

The Australian

KPMG fights back in Westpoint stoush

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THE message from yesterday's landmark High Court challenge by KPMG against the Australian Securities & Investments Commission is never get between an accounting firm and its money.

ASIC has lodged claims against KPMG, alleging it was negligent in auditing Westpoint in the years before its collapse.

The unprecedented action is being taken on behalf of Westpoint companies under section 50 of the ASIC Act because this is the most effective way of recovering anything for the 200,000 or so people who lost money in the collapse. The alternative would be to take 200,000 individual cases.

When it comes to the conduct itself, KPMG seems to have a different attitude to when its money is at peril.

KPMG last year accepted an enforceable undertaking covering the three auditors involved in the matter, agreeing they stay out of the business for set periods without admitting guilt.

The High Court claim is a preliminary skirmish heading into the formal action on the merits of the ASIC claims.

Just how long this process takes is anyone's guess. The losers, of course, are the people who lost money, allegedly in part because the audit was negligent.

KPMG, of course, is entitled to whatever protection it can muster, but before the main arguments are fought out, you should put some context in the matter.

If the challenge is successful it will obviously make section 50 invalid, but will not impact other ASIC powers.

Section 50 is being used more often because it is a more efficient way of recovering lost money.

The financial crisis left many people without the means to fight for compensation for losses.

ASIC was acting as an agent for the retail punters.

KPMG's argument on the constitutional challenge is a stretch. It says the section is invalid because it allows ASIC to take action on behalf of the company without seeking its permission.

The fact is, ASIC hasn't acquired anything, and if it gets the money from KPMG this will go to people dumb enough to invest in Westpoint -- not ASIC's pockets.

So it is a highly technical argument, seeking to make section 50 invalid just as ASIC was looking at using the same section in its fight against Storm Financial.

The reputational risk to KPMG from this manoeuvre is being put to one side, as are the finances of the people who lost their money.

As an aside, changes to the law would have minimised the claims against KPMG to 10 times the alleged loss, but ASIC's compensation claim pre-dates the change, which is why the \$200 million claim can be made.

ASIC has recovered roughly one third of the money lost in the collapse and the KPMG claim was going to bridge the gap.

It seems that will now be a long time coming.

Foster's talking

FOSTER'S latest star recruit (there have been a few), John "The Admiral" Pollaers, will do the rounds of analysts in Sydney today for the first time since taking on the role as head of CUB five weeks ago.

Pollaers of course hails from Diageo, a brand manager covering Guinness, Johnnie Walker and Bundaberg Rum, so can be expected to take up the challenge of reviving the CUB beer brands.

In a quick chat yesterday, he in fact cited Bundaberg as an example of a brand that was once considered dead and buried but has experienced a remarkable turnaround.

Asked what he knows about beer -- given he comes from a spirits company -- he is well prepared.

He notes that Diageo owns Guinness, which is sort of a beer.

And in any case, the game is not beer or wine but how to get a share of the "refreshment" market.

This requires understanding the customer and executing faultlessly.

Pollaers, who earned his nickname from his past naval service, has spent his first five weeks speaking to some 200 people inside and outside the company.

Encouragingly, he says "there has never been a more exciting time to be in the sector given the structural changes and shift in consumer preferences".

His challenge is enormous, given beer is the life-blood of the company and its volumes have fallen, meaning the only profit growth has come from price increases.

Macquarie's Greg Dring figures the company is a victim of the success of the beer industry.

Beer was on a slow trend downwards for many years until the industry got smarter and rolled out myriad new brands to create some excitement in the market.

In the process, it has shaken the traditional loyalty of the average beer drinker, who used to settle

for his or favourite brand but

now has grown extraordinarily promiscuous.

This has diluted CUB's powerhouses such as VB.

Meanwhile, rival Lion Nathan has out-marketed Foster's and is attacking its home base in Victoria with Australia's best beer . . . Boags, of course.

Just how The Admiral responds remains to be seen but his boss, Ian "Choco" Johnston, will be looking for a miracle.

The company's stock price has underperformed the market by some 11.8 per cent in the past year, with wine sales going nowhere and beer downhill.

Retail therapy

DAVID Jones boss Mark McInnes did little to boost sentiment around the discretionary goods retailers despite posting the most impressive growth numbers in the sector so far this financial year.

The macro environment is simply running against the sector, given income growth last calendar year at 11 per cent will halve to 5 per cent this year. At the same time, the appreciation of the Australian dollar has put pricing pressure on imported goods, which means profit margins are under pressure.

McInnes is a little more optimistic than the analysts, who figure punters should simply avoid the sector for the rest of the year. He figures the comparisons with last year's sales are obviously tough given the government pumped \$20 billion into

the economy last year and zero this year.

Financial year 2010-11 will return to more normal growth patterns and his friends at Access Economics are tipping retail in 2012.

Merrill Lynch analyst David Errington took the stick to Woolies yesterday in a report arguing Coles' growth was having a big impact.

The Qantas frequent flyer program, he said, was costing 0.7 per cent in profit margins, which means the airline is the major beneficiary, a point Woolies strongly rejects.

The big mistake Woolies made historically, according to Errington, was trying to outspend Coles when Wesfarmers took control two years ago, while at the same time increasing profit margins from 5 to 7 per cent in supermarkets.

If it had left margins alone, then Coles would have had to slash its margins from their base at 3.1 per cent to attract more custom.

That at least is the view being pushed by the folk at Wesfarmers and supported by Errington.

It's early days yet in the battle and Wesfarmers' Kmart seems to be also grabbing market share from both Big W and Target. Given the latter is in the same stable, and in the first half last year earned profit margins of 12.8 per cent against 6.9 per cent for Kmart, it doesn't seem smart business.

Pumping petrol

THE 7 Eleven purchase of Mobil petrol stations, flagged here earlier in the month, is close to being finalised with an announcement due any day. The challenge will be to revamp the stores.

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