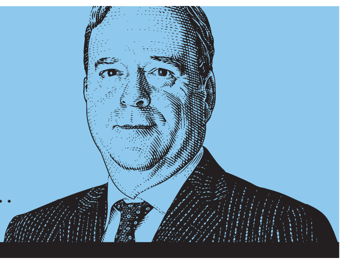
Matthew Stevens

matthew.stevens@afr.com.au



ASIC studies Antares implosion

Administrators of the dusted Australian-listed Texan oil spruiker Antares Energy have accused the company's former executive chairman of breaches of fiduciary duties, fraud and theft after advising the Australian Securities and Investment Commission of concerns over past management's conduct.

It is understood that ASIC had already opened an investigation of the circumstances of the demise of Antares and that the regulator has conducted interviews with former executives using its Section 19 powers, which compel witnesses to answer questions.

Those interviews have become the subject of legal fencing, with the interviewees resisting the administrator's application for access to transcripts of the Section 19 transcripts.

A final decision on that application is imminent. It is understood that ASIC's file on Antares remains active and that it has received the administrator's advice that its investigations "indicate that certain offences may have been committed".

The administrator, FTI Consulting, has cited potential contraventions of six separate sections of the Corporations Act. FTI's allegations range from the very serious to the seemingly trivial. It has raised questions about whether or not Antares traded while insolvent, which is a very serious breach. It is also observed that Antares executive chairman James Cruickshank has been "purposefully obstructive and obtuse" in his dealings with FTI investigators.

FTI also complained that Cruickshank, a Duntroon-trained soldier who served in the Australian Army, had refused to return two cars owned and registered by the company. After months of ignored requests, the vehicles (one reportedly a Cadillac SUV) were collected after the administrator went to the courts.

"Mr Cruickshank's conduct caused disruption and contributed to increasing the costs of the administration," FTI complained.

Cruickshank's Antares was ever a perplexing beast. It was an ASX-listed,

Antares kept the deals coming even as oil prices tanked. PHOTO: BLOOMBERG

Perth domiciled, Houston-based owner of US shale oil assets. Cruickshank was more real estate agent that driller. His strategy was to gather and flip prospective oil tenements. And it worked for a while. But then the US shale boom busted.

By the time FTI Consulting took the keys to the business last May, Antares boasted oil properties of disputed value and no market interest, a bank balance of $187,000, rolling lease liabilities that currently top $2.8 million, gross debts of $136 million and a family of unsecured bond holders that were owed just more than $47 million.

There is, of course, nothing particularly unusual about any of that. Antares lies, but one of many, in the graveyard of US oil prospectors that were crushed by Saudi Arabia's decision to walk away from OPEC pricing disciplines in October 2014.

But death, like life, has proved a messy business for Antares.

FTI told creditors late last year that it had commenced action in a Dallas county court to recover monies paid to Cruickshank and another former Antares executive, Greg Shoemaker.

The administrator has also expressed concern about the $US235.9 million ($307.5 million) asset sale that Antares announced through the ASX platform on September 7, 2015, and that subsequently became the subject of a dispute when Cruickshank refused the market operator's demand that the name of the acquirer be revealed.

Just more than a week after that deal was announced ASX suspended Antares from quotation. But the deal never happened and that market stasis held right up until Cruickshank called in Pitcher Partners in April 2016.

In May, senior creditors pitched Pitcher in preference for FTI. And it was FTI's first report to creditors, which was released with little public visibility on November 24, that announced "claims for breach of fiduciary duty, fraudulent transfer and theft against Cruickshank, and breach of fiduciary duty and fraudulent transfer against Shoemaker".

FTI reported: "These claims are based on Cruickshank's and Shoemaker's misappropriation and dissipation of company funds and breaches of the trust placed in them as directors and company insiders."

At issue here are six cash transfers worth $US1.377 million that were authorised by executive chairman Cruickshank.

The first three disputed transfers totalled $US899,000 and they were made in the hours before Pitcher people took control of Antares. The funds were paid to Cruickshank ($US445,000), Shoemaker ($US64,941) and to the US tax man ($US388,209).

The second round of three transfers cited by the administrator totalled $US478,326 and they were triggered on May 10, the day FTI was delivered authority. Some $US182,000 was delivered to a Cruickshank account and $US96,000 to Shoemaker. A week after those payments $US199,000 in withholding tax was paid to the IRS.

The administrator noted too that just a week before Pitcher was called in, Antares sold $US1 million worth of its holding in a troubled US oil investor called Breitburn Energy Partners.

FTI claims the funds raised were used to pay out the leave entitlements of Cruickshank and Shoemaker and offers a view that these funds should have been devoted to debt reduction or meeting lease requirements.

Antares first fell onto our radar in February 2014 after it apparently walked away from a $US300 million sale to an unnamed buyer of a collection of properties in what has subsequently emerged as the new heartland of US onshore expansion, the Permian shale of West Texas. This decision to hold rather than fold just didn't make a whole lot of sense.

But the deals kept coming. In October 2014 Cruickshank did well to sell another of his property portfolios for $US50 million in cash and for 4.3 units in Breitburn, which were then worth $US124 million.

