

Dear Sir or Madam

I am writing this submission in response to the draft report as detailed above.

I was a licensed builder operating in the Western Australian residential market place from 1998 to 2002. During this period and post Collapse of HIH Insurance in early 2001, I was required to sign a personal guarantee/Deed of Indemnity in the favor of the insurer. At this time, November, the Insurer had almost 100% of the market for this product in WA. A residential builder cannot operate in WA without Builders Warranty Insurance (BWI), this is covered by legislation.

Due to a substantial bad debt incurred in 2002, I was forced to place the building company into Voluntary Administration. I had 2 projects on the books at this time, the owners of these projects made claims on their BWI policies with the Insurer.

Since early 2005, I have been in litigation with the Insurer, who is claiming under the Deed of Indemnity, monies lost in the claims made as a result of my companies problems.

I was fortunate to seek some high level legal advice very early in the process, the advice received described the Deeds of Indemnity as quasi contracts of reinsurance, after all, I was paying an Insurance Premium to the Insurer and then personally indemnifying the insurer in case of a loss. Where was the insurance one may ask?

Reinsurance and Reinsurance arrangements are covered by the Insurance Act, a Federal Act of Parliament, and is governed by APRA, the Australian Prudential Regulatory Authority. Reinsurance arrangements must be APRA approved, if not they are illegal and non enforceable.

The Insurer scoffed at this claim (that the deeds were contracts of reinsurance) and proceeded with a Summary Judgment application. This application was initially granted in the insurers favor. We appealed this decision and were ultimately successful. The appeal judgment found that their is a triable issues as to the legality of the Deeds and that they could be classified as contracts of reinsurance.

Since this decision was handed down, the Insurer has now entered into the legal game of simply nitpicking, objecting, stalling every process, application and generally abusing the court process to prevent the matter from seeing the inside of a courtroom. This process is financially draining and as the insurer has fairly limitless funds to stall the process, for the small business man, it is hard work.

The above represents the other end of the BWI market, and is a direct result of the well intentioned laws being abused by big business.

If the insurer is in the right with respect to the Deeds of Indemnity and that they are perfectly legal, why don't they want their day in court?



hardenjonesarchitects
Western Australia 6909