

## NEWSLETTER

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- >> **Q. How does someone properly detail a claim for damages when most of the information about how the damage was caused is locked up in the hands of the party who caused it?**
  
- >> **A. Courts sometimes require documents to be handed over for inspection at a much earlier stage in proceedings than is normal.**

In 1996 water was released from the Hume dam in southern New South Wales and flooded neighbouring properties. The flooding caused damage to crops growing on the properties and to the fencing.

The owners of one of these properties, Collendina Pty Ltd, sued the Murray Darling Basin Commission for the damage just before the end of the six year limitation period after negotiations had broken down.

The landowner claimed that the release of water caused damage because the defendant did not take reasonable care in the way in which the releases were done.

Collendina did not know much about the details of the patterns of release of the dam waters in 1996. It had enough evidence to start the claim but could get nothing from the Commission itself.

In the claim they just referred generally to the time at which the releases were commenced, the daily volume of water released, the total time period of which the releases were carried out and the geographic area over which the releases were carried out.

The Murray Darling Basin Commission, the defendant in the action, attempted to obtain summary judgment and have the landowner's claim struck out before it got anywhere near a hearing. Before Master Malpass of the Supreme Court the Commission was unsuccessful.

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The Master said that this was a case where “at least largely the relevant information may be solely within the knowledge of the defendants” and therefore the claim should not be dismissed at such an early stage.

The Commission appealed and on 13 May 2004 Judge Windeyer handed down his decision, rejecting the appeal by the Commission .

Before His Honour on the same day as the appeal was a notice of motion for the production of certain documents that were in the hands of the Commission.

The purpose of the motion was to get access to documents which the Commission held, so a fully detailed claim could be made. It is not usual to get access to documents at an early stage and such motions are not usually successful before a Plaintiff has supplied particulars of its claim.

In respect of this notice of motion Judge Windeyer ordered that the documents should be made available for inspection.

The Judge repeated a well established authority that the court can exercise its discretion by ordering discovery before particulars have been provided, where the party demanding particulars of the claim and resisting handing over documents, is alone in possession of the documents.

Collendina Pty Limited of course awaits seeing the documents with great interest.

For any further information or assistance contact Peter Jackson, at Jackson Smith Solicitors, free call, 1800 687 217.

>> Professional advice should be sought before applying the information in this newsletter to particular circumstances.

>> We hope that our newsletters are of interest to you. If you wish a particular topic examined, please let us know.

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