

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
JUDICIAL REVIEW AND APPEALS LIST

No. 8547 of 2009

BETWEEN

ENVIRONMENT EAST GIPPSLAND INC

Plaintiff

and

VICFORESTS

Defendant

AFFIDAVIT OF CAMERON MACDONALD

Date Sworn: 14 September 2009

Filed on behalf of the Defendant

**HWL Ebsworth Lawyers as agents for Komesaroff
Legal Pty Ltd**
Level 21, 570 Bourke Street
Melbourne VIC 3000

Solicitor Code: 179

DX: 564, Melbourne

Tel: (03) 8633 7500


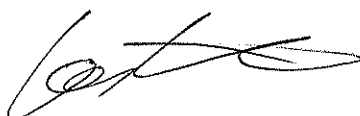
Fax: 1300 365 323

Ref: JAK:RVH:182227

Email: jonathan.kramersh@hwlebsworth.com.au

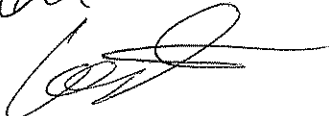
I, Cameron MacDonald of Level 7, 473 Bourke Street, Melbourne in the State of Victoria, make oath and say as follows:

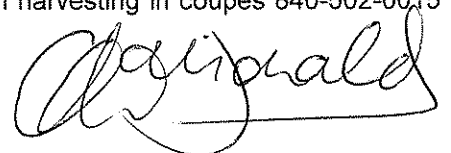
1. I am the Director – Strategy and Corporate Affairs at VicForests, the Defendant in this proceeding and am duly authorised to swear this affidavit on its behalf.
2. I make this affidavit on behalf of VicForests. I make this affidavit from my own knowledge unless otherwise indicated. Where I depose to matters from information and belief, I believe those matters to be true.
3. I refer to the affidavit sworn by me on 31 August 2009 (**First Affidavit**) and to the affidavit sworn by me on 2 September 2009 (**Second Affidavit**) and filed on behalf of the Defendant. The last exhibit referred to in the Second Affidavit is marked **CM18**. As a result, the first exhibit referred to in this affidavit is marked **CM19**.
4. I refer to exhibit **CM17** which is exhibited to the Second Affidavit. I prepared the table which is exhibited at **CM17**. The table sets out the increase in loss of profits over the period of two weeks, one month, three months and six months. The method I employed calculating those figures is set out at paragraph 12 of the Second Affidavit. The figures represent the loss that VicForests will suffer should it be



prevented from harvesting coupes 840-502-0015 and 840-502-0019. It is unlikely the VicForests will ever be able to recover those losses.

5. Now produced and shown to me and marked **CM19** is a true copy of a table I prepared setting out VicForests' saw log production for the financial years ended 30 June 2007, 30 June 2008, 30 June 2009 and 30 June 2010. Exhibit **CM19** contains commercially sensitive information that is not in the public domain. Accordingly, I request that this Honourable Court order that this exhibit be kept confidential and that access be restricted to the external solicitors and counsel acting for the parties.
6. In my experience, where sawlog production falls behind budget in the period July to December, it is difficult to recover this shortfall in the second half of the financial year. For example, in the financial year ended 30 June 2008, a poor start to the year resulted in a significant shortfall in sales for the financial year ended 30 June 2008.
7. Similarly a strong start to a financial year does not guarantee that contractual agreements will be met. During the financial year ended 30 June 2007, the Great Divide fires curtailed production between December and February. Despite the good start to the financial year with respect to sawlog production, this disruption resulted in a significant shortfall in sawlog sales for the financial year. This highlights the impact that unforeseen external events can have on sawlog production.
8. As a result, the gross profit from sawlog sales for the financial year 30 June 2007 and 30 June 2008 was lower than the gross profit from sawlog sales for the financial year ended 30 June 2009. The lower profit was in the order of \$76,251 in 2007-2008 and \$482,642 in 2006-2007. This profit is not recovered in subsequent financial years as it is dependent on both customers being willing to accept any shortfall in subsequent years, and VicForests ability to produce additional volume over and above base contract commitments in subsequent financial years. I have been informed by Bob Humpherries, owner of VicForests' customer Hallmark Oaks, and believe that some customers opted to source sawlogs from alternative suppliers such as Forests NSW when it became evident that VicForests would not meet contractual obligations in the financial year ended 30 June 2008.
9. The profit figures in paragraph 8 reflect total sawlog production in the East Gippsland Forestry Management Area over a financial year. Sawlog production from coupes 840-502-0015 and 840-502-0019 represent VicForests' higher margin sawlog sales due to the quality and yield of sawlog obtained from this area. Therefore the loss of these coupes from production will have a greater relative impact on profit than the figures in paragraph 8 above. As highlighted in CM17, in addition to the fact that there will be a production shortfall of 6,000m³, the sawlogs from alternative areas generate a lower gross profit for VicForests.
10. As set out in paragraph 7 of the Second Affidavit, VicForests is already behind budget for the first two months of the financial year ended 30 June 2010. The present weather conditions are such that harvesting can now commence in coupes 840-502-0015 and 840-502-0019, which are expected to yield a significant volume of sawlog. If VicForests were prevented from harvesting in coupes 840-502-0015

