

TRANSCRIPT OF PROCEEDINGS

O/N 12799

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FEDERAL COURT OF AUSTRALIA

VICTORIA DISTRICT REGISTRY

GENERAL DIVISION

GOLDBERG J

No VID621 of 2005

IN THE MATTER OF ANSETT AUSTRALIA LIMITED

MELBOURNE

10.16 AM, MONDAY, 26 SEPTEMBER 2005

DAY THREE

Continued from 30.8.05

MR S. SHARPLEY appears for the Applicants

**MR M. SIFRIS SC with MR RANDELL appears for Australian Securities and
Investments Commission**

MR D. WILLIAMS appears for WTH Pty Ltd

MS N. TOHOLKA appear for CBA and BNP Paribas

MR T. GINNANE SC appears for the Commonwealth of Australia

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MR S. SHARPLEY: Your Honour, I appear on behalf of the applicants.

HIS HONOUR: Thank you, Mr Sharpley.

5 MR D. WILLIAMS: If your Honour pleases, I appear on behalf of WTH Pty Ltd, which is a contradictor.

HIS HONOUR: WTH Pty Ltd, yes.

10 MS N. TOHOLKA: Your Honour, if it pleases the Court, my name is Toholka. I am here for CBA and BNP Paribas. We are not formally - - -

HIS HONOUR: I am sorry?

15 MS TOHOLKA: I am here for CBA and BNP Paribas. We are not formally parties to the proceeding, but we are here in support of the application.

MR M. SIFRIS SC: If it please the Court, I appear with my learned friend MR RANDALL for ASIC.

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MR T. GINNANE SC: If your Honour please, I appear for the Commonwealth of Australia.

HIS HONOUR: That is the lot for the moment?

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MR SHARPLEY: Your Honour, I will first briefly outline the steps that the administrators have taken since the last directions hearing on 30 August. Your Honour should have received an affidavit sworn by Alex King on 23 September.

30 HIS HONOUR: I have read that.

MR SHARPLEY: Yes. That affidavit - in summary, that affidavit deposes to the administrators having prepared a substantive affidavit, which your Honour should also have a copy of.

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HIS HONOUR: Which I have read.

MR SHARPLEY: We have provided copies of that affidavit to the Commonwealth, ASIC, and the three banks. We have placed copies of the affidavit and all the relevant court documents on the Ansett websites. We have written to 126 of the creditors of the six companies or entities that the administrators believe stand to be worse off if pooling goes through, and those were identified on the basis of the analysis set out in Mr Korda's substantive affidavit, and the assumptions therein, to identify those creditors who the administrators believed stood to be at least \$10,000 worse off in a worst case, should pooling go ahead.

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The next step is that an advertisement was placed in "The Australian" on 21 September. The administrators have also provided a further update to the

committees of creditors, which includes an explanation - a more detailed explanation of the reasons for the AAE compromise. The administrators have also had meetings or discussions with ASIC, the Commonwealth, unions, and a solicitor acting for the contradictor, WTH Pty Ltd. The response that the administrators have received to the various steps is as follows.

We have received a letter from ASIC which raised a number of questions, and we have had a meeting with ASIC to discuss those issues. WTH Pty Ltd, who trade as AVIS, have agreed to act as a contradictor in the proceeding. They are a creditor of - a non-priority creditor of four of the six companies or entities that we believe, on our best estimate, stand to lose if pooling goes ahead, those being Show Group, AAHL, Westsky - Westsky, I should say - and Kendell. They are also a creditor of the head company AAL, once again a non-priority creditor.

There have been no responses to the advertisement. As regards the letter, we have received two responses in the forms of emails sent to the administrator's staff - - -

HIS HONOUR: That is two responses to the letters to the 126 creditors?

MR SHARPLEY: Yes, your Honour. We received two emails from creditors, one known as Rockwell Collins, and the other known as Skippers Aviation. They sent us emails expressing an interest in opposing the application. We have attempted to contact them by telephone, without success so far. As matters currently stand, your Honour, the further steps that the administrators anticipate taking prior to the trial on 10 October is first file an affidavit with a confidential exhibit, setting out in detail the legal and commercial reasons for the AAE compromise. There has already been disclosure of those reasons to the committee of creditors, and a copy of that - - -

HIS HONOUR: That is the compromise with the banks, you mean?

