

30th Anniversary

Congratulations to the Institute on this fantastic milestone. I have been associated with the Institute and met and dealt with many of your members for just under half of this time. I have seen it grow into a very informative and representative organisation of which all those associated over the years should be particularly proud.

I look forward to continuing my association for many years to come (but another 30 may be pushing it!).

Judgement Delay Costs Deceased Estate

In a recent Victorian case the Court of Appeal found that an executor could not take the place of the deceased. The case in *Hartley Pynton Ltd v Ali* [2005] was quite complicated. Essentially the deceased died after the reservation of judgment but before the judgment was delivered. A section of the Victorian Administration and Probate Act provides that an executor may stand in the place of the deceased in any action; however the benefits recoverable, if any, should not include exemplary damages.

In this particular case the deceased had taken action against his former stockbroker and in fact been awarded \$846,819 compensatory damages and \$260,000 exemplary damages. Consequently the new plaintiff sought an order effectively antedating the judgment to the last day of the hearing, six months earlier. The original judge agreed and set the date of the judgment back six months. The broker appealed and was successful and the exemplary damages were voided.

It may be time to review any current cases to ensure that judgments are sped up if the plaintiffs are not well!

Share Registry Fees

A particular share registry in Australia is charging a fee for the processing of estate transfers. Although at present they are stating that the fee is for Portfolio Administration, it clearly states in its literature that the fee is dependent on the number of beneficiaries (or transfers presented). They have also cited the increasing indemnity insurance burden as one of the reasons for their fees; however this has been challenged on the basis that they insist on certain legal requirements being met before they process the transfers, thereby negating any insurance type of risk.

The Stock Exchange Listing Rules in Australia clearly prohibit the charging of a fee for the processing of transfers. Also, the constitutions of several companies I have investigated clearly do not provide for a fee to be charged for the transfer to be registered. One company (Westpac) has instructed its Registrar to not charge the fee which they attempted to levy on one of my estates. This is a good precedent and I am more than happy for readers to use it if they happen to send something directly to Westpac's Share Registry. I am continuing to challenge the fee across the board and have made contact with the Australian Shareholders Association to possibly mount a joint campaign. I will keep you posted.

Regards from Australia
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