



Insurance Law Case Update

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Overview

1. Notification obligations (legislative interpretation):

- *Allianz Australia Insurance Ltd v Uniting Church in Australia Property Trust (NSW)* [2025] FCAFC 8
- *ASIC v Auto & General Insurance Company Limited* [2025] FCAFC 76

2. Causation (illustrative examples):

- *Allianz Australia Insurance Limited v Bell* [2025] NSWCA 187
- *Pearce v Waller Legal Pty Ltd* [2025] VSC 324

3. Loss:

- *R Lawyers v Mr Daily* [2025] HCA 41
- *Stewart v Metro North Hospital and Health Service* [2025] HCA 34
- *Sayers Property Holdings Pty Ltd v AIG Australia Ltd* [2025] VSCA 294

Allianz v UCPT



Facts:

- 1999 - 2011, Allianz issued successive PI policies to UCA, covering all entities, persons and associations within it, including Knox Grammar School.
- From 2007, civil claims for historical sexual and physical abuse were brought by numerous former Knox students. UCPT responded, engaged in settlement negotiations, resolved a number of them, and sought indemnity from Allianz.
- Investigative report (LKA2) by a licensed private investigator was delivered to the Headmaster on 7 May 2004, addressing allegations of sexual abuse of students by multiple teachers over many years and identified a culture of paedophilic conduct.
- Report tabled at a School Council meeting on 16 June 2004.

Allianz v UCPT

Allianz contended that:

- LKA2 disclosed facts which might give rise to claims;
- the relevant insureds were aware of these facts in 2004; and
- no timely notification was given to Allianz during the 2004/2005 policy period.



Insurance Contracts Act 1984 (Cth)

Section 40(3):

*Where the insured gave notice in writing to the insurer of **facts that might give rise to a claim** against the insured **as soon as was reasonably practicable** after the insured became aware of those facts but before the insurance cover provided by the contract expired, the **insurer is not relieved** of liability under the contract in respect of the claim, when made, **by reason only** that it was made after the expiration of the period of the insurance cover provided by the contract.*

Insurance Contracts Act 1984 (Cth)

Section 52:

"Contracting out" prohibited

- (1) *Where a provision of a contract of insurance (including a provision that is not set out in the contract but is incorporated in the contract by another provision of the contract) **purports to exclude, restrict or modify, or would, but for this subsection, have the effect of excluding, restricting or modifying,** to the prejudice of a person other than the insurer, the operation of this Act, the provision is void.*

Relevant policy exclusion

This policy does not cover any liability for or arising directly or indirectly from:

7. Prior Claims & Circumstances

any Claim, fact, circumstance of occurrence;

[...]

- c. of which the Insured is aware before the commencement of the Period of Insurance, which may give rise to a claim.*

This exclusion is independent of and shall not affect [Allianz]'s other rights regarding misrepresentation and non-disclosure.

Allianz v UCPT

Legal Issues:

1. Did LKA2 reveal facts which might give rise to a claim (s 40(3))?
2. Should the knowledge of Knox be attributed to UCPT?
3. Was Exclusion 7(c) void under ss 33 or 52 of the ICA?
4. Does s 54 expand the operation of s 40(3)?
5. Did doctrines of estoppel, waiver, election and/or utmost good faith apply?



Allianz v UCPT

Outcome:

- Trial judge (Lee J) found in favour of UCPT.
- Appeal allowed (Derrington, Colvin & McEvoy JJ).
- The primary judge's declarations and orders were set aside and the proceedings otherwise dismissed.
- UCPT ordered to pay Allianz's costs of the appeal.

Legal Issue #1

Did LKA2 reveal facts which might give rise to a claim (s 40(3))?

- The Court unanimously held that it did.
- Derrington J found that LKA2 revealed the existence of a "problem", "hornets' nest", or "can of worms" going back to the 1980s, including persistent grooming and sexual abuse of boys, and the existence of a school culture where that could occur.
- The primary judge's finding that LKA2 gave rise to only a "bare possibility" of a claim was overturned.

s 40(3) commentary

- The test for notifiable facts is "deliberately undemanding" — it is sufficient to notify of a "problem" or "hornets' nest" described in general terms, even if the quantum, character or identity of claimants is unknown. [160]–[161]
- Expert opinions (such as investigator reports) can constitute "facts" for the purposes of s 40(3) — the opinion of an expert based on reasoned explanations and substantive evidence qualifies. [165]–[168]
- The temporal requirement is strict: notification must be given as soon as reasonably practicable after awareness and before the policy expires. Failure to notify in the correct policy year means the statutory extension is lost permanently. [337]–[338]
- s 54 of the ICA cannot cure a failure to comply with s 40(3) — this is now firmly established. [463]–[499]

Legal Issue #2

Should the knowledge of Knox be attributed to UCPT?

