

# ANTI-SUIT ORDERS MADE AGAINST CLASS ACTION PLAINTIFF

14 April 2016 | Australia, Brisbane, Melbourne, Perth, Sydney  
Legal Briefings - By **Alan Mitchell** and **Helen Mould**

---

A plaintiff in an Australian shareholder class action has been unsuccessful in his attempt to use US procedure to depose the defendant's former employees who live in New York and California.

## In brief

A plaintiff in an Australian shareholder class action has been unsuccessful in his attempt to use US procedure to depose the defendant's former employees who live in New York and California.

Handed down yesterday by the Full Federal Court, the decision in *Jones v Treasury Wine Estates Limited* [2016] FCAFC 59,1 also restrained a US-based institutional investor (a group member in the class action) from using the US procedure.

## Background

In September/October 2015, lawyers for the plaintiff and an institutional investor filed proceedings in the United States District Courts (Northern District of California and the Southern District of New York) seeking to invoke a US procedure (under 28 USC §1782 of the US Federal Rules of Civil Procedure) to conduct discovery for use in a foreign proceeding (namely, the Australian class action). The discovery was sought to be obtained through examination by oral questions, or deposition.

The US proceedings were issued without notice to the defendant or the Australian Court, and before their existence was notified to the defendant, the Californian Court had made orders permitting the issue of subpoenas for the taking of depositions from two of the named individuals, and the New York Court had ordered that a third individual show cause as to why orders should not be made permitting the issue of a subpoena to him.

## **Application to prevent depositions**

The defendant applied to the Federal Court for an anti-suit injunction to restrain the plaintiff and investor from pursuing or participating in the depositions.

The Chief Justice of the Federal Court determined that the matter was of sufficient importance that it be referred directly to the Full Court for hearing.

## **Defendant's application for anti-suit injunction successful**

The Full Court granted the relief sought by the defendant. The Full Court accepted the defendant's submission that the Court's recent discovery reforms and case management regime would, in the circumstances of the case, be undermined by the US proceedings unless the injunctive relief were granted. The Court found that the applications for depositions were patently made in order to obtain the benefit of processes not usually available in the Australian Court.

The Full Court's judgment states that it is vital that its proceedings and pre-trial processes are solely subject to supervision by it, particularly in the context of a class action. The Court observed that anti-suit injunctions have been granted previously by the Federal Court and other Australian Courts in order to protect their processes (eg in *Pathway Investments Pty Ltd v National Australia Bank Ltd (No 2)* [2012] VSC 495).

## **Approach in future matters?**

The Court did not rule out that Australian parties' legal representatives might invoke the US procedure in future, but it held that orders for depositions under the US §1782 procedure will only be permitted in exceptional cases and such orders should not be obtained without notice to the other party and without the prior knowledge and endorsement of the Australian Court.

## **Endnotes**

The full decision may be viewed here: *Jones v Treasury Wine Estates Limited* [2016] FCAFC 59. Herbert Smith Freehills acts for the defendant.

More information

For more information regarding possible implications for your business, contact [Alan Mitchell](#) or [Helen Mould](#).



## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



**ALAN MITCHELL**  
PARTNER,  
MELBOURNE  
+61 3 9288 1401  
Alan.Mitchell@hsf.com



**HELEN MOULD**  
EXECUTIVE COUNSEL,  
MELBOURNE  
+61 3 9288 1718  
helen.mould@hsf.com

---

## LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2022

---

**SUBSCRIBE TO STAY UP-TO-DATE WITH INSIGHTS, LEGAL UPDATES, EVENTS, AND MORE**

Close