

IN THE MATTER OF:

**ANSETT AUSTRALIA LTD**  
(ACN 004 209 410) & ORS (in accordance with  
the schedule attached) (All subject to a Deed of  
Company Arrangement)

and

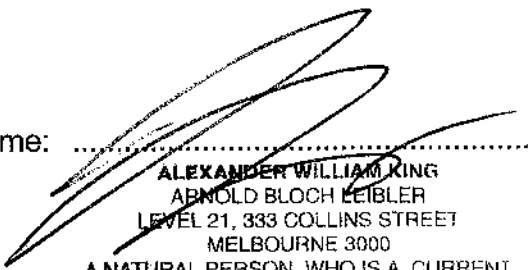
**MARK ANTHONY KORDA and MARK FRANCIS  
XAVIER MENTHA** (as Deed Administrators of  
the Companies)

Plaintiffs

**CERTIFICATE IDENTIFYING EXHIBIT**

This is the exhibit marked "**MAK-53**" now produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit on 13 October 2005.

Before me: .....



**ALEXANDER WILLIAM KING**  
ARNOLD BLOCH LEIBLER  
LEVEL 21, 333 COLLINS STREET  
MELBOURNE 3000  
A NATURAL PERSON WHO IS A CURRENT  
PRACTITIONER WITHIN THE MEANING OF  
THE LEGAL PRACTICE ACT 1996

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Filed on behalf of the Plaintiffs

**ARNOLD BLOCH LEIBLER**  
Lawyers and Advisers  
Level 21, 333 Collins Street  
MELBOURNE VIC 3000

Telephone: (03) 9229 9696  
Facsimile: (03) 9229 9900  
Reference: AWK:01-1349951  
(Alex King)

Alex King

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**From:** Murray, Fiona [fiona.murray@deacons.com.au]  
**Sent:** Thursday, 29 September 2005 7:28 PM  
**To:** Alex King; Caroline Goulden  
**Cc:** Peters, Stewart; Palmer, Steven  
**Subject:** Ansett Group - Pooling Application



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Dear Alex and Caroline,

As discussed with Caroline this afternoon, attached is letter setting out some issues we consider ought to be addressed in the material before the Court.

We note that you propose to file and serve further material during the course of tomorrow. We are aware of the significant time constraints in which you are working and of course do not expect or require that the matters raised in our letter be addressed in the material to be served tomorrow. In fact, our preference would be to receive the affidavit material you are currently working on sooner and to receive any additional material responding to the matters raised in our letter next week.

If you would like to discuss our letter or any other aspect of this matter, please do not hesitate to contact me or Stewart Peters.

Yours sincerely,

Fiona Murray  
Senior Associate  
Deacons  
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Melbourne VIC 3000  
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29 September 2005

Email: aking@abl.com.au

Arnold Bloch Leibler  
Level 21  
333 Collins Street  
MELBOURNE VIC 3000

**Attention: Mr A King**

Your Ref: AWK:01-1349951  
Our Ref: FKM:SFSP:2575871

Dear Sir

**WTH PTY LTD ats MARK ANTHONY KORDA and MARK XAVIER MENTHA  
(AS DEED ADMINISTRATORS OF THE ANSETT GROUP OF COMPANIES)  
FEDERAL COURT OF AUSTRALIA PROCEEDING No. VID 621 of 2005**

As you know, we act on behalf of WTH Pty Ltd, the contradictor to your clients' application.

As foreshadowed at our meeting on 23 September 2005, we write to draw your attention to several matters which, in our view, are of significance to the proper consideration of the application by the Court. We do so in order to invite you to respond to these matters - either by filing and serving such further material as your clients may consider appropriate, or by drawing our attention to those aspects of the existing material which you consider adequately address the issues raised. Naturally, if your clients' response to any of these matters involves the filing of further material, we will not take any point about such material being filed beyond the time limit imposed by the directions made on Monday 26 September 2005.

These matters ought not be taken as defining or limiting the matters that may be relied upon in opposition to your clients' application. You will appreciate that we are not yet in a position to definitively limit the scope of our opposition, even if we were so minded.

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**Other Offices**  
Brisbane  
Canberra  
Perth  
Sydney

**Independent  
Affiliated Firms**  
Hong Kong  
Indonesia  
Malaysia  
People's Republic of  
China  
Singapore  
Taiwan  
Thailand  
Vietnam

In this letter we adopt abbreviations used in the affidavit of Mark Anthony Korda sworn on 12 September 2005 in support of the application ("the affidavit").

### **Early predisposition towards pooling**

It appears from the date of the MOU and its terms that from a very early stage in the administrations, your clients contractually bound themselves to propose and recommend pooling. Your clients were appointed on 17 September 2001. The MOU was executed on 3 October 2001, 16 days later. Presumably the terms of the MOU, including as to pooling, were negotiated prior to the date of execution.

