



Melbourne expert testimony **key to biggest tax evasion penalty in Australian corporate history** *by George Kompos**

The Case:

In *Commissioner of Taxation v Australian Petroleum Supplies & Others, Bongiorno J* imposed penalties relating to the evasion of excise duty totalling \$53.4 million on the operators of a fuel distribution business.

The Facts:

Australian Petroleum Supplies and others (The defendants) were the operators of a fuel depot in Victoria. Between 1 July 1996 and 1 August 1997 they engaged in a scheme involving the blending or mixing of automotive diesel fuel with cheaper petroleum products. The Court found that the defendants had engaged in a deliberate, well planned commercial enterprise in blending the cheaper products with the genuine diesel fuel and then selling the blended product without paying the appropriate duty. The Judge commented that “had this matter proceeded as a contested trial the plaintiff’s case would have been proved largely by documentary material seized from the premises of the defendants or obtained from commercial enterprises with whom

the defendants transacted business. Those documents included invoices, faxes, trucking records, diaries, financial records and other material seized from the defendant’s premises including a document entitled ‘Depot Stock Balance.’”

They also included documents seized from suppliers of diesel fuel and other petroleum products to APS and documents seized from the National Australia Bank with respect to the defendants’ accounts.

Ferrier Hodgson’s role:

Ferrier Hodgson’s Melbourne Forensic team were instrumental in analysing the documentary material commented upon in the judgement. In analysing the documents we established the volume and the type of product purchased, traced the physical movement of stock and compared sales records with the trucking movements. This enabled us to reconstruct the theoretical stock levels and then compare this with the actual volume capacity of the depot and trucks. On examining the results of the comparison we provided a hypothesis to the authorities as to what was likely to have occurred. An expert witness statement was then prepared and filed in Court in support of the allegations, resulting in a successful prosecution.

**George Kompos, Senior Manager in our Melbourne office, specialises in Insolvency and Forensic Accounting.*

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Controls are easy to override when no one is monitoring! *Catherine Williams* reports*

The following case highlights some of the issues raised in our ‘12 Crucial questions to ask’ *(see article over page)*

The facts: A subsidiary of a large industrial products company claimed a loss of funds from its insurer as a result of a fraudulent misappropriation of tens of thousands of dollars by an employee.

At the time of the incident she was employed by the subsidiary as an Administrative Assistant whose responsibilities included accounts payable and petty cash. The office where she worked was relatively busy and she was supervised by a state manager and a national manager.

‘Miss H’ employed two methods of misappropriating funds from the company. Generally, supplier payments were made by head office, although some off-site

locations had been provided with bank account facilities for the payment of emergency amounts. Miss H created false entries for suppliers and made the cheque payable to ‘Cash’ which she then cashed at the local suburban bank branch. These false entries were sometimes supported by false documentation. Miss H did not always obtain a manager’s authorising signature and transactions were not always supported by documentation.

The second method employed was to withdraw cash from petty cash and create fictitious dockets for stationery and accommodation costs. These dockets were not authorised by a manager and often did not include a supporting receipt. *continued over...*

- Litigation Support
- Insurance Services
- Fraud Investigations
- Financial Investigations
- Computer Forensics

Are you in control? – 12 crucial questions to ask when assessing the risk of fraud in an organisation by Catherine Williams*

- 1 Is there a risk management strategy or plan?
- 2 Is there a material difference between reported profits and cash flows?
- 3 Is there adequate physical security over assets especially cash and inventory?
- 4 Are under or over qualified staff hired?
- 5 Are reference checks on new staff completed?
- 6 Are there policies and procedures to prevent the unauthorised use of assets?
- 7 Are financial records up to date?
- 8 Are management and accounting systems integrated and reconciled?
- 9 Is access to financial information restricted?
- 10 Is access to computer systems controlled and monitored?
- 11 Does management monitor and evaluate controls on an ongoing basis?
- 12 Does the company have a code of conduct or ethics policy?

Most frauds occur as a result of inadequate internal controls or an override of internal controls. Internal controls encompass a wide range of policies, procedures and directives which management implements in order to address the risks faced by a company in achieving its objectives. A strong control environment combined with a management team that is aware of the risks greatly lowers the opportunity for a fraud to occur.

