The Adelong Refinery

One of the most difficult, yet most defining periods of my life, one of the darkest and yet one that was used to let in much light, was during a five year corporate trial following my involvement with an ASX listed company called Adelong Consolidated Gold Mines N.L., first as a 32 year old stockbroker and corporate advisor and then as a director. It was my first foray into the corporate world and one which proved, with the boom and then bust, in early 2000, of the dot-com phenomenon, to be a fiery training ground which ultimately shattered my career, reputation, confidence, trust, friendships, corporate ambitions and much of my previous world, but which paradoxically led to much more than I ever dreamed possible.

The public reporting on the resulting five year corporate trial was very poor, as I think it often is. In fact the reporting by The West Australian and The Age in particular was blatantly Christophobic, false and misleading, with no concern for the consequential effects on the jury, or on my family or my ongoing ability to gain paid employment or build a business. [1] This is the main reason for me posting the following, as a no doubt vain attempt to counter the unfair, inaccurate, slanderous work of journalists who showed no integrity in their writing about my case, and who quite frankly bring their profession into great disrepute.

Having discovered that I was a Christian, the anti-Christian bias of the reporters became very clear, with blatant, slanderous attempts to destroy my reputation and boldly and recklessly declare me to be well and truly guilty of things which the judge and jury had yet to even consider. These journalists never once spoke to me nor sat in on any of the defense sessions in court.

Eventually, having the opportunity to consider the case at great length, the judge and jury effectively declared these reporters to be wrong. They were intentional in their attacks on me and molded their concluding articles about my case to cover their mistakes and continue to paint me out to be what their previous articles portrayed me to be.

The court, with the conclusions of both the jury and then separately and clearly from Judge White, stated unequivocally that there was no dishonesty on my part, there was no intent to gain on my part, there was no deception on my part, and that there was no breach of director`s duty on my part in any way on either a criminal nor on a civil level on any of the original 37 charges the government laid upon me.

If you throw enough mud and resources at a target you are bound to get some to stick, which did happen, but even with that mud it was found that there still was no dishonesty, no intent to gain, no deception, and no breaches of director's duties.

The mud that stuck was a breach of the Corporations Act (2001) which was only introduced after the offence with retrospective power, and which doesn't even exist today (I was the 1st and last, the only person to ever be charged under that contentious piece of legislation). Uniquely, the finding was one which both the jury and judge found to lack all and any element of criminal wrongdoing. The breach was found to be unintentional, unknowingly, potentially misleading

(five years after the hype of the internet boom madness) but in hindsight reckless. I agreed with that in early 2000. I tried to offer a civil plea twice during the next 5 years, and to pay the losses of any victims the authorities could find. These offers were all rejected by the government prosecutor.

Solomon wisely once said, “The first to present his case **seems** right, until another comes forward and questions him.” (Proverbs 18:17). It is the same with press releases from someone’s accuser, backed with the full resources of the State, or articles by journalists who do not sit through the defense sessions of a court case nor speak to their target. When someone reads them they **seem** right, but that does not mean they **are** right, fair, unbiased or that they tell the true story.

As it has an ongoing affect on my ability to provide for my family I have repeatedly requested The Age remove their misleading slanderous articles from the internet but to no effect. I agree with Australian Prime Minister Tony Abbott who, again wisely, said, "I'm confident that it's not someone's past that matters; it's their future that matters." The Age media links remain live with their misleading content as if someone's past mistakes from 15 years ago must haunt them and keep them down for life.

So, for what it is worth, here is my side of the story:

Summary of the Adelong Capital Limited Matter regarding Craig Manners- by Craig Manners

In March 1999 I facilitated the corporate resuscitation of a small, debt-laden, ASX listed gold explorer heading toward corporate oblivion, and turned it around within 10 months from a company with no cash, debt, and a then un-economic gold project in Adelong (NSW), to a company, even after the dot-com crash, with A$15m cash and a string of internet and technology start-up investments. At the peak of the internet boom, in January 2000, Adelong had a market valuation of A$140m. Such a stellar rise was not unusual at the time, and the corporate regulator was increasingly under media pressure to make an example of an ASX company regarding the non-disclosure of market-sensitive information to the market.

