12 WENTWORTH SELBORNE CHAMBERS

Jocelyn Jaffray appears in successful Federal Court insurance case

Last week, the Federal Court of Australia (Lee J) considered the proper construction of a directors and officers insurance policy in Matheson Property Group Pty Ltd (Trustee) v Virgin Australia Holdings Limited (No 4) [2024] FCA 280.

The decision is significant for insurance lawyers as one of the few cases that has considered the time at which an excess is applicable under a contract of insurance. Lee J upheld Liberty Mutual Insurance and Virgin Australia Holdings' argument that the excess of $5 million was first borne by the insured under the policy before Liberty incurred any liability.

It follows on from earlier decisions of Lee J in the Virgin airlines class action, including in Matheson Property Group Pty Ltd (Trustee) v Virgin Australia Holdings Limited (No 2) [2023] FCA 899, in which Virgin's insurers were joined to the proceeding under r 9.05 of the Federal Court Rules 2011 (Cth).

Jocelyn Jaffray appeared unled for Liberty Mutual Insurance, on instructions from Moray & Agnew.

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