IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M221 of 2015

ON APPEAL FROM THE COURT OF APPEAL OF THE SUPREME COURT OF VICTORIA

BETWEEN:

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CGU INSURANCE LIMITED
(ACN 004 478 371)

Appellant

and

ROSS BLAKELEY, MICHAEL RYAN & QUENTIN OLDE AS JOINT AND SEVERAL
20 **LIQUIDATORS OF AKRON ROADS PTY LTD (IN LIQ) (ACN 004 769 895)**

First Respondents

AKRON ROADS PTY LTD (IN LIQ)
(ACN 004 769 895)

Second Respondent

TREVOR PAUL CREWE

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Third Respondent

ROBERT MARK SILL

Fourth Respondent

JOHN MARTIN SILL

Fifth Respondent

CREWE SHARP PTY LTD (IN LIQ)
(ACN 066 670 013)

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Sixth Respondent

FIRST AND SECOND RESPONDENTS' SUBMISSIONS

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Part I: Publication

1 The First and Second Respondents (**Akron and its liquidators**) certify that these submissions are in a form suitable for publication on the Internet.

Part II: Issues

2 Akron and its liquidators contend that the appeal raises the issue whether an insurer may be joined as a defendant to a proceeding by a person who claims against an insolvent insured.

Part III: Section 78B of the *Judiciary Act 1903* (Cth)

3 Akron and its liquidators certify that they have considered whether a notice should be given under section 78B of the *Judiciary Act 1903* (Cth) and that no notice needs to be given.

Part IV: Material Facts

4 The factual background set out in the summary of argument of the Appellant (**CGU**) needs to be augmented and clarified by reference to the following matters.

5 The amount of the claim in the proceeding is $14.6 million. Neither Crewe Sharp nor Mr Crewe will be able to satisfy a judgment. Crewe Sharp is in liquidation. Although Mr Crewe is not bankrupt, the uncontroverted evidence is that he has limited assets,[1] which would be insufficient to cover the multi-million dollar claim against him in this proceeding.

6 Although Crewe Sharp's claim for indemnity for the insolvent trading claim was formally made in December 2013, CGU has agreed to treat an earlier notification of the claim – in June 2010 – as applicable to the insolvent trading claim.

7 In correspondence, Mr Crewe expressly disagreed with CGU's denial of indemnity,[2] and the liquidator of Crewe Sharp stated that he was not aware of the action Crewe Sharp took in response to CGU's denial of indemnity and, in the absence of funding, was not in a position to investigate why indemnity was denied.[3]

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[1] Exhibits RAB-8, RAB-9 – setting out Mr Crewe's financial position as at 31 July 2011. There is no reason to believe that his financial position has improved since then. More recently, at a directions hearing on 5 June 2015 (after the conclusion of the hearing of the appeal in the Court of Appeal), Mr Crewe's counsel stated that Mr Crewe could not even afford to pay for part of the costs of a special referee.

[2] Reasons for judgment of the Court of Appeal at [11].

[3] Reasons for judgment of the Court of Appeal at [12].

At first instance, CGU opposed the joinder application on two grounds (a) the absence of jurisdiction to grant declaratory relief about a private contract at the suit of a stranger, and (b) the insurance policy, on its terms, did not provide cover to Mr Crewe and Crewe Sharp in relation to the claims in the proceeding. The judge at first instance rejected both contentions. Subsequently, on appeal, CGU pressed only the first ground.[4] Therefore, this Court need not be concerned with whether the policy, on its terms, responds to the claims made in the proceeding.

Part V: Applicable Statutes

8 Akron and its liquidators agree with CGU's statement on applicable legislation and wishes only to add reference to the *Civil Procedure Act 2010* (Vic).

Part VI: Statement of Argument

The insolvency provisions

9 Section 562 of the *Corporations Act 2001* (Cth) and s 117 of the *Bankruptcy Act 1966* (Cth) – which apply respectively in company liquidation and personal bankruptcy– permeate every aspect of the joinder application, and provide an answer to every argument made by CGU.

