

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIAN DISTRICT REGISTRY**

No. VID 621 of 2005

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-52**" now produced and shown to **MARK ANTHONY KORDA** at the time affirming his affidavit on 30 September 2005.

Before me:



**CAROLINE ANNE GOULDEN
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**

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)

**ASIC**

Australian Securities & Investments Commission

Facsimile Transmission

To: Attention: Mr Alex King
Arnold Bloch Leibler

From: Tim Luxton
Australian Securities and
Investments Commission
Level 13, CGU Tower
485 Latrobe Street
Melbourne Vic 3000

Fax: 03 9916 9359

Fax: 03 9280 3434

Date: 19 September 2005

Tel: 03 9280 3466

Time:

Pages: 3 (including cover page)

Dear Sirs,

Please see attached letter dated 19 September 2005.

Yours faithfully,

Tim Luxton
Senior Lawyer
Enforcement
Australian Securities & Investments Commission

The information in this facsimile is confidential, intended only for use of the individual or entity named above, and may be privileged. If you are not the intended recipient, any dissemination, copying or use of the information is strictly prohibited. If you have received this facsimile in error, please telephone me immediately and return the original facsimile to me at GPO Box 9827, Melbourne VIC 3001. If you have experienced any problem with the receipt of the facsimile transmission, please telephone me.

**ASIC**

Australian Securities & Investments Commission

Writer: Tim Luxton
Direct Telephone: 03 9280 3466
Direct Facsimile: 03 9280 3434
Email: tim.luxton@asic.gov.au

Our Reference: ENF2005/15532
Your Reference: AWK-01-1349551

Level 13, CGU Tower
485 La Trobe Street
Melbourne VIC 3000
GPO Box 9827 Melbourne VIC 3001
DX 923 Melbourne

Telephone: (03) 9280 3200
Facsimile: (03) 9280 3444

19 September 2005

Attention: Mr Alex King
Arnold Bloch Leibler

By facsimile: 03 9916 9359

Dear Sirs,

**RE: ANSETT AUSTRALIA LIMITED (SUBJECT TO A DEED OF
COMPANY ARRANGEMENT) & OTHERS
FEDERAL COURT OF AUSTRALIA – PROCEEDING VID 621 of 2005**

We refer to previous correspondence in this matter and to the affidavit of Mark Anthony Korda sworn 12 September 2005 ("Affidavit"). We note your advice that Mr Korda intends to swear a further affidavit for use in the application.

ASIC raises certain matters for further consideration and comment. In particular, ASIC would appreciate your clients' comments regarding the following matters (using the terms defined in the Affidavit):

1. ASIC seeks further explanation of the AAE Pooling Compromise Deed. In particular, ASIC would like to know:
 - (1) the commercial basis upon which your clients entered into the AAE Pooling Compromise Deed and determined the amount of the various proposed payments to the banks;
 - (2) the basis upon which the proposed payments to the banks could be characterised as payments made pursuant to either ss 556(1)(a) or 556(1)(d) of the *Corporations Act 2001*;
 - (3) whether any compromise has been made with any other creditor of AAE (we note the listing of AAE creditors found in the Affidavit at [213]); and

- (4) if no to (3), whether any other creditor of AAE (other than AEF) has been notified of and/or given its consent to the AAE Pooling Compromise Deed.
2. Amongst other relief, your clients seek directions from the Court that they may "properly and justifiably cause each of the Ansett Group Companies to vote in favour of Pooling, to the extent each Ansett Group Company is entitled to vote as a Deed Creditor" (Affidavit at [13]). However, the Affidavit states at [54] that your clients "have formed the opinion that the inter-company loan balances in each Ansett Group Company are either impossible or impracticable to accurately reconstruct and reconcile." Further, the Affidavit refers to other difficulties in determining the respective assets and liabilities of the Ansett Group Companies. In these circumstances, ASIC would like to know how your clients will be able determine the value of the votes which they propose exercising on behalf of the Deed Creditors.
3. The table found at page 73 of the Affidavit compares the effect of "Pooling" and "No Pooling" on certain classes of creditors. In each case, however, it is presumed that the Court's approval will be given to the AAE Pooling Compromise Deed. In circumstances where it is not known whether such approval will be given, ASIC suggests that a table in similar form be prepared which includes a third scenario; where there is no pooling and where the Court does not approve the compromise documented in the AAE Pooling Compromise Deed. The provision of such a table would assist creditors (and ASIC) in evaluating the various possibilities.
4. ASIC is unsure of the basis upon which the Court could make orders under Part 5.3A of the *Corporations Act 2001* in relation to the affairs of the Pelican Trust and the Westsky Trust. Although it would appear that these trusts hold assets which were previously owned by, respectively, Aeropelican Air Services Pty Ltd and Skywest Airlines Pty Ltd (which were for a short time subject to external administration under Part 5.3A), these companies are no longer subject to any form of external administration. We would be interested to know how your clients propose putting this aspect of the application.
5. ASIC notes that the proposed form of advertisement contained in your second email dated 16 September 2005 does not refer to the AAE Pooling Compromise Deed. In ASIC's view, given that it is proposed that large payments be made to a small number of Deed Creditors, the compromise set out in this document is likely to be of particular interest to the wider body of Deed Creditors and is thus worthy of separate reference in the advertisement.

Yours faithfully,



Tim Luxton
Senior Lawyer
Enforcement
Australian Securities & Investments Commission