I was conscious of this at the time, as it was all over the newspapers, and when invited to give an interview on behalf of Adelong to a German based internet news site I jumped at it thinking it would be a good way to ensure the European market and the market in general were more fully aware of the furious pace of activity Adelong was working on. Over 55% of Adelong's shareholders were at the time based in Europe. Adelong had made a string of announcements to the ASX over the previous few weeks, and through their website, but this interview offered a chance to bring everything together to make sure the market was fully informed and got the picture that we were aiming to replicate what similar US based companies were doing at the time, regarding venture capital investment in internet start-ups.

So, when the market capitalization of Adelong was $45m on the 11th January 2000, I gave the interview . The shares went up a bit over the next week or so to about 66c, from 44c, nothing out of the ordinary during the internet boom going on at the time. Then at the end of January the

shares really started to take off along with most internet stocks, and pretty much as per technical trading norms as far as I was concerned during the boom, rising through 75c, then a few days later to $1, and then a few days later to $1.44.

In hindsight, the interview should have been posted through the ASX by Adelong, but we were all too busy to think much of it at the time. But when the interview came to the attention of the ASX they put a normal query notice to Adelong asking if there was any new information which would explain the rise in the shares. The whole board, having analyzed the interview, replied that the market was fully informed and in effect that the interview was okay. We knew at some stage we had to undergo a brief suspension from the ASX due to the rules about changing our company status and business direction from a gold explorer to a venture capital company, and the ASX said they now wanted us to do the suspension then and there. The board didn't like all the attention from the ASX and also from hundreds of emails coming from our increasing shareholder base in Germany (none of which any of us could read).

The German investors did not fully understand why the company was suspended and sent through an avalanche of emails day and night. The board approached me and suggested that maybe if I resigned the pressure may disappear. I wasn't thinking straight, was pretty well exhausted and on the verge of a nervous breakdown, so I went along with them. So, I was forced to resign from Adelong, as all good scape-goats are, "in the best interests of the company."

Of course that sort of thing always looks suspicious though doesn't it. The mob were not appeased by the board's sacrifice, and instead of the flurry of attention dissipating, it increased, as I was the main driver of all the genuine corporate activity at Adelong and its numerous subsidiaries and investment company start-ups. The media started to take some interest too, as did the corporate regulator, ASIC.

Adelong turned on me, hanging me out to dry, speculation was rife, uncertainty reigned. From early February 2000 and for some months following I could not even face getting out of bed. I threw my phone away, and never returned to my office at D&D Tolhurst Ltd. The breakdown which had been threatening over the previous exhausting months, finally took full hold. Friends and colleagues alike were no more and never more to be seen.

This all just added to the spiral of chaos. Then the world-wide internet boom came crashing down to earth in April 2000, and ASIC, now under even more pressure to prosecute one of the dot-com entrepreneurs, (and maybe after seeing that all my Adelong shares were in my own name, as were my bank accounts, other investments and my fully paid off house in Perth, and therefore easily targeted), launched an investigation into Adelong. They then went the whole hog and decided I had disclosed too much information to the market in the interview rather than too little.

One of the criteria for ASIC before they make their final decision as to whether to prosecute someone is the likelihood of gaining access to their target's assets if they are successful. They do not want to carry out such lengthy and costly prosecutions if their target's assets are all locked away safely in tricky corporate trust structures or offshore accounts. I must have been a dream come true for them!

Almost six, long, stressful years, and over $600,000 in legal defence bills later, having been more than thoroughly put through the mill of justice, what was left of me managed more than a few tears of joy with my wife, and enormous relief when the final words of Judge Bill White were uttered in the Melbourne County Court on November 4th 2005: **"Mr. Manners, this has been a tortuous ordeal for you and your family. YOU ARE FREE TO GO!!!"**

At the conclusion of a 9 week trial (that's right 9 weeks. Adelong were so busy preparing to become a successful business that it took 9 weeks to go through all the "available" evidence in my favour), in 2005, having seen and heard the evidence (except for some crucial evidence withheld by the prosecutor and ASIC - something not discovered until after the trial) County Court Judge Bill White firmly rebuked the prosecutor publicly and on the record, sternly and decisively berating him and saying that: in no way was Mr Manners ever even required to show any remorse, neither prior to, during, nor after this trial, and that Mr Manners did what was necessary in defending these charges as fully and as best he could.

