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Claim examples

Below are some examples of the types of claims directors and officers of a company could face and the potentially disastrous outcomes that such claims could have both on the companies they work for and on the directors or officers personally. These examples are hypothetical but are based on claims that have actually occurred.

Misleading and deceptive conduct

XYZ XLtd (XYZ) was a company of widget manufacturers. In 2019, XYZ listed on the stock exchange to fund their expansion into manufacturing in China. With the help of advisers, they produced a prospectus which contained financial forecasts the company directors thought they could expect over the next year.

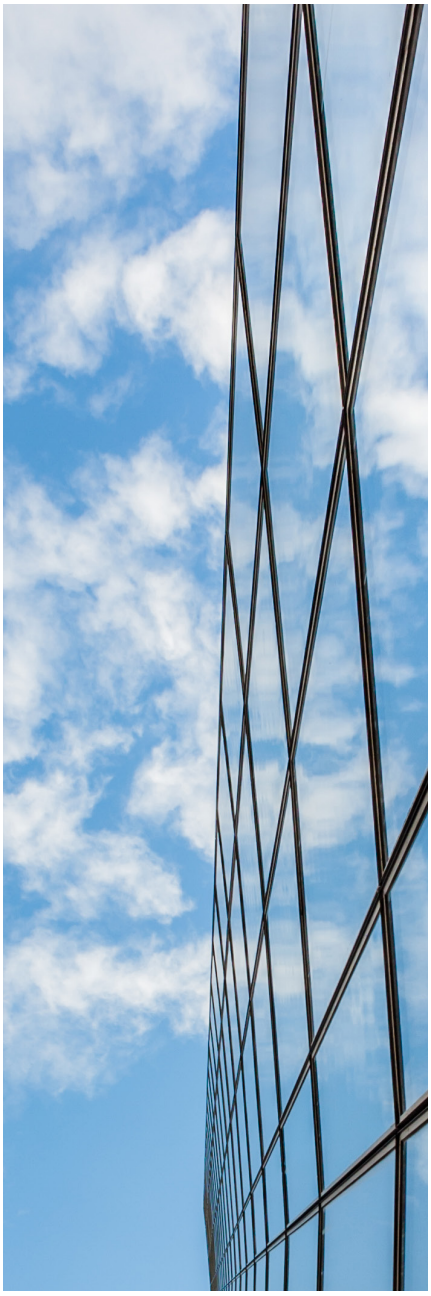
At the end of 2019, XYZ's revenue was below the financial forecasts contained in the prospectus. Subsequently investors lodged a claim for misleading and deceptive conduct against the directors of XYZ for the statements made in their prospectus. The matter went to trial and the directors were found to have engaged in misleading and deceptive conduct under the Australian Consumer Law. The directors were ordered to pay damages of $10,000,000, on top of this they incurred $3,000,000 in legal fees in defending the claim.

Attendance at an official inquiry

On a single day in 2017, the share price of Bumper Ltd (Bumper) fell 8%. The movement was not accompanied by any company announcements or any news about the company in the media and the ASX index closed higher on the day. After this large single day variance, the market initially remained sceptical of the company but the price recovered to its previous level after a month and traded higher thereafter.

One month after the event a formal notice under Section 30 of the Australian Securities and Investments Commission Act 2001 (Cth) was received from ASIC requiring Bumper's directors to provide a written explanation of the event and their perceived reasons behind the unexplained movement. The directors wrote to ASIC stating they were unaware of any reason for the move in share price. ASIC called the directors before an inquiry into the event. After notifying their insurer, the directors attended the inquiry accompanied by legal support.

The inquiry never alleged any wrongdoing by the directors or Bumper. ASIC declared that it was happy with the results of the inquiry and the matter was considered closed. The directors incurred $80,000 in legal fees in preparing for and attending the inquiry with their legal representatives.



Attendance at an official inquiry and examination

New Tech Ltd (New Tech) was listed on the ASX in December 2017 following an initial public offering (IPO). The IPO was undertaken pursuant to an offer contained in a prospectus. The prospectus contained facts and information regarding the business of New Tech, including its financial statements.

