Stubbs & Section 45 of the Motor Accidents Act (NSW)

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In my article published in the February 1998 edition of **Plaintiff**, *I summarised the effect of the Court of Appeal decision in* **Stubbs v NRMA Insurance Ltd**, *(unreported 31 October 1997)*

The Court of Appeal held, in effect, that an insurer's obligation to make payments on an interim basis pursuant to s. 45 of the Motor Accidents Act, was unenforceable by the Court.

Stubbs' Application for Special Leave to appeal to the High Court was refused on 19 May 1998.

Justice McHugh, in refusing the Application, commented that section 118A of the Motor Accidents Act presented an impenetrable argument against the Application.

Section 118A provides:

"Proceedings for failure to comply with licence. No proceedings may be taken against the licensed insurer for failure to comply with the terms of the licensed insurer's licence or this Act ot the regulations, except by the Authority"

It has been held that the duty imposed on the insurer by s.45(2) is of this nature and that it is the Motor Accidents Authority alone which has the power to invoke proceedings against the licensed insurer designed to require that insurer to comply with the Act and with the terms of its licence.

The outcome is a sad one for grievously injured Plaintiffs, as in the case of *Stubbs*, who might be left without support from an insurer because of a bona fide dispute as to whether or not hospital, medical, pharmaceutical, rehabilitation and care expenses are reasonable and necessary.

Whilst the Motor Accidents Authority has set up a mechanism to deal with complaints against insurers, there is no mechanism to actually decide such questions and it is highly unlikely that action could be taken against an insurer's licence for failure to pay such expenses where they were genuinely in dispute.

The strategy of seeking expedited hearings on liability so as to invoke the provisions of s.45 will, it is submitted, fall into disuse.

Now the issue in *Stubbs* has been settled it is imperative that APLA and other interested groups make representations to the Attorney General and to the Law & Justice Committee in the Legislative Council for the *Motor Accidents Act* to be amended so that the Courts are given specific power to do what the Courts had been doing for several years before the Stubbs decision, namely to enforce insurers' obligations. ■

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Product Safety

MNB Variety Imports Pty Ltd

Non-compliance with mandatory consumer product safety standards (s.65C)

Australian Competition and Consumer Commission

On 4 February 1998 the Federal Court Sydney ordered MNB Variety Imports Pty Ltd, an importer and wholesale supplier of electronic, general and wholesale goods, to pay penalties totalling $25,000 and costs of $1,599 for supplying swimming aids and sunglasses which failed to comply with the relevant mandatory consumer product safety standards.

The Commission instituted two criminal proceedings on 12 December 1996 alleging that the swimming aids and its packaging were not marked in accordance with the Australian Standard AS 1900-1991: Children's Floatation Toys and Swimming Aids. Amongst other things, the product and packaging failed to contain the words, 'WARNING USE ONLY UNDER COMPETENT SUPERVISION', as required by the standard.

The Commission also alleged that the Sundance style of sunglasses supplied by MNB failed to comply with the field of view, refractive power, density matching and labelling provisions of the Australian Standard AS 1067.1-1990: Sunglasses and Fashion Spectacles.

The company had previously pleaded guilty to committing both offences on 3 April 1997. This was taken into account by the Federal Court in its determination of penalty. Also taken into account was the fact that MNB had committed earlier similar product safety offences under the *Trade Practices Act* and the *Fair Trading Act*. ■