

TO : Mr C. Saundra, Chief Litigation Counsel, Chief Legal Office, ASIC

CC : The Honourable Chris Bowen, Minister for Human Services
Minister for Financial Services, Superannuation, Corporate Law

CC : The Honourable Bernie Ripoll

CC : Mr. Tony D'Aloisio, ASIC Chairman

CC : Ms Helen McNally, ASIC contact for Westpoint.

CC : TheAustralian Media

CC : Any Australian investor I can reach

FROM : Graham MacAulay, President Westpoint Investors Group.
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DATE : September 13, 2009.

Subject **A reply to matters referred to in your communication of 04/09/2009.**

Dear Mr. Savundra,

I write in reply to your communication of 04/09/2009. As an honest reply to my questions asked of Ms McNally would severely embarrass ASIC, I do not expect an answer, even though ASIC is a signatory to an agreement relating to the answering of questions.

I disagree that I do not understand ASIC's role as legislated by the Parliament. However, like a great many, I do not hold ASIC's past/current regulatory efforts in high regard - nor does ASIC's unenviable, persistent, record of losing court cases of major import impress. I have formed my view from direct personal involvement in the Westpoint tragedy, and the plethora of public domain media articles.

It is true Westpoint events before its collapse concern me. The following five points, drawn from a much larger number in the public domain, are at the heart of the question ASIC refuses to answer. That refusal raises serious questions about ASIC's integrity. .

- a). Despite prior warnings about Westpoint before any product reached the marketplace, ASIC failed to detect the Westpoint Mezzanine model was a Managed Investment Scheme.
- b). On 23/08/2000, ASIC issued a no-action letter to Freehills, the Westpoint lawyers, giving the "green-light" to Westpoint issuing promissory notes. This action implies ASIC examined

- the legality of their use in the Westpoint Mezzanine Model.
- c) Between 2002 and 2004, the West Australian Government wrote to the Treasury/ASIC on five separate occasions without ASIC taking action on any of them. Nor did ASIC inform the market of the WA Government's concerns, thus denying investors the opportunity of making an informed decision.
 - d) Hansard records ASIC's Mark Steward (at a Senate Estimates Committee) stating ASIC "cat and moused" with Westpoint's lawyers for months. Could you please refer me to any legislation relating to ASIC involving "catting and mousing"? More importantly, Investors knew nothing of this and ASIC did not take the matter back to Parliament for direction.
 - e) In the 2004 case, the judge said words to the effect, "You asked if this was a debenture. The answer is no, but had you asked if it was an MIS, then I would have said yes". Even with that knowledge, ASIC took no action and investors continued to pour money into Westpoint. Clearly, ASIC's inaction denied those investors the opportunity of making an informed decision.

The above five items are sufficient proof ASIC failed its duty of investor protection. As a result of this failure every Westpoint investor placed his/ her money in an illegal MIS. Given the judge's comments in item (e) above, I have difficulty in finding any valid reason why ASIC did not immediately inform investors of its error in issuing the no-action letter to Freehills, and take regulatory action. The only obvious explanation is ASIC wished to hide its colossal blunder in not recognizing the Westpoint Mezzanine model as an MIS at the outset.

It is ASIC 's claim it cannot answer my questions because of current court proceedings. The suppression of items (a) - (e), all freely available in the public domain, cannot alter the outcome of a current. That only leaves the answer to my question as to why ASIC is not responsible for Westpoint investor losses. That implies a truthful answer involving ASIC's past negligence/incompetence could affect the outcome of unnamed court cases. Which is of greater importance, ASIC display integrity and answer my questions honestly, or it wins a court case by hiding the truth?

ASIC's initial failure in the Westpoint matter all those years ago has resulted in the financial destruction of a large proportion of the 4000 Westpoint investors, most of whom are in their senior years and will never recover their former lifestyle. The toll in broken marriages, ill health - and suicides is heartbreaking. A week does not go by where someone does not ring me for advice. My lack of social work expertise troubles me, and some of the calls continue to haunt me. It also troubles me Westpoint investors are but one set of a large number of investors in a similar position through ASIC's incompetence/negligence. In a society based upon democracy and accountability, it is mandatory those responsible for the needless destruction of Australian lives are brought to account

With such a clearly proven case against ASIC, it is my contention the Government should make an Ex-Gratis payment to Westpoint investors. In addition, it has a moral duty to hold the open inquiry into ASIC and the Financial Industry as promised by Senator Sherry on behalf of the Labor party. That inquiry should be a Royal Commission with the widest powers.

Given ASIC appointed Ms McNally as Westpoint liaison Officer, my directing all correspondence to her simply followed the universal practice of directing all communications to the appointed person.

My understanding of the purpose of the WIG-ASIC meetings in recent times was a reporting of progress in the mediation matter. At those meetings I made it quite plain I would relay only what ASIC wished to report to the group.

Most would find it rather strange, as the WIG President, I receive no communication from ASIC about the next ASIC-WIG meeting. Instead, ASIC contacts a committee member who no longer lives in Australia, and does not report directly to the group. Further, ASIC invariably convenes the meetings when he happens to be in Australia. On such an occasion, he advises me of the meeting details at short notice, and I then drop anything I have planned and attend the meeting. I don't take the lack of courtesy as an insult. To me, this strange line of communication is just one more incomprehensible ASIC anomaly.

I believe I have covered all the points in your communication.

Graham MacAulay