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2010 Sons of Gwalia to be Reversed - Update

The federal government recently announced its intention to reform Australia's insolvency regulatory framework. Headlining this reform was a direct addressing of the Sons of Gwalia decision which, among other things, allowed shareholders to make damages claims that rank alongside other unsecured creditors when they made investment decisions that relied upon misleading and deceptive conduct on the part of the company or its officers.

More information

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Isn't Sons of Gwalia dead...?

What may have been overlooked in the commentary regarding the reversal of Sons of Gwalia, is a closer examination of whether the reforms¹ are intended not to be retrospective. If so, then the entire period of the GFC is still in play for future Sons of Gwalia style claims to arise.

This is one of the issues to be tested in a recently launched court action by De Bortoli Wines in regard to a \$7million dollar investment in HIH². De Bortoli is progressing its case based largely on the Sons of Gwalia judgment.

De Bortoli Wines allege that their investment was based on misleading and deceptive conduct by HIH in October 2000, a not inconsiderable 10 years ago.

The Implications

If the reforms are not retrospective, then the potential for shareholder claims to arise remains live. Therefore, this case bears close attention as the results may prompt other shareholder groups, and litigation funders, to bring similar actions, most obviously those arising from the GFC. It will also be interesting to see what, if any, action the government takes to clarify or settle the issue, as any attempt to make the reforms retrospective, may create a rush of matters brought to court to pre-empt any further changes.

If you wish to have a confidential discussion about any matter raised in this newsletter, please contact one of the Taylor Woodings partners in Sydney, Melbourne or Perth.

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¹ http://www.treasury.gov.au/documents/1713/PDF/2010_Insolvency_Reforms.pdf

² <https://www.comcourts.gov.au/file/Federal/P/NSD147/2010/actions>

