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**I Companies round-up**  
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**I Indonesia bags Rudd**  
Jakarta snubs PM over his proposal for an Asia-Pacific Community. **Page 9**

**I Luxury magazine**  
**Sex and death:** David Walsh's not-so-far pavilions. **OUT TOMORROW**



# THE AUSTRALIAN FINANCIAL LIBRARY MIRROR REVIEW

THURSDAY 19 NOVEMBER 2009

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## Tough rules force financial planners back to school

Leng Yeow and Duncan Hughes

Financial planners will be required to have tertiary qualifications and complete a professional-year program in order to provide advice to clients, under sweeping changes being proposed by the Financial Planning Association.

FPA chief executive Jo-Anne Bloch will today propose a "dramatic

### FINANCIAL SERVICES

**'Axa Asia Pacific Holdings yesterday revealed the conditions that could break the stalemate with AMP.'**

— Duncan Hughes, page 22

shake-up of the education expectations for financial planners" for the group's 12,000 members, including a national examination and accreditation

➔ Cabcharge chairman forecasts a decline in taxi turnover, **page 22**  
➔ APRA rejects pressure from banks to allow covered bonds, **page 43**

process and compulsory ethics training from next year.

In a speech to the FPA's annual conference in Melbourne, Ms Bloch

will declare that the minimum legal training standard for planners is unacceptable, fails to protect consumers and often contributes to poor quality advice.

"Consumers should have confidence the adviser they are trusting with their financial future has a solid educational background, sufficient technical and practical knowledge and an ethical, professional orientation that ensures reliable, quality advice," she will say.

Ms Bloch has accused some of the underqualified salespeople and accountants who recommended products from failed groups including Westpoint, Basis Capital and Timbercorp of tarnishing the reputation and credibility of the broader financial planning community.

Continued page 43

■ Case against directors thrown out

■ Judge critical of Packer, Murdoch

## ASIC slated in One.Tel court defeat

Marsha Jacobs and Angus Grigg

The corporate regulator suffered a humiliating loss yesterday when the NSW Supreme Court threw out all charges against One.Tel founder Jodee Rich and criticised the watchdog for exaggerating and running a superficial case.

In a judgement that could see former One.Tel directors Lachlan Murdoch and James Packer pursued over the 2001 collapse of the mobile phone company, Justice Robert Austin also said Mr Rich was entitled to seek recovery of his legal costs.

The Australian Securities and Investments Commission alleged Mr Rich and finance director Mark Silbermann had misled the board about One.Tel's true financial position and breached their directors' duties by not ceasing trading in February 2001, three months before the company's demise. But the court found ASIC failed to prove its case.

In addition to its own costs, thought to be more than \$20 million, the regulator is liable for the majority of the defendants' \$15 million in costs.

"I am completely overwhelmed by the decision," Mr Rich said

### EXPERT ANALYSIS

**'Justice Austin's ruling has put the spotlight back on the role of James Packer and Lachlan Murdoch.'**

— Neil Chenoweth, page 60

**'ASIC's apparent inability to successfully run a high-cost, high-profile case raises all sorts of questions.'**

— Chanticleer, back page

➔ Boards can take comfort, **page 60**  
➔ WingDude unlikely to fly, **page 61**

outside court. He said the ruling "should put to bed once and for all the ridiculous statement" made by Mr Packer and Mr Murdoch that they were "profoundly misled".

ASIC had sought \$92 million in damages from Mr Rich and Mr Silbermann, following guilty pleas from former directors John Greaves and Brad Keeling.

In a judgement that ran to 3105 pages and took more than two years to bring down, ASIC was criticised for putting a case that was "far too wide" and for not calling enough documentary evidence or relevant witnesses.

Continued page 10



One.Tel founder Jodee Rich arrives at the NSW Supreme Court yesterday.

Photo: AAP

## S&P quits over ratings crackdown

Matthew Drummond

Two of Australia's largest credit ratings agencies are preparing to pull out of the retail market before the introduction of new rules that would have forced them to pay compensation to retail investors for losses.

Standard & Poor's made the surprise decision yesterday to stop rating investments sold to retail investors in response to new licence rules announced last week by the Australian Securities and Investments Commission.

The S&P decision may have an immediate effect on the capital raising plans of the big banks, all of which raise money from retail investors.

The new rules mean that from January 1, ratings agencies that rate investment products offered to retail customers must subject themselves to an external dispute resolution scheme such as the Financial Ombudsman Service.

