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 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.
• 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?