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VPro Lawyers Newsletter November 2009

ASIC GOES AFTER MORE COMPANY DIRECTORS

A few days ago ASIC announced that it has launched proceedings against the directors of the Centro Property Group because the information in that Company's 2007 financial reports contained material misstatements. This arose because the Company classified certain current liabilities as if they were non-current liabilities. ASIC alleges that the directors failed to discharge their duties with due care and diligence in approving the financial reports. As a result, ASIC is trying to disqualify these directors from managing companies, and will also ask the Court to impose pecuniary penalties on them.

Although the case has nothing to do with asbestos, the case has much in common with the James Hardie travesty. In our May 2009 Newsletter about the James Hardie decision, I said about the directors:- because "they chose to gild the lily", and to make misleadingly optimistic statements about the company's financial position, they were in breach of their duty of care and diligence. I suggested that the solution for directors was to simply "tell it the way it is".

As the Centro case unfolds, we will see that the Centro directors will be accused of almost the same failure as the James Hardie directors, i.e. a failure to exercise care and diligence in carrying out their duties because they made misstatements which they thought would make the Company look better.

It does not work! Section 180 of the Act is a very powerful provision. When things go wrong, this will be the first provision ASIC relies on to get the directors.

Regards
Mike Lyons
VPro Lawyers & Corporate Consultants