



HIGH COURT OF AUSTRALIA

Public Information Officer

6 February 2008

INTERNATIONAL AIR TRANSPORT ASSOCIATION v ANSETT AUSTRALIA HOLDINGS LIMITED
(subject to deed of company arrangement), MARK KORDA AND MARK MENTHA
INTERNATIONAL AIR TRANSPORT ASSOCIATION v ANSETT AUSTRALIA HOLDINGS LIMITED
(subject to deed of company arrangement)

The High Court of Australia today upheld IATA's claims as to the effect of its Clearing House system in relation to the insolvency of Ansett Australia.

Ansett collapsed on 12 September 2001 and administrators were appointed. It was then a member of the IATA Clearing House, which pays out airlines for services provided to other airlines in accordance with agreements between IATA and the airlines, including Ansett. International airlines regularly carry passengers and goods on behalf of other airlines. The Clearing House avoids the necessity for the airlines to make and receive numerous payments for such operations. Each month, airlines with a net credit balance receive a payment from the Clearing House while those with a net debit balance are obliged to pay funds into the Clearing House. The agreements between IATA and the airlines provided that settlement of amounts payable would be in accordance with IATA's Regulations. IATA claimed to be a creditor of Ansett and alleged that Ansett had a net debit balance of \$US4,370,989 outstanding as at December 2001. Ansett's creditors resolved that Ansett execute a Deed of Company Arrangement on 27 March 2002, which bound Ansett, its officers, certain creditors and the administrators, Mr Korda and Mr Mentha. The Deed barred creditors bound by it from taking any action to seek to recover their claim other than pursuant to the Deed. Ansett and the administrators submitted that the Deed and the insolvency provisions of the *Corporations Act* operated upon Ansett's property as it existed on 12 September 2001 so other airlines' claims against Ansett at that date needed to be proved in accordance with the Deed rather than with the IATA Regulations. After execution of the deed in May 2002, the administrators demanded payment from 13 airlines, all Clearing House members, for alleged net indebtedness for the months from August 2001 to March 2002 of more than \$US11 million. Further action by Ansett on these demands is on hold, pending the outcome of this litigation.

Both IATA and Ansett brought proceedings in the Victorian Supreme Court. IATA challenged decisions of Mr Korda and Mr Mentha. Ansett sought declarations about the application of the IATA Regulations. Justice Philip Mandie heard the two actions together. He made declarations that, notwithstanding the appointment of administrators, the Clearing House arrangements continued to apply with contractual force between IATA, Ansett and the other Clearing House members, and that IATA was a creditor of Ansett. Ansett and the administrators successfully appealed to the Court of Appeal, which held, by majority, that IATA was not a creditor, the Clearing House arrangements did not apply, and Ansett was a debtor of carrying airlines and a creditor of issuing airlines. IATA appealed to the High Court.

The High Court, by a 6-1 majority, allowed each appeal and upheld the declarations made by Justice Mandie. IATA Regulation 9 provided that no liability for payment and no right of action to recover payment accrued between Clearing House members and that members instead had liabilities to or rights of action against the Clearing House. The Court held that the effect of the IATA Regulations was that no liability for payment arose between airlines and that the only debt or credit which arose was that between IATA and member airlines in relation to the final balance each month. It followed that IATA was a creditor of Ansett to the exclusion of the member airlines. Ansett submitted that the Regulations operated to circumvent the Deed and the *Corporations Act*. The Court held that there was no contracting out of the operation of the Deed or the Act and no repugnancy between the Deed and the Clearing House arrangements. It also rejected Ansett's submission that the IATA Regulations were ineffective or void by reason of public policy.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*