

**RHIANNON GRAY BY HER TUTOR KATHLEEN ANNE GRAY v RICHARDS**  
**(S111/2014)**

Court appealed from: New South Wales Court of Appeal  
[2013] NSWCA 402

Date of judgment: 2 December 2013

Special leave granted: 16 May 2014

Ms Gray was severely injured in a car accident in 2003. As a result she requires constant care. Through her mother as tutor, Ms Gray brought proceedings against Mr Cory Richards, claiming that his negligence caused her injuries. Justice McCallum agreed and awarded Ms Gray damages of \$10 million. Her Honour also awarded Ms Gray a separate amount for the costs of administering the main part of the judgment. This matter concerns that separate amount awarded.

Upon appeal the issues for determination included:

- (i) whether the amount awarded for fund management expenses should include an amount for the management of the fund management itself (fund management on fund management);
- (ii) whether the amount awarded for fund management expenses should include an amount for fund management on fund income;
- (iii) whether, when calculating the amount awarded for fund management expenses certain components should be deducted from the body of the verdict.

On 2 December 2013 the Court of Appeal (Bathurst CJ, Beazley P, McColl, Basten & Meagher JJA) allowed the appeal in part. Their Honours found, inter alia, that it was inappropriate to extend the principle by which fund management expenses are awarded to a plaintiff (who is incapable of managing his or her award of damages by reason of their injuries) to also cover fees for managing that fund. They additionally found that the claim for fund management on fund income should not be allowed, as likely being contrary to s 127 of the *Motor Accidents Compensation Act 1999* (NSW).

The Court of Appeal further found that it was inappropriate to make any deduction from the fund for the purpose of calculating fund management expenses. This was because there was no reason to suggest that the whole of the fund would not initially be available for investment, and further, that the timing of any relevant payments was speculative.

The ground of appeal is:

- The New South Wales Court of Appeal erred in holding that it was inappropriate to award fund management fees on the head of damage identified as fund management, and fund management fees on fund income, which is inconsistent with the principle of *restitutio in intergrum*.