

**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

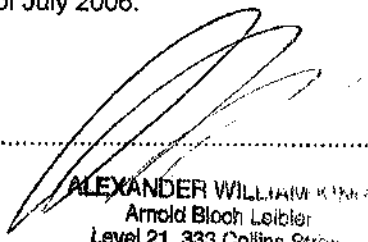
**MARK ANTHONY KORDA and MARK FRANCIS
XAVIER MENTHA (as Deed Administrators of the
Companies)**

Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "**SDH 1**" now produced and shown to **SEBASTIAN DAVID HAMS** at the time of swearing his affidavit on the 27th day of July 2006.

Before me:



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

5 Suffice to say this, if you look at the general position for the reasons set out in the material last year as reflected in your Honour's judgment, the overall benefits of pooling are to the substantial benefit of the former employees of Ansett and the Commonwealth in the guise of Sees Proprietary Limited. And to the extent that the Commonwealth is an affected creditor or an affected non-priority creditor in a guise other than as Sees, the benefit to the Commonwealth on the Sees side of the ledger in the administrator's opinion is far greater.

10 Now, that is not to ignore the fact that the Commonwealth is more than one entity, but that is the overall effect. We would say though, in any event, no substantive orders are sought in respect of AAL today so that is another issue which can be dealt with as between the parties.

15 HIS HONOUR: When they arise.

MR KING: We would also submit that the position of AALs creditors is not, in fact, affected by any of the orders made today in respect of any connection between AAL and those 32 non-asset holding companies. Parties have raised queries about the notification issues and, in fairness, Mr Korda said in his affidavit that we intended to file further material in relation to that for the reasons that I have explained about the course the administrator has proposed to take. In respect of reporting and going straight to pooling meetings, we have not filed any further material on notification and instead rely upon what was previously put, again in an overall level.

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25 There are really two modes of notification: what I might call the notification in the form sought, and the standard notification. We seek the notification in the abbreviated form sought in respect of the 32. But in respect of the non-asset holding entities, both to reflect concerns your Honour had at para 136 of the judgment and also questions raised by some of the parties here. In respect of those creditors of potentially asset holding entities who might be disadvantaged by pooling, the deed administrators would propose to give notice to such creditors in one of two ways. The first is the normal way which is simply the sending out of a 439A style report which effectively - - -

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35 HIS HONOUR: Include them individually?

MR KING: That is right. Now, that is likely to be the course adopted in respect of those companies such as a show group or a Pelican where there is a small number of non-priority creditors who may, in fact, stand to receive something more than a negligible return on a cents in the dollar basis. And it is also manageable because the numbers of creditors of those companies are relatively small. So the method that the administrators propose to adopt there is to specifically - I think to use the word in your Honour's judgment - notify by sending a report as though it were any second meaning of creditors.

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45 HIS HONOUR: Yes.

MR KING: The administrators will not be able to descend to the detail of estimating the dollar return to creditors, but they will, of course, be able to say the likely return is X cents in the dollar. And then, as in any administration, it would be for the creditor to determine - - -

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HIS HONOUR: But they will raise the issue for the consideration of the creditors.

MR KING: That is right, and to direct it specifically to the creditor by issue of a report.

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HIS HONOUR: Yes.

MR KING: What I have called a standard report. The other - there is a middle way which the administrators might adopt in the process of considering the logistics here and we would seek, if you like, the views of the parties to this application where in respect of a company, for example, like AAL or AAHL where there are tens of thousands of creditors, a large number of whom might stand to receive a very small increment of .1 cent in the dollar. There the administrators may well send a one page note noting that in a pooling scenario that creditor would get - that there would be no return to creditors in that creditor's position. And in a no pooling scenario, there might be a return of - to use the example .1 cents or .05 cents in the dollar; and then referring that creditor specifically advised by the one page note to a website where the necessary information is set out.

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Your Honour, in our submission, that would address the concern expressed by you at para 136 of giving specific notice to people who might be affected without imposing an unreasonable burden on the administration in sending out perhaps tens of thousands of reports of 60, 70, 80 pages long.

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HIS HONOUR: Yes, I follow that.

