



HIGH COURT OF AUSTRALIA

Public Information Officer

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CGU INSURANCE LIMITED v AMP FINANCIAL PLANNING PTY LTD (two matters)

AMP was not entitled to be indemnified by its insurer for payouts it made to investors because it had not established by appropriate evidence that the payments were reasonable, the High Court of Australia held today.

In 1999, AMP entered into a professional risks insurance contract with CGU. That same year, Ashok Pal and Anthony Howarth, who conducted the Macquarie Advisory Group (MAG) and were representatives of AMP, were found to have invested \$3.4 million of clients' funds in a company already in deep financial trouble and the investors lost their money. Mr Pal and Mr Howarth became bankrupt, and the Australian Securities and Investments Commission (ASIC) banned them from the securities industry and from company management. On becoming aware of the large losses, AMP notified CGU, its insurer, and sought indemnity under the policy. AMP drew up a protocol for handling claims in which AMP would notify CGU of each claim and prepare a liability report and CGU would decide within 14 days whether to settle or defend the claim. CGU agreed in principle to the protocol, but held off deciding whether it would indemnify AMP for the losses and repeatedly told AMP to act as a "prudent uninsured". AMP, under pressure from ASIC to resolve claims promptly and after repeated requests to CGU for determination of AMP's liability, went ahead and paid out more than \$3.24 million for 47 claims in October and November 2001. CGU eventually denied AMP indemnity and AMP commenced proceedings alleging that CGU was in breach of its policy. It sought damages for the investors' claims paid, interest and investigation costs and sought a declaration that AMP was entitled to indemnity for outstanding claims.

In the Federal Court, Justice Peter Heerey dismissed the application. He held that AMP had no belief that CGU had accepted liability and that AMP paid the settlement amounts because it considered this was in its own best interests to do so, not because of any representation by CGU that it would not require AMP to prove its liability to the investors. AMP had also not shown that the settlements were reasonable and had failed to take into account whether section 819(4) of the *Corporations Law* could have made MAG rather than AMP liable. The Full Court of the Federal Court, by majority, allowed an appeal by AMP and remitted to Justice Heerey questions on whether AMP was induced by CGU into settling the claims. CGU appealed to the High Court.

The Court, by a 4-1 majority, allowed the appeal. It held that nothing in CGU's conduct conveyed a representation to AMP that it would not be required to prove its liability to investors to receive indemnity. Nothing in AMP's conduct showed that it relied on such a representation. AMP had no belief that CGU accepted liability, instead making payments for its own commercial reasons to ensure legal proceedings for determining investors' claims did not occur and to preserve relations with ASIC. It was open to Justice Heerey to conclude that AMP had not shown the settlements were reasonable.

In the Full Court of the Federal Court, CGU had cross-appealed against Justice Heerey's costs order. The Full Court, in allowing the appeal by AMP, did not deal with the cross-appeal, and CGU brought a second appeal to the High Court. The High Court ordered that the matter should be remitted to the Full Court for consideration of CGU's cross-appeal.

- *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.*