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

MONDAY 20 JANUARY 2003

IN THE MATTER OF
ANSETT AUSTRALIA LTD

F5476

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MR D. MACLEAN APPEARED ON BEHALF OF THE PLAINTIFF.
MS J. BELLELI APPEARED ON BEHALF OF THE 1ST AND 2ND DEFENDANTS.
DR I. HARDINGHAM APPEARED ON BEHALF OF THE 3RD DEFENDANT.
MR J. MERRALLS APPEARED ON BEHALF OF THE 4TH DEFENDANT.

HER HONOUR: What is the position, Mr MacLean?

MR MacLEAN: Your Honour asked us to report on what's
happening. From the trustees' point of view, we have
circulated a draft of possible orders and there is
certainly a process of negotiation going on about those
orders, but we are not in a position yet to put forward a
form of orders to the court. There's probably only a
matter of days to exhaust the negotiation process, however
the solicitors for the first and second defendants have
said could the consideration of any formal orders being
made be put off to a date shortly after 3 February, at
Your Honour's convenience, perhaps with liberty to apply
in the meantime. That's the second point. The third
point is the trustee has received a copy of a letter to
the court from Pointon Partners, the solicitors for the
third defendant, foreshadowing some matters to be raised
with the court concerning s.5561(e). The trustee takes a
view that in any event the court should deal with that
matter first before final orders can be made, on the basis

1 that the trustee should see what the whole judgment is
2 once it's there.

3 HER HONOUR: The trustee has the judgment. That was delivered
4 before Christmas.

5 MR MacLEAN: Certainly, Your Honour, and the letter from
6 Pointon Partners has not impeded our preparation of the
7 draft that's been circulated.

8 HER HONOUR: And you would anticipate, subject to completion of
9 discussions with the other parties, that some time on or
10 shortly after 3 February you would be in a position to
11 hopefully bring orders before me?

12 MR MacLEAN: Yes, Your Honour, they will either be orders posed
13 by the trustee itself or orders that have the backing of
14 an accord by all the parties. But the process of working
15 out which one it will be will be over by then, we expect.

16 HER HONOUR: Do you wish to propose a date, at this stage? It
17 would certainly be convenient any time after 3 February.
18 It may be that some members of the bar and the profession
19 have other matters at 9.30 on the morning of 3 February
20 and it may be that it is better that it is 4 February.

21 MR MacLEAN: Yes. I think 3 February is the date that counsel
22 for the first and second defendants is back on board.
23 Apparently the 4th would be fine - certainly fine for us.

24 HER HONOUR: Well, I can tentatively indicate 4 February at
25 9.30, and I'll hear what the other parties have to say. I
26 take it that that date and time would be convenient to the
27 trustee?

28 MR MacLEAN: Certainly, Your Honour. Your Honour, the only
29 other matter is, I think it's fair to say, all of the
30 parties are assuming that no time for an appeal is running
31 at the moment, and I've been - - -

1 HER HONOUR: Well, no orders or answers have been provided with
2 respect to the originating motion in the form of an order.
3 MR MacLEAN: Yes, thank you for that, Your Honour. I think
4 that's all I have to say.
5 HER HONOUR: Ms Belleli?
6 MS BELLELI: I have nothing further to say.
7 HER HONOUR: Dr Hardingham?
8 DR HARDINGHAM: Your Honour, I have nothing to add to the
9 matters raised by my learned friend Mr MacLean, except in
10 relation to the issue of reasons. Your Honour will have
11 received the letter from my instructing solicitors. It's
12 with very great respect that we suggest that there is a
13 hiatus in reasons in relation to s.5561(e). In paragraphs
14 297-301 of the judgment, Your Honour makes it very clear
15 that 5561(e) relates to pre-existing obligations, it does
16 not relate to obligations that arise after the relevant
17 date. In paragraphs 372-3 of your judgment, you indicate
18 very clearly that the obligations were incurred prior to
19 the relevant date, and then at the end of your judgment,
20 you conclude that 5561(e), indeed no paragraph of 5561, is
21 applicable to confer priority on those entitled to
22 retrenchment benefits. And so we would respectfully
23 suggest, Your Honour, that it would be appropriate if
24 supplementary reasons were provided to fill that hiatus.
25 As Your Honour will appreciate, and as I think the letter
26 makes clear, it is the last thing in the world that I wish
27 to do to re-agitate the issue of 5561(e). It's only a
28 matter of having adequate reasons on the record, in case
29 the matter goes further, Your Honour.
30 HER HONOUR: Dr Hardingham, the letter from your instructor in
31 fact was not seen by me until yesterday, and I do need to

1 give some consideration to its contents, as you might
2 appreciate.

3 DR HARDINGHAM: Yes.

4 HER HONOUR: What I would intend to do would be to consider the
5 contents of the letter, whether in fact I should provide
6 supplementary reasons or whether indeed it is appropriate
7 or possible for me to do so. I will give that matter some
8 consideration and if I intend to go down that path, what I
9 would intend to do would be to have my Associate contact
10 the parties and list the matter for mention on a morning
11 that would be convenient to all the parties.

12 DR HARDINGHAM: Thank you, Your Honour. Your Honour, can I
13 simply refer you to one authority? Your Honour made
14 reference to the issue of whether it is indeed open to
15 Your Honour to pursue this course. There's a decision of
16 the Full Court of the Supreme Court of Victoria, called
17 Sun Alliance Insurance v. Massoud, and that's reported in
18 1989 VR p.8 and it's very helpful.

19 HER HONOUR: Thank you Dr Hardingham for that authority. Are
20 there any other matters you wish to raise this morning?

21 DR HARDINGHAM: No, Your Honour.

22 HER HONOUR: Mr Merralls?

23 MR MERRALLS: If you please, Your Honour, the date 4 February
24 at 9.30 would suit us. I did raise a matter involving a
25 possible misprint in a word in Your Honour's judgment in
26 December and I wondered whether Your Honour - - -

27 HER HONOUR: Well, the situation has been, Mr Merralls, that the
28 judgment has been undergoing review for the purposes of
29 preparing a revised copy and that process is not yet
30 complete.

31 MR MERRALLS: Yes.

1 HER HONOUR: And I will have the particular answer to the query
2 you raise conveyed to you by my Associate and I will
3 announce it formally on the next occasion.

4 MR MERRALLS: If Your Honour pleases.

5 HER HONOUR: Are there any other matters, Mr Merralls?

6 MR MERRALLS: No, Your Honour.

7 HER HONOUR: Yes, very well. I will adjourn this matter to 4
8 February 2003 at 9.30 a.m. I will also order liberty to
9 apply and I will reserve the costs. If it transpires for
10 any reason that the parties form a view that on 4 February
11 more than about 30 minutes would be required for the
12 purposes of what may need to be done on that occasion, it
13 would assist me if my Associate could be notified at the
14 earliest opportunity. There being no other matters,
15 adjourn the court.

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