

## Appendix D: Australian corporate collapses and financial advisers

### Westpoint

The investors in Westpoint-related financial products had an outstanding total capital invested at \$388 million as at January 2006 when the Group collapsed. Liquidators and administrators of the various entities have estimated total amounts available for distribution to investors in respect of a limited number of the entities of \$56 million. The capital value adopted as the expected return of the Westpoint entities not in liquidation or administration is approximately \$22 million.

The crux of ASIC's claims is that when recommending and selling Westpoint investments to their Clients, the financial planners were negligent and breached the conditions of their Australian financial services licenses. An article by The Age on 23 February 2006 revealed that "...planners got 10 per cent commissions for selling Westpoint mezzanine products, compared with an industry average of 2 per cent"

Since November 2007, ASIC has commenced 16 civil actions (including the action against KPMG) seeking to recover funds for investors in the majority of the Westpoint companies. These claims are summarised in the following table:

|                    | <b>ASIC ACTIONS FOR COMPENSATION</b>  | <b>APPROXIMATE AMOUNT BEING CLAIMED</b>  |
|--------------------|---|--|
| Directors          | Five individuals who were appointed as, or are alleged to have been, directors: Norman Carey, Graeme Rundle, Richard Beck, John Dixon, Lynette Schifftan and persons and companies associated with Mr Beck. The matter against Lynette Schifftan has now been resolved.   | <b>\$273 million</b>   |
| Financial planners | Seven Australian financial services licensees: <ul style="list-style-type: none"> <li>• Bongiorno Financial Advisers Pty Ltd and Bongiorno Financial Advisers (Aust) Ltd (settled);</li> <li>• Dukes Financial Services Pty Ltd (now known as Barzen Pty Ltd) and Joseph Dukes;</li> <li>• Glenhurst Corporation Pty Ltd (in Liquidation);</li> <li>• Masu Financial Management Pty Ltd (Confidentially settled);</li> <li>• Professional Investment Services Pty Ltd (settled);</li> <li>• Strategic Joint Partners Pty Ltd; and</li> <li>• Brighton Hall Securities Pty Ltd (in Liquidation) (the Financial Planners).</li> </ul> | \$2.6 million<br>\$1 million<br>\$24.5 million (Undisclosed)<br>\$5.9 million<br>\$1.39 million<br>\$ 14 million |
|                    | <b>Total</b>  | <b>\$83 million</b>  |
| Trustee            | State Trustees Limited, the trustee of an unsecured Mezzanine Note issue by Market Street Mezzanine Ltd   | <b>\$17.9 million</b>  |
| Auditors           | Accountancy firm KPMG   | <b>\$200 million</b>   |
|                    | <b>Total amount being claimed</b>   | <b>\$573.9 million</b>   |

Table 1: ASIC civil actions to recover funds for Westpoint investors (ASIC, 2008)

Based on review of websites of the above entities we note that some of the organisations noted above have professional accountants in key roles in their respective organisations.

In addition to the list of financial advisers identified above, ASIC further revealed that eighteen licensed advisers and four unlicensed advisers, who provided advice in relation to Westpoint products, have been banned.

### Storm Financial

On 22 December 2010, ASIC announced it had commenced legal proceedings against the Commonwealth Bank of Australia ("CBA"), Bank of Queensland Limited ("BoQ") and Macquarie Bank Limited ("MBL") seeking compensation for investors arising out of these entities' involvement in selling unregistered managed investment scheme operated by Storm. By 2012, the corporate watchdog is narrowing in on the banks' relationship with Storm, to offer lower interest rates and higher borrowing levels to their Clients.

ASIC also announced it had commenced civil penalty proceedings against Emmanuel and Julie Cassimatis as directors of Storm in relation to alleged contraventions of their duties as directors. It is alleged they caused and permitted Storm to be exposed to legal liability arising from the implementation of a financial services business model which involved providing commoditised financial advice to investors that failed to take into account the personal circumstances of individual investors.

| Case            | Financial Advisers                      |
|-----------------|---|
| Storm Financial | Emmanuel Cassimatis<br>Julie Cassimatis |

### Great Southern

Extract from *'Sales professionals' pushed Great Southern Products*, The Australian, 21 May 2009:

*'Sales professionals' pushed Great Southern Products*

**"THE failed Great Southern agriculture investment empire used an in-house team of 35 "sales professionals" to push its products via a network of 1100 financial planners and accountants.**

Its fund-raising methods have been questioned after it was revealed the group paid financial planners and accountants up-front fees of 10c of every dollar invested. Great Southern's accounts reveal the team of 35 "sales professionals" – supported by an administration team – worked with accountants and planners to "educate" them about the group's products and to "provide assistance in creating wealth creation strategies". The Financial Planning Association, which represents about 60 per cent of the nation's financial planners, has said "very few" of its members were involved in the collapse. The 300-plus accountants selling Great Southern product are listed as "authorised representatives" of Great Southern by the Australian Corporations and Investments Commission.

Adviser Edge analyst Shane Kelly said those authorised representatives were typically small accounting firms who had "bought the Great Southern line". Under law, smaller accountancy firms and some independent financial planners who do not have access to an AFSL can be made "authorised representatives" by Great Southern to sell the group's products. Those authorised representatives needed to meet only minimal financial planning education requirements, established by ASIC. Great Southern's team of 35 sales professionals is understood to have been involved in creating the group's network of authorised representatives."

Further revealed by an article in the Sydney Morning Herald on 23 May 2009, James Higgins, from the law firm Slater & Gordon, points out that the 10% commissions were "in the same ball park" as those involved with Westpoint or Storm Financial. "It's amazing how often they involve high commissions," he observes. The fact that accountants were responsible for distributing Great Southern's products has prompted much soul-searching in the profession. **Some believe the "authorised**

**representative" system - where an accountant can be authorised to give financial advice in one product area, like MIS – needs revamping, along with the practice of product makers paying commissions.**

Apart from advising Westpoints products to Clients, the national financial planning firm Professional Investment Services (PIS) was also largely involved in improperly advising Clients to buy tax-effective managed investment scheme products from Great Southern.

| <b>Case</b>                       | <b>Financial Advisers</b>                                     |
|-----------------------------------|---|
| <b>Great Southern, Timbercorp</b> | Professional Investment Services Pty Ltd                      |
|                                   | Prophecy Wealth Management (PWM)<br>Hayes Knight (Accountant) |

### **Trio Capital**

The Parliamentary Joint Committee (PJC) Inquiry has investigated the collapse of Trio Capital, which was the largest superannuation fraud in Australian history. Approximately \$176 million in Australians' superannuation funds is lost or missing from two fraudulent managed investment schemes: \$123 million from the Astarra Strategic Fund and \$53 million from the ARP Growth Fund. Trio Capital was the 'responsible entity' for both schemes.

To date, nine individuals have either been banned from providing financial services, been prevented from managing corporations, voluntarily removed themselves from the financial services industry, or been prevented from acting as a registered auditor, according to ASIC.