

## Defence Costs Liability

### Uncertainty Remains

On 20 December 2012 the Court of Appeal overturned the High Court's decision in *Steigrad v BFSL 2007 Limited* concerning the application of s9 of the Law Reform Act 1936 to defence costs whereby the receivers of Bridgecorp took a charge on the insurance monies available under a Directors & Officers Liability policy. The Court of Appeal held that a charge under s9 does not apply to such monies payable in respect of defence costs, even where such cover is combined with third party damages cover and subject to a single limit of indemnity.

Bridgecorp's receivers have applied for leave to appeal the Court of Appeal's s9 decision to the Supreme Court. The decision on leave is likely to be made by the Supreme Court within three months. Given the wider commercial significance of this case, we are advised that there is good prospect that leave will be granted.

If that is the case, the appeal itself is likely to be heard later this year or early next year, so it could be as much as 18 months before the issue is finally determined. In short, the law in this area is still uncertain.

When the issue first arose after the High Court ruling in September 2011 the market responded by offering separate defence costs policies. Vero Liability recognised that, whilst the *Steigrad* case centred on a Directors & Officers policy, there was the prospect of other types of policies being similarly affected, mainly Professional Indemnity.

Accordingly, an innovative [Defence Costs Policy](#) was released to the market in our September 2012 [Market Bulletin](#).

Briefly, the outstanding feature of this product is its flexibility:

- it can apply to other 'claims made' lines, mainly Professional Indemnity, as well as supplementing D&O covers ;
- it provides an additional excess layer of defence costs cover in event of the depletion of the underlying covers.

The Appeal Court decision may well point to an eventual return to the "pre-*Steigrad*" position of effective blended damages/defence costs covers but until the Supreme Court process is concluded defence costs only policies remain advisable for insureds.

The Vero Liability Defence Costs Liability policy continues to be a most effective solution to the current market uncertainty and its unique additional features make it an enduringly attractive component of most "Profin" portfolios.

Your specialist [VL Underwriter](#) will be happy to discuss the best solutions for your clients.