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Lawyers vouched for Westpoint

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NATIONAL law firm Freehills vouched for Westpoint's ill-fated fundraising methods and claimed the corporate watchdog was harassing its client.

Freehills reassured the Australian Securities and Investments Commission in 2000 that each investor in Westpoint's Bayview mezzanine fund was "experienced in investing in securities".

An official said the Freehills letter succeeded in knocking ASIC off the Westpoint trail for three years, as the building and finance empire netted hundreds of millions of dollars from thousands of small and inexperienced investors.

The Westpoint empire, controlled by Perth businessman Norm Carey, eventually collapsed early this year, leaving about \$300 million in unpaid debts to more than 3000 investors.

Auditors, lawyers, financial planners and regulators have been drawn into the mire.

Investors have accused ASIC of being too slow and too soft.

ASIC resumed Westpoint investigations in 2003 after a series of complaints about unsophisticated investors being misled.

Freehills then claimed ASIC was harassing its client, itemising the concerns in a five-page letter.

A letter to ASIC dated June 2, 2000, released by Mr Carey, shows Freehills, writing on instructions from Bayview, hanging its defence in part on Westpoint's balance sheet. "Bayview Mezzanine Pty Ltd is guaranteed by the Westpoint group which has a combined balance sheet showing net assets in excess of \$46 million. Because of this guarantee, promissory note holders are not dependent on the success of the business activities of Bayview Port Melbourne Ltd for the repayment of their loans and interest thereon."

Investors lent money through "promissory notes" to Bayview Mezzanine, which on-lent the money to a construction company also within the Westpoint group, Bayview Port Melbourne. Westpoint entities cross-guaranteed each other and receivers are still endeavouring to discover where the money went.

In the same letter, Freehills claimed Westpoint had not breached the Corporation Law's fundraising provisions, wrongly observing that investors were all experienced.

"It is our understanding that each of the investors in the promissory notes is experienced in investing in securities and have invested in reliance on advice from an investment adviser.

"If the promissory notes were securities, it could well be that each investment adviser would consider the offer did not need disclosure by virtue of the sophisticated investor exclusion."

Freehills also advised Finchley Central Funds Management Ltd. Finchley was formerly Kebbel Funds Management, which raised most of Westpoint's capital.

ASIC officials are furious, believing Freehills made claims that were later proven false to fob the regulator off the Westpoint trail.

ASIC's deputy enforcement director, Mark Steward, told a Parliamentary committee on May 31 that Freehills was "cat and mousing" with it.

"We eventually realised by the end of 2003 that we were being stalled, we were being given the run around, and we delivered an ultimatum to Westpoint to either comply ... or we would take court action."

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