MR SHARPLEY: The compromise with the banks and also the compromise with the NABs sweeping claim - or, sorry, I should say AALs claim against the NAB for the sweeping of accounts.

HIS HONOUR: Yes.

MR SHARPLEY: That is all rolled into the same compromise.

HIS HONOUR: I understand.

MR SHARPLEY: The second - and we anticipate being able to provide that affidavit with a confidential exhibit to your Honour by early next week. Yes - my instructor reminds me that we have disclosed to the committee of creditors a quite detailed explanation for the reasons behind the AAE compromise, and that circular to the committee of creditors is an exhibit to my instructor's most recent affidavit which your Honour would have received on Friday. The second step we anticipate taking is that as a result of the letter from ASIC and further discussions, ASIC have asked us to put on some further material relating to two particular points.

Your Honour will have noted that the Korda affidavit contains a number of scenarios and calculations as to who is better or worse off if pooling does or does not occur. Those scenarios operate on the assumption that the AAE compromise is approved and takes effect, and that AAE is pooled, and that the payments provided for under the AAE compromise are made by AAL. ASIC have asked the administrators to prepare two more scenarios dealing with pooling or no pooling, but with - once - without the AAE compromise taking effect.

10 HIS HONOUR: Yes, I understand that.

MR SHARPLEY: The second step, or the second piece of information ASIC have asked for, is for the administrators' best attempt to quantify what they believe might be the additional costs of having to run 41 separate administrations rather than one pooled administration.

HIS HONOUR: By that you mean 41 administrations where there is no pooling?

MR SHARPLEY: Yes, your Honour. Your Honour would have noticed that the effect of pooling is in - is in substance to transfer about \$20 million from the 40 companies into the one company, to the advantage of the priority creditors of AAL and the disadvantage of a large number - mostly to a very small amounts, in cents per dollars - of the creditors of the six subsidiary companies. The point that is made in the affidavit, your Honour, is that it is not really a zero-sum game, because the 20 million that - extra that would flow into the pool, if pooling is approved, does not necessarily mean that the individual creditors are therefore 20 million worse off.

And the reason is that the calculations by the administrators as to who is worse off are done on a worst case basis. They assume that there are no additional costs for running 41 separate administrations instead of one administration. So where the tables identify potential creditors may be, for example, up to three-tenths of the cent in the dollar worse off, that is prior to any attempt to estimate the additional costs of separate administrations, which would reduce that return.

35 HIS HONOUR: Even more?

MR SHARPLEY: Even more. But what ASIC have asked us to do, as best as possible - and it is going have to be our best estimate to estimate the range, at least, of those additional costs if pooling didn't go ahead. And we anticipate filing a further short affidavit this week dealing with those two requests for extra information by ASIC. The fourth matter I was going to raise, your Honour, is that when I was last before your Honour, your Honour asked me could I just briefly scope out where the administration stood in terms of distributions and the future course of the administration.

45 I am instructed that the total priority claims in the administrations amount to some \$760 million. To date, an amount of \$561 million has been paid to priority creditors, and that compromise is - consists of - direct distributions by the

administrators - these are the employees I am speaking of here as the priority
creditors - and payments enabled by the Commonwealth's SEESA Scheme. So there
is \$561 million has been paid to date. If pooling goes through, the administrators
anticipate being able to distribute approximately \$80 million to the priority creditors
of AAL, our - in addition to making the \$27 million payment provided for by the
AAE compromise.

That would leave the administrators in the position - there would only be one
company left in existence, AAL. The further distributions from then on are not as
clear. The amount - the best estimate of the administrators, following the realisation
of assets still to be realised - at the moment those largely consist of some 12 further
aircraft which the administrators are trying to sell, though they are giving
contemplation to breaking them up to spare parts, should there be - should they be
unable to sell them in whole. I should note that there were 130 aircraft in the fleet at
the date of administration. So this is the rump of 12 that are left.

HIS HONOUR: But a lot of those 130 were either leased or mortgaged - - -

MR SHARPLEY: They were - - -

HIS HONOUR: - - - weren't they?

MR SHARPLEY: Yes.

