

UnderCover

Insurance and legal news from the VL desk



Directors in the Spotlight

In a well-publicised High Court judgment former directors of Mainzeal Property and Construction Limited (in liquidation) were found liable for breach of their directors' duties by trading recklessly whilst the company had been insolvent over a period of years.

The case brought by the liquidators on behalf of unsecured creditors sought contributions of between \$32.8m and \$75.3m from the four former directors. The Court awarded a total of \$36m. Three of the directors were found liable for \$6m each with a fourth liable for the total of \$36m.

The Court took a novel approach to assessing damages. It used the estimated loss to creditors, \$110m, then applied discounts for other factors which contributed to the loss. The final \$36m also reflected the sum which had been extracted from the company in favour of a group of substantial shareholders.

Of particular interest to insurers is, that in settling on the amount of damages the Court considered the insurance cover held by the directors. Whilst in the outcome, the court found that the existence of liability insurance had no bearing on liability

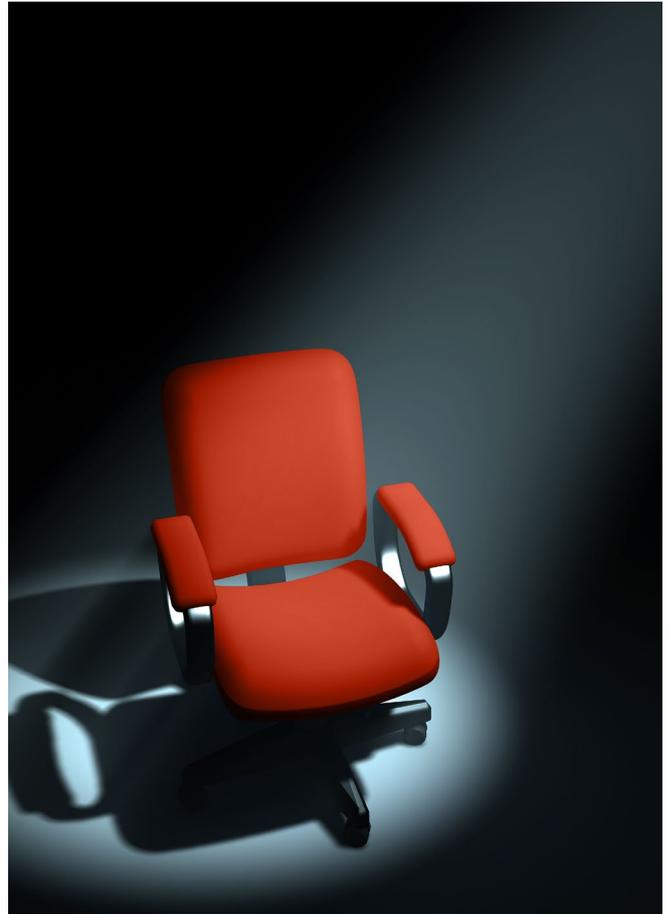
...the liquidators used litigation funders to fund the case...

it may have been relevant to the amount of damages awarded. But it ruled that there was no need to change its award on the basis of the insurance cover. Of interest, it appears that there was under-insurance.

Another feature of these Mainzeal proceedings is that the liquidators used litigation funders to fund

the case. Litigation funders can take a substantial portion of the proceeds of a successful claim. The involvement of litigation funders in future cases may raise the risk profile faced by company directors in that potential (litigation funded) claimants might more readily appear with a substantial "war chest" at their disposal to pursue claims against directors.

[\(This commentary from Wotton + Kearney provides a nice synopsis of the case.\)](#)



All of this should ring warning bells to all company directors to ensure that there is in place adequate Directors and Officers Liability insurance from an established and trusted underwriter.

In particular it brings into sharper focus the advantages of [VL's Directors and Officers Personal Liability](#) policy which is available to company directors who wish to supplement their corporate D&O policy(ies) and/or maintain a more direct influence in the defence of claims.

Your VL underwriter will be happy to discuss this.

You can see the [High Court Media Release here](#) or read the full 178 page judgement [here](#).