

NEWS

Legal win for Lumley Insurance provides clarity for Victorian insurers and brokers

Lumley Insurance has been successful in its appeal to the Supreme Court of Victoria over a dispute with the Commissioner of State Revenue relating to stamp duty refunds. The Commissioner was ordered to set aside an assessment of \$756,824 previously made against Lumley Insurance and has also been ordered to pay legal costs.

Background

The Victorian State Revenue Office (VSRO) undertook a tax audit of Lumley Insurance in 2004 covering 22,500 premium refunds. From a sample of these, there were 22 cases where Lumley could show the premium was refunded to the insurance broker but no evidence was available to prove receipt by the client. The VSRO deemed these refunds not to have been made and then applied that portion from the sample across all of the premiums that were refunded. They then penalised Lumley for "not refunding the duty." Lumley deals through brokers and other intermediaries so this approach appeared to disregard the agency role that insurance brokers have with their clients. It also ignored the fact that Lumley could prove that a refund had been paid to the broker in every case.

In handing down his findings Justice Pagone said "...the consequences of adopting the process advanced in argument by the Commissioner to deal with a mere 4.93% of cases would potentially have profound effects upon the orderly conduct of efficient business and upon the relations between, policy holders, the broker and general insurer"

Wesfarmers Insurance Managing Director, Rob Scott said "The decision is a victory for commonsense. This process has been costly and time consuming but we felt we had to take a stand to protect our rights and for the broader benefit of the industry."

"Paying an additional levy and penalty for duties that were already appropriately refunded would have been a bitter pill to swallow given the significant contribution that insureds already pay in Fire Services Levies and Stamp Duties."

Ends

A full copy of the judgement is available at <http://www.austlii.edu.au/au/cases/vic/VSC/2009/599.html>

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