HIS HONOUR: Yes. That is true, your Honour. So this is the rump of 12 that
there are - they are BA 146 aircraft the administrators are either going to sell, or if
that proves unsuccessful, contemplate breaking them for parts to sell. The other
major asset is Ansett had a very large bank of spare parts for aircraft, which is a
valuable asset, and I am instructed that to date some \$80 million has been realised
by the sale of spare parts, but there still remain some four million spare parts which
the administrators are endeavouring to sell.

HIS HONOUR: How about the flight simulator?

MR SHARPLEY: The flight simulator business has been sold, and there is - I
believe there is one further payment - two further payments to come. But that - the
land and the business, which operated it, have been sold. It was early this year, I
believe. Yes. So there are still asset realisations to go on into the future. There are
also outstanding issues largely relating to tax, and there is litigation still on foot
relating to - the two main pieces are litigation with Diners' Club and litigation over
the status of moneys paid into travel agents' accounts, whether they are trust moneys
and if so who is the beneficiary.

HIS HONOUR: What is the status of that litigation?

MR SHARPLEY: I will have to get some instructions, your Honour. I am afraid I
can't give your Honour any more information about that.

HIS HONOUR: I only ask because at some stage there has to be an end to this administration.

5 MR SHARPLEY: There does, and what I was going to say, your Honour, is that
that end won't come before 2007. The tail of asset sales and ongoing litigation is
going to take that long, and that - which would be conducted by the rump of Ansett,
the AAL. So that is the administrators' current expectation as to the remaining
10 issues. Now, the administrators expect that following the pre-Christmas payments
that would be made if pooling was approved, there could be up to a further \$65
million to be distributed by AAL at a later date, but that depends - an absolute
maximum of 65, because that depends on a number of contingencies, largely
disputes over tax.

15 HIS HONOUR: In any event, the distributions will only be to the priority creditors,
won't they?

MR SHARPLEY: Yes, your Honour.

20 HIS HONOUR: And they are basically the employees?

MR SHARPLEY: Yes, and Commonwealth in its - - -

HIS HONOUR: And the Commonwealth entity?

25 MR SHARPLEY: Yes, your Honour.

HIS HONOUR: Through SEESA?

30 MR SHARPLEY: Yes, your Honour. So that is the state of play as it were, so of
the realisations that the administrators anticipate, it would be fair to say that at least
two-thirds would be - if pooling went through, would be - at least two-thirds would
be distributed before Christmas, and then there would be a further payment or
payments to be made into the future when the asset realisations and litigation
conclude.

35 HIS HONOUR: And if pooling doesn't go ahead.

MR SHARPLEY: Well, then - - -

40 HIS HONOUR: Presumably they would extend the administration substantially?

MR SHARPLEY: Very substantially, your Honour.

45 HIS HONOUR: And increase the costs incrementally?

MR SHARPLEY: Well, my instructor whispers "massively". The additional costs
of running 41 administrations instead of one and resolving all the intra-group issues

- the - as Mr Korda has deposed, there are a large number of such issues, and the additional costs are expected to be very significant.

5 HIS HONOUR: Yes, well, it may well be they will need to be quantified as best you can - - -

MR SHARPLEY: Yes.

10 HIS HONOUR: - - - by the time we get to 10 October.

MR SHARPLEY: Yes, your Honour. Well, that is one of the two pieces of information that ASIC have asked for, and we are going to make our best attempt to try and quantify those, and we can also give consideration to perhaps the extra duration of the administrations were pooling not to occur.

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HIS HONOUR: Yes.

MR SHARPLEY: The final matter I wish to address to your Honour was that in relation to the timetable your Honour fixed the matter for trial on the 10th, and the administrators are ready and willing and keen to have the trial on that date, and we don't understand that - we understand that all other parties support us in that desire. The only variation which we would seek to the orders that were made, after consultation with the other parties, is in relation to the date for the outline of submissions, which is currently provided for next Monday the third, and we would request that the Court would amend that till Thursday of next week being the 6th.

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HIS HONOUR: You still anticipate a trial on the 10th, do you?

MR SHARPLEY: Yes, your Honour, to conclude within the one day.

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HIS HONOUR: Yes. You received a letter from ASIC Monday last that is the last exhibit, I think, to Mr King's affidavit, exhibit 15.