- The Court held that the UCPT was fixed with the knowledge of the Headmaster and School Council.
- Derrington J formulated a special rule of attribution. [307]–[326].
- Colvin and McEvoy JJ reached the same conclusion through the contractual notification arrangements. [782]–[799]

Knowledge attribution

- Where one insured acts as a nominal defendant for another insured's liability under a composite policy, the nominal defendant is fixed with the knowledge of the insured whose liability is being indemnified. [322]–[326]
- Internal reporting protocols and insurance sweep arrangements are relevant to determining the scope of knowledge attribution — they demonstrate what the parties expected in terms of disclosure. [292]–[306]
- The severance clause in a composite policy means each insured is individually subject to policy terms including exclusion clauses — one insured cannot improve its position by interposing itself between another insured and the insurer. [309]–[311]

Legal Issue #3(a)

Was Exclusion 7(c) void under s 33 of the ICA?

s.33 ICA:

No other remedies

The provisions of this Division are exclusive of any right that the insurer has otherwise than under this Act in respect of a failure by the insured to disclose a matter to the insurer before the contract was entered into and in respect of a misrepresentation or incorrect statement.

- A "known circumstances" exclusion clause is a true exclusion defining the scope of cover, not a non-disclosure provision — it is not rendered void by s 33 of the ICA. [433]–[449]

Legal Issue #3(b)

Was Exclusion 7(c) void under s 52 of the ICA?

Exclusion 7(c):

This policy does not cover any liability for or arising directly or indirectly from any Claim, fact, circumstance of occurrence of which the Insured is aware before the commencement of the Period of Insurance, which may give rise to a claim.

- **Divergence on s 52 ('no contracting out'):**
 - Derrington J held Exclusion 7(c) is not void under s 52. [450]–[462]
 - s 40(3) and Exclusion 7(c) are complementary: the first extends cover if timely notification is given; the second excludes cover for known pre-inception facts in subsequent policies. [398]–[403]
 - Colvin and McEvoy JJ held it is void under s 52 because it has the effect of substantially excluding the application of the duty of disclosure provisions. [835]–[847]

Legal Issue #4

Does s 54 expand the operation of s 40(3)?

- The Court unanimously held that s 54 does not apply to cure a failure to comply with s 40(3).
- The inherent restriction in the claims covered is that they arise out of facts notified during the policy period, and s 54 operates only upon the "effect of a contract of insurance", not the effect of statutory provisions. [463]–[499]

Legal Issue(s) #5

Did doctrines of estoppel, waiver, election and/or utmost good faith apply?

- These claims were rejected for want of evidence of any representation, reliance or detriment. [501]–[578]



Key takeaways

- For insureds: Ensure clients understand the breadth of notification obligations. Any facts that bespeak of a "problem" — even at a high level of generality — should be notified promptly. Delay is fatal to the s 40(3) extension.
- For composite policies: Organisations with multiple insured entities must ensure robust internal reporting systems. Knowledge held by one entity will likely be attributed to the entity claiming indemnity, particularly where a nominal defendant arrangement exists.
- The divergence between Derrington J and Colvin/McEvoy JJ on s 52 creates uncertainty: known circumstances exclusions may be vulnerable to challenge under s 52.
- Estoppel and waiver arguments based on an insurer's prior conduct in accepting claims are extremely difficult to establish without evidence of specific representations, reliance and detriment.



