

**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

**AFFIDAVIT**

**(Order 14, rule 2)**

On 23 September 2005 I, **ALEXANDER WILLIAM KING**, lawyer, of Level 21,  
333 Collins Street, Melbourne in the state of Victoria **AFFIRM** that:


1 I am a partner of Arnold Bloch Leibler, solicitors for the plaintiffs, and with  
Leon Zwier, a partner of Arnold Bloch Leibler, have the care and conduct of  
this proceeding on behalf of the plaintiffs. Except where I otherwise indicate,  
I make this affidavit from my own knowledge. Where I depose to matters  
from information and belief, I believe those matters to be true.

**Filing and service of the plaintiffs' further affidavit material**

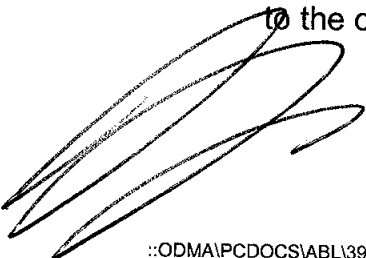
2 On 30 August 2005 the Court made an order that the plaintiffs file and serve  
their further affidavit material by 2 September 2005.

  
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)

- 3 On 2 September 2005 I caused a letter by email to be sent to Tim Luxton of the Australian Securities & Investments Commission ("**ASIC**"), Ross McClure of the Australian Government Solicitor ("**AGS**") on behalf of the Commonwealth, Tony Troiani of Mallesons Stephen Jaques ("**Mallesons**") on behalf of National Australian Bank Ltd ("**NAB**") and Brendon Watkins of Minter Ellison ("**Minters**") on behalf of Commonwealth Bank of Australia Ltd ("**CBA**") and BNP Paribas ("**BNP**"), with a copy to Annabelle Roxon, Associate to the Honourable Justice Goldberg advising, among other things, that the further affidavit material would not be filed and served that day. Now produced and shown to me marked "**AWK-1**" is a copy of my 2 September 2005 letter by email.
- 4 On 7 September 2005 I sent an email to Tim Luxton of ASIC, Ross McClure of the AGS, Tony Troiani of Mallesons and Brendon Watkins of Minters, with a copy to Ms Roxon of the Court, a copy of which is now produced and shown to me marked "**AWK-2**".
- 5 On 8 September 2005 I caused to be served by email on ASIC (Tim Luxton), the Commonwealth (Ross McClure), NAB (Tony Troiani) and CBA and BNP (Brendon Watkins), with a copy to the Court (Annabelle Roxon), *"the final form of affidavit to be sworn by Mark Korda in proceeding VID 621 of 2005, excluding exhibits"* ("**Korda Affidavit**"). Now produced and shown to me marked "**AWK-3**" is a copy of my email to ASIC, the AGS, Mallesons and Minters, with a copy to the Court (excluding the attachment, being the form of affidavit).
- 6 Also on 8 September 2005 I caused to be served by courier upon each of ASIC, the Commonwealth, NAB, CBA and BNP, with a copy to the Court, a poster-sized chart of the Ansett Group, being exhibit "MAK-14" to the Korda Affidavit. Now produced and shown to me marked "**AWK-4**" and "**AWK-5**", respectively, are copies of the letter under cover of which the chart was served and filed by courier; and an email I caused to be sent that day, prior to the courier deliveries, attaching a pdf version of the chart.



- 7 Also on 8 September 2005 I caused to be served by courier upon ASIC and the Commonwealth copies of the four folders of proposed exhibits to the Korda Affidavit. Now produced and shown to me marked "**AWK-6**" is a copy of the letter under cover of which the folders of proposed exhibits were served on ASIC and the Commonwealth.
- 8 On 9 September 2005 I caused to be served by courier on NAB, CBA and BNP copies of the four folders of proposed exhibits to the Korda Affidavit. Now produced and shown to me marked "**AWK-7**" is a copy of the letter under cover of which the folders of proposed exhibits were served on NAB, CBA and BNP.
- 9 On 12 September 2005 Mark Korda swore before me the Korda Affidavit in a form identical to that served on 8 September 2005. The Korda Affidavit was filed with the Court on 15 September 2005.