In these circumstances, was there any and if so what opportunity for the creditors of the various Ansett companies to:

- (a) become aware of your clients' intention to agree to the terms of the MOU insofar as they referred to pooling?
- (b) have an input into those terms?; and/or
- (c) make an informed judgment as to whether they, or any of them, might be disadvantaged by a future pooling?

The affidavit does not disclose which party to the MOU requested the inclusion of the terms as to pooling, nor the reasons why your clients either proposed, or agreed to, those terms. In our view this ought to be explained.

The same matters should be canvassed in respect of the terms of the SEESA Deed, and of the Ansett DOCAs, in as far as they relate to pooling.

### **Focus on position of the companies most affected by pooling**

While there are 41 companies (including the trustee companies) which would be subject to the proposed pooling, there appear to be only 7 companies (those in Table 1, paragraph 200 of the affidavit) which hold assets which would be contributed to the proposed pool. The analysis summarised in paragraph 209 of the affidavit suggests that it is the creditors of 5 of those "asset holding" companies (Westky Trust, AIL, Pelican Trust, Kendell and Show Group), and to a lesser extent also the creditors of AAHL, whose entitlements may be adversely affected by pooling.

The affidavit makes a number of references to the complexity of inter-company arrangements which may need to be disentangled if pooling does not occur. However we would suggest that, in doing so, there is an absence of specific focus on the position of the asset holding companies. We consider that the position of these companies, and their creditors, is pivotal to the pooling issue. The facts specific to those companies should therefore be set out in some detail. Our client, and the Court, would then be better able to make an informed judgment about the likely impact of pooling, and likely additional cost of non-pooling, for the asset holding companies.

We note in this context that the pooling scenarios canvassed in the affidavit all assume that all of the 41 companies will be pooled. Our understanding is that the Ansett DOCAs are not mutually interdependent in this respect. In other words, it would be open to the creditors of some companies to pool, in which case the

"pool" would comprise only the assets of those companies, with the remainder being treated as stand-alone administrations. Please inform us if you consider this understanding to be erroneous.

If our understanding is correct, we invite your clients to explain whether any, and if so what, proportion of the likely cost savings from pooling could still be achieved if one or more of the asset holding companies remain outside the pool.

We note also that in paragraph 18 of the affidavit there is foreshadowed "a report" to creditors, setting out *inter alia* whether it is in the interests of "Ansett Group creditors" for pooling to occur. If what is contemplated by that paragraph is a single report which does not distinguish between the interests of creditors of "asset holding" companies and the interests of other Ansett Group creditors, then we would have similar concerns as to the adequacy of the proposed report to creditors.

#### **Impact of Administrators' intended voting**

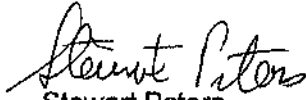
We note that your clients ask for what is, in some respects, unusual relief in relation to their voting intentions. They propose to vote, and, if necessary, exercise a casting vote, in a manner which in at least some cases would appear to be demonstrably against the specific interests of the creditors of the company whose proxy they are exercising, and/or whose meeting they are chairing, as the case may be. Your clients seek, in effect, protection against the consequences of proposed conduct which would otherwise expose them to a clear conflict of interest, which potential conflict your clients have acknowledged in the Recitals to the AAE Compromise Deed. In those circumstances, we consider that the Court and creditors must be provided with as full an explanation of the position as possible.

You have told us that, in practical terms, your clients consider that their votes would secure the passage of a pooling resolution in all 41 administrations (provided the AAE Compromise Deed is approved and binding on the AAE Creditors). In most cases your clients would have a majority of value. In others, they would have a significant minority in value but the spread of other creditors is so great (and attendances such) that experience suggests that your clients' votes will be decisive in obtaining a majority in value of those creditors present and voting. When coupled with your clients' power, in chairing each meeting, to exercise a casting vote if required, this will enable your clients to "carry the day" in each case.

We consider that your clients should put material before the Court setting out the basis for their belief in respect of the voting position, at least in relation to each of the asset holding companies and AAHL. If, as we understand to be the case, the practical effect of the Court granting the relief your clients seek would be to make pooling a *fait accompli*, when otherwise it might not be so, then we consider that this should be disclosed and explained to the Court.

We appreciate that your clients are currently preparing further material which may deal with much of the above.

Yours faithfully



Stewart Peters

Partner

Deacons

Contact: Fiona Murray

Direct line: +61 (0)3 8686 6330

Email: [fiona.murray@deacons.com.au](mailto:fiona.murray@deacons.com.au)