

## ***Allen, in the matter of North East Wiradjuri Co Limited (Administrators Appointed)* [2010] FCA 1248**

Jacobson J, 5 November 2010

### **Issue**

The issue was whether the Federal Court should appoint receivers to two corporations given there was a question as to who was entitled to control those corporations, both of which receive native title agreement monies for distribution to the Wiradjuri People. The dispute concerns entitlement to be a member or a director of the corporation, which rests upon proof of being Wadjuri via genealogical descent. The Federal Court was satisfied receivers should be appointed.

### **Background**

Bill Allen, Ester Cutmore and Robert Bugg (the applicants) applied to have receivers and managers appointed to the North East Wiradjuri Co Limited (NEWCO) and the North East Wiradjuri Community Fund Limited (NEWCF) because of a dispute between two groups of shareholders about who controls NEWCO and NEWCF. Justice Jacobson was satisfied this deadlock justified the appointment of receivers 'so as to preserve the assets of both companies' — at [6].

His Honour summarised the dispute as follows:

- NEWCF and NEWCO deal with payments received from 'native title properties', i.e. each receives payments 'from mining interests' for distribution to 'members of their community';
- the applicants (the first shareholder group) claimed they were members of the Wiradjuri People and that Mr Allen was validly appointed to the board of NEWCO in May 2010 because 'he is a Wiradjuri man and therefore has the requisite genealogical requirements for membership of the company and appointment to the Board';
- the applicants alleged among other things that those who comprise the second shareholder group are not members of the Wiradjuri People and are not, therefore, 'entitled to be members or directors of the company';
- NEWCO and NEWCF are related because NEWCO is entitled to appoint directors to the Board of NEWCF and so the dispute affected both corporations;
- the dispute extended to 'the power and entitlement of the respective parties to deal with the proceeds of royalty payments', with funds in the bank accounts of both companies now frozen—at [10] to [15].

According to His Honour:

[I]t is plain that the power to appoint receivers and managers contained in s. 57 of the *Federal Court of Australia Act 1976* (Cwlth) is enlivened. The applicants are persons who are aggrieved because they say the second shareholder group are not of the requisite genealogical descent and are therefore not entitled to be members or directors of the companies. It is therefore proper to exercise the power to appoint receivers where there is a dispute as to who exercises the power to control the companies—at [16].

The court then dealt with several other issues not summarised here.

### **Decision**

Among many others, an order was made appointing receivers and managers of NEWCO and NEWCF 'without security, until further order'.

**Postscript – referee appointed, costs**

The Hon Murray Wilcox QC, formerly of the Federal Court, has been appointed as referee under s. 54A of the Federal Court Act 1975 (Cwlth) to conduct an inquiry into this matter. He must report to the court no later than 31 July 2011. NEWCO and NEWCF are jointly and severally to pay the referee's fees and the 'reasonable costs' of the parties' legal representatives, an agreed anthropologist and the witnesses 'in connection with the inquiry', which are estimated to be upward of \$200,000 according to orders made on 11 March 2011.