



HIGH COURT OF AUSTRALIA

4 May 2011

KUHL v ZURICH FINANCIAL SERVICES AUSTRALIA LTD & ANOR
[2011] HCA 11

Today the High Court allowed an appeal against a decision of the Court of Appeal of the Supreme Court of Western Australia and held that Zurich Financial Services Australia Ltd ("Zurich") was liable in negligence to Mr Geoffrey Lawrence Kuhl.

In 1999 Mr Kuhl, an employee of Transfield Construction Pty Ltd, suffered injuries on a work site when his left arm was sucked into a vacuum hose after the hose was passed to him by another person. Mr Kuhl commenced an action in negligence against Zurich and QBE Insurance Services Australia Ltd ("QBE") in the District Court of Western Australia. Mr Kuhl alleged that WOMA (Australia) Pty Ltd ("WOMA") and Hydrosweep Pty Ltd ("Hydrosweep") were liable in negligence for his injuries. Zurich and QBE were the respective insurers of these two companies.

The District Court held that neither Zurich nor QBE were liable to Mr Kuhl in negligence. Mr Kuhl appealed to the Court of Appeal. The Court of Appeal dismissed the appeal on the basis that neither Zurich nor QBE owed Mr Kuhl the duties of care contended for, and that there was no breach of duty in any event.

A majority of the High Court allowed the appeal, and made an order setting aside the orders of the Court of Appeal and the District Court in respect of Zurich and entering judgment against Zurich in the amount of \$265,000. The High Court held that WOMA had a duty of care to users of the hose which extended to risks in relation to the passing of the hose. The Court further held that WOMA had breached that duty by failing to issue instructions not to pass the hose while the power was turned on and by failing to install a "break box" close to the head of the hose which could be employed to break the vacuum pressure, and that each of these breaches had caused Mr Kuhl's injuries. The High Court also held that the trial judge erred in drawing an inference adverse to Mr Kuhl, on the basis of Mr Kuhl's oral evidence, that some action by him subsequent to the passing of the hose caused his arm to be drawn in to the hose. The nature of this error was the trial judge's failure to give reasons for his inference and his failure to give Mr Kuhl an opportunity to address the point.

The High Court upheld the orders of the District Court and the Court of Appeal in favour of QBE.

- *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.*