



## HIGH COURT OF AUSTRALIA

11 February 2016

### CGU INSURANCE LIMITED v ROSS BLAKELEY, MICHAEL RYAN & QUENTIN OLDE AS JOINT AND SEVERAL LIQUIDATORS OF AKRON ROADS PTY LTD (IN LIQ) & ORS

[2016] HCA 2

Today the High Court dismissed an appeal from the Court of Appeal of the Supreme Court of Victoria. The High Court held that the federal jurisdiction invested in the Supreme Court of Victoria authorised that Court to grant a declaration in favour of a plaintiff against a defendant's insurer that the insurer is liable to indemnify the defendant.

The first respondents are liquidators of the second respondent, Akron Roads Pty Ltd ("the company"). They commenced proceedings in the Supreme Court seeking an order under s 588M(2) of the *Corporations Act* 2001 (Cth) ("the Act") that the directors of the company, including Mr Trevor Crewe and Crewe Sharp Pty Ltd ("the directors"), pay to them as a debt due to the company, an amount equal to the amount of loss or damage suffered by creditors of the company due to alleged insolvent trading in breach of s 588G of the Act. Crewe Sharp made a claim on a professional indemnity policy with the appellant, CGU Insurance Ltd ("CGU"). Mr Crewe was also insured under that policy. CGU denied the claim on the basis that the insurance policy did not cover the liability asserted by the directors as a result of various exceptions in the policy. The directors were not in a position to challenge CGU's denial of liability.

In the interlocutory stages of the proceedings, the liquidators sought an order to join CGU as a defendant and for leave to file and serve amended points of claim seeking a declaration that CGU was liable to indemnify the directors under the policy. In contending that they had a sufficient interest in the determination of CGU's liability to support their claim for a declaration and joinder, the liquidators relied on s 562 of the Act. Section 562 afforded the liquidators a priority in respect of any insurance proceeds payable by CGU to Crewe Sharp. Section 117 of the *Bankruptcy Act* 1966 (Cth) would have imposed a similar priority, if Mr Crewe were to become bankrupt.

The primary judge in the Supreme Court made the orders sought, and the Court of Appeal dismissed CGU's appeal. By grant of special leave, CGU appealed to the High Court, submitting that the Supreme Court lacked jurisdiction to join CGU and to grant declaratory relief at the suit of the liquidators regarding the effect of the private insurance contract between CGU and the directors, where the directors were not in a position to pursue any claim against CGU. In relation to federal jurisdiction, CGU's argument reduced to the proposition that there was no justiciable controversy between the liquidators and CGU and therefore no "matter" on which to found federal jurisdiction.

The High Court dismissed the appeal, holding that the liquidator's claim for relief was within the subject matter area of federal jurisdiction and constituted a justiciable controversy between the liquidators and CGU. It was confirmed that the Supreme Court had federal jurisdiction to entertain the liquidators' claim and grant the declaration sought.

- *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.*