

The Gunns Case

Sept '05

Summary

In December 2004, Gunns Ltd, Australia's largest export woodchipper, commenced civil proceedings in the Victorian Supreme Court against 20 individuals and organisations.

Gunns are claiming damages for **media statements** by defendants, so-called unlawful **lobbying** of shareholders, customers and **disruption** of its logging operations.

Versions 1 and 2 of the statement of claim were struck out by Justice Bongiorno on 18 July 2005. The basis for the decision was that the defendants could not precisely determine what the allegations against them were, thus the statement of claim was "embarrassing".

Costs were awarded against Gunns as a result. The costs awarded, however, will only cover part of the defendants total costs. Despite the victory the defendants legal bills are significant.

Version 3 was received by the defendants on 15 August 2005. The claim for compensation in Version 3 totals **\$6.9 million** (up from \$6.4 million in versions 1 and 2).

Special and general damages claimed are:

- \$400,000.00 for damage to standing and prestige,
- \$545,000.00 for "trouble and inconvenience", and
- \$240,504.48 for expenses such as additional labour and security costs and replacing marker pegs and tape.

This part of the claim includes \$125,000.00 for legal advice and consultants relating to the Japanese and Banks actions(see below).

The remainder (\$5.1 million) of the claim is for aggravated and exemplary damages (rarely awarded in Australia).

The statement of claim (No.3)

The claim can be divided into 10 actions or sets of circumstances:

- 1) Burnie Woodchip Pile (April 2002)
- 2) Banksia Awards (April /May 2004)
- 3) Japanese customers (2000 – 2004)
- 4) Banks (2001 – 2004)
- 5) Campaign against Gunns (incorporating actions 1,3,4,8,9)
- 6) Triabunna 03 (15 January 2003)
- 7) Lucaston (March 2003 & March 2004)
- 8) Styx (24 & 25 November 2003)
- 9) Triabunna 04 (15 Feb 2004)
- 10) Hampshire (24 March 2003)

Gunns chiefly rely on 3 legal concepts (torts) in claiming compensation:

- 1) Conspiracy by unlawful means;
- 2) Interference with contractual relations by unlawful means; and
- 3) Interference with trade and business by unlawful means.

The tort of interference with trade and business has, to date, not received approval from the High Court of Australia. Whether compensation can successfully be claimed on this basis is therefore doubtful. The other causes of action relied on include defamation and trespass.

An application to strike out version 3 is likely to be made in late 2005.

terminology

STATEMENT OF CLAIM

Written statement by a person commencing legal proceedings detailing the facts and legal principles which support the claim and the compensation sought.

TORT

A wrongful act that causes harm to another person.

SPECIAL DAMAGES

Out-of-pocket damages that can be quantified.

GENERAL DAMAGES

Compensation for losses that cannot be specifically measured, such as pain and suffering.

AGGRAVATED DAMAGES

Compensation artificially increased for some reason e.g. – to compensate for injured dignity/feelings

EXEMPLARY DAMAGES

Damages to punish (i.e make an example of) the offender.

the allegations

1. Burnie

Burnie is on the north coast of Tasmania an hour's drive west of Devonport. Gunns uses a facility on the waterfront to stockpile woodchips as well as load them onto ships for export. It is alleged that Dr Frank Nicklason, The Wilderness Society (TWS), Dr Peter Pullinger and Doctors for Native for Forests (DFNF) conspired to defame Gunns.

The alleged defamation occurred in a television interview and a media release by Dr Nicklason. The comments relate to concerns expressed regarding potential health risks associated with the woodchip piles. Gunns claims \$150,000.00 for damage to "standing and prestige".

2. Banksia Awards

The Banksia Awards, run by the Banksia Environmental Foundation, are Australia's major corporate environment awards. Gunns entered the competition on 18 March 2004 and were advised by Banksia that it was a finalist in Category 2 on 14 April 2004. On 5 May 2004 the Banksia Foundation announced Gunns was no longer a finalist.

