

## Dealing with Trauma Insurance in the Family Court can be Traumatic

In the case of **Miller** [2009] FamCAFC 121 the Family Court found that a husband who received a lump sum payment from an insurance policy as a result of suffering but surviving a heart attack after separation and contributing that payment to meet joint debts of the parties should be credited with having made a significant personal financial contribution to the couple's asset pool. However the Court considered the significance of that contribution should be diminished to some extent by the wife having also made a contribution as the policy premium payments had been made from joint funds prior to separation.

Given that the husband had suffered a life threatening event the Court specifically rejected the wife's argument that the parties had contributed equally to the payout simply because the premiums had been paid from joint funds. It considered the wife's indirect contribution to have been of a "relatively minor nature".

However in **Yates** [(2012) FamCAFC 138 the Court distinguished Miller's case in circumstances where the wife received a trauma payment from an insurance policy for which the parties had paid jointly upon the wife being diagnosed with cancer during the marriage and applying those funds toward matrimonial debt prior to the parties separating.

In Yates the Court said there was no general rule as to the treatment of financial contributions arising from insurance trauma payments and that the specific facts of each case will determine whether such payments are to be treated as:

- a contribution made solely by the party whose insurance policy it is;
- an equal contribution by both parties; or
- a joint contribution but with one party making a greater contribution than the other

Accordingly it's apparent that what might appear to be a straightforward issue may be anything but when it arises in the context of a Family Law financial settlement.

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