ASIC v Auto & General

Unfair contract provisions

s 12BG ASIC Act:

- (1) A term of a contract referred to in section 12BF is unfair if:*
- (a) it would cause a significant imbalance in the parties' rights and obligations arising under the contract; and*
 - (b) it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and*
 - (c) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.*
- [...]*
- (4) For the purposes of paragraph (1)(b), a term of a contract is presumed not to be reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term, unless that party proves otherwise.*

Unfair contract provisions

s 12BG ASIC Act:

- (2) In determining whether a term of a contract is unfair under subsection (1), a court may take into account such matters as it thinks relevant, but must take into account the following:*
- (b) the extent to which the term is transparent;*
 - (c) the contract as a whole.*
- (3) A term is transparent if the term is:*
- (a) expressed in reasonably plain language; and*
 - (b) legible; and*
 - (c) presented clearly; and*
 - (d) readily available to any party affected by the term.*

ASIC v Auto & General

Facts:

- Between 2021 and 2023, Auto & General entered into approximately 1.3m home and contents insurance contracts containing a "Notification Term" requiring insureds to tell the insurer "if anything changes about your home or contents".
- The term specified consequences for non-compliance and provided examples of changes.
- It was agreed that the contracts were standard form consumer contracts and financial products within the meaning of the ASIC Act.
- ASIC commenced a proceeding seeking, amongst other forms of relief, declarations that the Notification Term is an unfair term within the meaning of s 12BG(1) of the ASIC Act and, as such, is void by operation of s 12BF(1).
- At first instance, Jackman J concluded that the Notification Term was not an unfair term and, should be construed as limited to changes in information previously disclosed by the insured.



Tell us if anything changes while you're insured with us

While you're insured with us, you need to tell us if anything changes about your home or contents.



If you don't tell us about changes, we may:

- refuse to pay a claim
- reduce the amount we pay
- cancel your contract
- not offer to renew your contract.

Examples of changes we want you to tell us about, are:

Your insured property or address for contents changes

You find out your home is heritage listed or has a heritage overlay

Paying guests stay in your home, for example, Airbnb, Homestayz

Your home is no longer in good condition

You are moving out and rent your home to tenants

You will start earning an income at your insured address

Any construction, alteration, or renovation work will start or finish

Security devices are removed, or broken

Your home will be demolished, by you or a government authority

You find out the building materials contain asbestos.

Your property will be unoccupied for more than 60 days, or is occupied by trespassers

ASIC Grounds of Appeal

1. Construction of the Notification Term.
2. The Notification Term would cause a significant imbalance in the rights and obligations of the parties arising under the contract for the purposes of s 12BG(1)(a) of the ASIC Act.
3. The Notification Term was not reasonably necessary to protect A&G's legitimate interests for the purposes of s 12BG(1)(b) of the ASIC Act.

* In respect of grounds 2 & 3, the trial judge also failed to take into account the transparency of the term in the manner required by s 12BG(2)(b).

Outcomes

Construction of the Notification Term:

- The Court upheld ASIC's ground of appeal on construction.
- O'Bryan and Cheeseman JJ held the preferable construction was to qualify the words "if anything changes" with a criterion of materiality, where materiality relates to the risk insured.
- However, the Court noted a logical inconsistency in ASIC's case: it was contradictory to contend that the term should be construed as subject to a materiality criterion but that a reasonable consumer would not understand that qualification.





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Outcomes

Significant imbalance (s 12BG(1)(a)):

- ASIC acknowledged that on its own construction (materiality), Notification Term did not cause significant imbalance in the parties' rights and obligations.

Legitimate interests (s 12BG(1)(b)):

- Notification Term was reasonably necessary to protect A&G's legitimate interests.
- The Court accepted that a lack of transparency of a contractual term may, on its own, support a finding that the term is not reasonably necessary, but here the term as construed did not suffer from a fatal lack of transparency.

Transparency:

- Followed *Karpik v Carnival Plc* [2023] HCA 39: a lack of transparency may affect the analysis of each element of the statutory definition of "unfair".
- ASIC's concession on construction undermined its transparency argument: must accept that reasonable consumer would understand term in that manner.

Outcomes

Interaction of the unfair contract terms regime with the ICA:

- The Court held that the statutory good faith implied term under s 13 of the ICA does not alter the proper construction of a contractual term but imposes an obligation on the exercise of rights under that term.
- The contractual term to be assessed under s 12BG is the term as expressed in the contract.
- The Court expressed caution about the assumption that provisions such as ss 54 and 63 of the ICA are relevant to the significant imbalance assessment, noting that the phrase "the parties' rights and obligations arising under the contract" directs attention to contractual rights and obligations.

