



Supreme Court of New Zealand

23 December 2013

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**BFSL 2007 LIMITED & ORS v PETER DAVID STEIGRAD
(SC 19/2013)**

**ERIC MESERVE HOUGHTON v AIG INSURANCE NEW ZEALAND LIMITED
(FORMERLY CHARTIS INSURANCE NEW ZEALAND LIMITED) & ORS
(SC 21/2013)**

[2013] NZSC 156

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.

These two appeals concern the effect of s 9 of the Law Reform Act 1936, which imposes a statutory charge over insurance money payable to an insured to indemnify the insured for damages or compensation payable to third party claimants.

The issue in these appeals is the nature and effect of such a charge and in particular:

- (a) whether the charge secures whatever is eventually held to be the full amount of the insured's liability to the third party claimant, with no payments

under the policy able to be made which would deplete the insurance money available to meet the insured's liability to the third party should it be established; or

- (b) whether the charge secures the insurance money that remains at the time of judgment on, or settlement of, the third party claim against the insured, allowing in the meantime the payment of other sums (including defence costs) that fall due for payment under the policy even if that depletes the sum available to meet the third party claim.

Both appeals relate to actions brought against the directors of certain companies that have collapsed. The first appeal (SC 19/2013) concerns an action brought by the receivers of the Bridgecorp group of companies against the former directors, including Mr Steigrad. The second appeal (SC 21/2013) concerns an action brought by Mr Houghton in a representative capacity on behalf of shareholders who invested in Feltex Carpets Ltd, against a number of parties, including the directors of Feltex.

The directors in both appeals are covered by directors' liability insurance policies. The insurance policies in both cases cover not only claims for losses resulting from breaches of duty as directors but also the costs of defending any actions brought against them. The limit of indemnity provided under the policies constitutes combined policy limits, which apply to the aggregate of liability to third parties and defence costs. In both cases, the damages claimed against the directors far exceed the policy limits in each insurance policy.

The appellants in both appeals submit that they have a statutory charge over the insurance moneys payable to the directors in respect of their claims, with the effect that defence costs cannot be paid under the policies if to do so would deplete the funds available to meet the directors' liability if eventually established (being the interpretation set out at (a) above). This interpretation was held to be correct by the High Court in the Bridgecorp proceedings.

The respondents argue that s 9 is not designed to interfere with the contract between the directors and their insurers and therefore that, until liability is established, payments for defence costs may be made as they fall due under the policies (being the interpretation set out at (b) above). The respondents' interpretation was upheld on appeal in both the Bridgecorp and Houghton cases in the Court of Appeal.

The Supreme Court has, by majority (comprising the Chief Justice, Glazebrook and Anderson JJ) held that the statutory charge covers whatever the amount of liability to the third party eventually turns out to be. Reimbursement to the directors of their defence costs is not within the statutory charge. It is immaterial under the statute that the contractual obligation to pay the directors' defence costs arises when the costs are incurred and that liability on the claim for damages is not yet determined or payable. The effect of the charge is that payments under the insurance policy to meet the directors' defence costs can be met only at the peril of the insurer when there is insufficient insurance cover under the limit of the policy to meet both insurance obligations.

McGrath and Gault JJ would have upheld the Court of Appeal's decision that the statutory charge did not have the effect of preventing the directors from accessing the insurance money to cover their defence costs.

In accordance with the views of the majority, the appeal is allowed.

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