

# COMPANY AND SECURITIES LAW JOURNAL

Volume 39, Number 8

2023

EDITORIAL ..... 439

ARTICLES

**Shareholder Class Actions Judgments in 2022 – Iluka Resources and Worley – Prashant Kelshiker and Michael Legg**

This article explains developments to the Australian shareholder class action landscape following two important court decisions in 2022, namely: the Iluka class action (*Bonham v Iluka Resources Ltd*) and the Full Court of the Federal Court’s judgment upholding the applicant’s appeal in the Worley class action (*Crowley v Worley Ltd*). These class actions were significant as very few shareholder class actions have proceeded to judgment and the latter was the first appellate judgment in a shareholder class action. The judgments provide guidance as to the need for robust internal processes for preparing forecasts and issuing guidance, the use of disclaimers, the use of principles of corporate attribution so that the company is not limited to the board, and may include officers, which in turn necessitates the ascertainment of the knowledge of different officers (both actual and constructive) at different times. The article also touches on the legislative reforms to the continuous disclosure regime effected by the *Treasury Laws Amendment (2021 Measures No 1) Act 2021* (Cth) and its interaction with the above judgments. .... 440

**Misleading or Deceptive Conduct and the Corporate State of Mind: Insights from Australian Civil Penalties Law – Alex McCracken**

While it is not an element of the “strict” statutory prohibitions on misleading or deceptive conduct, courts have endorsed consideration of the defendant’s state of mind when assessing an appropriate civil pecuniary penalty for misleading or deceptive conduct. This poses a challenge when the defendant is a corporation, as existing private law methods of corporate attribution are inadequate. This article identifies and interprets how judges conceptualise the corporate state of mind in Australian civil penalties jurisprudence responding to misleading or deceptive conduct. It critically evaluates judicial conceptions of the corporate state of mind, drawing on an alternative analytical framework to understand the limitations and ramifications of key “markers” of judicial reasoning. .... 455

COMPANY LAW – Editor: Juliette Overland

**Cybersecurity Risk Management in the Financial Services Industry: Australian Securities and Investments Commission v RI Advice Group Pty Ltd – David Chaikin** ..... 485

---

**VOLUME 39 – 2022–2023**

|                        |     |
|------------------------|-----|
| Table of Authors ..... | 493 |
| Table of Cases .....   | 497 |
| Index .....            | 513 |