

SUPREME COURT OF QUEENSLAND

CITATION: *Suncorp Metway Insurance Ltd v Kilner* [2013] QCA 69

PARTIES: **SUNCORP METWAY INSURANCE LIMITED**
ABN 83 075 695 966
(appellant)
v
KEITH WARREN KILNER
(respondent)
DONALD ROBERT TURNER
(not a party to the appeal)

FILE NO/S: Appeal No 8940 of 2012
DC No 1542 of 2011

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 2 April 2013

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Muir, Fraser and Gotterson JJA
Judgment of the Court

ORDER: **The respondent is granted an indemnity certificate in respect of appeal no 8940 of 2012 pursuant to the *Appeal Costs Fund Act 1973 (Qld)* with respect to the costs ordered to be paid to the appellant and with respect to his own costs of the appeal.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL PRACTICE AND PROCEDURE – QUEENSLAND – APPEAL COSTS FUND – POWER TO GRANT INDEMNITY CERTIFICATE – WHEN GRANTED – where the appellant’s appeal was allowed with costs – where the appellant was successful due to trial judge’s errors of law – where these errors were not instigated by counsel for the respondent – where the respondent seeks an indemnity certificate under the *Appeal Costs Fund Act 1973 (Qld)* – whether the respondent should be granted an indemnity certificate
Appeal Costs Fund Act 1973 (Qld)

COUNSEL: No appearance by the appellant
No appearance by the respondent, the respondent’s submissions were heard on the papers

SOLICITORS: Bray Lawyers for the appellant
 Shine Lawyers for the respondent

- [1] **THE COURT:** On 12 March 2013, this Court made orders which, inter alia, allowed the appellant's appeal with costs. The appeal succeeded on the basis of errors of law on the part of the trial judge which were not instigated by counsel for the respondent. As was observed in Muir JA's reasons, with which Fraser and Gotterson JJA agreed, this is an appropriate case for the grant to the respondent of an indemnity certificate under the *Appeal Costs Fund Act 1973* (Qld).
- [2] Accordingly, the respondent is granted an indemnity certificate in respect of appeal no 8940 of 2012 pursuant to the *Appeal Costs Fund Act 1973* (Qld) with respect to the costs ordered to be paid to the appellant and with respect to his own costs of the appeal.