

# Essay on the issue

[Business](#), [Company](#)



## **Executive Summary**

The President, Board Members, CEO and CFO of the Centro Group were sued in 2008 by the Class Action specialist legal firms Maurice Blackburn ( backed by IMF1 Australia) and Slater & Gordon. The case was slapped on the grounds of release of false and misleading financial information to the investors and ASIC<sup>2</sup>. Centro had overlooked certain interest bearing short-term debts, and had shown them as long-term debts. The report said nothing about the fact that the company may not be able to refinance this total liability of \$2, 700 million. The company was thus alleged to have issued misleading and deceptive information to the investors who had invested in its shares between August 2007 and February 2009. ASIC also sued external auditors PricewaterhouseCooper, who had checked the accounts and certified them as correct.

After an intense legal battle, during which the directors confessed to overlooking the data, Centro lost the case. All the directors were penalized to different extents by the court. In the class case, a record compensation of 200 million\$ was finalized in a settlement which sought the court's approval. This is a landmark case in legal history not only because of the claim amount but also due to the abrupt change in perspective regarding corporate board directors, whom we often imagine to be playing golf in afternoons. The Centro case brought the message home that in case of wrongdoing, the directors and CEO shall be responsible, irrespective of who prepared the faulty report. This researcher has sought to put up the summary of these incidents and the ramifications thereof in the following paper.

## **Introduction**

Legal experts have opined that The Centro legal case may be incorporated as a textbook case study, being a pioneering case in Corporation Law. The case is mentioned in the list of cases given in textbook "Australian Business Law; 2012" (Latimer, 2012).

Of the different companies that formed the Centro Group, charges were brought against Centro Properties Group (CPG) and Centro Retail Group (CER), in 2008. Companies listed in capital markets around the world have to put up correct accounting and financial data and information, in their quarterly, half-yearly and annual Reports. Putting up misleading information is a white-collar crime against the investors. Centro was sued for violation of the above. It needs clarification that the class action was on behalf of the investors against the Centro Group while ASIC has legally charged eight board directors with violation of the Corporation Act, 2001, as cited below. The groups 2007 annual report was examined and the information not disclosed were found as (1) Around \$1.5 billion short-term debts were classified as noncurrent debts by CPG (2) Around \$1.7 billion worth guarantees of an associated company's short-term debts by CPG, and (3) About \$500 million short-term debts were shown as long term liabilities by CER. Centro's directors thereby duly violated the 2001 Corporation Act's prescribed director's duties under sections s180(1), 601FD(3) and 344(1). (Downie; 2011) The period in which the shareholders may have suffered losses was August 2007 to February 2008. (Maurice Blackburn; 2012) The external auditors were here PricewaterhouseCooper (PwC). PwC here made a mistake as they neglected to check properly the financial records

and certified the wrong reports as correct. As PWC is a reputed company, an audit done by them can increase investor confidence of the authenticity of data. (Lenaghan & Wilmot, May 2012)

Two legal firms, specialists in class cases, filed class cases. This was on behalf of the investors who had suffered alleged losses due to investing in Centro, misguided by non-disclosure of the erroneous financial information. These were Maurice Blackburn, funded by IMF, Australia and Slater & Gordon, which represented the investors not being catered to by IMF and was backed by Comprehensive Legal Funding. The Class suit was filed against the Centro group. (referenced before)

In October 2009, the two class action specialists received indirect backing when the Australian Securities and Investments Commission (ASIC) joined the party and dragged eight Centro board of directors to court including the CEO and the CFO. ASIC alleged that both Centro Properties and Centro Retail Open combined showed interest bearing current financial liability in their public reports. (Woods, 2011) Deliberate negligence and apathy to the shareholder's interests was the base charge of ASIC after Centro had earlier admitted that its reports were faulty. This was the biggest case involving Accounts Errors in Australia. ASIC as well as the class action companies also sued auditors Price Waterhouse Coopers, on the ground of PWC being incompetent and negligent. ASIC won its case in June 2011 (Woods. L, 2011)

## **The Federal Court Records**

The Federal Case of Australia , Victoria General Division number VID 326 of 2008 is enclosed along with this paper as Appendix-I (Digital Copy). Brian Haley the ex-Chairman, Andrew Thomas Scott former CEO and non-executive

director, James William Hall former non-executive director, Romano G. Nenna-ex Chief Finance Officer are some of the names, given in the Federal Court's Notice.

## **The Responsibilities of Directors under the CAC and the Australian Corporation Act**

1. Duty to be diligent and exercise care under Section 22 of that CAC act and section 180 of the Corporations act of 2001. The basics of accounting procedure so that errors if any can be checked up in financial statements.
2. To declare conflict of interest as per CAC and the Corporation Act under sections 27F and 27G; and 91 and 92 respectively.
3. Duties to act in good faith, section 23 of the CAC Act and s 181 of the corporation Act.
4. Not to abuse their positions and/or indulge in nepotism Sec 24 of the CAC ACT AND 182 of the Corporate Act
5. To not misuse information under sections 24 and 182 of the CAC and Corporations
6. To not to trade what while company is in insolvent condition. as per section 588G of the corporation act
7. Duty to respect and uphold CAC account or enabling legislation of a commonwealth authority.(CAC act section 27a)

### **These are just some of the duties that a director will has to look after.**

Actually, the ultimate responsibility of any action initiated stops and ends with the director. For violation of any of the above, a director of a CAC listed company can be subjected to penalty, which may start from a pecuniary fine,

conviction, deregulation of the company upto even criminal activity.

(Australian Government, Dept of FAHSCIA, 2012)

Justice Middleton did not impose any pecuniary penalty on the directors Healey, Cooper. et al or disqualification. Andrew Scott was penalized by \$30,000 and Romano Nenna was disqualified for two years. Legal costs were also payable by seven ex/present directors and Mr Nenna. In the class action case, The Federal court granted the sum of \$ 200 million in a settlement proposal. Price Waterhouse Cooper is likely to pay one third of this amount. 150 million \$ will be Maurice Blackwell's shareholders while the balance \$50 million will be Slater & Gordon's. (referenced before)

## **Overall effects of the judgment**

While there have been opinions galore about the judgment, most of them subscribing to the theory that harsh penalties have been imposed, this researcher fully concurs with the judgment. Commenting in hindsight is always easy, but Justice Middleton has to be congratulated for taking the first steps towards awarding a record claim, highest in the world till now.(sans the US of course). (referenced before)

The second point is that the Justice has reminded us of the importance of the board members. Being a non-executive board member is not something, which is a hobby on the part of a retired civil servant. Reward and social position without responsibility sounds absurd. But this is exactly many people in the boards of companies are enjoying. The Justice has shown the way. It is now left for us to follow the path shown.

## **REFERENCES:-**

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8. Woods. L, 2011. " ASIC wins case against Centro directors" Online digital version of ' The Age"; Accessed on 19/06/2011 < <http://www.theage.com.au/business/asic-wins-case-against-centro-directors-20110627-1gmk5.html> >

## APPENDIX-1