

## Transnational Class Action Dispute Over Oil Spill Commenced in Australia

### IN SHORT

**The Background:** *Sanda v PTTEP Australasia (Ashmore Cartier) Pty Ltd* raised the question as to whether the Federal Court of Australia possesses the power to consider an extension of time on the class members' statute-barred claims.

**The Issue:** The Federal Court of Australia may be an appropriate forum for the resolution of transnational class action disputes involving events occurring in external Australian territories and beyond, including Indonesia.

**Looking Ahead:** The implication of this proceeding is that class members whose claims are statute-barred may apply for an extension of time, although each may, in certain circumstances, have to apply to the Court individually. This was the position reached by the Court in light of the Northern Territory limitations legislation and may impose a significant evidentiary burden on class members seeking an extension of the limitation period.

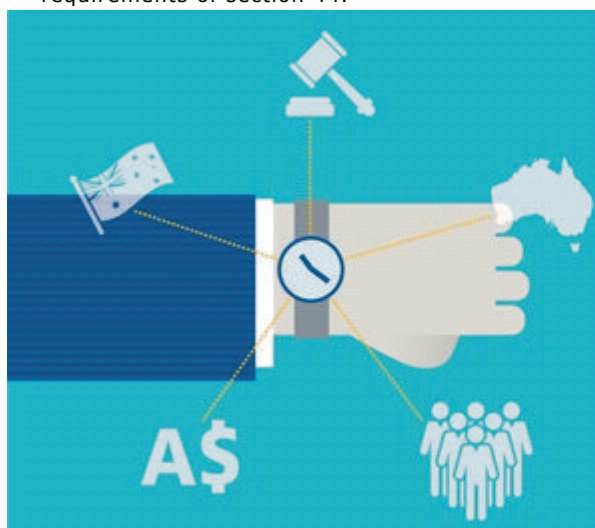
Following the 2009 Montara Oil Field oil spill in the Timor Sea, an Indonesian seaweed farmer brought a class action in Australia against the operator of the Montara Oil Field. The action was commenced on behalf of a class of Indonesian seaweed farmers who allegedly suffered loss as a result of the oil's sterilization of certain Indonesian waters, causing a decline in seaweed production. On 24 January 2017, Griffiths J handed down judgment in *Sanda v PTTEP Australasia (Ashmore Cartier) Pty Ltd* [2017] FCA 14 ("*Sanda v PTTEP*") on the separate question of whether the Federal Court of Australia possesses the power to consider an extension of time on the class members' statute-barred claims.

### Issues

It was not contentious that Sanda and the class members had commenced proceedings after the expiration of the relevant statutory limitation period of three years, stipulated by section 12 of the Limitation Act 1981 (Northern Territory) ("Limitation Act"). To sustain the action, Sanda would have to apply for an extension of the limitation period in respect of not only his own claim, but those of the class members he represented.

The question of whether, in a class action context, section 44 of the *Limitation Act* may apply to the extension of the limitation period on the claims of class members turned on whether a class member:

- Is a "plaintiff" for the purpose of section 44 of the Limitation Act; and
- Can, themselves, be considered to institute the relevant class action proceedings in satisfaction of the requirements of section 44.



**Section 44(b) . . .**

. . . of the Limitation Act specifies that time may be extended where a "plaintiff" (who is defined as a person bringing an action and not a party to the action) ascertains new facts and institutes an "action" (which is defined as including a proceeding in a court of competent jurisdiction) after the expiration of the relevant statutory limitation period.

# Are Class Members Plaintiffs and Do They Institute Class Action Proceedings?

Justice Griffiths held that the Limitation Act's definition of "plaintiff" is broad enough to capture class members on whose behalf a class action proceeding is instituted and the definition of "action" is sufficiently broad to encompass any form of legal proceeding.

In light of the language of and legislative intention behind the Federal Court Act, His Honour held that class members are properly regarded as plaintiffs (for the purpose of the Limitation Act) who have instituted proceedings. Furthermore, consistent with modern principles of statutory interpretation, Justice Griffiths concluded that class members must be understood to constitute plaintiffs, at least in the context of the Limitation Act. A contrary interpretation would lead to a "profoundly unlikely and scarcely intended result" whereby the statute bar may not have applied to the class members as it did to the representative party.

Therefore, His Honour was satisfied that the Court's power not only extended to considering extending time on the representative party's claim but on the claims of each of the class members as well.

## THREE KEY TAKEAWAYS

1. A class member, at least as far as the Limitation Act is concerned, will be construed as a plaintiff in respect of a class action in which it is represented. The notion that class members are plaintiffs in their own right may have more widespread implications, although broader ramifications will depend on the context.
2. An implication of treating class members as individual plaintiffs is the potential diminishment of the efficiency of a class action proceeding where many or all class members apply to the court for an extension of time and the facts of each application must be determined individually. This may also increase the burden upon and cost to the Defendant, if it should seek to contest some or all of those applications.
3. The FCA's decision in *Sanda v PTTEP* specifically turned on the language of the Limitation Act. Proceed with caution when extrapolating the implications of Griffiths J's decision.

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