MR KING: Yes. Your Honour, there were just two other matters; in fact, one other matter which I need to address arising out of a concern expressed by ASIC. ASIC asked about the absence of a schedule of the proposed amendments to these orders. You may recall that in the orders submitted in November last year as part of the application there was a long list of orders because it dealt with the trusts and various other matters, and at the end of which there was a schedule of the proposed variations. On reflection, a schedule of proposed variations not in context of the deed is more likely to confuse than clarify, and so we think the better course is to simply refer the relevant creditors to the websites.

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HIS HONOUR: Yes, thank you.

MR KING: They are the submissions for the plaintiffs.

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HIS HONOUR: Yes. Mr Star, what is the attitude of the ACTU and the unions?

HIS HONOUR: Potential deed or actual deed?

5 MR LUXTON: I understand that there may be a deed of cross-guarantee.

HIS HONOUR: A further - there is an existing deed of cross-guarantee. I thought you said potential deed. I may have misunderstood you.

10 MR LUXTON: It is something that has been raised this morning, your Honour.

HIS HONOUR: You mean a future deed - - -

15 MR LUXTON: Sorry, not a future deed of cross-guarantee, your Honour, an existing deed of cross-guarantee.

HIS HONOUR: Well, there is an existing deed of cross-guarantee and that has been referred to in the material in the past and it has been one of the complex issues that has had to be considered by the administrators in determining the extent of who is a creditor and for what amount within the group. But what is your concern about it?

20 MR LUXTON: Possibly, if there is a right of indemnity whether those - any funds that arise under the right of indemnity may be caught by the deed of cross-guarantee and, in effect, the position of any - - -

25 HIS HONOUR: Yes. Well, Mr King, again, has explained the consequence of that this morning. I don't think that is a matter, again, that impinges upon the forms of the orders sought today.

30 MR LUXTON: Thank you, your Honour. Again, in relation to the notice point that has again been raised by Mr King this morning, respectfully, in accordance with paragraph 160 - sorry, 136 of your Honour's reasons, ASIC submits that:

35 *Notice of any pooling meeting should be given specifically to those creditors who may be disadvantaged by the proposed resolutions.*

HIS HONOUR: Yes. Well, on the material before me there is no evidence that any will be disadvantaged by the proposed resolution - - -

40 MR LUXTON: Not - yes. Sorry, your Honour.

HIS HONOUR: Again, that is a matter for further down the track, I think.

MR LUXTON: In relation to AAL, I think, in particular.

45 HIS HONOUR: Indeed. Indeed, it is.

MR LUXTON: There was a further matter that ASIC raised in relation to the proposed form of the resolution referring to the requirement that AAL be called

before the creditors of these pooling companies, could actually make a claim against AAL. And Mr King has already indicated to the Court that those amendments will be made. So ASIC doesn't take that position - that matter any further.

5 HIS HONOUR: Yes, thank you.

MR LUXTON: And lastly, your Honour, ASIC repeats the submission that it made, I think at the hearing in October last year, that any draft resolution, except for newspaper advertisements, should have a schedule which sets out the proposed
10 amendments to the relevant deed.

HIS HONOUR: You mean in relation to the 32 companies.

15 MR LUXTON: Yes, your Honour.

MR KING: Your Honour, if I could deal with that this way. It might be useful to have to hand exhibit MAK71.

20 HIS HONOUR: I have got that.

MR KING: Which is the report, if you like, the vanguard report, the template we have used for AAE. And the reports which will follow to the other creditors - the creditors of the other Ansett group of companies will adopt a very similar pattern in two respects. You will see that part 3 of the report gives a background to the pooling
25 application and there the administrators have sought to summarise the reams of material which were put in evidence in this application. And, of course, that is where the immediate issue about the deed of cross-guarantee arises and we will address that as appropriate. And the reason I make mention of that is because there will be a similar section in each of the other reports. But if you look to the last appendix of
30 this report it is the AAE deed of company arrangement which is showing the pooling variations.

HIS HONOUR: Has that got a page number on it?

35 MR KING: It is a stand-alone document of some 50 pages right at the end of the exhibit. So, in fact, if you go to the exhibit it is about half-way through, or just slightly less than half-way through on about page 35, 36, you will see a reference to appendix 6, a cover sheet.

