



HIGH COURT OF AUSTRALIA

Public Information Officer

5 December, 2002

GRAHAM BARCLAY OYSTERS PTY LTD & ANOR v GRANT RYAN & ORS
GRANT RYAN v GREAT LAKES COUNCIL & ORS
THE STATE OF NEW SOUTH WALES v GRANT RYAN & ORS

The issue was whether Graham Barclay Oysters and Graham Barclay Distributors Pty Ltd (the Barclay companies), Great Lakes Council and the State of NSW were liable in negligence towards Grant Ryan and others who contracted hepatitis A from eating oysters from Wallis Lake near Forster on the NSW central coast. Heavy rain in November 1996 caused run-off which increases the risk of viral contamination.

Mr Ryan instituted a representative action in the Federal Court, on behalf of those who became ill from eating oysters, against the Barclay companies, other oyster growers and distributors, the council and the state. The Barclay companies, the council and the state entered cross-claims against one another.

A Federal Court judge held the Barclay companies, the council and the state all liable in negligence to Mr Ryan and those class members who proved they suffered damage. The Full Court of the Federal Court by differently constituted majorities allowed the council's appeal and dismissed appeals by the state and the Barclay companies. The Barclay companies, the state and Mr Ryan then appealed to the High Court of Australia.

Mr Ryan claimed the state and the council were negligent by omission as they could and should have done more to prevent the hepatitis outbreak. The High Court unanimously held that such public authorities had responsibilities for public health and safety – including fisheries and sewage management – but that Mr Ryan failed to establish that they owed a duty of care to individual consumers of Wallis Lake oysters. The state and the council were therefore not liable.

The Barclay companies accepted that they owed a duty to consumers to take reasonable care to see that their oysters were fit for human consumption but the High Court by majority found the companies did not breach that duty, so were not liable in negligence.

Mr Ryan had succeeded in the Federal Court in having Barclay Oysters found liable under sections 74B (fitness for purpose) and 74D (unmerchantable quality) of the Trade Practices Act. The Full Court of the Federal Court dismissed Barclay Oysters' appeal and the company did not challenge those findings in the High Court, so the judgment obtained by Mr Ryan against that company remains undisturbed.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later considerations of the Court's reasons.*