



New Law Bulletin

Insurance Companies Not Always Right

Do you always assume what the Insurer has said to you is always the right answer?
Do you believe when an Insurer declines to pay out as a result of an accident that they have in fact got it right?

Let's take a look at a recent decision in the High Court of Australia – "Maxwell –v- Highway Hauliers Pty Ltd [2014] HCA33".

This is a decision in the High Court handed down in September 2014 where an insurer refused to pay two claims as the result of losses caused when B Double Trucks were involved in a collision.

Firstly you should know that in "Maxwell" (mentioned above), drivers of the B Doubles were required to have a PAQS driver profile score of at least 36 to be covered by insurance.

The two claims occurred at times when each of the trucks was driven by a driver who did **not** have a PAQS test score.

The insurer refused to pay the claims.

The owner took the insurer to Court and cited Section 54(1) as being applicable, that is the insurer could not refuse to pay a claim in circumstances where there is **an act** by its insured which would otherwise entitle the insurer to decline indemnity. The insurer can only reduce the claim amount paid by that extent to which the insurer has been prejudiced, as a result of that **act**.

The insured trucking company was initially successful in the Supreme Court of Western Australia. The insurance company appealed to the Court of Appeal and was unsuccessful. The insurer then sought special leave to appeal to the High Court but was again unsuccessful.

The High Court said by allowing each of the trucks to be driven by the "non-compliant" driver this was **an omission** of the insured.

You see "**an omission**" as compared to "**an act**" is viewed very differently under Insurance Law.

Therefore, in circumstance where an insurer does decline a claim it would always be wise to seek legal advice about the nature of that declination.

The insurer may in fact be wrong in so declining the claim, entitling the insured to indemnity under the contract of insurance.

Should you require any information or advice about such matters, please do not hesitate to contact **rb lawyers**