an




and 840-502-0019, it is unlikely that VicForests could make up the production shortfall, which, in turn could result in a permanent loss of profits akin to the financial year ended 30 June 2007 as set out in paragraph 8 above.

SWORN at MELBOURNE

on

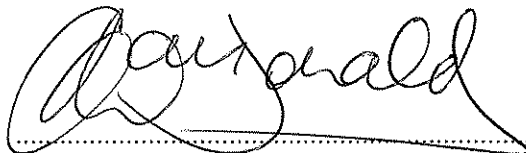
14 September 2009

Before me:



.....**Carlos Alberto Gutierrez**.....

**Level 21, 570 Bourke Street, Melbourne
An Australian Legal Practitioner
(within the meaning of the
Legal Profession Act 2004)**



.....
Cameron MacDonald

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
JUDICIAL REVIEW AND APPEALS LIST

No. 8547 of 2009

BETWEEN

ENVIRONMENT EAST GIPPSLAND INC

Plaintiff

and

VICFORESTS

Defendant

CERTIFICATE IDENTIFYING EXHIBIT

Date of Document: 14 September 2009

Filed on behalf of the Defendant

**HWL Ebsworth Lawyers as agents for Komesaroff
Legal Pty Ltd**
Level 21, 570 Bourke Street
Melbourne VIC 3000

Solicitor Code: 179
DX: 564, Melbourne
Tel: (03) 8633 7500
Fax: 1300 365 323
Ref: JAK:RVH:182227

This is the exhibit marked "CM19" produced and shown to CAMERON MACDONALD at the time of swearing his affidavit this 14th day of September 2009.

Before me:

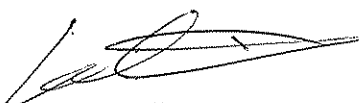

Carlos Alberto Gutierrez
Level 21, 570 Bourke Street, Melbourne
An Australian Legal Practitioner
(within the meaning of the
Legal Profession Act 2004)

Exhibit "CM19"

Table setting out VicForests' saw log production for the financial years ended 30 June 2007,
30 June 2008, 30 June 2009 and 30 June 2010.

Sawlog D+ sales
East Gippsland FMA

	<u>Aug YTD</u>	<u>Dec YTD</u>	<u>June YTD</u>
Volumes			
2009/2010	10,507	-	-
2008/2009	10,642	48,297	107,907
2007/2008	9,888	41,619	98,976
2006/2007	12,041	48,577	89,595
Sawlog Gross Profit			
2009/2010	367,469	-	-
2008/2009	399,538	1,657,277	3,371,106
2007/2008	364,586	1,493,291	3,294,856
2006/2007	405,782	1,530,037	2,888,464
Gross profit \$/m3			
2009/2010	34.97	-	-
2008/2009	37.54	34.31	31.24
2007/2008	36.87	35.88	33.29
2006/2007	33.70	31.50	32.24