



Market spared influx of GFC-generated D&O claims

by Kate Tilley, *KT Journalism*

Despite the impact of the global financial crisis, the insurance market is unlikely to face a mass of successful D&O claims, says Robert Merkin, Professor of Law, University of Southampton, and a consultant to the UK firm Barlow, Lyde & Gilbert LLP.

Delivering the annual Geoff Masel memorial lecture series for AILA around Australia, Prof Merkin said the GFC had led to a mass of claims against directors, officers, auditors and others in several jurisdictions, most importantly in the United States.

“Claims are being brought by shareholders alleging negligence in bank lending policies and against companies [that] have bought bank loans that have proved to be toxic.

“Less plausibly, but equally true, claims are being brought by debtors against creditors on the basis that, without negligence, loans would not have been made to them and they would not have incurred unaffordable liabilities,” he said.

Shareholders

Prof Merkin said D&O policies were being “dusted off and scrutinised”. But insurers were unlikely to face serious ramifications for two reasons. “First, the US apart, the law is unlikely to impose liability on directors in their personal capacities, because duties are not owed to shareholders individually or third parties dealing with the company, only to the company itself.

“Secondly, even where liability is established, it is most unlikely to be covered by a D&O policy.

“So the substantive coverage of a D&O policy is, in most cases, going to prove illusory.”

Prof Merkin said underwriters were likely to face successful claims of only two types, defence costs and, more particularly in the London market, reinsurers could face claims over allocation and aggregation.

“D&O policies contain a variety of different provisions for defence costs: some will respond and some will not.”

Defence costs

He noted online advertisements for D&O cover on broker and insurer sites said how significant D&O cover was, but examples of coverage provided in cases on those websites all related to defence costs or the costs of defending regulatory proceedings.

“It is also interesting to note that cases on D&O policies (and there are many from Australia, New Zealand, Canada and England) are concerned almost exclusively with defence costs cover, and there is – and that is arguable – only one on substantive coverage,” Prof Merkin said.

The second area of potentially successful claims was an issue mainly for the London reinsurance market, ie, claims against reinsurers by D&O carriers in other jurisdictions, particularly the US market.

“Reinsurance claims raise issues of allocation of losses between policy years, aggregation and – the last resort

of the scoundrel – compliance with claims conditions,” Prof Merkin said.

Reinsurances

He said claims the London market was likely to face from D&O insurers, particularly US carriers, raised procedural (notification) and substantive (coverage) issues.

Similar claims could conceivably arise from Australia.

“Reinsurances of D&O policies are not drafted as clearly as they might be, often because the notification clauses have been lifted from casualty covers where they make sense and dropped into liability policies where they do not,” Prof Merkin said.

Reinsurance policies typically required the reinsured to notify the reinsurers, within a limited period, once they obtained knowledge of any loss.

“The problem is, whose loss is being referred to? In a D&O case, potential losses are those suffered by stockholders (when their shares plummet), directors (when they are successfully sued or when they settle) and the reinsured (when the liability of directors is established and quantified),” Prof Merkin said.

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News from the branches

Victoria

by Peter Chapman

In the August issue, we were counting down the weeks to the conference.

Then it was on us and whoosh it's gone. Conference chair Peter Rashleigh, the conference committee and all the Victorian committee members are collectively wiping their fetid brows.

It was an interesting, informative event, combined with more than a little fun. We trust all attendees gained from the experience both technically and socially.

However, just to show the conference was not all that was on our minds, the seminar program continued before and after.

When Good Products Go Bad was a joint event held with the National Public Liability Association in early August, hosted by Raff Pisano, Minter Ellison.

In a hypothetical based on the recall of a medical product, the expert panel of Tracie Thompson, regional manager, crisis management, AIG; Felicity Cull, senior associate, Mallesons Stephen Jaques; Steve Heather, director, RQA Asia Pacific Pty Ltd; and Veronica Scott, senior associate, Minter Ellison; reviewed the situation.

Moderator Annette Hughes, NPLA president and partner and head of the product liability practice group at Allens Arthur Robinson, controlled the event.

The September seminar slipped into early October when the subject of professional standards legislation was aired.

The seminar was hosted by David Abell, from ANZ. David Leggatt, partner, DLA Phillips Fox, reviewed the nature of professional standards liability schemes, the impact they may have on litigated claims and the risks for insured professionals.

Mr Leggatt was supported by Toby Preston, professions manager, Aon, to provide a broker perspective.

Close on the heels of the conference, Prof Robert Merkin delivered the Geoff Masel lecture. The well-attended event was chaired at short notice by immediate past national president Chris Rodd.

The concluding seminar for the year, on double insurance, was held in mid November and presented by Michael Thomson, SC, of the Victorian Bar.

The seminar concentrated on the ramifications of two Victorian Supreme Court decisions, *Insurance Aust Ltd v HIH (2006-08) VR 528* and *HIH Claims Support Ltd v Insurance Aust Ltd (2009) VSC 434*. (see page 11)

This being the last newsletter for 2009, chairman Keiran O'Brien and the Victorian committee send season's greetings to all.

Queensland

by Rebecca Stevens

Queensland's final seminar for 2009 was on November 19, with Richard Perry, SC, presenting on *Are insurance contracts still privileged?*

He considered the case of *Wingecarribee Shire Council v Lehman Bros Australia Ltd (No 2)* in which the Lehman Bros administrator was ordered by the Federal Court to hand over to Wingecarribee Shire Council, copies of all insurance contracts, including professional indemnity and D&T contracts, that may indemnify Lehman Bros. (see page 13)

The Federal Court determined that orders of the type usually described as Mareva injunctions may be granted in circumstances where there is no evidence of an intent to remove or dissipate assets, but simply to ensure there are assets available to a plaintiff to satisfy a potential judgement.

Mr Perry considered if that approach was consistent with authority and principle, what circumstances might enliven the jurisdiction and what, if any, limits might be appropriate?

Further, where do administrators, liquidators and insurers stand where such a jurisdiction is exercised?

The Queensland AGM was scheduled for December 2.

In 2010, the Insurance Law Intensive is planned for May 6-7.

Western Australia

by Sue Taylor

WA's successful breakfast seminar program has continued with seminars on directors & officers' insurance, expert evidence, managing information in litigation and the proposed harmonised occupational health & safety laws.

I thank our incredibly talented speakers for their time.

The annual dinner dance at the Parmelia Hilton on August 22 was a night of great food, fabulous wine and good music. More than \$2,000 was raised for the Princess Margaret Hospital for Children through raffles held during the evening – thanks to all the prize donors. We were delighted immediate past national president Chris Rodd, and his wife, Sue, were able to join us for the dinner dance. Thanks to the social committee for all their hard work.

The Geoff Masel lecture in November and the traditional "The Year That Was" seminar in December complete the 2009 program. The December seminar coincided with WA's AGM.

On behalf of the AILA committee for 2009, I wish everyone a safe and happy Christmas and New Year.

