



HIGH COURT OF AUSTRALIA

Manager, Public Information

5 August 2009

AON RISK SERVICES AUSTRALIA LTD v AUSTRALIAN NATIONAL UNIVERSITY
[2009] HCA 27

Three days into a four week trial the Australian National University (ANU) sought an adjournment in order to make an application to the Supreme Court of the Australian Capital Territory to amend its statement of claim against its insurance broker significantly, Aon Risk Services Australia Ltd. The primary judge granted the adjournment and leave to amend. The ACT Court of Appeal dismissed an appeal against that decision except in relation to costs. Today the High Court allowed an appeal against the decision of the Court of Appeal.

The bushfires in and around Canberra in January 2003 destroyed property belonging to ANU at its Mt Stromlo complex. In December 2004, ANU commenced proceedings against three insurance companies claiming indemnity for the Mt Stromlo losses. It subsequently joined Aon to the proceeding, claiming that it had acted negligently in failing to renew insurance over certain ANU properties.

A four week trial was listed to commence on 13 November 2006. On that day, ANU and two of the three insurance companies commenced mediation which led to the settlement of ANU's claims against them. ANU also settled its claim against the third insurance company. Those three claims having been resolved, ANU sought an adjournment of the trial on the basis that certain events that occurred and information received before and during the mediation made it necessary to seek leave to amend its statement of claim against Aon. Despite Aon's opposition, the primary judge granted the adjournment and also granted ANU leave to amend its claim against Aon substantially. A majority of the Court of Appeal dismissed Aon's appeal against the primary judge's orders but ordered ANU to pay costs to Aon arising out of the amendment on an indemnity basis. The High Court granted Aon special leave to appeal.

All members of the Court considered the proposed amendments did not fall into the category of amendments to which Rule 501 of the Court Procedure Rules 2006 (ACT) applied, that is, amendments which were required to be made for the purpose of deciding the real issues in the proceeding, or for the purpose of avoiding multiple proceedings. Rule 502 was the applicable rule. It required the Court to exercise its discretion in deciding whether to grant leave to ANU to make the amendments. Taking into account the objects and purposes of the Rules as set out in Rule 21, matters relevant to the exercise of the discretion would include, but not be limited to, the extent of the delay in seeking to amend, and the costs associated with that delay; prejudice to the opposing party if leave were to be granted; the nature and importance of the amendment to the party applying; the point the litigation had reached, relative to the trial commencement date; prejudice to other litigants awaiting trial dates; and the proposing party's explanation for the delay in applying for the amendment. To the extent that statements in the case of *Queensland v J L Holdings Pty Ltd* (1997) 189 CLR 146 suggested only a limited application for case management principles in determining applications for leave to amend, the Court held that such statements should not be applied in the future.

The High Court held that the primary judge and the majority in the Court of Appeal had not had sufficient regard to the following salient features of ANU's application for leave to amend: it sought to introduce new and substantial claims which would require Aon to prepare a new defence as if from the beginning; the application was brought during the time which had been set for trial and would result in the abandonment of the remaining scheduled weeks of trial; it was not clear that even an order for indemnity costs would overcome the prejudicial effects on Aon; and ANU had offered no explanation about why the case had been allowed to proceed to trial in its existing form when the basis upon which it was now seeking to amend had been known to it for at least 12 months. The abandonment of the trial date would also have had deleterious effects on other litigants whose trial dates would have to be put back. In the Court's view, adjourning the trial date and granting ANU leave to amend in the circumstances of this case was contrary to the case management objectives set out in Rule 21 of the Rules.

The High Court allowed Aon's appeal and ordered that ANU's application for leave to amend its statement of claim be dismissed.

- *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.*