SUBMISSION TO AUSTRALIAN LAW REFORM COMMISSION INTO LITIGATION FUNDING

25 July 2018

INTRODUCTION

1. My name is Mark Morris. I have read the terms of reference for the above inquiry and the ALRC preliminary report dated 31 May 2018. With respect I make the following submission to demonstrate to the Commission that a private business, not having broken the law, employing 100 professionals, has no protection from a determined, unsupervised litigation funder.

2. I have been in the securities industry for forty years. In that time, I have been a director of businesses within major domestic and offshore financial Institutions, Macquarie, ANZ, and CBA banks. I started my own business which I sold to the Commonwealth Bank of Australia in 2004. I have held the Responsible Executive/ Management positions (or their equivalents), in Australia, Hong Kong, Singapore, London and New York.

3. I am considered a financial markets expert across equites, debt, foreign exchange and all of the afore-mentioned associated derivatives. I have run sales and trading teams and large research departments. I have no legal training. I naturally look at the world through the prism of my forty (40) years of financial markets experience.

4. I appreciate many diverse interests will be competing for your attention in your inquiry into litigation funders. I make this submission to highlight to the Commission the stark reality of the financial and human damage a litigation funder, without supervision but with an expertise of manipulating the legal process, can bring to the lives of 150 people. The damage included loss of jobs, capital, and substantial taxation revenue for the Australian government, business opportunity, bankruptcy, liquidation and thoughts of suicide as a constant companion.

5. My experience is not theoretical or abstract, but a factual situation that has extended into its tenth year. There is a dark side to litigation funding and unfortunately ASIC is running a protection racket for Third Party Litigation Funders (TPLF). I must ask why?

6. My personal experience is with the litigation funder [redacted]

7. I have endeavoured to explain my situation to ASIC numerous times. It is either beyond ASIC's powers of comprehension or as always it looks for any excuse not to become involved. [redacted] In court transcripts of witnesses under cross examination, where I have been directly involved, I have explicit evidence of this. The Commission is welcome to this evidence.

8. I ask ASIC if the activities of a rogue financial adviser, with an AFSL, adversely impacted the lives of 150, would ASIC turn a blind eye? After the evidence from AMP in the Royal Commission the answer is probably "yes".

9. Promoters and devotees of litigation funders and class actions justify their conduct by claiming companies that break the law and cause significant losses for thousands of everyday Australians should be sued. Their mantra is "access to justice" for class members. This is claimed to be an efficient use of a public resource – the civil justice system. Their mantra sounds noble but it should really be "access to dollars" for litigation funders. In reality profit motive dominates, and the principles of "conflict of interest" are ignored because funders go unregulated by ASIC.

10. Both arms of the funders' justification for litigation were missing in my case. Neither I nor my company broke any laws or lost money for anyone.

11. ASIC has allowed litigation funders free range. ASIC is broadly speaking supposed to be regulating them. There have been many cases decided where class members received little or nothing. The Huon Corporation case was a classic. Every cent New Zealand insurer CBL Insurance paid to settle the claim went to lawyers and the litigation funder. The class members got nothing.

12. In a recently settled case in Melbourne, again it didn't go to trial, the lawyer received $4,000,000.00 and the litigation funder $8,000,000.00. The class members received three (3) cents in the dollar.

13. Class members in a recently settled Queensland case have had to resort to their own finances to mount a court challenge against exorbitant payments to a funder and lawyers after the class members received very little.

14. The specific details of these cases can be made available to the Commission. ASIC appears oblivious to festering problems in the litigation funding industry.

15. In my case, [redacted] only achievement was the total destruction of my company based on [redacted] allegations – all condoned by ASIC's Perth office.

16. I seek to present to the Commission a situation where neither I nor my company broke the law or lost money for clients. This did not stop [redacted] filing two artificially constructed actions against my company. ASIC had been made aware of the factual situation thirteen months prior to [redacted] becoming involved and did nothing to defuse the situation.

