

## Article Information

Authors: Donna Benge, Rod Jones

Service: Estate & Succession Planning

Sector: Private Clients

---

## Protection to Finalise Administration of Estate

**The Victorian Supreme Court recently considered an application by the executors of an estate and the trustees of a trust to be at liberty to distribute the assets of the estate and trust without concern for any potential liability which may arise after distribution.**

---

The Victorian Supreme Court recently considered an application by the executors of an estate and the trustees of a trust to be at liberty to distribute the assets of the estate and trust without concern for any potential liability which may arise after distribution.

At the date of her death, the deceased was a director of a company appointed as trustee of a trust. Upon company property a motor vehicle accident occurred during the deceased's lifetime. There was a risk that an allegation of negligence could be made against the company and directors. Prior to the deceased's death she had indemnified the other director of the company from liabilities that may be incurred by him. Consequently, there was a risk that her estate and/or the trust could face some liability if a claim was brought.

Whilst the estate and the trust were both in a position to make final distributions to the beneficiaries, the executors and trustees were cautious of doing so given this potential liability for the estate and/or trust. The executors and trustees therefore sought the advice of the Court prior to distributing the assets to ensure that they discharged their duties and would not face any personal liability.

The Court considered a range of factors, including the likelihood of a potential claim, whether adequate protection such as insurance could be taken out to cover any potential liability and whether the intention to distribute had been advertised.

Where there is concern of a future liability, the authorities state that in order to distribute the estate proceeds the likelihood of a claim must be extremely remote.

In assessing the likelihood of the claim, the Court carefully considered the facts of the motor vehicle accident. In this case the injured party in the motor vehicle claim had already received compensation, there did not appear to be strong grounds to establish negligence, the insurers at the time of the accident had been notified and the executors and trustees had both advertised their intentions to distribute the assets and had received no notice advising them not to do so.

Based on the facts above, the Court held that the possibility of a future claim was remote and that accordingly the executors and trustees were at liberty to distribute the estate assets.

If you are an executor of an estate or a trustee of a trust, this is an important example of the considerations that should be made prior to distributing assets. If you are in any doubt about whether to make a distribution or have any concerns about fulfilling your fiduciary obligations to the beneficiaries, proper legal advice should be obtained. Where necessary it may be wise to make an application to the Court for determination to ensure that your duties and responsibilities are discharged and that you are protected.