

Masterclass presented by the University  
of Western Australia and the Australian  
Insurance Law Association (Western  
Australian Branch)

## **SIR NINIAN STEPHEN INSURANCE LAW MASTERCLASS**

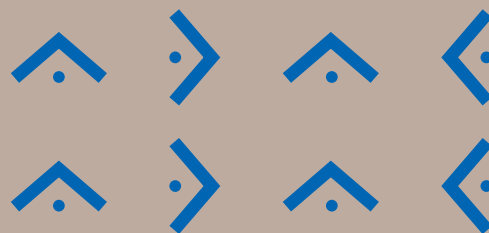
Insurance Gangnam Style (Redux)

Parmelia Hilton Perth Hotel,  
Mill Street, Perth 6000  
Friday, 19 May 2017

Masterclass commences  
at 8.30am for a 9.00am start,  
finishing at 4:30pm.

Online registration: [www.aila.com.au](http://www.aila.com.au)

Contact: Greg Pynt



# SIR NINIAN STEPHEN INSURANCE LAW MASTERCLASS

Insurance Gangnam Style (Redux)

PRESENTED BY

AILA



THE UNIVERSITY OF  
WESTERN AUSTRALIA

## SIR NINIAN STEPHEN INSURANCE LAW MASTERCLASS

Insurance Gangnam Style (Redux)

<b><u>8:30AM</u></b>	Registration, coffee and tea	<b><u>11:20AM</u></b>	Coffee and tea
<b><u>9:00AM</u></b>	Opening address: The Hon. Justice Ken Martin	<b><u>11:35AM</u></b>	<b><u>Limitation periods for insurance claims</u></b> Chairperson: The Hon. Justice Ken Martin 7. What is the Western Australia limitation period for a claim for indemnity under a liability insurance policy? Jenny Thornton (15 min) 8. When does a cause of action accrue for a claim for indemnity under a property damage insurance policy? Dr Ozlem Gurses (25 min) 9. When does a cause of action accrue for a claim for payment under a contingency insurance policy? Geoff Hancy (25 min). <i>CPD points – CA4: Substantive Law (Legal Knowledge) 1</i>
<b><u>9:10AM</u></b>	<b><u>Warranties and conditions</u></b> Chairperson: Justine Siavelis, Principal, Gilchrist Connell 1. What are the common law consequences for an insured that breaches or does not comply with a promissory warranty? The position in South Africa. Dr Andrew Hutchison (20 min) 2. What are the common law consequences for an insured that breaches or does not comply with a policy condition? Dr Ozlem Gurses (25 min) 3. What are the chances of an insurer proving an insured has breached or not complied with a 'Reasonable precautions' condition? Roger Traves QC (20 min) <i>CPD points – CA4: Substantive Law (Legal Knowledge) 1</i>	<b><u>12:40AM</u></b>	Lunch
<b><u>10:15AM</u></b>	<b><u>Section 54 of the Insurance Contracts Act 1984 (Cth)</u></b> Chairperson: Stephen Davies SC 4. How will I know a s 54 'limitation or restriction' inherent in a claim when I see one? John-Paul Wilson (25 min) 5. How will I know a s 54 'act or omission' when I see one? Samantha Traves (25 min) 6. Is it s 54(1) or is it s 54(2)? Joel Sheldrick (15 min) <i>CPD points – CA4: Substantive Law (Legal Knowledge) 1</i>	<b><u>1:45PM</u></b>	<b><u>Total and permanent disability benefits</u></b> Chairperson: Heather Osborne, Special Counsel, Jarman McKenna 'M', a full time auto mechanic living and working in Goomalling, is a member of a superannuation fund. 'T' is the trustee of the fund. The fund has taken out a Group Life Policy with a life insurer 'LI'. By the policy, LI promises to pay the fund a TPD benefit if it "provides proof to the satisfaction of LI that a member has become incapacitated to such an extent as to render them unlikely ever to engage in or work for reward in any occupation or work for which they are reasonably fitted by reason of education, training or experience." M left school aged 16 years. He is now aged 28 years. M suffered a permanent injury to his left leg when a truck wheel fell on it two years ago. He has not worked since. Medical and vocational expert opinion is

**1:45PM**  
**(CONT)**

that he can't work as a mechanic but he is physically, mentally and by way of aptitude, suited to work part time as a clerk, as a sales assistant in an auto parts shop or as a shop assistant in a 'do it yourself' warehouse like Bunnings or Ikea. He has never done any of those jobs before. A labour market expert says all of these jobs are available in Perth; none of them are available in Goomalling.

