Wallis Lake class action

Julie Clayton, Slater & Gordon, Melbourne

On 13 March 1997, Slater & Gordon instituted a representative proceeding on behalf of consumers of contaminated oysters from the Wallis Lake region of New South Wales. The representative proceeding has been brought using the provision of Part IVA of the *Federal Court Act*. The respondents to the proceedings are the Great Lakes Council, nine incorporated oyster producers and three oyster suppliers. The respondents are being sued pursuant to the *Trade Practices Act* and in negligence.

Over three hundred people contracted Hepatitis A virus after consuming the oysters. It is believed that human faeces carrying the virus polluted the water in which the oysters v● cultivated. The oysters were then harvested, distributed to ●ppliers and ultimately consumed.

Because the chain of supply can be very complicated, the represented person in these circumstances is often at a disadvantage. He or she might have consumed oysters and been diagnosed with Hepatitis A, but may well not have sufficient information to trace the oysters eaten to Wallis Lake. Wilcox J appreciated the difficulty that faced that represented persons. His Honour expressed this view: *"... this blind man's bluff approach to litigation is to be consigned to the history books. You have a claim here which I gather is seriously made ... the applicants plead this in general terms, you write and say give us your particulars, they say, look we cannot give you any meaningful particulars until we have discovery, can we have your discovery. And then they are met with an argument, no you cannot see our documents because you are fishing. I am sorry, this is an absurdity..."*

His Honour made orders for limited discovery prior to the close of pleadings. This is an important recognition by the court that chains of supply in product liability cases can be difficult and time consuming to trace and claims should not be struck out without giving an applicant every reasonable opportunity to n● out his or her case. This is particularly true in cases of foo● contamination where the defective product has been consumed and may no longer exist.The provisions of s75AJ of the *Trade Practices Act* are also useful to establish the manufacturer of the oysters supplied to consumers.

His Honour made orders that respondents file any defence, strike out applications and cross-claims by 1 August 1997. Several respondents will argue that the legislation cannot be used in a situation where there are multiple respondents and not every represented person has a claim against every respondent. In our view the legislation can encompass such a situation. We will let *Plaintiff* readers know the court's view after August. ■

Julie Clayton is a solicitor with Slater & Gordon in Melbourne.
Phone 03 9629 7177.