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ARTICLES

Damages for negligent valuation of mortgage securities: A finance theory perspective – *David Johnstone* and *Ben Curtin*

The Full Federal Court has recently decided two cases, *La Trobe Capital & Mortgage Corp Ltd v Hay Property Consultants Pty Ltd* (2011) 190 FCR 299; [2011] FCAFC 4 and V*alcorp Australia Pty Ltd v Angas Securities Ltd* [2012] FCAFC 22, which raise important questions concerning damages for negligent valuation of mortgage securities. These questions concern the inter-relationship between the lender's loss of capital and loss of income, and the proper basis for assessing damages for loss of opportunity. This article considers the damages principles applied in each case from the perspective of financial valuation theory and suggests an alternative approach to the assessment of damages in negligent valuation claims. 476

The duty to auction: Real or imagined? – *Andrew Lumsden* and *Saul Fridman*

What are the duties of directors when they find themselves the subject of an unwanted advance? Is the Australian Takeovers Panel standard different to the standard in the United States and elsewhere? In Australia neither the courts nor the Takeovers Panel have gone so far as to suggest that target directors ought to actively seek an auction once a company is "in play". Is the difference between the United States and Australian provisions more than a different view of the role of shareholder primacy? It is unlikely that an Australian court will consider the "duty to auction" in an Australian takeover. Instead, the Takeovers Panel will most likely determine the issue on the basis of what is "unacceptable". The Takeovers Panel has consistently refused to consider the duties of directors in control transactions. Nonetheless, duties analogous to an obligation to auction can be discerned from the Takeovers Panel material. The Takeovers Panel is strongly focused on the transfer of control taking place in an efficient, competitive and informed market, but when does an efficient market demand an auction? Like the United States model, are these duties only enlivened when control is likely to pass? While not as strict an obligation as the shareholder wealth duty imposed by the Delaware courts, the Takeovers Panel will impose a wide set of requirements on directors to preserve the market for control. In the contest for corporate control there needs to be an adequate opportunity for shareholders to maximise payment for what will effectively be their final chance to benefit from their shareholding. What this means is that there is practically no difference between the processes the Takeovers Panel would require of a target board and those a court might require before it would agree to exercise its discretion to convene a meeting of shareholders to approve a scheme. In the end, the jurisdictional differences are much more at the margin than one might otherwise expect. 493

The life and times of the Financial Reporting Panel – *Jeffrey Knapp* and *Stephanie Kemp*

On 1 January 2005, the Financial Reporting Panel was established at law amid high expectations that, as an alternative to the courts, it would prove to be a useful accounting dispute resolution body. On 23 August 2012, the Panel was effectively closed with the passage through both Houses of Parliament of the *Corporations Legislation Amendment (Financial Reporting Panel) Bill 2012* (Cth). The reason proffered for the Panel's closure is that its ongoing existence could not be justified on the ground of cost-benefit given a history of few referrals and rare use. This article is the first to consider how the Panel has operated and to narrate its history from origination to closure. The article also analyses why the Panel was underused and failed to meet its original expectations. 510

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