action, or to withdraw completely. Similarly, the common difficulty of funding a class action and protecting the representatives in the event of an adverse costs order, is minimised where all class members can be identified early in the proceedings.[17]

Insurers see the ruling in *Wong v Silkfield* as a catalyst for more class action litigation, and a risk factor which may lead to increased insurance premiums. The administrative challenges of running a representative action and the liability of the representative for costs make it certain that such litigation will not be lightly undertaken.

The cost factors in representative proceedings are particularly contentious. Senator Durack in the second reading debate in Federal Parliament (Hansard, Senate 13 November 1991) referred to "revolutionary proposals about contingency fees, assistance funds and so on". Both sides of Parliament rejected the proposal of the Australian Law Reform Commission for approval of fee agreements with legal practitioners, and establishment of a special fund to provide financial assistance for grouped proceedings. The Australian Law Reform Commission itself rejected arrangements by which legal costs could be ascertained by reference to the amount recovered in proceedings.

In the United States, Federal Rule of Civil Procedure 23 requires Court approval of fees charged by attorneys. The judicial discretions in class actions "effectively remove the threat of ethical dilemmas related to attorney self-dealing in settlement negotiations that might otherwise be detrimental to the class..."[18]

Ultimately Part IVA is a system of case management. If resolution of common issues can go some way to finalising a case, the rules are useful. Consistency in decision-making, economical and efficient conduct of proceedings and consumer access to the Courts are the benefits. PL

Sue SOCOG over seats? Ridiculous

JOHN LEHMANN

LAWYERS believe it would be extremely difficult for ticket applicants to successfully sue Olympics organisers if they dropped their "first in, first served" policy.

People who wanted to sue SOCOG for misleading conduct would have to prove they suffered a real loss by SOCOG changing its policy after advising applicants last week that supplementary ticket applications would be processed on a "first-in" basis.

Sydney lawyers Peter Cashman and Andrew Grech said it was doubtful a person would be able to demonstrate suffering substantial loss on the grounds that their supplementary ticket application was not treated on a first-in basis.

SOCOG could argue that the "loss" only came after a postal mistake gave the applicant an unfair and unexpected advantage.

Any loss might also be qualified by the fact that applicants in the supplementary round were applying for tickets they decided not to order in the first round.

Mr Grech said his firm, class-action specialists Slater & Gordon, would not accept any briefs, saying it would be "ridiculous" to take such action.

Mr Cashman pointed out that even in clear-cut cases where people had bought cruise tickets and the cruise was cancelled they were only awarded nominal damages for loss of enjoyment.

Uncertainty also exists as to whether SOCOG is even governed by the NSW Fair Trading Act or Commonwealth Trade Practices Act.

Mr Cashman acted for Greenpeace this year in a case where the Olympic Co-ordination Authority argued that it was not subject to the Commonwealth Trade Practices Act or Fair Trading Act because it was not a corporation engaged in business, trade or commerce.

It also argued that it had Crown immunity as it was a statutory corporation under ministerial control.

SOCOG is also protected against restrictive trade practices under the Trade Practices Act through a special clause in the SOCOG Act.

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1 Gleeson CJ, McHugh, Gummow, Kirby and Callinan JJ in a single judgement, [1999] HCA 48, 9 September 1999, B26/1999.

2 (1993) 45 SCR 384 at 403.

3 (1996) 139 ALR 723.

4 Drummond and O'Loughlin JJ (1998) ALR 329.

5 Wilcox J extra-judicially in an article "Representative Proceedings in the Federal Court of Australia: A Progress Report" (1997) 8 APLR 77; see also the summary of conflicting views by Moore J in *Peter Shanka & Ors v Employment National (Administration) Pty Ltd* SCA, 9 September 1998, unrep.

6 (1998) 159 ALR 329 at 343.

7 (1998) 159 ALR 329 at 344.

8 (1998) 159 ALR 329 at 345.

9 (1998) 159 ALR 329 at 345-346.

10 (1998) 159 ALR 329 at 333.

11 [1999] HCA 48, 9 September 1999, page 10.

12 [1999] HCA 48, 12

13 [199] HCA 48,13

14 Australian Law Reform Commission Report No. 46, Summary page 1.

15 See discussion by Vince Morabito in "Class Actions: The Right to Opt Out under Part IVA of the Federal Court of Australia Act 1976 (CLM) (1994) XIX" MULR 615

16 Application by respondent in *Bright v Femcare Ltd* [1999] FCA 1377 dismissed by Lehane J on 6 October 1999.

17 Law Reform Commission Report No. 46 proposed Court approval of fee agreements with lawyers, however this was rejected by Parliament.

18 Ethical considerations for attorneys in class action by Martin B Chitwood & Nikole M Davenport http://www.class-law.com\Articles\Ethics.htm. This article also discusses the process of class certification and the ethical dilemmas facing an attorney who has a fiduciary responsibility to class members he or she never meets.