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COMMERCIAL LIST - DIRECTIONS HEARING
IN THE SUPREME COURT OF VICTORIA
COURT 1 OLD HIGH COURT
BEFORE THE HONOURABLE JUSTICE WARREN
FRIDAY 20 DECEMBER 2002

IN THE MATTER OF
ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION PLAN PTY LTD

v

ANSETT AUSTRALIA (ADMINISTRATOR APPOINTED) LTD

5382/2002

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MR D. MACLEAN APPEARED ON BEHALF OF ANSETT AUSTRALIA LTD.
MR R. BRETT QC APPEARED ON BEHALF OF THE ACTU.
MR A. COX APPEARED ON BEHALF OF THE THIRDNAMED DEFENDANT.
MR S. ROSEMAN APPEARED ON BEHALF OF THE FOURTHNAMED DEFENDANT.
MR L. ZWIER APPEARED ON BEHALF OF THE ADMINISTRATOR.

HER HONOUR: In this matter I find as follows:

- (1) Pursuant to the Superannuation Statutory Regime and the Trust Deed, Ansett is obliged to make contributions in accordance with the Funding and Solvency Certificate known as FSC5.
- (2) The said obligation arises also from the contract of employment between Ansett and its employees who were members of the ground staff plan.
- (3) The Funding and Solvency Certificate FSC5 is valid and a shortfall has arisen that is required to be met pursuant to the obligations upon Ansett. The obligation does not attract

1 priority under s.556(1) of the Corporations
2 Act 2001 and constitutes a debt provable in
3 the administration of Ansett, and I publish my
4 reasons.

5 As a result of my reasons, I direct the trustee to prepare
6 answers as informed by my reasons. Have the parties
7 agreed upon a date when the matter can be listed for
8 mention?

9 MR McLEAN: No, Your Honour, they have not.

10 HER HONOUR: I will be available any day from 20 January next
11 onwards.

12 MR ROSEMAN: I can only speak for the trustee, Your Honour. We
13 would think from our point of view, not before 3 February,
14 but we're in Your Honour's hands.

15 MR ZWIER: 3 February, Your Honour.

16 HER HONOUR: If I adjourn the matter until 9.30 a.m. on
17 Tuesday, 4 February for mention, would that be convenient
18 to all the parties.

19 MR ROSEMAN: It would for the trustee, Your Honour.

20 MR ZWIER: I'm sorry, Your Honour. I appear for the
21 administrators of the Ansett Group. The Ansett
22 administrators would seek to have a Directions Hearing as
23 soon as possible. If it were at all possible for us to
24 come back on Monday to try and work out when that
25 Direction Hearing should be, that would be a course
26 appropriate in the circumstances of this matter, Your
27 Honour. The Ansett administrators do not wish for there
28 to be any delay in resolving these matters and therefore
29 it would not be their desire to see us deferring the
30 further hearing until February or even indeed to
31 20 January.

1 HER HONOUR: What course would you propose then, that the
2 matter come back on Monday morning next.

3 MR ZWIER: If that would be convenient to the court to come
4 back on Monday morning perhaps by then we would have had
5 an opportunity to read Your Honour's reasons and perhaps
6 formulate when it might be convenient for all the parties
7 to come back to argue as to what directions and orders
8 ought to be made, Your Honour.

9 HER HONOUR: I'm not sure quite what it is you propose next
10 week. If you simply propose coming back on Monday to tell
11 me when you will come back thereafter, it may be we can
12 agree upon the thereafter now.

13 MR ZWIER: It is difficult because I have not read Your
14 Honour's reasons and I have not had an opportunity to
15 speak to the other parties. The only issue that the
16 administrators have instructed me to agitate is for
17 expedition, for obvious reasons, Your Honour.

18 HER HONOUR: Yes, certainly I would be minded to deal with the
19 matter as expeditiously as might be required. What I
20 could do would be to list the matter for mention on
21 4 February and grant liberty to apply, and in the event
22 that in the intervening period, you wish to bring the
23 matter on, you could make arrangements through the
24 Prothonotary and subject to inconvenience and other
25 matters, I would endeavour to accommodate the parties.

26 MR ZWIER: It would be the preference of the administrators to
27 fix a date earlier than that if that is at all possible to
28 do so, because, obviously, large amounts of money might
29 flow for payment of redundancy to employees depending what
30 might hereafter arise and the administrators wish for that
31 to occur in the shortest possible time frame if it can so

1 occur. Unfortunately, if the matter comes back in
2 February, then periods and time will run on a later time
3 table.

4 HER HONOUR: The situation is that the judgment as is obvious
5 is very long, it is approximately 160 pages as I recall.
6 The parties might need some time to consider the reasons
7 and if you came back on Monday morning, the position might
8 not be very far advanced.

9 MR ZWIER: We may need the court to come back perhaps later in
10 the week or indeed, earlier in January.

11 HER HONOUR: My difficulty is that what you propose seems to be
12 very uncertain. What I will do, if it is convenient to
13 the parties is list the matter for mention on Monday next
14 at 12 noon and the parties can come before me and inform
15 me as to the position they wish to pursue at that time and
16 I will endeavour to accommodate the parties in all the
17 circumstances and deal with it as expeditiously as I
18 possibly can. I will be sitting from 20 January onwards
19 and if the parties would bear that in mind as to any
20 adjourned date after Monday. Are there any matters
21 otherwise to be dealt with this afternoon.

22 MR ROSEMAN: No, Your Honour. I was instructed to oppose it
23 being listed on Monday, preferably 6 February, but I have
24 heard what my friend has to say and I can't say much more.

25 HER HONOUR: It may be on Monday all that does happen is the
26 matter is adjourned again until February, but in light of
27 the concerns that Mr Zwier expresses on the basis of his
28 instructions, I consider it appropriate to at least have
29 the matter mentioned on Monday next at 12 noon.

30 MR ROSEMAN: Certainly.

31 HER HONOUR: Mr Brett, is there anything you wish to say?

1 MR BRETT: The only thing I wish to say, Your Honour, is we
2 will simply abide the order of the court as to when the
3 matter comes back on and if Your Honour would excuse us,
4 we wouldn't appear on Monday.

5 HER HONOUR: Yes, very well. I will excuse the ACTU in those
6 circumstances.

7 HER HONOUR: Mr Cox?

8 MR COX: Nothing further, Your Honour.

9 HER HONOUR: Yes. Unless there is anything any other party
10 wishes to raise. Mr McLean, is there anything?

11 MR McLEAN: No, Your Honour.

12 HER HONOUR: Very well. I will adjourn this matter until
13 12 noon on Monday next.

14 ADJOURNED UNTIL MONDAY 23 DECEMBER 2002