INSURANCE POLICY CONSTRUCTION

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1. The principles of Insurance Policy Construction

1.1 Regard must be had to the commercial purpose and object of the Policy[1].

1.2 The policy must be read as a whole and construed in accordance with the principles which apply to the interpretation of contractual documents. The words of the Policy should be given their ordinary natural meaning, according to the context in which those words appear. The Court will analyse the language used by the parties, the commercial circumstances which the document addresses and the objects which it is intended to secure[2].

1.3 If the words are clear and definite, there is no necessity to resort to any aids to interpret the policies. Effect must be given to clear language. To the extent that there truly is an ambiguity, the *contra proferentum* rule of construction applies, but this rule remains a rule of last resort[3].

1.4 In general terms the Court is more likely to interpret the insuring clause of a Policy broadly and exclusion clauses narrowly. This is notwithstanding that exclusion clauses will be construed according to their ordinary and natural meaning, read in the light of the contract as a whole[4]. As a matter of practice, calling underwriters to give evidence as to their subjective intention of the words, will not be accepted in preference to the Court's construction of the language of the document[5].

1.5 In construing the proper meaning of the words in the setting in which the policies were effected, the Court will place itself in the same "factual matrix" as that in which the parties were at the time of execution[6]. The factual matrix is an objective setting and is set to comprise "the genesis of the transaction, the background, the context, "the market" in which the parties were operating, as known to the parties[7].

1.6 Be careful about being too literal on applying exclusions. An exclusion will be struck down by the Court if it would undermine the commercial purpose of the policy.[8] In *Power Technologies* the insurer sought to rely on the breach of professional duty exclusion in respect of a liability arising out the insured's ordinary business activities. The Court found that to adopt a literal approach to the exclusion,

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[1] *McCann v Switzerland Insurance Australia Limited [2000] 203 CLR 579.*
[2] *McCann at [22] per Gleeson CJ.*
[3] *Wilkie v Gordian Runoff Limited 221 CLR 522.*
[4] *Darlington Futures Ltd v Delco Australia Pty Ltd [1986] 161 CLR 500.*
[5] *Pacific Carriers Ltd v BMP Paribas [2004] 218 CLR 451.*
[6] *Codelfa Construction Pty Ltd v State Rail Authority of NSW [1982] 149 CLR 337.*
[7] *Codelfa Construction Pty Ltd at [350] per Mason J.*
[8] *Vero Insurance Ltd v Power Technologies Pty Ltd [2007] NSWCA 226*

the insured could be construed as operating in a professional capacity in all its activities and thus any liability might be excluded. The Court said that the application of such exclusion in those circumstances would undermine the commercial purpose of the policy. In addressing the business activities of the insured, maintenance and repair work on boiler tubes at a power station, the Court ruled that the insured did not owe a professional duty to the third party plaintiff and thus liability did not arise out of the breach of professional duty.

2. The Coverage Clause

2.1 This will be addressed by referring to a typical Liability Policy wording.

2.2 The Operative clause:

> *Whereas the Insured stated in Item 1. of the Schedule has made to the Underwriters a Proposal, whose particulars and statements, including any ancillary information provided therewith, are hereby agreed to be the basis of this Policy.*
>
> *We, the Underwriters, in consideration of payment of the Premium stated in Item 5, of the Schedule, agree, subject to all the terms and provisions of this Policy, to indemnify the Insured as is set out in each insured Coverage Section of this Policy in respect of the Insured's Business as stated in Item 3. of the Schedule…*

2.3 The Public Liability coverage clause is as follows:

> *9. COVERAGE SECTION A – INDEMNITY*
>
> *The Insured is indemnified by this Coverage Section in accordance with the Operative Clause against the Insured's liability to pay damages, including claimants' costs, fees and expenses, in accordance with the law of any country for and/or arising out of Injury and/or Damage but not against liability arising directly or indirectly out of:*
>
> *9.1 Pollution or*
>
> *9.2 In connection with any Product.*

<u>The Insured stated in the Schedule:</u>

2.4 It is necessary to consider the Insured as stated in the schedule, any interested parties also stated in the Schedule, and clause 15. *INDEMNITY TO OTHERS* when considering those parties entitled to cover under the policy.