In March 2018, New Tech announced its results for the first half of the 2018 Financial Year, which were less than forecast. In April 2018, New Tech downgraded its 2018 Financial Year forecasts. New Tech became subject to various adverse media reports which included criticism against many of its former and current directors and officers. New Tech's share price dropped over 13% between March - April 2018.

In the following six months, ASIC issued 26 notices compelling former/current directors or officers to (1) appear for examination on oath or affirmation (Section 19 notices) and/or (2) produce certain books to ASIC. The notices were issued upon eight different current/former directors or officers, all of which obtained separate legal representation. The individuals incurred investigation costs in response to ASIC totalling $560,000. ASIC ultimately found no wrongdoing by any of the directors or officers.

Insider trading

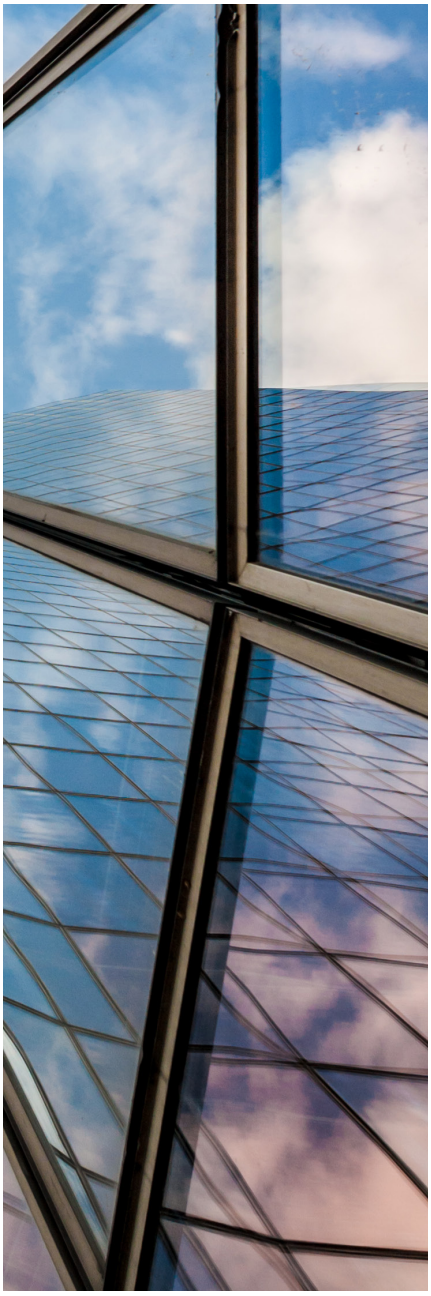
Junior Metals Ltd (Junior) discovered a reasonable sized minerals deposit in outback Australia on a small property adjacent to a large property owned by Mega Metals Ltd (Mega), a large public mining company. The land was not in use by Mega as they had not conducted any exploration yet. Frank N Sense (Frank), a director of Junior, decided that Junior's mineral discovery meant that the Mega land probably held a significant deposit and, as he was not a director or officer of, or in any way connected with, Mega, that he could buy a number of shares in Mega, announce the minerals find on his own land and benefit from the rise in value of Mega's shares.

Frank bought 1,000,000 shares in Mega and announced the minerals find on Junior's land. The next day Mega's stock price gained $0.10 and Frank made $100,000. Frank was investigated by ASIC. He incurred $100,000 in legal fees in attending an inquiry. He was then prosecuted for insider trading and eventually found not guilty but he incurred a further $200,000 in legal fees in defending the insider trading allegations.

Insolvent trading

Explorer Metals Ltd (Explorer) was a small, publicly listed exploration company specialising in gold exploration. Explorer had a market capitalisation of $50,000,000 and debt of $10,000,000. Explorer decided to engage in exploration in Papua New Guinea and hired contractors to undertake preliminary drilling. Before any contract was signed, the price of gold fell sharply causing the value of Explorer to drop. Eventually the company was forced to declare bankruptcy.

A claim was lodged by the liquidators alleging that the directors had continued to trade whilst the company was in fact insolvent. Ultimately the claim was settled without going to trial for a payment of $1,000,000 to the liquidators and with $500,000 in legal fees.



Mergers and acquisitions

Mr Small owned a manufacturing company that had been family run for over 30 years. Mr Small decided to sell his business to a large conglomerate before his retirement. Before putting the business up for sale, Mr Small retained a consulting firm to provide a valuation of the company.