The head of Standard & Poor's in Australia, John Bailey, said ASIC was well aware his agency could not accept the new rules and had been warned they were out of step with reforms in Europe and North America.

Moody's Investors Services, Australia's second-largest ratings agency, has decided not to allow its ratings to be used on documents given to retail investors.

Continued page 22

Tony Boyd: comment, page 22 ■

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# ASIC slated in One.Tel court defeat

From page 1

"Its contentions had a superficial appeal, but time and again they were shown to be unpersuasive when the underlying financial details were investigated," Justice Austin said.

The case was commenced in 2001 under former ASIC chairman David Knott. In a statement yesterday, the regulator said it would decide shortly whether to appeal.

ASIC chairman Tony D'Aloisio said the case provided "important guidance to ASIC on how to run similar matters in the future".

The decision has also put the role played by James Packer and Lachlan Murdoch in the collapse of One.Tel squarely back in the spotlight, with Justice Austin ruling there was no breach of directors duties by Mr Rich and Mr Silbermann. The judgement negates the pair's long-held position that they were "profoundly misled as to the true financial position of the company".

Neither was available for comment yesterday. One.Tel special-purpose liquidator Paul Weston has been treading water on a \$230 million case against Mr Packer, Mr Murdoch, Publishing & Broadcasting Ltd, News Ltd, One.Tel auditor Ernst & Young, Freehills, One.Tel liquidator Steve Sherman and former director Peter Yates.

Mr Weston was appointed to see if there is any cause of action arising from the decision to cancel a \$132 million rights issue, underwritten by PBL and News Ltd and place the company into voluntary administration on May 29, 2001. Coupled with interest, that claim has more than doubled. News, PBL, and Kerry Packer's private company Consolidated Press Holdings (CPH) were all major investors in One.Tel.

Mr Weston, a partner at Pitcher Partners, was waiting for findings about the financial state of the company, and is now likely to proceed with the case.

He said yesterday the judgement was "prima facie good news" for his legal action. The discounting of Mr Packer's and Mr Murdoch's arguments about being misled were relevant to the proceedings.

Mr Weston said he had not spoken to his litigation funder yet and it was too early to give a time frame for when the legal action might begin.

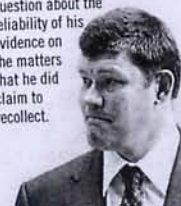
Previously he claimed to be 95 per cent of the way to securing funding for the case, and that he was waiting

## Character reference

What Justice Austin said about witnesses in ASIC's case against One.Tel

**JAMES PACKER**  
One.Tel non-executive director

Essentially Mr Packer jr appeared to misunderstand the purpose of cross-examination, and treated it as an opportunity to attempt to "put his side of the story" by argumentative and non-responsive answers, and even occasionally evasive answers; and that was coupled with an inability to recollect important matters, raising a question about the reliability of his evidence on the matters that he did claim to recollect.



**LACHLAN MURDOCH**  
One.Tel non-executive director

My view is that there was a significant problem of lack of recollection in Mr Murdoch jr's evidence, which undermined its credibility. He answered: "I can't recall", or similar words, in response to 881 questions, a higher daily rate than Mr Packer jr. This was despite having spent several days preparing to give evidence. It was not just that he could not recall matters of detail. He recalled very little, even on substantial matters such as what occurred at board meetings.



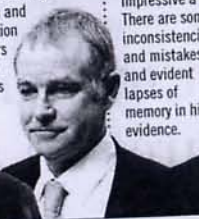
**JODEE RICH**  
One.Tel executive director

It was obvious to any observer of the proceedings that Mr Rich applied himself to his defence with enormous industry and determination. Having presided over trials in the Equity Division for over 11 years, my comparative assessment of Mr Rich's evidence in cross examination is that he was one of the best prepared party/witnesses that I heard in that time, with a very good level of recollection of detailed facts in the witness box.



**GEOFFREY KLEEMANN**  
PBL chief financial officer

There are many aspects of Mr Kleemann's evidence that I found to be satisfactory. But there were five topics on which I found his evidence problematic. I agree with the defendants that the cumulative effect of these matters is that it is necessary to treat Mr Kleemann's evidence with caution and circumspection as to matters touching on the interests of PBL and CPH.



