

THE SHAREHOLDER



IMF (Australia) Ltd

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SHAREHOLDERS TAKE ACTION AGAINST AWB

Shareholders of AWB Limited who suffered financial losses when the disgraced wheat exporter's share price plunged during the highly publicised Oil For Food scandal last year have begun an action in the Federal Court of Australia with funding from IMF.

On 17 April 2007, a representative proceeding was filed on behalf of a number of AWB's current and former shareholders seeking compensation for damages suffered as a result of AWB's alleged breaches of the ASX Listing Rules and *Corporations Act*.

The proceeding has been brought on behalf of persons who signed a litigation funding agreement with IMF and who obtained an interest in AWB's B Class shares between 11 March 2002 and 13 January 2006 and still held an interest in those shares on 14 January 2006 (the last day of trading before the commencement of the Cole Inquiry). AWB's B Class shares are listed on the ASX.

Between March 2002 and January 2006, AWB enjoyed the benefits of a seemingly legitimate and immensely profitable relationship with the Iraqi Grains Board (IGB).

The United Nations Oil For Food Programme was established, as part of the UN's sanctions against Saddam Hussein's regime, to

enable nations to provide foodstuffs and other humanitarian assistance to Iraq, whilst making payments to any Iraqi entity illegal.

Under the Programme, funds from a specially created UN escrow account (which held the proceeds of sales of Iraqi oil) were used to finance the export of food products to Iraq.

Any proposed transaction under the Programme had to first be approved by a UN committee.

AWB forwarded a number of proposed wheat export contracts to the Department of Foreign Affairs and Trade for approval by the UN committee and subsequently received approval to partake in the Oil For Food Programme. Contract prices agreed to by AWB and IGB were, unbeknown to Department of Foreign Affairs and Trade and the UN, inflated due to the inclusion of "transportation" and "handling" fees. The fees were paid to a company called Alia (which held itself out as a trucking company) with funds received from the UN escrow account.

However, when Paul Volcker released his report on corruption within the Oil for Food Programme in October 2005, it was found Alia kept only a small portion of the

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FASTER JUSTICE: FEDERAL COURT IN VICTORIA INTRODUCES "ROCKET DOCKET"

The Victorian Registry of the Federal Court has introduced a so-called "Rocket Docket" to speed-up the determination of commercial disputes.

Commercial litigation in most Australian courts has become synonymous with expense and delay. But the Victorian procedure is likely to increase access to justice and reflects the desire of many users of the courts not to be lavished with expensive, "Rolls Royce" style justice.

The new "Fast Track List", which will be managed by three judges, will introduce a number of less-formal procedures that are likely to

reduce the costs of commercial actions. For example, under the Rocket Docket:

- pleadings may not be required;
- case summaries will be introduced;
- discovery will be limited;
- a scheduling conference – which will take place soon after filing – will narrow the issues;
- trials will occur more quickly (between two and five months from the date of the conference); and

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DOWNER SHAREHOLDERS SET TO TAKE ACTION FOR AUGUST 2006 WRITE-DOWN

IMF will provide funding to shareholders of engineering contractor Downer EDI Limited to pursue losses they suffered when the company's share price collapsed in August last year, following a massive and unexpected write-down of revenue.

On 9 August 2006, Downer's shares plunged 30% to close at \$5.15 after the company said it would report a net loss after tax for the year to 30 June 2006 of \$25 million. The market had been expecting a net profit after tax of around \$125 million.

The loss was caused by a reversal of revenue previously recognised by a Downer subsidiary, Roche Mining, relating to claims made against Iluka Resources over a disputed contract for the Douglas Mineral Sands project.

Roche had applied for extensions of time and additional payments of around \$105 million under a contract it had with Iluka in around December 2005. These claims were included as revenue. On 30 January 2006, Iluka told the market it had rejected the claims as being without factual basis.

In February, when Downer released its interim results, it told the market an increase in sales "should translate directly to at least a 20% uplift in net profit after

tax". Between February and August 2006, Downer never corrected the market's expectation that it would deliver a 20% increase in profit for the full year.

Shareholders will allege, however, that:

- (a) Downer knew, or ought to have known, at a time earlier than August 2006 that amounts previously recognised as revenue in respect of the Roche contract would need to be expensed as at FY06 and net profit after tax for FY06 was not going to increase by 20% from the previous year;
- (b) that the recognition of certain amounts as revenue was not consistent with the Accounting Standards; and
- (c) Downer failed to adhere to its obligations under Listing Rule 3.1 and breached section 674 of the *Corporations Act 2001*.

Law firm Slater & Gordon are conducting the legal work on the claim. It is expected that the case will be run in the so-called "Rocket Docket" in Victoria (see article on page 1), which could result in a faster resolution of the claim.

You can request a copy of the Shareholder Information Package for the Downer action from the IMF website at www.imf.com.au.

ROB FERGUSON TO LEAD IMF'S NEXT PHASE OF GROWTH AS EXECUTIVE CHAIRMAN AND CEO

IMF announced in June that Rob Ferguson has been appointed as IMF's executive chairman and chief executive officer.

