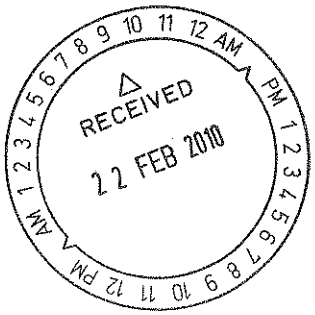

TO: Mr John Hawkins
Committee Secretary

DATE: 22nd February 2010

Supplement to my Submission No. 11 and my covering letter dated 8th February 2010.

INQUIRY INTO LIQUIDATORS AND THE ROLE OF ASIC

In **matters** where a Parliamentary Committee has **duties** to inquire into and report to **both houses** on the activities of ASIC (s 243 ASIC Act 2001) so that **both houses** may use their **exclusive powers** to terminate the appointment of an ASIC member (s 111 ASIC At 2001). Terminate the appointment for being in breach of the ASIC Act s 111(a), and in breach of the **object** of the Corporations Act 2001, Part 5.3A – where the "aim of the scheme is to save companies and businesses which are experiencing solvency difficulties rather than destroy them in the way the current law all to often does" (Explanatory Memorandum **1992**, paragraph 15).

I, Antal Bittmann and fellow aggrieved citizens that are aggrieved by the Administrative Decisions of members of ASIC, Officers of the Commonwealth or the Judiciary, as set out in S 75(V) of the Constitution.

I submit –

(a) ASIC's letter dated 14th January to show breach of the Act.

(b) ASIC's media release 04-024, showing the Courts compounding with ASIC, resulting in asset striping of companies.

(c) Senator Murray and McKiernan condemning asset-stripping.

The Committee must be cognizant that under a Westminster system **Parliament** makes the laws and controls (by Royal Assent) the supervision and/or expulsion by the house.

We the aggrieved, ask the Committee to report to the **Parliament** that has the power to remove the Judiciary, an Executive of Parliament or an Officer of the Commonwealth, on certain grounds.

A Bittmann
Petitioner No. 11

Jhawkins1022.feb

ASIC
Australian Securities & Investments Commission

MARK DRYSDALE
Executive Director – Public and Commercial Services
and Regional Commissioner – Victoria

Level 19, CUB Tower, 485 La Trobe Street, Melbourne
GPO Box 9827, Melbourne VIC 3001
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Telephone: [illegible]
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Email: [illegible]

Our Reference: CCU-04/0009

14 January 2004

Mr Antal Bittmann
Managing Director
Antal-Air Pty Ltd
Unit 1, 11 Melrich Road
BAYSWATER VIC 3153

Dear Mr Bittman

PAUL PATTISON and A. P. MORLING PTY LTD

Thank you for your letter of 18 December 2003 concerning your continuing complaints about Mr Paul Pattison and AP Morling Pty Ltd. The Chairman has asked that I respond to your concerns for ASIC.

The issues raised in your most recent correspondence were comprehensively dealt with in Mr Fintan's letter to you of 22 September 2003. Despite your representations, ASIC can find no legal support for your proposal that we should act to require controllers and liquidators to routinely follow an administration process under Part 5.3A.

As Mr Fintan indicated in his recent correspondence, if you have concerns about how ASIC has dealt with your complaint you may raise your concerns with the Commonwealth Ombudsman.

Yours sincerely

Mark Drysdale
Executive Director – Public & Commercial Services
Regional Commissioner – Victoria

See, Joshua (SEN)

From: Saved by Windows Internet Explorer 8
Sent: Friday, 19 February 2010 4:24 PM
Subject: Australian Securities and Investments Commission - 04-027 Court decision a first for ASIC'S Insolvent Trading Program
Attachments: ATT56445185.css; ATT56445186.dat; ATT56445187.dat; ATT56445188.dat; ATT56445189.dat


ASIC
Australian Securities & Investments Commission

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04-027 Court decision a first for ASIC'S Insolvent Trading Program

Tuesday 3 February 2004

The appointment of liquidators to wind up a NSW building company by the Supreme Court of NSW yesterday represents a first for the Australian Securities and Investment Commission's (ASIC) National Insolvent Trading Program.

