



## HIGH COURT OF AUSTRALIA

Public Information Officer

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### IAN WAYNE GIBBS AND PARAGLIDE PTY LTD v MERCANTILE MUTUAL INSURANCE (AUSTRALIA) LTD

A parasailing company cannot claim on its insurance policy to cover injuries to a customer after the High Court of Australia today held that the policy was covered by the federal Marine Insurance Act, rather than the Insurance Contracts Act.

The High Court, by a 3-2 majority, upheld a decision of the Full Court of the Western Australian Supreme Court that the Marine Insurance Act applied.

Helen Morrell was seriously injured on January 30, 1989, when the power boat driven by Mr Gibbs came too close to Heirisson Island in Perth's Swan River and she was dragged through trees. Mr Gibbs and Paraglide did not inform Mercantile of the accident for another four years and had also not informed Mercantile of another accident in February 1988. Paraglide ceased trading in January 1990. Mrs Morrell successfully sued Mr Gibbs and Paraglide. They sought indemnity under the policy but Mercantile denied liability.

Mr Gibbs and Paraglide claimed the policy was for public liability, not marine losses, and that the accident was unrelated to the sea, and so was covered by the Insurance Contracts Act. The failure to give timely notice to Mercantile may not then have barred a claim for indemnity.

The WA District Court held that the policy was not a contract for marine insurance. This decision was reversed by the Full Court of the WA Supreme Court. Mr Gibbs and Paraglide then appealed to the High Court.

The majority of the Court held that the cover provided by the policy was for liability arising from events occurring during the navigation of the boat and from exposure to maritime perils. Indemnity against legal liability to third parties had long been a form of marine insurance. Careless operation of the boat that caused Mrs Morrell to crash into trees was a form of maritime peril. The policy was one for marine insurance and the Marine Insurance Act applied.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*