10 Those sections apply where an insured, prior to liquidation or bankruptcy, entered into a contract of insurance to insure against liability to third parties. They provide for payment of the insurance proceeds 'to the third party'. As correctly held by the Court of Appeal,[5] insurance proceeds in the hands of a liquidator or trustee in bankruptcy of the insured are payable to the claimant, and are not divisible among the creditors of the insured.[6] This is consistent with the purpose of those provisions (and their predecessors), which was to reverse the problem identified by this Court in *AssetInsure*,[7] where at common law insurance proceeds were distributed among the insured's creditors, rather than paid solely to the claimant that invoked the policy.[8]

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[4] Reasons for judgment of the Court of appeal at [14].
[5] Reasons for judgment of the Court of Appeal at [34].
[6] As explained by King CJ (with whom the other members of the Full Court of the Supreme Court of South Australia agreed) in *JN Taylor Holdings Ltd v Bond* (1993) 59 SASR 432, 437.
[7] *AssetInsure Pty Ltd v New Cap Resinurance Corporation Ltd (in liq)* (2006) 225 CLR 331, [78]–[79]. See also *AssetInsure Pty Ltd v New Cap Reinsurance Corporation Ltd* (2004) 61 NSWLR 451, [200]–[201] per Ipp JA and *Interchase Corp Ltd (in liq) v FAI General Insurance Co Ltd* [2000] 2 Qd R 301, 314 per McPherson JA.
[8] *Re Harrington Motor Co Ltd* [1928] Ch 105; *Hood's Trustees v Southern Union General Insurance Co of Australasia Ltd* [1928] Ch 793. This effect of s 562 was acknowledged in the Explanatory Memorandum to the *Corporations Law Reform Bill 1992* (Cth), which introduced s 562A (dealing with reinsurance), at [945].

11 Although s 562 and s 117 do not – in terms – vest the insolvent company's rights against the insurer in the third party (as do, for example, the provisions in the United Kingdom), the effect of the application of s 562 and s 117 is to confer on the third party a legal right to the proceeds of the policy. Once the insured is in liquidation or in bankruptcy, the provisions operate to give the claimant a direct claim to the insurance proceeds. The 'third party to whom the liability was incurred', has a right to payment of 'an amount in respect of that liability [which] has been or is received by the company or the liquidator [or the trustee in bankruptcy] from the insurer'.[9] In order to avoid circuity of action, it is implicit that the third party is entitled to seek to enforce the right directly against the insurer, rather than a cumbersome two-step approach which would require the liquidator or trustee to claim separately against the insurer. The fact that other jurisdictions have adopted different means and language to address the common law difficulties, including in some statutes the express conferral of rights on a third party, does not assist in the interpretation of s 562 and s 117. CGU's summary of argument at [57]–[65] suggests that there is a converse to the *in pari materia* principle of statutory construction,[10] where none exists.

Declaratory relief

12 Crewe Sharp's liquidation, and Mr Crewe's likely bankruptcy if an adverse judgment is given against him, means that – contrary to CGU's summary of argument at [33] – the court is not answering 'an abstract, academic or hypothetical question divorced from a real controversy'. A 'real controversy'[11] – as to whether the insurance policy responds to the claims against Mr Crewe and Crewe Sharp – exists. CGU has denied indemnity under the policy. Although Akron and its liquidators are not parties to the policy, it is they who stand to gain if the policy responds (or lose if the policy does not respond), by operation of s 562 and s 117. If the policy responds, then those provisions would operate, because Crewe Sharp is already in liquidation, and Mr Crewe would become bankrupt if the claim against him, for a total of $14 million plus interest and costs, succeeded.

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[9] Under the *Corporations Act*, the third party is entitled to 'priority to all payments in respect of the debts mentioned in s 556' (including the liquidators' expenses and remuneration).
[10] DC Pearce and RS Geddes, *Statutory Interpretation in Australia*, (8th ed, 2014), [3.36]–[3.37].
[11] *Kuczborski v Queensland* (2014) 314 ALR 528, [6], [175], [278].

13 The operation of the statutory provisions gives Akron and its liquidators a 'real interest' in joining CGU and seeking declaratory relief as regards the applicability of the insurance policy. Akron and its liquidators seek the determination of an immediate right which they claim, and in which they have a sufficient interest, namely their right to payment of the policy proceeds to which they would be entitled under s 562 and s 117 upon obtaining judgment against Crewe Sharp and Mr Crewe. There is nothing 'hypothetical' about it; Crewe Sharp is already in liquidation, and Mr Crewe's bankruptcy is inevitable in the event of an adverse judgment.

14 Akron and its liquidators are not parties to the contract of insurance, and there is no privity of contract between them and CGU. However, Akron and its liquidators – being third parties to whom insurance proceeds are to be paid – are not 'strangers' to the contract of insurance, but are the beneficiaries of any insurance proceeds by virtue of statute.