Adding confirmation to this view my lawyers and barrister assured me I came out of this experience with my integrity fully intact. After a very thorough investigation and expensive trial it was discovered that: There was no dishonesty, no deception, no intent to gain and no breach of director's duties.

There were three statements I made which, five years after the internet boom madness, were deemed not false (and making these three statements did not even breach my director's duties) but that I ought to have known they were potentially misleading.

I fully agreed with this before the expensive trial (offering an early civil plea twice), and am still the first to admit my utter foolishness in giving such an enthusiastic interview. Given my time again I would not have answered the list of 10 interview questions the European's wrote and emailed to me late that fateful evening in January 2000. Or would I? Given how it has been used for my good, maybe with the end result in mind, paradoxically, I would! To find out what I am referring to have a read of what happened to me "On the Road to Adelong."

Background:

Between 1997 and 1999 I assisted Adelong Consolidated Gold Mines N.L. (listed on the ASX), as a stockbroker, to raise capital to explore the Adelong goldfields in NSW.

When the gold price slumped by 1999 Adelong was unable to raise any further funds for gold exploration, so I assisted Adelong in diversifying its activities into the venture capital area, investing in internet start-up investments. Adelong, with a market capitalization of A$2m and debt of A$300,000, made its first investment in April 1999 in eSmart, a Melbourne-based data storage start-up company, which my brother Ian and I founded and directed.

I facilitated an equity raising of A$1 million for Adelong in June 1999. I then introduced Adelong to its second investment in August 1999, a start-up company based in Sydney called FreeISP, which I had also been involved in founding earlier in the year with some IT people in

Sydney.

I was then invited to join the board of directors of Adelong in August 1999, which I did, becoming a non-executive director, and agreeing to work for no fee until we established Adelong more fully. A part of my official brief was to change the direction of the company from gold exploration to venture capital investments and to identify and co-ordinate a large number of start-up investments for Adelong. Further investments could not be made or announced until the change of direction was completed but we could get them prepared ready to sign off on and announce as soon as the status changed.

This was all made public in ASX announcements in August and December 1999, but the very large number of start-ups Adelong were hoping to invest in, and the vision and scope the board had for Adelong which this number implied, was not made public until it was placed on the Adelong website, by the board, in December 1999 and then communicated in an interview by myself in mid-January 2000.

In December 1999 the website announced that Adelong was to have up to 15 start-up investments within six months, and a more detailed announcement in a D&D Tolhurst Ltd stockbrokers research report, approved by the Adelong board (as testified by the whole board during the court case), and placed on the website in December, stated that Adelong could have "up to 10-15" investments "by mid to late 2000" and "possibly up to 30 or 40 by 2001."

Between August and February 2000, I had assisted in facilitating the equity raising of a further A$10 million for Adelong to invest in start-up investments. The average cash investment we were making and intending to make in each start-up was between A$150,000 to A$250,000.

I had already identified and was co-ordinating investing in a very large number of start-ups by Adelong. At the same time, the other directors of Adelong were doing the same thing. Two of the directors had told me in early December they would have a number of investments ready within weeks.

By mid-January 2000 things were very advanced and Adelong was ready to finalize numerous investments. On January 8th Adelong announced to the ASX that it had finalized the change of direction and had now officially changed its direction and status to being a venture capital company and its name to Adelong Capital Ltd. The company was now ready to make these investments and announce them, with the only remaining requirement that we undergo a brief few weeks suspension to mark the change.

Due to my contacts in Europe, who subscribed to and arranged most of the equity capital raised for Adelong, by the end of 1999 over 50% of shareholders in Adelong were based in Europe. In November 1999 we listed Adelong on five separate German stock exchanges, including the Berlin and Frankfurt exchanges.

The share price of Adelong started to move up very strongly on the back of this support, combined with the website news about the large number of investments proposed and the obvious implications this had for transforming Adelong very quickly into the big league. All VC

companies around the world at this time, who were doing what Adelong were doing, were highly valued by the market.

