



HIGH COURT OF AUSTRALIA

22 August 2011

HIH CLAIMS SUPPORT LIMITED v INSURANCE AUSTRALIA LIMITED
[2011] HCA 31

Today the High Court dismissed an appeal by HIH Claims Support Limited ("HCSL") from a decision of the Court of Appeal of the Supreme Court of Victoria. The High Court upheld the Court of Appeal's finding that HCSL was not entitled to equitable contribution from Insurance Australia Limited ("IAL") in respect of amounts HCSL had paid to satisfy certain liabilities incurred by Mr Ronald Steele.

Steele was sub-contracted to erect a scaffold at Albert Park, Melbourne, for the 1998 Australian Grand Prix. He was insured under a general liability insurance policy ("the HIH policy") issued by a company ("HIH") in the HIH group of insurance companies ("the HIH Group"). As a sub-contractor of the Australian Grand Prix Corporation, Steele was also insured under a policy issued by IAL's predecessor in title. In March 1998, Steele's scaffold collapsed and damaged a valuable "jumbotron" video screen. The operator of the screen subsequently won an action against Steele in the Supreme Court of New South Wales ("the NSW proceeding") for damages for losses caused by the collapse of the scaffold. Steele made a claim under the HIH policy in relation to the incident and any liability established in the NSW proceeding. HIH accepted his claim. However, before the trial in the NSW proceeding, the HIH Group collapsed.

In 2001, the Commonwealth Government established a scheme for providing financial assistance to policyholders, insureds and beneficiaries under insurance policies issued by the HIH Group who had suffered loss as a result of the collapse of the HIH Group ("the Scheme"). HCSL was appointed as the Scheme's trustee, administrator and manager. Steele applied and was accepted for assistance. In accordance with the Scheme, Steele assigned to HCSL all of his rights against HIH, including his right to prove in the liquidation of HIH. In return, HCSL paid 90 per cent of the amount HIH would have paid under the HIH policy in satisfaction of Steele's liability and his costs in defending the NSW proceeding, excluding some amounts HIH had already paid. HCSL then brought proceedings against IAL in the Supreme Court of Victoria, seeking equitable contribution in the sum of one half of all of the payments HCSL had made in respect of Steele. Both the primary judge and the Court of Appeal dismissed HCSL's claim. HCSL was granted special leave to appeal to the High Court.

The High Court dismissed the appeal on the basis that the liabilities of HCSL and IAL were not co-ordinate. The parties did not share a common burden because the Scheme was structured to prevent contractual obligations between HCSL and Steele from arising if Steele had already been indemnified by IAL and to prevent IAL from claiming equitable contribution from HCSL. Further, in its contract to indemnify Steele, HCSL did not undertake the same risk as IAL had undertaken in its insurance policy covering Steele.

- *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.*