

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

SLB 1

Date of Document:	6 February 2002
Filed on behalf of:	The Plaintiffs
Prepared by:	Solicitor's Code: 564
Maurice Blackburn Cashman	Tel: 9605.2700
Lawyers	DX: 466
Level 10, 456 Lonsdale Street	Ref: SLB
Melbourne Vic. 3000	

This is the document marked SLB 1 now produced and shown to Simone Louise Bingham at the time of affirming this Affidavit 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, 1996.

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIAN DISTRICT REGISTRY

No. 13075 of 2001

ORIGINATING PROCESS

IN THE MATTER OF:

ANSETT AUSTRALIA LIMITED (A.C.N. 004 209 410) (Administrators Appointed)

**MARK FRANCIS XAVIER MENTHA and MARK ANTHONY KORDA (as
Administrators of Ansett Australia Limited)** Plaintiffs

and

**ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION PLAN PTY LTD
(A.C.N. 065 590 178),**

**ANSETT AUSTRALIA PILOTS/MANAGEMENT SUPERANNUATION PLAN PTY LTD
(A.C.N. 065 590 043), and**

**ANSETT AUSTRALIA FLIGHT ENGINEERS' SUPERANNUATION PLAN PTY LTD
(A.C.N. 065 589 979)** Defendants

APPLICATION

A DETAILS OF APPLICATION

This Application is made under section 447D of the Corporations Act 2001.

On the facts stated in the supporting affidavit, the plaintiffs seek:

- 1 Directions pursuant to section 447D of the Corporations Act and a declaration pursuant to section 21 of the Federal Court Act as to whether the recent



Date of document: 27 November 2001

Prepared by:
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
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Solicitor's Code: 54
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Tel: 9229 9647
Fax: 9229 9712
Ref: P Chiappi:1208689

114217

termination of the employment of employees is a "retrenchment" for the purposes of the respective trust deeds of the Ansett Australia staff superannuation plans.

- 2 An order pursuant to Rule 3(1) of the Federal Court Rules abridging the time by which this Originating Process is required to be served on the defendants pursuant to Rule 2.7 of the Federal Court (Corporations) Rules 2000.

Date: 27 November 2001

Arnold Bloch Leibler
Solicitors for the plaintiffs

This Application will be heard by the Federal Court of Australia, 305 William Street, Melbourne at 9.15 am on 29th November 2001.

B FILING

Date of filing: November 2001

27 NOV 2001



This originating process is filed by Arnold Bloch Leibler for the plaintiffs.

C SERVICE

The plaintiffs' address for service is Arnold Bloch Leibler, Lawyers & Advisers, Level 21, 333 Collins Street, Melbourne, Victoria, 3000

It is intended to serve a copy of this originating process on the Australian Securities and Investments Commission.

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIAN DISTRICT REGISTRY

No. V3075 of 2001

IN THE MATTER OF:

ANSETT AUSTRALIA LIMITED (A.C.N. 004 209 410) (Administrators Appointed)

MARK FRANCIS XAVIER MENTHA and **MARK ANTHONY KORDA** (as
Administrators of Ansett Australia Limited) Plaintiffs

and

ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION PLAN PTY LTD
(A.C.N. 065 590 178),

ANSETT AUSTRALIA PILOTS/MANAGEMENT SUPERANNUATION PLAN PTY LTD
(A.C.N. 065 590 043), and

ANSETT AUSTRALIA FLIGHT ENGINEERS' SUPERANNUATION PLAN PTY LTD
(A.C.N. 065 589 979) Defendants

AFFIDAVIT OF PAUL FRANCIS CHIAPPI

On 27 November 2001, I, **PAUL FRANCIS CHIAPPI**, solicitor, of Level 21, 333 Collins Street, Melbourne in the State of Victoria, say on oath:

1 I am a solicitor and partner of the firm Arnold Bloch Leibler of Level 21, 333 Collins Street, Melbourne Victoria. I have the care of this matter on behalf of the plaintiffs.