Key takeaways

- The unfair contract terms regime now applies to insurance contracts following the 2020 amendments, operating independently of the duty of utmost good faith under s 13 of the ICA.
- The statutory good faith implied term does not alter the construction of a contractual term — it constrains the exercise of rights under that term. The term to be assessed for unfairness is the term as expressed in the contract.
- A notification term requiring disclosure of changes material to the insured risk is not, of itself, unfair — it is consistent with the nature of insurance and does not cause significant imbalance.
- Transparency is not an independent element of unfairness but must be taken into account in assessing each element of s 12BG(1) — greater imbalance requires greater clarity.

Allianz v Bell



Facts:

- Attempted theft of Mr Bell's Harley-Davidson motorcycle.
- As Mr Bell pursued the thief, the perpetrator pushed the motorcycle toward him, causing physical injury.
- A second motorcycle then approached, picked up the would-be thief, and turned toward Mr Bell in a threatening manner.
- Mr Bell then believed that they were members of a motorcycle gang, which triggered significant psychological distress.

Legal Issues

- 1. Characterisation of Causative Event:** Whether the rapidly occurring sequence (attempted theft, physical contact with motorcycle, perceived gang threat) should be treated as a single motor accident or multiple discrete events for causation analysis.
- 2. Medical Review Panel Function:** The proper role of Medical Review Panels in determining causation under the *Motor Accident Injuries Act 2017* (NSW), particularly whether panels must apply legal tests or confine themselves to clinical assessments.
- 3. Factual Causation in Psychological Injury:** Whether the psychological injury (including PTSD and related conditions) was caused by the physical aspects of the motor accident or by the plaintiff's subsequent perception of gang involvement.

Outcome #1

On Single Causative Event:

- The Panel was entitled to treat the rapidly occurring sequence of events as a single causative incident.
- The forensic dissection of the events into separate components (physical contact with motorcycle versus perceived gang threat) was neither appropriate nor realistically possible for a Medical Review Panel conducting a clinical assessment.

Outcome #2

On Panel's Role (at [76]):

- Following *Jarvis v Allianz Australia Insurance Limited*, the Court emphasised that Medical Review Panels are not required to follow a rigid two-stage causation test from the MAA Guidelines.
- The Panel's task is to form and give their own medical opinion based on clinical expertise.
- Causation is "quintessentially" a question of fact, and once a finding is made, no further explanation of reasoning is required beyond what supports the factual conclusion.

Outcome #3

On Causation Assessment (at [48]):

- The Panel sufficiently outlined a path of reasoning clarifying that the accident (comprehensively understood) caused the physical and psychological injuries.
- The Panel concluded cervical and lumbar injuries were caused by the accident, while remaining injuries were not. This necessarily implied the finding that psychological injury arose from the accident as a whole.
- The Panel applied factual causation principles by determining the accident was of sufficient severity to give rise to specific psychiatric diagnoses. This clinical finding established the accident as a necessary condition of the psychological harm without requiring the Panel to articulate legal causation tests.
- The Panel's conclusion that "the subject motor accident was the substantial cause of the psychiatric injuries" satisfied the requirement that the accident materially contributed to the harm, even where pre-existing vulnerabilities or subsequent perceptions played a role.

Outcome #4

On Evidentiary Standards:

- The Court rejected arguments that the Panel failed to adequately respond to the insurer's submissions about what constituted the "motor accident" for legal purposes.
- The Panel's use of descriptors like "the subject motor accident" and "the event" were appropriate clinical terms, not attempts to determine legal boundaries.
- The Panel was entitled to accept Mr Bell's account based on clinical judgement.

Pearce v Waller Legal

Facts:

- Mr Pearce was a survivor of historical sexual abuse who retained Waller Legal to act for him in abuse compensation litigation.
- Waller Legal negotiated a settlement that included components for general damages, past care, and future care. However, the settlement structure resulted in the abandonment of Mr Pearce's claim for economic loss (loss of earning capacity).
- Mr Pearce subsequently sued Waller Legal for professional negligence, alleging the firm negligently handled the economic loss component of his abuse claim, causing him to lose the opportunity to pursue that claim through litigation or further negotiation.

Legal Issues

1. **Duty and Breach:** Whether Waller Legal breached its duty to Mr Pearce by:
 - Failing to properly advise on the economic loss component
 - Failing to obtain proper instructions
 - Structuring settlement that abandoned viable economic loss claims.
2. **Causation — Lost Opportunity:** Specifically:
 - Would he have pursued the economic loss claim but for negligence?
 - Value of lost opportunity to litigate/negotiate economic loss claim?
3. **Damages — Valuation of Lost Litigation Opportunity:** Assessment of:
 - Prospects of success in the underlying abuse claim
 - Likely quantum of economic loss damages
 - Appropriate discount for litigation risk.