15 In any event, a declaration 'does not require the prior existence of a cause of action, a wrong or an injury'.[12] It is not a necessary precondition for declaratory relief that the relationship between Akron (and its liquidators) and CGU should fall within the framework of a specific legal category or cause of action such as contract.[13] Akron (and its liquidators) and CGU fall on opposing sides of a controversy about whether the policy responds to the claims. Akron contends that the policy responds, so that it can enjoy the fruits of it if the proceeding against Mr Crewe and Crewe Sharp is successful. CGU contends that the policy does not respond, as it wishes to avoid its obligation to indemnify the insured, which, by reason of the insured's financial position and s 562 and s 117, would be an obligation to pay to Akron.

16 Contrary to CGU's summary of argument at [67], if Akron and its liquidators establish Crewe Sharp's and Mr Crewe's liability at a trial to which CGU has been joined as a party, CGU's liability to indemnify will follow, and if necessary an order could be sought and obtained accordingly. It is inevitable that s 562 and s 117 will apply. Those provisions will operate, by their terms, to vest the policy proceeds in Akron and its

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[12] Justice R S French (as his Honour then was, writing extrajudicially), 'Declarations - Homer Simpson's remedy - Is there anything they cannot do?' [2007] FedJSchol 24, [4].
[13] Woolf & Woolf, *The Declaratory Judgment*, (4th ed, 2011) at [5-26], citing *Hanson v Radcliffe Urban DC* [1992] 2 Ch 490. See also JD Heydon, MJ Leeming and PG Turner, *Meagher, Gummow & Lehane's Equity Doctrines & Remedies*, (5th ed, 2015), [19-215], referring in fn 177 inter alia to *Ashmere Cove.*

liquidators. It would be unnecessary for the trustee in bankruptcy or liquidator to 'decide to pursue CGU for indemnity and obtain an order that CGU pay the insurance proceeds' or take any other positive action, as that would emasculate the legislation.

17 Where the insurer has denied liability and the insured is insolvent, a claim for a declaration may be made directly by the affected person against the insurer, without the need for the insured's liquidator or trustee in bankruptcy to demand or pursue recovery against the insurer. The affected claimant's right to claim directly against the insurer cannot be affected by whether an insolvent insured accepts the insurer's denial of indemnity, because under the statutory provisions, the insolvent insured is merely a
10 'pass-through' for the flow of funds between the insurer and the affected person. The existence of a true controversy cannot depend on the attitude of an insolvent insured, which is likely to have no funds to contest the denial of indemnity, and has nothing to gain or lose personally by the insurer's acceptance or denial of indemnity,[14] and is therefore unlikely to care whether the affected claimant is paid.

18 Even if some positive action on the part of the liquidator or trustee in bankruptcy were required, they would be in breach of their obligations if they refused to take that action in order to enable the affected claimant – as a priority creditor – to receive payment. Their inaction would also be appealable under s 1321 of the *Corporations Act* or s 178 of the *Bankruptcy Act*, as the case may be.

20 19 CGU points to s 36 of the *Supreme Court Act 1986* (Vic), which vests the power to make declarations 'of right'.[15] As explained by Woolf & Woolf, 'right' is a protean word, and has a variety of meanings.[16] It is sufficient that the right in question is contested by the parties, and that each of them would be affected by the determination of the issue.[17] It is well within the spirit and intent of the rule as to declaratory judgment 'to grant a remedy by way of declaration to a person whose interests are

[14] This proceeding does not involve a policy where the insurer pays defence costs while not admitting indemnity, as is sometimes seen in directors & officers' liability insurance policies.
[15] CGU's summary of argument at [34].
[16] Woolf & Woolf, *The Declaratory Judgment*, (4th ed, 2011), [5-17].
[17] *Re S (Hospital Patient: Court's Jurisdiction)* [1996] Fam 1, 22 per Millett LJ.

vitally affected'.[18] Akron and its liquidators have a 'real interest'[19] in the determination of the issue of the applicability of the policy.

20 It may be that, outside the context of insolvency, a stranger to the insurance policy is not entitled to seek declaratory relief in relation to it[20] (even though, there may be good sense in persons being able to establish by means of a declaration, the legal rights which will in due course directly affect them[21]). However, as the Court of Appeal held correctly,[22] once the insured becomes insolvent, leaving behind an unpaid claimant in respect of whose claim the policy responds, the situation is very different to an ordinary private contract. It is the claimant, and only the claimant, that has an interest in the insurance contract.

