

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates 2012

15 – 17 February 2012

Question: AET 49 - 52

Topic: Investment into the Westpoint Market Street Mezzanine Fund

Hansard Page: Written

Senator WILLIAMS asked:

49. In 2003, Mrs. Karen Bos invested \$100,000 into the Westpoint Market Street Mezzanine Fund through an advisor who was an authorised representative of Glenhurst Corporation. ASIC edged an action against QBE, Glenhurst's insurer, and in September, 2010, investors were compensated for their losses. However Mrs Bos was not compensated because ASIC claimed her investment was with Keibel and not Glenhurst.
- a. Is it not true that Keibel was the investor funding conduit used by Westpoint?
50. Could you confirm that Wayne Lucerne, the advisor through which the investment was made, was still an authorised representative of Glenhurst Corporation until the 18th of November, 2010 which was after the 15th of September compensation announcement?
51. If that was the case, is Mr. Bos not entitled to compensation?
52. ASIC has indicated in a reply to Mrs. Bos previously that it had advertised on its website for people to lodge claims and the time had expired. Were all investors notified by mail and any other means?

Answer:

49. Mrs Bos was not compensated because she was not included in the list of investors in the orders made by the Court in relation to the proceedings against Glenhurst and Glenhurst's insurer, QBE.

A list of potential group members was compiled for the Glenhurst Class Action from information ASIC obtained from various sources including Glenhurst Corporation, the Westpoint Access Database, the company liquidators and insurers and by direct notification from investors. Mrs Bos was not identified as a Glenhurst investor from these sources.

When the Glenhurst Proceedings reached the point of settlement discussions and the execution of settlement deeds in May 2010, ASIC applied to the Federal Court for orders, which included orders to communicate the proposed settlement of the Glenhurst Proceedings to known Group Members by way of notice (sent to Group Members at their last known address) and to other eligible investors who may not have been known to ASIC by way of public notice (published in the Australian and on the ASIC website).

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The Federal Court approved the settlement of the Glenhurst Proceedings and made orders for the settlement sum to be distributed to investors whose names appeared in the Settlement Fund Distribution Schedule (including any investors who established themselves as group members through the Court approved process).

ASIC is considering whether Mrs Bos may be entitled to any other compensation. Further, Ms Bos may also be entitled to participate in distribution of the settlement monies obtained as a result of ASIC's Westpoint related settlement involving KPMG and the Westpoint Directors.

a. Palentia Pty Ltd, formerly known as Kebbel (NSW) Pty Ltd was involved in the promotion of Westpoint and the raising of investor funds on behalf of Westpoint.

50. ASIC's records detail that Wayne Lucerne was an authorised representative of Glenhurst Corporation until 16 December 2003.
51. Irrespective of whether or not that was the case, Mrs Bos is not entitled to receive compensation from the Glenhurst Class Action, as her name was not in the Settlement Fund Distribution Schedule.

However as noted above, ASIC is giving consideration to whether Mrs Bos may be entitled to any other compensation and Ms Bos may be entitled to participate in distribution of the settlement monies obtained as a result of ASIC's Westpoint related settlement involving KPMG and the Westpoint Directors.

52. ASIC had a comprehensive communications plan with a dedicated website which included a portal for investors to obtain specific information regarding their investments; It has issued numerous media releases setting out actions it proposed to take and the results of those actions; ASIC has also notified potential group members of its representative actions against financial planners and State Trustees Ltd, in accordance with the orders of the Court made in each of those proceedings. Generally, that involved writing to potential group members known to ASIC at their last known address and advertising in a national newspaper and on ASIC's website.