

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE**

**COMMERCIAL AND EQUITY DIVISION  
COMMERCIAL LIST**

No. 2115/01 F5382

**B E T W E E N :**

**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 8**

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

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This is the document marked SLB 8 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 SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL AND EQUITY DIVISION  
COMMERCIAL LIST

F. 5382  
BETWEEN:

No. 2115/01

**ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION PLAN PTY LTD  
(ACN 065 590 178) (as trustee of the Ansett Australia Ground Staff  
Superannuation Plan) AND OTHERS ACCORDING TO THE  
SCHEDULE ATTACHED**

Plaintiffs

and

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

Defendants

**ORIGINATING MOTION BETWEEN PARTIES**

Date of document:  
Filed on behalf of:

21 December 2001  
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

21 DEC 2001

  
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 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 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.
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 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 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: 21 December 2001

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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 501 Swanston Street, Melbourne and Level 35, The Tower, Melbourne Central, 360 Elizabeth Street, Melbourne, Victoria, respectively.

## 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

DATED 21 December 2001

*Peacocks*

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Solicitors for the plaintiffs