Outcome (breach)

The Court **found in favour of Mr Pearce**, establishing both breach and causation.

On Breach: Waller Legal breached its duty by:

- Failing to obtain proper instructions regarding the economic loss claim
- Failing to advise Mr Pearce of the significance of abandoning the economic loss component
- Proceeding with a settlement structure that effectively extinguished the economic loss claim without informed consent.

Outcome (causation)

On Causation - 'But For' Test:

- Factual Findings:
 - Court accepted Mr Pearce's evidence he would not have agreed to settle on the terms proposed if properly advised.
 - Medical and vocational evidence supported that Mr Pearce had suffered significant economic loss from his abuse.
- Causation Analysis: But for the negligence, Mr Pearce would have:
 - been properly informed of the economic loss component's value;
 - rejected settlement or insisted on terms preserving economic loss claim;
 - retained the opportunity to litigate or further negotiate that claim.

Outcome (loss)

On Damages—Lost Opportunity Valuation:

Applying the principles from *Sellars v Adelaide Petroleum NL*:

- **Broad-Brush Assessment Required:** Where plaintiff proves they lost opportunity due to negligence, damages are assessed by evaluating what the opportunity was worth, not by determining what would have happened with certainty.
- **Discount for Litigation Risk:** Court must discount potential award to reflect:

Evidence-Based Valuation (at [691]): The Court:

- Reviewed expert vocational evidence on Mr Pearce's earning capacity losses
- Assessed medical evidence linking abuse to psychological conditions affecting work capacity
- Evaluated prospects of success in proving causation in the underlying claim
- Applied appropriate percentage discount reflecting realistic litigation prospects.

R Lawyers v Mr Daily

Facts:

- Mr Daily engaged R Lawyers in 2005 to draft BFA before his marriage.
- BFA intended to protect Mr Daily's pre-marital assets in the event of marriage breakdown.
- BFA executed and the parties married shortly thereafter.
- Marriage lasted approximately 13 years and produced two children.
- Upon separation in 2018, Ms Daily brought proceedings to set aside the BFA on grounds of uncertainty and hardship under s 90K of the Family Law Act.
- The Family Court set aside the BFA, finding it was void for uncertainty and would have caused hardship to Ms Daily, particularly given the birth of children which the BFA had not adequately addressed.
- Mr Daily then sued R Lawyers in negligence and contract, alleging the BFA was defectively drafted.

The claim

- Mr Daily's claim comprised two components:
 1. wasted legal costs defending the uncertainty challenge (\$38,000); and
 2. loss of a better property settlement outcome that he would have achieved but for the negligent BFA (approximately \$2 million).

Limitation of Actions Act 1936 (SA) imposed a six-year limitation period:

- R Lawyers argued Mr Daily's cause of action accrued in 2005 when the defective BFA was executed, making the 2020 proceedings statute-barred.
- Mr Daily contended that loss did not accrue until separation in 2018, when the contingency materialised and the BFA was set aside.

Legal Issues

1. When did loss accrue for limitation purposes?

- Was loss suffered when the defective BFA was executed in 2005, or only when the marriage broke down and the BFA was set aside in 2018-2019?

2. What evidence is required to prove compensable loss beyond wasted costs?

- Can a plaintiff establish loss of a better property settlement outcome without adducing evidence of what that counterfactual outcome would have been?

Accrual of loss

Loss Does Not Accrue Until the Contingency Materialises

- Statutory purpose of BFAs under the Family Law Act. BFAs are prospective and contingent—they have no operative effect unless and until separation occurs.
- Assessing loss at the time of signing in 2005 would have required "impermissible speculation about future events".

Application of *Wardley Australia Ltd v Western Australia* principles:

- For limitation purposes, loss is suffered when the plaintiff sustains **measurable damage**, not merely when exposed to a contingent liability.
- In the BFA context, such detriment could not arise until:
 - marriage broke down (triggering BFA's operative provisions under Part VIIIA);
 - parties engaged in property settlement proceedings; and
 - defects in the BFA became relevant to the property division.