Gunns allege the Banksia Foundation was induced to remove it from the list of finalists by several defendants, who allegedly communicated with Banksia and also made public comments. Gunns seek compensation on the basis that six individual defendants and TWS conspired to injure them via this communication in relation to the Banksia nomination. Gunns say this communication was unlawful because it amounted to interference with the contract that existed between it and the Foundation. Gunns claim \$250,000.00 for damage to "standing and prestige"

3. The Japanese Customers Action

Gunns annually export around 5,000,000 tonnes of woodchips to Asia, predominantly Japan. The statement of claim refers to several Gunns customers: Fuji Xerox, Mitsubishi, Nippon and Oji. It is alleged that six individual defendants and TWS conspired to "force" the Japanese customers to stop purchasing woodchips from Gunns. Apparently, the defendants sought to achieve this via the media and direct contact with customers. Gunns claim that threats, "express and implied", of adverse publicity, consumer boycotts and direct action were made to the Japanese customers.

Gunns does not claim compensation for loss of income within this action. There are no specifics as to any actual damage to business as a result of the alleged *Japanese Customers Action*. The claim for general damages is limited to \$100,000.00 for legal advice and consultants' fees to respond to the representations made by defendants to the Japanese customers. A further \$300,000.00 is sought for "trouble and inconvenience". Over \$2,000,000.00 is claimed for aggravated and exemplary damages.

4. The Banks Action

The statement of claim indicates Gunns conducts business with "the Commonwealth Bank, the National Australia Bank, the ANZ Bank and Perpetual Trustees".

The central allegation in this action is that between 2001 and 2004, certain defendants aimed to "force" these banks not to do business with Gunns. The defendants allegedly tried to achieve this by publicising the relationship between the various institutions and Gunns, by organising protests at various bank offices and arranging for resolutions to be put at the banks' AGMs.

Gunns is seeking \$25,000.00 compensation for "the cost of travel, consultants and legal advice" and \$20,000.00 for "trouble and inconvenience". There is no claim based on any actual and specified damage to business as a result of the *Banks Action*.

5. Campaign against Gunns

In addition to the nine discrete actions, Gunns claim there has been a “campaign” against it. The allegation is that TWS, Bob Brown and Peg Putt conspired to injure Gunns. It is also claimed Drs Pullinger and Nicklason, DFNF, Louise Morris, the Huon Valley Environment Centre (HVEC) and Simon Brown were involved.

The statement of claim says that the alleged campaign began in 2000 at meetings conducted by TWS. Essentially the claim is that the Banks, Japanese Customers, Styx, Burnie and Triabunna 04 actions were part of an overall conspiracy to injure Gunns. These actions were complemented with public criticism, establishing groups and raising and allocating funds. Gunns claims \$500,000 for damage to its standing and prestige from TWS and several of its employees at the time, Bob Brown, Peg Putt, Dr Peter Pullinger, Dr Frank Nicklason and DFNF. There is no claim against Simon Brown, HVEC or Louise Morris despite them being named in this part of the statement of claim.

6. Triabunna 2003

The town of Triabunna lies on Tasmania’s east coast. Gunns operates a woodchip mill/wharf at Triabunna, where logs are chipped and loaded onto ships for export.

It is claimed six defendants conspired to disrupt operations at Triabunna. Allegedly, at 5.30am on 15 January 2003, three defendants and others entered the site via a rubber dinghy. Some people, including one of the defendants, then locked themselves to various parts of the loading equipment. According to Gunns, this disrupted operations until 1pm that day. Gunns claim \$15,472.78 for additional labour and security, damage to a cable reel and brush holder and other expenses plus \$25,000.00 for “trouble and inconvenience”.

7. Lucaston Action

Lucaston is a small community in a rural residential area near Huonville. Gunns intended to fell and woodchip the majority of forest at a site nearby. It is alleged that this action, involving seven individual defendants, TWS and HVEC constituted a conspiracy to injure Gunns.

Gunns claim four of the defendants and others obstructed roadworks by obstructing access to the logging coupe and attaching themselves to equipment.. There are also allegations of minor property damage and theft – e.g. damaging a gate, removing the badge from a car and removing survey pegs and tape. There is an allegation of “serious damage” to a bulldozer; however, no compensation is claimed for this. Gunns claim \$84,869.43 for additional labour and security costs and \$100,000.00 for “trouble and inconvenience”.

