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

CIV 1561 of 2012

B E T W E E N:

STEPHEN WILLIAM MARSH First Plaintiff

SUSAN GENEVIEVE MARSH Second Plaintiff

and

MICHAEL OWEN BAXTER Defendant

SUPPLEMENTARY WITNESS STATEMENT OF JANET BOURKE DENHAM

Introduction

1. I have previously made a statement in this proceeding dated 14 February 2013. This is my second statement.

2. As I state in my first witness statement, I am familiar with the IFOAM Norms and with the *Australian National Standard for Organic and Biodynamic Produce* (**the National Standard**). The NASAA Standards conform to the National Standard. NASAA also applies its standards in the light of the principles articulated in the IFOAM Norms.

3. I have been provided with and have read a copy of the expert report of Jonathon William Slee dated 18 November 2013 in which Mr Slee refers to EC regulation 834/2007.

Importance of the farming system to organic certification

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8. A significant part of the work of NASAA and NCO is to certify farms as organic. That involves application of the NASAA Standards. That process is not limited to an assessment of the products that are produced by an organic farm. More importantly the assessment is about the farming system as an integrated system and its compliance with the NASAA Standards.

9. When NCO is engaged in certification and review of an organic farm, NCO does not simply test the farm produce in order to check that it is free from GMOs or other prohibited inputs. This is because the integrity of the system is the cornerstone of organic agriculture.

10. When certifying a farm, NCO must look for compliance with the NASAA Standards: that is, for qualities such as soil fertility and thorough pest and disease control. For example, crop rotation and weed control systems are important aspects of organic farm management and these are assessed by an examination of the farm and the processes and systems that are used by the farmer.

11. Although the final organic product is an important aspect of certification, and this is reflected in the NASAA Standards, it is not possible to simply examine organic produce in order to determine whether the NASAA Standards and the National Standard are being applied by the farmer.

12. When NCO inspects a farm for the first time in order to assess whether or not it should be certified, NCO always conducts a soil test. If the soil test reveals the presence of organochlorines, which were in common use by earlier generations of famers, an MRL (maximum residue level) of less than 10% of such chemicals will be tolerated. The 10% level in soil is based on 10% of MRL of the relevant crop set by Food Standards Australia and New Zealand. However, NASAA has a policy of zero tolerance for modern, synthetic chemicals (organophosphates), such as post-harvest chemicals including chlorpyrophos and for GMOs.

13. Again, the presence of substances as revealed in the soil tests might or might not be revealed by testing produce of the farm.

14. Organic agriculture is a holistic system built on natural and ecological processes that sustain the health of soils, ecosystems and people. Hence organic certification is based on these principles.

15. If a farmer deliberately or negligently introduced contaminants such as those identified in paragraph 12 above, on to a certified organic farm, NCO would decertify the farm for a period of three years at a minimum. The soil/crop would be then be re-tested after that time. That time frame and process is similar to that which a farmer who wishes to covert to certified organic farming must undergo. Once being re-certified the farmer will normally have more stringent surveillance requirements included in their certification conditions.

16. If such contaminants were introduced into a certified organic farm through no fault of the farmer, a minimum 12-month decertification period would apply, and after 12 months had passed, the situation would be assessed according to the extent and nature of the contamination. The soil would be tested again. For the farmer to regain certification, the test results would have to show that no more contaminant was present, as those contaminants have no place in the organic farming system.

17. In later inspections of the farm, NCO may also conduct random sampling of farm produce. However, NCO organic certification focuses on the farm system so that produce of a certified organic farm is certified organic on the basis of compliance at the farm level.

The importance of standards

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20. The organic market in Australia is large and growing. I believe it is one of the fastest growing industries in Australia and has been the best performing agricultural industry over the past 5 years. The Australian organic industry is currently worth more than $1.276 billon AUD to the Australian economy.

The global organic marketplace is worth more than $59 billion USD. I refer to *Australian Organic Market Report 2012* [TB 2912-3009].

The National Standard and the NASAA Standard

21. There is no equivalent in the National Standard of the labeling allowance found in the EU regulation. The National Standards Committee has never considered a proposal to allow adventitious presence of GMOs of 0.9% within organic products.

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23. Moreover, the National Standard, which NASAA is bound to apply, does not presently allow for the introduction of such allowance threshold. The National Standard includes the following general principle (clause 3.3): "Products or by-products that are derived from genetic modification, are not compatible with the principles of organic and biodynamic agriculture." The National Standard also provides in clause 3.3.1 as follows: "The use of genetically modified organisms or their derivatives is prohibited." I refer to *the National Standard for Organic & Bio-Dynamic Produce* [TB 1408-1480].

24. The NASAA Standard provides in clause 3.2 (General Principles) that: "Even where evidence of GMOs is not detected in finished organic product, the deliberate or negligent exposure of organic production systems or finished products to GMOs is outside organic production principles." Clause 3.2.2 of the NASAA Standard provides that "Contamination of organic product by GMOs that results from circumstances beyond the control of the operator may alter the organic status of the operation." I refer to *NASAA Organic Standard* [TB 1293-1407].

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NASAA's decision to decertify Eagle Rest

27. NASAA is obliged to enforce the NASAA Standard in conformity with the National Standard. In contamination cases, clause 3.3.4 of the National Standard provides for a five-year minimum decertification where there has been deliberate growing of GMOs. Clause 3.3.5 provides that certification of organic crops must be withdrawn where genetically modified crops are grown on the same farm. Clause 3.2.3 of the NASAA Standard provides likewise.

28. I was not involved in the decision to decertify Eagle Rest. I am, however, aware of the kinds of factors NASAA evaluates when deciding whether or not to decertify a farm in cases of contamination. The principal factors are the nature and the extent of the contamination.

29. In the case of GMO contamination, NASAA does not automatically de-certify a farm. Instead, NASAA suspends the farm's certification for the affected paddocks while it investigates the nature and extent of the contamination.

30. Where there is uncertainty about either the level or extent of contamination and the impact including extent to which GM plants may germinate on the farm, it is appropriate in my view for NASAA to decertify the affected areas of a farm in order to allow time for any plants to germinate and be removed (which may, in turn, be affected by climatic conditions). Recertification can then be considered depending upon the extent of germination and measures taken and able to be taken by the farmer to eradicate the plants. This approach is consistent with what I understand to have occurred in the case of the contamination of Eagle Rest.

31. A farmer who has incursions of GM plants including potentially viable seed onto his or farm is in the position of having prohibited substances incorporated into the farming system. That event has to be assessed within the context that GMOs have no place in organic farm systems.

I have read the contents of this, my supplementary witness statement, and the documents referred to in it, and I am satisfied that it is correct and that this is the evidence-in-chief which I wish to give at the trial of the proceeding.

Janet Denham

Dated: Undated (January 2014)
Amended: 17 February 2014