HIGH COURT OF AUSTRALIA

Public Information Officer

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ALAN DAVID DOYLE v AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION AND DEREK WILLIAM SATTERTHWAITE

A director on the board of a Western Australian mining company had improperly used his position to gain an advantage for his company and its clients, the High Court of Australia held today.

Mr Doyle was a director of Doyle Capital Partners (DCP), engaged as a consultant to Chile Minera NL with respect to potential mining interests in Chile. Chile Minera had three directors: chairman Bernard Roland Mountford, who was in Chile during the relevant period; Mr Satterthwaite; and John David Hopkins, who resigned on 15 November 1996. In September 1996, after losses for 1995-96 of more than $12 million, the board resolved to concentrate its activities in Chile, in particular acquiring 75 per cent of Carrizal Alto Prospect. A resolution approving this strategy (and a name change from InterChrome NL) was passed by a show of hands at an extraordinary general meeting (EGM) on 18 October 1996, but with some strong dissent. Two days earlier, Chile Minera allotted eight million new shares, half to DCP and half to two DCP clients, raising $400,000. It paid DCP $24,000 to bring about the share placement.

However, on 17 October the Australian Stock Exchange told Chile Minera that the share placement breached the ASX rule prohibiting a listed company from issuing more than 10 per cent of its capital in any 12-month period without shareholder approval. The ASX was also concerned that the allottees of the eight million shares had voted at the EGM. Trading was suspended on 13 November. ASIC's precursor, the Australian Securities Commission, won Federal Court orders setting aside the EGM resolution approving the acquisition of Carrizal Alto Prospect. The company was restrained from proceeding with the acquisition until it had shareholder approval in the manner required by the Corporations Law and the ASX rules. On 21 November, Mr Doyle sought the return of the $400,000. He, as alternative for Mr Mountford, and Mr Satterthwaite voted to return the money to the DCP trust account and to have DCP return the $24,000 placement fee. The next day Mr Doyle agreed to be a director. He and Mr Satterthwaite and Mr Mountford (by phone) voted to cancel the share placement. Another EGM in February 1997 replaced the directors.

The company took separate proceedings in 1997 in the WA Supreme Court against DCP seeking repayment of the placement money and against the three directors. Both matters were settled with DCP paying the company $250,000, minus the $24,000 placement fee. In the WA Supreme Court in 2002, after a trial of the action brought by ASIC, Justice Roberts-Smith made a declaration that Mr Doyle had made improper use of his position to gain directly an advantage for other persons by putting the allottees' interests ahead of the company's, contravening section 232(6) of the Corporations Law. Justice Roberts-Smith ordered Mr Doyle to pay to the Commonwealth $30,000 and prohibited him from managing a corporation for two years. On appeal, the Full Court reduced the prohibition period to six months. Mr Doyle appealed to the High Court, seeking to have the finding of breach of section 232(6) set aside.

The Court unanimously dismissed the appeal, upholding the Court of Appeal's finding that all five elements of section 232(6) were present: Mr Doyle was at the relevant time an officer of a corporation; he used that position; his use of his position was improper; the improper use was for the purpose of gaining an advantage; and the advantage was for himself or someone else. In contravention of section 232(1), he was present when the board considered a matter in which he had a material personal interest and had voted on it. Knowledge of the conflict of interest by all the directors did not in all the circumstances alter the case.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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