

IN THE SUPREME COURT OF WESTERN AUSTRALIA
COMMERCIAL AND MANAGED CASES LIST

COR 35 of 2010

IN THE MATTER OF GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED
(ACN 083 825 405) (IN LIQUIDATION)

BETWEEN:

**GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED (ACN 083 825
405) (IN LIQUIDATION) IN ITS CAPACITY AS RESPONSIBLE ENTITY OF
THE MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1**

First Plaintiff

- and -

**GREAT SOUTHERN OLIVES COMPANY LIMITED
(ACN 121 381 208) (IN LIQUIDATION)**

Second Plaintiff

- and -

**GREAT SOUTHERN OLIVE HOLDINGS PTY LIMITED
(ACN 111 092 374) (IN LIQUIDATION)**

Third Plaintiff

- and -

ANDREW JOHN SAKER

Fourth Plaintiff

- and -

MARTIN BRUCE JONES

Fifth Plaintiff

- and -

DARREN GORDON WEAVER

Sixth Plaintiff

- and -

JAMES HENRY STEWART

Seventh Plaintiff

- and -

JAMES THACKRAY

First Defendant

- and -

TONY MCGRATH

Second Defendant

- and -

COLIN NICOL

Third Defendant

- and -

**THE GROWERS LISTED IN SCHEDULE A
OF THE APPLICATION**

Fourth Defendants

**DEFENDANT GROWERS' FURTHER SUBMISSIONS WITH RESPECT TO
THE DEFENDANT GROWERS' APPLICATION FOR COSTS DATED 28
JULY 2010 HEARD BEFORE THE HONOURABLE JUSTICE LE MIERE
ON 1 SEPTEMBER 2010**

Case Manager: The Hon Justice Le Miere
Date of Document: 3 September 2010
Filed on behalf of: Those of the fourth defendants listed in Schedule A hereto
Date of Filing: 3 September 2010

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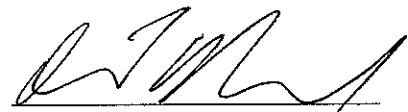
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Ref: MAB:MOC:0900568

Pursuant to the leave granted by the Honourable Justice Le Miere on 1 September 2010, the Defendant Growers' make the further written submissions with respect to the plaintiffs assertion to the effect that statements made by Mr Bigmore SC at the hearing of 21 May 2010 regarding the conduct of the plaintiffs had not been raised prior to the hearing of 21 May 2010. In particular, leave was given for the Grower Defendants to make submissions following a reading of the transcript of the hearing of 28 April 2010 (Transcript) as to what occurred at the hearing of that date.

1. The Defendant Growers refer to the following sections of the Transcript:
 - 1.1 Page 29 – “Solomon MR: No, under the head lease and that’s in default and that’s why we are bringing an application to get rid of the liquidators, your Honour. This hasn’t been remedied and instead the head lease has been forfeited so that the landlord under the head lease will then get the benefit of the land, get the benefit of the crop, get the benefit of the olive trees that have been planted and with the investors’ money and as far as the investors are concerned it’s bye bye.”

- 1.2 The remainder of page 29 up to and including the first complete paragraph on page 30 which commences: "Mr Burns doesn't make any quibble of ...".
- 1.3 Page 30 – reporting a statement of Mr Solomon "...unlike a lot of them [investment advisors], they [BCP Group Services, see top page 25 of Transcript] are actually doing something serious to try and help those clients to get a proper return for their investment rather than simply see their investment vaporised by the liquidators doing nothing and simply allowing the head lease to be forfeited. The result is that the landlord, that is, the parent Great Southern company, which they are the liquidators of and looking to be paid fees from become the owner of the current crop, the owner of the trees, free from the long-term lease that there investors acquired by investing in this managed investment scheme."
- 1.4 Remainder of page 30 to the end of the first paragraph on page 31.
- 1.5 Page 32, the last two paragraphs.
2. Mr Solomon comments need to be read in the context of the submissions that were also before the Court on that day, and which are attached to these submissions. (See paragraphs 7 to 10).
3. In the circumstances above, it cannot be said that statements of the kind made by Mr Bigmore on 21 May 2010 had not been made before or were new any substantive way.



DJ Marsh
Counsel