Ashmere Cove

21 There is no reason to doubt the correctness of the Full Federal Court's holding in *Ashmere Cove*[23] that an injured claimant has a real interest in establishing that the insurer is liable to indemnify the insolvent insured against the claims made by the claimant. Accordingly, there is a legal controversy, sufficient to found an application for declaratory relief, as between a third party claimant and the insurer. The declaration of the insurer's liability to the insured will directly affect the right of the injured claimant to payment of the policy proceeds under s 562 and s 117.

22 The decision of the Full Court in *Ashmere Cove*, that an insurer may be joined properly to proceedings brought by a third party claimant against an insolvent insured, has since been followed by three intermediate appellate courts,[24] and several first

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[18] *Eastham v Newcastle United Football Club* [1964] Ch 413, 443, followed in *Adamson v New South Wales Rugby League* (1991) FCR 242. .
[19] *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 582; *Kuczborski v Queensland* (2014) 314 ALR 528, [6].
[20] Woolf & Woolf, *The Declaratory Judgment*, (4th ed, 2011), [5-18]–[5-20], referring to *Meadows Indemnity Co Ltd v Insurance Corp of Ireland plc* [1989] 2 Lloyd's Rep 298.
[21] *Meadows Indemnity Co Ltd v Insurance Corp of Ireland plc* [1989] 2 Lloyd's Rep 298, 305 per Neill LJ.
[22] Reasons for judgment of the Court of Appeal at [34].
[23] *Employers Reinsurance Corporation v Ashmere Cove Pty Ltd* (2008) 166 FCR 398, [52]. The Full Federal Court dismissed an appeal from French J's decision at first instance: *Ashmere Cove Pty Ltd v Beekink (No 2)* (2007) 244 ALR 534; appeal dismissed. This Court refused special leave: [2008] HCA Trans 296.
[24] The Full Court of the South Australian Supreme Court *in JN Taylor Holdings Ltd (in liq) v Bond* (1993) 59 SASR 432; the Western Australian Court of Appeal in *QBE Insurance (Aust) Ltd v Lois Nominees Pty Ltd*(2013) 17 ANZ Insurance Cases ¶61-949 , [109], [226]; and the Victorian Court of Appeal in the case the subject of the appeal to this Court.

instance decisions,[25] and has the support of the learned authors of *Meagher, Gummow & Lehane*.[26]

23 As the Court of Appeal correctly held,[27] following *Ashmere Cove*, the making of a declaration in the circumstances sought in the present case would be of practical utility and would not constitute the giving of an advisory opinion, because its practical effect would be to resolve the issue as between insured and insurer.

Interchase and QBE

24 CGU urges the Court to reject the principle in *Ashmere Cove*, and instead to adopt the reasoning of the majority judgment in *Interchase*[28] (see CGU's summary of argument at [39], [45], [46] and [51]) and the reasoning of McLure P in her Honour's dissenting judgment in *QBE*[29] (see CGU's summary of argument at [36], [55] and [72]).

25 There are a number of reasons why this Court ought reject, or at least distinguish, the majority reasoning in *Interchase* and the dissenting judgment in *QBE*.

26 First, *Interchase* concerned joinder under O 3 r 11 of the former *Rules of the Supreme Court* (Qld) (the equivalent of r 9.06(b)(i) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic)), whereas the present joinder application is under r 9.06(b)(ii) of the Victorian *Rules*. As the Court in *Interchase* observed,[30] Queensland had not adopted the wider joinder provision which appears in r 9.06(b)(ii).[31]

27 Second, in *Interchase*, the insureds were not in liquidation or bankruptcy.

28 Third, unlike in the present case, the insured in *Interchase* 'appeared content to accept' that the insurer was entitled to decline indemnity.[32] That led the Court of

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[25] *Tatterson v Wirtanen* [1998] VSC 88, [60]–[65]; *Anjin No 13 Pty Ltd v Allianz Australia Insurance Ltd* (2009) 26 VR 148, [74]–[79], [89]; *Done v Financial Wisdom Limited* [2008] FCA 1706, [28]; *Genworth Financial Mortgage Insurance Pty Ltd v KCRAM Pty Ltd (in liq) (No 2)* (2011) 284 ALR 72, [27]; *Sienkiewicz v Salisbury Group Pty Ltd* [2013] FCA 977, [43]–[50]; *Austcorp Project No 20 Pty Ltd v LM Investment Management Ltd; Re Bellpac Pty Ltd* [2013] FCA 883, [25]–[35]; *Bazem Pty Ltd v Bureau of Urban Architecture* [2010] NSWSC 978, [41]–[43] (leave to appeal refused in *CGU Insurance Ltd v Bazem* [2011] NSWCA 81); *Owners - Strata Plan 62658 v Mestrez Pty Ltd* [2012] NSWSC 1259, [54]; *Marriott v Brine* [2013] NSWSC 1589, [38]–[30]; *Belcastro v Nakhl* [2014] NSWSC 1305, [28].

