

Tobacco Litigation Special Interest Group

Developments on tobacco
Neil Francey, Sydney

The Tobacco Special Interest Group met at the 1998 APLA Annual Conference on Hamilton Island in October at which time I took over as National Chair of the Tobacco S.I.G. Unfortunately the previous National Chair, Patsy Toop, solicitor of Holding Redlich was unable to attend.

The conference itself featured a key note address on tobacco litigation by former APLA National President, Peter Semmler QC which involved a comprehensive review of international and national tobacco litigation. A copy of the paper, and the audiotape, is available through the APLA Head Office.

Various strategies in relation to tobacco control were canvassed by the Tobacco S.I.G. These strategies include action through the newly established International Criminal Court to have tobacco industry Directors and Executives charged with "crimes against humanity" as an adjunct to the development of An International Framework Convention on

Tobacco Control by the World Health Organisation.

On a national level, the APLA Tobacco S.I.G. is involved in an initiative of ASH Australia in conjunction with the Consumer Law Committee of the Law Council of Australia for the development of a Model Uniform National Tobacco Control Act which would establish a regulatory body and provide special remedies for individuals and families of individuals who contract smoking related disease.

On an individual level, cases are being progressed through the Human Rights & Equal Opportunity Commission which is conducting a public inquiry into steps which should be taken to provide smoke free access to hotels and nightclubs in respect of individuals who suffer from disabilities rendering them sensitive to exposure to environmental tobacco smoke: *Meeuwissen v Hilton Hotels of Australia Pty Limited* (HEROC H97/50 - H97/51). Another interesting case (which should be

decided at about the time this issue of *Plaintiff* is published) involves a NSW Consumer Claims Tribunal action to recover the costs of quitting smoking: *Dr Sarah Hodson v WD & HO Wills (Australia) Limited and The Benson & Hedges Company Pty Limited*.

It is envisaged that other papers dealing with the subject matter will be published in future issues of *Plaintiff* and members of APLA, especially members of the Tobacco S.I.G., are invited to contribute assistance in any which may be thought appropriate in respect of the various initiatives being developed. ■

Neil Francey is a Barrister at Wentworth Chambers, 180 Phillip Street, Sydney NSW 2000 **phone** (02) 9233 5892, **fax** (02) 9223 4204, DX 400 SYDNEY, **email** neilfrancey@onaustralia.com.au

States could sue tobacco firms: QC

By **DAVID SOLOMON**

AUSTRALIAN governments could launch a successful multi-million damages claim against tobacco companies to recoup healthcare spending, a legal conference has been told.

If the political will existed, governments or health insurers in Australia could undertake legal action similar to that in the US state of Texas that resulted in a record \$15 billion payout.

Peter Semmler, QC, has told the Australian Plaintiff Lawyers Association conference that legal action to recoup costs incurred in treating tobacco-related illness "remains a real possibility in this country".

Mr Semmler, a former association president, said an Australian federal or state attorney-general, either alone or in conjunction with health funds, could make such a claim.

He told the conference on Hamilton Island that 40 US states had begun legal actions against tobacco companies, and four had settled.

Texas reached a \$15.3 billion settlement in January, the largest settlement in the history of litigation.

Another state, Minnesota, reached a \$6.5 billion settlement after a trial had been in progress for 16 weeks.

The sum, as well as \$500 million to two health funds, will be paid during the next 25 years.

Mr Semmler said one of the important aspects of the tobacco litigation was that it had disclosed many incriminating documents which would be of critical importance in similar cases in the US and the rest of the world.

He said that in Australia there were legal and factual difficulties which faced individual claimants, but probably the greatest impediment arose from the tactics adopted by, and the resources available to, the tobacco companies.

He said the tobacco industry "is prepared to devote almost unlimited resources to defend claims by individuals and take every possible point, thus ensuring that the pro-

ceedings are at once extremely protracted and expensive".

Mr Semmler said the recent successes in the US and the discovery of documents in those proceedings which tended to inculcate tobacco manufacturers were circumstances which suggested that tobacco litigation in Australia had a promising future.

"However, as in the past, actions by individual plaintiffs against employers and occupiers of premises for injuries caused by passive smoking have a more favourable prognosis than actions by individuals against tobacco manufacturers for injuries caused by active, or direct, smoking," he said.

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