

Small win for insurers dealing with credit claims

Theodorou v Roberts [2018] (August) *Avery v Alexander* [2018] (January) Magistrates Court, Brisbane QLD

Geoff Irvine & Dana Kirkpatrick | November 2018 | General Insurance

The last few years have seen an influx of credit hire and credit repair claims being brought against the insurers of 'at fault' parties. Whether the matter relates to repairs performed on credit or credit hire car charges, it is largely decided that the Plaintiff is only entitled to damages within market range of other mainstream repair or hire car companies. Unfortunately, with the formation of new entities purporting to provide services on credit, and the ever-changing market rates of services, not even well-established case law will deter a high percentage of credit matters being litigated; leading to high expenditure by insurers.

Some relief comes by way of recent support from Queensland Courts in relation to the Plaintiff's claim for interest. In the Magistrates Court matter of *Avery v Alexander*, the Court accepted the position of the New South Wales Courts (delivered in the matter of *Screenco Pty Limited v R L Dew Pty Limited & Anor* [2003] NSWCA 319), whereby interest is not payable for the loss of a chattel where no money was spent to obtain the replacement.

The Magistrates Court matter of *Theodorou v Roberts* affirmed the current position that discretionary pre-judgment interest is not justified where the Plaintiff was not obliged to pay charges relating to the service obtained on credit, and had not suffered any actual financial detriment between the date of loss and the date the legal entitlement to damages arose. Such a decision saved the insurer thousands in interest, due to the matter relating to the lengthy hire of a luxury vehicle.

Notably, this principle would arguably extend to matters where the Plaintiff has not yet repaired a damaged chattel, but has instead obtained a quotation with the intention of repairing the chattel upon receipt of settlement monies.

This decision provides insurers a greater opportunity to challenge claims brought by credit hire companies. While it only eroded a component of a plaintiff's claim, it gives less impetus for credit hire companies to continue litigation especially where the credit card hire model is so reliant on cash flow. When an insurer is considering resolution of credit hire claims keep in mind the ability to challenge any interest charges.

For more information, please contact:



Geoffrey Irvine

Partner

T: 07 3212 6701

M: 0414 848 666

geoffrey.irvine@turkslegal.com.au



Dana Kirkpatrick

Lawyer