



Supreme Court of New Zealand

23 April 2010

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

WYETH (NZ) LIMITED v ANCARE NEW ZEALAND LIMITED AND THE ENVIRONMENTAL RISK MANAGEMENT AUTHORITY

(SC 57/2009) [2010] NZSC 46

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

In a judgment delivered today, the Supreme Court has clarified the basis on which the Environmental Risk Management Authority (ERMA) should decide whether confidential information it holds concerning hazardous substances is to be made available to members of the public participating in its public hearings.

Under the Hazardous Substances and New Organisms Act 1996, hazardous substances may not be manufactured or imported into New Zealand other than with the approval of ERMA. Applications for approval must be publicly notified and any member of the public is entitled to make a submission on the application to ERMA and present it at a public hearing.

The appeal to the Supreme Court concerned an application to ERMA by Ancare New Zealand Limited to import and manufacture a veterinary drench which was a hazardous substance. Wyeth (NZ) Limited sought details of the composition of the substance for the purposes of making a submission on

Ancare's application. Ancare objected to release of the information, which it said was confidential. It contended that Wyeth would use the information for its own commercial purposes. The Authority refused to release the details of composition on the grounds of commercial confidentiality. Its decision was upheld on review by the Ombudsman. Wyeth appealed on questions of law and the matter eventually came before the Supreme Court.

In a unanimous judgment the Supreme Court has held that members of the public making submissions to ERMA on applications for approval to import or manufacture hazardous substances are entitled to an appropriate and fair hearing in accordance with the requirements of natural justice. The Act contemplates that, in appropriate cases, such a hearing can take place while preserving the confidentiality of the composition of the hazardous substances. The competing interests, which will usually be those of applicants in confidentiality and submitters in being fully informed, are to be reconciled by the Authority on the basis of principles set out in the Official Information Act 1982. Provisions in the 1996 Act for a public register of applications do not require additional disclosure of confidential information. Decisions of the Authority are subject to review by the Ombudsman.

Wyeth's appeal to the Supreme Court against a decision of the Court of Appeal upholding the decisions of the Authority in the particular case was dismissed.

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