

BETWEEN:

**ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION PLAN
PTY LTD (ACN 065 590 178) (as trustee of the Ansett Australia Ground
Staff Superannuation Plan) and ANOR**

Plaintiffs

And

**ANSETT AUSTRALIA LIMITED (Administrators Appointed) (ACN 004 209 210)
And Others according to the Schedule attached**

Defendants

**SUBMISSIONS ON BEHALF OF THE FOURTH DEFENDANT
IN RELATION TO COSTS**

Summary

1. The Fourth Defendant ("Clarke") submits that –
 - (a) the First Plaintiff ("Ground Staff Plan Trustee") should pay the costs of the defendants on a solicitor - client basis in respect of two of the three questions raised for determination by the Court in the proceeding; and
 - (b) in respect of the third question the First and Second Defendants (respectively, "Ansett" and "the Administrators") should pay the costs of the Ground Staff Plan Trustee, Clarke and the third defendant, Booth, on a solicitor – client basis;
 - (c) the Ground Staff Plan Trustee should recover its costs and expenses of the proceeding, save for those recovered from Ansett and the Administrators, out of the assets of the Plan of which it is trustee.

Argument

2. Clarke adopts the designation of the three distinct questions referred to in the outlines of submissions of each of the other parties to the proceeding.

3. The first and second questions were questions properly raised in respect of the construction of the Deed and administration of the Fund of which the Ground Staff Plan Trustee was trustee. Each of the parties to the proceeding was a person whose interests were affected by the resolution of those questions either as a party to the Deed or a beneficiary under the Plan. In that respect Clarke agrees with the submissions of Ansett and the Administrators at paragraphs 1.7.1 and 1.7.2 of their submission. Clarke would add to those paragraphs that the first and second questions were also raised to ascertain the liability of the employer, Ansett, as a contributor to the trust fund.
4. In respect of the third question it is submitted that the question put before the Court was not one which concerned the administration of the trusts so much as the administration of the assets of Ansett under the control of the Administrators. In this regard Clarke adopts the submissions of Booth at paragraphs 8 – 15 of his submissions. The costs of the third question should properly be dealt with as costs of the administration of Ansett because of the true nature of the task before Court, namely that it provide direction to the Administrators as to the proper disposition of Ansett's assets under the s.556 regime.
5. The answer to the third question was one which was obtained for the benefit of all the creditors of Ansett. Even though the relevance of the answer to the question is somewhat linked to the outcome of Federal Court proceedings concerning the Deed of Company Arrangement, it was nonetheless determined in this proceeding as a matter of convenience by agreement between the parties. The issue of whether the third question be determined in advance of the validity of the Deed of Company Arrangement, or vice versa, was resolved by having that question made the subject of this proceeding. Notwithstanding that the issue was determined in this proceeding the Court should pay due regard to the essential nature of the question and for whose benefit it was determined.

6. Clarke is unable to agree with Booth's contention that the costs to be paid by the Plaintiff should be paid by both Plaintiffs. Difficulties arise from this proposition having regard to the separate interests of the members of the Ground Staff Plan and the Pilots Management Plan and the lack of representation on behalf of the latter on this issue.

Orders

7. Clarke submits that the proper orders should be:
- (a) the Ground Staff Plan Trustee pay out of the assets of the Ansett Australia Ground Staff Superannuation Plan the costs of the Defendants of and incidental to the determination of the first and second questions on a solicitor-client basis;
 - (b) Ansett and the Administrators pay the costs of the Ground Staff Plan Trustee, Booth and Clarke of and incidental to the determination of the third question on a solicitor-client basis, such costs to be costs of the administration;
 - (c) save for those costs which it recovers pursuant to the order in subparagraph (b), the costs and expenses of and incidental to the proceeding of the Ground Staff Plan Trustee be retained out of the assets of the Ansett Australia Ground Staff Superannuation Plan.

DATED: 16 April 2003



J.D. MERRALLS



C. C. MACAULAY