17. [redacted] told me in 2009, I had done nothing wrong personally, that I had not broken the law, but my company was responsible for the actions of others because of section 917 of the Corporations Act. In March 2018, a Supreme Court judge in Western Australia, Allanson J, ruled [redacted] interpretation of section 917 invalid. This was no consolation to me as my company was in liquidation by 2018.

MY BUSINESS

18. In June 2007, I executed a joint venture agreement with an international company to dovetail their global algorithm trading business with my abilities of establishing an equity distribution business with the intention of taking it global. My joint venture partner employed 1,000 people and traded in markets worldwide. In 2007 it made a profit of $400m. A competitor had since proven the concept of our joint venture would have been successful being the evolution of the proven concept – an updated 2.0 model.

19. In December 2007, the joint venture purchased a business, Australia Stockbroking & Advisory Pty Ltd (ASANDAS ACN 094106751), from the ANZ Bank to be the vehicle for expansion. KPMG conducted due diligence. The business included thirty stockbrokers working in offices in Sydney, Melbourne, Brisbane and Perth.

20. In early 2008, I was advised of problems with two clients of a broker, [redacted] in the Perth office. I held unconditional, irrevocable and unlimited guarantees from all ASANDAS advisors in order to cover any problems with a broker's clients – effectively initiating primary insurance cover. I investigated and ordered the two problem accounts closed and called on the guarantee (copy available) to the extent of $2,600,000.00 (Deed of Settlement available) to solve the problems in June 2008. The clients were not compromised. An independent audit confirmed the findings.

21. These problems had incubated under ANZ's ownership in 2007 but I took responsibility to solve them. Six brokers from Macquarie Bank had joined ASANDAS in May 2006. ANZ Bank/E*TRADE had licensed them under their company name Stripe Capital Pty Ltd.[redacted] These six brokers were the guarantors who paid the above $2,600,000.00 – they had no alternative.

22. In June 2008[redacted] was asked to leave ASANDAS. [redacted]joined another firm. After my experience with [redacted] two problem accounts, I took the opportunity to write to all of[redacted] clients asking if they had any problems with him and to reply to me. In the same letter (copy available) I asked their permission (as required by law) to transfer their accounts to [redacted] new firm. [redacted] had eighty-two clients and only five did not transfer. All eighty-two clients had settled all their trades (trade day + 3) as required by ASX regulations. There were no outstanding trades that warranted attention. No further problems were reported to me.

23. This should have been the end of the matter. I had analysed and swept all of [redacted]accounts with the endorsement of an independent consultant. The clients had all settled their trades. I had written to them giving them the opportunity to complain about any aspect of their dealings with [redacted] and ASANDAS. Only five of the eighty-two didn't transfer to [redacted]new business indicating they were happy with the association. ASIC and ASX were advised of this exercise. All possible risk mitigation alternatives were considered and even after a decade of reflection I believe management's response was thorough, broad and complete.

24. In August 2008 my letter provoked one of [redacted] clients, [redacted] to contact [redacted]a director of Stripe Capital in my Perth office, not with a specific complaint, but with what [redacted] described as a potential problem in relation to[redacted] requested [redacted] to provide full details of his "potential problem", he refused. [redacted] compiled a memo (copy available) of the meeting with [redacted] and circulated it to the chairman, other directors and the compliance officer of ASANDAS. This meeting with [redacted] was to be a seminal moment in [redacted] and my life.

25. [redacted]

26. 24 November 2008, [redacted] again contacted ASANDAS – this time with an official complaint. The GFC was impacting markets and although [redacted] 27 November 2008 I wrote to ASIC (copy available) advising it of the one complaint [redacted] was making and mentioning the above guarantee. [redacted] was also advised of the guarantee. QBE, my insurer was also advised.