Adelong had a market capitalization by the 11th January 2000 of A$45m. On the 11th January I was asked to give an interview to a German financial news portal about how Adelong was going. The interview I gave was as far as I was concerned factual and accurate and assisted in fully informing the shareholders and market.

Over the following two weeks the share price, already strongly on the move, moved from approx. 43c to 85c before settling down in the mid 60c region. Then the share price took off at the end of January (two weeks after my interview) and moved to A$1.45.

This attracted some attention and the interview subsequently became the subject of action by the securities regulator in Australia (A.S.I.C). Some Adelong directors manipulated me to resign at the beginning of February 2000, as a scapegoat, supposedly in the best interests of the company to appease the mad market and the regulators, which in effect was seen as an admission of some sort of guilt. Over the following five years I was the subject of false accusations by the regulator that I made false and misleading statements in the interview. I rejected the allegations and fought the matter in very lengthy court cases which concluded in 2005.

Just over two months after my resignation the internet boom crashed, and the board of Adelong happily went about reneging on their publicly made commitment to continue developing the internet start-ups Adelong had invested in, dismantling them or selling them off cheaply, while spending the $10m cash which the company had secured by the time of my resignation, on executive salaries, consulting fees, first class travel, and real-estate ventures mostly in Asia which never amounted to very much.

The end result of the case was that I was found to be guilty of "ought reasonably to have known" that three things I said in the interview were misleading (but not false- otherwise, as the judge said, he would have put me in jail), including that "Adelong was finalizing investments in 12 start-ups," which we were.

A jury was given nine (9) separate opportunities and they cleared me, on both the criminal and then separately also on the civil level, of: director's duty breaches, dishonesty and intent to gain, in relation to 100% of the charges (relating to 100% of the interview I gave on behalf of Adelong), including as related to the 3 guilty verdicts of "*ought* reasonably to have known."[2]

Many files from the Tolhurst, Adelong, eSmart and FreeISP offices, and both the Adelong and the eSmart websites from 1999/2000 were not made available to myself or the court by the prosecutor during the court cases. I discovered after the case that the prosecutor did have copies of both of these websites. I maintain that without this crucial evidence it was not possible for a proper verdict to be handed down. The Adelong website for example stated very clearly that Adelong were at the time researching numerous internet start-ups and intended to invest in up to 15 such start-ups within 6 months.

The letter from my lawyer, attached [3], explains the verdict. The judge, Judge Bill White, in the

Victorian County Court on October 4th 2005, sentenced me to a fully suspended sentence (I did not spend any time at all in prison during this saga nor after it), and handed down a $1,000, two year good behaviour bond as punishment.

A few comments from Judge Bill White's concluding comments on the 4th October 2005 include:

Judge White: (Paragraph 12, page 4, my bold emphasis) *"Taking into account the jury's verdict in this trial and the state of the evidence, I am not satisfied beyond reasonable doubt of the element of knowing in relation to the guilty verdicts in Counts 10, 13 and 14. Accordingly, you will be sentenced on the basis of "**ought** reasonably to have known".*

Judge White's statement above confirms the lack of knowingly committing any offence on the criminal level, whilst the Jury's verdict, having also acquitted me 100% of the civil alternates relating to 100% of the charges, confirms the lack of dishonesty, intent to gain and breach of director's duties and knowingly committing any offence even on the easier to convict civil standard.

Judge White below (Paragraph 20, page 7) reinforces and clarifies the fact that **there was no dishonesty, deception or knowingly committed offence in the three counts I was convicted of.** Referring to the prosecutions attempts during the sentencing hearing to convince the Judge of dishonesty by comparing my case with cases containing such elements, Judge White responds as follows:

Judge White: (Paragraph 20, page 7; my bold emphasis) *"In general, the authorities placed before the court related to offences in which dishonesty, deception and knowingly were elements in one or all of the subject offences. This is different to an element of **ought** reasonably to have known."*

Judge White: (paragraph 26, page 8) *"…you were **not** found guilty of intending to gain an advantage."*

Conclusion:

The clear conclusion is that the jury decided I did not knowingly make any false or misleading statements; did not make the statements dishonestly; did not make the statements with any intent to gain; and did not make improper use of or breach my director's duties in making the statements. The conclusion of the Judge and jury was that the statements were at most unknowingly misleading not false, and that this was only really concluded with the benefit of a post internet boom madness hindsight some five years later (the Dutch Tulip boom did not seem mad at the time either). Judge White also added that there was no element of deception related to these three guilty verdicts either.