Christchurch

by Richard Johnstone

Melissa Borcoski, of Kennedys, discussed the High Court decision *Arrow International Ltd v QBE* (June 2009) at a seminar on Monday, October 12.

She provided insights into the operation of liability wordings and triggers for coverage.

The last event for 2009 was an insurance law miscellany presented by the Wynn Williams & Co insurance team on Monday, November 23.

News from the branches

New South Wales

by Penny Paterson

We are coming to the end of an extremely busy year for the NSW branch and I thank everyone involved in the committees and sub-committees for making the year such a success.

The Twilight Seminar Series is over for another year and we are in the early planning stages for the 2010 series. The series, as usual, was extremely well received and I congratulate the Twilight Seminar sub-committee for arranging such a great series. I thank Minter Ellison for hosting the seminars and all the speakers involved in presenting the various topics.

AILA had a co-badged seminar, entitled *When Good Products Go Bad*, with the National Products Liability Association. Annette Hughes, NPLA president and a partner at Allens Arthur Robinson, was the moderator.

Prof Robert Merkin spoke at a Spotlight on Reinsurance seminar which considered the House of Lords decision in *Wasa v Lexington*.

The Young Professionals Network sub-committee has been extremely active with its biggest event of the year, *Summer Stimulus*, held on November 5 at the GPO hotel.

It was a sensational evening with nearly 500 people attending. Thanks to sponsors e.law, Holman Webb, Hunt & Hunt, Austbrokers Professional Services, G Hughes & Associates, Matson Driscoll and Damico, without whom the event could not have taken place. I congratulate and thank the sub-committee for the huge amount of work required to arrange the event.

The AGM was on November 4, in conjunction with the Geoff Masel memorial lecture, presented by Prof Merkin. The following were elected to the NSW committee:

Chairperson	David Lee
Secretary	Linda Hamilton
Treasurer	John Edmond
Immediate past chairperson	Michael Raymond

Committee

Henry Alexander
Peter Backe-Hansen
Dallas Booth
Nick Codd
Alan Conolly
Robert Crittenden
Justine Hall
Matthew Harding
Jason Howard
Mohinder Kumar
Peter Mann
Paul O'Brien

Thanks to Minter Ellison, Allens Arthur Robinson, Hunt & Hunt and Holman Webb for allowing AILA NSW to use their premises for seminars and meetings during the year.

The first event for 2010 will be a general tort law seminar on March 3. Watch the website for more details. AILA NSW also is planning a seminar series aimed specifically at young professionals during the year.

If you would like to see any particular topics or speakers presented at a seminar, please contact me, as suggestions are always welcome.

Northern Territory

by Eric Hutton

The AILA NT Branch hosted the first in the series of Geoff Masel memorial lectures, presented by Prof Robert Merkin, on October 26.

It was attended by 20 people with an interest in insurance law, 16 of whom were lawyers. The lecture was very well received.

Territory Insurance Office provided the venue and drinks for the occasion. AILA provided the catering.

Afterwards, the local AILA branch executive dined with Prof Merkin and his wife. Prof Merkin was presented with a small traditional Aboriginal artwork, painted by famous local actor David Gulpilil, to remind him of his very short visit to the territory.

Editorial submissions

AILA encourages members to submit editorial contributions for consideration for publication in *AILA-NZILA News*. Contributions will be included at the editor's discretion. They should be supplied as a Word document by email to ktj@bigpond.com well in advance of the final deadline (see page 16).

Articles should cover topics of interest in furthering insurance law education, for example, case notes and commentary on topical issues.

Articles should be non-technical, written in plain English, and a maximum of 750 words.

Letters to the editor are also welcome, as are suggestions for leads the *AILA-NZILA News* journalists can pursue.

For all editorial inquiries, please email the editor Kate Tilley (see above) or phone (07) 3831 7500. We look forward to receiving your contributions – this is your publication, have your say.

Season's greetings

AILA wishes all members a happy festive season and best wishes for the new year.





Craig Langstone

Varied program enthrals NZ delegates

The 18th annual New Zealand Insurance Law Association conference, held in Auckland on November 5-6, was an unqualified success.

Feedback received by the organising committee during the conference was that the panel of speakers and wide range of topics dealt with were exactly what attendees wanted.

The first speaker after the conference was formally opened was Chris Ryan, CEO of the Insurance Council in New Zealand. His paper was entitled "*Government initiatives and inclinations now challenging insurance thinking*" and the title aptly summed up what he had to say. It was particularly interesting to hear how the change of government in New Zealand just over a year ago has impacted on the Insurance Council and what might be broadly labelled "the big picture" for the insurance industry in New Zealand. Clearly, challenges and opportunities lie ahead.

The second speaker is a man well known to Australians and New Zealanders, retired Queensland judge Desmond Derrington, QC. His talk was called "*A miscellany of traps and terrors*". Many insurance issues that regularly confront insurance law practitioners and their clients were examined and dismantled. The numerous topics covered were dealt with clearly and succinctly, thus making difficult issues and concepts seem straight forward. The audience would

have liked more.

On behalf of NZILA, I thank Mr Derrington for taking time out of his very busy schedule to travel to New Zealand and speak at the conference.

After lunch, Anna Sandiford, of Forensic & Scientific Research Ltd, spoke about the use of scientific techniques and forensic science in insurance cases. Ms Sandiford was involved in a very high profile criminal case in New Zealand involving David Bain. Judging by comments later in the day, more work from insurers will come Ms Sandiford's way in the future.

Dale Donaldson, general manager of Vero General Corporate, gave a very humorous insight into underwriting behaviour. The concepts of "COPE" and "HOPE" were explained and a bastardised version of the courtroom scene from "*A Few Good Men*" was a real highlight.

Following afternoon tea, Duncan Webb, Professor of Law and Legal Complaints Review Officer, asked whether there was a rule of proportionality in insurance law. The answer, it appears, is largely "no", although in certain areas of NZ insurance law the concept has some application. Prof Webb's presentation was entertaining and thought provoking.

Rounding off the day was Royden Hindle, of the Human Rights Review Tribunal. He gave numerous examples of the wide-ranging cases that reach the tribunal and, interestingly, raised the question of whether there has been any proper thought given in New Zealand to the appropriate level of damages that ought to be awarded for stress and inconvenience.

The first speaker on Friday morning was Crossley Gates, special counsel at DLA Phillips Fox. He provided a considered and comprehensive review of reforms

coming our way in New Zealand.

The second session was a panel discussion on the current state of the New Zealand market. Panel members were John Lyon, CEO of Lumley General Insurance; Geoff Blampied, CEO of Aon New Zealand; and Kerry Gupwell, CEO of McLarens Young International.

All three speakers were excellent, very candidly setting out their views of problems the industry faces (apparently insurance is not "sexy") but highlighting also the "positives" of the industry.

The session attracted the most questions from the audience; no doubt reflecting the limited opportunity most attendees have to access three CEOs from three large insurance entities at one time and the interest in what they all had to say.

