

**VISNIC v AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
**(S389/2006)**

Court from which cause removed: Full Court of the Federal Court of Australia

Date of cause removed: 30 October 2006

At all material times, Mr Milan Visnic was a director of 13 wound-up corporations. A liquidator reported to the Australian Securities and Investments Commission ("ASIC") that the unsecured creditors of those corporations may not receive more than 50 cents in the dollar. The liquidator also advised ASIC that offences against Commonwealth legislation may have been committed.

On 4 November 2005 ASIC served Mr Visnic with a "Notice To Demonstrate Why A Disqualification Should Not Occur" pursuant to section 206F(1)(a)(i)(ii)(b)(i) of the *Corporations Act 2001* (Cth) ("the Act"). That notice offered Mr Visnic an opportunity to be heard, either in person or in writing, to demonstrate why he should not be disqualified from managing a corporation. Mr Visnic responded by advising ASIC that he would be commencing a High Court challenge to the constitutional validity of section 206F of the Act. He further declined to attend any hearing arranged by ASIC.

On 24 January 2006 a delegate of ASIC served on Mr Visnic a "Notice of Disqualification from Managing Corporations" ("Disqualification Notice"), accompanied by a "Statement of Facts, Findings and Reasons for Decision". The Disqualification Notice disqualified Mr Visnic from managing a corporation for five years.

On 3 February 2006 Mr Visnic filed a writ and a statement of claim in this Court in which he challenged the constitutional validity of section 206F of the Act. That matter was however remitted to the Federal Court of Australia by Justice Kirby on 27 March 2006. On 11 October 2006 (and before the Full Federal Court could determine the matter pursuant to a direction made by Chief Justice Black), Mr Visnic sought the removal of this matter back into this Court. This was on the basis that special leave to appeal had recently been granted in the matter of *Albarran v the Members of the Companies Auditors and Liquidators Disciplinary Board & Anor* and that there was a substantial overlap in the issues in both cases. On 30 October 2006 Justice Heydon removed into this Court the cause then pending in the Full Federal Court. His Honour also ordered that the removed matter be listed for hearing concurrently with the appeals in *Albarran* and also that of *Gould v Magarey & Ors*.

On 30 November 2006 a notice of constitutional matter was filed in respect this matter. On 13 December 2006 the Attorney-General of the Commonwealth advised the Court that he would be intervening.

The issues raised in the notice of constitutional matter are:

- Whether section 206 of the Act is ultra vires the legislative power of the Parliament of the Commonwealth to the extent that it invests the judicial power of the Commonwealth in an administrative body contrary to the separation of judicial, executive and legislative power entrenched in the Constitution.

- Whether section 206F of the Act is null and void and of no legal effect because it purports to invest the judicial power of the Commonwealth in an administrative body contrary to the separation of judicial, executive and legislative power entrenched in the Constitution.
- Whether section 206F of the Act is null and void and of no effect to the extent of conferral of power to disqualify based on the grounds and findings falling within sections 206C and/or 206E of the Act.