Date of document: 27 November 2001

Prepared by:
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
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115636

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DEAN GUIDOLIN
ARNOLD BLOCH LEIBLER
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MELBOURNE 3000
A NATURAL PERSON WHO IS A CURRENT
PRACTITIONER WITHIN THE MEANING OF
THE LEGAL PRACTITIONERS ACT 1998

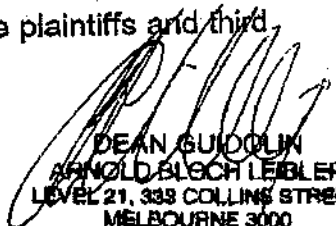
28-NOV-2001 15:58 FROM ABL P. CHIAPPI

2 I am informed by Dominic Emmett of Andersen Legal, a solicitor acting for the plaintiffs, and believe that Mr Emmett has been involved in discussions with the representative of three superannuation schemes for employees of Ansett Australia Limited. I am informed by Mr Emmett and believe that:

(a) prior to the appointment of the plaintiffs as administrators, Ansett Australia Limited or companies within the Ansett Group of Companies ("Ansett") contributed to a number of superannuation schemes for employees. Those schemes included the Ansett Australia Ground Staff Superannuation Plan ("the Ground Staff Plan"), the Ansett Australia Pilots/Management Superannuation Plan ("the Pilots/Management Plan") and the Ansett Australia Flight Engineers' Superannuation Plan ("the Flight Engineers' Plan"), (collectively "the Plans");

(b) each of the Plans, through its respective trust deed or deeds, provides that, upon termination of an employee's employment with Ansett, the employee may receive a greater or different benefit if the termination occurs "on account of Retrenchment" than if the termination occurs for other reasons, such as personal reasons or because the employee has reached retirement age. In the trust deed governing the Ground Staff Plan, "Retrenchment" is defined, at page 29, as "a reduction of staff declared by the Employer for the purposes of these Rules";

(c) the airline which is presently being run by the plaintiffs (and which is presently the subject of sale negotiations between the plaintiffs and third

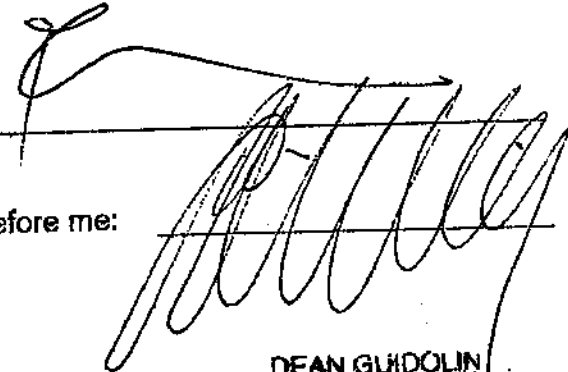

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MELBOURNE 3000
A NATURAL PERSON WHO IS A CURRENT
PRACTITIONER WITHIN THE MEANING OF
THE LEGAL PRACTICE ACT 1986.

parties) requires much less staff than the airline operated under the Ansett name prior to the appointment of the plaintiffs. The plaintiffs have offered some Ansett employees the opportunity to terminate their employment on the grounds of redundancy and the plaintiffs have further terminated the employment of other Ansett employees on the grounds of redundancy.

3 I am informed by Mr Emmett and believe that the trustees of the Plans have raised with the plaintiffs the following issue. The Plans, through their definition of Retrenchment, require there to have been a reduction of staff declared by the Employer for the purpose of the Rules (being the Rules of the respective Plans). The plaintiffs have not made a declaration in formal terms. The trustees of the Plans have agreed with the plaintiffs that the issue of whether the redundancies are properly to be regarded as Retrenchment in the terms of the respective trust deeds for the various Plans is an issue that should be put before this Honourable Court for directions and declaration.

4 I am informed by Peter Cash of Deacons, the solicitors acting for the defendants, and believe that the relevant trust deeds and correspondence are to be exhibited in this proceeding to an affidavit to be filed by the defendants.

SWORN by PAUL FRANCIS CHIAPPI at Melbourne in the State of Victoria on 27 November 2001

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Before me: 

DEAN GUIDOLIN
ARNOLD BLOCH LEIBLER
LEVEL 21, 333 COLLINS STREET
MELBOURNE 3000
A NATURAL PERSON WHO IS A CURRENT PRACTITIONER WITHIN THE MEANING OF THE LEGAL PRACTICE ACT 1996