The final session was a general insurance law update from Neil Campbell, barrister and conference organising committee member. He walked the audience through a handful of recent NZ decisions in insurance law. Over the past year, NZ insurers seem to have had a better rate of success in the courts than in previous years. Accordingly, the update was rather better listening than in years gone by!

Most of the papers presented are available for viewing on the NZILA website.

Thanks to the sponsors of the 2009 NZILA conference. Conferences cannot take place without the continued support of sponsors.

I wish all members of AILA and NZILA and their families a very merry Christmas and a happy and prosperous New Year. Make sure you all take time to recharge the batteries and come back revitalised for 2010.

Craig Langstone
NZILA President ■



David McKenna

The High Court has handed down its decisions in the *Scott* and *Adeels Palace* cases that I outlined, among others, in my paper to the AILA conference in Melbourne (See *AILA News Conference 2009* issue).

The High Court has clarified the liability of publicans and I welcome the decisions. I'm sure the insurance industry will do likewise.

It is refreshing to see a common-sense attitude prevailing.

In the *Scott* case, The High Court held that neither a hotel proprietor nor the licensee had a legal duty to refuse a customer access to his motorcycle and its keys to prevent him suffering an injury caused by his consumption of alcohol.

Alcohol reading

Shane Scott had asked the publican at a Tasmanian hotel in 2002 to put his motorcycle in a storeroom because he wanted to avoid being breathalysed on the way home. Later, after arguing with a friend, he asked for the motorbike back, drove towards his home, had a crash and died. His blood alcohol reading was 0.253.

The High Court said the informal arrangement for storing Scott's motorcycle was for his own convenience, but did not empower the licensee to deny Scott's right to recover the keys and the motorcycle, should he request them.

The court also held that the duty argued for by Scott's widow would have conflicted with Scott's right and

Common-sense attitude prevails

capacity to act in accordance with his own wishes, and would have been incompatible with other legal duties that bound the licensee.

The High Court ordered judgement in favour of the proprietor and the licensee.

Prevent injury

In *Adeels Palace*, the court ruled the Adeels Palace Restaurant should not be held liable for injuries arising from violent conduct, in circumstances where the evidence did not establish there was action it could have taken which would, on the balance of probabilities, have prevented that conduct from occurring.

While the restaurant owed a duty to all its patrons to take reasonable care to prevent injury arising from the violent, quarrelsome or disorderly conduct of other people, the High Court held it was unnecessary to determine whether there had been a breach of the duty.

The evidence did not establish that greater security, if it had been provided, would have deterred or prevented a gunman who re-entered the premises and shot two men.

The NSW *Civil Liability Act* required the two injured men to establish that the restaurant's negligence in failing to provide any or sufficient security was a necessary cause of the damage they each suffered.

However, the court said the evidence only went as far as to establish that, if there had been more security, it *might* have prevented the injuries caused by the gunman. It did not show that more security *would*, on the balance of probabilities, have prevented the injuries.

Geoff Masel lectures

The last of the Geoff Masel memorial lectures has been delivered by Robert

Merkin, Professor of Law, University of Southampton, and a consultant to the UK firm Barlow, Lyde & Gilbert LLP. On behalf of AILA, I thank Prof Merkin for travelling to Australia to present the series.

There were excellent attendances at all locations and the subject was very topical, given that the global financial crisis has resulted in many claims against directors and companies (see p1).

The excellent paper will be an invaluable resource for those working in the D&T area and maintains the high standard we have always enjoyed with the memorial lecture series.

AILA is delighted that former High Court judge Justice Michael Kirby has agreed to present the 2010 Geoff Masel memorial lecture tour.

Website access

AILA members will by now have received instructions on how to access the members-only section of the AILA website that houses the library archive.

This excellent resource is a work in progress, with new material being added frequently, so it pays to check the site regularly for new information.

Season's greetings

As this is the December issue, I'd like to offer season's greetings and best wishes for the new year to all members of AILA and NZILA.

I trust you will enjoy a festive break with family and friends and return revitalised in 2010 ready for an enjoyable year ahead.

Please stay safe as you enjoy your holidays.

David McKenna
President ■

Courts disagree on damages for loss of a chance

Stress test for survival

by Michael Mills, Edmund Barton Chambers, Adelaide

Decisions of the Full Court of SA in *Queen Elizabeth Hospital v Curtis* (2008/344) and the NSW Court of Appeal in *Gett v Tabet* (2009/76) reveal conflict in the state courts' approaches to the proof required to establish a claim for damages for loss of a chance.

While both were medical negligence cases, it would be unwise to assume the approaches adopted will be confined to such cases in the future.

In *Curtis*, there was no dispute the hospital was under a legal duty to take precautions to protect *Curtis* from risks associated with the illness of meningitis and that, by omitting proper treatment, the hospital substantially increased her risk of loss of hearing.

The hospital accepted that an inference could be drawn that it caused the hearing loss because it breached its duty. However it argued that, in the circumstances, the inference was too weak to support a conclusion, on the balance of probabilities, that it caused *Curtis*'s hearing loss.

It was held however that, because the loss of hearing had occurred, the law treats the increase in risk as sufficient basis, in the absence of evidence on how the meningitis occurred, for an inference that the omission of proper treatment materially contributed to *Curtis*'s hearing loss. Causation was held to have been established.

Curtis contrasts with *Gett v Tabet*, where the NSW Court of Appeal rejected loss of a chance of a better outcome as a basis for a claim in negligence.

Tabet was diagnosed with a brain tumour on January 14, 1991. The diagnosis was made following a seizure, a CT scan and EEG.

She received treatment, including surgery to remove the tumour, and suffered irreversible brain damage.

She brought proceedings against a specialist paediatrician, alleging he had been negligent in his treatment of her.

The primary allegation was that the CT scan should have been done earlier, either on January 11 or 13, and that, if it had, *Tabet* would have had a better medical outcome.

The specialist succeeded on appeal because *Tabet* had not established, on the balance of probabilities, that any harm was suffered because of his breach of duty.

The Court of Appeal held that the NSW case of *Rufo v Hosking* and the Victorian case of *Gavalas v Singh*, which had been put forward as Australian authorities for awarding damages for loss of a chance of a better medical outcome, were plainly wrong and should not be followed.

They were wrong because awarding damages for loss of a chance of a better medical outcome altered the principle of causation, as the plaintiff did not need to prove the damage was caused by the breach of duty.

Though the point was not argued on appeal, the court said the general principle that a causal connection between the tortious conduct and the plaintiff's injury must be established was now expressly enacted in various state *Civil Liability Acts*.

Further, it might be thought inappropriate for the general law to develop a concept of harm that departed from the assumptions underlying a tolerably uniform statutory definition of harm in the *Civil Liability Acts*, which implicitly do not include a risk of physical or mental injury.

Special leave has been granted to appeal to the High Court in *Gett v Tabet*, so it is possible there will be a High Court decision that clarifies the proper approach to proof of causation for loss of a chance of a better outcome in medical negligence cases, if not generally.

