

# 2020 ANNUAL GENERAL INSURANCE LAW REVIEW

A snapshot of important 2019 court decisions and legislation together with commentary on developments affecting the General Insurance Industry for 2020

## WEBINAR: THURSDAY 25 JUNE 2020

Insurance Contracts Act | Policy Construction  
Regulatory | Professional Indemnity | Duty of Care & Causation | Class Actions  
Damages, Proportionate Liability & Limitation Periods | Short & Sharp

Presented by > [Chern Tan](#) [Partner, Minter Ellison] [Colleen Palmkvist](#) [Partner, Lander & Rogers] [Andrew Sharpe](#) [Principal, Meridian] [Ray Giblett](#) [Partner, Norton Rose Fulbright] [Rehana Box](#) [Partner, Ashurst]

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4 CPD Points > 4 legal (LPBWA Substantive Law) , 4 ANZIIF, 4 NIBA

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## Insurance Contracts Act

- Allianz v Certain Underwriters at Lloyd's [2019] NSWCA 271 – s45, double insurance
- DIF III – Global Co-Investment Fund LP v Babcock & Brown International Pty Ltd – s54, deeming provision in PI policy, whether relevant circumstances known; for D&O policy, whether circumstances notified related to the claim made and professional services exclusion
- Re Muriniti (No 2) [2018] NSWCA 311 – s.13, duty of utmost good faith, whether necessary for insurer to pursue appeal

## Policy Construction

- Tokio Marine & Nichido Fire Insurance Co Ltd v Holgersson [2019] WASCA 114 – inconsistency between Schedule and policy wording, 'Named Insured', incoherence, subrogation
- Bank of Queensland Limited v AIG [2019] NSWCA 190 – class action and aggregation clauses
- IG v Kaboko Mining Limited [2019] FCAFC 96 – insolvency exclusion and "arising out of"
- Delta Pty Ltd v Mechanical and Construction Insurance Pty Ltd [2019] QCA 62 – assignment of rights under liability policy, whether Delta was an insured
- XL Insurance v BNY Trust Company of Australia Limited [2019] NSWCA 215 – exclusion clause for valuations without "Prudent Lender Clause"
- Bechini v IUS Pty Limited [2019] NSWSC 427 – rectification of PI policy for architect
- Globe Church Incorporated v Allianz [2019] NSWCA 27 – limitation period for claim against insurer for property damage, when did the cause of action arise
- Dalby Bio-Refinery Ltd v Allianz [2019] FCAFC 85 – "heating" and "spontaneous" in exclusion clause
- UDP Holdings Pty Ltd v Ironshore Corporate Capital Ltd & Ors [2019] VSC 645 – W&I policy, its interaction with Share Sale Agreement and measure of "Loss"
- Young Investment Group Pty Ltd v QBE [2019] WASC 74 – financial adviser PI policy, unauthorised transaction exclusion and conflict exclusion, meaning of "insured", s601AG Corporations Act

## Regulatory

- Australian Securities and Investment Commission v Westpac Securities Administration Limited [2019] FCAFC 187 – distinction between general advice and personal advice; best interest duty
- Product Design & Distribution
- Unfair Contract Terms Legislation
- Claims as a Financial Service

## Professional Indemnity

- Atanaskovic v Birketu Pty Ltd [2019] NSWSC 1006 – fraud of employed solicitor, vicarious liability of law firm
- Liprini v McIntyre [2019] NSWSC 355 – solicitor settling dispute regarding father's estate prior to commencing proceedings against regarding mother's estate
- Coffey v Murrumbidgee Local Health District [2019] NSWSC 1265 – nervous shock suffered by mother arising from birth, child also sued for neuro-developmental impairment, s50 CLA
- Jams 2 Pty Ltd & Ors v Stubbings (no. 3) [2019] VSC 150 – accountant's negligence, independent financial advice prior to entering into loan
- Pitcher Partners Consulting Pty Ltd v Neville's Bus Service Pty Ltd [2019] FCAFC 119 – deceit, damages

## Duty of Care & Causation

- Lloyd v Thornbury [2019] NSWCA 154 Civil Liability Act 2002 (NSW), s 5B, 5D, 5R, 5S and s13 – identification of risk of harm, causation, contributory negligence and apportionment, damages
- Tapp v Australian Bushmen's Campdraft & Rodeo Association Ltd [2019] NSWSC 1506 – plaintiff's horse fell, obvious risk, dangerous recreational activity, risk warning, signed waiver, s60 CLA, s275 ACL
- Carter v Hastings River Greyhound Racing Club [2019] NSWSC 780 – greyhound racing attendant struck by mechanical bunny, obvious risk, dangerous recreational activity
- Cootes v Concrete Panels & Ors [2019] QSC 146 – Collapse of excavation, duty of care, contributory negligence, pre-existing medical conditions
- Roo Roofing Pty Ltd & Anor v Commonwealth of Australia [2019] VSC 331 – Home insulation program, duty of public authorities, negligent misstatements
- Hossain v Unity Grammar College Ltd & Ors [2019] NSWSC 1313 – gas explosion, contribution between school, builder, gas fitters and building inspectors

## Class Actions

- Weber v Greater Hume Shire Council [2019] NSWCA 74 – bush fire, indeterminate liability, s42 CLA
- Herridge v Electricity Networks Corporation (No. 4) [2019] WASC 94 – bush fire, indeterminate liability, non-delegable duties, landowner's duty, nuisance
- Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority trading as Seqwater (No 22) [2019] NSWSC 1657 – Queensland floods, negligence
- BMW Australia Ltd v Brewster; Westpac Banking Corporation v Lenthall [2019] HCA 45 – litigation funding, common fund orders

## Damages, Proportionate Liability & Limitation Periods

- White v Redding [2019] NSWCA 152 – eye injury from being hit by tennis ball, non-economic loss, future economic loss
- AEA Constructions Pty Ltd v Wharekawa; AEA Constructions Pty Ltd v Building Partners Pty Ltd [2019] NSWCA 176 – workman struck by nail from nail gun, non-economic loss, contribution
- Moggridge v The Benevolent Society [2019] NSWSC 638 – cost of past and future care

## Short & Sharp

- Mrdalj v Allianz Australia Insurance Ltd [2019] NSWSC 101 – action under Civil Liability (Third Party Claims Against Insurers) Act 2017 (NSW), whether exclusion clause operated to preclude access to insurance monies, exercise of court's discretion
- Royal & Sun Alliance Insurance plc v DMS Maritime Pty Ltd [2019] QCA 264 – whether amount in settlement deed fell within insuring clause
- Bucic v Arnej Pty Ltd [2019] VSC 330 – brick cleaner fell from scaffolding, duty of care of builder / occupier
- Owners – Unit Plan No 3115 v Masters Builders Fidelity Fund Scheme [2019] FCA 115 – whether builders fidelity scheme was regulated by Insurance Contracts Act
- R&B Directional Drilling Pty Ltd v CGU (No. 2) [2019] FCA 458 – loss of use v physical injury, exclusion for property in physical or legal control and for faulty workmanship