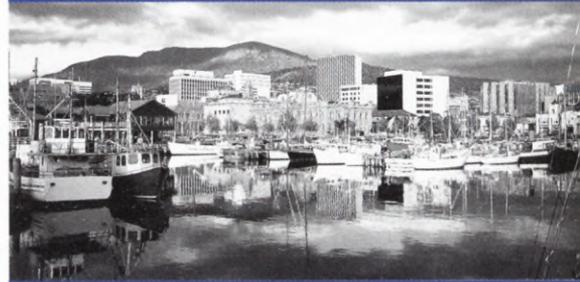


# National Conference 2002



## Hotel Grand Chancellor, Hobart

For only the second time in APLA's history, the annual National Conference was held both outside Queensland and in a capital city in 2002. The Hotel Grand Chancellor was a great venue for the conference with display and meeting areas available outside the conference rooms themselves. This allowed the delegates ready access to our sponsors and exhibitors, Lawbook Co., ipac securities, National Australia Trustees and Lawmaster, and also for delegates to mingle and mix with each other. ▶

claim as to the identity of his creditor. However, Brookfield contended that the order sought, amending the judgment, should not be made as Davey/Yevad deliberately did not cause its name in the proceedings to be changed after 6 March 1995.

Brookfield alleged that the respondent wished to mislead the court, himself and others as to its true identity, because its parent company at the time was in financial difficulty and needed unencumbered access to the proceeds of the sale of the Davey business to continue to operate.<sup>3</sup> Brookfield stated that had he been aware of Davey's name change, he would have applied for a Mareva injunction,<sup>4</sup> and the withholding of the sale proceeds to the parent company's detriment.

### THE DECISION

The Federal Court held that there was no evidence that Davey/Yevad had deliberately withheld its change of name to preclude the making of the order claimed. Rather, the parent company's reports specifically disclosed the sale of the Davey business as part of a debt reduction program, and the sale was announced to the Australian Stock Exchange.<sup>5</sup>

However, the court considered it unnecessary to amend the terms of the judgment itself,<sup>6</sup> stating that it was 'the title to the proceedings which, in reality, Davey/Yevad wished to change'.<sup>7</sup> The present circumstances resulted from the misnomer of the respondent in the title of the original proceedings following their change of name.

Therefore, pursuant to s161(2) *Corporations Act 2001* (Cth)<sup>8</sup> and O13 r2 Federal Court Rules<sup>9</sup>, the court ordered that:<sup>10</sup>

- From 6 March 1995 the title of the proceedings be amended to show Yevad as first respondent; and
  - Davey/Yevad, pay all costs of the motion, including any costs thrown away by Brookfield, as its failure to alter the proceedings to reflect its name change led to the motion.
- This decision was influenced by the

fact that:

- Brookfield at all times understood that Davey/Yevad was the first respondent, notwithstanding the change in name,<sup>11</sup> and therefore could not be prejudiced by the amendment; and
- There was no question of a statute-barred claim being revived, or the addition or substitution of another party to the proceedings.<sup>12</sup> ■

### Endnotes:

<sup>1</sup> Pursuant to s.41 *Bankruptcy Act 1966* (Cth).

<sup>2</sup> [2002] FCA 889 at [5].

<sup>3</sup> At [6].

<sup>4</sup> A Mareva injunction is an interlocutory prohibitory injunction that restrains a defendant from removing assets from a jurisdiction, or otherwise dealing with assets either within or outside the jurisdiction. See *Mareva Compania Naviera S.A. v International Bulkcarriers S.A.* [1980] 1 All ER 213.

<sup>5</sup> [2002] FCA 889 at [7-11].

<sup>6</sup> As the costs order was in favour of 'the first respondent', which clearly was Davey/Yevad. At [13].

<sup>7</sup> At [13].

<sup>8</sup> Section 161(2) provides that 'any legal proceedings that could have been continued or begun ... against the company in its former name may be continued ... against it in its new name'.

<sup>9</sup> See especially O13 r2(1),(2),(3) and (4) of the Federal Court Rules.

<sup>10</sup> [2002] FCA 889 at [15-17].

<sup>11</sup> In that Davey/Yevad's ACN number remained the same, and Brookfield in his bankruptcy application demonstrated his understanding of the companies' connection. See [3], [12-13] and [15].

<sup>12</sup> At [15]. See *Metropolitan Oils Pty Ltd v Fortron Industrial Lubricants Pty Ltd* [1986] 11 FCR 335 and *Smithkline Beecham (Australia) Pty Ltd v Minister for Family Services* [1993] 45 FCR 587, to which the court referred.

# National Conference 2002 Hotel Grand Chancellor, Hobart



From left:  
Maurie Stark, Michael Lavarch and Rob Davis



Plaintiff Managing Editors past and present  
From left: Bill Madden, Tina Cockburn and Geoff Coates



Rob Davis and APLA Civil Justice Award  
winner 2002 Jennifer Beck



From left: Richard Faulks,  
Tom Goudkamp, Jane Staley,  
John Gordon and Rob Davis

The conference venue also overlooked the picturesque Derwent River and dock area as well as historic Battery Point and Salamanca Markets.

On Friday night I popped my daughter Isla into a pram and we went walking up through Battery Point. It was a balmy evening made all the more pleasant by bumping into delegates all through the walk and hearing how much they were enjoying being in Tasmania. For the record, Isla and I had takeaway Indian food that night which was very pleasant indeed.

Highlights were APLA President Rob Davis' sterling performance in the one-man debate over tort reform; a lively performance by my two Ballarat colleagues Justin Bourke and Dan McGlade presenting a paper called 'New Tricks From Old Dogs'; Jennifer Beck being presented with the 2002 Civil Justice Award;

and Margaret Otlowski talking on the emerging legal issues in relation to the use of genetic testing. But, as is often the case with these conferences, you do not get to see everything that was important and I had reports back from many other delegates of the other outstanding papers delivered at the conference.

There was an element of sadness about the conference as it was the last one to be attended by CEO Jane Staley before she left the job in November and headed overseas with her husband, Brendan. Jane has done so much for APLA while she has been with us, leaving the organisation in a strong position as a truly national organisation. The farewell given to her at the conference dinner was touching and emotional, however was in no way a mood-dampener. As usual, we all had a fantastic time dancing the night away!

Congratulations to Tamara Dickson and her team of willing helpers for making the conference run as smoothly as any that we have had. Unfortunately, it will also be Tamara's last National Conference as she will be leaving us this month to move to Melbourne after five years working on APLA's conferences and events. She will also be sorely missed.

Anyway, I'll see you all later this year back in sunny Queensland at the Hyatt Coolum on the Sunshine Coast! **PL**

---

**Geoff Coates** is a Solicitor at Ryan Carlisle Thomas and was the National Conference Convenor 2002 **PHONE** 03 5331 7898  
**EMAIL** gcoates@rct-law.com.au