Cost Protection – Tenders/Lodgments

A recent Irish Supreme Court decision of particular interest to insurers regarding Tenders and Lodgments is its judgment in Reaney & Ors - v- Interlink Ireland Ltd.

The proceedings concerned the appeal of a Court of Appeal Judgment in respect of the formulation and wording of a lodgment and when interest on damages payable should / could be awarded by the Court under the Courts Act 1981.

The defendant had made a lodgment prior to the High Court trial which was expressed to be “enough to satisfy all of the plaintiffs’ claims” together with a denial of liability. The lodgment was approximately €6,000 more than the damages awarded by the High Court. Mr Justice Gilligan in the High Court refused to award interest on the basis that interest had not been provided for in the original contract.

Accordingly, as the plaintiff failed to beat the lodgment the plaintiff should have only been able to recover legal costs until the date of the lodgment, and the defendant should recover all costs thereafter, which included the costs of the trial. The High Court held that the original lodgment was void as the defendant had failed to specify on the Notice of Lodgment the causes of action in respect of which payment was made and the sum paid in respect of each cause of action.

The Court of Appeal held the High Court had erred in exercising its discretion not to award interest. The Court further held that interest of 8%¹ should have been included in the award under s. 22 of the Courts Act 1981, which is calculated from the date the contractual obligations came into question and not from the date of the High Court judgment. As a result of this increase, the

¹ The Courts Act Interest rate was reduced from 8% to 2% per annum with effect from 01 January 2017.
formulation of the lodgment did not need to be considered as the award now exceeded the original lodgment amount.

The Supreme Court ultimately allowed the appeal in relation to the amount of interest on damages to be awarded to the Plaintiff and reduced the value of the award of interest. It dismissed the Defendant’s appeal on all other grounds.

The key points for insurers of the Supreme Court judgement can be summarised as follows:

(i) Courts Act Interest should be awarded when a court concludes that the amount it is awarding is clear cut, could, and should, have been paid earlier;

(ii) Where a claim is difficult and requires assessment and determination, it may be appropriate not to award interest;

(iii) Interest should not have to be included in a lodgment and accordingly should not be taken into account in considering if the plaintiff has received an award in excess of the lodgment;

(iv) A single lodgment expressed as one being enough to satisfy all claims made by the plaintiff, is a valid lodgment;

(v) Where a plaintiff fails to beat a lodgment, but falls short by a clear margin, and the matter is one of general assessment rather than precise award, a court may reflect the reasonableness of the pursuit of the claim by, if appropriate, disallowing some element of the plaintiff’s costs

(vi) Conversely, where a plaintiff beats a lodgment but by only a small amount, a court may still consider if it was reasonable to have pursued the case, and may reflect that adjudication in its award of costs.

This case clarifies the law on the formulation of Tenders which is of course a welcome development for insurers. Mr. Justice O'Donnell noted that the issues considered concerning Tenders and Lodgments warrant consideration by the Superior Courts Rules Committees.

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