27. [redacted]

[redacted] ACTION AGAINST ASANDAS

28. 22 July 2009 (thirteen months after I'd settled all problems and taken the precautionary action described above) [redacted] made an ASX announcement (copy available) unconditionally claiming ASANDAS and [redacted] had breached a duty of care to clients.
29. The very same day, for impact, [redacted] briefed the press (press clippings available) that the claims would be in the "tens of millions". [redacted] invited clients to join an action. [redacted] did not do me the courtesy of informing me. Like the rest of the world, I heard the announcement broadcast globally to financial market professionals and then read later in the coordinated targeted press release of [redacted] fishing expedition for clients [redacted] had only one client signed up when this announcement was made.

30. [redacted] was to double down on its allegations. 24 May 2011 [redacted] told an ASANDAS creditors meeting that [redacted] claims would be $25,000,000.00 – report available. To this day [redacted] has not been able to prove these claims in court or anywhere else. This false statement caused a DOCA I had in place with shareholders and staff to collapse along with my health.

31. I engaged with [redacted] told me in the presence of witnesses, I personally had done nothing wrong but ASANDAS was responsible for the conduct of [redacted] as a licensee, because of section 917 of the Corporations Act. [redacted] has a well-documented process (copy available) where a committee of three conducts due diligence before litigation is commenced. [redacted]

32. I told [redacted] its conduct was damaging my business. [redacted] responded by asking me to join it in an action against ANZ Bank and my insurer QBE. I declined. [redacted] promotes its expertise in due diligence, sufficient to justify litigating against law breakers. Why was [redacted] asking me to join its action if it had done proper due diligence? [redacted] Why was [redacted] suing my company in September 2009 on behalf of clients who did not have any complaints when I wrote to them in June 2008? [redacted]

33. I informed [redacted] about the guarantee. The guarantee was not limited to the $2,600,000.00 mentioned above. The $2,600,000.00 paid covered the only complaints I received. The guarantee would have covered any outstanding legitimate claim including the still unproven $25,000,000.00 announced by [redacted] to the ASANDAS creditors meeting 24 May 2011.

34. [redacted] filed CIV 3124/2009 in the Supreme Court of Western Australia against ASANDAS and [redacted] Even though Leveraged Equities and Stripe Capital Pty Ltd were not mentioned in the ASX announcement, they were made respondents. [redacted]

[redacted]

35. In addition to ASIC, [redacted] and initially [redacted], 16 November 2010, I informed [redacted] of the guarantee. 11 and 12 January 2012, [redacted] solicitors acting for [redacted] viewed the guarantee in Sydney. Everyone associated with [redacted] chose to ignore the guarantee because there was no 30% fee in the guarantee for [redacted] This constituted a conflict of interest between [redacted] and its class members.

36. 4 May 2010, Minter Ellison on behalf of my insurer QBE, wrote a report contradicting [redacted] interpretation of section 917 of CA and presciently agreeing with Allanson J of the Western Australian Supreme Court eight years later. This report was given to [redacted] in 2010. [redacted] dismissed it.

37. 29 March 2018 in CIV 3124/2009, His Honour, Allanson J of the Supreme Court of Western Australia, dismissed [redacted] claim against ASANDAS. His Honour found no validity in [redacted] claim that ASANDAS was responsible for [redacted] interaction with Mr Smith because of section 917 of CA. [redacted] The case against Leveraged Equities was also dismissed.

38. Allanson J heard evidence for twelve days. [redacted]

39. [redacted]

40. [redacted] had been banned for life from the securities industry by ASIC but not charged with any offences. This was not good enough for [redacted]

41. Instead of investigating [redacted] ASIC in Perth accommodated [redacted] to advance the civil cases against my company. This is the dark side of litigation funding. Not only did ASIC look the other way, [redacted]

42. It took a Supreme Court judge, Allanson J, to expose [redacted] to state clearly ASANDAS had not broken the law. Unfortunately by

2018, when the decision was handed down, the damage had been done. ASANDAS was in liquidation, I had been bankrupted trying to save ASANDAS and had suffered a stroke. I say emphatically this should never be allowed to happen to anyone else.[redacted]

43. [redacted] filed a second action against ASANDAS and others in CIV1793/2012. [redacted] has made no attempt to bring this case to trial, no judge has been appointed and it has been deliberately confined to Registrars of the Supreme Court after forty status hearings. The case is based on the same allegations that Allanson J dismissed in CIV 3124/2009 - section 917 of CA. My insurers have extensively analysed the X-PLANS (containing all the trading records of [redacted] clients) filed in detail within a module with ASX listed IRESS and advised [redacted] it has no cause of action. [redacted] has been invited to bring the case to trial.