2.5 Often by their contracts, insureds will be required to include their business partners as "*interested parties*" on their Public Liability policies. Accordingly provided this is accepted by the underwriters, the interested parties are named on the Schedule and entitled to the cover, subject to the terms and conditions of the policy as with the named insured.

2.6 The expression *interested party* connotes the person named as having an insurable interest, in relation to Public Liability claims against that person[9]. In making this finding in *Arabian Horse*, the Court drew upon section 48 of the *Insurance Contracts Act 1984* (Cth):

> *Entitlement of named persons to claim*
>
> *(1) Where a person who is not a party to a contract of general insurance is specified or referred to in the contract, whether by name or otherwise, as a person to whom the insurance cover provided by the contract extends, that person has a right to recover the amount of the person's loss from the insurer in accordance with the contract notwithstanding that the person is not a party to the contract.*
>
> *(2) Subject to the contract, a person who has such a right:*
>
> *(a) has, in relation to the person's claim, the same obligation to the insurer as the person would have if the person where the insured; and*
>
> *(b) may discharge the insured's obligations in relation to the loss.*
>
> *(3) The insurer has the same defences to an action under this section as the insurer would have in an action by the insured.*

2.7 Thus where an individual or a corporate person is named as an interested party, that person is also entitled to the cover.

2.8 Difficulty arises where insureds have contracts with their business partners, the contracts typically having indemnity and insurance clauses, required by the business partner, where the insured does not have the agreement of the underwriter that the business partner (principal) will also be insured.

2.9 In these circumstances it is the practice for those principals to seek access to the insured's insurance policy details. In this respect clause 15.1 of the A typical Policy is written similarly to other general liability policies. The clause states:

> *15. INDEMNITY TO OTHERS – APPLICABLE TO COVERAGE SECTIONS A, B AND C*
>
> *The indemnity granted extends to:*
>
> *15.1 at the request of the Insured, any party who enters into an agreement with the insured for any purpose of the Business, but only to the extent required by such agreement to grant indemnity and subject always to Clauses 17.3 and 7.4…*

2.10 Clause 17.3 relates to liability for damage to property in the insured's care, custody or control. Clause 7.4 is the Contractual liability exclusion clause. I address these clauses later in this paper.

[9] *NSW Arabian Horse Association Inc v Olympic Co-ordination Authority [2005] NSWCA 210*

Example:

2.11 A Golf Club is granted a Licence by a local Council to use the Golf Club premises and for its members to use the golf course, owned by the Council. The Council retained control of maintenance of the fairways. The Club was to maintain the premises in good repair. The "premises" were restricted to the Club rooms. Otherwise the Licence Deed allowed the Club to use the course. The Council retained ownership and control of the entire land licensed. The Deed even specified the occasions the Club had access to the course i.e. for competitions. The Indemnities and Insurances clauses stated as follows:

> *7.1 The Club must indemnify and keep harmless the Council from and against: -*
>
> *7.1.1 all loss and damage caused by the negligent misuse or abuse of water, gas or electricity supplied to the Club in connection with the Premises and/or the Course or by any faulty water, gas or electric light fittings or fixtures fitted in the Premises and/or the Course by or with the authority of the Club;*
>
> *7.1.2 all actions, claims and demands made against the Council by any person for any injury that person may sustain when using or entering of the Premises and/or the Course whether in occupation of the Council, the Club or any other person or arising out of the use of the Premises and/or the Course by the Club where that injury arises or has arisen as a result of the negligence of, or as a result of the creation of some dangerous thing or state of affairs, by, the Club or by any servant or agent of the Club and whether or not the existence of that dangerous thing or state of affairs is or ought to be known to the Council.*
>
> *7.2 The Club must at the cost of the Club effect and keep in full force –*
>
> *7.2.1 a policy of public risk insurance with respect to the Premises and the Course and the activities carried on in the Premises and on the Course in which the limit of public risk is not less than $5,000,000.00 or such greater amount as the Council may reasonably require by written notice to the Club as the amount payable arising out of any one single accident or event*
>
> *...*
>
> *The policies referred to in paragraphs 7.2.1 and 7.2.2* (property damage cover) *must be issued in the joint names of the Council and the Club. The Club must deliver copies of each policy to the Council on request by the Council and current certificates of insurance on 1 July in each year.*