The QC who conducted the four week committal hearing for me, Mr. Tom Percy, said that this matter should never have been brought to trial. The Barrister at the end of the nine week trial, Mr. Peter Jones, said that I came out of the whole process with my integrity very much in tact

despite the three guilty verdicts. This was shown to be an accurate assessment during Judge White's summing up.

It was suggested by some that it only went to trial because I had all of my assets, my Adelong shares included, and a fully paid off house, in my own name, rather than in a tricky corporate nominee company, trust structure or overseas entity. This, it was suggested, was an attractive target for the prosecutor, who firmly had its eye on the money. They even rejected my earlier made offer to distribute all my assets to investors as restitution!

There was no fine imposed as reported in the media, rather I consented to pay all of my remaining assets (after my legal team billed me for most of it), including my pre-offence fully owned house, to the prosecutor. They seemed pretty keen to get their hands on it so why not. So I consented to let them have $900,000. Judge White, noting the size of the consent order stated: "you have made concessions" in agreeing to this figure. He stated for the record during the trial that only approximately $250,000 in share sales by me could in any way be associated with and attributed to the interview. [4]

After handing down his sentence of a $1000, two year good behaviour bond and a fully suspended one year sentence Judge White concluded the whole trial by noting the birth of my third son (whose name in Hebrew means "God is my Judge") during the sentencing hearing period and saying that he hoped the birth went well. He finished off by saying: "this has been a tortuous ordeal for you and your family…Mr. Manners you are free to go."

[1] I was amazed at the speed with which most non-Christian people I knew, old friends, new friends, work colleagues, fellow directors, etc all deserted me at the first bad headline and hint of trouble brewing with ASIC. Friends are fickle and trouble reveals true friends. I found in the following weeks and years that, although I had lots and lots of very fickle "friends" in my life when everything blew up, I also had a strong core of true friends who stuck by me. Proverbs 19:4,7 (NIV) explains this well: "Wealth attracts many friends, but even the closest friend of the poor person deserts them... The poor are shunned by all their relatives— how much more do their friends avoid them! Though the poor pursue them with pleading, they are nowhere to be found."

[2] Judge White re the civil charges: (Paragraph 1, page 1, "In addition, there were nine breach of civil penalty provision counts, being alternates to the criminal Counts 1-9 inclusive. Counts 1 to 9 alleged improper use of your position as an officer of a company to gain advantage contrary to s.232(6) of the Corporations Law, which relates to breach of the civil penalty provision but when read in conjunction with s.1317FA of the Corporations Law a criminal offence is created as alleged in Counts 1 to 9 inclusive. You were acquitted of Counts 1 to 9 and the alternates."

[4] Prior to this ASIC exerted what I consider to have been extreme duress upon me during the sentencing hearing process, whilst my wife was pregnant and I was exhausted after the nine week trial, by pressuring me into agreeing to allow the Crown to confiscate all of my remaining assets in what they called a "consent order" which I agreed to and signed prior to Judge White handing down his sentence. ASIC told my lawyer that if I did not consent to it they would make up something else to prosecute me for in the civil courts and just keep going. This amounted to approx $900,000. The media called this a "fine" but it was in no way a court imposed figure or fine at all, it was between me and the Crown and was "voluntarily" agreed to be myself. Neither the court nor Judge White had anything to do with it and in fact Judge White, in his sentencing remarks commented about the figure by saying that I had "made concessions" in agreeing to the $900,000 figure. He had previously stated in court that the only amount it could be said I made as a result of the interview was approximately $250,000.