8. Styx Action

The Styx River flows from Mt Mueller in the Southwest World Heritage Area into the Derwent River north of New Norfolk. It is alleged 11 individual defendants, TWS and HVEC conspired to injure Gunns in planning and undertaking actions in relation to the logging of the Styx forest. Gunns say that the defendants organised meetings in 2003 and 2004, established “Tarkine Action Groups” in Victoria, NSW and SA, trained protestors and set up the Global Rescue Station. Gunns says these alleged actions demonstrate a conspiracy by the defendants to injure Gunns’ business.

It also alleges the conspiracy involved organising and participating in an action at Styx 4A logging coupe. It is claimed one defendant and about 40 others entered the coupe on 24 November 2004 and erected tree sits and other structures to obstruct logging. No property damage is alleged or compensation claimed for additional costs or lost production. Compensation is claimed for “trouble and inconvenience” - \$25,000 by Gunns and \$25,000 by the 2nd and 3rd plaintiffs (Robin Simons and Heather Simons).

9. Triabunna 2004

This action, allegedly arose out of a conspiracy by four individual defendants, TWS and others to injure Gunns. The circumstances are similar to the *Triabunna 03 Action*. The alleged acts Gunns uses to support their claim of conspiracy includes:

On or about 3 February 2004, immediately before a meeting of the United Nation Convention on Biological Diversity in Malaysia, Greenpeace on behalf of the Sixth Defendant [TWS] wrote to the Environment Minister of Japan criticising the purchase by Japanese customers of Tasmanian woodchips. (Statement of Claim – Version 3 pg 118 para 348)

Presumably, Gunns is saying the timing of the letter sent by Greenpeace is significant in demonstrating the defendants' conspiracy to injure Gunns.

Only one defendant is alleged to have been present at the action on 15 February 2004. According to the statement of claim, protesters were removed around 11.15am. No property damage is alleged. Damages of \$6014.00 are claimed for additional labour costs, machinery hire and delaying a ship's departure plus \$25,000.00 for "trouble and inconvenience".

10. Hampshire Action

Hampshire in northern Tasmania has a woodchip mill employing around ten people. It is alleged two defendants and about 10 other people entered the site at 6am on 24 March 2003, climbed and attached themselves to a crane. According to the statement of claim, the mill recommenced operations at 6pm that evening.

This action was allegedly part of a conspiracy by eight defendants and others to injure Gunns. There is no allegation of property damage. The claim for general damages is comprised of additional labour and security costs, an additional timber transfer (\$9,313.27) and "trouble and inconvenience" (\$25,000.00).

THE DEFENDANTS & the amount claimed against each of them*

1.	Alec Marr	National Campaign Director, The Wilderness Society	\$1,566,014
2.	Geoff Law	Tasmanian forest campaigner, The Wilderness Society	\$1,456,014
3.	Russell Hanson	CEO, The Wilderness Society	\$1,355,000
4.	Leanne Minshull	Environmental Business Analyst (former TWS employee)	\$1,555,000
5.	Heidi Douglas	Film-maker, AV Producer, The Wilderness Society	\$464,313
6.	The Wilderness Society Inc	Leading Australian environmental organisation	\$3,970,032
7.	Adam Burling	Environmental activist; former Huon Valley Councillor	\$399,018
8.	Louise Morris	Environmental activist; journalism/politics student	\$419,018
9.	Simon Brown	Electronic musician; new media artist	\$309,108
10.	Bob Brown	Federal Senator; Leader of the Australian Greens	\$1,765,718
11.	Peg Putt	Member of House of Assembly; Parliamentary Leader, Tas Greens	\$1,474,704
12.	Helen Gee	Environmentalist; author	\$45,473
13.	Ben Morrow	Environmental activist; Environmental Science graduate	\$121,014
14.	Lou Geraghty	Self-employed cafe owner	\$249,018
15.	Neal Funnell	Environmental Activist; final year law student	\$70,000
16.	Brian Dimmick	Independent film-maker	\$204,704
17.	Huon Valley Enviro. Centre	Southern Tasmanian Environment Centre	\$569,490
18.	Dr Peter Pullinger	Burnie dentist	\$784,313
19.	Dr Frank Nicklason	Physician, Royal Hobart Hospital	\$750,000
20.	Doctors for Native Forests Inc	Victorian-based environment group	\$550,000

* In some cases, a single amount has been claimed against multiple defendants. This figure is duplicated in the calculation of the above totals such that the figures represent the total potential liability of each defendant.