2.12 For Policy clause 15.1 to apply so that the Council also is an insured, the indemnity for the Council has to be requested by the Insured (and agreed by underwriters) so that the underwriters can properly rate the risk and charge the appropriate premium. If not requested there is no indemnity.

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2.13 Furthermore the cover can only be to the extent required by the agreement as stated in the Policy clause 15.1.

2.14 The interpretation of the effect of such insurance clauses, and therefore "*the extent required by such agreement*" has recently been addressed by the NSW Court of Appeal in *Erect Safe Scaffolding (Australia) Pty Limited v Sutton*[10]. Without going into a lengthy analysis of the *Erect Safe* decision, the Court of Appeal held that in the absence of express words, obligations under an insurance clause in a contract which is provided to support an indemnity clause will not require a sub-contractor to maintain insurance against loss occasioned by a head contractor's negligence. The head contractor in *Erect Safe* was a builder. The Sub-contractor was a scaffolder. The Court of Appeal held that the public liability insurance clause could not be construed in isolation from the indemnity clause. The indemnity clause in *Erect Safe* required the sub-contractor to indemnify the head contractor where its liability arose out of the performance of the sub-contract works. The public liability insurance clause required the sub-contractor to effect public liability insurance in the joint names of the head contractor and the sub-contractor.

2.15 The head contractor was liable because of its breach of duty concerning supervision of the work site. Its liability did not arise out of the sub-contract works. The Court did not accept that the public liability clause, immediately following the indemnity clause required the sub-contractor to obtain insurance for all liability of the head contractor including that arising from its own negligence. In other words the contractual requirement by the public liability insurance clause was constrained to that liability arising out of the performance of the sub-contract; i.e. the acts or omissions of the sub-contractor.

2.16 This was a different approach to insurance clauses in previous NSW Court of Appeal decisions[11], where the public liability clause was held to operate independently of the indemnity clause.

2.17 In our example the indemnity clause 7.1.2 is engaged by the negligence of the Club. The subject matter of the Licence involved the Club maintaining the building being the premises and the Council maintaining the Course. A golfer suffered injury when he stumbled down an embankment looking for his golf ball. The claim against the Club and the Council relates to failing to properly maintain the embankment. In applying the *Erect Safe* authority the insurance clause should not be applied in isolation. It does not say that the Club is required to maintain insurance against loss occasioned by the Council's negligence, notwithstanding that it states that the public risk policy is to be kept in force with respect to the course as well as the premises. Previously to *Erect Safe* one could construe the public risk insurance clause as requiring the policy to be taken out to cover the Council for its negligence. Since *Erect Safe* this conclusion should not be adopted. The indemnity clause applies where the injury is a result of the Club's negligence. The parties would not have intended the Club to be liable for any liability of the Council, especially to the Course where the Club had no power to conduct maintenance. In the absence of the express words to cover the Council's own negligence the obligation under the

[10] [2008] NSWCA 114.
[11] See *NSW Arabian Horse [43].*

insurance clause to support the indemnity clause will not require the Club to maintain insurance against loss occasioned by the Council's negligence.

2.18 In any event the Club does not have cover in its policy with a typical Policy. The Council is not noted on the Schedule as an interested party, as it would be if the indemnity was granted under the policy at the request of the insured Club. IF there is liability in the Club for a breach of the insurance clause 7.2, damages flowing from the breach of contract are not indemnified by the Policy.

