

**COVERING LIABILITY RISKS: HOW DOES
PROFESSIONAL INDEMNITY INSURANCE RELATE
TO OTHER FORMS OF COVER?**

Overview

- A set of facts - rotting pies
- The key liability covers
- Which policy - the legal principles
- Back to the pie factory - the p.i. exposure
- Final thoughts

The Pie Factory

The contract:

- Manufacture and supply the cold store itself, including refrigeration unit.
- Lay a new concrete floor on which to stand the cold store.

Meat Co.'s claim for damages:

- The cost of repairing the cold store.
- The value of the destroyed stock.
- Loss of profits on the destroyed stock.

Product Liability Insurance

Covers: claims arising out of NEGLIGENT MANUFACTURING where the faulty product caused PROPERTY DAMAGE or PERSONAL INJURY or DISEASE

Typically excludes:

- Claims arising out of ADVICE or INFORMATION provided for a fee.

May exclude:

- claims arising out of DESIGN or SPECIFICATION

Public Liability Insurance

Covers: liability for PROPERTY DAMAGE or PERSONAL INJURY or DISEASE caused by negligence.

Typically excludes: claims arising out of

- PRODUCTS supplied
- Breach of duty owed in a PROFESSIONAL CAPACITY

Omega Proteins v Aspen [2010] EWHC 2280 (Comm)

- Neither a judgment, nor a settlement agreement on liability is DETERMINATIVE of whether a loss is covered by the policy.
- It is open insurers to dispute that the insured was in fact liable or that the true basis of his liability fell within an exclusion.

Vero Insurance v Power Technologies [2007] NSW CA 226 (In Australia)

- (In Australia)
- Just because a PROFESSIONAL has been negligent does NOT mean it is a PROFESSIONAL NEGLIGENCE claim. What is the true nature of the duty of care that has been breached?
- “PROFESSIONAL” will be construed more narrowly in an EXCLUSION CLAUSE in a public or product policy than when found in an INSURING CLAUSE in a p.i. policy.

Baulderstone v Gordian Run-Off [2008] NSWCA 243

- Analyse the legal obligation - 3 words in a contract “MUST NOT EXCEED” determined whether a AU\$ 60 million was covered by a p.i. policy.
- Expert evidence can be crucial on proximate loss and coverage.

Back to the Pie Factory

Possible causes of the loss

- The door slipped its latch because the cold store had subsided because the floor was laid badly.
- Manufacturing fault in the door latch.
- Door blown open by an inadequate refrigeration unit.
- A combination of the above

P.I. Policy Exclusions

Bodily Injury or damage to property

Bodily injury to any other person or loss of or damage to property unless arising out of professional activities and duties.

Defective workmanship

Any claim arising out of defective workmanship or defective materials or the failure to supervise or inspect work carried out.

Back to the pie factory

- Faulty door latch = product liability policy
- Refrigeration unit = p.i. policy OR p.i. policy and product policy (double insurance)
- Concrete floor + refrigeration unit = public liability policy?