40 HIS HONOUR: Yes, I have got that.

MR KING: And then behind that cover sheet, appendix 6, is the deed of company arrangement for AAE in the form that was proposed and passed unanimously - sorry, incorporating the amendments which were proposed and passed unanimously by the
45 creditors of that company. The point I sought to make before was if you pluck out the amendments and put them in a schedule as a stand-alone document they don't have the context of the deed.

HIS HONOUR: In order to understand, then, you would need to refer back to the deed.

5 MR KING: Correct, and there are two ways of notifying creditors of that. There is the abbreviated notice fashion, an example of which is the orders we have sought today, where you can see such a document, for example, from Wridgways or Rocket Cargo or any of the companies. You can see such a document on the websites. And then for those creditors where, having regard to your Honour's reasons, the administrators consider that they should separately and specifically notify, i.e. by
10 sending, in effect, a 439A report. Then those administrators will get a document that looks a bit like this which has the whole deed with the amendments - - -

HIS HONOUR: With the amendments marked up.

15 MR KING: That is right. So, in our submission, there is no need for the proposed amendments to be annexed to the orders sought to be made today.

HIS HONOUR: Yes, thank you for that. Anything further you want to say, Mr Luxton?

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MR LUXTON: No, your Honour. I mean, if it is proposed that the amended deeds will be annexed to any notice to creditors, then that would be - - -

25 HIS HONOUR: Well, no, no, it is going to be annexed to a notice to creditors who will be potentially disadvantaged by it, because otherwise it is available on the website which, I think in the circumstances, is satisfactory.

30 MR LUXTON: Yes, your Honour, I was assuming that the notice wasn't going to be sent to creditors who wouldn't be disadvantaged in any event.

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MR KING: Again, I do need to clarify. There are those creditors who won't be disadvantaged and the best example is the creditors of the companies in respect of which the orders are sought today.

35 HIS HONOUR: Yes.

40 MR KING: There will be those creditors who, to use an example, on the material that is currently filed, employees in Show Group who might stand to lose a not insignificant sum. There are a small number of those creditors and it is relatively inexpensive to produce a 100 page document and send it to those creditors. There is, then, a middle category which are potentially disadvantaged creditors of a company such as AAHL with 40,000 creditors, creditors who might stand to be disadvantaged to as little as .1 or .05 cents in the dollar.

45 HIS HONOUR: They will be directed to the website.

MR KING: They will get a one pager saying - - -

HIS HONOUR: Which will put them on notice. No, I understand. Yes, anything further, Mr Luxton?

MR LUXTON: No, your Honour.

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HIS HONOUR: Thank you, for that. I think that leaves you, Mr Williams.

MR WILLIAMS: Yes, your Honour. The contradictor doesn't oppose the orders, your Honour. It is accepted by the contradictor that with the possible exception of 501 Swanston Street - and I will come back to that, if I may, very briefly - there is no potential for disadvantage to the creditors of any of those companies. And on that basis we see no objection to the orders that are sought today.

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HIS HONOUR: Yes, thank you.

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MR WILLIAMS: That is not to say that we accept the course that is proposed for the future in relation to the other company. We will adopt a wait and see approach in relation to that. It is only really yesterday that we became aware that it was not proposed that the application would be assisted with in relation to those companies. The course that is now proposed in relation to those asset holding companies appears to be that there will be no scrutiny, or potentially no scrutiny, by the Court of that process because the administrators have taken the view that they don't need, or probably won't need to exercise any vote.

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HIS HONOUR: They are going to stand aside.

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MR WILLIAMS: And that being so the opportunity that might otherwise have existed for some scrutiny of that process including the notice process may be lost. Mr King has indicated that he will take a consultative approach to that including, no doubt, with us and that is obviously something that we welcome.

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HIS HONOUR: That is probably a good idea because at the end of the day if there were, for example, no consultative process and it went through with the administrator standing aside it would be open to any disaffected creditor to come to the Court to set side the resolution.

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MR WILLIAMS: That is what we want to avoid, your Honour, is a creditor feeling disaffected in that way and feeling that it has had its rights trampled by a democracy of the majority who are either disinterested or acting altruistically in respect of a small amount of money that they choose that they won't pursue.

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HIS HONOUR: Yes, well, I don't have - apart from what is specified in the - part 5.3A of the Act - I don't have a supervisor jurisdiction to monitor every step in the process.

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MR WILLIAMS: No.

HIS HONOUR: Unless the parties bring matters before the Court.