



HIGH COURT OF AUSTRALIA

20 October 2010

WORKCOVER QUEENSLAND v AMACA PTY LTD & ANOR
[2010] HCA 34

Today the High Court unanimously held that limitations on damages recoverable by an estate suing on behalf of a deceased person under s 66 of the *Succession Act* 1981 (Qld) ("the Succession Act") do not apply to a workers' compensation insurer seeking to recover from wrongdoers under the *Workers' Compensation and Rehabilitation Act* 2003 (Qld) ("the Compensation Act") compensation paid to a worker who died before the insurer's action came to trial.

Mr Rex Noel Thomson was a worker who died in 2006 from malignant mesothelioma contracted as a result of inhaling asbestos in products manufactured by the respondents. Prior to his death, WorkCover Queensland paid to Mr Thomson the sum of \$340,000 as compensation under the Compensation Act. Mr Thomson had not instituted any action for damages against either respondent before his death. WorkCover was consequently able to pursue its entitlement under s 207B(7)(a) of the Compensation Act to be indemnified by a wrongdoer to the extent of the wrongdoer's liability for the damages. Section 66(2) of the Succession Act operates to limit the damages recoverable where a cause of action survives a person's death for the benefit of that person's estate under s 66(1), by excluding matters such as damages for pain and suffering, for any bodily or mental harm or for curtailment of expectation of life.

In a case stated for the Court of Appeal of the Supreme Court of Queensland, that Court considered that the Succession Act did operate to reduce the amount of the indemnity that WorkCover was entitled to claim in the circumstances. It held by majority that the extent of the indemnity was delineated by the statutory limitations which would operate if an action was pursued by the deceased's personal representative after death.

The High Court allowed an appeal by WorkCover, holding that s 66(2) of the Succession Act operates as a limitation on the remedy available, which applies only to an action brought by the estate of the person in whose favour a liability existed. The Court held that the section does not operate to limit the liability of a wrongdoer towards the deceased person, and thus the quantum of WorkCover's indemnity was not reduced following Mr Thomson's death or the consequent impact of s 66(2) on any action which may have been brought by Mr Thomson's estate.

The respondents were ordered to pay WorkCover's costs.

- *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.*