

Professional Indemnity Insurance: Recent Developments

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September 2009

1.Contract - Fair Trading Act claims

2.Foreign Judgments – NZ, place of business

Contract / FT Act

- Rolls Royce Decision
- Recent FT Act decisions
 - Personal liability
 - Cannot limit liability
- Recommendations

Contract / FT Act

- Rolls Royce
 - Case itself
 - Limit retainer
 - Limit liability
- Recent FT Act decisions
 - Body Corporate 202254 v Taylor
 - Newport v Cobum
 - Potential personal liability for directors / employees
 - No contracting out

Contract / FT Act continued...

- Recommendations:
 - Review contract carefully
 - Limit retainer
 - Limit liability
 - Don't increase exposure
third parties / subcontractors / guarantees
 - P. I Insurance / FT extension

Foreign Judgments

- Relevance
- How it works
 - Reciprocal Enforcement of Judgments Act
 - Commonwealth Countries
 - Common Law (US)

Foreign Judgments continued...

- Territorial limits of policy – schedule
- Place of business
 - Trading in NZ – internet?

Foreign Judgments continued...

•Reciprocal Enforcement of Judgments Act

Is your judgment from one of the following countries?

Australia Nigeria
Bechuanaland (Botswana) Norfolk Island
Belgium Pakistan Northern Ireland
Cameroon Papua New Guinea
Ceylon Sarawak
Corsica Singapore
England Solomon Islands
Fiji Sri Lanka
France Swaziland
Gilbert & Ellice Islands (Kiribati & Tubalu) Tonga
Hong Kong Wales
Malaya Western Samoa

The judgment may be enforceable under the Reciprocal Enforcement of Judgments Act 1934, as it is given by a country with which New Zealand has a reciprocal agreement.

Foreign Judgments continued...

- Commonwealth Countries Judicature Act

Is your judgment from a Commonwealth country?

Antigua and Barbuda	Australia	Bahamas
Bangladesh	Barbados	Belize
Botswana	Canada	Cyprus
Dominica	Fiji	Gambia
Ghana (United Republic of)	Grenada	Guyana
India	Jamaica	Kenya
Kiribati	Lesotho	Malawi Zambia
Malaysia	Malta	Mauritius
Nauru	Nigeria	Papua New Guinea
Seychelles	Sierra Leone	Singapore
Solomon Islands	Sri Lanka	St Lucia
St Vincent and The Grenadines	Swaziland	Tanzania
Tonga	Trinidad & Tobago	Tuvalu
Uganda	United Kingdom	Vanuatu
Western Samoa	Zimbabwe	

If so, the judgment is enforceable under the Judicature Act 1908 provided the judgment is for a sum of money.

Foreign Judgments continued...

- Common Law (US)

If your judgment is from any other country not listed and which is not a Commonwealth country (eg the United States), the judgment is enforceable at common law in New Zealand.

- Resident or has a place of business
- Voluntarily submitted to jurisdiction
- Final and conclusive unless – fraud or breach of natural justice

Summary

- Contracts / FT Act cases
- Foreign Judgments

Summary - Contracts / FT Act cases

- Review contracts carefully
- Limit retainer
- Limit liability
- Don't guarantee
- Beware personal liability

Summary - Foreign Judgments

- No quick business trip overseas
- Take advice if claim arrives