

# New Special Interest Group - Commercial Litigation

Damian Scattini, Brisbane

**A**PLA was born of the desire of a few visionary lawyers to champion the cause of those who deserve redress for injury to person or property.

With political winds blowing Australia-wide towards limitation or extinguishment of the rights of injury victims, APLA has quite rightly focused its attention that way.

Those winds continue to blow, but APLA is on its feet and with growing strength and the power of right on its side we can surely help redress the balance.

Not all victims, however, suffer physical injury and not all injury falls within tort law. Large corporations and governments inflict economic harm on consumers and small businesses all the time and with apparent impunity.

To use a topical example: if computer manufacturers have known about the Year 2000 problem since the early 1980s (and they have), why is it that you and your clients are expected to bear the costs of rectification with nothing but the crumbs of tax deductibility as possible compensation?

It may well be that the Year 2000 provides the biggest anti-climax since Halley's Comet, but in the meantime the costs of compliance are substantial and what if the doomsayers are right?

Our colleagues in the American Trial Lawyers Association are on to this issue and several actions in the United States have already been settled or decided in favour of plaintiffs.

Already some insurers are rewording policies and indicating that they will not insure against Year 2000 difficulties. Consumers will find that their only resort is to sue the suppliers and manufacturers to recoup their losses.

You can be sure that the corporations' lawyers are already gearing up and in the traditional style of big business they will attempt to knock off the claims one by one and if they settle, to insist on strictly worded deeds of confidentiality to prevent other consumers from having access to our best weapon: information.

In a similar vein, most of us have clients with genuine grievances against large financial conglomerates like banks and insurance companies. From experience, we all know that these organisations sometimes engage in unseen conduct that would leave John Grisham shaking his head.

If our client musters the courage and resources to commence proceedings, what happens? See if this sounds familiar - Initially you receive the lengthy letter from the corporation's high rent lawyers.

Capriciously, they express bewilderment and claim that they cannot possibly defend your "embarrassing" pleadings without exorbitant particulars, including of matters internal to the corporation and of which your client can have no knowledge.

They will say that they are inclined to strike out parts of the claim and no defence will be forthcoming until your client has jumped through their hoops.

Many genuine claims go no further than this point as the lawyer and the client are overwhelmed. The file remains in the cabinet to be only fitfully prosecuted from time to time.

The advantage is with the corporation's lawyers because they have a pool of knowledge to draw from. They know how their particular client operates, where it is sensitive, where its strengths are and what it has to hide.

They also know, but your client may not, that the Courts know very well what they are up to and will not readily let them get away with this type of conduct (*Dynies Pty Ltd v Westpac Banking Corporation Limited*, Queensland Court of Appeal, Unreported 16/10/98).

If we can create a similar pool of knowledge from our members' dealings with these corporations, then we can



APLA has recently developed a new member service - the Certified Member Firm scheme.

This scheme licenses firms, subject to certain conditions and fees, to use a special APLA Certified Member Firm logo on their letterhead and advertising materials.

For a firm to be eligible, all solicitors and partners in the firm who predominantly undertake plaintiff matters must be members of APLA.

## APLA Certified Member Firm Scheme

For more information, contact the APLA National Secretariat, 02 9415 4233

begin to redress the balance.

Plaintiffs' lawyers do surmount these problems and they win such actions every day by settlement or verdict. Yet there is little sharing of the information with our colleagues. The deed of confidentiality is signed, the file is archived and with it a wealth of experience and insight into the workings of the opponent.

The corporation's lawyers meanwhile wait for the next plaintiff to jump out of the trench.

For all this, there are some powerful tools in the plaintiffs' armoury. The *Trade Practices Act* in its current form and its state equivalents are, we suspect, under appreciated.

Other matters that warrant scrutiny by APLA include the conduct of the large public utilities, with or without govern-

ment ownership; the almost indecent relationship between some governments and business interest groups and the manner in which the Australian Tax Office deals with its clients, the general public.

With governments currently inclined towards "free markets" and deregulation, it will be increasingly up to individuals to fend for themselves and that is where APLA's members come in - to champion the course of those who deserve redress.

For these reasons, it was decided to set up a Commercial Special Interest Group within APLA.

Obviously, the term "commercial" is very broad and we must be careful to keep the aims and interests of the Australian Plaintiff Lawyers Association foremost.

One rather obvious issue is the fact that in the many commercial disputes, the

victim is the one being sued - by the bank, the franchisor or landlord for instances. How will we reconcile this with our nomenclature as the Australian Plaintiff Lawyers Association?

Nevertheless, these are all matters up for discussion and we would be truly grateful for the input of any members who are interested in what will hopefully prove to be an exciting further expansion of APLA's services to its members and their clients. ■

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If you would like to join the Commercial Litigation Special Interest Group, please call **Jane Staley** in the National Secretariat on **phone** 02 9415 4233

## Representative Actions Special Interest Group - Representative Actions Manual developed

Neil Francey, Sydney

*A Representative Actions Manual has been developed by the Representative Actions S.I.G. over the past year and was launched at the S.I.G. meeting at APLA's Annual Conference on Hamilton Island in October 1998.*

John Rowe, barrister, of Sydney has taken over as National Chair of the Representative Actions S.I.G. Andrew Grech, solicitor of Slater & Gordon, Sydney and Judy Teitzel, solicitor of Shine Roche McGowan, Brisbane, have offered to assist as Deputy Chairs.

After developing the Representative Actions Manual during my tenure as National Chair of the S.I.G., I have stood down but will remain on as General Editor of the Representative Actions Manual. Stephen Moss, solicitor, of McCabes, Sydney, has offered to act as Assistant

Editor.

Development of the Representative Actions Manual was made possible by a donation from LBC Information Services who also kindly agreed to allow us to incorporate in the Manual material published by LBC including extracts from Flick Federal Court Practice and the Federal Court Reports.

At the present moment, the Manual includes copies of relevant provisions of the Federal Court Act, Federal Court Rules and Forms, Extrinsic Material at the time of amendments to Federal Court Act and Commentary in the form of a paper produced by Peter Cashman of Cashman & Partners and presented at the 1998 APLA Annual Conference. It is envisaged that precedents and relevant case law will be included in the Manual in due course with

an expanded commentary and additional relevant materials.

APLA members, and especially members of the Representative Actions S.I.G., are invited to submit material for possible inclusion in the Representative Actions Manual. At this stage, suggestions should be forwarded to me at the address set out below or to the APLA Secretariat. Copies of the Representative Actions Manual are available from the APLA Secretariat at a cost of \$50.00. It is envisaged that the Manual will be developed over time with a view to possible commercial publication in due course. ■

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