**Catherine Williams is a Sydney Forensic Accounting team Manager. She has a broad range of experience in litigation support, assessment of loss, financial investigations, and insurance claims assessments. Catherine has a Certificate IV in Fraud Control Investigations and is a member of the ICAA's special interest group and the Australian and New Zealand Institute of Insurance and Finance.*

Controls are easy to override when no one is monitoring!

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During our review of the claim the following weaknesses and instances where there were overrides of internal control procedures were noted:

- Lack of supervision by management. Miss H had relative autonomy in her role;
- Both managers described Miss H as a trusted employee despite a previous warning to her for providing confidential documents to an ex-employee in dispute with the company;
- Both managers signed blank cheques for emergency situations and neither followed up on the usage of the signed cheque;
- Both managers authorised documents for payment of cheques which did not include adequate and appropriate support;
- Head office accounts payable processed payments for suppliers and petty cash reimbursements that were not authorised, or did not include supporting documents in contravention of company policy;
- Petty cash vouchers were signed by Miss H and the reimbursement was prepared by her. There was no co-authorising signature even though the company had a written policy on the procedures for petty cash; and
- Miss H was responsible for the authorisation and payment of suppliers as well as the authorisation and handling of cash. There was no segregation of duties.

- Petty cash amounts reimbursed exceeded the maximum limit of \$500.

Our role: Ferrier Hodgson's forensics team was engaged by the Insurer to review the company's claim and provide an assessment of the reasons the fraud had occurred.

The outcome: This company had documented policies, procedures and guidelines, however, Miss H was still able to use her position of trust to misappropriate funds. Both managers actually aided the deception by failing to observe procedures when it came to the authorisation of payments, documents and the signing of cheques.

Managers must observe, monitor and evaluate controls on an ongoing basis.

Miss H, who was on leave at the time the discrepancies were discovered, initially admitted to the misappropriation of company funds and was immediately terminated from employment. The company prosecuted Miss H who entered a plea of not guilty at the hearing. We await the outcome of the court case.

The insurance company part paid the claim because not all of the loss could be properly evidenced by the company.

**For information on Ferrier Hodgson's Insurance Services please contact Catherine Williams on (02) 9286 9816.*

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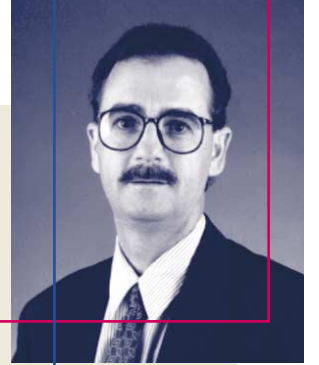
forensics@ferriers is a newsletter issued by Ferrier Hodgson discussing current issues in the area of Forensic Accounting – litigation support, insurance services, fraud investigations, financial investigations and computer forensics.

For comments please contact john.temple-cole@syd.fh.com.au Alternatively you can read forensics@ferriers on our website.

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Partner Profile: Peter Holmes Adelaide

Peter Holmes is a Partner in our Adelaide office and has specialised in Forensic Accounting for over 13 years, with a background in auditing and corporate finance. Peter's industry expertise covers agriculture and aquaculture, manufacturing, gaming, tourism and hospitality, energy, accounting and legal firms, and retailing. His broad spectrum of forensic accounting skills includes:

- giving expert opinion evidence in Courts around Australia
- fraud investigations, including covert extraction of evidence
- complex financial analyses and reconstruction of financial records, including business interruption claims
- preparation and assessment of damages across tort, contract and statutory claims
- valuations of equity & businesses, including oppressed minority interests
- proving or disproving solvency claims, eg: insolvent trading actions and security for costs applications

Peter was a major contributor in drafting the ICAA's 'APS 11 – Statement of Forensic Accounting Standards' and its related guidance note 'GN2 – Forensic Accounting'. He has also lectured to the Serious Fraud Investigation branch of the SA Police.

Peter is a Fellow of the ICAA, a Member of the Institute of Internal Auditors, an Affiliate Member of the Securities Institute of Australia, a Certified Fraud Examiner, a Mediator in the Magistrates Court of South Australia, as well as an appointee to the Civil Litigation Committee of the Law Society of South Australia.

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