Key Takeaways

Limitation Period: In BFA-related negligence, the cause of action does not accrue until separation and property proceedings, not at execution of the defective agreement.

Evidentiary Burden: Plaintiffs must adduce concrete evidence of counterfactual scenarios, not rely on judicial speculation. Expert evidence (e.g., family law practitioners opining on likely property settlement outcomes under alternative BFA terms) will typically be required.

No Transaction vs Alternative Transaction: Where the plaintiff's case is "I would not have entered this transaction but for negligence," clear evidence is needed of what alternative course would have been taken and its financial consequences.

Stewart v Metro North Hospital

Facts:

- Ms Stewart suffered catastrophic injuries during childbirth at a Queensland public hospital, resulting in permanent quadriplegia and total care dependency. Liability was admitted.
- At trial, Ms Stewart claimed damages for future care costs on the basis that she would receive care in her own home.
- Trial judge awarded substantial damages for future care, accommodation modifications, and attendant care services to enable Ms Stewart to live at home.



Appeal

- Metro North Hospital appealed, arguing that home care was unreasonable because care in nursing home significantly cheaper and medically appropriate.
- MNH contended that under s 61 of the *Civil Liability Act 2003* (Qld), "**reasonableness**" should be assessed by balancing the cost of care against the health benefits derived—a proportionality test.
- The Queensland Court of Appeal upheld the appeal: trial judge erred by failing to consider whether the additional cost of home care (compared to institutional care) was justified by additional health benefits.
- Court of Appeal adopted a **cost-benefit proportionality test**: damages for care should be "reasonable" in the sense that they are proportionate to the medical or health benefits achieved.
- Ms Stewart appealed to the High Court.

Legal Issue

Does s 61 of the *Civil Liability Act 2003* (Qld) require a court to assess "**reasonableness**" of care costs:

- a) by balancing cost against health benefits (a proportionality test); or
- b) does "reasonableness" operate within the broader compensatory principle to restore the plaintiff to their pre-injury position?

Outcome

Rejection of Cost-Benefit Proportionality:

- The High Court **unanimously allowed the appeal.**
- The Court held that the Court of Appeal had erred in applying a narrow cost-benefit proportionality test.
- The High Court held that "**reasonableness**" is not confined to balancing costs against health outcomes.
- Reasonableness must be assessed within the **compensatory principle**: the plaintiff is entitled to be restored, as nearly as possible, to the position they would have been in had the tort not been committed.

Compensatory Principles

The High Court reaffirmed the foundational principle of damages for personal injury: **restitutio in integrum**—restoration to the pre-injury condition:

*The proper question is whether the plaintiff's choice to receive care at home is an **ordinary and reasonable response** to repair the consequences of the tort, considered in light of the plaintiff's pre-injury life, personal circumstances, and the contemporary context in which the care decision is made.*

Assessment of "reasonableness" must take into account:

- **Personal choices and preferences:** plaintiff's desire to live at home rather than in institutional care;
- **Pre-injury status:** what plaintiff's living arrangements and quality of life were before the injury;
- **Contemporary social context:** societal attitudes and norms regarding care for catastrophically injured persons in 2025, including recognition of the dignity and autonomy interests in receiving care at home.

Multi-factorial assessment

Reasonableness is a **multi-factorial evaluative assessment**, not a mechanical cost-benefit calculation. Relevant considerations include:

- **Medical Appropriateness:** Whether the proposed care arrangement is medically suitable and safe;
- **Quality of Life:** Whether home care better enables the plaintiff to maintain connections with family, community, and ordinary life experiences;
- **Dignity and Autonomy:** Recognition that institutionalisation may be incompatible with the plaintiff's pre-injury lifestyle and reasonable expectations;
- **Cost:** While cost is a relevant factor, it is not determinative. Higher cost alone does not render home care "unreasonable".

Burden of proof on mitigation

The **burden of proving failure to mitigate** rests on the defendant.

Once a plaintiff establishes that their choice of care arrangement is reasonable, the defendant must prove that:

- plaintiff's refusal of an alternative (e.g., nursing home care) was unreasonable; and
- claimed costs could have been avoided by accepting that alternative.

The defendant in *Stewart* failed to discharge this burden: evidence supported the reasonableness of Ms Stewart's choice to live at home.

