



Supreme Court of New Zealand

11 May 2010

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

Ludgater Holdings Limited v Gerling Australia Insurance Company Pty Limited
(SC 92/2009 [2010] NZSC 49)

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

Ludgater Holdings Ltd alleges that a fire in its building in Auckland was caused by a capacitor negligently manufactured by Atco Controls Pty Ltd, an Australian company which is now in liquidation. Atco had an insurance policy with Gerling Australian Insurance Co Pty Ltd indemnifying it, up to a stated aggregate maximum, against product liability claims, including claims for events occurring in New Zealand.

The rule at common law was that any insurance proceeds were payable to the insured and were distributed to its creditors in the same way as any other assets of the insured. The injured claimant had no priority notwithstanding

that an insurance payment was directly in response to its claim. Section 9 of the Law Reform Act 1936 reformed the law in this country by giving the claimant the right to bring a proceeding directly against the insurance company and by creating a first charge over the insurance proceeds in favour of the claimant.

The issue in this case is whether the section can apply, and Ludgater can sue Gerling under it, when both Atco and Gerling were resident in Australia and the insurance policy was taken out there. Upholding the decision of the Court of Appeal, the Supreme Court has unanimously found that the New Zealand statute cannot be given extra-territorial reach because the charge would be inconsistent with Australian insolvency rules, which must govern the liquidation of Atco and the obligations of Gerling to Atco under the policy. Ludgater therefore cannot bring a direct claim against Gerling in this country.

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