2.19 This is confirmed by the contractual liability exclusion clause 7.4 which states:

> *This Policy does not cover*
>
> *7.4 Contractual Liability*
>
> *liability assumed by the Insured under any liquidated damage, penalty or forfeiture clause, express warranty, contract, agreement or guarantee other than to the extent that such liability would have attached to the Insured in the absence of such clause, warranty, contract, agreement or guarantee;*

In respect of the Insured's Business:

2.20 In adopting a broad approach to the construction of these words obviously the starting point is the Schedule. All activities of an ancillary nature to what is stated in the Schedule will be held to fall within the business description. Any activity with even an indirect relationship to the business is likely to be covered.

Example: *QBE Insurance (Australia) Ltd v Wesfarmers Insurance Ltd*[12]

2.21 This was an action by QBE seeking contribution (dual insurance). A rural property near Bourke, Mulga Creek Station, had insurance cover through Wesfarmers for its farm business; cereal cropping and grazing. The owner allowed a group called Inland Hunting to hunt on the property for feral animals. The control of feral animals was necessary because of the damage they did to the property. Monies paid by the shooters were used to improve the property. The shooters' activity was not disclosed on the Proposal. The shooters stayed in the shearers' quarters. The plaintiff, being the son of a shooter, was asleep in the shearers' quarters when it caught fire, causing his injuries. He sued the owner and manager of the property. Although the activities of the hunting group were not disclosed to the insurer, Justice Peter Garling held that the control of feral animals was a necessary activity for the proper and ongoing management of the cropping business. Wesfarmers was obliged to indemnify and thus contribute.

Example 2: *Manren Ltd v Royal & Sun Alliance Insurance Australia Ltd*[13]

2.22 The insured being the owner of a building had liability cover for the business, stated to be ownership or occupation of the premises. On the Proposal it was stated that the business included property investment, development and construction. However

[12] [2010] NSWSC 855
[13] [2003] VSCA 59

also on the Proposal the risk for which insurance was requested was restricted to property ownership and occupation.

2.23 In the course of constructing the building a balustrade was built which was not to the height required by the Building Code of Australia. The plaintiff fell over the balustrade, was injured and sued the insured. The Victorian Court of Appeal held that the liability was not ancillary to the business insured being ownership or occupation of the premises. The liability related to construction, a business noted to be carried out by the insured on the Proposal, but not a risk for which insurance was requested. No doubt the underwriter would have rated the requested cover differently and perhaps charged a different premium if construction was identified as a risk requiring cover.

3. Policy Exclusions

3.1 For personal injury claims an exclusion regularly applied, is the contractual liability exclusion. This exclusion will not apply where the liability will attach to the insured in the absence of such a clause; that is by negligence or statute; for example implied conditions in contracts for sale pursuant to the Sale of Goods and Fair Trading Acts.

3.2 The exclusions for material damage claims, particular with respect to product liability regularly applied are as below.

Coverage Section C-Products Liability:

Exclusion 13.1 Damage to Products:

This Coverage Section does not cover

13.1 Damage to Products

liability for Damage to any Product or part thereof;

3.3 Liability policies cover damage to third party property or injury to persons not being employees of the insured. With respect to property damage the policy does not cover replacement costs of the insured's products when they are defective or unsuitable for the purpose required by the purchaser. This is also the reasoning behind exclusion clause 13.2:

This Coverage Section does not cover

13.2 Product Guarantee

liability for costs incurred in the repair, reconditioning, modification or replacement of any Product or part thereof and/or economic loss consequent upon the necessity for such repair, reconditioning, modification or replacement.

3.4 Product Recall costs are also excluded by clause 13.3.

3.5 By definition clause 14.1:

"Product" shall mean any physical property after it has left the custody or control of the Insured which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the Insured, but shall not include food or drink supplied by or on behalf of the Insured primarily to the Insured's employees as a staff benefit.

3.6 Product Liability insurance policies are not performance bonds. They will not pay the insured to remove and replace its own faulty work or deficient product.

