

The Boardroom Practice Limited

◆ Building Governance Best Practice ◆

August 2010

Feltex Directors: What can we learn.....?

Directors charged with failing to discharge their duties as directors in ensuring full compliance with the financial reporting legislation were today 2nd August 2010) found not guilty of the charge. While this finding is welcome not only to those charged but to the director community at large there are valuable lessons to be learned from the case – particularly when we bear in mind that those charged included some of the country's most experienced finance professionals and directors.

Much of the case revolved around the acceptability of relying on advice (in this case from big brand accountancy firm Ernst Young [EY]) and the extent to which directors are otherwise required to take measures to ensure compliance. In this case their reliance was found to be reasonable and thus the directors were deemed to have acted appropriately.

In the long winded debate which led to this conclusion however there was considerable discussion over just what kind of advice was sought and given, its status and its meaning relative to the requirements of the legislation. In particular EY argued for example that their advice was a “review” not an audit and thus they could not be expected to uncover all matters which might need to be disclosed.

The lessons then seem to be:

1. Be very clear what kind of advice is being sought.
2. Make sure that the advisor knows (in writing) what the advice is going to be used for.
3. Ensure that terms are defined – what is a “review” compared with an audit and so on.
4. Where is liability (if any) to fall should matters become heated and difficult.

Briefing advisors of all types is, in other words, critical. A lesson taught in the Boardroom Practice “Risk Management for Boards” modules runs under the heading “Use Advisors and Know How to Use Them”.

Despite today's decision it is clear that simply relying on advice in an “all care no responsibility” fashion is likely to lead to trouble.

Brent Wheeler
August 2010

PO Box 8518, Symonds Street,
Auckland, New Zealand

Fax: (+64) 9 529 2314

Email: enquiries@boardroompractice.co.nz
Website: www.boardroompractice.co.nz

Principals:

Ron Hamilton
021 428-466

Janine Smith
021 952-600

Brent Wheeler
021 834 279