

Annexure A

Corporations Act 2001

Section 40-55 of Schedule 2

REPRIMAND

Decision

Upon referral under s40-50 of Schedule 2 of the Corporations Act 2001 (the Act) to a committee convened under s40-45 of Schedule 2 of the Act, the Committee determined that Simon John Thorn, a registered liquidator, had failed to carry out adequately and properly other duties or functions that a registered liquidator is required to carry out under a law of the Commonwealth or of a State or Territory, or the general law, in connection with his role as administrator of Premier Energy Resources Pty Ltd ACN 646 696 317 (Premier Resources) in that he:

- (a) failed to make reasonable enquiries to satisfy himself that he had been validly appointed where a director had asserted that he had not signed a notice of resignation which allowed the other director to appoint Mr Thorn as voluntary administrator; and
- (b) failed in his responsibility under general law to promptly bring an application to court to confirm the validity of his appointment in circumstances where there remained a question regarding the validity of his appointment.

Where a director has asserted that a registered liquidator has not been validly appointed by reason of him not signing a document essential to the appointment, the registered liquidator must make reasonable and prompt enquiries into the circumstances surrounding their appointment, and unless those enquires resolve the dispute, promptly bring an application to court on the basis that they have not been validly appointed, rather than to carry out any functions and to exercise any powers.

Under s40-55(1) of Schedule 2 of the Act the committee decided that:

- (a) Simon John Thorn should continue to be registered;
- (b) Mr Thorn should be publicly reprimanded; and
- (c) ASIC should publish this notice on its website, www.asic.gov.au.

In reaching its decision, the Committee took into account Mr Thorn's submissions that he has learnt from the experience and would immediately take steps to seek directions from the court if faced with a similar situation in the future, that he has not been subject to any previous disciplinary action, and there was no allegation that he had acted dishonestly.

Background

- Premier Resources had two directors prior to Mr Thorn's appointment as voluntary administrator.
- On 20 June 2023, Mr Thorn was notified by the first director that the second director had resigned earlier that day.

- On 20 June 2023, the first director provided Mr Thorn with documents appointing him as voluntary administrator of Premier Resources, signed by the first director as sole director.
- Mr Thorn requested the first director provide him with a copy of the second director's resignation letter. Upon being provided with a copy of the resignation letter, Mr Thorn checked the signature against other examples before him and concluded that it was sufficiently similar.
- On 28 June 2023, Mr Thorn was notified by the second director that he had not signed the director resignation letter, such paperwork being falsified, that Premier Resources cannot be placed into administration by a single director, and that his appointment as director by one of the shareholders could not be revoked by the first director. Mr Thorn spoke to the first director who stated that the second director had signed the notice.
- Later on 28 June 2023, after obtaining legal advice, Mr Thorn informed the second director and his appointing shareholder that he had no reason to dispute the documents provided to him, that Premier Resources was without funds, and invited them to make an application to court to determine the validity of his appointment.
- Mr Thorn continued to fulfil the role as voluntary administrator of Premier Resources, including advertising for expressions of interest for its mining lease, conducting investigation into its affairs, preparing reports to creditors, and chairing the first creditors meeting on 29 June 2023.
- On 4 July 2023, the second director informed Mr Thorn that he had provided Mr Thorn with proof that his appointment as administrator was invalid and that he needed to go to court to have his appointment ratified, and to provide them with an opportunity to present their concerns.
- On 15 August 2023, Mr Thorn informed his lawyer that an application to court to validate his appointment as voluntary administrator was now necessary.
- On 15 September 2023, an application was made to the Supreme Court of NSW for orders under s447A of the *Corporations Act 2001* (Cth) seeking to validate Mr Thorn's appointment as administrator of Premier Resources.
- On 5 October 2023, Justice Williams in the matter of *Premier Energy Resources Pty Ltd* [2023] NSWSC 1185 dismissed Mr Thorn's application.