

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)**

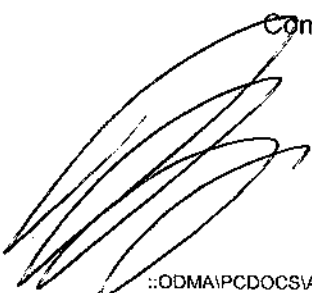
Plaintiffs

AFFIDAVIT

(Order 14, rule 2)

On 15 May 2006 I, **MARK ANTHONY KORDA**, Chartered Accountant, of Level 24, 333 Collins Street, Melbourne in the state of Victoria **MAKE OATH AND SAY** that:

- 1 I refer to my affidavits sworn 21 June 2005 ("**First Affidavit**"), 12 September 2005 ("**Second Affidavit**"), 30 September 2005 ("**Third Affidavit**") and 13 October 2005 ("**Fourth Affidavit**"), and to the affidavits of Alexander William King affirmed 23 September 2005 ("**First King Affidavit**"), 18 October 2005 ("**Second King Affidavit**") and 31 March 2006 ("**Third King Affidavit**"), copies of which I have read. Words, phrases and acronyms defined in my Second Affidavit have the same meaning in this affidavit, unless otherwise stated.
- 2 Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true. I am authorised by Mark Mentha to make this affidavit on his behalf. References in this affidavit to "we", "us" "our" or "ourselves" are references to Mentha and me.
- 3 I make this further affidavit in support of this application, in which we seek orders or directions pursuant to sections 447A and 447D of the Act and the inherent jurisdiction of the Court as to the course we, as Deed Administrators, ought to follow in connection with the proposed pooling of the assets of the Ansett Group into one Ansett Group Company (namely, AAL).



Directions hearing on 31 March 2006 and subsequent events

4 On 31 March 2006 the Court made orders to the effect that:

- 4.1 pursuant to section 447A(1) of the Act, section 447D(1) of the Act is to operate in relation to each of the Ansett Group Companies so that in this application for directions in relation to, among other things, the "AAE Pooling Compromise Deed" dated 29 August 2005, as amended on 31 March 2006 ("**AAE Pooling Compromise Deed**"), the Court may give a direction that it approves the AAE Pooling Compromise Deed and each of us, in the capacities in which we have executed the AAE Pooling Compromise Deed, may properly perform and give effect to that deed;
- 4.2 pursuant to section 447D(1) of the Act, as it operates in accordance with the above order, the Court directs that it approves the AAE Pooling Compromise Deed and that each of us, in the capacities in which we have executed the AAE Pooling Compromise Deed, may properly perform and give effect to that deed;
- 4.3 we file and serve any further affidavit material in support of the application on or before 12 May 2006;
- 4.4 the further hearing of the application for directions be adjourned to 26 May 2006.

The Court also made certain costs orders.

5 At the 31 March 2006 directions hearing our Counsel indicated to the Court that we would prepare, file and serve affidavit evidence (if available) by which we would seek to establish with a greater degree of precision the extent of the estimated extra costs involved in the administrations of each of:

- 5.1 Ansett Australia Holdings Limited (subject to deed of company arrangement) (ACN 004 216 291) ("**AAHL**");
- 5.2 Ansett International Limited (subject to deed of company arrangement) (ACN 060 622 460) ("**AIL**");
- 5.3 Kendell Airlines (Aust) Pty Ltd (subject to deed of company arrangement) (ACN 000 579 630) ("**Kendell**");



5.4 Bodas Pty Ltd (subject to deed of company arrangement) (ACN 002 158 741) (in its capacity as trustee of the Westsky Trust ("**Westsky Trust**") and the Pelican Trust ("**Pelican Trust**"));

5.5 ANST Show Pty Ltd (subject to deed of company arrangement) (ACN 002 968 989), formerly Show Group Pty Ltd ("**Show Group**"),

(all "**Asset Holding Entities**") if those entities and other Ansett Group Companies are not pooled ("**Estimated Separate Administrations Costs**"). That way, the Court could better assess whether it is likely in a "no pooling" situation that the Estimated Separate Administrations Costs would erode the amount the creditors of the Asset Holding Entities would be likely to receive in a "no pooling" situation ("**Erosion Issue**"). I refer to paragraphs [117] to [129] of the reasons for judgment in this proceeding published 22 March 2006 ("**Judgment**").

