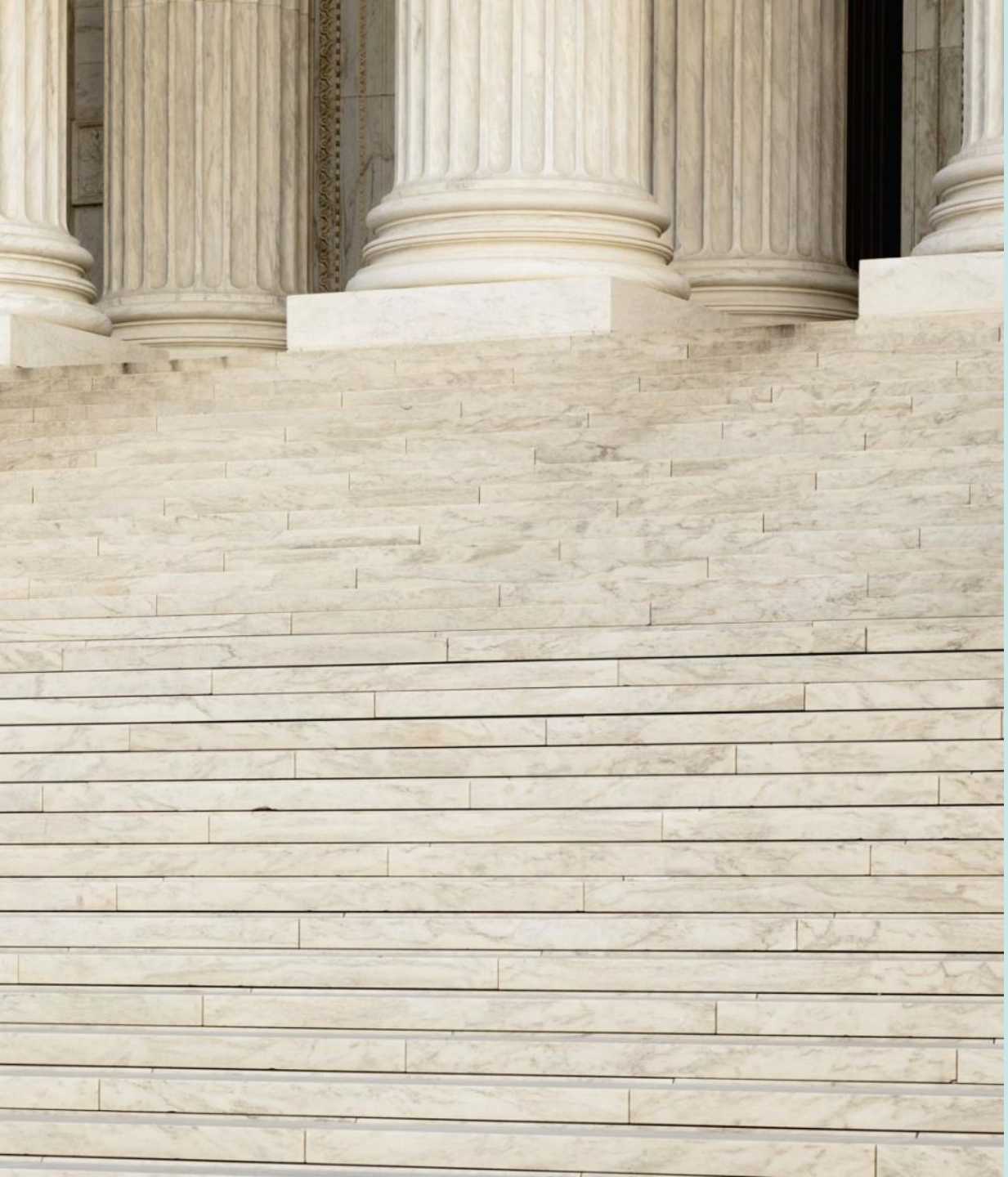
Duncan Cotterill

Insurance Law Update
October 2027

Rob Merkin KC

With special thanks to Dr Who for travel assistance



Wunce is More than Enough

A sudden rush of insurance disputes under the Contracts of Insurance Act 2024 led in January 2027 to the recall to the bench from retirement of insurance specialist Matilda Wunce.

A series of short but controversial judgments by Justice Wunce has caused panic amongst insurers and is under appeal to the Court of Appeal.

The Court has nominated Justice Campbell to write the leading judgments. His task, in the carefully drafted and varying legal terminology of his brethren, was “to get it sorted”.

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Case 1: *ICNZ v Lloyd's Syndicates*

London market reinsurers have refused to pay NZ insurers for COVID-19 liabilities.

Reinsurers have pleaded late notification of claims by insurers and also their failure to comply with policy obligations relating to reasonable care.

