

**TRANSCRIPT OF PROCEEDINGS**

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O/N 18092

A 8.8.06

**FEDERAL COURT OF AUSTRALIA**

**VICTORIA DISTRICT REGISTRY**

**GOLDBERG J**

**No VID 621 of 2005**

**IN THE MATTER OF ANSETT AUSTRALIA LIMITED**

**MELBOURNE**

**2.59 PM, FRIDAY, 4 AUGUST 2006**

**DAY ONE**

**MR A. KING appears for the plaintiffs**

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MR KING: Your Honour, I appear for the plaintiffs.

5 HIS HONOUR: Thank you, Mr King. Mr King, I am disposed to grant the orders which you have propounded. Because they were not consented to, I thought they couldn't be made on the papers and signed administratively under order 35, rule 10, but as they are not opposed, I can deal with them in an open hearing which is the purpose of why you are here today.

10 MR KING: Thank you, your Honour.

HIS HONOUR: I am disposed to make the orders. I only have one query. I am not quite sure how it works administratively. The orders you seek deal with the method of notifying the creditors who aren't likely in any way, potentially or otherwise, to be disadvantaged by the pooling orders which are proposed.

15 MR KING: That is right. We seek, your Honour, not only to deal with those creditors who will not be disadvantaged and, in that sense, stand in the same position as the creditors of the 32 companies in respect of which we obtained orders at the end of May. And that is the completely abbreviated notification regime.

20 HIS HONOUR: Yes, I understand that.

MR KING: And then there is a group of - - -

25 HIS HONOUR: A hundred.

MR KING: - - - approximately, or up to 3779 creditors who we intend to notify as though under 439(a).

30 HIS HONOUR: But they are not dealt with by the order, are they?

MR KING: No, they are not. It is - your Honour is correct, it is a carve out - - -

35 HIS HONOUR: I am not complaining. I am trying to understand it.

MR KING: Yes.

40 HIS HONOUR: Some of them are the ones in respect of whom you don't have current addresses - - -

MR KING: That is right.

45 HIS HONOUR: - - - and they are the ones who, at the most, might be affected by up to about \$32 per person.

MR KING: That is correct, on an averaged basis.

HIS HONOUR: On an averaged basis, I understand that.

MR KING: Yes, so what the orders that we are seeking today - - -

5 HIS HONOUR: The orders - the abbreviated order covers them - - -

MR KING: And it covers the balance of those creditors in each of the companies  
which may have affected creditors. So if I could give you an example. If one were to  
turn to and I believe your Honour has a copy of the proposed orders in front of you  
10 - - -

HIS HONOUR: Yes, I do.

MR KING: In order 1(c), there we refer to the creditors of Ansett Australia  
15 Holdings Limited but only those described in paragraph 13(a) - - -

HIS HONOUR: 13(e)?

MR KING: - - - 13(e) - thank you - of the Hams affidavit. And if one turns to that  
20 affidavit - - -

HIS HONOUR: Those are the creditors of AAHL who are not potentially  
disadvantaged creditors.

MR KING: So it is done by a process of exclusion. The number of 37,991 when  
25 added to the number of AAHL creditors described in the table under paragraph 10 of  
the affidavit, which is 2668, gives a total of - or the estimated total of AAHL  
creditors. So the abbreviated notification orders are sought, to use the AAHL  
example, only in respect of those creditors which the administrators estimate - or will  
30 not be disadvantaged by pooling.

HIS HONOUR: I understand that. So in relation to the creditors who may be  
potentially advantaged by pooling who are the 3000 - I added it up - 3700 odd in  
35 paragraph 10 - - -

MR KING: That is right.

HIS HONOUR: - - - you don't have any order obtained in relation to them for  
40 service?

MR KING: No.

HIS HONOUR: So you are proceeding on the basis that because you have got to  
45 notify them of the meeting, you have got to notify them in the usual way, by post.

MR KING: That is right. So we have picked - - -

HIS HONOUR: So you don't need an order in relation to them at all?

MR KING: That is right. The DOCA provides that we are entitled to give abbreviated notice to everyone.

5

HIS HONOUR: It does.

MR KING: In paragraph 136 of your Honour's reasons for judgment on 22 March, or by that paragraph, the Court expressed the concern that creditors who may be potentially disadvantaged by pooling should have - I think the word used was "specific notice".

