



NEWSLETTER

Coode & Corry

Solicitors

IS DIRECTORS INSURANCE WORTHWHILE ?

Directors often take out what is called directors and officers insurance to cover their legal costs if they are sued in their capacity as directors. A recent case involving the directors of the failed telco One.Tel raise some concerns about this type of insurance. The policy in the One Tel case stated that the legal costs would however not be paid by the insurer if the directors had been guilty of fraud and dishonesty.

The policy said that “this exclusion shall only apply to the extent that the subject conduct has been established by a judgement or other final adjudication adverse to the directors”.

There had not been any such judgement against the directors however the insurance company refused to pay the directors legal costs. The directors sued the insurance company but the court of appeal held that the insurer could refuse to pay the legal costs even though there had not been a judgement if it was acting “on reasonable grounds” and believed that fraud and dishonesty had occurred.

The problem is that the decision may set a precedent that could be followed by insurers in the case of “ordinary” people. Can the insurer avoid paying out by simply saying it believes there may have been fraud and dishonesty?

Care needs to be taken to read the

terms of any insurance policy to make sure that the coverage you are being promised is in fact what you want it to be. If you are still in doubt you should discuss this with the insurance agent/



CIRCA 1890

broker and possibly have your lawyer look at the policy before entering into it.

SALARY CAP BUNNIES

In the last edition of the newsletter we discussed a case concerning the South Sydney leagues club which we thought would be the last of the “Super League” cases. The point involved in that case was whether or not the restriction on the number of clubs that could play in the competition was an unlawful restraint of trade .

In that case the court said that even though the effect of the restrictions was to reduce competition the restrictions were not

unlawful because the purpose of the restrictions was to ensure that the competition remained financially

viable.

It seems to me that the same may be said about the salary cap, ie the ultimate purpose is to try and ensure that the clubs and the competition is financially viable. A competition dominated by a small number of wealthy clubs is not likely to last because all the “other” clubs will go broke eventually.

I imagine we have not heard the last of this issue.

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WE ARE ON THE WEB

We have opened our own website on the internet recently in an effort to keep up with the technological change that is going on around all of us, and in an effort to improve our ability to deliver good service to our customers.

Our website is located at www.coodecorry.com.au.

We have started out with a fairly straight forward website however as this is our first attempt at a website we would welcome any suggestions as to ways in which it can be improved. We have been fortunate that we have had the benefit of being guided along by Ron Brewster, a local website designer .

The website has a link to our email

address making it is a simple step to leave a message for us in regard to any suggested improvements to the website, or in regard to any matter.

COMPENSATION FOR THE COST OF RAISING A CHILD

Recently the High Court dealt with a claim by parents against a doctor for negligence after the wife became pregnant in spite of the doctor having performed an operation on her to prevent her falling pregnant again.

Part of the claim was for the cost of raising the child. The insurance company argued that the allowance

for the future financial expenditure the parents would incur should be reduced because the parents would get enjoyment from the child. The High Court rejected that argument , saying :

“The head of damages that is relevant in the present case is the financial damage that the parents would suffer as a result of their legal responsibility to raise the child. The benefits to be enjoyed as a result having a child are not related to that head of damages. The coalminer, forced to retire because of injury, does not get less damages for loss of earning capacity because he is now free to sit in the sun each day reading his favourite newspaper. Likewise the order for damages to the parents for future financial expenditure is not to be reduced by the enjoyment that they will or may obtain from the birth of the child”.

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