44. [redacted]

45. [redacted]

46. The favoured tactic of litigation funders is to make opaque allegations that insurance companies don't challenge and simply settle. To their credit my insurers, QBE and Vero have called [redacted] out and refused to settle. Their decisions have been vindicated.

THE FOSTIF CASE

47. The High Court of Australia decision in Campbell's Cash and Carry Pty Ltd v Fostif Pty Ltd gave litigators the licence to fund cases on the condition that class members were given "access to justice" and "conflicts of interest" were avoided. It was a 5:2 majority decision.

48. The criticism of litigation funding by the minority judges in Fostif, Callinan and Heydon JJ was prescient in view of [redacted] artificial claims against my company…"the purpose of court proceedings is not to provide a means for third parties to make money by creating, multiplying and stirring up disputes in which those third parties are not involved and which would not otherwise have flared into active controversy but for the efforts of the third parties, by instituting proceedings purportedly to resolve those disputes, by assuming near total control of their conduct, and by manipulating the procedures and orders of the court with the motive, not of resolving the disputes justly, but by making very large profits".

49. The above statement by the minority judges was a pragmatic warning about manipulating litigation funders motived by profit, but even the judges could not have foreseen the damage [redacted] would cause to my 100 employees, shareholders, the fifty-three applicants in [redacted] class actions (who have received nothing after ten years), the lost opportunity to establish a global business with an international party, my bankruptcy and the liquidation of ASANDAS. Where is the "access to justice" for us?

50. [redacted] conduct against me and ASANDAS has been the antithesis of the spirit of the majority judges intended in Fostif. Remember in ten years [redacted] with all its legal resources, has not been able to secure a judgment against me or my company. I have not broken the law nor have I lost money for clients.

ALRC PRELIMINARY REPORT

51. It was heartening to read the ALRC's initial report of 31 May 2018 and in particular the following paragraphs. The paragraphs are not flattering to ASIC. Unfortunately ASIC deserves criticism because, in the mind of the public, the only time it enforces the powers it already has, is when prompted by a Royal Commission.

52. Paragraph 3.29 of the report reads – "A licensing regime, in and of itself, cannot guarantee compliance with the law. As the early evidence before the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry shows, the effectiveness of a licensing regime depends on strong oversight and enforcement by a regulator. Given the ongoing interaction between the courts and litigation funders, information sharing between the courts and the regulator will be required to ensure that any licensing regime is appropriately enforced. Evidence of misconduct, or unsatisfactory conduct, by a litigation funder that comes to the attention of the court during litigation should be rigorously investigated by the regulator".

53. In relation to conflict of interest the report at paragraph 4.34 reads – "Regulatory Guide 248 provides extensive guidance and imposes appropriately designed obligations on litigation funders, yet there is no way to determine if funders are following it, and to what extent. Regulatory Guide 248 requires litigation funders to review their written procedure every twelve months. This is an internal obligation, currently undertaken without review by the regulator".

54. Paragraph 4.36 reads – "There is little oversight or action from ASIC. There is no record of ASIC, either proactively or in response to a complaint, investigating or initiating an action against a litigation funder for breach of the obligations in Regulatory Guide 248".

55. Paragraph 4.4 reads – "It is also proposed that prospective class members should receive information regarding actual and perceived conflicts of interest that may affect the conduct and management of their claims at the first available opportunity".