Key takeaways

- **No proportionality straightjacket:** Court is not required to deny home care simply because institutional care would be cheaper, provided home care is an ordinary and reasonable response to restore the plaintiff's pre-injury life.
- **Holistic assessment:** Courts must consider the full range of factors bearing on whether the plaintiff's care choice is consistent with restoring them to their pre-injury position, including personal, social, and dignitary considerations.
- **Evidentiary requirements:** Plaintiffs should adduce evidence of their pre-injury living arrangements, family circumstances, and the availability and suitability of home care services. Defendants seeking to argue that alternative care is required must prove that the plaintiff's choice is objectively unreasonable and that mitigation was refused.

Sayers v IAG

- Sayers held a corporate liability insurance policy with AIG Australia, provided cover for "Loss" resulting from a "Claim" against the insured.
- Sayers was sued in proceedings that included both monetary and non-monetary remedies (including injunctive relief), but settled and agreed to pay a settlement sum and forego certain non-monetary claims.
- Sayers sought indemnity for the settlement payment. AIG denied coverage:
 - proceedings against Sayers did not constitute a "Claim" under the policy because sought non-monetary relief (injunctions) in addition to damages;
 - settlement payment was not "Loss" covered by the policy; and
 - settlement payment did not "result from" counterclaim within the meaning of the policy.

Outcome

- The Victorian Supreme Court (Garde J) found for AIG at first instance.
- Victorian Court of Appeal (Niall CJ, McLeish and Lyons JJA) unanimously allowed the appeal.

Definition of 'claim'

- Policy defined "Claim" to include any claim for "**compensation or other legal remedy**". This definition is **deliberately broad** and encompasses claims seeking both monetary compensation and other forms of legal remedy, including injunctive or declaratory relief.
- The phrase "**or other legal remedy**" extends coverage beyond pure monetary claims. If the policy intended to exclude claims seeking non-monetary relief, it would not have used such inclusive language.
- Proceedings against Sayers—which sought both damages and injunctive relief—**did constitute a "Claim"** within the policy definition.

Definition of 'loss'

- Policy did not exhaustively define "Loss," but it did expressly reference "**settlements**" as a component of indemnifiable Loss.
- This express inclusion confirmed that settlement payments made to resolve covered Claims fall within the definition of Loss.
- The Court rejected AIG's argument that "Loss" should be narrowly construed.
- Liability policies routinely contemplate indemnification for settlement amounts, as settlement is a reasonable and common method of resolving litigation risk.

Causation: 'Resulting From'

- The settlement payment "**resulted from**" the counterclaim within the meaning of the policy.
- The causal connection between the counterclaim (a "Claim" as defined) and the settlement payment (a "Loss") was established on the facts.
- Court applied orthodox principles of contractual interpretation, reading "resulting from" as requiring a sufficient causal nexus but not demanding that the Loss be the sole or dominant consequence of the Claim.
- Here, the settlement resolved the counterclaim, and the payment was made to discharge the insured's exposure arising from that counterclaim.

Key takeaways

- **Broad Definition of "Claim":** Express reference to "compensation **or other legal remedy**" brings non-monetary claims (injunctions, declarations, specific performance) within the scope of "Claim".
- **Settlement as Insured Loss:** Settlement payments made to resolve covered Claims constitute "Loss" and are indemnifiable, absent express policy exclusions.
- **Causation:** The insured must establish that the settlement payment was causally connected to the Claim—i.e., that it was paid to resolve or mitigate liability arising from the Claim.
- **Policy Wording Controls:** Court emphasised the primacy of the actual policy wording. Insurers seeking to limit coverage must do so through clear and specific exclusions, not by arguing for artificially narrow interpretations of inclusive defined terms.

Closing remarks

1. Notification obligations:

- *Allianz Australia Insurance Ltd v Uniting Church in Australia Property Trust (NSW)* [2025] FCAFC 8
- *ASIC v Auto & General Insurance Company Limited* [2025] FCAFC 76

2. Causation:

- *Allianz Australia Insurance Limited v Bell* [2025] NSWCA 187
- *Pearce v Waller Legal Pty Ltd* [2025] VSC 324

3. Loss:

- *R Lawyers v Mr Daily* [2025] HCA 41
- *Stewart v Metro North Hospital and Health Service* [2025] HCA 34
- *Sayers Property Holdings Pty Ltd v AIG Australia Ltd* [2025] VSCA 294

Questions

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