

ASIC v Peter Macdonald and Others

Contraventions

Peter Macdonald First Defendant		
ACTION	PROVED CONTRAVENTION	DISMISSED ALLEGATION
Draft ASX Announcement 15 February 2001	<p>s 180(1): breach of duty of care and diligence by director or officer of a corporation.</p> <p>ASIC established that Mr Macdonald:</p> <ul style="list-style-type: none"> - failed to advise JHIL's board that the Draft ASX Announcement was expressed in too emphatic terms concerning the adequacy of funding; - failed to advise JHIL's board that the review of the Cashflow Model by PWC and Access Economics was limited to reporting on logical soundness and technical correctness and they had been specifically instructed not to consider other key assumptions adopted by the Cashflow Model. 	<p>s 180(1): breach of duty of care and diligence by director or officer of a corporation.</p> <p>ASIC failed to make out its case that Mr Macdonald failed to advise JHIL's board that the "best estimate" in certain Trowbridge reports:</p> <ul style="list-style-type: none"> - was too uncertain to be used as an assessment of the adequacy of funding; - had not taken into account superimposed inflation; - only had a 50% probability of being achieved.
Final ASX Announcement 16 Feb 2001	s180(1): breach of duty of care and diligence by director or officer of a corporation	
Press Conference Statement 16 February 2001	s180(1): breach of duty of care and diligence by director or officer of a corporation	s181(1): breach of duty by director or officer to act in good faith and for a proper purpose.

<p>ASX Announcements 23 February and 21 March 2001</p>	<p>s 180(1): breach of duty of care and diligence by director or officer of a corporation.</p>	<p>s181(1): breach of duty by director or officer to act in good faith and for a proper purpose.</p>
<p>Deed of Covenant and Indemnity (DOCI) – Disclosure</p>	<p>s 180(1): breach of duty of care and diligence by director or officer of a corporation.</p> <p>ASIC established that Mr Macdonald:</p> <ul style="list-style-type: none"> - failed to advise the chairman or the board of JHIL as to whether the DOCI Information was required to be disclosed; - failed to seek and consider advice or satisfy himself as to whether JHIL was required to disclose the DOCI Information; - failed to resolve or determine that JHIL would disclose the DOCI Information; - failed to raise with or propose to the chairman or the board of JHIL that they need to consider and determine whether or not to disclose the DOCI Information. 	
<p>(Draft) Information Memorandum for the 2001 Scheme of Arrangement (plus Draft Court Letter and Final</p>		<p>s 180(1): breach of duty of care and diligence by director or officer of a corporation</p>

Court Letter)		
UK Roadshow - ASX Representations (UK Slides); - Edinburgh Representations - London Representation	s 180(1): breach of duty of care and diligence by director or officer of a corporation	s181(1): breach of duty by director or officer to act in good faith and for a proper purpose.
Peter Shafron Second Defendant		
ACTION	PROVED CONTRAVENTION	DISMISSED ALLEGATION
Draft ASX Announcement 15 February 2001	s 180(1): breach of duty of care and diligence by director or officer of a corporation. ASIC established that Mr Shafron: - failed to advise JHIL's board that the Draft ASX Announcement was expressed in too emphatic terms concerning the adequacy of funding; - failed to advise JHIL's board that the review of the Cashflow Model by PWC and Access Economics was limited to reporting on logical soundness and technical correctness and they had been specifically instructed not to consider other key assumptions adopted by the Cashflow Model.	s 180(1): breach of duty of care and diligence by director or officer of a corporation. ASIC failed to make out its case that Mr Shafron failed to advise JHIL's board that the "best estimate" in certain Trowbridge reports: <ul style="list-style-type: none">o was too uncertain to be used as an assessment of the adequacy of funding;o had not taken into account superimposed inflation;o only had a 50% probability of being achieved)
Deed of Covenant and	s 180(1): breach of duty of care and diligence by director	

Indemnity (DOCI) – Disclosure	<p>or officer of a corporation.</p> <p>ASIC established that Mr Shafron:</p> <ul style="list-style-type: none"> - failed to advise the chairman or the board of JHIL as to whether the DOCI Information was required to be disclosed; - failed to obtain advice for the CEO or the Board or provide his own advice to the Board as to whether the DOCI Information was required to be disclosed; - failed to advise the CEO or the Board to resolve or determine that JHIL would disclose the DOCI Information to the ASX. 	
(Draft) Information Memorandum for the 2001 Scheme of Arrangement (plus Draft Court Letter and Final Court Letter)		s 180(1): breach of duty of care and diligence by director or officer of a corporation.
Phillip Morley Third Defendant		
ACTION	PROVED CONTRAVENTION	DISMISSED ALLEGATION
Draft ASX Announcement 15	- s 180(1): breach of duty of care and diligence by	s 180(1): breach of duty of care and diligence by director