[3] Below is the Legal Analysis of the Case (PDF COPY available upon request)

1 July 2005 Our Ref: RON:AB:40108

To Whom it May Concern

Dear Sir/Madam,

Re: Craig William Manners

This firm acted for Mr. Manners in relation to twenty-seven (27) charges brought against him by the Australian Securities and Investments Commission. Those charges related to his conduct when he was a Director of an ASX listed Company called Adelong Capital Limited in late 1999 and early 2000.

Although there were eighteen, 18, primary charges, an alternative nine (9) verdicts were required on a separate 9 civil charges alleging breaches of directors' duties.

The allegations against Mr. Manners were in relation to nine (9) statements that he made in an interview on behalf of the Company regarding its then new direction of Internet venture capital investments.

It was separately alleged that Mr Manners made the statements dishonestly, that he made improper use of his position in making the statements, and that each of the statements were false or misleading.

After a Trial in the County Court from 7 April 2005 to 9 June 2005, Mr. Manners was acquitted of twenty-four (24) of the twenty-seven (27) charges.

Importantly, **Mr Manners was completely acquitted of all the charges that alleged dishonesty**. **The jury found that no dishonesty had been demonstrated against Mr. Manners**.

Separately from the dishonesty charges, **Mr Manners was also completely acquitted of the charges of breaching his duty as a Director of the Company**.

The charges that he was convicted of imply that three (3) of the nine (9) statements were either false or misleading but not that Mr. Manners knew that they were false or misleading. Rather, the verdict implies that he ought to have known that they were false or misleading.

Even though they found that he ought to have known those matters, **the Jury found neither any breach of his director's duties in making them nor any dishonesty in making the statements**.

The charges that he was convicted of relate to Section 999 of the Corporations Law as it stood in

2000. That Section has since been repealed. Had the events taken place in 2005 those charges could not have been brought against Mr. Manners, because they are no longer criminal offences.

Yours faithfully,

Rob O'Neill from Hargreaves and Partners

Legal representation of Mr. Craig Manners
July 2005

The following RWE article was the only piece of reporting with any journalistic integrity during the whole case:

Sydney – Tuesday – October 4 2005: (RWE Aust Business News) -

Mr Craig Manners today expressed relief that the court proceedings in relation to Adelong Capital had ended and the matter could now be put to rest.

"It has been a long and difficult five and a half years and, having been acquitted of 24 of the 27 initial charges, I am relieved that the vast majority of the allegations raised by ASIC were completely rejected by the jury," he said.

Judge White of the County Court of Victoria stated in his sentencing remarks that the jury had acquitted Mr Manners on all counts with any element of dishonesty or intent to gain.

Judge White rejected the prosecutor`s submission that Mr Manners knew the statements were false or misleading.

Judge White said the verdicts are inconsistent with dishonesty, therefore Mr Manners would be sentenced on the basis of "ought to have known" they were false or misleading.

He said that if the jury found Mr Manners knowingly made false or misleading statements, they would have found him guilty of dishonesty and intent to gain.

This was not the case.

In his remarks, Judge White acknowledged that Mr Manners had shown remorse by attempting to plead guilty to civil penalty offences but that these offers had been rejected by ASIC.

Judge White refuted ASIC`s comparisons between this and other high profile cases of recent times – he said that Mr Manners did not intend to gain advantage for himself and that Mr Manners` offence lacked any degree of serious sophistication.

Judge White stated that Mr Manners had cooperated with the authorities and that he had taken this into consideration.

It is viewed as important that **Mr Manners was completely acquitted of all the charges that alleged dishonesty and intent to gain**, and that **Mr. Manners was additionally completely acquitted of all nine civil alternative charges of making improper use of his position as a director of the company**.

The Jury`s verdict implies that three of the statements were misleading but not that Mr. Manners knew that they were misleading. Rather, the verdict implies and the Judge sentenced on the basis that he ought to have known that they were misleading.

The jury found that in making these three statements there were no elements of dishonesty or intent to gain and found that Mr. Manners did not even breach his director`s duty in making the statements on either a criminal nor on a civil level.

“I am deeply regretful of the whole matter, which occurred almost 6 years ago during the euphoria of the dotcom boom. `

“I am relieved that it is now closed,” Mr Manners declared.

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Contact

Craig Manners