

SENATE STANDING COMMITTEE ON ECONOMICS QUESTION
(Supplementary Budget Estimates 20 October – 21 October)

Question: SBT 25

Topic: Liquidation Industry

Senator Williams asked:

1. Does ASIC maintain a complaints register for complaints about liquidators?
2. Can ASIC state how many complaints have been received about liquidator Andrew Wily or his firm Armstrong Wily?
3. Can ASIC advise what action it has taken in relation to these complaints?
4. Why did ASIC appoint Andrew Wily as liquidator to BACF and related companies in 2005, when it had suspended him in 2003 for failing to perform properly and adequately his duties as a liquidator in relation to six companies?
5. Is ASIC aware, that despite there being more than \$6.5 million available for creditors, that the creditors in the BACF matter have received no dividend and all these the monies have been consumed in fees?
6. I met senior officials from ASIC in May this year to discuss certain complaints against Andrew Wily. Has any action been taken about these complaints?
7. Has ASIC taken any action about issues raised about Andrew Wily, in articles in *The Age* and *The Sydney Morning Herald* published in September 2010.

Answers:

1. All complaints received by ASIC are recorded and assessed. A detailed discussion on ASIC's complaints handling and referral processes was provided in ASIC's March 2010 submission to the Senate Inquiry¹.
2. It is ASIC policy not to discuss publicly the complaints it receives. A detailed discussion on ASIC's complaints handling and referral processes was provided in ASIC's March 2010 submission to the Senate Inquiry².
3. It is ASIC policy not to discuss publicly the complaints it receives or any actions that might flow from these complaints.
4. Mr Wily was already liquidator of three other companies in the BACF Group at the time that BACF was ordered to be wound up by the Supreme Court of New South Wales on the application of ASIC. It is generally more practical to have one liquidator appointed to oversee the liquidation process across a group of companies.

¹ Refer to paragraphs 188 to 206 & Appendix C1 of ASIC's March 2010 Submission to the Senate Inquiry.

² Refer to paragraphs 188 to 206 & Appendix C1 of ASIC's March 2010 Submission to the Senate Inquiry.

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5. ASIC has conducted a review of the publicly available liquidation accounts lodged by Mr Wily with ASIC (Forms 524) for each of BACF and related companies being liquidated by Mr Wily. The liquidation accounts show the receipt and disbursement of funds by Mr Wily as liquidator following a litigation settlement in October 2006. Four payments were made under the litigation settlement with the total funds received by the companies being liquidated by Mr Wily, being \$4,977,782.68 rather than \$6.5 million. The breakdown of the amounts received by Mr Wily, and the reasons why the amount received by Mr Wily was less than \$6.5 million, is as follows;
- a. An amount of \$1,625,000 was paid to a BACF related company being liquidated by Mr Wily;
 - b. An amount of \$1,625,000 was paid to a BACF related company being liquidated by Mr Wily;
 - c. An amount of \$1,625,000 was held by the NSW Supreme Court pending the outcome of other litigation. Interest was earned on this amount, resulting in the sum of \$1,727,782.68 being paid to BACF, a company being liquidated by Mr Wily. ; and
 - d. An amount of \$1,625,000 was paid to an entity that was not in liquidation at the time and not under the control of Mr Wily (although it is now in liquidation and being liquidated by Robert Whitton of William Buck Sydney).

The funds received by Mr Wily as liquidator (\$4,977,782.68) were then disbursed by him or remain as cash in bank in the BACF liquidation. The disbursements included the following payments totalling \$4,668,618.22; :

- a. \$1,055,463.85 Armstrong Wily (Administrator and Liquidators fees)
- b. \$2,085,853.46 MD Nikolaidis & Co (Legal fees)
- c. \$600,000.00– International Litigation Services Ltd (litigation funder)
- d. \$386,786.75 – Tim Hale (Counsels fees)
- e. \$177,000.00 – Legal fees for litigation funder
- f. \$90,000.00 – Ernst & Young under a cost order
- g. \$181,844.16 - HWL Ebsworth (Legal fees)
- h. \$41,360.00 – R Newlinds (Counsels fees)
- i. \$50,310.00 – THW Rybak (Legal fees)

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As at 15 November 2010 (the date of the most recent liquidation accounts lodged with ASIC) an amount in the sum of \$267,106.18 is recorded as being held as cash in bank in the BACF liquidation.

6. To protect the integrity of its investigations and out of fairness to affected persons, ASIC does not generally comment on investigations it may or may not be conducting.
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ENDS