In the meantime, insurers may consider it prudent to appraise claims for damages for loss of a chance with that possibility in mind. ■

The GFC has shown financial institutions can no longer follow lessons of the past, but must embark on stress testing and scenario analysis to ensure survival, says KPMG financial services chair Dr Andries Terblanché.

Academic economic theory could not keep pace with the changes the global economy created, he told Barry & Nilsson seminars in Sydney and Brisbane. A "spaghetti web of inter-relationships" developed as countries became more economically dependent and more nations joined "the global village". That created increased volatility in the financial sector.

In the past, political boundaries, time zones, physical distances and language had been barriers to the global economy, but technology had broken them down.

Before the GFC, no one saw "the tidal wave building", because financial organisations thought the 1950s-60s economic theories and models "would still protect us". Economies were "built on the wrong foundations", Dr Terblanché said.

Although the GFC's "deep dive" was over, and many economies had "crash landed", there were still difficulties ahead. They included rising inequality between rich and poor in the US; adjustable rate mortgages, which reset in 2010-11, hiking mortgages by an average \$US1,000/month; and increasing credit card debt.

The US was beset by a trend for fewer family members sharing larger homes, which were financed by debt "because it was cheap". That dilemma was unravelling, heightening the inequality underlying it. Underemployment masked true unemployment figures, because many people worked fewer hours.

A better trade balance was needed, with countries not being predominately either buyers or sellers. Australia's biggest risk was underinvestment in R&D, particularly for environmental technology. Australia had to capitalise on its "smarts".

The Australian Government was doing "mostly sensible things" to cope with the GFC. The stimulus package investments in infrastructure were positive, he said.

The biggest challenge was not to "lose the momentum" of the GFC. If nations worked together they could overcome the formidable future obstacles, Dr Terblanché said. ■

Reinsurer liability well established

From page 1

The drafting gave no clue as to which was being referred to and, although reinsurers wanted to be notified at the earliest possible stage so they could exercise rights on negotiation and settlement, the wording used “is more consistent with casualty rather than liability coverage”.

The principles governing reinsurer liability were now well established in English law. In essence, a reinsured could make a successful claim if it could satisfy a two-limb test. The reinsured must establish and quantify its own liability to the reinsured; and the loss must fall within the terms of the reinsurance.

Less conclusive

Prof Merkin said a reinsured could establish and quantify its own liability by being sued to judgement by the assured; losing an arbitration; or entering into a settlement with the assured. Judgements and awards were more or less conclusive, but a settlement was binding only if the reinsured could show he was liable for at least the sum of the settlement.

“That may have to be done in declaratory proceedings against the reinsurers following the settlement. In practice, however, most reinsurance agreements contain some form of follow the settlements (or follow the fortunes) provision, the effect of which is that the need to establish and quantify liability as a matter of law is replaced by an obligation on the reinsurers to accept the settlement unless they can prove it was not made in a bona fide and businesslike fashion.”

Prof Merkin said the second limb was more problematic. “London market facultative policies normally contain one or other of the variations of the ‘full reinsurance’ clause which, stripped to its basics, provides ‘as original’ (incorporating the terms of the direct policy into the reinsurance) and ‘follow the settlements.’”

Prof Merkin said using identical

wording in the insurance and reinsurance contracts gave rise to a presumption of ‘back to back’ cover, so if the reinsured established it faced liability under the direct policy on the claim, the words of the reinsurance were not to be construed any differently and the reinsurers faced the same liability.

Applicable laws

“This is so even if there has been some change in the law so the liability under the direct policy was significantly more extensive than could have been predicted when the covers were taken out. More problematic is the situation in which the direct insurance and the reinsurance are governed by different applicable laws.

“This is almost an inevitability where the insurance is placed in Australia, given the rules demanding the application of local law to most forms of insurance in s8 of the Insurance Contracts Act 1984 (Cth), whereas reinsurance is outside the Act (so different legal principles would apply)

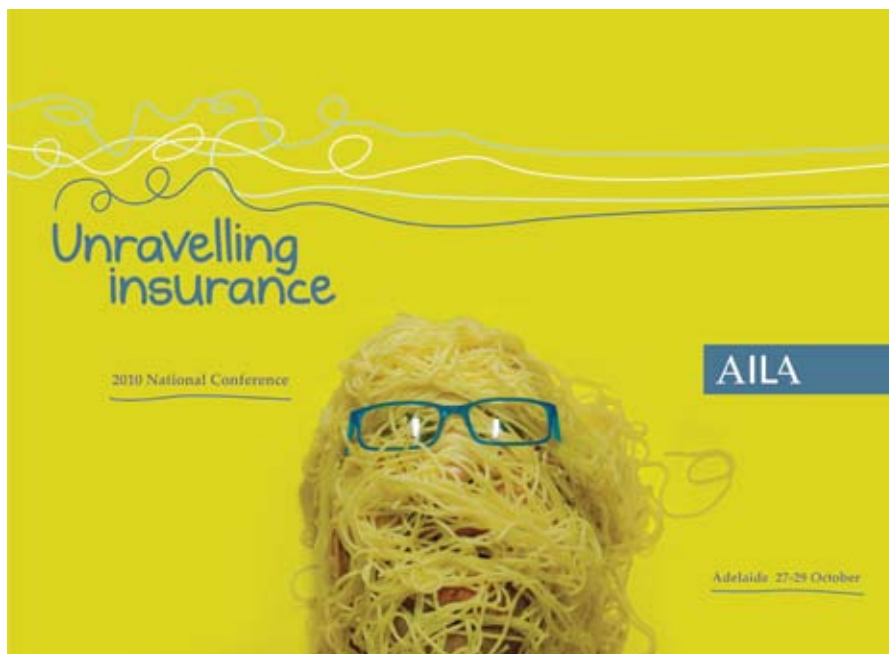
and in any event – if placed in England – only exceptionally to be governed by anything other than English law,” he said.

In Australia, directors faced liabilities under the *Corporations Act* and other regulations, but Prof Merkin said the only situation in which a company director could incur personal liability to a third party was where he [sic] was acting outside his capacity as director and on his own behalf, “a finding which would take him outside the scope of any D&O cover he might hold”.

The *Corporations Act* allowed a company to indemnify a director against liability, including liability for legal costs. However restrictions were imposed.

Prof Merkin said D&O cover had been available in Australia since 1975 in three forms. With side A cover, insurers agree to pay any loss suffered by a director where the director has not been indemnified by the company.

Continued page 8



The AILA national conference for 2010 is in Adelaide, the centre of South Australia's booming wine industry. The closest vineyard is a cork toss from the city centre. Plan to be in Adelaide on October 27-29 next year for the conference and take some extra time off to enjoy the city's sights. For bookings and pre-registration, contact Amy Dolling, Senior Coordinator - Conventions and Events, at All Occasions Group. Ph +61 8 8125 2200 or go to www.alloccasionsgroup.com or www.alloccasionstravel.com.

More information on the program will be in the next issue of AILA News.