MR SHARPLEY: It is dated the 19th, so Monday last, your Honour. We had a meeting with the representative of ASIC on Friday to discuss the five points that were raised there and as a result of that we are going to provide some further information in relation to two points raised by ASIC.

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40 HIS HONOUR: Yes. Anything further you wish to say for the moment?

MR SHARPLEY: No, your Honour.

HIS HONOUR: Mr Williams, what is your position in this in terms of preparation?

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MR WILLIAMS: I, personally, have just come into it, your Honour, and my instructors have come into it early last week but with the expectation of a different client. The client has changed in the space of the last couple of business days, in

fact the last business day. It notionally changed on Friday and was confirmed over the weekend. But the real position in a sense is the same. It is an entity that has been found with the application which is willing to do so. So the reality is my instructor has been in it for a week and I have been in it since - I think Wednesday night I got the papers. There are of course a lot of papers and we are doing our best to get on top of them.

HIS HONOUR: That is why I am concerned about 10 October. I think it is very important in a case like this that there be a contradictor participating in the matter who has had the time and the resources to prepare the matter properly. Do you anticipate that you would be ready by 10 October?

MR WILLIAMS: Yes, I do, your Honour, provided that we have the extra time to put into submissions which is contemplated and indicated by Mr Sharpley.

HIS HONOUR: Well, you will certainly have that.

MR WILLIAMS: We don't anticipate putting on our own evidence at this stage, but we do anticipate raising issues with the administrators and inviting them in a rather similar way to what ASIC has already done to address issues and further material that they want to file. Of course if they are not able adequately to address those issues, then we will draw those issues to the Court's attention, draw our correspondence to the Court's attention and invite the Court to draw an inference that that has not been answered, that either there is no answer available or no satisfactory answer available.

But we don't see there being any material that we, ourselves, could put on, so that does give us an opportunity to spend our time correctly identifying the issues that we want to raise and making sure that those issues are either responded to or not responded to but in such a fashion that - the non-response we can rely on.

HIS HONOUR: Thank you. Mr Sifris, what is the position of the Commission?

MR SIFRIS: Your Honour, we haven't fully digested the substantial material filed, and we note there is to be a further affidavit. We have raised a number of matters, as have been identified. The first and the most important was a contradictor, which now appears to be in place. The second matter was the compromise with the banks and the adequacy of the material before the Court. We understand there is to be a further affidavit next week, no later than next week. The third matter is the question of the tables that appear in the affidavit.

HIS HONOUR: That is around page - in the seventies.

MR SIFRIS: Yes. We were not happy with those tables, and there has been an attempt to clarify them.

HIS HONOUR: I am sorry. There are about four distributions tables.

MR SIFRIS: There are four tables that start at page 69, I think it is, right through to 74, four tables. There has been an endeavour made to clarify and to put in a further column. That should also be made available to creditors in some form. It is one thing to clarify the position; it is another to inform creditors of that clarification.
5 The fourth matter that needs to be raised is the question of the trusts, and there needs to be a process on foot to incorporate dealing with the trusts.

HIS HONOUR: You mean the Pelican Trust and the Westsky Trust?

10 MR SIFRIS: Yes.

HIS HONOUR: Yes, and that was raised in the Commission's letter of 19 September.

15 MR SIFRIS: Yes. Those matters need to be attended. The matters are being dealt with. We do query whether the matter will be ready on the 10th. If everybody is ready, well, then, no doubt it will be ready, but it is ambitious, we would think.

20 HIS HONOUR: It may be. That is what concerned me when I read through the exhibits to Mr King's letter and then came to your letter. One of the matters that you raised in the last paragraph of the Commission's letter was that the form of advertisement didn't refer to the AAE pooling compromise deed.

25 MR SIFRIS: Yes.

HIS HONOUR: I don't know the attitude, whether you are going to persist in that attitude or whether you think it is a real matter that needs to be raised.

30 MR SIFRIS: That will depend on the further material that is going to be directed to that specific point. We note that there is proposed to be a confidential exhibit, no doubt an advice, and we may seek access to that. It may be agreed to. But we do need to understand the basis of that compromise with the banks. It is an important matter.

