

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

F. 5382

No. 2115 of 2001

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

Defendants

**PLAINTIFFS' SUPPLEMENTARY STATEMENT OF
RELEVANT FACTS AND LAW**

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 6672
Ref: P E Cash

INTRODUCTION

1. The plaintiffs have previously filed and served their Statement of Relevant Facts and Law dated 22 February 2002 ("**First Statement**") which referred to the matters raised in the Originating Motion dated 21 December 2001.
2. The Originating Motion has been amended, and this Supplementary Statement of Relevant Facts and Law refers in particular to the amendments to the Originating Motion which are comprised in paragraphs 1(b), 2(b), 4(a),(b)(ii), 5(a), (b)(ii), 7(b) 8(b), 9(b), 10(b), and 11A of the Second Amended Originating Motion dated 21 March 2002 (which was amended pursuant to the orders of the Honourable Justice Warren made on 15 March 2002).

3. Abbreviations used in the First Statement are used in this Supplementary Statement.

REDUNDANCIES OF ANSETT EMPLOYEES : ENTITLEMENTS TO RETRENCHMENT BENEFITS

4. As described in the First Statement, some employees of Ansett ceased service on account of redundancy pursuant to letters dated 17 October 2001 [plaintiffs' document 3.1.60] and 9 November 2001 [plaintiffs' document 3.2.50] sent to them by the Administrators.
5. Many other employees of Ansett have also ceased service on account of redundancy ("**the other employees**"), pursuant to other letters in various forms that have been sent to them by the Administrators. Copies of those letters are the plaintiffs' documents 3.2.40, 3.2.42, 3.2.44, 3.2.57, 3.2.59, 3.2.60, 3.2.70, 3.2.80 and 3.2.90.
6. Some of those other employees were members of the Ground Staff Plan.
7. Paragraph 1(b) in the Second Amended Originating Motion is directed at the question of whether those employees are entitled to retrenchment benefits under the Ground Staff Plan.
8. Some of those other employees were members of the Pilots/Management Plan.
9. Paragraph 1(b) in the Second Amended Originating Motion is directed at the question of whether those employees are entitled to retrenchment benefits under the Pilots/Management Plan.
10. The legal issues that arise under paragraphs 1(b) and 2(b) correspond to the legal issues under paragraphs 1(a) and 2(a). They are described in paragraphs 1 to 8 inclusive of Part B of the First Statement.
11. The plaintiffs give notice of a further argument that may be made in support of a submission that employees who have been made redundant are entitled to retrenchment benefits:
 - (a) in respect of redundancies since 13 September 2001, Ansett has notified the fund administrator (NSP Buck Pty Ltd) of the Ground Staff Plan and the Pilots/Management Plan that the respective employees have "exited Ansett on a redundancy";

- (b) it may be contended that those communications are sufficient as the requisite "declarations" for the purposes of the said Plans, and give rise to retrenchment benefits accordingly.

DECLARATIONS BY THE ADMINISTRATORS

12. Paragraph 4(a)(b)(ii) of the Second Amended Originating Motion is directed at the questions of whether the Administrators are entitled or obliged to give any necessary declaration under the Ground Staff Plan to entitle the members concerned to retrenchment benefits.
13. The legal issues that arise under paragraph 4(a)(b)(ii) correspond to the legal issues under paragraph 4(a)(b)(i) that are described in paragraphs 9 to 17 inclusive in Part B of the First Statement.
14. Paragraphs 16 and 17 of Part B of the First Statement refer to the implied obligation of good faith. It may be relevant to the assessment by the Court of the carrying out of that obligation that payment of retrenchment benefits to all members of the Ground Staff Plan may exhaust, or nearly exhaust, the assets of that Plan to the detriment of the continuing members. It may also be relevant that Ansett is or is not obliged or able to make further contributions to the Plan.
15. Paragraph 5(a) (b) (ii) of the Second Amended Originating Motion is directed at the questions of whether the Administrators are entitled or obliged to give any necessary declarations under the Pilots/Management Plans to entitle the members concerned to retrenchment benefits.
16. The same legal issues arise under paragraph 5(a) (b)(ii) as in the case of paragraph 4(a) (b)(ii), but at the time of the making of this Supplementary Statement the Trustee of the Pilots/Management Plan is insufficiently certain of the status of Plan assets and liabilities to be able to say what is said in respect of the Ground Staff Plan under paragraph 14 hereof.

DETERMINATIONS BY THE TRUSTEES

17. The issues that arise under paragraph 7(b) of the Second Amended Originating Motion for the Ground Staff and Pilots/Management Plans correspond to the issues described in paragraphs 18 and 19 of the First Statement.

DECLARATIONS BY THE COURT ITSELF

18. The issues that arise under paragraph 8(b) of the Second Amended Originating Motion for the Ground Staff and Pilots/Management Plans correspond to the issues described in paragraphs 20 to 23 inclusive of the First Statement.
19. In the case of the Ground Staff Plan, it may be relevant to any declaration considered by the Court:
 - (a) whether to make the declaration would (given the numbers of redundancies) exhaust, or nearly exhaust, the assets of the Plan to the detriment of the continuing members.
 - (b) whether Ansett is or is not obliged and able to make further contributions to the Plan.
20. The issues that arise under paragraphs 9(b) and 10(b) of the Second Amended Originating Motion for the Pilots/Management Plan correspond to those described in paragraphs 20 to 23 inclusive of the First Statement.
21. In the case of the Pilots/Management Plan, the Trustee is unable to say whether the kind of matters referred to in paragraph 19 herein will be material.

PARAGRAPH 11A OF THE SECOND AMENDED ORIGINATING MOTION

22. The legal issue in paragraph 11A of the Second Amended Originating Motion is whether Regulation 7(c) of the Regulations for the Ansett Transport Industries Ltd Pilots' Superannuation Plan comprised in the Deed made 9 July 1973 is still in force for the purposes of the Defined Benefit Section for Pilots in the Pilots/Management Plan.
23. The resolution of this legal issue will depend inter alia upon the scope of the relevant power of amendment in Regulation 20 of the Deed made 9 July 1973, and whether it authorised the deletion of Regulation 7(c). The deletion occurred with the making of the Supplemental Deed made 27 June 1979 by Ansett Transport Industries (Operations) Proprietary Limited.
24. Regulation 7(c) stated:

"That the Company or such companies or person hereinbefore mentioned in this Regulation 7 may make such further contributions as

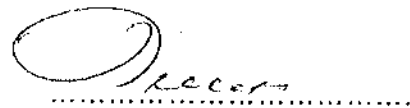
shall be recommended by an actuary as being necessary to provide for the benefits that Members or their dependants have rights to receive from the Scheme."

25. If Regulation 7(c) is still in force, and if it is a live issue for the Defined Benefit Section for Pilots that further contributions from Ansett are required, then Regulation 7(c) may be relevant to whether further contributions should be made.
26. The authorities that are relevant to paragraph 11A are considered in B.H.L.S.P.F. Pty Ltd v Brashes Pty Ltd [2001] VSC 512. The first defendant in that case has filed a Notice of Appeal.

**FUNDING AND SOLVENCY CERTIFICATE :
GROUND STAFF PLAN**

27. Mr Francis has provided a fifth Funding and Solvency Certificate dated 24 April 2002 for the Ground Staff Plan.

DATED : 6 May 2002.



DEACONS

Solicitors for the plaintiffs