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# Transpacific could face class action

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Waste management company Transpacific Industries could face a class action lawsuit over allegations it engaged in misleading and deceptive conduct and breached continuous disclosure obligations in 2008 and 2009 when its share price slumped.

Listed litigation funder IMF (Australia) and plaintiff law firm Maurice Blackburn proposed the class action yesterday, although the funder has been prevented by the corporate regulator, for the first time, from broadening the class to include individual investors. Such investors have flocked to similar claims against Centro Properties Group, AWB Limited and Aristocrat Leisure in recent years.

The claim will be limited to sophisticated institutional and professional investors who bought Transpacific shares between February 28, 2008 and February 16, 2009.

Transpacific chief executive Trevor Coonan said no litigation has started nor threat of litigation received. "In the absence of any specifics, Transpacific cannot comment on a hypothetical claim," he said.

The class action charts a steady decline in the company's fortunes after

a period of rapid growth between 2005 and 2008. Between August and November 2008, Transpacific forecast double-digit earnings before interest, tax, depreciation and amortisation growth for the 2008-09 financial year.

At its November 6 annual meeting, it said it was "comfortable with gearing because of near recession proof business, solid performance and bank support".

This sat "in stark contrast" with an announcement by Transpacific three months later on February 16, 2009, that weaker commodity prices and foreign exchange rates would hurt annual financial performance, and that its capital structure was being reviewed, Maurice Blackburn principal Ben Slade said.

The following day, Transpacific entered a five-month trading halt, after its share price plunged from \$2.90 to \$1.80. When trading resumed on July 20 last year, the share price slumped again, to \$1.26.

Earlier, on February 27, Transpacific announced a \$69.3 million loss from hedging instruments, a \$52.6 million net loss for the first half of the 2008-09 year, that it had breached banking covenants, and had a net current asset deficiency



**Transpacific Industries said it was not aware of any litigation.**

Photo: BEN RUSHTON

of \$2.057 billion, Mr Slade said. Retail investors are being kept from joining the proposed claim due to the repercussions of a Federal Court decision in October in a shareholder class action against Multiplex found it to be a managed investment scheme requiring approval from the Australian Securities & Investments Commission.

ASIC granted temporary relief

from the decision but has now refused to exempt IMF for the proposed Transpacific matter. Federal treasury officials plan to meet tomorrow with IMF and two major plaintiff and corporate defendant law firms to discuss the fallout from the Multiplex decision.

IMF told investors yesterday that it would proceed with the claim "on behalf of sophisticated and profes-

sional investors only by way of an unregistered managed investment scheme, as it is entitled to do by virtue of its licence".

"If at some stage in the future ASIC should grant an exemption to IMF for the conduct of the TPI [Transpacific] claims then application will be made to the court at that time to reopen the class to include retail investors," it said.