of his client. A copy of the correspondence of 22 January 2002 is now produced and shown to me and marked with the letters "SLB 6".
12. On 24 January 2002 I received a response to my correspondence of 22 January 2002 from Mr Cash by way of facsimile transmission. In his response he advised that the Supreme Court proceedings had been issued on 21 December 2001 and refused to provide this firm with copies of those proceedings. A copy of the letter from Mr Cash of Deacons Lawyers is now produced and shown to me and marked with the letters "SLB 7".
13. As a result of Mr Cash's response, I caused the Supreme Court Registry file to be searched by Ms Rosemary Hamer, an assistant in the Employment and

Industrial Law Section of this firm. She provided me with copies of material from that file which were available to non-parties to the proceedings. A copy of the Supreme Court Commercial and Equity Division List Originating Motion No 2115 of 2001 is now produced and shown to me and marked with the letters "SLB 8".

14. On 1 February 2002 Mr Beach QC and Mr Star of Counsel appeared before the Honourable Justice Goldberg on behalf of the clients referred to in Paragraph 1 hereof in the proceedings V3075/2001. At these proceedings Mr Whelan, Counsel for the Defendants in this proceeding, sought an adjournment of this matter pending further discussions with the Trustees. Mr Whelan informed the court that the Supreme Court matter was listed before this Honourable Court on Friday, 8 February 2002 for Directions. A copy of this transcript of proceedings in V3075 of 2001 on Friday, 1 February 2002 is now produced and shown to me and marked with the letters "SLB 9".

Ansett Administration Proceedings - General

15. On 17 September 2001 the clients referred to in Paragraph 1 hereof applied to the Federal Court (V3027 of 2001) seeking an Order that the employees of the First Defendant company in these proceedings have the opportunity to make their views known at a creditors' meeting through the various Unions. The ACTU and the Unions were successful in their Application. A copy of the Order of Goldberg J in V0327of 2001 is now produced and shown to me and marked with the letters "SLB 10".
16. Since 17 September 2001, the ACTU and the twelve unions have appeared and have been heard in the following "Ansett proceedings":
- (i) V3045 of 2001 - Application to Approve Proposed Memorandum of Understanding;
 - (ii) V3051 of 2001/V3060 of 2001 - Application by Hazelton Group Administrator for Apportionment;

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- (iii) V3083 of 2001 - Application for Approval of the Commonwealth Government Loan - the \$195 Million Dollar Issue;
- (iv) V3106 of 2001 - Application for Approval of Method of Distribution of Notices of Creditors' Meeting;
- (v) V3075 of 2001 - Application re Superannuation;
- (vi) V3010 of 2002 - Approval of Tesna Sale;
- (viii) V3015 of 2002 - Application Seeking Directions that the Administrators continue the operation of the Ansett land line business.

ACTU and Unions - Protection of All Employee Interests.

17. The ACTU, together with its affiliates named in Paragraph 1 hereof, is the most appropriate body to ensure the protection of all employee interests and that the treatment of employees' interests is consistent.
18. At this point I have been informed by Mr Cash in his correspondence of 24 January 2002 that the "members' interests" are protected by the joining of two employee Defendants. I am unaware of the names or identities of these employee Defendants. I have made enquiries at the ACTU and I have been informed by Linda Rubinstein, Industrial Officer with responsibility for superannuation, and believe that she is unaware of the identity of these employee members. Save for the fact the representatives "employee members" include persons from the class of engineers fund who are employed and a person of the ground services fund who has been "terminated". To my knowledge there is no representative member employee of the ground services fund who will be employed by Tesna in Ansett Mark II. As such not all employee interests are represented by the newly joined Defendants. It is not clear that an adequate range of considerations affecting employees will be enabled by the joinder of two employee Defendants.

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Ground Staff Fund

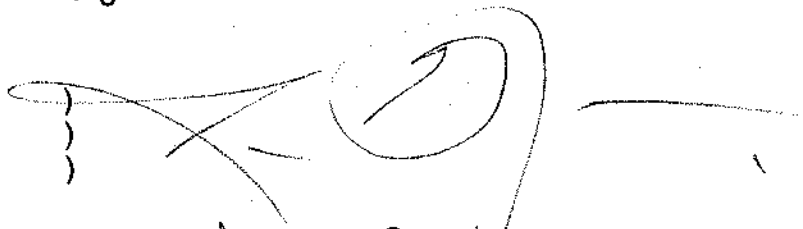
19. The Ansett Transport Industries Limited Airline Ground Staff Superannuation Plan Trust Deed and Rules provide at Rule 10 Appointment and Removal of Trustee at subrule (2) that appointment of the three Trustees representing members of the Plan will be arranged by the ACTU. At sub rule 4 the members through the ACTU may remove a member trustee or appoint a replacement member Trustee. A copy of Rule 10 from the Ansett Transport Industries Limited Ground Staff Superannuation Plan Trust Deed and Rules now produced and shown to me and marked "SLB 11".

Flight Engineers Fund

20. The Ansett Transport Industries Limited Flight Engineers Superannuation Plan Supplementary Trust Deed provides at Rule 10 Appointment and Removal of Trustee sub-rule (2) that appointment that appointment of the three Trustees representing members of the Plan will be arranged by the Australian Airline Flight Engineers Association. At sub rule (4) the ALFEA may remove a member trustee or appoint a replacement member Trustee. A copy of Rule 10 from the Ansett Transport Industries Limited Flight Engineers Superannuation Plan Supplementary Trust Deed and Rules now produced and shown to me and marked "SLB12".
21. The ACTU and the twelve unions named in Paragraph 1 hereof seek to take part in this proceeding to a limited extent to lead evidence and make submissions should that be necessary. It is not intended to duplicate the matters dealt with by other parties.
22. On the grounds stated above, I believe that the ACTU and the twelve Unions named in Paragraph 1 hereof should be joined as parties to these proceedings.


(SC-Do)

AFFIRMED by the deponent at
Melbourne in the State of Victoria
this 6th day of February 2002



Before me:

Anne Gooley

ANNE GOOLEY
of 456 Lonsdale Street, Melbourne
a natural person who is a current
practitioner within the meaning
of the Legal Practice Act, 1998.