

**FAI GENERAL INSURANCE COMPANY LTD V AUSTRALIAN HOSPITAL CARE P/L [2001]
HCA 38**

High Court of Australia – 27 June 2001

FACTS

A former patient of the Hospital informed the Hospital that he contemplated bringing an action against the Hospital and its surgeon for negligent treatment given while he was a patient at the Hospital.

The Hospital did not inform its insurer, FAI of the potential claim because the matter was not pursued.

The former patient commenced proceedings against the Hospital the following year but the Hospital's professional indemnity policy for negligence claims with FAI had expired and replaced with a new professional indemnity policy taken with Lloyd's Underwriters.

FAI claimed that s54 of the Insurance Contracts Act 1984 ("the Act") precluded it from being liable for claims made by the former patient which was outside the period of cover under the policy.

ISSUES

Whether FAI could refuse to pay for the former patient's claim against the Hospital when the Hospital failed to notify FAI of the claim within the period of cover under the insurance contract.

FINDINGS

The Hospital's failure to notify FAI of the claim within the period of policy was an omission not consistent with the contract of insurance between the parties but section 54 of the Act precluded FAI from refusing to indemnify for claim.

QUOTE

McHugh, Gummow and Hayne JJ said:

"The effect of the contract of insurance is that FAI could refuse to pay the claim by reason only of the fact that the Hospital's did not give notice of the occurrence to it. Section 54, therefore, requires the conclusion that FAI may not refuse to pay the Hospital's claim.

The effect of the contract of insurance, but for s54, would be that the insurer may refuse to pay the Hospital's claim by reason only of the omission of the Hospital to notify the occurrence which at the time was one which might subsequently give rise to a claim by the former patient against it. That being so the section is engaged."

IMPACT

Section 54 of the Act operates to preclude the insurer from refusing to pay for a claim under the contract of insurance simply because the insured or third party failed to notify the insurer of the claim during the period of policy.

The insurer's only recourse if its interests are prejudiced due to the failure to notify within the period of policy is to reduce its liabilities to the extent of its prejudice suffered.

In this case, FAI's liabilities were not reduced because it did not suffer any prejudice as a result of the Hospital's failure to notify the claim within the period of policy.

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