[26] JD Heydon, MJ Leeming and PG Turner, *Meagher, Gummow & Lehane's Equity Doctrines & Remedies*, (5th ed, 2015), [19-215], referring in fn 177 inter alia to *Ashmere Cove*.

[27] Reasons for judgment of the Court of Appeal at [26].

[28] *Interchase Corp Ltd (in liq) v FAI General Insurance Co Ltd* [2000] 2 Qd R 301.

[29] *QBE Insurance (Aust) Ltd v Lois Nominees Pty Ltd*(2013) 17 ANZ Insurance Cases ¶61-949, [34].

[30] *Interchase Corp Ltd (in liq) v FAI General Insurance Co Ltd* [2000] 2 Qd R 301, 314–15.

[31] The Victorian *Rules* were amended following amendments in England – see *Williams Civil Procedure Victoria* [I 9.06.3]. The Queensland *Rules* were amended after *Interchase*.

[32] *Interchase Corp Ltd (in liq) v FAI General Insurance Co Ltd* [2000] 2 Qd R 301, 317.

Appeal in *Interchase* to describe the insurer and the insureds as not being 'adversaries', in the passage quoted in CGU's summary of argument at [51]. The same cannot be said in this case. Neither of the insureds in the present case has accepted CGU's denial of indemnity, and Mr Crewe has expressed his disagreement with CGU's position,[33] while Crewe Sharp's liquidator does not accept it, but has no funds to investigate why indemnity was denied.[34]

29 Fourth, in *Interchase*, the claimant was 'apparently content to accept that the rights contingently conferred by [s 562 and s 117] could not accord standing to [the claimant] to maintain proceedings against [the insurer] were the liquidator or trustee in bankruptcy unwilling to sue'.[35] No such concession is made by Akron and its liquidators here.

30 As regards *QBE*, McLure P's judgment was based on the concession by the parties in that case[36] (the correctness of which her Honour implicitly doubted[37]) that if the court made the declaration about the operation of the policy, the doctrines of *res judicata*, issue estoppel and *Anshun* estoppel would have no application in subsequent proceedings by the insured for indemnity under the policy. Again, no such concession is made in the present case.

Declaration will bind insurer and insureds

31 The two insured – Crewe Sharp and Mr Crewe – are already defendants in the proceeding. The joinder of CGU as an additional defendant will have the effect of enabling all issues in relation to the policy to be determined once and for all in a single proceeding. Once the Court has determined whether the policy responds, neither CGU nor the insureds will be in a position to re-litigate that question. Contrary to CGU's summary of argument at [50], a decision to grant or refuse the declaration will finally determine the rights of the parties to the insurance policy, all of whom are parties to the proceeding. There will be no 'second contest', as described in *Interchase*.[38] As the Court of Appeal held,[39] following the analysis of French J (as his

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[33] Exhibit RAB-7.
[34] Second Blakeley Affidavit, [4].
[35] *Interchase Corp Ltd (in liq) v FAI General Insurance Co Ltd* [2000] 2 Qd R 301, 317 fn 10.
[36] *QBE Insurance (Aust) Ltd v Lois Nominees Pty Ltd* (2013) 17 ANZ Insurance Cases ¶61-949, [22].
[37] *QBE Insurance (Aust) Ltd v Lois Nominees Pty Ltd* (2013) 17 ANZ Insurance Cases ¶61-949, [25].
[38] *Interchase Corp Ltd (in liq) v FAI General Insurance Co Ltd* [2000] 2 Qd R 301, 320.
[39] Reasons for judgment of the Court of Appeal at [26].