Within a month the oil price hit the skids and US shale was in big trouble. But still Cruickshank kept the deals flowing. Along came that September 2015 deal that had, once again, an unknown buyer paying an exuberant price for the Permian assets that Cruickshank sold but then didn't sell in 2014. It wasn't until that deal didn't happen in March 2016 that the name of the non-buyer was made public. The buyer was Wade Energy, a company run by a Texan named Barry Hanson.

According to FTI, it was unable to find "any evidence to suggest that Wade Energy was a credible party who had the ability to complete the transaction".

"Additionally we are not aware of the extent to which the company undertook due diligence to ensure that Wade Energy was a credible purchaser," FTI told Antares creditors.

In detailing efforts to understand the Wade transaction, FTI referred to discussion between one of the administration team and Cruickshank. The former chairman was pressed on the detail of the transaction and on efforts to assess the credentials of Wade Energy.

"Mr Cruickshank did not acknowledge the question," the FTI report complained, observing that he "immediately" moved the conversation "onto other matters".

"There is no indication from publicly available information that Wade Energy had any means at all to make a $US250 million offer for the group's assets. The administrators have made ASIC aware of this issue."

FTI noted that the valuations implicit in the failed deal continue to resound among those that backed Antares. FTI observed that "primarily as a result of announcements by management" of the Wade Energy deal, there has developed a "largely distorted" view of the underlying value of the Antares portfolio. FTI holds these valuations "are not commensurate with the interest generated and feedback from the various sale processes run by the administrators in Australia and the US".

After noting the recent spike in valuations of quality Permian assets, FTI warned creditors that "multi-sourced expert reports and feedback from our marketing efforts highlights the fact that the Antares projects do not share the geological advantages of those more valuable asset transactions".

Since FTI published its stinging assessment, the senior creditors of Antares have backed a $1.8 million recapitalisation plan being promoted by Pager Partners Corporate Advisory, an arrangement that will see it emerge with 95 per cent of the company and stands pretty much the only hope, apparently, of a zero outcome for creditors. The deal only waits on shareholder approval. And that should be some meeting.

For the record, the *AFR* was unable to make contact with either James Cruickshank of Greg Shoemaker ahead of publication of this column. We welcome their feedback.

Michael Smith

Our big project problem

Australia, along with many other parts of the world, has a terrible track record managing large infrastructure projects. Cost blowouts and delays are common, particularly in government-funded transport and telecommunications projects.

A new global report to be released in Sydney on Wednesday will show that while the billions in wastage is still there, things are improving. Australia still lags the global average, though, in terms of project management performance and needs to look at initiatives being taken in the United States and New Zealand to better manage big infrastructure projects.

PMI, a US-based organisation that certifies project management skills and tracks wastage in infrastructure spending, releases its annual survey in Sydney on Wednesday. It will show an improvement in the number of projects completed successfully in 2016 for the first time in five years.

The money wasted has fallen to $US97 million ($126 million) for every $US1 billion invested, an improvement on the average of $US122 million per $US1 billion wasted in the previous year. But Australian organisations came in below the global average, wasting an average of $US108 million for every $US1 billion spent. The survey included 187 Australian respondents working on big projects.

PMI chief executive Mark Langley, who is in Australia this week, said the latest survey identified a lack of talent for project management in Australia, compared with the global average. For example, the percentage of organisations with a defined career path for staff in project management was 33 per cent in Australia, compared with the global average of 43 per cent.

In Australia the percentage of projects completed on time is 50 per cent, compared with 51 per cent globally. About 55 per cent of projects were completed within budget, compared with 57 per cent globally.

He says there are signs, though, that governments and organisations are trying to improve things. Langley will meet executives from the Reserve Bank, Westpac, Woolworths, Macquarie and NBN Co this week. PMI's members already include Telstra and Rio Tinto.

There is growing interest in project management wastage following the example set by the US.

Former US President Barack Obama introduced the Program Management Improvement and Accountability Act (PMIAA), which was designed to streamline all US federal agencies when it comes to managing large infrastructure projects.

Toll-road operator Transurban could stand to benefit significantly from any sharp uptick in infrastructure spending in the US under Donald Trump. However, chief executive Scott Charlton is urging investors not to get ahead of themselves as any work Transurban could pick up from billions of dollars in new projects could take some time to filter through.

"While we believe it is a positive, as you know, infrastructure takes a very long time ... while we will be watching for opportunities we remain patient when it comes to the US," he told analysts, noting that many projects are managed by state authorities.

Add that to the potential pipeline of toll-road projects in Australia, particularly around Sydney's Westconnex, and Transurban's future continues to look bright. Transurban on Wednesday upped its dividend guidance after strong traffic growth on its toll roads in Sydney and Melbourne in the second quarter. Transurban rarely disappoints but its shares have been under pressure during the last six months because of the potential impact higher interest rate rises could have on the company's debt repayments. However, there has also been excitement about the opportunities for the company from Mr Trump's promise to invest heavily in infrastructure.

Citi said it liked the strong traffic growth in Sydney and Melbourne in the second quarter and the higher distribution guidance. The market is also confident around Transurban's growth opportunities from projects such as Westconnex in Sydney.

Transurban has a $9 billion pipeline of development projects, which can be funded from the balance sheet. Mr Charlton confirmed speculation that the $5.5 billion Western Distributor project in Melbourne might need additional equity when it reaches an expected agreement with the Victorian government this year.