CONFLICTS OF INTEREST

56. One aspect the ALRC is investigating, according to its terms of reference, is conflicts of interest. I have mentioned above the number of times [redacted] was informed of the existence of the guarantee that would have settled any legitimate claim.

57. The simplest way for [redacted] to honour the licence Fostif gave litigation funders, was to advise its class members of the guarantee. Any legitimate claims would have been settled 100 cents in the dollar. [redacted] would have provided its class members with "access to justice" and avoided any "conflict of interest". My company would still be operating.

58. The reason [redacted] didn't advise its class members of the guarantee - it would not have received a 30% commission from the class members under the guarantee. Only successful litigation would earn [redacted] that fee. After ten years of litigation, the class members have received nothing, and the guarantee is no longer available.

59. [redacted] put its own interests before those of the class members. This was a blatant conflict of interest.

60. [redacted]

61. [redacted]

62. [redacted]

63. I have alerted ASIC to this article. As usual its reaction was benign. I would have thought "criminal sanctions for non-compliance" was a serious matter. In recent correspondence with ASIC the response to compliance with RG 248 was "ASIC's Regulatory Guides set out an approach for entities to follow which ASIC considers would enable them to comply with relevant legislation. Regulatory guides are not legislative instruments and do not impose any legal requirements on entities". Tell that to the Australian public Commissioner. Non-compliance incurs criminal sanctions according to [redacted]. We know for a fact ASIC is not regulating the litigation funders.

THE PROBLEM

64. As quoted in the paragraphs above, the ALRC 31 May 2018 preliminary report has already identified the root cause of the problem, it has belled the cat on ASIC. ASIC has lost control of litigation funders. ASIC has outsourced law enforcement. Litigation funders write soothing papers about "access to justice" and "managing conflicts of interest" but don't practice it and ASIC is not monitoring them. Worse still ASIC always finds excuses for not investigating complaints about litigation funders. Had ASIC investigated my complaint in 2009, 150 people (and their families) would not have come to grief.

65. As the system now stands the greatest damage occurs when a litigation funder files a writ. Court proceedings are an excuse for ASIC not to be involved. The litigation funders know this and play on it to manipulate the legal process. The gamekeeper (ASIC) washes its hands of the matter and retires to the safety of the compound. The prey (my private company) is left to the jackals. My cries for help to the gamekeeper go unanswered. The jackals show no mercy in exhausting the prey financially, emotionally and morally through the court system.

66. [redacted] ASIC will never have the respect of the Australian public until it grows the spine of the SEC in America.

67. By the time a Supreme Court judge, Allanson J, ten years later, invalidated [redacted] interpretation of section 917, it was too late. My company was dead, shareholders had lost their money, 100 people their jobs, and I had been made bankrupt and had a stroke. Is this the licence Fostif gave litigation funders given the fact [redacted] has nothing positive to show the world after ten years? ASIC cannot be proud of this. What would ASIC do to an AFSL advisor who caused this amount of damage to so many people?

68. Litigation funders know they can manipulate the system unsupervised, unchallenged and without fear of censor. ASIC has outsourced its powers of enforcement to funders who have no respect for the rule of law. Manipulation is the name of the game. How many companies like mine, that has never broken the law or lost money for anyone, have become collateral damage and been destroyed by the twenty-five funders pursuing profits across the country while ASIC remains a spectator?

69. Litigation funders say they conduct proper due diligence on a case. How does ASIC know if [redacted] ever did any due diligence at all on my case? [redacted] hides behind the smokescreen of due diligence and ASIC is seduced. [redacted] and ASIC were told and knew of all the precautions I'd taken up to June 2008. The only due diligence [redacted] did was to find a section of the Corporations Act to hopefully support a [redacted] set of allegations [redacted] Unfortunately litigation funders are gaming ASIC and the Australian public is paying the penalty.