Ferguson has an unparalleled track record of building a successful financial services business, having been involved in the team that created the phenomenal growth of Bankers Trust Australia in the late 1980s and the 1990s.

Ferguson's appointment will allow executive directors John Walker and Hugh McLernon to focus on growing IMF's investment portfolio.

BT Australia was one of the great success stories of Australian finance. Formed in 1969 with two employees and \$3.6 million in capital, over the next thirty years BT Australia grew to a funds management and investment banking behemoth with more than 2,500 employees, accumulating more than \$2 billion in capital along the way.

Ferguson joined BT Australia in 1971 and acted as Chief Executive Officer between 1985 and 1999 and was Chairman between 1999 and 2001.

Ferguson has also served as a director of Westfield Holdings Limited and as Chairman of Vodafone Australia.

Ferguson was appointed director and Chairman of IMF on 1 December 2004.

He looks forward to the opportunity to add value to IMF's next phase of growth.

"At BT, I saw a lot of businesses grow from nothing and blossom into something substantial.

"From a distance, the legal industry needs to deregulate; the big question is how quickly it will do so. It won't be with the same speed as the financial sector because a large number of the incumbents in that sector were keen for change, which is not the case in the legal sector," he says.

"But I am interested in the possibility of growing a business in the same way as we grew BT."

VILLAGE LIFE ACTION BEGINS IN FEDERAL COURT

IMF is funding a representative proceeding on behalf of shareholders of the ASX-listed aged-care residential developer Village Life and three of its directors.

The action was filed in the Federal Court on 30 May 2007.

Village Life issued a prospectus in November 2003 in which it claimed it would build 102 retirement villages and generate a net profit of \$15.4 million by July 2005.

During 2004, shareholders are alleging that Village Life became aware of adversities that would significantly impact on the achievement of these targets yet did not make this information public.

Problems arising included construction delays associated with weather and engineering issues, lower than expected occupancy, increasing land prices and increased construction costs.

It was not until February 2005 that Village

Life issued a revised profit forecast of \$11.5-\$12.5 million. Following two more profit downgrades between February and May 2005, the final projected net profit stood at just \$2 million and only 69 of the originally promised 102 villages had been completed.

Some shareholders saw the value of their shares plummet from \$2.38 in November 2004 to less than \$0.35 in June 2005. In June 2007, the stock was languishing at \$0.04.

Investors are seeking a declaration that Village Life failed to fulfil its continuous disclosure obligations under the *Corporations Act 2001* and breached deceptive and misleading conduct provisions of the *Corporations Act*, *ASIC Act* and/or *Trade Practices Act*.

Following a directions hearing held on 29 June, parties will now finalise their pleadings before moving on to the discovery process.

AWB—CONT FROM PAGE 1

“transportation fees” paid to it and handed the rest over to Saddam Hussein’s former government.

The 2006 Cole Inquiry subsequently revealed that AWB had been making clandestine payments to the Iraqi Government via Alia.

It will be argued that AWB’s actions constituted a breach of both the ASX Listing Rule 3.1 and section 674(2) of the *Corporations Act 2001*, both of which require a listed entity to disclose any information that a reasonable person would expect to materially affect the value or price of the entity’s securities.

The shareholders allege that AWB failed to disclose to the ASX over a number of years the true nature of its dealings in Iraq, and as a result of this failure, the AWB share price was consistently higher than its true worth throughout the period from March 2002 to January 2006.

The shareholders allege, therefore, that they suffered losses when they purchased AWB shares at an inflated price or that they would not have purchased AWB shares at all had

they known the true situation.

In 2006, the price of AWB shares fell dramatically, from a high of \$6.37 just prior to the Cole Inquiry’s commencement, to below \$2.38, a drop of more than 60%.

A directions hearing was held on 15 June before Gyles J in the Federal Court at which AWB agreed to file and serve its defence in August. Another directions hearing is scheduled for September.

Law firm Maurice Blackburn Cashman is acting for the claimants in the shareholder action.

Future issues of The Shareholder will update you on the action against AWB. Information is also available on the IMF website at: www.imf.com.au

ROCKET DOCKET—CONT FROM PAGE 1

- a pre trial conference will be held about 3 weeks before the trial to identify agreed facts, finalise witness lists, deal with any objections to evidence and allocate the total time that each party will be allocated at the trial.

A “chess clock” type of system will govern timing under the new regime to ensure that the parties adhere to strict timetables.

Any closing submissions will be limited in length to 15 pages.

The Rocket Docket is currently only available for claims that are expected to take less than 8 days to be heard.

The Supreme Courts of the other States will be taking note of the developments in Victoria and considering the introduction of similar streamlined procedures that focus litigants’ attention on the real issues in dispute. Unless they do, it is likely that more litigants will seek to run their commercial matters in the Federal Court in Victoria.

As reported in *The Shareholder* in December last year, IMF prepared a submission to the Victorian Law Reform Commission’s Civil Justice Council, which has been examining how to make court procedures in Victoria more efficient, and is due to report in September this year.

In that submission, IMF argued that an effective civil justice system must resolve disputes fairly, quickly and at reasonable expense.

