



HIGH COURT OF AUSTRALIA

12 December 2012

CERTAIN LLOYD'S UNDERWRITERS SUBSCRIBING TO CONTRACT NO IH00AAQS v JOHN CROSS; CERTAIN LLOYD'S UNDERWRITERS SUBSCRIBING TO CONTRACT NO IH00AAQS v MARK GEORGE THELANDER; CERTAIN LLOYD'S UNDERWRITERS SUBSCRIBING TO CONTRACT NO IH00AAQS v JILL MARIA THELANDER

[2012] HCA 56

The High Court today held that claims for personal injury damages based on intentional acts were claims for personal injury damages within the meaning of s 198D of the *Legal Profession Act 1987* (NSW) ("Legal Profession Act"). The respondents were assaulted by hotel security staff. They sued the appellant, as the insurer of the company that employed those staff, for trespass to the person claiming damages for personal injuries allegedly inflicted intentionally and with intent to injure. The damages awarded in each case were for less than \$100,000, with a declaration made that each respondent's costs for legal services were subject to s 198D of the Legal Profession Act.

Section 198D of the Legal Profession Act provided that where the amount recovered on a claim for personal injury damages did not exceed \$100,000 the maximum costs for legal services provided to a plaintiff were fixed at 20% of the amount recovered or \$10,000, whichever was greater. Section 198C of the Legal Profession Act provided that "personal injury damages" had the same meaning as in the *Civil Liability Act 2002* (NSW) ("Liability Act"). The Liability Act limited awards for personal injury damages. The awards limited by the Liability Act were subject to specific exceptions contained within the Liability Act, including where personal injury resulted from intentional acts. The central point of difference between the parties was whether the definition of "personal injury damages" was to be construed by reference only to the words of the definition in the Liability Act or by reference to both the words of the definition and the limited operation

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which the Liability Act had in respect of awards of personal injury damages as a result of the relevant exclusions contained within the Liability Act.

In the District Court of New South Wales it was ruled that the respondents' claims were for personal injury damages as defined under s 198D of the Legal Profession Act. On appeal, the Court of Appeal of the Supreme Court of New South Wales held that the costs for legal services were not subject to s 198D of the Legal Profession Act. By special leave, the insurer appealed to the High Court.

The High Court allowed the appeals. A majority of the Court held that the claims which the respondents made were claims for personal injury damages within the meaning of s 198D of the Legal Profession Act.

- *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.*