

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 19 December 2022**

2018/00371447-001 / Summons: Richmond Valley Council v JLT Risk Solutions Pty Ltd
For the reasons found in [2022] NSWSC 1761, Her Honour, Williams J, makes the following orders:

(1) Order that the plaintiff's claims for relief in the Third Further Amended Commercial List Statement are dismissed.

(2) Direct the parties to bring in by 24 February 2023 an agreed minute of the orders to be made concerning the costs of the proceedings or, in the absence of agreement, each party's minute of the costs order for which it contends and written submissions of no more than four pages in support of that costs order.

(3) Reserve the question of costs for determination on the papers.

(4) Order that the common questions are answered as follows:

(1) During the Relevant Period, did JLT hold itself out in the Renewal Reports that it issued to Richmond group members as:

- (a) being one of the largest insurance brokers in Australia and the world;
- (b) possessed of the expertise to deliver the most comprehensive range of insurance and risk solution products and services available to local government authorities across Australia; and/or
- (c) capable of ensuring that local councils receive a well-designed insurance programme at a competitive premium cost?

A: Yes, in the context of performing services for the renewal of the Primary Insurance for the Statewide Funds operated pursuant to the Deed dated 22 March 1994 establishing the NSW Local Government (Jardine Lloyd Thompson) Mutual Liability Scheme, on the instructions of the Statewide Board and in circumstances where the group members were parties to that Deed and members of one or more of those Funds and were required by the Deed to pay contributions to those Funds as determined by the Board for the forthcoming insurance year.

(2) Did JLT hold itself out in the Renewal Reports and Financial Services Guides that it issued to Richmond and each group member as being a subscriber to the Code of Practice of the National Insurance Brokers Association at all material times during the Relevant Period?

A: Yes, in the context of performing services for the renewal of the Primary Insurance for the Statewide Funds operated pursuant to the Deed dated 22 March 1994 establishing the NSW Local Government (Jardine Lloyd Thompson) Mutual Liability Scheme, on the instructions of the Statewide Board and in circumstances where the group members were parties to that

Deed and members of one or more of those Funds and were required by the Deed to pay contributions to those Funds as determined by the Board for the forthcoming insurance year.

(3) Leaving aside any fact relevant to the issues which are peculiar to Richmond or a particular group member, during the Relevant Period, did JLT's conduct by:

- (a) issuing insurance declarations, renewal reports, summaries of insurances, financial services guides and invoices for Property and/or Public Liability and Professional Indemnity insurance to Richmond and each group member; and
- (b) accepting authorisation forms and payment of those invoices from Richmond and each group member;
give rise in each case to a contract between JLT on the one hand, and the relevant local council on the other, an implied term of which was that JLT would exercise reasonable care and skill in:
- (c) designing and providing advice with respect to its annual insurance programme and placing or arranging its property and/or public liability and professional indemnity insurance through Statewide; and
- (d) advising or recommending that it obtain or renew their property and/or public liability and professional indemnity insurance through Statewide?

A: No.

(4) Leaving aside any fact relevant to the issues which are peculiar to Richmond or a particular group member, during the Relevant Period, did JLT by reason of the course of conduct in doing one or more or all of:

- (a) issuing insurance declarations, renewal reports, summaries of insurances, financial services guides and invoices for Property and/or Public Liability and Professional Indemnity insurance to Richmond and each group member;
- (b) accepting authorisation forms and payment of those invoices from Richmond and each group member;
- (c) providing such assistance as it did, to Richmond and each group member to obtain protection for their property and/or public liability and professional indemnity exposure,
owe Richmond and each group member a fiduciary duty:
- (d) to refrain from pursuing or advancing its own interests in circumstances where there existed a conflict, or significant possibility of conflict, between its own interests and those of Richmond or each group member;
- (e) to refrain from using its position or knowledge resulting from its position as an insurance broker so as to obtain a benefit for itself or a third party or to cause detriment to Richmond or a group member (as the case may be)?

A: No.

(5) Did a conflict exist between JLT's own financial interests in earning and continuing to earn fees and commissions, for or in

connection with, services it provided to Statewide Mutual and the interests of Richmond and each group member in obtaining suitable property cover and/or liability and professional indemnity cover at the best premium rates that were reasonably available to each of them in the market?

A: No.

(6) Leaving aside any fact relevant to the issues which are peculiar to Richmond or a particular group member, in doing one or more or all of:

- (a) issuing insurance declarations, renewal reports, summaries of insurances, financial services guides and invoices for property and/or public liability and professional indemnity cover to Richmond and each group member;
- (b) accepting authorisation forms and payment of those invoices from Richmond and each group member;
- (c) providing such assistance as it did, to Richmond and each group member to obtain protection for their property and/or public liability and professional indemnity exposure, did JLT breach any fiduciary duties by:
- (d) pursuing or advancing its own interests in earning or continuing to earn fees or commissions; or
- (e) using its position or knowledge resulting from its position for its own financial benefit and to the detriment of Richmond and each group member?

A: No.

Justice K Williams

Signed

Date