The firm used materials and statements provided by Mr Small to calculate a value based on the revenue stream expected in the future. Mr Small had never retained an auditor over the company's history. Mr Small sold his business for $3,000,000 in 2016.

By 2019, demand for the product of the company had slumped and forensic accountants were going through the records. They concluded that the revenue figures prior to the acquisition had been inflated. The conglomerate sought damages from Mr Small and from the consultants providing the valuation, for misleading and deceptive conduct that was in breach of the Competition and Consumer Act 2010 (Cth). The consultants were able to argue that their valuation was based on the figures provided, and successfully defended the claim.

Mr Small incurred $200,000 in defence costs and was liable to pay $1,000,000 in damages.

Prosecution notice

Big Mining operates an underground gold mine in Western Australia. In May 2017, Mr Jones instructed Mr Kelly to enter a stope of the mine to perform bund work. At the time, there was an open hole at the edge of the stope. Mr Kelly drove his truck over the edge of the stope in the process of performing the works. Mr Kelly was not injured as he managed to remove himself from the truck before it fell into the hole.

Shortly after the incident, the Department of Mines, Industry Regulation and Safety of Western Australia (the Department) visited the Mine and requested interviews with personnel involved in the incident.

In August 2017, Mr Jones received a prosecution notice from the Department which alleged Mr Jones breached of Section 10 and Section 10A(3) of the Mines Safety & Inspection Act 1994 (WA) for alleged failures to take reasonable care to avoid adversely affecting the safety or health of any other person through any act or omission at work.

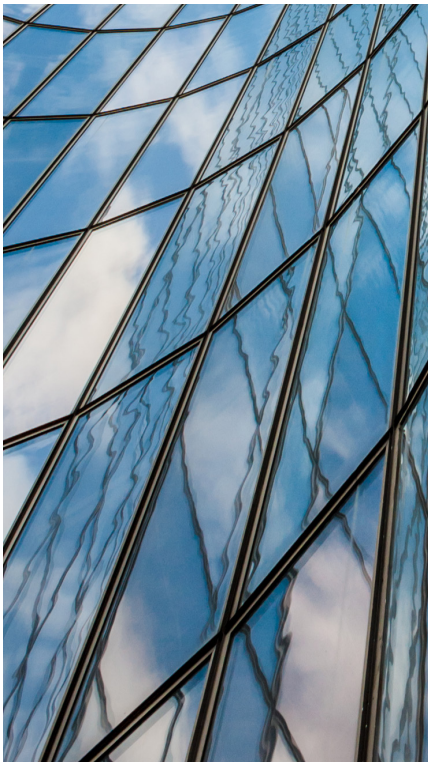
Mr Jones pleaded guilty to the charges. The Court imposed a fine against Mr Jones of $10,000. Mr Jones also incurred $15,000 in defence costs.

Disgruntled shareholders

In July 2021, a notice was provided to shareholders of Group Company Ltd (Group Company) of an Extraordinary General Meeting (EGM) to be held later that month. The resolutions proposed included a proposed capital reduction and payment of shares to an external service provider. The two resolutions were passed by majority at the EGM and implemented.

In November 2021, a syndicate shareholder of Group Company wrote to the directors disputing the validity of the two resolutions and threatened legal action against the directors for breach of director duties under the Corporations Act 2001 (Cth).

The directors incurred defence costs totalling $60,000 in responding to correspondence from the syndicate shareholder. While the syndicate shareholder was unhappy with the resolutions passed, it ultimately accepted that the resolutions were supported by the majority of shareholders at the EGM and that the vote was binding.



Securities class action

In April and May 2020, Lock Ltd (Lock) issued revised forecasts (Corrective Disclosures) to the ASX.

The Corrective Disclosures downgraded revenue forecasts contained in the financial statements for the 19/20 financial year and Lock's share price fell from a $12 high in January 2020 to $3 by the end of May 2020

Lock became subject to three class actions alleging various misleading and deceptive statements contained in Lock's financial statements.

After three years of defending the class actions, Lock had incurred almost $10,000,000 in defence costs and negotiated a large commercial settlement for all three class actions.

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