



Recent Decision Bulletin

Insurer Gets Canned in The High Court

Recently in the High Court, a single Judge gave an insurer a hard time over costs, the decision of Certain Lloyd's Underwriters -v- Cross [2015] HCA52.

In this case, the claims related to claims on policies for “personal injury damages” which were caused by assaults.

The matter was run as a test case and proceeded at first instance in the District Court and then proceeded to the Court of Appeal in New South Wales and then subsequently to the High Court.

It must be appreciated that before the High Court considers a case, “Special Leave” must be granted. Special Leave will only be granted in certain circumstances (as we shall see in the much publicised R -v- Baden-Clay Case).

The appeal related to costs orders as at first instance in the District Court, the insurer Defendant was required to pay Plaintiff's legal costs.

On appeal, the insurer was again ordered to pay costs.

The insurer sought special leave of the High Court but on an undertaking that it would pay the costs of the appeal in any event.

However, the insurer argued that the normal rule should apply, that is that the loser pays costs. It sought that the original Plaintiffs pay the insurer's costs of each appeal to the Court of Appeal or alternatively, that there be no costs awarded.

The insurer went on to argue that the Court made a mistake about who should pay the costs and so the “slip rule” should be applied. This is the inherent power that a Court has to correct minor mistakes that are made in giving Orders and Judgment.

The Court said that this is however one to be exercised sparingly.

The insurer further argued that there was no argument about what costs Order should have been made in the Court of Appeal.

Therefore, at the end of the day the insurer's Application to the High Court was unsuccessful so they would again have to pay costs.

With respect to the insurer and its lawyers, this case reflects experience that we have had with insurers who take an arrogant approach to the position of the Courts and their obligations.

However, given that this is a decision from the Highest Court of the land, it is hopeful that insurers may in future, take a more reasonable approach.

We shall see. (But let's be honest isn't it good to see them punished!)

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