35 HIS HONOUR: Yes, I understand.

MR SIFRIS: The only other matter, perhaps one of form, is that in the substantial affidavit sworn by Mr Korda, paragraph 13, he does depose to the following:

40 *The plaintiff will seek orders or directions from the Court to the effect that we may properly and justifiably cause each of the Ansett group of companies to vote in favour of pooling.*

45 The way the application has been structured is under 447A and D that the administrators are permitted to vote in a certain way. That is not stated in the originating process. We make no criticism of that, but it should be understood by all that even though in paragraph 13(a) what is sought is an order to vote in favour of pooling, it is a pooling application, this, and we treat it as such. That does raise

another matter as to the desirability of in fact referring the matter to a meeting or whether it would be more appropriate for the Court simply to make an order under its powers in the nature of a pooling order.

5 HIS HONOUR: You mean for the pooling or the voting?

MR SIFRIS: The pooling, without the need to convene all these meetings. The Court has power to vary a deed if the Court is satisfied that there has been proper disclosure and information to creditors.

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HIS HONOUR: Yes, I understand that.

MR SIFRIS: Yes. If your Honour pleases.

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HIS HONOUR: Mr Ginnane, the Commonwealth?

MR GINNANE: If your Honour pleases. The Commonwealth is considering the proposal and its position in respect of it. It expects to be in a position by the end of this week to communicate its position to the applications. It would seek a variation of the orders your Honour made on the last occasion additional to that proposed in respect of submissions and would seek a variation enabling any affidavit in response to be filed by Tuesday of next week, which is October 4, your Honour. The affidavit material is still being considered. There is still material to come to hand.

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HIS HONOUR: Yes, I understand.

MR GINNANE: If the Commonwealth supports the proposal, well, then it is perhaps unlikely that we would be filing any material, but if the other course is followed, then we may want to put on material and we would seek till tomorrow week, October 4, to file and serve that, your Honour.

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HIS HONOUR: Yes, you shall have that opportunity. Ms Toholka, what is your attitude to this application - or have you just got a watching brief?

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MS TOHOLKA: I have a watching brief, your Honour, so I have got nothing to add to what has been said this morning.

HIS HONOUR: Thank you for that. Well, where do we go from here, Mr Sharpley? We will just amend some directions; is that right?

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MR SHARPLEY: Yes, your Honour. I would just say that in relation to the comments that Mr Sifris made on behalf of ASIC he is correct that we will be providing tables including two further scenarios that ASIC has requested and any further affidavit material of course will go onto the web site to be accessible. In relation to the tables, necessarily they are somewhat complicated because it is a very complicated calculation that has to be done because of the large number of companies and the existence of inter-company debt and various cross-guarantee

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provisions. I just note that the impact on creditors is also set out in the body of the affidavit at page 209. There is a comprehensive list - - -

HIS HONOUR: Page or paragraph?

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MR SHARPLEY: Paragraph 209. There is a list given in a textual form identifying those creditors who the administrators consider may be worse off if pooling goes through, both non-priority creditors, and in paragraph 210 the priority creditors. So that is pretty much a synthesis of what the previous four tables set out, and as I have noted before, the expression used is maximum reduction because the disadvantage to those creditors does not assume any additional costs to those creditors of separate administrations.

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So that is why it has been termed a maximum reduction. For example, paragraph 209(a) identifies 31,296 third-party, non-priority creditors of AHL who stand to lose a maximum of .36 cents in the dollar. But we will provide the - we have shown a draft to ASIC at the meeting on Friday, and we will provide new tables that set out the two further scenarios ASIC wishes the administrators to consider.

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In relation to the trusts, the Westsky and Pelican trusts, the administrators agree that the form of direction with respect to those two entities would have to be slightly different than the form currently set out in the application and the affidavit because of their nature as trusts, but the administrators considered that between the Court's power under section 447A, 447D and the accrued jurisdiction to give directions and advice to trustees which your Honour exercised most recently in the superannuation litigation, that the position of the Westsky and Pelican trusts, while of a different legal format because they are trusts rather than companies under deeds of company administration, the administrators believe the substantive issues are the same and the Court would have jurisdiction to give directions which have a similar effect.