6 Our Counsel also indicated to the Court that we would prepare, file and serve further evidence in relation to the creditor notification issues ("**Notification Issue**") and in relation to the distribution of the proceeds of the sale of Ansett's Head Office and the Other Ansett Melbourne CBD Properties ("**Trust Issue**"), which proceeds ("**501 Proceeds**") we believe, based on the available evidence, are held on trust by 501 Swanston Street as trustee for AAL, and perhaps (in part) AAHL. I refer to paragraphs 218 to 230 of my Second Affidavit and paragraphs [130] to [132] and [136] of the Judgment in relation to the Notice Issue and to paragraphs 44, 45 and 60 to 67 of my Second Affidavit and paragraph [135] of the Judgment in relation to the Trust Issue.

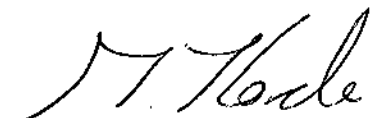
7 In summary, our Counsel indicated to the Court that we would:

7.1 deal with the proposed pooling of AAE (further to execution of the AAE Pooling Compromise Deed);

7.2 seek orders or directions in relation to the proposed pooling of the 33 non-Asset Holding Entities in the Ansett Group (being all of the companies and entities in the Ansett Group other than the Asset Holding Entities, and AAL, into which it is proposed the various assets and liabilities of the Ansett Group Companies be pooled, and AAE) ("**Non-Asset Holding Companies**");

7.3 prepare, file and serve further material, as necessary, on the Erosion, Notification and Trust Issues; and

7.4 proceed to a further hearing and determination of the outstanding issues in the application.

Pooling of AAE

- 8 On 12 April 2006 I caused to be published in "The Australian" newspaper notice of a meeting of AAE's creditors called under section 445F of the Act to consider the proposed variations to the AAE DOCA in connection with the pooling of AAE. Produced and shown to me marked "MAK-70" is a copy of the notice, as published in "The Australian" newspaper on 12 April 2006.
- 9 On 13 April 2006 we issued to the known creditors of AAE a special purpose report dated 12 April 2006 in relation to the proposed pooling of AAE into AAL, together with the proposed form of amended AAE DOCA and notice of the meeting called under section 445F of the Act to consider the proposed variations to the AAE DOCA in connection with the pooling of AAE. Produced and shown to me marked "MAK-71" are copies of the special purpose report, the proposed form of amended DOCA and the notice of meeting.
- 10 The section 445F meeting of AAE creditors was held on 21 April 2006. I put the following resolutions ("**AAE Pooling Resolutions**") to the meeting of creditors:
- 10.1 "1 *That, separately and independently of any other resolutions made today, and with the intention that this resolution is to remain valid and binding even if any other resolution made today fails or is found to be invalid or ineffective for whatever reason, the creditors are in favour of the pooling of [AAE's] assets into AAL and the administrators are authorised to take whatever steps they regard as appropriate to effect that pooling.*"
- 10.2 "2 *That the Deed of Company Arrangement be varied in the manner set out in the document titled "Proposed Amendments to AAE Deed of Company Arrangement" available at each of www.ansett.com.au, www.kordamentha.com and www.abl.com.au, so as to effect the pooling of [AAE's] assets into [AAL] and to allow [AAE's] creditors to make claims against AAL instead of [AAE].*"
- 11 The AAE Pooling Resolutions were passed unanimously by the creditors of AAE present and entitled to vote at the meeting. We refrained from causing one of AAE's creditors, namely Ansett Equipment Finance Limited (subject to deed of company arrangement) (ACN 006 827 989) (a related company), to vote on the AAE Pooling Resolutions, due to perceived conflicts of interest and having regard to the Judgment.
- 12 As a result of the passage of the AAE Pooling Resolutions, on or about 27 April 2006 the assets of AAE (of approximately \$38 million) were pooled into AAL, of which

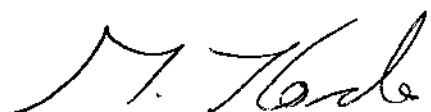
\$27 million was then paid to various AAE creditors by AAL pursuant to the AAE Pooling Compromise Deed.