'It is the first time that we have brought a winding up application on the grounds of insolvency under the program', ASIC's Executive Director, Public and Commercial Services, Mr Mark Drysdale, said.

The winding up order was sought after the sole director of Budget Lifestyle Homes, Mr Doukas Petrou, disappeared leaving unpaid creditors. This occurred despite Mr Petrou advising ASIC's National Insolvency Coordination Unit (NICU) that he would arrange for the appointment of a voluntary administrator.

'As shown in the Budget Lifestyle matter, ASIC will take steps to wind up companies that are trading while insolvent, where directors fail to act', Mr Drysdale said. [Media release about Budget Lifestyle]

'It is pleasing that the court acknowledged the National Insolvent Trading Program and ASIC's role in taking direct steps to wind up a company where it is in the community's interest to ensure that limited liability companies do not continue to operate when they are insolvent', he said.

The program was established by ASIC in July 2003, to review companies suspected of trading while insolvent. It follows a successful pilot project conducted in Sydney and Melbourne from January to June by NICU. In the 2003 Budget, the Federal Government allocated $12.3 million to allow this insolvency work to continue over the next four years.

In the six months since the program was established (to 31 December 2003):

- Surveillance visits of 285 companies (including a number of related companies) were conducted;
- 26 companies appointed a voluntary administrator or liquidator following a visit;
- Updated or additional financial information was sought from 105 of the companies visited;
- Restructuring advice was sought by directors of a significant number of companies visited.

Companies that appointed an external administrator after an ASIC surveillance visit include Poltech Ltd, Feature Australia Pty Ltd (trading as Feature Tours) and the Wagga Leagues Club Ltd.

A key aim of the program is to have directors focus on the solvency of their companies and to take action sooner, rather than later, where solvency problems exist. All too often there is a culture of denial of financial difficulties. Early action maximises the chances of the company surviving, which in turn minimises the hardship to creditors and costs to the Australian economy caused by insolvent trading.

Directors have an obligation to inform themselves of their company's financial position and to ensure the company doesn't trade whilst insolvent. ASIC encourages them to seek proper accounting and legal advice to ensure these obligations aren't breached.

'In several cases companies that have sought advice and restructured following ASIC's visit have significantly improved their financial position', said Mr Drysdale

The benefits of the early intervention model have also received significant support from the accounting, credit management and legal professions. Deloittes, Ernst & Young, KPMG, PricewaterhouseCoopers, have provided senior insolvency specialist secondments to undertake financial assessments for ASIC.

'The primary focus of the program is to encourage directors to act earlier to prevent insolvent trading. This proactive approach to ensure we deal with insolvent trading sooner, rather than later, is in addition to our criminal and civil action against directors under the insolvent trading provisions of the Corporations Act', said Mr Drysdale.

ASIC's National Insolvent Trading Program aims to:

- make company directors aware of their company's financial position;
- make directors aware of their responsibilities to avoid insolvent trading;
- encourage directors to seek advice from accountants and lawyers on restructuring; and
- encourage directors to seek advice from insolvency professionals, where appropriate, and to take action to appoint a voluntary administrator where necessary.

End of release

More about our National Insolvent Trading Program

come operational again over the last couple of years.

P&O Australia have bought the management rights for this port and own some 30 per cent of it. It intends it to be a major container port for the southern African region. Their equipment is antiquated, their docks are basically bombed out, and their workers are incredibly inexperienced. They have really only been going for the last couple of years.

To P&O Australia's credit, they see a future in this area. They are lifting 16 containers per hour with antiquated equipment and with inexperienced workers. They have told us that within 12 months, once they get these workers up and running an operation, they will surpass Australia's 18. There is a benchmark that we cannot even match in a bombed out country that has been war-torn for the past 25 years. They have a great deal of hope in that country and it would be a disgrace to see Australia surpassed by the efforts of P&O in Mozambique. So overmanning is the problem.

The third problem is greater reliability. Australian ports have the worst strike rate in the world. The level of industrial action on the waterfront in 1996 was 1,250 working days lost per thousand employees. Just as a measure, compare that with the rest of the Australian economy. Against 1,250 working days lost per thousand employees, only 135 working days were lost per thousand employees in all other industries. This is a ratio of 10:1 compared with other industries in Australia. As two per cent of the world's shipping trade is in Australia, the waterfront has the highest level of industrial unrest in the world—23 per cent of working days lost on the waterfront across the world. We are the worst strikers in the world: little wonder that is a benchmark.

