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**TRANSCRIPT
OF PROCEEDINGS**

FEDERAL COURT OF AUSTRALIA

VICTORIA DISTRICT REGISTRY

GOLDBERG J

DIRECTIONS

No VID 621 of 2005

IN THE MATTER OF ANSETT AUSTRALIA LTD

MELBOURNE

10.20 AM, THURSDAY, 23 JUNE 2005

MR A. KING (instructed by Arnold Bloch Leibler) appeared on behalf of the plaintiffs

MR N. SAVILLE appeared on behalf of the Australian Securities and Investments Commission

MR KING: Your Honour, I appear for the plaintiffs in the application.

HIS HONOUR: Thank you, Mr King.

5 MR SAVILLE: Your Honour, I appear on behalf of ASIC in this matter. My name is Saville.

HIS HONOUR: Yes, thank you very much. Thank you for attending this morning. I appreciate it was short notice for both of you but the matter was
10 given a first directions hearing on I think 19 July. Is that correct?

MR KING: Correct, your Honour.

HIS HONOUR: It involves the issue of pooling which is a significant and a
15 substantial issue. It occurred to me that what I should probably do, Mr King, at the outset is flag - and also for the benefit of ASIC who may wish to have some input into this matter only because it's a substantial administration. An issue of pooling has been dealt with in earlier cases but I doubt that it has been
20 considered in the context of such a complex administration. What occurred to me was, who are the parties that are going to be represented and what interests should be represented? I wanted to foreshadow that to you today, not because I expect the matter will be ready for hearing on 19 July, it obviously won't, but I thought we should have the benefit of the input of the commission if the
25 commission thought there was a role for it to play in terms of assisting the court in the matter and identifying the parties or the interests that ought to be represented. What has been going through my mind, and this is sort of a stream of consciousness if I can put it that way, is - you had about 41 or 42 companies?

30 MR KING: 41 and I believe 39 are now in the picture.

HIS HONOUR: 39 are in the picture and each of them had their own, in differing degrees, groups of creditors.

35 MR KING: Correct, your Honour.

HIS HONOUR: What you are proposing to do consistently with the scheme of arrangement and memorandum of understanding is lump all of the assets together and somehow distribute them rateably across all of those creditors?
40

MR KING: Correct, your Honour.

HIS HONOUR: That being so we should identify the interests which may be affected. There are interests of - and I'm thinking aloud for the moment -

there's the government - - -

MR KING: Can I say, your Honour, Ross McClure from the Australian
Government Solicitor is in court. They are aware of the - on behalf of the
5 Commonwealth - aware of the application and again have come along today
not to appear - - -

HIS HONOUR: No, I understand that.

10 MR KING: - - - but so they're - again can hear your Honour's comments.

HIS HONOUR: Where you have a pooling arrangement you have the
potentiality to advantage some and disadvantage others. As against that if you
don't have pooling you also have the opportunity or the potential to advantage
15 some and disadvantage others and if you don't have pooling I would expect
without having had any particular practical experience that it would involve
significant further administrative costs and professional costs that would be
better spent on paying out creditors rather than incurring costs unnecessarily
and I speak very generally in that respect. So we've got the government; we've
20 got the interests in favour of pooling; we've got the interests not in favour of
pooling. Secured creditors, are they relevant in this context?

MR KING: No, your Honour, it's a case of, as the application says, a series of
priority creditors who are defined under the deed.

25

HIS HONOUR: Yes.

MR KING: There are, in large part, unsecured creditors. Some of those are
creditors for significant sums of money in various companies across the group
30 who will have differing interests depending on the particular company of
which they're creditor. There's also a particular issue about the deed
administrators or what the deed administrators ought to do in terms of the
inter-company debt because if they are to vote that inter-company debt in a
particular way in accordance with their obligations, that immediately brings to
35 light matters of conflict which is in our submission appropriate for directions.

HIS HONOUR: What I would like to do if I can is have, when this matter
next comes on before the court for directions representatives of these interests
if they can be arranged by the administrator. Obviously the costs will have to
40 come out of the estate, as it were. I would hope and expect that someone
would be present on the next hearing to say, "I'm in a position to represent the
interests of". Just before I go to that, what's the current situation under the
SEESA scheme?

MR KING: In what regard, your Honour?

HIS HONOUR: In terms of the Commonwealth being reimbursed.

5 MR KING: I don't have the figures at hand. That's part of the material which would be dealt with in the substantive affidavit.

HIS HONOUR: That's what I thought. So the Commonwealth should probably be represented at the next directions hearing; there should be
10 someone to represent - at least one person to represent pro-pooling; someone to represent contra-pooling. Now, how about priority creditors?

MR KING: Can I indicate to your Honour that there is a meeting of the committee of creditors next Thursday at which the pooling application will be
15 discussed in principle and at a high level and at that meeting and as a result of that meeting the administrators hope to obtain some indication from the committee of creditors on behalf of the groups that they represent as to their attitude to pooling, which we hope by the time it comes back to you on 19 July will enable us to be in a better position to indicate what those competing
20 interests might be.

HIS HONOUR: All right then. What I would like you to pursue is all those matters so that when the matter comes back on the 19th, whether it comes back before me or another judge of the court, you'll announce your appearance,
25 presumably someone will announce an appearance for the Commonwealth at least, someone will say, "I'm seeking a direction that with the consent of the administrators that I represent the interests of those in favour of pooling, those against pooling, priority creditors," and another discrete group who you've identified in the meantime who might have an interest which is otherwise not
30 represented by the groups to which I've just made reference.

MR KING: I understand, your Honour. We're indebted for that indication about what the court would require on the 19th. It may be that it's a two-step process and that we can only by the 19th have identified the range of people
35 you've just talked about. Whether or not it's possible to say there is one party who can represent the anti-pooling interests, if there are such interests, and one party who can represent the pro-pooling interests, other than the deed administrators pursuant to their obligations, it's not clear at the moment but we'll certainly be in a position to give a much better indication about what
40 those competing interests are.

HIS HONOUR: I agree with that. It's quite conceivable that there might be different pro-pooling interests.

MR KING: Indeed.

5 HIS HONOUR: Indeed there might be different - and I hope not too many -
contra-pooling interests because different companies or different groups of
creditors would have different reasons for being against pooling. I wanted to
give you a flying start, as in the earlier Ansett matters in which I was involved.
I think this is an important administration and it affects a wide range of
creditors and people throughout the community and it's incumbent upon the
court to deal with this matter expeditiously.

10

MR KING: Thank you, your Honour. The deed administrators are indebted
for that guidance.

15 HIS HONOUR: So I'm not proposing to make any orders of course this
morning other than simply to confirm the directions hearing on 19 July.
Mr Saville, have you got anything that you wish to say at this stage other than
to note the matters that I have raised?

20 MR SAVILLE: No, I have had no instructions.

HIS HONOUR: I wouldn't have expected you to have had instructions. I'm
indebted to you for coming this morning. I thought this was a matter of
significant importance that ASIC should be tuned in right from the start and I
would ask the administrators through Mr King to keep the commission
25 informed of what's happening so that if feel the need to play an amicus role the
court would be indebted for your assistance.

MR SAVILLE: I will certainly pass that message on, your Honour.

30 HIS HONOUR: Thank you very much. Nothing further at this moment,
Mr King?

MR KING: No, your Honour.

35 HIS HONOUR: I'll simply confirm the directions hearing will be held on
19 July at - what time was specified?

MR KING: I understand 10.15, your Honour.

40 **MATTER ADJOURNED AT 10.32 AM UNTIL
TUESDAY, 19 JULY 2005**