Payment of fifth dividend

- 13 The balance of the AAE assets pooled into AAL (namely, cash of \$11.239m) was immediately applied, together with other available funds derived from AAL asset realisations since December 2005, to pay a fifth dividend to Ansett Group priority creditors (former employees and the Commonwealth), in the amount of approximately \$28.6 million. Of that, approximately \$17.3 million was paid to former employees (representing approximately 10% of those employees' outstanding entitlements), and the balance to the Commonwealth. Produced and shown to me marked "MAK-72" is a copy of Update 79 to the members of the Ansett Committees of Creditors dated 27 April 2006.

Further directions in relation to the Non-Asset Holding Companies

- 14 In our opinion, the creditors of the Non-Asset Holding Companies would be unaffected by pooling in that, based on our knowledge of the Ansett Group's affairs, we believe those creditors would receive no distribution from the Non-Asset Holding Companies of which they are creditors in either a "pooling" or a "no pooling" scenario. (See paragraph 208 of my Second Affidavit, as corrected in paragraph 38(c) of my Third Affidavit.) Accordingly, we maintain our application for orders or directions to the effect as stated in paragraphs 13(a), (b) and (e) of my Second Affidavit (namely, for voting, casting vote and notification orders) in respect of each of the Non-Asset Holding Companies.
- 15 In any event, as soon as practicable following the Court's decision on whether or not to make orders or give directions allowing us to vote inter-company debt in the Non-Asset Holding Companies in favour of pooling (and, if necessary, to cast a casting vote) in the relevant section 445F meetings, we intend to convene section 445F meetings of the creditors of the Non-Asset Holding Companies, at which we intend to propose pooling resolutions at those meetings. Based on our experience in corporate insolvency (as to which, I refer to paragraph 4 to 6 of my Second Affidavit), we anticipate that a majority of those creditors (in number and value) present and entitled to vote at the relevant section 445F meeting will vote in favour of resolutions to effect the pooling of the Non-Asset Holding Company of which he, she or it is a creditor, into AAL.
- 16 In our opinion there would be significant practical and costs advantages to be obtained by the pooling - sooner rather than later - of the remaining 33 Non-Asset Holding Companies: principally, simplification of the administrations of the Ansett Group companies as a whole. Further, if the remaining 33 Non-Asset Holding Companies, or



any of them, are pooled, we intend to apply to deregister the relevant companies as soon as possible. Costs, efficiency and administrative savings likely to flow from the pooling and deregistration of the Non-Asset Holding Companies (or any of them) include:

- 16.1 reduction in the volume and complexity of creditor-related work to be done and documents to be created in relation to the administration of the relevant Non-Asset Holding Companies, such as that required for Committees of Creditors meetings (notification, creation of minutes, filing, to name a few) and proof of debt allocations;
- 16.2 reduction in the cost of the allocation, processing and approval of priority expenses in the administration of the Ansett Group (for example, our fees and professional service fees);
- 16.3 decreased regulatory requirements and fees, and commensurate cost savings in the administrations of the relevant companies for the completion of these tasks;
- 16.4 reduction in litigation-related costs in this application.

Our further consideration of the Erosion and Trust Issues

- 17 Since the Judgment was delivered we have further considered the Erosion and Trust Issues.

Erosion Issue

- 18 We have undertaken a preliminary allocation of the Estimated Separate Administrations Costs. As a result, in our opinion the amounts likely to be available for distribution to third party non-Priority Creditors of the Asset Holding Entities ("**Potentially Pooling-Affected Creditors**") will be further reduced on account of each Asset Holding Entity's share of the Estimated Separate Administrations Costs. However, based on our preliminary allocation, in our opinion none of the Asset Holding Entities' amounts (entity by entity) likely to be available for distribution to their respective Potentially Pooling-Affected Creditors are likely to be eroded to zero due only to an allocation (even on a final basis) of the Estimated Separate Administrations Costs.
- 19 As part of our preliminary allocation of the Estimated Separate Administrations Costs we commenced a preliminary apportionment of certain costs incurred or services provided in the administrations of the Asset Holding Entities, such costs and services having so far been funded or provided out of AAL ("**Post-Administration Charge-**

backs”). The costs of the Post-Administration Charge-backs to the relevant Asset Holding Entities will be priority expenses under section 556(1)(a) of the Act in the administration of the relevant entities, thus ranking before the priority claims of the former employees and the Commonwealth. (See paragraphs 19(e) and 86 to 94 of my Second Affidavit.) We did so because we came to the conclusion, in allocating the Estimated Separate Administrations Costs, that we may be able to produce better estimates of the likely returns (if any) to Potential Pooling-Affected Creditors in a “no pooling” scenario if we also did a preliminary assessment and allocation of the effect on the Asset Holding Entities of Post-Administration Charge-backs. We started by reviewing, assessing and allocating the Post-Administration Charge-backs that arise between AAL (as funder and provider of services) and Kendell (as recipient of those funds and services).