Common liability ‘most equitable’

Of three methods of calculating each insurer’s liability if double insurance existed, the best was the common liability method (CLM), Professor Martin Davies, from the Tulane Law School, New Orleans, USA, told the AILA Queensland Insurance Law Intensive.

The other methods were maximum potential liability (MPL) apportionment and independent actual liability (IAL) apportionment, which was the most common in Australia.

Prof Davies said there was no difference in apportionment between the methods if a claim was greater than each insurer’s policy limits. But there was considerable difference if the claim was less than one or more of the policy limits.

He argued CLM was more equitable because it was the only method that considered each insurer’s liability separately.

Prof Davies used examples to illustrate the differences. Under MPL: Policy A covers \$1,000,000, Policy B covers \$100,000. Loss is \$10,000.

Maximum potential liability under A+B is \$1,100,000

Policy A must cover 90.9% of the loss = \$9,090.91 (Policy A’s proportion of the MPL under both policies) Policy B covers only \$909.09

The principal criticism was that MPL reduces Policy B’s exposure according to the size of Policy A’s limits and Policy B covered \$100,000 without knowing about Policy A, yet is relieved of 90% of the burden because of the disparity between Policy A and Policy B.

Under IAL: Policy A covers \$1,000,000, Policy B covers \$100,000. Loss is \$10,000.

Total of independent actual liabilities is \$20,000, ie Policy A covers \$10,000; Policy B covers \$10,000. It is apportioned as Policy A covers 50% of the loss; Policy B covers 50% of the loss.

However, if the amounts were Policy A covers \$1,000,000, Policy B covers \$100,000. Loss is \$300,000. Total of IAL is \$400,000 – \$300,000 under Policy A, \$100,000 under Policy B – the Policy A covers 75% of the loss (\$225,000) and Policy B covers 25%

(\$75,000), ie, Policy A’s IAL (\$300,000) as a proportion of the total of IAL (\$400,000); ditto Policy B. Under MPL, the allocation of the same claim would be Policy A \$272,727 (90.9%) and Policy B \$27,273 (9.09%).

Under CLM: Policy A covers \$1,000,000, Policy B covers \$100,000. Loss is \$300,000.

The loss borne equally until maximum liability of Policy B is reached, so Policy A bears \$100,000, Policy B bears \$100,000. Policy A bears the remainder over \$200,000, so Policy A bears a total of \$200,000, Policy B a total of \$100,000.

Prof Davies said the *Insurance Contracts Act* preserved the common law but did not create a right to contribution, whereas the *Marine Insurance Act 1909 (Cth)* created a statutory right to contribution. It was up to the courts to determine which method would be used.

The CLM apportionment had Australian Law Reform Commission support, but was not commonly used in Australian courts.

Prof Davies said double insurance occurred accidentally when there was a second policy with a new insurer, the insured was unaware that policies overlapped, the insured failed to cancel the first policy or a third party took out insurance for an insured that already had cover. It occurred deliberately when an insured wanted protection against insurer insolvency.

The principle was that an insured could not recover twice over, but could elect against which insurer it would claim, unless a valid rateable proportion clause existed. ■



Prof Davies

Shareholder actions get HCA boost

From page 7

Side B covers any sums paid by the company to a director as indemnification for the director’s own liability. A director may not sue under side B cover; the only insured is the company.

With side C cover, which is available as a stand-alone policy, the company insures against its own liability.

Prof Merkin said the increasing trend for shareholder actions against the company itself was given a significant boost by the majority decision of the

High Court in *Sons of Gwalia Ltd v Margaretic*. The ruling that shareholders ranked equally with unsecured creditors had the potential to erode personal cover available under side A. Prof Merkin suggested directors may want to buy their own personal cover. ■

AIDA World Congress meets in Paris

by Michael Gill

The XIII World Congress of the International Insurance Law Association will be hosted by the French Chapter of AIDA in Paris on May 17-20, 2010.

The two major themes deal with:

- Mandatory insurances: legal and economic myths and realities
- Climate change

A third plenary session, on arbitration, will be held on Monday, May 17.

The 11 AIDA working parties will meet during the congress to expand on their subject areas – accumulation of claims and subrogation; civil liability and insurance; motor insurance; marine insurance; reinsurance; state supervision of insurance; new technologies, prevention and insurance; distribution of insurance; transport and insurance; consumer protection; and collective insurance.

AIDA also is establishing a new credit insurance working party.

Australian reports on the two major themes have been provided. For climate change, the general reporter is Prof Marcel Fontaine and the



Australian reporter was immediate past AILA national president Chris Rodd.

On mandatory insurances, the general reporter is Professor Jerome Kullmann and the Australian reporter was Dallas Booth.

For more information on the congress, go to: www.aida.org.uk.

For registration and accommodation details, go to: www.aida-france.org.

For online registration, please email aida2010@clggroup.com to receive a link.

The congress coincides with AIDA's 50th anniversary. Australian delegates can be assured of an opportunity to meet a great community of people with an interest in insurance and the law from all over the world.

Registration is €600 until March 1, 2010, and then increases to €750. If you register before December 15, the rate is only €500.

May 2010 is not far away – Paris in the spring time beckons. ■

Call for transparency in insurance

The US-based Risk & Insurance Management Society (RIMS) has called for complete transparency and full disclosure of all revenue streams linked to placement of insurance products.

It has released an executive report, *A practical guide to insurance broker compensation and potential conflicts of interest for the risk manager*, to assist risk managers to understand insurance broker compensation and potential conflicts of interest. The guide has been distributed to Risk Management Institution of Australasia members.

A RIMS spokesperson said the report aimed to raise awareness of the potential pitfalls surrounding insurance transactions.

"In ideal settings, insurance brokers and risk managers are working toward a

common goal, marketing the insured's coverage to achieve optimal results," RIMS external affairs committee director Deborah Luthi said. "However, because the industry has yet to mandate full disclosure, risk managers must be diligent in the broker selection process," she said.

"This report gives them the tools they need, not only to successfully make that selection, but to drive a higher standard of conduct industry-wide."

RIMS released a revised position statement on broker compensation alongside the executive report. It reiterates the guide's call for full transparency and addresses broker-marketed new products and services to carriers.

"While RIMS takes no issue with new

products, there must be a separate agreement between the two parties which does not link these services to specific clients," Ms Luthi said.

"However, if a broker receives payment from both the carrier and the buyer for placement of insurance products, all transparency requirements should adhere to that transaction."

RIMS' calls came as another chapter opened in an ongoing US insurance bid-rigging saga.

A US District Court writ lodged by commodity producer Seaboard Corporation alleges global broker Marsh and insurer AIG engaged in business steering and bid-rigging in a case dating back to before 2004.

Continued page 10

Judge rejects NRMA's arguments

CTP insurer NRMA has been ordered to pay more than \$1.2 million in compensation to a Sydney man whose credibility as a witness was questioned by the judge deciding the case.

An NRMA spokesperson said the insurer planned to appeal against the decision.

