

6<sup>th</sup> April 2010

Senate Inquiry into Liquidators and Administrators

Via email

Dear Sir/Madam,

I write as I would like to make a submission to the Senate inquiry into Liquidators and Administrators. I note it is the seventh review in two decades into the insolvency industry and I really wish the inquiry well and hope it achieves something as something has to happen and happen NOW. I really think some in the insolvency industry are failing creditors and shareholders and ASIC and the IPA that are supposed to protect investors and investigate conduct of administrators are failing in their duties. I have no doubt about that, how many cases does ASIC need to lose or not to investigate or do anything about until it's too late until the government says enough and pulls them into line, they are a bunch of cowboys that do what they like and act like they are unaccountable to anyone. ASIC fail everyday.

Before I start I would like to state that I do not work in the insolvency industry and write only as a shareholder in a number of companies that have gone into administration, receivership or liquidation. I also would like to state that I have the knowledge and skills to make strong statements about the insolvency industry and ASIC having worked in the finance industry for over 10 years from a share registry to insurance and superannuation to working in a stockbroker's office. I also have a Diploma of Financial Markets to back up my extensive experience in the financial markets.

I believe ASIC have been biased, rude, arrogant and very unprofessional in the way they have treated my concerns about the insolvency industry, why do I say that? I say that because of my experiences dealing with ASIC in regard to companies that have gone into administration and I would like to tell the inquiry about just two of these experiences being a Biotech company. In the second instance I will mention the name as in that instance I only dealt with ASIC and the Commonwealth Ombudsman.

From my dealings being a shareholder in just these two companies I can demonstrate how ASIC act or don't act and how they treat people like me that take the time and effort to write to them. They treat people like me like rubbish and show our concerns no respect at all. I would also like to talk about a company called ION Limited to demonstrate the fees and charges that can be charged by the insolvency industry and I have to question what have creditors and shareholders got and are getting for their money?

I would also like to tell the inquiry about how the Federal government dealt with my letters in regard to making a submission to them about ASIC and its failings in regard to the insolvency industry. I wrote to the federal government because I was so upset with my treatment at the hands of ASIC and wanted them to hear my thoughts before they

gave ASIC more powers and guess what they could not even be bothered to write to me to ask my thoughts while they were consulting big business about the changes.

**My first example of a company I was a shareholder in:**

I was a shareholder in a biotech that was listed on the ASX that went into administration; the firm that was appointed charges \$595 an hour for a partner. The company had millions in the bank was not even close to trading while insolvent but the directors called in the Administrators to push their own agenda's. The worst board of directors in Australia and I for one will never invest in any company where they are directors. The company had installed a state of the art machine that had saved the lives of 38 people.

The Company's Headquarters, Research and Development and Manufacturing facilities were in Sydney and the company employed 130 Australian workers and 17500 investors had invested over \$200 million into the company as they believed in it. All this meant nothing to the ruthless administrators that pushed their own agenda and were only interested in their fees. Why do I say that? While here is just one example of how they acted.

The administrator when appointed wasted hundreds of thousands of dollars on a deal to sell the company that never was going to happen as one of the most basic fundamentals of business was not followed by the administrator, confirmation of funds to pay for the company they were selling. They stated that they did it but the proof shows they did not do it as the overseas company that agreed to buy the company could not even come up with funds to keep the company running let alone any money to buy it. Is it not the role of the administrator to make sure any buyers have the money they say they have? Do the administrators have specialist skills or just common sense, I doubt it. I state again they say they did and the proof shows they didn't. They wasted hundreds of thousands of the company funds and weeks and weeks on this stupid deal. What did creditors get for the hundreds of thousands charged by the administrator for all their work on this deal? As I state above, the buyer did not even have the funds to fund \$100,000 a day, let alone the \$28-32 million that the administrator told creditors they had. The whole Deed of Company arrangement was a waste of time and money. Seeing a term sheet about funds is not good enough. Anyone can give you a piece of paper that states they have millions. Truly amateur and really unprofessional, but remember this firm as they state on their website is Asia Pacific's most widely recognized and highly respected provider of turnaround, reconstruction and forensics services and charge \$595 a hour for a partner.