Occupational health and safety is the fourth of the seven benchmarks the government is attempting to achieve. The fifth is lower stevedoring costs. Of course, with greater stevedoring competition—like the NFF's P&C—lower costs will be established by market pressure. The sixth benchmark relates to making the best use of new technologies, which will require a massive capital injection by the existing and new stevedores. And of course, training is the seventh item.

Senator Carr—Where were the registered trainers down on the wharves? Jeff Kennett was dead right about you!

Senator McGAURAN—I can tell you, Senator Carr, about this idea that the wharfies—the MUA—have some monopoly on understanding of all the technical equipment and the strapping of the ships and the shifting of the containers, et cetera. I know some of the NFF P&C non-unionised workers have got the job down pat within a matter of months of training. Experience will make them better, but this is no complicated job and it can be done better. They have proven it, particularly some of the young women who are driving the big cranes. They have greater concentration and greater work effort than many of the MUA workers. Not all the MUA workers are to blame—it is the leadership and the thuggery clique that they have around them. Madam Acting Deputy President, we reject this motion.

Senator MURRAY (Western Australia) (4.20 p.m.)—I wish to introduce a less adversarial note in this matter. What this motion is about—

Senator Carr—You should have thought about that in the industrial relations act.

Senator MURRAY—Regardless of the foolish intrusion of Senator Carr, who forgets that it is the Workplace Relations Act which the MUA and others who have been wronged in this issue are relying on, the issue I wish to address here is the question of what is right. Regardless of who is involved in a particular issue, the very concept of allowing employers or anyone with a contractual obligation to escape those obligations—to employees or to any other creditor—through corporate restructuring is an extremely dangerous and evil concept. For any government of the day to even hint at—and this government did not hint; it was forthright about it—support for any corporate asset strippers, is a serious misjudgment. The outcry from those of all political persuasions against this assault on our moral and legal values has surprised many of those who thought that bashing

wharfies was an easy way to get electoral support.

The fact is that if corporations are allowed to set up subsidiaries, are allowed to withdraw their assets and their financing and then to declare them bankrupt so that they can avoid their contractual obligations, then we are all at risk. It is not just employees; it is creditors, bankers—their contracts could be affected by such restructuring, landlords. tenants, the small business people whom Minister Reith recently put a fair trading act through to protect, and it is any supplier. When this restructuring device was activated by the Patrick group, a shiver of fear went through numerous people who realised that their contractual obligations could be avoided by the same device.

This is not a new issue. It has been raised before in the bottom-of-the-harbour days, and it was raised and covered in 1988 by the Law Reform Commission when it conducted a general insolvency inquiry. As a part of that inquiry the commission considered the possibility of making related companies liable for the debts of an insolvent company in certain circumstances, and the commission recommended that companies should be so liable. Because of that advice which was given to the Labor government of the day by the Law Reform Commission, the Australian Democrats have constructed an amendment to the Corporations Law which is to be debated in the next session. The amendment will seek to prevent corporate groups from stripping assets from insolvent companies to prevent payments to employees or to any other creditors. We hope that we will get the support of the Senate to end the practice, but I think the point made by Senator O'Brien is that this is a little late; it is bolting the stable door too late—the horse is gone. We have to hope that the courts will regard this means of avoiding obligations to employees as not only improper, not only immoral, but hopefully they will regard it as illegal.

The Australian Democrats have clearly put on the record their dislike of any system which applauds the wholesale sacking of 1,400 workers because they belong to a union. It does not matter whether they belong to the MUA, a communist union, a farmers union or any other kind of union; it is wrong to sack workers because they belong to a union. It is just as wrong to avoid the obligations you are required to have as an employer by structuring or restructuring your assets and your companies in such a way that employee entitlements cannot be paid. It has not missed the attention of the Prime Minister (Mr Howard), of other ministers and of the Senate that that same device has recently been used on the workers of Cobar and Woodlawn and has affected them. Pretty soon, we will all have tenants or suppliers or banks or somebody else who is a creditor knocking on our doors and squealing about this. Over and above the adversarial politics of who loves and who hates what, we must pay attention to the very real dangers identified in this motion that corporate asset stripping poses for anyone who has a contractual obligation and who can avoid it by what I regard as shonky, sneaky, improper actions using a device to be abhorred.

