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FORMATION OF OPINIONS BY INSURERS

David Kelsey-Sugg

It is common for an insurer to be empowered under a contract of insurance to form an opinion about the existence of a fact or state of affairs on which its own liability depends. Such powers frequently appear in group insurance contracts taken out by superannuation fund trustees in circumstances where the fact or state of affairs in question is the degree of a third party beneficiary's disability. This article considers and compares the three most important ways in which the exercise of such powers by an insurer can be reviewed. First, consideration is given to review by the courts, including: the bases upon which a court will review the formation of an opinion by an insurer; the insurer's duty of good faith and fair dealing, and the related but distinct duty to act reasonably; and the circumstances in which a court will intervene and substitute its own decision for that of an insurer. Secondly, review by the industry-sponsored dispute resolution scheme, the Financial Ombudsman Service, is considered. Thirdly, some aspects of review by the Superannuation Complaints Tribunal are briefly discussed. 379

CLOSING THE DOOR ON F-CUBED LITIGATION: BUT FOR HOW LONG?

Michael Raine

This article examines the complex and intertwined issues involved in regulating global securities trading that the US Supreme Court considered in *Morrison v National Australia Bank Ltd* 130 SC 2869 (2010). It considers the historical development of US securities regulation and analyses the Supreme Court's sharp departure from progressive approaches to securities regulation in favour of jurisprudential simplicity and international comity. 398

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