

[Three Strikes Prove Regulator Out of Touch](#)

Jennifer Hewett

From: [The Australian](#)

December 24, 2009

Andrew Forrest's comprehensive victory in court yesterday makes three spectacular strikes against the corporate regulator in little more than a month.

It should surely be enough for the Australian Securities & Investments Commission to engage in some serious reflection about its approach and priorities.

Instead, it has already announced it is appealing against its previous two embarrassing losses.

It's hard to imagine ASIC would have the nerve to repeat that same exercise with Andrew Forrest, but that's all too obviously part of ASIC's current problem.

Its sense of judgment seems badly flawed.

And that can only undermine market and community faith in what is supposed to be the reliable backbone of the entire corporate regulatory structure.

ASIC has been ordered to pay costs. Those will be high enough, but the costs to its reputation are incalculable.

The Fortescue fiasco comes after the NSW Supreme Court threw out ASIC's very lengthy and expensive case against Jodee Rich, the founder of the collapsed telecommunications company, One.Tel, last month. The judge strongly criticised the regulator's conduct in that case and said time and again that its contentions were "shown to be unpersuasive when the underlying financial details were investigated".

Earlier this month, the Victorian Supreme Court also presented ASIC with another humiliating defeat by blocking its attempt to bring a new case against Andrew Lindberg, the former managing director of the Australian Wheat Board.

The case against Fortescue Metals and its founder Forrest began in 2006 and involved claims made by the company in 2004 about the nature of its contracts with Chinese buyers of its ore. ASIC insisted on its own version of events. Now it just looks silly.

http://www.theaustralian.com.au/business/opinion/three-strikes-prove-regulator-out-of-touch/story-e6frg9px-1225813311629?referrer=email&source=AusBus_Even_email_nl