

**Chris Parkin**, 'Proportionate liability under the Corporations Act and the ASIC Act'

joint judgment, French CJ, Kiefel, Bell and Keane JJ (with whose reasoning Gageler J agreed<sup>5</sup>), held that an apportionable claim for the purposes of the proportionate liability regime was limited to a claim under s 1041I based upon a contravention of s 1041H.<sup>6</sup>

Their Honours found that the expression 'claim', as deployed in each of subsections (1) and (2) of s 1041L, should be given the same meaning. As such, the reference to a 'claim' in subsection (2) could only mean a claim for damages as described in subsection (1), which meant a claim under s 1041I for damage suffered by reason of a contravention of s 1041H.<sup>7</sup>

Their Honours stated that the function of s 1041L(2) was to explain that regardless of the various causes of action pleaded with respect to s 1041H, the responsibility of the defendants would be apportioned by reference to a notional single claim.<sup>8</sup> This position was reinforced by the fact that s 1041N(2) required that liability for an 'apportionable claim' was to be

determined in accordance with the proportionate liability provisions, and liability for other claims were to be determined in accordance with the legal rules relevant to those claims.<sup>9</sup>

Finally, the court determined that any reduction in damages under s 1041I(1B), which allows the court to reduce the plaintiff's damages for contributory negligence, was to occur before any apportionment between concurrent wrongdoers.<sup>10</sup>

### Endnotes

1. (2014) 221 FCR 1.
2. (2014) 224 FCR 1.
3. *Selig v Wealthsure Pty Ltd* [2013] FCA 348, [1084], [1097].
4. (2014) 221 FCR 1, [10], [77].
5. [2015] HCA 18, [50].
6. [2015] HCA 18, [37].
7. [2015] HCA 18, [29].
8. [2015] HCA 18, [31].
9. [2015] HCA 18, [32].
10. [2015] HCA 18, [33]–[34].

## Verbatim

**On 16 June 2015 Grahame Richardson SC spoke on behalf of the New South Wales Bar at the swearing-in of the Hon Justice Robert McClelland as a judge of the Family Court. As well as being highly complimentary of his Honour's suitability for the position, the chair of the Bar Association's Family Law Committee wished to say something about the Australian Government's funding for the Family Court.**

Your Honour is a brave man in taking on this appointment. You know that this court is chronically under-resourced. You soon will be met by the looks of dismay from litigants whose families are often in turmoil and uncertainty whilst they grapple with the realisation that the court will not be able to provide them with a hearing for three years or more.

You will be struck by the irony and tragedy on occasion of awarding urgent financial relief to a mother with young children, who has waited 2–3 months and sometimes more to be able to have her urgent application listed, whilst we all will be embarrassed by knowledge that her application was every bit as urgent on the date it was filed as it is on the day months later when it is determined.

You will share in the anguish of litigants who wait months for a listing of a short and urgent matter in a duty to list to find that they are one of a dozen or more and only two or three can be heard. If they are lucky they are then given a short hearing fixture when the list co-ordinator can find a slot – a task which itself often involves weeks and months waiting for the phone call. It is just appalling.

You will feel embarrassed. You will feel stressed at being unable to ensure that members of the community are provided with a workable system of justice. These elements will place pressure on you – you will suffer the tension of finding time to write judgments as opposed to finding time to hear yet another from the never ending queue. You will do your best – your efforts will make a difference – but without resources the problem will not be resolved.

The heartache and tragedy faced by families sitting in limbo in a queue is appalling.

This is not a criticism of the court but the lack of resources to enable it to function as it should.

Whilst the attorney is to be congratulated on your appointment in the manner I have described, in circumstances where this court is stumbling and the community so desperately needs it to function, the delay between the retirement of Justice Fowler who your Honour replaces, in November 2013 is inexplicable.