#### **Notification to creditors of the Application**

- 10 On 15 September 2005 I caused copies of certain documents in relation to the Application to be placed on the following websites ("**Websites**"):
- (a) [www.ansett.com.au](http://www.ansett.com.au);
  - (b) [www.kordamentha.com.au](http://www.kordamentha.com.au); and
  - (c) [www.abl.com.au](http://www.abl.com.au).

The documents placed and remaining on the Websites are:

- (d) the Application, dated 21 June 2005;
  - (e) the affidavit of Mark Korda sworn 21 June 2005 (including exhibits "MAK-1" to "MAK-4", inclusive);
  - (f) the Korda Affidavit (including exhibits "MAK-5" to "MAK-51", inclusive);
  - (g) the orders of the Court made in the Application, dated 30 August 2005;
- and



(h) the transcripts of the directions hearing to date in the Application (23 June, 19 July, 16 August and 30 August 2005).

Now produced and shown to me marked "**AWK-8**" are copies of print outs of the relevant pages of the Websites.

- 11 I am informed by Sebastian Hams of KordaMentha that on 15 and 16 September 2005 he caused letters to be sent from Mark Korda and Mark Mentha ("**Deed Administrators**") to various Ansett Group creditors ("**Letter Recipients**") which, among other things, gave notice of the Application, directed the Letter Recipients to the Websites, advised that the Letter Recipients may be adversely affected by the "pooling" of the Ansett Group and invited the Letter Recipients to participate in the Application, either to oppose or support it. Now produced and shown to me marked "**AWK-9**" to "**AWK-12**" are copies of the three forms of letter sent to the Letter Recipients (Ansett Group Creditor; Skywest Creditor; Aeropelican Creditor) and a list of the Letter Recipients. I am informed by Mark Korda that the Letter Recipients are those Ansett Group creditors (except for the Commonwealth, NAB, BNP and CBA) who, based on the tables and assumptions set out in the Korda Affidavit, would be likely to suffer a reduction of \$10,000 or more in the amount of the dividend that creditor may receive if the Ansett Group is pooled, as opposed to the dividend that creditor would be likely to receive if the Ansett Group is not pooled.
- 12 On 21 September 2005 I caused to be published in "*The Australian*" national newspaper, "Company Notices" section, a notice to "ALL ANSETT GROUP CREDITORS" ("**Newspaper Notice**"). Now produced and shown to me marked "**AWK-13**" is a copy of the Newspaper Notice.

#### **Committees of Creditors updates**

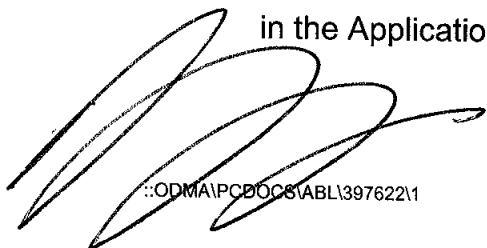
- 13 I am informed by Carmel Flynn of KordaMentha that since the directions hearing in the Application on 30 August 2005 she has caused to be sent to the Ansett Group Committees of Creditors one email (with attachments) to update the Committees about the status of the Application and the so-called "AAE compromise" (being the compromise evidenced in the document



entitled "AAE Pooling Compromise Deed", a copy of which is exhibit "MAK-5" to the Korda Affidavit). Now produced and shown to me marked "AWK-14" is a copy of the email (with attachments) to the Committees of Creditors dated 19 September 2005.

