



## INSOLVENCY BRIEFS

### **Liquidator goes down in High Court**

It appears we may have a definitive word on when a shareholder is not a shareholder, at least for now. We are talking about the Liquidator's appeal in the Sons of Gwalia matter involving Mr Margaretic.

To remind readers Mr Margaretic brought 20,000 shares in Sons of Gwalia on market 11 days before the company went into Administration. He lodged a claim alleging that the company had breached the continuous disclosure requirements of the Corporations Act and ASX rules and as such he should be treated as a creditor of the company. In the first instance the Federal Court agreed. The Liquidator appealed but the High Court has now rejected the arguments.

Many commentators are arguing that this could only apply to listed companies. Given the action was also for misleading and deceptive conduct and his claim appears to be for damages arising therefrom there may yet be scope for expansion.

It has been argued by some commentators that this precedent is dangerous.

### **Insolvency Numbers Up - NSW Leads the Way**

Both Personal and Corporate Insolvencies are up in calendar 2006 from 2005 by 8%.

NSW is the main contributor to this with an 18% increase for the year whereas Queensland has actually fallen in numbers.

This is highlighted by the fact that we are experiencing a strong increase in inquiries at this time.

With two elections on the horizon, a current spate of stock market corrections offshore and some polls of business people predicting a recession we are in for interesting times.

### **Bankruptcy Law in the process of being tightened with regard to Superannuation**

You will recall that currently the only way last minute transfers to superannuation funds was via an action under Section 121 of the Bankruptcy Act as a transfer to defeat creditors with the difficulty of proving intent. The Law drafters appear no longer willing to let Trustees rely on this approach with its obvious pitfalls.

There is a Bill that was introduced to Parliament on 6 December 2006. It provides, if from all the circumstances at the time of a transfer to a fund it can be inferred the Debtor was about to become insolvent the transfers can be challenged.

The drafters have even included a rebuttable presumption of insolvency on an absence of books and records making the use of the shredder no defence.

Clearly, they are trying to make last minute restructuring even harder.

As ever we welcome all your insolvency related enquiries.



# NEWS WITH CLOUT

Offering Corporate & Personal Solvency Solutions

March 2007

---

**Apart from Formal Insolvency Services at Clouts we also Offer:-**

Orchestrating Informal Arrangements with Creditors

Monitoring Businesses in Workout Situations

Conducting Negotiations with Secured & Unsecured Creditors

Business Risk Minimisation Reviews

Forensic Accounting Assignments

Business Valuations

Internal Control Reviews

Small Business Courses

***Official Website***

**[www.CloutAssociates.com.au](http://www.CloutAssociates.com.au)**

***Contact Details***

Tel: 02 6652 3288

Fax: 02 6651 9393

Email: [admin@cloutassociates.com.au](mailto:admin@cloutassociates.com.au)

***Clout & Associates Senior Representatives***

Morgan Chubb

Email: [mjchubb@cloutassociates.com.au](mailto:mjchubb@cloutassociates.com.au)

David Morgan

Email: [dmorgan@cloutassociates.com.au](mailto:dmorgan@cloutassociates.com.au)