The submission argued that in modern litigation, which puts an emphasis on the principle of proportionality (which recognises the time and effort put into a case should be commensurate with the importance and value of the subject matter involved), it is necessary for the parties to make an assessment at the outset of a case:

- the likely value of the claim; and
- its importance and complexity; and then to plan in advance:
 - the necessary work;
 - the appropriate level of person to carry out the work;
 - the overall time which would be necessary and appropriate to spend on the various stages in bringing the action to trial; and
 - the likely overall cost.

IMF argued that any reform of the civil justice system must involve mandatory procedures to facilitate the full and frank exchange of information between the parties at the earliest possible stage of the litigation process, which is vital for the proper assessment and management of the risks of litigation.

The Federal Court is attempting, through the Rocket Docket, to address a number of these concerns and IMF applauds its initiative.

IMF plans to make use of the Rocket Docket in the action against Downer EDI (see article on page 2).

JUDGES SAY ENOUGH IS ENOUGH WHEN IT COMES TO LEGAL COSTS

The chorus of criticism relating to the high costs of litigation is continuing, with judges suggesting that the legal profession must consider ways to resolve disputes more quickly and that clients should be more assertive in demanding lower costs from their lawyers.

The Chief Justice of South Australia’s Supreme Court, John Doyle, told *The Australian Financial Review* in June that: “We will achieve change only if we can produce a fundamental shift in attitudes on the part of the legal profession and on behalf of the regulator litigators in the relevant field.”

David Byrne, of the Victorian Supreme Court, told a hearing in May that the companies preparing the case before him should “consider litigation as they would a substantial commercial enterprise...that is to say, let’s see how best we can achieve the result we set out to achieve and at minimum cost.”

It is hoped that Victoria’s Rocket Docket will begin to shift the attitudes of the legal profession and send a strong message that many users of the civil justice system do not want the red carpet treatment. Something less—where costs are proportional to the value of the claim and disputes are resolved speedily and not necessarily by way of a trial—will, for most persons seeking justice, be sufficient.

IMF will continue to lobby for reforms to the civil justice system that seek to achieve faster and cheaper justice.

IMF (Australia) Ltd***To apply for funding please contact:***

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NEW OFFICE IN BRISBANE, INSURANCE, SONS OF GWALIA DIVIDEND CLOSER

IMF OBTAINS INSURANCE FOR ADVERSE COSTS

IMF announced on 7 June 2007 that it has obtained adverse cost order (ACO) insurance from Brit Insurance Limited.

Never before in Australia has such cover been granted for matters where the decision to begin litigation has already been made. The cover will protect IMF in the event of an unfavourable court decision and will apply to all new investments of up to \$2.5 million taken up from 1 April 2007 to 30 September 2008.

This cover is significant to IMF in a number of ways: not only will it assist IMF to expand its investment portfolio, but it also lessens the need to retain current cash levels.

Brit Insurance is the major subsidiary of London-based Brit Insurance Holdings PLC, which provides a wide range of insurance products both within the UK and internationally.

VISITORS TO IMF WEBSITE SOAR

With interest in litigation funding booming, there has been a surge of activity on the IMF website, with figures for May 2007 showing a dramatic increase in visitors.

The number of unique visitors in the five months to the end of May 2007 has jumped to 12,361, compared to 2,874 unique visitors for the whole of calendar 2006. In the five months to May 2007, there were 43,437 individual page loads compared to 9,287 in the whole of calendar 2006.

Earlier this year, IMF revamped its website and visitors will now find detailed information about each funded case, various policy documents and other information at www.imf.com.au.

IMF OPENS IN BRISBANE

IMF has established a Brisbane office, staffed by investment manager Andrew Charles. This office is at 15 Adelaide Street and Andrew can be contacted on (07) 3218 1516 or acharles@imf.com.au

ASIC CHAIRMAN ACKNOWLEDGES IMPORTANCE OF WESTPOINT ACTION

In his first appearance before the Senate Standing Committee for Economics in Canberra in May 2007, the new chairman of the Australian Securities and Investments Commission, Tony D'Aloisio, suggested that privately-funded proceedings seeking compensation on behalf of victims formed part of the regulatory response to financial scandals. In his "Statement on Westpoint", Mr D'Aloisio made specific reference to the legal actions being brought on behalf of some Westpoint victims against various licensees, which are being funded by IMF.

DIVIDEND CLOSER FOR SONS OF GWALIA SHAREHOLDER-CREDITORS

Creditors of Sons of Gwalia, at a meeting held on 28 June 2007 in Perth, have voted in support of the sale of the company's tantalum assets for an amount which will provide approximately 12¢ in the dollar to all creditors, including those shareholders who have become creditors by virtue of their statutory claims against the company. Most of the clients of IMF, representing claims of approximately \$150 million, voted in favour of the sale.

IMF is continuing to negotiate with the Administrator of the failed gold miner to determine the adjudication process for client's claim.

A further distribution may occur from the proceeds of litigation by Sons of Gwalia against its former auditors and officers and from the sale of non core assets by the company.

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