The NSW Supreme Court (NSWSC) heard John Checchia, then 31, sustained initially superficial injuries from a January 2003 collision between his bicycle and a car in which he was thrown over the vehicle's bonnet.

He later developed a back complaint, underwent three spinal operations, and was awarded a \$1.225 million settlement of his CTP claim after NRMA accepted liability.

But in November 2006, NRMA advised it would not pay, citing evidence it received after the agreed settlement allegedly proving Mr Checchia failed to disclose a 1993 back injury sustained in a fall when working at a Sydney fruit market.

Inflated earnings

NRMA, part of Insurance Australia Ltd, also alleged Mr Checchia inflated his previous earnings, exaggerated his injuries from the 2003 incident and minimised the extent of his recovery. Mr Checchia was suing NRMA for the initial settlement amount.

In his decision, NSWSC Justice Stephen Rothman rejected the insurer's arguments about inflated earnings after considering evidence of wages paid to Mr Checchia by the owner of a Sydney coffee shop where he was working in 2003.

Justice Rothman also rejected NRMA's claim that a surveillance video proved Mr Checchia had exaggerated his condition.

He said Mr Checchia's filmed activities were not inconsistent with his injuries. Although Justice Rothman said Mr Checchia was overall not a witness "of truth or reliability".

"Some of his answers were disingenuous and dissembling. But not all of them were."

He found Mr Checchia had misled NRMA about his prior injury.

But the misleading conduct was not done to obtain a benefit to which he was not otherwise entitled.

"Indeed, on the assessment of damage, I have determined that, had the matter gone to hearing, Mr Checchia, on the true facts, would have received more than that for which the claim was settled."

Back injury

Justice Rothman calculated that the total damage assessed at a minimum basis if Mr Checchia were required to prove damage and have it assessed, would have been \$1.298 million.

He said several relevant aspects of evidence given in support of Mr Checchia's claim proved he displayed no symptoms of the previous back injury from about 1994 until the date of the motor vehicle accident in 2003.

Moreover, the lack of outward signs of a back injury included periods during which Mr Checchia played sport, was involved in household chores, engaged in usual activities within the family and assisted in building his home.

It was revealed in court that Mr Checchia's CTP claim which NRMA alleged was misleading because it did not disclosing Mr Checchia's prior work injury of 1993 was completed by his wife, who did not recall the work accident in 1993.

She had completed it because Mr Checchia was in pain because of his injuries.

Justice Rothman said he accepted the evidence of Mrs Checchia, who was "forthright, seemingly honest and prepared to give evidence she seemed to assume was inconsistent with the interests of Mr Checchia".

Mr Checchia had experienced no symptoms of his 1993 back injury before the January 2003 incident. Consequently, even NRMA's medical witnesses conceded his impairment for the purposes of compensation under NSW's *Motor Accidents Compensation Act* "is entirely due" to the 2003 incident.

Medical specialist

Justice Rothman also found it was "not totally accurate" for NRMA to suggest it had not known of Mr Checchia's earlier spinal problem, pointing to an October 2005 medical specialist's report to the insurer that referred to a previous back injury.

He ordered NRMA to pay interest from November 2006 on the original settlement.

(NSWSC, *Checchia v Insurance Australia Ltd t/a NRMA Insurance*, 1005/2009) ■

Insured sparks legal action

From page 9

The lawsuit against Marsh and AIG alleges the companies conspired to rig insurance bids, forcing Seaboard to pay higher premiums.

Seaboard wants to recover \$US66m (\$A72m) in premiums in addition to consulting fees.

Four years ago, parent company Marsh & McLennan paid \$US850m to settle then New York attorney-general Eliot Spitzer's investigation into contingent commissions.

Seaboard opted out of a resultant Marsh restitution fund, instead electing to file an individual suit against Marsh and AIG.

The company cited the extent of Marsh's unlawful conduct and the volume of commissions paid as reasons for the individual suit. ■

HIH fund considers appeal

Further litigation is expected in a dispute that started at Melbourne's 1998 Formula-1 Grand Prix and has since been considered by courts in two states and the High Court of Australia (HCA), says a lawyer for one of the parties involved.

In the latest move, the fund established by the Howard government to meet policyholder obligations after HIH Insurance Group's 2001 collapse failed to convince Victorian Supreme Court (VSC) Justice Elizabeth Hollingworth it was a double insurer with the provider of liability cover to race organisers.

Justice Hollingworth rejected arguments by HIH Claims Support Ltd (HCSL) that Australian Grand Prix Corporation's (AGPC) insurer should foot half a \$1.315 million damages bill the fund met on behalf of a former HIH policyholder.

AGPC held liability cover for contractors and subcontractors with SGIC General Insurance Ltd (SGIC), now part of Insurance Australia Ltd (IAL), IAG's listed entity.

The legal fight started after a March 1998 incident in which a 4.9-tonne outdoor video screen fell off scaffolding before the race. Ronald

Steele, trading as Dragon Scaffolding, was sued by Screenco Pty Ltd, which had supplied the screen to AGPC.

Following a September 2002 NSW Supreme Court judgement ordering Mr Steele to pay Screenco \$1.461 million, HCSL met 90% (\$1.315 million) of his liability.

Previously, in January 2000, proceedings had moved to the VSC when SCIG disputed HIH's claim for equitable contribution from SGIC.

In August 2005, after Mr Steele sought indemnification under the SGIC policy, VSC Justice Bernard Bongiorno found the SGIC policy did respond to Mr Steele's liability in the NSW proceeding and IAL was liable to contribute to half the costs.

IAL appealed against the decision and in October 2007, the Victorian Supreme Court of Appeal found in its favour against Mr Steele but upheld Justice Bongiorno's ruling in favour of HCSL.

Justices Alex Chernov, David Ashley and Robert Redlich said IAL was relieved of any obligation to indemnify Mr Steele because of the HCSL payment, which they characterised as a contractual indemnity.

Mr Steele sought special leave of the High Court to appeal against the Victorian Appeal Court decision and clarify the effect of the HCSL payment but, on May 23, the High Court refused to hear his application.

Subsequently, HCSL sought an equitable contribution from IAL in the VSC. IAL denied it had any obligation to make contribution to HCSL on several grounds, including:

- proper analysis of the support scheme and the arrangements between Steele and HCSL showed HCSL had a primary obligation of indemnification and any obligation on IAL was a secondary obligation,
- even if HCSL and IAL's obligations were equal, HCSL had no obligation at the relevant date, being the date of the incident, and
- the obligations of HCSL and IAL were not co-ordinate and there was no obligation on IAL to make equitable contribution to HCSL.

In her ruling, Justice Hollingworth said it was accepted the IAL liability policy covered AGPC contractors and subcontractors.

But she found the date of the insured event, March 3, 1998, meant HCSL and IAL were not double insurers, adding it was not possible "to simply equate" HIH and HCSL and their obligations.

"I agree with IAL that, even if the obligations of HCSL and IAL were in the same degree, HCSL had no indemnity obligation as at March 3, 1998," she said. "HCSL did not even exist until 2001."

