

Editor's note

Tanya Simpson, Member Services Officer, APLA

Following the outstanding membership growth APLA has enjoyed over the last few months, I am pleased to provide members with this "bumper issue" of *Plaintiff*, just prior to our popular second annual National Conference.

As you know, professional associations such as APLA require regular input from members to keep member services current, relevant and useful.

To this end, I would appreciate your feedback on APLA seminars, such as your ideas of topics and speakers. I am also keen to receive your input on *Plaintiff* - are we adequately catering our publication to your needs as a plaintiff lawyer?

APLA's Expert Database needs your help too, as the APLA membership is our source for appropriate experts. I would be pleased to invite experts to join this important, and growing, referral service. Who can you recommend to write expert reports and give evidence in court?

The "new look" of APLA, launched earlier this year, has inspired much positive feedback. I would encourage your comments on "anything APLA".

As APLA's reputation in the public arena grows, and as it becomes known as

a powerful lobbying force to government, it is just as critical that members are happy with the level of service they receive from their association. Please contact me at the address overleaf with comments or queries.

Tanya Simpson
Member Services
Officer



APLA Exchange

Easter Show slide accident

We represent a man who suffered an injury on a giant slide at the Royal Easter Show in April 1995. The slide was constructed of sections of corrugated metal. We would appreciate information from APLA members on any similar claims.

Please contact **Jim Maitland**, Tapereil Rutledge, DX 7207 Gosford, **phone** 02 4323 3333 or **fax** 02 4323 2186.

Carpel tunnel syndrome

If there is any "Plaintiff" reader who has had experience with, or has knowledge of the occupation of stell fixing, using nips, and not a straight puller using preformed reo tiles, which in the long term has caused carpal tunnel syndrome, would you please contact Mr Cam Schroder of our office.

Robert Harris & Co, Yeppoon, Queensland, **phone** 079 39 3533, **fax** 079 39 3812.

Electrocution & Fibromyalgia

We are acting for a client who received an electric shock and subsequently developed a condition called fibromyalgia together with several other complaints including ulceration of the oesophagus. We would appreciate any information as to condition suffered by the people who have sustained electric shocks or who have fibromyalgia.

Please contact **Mark Jones**, Solicitor, Biggs & Biggs, GPO Box 1388, Brisbane, Qld, 4000, DX 109 Brisbane.

Phone 07 3331 1950, **fax** 07 3221 0329, **email** biggs@gil.com.au

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THE AUSTRALIAN FINANCIAL REVIEW

What was decided in the Ok Tedi litigation

In "Case against judicial chauvinism" (*AFR*, September 16), Jerrold Cripps says that no matter of real significance was decided before the Ok Tedi litigation against BHP was settled and that legislation was passed in PNG ending the claims. He is wrong on both counts.

What Mr Cripps doesn't tell you is that his legal group acted for BHP in the Ok Tedi litigation. As a solicitor of the law firm which managed the litigation on behalf of indigenous Papua New Guineans, I wonder whether Mr Cripps' failure to make that disclosure was borne of his natural modesty, or whether, as a former NSW judge, he would prefer to forget his legal group's involvement in the case. Perhaps

insignificant matters like the failure to enter a defence for BHP on time, or using the wrong form in contempt proceedings brought against John Gordon and me with the result that they were peremptorily struck out, are matters Mr Cripps would rather forget.

More important, though, is Mr Cripps' pronouncement that no matter of real significance was decided. Amongst other things, the Supreme Court of Victoria found:

(i) Impecunious foreigners are entitled to bring claims against Australian companies in Australia without lodging a security with the court in circumstances where their lawyers are running the litigation "no win, no fee".

(ii) Subsistence dwellers are nevertheless entitled to damages for loss of amenity due to the negligence of Australian companies even though they do not participate in a Western-based economic system.

(iii) BHP's agreement with the PNG Government which prevented access to the Supreme Court of Victoria by the people of the Ok Tedi and Fly River was a criminal contempt of court. (This finding was subsequently overturned by the Court of Appeal, but the Appeal Court only dealt with the issue of standing and held that only the Attorney-General could bring such contempt proceedings.)

At the time of settlement, the

legislation in PNG which Mr Cripps says ended the claims had been in force for some four months without effect, and was the subject of constitutional challenges brought in the Supreme Court of Papua New Guinea.

Further, Mr Cripps fundamentally misapprehends the position of BHP in the litigation when he uses it as a paradigm to suggest that "forum shopping" unfairly exposes Australian business, and that, "instead, deciding the case in the place with which the action has the most connection would end our courts making value judgements, or worse still, assumptions, about the quality of justice in other countries".

BHP itself apparently made just such a value judgement when it elected not to challenge the forum of the Supreme Court of Victoria despite several opportunities to do so.

Last, and perhaps of most significance, both BHP and the mining industry generally recognise that serious misjudgements were made in relation to Ok Tedi, and the litigation has helped develop an emerging view within the industry that domestic standards of environmental practice must also be employed in developing countries.

Nicholas Styant-Browne
Slater & Gordon
Melbourne, Vic.

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