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EDITORIAL 85

ARTICLES

Requiring proof of individual reliance to establish causation in disclosure-based shareholder class actions: The role of principle and policy – *James Argent*

The appropriate test for proving causation in shareholder class actions in Australia is disputed. Australian courts have increasingly accepted that a form of market-based causation, which does not require group members to establish proof of reliance, is arguable to establish causation. This article argues that it is only through construing each statute and examining the policy considerations that emerge from this process of construction that the appropriate test of causation can be determined. In light of this, Australian courts should apply a test of direct reliance to determine causation in disclosure-based shareholder class actions, where each group member transacted in the defendant's shares on the market. 87

Equitable subrogation of banks and other secured creditors for the recovery of statutory employee entitlements: A "new class of case" or simply a different perspective? – *Dr Garry J Hamilton*

For over 100 years, it has been the law in England that a liquidator's recoveries of monetary preferences are available only to unsecured creditors. That also appeared to be the law in Australia until the last few years, during which there have been a number of Federal Court decisions that appear to alter that position. In this article, it is suggested that the current Australian position tends to distort the long-standing principle that preference recoveries have never been regarded as being available to a secured creditor, whether by subrogation, equitable subrogation or otherwise. An alternative approach is proposed. 121

"The easy way or the hard way": Should directors cooperate with regulators? – *Emily Rumble*

Given the increasing emphasis on cooperation with regulatory investigations being placed on directors by regulators such as the Australian Securities and Investments Commission, directors are increasingly being asked to wrestle with the difficult questions of whether to cooperate with regulators, and if so, to what extent. This article considers first whether directors' duties under Australian law either require or permit directors to engage in socially responsible conduct, and whether directors could justify a decision to cooperate with regulators on such a basis. Secondly, this article examines the benefits and detriment of cooperation, with a particular focus on whether directors should feel comfortable self-reporting misconduct to regulators. Ultimately, however, the question of cooperation is likely to remain a difficult one for directors that requires careful consideration of the benefits and detriment of cooperation in the circumstances before the directors. 135

CORPORATE GOVERNANCE, CORPORATE RESPONSIBILITY AND LAW – *Jean Jacques du Plessis*

Barbarians at the gate? Activist investors and s 249N of the Corporations Act 2001 (Cth) – *Jason Harris* 151

OVERSEAS NOTES: HONG KONG, SINGAPORE AND MALAYSIA – *Say Goo*

Modernising company law: The Singapore experience – *Pey-Woan Lee* and *Christopher Chen* 157