



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID307/2021

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

AUSTAL LIMITED (ACN 009 250 266) and another named in the schedule

Defendants

ORDER

JUDGE: JUSTICE O'BRYAN

DATE OF ORDER: 10 October 2022

WHERE MADE: Melbourne

THE COURT NOTES THAT:

In this order, **Information** means:

- (a) it was likely that there was a significant increase in the estimated actual cost of construction for the Littoral Combat Shipbuilding program and a reset and profit writeback of at least US\$90million was required in FY2016;
- (b) the reset and profit writeback would generate a loss of at least US\$40million in FY2016 for Austal USA LLC (a wholly-owned subsidiary of Austal Holdings Inc which was at all material times a wholly-owned subsidiary of the first defendant, and whose operations were the largest contributor to the first defendant's revenue and earnings);
- (c) the reset and profit writeback would generate a significant loss in FY2016 for the first defendant; and
- (d) the EBIT margin guidance announced to the ASX by the first defendant on 10 December 2015 was no longer reliable and should be withdrawn.

THE COURT DECLARES THAT:

1. The first defendant contravened s 674(2) of the *Corporations Act 2001* (Cth) (**Corporations Act**) on one occasion from 16 June 2016 and continuing to 4 July 2016 by failing to notify the ASX of the Information, in circumstances where:



- (a) on 16 June 2016, the first defendant became aware of the Information;
 - (b) the Information was not generally available within the meaning of s 676 of the Corporations Act and for the purposes of s 674(2)(c)(i) of the Corporations Act;
 - (c) the Information was information that a reasonable person would have expected, if it had been generally available, to have had a material adverse effect on the price or value of the first defendant's securities, within the meaning of s 677 of the Corporations Act and for the purpose of s 674(2)(c)(ii) of the Corporations Act;
 - (d) in the period between 16 June 2016 and 4 July 2016, the first defendant was obliged by Rule 3.1 of the listing rules of the ASX and s 674(2) of the Corporations Act to immediately notify the ASX of the Information.
2. The second defendant, in his position of Chief Executive Officer of the first defendant, contravened s 674(2A) of the Corporations Act on one occasion from 16 June 2016 continuing to 4 July 2016 by reason of being knowingly concerned in the contravention by the first defendant of s 674(2) of the Corporations Act (as set out in paragraph 1 above).

THE COURT ORDERS THAT:

3. Pursuant to s 1317G(1A) of the Corporations Act in respect of the contraventions the subject of the above declarations:
 - (a) the first defendant pay a pecuniary penalty to the Commonwealth of Australia in the sum of \$650,000; and
 - (b) the second defendant pay a pecuniary penalty to the Commonwealth of Australia in the sum of \$50,000.
4. The defendants pay a contribution to the plaintiff's costs in a lump sum of \$500,000.
5. The proceedings otherwise be dismissed on the basis that, other than provided for in order 4 above, there be no order as to costs between the plaintiff and the defendants.

Date that entry is stamped: 10 October 2022

Sia Lagos
Registrar



Schedule

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Second Defendant DAVID SINGLETON