HCSL's lawyer, Philip Jones, a partner in the Melbourne office of Tress Cox Lawyers, said although a final decision had not been taken, there was "a fair prospect" of an appeal against the ruling. ■



Trowbridge: Insurance industry faces fundamental change in wake of GFC

by Eva Wiland, *KT Journalism*

A push for protection against investment and longevity risks and growing use of life insurance and salary continuance insurance are some of the fundamental changes wrought in the wake of the global financial crisis (GFC), says John Trowbridge, executive member of the Australian Prudential Regulatory Authority (APRA).

Addressing the Institute of Actuaries of Australia on the impact of the GFC, Mr Trowbridge said the changes were “likely to spawn a new range of products which give some form of asset or income protection against the volatility and uncertainty of investment performance and against the risk of living longer”.

He also predicted increased interest in protection against future inflation risk.

He expected growing use of life insurance and salary continuance insurance by superannuation funds, including industry funds. The bigger industry funds were already generating “a form of indigestion within the life industry” because of the large scale and limited period of their insurance contracts.

“We now have an inefficient market operating, as evidenced by many of the larger life insurers not participating in industry fund tenders because of the upheaval that occurs at each renewal, usually every three years.”

Sharp reminder

Mr Trowbridge predicted a restructuring of that market, “perhaps along the lines of the coinsurance practices managed by general insurance brokers on behalf of large corporates when they buy their insurances”.

He said the general insurance industry had a wake-up call and was very much on its guard – “a sharp reminder of the traps of volatile investment conditions and uncertain economic times”. The pricing implications were clear – lower

interest rates required higher prices.

Although a recovery in confidence, a fall in credit spreads and a rise in longer interest rates since December 2008 had improved the position, relatively adverse economic conditions were “very likely to generate increased claim activity in the period ahead”.

Mr Trowbridge said there were some lessons to be learned for retail superannuation funds, many of which were within life companies or groups owning life companies.

He said there was now increasing evidence that low-cost funds tended to perform better than higher-cost funds.

“Debates are emerging about unbundling sales and advice expenses from distribution and other operational costs, and about the suitability of various commission arrangements.”

Capital requirements

He said APRA’s role was two-fold since taking over responsibility for prudential regulation from the Life Insurance Actuarial Standards Board (LIASB):

- to assess capital requirements and risk management requirements to ensure the risks are properly understood and managed, and
- to review capital and other prudential requirements generally.

Mr Trowbridge said APRA would follow closely developments in the European life and general insurance industries, assessing capital and other requirements against Solvency II.

He noted the convergence or harmonisation of life and general insurance standards in Solvency II and other places.

Accounting standards in insurance were another vexed issue. Strong efforts had been made internationally through the International Accountancy Standards Board and USA’s Financial Accounting Standards Board to develop new, commonly agreed accounting standards.

“Under pressure from the G20, they have been making rapid progress recently and yet there continue to be fierce divisions of opinion on some key issues,” Mr Trowbridge said.

He noted consolidation had become a major regulatory issue internationally because of the GFC, typified by the “AIG experience”.

“On one hand, not one policyholder had been denied benefits in any of the hundred-plus subsidiaries of AIG in the US or elsewhere but, on the other hand, a single unregulated subsidiary of the group had made claims on the parent which the parent could not meet because insurance supervisors around the world were effective in quarantining the assets of each insurer,” Mr Trowbridge said.

International initiatives were in progress through the International Association of Insurance Supervisors and the joint forum on consolidated group supervision.

In Australia, that topic was high on APRA’s agenda. “We have succeeded in introducing group supervision already for general insurers,” Mr Trowbridge said.

Twin-peaks model

“With the legislative power now to authorise life insurance non-operating holding companies, we are moving towards consolidated group supervision for specialist life insurance groups and conglomerate financial groups.”

Mr Trowbridge said APRA’S response to the GFC would be modest and there would be little new regulation because Australia’s “twin-peaks model” of APRA for prudential regulation and the Australian Securities & Investment Commission for market conduct had successfully navigated the industry through “the worst of the GFC”. ■

Lehman Brothers turns to High Court

Entities within the collapsed US-based Lehman Brothers (LB) group have been granted High Court leave to appeal against a Federal Court Full Court (FCAFC) ruling that exposed them to lawsuits from Australian clients wanting to recover investment losses.

In September, the FCAFC found in favour of three Australian municipal councils that argued a deed of company arrangement (DOCA) covering LB Australia Ltd (LBA) was invalid.

The now-void DOCA would have provided for the councils to recover only 2c to 12c in the dollar.

The City of Swan, Parkes Shire Council and Wingecarribee Shire Council claimed the DOCA, devised by LB Asia Holdings Ltd (LBAH), wrongly blocked claims against the insurance policies of LB entities and gave LBA's administrators final say on claims against the firm for losses the councils sustained in collateralised debt obligations.

The councils sued three LB companies and two PPB partners, Stephen Parbery and Neil Singleton. PPB, which was appointed voluntary administrator to LBA on September 26, 2008, said it was "in the best interests of creditors that they resolve in favour of Lehman entering into a DOCA" proposed by LBAH.

On May 21, Justice Steven Rares agreed with Wingecarribee that the DOCA was

problematic. He allowed the council to discover the insurance documents ahead of a second creditors' meeting that was scheduled for May 27.

Justice Rares based his decision on conduct constituting "abuse" from the draft DOCA.

"In my opinion, the question whether a respondent or defendant has assets that are available to satisfy a judgement and whether there is another party who may be liable ... are matters which are within the power of the court to require to be disclosed in the proceedings themselves," he said.

On May 26, hearing an appeal from LBA, the Federal Full Court's Justices Peter Jacobson, John Middleton and Nye Perram disagreed with Justice Rares' ruling and set aside the May 21 decision. (*FCAFC, Lehman Brothers Aust Ltd v Wingecarribee Shire Council, 63/2009*).

The judges acknowledged Wingecarribee Shire Council's desire to determine if there was an insurance policy which responded to its exposure from alleged "misrepresentations said to have been made by directors of Lehman to officers of the council in relation to investment in collateral debt obligations (CDO)".

But they found there was no evidence to suggest a draft DOCA was likely to have been passed at a creditors' meeting if administrators failed to provide information about Lehman Brothers' insurance arrangements.

On September 25, the three Federal Full Court Justices Rares, Perram and Margaret Stone decided the LB DOCA was "void and of no effect".

They said "impugned" clauses were "not severable and not capable of binding creditors in respect of their rights against persons or entities other than the company".

In his September 25 judgement, Justice Rares said "there are 308 litigation creditors of Lehman Australia that held CDOs that Lehman Australia had acquired for them, or on their behalf, bearing a face value of \$1.283 billion". (*FCAFC, City of Swan & Ors v Lehman Brothers Aust Ltd (subject to a DOCA) & Ors, 538/2009*)

On October 2, the case returned to Federal Court when Justice Rares appointed Mr Singleton and Mr Parbery liquidators of LBA "on a final basis".

