

Minter Ellison Health News

4 August 2010

Case law

Queensland

Australasian Medical Insurance Ltd & Anor v CGU Insurance Ltd

The Queensland Court of Appeal has dismissed an appeal from a decision of the Chief Justice of Queensland about the interpretation of a medical indemnity insurance contract.

The appellant, Australian Medical Insurance Ltd (AMIL), provided professional indemnity insurance to each of the 15 partners who own Queensland Medical Laboratory (QML). This insurance indemnified the partners for compensation they became liable to pay in connection with their "profession", up to a capped amount. The insurance contract defined "profession" to mean the provision of medical treatment, advice and services in the course of his or her medical practice. Because of this definition, the coverage did not extend to the employed staff of the pathology practice, such as cytologists. The partners' vicarious liability for the negligence of their employed staff was covered by another insurance contract with CGU Insurance Limited (CGU).

AMIL paid compensation to a claimant whose cervical cancer was not detected in a test conducted by a cytologist employed by QML. The incorrect test report was not signed by a QML partner, and a claim was commenced against the QML partners for their personal negligence in relation to the supervision of the unidentified staff member.

After making a compensation payment of \$486,517.95, inclusive of legal costs, AMIL sought a contribution in the sum of \$238,154.03 from CGU on the basis that the payment was covered by both the AMIL and CGU policies. (When a particular liability is covered by two insurance policies, the principle of "double insurance" applies and each insurer is required to contribute pro rata.) When CGU declined to pay, AMIL sought an order in the Supreme Court.

The Chief Justice sat as the trial judge. CGU contended that the identity of the insured under its policy was the business and not each of the individual named partners, and further that the policy applied only to the risks of the business associated with the negligence of employed staff, rather than the professional negligence of the pathologist partners. The Chief Justice found against CGU on both of these grounds, but relied on a detailed examination of the history of the relationship between CGU, QML and AMIL to hold that an "estoppel" operated to prevent AMIL from enforcing CGU's liability. This

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was because of extensive evidence that the staff of AMIL and CGU had dealt with each other on the assumption that they were insuring different risks.

Chesterman JA gave the Court of Appeal's judgment, with the other judges concurring. Chesterman JA considered the language of CGU's insurance contract with QML meant that the policy did not extend to the claim against the partners for which compensation was paid. Because the claim was not brought against QML for its vicarious liability for the negligence of the employed cytologist but was a claim for the partners' own negligence, it was only covered by the AMIL policy. The appeal was dismissed for this reason.

[Click here for decision](#)

New Zealand

Health Practitioners' Disciplinary Tribunal: Dr Johannes Wilson, general practitioner

Dr Wilson faced seven charges for obtaining, prescribing and importing various medications for patients in circumstances which departed from the usual prescribing practice of general practitioners. He did not complete consultations before prescribing the medication. Dr Wilson also faced a charge of exploiting patients by overcharging for non-consented medication. Among the medication prescribed by Dr Wilson were medications which contained non-consented Human Growth Hormone products and the controlled drug pseudoephedrine.

The Tribunal found that all the charges were proven against Dr Wilson. Dr Wilson's behaviour constituted the "grossly reckless handling of pharmaceuticals" over a sustained period of at least seven years. The Tribunal accepted evidence that Dr Wilson had prescribed an "enormous volume" of prescriptions for medications that were capable of being diverted for illicit purposes. The charge of professional misconduct was established.

The Tribunal cancelled Dr Wilson's registration and imposed a fine of \$20,000. Dr Wilson was also ordered to pay \$66,000 in respect of the costs and expenses of the Tribunal.

[Click here for full decision](#)

News

Aged care

Slow diagnosis under scrutiny

The WA Deputy State Coroner is investigating the treatment an 85-year-old woman received at a nursing home in the days before her death.

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E-Health

E-health records popular in polling

Australians favour the idea of an electronic health record - with a significant minority even prepared to pay for it - according to a survey of 1200 people.

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No guarantee of e-health safety

Australian Medical Association President Andrew Pesce said the AMA had long called for a proper implementation plan for healthcare identifiers.

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General Health

Still no warning on whooping cough

The parents of a child who died of whooping cough have criticised a failure to deliver on a promised national immunisation strategy.

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\$227m mental health plan 'not enough'

The Australian Medical Association and the Royal Australian and New Zealand College of Psychiatrists have called for more comprehensive reforms to the mental health sector.

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Jettison super clinics: doctors

The Australian Medical Association has demanded scrapping of the GP super clinics program.

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Pharmaceuticals

Merck's net income drops

Merck & Co has reported a 52 per cent drop in second-quarter net income, weighed down by big restructuring charges from buying Schering-Plough Corporation, generic competition and other factors.

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ACCC clears Novartis bid for Alcon Laboratorie

The ACCC has cleared Novartis AG's planned buyout of Alcon Laboratories, after Novartis agreed to sell one of Alcon's products to eye care company Bausch & Lomb in Australia.

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Government urged to be open with pharmaceutical contracts

An infectious diseases expert is calling on the Federal Government to offer greater transparency when awarding contracts to pharmaceutical companies.

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New Zealand

Hospitals packed as flu hits

Spring temperatures may have arrived early this year but people still need to be wary of illnesses that have pushed hospitals close to capacity.

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NZ Government to fund implant contraceptive

Women wanting longer-term contraception will be able to get Government-funded contraceptive implants from August 1.

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Payment deal for thalidomide victims

In an historic agreement, the 45 surviving thalidomide victims in Australia and New Zealand will share in an annual AUD 3m (NZD 3.5m) payment which could last for another 20 years.

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Swine flu-linked death referred to coroner

The death of a Wellington woman from a brain virus after contracting swine flu should have been referred to the coroner, a finding released today says.

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Management of heart patients 'improving'

The hospital management of heart attack patients has been improving, but many experience delays and New Zealand's rates of invasive treatment are lower than in comparable countries, an audit has found.

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