

ASIC v Adler (2002) 41 ACSR 72

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Facts

- In June 2000, HIH Insurance (**HIH**) paid \$10 million for a unit in a trust which was controlled by Mr Adler. Mr Adler was, at the time, a non-executive director of HIH.
- Adler controlled the trust through Adler Corp and Pacific Eagle Equity Pty (**PEE**). Adler Corp was PEE's sole shareholder.
- The assets in the trust which PEE managed were technology stocks. These stocks were worth substantially less than \$10 million.
- PEE used part of the \$10 million to purchase HIH shares. Alder Corp also had substantial shareholdings in HIH. No shareholder approval was sought for the loan.
- ASIC commenced proceedings against Adler, Williams and Fodera for contravening the related party transaction, financial assistance and directors' duty provisions of the *Corporations Law 1998* (Cth).

Issues

- Was the \$10 million loan by HIH to PEE a financial benefit given to a "related party"?
- If this was the case, was the transaction actually conducted "at arm's length", which would provide a defence to Adler against a breach of related party transactions provisions?

Held

- The NSW Supreme Court held that the \$10 million payment was a financial benefit provided to PEE, Adler Corp and Adler because no shareholder approval was obtained prior to the payment.
- The payment was unsecured, inadequately documented and allowed for the self-acquisition of securities by HIH. Therefore, the transaction was not conducted "at arm's length".

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