

## update

8 August 2008

## Friday Facts: Public interest immunity protected

*In the recent decision of Australian Securities and Investment Commission (“ASIC”) v P Dawson Nominees Pty Ltd (“Dawson”), the Full Court of the Federal Court of Australia considered whether or not it should compel ASIC to produce documents which would ultimately disclose the identity of its informants.*

ASIC had been subpoenaed to produce documents to the Court relating to its investigation into Multiplex Limited (“**Multiplex**”) in proceedings issued by Dawson against Multiplex (the “**Proceeding**”).

Companies in the Multiplex Group had contracted to design and construct the new Wembley National Stadium in London (the “**Project**”). There were substantial delays and cost increases associated with the Project. Multiplex as a result announced a forecast loss on the Project and a reduction in earnings for the Multiplex Group. It was however alleged by undisclosed informants who complained to ASIC that Multiplex had delayed disclosing their projected losses to the Australian Stock Exchange (the “**ASX**”).

ASIC launched an investigation into the conduct of Multiplex and concluded that Multiplex had failed to comply with its continuous disclosure obligations under the ASX Listing Rules (the “**Investigation**”).

Multiplex entered into an enforceable undertaking with ASIC that included, amongst other things, an undertaking to accelerate a \$50 million indemnity and to establish a \$32 million fund to meet the

claims of shareholders who had suffered losses.

Dawson issued the Proceeding in the Federal Court of Australia on behalf of a number of Multiplex shareholders seeking to recover losses which they had suffered by reason of Multiplex’s failure to comply with its ongoing disclosure requirements. It also issued a subpoena on ASIC to produce documents relating to the Investigation.

ASIC produced a large number of documents in answering the subpoena. However, ASIC objected to the production of documents which would disclose the identity of informants who had assisted with the Investigation. ASIC argued that it was in the public interest that the identity of its informants, who were employed by a company associated with the Project, be protected.

The Full Court of the Federal Court of Australia held that the documents which disclosed the identity of informants were protected from production on the grounds of public interest immunity.

In a media release, ASIC Chairman Mr Tony D’Aloisio stated: “[t]his decision is an

important one for whistleblowers. It affirms the principle that when people come forward to report matters to ASIC in confidence, their confidence will be respected where that is in the public interest. Otherwise there is a risk that fewer people would report matters to us.”

## For more information

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