

HIGH COURT DECISION CLEARS WAY FOR ION SHAREHOLDERS' ACTION

The High Court's 6-1 decision in *Sons of Gwalia* confirms that the legal claims of shareholders, arising from the acquisition of shares on the basis of misleading conduct or inadequate disclosure, will rank alongside unsecured creditors in the event of insolvency. The decision paves the way for shareholders in ION Limited to proceed with their claims against the company.

ION Limited an Australian automotive components manufacturer, which went into administration in December 2004 leaving debt in excess of \$700 million. The claims are being brought by investors who purchased shares between October 20, 2003, and December 7, 2004. They allege that vital information concerning the company's real financial position was withheld. Investors have been waiting for the High Court's decision in *Sons of Gwalia* to determine where their claims would rank in the company's insolvency.

The *Sons of Gwalia* decision arose in the context of a legal claim brought by shareholders, which alleged that the company had engaged in misleading conduct and had failed to comply with its obligations of continuous disclosure under the *Corporations Act*. Section 563A of the Act operates to defer the recovery of debts owed to "members in their capacity as members" to follow the payment of unsecured creditors.

Chief Justice Murray Gleeson said that there was no general principle that "members come last" in an insolvency. Instead, he said that the Act requires, "a line to be drawn between a shareholder claiming in the capacity of a member and a shareholder claiming otherwise than in the capacity of a member...To draw that line it is necessary to analyse the nature of a claim; it is not sufficient to describe its effect on other creditors".

The *Corporations Act* provides a right to compensation for people who suffer loss as a result of a company engaging in misleading conduct, or failing to comply with the continuous disclosure obligations contained in the ASX Listing Rules. The High Court found that the legal claims of shareholders alleging breaches of these provisions were not debts owed to those members in that capacity.

Slater & Gordon practice group leader, Lisa Nichols said, "The High Court's decision is a strong reminder to companies, creditors and other stakeholders that the prohibitions on misleading conduct and inadequate disclosure are to be taken seriously. Hopefully, this judgment will be another important step towards improved corporate governance and a better informed market."

Ms Nichols said, "The High Court's decision will not necessarily increase the number of shareholder class action. It will, however, increase the prospects of recovery for shareholders, including ION

shareholders, who were induced to invest in insolvent companies by misleading conduct or inadequate disclosure.

“Should the legislature wish to take an interest in this matter, then it would be time better spent informing companies of their legal obligations and trying to prevent such breaches from occurring in the first place.”

Sons of Gwalia Limited was a gold mining company that collapsed in 2004 with over \$850 million of debt. The claim was brought by Mr Margaretic who purchased shares in the company only 11 days prior to its collapse. Margaretic alleged that Sons of Gwalia had engaged in misleading or deceptive conduct and had failed to keep the market adequately informed about its financial position.

For the judgment, click here:

http://www.austlii.edu.au/au/cases/cth/high_ct/2007/1.html

If you purchased shares in ION Limited between 20 October 2003 and 7 December 2004 and wish to register for the action, please contact Slater & Gordon on 1800 555 777.