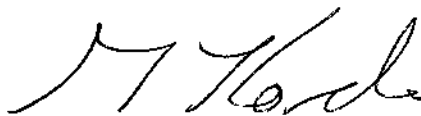
- 20 From September 2001, when we were appointed as Voluntary Administrators, until the sale of Kendell’s business on 1 August 2002, AAL made available, or provided, to Kendell numerous AAL assets and resources to enable Kendell to continue to operate its airline business and to maximise the return to creditors on its sale as a going concern. See, for example, paragraphs 92 and 93 of my Second Affidavit.
- 21 As at the date of this affidavit, we estimate that, once we have determined our best estimate of Kendell’s likely share of the Estimated Separate Administrations Costs and the likely amount of Post-Administration Charge-backs for which AAL would have a priority claim against Kendell (were Kendell not to be pooled, such that the Estimated Separate Administrations Costs would have to be incurred and the Post-Administration Charge-backs would be recovered from Kendell by AAL), the amounts likely to be available for distribution to Kendell’s Potentially Pooling-Affected Creditors will erode to zero.
- 22 Based on our knowledge of the affairs of the Ansett Group, both pre- and post-Administration, we apprehend that were we to undertake a more comprehensive apportionment of the Estimated Separate Administrations Costs and a more comprehensive analysis of the Post-Administration Charge-backs referable to each Asset Holding Entity, then we estimate that the amounts likely to be available for distribution to the Potentially Pooling-Affected Creditors of at least three of the six Asset Holding Entities (including Kendell) are likely to erode to zero in each case.
- 23 In those circumstances, we intend to proceed with the apportionments and analyses referred to in paragraph 22 and, at a later date, if appropriate, seek to file and serve further affidavits going to the Erosion Issue and the effects of Post-Administration Charge-backs on Potentially Pooling-Affected Creditors.

Trust Issue

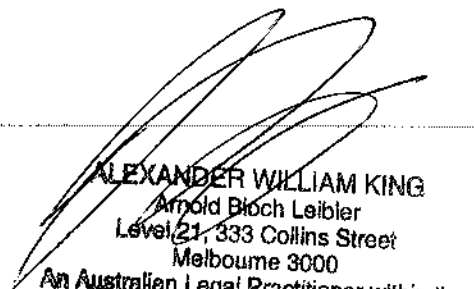
24 The Trust Issue also needs to be further investigated. In simple terms, based on the available evidence, we believe that all of the 501 Proceeds are held on trust by 501 Swanston Street for AAL. However, it may be that the 501 Proceeds, which now total approximately \$34.97 million, are beneficially owned by both AAL - as to approximately \$23.19 million, and AAHL - as to approximately \$11.77 million.

25 We are now considering various options for dealing with the 501 Proceeds ownership issues, including making application to the Court for a determination as to the beneficial ownership of the 501 Proceeds, having regard to paragraph [135] of the Judgment. It is important to note that 501 Swanston Street (a Non-Asset Holding Company) and, as a result, its creditors, have no beneficial entitlement to the 501 Proceeds; rather, 501 Swanston Street acts merely as trustee of the 501 Proceeds. On that basis, the pooling of 501 Swanston into AAL, were it to occur, would have no effect on the existence, or manner of resolution of the Trust Issue or any beneficial interest in the 501 Proceeds.

SWORN at Melbourne in the State of Victoria)
on this 15th day of May 2006.)

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Before me:


ALEXANDER WILLIAM KING
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

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

AFFIDAVIT - CERTIFICATE OF COMPLIANCE

(Order 14, rule 5A)

I, **ALEXANDER WILLIAM KING**, certify to the Court that the affidavit of **MARK ANTHONY KORDA** sworn on 15 May 2006 filed on behalf of the plaintiffs complies with Order 14, rule 2 of the Federal Court Rules.

Date: 15 May 2006



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ALEXANDER WILLIAM KING
Solicitor for the plaintiffs

Version 2