



## HIGH COURT OF AUSTRALIA

29 March 2017

### DAVID KENDIRJIAN v EUGENE LEPORE & ANOR [2017] HCA 13

Today the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of New South Wales in relation to the second respondent to the appeal. The High Court held that advocates' immunity from suit does not extend to negligent advice not to compromise a proceeding which then proceeds to a judicial decision.

In November 1999, the appellant was injured in a car accident. In 2004, he commenced legal proceedings in the District Court of New South Wales against the other driver involved in the accident, who admitted liability. On the first day of the trial on quantum, the other driver's legal representatives made a settlement offer to the appellant's solicitor (the first respondent) and barrister (the second respondent) of \$600,000 plus costs. The settlement offer was not accepted so the trial proceeded. Ultimately, the appellant obtained judgment for \$308,432.75 plus costs. An appeal to the Court of Appeal in relation to quantum was dismissed.

In 2012, the appellant brought a claim in the District Court against the respondents. The appellant alleged that the respondents were negligent in advising him in relation to the settlement offer. Central to his claim were allegations that the respondents did not advise him of the amount of the settlement offer, "but merely of the fact that an offer had been made". The appellant also pleaded that the respondents rejected the settlement offer, "absent any express instructions" from him, because the offer was "too low". The respondents successfully brought an application in the District Court for summary judgment. The District Court held that the respondents' conduct was covered by advocates' immunity. This conclusion was upheld by the Court of Appeal.

By grant of special leave, the appellant appealed to the High Court. In November 2016, the Court made orders by consent allowing the appeal in relation to the first respondent. Today, the Court unanimously allowed the appeal in relation to the second respondent. The Court held that advocates' immunity did not extend to the advice given in relation to the settlement offer because the advice did not affect the judicial determination of the case. The Court declined to distinguish or reopen its most recent decision on advocates' immunity, *Attwells v Jackson Lalic Lawyers Pty Ltd* (2016) 90 ALJR 572; 331 ALR 1; [2016] HCA 16.

- *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.*