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In relation to Mr Sifris' comment about paragraph number 13, it is important to note that the administrators have chosen to proceed by way of section 445A and F; that is, to hold meetings to vote on variations to approve variations to the DOCAs which will have the effect of causing pooling rather than coming to the Court and asking the Court to force through pooling via a section 447A application without holding meetings and the administrators consider that is the preferable way to proceed.

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HIS HONOUR: To leave it in the hands of the creditors?

MR SHARPLEY: Yes, for several reasons. The advice of the administrators is that is the preferable legal course to follow. There is also - a variation of the DOCA under 445F leaves it open to creditors who feel that they are particularly disadvantaged to apply to the Court under section 445B. The third reason of course is that the DOCAs that were passed by a very great majority of creditors provided for - not only did they contemplate pooling but they required the administrators to hold section 445F meetings to put pooling to the creditors.

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5 Now, while that provision could be wiped away by a section 447A application, the administrators consider that the process that they have chosen to follow, that is, merely to seek Court directions in relation to the voting of inter-company debt is preferable to coming to the Court and asking the Court to force through pooling simply under section 447A.

HIS HONOUR: So we can deal with that in due course on the merits.

10 MR SHARPLEY: Yes, your Honour. The last point is that of course the administrators have no objection to late filing of any material by the Commonwealth.

15 HIS HONOUR: Well, we - the last order I think I made was on 30 August. I should vary paragraph 2 of the order. You are going to file a further affidavit are you, Mr Sharpley? When are you going to do that by?

MR SHARPLEY: We are going to file one further affidavit this week, dealing with the queries raised by ASIC and providing the further information, yes.

20 HIS HONOUR: So I should provide for any further affidavits by the applicants to be filed and served by what, Friday, 30 September?

25 MR SHARPLEY: Excuse me, your Honour. I am instructed, your Honour, that we can provide the - there are two further affidavits. One to deal with the ASIC request for information, and we will be in a position to provide by the 29th, this Thursday. The second affidavit is the affidavit containing the confidential exhibit dealing with the AAE compromise. And we won't be in a position to provide that until early next week, the second, I am told. The fourth.

30 HIS HONOUR: Well, what I will do is provide that any further affidavits by the applicants to be filed and served by the 4 October. If they can be done earlier, they should do so. I should probably then provide for an affidavits in response, to be filed and served by Friday, 7 October. But if that is - it has just occurred to me, Mr Sharpley, if you are going to put those affidavits in that late - when I say that late, at that point of time, it puts Mr Williams in a very difficult position.

35 MR SHARPLEY: Well, your Honour, the open affidavits will be provided by Thursday. And it really will be limited to providing a couple of extra - some extra columns in a table, and our estimate of the - our best estimate of the additional costs of separate administration. There is not going to be a lengthy affidavit. It will be concise and directed to those two points. The only affidavit that we are proposing to serve next week would be the confidential affidavit for your Honour's consideration, setting out the legal and commercial reasons for the AAE compromise.

45 HIS HONOUR: The only issue is the administrators and those instructing you, and indeed you have lived with this administration for some years now. Mr Williams and Deacons have probably lived with it for a matter of days. And if there is to be a

proper consideration by Mr Williams and those instructing him, I am very apprehensive that the date of 10 October is not practical. Now what I am prepared to do at the moment, if you want me to, is to hang onto it, but if Mr Williams and those instructing him, or indeed the Commonwealth, at any stage, say they are not ready, I will not allow the matter to proceed on the 10th, until they are properly ready.

MR SHARPLEY: Yes, I understand, your Honour. Well I have heard - and your Honour has heard what Mr Williams has said about his preparedness. I don't anticipate that the filing of this further affidavit by Thursday, would unduly lengthen his preparation. It really will be directed to two very specific points.

HIS HONOUR: Well, the only question is, whether they have got time enough even now. With my knowledge of Mr Korda's affidavit, is 87 pages, and some 235 paragraphs, for those of us who have participated in some of that process, it brings - it re-emerges in the consciousness. But that luxury may not be available to the contradictor.

MR SHARPLEY: Yes, your Honour. Well, I have heard what your Honour has to say. If Mr Williams feels that they cannot properly prepare in the time available, then that is a matter for him to raise with the court.