LI and T reject M's claim for payment of a TPD benefit.

10. Who does M sue and for what? How does M establish 'unlikely ever'? Ian Enright (25 min)

11. Is M reasonably "fitted" for work as a clerk, a sales assistant or a shop assistant? Phil Gleeson (15 min)

12. What are LI's obligations in reaching a decision on whether M is TPD? What will a Court do next if it finds T and LI acted unreasonably in deciding M is not TPD? Dr Robin Bowley (25 min)

*CPD points – CA4: Substantive Law (Legal Knowledge) 1*

**2:50PM****Some ethical issues**

Chairperson: His Honour Judge John Staude DCJ

Sometimes an insurer will offer to instruct and pay for a lawyer to take over the conduct of an insured's defence of a third party claim on condition that the insured agrees not to claim legal professional privilege as against the insurer in relation to the confidential communications it will have with the lawyer.

(a) Is it a breach of the insurer's duty of utmost good faith for it to ask an insured to give up any anticipated claim for legal professional privilege?

(b) Assume the insured agrees to give up any claim for legal professional privilege. The insurer appointed lawyer takes over the conduct of the insured's defence. The insured's Health and Safety officer subsequently passes on to the lawyer some information about the circumstances giving rise to the insured's exposure to the claim. The lawyer anticipates that if the insurer learned that information, it would seriously consider withdrawing indemnity on the basis of it. What should the lawyer do next?

**2:50PM**  
**(CONT)**

13. The South African position on (a) and (b) Dr Andrew Hutchison (20 min)

14. The Australian position on (a) and (b) Ian Enright (25 min)

15. Insured holds a liability policy with a \$15,000 excess. Insurer agrees to indemnify the insured against any liability it has to the third party in terms of the policy and takes over the conduct of the insured's defence of the third party claim.

Who has ultimate control over the defence of the action? Dr Brenda McGivern (20 min)

*CPD points – CA3: Ethics/Professional Responsibility 1*

**3:55PM**

**Closing address**

**4:05PM**

**Drinks and nibbles**

**About Sir Ninian Stephen**

Sir Ninian Stephen, past Justice of the High Court of Australia and past Australian Governor-General, made significant contributions to the development of insurance law. His judgment in the matter of *The Distillers Company Biochemical (Australia) Pty Ltd v Ajax Insurance Company Ltd* [1974] HCA 3; (1974) 130 CLR 1, is still regularly referred to more than 40 years later as the starting point for any discussion in relation to the post-contractual duty of utmost good faith and aggregation clauses.

**Dr Robin Bowley**

Robin Bowley commenced as a full-time lecturer with the Faculty of Law, University of Technology Sydney in 2014, having previously taught on a sessional basis since 2009. His principal fields of teaching and research are in Corporate Law and Insurance Law.

Robin is actively involved in professional bodies including the Australian Insurance Law Association (as a member of the NSW Education Committee) and the Governance Institute of Australia (as a member of the NSW State Council and the Corporate and Legal Issues Committee). He is a contributing author to a number of legal publications – including *Australian Corporations Law Principles and Practice* and *Australian Consumer Credit Law* published by LexisNexis, and *Robsons Annotated Corporations Legislation* published by Thomson Reuters.

**Ian Enright**

- Lawyer, academic author and company director
- Law firm partner, insurance executive and consultant
- Honorary Professor of Law at the University of Technology Sydney
- 35 years insurance and law experience
- Designed, developed and led the teaching for the University of New South Wales and University of Technology Sydney insurance course in the Master of Laws Degree in Australia
- Occasional lecturer and papers presented in commercial law subjects: Geneva Association, Warsaw University, London School of Economics, Cambridge University, University of Sydney and Monash University
- Author of the Anglo-Australian text *Professional Indemnity Insurance Law*, the second edition of which was awarded the 2008 British Insurance Law Association Book Prize as “the most notable contribution to literature in the field of law as it affects insurance”
- Co-author with Robert Merkin of *Sutton on Insurance Law* (4th edition, 2014)
- Appointed by the Insurance Council of Australia in May 2012 to conduct the Independent Review of the General Insurance Code of Practice
- Regular speaker for AILA and for NZLIA, including Geoff Masel Lecturer in 2015: “The Insurance Social Contract: 1788 and all that”
- FOS Panel member
- Life Member of the Financial Services Accountants Association
- Awarded the AILA Insurance Law Prize in 2015 in recognition of his contribution to Insurance law and Insurance law education

**Phil Gleeson**

Phil Gleeson is a Principal at Maurice Blackburn. He has 15 years’ experience as a lawyer in all aspects of personal injury compensation and civil claims. Phil was the founding Principal responsible for the first Maurice Blackburn office in Western Australia commencing in 2011. Maurice Blackburn opened their second office in the Perth CBD in 2015.

