Queensland Supreme Court decision a first step towards new disclosure regime

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In the first case of its kind in Queensland, the decision of Justice Applegarth in Central Queensland Mining Supplies Pty Ltd v Columbia Steel Casting Co Inc [2011] QSC 183 has introduced a new disclosure regime that is consistent with the Court's proposed 'document plan' for managed cases. Those cases are, by definition, larger and/or more complex and prone to suffering from disproportionate disclosure under the current rules. The decision is also consistent with the proposed changes to discovery in the Federal Courts as identified by the Australian Law Reform Commission.

Background

The dispute relates to the termination of a distribution agreement between Columbia Steel Castings (Columbia), an Oregon (US) company that manufactures and sells impact and wear resistant replacement parts for use in mining equipment worldwide, and Central Queensland Mining Supplies (CQMS), which was Columbia's exclusive distributor in Australia for 23 years.

Following disclosure by the parties, Columbia applied to Justice Applegarth, as the Commercial List Judge overseeing the dispute, for orders relating to CQMS' disclosure. The two grounds of complaint made against CQMS' disclosure were first, that in its initial searches, CQMS had failed to conduct a sufficient process to identify potentially disclosable documents (the Judge described this as the "under-disclosure" complaint) and, secondly, that of the approximate 4,900 documents disclosed by CQMS, many did not satisfy the test for disclosure and were irrelevant (the "over-disclosure" complaint).

Justice Applegarth commented in his reasons for judgment that this kind of dispute in litigation was common.

In deciding the under-disclosure complaint, His Honour held that it would be best addressed by "targeted orders directed at specifically requested documents or categories of documents, and by an informed assessment of whether the requested documents have a specific relevance to the case and materiality to its outcome, and the likely time, cost and inconvenience involved in locating, reviewing and disclosing the documents or categories of documents".

In relation to the over-disclosure complaint, his Honour held that based on the examples of disclosed documents relied on by Columbia in the application, its concerns were legitimate and orders were required.

At to how best to address the deficiencies that were found to exist, Justice Applegarth considered that the "appropriate and efficient approach" was to require the parties to agree upon a regime whereby they each submit a list of only those documents upon which they intend to rely upon at trial (rather than give customary disclosure in accordance with the rules) and then supplement those with further documents in response to a request to produce which (if not accepted) could demonstrate to the Court's satisfaction that the requested documents are relevant and material to the outcome.
The broader context

This decision has a timely and relevant context to the potential approach that the Queensland Courts are considering. That approach is more akin to Part 31 disclosure under the UK Civil Procedure Rules as well as international arbitration.

In Queensland, the Court's review of document management forms part of the broader work being undertaken by the Better Resolution of Litigation Group (established in September 2009 and convened by Justice Byrne). That work is aimed towards improving the practices of the Court to ensure that the obligations conferred by rule 5 of the UCPR Qld (1999) are met and also to "develop practical ways of reducing complexity and cost".

If the proposed changes to disclosure in the Queensland are introduced, either by formal guidelines and/or by case law such as this decision then the parties to litigation and their legal advisers may be required to adopt the process of agreeing a 'document plan' at an early stage of the litigation with a view to identifying the 'critical documents' ("Critical documents' have been defined in the Supreme Court's draft guidelines as 'those documents...likely to be tendered at trial and to have a decisive effect on the resolution of the matter [including] documents that are either supportive or adverse to a party's case'.) when undertaking disclosure. In the Queensland Supreme Court, that process will initially apply to managed cases as an exception to the current rules for disclosure.

The writers suggest that this decision provides guidance for practitioners considering how best to initiate and agree upon document plans in larger and/or more complex cases, where the volume of potentially disclosable documents is sufficient to render giving full disclosure out of all commercial proportion to the documentary evidence likely to be relied upon at trial.

HopgoodGanim acts for Columbia Steel Casting Co. Inc. in the litigation, which is ongoing.

For more information, please contact HopgoodGanim's Litigation and Dispute Resolution team.

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