February 2001	<p>director or officer of a corporation.</p> <p>ASIC established that Mr Morley failed to advise JHIL's board that the review of the Cashflow Model by PWC and Access Economics was limited to reporting on the logical soundness and technical correctness and they had been specifically instructed not to consider other key assumptions adopted by the Cashflow Model.</p>	<p>or officer of a corporation.</p> <p>ASIC failed to make out its case that Mr Morley failed to advise JHIL's board that the "best estimate" in certain Trowbridge reports:</p> <ul style="list-style-type: none"> ○ was too uncertain to be used as an assessment of the adequacy of funding; ○ had not taken into account superimposed inflation; ○ only had a 50% probability of being achieved
Deed of Covenant and Indemnity (DOCI) – Execution		s 180(1): breach of duty of care and diligence by director or officer of a corporation.
Michael Brown Forth Defendant		
ACTION	PROVED CONTRAVENTION	DISMISSED ALLEGATION
Draft ASX Announcement 15 February 2001	s 180(1): breach of duty of care and diligence by director or officer of a corporation.	
(Draft) Information		s 180(1): breach of duty of care and diligence by director

Memorandum for the 2001 Scheme of Arrangement		or officer of a corporation.
Michael Gillfillan Fifth Defendant		
ACTION	PROVED CONTRAVENTION	DISMISSED ALLEGATION
Draft ASX Announcement 15 February 2001	s 180(1): breach of duty of care and diligence by director or officer of a corporation.	
(Draft) Information Memorandum for the 2001 Scheme of Arrangement		s 180(1): breach of duty of care and diligence by director or officer of a corporation.
Meredith Hellicar Sixth Defendant		
ACTION	PROVED CONTRAVENTION	DISMISSED ALLEGATION
Draft ASX Announcement 15 February 2001	s 180(1): breach of duty of care and diligence by director or officer of a corporation.	
(Draft) Information Memorandum for the 2001 Scheme of Arrangement		s 180(1): breach of duty of care and diligence by director or officer of a corporation.
Martin Koffel		

Seventh Defendant		
ACTION	PROVED CONTRAVENTION	DISMISSED ALLEGATION
Draft ASX Announcement 15 February 2001	s 180(1): breach of duty of care and diligence by director or officer of a corporation.	
(Draft) Information Memorandum for the 2001 Scheme of Arrangement		s 180(1): breach of duty of care and diligence by director or officer of a corporation.
Geoffrey O'Brien Eighth Defendant		
ACTION	PROVED CONTRAVENTION	DISMISSED ALLEGATION
Draft ASX Announcements 15 February 2001	s 180(1): breach of duty of care and diligence by director or officer of a corporation.	
Gregory Terry Ninth Defendant		
ACTION	PROVED CONTRAVENTION	DISMISSED ALLEGATION
Draft ASX Announcements 15 February 2001	s 180(1): breach of duty of care and diligence by director or officer of a corporation.	
Peter Willcox Tenth Defendant		
ACTION	PROVED CONTRAVENTION	DISMISSED ALLEGATION

Draft ASX Announcements 16 February 2001	s 180(1): breach of duty of care and diligence by director or officer of a corporation.	
(Draft) Information Memorandum for the 2001 Scheme of Arrangement		s 180(1): breach of duty of care and diligence by director or officer of a corporation.
ABN 60 Pty Ltd (Formerly James Hardie Industries Limited) Eleventh Defendant		
ACTION	PROVED CONTRAVENTION	DISMISSED ALLEGATION
Final ASX Announcements 16 February 2001	s995(2): misleading or deceptive conduct in connection with securities s999: false or misleading statements in relation to securities	
ASX Announcement 23 February 2001	s995(2): misleading or deceptive conduct in connection with securities s999: false or misleading statements in relation to securities	

ASX Announcement 21 March 2001	s995(2): misleading or deceptive conduct in connection with securities	s999: false or misleading statements in relation to securities.
Deed of Covenant and Indemnity (DOCI) – Disclosure	s1001A(2): breach of continuous disclosure obligation	
Information Memorandum for the 2001 Scheme of Arrangement		s995(2): misleading or deceptive conduct in connection with securities s999: false or misleading statements in relation to securities.
James Hardie Industries NV Twelfth Defendant		
ACTION	PROVED CONTRAVENTION	DISMISSED ALLEGATION
UK Roadshow - ASX Representations (UK Slides)	s1041E: false or misleading statements s1041H: misleading or deceptive conduct in relation to a financial product	
UK Roadshow - Edinburgh Representations - London		s1041E: false or misleading statements s1041H: misleading or deceptive conduct in relation to a financial product

Representations in 2002		
ABN 60 Information (Cancellation of Partly Paid Shares)	s674(2): breach of continuous disclosure obligation	