

CASES AND TRIBUNAL DECISIONS

Crime doesn't pay

Westpac Life Insurance Services Limited v Mahony [2016] FCA 1071

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Background

Where a life insurer can obtain no sufficient discharge with respect to the payment of insurance benefits, it may pay that money into Court pursuant to the provisions of s215 of the *Life Insurance Act 1995* (Cth).

One of the circumstances in which a life insurer cannot obtain a sufficient discharge is where the person to whom the benefit would otherwise be payable is allegedly criminally involved in the death of the life insured.

Most recently, this arose in the context of a claim upon a life insurance policy issued by Westpac Life upon the lives of Lainie Coldwell and Louis Mahony in 2009. The policy provided for the payment of \$150,000 to the other in the event of the death of one, and for payment to a joint loan account, which at the relevant time had a balance of \$123,709.49.

Ms Coldwell died on 25 August 2009 from head injuries after she apparently fell from a tree, just weeks after the policy was issued, and Mr Mahony claimed the benefits.

By early 2010, there was suspicion about Ms Coldwell's death. For example, Swiss Re had also issued policies on the life of Ms Coldwell of over \$1.7 million just weeks before her death.

In December 2015, Mr Mahony was charged with Ms Coldwell's murder and dishonestly inducing or attempting to induce insurance proceeds from Swiss Re Life, Health Australia Limited, Westpac Life and Sunsuper Pty Ltd.

As Allsop CJ noted, if Mr Mahony is innocent, he will be entitled to the benefit. If he is guilty, he will not be entitled to the benefit and if there is a legitimate claim, it will be at the instance of the estate.

In the circumstances, Westpac Life formed the opinion that no sufficient discharge could be obtained otherwise than paying money into the Court.

Decision

Allsop CJ accepted that the practical reality of paying into Court requires a proceeding, to enable the exercise of judicial power in due course to direct where the money is to be paid, and held that Westpac Life had properly invoked the jurisdiction of the Court.

This led to the question of costs. Westpac Life, having incurred costs of over \$37,000, sought an order for costs fixed in the sum of \$25,000 to be paid out of the monies paid into Court.

His Honour accepted that "the terms of s43 of the *Federal Court of Australia Act 1976* (Cth) are sufficiently wide to enable the Court to make an order for costs out of money paid into Court".

His Honour noted that the question of legal costs in such a case was not without difficulty and that a balance needed to be struck. If Mr Mahony was innocent of the charges, it would be unjust to deduct from the "modest" insurance monies "a sum in the tens of thousands of dollars". However, evident care and attention had been given to the affidavit material filed by Westpac Life.

Looking at the matter as a whole and accepting the need for the detail in Westpac Life's affidavits in "a matter as serious as this", his Honour held that \$20,000 was an appropriate and reasonable costs award in favour of Westpac Life.

Implications

Allsop CJ suggested that perhaps a short summary affidavit could have been filed in the first instance, with guidance from the docket judge as to any necessary additional level of detail. These observations may be of assistance to other insurers in preparing similar applications.