

PROPORTIONATE LIABILITY— SETTLEMENT OF APPORTIONABLE CLAIMS

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In December 2003, the *Wrongs Act* was amended to provide for proportionate liability for concurrent wrongdoers in cases not involving personal injury. Part IVA of the legislation provides that once judgment is given against a concurrent wrongdoer, that party cannot be required to contribute to the damages recovered or recoverable from another concurrent wrongdoer in the same proceeding, nor can they be required to indemnify any such wrongdoer. However, Part IVA is silent on the ability of a concurrent wrongdoer to seek contribution or indemnity from other concurrent wrongdoers where a settlement is reached with the plaintiff. This issue was the subject of a recent Court of Appeal decision.

BACKGROUND

In March 2008, the Victorian Supreme Court was asked to consider the position of a concurrent wrongdoer who has achieved a settlement with the plaintiff. *Godfrey Spowers (Victoria) Pty Limited v Lincoln Scott Australia Pty Limited & Ors* [2008] VSC 90 concerned an action that was brought against a builder and architect for defective works. The building surveyor and the consulting engineer were subsequently joined as third parties by the architect. The architect settled with the plaintiff but continued with its claim against the third parties, seeking contribution in relation to the amount it paid under the settlement agreement.

The court found that a party, who would otherwise have been a concurrent wrongdoer, which had settled was not entitled to pursue a statutory claim for contribution against the remaining parties to the proceedings.

The court reasoned that a defendant's position in settling an apportionable claim should

not be better than the position of a defendant against whom a judgment had been entered in favour of the plaintiff.

GODFREY SPOWERS (VIC) PTY LTD V LINCOLNE SCOTT AUSTRALIA PTY LTD [2008] VSCA 208

The initial decision was overturned on 22 October 2008 by the Court of Appeal in *Godfrey Spowers (Vic) Pty Ltd v Lincolne Scott Australia Pty Ltd* [2008] VSCA 208. The Court of Appeal noted that part IVA did not prohibit a defendant from settling an apportionable claim for a sum greater than the proportion of the claim the court would have otherwise determined if the claim had gone to judgement. Consequently, if a party settles an apportionable claim for more than that amount, no legislation exists to prevent that party from claiming contribution in relation to the settlement sum.

HOW DOES IT AFFECT YOU?

The initial preclusion of a defendant's recourse to such rights of contribution would have arguably reduced the incentive for parties to settle proceedings involving apportionable claims unless all parties joined to the proceeding were simultaneously involved in the settlement. The appeal decision provides a greater incentive for concurrent wrongdoers to settle by allowing them to pursue claims for contribution or indemnity.

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