We hope that the amendment we are putting up will make this practice exceptionally difficult in future. I am aware that the Labor Party have further amendments, and I would hope that the government would move to support them. If the government's intention was to reform the waterfront, to damage their own case so savagely by even pretending or starting to support any kind of activity which smacks of such immorality is a very silly thing to have done because, as a result of it, large sections of the community have been turned against the very objective they were trying to achieve.

I do not have much more to say on this issue. I think the Senate should condemn the government for condoning the practice of asset stripping. They should not confuse the objective of improving productivity on the wharves—an objective supported by the Labor Party, the Democrats, the coalition, the MUA and the employers; we differ over the means, not the objective—with allowing companies to behave in a manner which avoids their contractual responsibilities and obligations and puts families at risk. Next time it could be the families of farmers, next

time it could be the families of retail tenants or the families of some supplier. It is just not the proper behaviour for government to agree with. I was deeply distressed and ashamed that ministers of the crown could have supported and applauded such behaviour. Accordingly, I indicate that the Democrats will support the motion moved by the opposition.

Senator McKIERNAN (Western Australia) (4.28 p.m.)—I commend Senator Murray, my Western Australian Democrat colleague, on the content of the speech that he has just made to the Senate. I make the point right at the beginning that he did at least address the text of the motion that is before the chamber, unlike the speaker prior to him, Senator McGauran from the National Party of Victoria, who completely and utterly evaded the text of the motion. Senator McGauran embarked rather on an attack on the Maritime Union of Australia, the trade union movement in general and the Labor Party as well—all lumped in together.

To help people who might want to understand what this debate is about, I repeat for the record the text of the notice of motion by the Leader of the Opposition (Senator Faulkner) and moved and spoken to so admirably by my colleague Senator O'Brien earlier this afternoon. The motion reads:

> That the Senate condemns the Government for condoning the practice of asset-stripping companies in order to evade the normal contractual responsibilities of employers to their employees, as evidenced by Government support for the corporate restructuring and asset-stripping of Patrick Stevedores' labour hire companies.

I am tempted to seek to amend the motion to not only delete the word 'condoning' but also insert the words 'the government jumping into bed with the various individuals who have operated around Patrick Stevedores'. It is becoming more and more evident day by day as further evidence is brought to the attention of the public that senior figures—senior ministers in this government, senior figures in ministers offices and senior identities in a number of government departments—have been up to their necks in the conspiracy to destroy the Maritime Union of Australia, and they have done it by the foulest means possible. They have done it by illegal means and they seek to cover their tracks. The law, it seems, is actually bigger than even senior figures in this government, as three very recent decisions of the courts have upheld. I refer to two decisions—one in the full court of the Federal Court and a later decision of the High Court of Australia.

This whole debacle began in February 1996 when the then opposition spokesperson on transport promised that a coalition government would, if elected, break the grip of the Maritime Union of Australia. Mr Sharp said that in 1996. It would seem the government has held to that promise since it has been elected. As a result, we have seen major disruption in various ports throughout Australia, in ports where there has been no industrial disputation for a large number of years. Yet the individuals employed were sacked merely because they were members of the Maritime Union of Australia.

Who were the major players in the game? There have been many and some have been named by my colleague Senator O'Brien and other speakers today. The main character in all of this, I would suggest, was Mr Chris Corrigan. Mr Corrigan now needs no introduction to the people of Australia. He certainly needs no introduction to corporate Australia and the trade union movement in Australia. His actions, since he took over Patrick Stevedores, have had one main objective—not necessarily to make a profit for his organisation, which essentially should be what he was appointed to do—which is to break a trade union.

The game has not been fully played out yet. Perhaps at the end it will be Mr Corrigan who is broken. Already Mr Corrigan has, out of his own mouth, been exposed to be a liar of the highest order. He misled, deceived and lied openly in order to advance his objective about breaking a union and sacking the employees of his company. All of this is on the public record. Unfortunately, it is not on the public record in the detail that would allow every individual in our society to understand the type of character Mr Corrigan is and the types of people that he is dealing with.