Now let me talk about ASIC and its role in the destruction of the above Biotech. As I stated above ASIC are unprofessional because I wrote to ASIC about the above company and the administrator on the 7th May 2009, I wrote again on the 28<sup>th</sup> May 2009 as I had not heard anything from ASIC not even receipt of my letter. I then rang ASIC on the 5<sup>th</sup> June 2009, I rang and ASIC could not find no reference to my letter and they would call me back, then when they rang me back they still could not find no reference to my letter and suggested I fax the letter that I did and then I got another call from ASIC to state or yes they actually did have my letter, talk about a pack of amateurs and that it was being

referred to the Melbourne office and would be done urgently. I wrote to ASIC again on the 11<sup>th</sup> June 2009, 16<sup>th</sup> June 2009 and on the 25<sup>th</sup> June 2009, 4<sup>th</sup> July 2009 and the 23<sup>rd</sup> July 2009 to state my ongoing anger at ASIC and there shockingly slow response to this urgent matter and to keep them updated. I had received confirmation of my letters and that was it, finally I received a letter dated the 29<sup>th</sup> July 2009, from Tony D'aloisio the Chairman of ASIC, that letter took ASIC over 2 months to send from my initial complaint and all it said was basically ASIC was going to take no action and just told me information that I knew and was on the public record. Basically just a load of rubbish, Mr D'Aloisio and ASIC just brushed my concerns away and while they took their time the administrator was destroying the company.

ASIC is bias because its' officers make statements like that the administrator would not do anything that was not legal or words to that effect when they rang me back about the above phone call to ASIC on the 5<sup>th</sup> June 2009. How dare that ASIC officer say that to me, I don't think it was even an informed comment? I think it was just a personal opinion? How could I have any faith in ASIC to look into my concerns in a fair and unbiased way when there officer's have these opinions and are biased?

ASIC is arrogant because they show no respect to complaints they receive and take months to reply to letters and all they ever say is ASIC will be taking no further action, they don't tell what they have done and they just keep you in the dark as I think they just do nothing.

To this day I still do not even now if ASIC even investigated any of my concerns at all. Mr D'Aloisio stated in his letter dated 29<sup>th</sup> July 2009 "ASIC has considered in full the allegations raised by shareholders", while the Commonwealth Ombudsman in their reply to my concerns about the handling of my complaint against ASIC states in their letter dated 7<sup>th</sup> October 2010 "ASIC will not investigate your complaint". So did ASIC do anything? I doubt it and just mislead me and that is shameful.

When the Biotech went into administration I stated to myself that I would explore and use every avenue open to me to get justice and that is what I did and still do but it has been soul destroying at how my concerns were treated, basically with no respect, and I got no help at all from the groups that are supposed to help. I would like to tell the inquiry about my dealings with these groups. I have listed them below; I have to say I think they are all nothing but a disgrace and am not worth dealing with at all.

I will not even start on the Senator the Hon Kim Carr the Minister for Innovation, Industry Science and Research that would rather spend 3.4 million to pay out the employees of the Biotech through the Federal Government's General Employee Entitlements and Redundancy Scheme, when that money could have saved the company. Another rude and very unprofessional minister who does not reply to letters.

The groups I contacted about the above Biotech:

**Australian Securities and Investment Commission**

ASIC the government agency that receives over 300 million and employs over 1200 employees and lists as it's number one priority "Assist and protect retail investors and consumers in the financial economy" Nice words, but they mean nothing if they don't do that, the problem with ASIC is will and a desire to make change and actually investigating letters and complaints rather than just dismissing them. It is too easy to take easy option and do nothing. They get no respect in the investment world as they command no respect. I have talked about ASIC in detail above.

### **Insolvency Practitioners Association**

The vision of the IPA is "building professional excellence" so how do they do that? I understand the IPA have made a submission to the inquiry that argues that the rules are working just fine, I have dealt with the IPA in regard to concerns about conduct of a member of the IPA and the whole experience has left a very bad taste in my mouth. How does the IPA investigate conduct? All they do is write a letter to the member involved and when that member writes back to state that they have done nothing wrong they just close their files? No triangulation of information, no interviews, no request to see documentation and really just a total waste of time. If the IPA did do anything else they certainly did not tell me about it, all they stated was they "received a reply to their letter in early December 2009".

Also it seems fine by the IPA that insolvency firms state that all their partners are members of IPA when they are not even members. I will talk about this below.

### **Legal Services Commissioner - Victoria**

The legal services commissioner states it "improves standards". I wrote to the Legal Services Commissioner about how the administrator got their solicitor to write to me, I talk about this under the heading below **The use of lawyers to stop shareholders questioning the actions of administrators** just because I dared to question the administrator and what did they did. The commissioner lost my first letter and then sat on my next letter for over 2 months and didn't even contact the solicitor involved and then wrote to me to state that they have 'Dismissed my complaint'. They are a waste of taxpayer money and are nothing but another joke. It seems fine to the Commissioner for lawyers to state in a very aggressive manner and it is also fine for lawyers to treat shareholders like me like idiots with words like "had no rights" and "I am clearly confused". How dare they, all I did was question the administrator, is that a crime?