Phil assists people with compensation claims if they have been injured at work, in a motor vehicle accident, through medical malpractice or asbestos exposure, as a result of a faulty product, if someone else was to blame for an accident on public or private property, or if they need to make a claim against their superannuation or insurance policy. Most recently he was the solicitor with carriage of the Police taser assault and false imprisonment case decided by Her Honour Judge Davis on 9 December 2016, *Cunningham v Traynor* [2016] WADC 168.

### **Dr Ozlem Gurses,** **Kings College London**

Dr Özlem Gürses is a Reader in Insurance and Commercial law at King's College London. She studied law in Turkey and in the UK. Prior to joining King's College London Özlem was an Associate Professor of Law at the University of Southampton. Özlem is a member of the Presidential Council and the Reinsurance Working Party of AIDA. She is the author of the books Marine Insurance Law (2nd ed, 2016) and Reinsuring Clauses (2010). She has updated the fifth edition of The Insurance of Commercial Risks: Law and Practice (2016) which had been previously written by a different author. She has written a number of articles on insurance and reinsurance law the latest of which is on the insurance law reform in the UK. Özlem has also contributed to Insurance Disputes (in press) and Maritime Law (in press) by writing the property insurance and marine insurance chapters, respectively. She teaches insurance and marine insurance law at different courses in Italy, Germany and Greece.

### **Geoffrey Hancy**

Geoff Hancy is a barrister. He has represented clients in trials, appeals, mediations and arbitrations for more than 35 years. The majority of his cases have been disputes that applied principles of tort, contract, competition and consumer law, equity, insurance law or maritime law. He has been counsel in many hearings in the High Court.

Geoff is well known as a liability and insurance law lawyer but his experience extends to a broad range of civil and commercial law cases.

Geoff has acted as an adviser or court advocate on insurance law for more than 3 decades. He has been counsel in a number of important insurance law cases from trial to the High Court. As an adviser he has drafted insurance policy wordings. He has drafted legal tender guidelines and practice standards for litigation lawyers. He was selected and acted as the legal adviser to the Western Australian Legislative Assembly's Economics and Industry Standing Committee during its Inquiry into the 2011 Kimberley Ultramarathon fire.

Geoff's national reputation in insurance law was recognised in 2006 when he was awarded the Australian Insurance Law Association's annual Insurance Law Prize for substantial contribution to insurance law and insurance law education.

### **Dr Andrew Hutchison,** **University of Capetown**

Dr Andrew Hutchison is an Associate Professor in the Department of Commercial Law at the University of Cape Town. He is a contracts specialist and has published widely on contracts; insurance; constitutional/contract law; contract history; and comparative law. Andrew convenes the core module on commercial contracts at the University of Cape Town, as well as the elective on insurance. He has been a guest lecturer at the University of Florida; and a research visitor to Edinburgh Law School; the Max Planck Institute for Comparative and International Private Law in Hamburg; Deakin Law School (Melbourne); and the University of New South Wales. Andrew's new book, 'The Constitutional Dimension of Contracts: A Comparative Analysis', a collection of essays of which he is co-editor along with Dr Luca Siliquini-Cinelli of Liverpool Hope University, England, was published by Springer in March 2017.

### **Dr Brenda McGivern** **PhD; LLB (Hons); B.Com**

Dr McGivern is a legal practitioner and academic who practises, researches and teaches in the areas of health, torts and insurance law. She is the Deputy Executive Dean, and Associate Dean Community and Engagement, of the Faculty of Arts, Business, Law and Education (FABLE) at the University of Western Australia. Brenda continues to practise as a Consultant with Moray & Agnew Lawyers in Perth. She is also the Chair of the Reproductive Technology Council of WA, and a member of the Clinical Ethics Service for Princess Margaret Hospital and King Edward Memorial Hospital.