ICNZ, acting on behalf of NZ insurers, seeks declaratory relief that ss 68 and 71 of COIA 2024 ride to the rescue.

Reinsurers rely on s 6(2)(b) – reinsurance not a contract of insurance

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Wunce J

Application reluctantly dismissed.

Not sure what the boys and girls in the Beehive were inhaling when they agreed to s 6(3)(b), but I'd like some.

Quite an achievement to remove NZ insurers from COIA 2024 protections in their outwards reinsurances, but that's what we've done.

Anyone's guess what would happen if a non-disclosure issue arose – we've abolished it for reinsurance.

I can't rewrite legislation, apologies.

Case 2: *Fiddler v BBB Insurance*

Claimant's house damaged in storm

- Insurers unsure about liability and get legal advice but do not pay the claimant.
- Claimant takes matters into own hands, gets on the roof to effect repairs but falls off the ladder with unfortunate consequences.
- Claim against insurers for damages for late payment – encompassing pain and suffering and loss of earnings – under ICA 2024, s 66.

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Wunce J

Judgment for the claimant, Fiddler, with damages to be assessed.

Insurers delayed unreasonably and in refusing to disclose privileged legal advice have not shown reasonable grounds for disputing the claim.

ACC does not affect damages for personal injury arising out of breach of contract, so the claim for damages is good in principle, subject to remoteness.

Loss not too remote. Eminently foreseeable that in the circumstances Fiddler would be on the roof.

Case 3: *Trump Emissions v CCC Insurance*

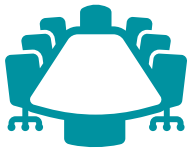
Public liability policy, maximum cover $10 million any one event, contains usual obligation to take reasonable steps to avoid or mitigate loss.

Due to equipment failure, poisonous gas at risk of being emitted by Trump, which spends $10 million replacing its generating equipment on the basis that anything spent to prevent future emissions by Trump was worthwhile.

Insurers reject claim because Trump has not been found liable for anything.

Wunce J

Judgment for Trump



Counsel pointed me to *URS Corp v BDW Trading* [2025] UKSC 21, where it was said that "the policy of the law favours incentivising a claimant … to carry out repairs so as to ensure that any danger is removed …" That was a tort case, but insurance coverage should be construed as matching tortious liability.

Yorkshire Water v Sun Alliance [1997] 2 Lloyd's Rep 21 to the contrary should no longer be followed in this jurisdiction.

Case 4: *O'Doors v DDD Insurance*

Claimant, Ms Pattie O' Doors, stated on her life and accident insurance proposal that she had no medical issues.

- At the time she was experiencing some worrying symptoms and had a hospital appointment.
- Some months later she was injured in a road traffic accident.
- Insurers sought to avoid for misrepresentation on the ground that she was both dishonest and uninsurable.
- They did so despite being told that the hospital tests had come back negative.

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Wunce J

Judgment for Ms O’ Doors.

I make no findings about dishonesty or indeed insurability. When the insurers sought to avoid the policy, they knew that there was no basis for doing so. They were in breach of their duty of utmost good faith in ICA 2024, s 59.

I reject the Scottish ruling in *Cowie v Vitality* [2025] CSOH 52 that the remedies for breach of the consumer duty are exhaustive. They are overridden by s 59.

Case 5: *Lea Key Contractors v EEE Insurance*

Lea Kee were appointed subcontractors by Jerry Build Ltd on a construction project.

Jerry Build secured a CAR policy covering itself and all subcontractors for respective rights and interests.

Jerry Build stated that it did not intend to store flammable material on site other than in bins.

That was untrue and it did so.

Following the subsequent inevitable fire, Lea Key suffered damage to its property on site.

Insurers dismissed a claim by Lea Key, alleging breach of the duty of fair presentation by Jerry Build's false statement.

Wunce J

Judgment for Lea Key

- When the COI Bill was under discussion, MBIE was told that there was an issue relating to the application of the duty of fair presentation to co-assureds, particularly in the context of construction contracts. It was decided to leave it for the courts to resolve. So here we go.
- Co-insurance is a bundle of separate contracts on the same terms. Lea Key's rights are distinct from those of Jerry Build. By making its false statement, Jerry Build was speaking for itself, and even if it was speaking for Lea Key it was not authorised to do so.

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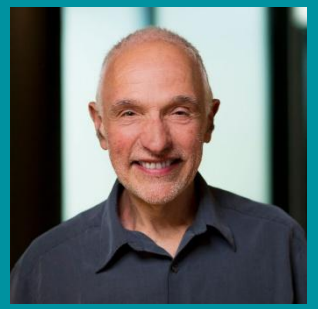
Contacts



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