THE SOLUTION

70. The solution was always in ASIC's hands had it exercised its role as an independent umpire.

71. Using the incontrovertible facts of my case, what if the following system were in place to protect private companies like mine from the jackals? ASIC's performance over many years disqualifies it from any role of mediation. TPLFs have effectively filled the void created by legal aid. This legal entrepreneurialism competes directly with regulation and proactive oversight from ASIC. [redacted] ASIC hopes the funders will do ASIC's job and bends to their pressures. [redacted]

72. A directions judge, schooled in commercial matters and independent of any trial judge, should be appointed as a mediator before matters get out of hand. My private company would present the following. The initial threatening letter from [redacted] lawyers, a copy of my letter advising my insurance company of [redacted] etter, a copy of the unconditional, irrevocable and unlimited guarantee my private company had in place to cover all legitimate contingences, the Deed of Settlement for the $2,600,000.00 mentioned above, copies of all letters ASANDAS sent to ASIC and ASX, copies of the letters (and replies) ASANDAS sent to [redacted] clients (no complaints were received), evidence that all class members had settled all trades in 2007 and made no complaints, copy of the memo prepared by [redacted] when [redacted] client [redacted] approached him in August 2008 about a "potential problem" [redacted] copy of the Minter Ellison report on behalf of QBE contradicting [redacted] interpretation of section 917 of CA and most importantly affidavits from all parties who specifically told [redacted] about the guarantees.

73. The grunt work would be done by my private company for the judge.

74. The judge would then convene a meeting with all parties. Each of [redacted] annual reports contains a graphic of [redacted] seven steps, three member committee, due diligence process to decide if it will finance a case. The judge would call for [redacted] internal working papers of that due diligence process and ask why [redacted] decided the risk of litigation for its class members was preferable to the certainty of the guarantee.

75. [redacted] would be asked to justify why the class members were not given "access to justice" via the guarantee.[redacted] would also be asked if the litigation path was a "conflict of interest" and really an attempt by [redacted] to get "access to dollars".

76. [redacted] would also be asked to detail the alleged "unauthorised trades" it has refused to deliver to me or my insurance company.

77. [redacted] annual reports also states the average duration of its cases is 2.6 years. Why has [redacted] failed in every aspect of its allegations against my private company, with all the expertise available to it, after ten (10) years?

78. If this facility were in place my private company would still be in business.

79. It is not too late for ASIC to be proactive.[redacted] refuses to bring CIV 1793/2012 to trial because it knows the allegations are based on its failed arguments in CIV 3124/2009. The discredited plaintiff,[redacted], is the lead applicant in CIV 1793/2012. All of the class members in CIV 1793/2012 happily settled their trades in 2007 (trade day + three days) when they were making money before the GFC impacted. 4,000 days later is [redacted] seriously suggesting the class members will under oath swear that the trades they settled in 2007 were "unauthorised"? Commissioner, give ASIC the courage to investigate this case.

80. CIV 1793/2012 is a challenge for ASIC. It is a rerun of the [redacted] rejected by Allanson J in CIV 3124/2009. It would be pointless having ASIC in Perth investigate it.[redacted] It has to be investigated in Sydney. I can give you all the necessary documentation.

81. ASIC of course will immediately press the excuse button claiming it doesn't get involved in judicial matters. I would remind ASIC it has the overall responsibility of administering the law in relation to corporations especially those listed on ASX.

82. Were [redacted] ASX announcements false and misleading? Are [redacted] ongoing allegations presented to the courts false and misleading? Has [redacted] raised capital from the public based on false and misleading statements? Is [redacted] abiding by the principles of Fostif and conflicts of interest? [redacted] Has [redacted] complied with the terms of its AFSL? Has [redacted] ever made disclosure to the ASX that it has not been able to supply specific details, over the last ten years, to support its allegations made to the [redacted] 22 July 2009 that my company had breached a duty of care to clients? Has [redacted] disclosed to ASX that it lost CIV 3124/2009 and that CIV 1793/2012 is based on the same invalidated allegations and [redacted] or bring the matter to trial?