10

HIS HONOUR: Yes.

MR KING: The administrators take that to mean notice directed to that individual creditor.

15

HIS HONOUR: Notices that were sent to them by post or otherwise communicated to them but not relying on the web or a notice in the newspaper.

20

MR KING: That is correct. So the administrators have told all of the interested parties and say in open court that the way they will be communicating with that group of 3779 creditors is by posting out a report as though it were a 439(a) report to each of those creditors, save for the 190 creditors who fall within that group of potentially disadvantaged creditors, in respect of whom the deed administrators do not have sufficient contact details to enable them to post reports without significant further investigation. And that is where the cost benefit analysis of the \$6000.

25

HIS HONOUR: I understand all of that. Where I am a trifle confused is under paragraph 18 - - -

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MR KING: Point four.

HIS HONOUR: - - - of the deed - 18 of the deed of company arrangements, you are entitled to send out - you are entitled to give them what you have called "abbreviated notice" - - -

35

MR KING: Yes.

HIS HONOUR: - - - but you are not going to do so.

40

MR KING: We are not going to do that. We don't seek a specific order but having regard to what was said in the reasons for judgment, we think it is appropriate to, instead of relying upon the DOCA regime in clause 18, to in fact notify these people individually to the extent they can be notified.

45

HIS HONOUR: Yes, well, that, in a sense - I follow that now. And you having said

that satisfies me of one of the matters that concerned me. I wanted it to be established, as it were, in open court and as a matter of record on the transcript that there was no misunderstanding which there obviously, now, isn't - - -

5 MR KING: Thank you, your Honour.

10 HIS HONOUR: - - - about what I had contemplated. And what you are telling me is that even though under clause 18 of the deed of company arrangements, you can send what you have called an abbreviated notice to those persons - other than the ones for whom you don't have addresses who are described in paragraph 10 of Mr Hams' affidavit - you are going to send them notices in a 439(a) type format to them individually.

15 MR KING: That is correct, your Honour.

HIS HONOUR: Yes, well that was all that - that was the only matter which concerned me as to whether there needed to be an order in relation to them but the probability is that you don't need an order in relation to them because you are going to serve - give them notice in the usual way. I suppose I want you, because of what you - what clause 18 of the DOCA provided, it might be still open to you to do so but you are, in effect, telling the Court that is not what you propose to do.

25 MR KING: That is right, having regard to the concerns which were expressed by the Court in the judgment.

HIS HONOUR: Yes, I follow that. In those circumstances and on the basis of what you have told me this afternoon, I will make the orders in the form of the minute.

30 MR KING: Thank you, your Honour, and may I also express the deed administrator's gratitude for dealing with the matter quickly and making yourself available this afternoon.

35 HIS HONOUR: Yes, well, I am quite happy to have done so. Is this the end of the Ansett administration from the Court's point of view?

MR KING: One would hope.

40 HIS HONOUR: I don't think there is anything left, is there? Although there is an outstanding action - - -

MR KING: There will be - - -

HIS HONOUR: - - - somewhere in relation to some pilots, I think.

45 MR KING: I should say that there are other matters which the administrators may well need to pursue in terms of debt recovery or commercial litigation, if I can put it in that way.

HIS HONOUR: Yes.

5 MR KING: I have previously foreshadowed, on behalf of the deed administrators,  
that if pooling occurs, subsequent to all of the meetings, there may be a perceived  
need or it may be desirable for the administrators to return to the Court and have  
what has happened, if you like, approved post-fact should any issues arise - - -

10 HIS HONOUR: Yes, I follow that.

MR KING: - - - but, save for those two sorts of matters, the deed administrators  
anticipate that this should be the end of the road in this application.

15 HIS HONOUR: Yes, well, it is almost the fifth anniversary of the start of the  
administration, isn't it?

MR KING: Indeed it is.

20 HIS HONOUR: Yes, well, it has been a long and slow process. I hope it will end  
ultimately satisfactorily and, if it is not premature, I thank you for the assistance you  
have given the Court. It has made the matter capable of resolution in difficult  
circumstances.

25 MR KING: Thank you, your Honour.

HIS HONOUR: Anything further this afternoon?

MR KING: No, your Honour.

30 HIS HONOUR: Adjourn the Court.

**MATTER ADJOURNED at 3.10 pm INDEFINITELY**