



HIGH COURT OF AUSTRALIA

Public Information Officer

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PERMANENT TRUSTEE AUSTRALIA LIMITED AND PERMENT TRUSTEE COMPANY LIMITED v FAI GENERAL INSURANCE COMPANY LIMITED (IN LIQUIDATION)

The High Court of Australia today ordered FAI to pay a claim of more than \$10.2 million made under an insurance contract. The contract had been extended for a month but the claimants, the Permanent Trustees companies, did not intend to renew the contract for the full year.

FAI was among companies providing professional indemnity cover to the Permanent Trustee companies which explored the possibility of effecting insurance with other insurers before their 1990-91 cover with FAI expired. Credit rating agency Standard and Poor's had recently downgraded FAI. The existing cover was in several layers totalling \$70 million and each layer was provided by various insurers, including FAI.

Just before the 1990-91 cover expired, the lead underwriter sought information about Permanent Trustees' involvement in property trusts. It offered a one-month extension of existing cover while the information was obtained. The price of the extension cost one-12th of the ordinary annual premium with an add-on of 20 per cent. FAI provided cover on the terms proposed.

Permanent Trustees' insurance broker did not tell FAI they were considering not renewing their annual contract. During the extension, claims were made against Permanent Trustees for which they sought indemnity. Proceedings were settled for \$100.1 million of which the insurers' contribution totalled \$34.65 million. When FAI refused to meet its share, Permanent Trustees brought action in the New South Wales Supreme Court.

The federal Insurance Contracts Act requires the insured disclose every matter it knows to be relevant to the decision of the insurer whether to accept the risk and, if so, on what terms. The trial judge held that had FAI known of Permanent Trustees' intentions it would not have provided the extension. He ordered FAI to return the extension premium (\$4,242.22) and held that FAI had no other liability. Permanent Trustees appealed unsuccessfully to the Court of Appeal, which held that the silence of the broker, which was negotiating for the Permanent Trustees companies, amounted to misrepresentation, and further that Permanent Trustees had acted fraudulently in failing to correct an untrue representation. Permanent Trustees then appealed to the High Court.

The High Court, by a 3-2 majority, held that the Act did not require Permanent Trustees to tell FAI they were considering other insurers. The Court held that matters for disclosure were those relevant to FAI's acceptance of the risk. Insurers had no right to continuing custom and no right to know that an insured might be looking for a different insurer, or a better or more competitive contract of insurance, both matters which any insurer would realise might be happening. The Court allowed the appeal with costs and entered judgment against FAI for a total of \$10.2 million plus interest. FAI was allowed to retain the \$4,242.22 premium. The Court also expressly overruled the finding of fraud made by the Court of 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.*