"Having regard to the determination by the Full Court that the deed was void, it is inevitable that the company must be wound up," he said.

"It is plainly insolvent, as is accepted by all parties and the circumstances in which the deed was entered into in the first place."

The case was scheduled for a High Court hearing on December 11. (*FCA, City of Swan v Lehman Bros Aust Ltd, 1160/2009*) ■

IAG reaffirms margin forecast

Insurance Australia Group Ltd says it is likely to deliver an insurance margin for 2009-10 at the upper end of its 9%-11% guidance.

That is provided losses from weather events remain within its \$350 million provision and there is no significant turbulence in foreign exchange rates or share markets.

At an investor briefing in Sydney, IAG

CEO Mike Wilkins said the group had experienced performance improvements in the first quarter of the current financial year.

They were attributed to the ongoing contribution of premium rises in 2008-09, tighter cost controls, improvements in IAG's performance in New Zealand and the commercial brand CGU, more stable investment markets and the group's reduced exposure to

the underperforming UK motor market.

"If operating conditions experienced to date continue for the remainder of the [2009-10] year we will be on track to report a full-year insurance margin approaching the upper end of our 9%-11% guidance," Mr Wilkins said, adding the forecast was subject to "normal caveats around natural perils and investment markets". ■

Insurance law came with the Territory

by Eva Wiland, *KT Journalism*

It was more by accident than design that Eric Hutton, now 12 months at the helm of AILA in the Northern Territory, became involved in insurance law.

He told *AILA News*, insurance law came with the territory when he joined Sydney-based law firm Hunt & Hunt in Darwin in November 1997.

Insurance law had always been a core area for the firm since it was established as an insurance and conveyancing law firm in 1929.

The firm now has offices in most Australian states and territories, and in Shanghai, operating in the commercial, property and insurance areas. Mr Hutton became a partner in July 2000, less than three years after joined Hunt & Hunt.

Mr Hutton started his legal career with the Solicitor for the Northern Territory after a long career in court administration in NSW and the Northern Territory.

His areas of expertise are personal injury, workers' compensation, motor vehicle accidents and personal liability.

He has 15 years' experience in litigation in most courts and tribunals in the Northern Territory and has advised government departments and conducted litigation to recover debts to the Crown.

At Solicitor for the Northern Territory, he advised several government departments.

He practised in general litigation, including claims by and against the Northern Territory, and represented the territory in courts, statutory boards, tribunals and coronial inquiries.

A major part of his practice was insurance litigation, including claims

under the Work Health Act of NT, medical negligence, personal injuries and property damage claims. Mr Hutton said *Santos Ltd v Chaffey* was one case that stood out in his mind.

"It was a constitutional matter and we took it to High Court," he said.

"It entailed ... the validity of an amendment of the *Work Health Act* which affected the payments of

compensation to workers.

"It was a very good outcome for the insurance industry and saved millions of dollars."

Mr Hutton said he had been an AILA member for many years but, with only 20 territory members, his time

over the past 12 months heading the Northern Territory branch had not been "terribly busy".

With such a small membership, it

meant "we have to rely on others in providing us with educational material and information".

When Mr Hutton is not involved in litigation, he keeps busy looking after his eight classic Ford cars, which are his "obsession".

He is president of the Classic Ford Club of the NT, which was formed in 2005.

His interest in Ford cars began when, as a young man, he was unable to persuade his bank manager to lend him enough money to buy a Mini Cooper S. He ended up with a Ford Escort 1300, which was cheaper.

Originally from Bellingen, on the NSW north coast, Mr Hutton's move to Darwin was a "real sea change".

Married since 1972, he

has two adult children – a daughter who lives in New Zealand and a son who also lives in Darwin – and two grandchildren. ■

'Good outcome for insurance industry'

'Darwin a real sea change'



Eric Hutton wasn't mad keen on AILA News running his photo, but was happy to share one of an old MK 1 Cortina... one of his obsessions.

People

Dee Wood (pictured right) has joined Carter Newell's litigation & dispute resolution team in Brisbane as an associate.



Dee Wood

She has more than 10 years' experience in commercial and professional indemnity litigation. She has spent the past five years with Minter Ellison. Ms Wood has previously practised in London and is a former judge's associate in the NSW Dust Diseases Tribunal. Her main areas of practice include commercial litigation, general insurance, reinsurance and professional indemnity. Ms Wood is a member of AILA's Qld chapter committee and the Australian Professional Indemnity Group.

TurksLegal has appointed **Helen Mentiplay** as a senior associate in its insurance & financial services unit in Melbourne. She joined TurksLegal Melbourne in 2005. Her areas of

expertise include defending life and disability insurance claims, handling insurance recoveries and property, motor vehicle, public liability, product liability, fire and flood claims. Ms Mentiplay also works in the niche area of disability insurance claims.

Moray & Agnew has bolstered its Melbourne practice, hiring insurance experts **Michael Martin** (pictured right) and **Nigel Kemp** (pictured right). Both joined from Sparke Helmore. Mr Martin joins as a partner and has extensive liability and professional indemnity claims experience gained in advising Australian insurers, blue-chip corporations, Victorian Government



Michael Martin



Nigel Kemp

departments and councils over 26 years. He has significant experience defending large, complex recovery action claims brought by the Victorian WorkCover Authority and the Transport Accident Commission.

Mr Kemp joins as special counsel and has vast experience in representing major insureds and self insured corporations across various sectors, including manufacturing, telecommunications and government. His expertise includes advising on public liability, WorkCover (section 138) recovery claims and property damage recovery claims.

CLS Lawyers in Brisbane has promoted three senior associates to directors. **Louise Edmondson** specialises in professional and product liability, with expertise in dust disease related matters. **Ed Zappert** specialises in public liability, with extended experience in the mining industry. **Adam Buston** specialises in professional indemnity and public liability, with expertise in the hospitality industry.

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To join AILA, please complete an application form at www.aila.com.au

February 17

Insurance Council regulatory update
Sydney
Go to www.insurancecouncil.com.au

March 3

AILA NSW tort law seminar
Sydney
Go to www.aila.com.au

May 6

Insurance Council annual dinner
Sydney
Go to www.insurancecouncil.com.au

May 6 – May 7

AILA Qld Insurance Law Intensive
Go to www.aila.com.au

May 17 – May 20, 2010

AIDA World Congress
Paris, France
Go to www.aida-france.org

August 26

Insurance Council Melbourne dialogue
Go to www.insurancecouncil.com.au

October 16 – October 19

National Insurance Brokers' Association annual conference
Gold Coast
Go to www.niba.com.au

October 27 – October 29

AILA National conference, *Unravelling insurance*
Adelaide
Go to www.aila.com.au

November 17

Insurance Council cocktails
Canberra
Go to www.insurancecouncil.com.au

This newsletter is compiled by Kate Tilley Journalism Pty Ltd on behalf of the Australian Insurance Law Association and the New Zealand Insurance Law Association.

Editor: Kate Tilley

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