FEDERAL COURT OF AUSTRALIA

Global Constructions Australia Pty Ltd (in liq) v AIG Australia Limited (No 2) [2018] FCA 100

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| File number: | NSD 2017 of 2017 |
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| Judge: | **ALLSOP CJ** |
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| Date of judgment: | 15 February 2018 |
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| Cases cited: | *Global Constructions Australia Pty Ltd (in liq) v AIG Australia Limited* [2018] FCA 98 |
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| Date of hearing: | Determined on the papers |
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| Registry: | New South Wales |
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| Division: | General Division |
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| National Practice Area: | Commercial and Corporations |
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| Sub-area: | Commercial Contracts, Banking, Finance and Insurance  Insurance List |
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| Category: | No Catchwords |
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| Number of paragraphs: | 7 |
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| Counsel for the Applicant: | Mr TD Castle |
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| Solicitor for the Applicant: | LMI Legal |
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| Counsel for the Respondent: | Ms J Thornton |
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| Solicitor for the Respondent: | Gilchrist Connell |

ORDERS

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|  | | NSD 2017 of 2017 |
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| BETWEEN: | GLOBAL CONSTRUCTIONS AUSTRALIA PTY LTD (IN LIQ) (ACN 135 598 757)  Applicant | |
| AND: | AIG AUSTRALIA LIMITED (ABN 93 004 727 753)  Respondent | |

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| JUDGE: | ALLSOP CJ |
| DATE OF ORDER: | 15 FEBRUARY 2018 |

THE COURT ORDERS THAT:

1. On or before 23 February 2018, the respondent file and serve a statement of no more than one page setting out what it says the issues are in relation to quantification of the applicant's claim and its position with respect to each issue.
2. On or before 2 March 2018, the parties each file a statement of no more than half a page as to how the quantification issues can be resolved.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

ALLSOP CJ:

1. On 8 February 2018 I delivered *extempore* reasons in relation to questions of construction of the policy relevant to this matter: see *Global Constructions Australia Pty Ltd (in liq) v AIG Australia Limited* [2018] FCA 98. My conclusion was that the relevant sub-limit of liability was to be applied after the loan account of a shareholder was set-off against the loss suffered by the insured company. At that time, I ordered that the parties provide by close of business on 9 February 2018 short minutes or competing short minutes that encompassed the views I expressed in that judgment.
2. In the *extempore* reasons, I expressed the view that:

34 … It follows that the applicant is entitled to an order that leads to a judgment in at least a sum that the parties are agreed upon, using figures of the insurer with any more, if there be any more, to be ordered by reference to the findings or later agreement in the quantification debate.

35 I will give the parties an opportunity to frame an order. The easiest course may be simply to provide an answer to a construction question. Alternatively, there can be a declaration, if that is thought to be more amenable to the interests of the parties.

1. At the time of judgment, I was not aware that there was any general issue as to quantification of the insured’s claim, or that the insurer sought to take issue with the figures outlined in the statement of facts and the materials before me in the court book other than as identified in those documents.
2. The parties provided competing short minutes on 9 February 2018. The insured seeks an order that judgment be entered in its favour in the sum of $200,826 (a sum determined using the figures contained in the statement of facts and the minimum amount the insured contends that it is entitled to) with an order that entry of judgment in this amount is without prejudice to its right to seek a further judgment amount upon determination of the quantification issues set out in the amended concise statement and in my earlier reasons at [16].
3. The insurer, on the other hand, does not agree to the orders sought by the insured and seeks an order providing an answer to the construction issues that were before me on 8 February 2018, with quantification to be determined at a later date. It takes the view that the figures contained in the statement of facts were not a final determination or agreement on quantum.
4. Thus the insurer appears to dispute the quantum of the claim generally. The insured asserts that the parties conducted the litigation on the basis of the figures that were set out in the statement of facts. I accept that there were quantification issues that were not before me. However, the hearing did proceed on the basis outlined in the statement of facts, with it acknowledged that there were several discrete issues of quantification to be determined at a later date. The figures affected by such issues were noted in the statement of facts.
5. In the circumstances I consider that the appropriate course is to order:
6. On or before 23 February 2018, the respondent file and serve a statement of no more than one page setting out what it says the issues are in relation to quantification of the applicant’s claim and its position with respect to each issue.
7. On or before 2 March 2018, the parties each file a statement of no more than half a page as to how the quantification issues can be resolved.

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| I certify that the preceding seven (7) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Chief Justice Allsop. |

Associate:

Dated: 15 February 2018