### **The Commonwealth Ombudsman**

The Commonwealth Ombudsman states that they "resolve complaints impartially, informally and quickly". After ASIC did nothing about my concerns in regard to the above Biotech I wrote to the Commonwealth Ombudsman about the situation. They stated that ASIC could take months to answer complaints and they did nothing at all to help me. Another waste of time and effort.

I also dealt with the Commonwealth Ombudsman about Destra Limited and I talk about that under the heading Destra Limited that has been going on for 6 months, quickly resolve complaints??????????????

### **The Liquidator/administrator**

I wrote to the Executive Manager of the firm that was the administrator of the Biotech to make a complaint about the actions of one of their partners involved in the administration. To my utter dismay he just passed on my letter to the partner I wanted to complain about and that partner wrote to me to ask about my concerns and to ask me to write to him in regard to my complaint and then he would determine the appropriate investigative course. I then wrote to a Principal of the firm in July 2009 about my concerns about how a partner can investigate his own contact, I still don't have a reply to that letter.

To my amazement the firm does not even have a complaint handling process and also states that it's members are member of the IPA or IPAA as they state, that is the same as the IPA just stands for the Insolvency Practitioners Association Australia when they are not. Nothing but a lie and is very misleading, talk about an unprofessional firm but one that charges \$595 an hour for a partner. The IPA agreed with me but I will not be holding my breath for them to do anything as they have already had my complaint for 6 months now. A sense of urgency not the IPA. (Copy of schedule attached about the IPAA and the hourly rates.)

But who else do I talk to about my concerns? I can't make a complaint to the Companies Auditors and Liquidators Disciplinary Board as ASIC are the gatekeepers and no one can get past them.

### **The use of lawyers to stop shareholders questioning the actions of administrators**

I wrote to administrator on the 20<sup>th</sup> March 2009 and a staff member replied via email on the 24<sup>th</sup> March 2009. Nothing in the reply to my letter told me that I would get the information I requested in my letter from the administrators website. Am I a mind reader? I replied to the email stating that I could not make the creditors meeting as it was in Sydney but could they please send me information on the meeting, not an unreasonably request I would think? A reply would have taken 30 seconds to tell me to refer to their website but that was too much for the administrator. They just didn't reply that really caused me to get angry so I wrote an angry letter to them on the 27<sup>th</sup> April 2009, what I think was totally justified. Is it too much to expect a reply? Next I get a letter from their lawyer telling me that they will not be corresponding with me anymore. What a total waste of creditors' and members money, as I stated above one quick email that would have taken them 30 seconds instead they referred my letter to their solicitor that then had to write a letter to me. I don't care about what the Corporations Act states I would think the administrator should be working for the creditors and members and not wasting company funds on stupid letters from their lawyers. I also talk about the use of lawyers when I talk about ION Limited below.

## **My second example of a company I was a shareholder in:**

### **Destra Limited**

Another example of how ASIC deals with complaints. I mailed in a complaint using an ASIC complaint form about the administration of Destra on the 20<sup>th</sup> November 2008 and I received a reply from ASIC on the 29<sup>th</sup> May 2009, which is over 6 months and that is unacceptable to me. (Copy of reply from ASIC attached that references the time involved)

Even when I received the reply it was substandard and did not address any of my concerns, it was basically a cut and paste job, a waste of time and I have no faith that ASIC even investigated my concerns or even referred the matter to a senior level. I don't trust ASIC or trust or respect their word one little bit.

I wrote to the Commonwealth Ombudsman on the 20<sup>th</sup> August 2009 about Destra and ASIC's handling of my complaint. I have now written to the Deputy Ombudsman on the 10<sup>th</sup> March 2010 about the matter and still awaiting a reply, even just a confirmation. Does the Ombudsman take complaints seriously I would say no way. They alone have had my complaint for over 6 months. (Copy of letter sent to the Commonwealth Ombudsman on the 20<sup>th</sup> August 2009 is attached)

## **My third example of a company I was a shareholder in:**

### **ION Limited**

I would also like to bring up the case of ION Limited, this administration has been going on for over 4 years and nothing seems to be happening expect millions are being charged by the administrators. In 2008 the administration costs were \$8 million and there is no light at the end of the tunnel. (Copy of article about ION attached)

Everything gets challenged at ION and goes to court and I have to ask is this the best outcome for creditors and members? I think that is a very fair question? Court case after court case matters go around and around while they charge the company millions, just another pack of cowboys that are a law upon themselves. I think it is time to ask them what has been achieved and what they are trying to achieve and get a timetable for resolution, how long does it take to finish an administration and destroy a company? 4 years, 5 years or 10 years it is a joke. They should be told that guess what business does normally, they negotiate resolutions they don't just take everything to court, that is stupid and a total waste of money. If I did not know better I would think they are hooked on the revenue and are just wasting time and creditors money and fighting everything just to drag it in and on for their own gain?