### **Joel Sheldrick**

Joel is a partner in Hall & Wilcox, Perth. He is an experienced and well-rounded insurance lawyer, who is always accessible to his clients and delivers prompt, pragmatic and comprehensive analysis and advice. Joel communicates difficult legal concepts and factual issues in plain language. He develops clear and precise claims management strategies for insurers.

Joel is an experienced advocate and represents insurers at all stages of litigation and has been recognised in the 2016 and 2017 Best Lawyers in Australia peer review for insurance law.

Joel is a WA Committee member for the Australian Insurance Law Association and is a member of the WA Law Society.

**Jenny Thornton**

Jenny is a partner in Clyde & Co, Perth. She advises insurers in a range of professional indemnity actions including in respect of engineers, architects, investment managers, financial planners, auditors, accountants, solicitors and medical practitioners.

Jenny also advises on directors and officers' insurance claims and, on insurers' instructions, defends directors/officers involved in commercial litigation and quasi-judicial inquiries. She has represented directors in actions alleging breaches of OH&S legislation and allegations of wrongful dismissal, misleading and deceptive conduct, and insider trading.

She advises on industrial special risks, contractors all risks and contract works policies. She also drafts and negotiates clauses in project contracts which reflect appropriate insurance arrangements and she handles coverage, defence and subrogated recovery matters.

Jenny has been recognised as a leading lawyer in Doyle's WA Professional Indemnity and Public Liability rankings and Australia's Best Lawyers (since 2011). She has also been named as a leading insurance lawyer in Australia in Chambers Asia Pacific and Legal 500 Asia Pacific (both since 2015).

**Roger Traves QC**

Roger Traves QC is a leading silk with a wide-ranging commercial, insurance and public law practice. He is a qualified mediator and former President of the Bar Association of Queensland.

**Samantha Traves**

Samantha Traves is a former Senior Lecturer and Visiting Fellow at the Faculty of Law, Queensland University of Technology where she was Head of undergraduate and postgraduate Insurance Law and Head of Commercial Law. In 2016, Samantha was appointed to lecture Commercial Law at the TC Beirne School of Law, University of Queensland. She is an admitted Solicitor of the Supreme Court of Queensland and since 2003 has been Consultant to Barry Nilsson Lawyers.

Samantha is the author of Commercial Law, LexisNexis, 4th ed, Due Diligence, LawBook Co (co-authored with Professor WD Duncan) and has published extensively in the area of insurance law. Samantha assisted in the drafting of insurance contracts legislation for Papua New Guinea, has been guest speaker at national and State insurance law conferences and was recently invited to participate in the Insurance Law Colloquium held by the National University of Singapore to celebrate the 250 year anniversary of Carter v Boehm. Samantha is a past recipient of the Australian Insurance Law Association (AILA) Insurance Law Prize and an Australian and New Zealand Institute of Insurance and Finance Award for excellence in the provision of education. She is a past member of the committee of the National Insurance Lawyers Group of the Law Council of Australia, serves on the Scientific Council of the Association International de Droit des Assurances (AIDA) and was the Reporter and Chair for the Session on Preventive Measures at the AIDA World Congress in Rome in October 2014. Samantha is a Member of the Queensland Law Reform Commission and in 2014 was appointed to the Queensland Civil and Administrative Tribunal.

**John-Paul Wilson**

John-Paul Wilson is a Principal of Gilchrist Connell, and has practised in the area of insurance law and litigation almost exclusively since commencing Articles in 1992. He has more than 24 years' experience in acting for insurers, self-insureds, and insureds in the defence of workers' compensation claims, employers' indemnity claims, public and product liability claims, property damage claims and others.

John-Paul has represented insurers and insureds in complex indemnity disputes, including acting for the successful insured in the unanimous decision of the High Court in Matthew Maxwell (on behalf of various Lloyds Underwriters) v Highway Hauliers Pty Ltd [2014] HCA 33; (2014) 252 CLR 590. He has also acted in pursuit of recoveries (workers' compensation, property damage, etc.) on behalf of insureds and self-insureds. He is the co-author of the most recent update of the Workers Compensation - Western Australia chapter of Halsburys Laws of Australia.

**Sir Ninian Stephen Insurance Law Masterclass**

Insurance Gangnam Style (Redux)

An insurance masterclass

Friday, 19 May 2017

Name	Registration fee \$330 including GST	Registration fee Full time student \$90 including GST
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**Cancellation**

AILA will refund the registration fee if cancellation is notified to AILA on or before 28 April 2017.

Replacement person/s may attend in a registered delegate's place.