Honour then was) in *Ashmere Cove*,[40] the practical effect of making a declaration would be to resolve the issue as between insured and insurer, and it would be an abuse of process to permit either to litigate the question in subsequent proceedings. Separation of the proceedings would be contrary to 'the way courts are expected to exercise their jurisdiction in the modern world'.[41]

32 CGU says in its summary of argument at [44] that the question whether CGU would be prevented from re-litigating issues in a subsequent proceeding cannot be known in advance of the trial. However, there is little doubt that if CGU is joined as a party, it will need to agitate at trial all of the defences on which it relies in support of the denial of liability, and it will be bound by a decision as to whether the policy responds. As Finkelstein J observed in *Kirby v Centro Properties Ltd*,[42] it is unlikely that any court would permit a party to re-litigate a question or issue which has already been decided against him even though the other side cannot strictly satisfy the requirements of *res judicata* or issue estoppel. In a similar vein, it is open to this Court to conclude, as the United States Supreme Court has decided in *Parklane Hosiery Co Inc v Shore*,[43] that in this case, the insured or the insurer could invoke against one another 'non-mutual collateral estoppel' so as to bar a later claim from being prosecuted, as it would promote judicial economy, consistency of result and would not otherwise be unfair. Alternatively, at the very least the Court could prevent re-litigation as it would be an 'abuse of process' of the kind described by the House of Lords in *Hunter v Chief Constable of the West Midlands Police*,[44] and approved by this Court in *Walton v Gardiner*.[45] In the words of Lord Diplock in *Hunter*, the re-litigation of issues 'would be manifestly unfair to a party to litigation... or would otherwise bring the administration of justice into disrepute among right-thinking people'.

Case management principles

33 In its summary of argument at [53]–[56] CGU contends that the question of joinder is one that goes to jurisdiction, not discretion. Whether that be the case,[46] and whether

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[40] *Ashmere Cove Pty Ltd v Beekink (No 2)* (2007) 244 ALR 534.
[41] Reasons for judgment of the Court of Appeal at [38].
[42] (2008) 253 ALR 65, [16].
[43] 439 US 322, 329–31 (1979).
[44] [1982] AC 529, 536.
[45] (1993) 177 CLR 378, 393; *Rogers v The Queen* (1994) 181 CLR 251, 255; *D'Orta-Ekenaike v Victoria Legal Aid* (2005) 223 CLR 1, [74]; *Jeffery & Katauskas Pty Limited v SST Consulting Pty Ltd* (2009) 239 CLR 75, [45].
[46] Woolf & Woolf, *The Declaratory Judgment*, (4th ed, 2011), [5-04]–[5-07].

(as stated by the Court of Appeal[47]) it was more appropriate for this issue to be determined at trial,[48] it is relevant to consider case management principles following the enactment of the *Civil Procedure Act 2010* (Vic). Case management is an accepted aspect of the system of civil justice administered by courts in Australia.[49] Section 7 states that the overarching purpose of that Act and the rules of court in relation to civil proceedings is to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute. Section 8(1) requires the Supreme Court to seek to give effect to that overarching purpose in the exercise of any of its powers, or in the interpretation of those powers, whether they be part of its inherent, implied or statutory jurisdiction. Therefore, the Supreme Court's inherent jurisdiction to make declarations and its statutory jurisdiction under s 36 of the *Supreme Court Act* to make binding declarations of right (which are not confined to situations where one person has a cause of action against another) must be interpreted in light of the overarching purpose.

34 Joinder of the insurer as a co-defendant with its insured in order to seek a declaration about the operation of the policy would enable all matters in controversy between the parties (namely, the liquidators of Akron, the two insured and the insurer) to be completely and finally determined. It is consistent with the overarching purpose. It would also avoid a multiplicity of proceedings.[50] Even if there is no direct pleading between the insurer and the insured, the issue of whether the policy responds has been raised by another party in the same proceedings and in respect of which the insurer is 'inextricably involved'.[51] The concerns about 'practical utility' and 'efficiency' identified in *Ashmere Cove* are entirely justified, especially in light of the statutory overarching purpose.

Conclusion

35 There is a true controversy between Akron (and its liquidators) and CGU, in relation to the denial of indemnity for the claims against both Crewe Sharpe and Mr Crewe. The trial judge properly joined CGU as a defendant so that Akron (and its liquidators)

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[47] Reasons for judgment of the Court of Appeal at [37]–[38].
[48] Woolf & Woolf, *The Declaratory Judgment*, (4th ed, 2011), [5-06].
[49] *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175, [92].
[50] An objective expressed in s 29 of the *Supreme Court Act 1986* (Vic).
[51] *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175, [83].

could seek a declaration against CGU as to whether the policy responds to the claims. CGU's appeal ought be dismissed with costs.

Part VII: Notices of Contention or Cross Appeal

36 Not applicable.

Part VIII: Time Estimate

37 Akron and its liquidators estimate that 2 hours will be required for the presentation of their oral argument.

Dated: 6 November 2015

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