

Defence Costs Liability

The “Steigrad” High Court decision upheld

On 23 December 2013 the Supreme Court issued its [judgment](#) (Case Number 2013 NZSC 156) overturning the Court of Appeal ruling on the Bridgecorp and Feltex cases. By a 3-2 majority the Court affirmed that under s9 of the Law Reform Act 1936, claimants have a charge over liability insurance policies which precludes an insurer eroding the limit of indemnity by incurring defence costs on behalf of the insured.

In our [September 2012 Market Bulletin](#) we introduced our stand alone Vero Liability “Defence Costs” policy in response to the initial High Court decision. What was then an uncertain position with appeals to be heard, has now been clarified.

This affirms the need for a practical method of insuring defence costs in the foreseeable future.

Whilst the VL Defence Costs policy was, at the time, created to meet an unexpected and uncertain situation it is nonetheless valid and is appropriate to the ongoing needs of the market.

The Cover

The cover offers a simple way to ensure that your clients have an individually separate and distinct cover for defence costs across a complete range of claims made policies without the possibility of cover being affected by claimants taking a charge on the underlying policy granting indemnity for proven damages.

An added feature is that where no Section 9 charge is involved the VL Defence Costs policy also provides a “drop down” indemnity for defence costs in the eventuality that the underlying policy's limit is eroded solely through normal claims attrition.

The policy can attach individually or collectively across all of VL claims made covers, namely:

- ▶ Directors & Officers
- ▶ Personal Directors & Officers
- ▶ Associations
- ▶ Trustees
- ▶ Statutory Liability
- ▶ Employers Liability
- ▶ Professional Indemnity

It is also applicable to relevant sections of composite or package policies, e.g. VL's LegalEdge policy.

The policy wording is available for examination by clicking on this link [Policy Wording](#).

For further information your [VL Underwriter](#) will be happy to discuss this with you.