

**IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
MAJOR TORTS LIST**

No. of 2007

BETWEEN

**GUNNS LIMITED**

Plaintiff

and

**FRANK NICKLASON**

Defendant

**STATEMENT OF CLAIM**

**Date of document:** 3 April 2007

**Prepared by:**

**Clayton Utz**

Lawyers

Level 18

333 Collins Street

Melbourne VIC 3000

**Filed on behalf of:** The plaintiff

Solicitor Code: 8599

DX 38451 333 Collins VIC

Tel No: (03) 9286 6000

Ref: 180/11138/80057704

Attention: Richard Mereine

Email: rmereine@claytonutz.com

1. The Plaintiff is and was at all material times:
  - (a) a corporation duly incorporated in accordance with the *Corporations Act 2001* (Cth); and
  - (b) engaged in the business of processing timber in Tasmania and exporting timber including wood chips to Japan and other countries.
  
2. On or about 8 April 2002 the Defendant spoke and thereby published the following words to a television reporter for Hobart WIN Television news (“**the Words**”):

*“The Gunns woodchip pile on the Burnie wharf has developed into a health risk. Conditions at the bottom of the stack are right to breed the Legionella bacteria. The bottom of the woodchip piles, I’ve been told, or at least one of them hasn’t been moved here in seven years so it will be compost and it will almost certainly have Legionella and fungal organisms which can be blown across the town.”*

3. In publishing the Words, the Defendant knew and intended that they would be republished on a television news broadcast to a wide and extensive audience in Tasmania; alternatively it was a natural and probable consequence of the publication of the Words that they would be so republished.

#### **Particulars**

The Defendant knew or ought to have known from the identity of the reporter and the presence of a television camera that the Words were being recorded for broadcast on a television news service.

4. On 8 April 2002, the Words were republished, together with other words and accompanying images, in a television news broadcast by WIN Television to a wide and extensive audience in the State of Tasmania.

#### **Particulars**

A transcript of the relevant broadcast is annexed hereto and marked “A”.

5. By reason of the matters alleged in paragraph 3, the Defendant is liable for the republication of the Words referred to in paragraph 4.
6. The Words were of and concerning the Plaintiff.

#### **Particulars**

- (i) The word “Gunns” was and was understood to be a reference to the Plaintiff.
- (ii) The words “woodchip pile” and “woodchip piles”

were and were understood to be references to woodchip piles under the Plaintiff's control at the Burnie wharf.

7. In their natural and ordinary meaning the Words were defamatory of the Plaintiff and meant and were understood to mean that:
  - (a) the Plaintiff, by neglecting to move the bottom of one or more of its woodchip piles on the Burnie wharf, was responsible for almost certainly exposing the people of Burnie to the risk of infection from Legionella;
  - (b) the Plaintiff showed disregard for the health of the people of Burnie by neglecting to take action to prevent the bottom of one or more of its woodchip piles at the Burnie wharf from reducing to compost almost certainly containing Legionella which could be blown across the town.
8. As a result of the publication and republication of the Words as alleged the Plaintiff has been severely injured in its reputation and has thereby suffered loss and damage.
9. Further, the Words were published in the following circumstances which entitle the Plaintiff to an award of exemplary damages:
  - (a) the Defendant had no genuine belief in the truth of the Words at the time they were published;
  - (b) alternatively, the Defendant was recklessly indifferent to the truth or otherwise of the Words at the time they were published;
  - (c) the Defendant undertook no reasonable research to ascertain the truth or falsity of the Words prior to publication;
  - (d) the Defendant made no inquiry of the Plaintiff as to the truth or falsity of the Words prior to publication;

- (e) the Defendant deliberately used provocative and sensational language (“Legionella and fungal organisms which can be blown across the town”) which was calculated to maximise the damage to the reputation of the Plaintiff;
- (f) the Defendant was motivated in publishing the Words by an improper purpose, namely to damage the business of the Plaintiff;
- (g) the Defendant has, despite request, failed and refused to apologise to the Plaintiff for the publication of the Words in circumstances where an apology is self-evidently called for.

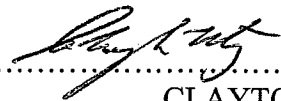
AND THE PLAINTIFF CLAIMS

- A. Damages.
- B. Exemplary damages.
- C. Interest pursuant to Statute.
- D. Costs.

Dated 3 April 2007

**JEREMY RUSKIN QC**

**MJ COLLINS**



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CLAYTON UTZ  
Solicitors for the plaintiff

**Annexure "A"****Hobart WIN TV State Television News****8 April 2002, 6.13 p.m.**

Forestry Giant Gunns has strenuously denied claims its woodchip pile at Burnie is at risk of carrying the Legionella bacteria.

Interviews with Frank Nicklason, Doctors for Forests; Paul O'Halloran, Tasmanian Greens.

**NEWSREADER:**

Forestry giant Gunns has strenuously denied claims its woodchip pile at Burnie is at risk of carrying the Legionella bacteria.

**REPORTER:**

Doctors for Forests claim the Gunns woodchip pile on the Burnie wharf has developed into a health risk. They say conditions at the bottom of the stack are right to breed the Legionella bacteria.

**FRANK NICKLASON - DOCTORS FOR FORESTS:**

The bottom of the woodchip piles, I've been told, or at least one of them hasn't moved here in seven years so it will be compost and it will almost certainly have Legionella and fungal organisms which can be blown across the town.

**REPORTER:**

The group wants an environmental management plan but their claims have been rubbished by Gunns managing director, John Gay. He says the woodchip piles are turned over every three months.

It hasn't been a good weekend for the company on the coast, beginning with Saturday's street theatre adaption of D Seuss' The Lorax.

**FEMAIL VOX POP:**

It tells exactly what's happening in the forests with the destruction of the forests for greed and for short-term gain.

REPORTER:

While the launch of the Braddon Green candidates for the next state election heard claims Tasmanians have only eighty per cent of the average national income, the lowest in fifty years, pointing to Gunns exports from the Burnie wharf as an indicator of where things are going wrong.

PAUL O'HALLORAN - TASMANIAN GREENS:

High volume, low value woodchips, soft wood timber and now hard wood timber to places that are creating jobs with those resources.

REPORTER:

Meanwhile, at Moorleah near Wynyard residents are angry about Gunns purchase of one hundred and forty-one hectares of fertile farm land.

1. Place of trial - Melbourne
2. Mode of trial - Judge
3. This writ was filed for the plaintiff by Clayton Utz, Lawyers, Level 18,  
333 Collins Street, Melbourne
4. The address of the plaintiff is - 78 Lindsay Street, Launceston, Tasmania 7250
5. The address for service of the plaintiff is -

C/- Clayton Utz,  
Lawyers,  
Level 18  
333 Collins Street  
Melbourne Vic 3000  
DX 38451 333 Collins VIC  
Tel: (03) 9286 6000

6. The address of the defendant is - 2 Allison Street, Hobart, Tasmania 7000