#### **Contradictor(s) to the Application**

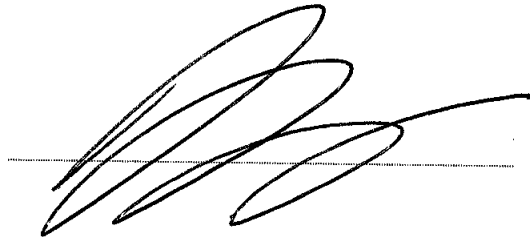
- 14 In addition to placing information on the Websites, sending letters to the Letter Recipients and placing the Newspaper Notice, the Deed Administrators have taken the following steps to facilitate the involvement of a contradictor or contradictors in the Application.
- 15 On or about 15 September 2005 I contacted Stewart Peters, a partner of Deacons, solicitors, to ascertain whether Deacons would be prepared to act for a contradictor or contradictors to the Application. I informed Mr Peters that, in the event Deacons were to act for a contradictor or contradictors, then that contradictor's (or contradictors') legal costs of and incidental to appearing in the Application would be paid on an indemnity basis by the Deed Administrators as an expense in the Ansett Group administrations. On 16 September 2005 I spoke with both Mr Peters and Steven Palmer, also a partner of Deacons, and was advised that Deacons would be able to act for a contradictor or contradictors in the Application.
- 16 On 19 September 2005 there was a meeting at ABL attended by persons from KordaMentha, ABL, Deacons and a representative of an Ansett Group creditor (one of the Letter Recipients), which creditor would consider its willingness to participate in the Application as a contradictor. I am informed by Mark Korda that, today, that Ansett Group creditor has advised Mr Korda that it does not wish to participate in the Application as a contradictor. I am informed by Mark Korda that he is presently attempting to identify another Ansett Group creditor (preferably a Letter Recipient) who would be willing to participate in the Application as a contradictor. Further, I am informed by Messrs Peters and Palmer of Deacons that Deacons remains ready and willing, subject to conflict of interest, to act for a contradictor or contradictors in the Application.



- 17 I am informed by Carmel Flynn of KordaMentha that this morning she met with Richard Watts of the Australian Council of Trade Unions and other union representatives to update them about the status of the Application, including in relation to the AAE compromise, and subsequently invited one or more union representatives to attend the directions hearing on 26 September 2005.
- 18 This morning I spoke with Ross McClure of the AGS, representing the Commonwealth. Mr McClure advised me that the Commonwealth is still considering matters raised in the Korda Affidavit and that if the Commonwealth determines to file and serve any affidavit in response to the Korda Affidavit it will not be in a position to do so until after the directions hearing on 26 September 2005. On behalf of the plaintiffs I offered to arrange a meeting between the Deed Administrators and the Commonwealth (and their respective representatives) to be held after the directions hearing on 26 September 2005 and before the Commonwealth files and serves any affidavit in response to the Korda Affidavit (if it determines to do so) for the purpose of efficiently responding to any questions the Commonwealth might have about the Application or resolving, or seeking to resolve, any issues which might arise for the Commonwealth in relation to the Application.
- 19 On behalf of the Deed Administrators I have arranged meetings to be held this afternoon at ABL, the first to involve KordaMentha, ABL and Deacons' personnel, and Counsel engaged by ABL and Deacons, in relation to the contradictor issue, to be followed by a meeting involving all of those persons and also a representative or representatives from or on behalf of ASIC, for the purposes of updating ASIC about the status of the Application and, in particular, to discuss the contents of a letter from ASIC to ABL dated 19 September 2005, a copy of which is now produced and shown to me marked "**AWK-15**". Further, in relation to ASIC's letter, I spoke with Tim Luxton of ASIC about numbered paragraph 5 of the letter on 19 September 2005, being the day the letter was received and prior to publication of the Newspaper Notice, to indicate to him that the Deed Administrators took the view that to make specific reference to the AAE compromise in the

Newspaper Notice may be liable to confuse Ansett Group creditors about the nature of the Application, and that full details about the AAE compromise could be obtained by accessing the information on the Websites.

**AFFIRMED** at Melbourne in the State of )  
Victoria on this 23<sup>rd</sup> day of 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.

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**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 my affidavit affirmed on 23 September 2005 filed on behalf of the plaintiffs complies with Order 14, rule 2 of the Federal Court Rules.

Date: *23 September 2005*

  
.....  
**ALEXANDER WILLIAM KING**  
Solicitor for the plaintiffs

Version 2