**ASIC, THE PLAINTIFF** First, there is a real question whether ASIC should ever bring civil proceedings seeking to prove so many things over such a period of time as in this case... I wonder whether that is beyond the bounds of reasonable scope of civil litigation.

**MARK SILBERMANN**  
One.Tel executive director

Mr Silbermann was not as impressive a witness as Mr Rich. There are some inconsistencies and mistakes and evident lapses of memory in his evidence.



for the judgement before proceeding. "This now allows me to move forward with my proceedings. I expect them to be lengthy and costly and fought hard by defendants," Mr Weston said.

In his judgement, Justice Austin did not reach any conclusions on what impact proceeding with the rights issue might have had on the company.

"The proceedings are not a royal commission to investigate what caused the spectacular collapse of One.Tel in May 2001 and who was to blame," he said. "Consequently, many questions are left unanswered, including the question whether One.Tel would have been able to survive if PBL/CPH and News had maintained their support for it and proceeded with the proposed rights issue in May 2001."

Arriving at court yesterday on his bicycle, Mr Rich told reporters he was nervous about the judgement, but glad to have it out of the way.

His wife Maxine cried as judgement was pronounced in just 10 seconds.

"ASIC has failed to prove its pleaded case against either of the defendants," Justice Austin said.

Outside court, after being absolved of any wrongdoing, Mr Rich thanked his wife and family, and said he was planning to go to the beach.

"It is extraordinary to feel that I live in a country where I feel the

justice system is independent of politics and big business," he said.

Justice Austin made extensive comments on the evidence given by witnesses, criticising Mr Packer and the former chief financial officer of PBL, Geoff Kleemann.

Mr Kleemann recently joined the board of Asciano, the first role in his new corporate life after years of serving the Packers at PBL and, later, Crown.

Of Mr Packer, Justice Austin said he had misconceived his role in cross-examination as an opportunity to put across his side of the story, and that his inability to

PBL and CPH". Mr Kleemann was accused of understating the amount of work he did on One.Tel, and made an "extraordinary claim" to be unable to remember events in a certain period.

"He seemed to me to be seeking to avoid a situation in which he would have to give the court a personal opinion held by him that was at variance with the revised PBL/CPH view," Justice Austin said.

In contrast to this, Justice Austin praised the evidence given by Mr Rich and said he was one of the best-prepared witnesses he had seen

complained of as evasive answers were, upon close examination, examples of Mr Rich's concern to understand precisely what was being asked, particularly where there was an element of ambiguity in the question, and to answer exactly that question."

The matter will return to court next Friday and Justice Austin said he hoped to resolve costs before Christmas.

ASIC has been ordered to pay Mr Rich's and Mr Silbermann's costs. Usually in a matter such as this, roughly 50 per cent of costs can be recovered.

Mr Greaves, the former chairman of One.Tel, said yesterday he had lost confidence in the whole system after pleading guilty on the same offence that Mr Rich was cleared of.

"If I had the money to fight, I would have not pleaded guilty," he said. "If you are wealthy, you can prove you are innocent."

In June 2007, ASIC suffered another huge loss when the Federal Court dismissed its case against global investment bank Citigroup, which it alleged had engaged in insider trading and failed to manage conflicts of interest when it advised client Toll Holdings about its takeover of stevedore Patrick Corp.

**It is somewhat unsettling that ASIC's assessment of Mr Rich is so sharply at odds with my own assessment.**

Judge Robert Austin

recall events weakened his evidence. He twice specifically rejected Mr Packer's evidence in favour of Mr Rich.

"I do not agree with ASIC that Mr Packer jr was an impressive witness," he said. "His misconceived approach to cross-examination was also reflected occasionally in aggressive and even angry answers, on one occasion (on Friday, December 9, 2005) accompanied by his banging his hand on the desk in front of him."

He said it was necessary to treat Mr Kleemann's evidence with "caution and circumspection as to matters touching on the interests of

during his 11 years judging commercial matters.

"Throughout the lengthy and arduous cross-examination, he responded to questions thoughtfully and clearly, sometimes even perceptively," the judge said.

"It is somewhat unsettling that ASIC's assessment of Mr Rich as a witness, reflected in its submissions, is so sharply at odds with my own assessment. But its critique of Mr Rich is, unfortunately, consistent with the general tendency of its submissions to exaggerate its case.

"Time and again what ASIC

Rear Window, page 42  
A lesson for the sons, pages 60, 61  
Gallery, page 62  
Chanticleer, back page

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