HIS HONOUR: Well, what I will do at the moment is provide for any affidavits in response, to be filed and served by 7 October. Outlines of submissions should also be filed and served by 7 October. Mr Williams, I am expressly reserving your position.

MR WILLIAMS: Yes, your Honour.

HIS HONOUR: Because my intuition and previous experience tells me that you may not be in a position to be fully prepared. But it is a matter for you.

MR WILLIAMS: Well, one does see your Honour's nervousness about that, and we have taken on this job in the understanding we are going to have to be working very hard to get up to speed on it. Having said, your Honour, the filing of further material by party, perhaps including the Commonwealth, by the 7th, doesn't fill one with joy about hearing on the following Monday. The 7th is a Friday. It doesn't give a lot of opportunity to consider that material.

Having said that, we don't want to interfere with the administrators' desire to see a large number of former employees given a payment by Christmas. But it may be that there is some step in between there that can be occurred, depending on the court's availability in the weeks following the 10th. And how long would be required after your Honour made any order, for the administrators to give effect to it. There is a certain artificiality about the Christmas deadline, although when you are dealing with a large number of former employees, one can understand it.

HIS HONOUR: Yes, well, the employees have been out of their entitlements now for, what is it 2001 - - -

5 MR WILLIAMS: They have had a Santa Claus distribution in each of the last couple of years, I think.

10 HIS HONOUR: Four years. Yes, but people in the position of the employees have been the least able of - probably of the creditors, although there are other smaller creditors in this administration, to withstand the difficulties of being out of their money for so long.

MR WILLIAMS: Yes. And we are conscious of that.

15 HIS HONOUR: And as I indicated when we had that fight over the superannuation, it is terribly important that this matter be brought to a final financial conclusion for the employees as soon as possible. It has been a difficult and a complex administration, but the priority creditors, the employees' interests, must be put into the forefront at all times.

20 MR WILLIAMS: Well, my client is very conscious of that, your Honour, and albeit that it is a corporate client and a quite different position, it appreciates that there is a desire, not only on behalf of the administrators, but on behalf of the priority creditors, to have this pooling application determined as soon as possible.

25 HIS HONOUR: Yes, I understand.

MR WILLIAMS: But of course that does have to be - consistently with it being heard fully, and so I wonder, your Honour, whether, if it is contemplated that there is going to be further material filed as late as 7 October, being a Friday, that the following Monday is too soon.

30 HIS HONOUR: I have changed my mind on that while I have been addressing you and you have been addressing me. Mr Sharpley, the affidavit - you can have the affidavit - you have got two affidavits. One is responding to ASIC.

35 MR SHARPLEY: Yes. Your Honour, if I could interject. I have just got some instructions. What we can do by this Thursday is provide the ASIC response affidavit, and the open portion of the AAE compromise affidavit, by Thursday. The only matter that would have to - couldn't be done before early next week, is the confidential exhibit, which would contain the legal advice and the commercial explanation for the AAE compromise.

HIS HONOUR: Is that being prepared on your -

45 MR SHARPLEY: Yes. It is, your Honour.

HIS HONOUR: It has been prepared?

MR SHARPLEY: Being. Has not been prepared. Well, the synthesis of it is -
there are various materials that have been prepared, but the exhibit itself, it is still in
the process of being prepared. And that will be - it is only that confidential exhibit
which will be going to your Honour. And that is the only piece of material which
5 the administrators rely on, which they wouldn't be in a position to serve by the 29th,
this Thursday. So we - - -

HIS HONOUR: That will have to go to Mr Williams, of course.

10 MR SHARPLEY: Well, I am not so sure - we wouldn't have anticipated providing
the legal advice to Mr Williams. Previous proceedings, your Honour, has not
generally distributed.

HIS HONOUR: This is the legal advice on - - -

15 MR SHARPLEY: The merits of the AAE compromise, which includes the
settlement of the claim against the NAB for the sweeping of accounts. We can
provide all further material that we intend to rely on by this Thursday, the one
exception being the confidential exhibit, which is something we can't provide before
20 early next week. So in that light, the contradictor and the other parties will have all
our material, save for that exhibit, by the 29th.