83. There is no excuse for ASIC to ignore these questions as they go to the core of full disclosure and keeping the market fully informed.

84. P[redacted]

[redacted]

85. [redacted]

86. [redacted]

87. At present the legal fraternity and funders have vested interests in maintaining the status quo. The enticement of "access to money" by both sides of the aisle is irrepressible. The chaos created by ASIC abrogating regulation and enforcement has worked to the detriment of the public ASIC is paid to protect. Local and international litigation funders have declared open season on the Australian market knowing there is no policeman on the beat.

CONCLUSION

88. It would be appreciated if the ALRC understood what is happening in the market place. Everything I have said in this submission can be validated. I have much more material on [redacted] manufactured case against my company and am happy to assist the Commission in any way I can.

89. What has not been documented is the human damage, mental and physical, the unsupervised conduct of [redacted] has caused. This is a very serious matter. It cannot adequately be typed into a submission. To have been financially destroyed while [redacted] has achieved nothing over ten years has made thoughts of suicide a constant companion – that is not easy to write. I ask you as a Commission to appreciate that [redacted] motivation has always been money, not "access to justice". [redacted]. I have not broken any laws or caused loss to others. For ten years I have been pursued by [redacted] There have been no judgments recorded against me. None of the above would have been possible if ASIC had done its job, become involved and engaged when I informed it of the guarantee on 27 November 2008. ASIC had the power and authority to shut this down and no one would have lost money or been damaged.

90. ASIC needs people, independent of outside influences, with an understanding of markets and are not afraid to enforce existing laws. On one side of the coin, I told ASIC 27 November 2008 about the guarantee I held. ASIC was kept appraised of all the precautions I took to protect clients up to August 2008. ASIC was also advised of the Minter Ellison report dated 4 May 2010 on behalf of QBE [redacted] Allanson J of the Supreme Court of Western Australia came to the same conclusion eight years later. With all this information, ASIC did nothing to protect me, my company and 150 people and their families from the onslaught from an unregulated [redacted]

91. On the other side of coin ASIC, with knowledge of the guarantee, did nothing when [redacted] filed CIV 3124/2009. In 2009 rightly banned [redacted] for life. In 2010 ASIC was made aware of the Minter Ellison report [redacted]

charged. [redacted] filed CIV 1793/2012 and ASIC did nothing. 2013 ASIC and the DDP spent ($1,000,000.00 PLUS) on a trial against [redacted].

92. The question has to be asked - why did ASIC march to the beat of [redacted] drum and ignore all the remedial information I gave them? What has ASIC got to show for the last ten years – only great expense to the Australian tax payer? What has [redacted] achieved over the last ten years – nothing for its class members and capital loss for its shareholders? And me, my company, shareholders, employees and their families – carnage?

93. A system has to be implemented that will change the behaviour of litigation funders. They have no fear of ASIC. Participants in the securities industry know if they break the law their license is cancelled and their ability to make a living gone. The same should apply to litigation funders. Funders hiding behind an AFSL and pretending to abide by the law are fooling no one. Funders need to be policed as assiduously as ASIC treats every other holder of an AFSL.

94. There is a legitimate place in the law for class actions but not when the conduct of litigation funders falls within the warnings of the minority judges in Fostif, is motivated by money and mimics what [redacted] has done to me and my companies.

95. If nothing comes of my submission, it will confirm my suspicion that the Australian public and private companies have nowhere to go for redress. The Commission has a serious task of rectifying a chaotic situation which ASIC has allowed to develop under its watch. The frightening aspect is ASIC doesn't even realise what it has allowed to happen.

96. It really is a question now whether the ALRC telegraphs to the world its endorsement of [redacted] conduct and tolerates the continued impotence of ASIC.

97. The Australian public is screaming out for ASIC to have some relevance other than a collection agency for corporate fees.

98. I have no objection to my submission appearing on your website. It may be a warning and assistance to others.

Yours faithfully

[redacted]

Note: A hard copy will be delivered to the ALRC