### **Chris Bowen and the Federal government**

When I heard that the government was looking at extending the roles of ASIC I was really concerned because of my dealings with ASIC so I wrote to the The Hon Wayne

Swan on the 16<sup>th</sup> June 2009 and then again on the 29<sup>th</sup> July 2009 about ASIC no reply nothing, then I wrote to Chris Bowen on the 28<sup>th</sup> August 2009, I emailed on the 18<sup>th</sup> September 2009 to chase up a reply and had a call from his office on the 21<sup>st</sup> September 2009 stating that a response would be forthcoming, no reply no nothing and again on the 15<sup>th</sup> November 2009 I emailed and still no reply. Finally on the 21<sup>st</sup> January 2010, over 7 months from my first letter I received a reply to my first letter and was totally wrong and made no reference to my other letters? What happened to them where they just thrown out? Copy of all my letters attached to this letter. All I asked was if I could make a submission about ASIC to be considered with the changes the government was going to make, it is not that hard, all they needed to do was tell me if I could do that and who I should write to. The handling of my letters has been nothing short of a disgrace and shows that Mr. Chris Bowen and Mr. Wayne Swan and their government could not care less what shareholders thought of any changes while they were not replying to my letters and emails they were meeting big business and working out how to overturn a High Court ruling about Sons of Gwalia. (Copies of all letters and emails attached in regard to trying to make a submission about ASIC)

### **What I would like to see happen**

As an investor and an Australian taxpayer I have no faith in any of the existing organisations that are involved in the insolvency industry and its regulation. They all take months and months to answer letters and to investigate concerns that's if they even investigate your concerns, over 6 months seems to be about the amount of time they need to tell you that they are not doing anything anyway and at the end of the day they do nothing to help or improve conduct and just waste the time of the people like me that write to them, they should tell investors up front to not waste their time dealing with them as nothing will be achieved.

ASIC for one are a total waste of tax payer's money and are weak and gutless and treat the complaints they receive with no respect. I'm in the process of building a website so I can contact other investors that have been let down by ASIC, the IPA, the Legal services commissioner and the Commonwealth ombudsman. I would not even trust the figures on the complaints ASIC receive; what they should be telling Australians is how many they actually investigate?

I would support ASIC losing all their powers over the insolvency industry and the financial industry s I have no doubt they are letting investors down every single day and enough is enough. If they don't lose powers then they should be measured on their performance. If they receive a complaint and don't investigate it and it is shown that it should have been investigated then their funding should be cut and cut hard and the staff member involved should be asked the hard questions about how they came to a decision.

ASIC should also be told by law that they need to keep investor updated on the progress of their complaints and also tell them exactly what they did to come to a conclusion, no more cut and paste replies.

I would also support bankruptcy protection to try to stop companies going into administration and to have a independent body set charges for fee's and time frames for administrations, where it a administration is dragging on the administrator has to appear before a committee to answer questions about why the matter is dragging on and what worth to creditors and members is the delay.

If a new department/ombudsman is established to handle complaints about the insolvency industry then this department/ombudsman needs strong and tough rules and laws so it does not become just another toothless tiger like ASIC, and that is what we don't want just another ASIC, one is bad enough. ASIC will say they are easy to kick and I would say they get a good kicking because they deserve it. They should get even more kicking as they are useless.

I also believe the Federal Government's General Employee Entitlements and Redundancy Scheme should not become a better deal than a plan to save a company, like what happened above to the Biotech Company I was an investor in.

Also the government should improve communication to shareholders from administrators that is fine to publish information on the administrator's websites but what if shareholders do not know it is there, why not publish it on the ASX? I think the existing legislation should be amended requiring administrators to keep shareholders informed of what is happening with an administration, is this not to much to ask?

Shareholders and creditors have no one they can trust to investigate the conduct of an administrator as ASIC will not do anything let alone reply to letters.

Yours Sincerely,

Stephen Koci  
(...)  
(...)