And therefore, the date for any responsive affidavits could be brought back earlier
from the 7th. I should say, your Honour, the administrators are very keen, if at all
25 possible, to have this matter heard on the 10th, because being desirous of making the
pre-Christmas distribution, the timeline for the hearing, awaiting a judgment, and
then calling the meetings, and then giving effect to pooling, requires us to move for
a hearing in early October.

30 HIS HONOUR: Well, I understand the desirability of that occurring.

MR SHARPLEY: Yes. I should note, your Honour, that - - -

HIS HONOUR: You may recall the originating process was filed on 21 June.

35 MR SHARPLEY: Yes, your Honour.

HIS HONOUR: Three months ago.

40 MR SHARPLEY: Yes.

HIS HONOUR: And it limped along for some number of directions hearings.

45 MR SHARPLEY: Pending the outcome, which was successful at negotiations with
the bank.

HIS HONOUR: Well, I understand that, but we still have to deal with the matter in a manner that will ensure that all possible arguments that need to be raised are considered - - -

5 MR SHARPLEY: Yes.

HIS HONOUR: - - - by all relevant parties. Not only the contradictor, but the Commonwealth and ASIC.

10 MR SHARPLEY: Yes, your Honour. The - - -

HIS HONOUR: There is very much a public interest element, I think, in this litigation.

15 MR SHARPLEY: There is, your Honour, and the representatives of at least the Commonwealth - I am not sure about ASIC - do have the advantage of considerable familiarity with this proceeding. I should note that in relation to the reasons for the AAE compromise, those have been comprehensively set out in the circular to the committee of creditors, which is an exhibit to Mr King's latest affidavit. The open
20 affidavit that will follow, by Thursday, is largely confirmatory of those reasons.

So other parties will have all our material, save for the confidential advice by this Thursday. And we don't anticipate that they would be subject to any application they make, and our consideration of it, that they would be looking at that exhibit in
25 any event.

HIS HONOUR: Well, what I will do is, I will provide for any further affidavits by the applicants to be filed and served by the 29th, recognising that the legal advice is going to come later. Provide for any affidavits in response to be filed by Thursday,
30 6 October, and for outlines of submissions by the 7 October. And Mr Williams, we will play it by ear. If you or those instructing you feel that you are unable to be ready in time, you should circulate by letter or email or other appropriate means, your concerns to the other parties. And if there is any resistance to an adjournment, I can bring a directions hearing at short notice.

35 MR WILLIAMS: Yes. Obviously we will take that course, your Honour. We wouldn't simply wait until the 10th, and then say, we are not ready. The one matter that does concern me out of the exchange I have just heard, your Honour, is that we would have thought that we would be provided with the confidential exhibit that has
40 been referred to. We are not parties to the litigation that was settled. Nor was ASIC, for example.

It is not like a situation when one approaches the court for approval of a compromise, and doesn't want to give the advice to the other side, because of course,
45 that is giving the other side ammunition in the event that the compromise is not proof. But we are not in that position. We are not one of the banks which was the party to that. We would like to fully understand the basis of that compromise so that

we understand whether or not we ought to be making submissions about it, as part of the overall submissions that we wish to make.

5 HIS HONOUR: I understand.

MR WILLIAMS: We would naturally provide - and I would expect to get instructions from the actual client to confirm this - we would provide any confidentiality undertaking that would be reasonably be sought.

10 HIS HONOUR: Yes. Well, I would have thought in the ordinary course, confidentiality undertakings ought to be sufficient protection for any commercial confidentiality, I suppose, it is, in this matter.

15 MR WILLIAMS: And to some extent, your Honour, my client is already in the loop, in a sense that its managing director is a member of the committee of creditors. So there is already that level of understanding. But I think what is proposed by way of this confidential exhibit goes beyond the level of confidence that has been extended to the media creditor to date. And in order to properly fulfil a contradictor role, I would have thought we would want to have all of the material available to us.

20 HIS HONOUR: That sounds right in principle to me. Mr Sharpley, I will leave it up to you as to how and those instructing you deal with it. If there is any issue, I will deal with it as it arises.

25 MR SHARPLEY: Yes, your Honour.

HIS HONOUR: Otherwise I will reserve the costs of the hearing today. Is there anything further from any other party? I will make those orders, and see how we go. Counsel are excused from the bar table.

30

MATTER ADJOURNED at 11.02 am INDEFINITELY