Example:

Company A manufactures insulated copper cable used for transmitting electrical current for the purposes of signal or communication. The cable is comprised of two copper wires twisted together covered by plastic coating. The coating is created by pouring molten material over the copper wire creating the continuous plastic coating. After manufacture and selling to the market, a number of complaints are made by customers that the plastic coating has deteriorated exposing the copper wire, which when coming into contact with other wiring caused electrical shortages thereby rendering the cable fundamentally defective.

The fault is with the product manufactured (assuming the insured is the manufacturer) or sold and supplied (assuming the insured is the retailer). The costs of withdrawing, rectifying and replacing the product are not covered.

Conversely if the deteriorated wiring caused damage to other property, not manufactured or supplied by the insured, that is property owned by the customers, the policy would respond to a damages claim relating to that property.

Care Custody and Control Exclusion:

3.7 Clause 17 exclusions-applicable to coverage sections A B and C includes*:*

This Policy does not cover

17.3 Care, Custody & Control

liability for Damage to property owned, leased or hired by or under hire purchase or on loan to the Insured or otherwise in the Insured's care, custody or control other than

17.3.1 premises or the contents thereof temporarily occupied by the Insured for work therein or thereon but no indemnity is granted for Damage to that part of the property on which the Insured is working and which arises out of such work;

17.3.2 clothing and personal effects belonging to employees and visitors of the Insured;

17.3.3 premises tenanted by the Insured to the extent that the Insured would be held liable in the absence of any specific agreement;

3.8 Examples:

Goods held on bailment by the insured and damaged in the insured's custody:

Botany Fork & Crane Hire Pty Ltd v New Zealand Insurance Co Ltd[14]

3.9 The insured stored goods in its warehouse and moved those goods by fork lift truck. The insured by contract stored a gondola and its trailer, owned by the plaintiff, in the warehouse. An employee of the insured drove a fork lift to move the gondola from its rack and lower it to the floor. The fork lift operator raised the tines, and took the weight of the gondola from its storage position. In reversing the fork lift the gondola and its trailer crashed to the floor, by the negligence of the fork lift operator.

3.10 The Full Court of the Federal Court in addressing the care, custody and control exclusion stated that the key to the application of the exclusion clause was the notion of possession, as denoted by the words "custody" and "control". The insured must have a degree of control over the item, although that control does not have to be exclusive. The exclusion applied because the insured had possession and physical management of the gondola.

HIH Casualty & General Insurance Ltd v Insurance Australia Ltd[15]

3.11 Screenco Pty Ltd hired out large video screens for use at sporting events, in this instance the Australian Grand Prix at Albert Park Victoria in 1998. Screenco engaged R L Dew to erect scaffolding to support the screen. Dew subcontracted the erection of the scaffolding to Ronald Steele in Melbourne. Steele erected the scaffolding. When the video screen was being put on the scaffolding, the scaffolding gave way causing the screen fall. Screenco sued Steele and others including the Australian Grand Prix Corporation which had hired the video screen from Screenco. Steele was insured by HIH. Australian Grand Prix Corporation was insured by IAG. Steele also had insurance as a subcontractor to the IAG policy. HIH covered Steele and sought dual insurance from IAG. IAG declined because of the care, custody or control exclusion, the screen being in the care custody or control of Steele, at the time it was damaged.

3.12 The Court found that Screenco retained care and control of the screen as it was being erected on the scaffolding. Steele did not have the care, custody or control of the screen and thus the exclusion did not apply.

3.13 The essential factor of the A typical Policy exclusion is that there is no indemnity for the property damaged if that property is being worked on by the insured at the time of the damage and the damage arises out of that work, where the work is being carried out away from the insured's premises.

The motor vehicle exclusion:

3.14 Clause 17 states:

This Policy does not cover:

[14] [1993] FCA 378
[15] [2005] VSC 342

17.1 Motor Vehicles

liability arising directly or indirectly out of the ownership, possession or use of any motor vehicle or trailer by or on behalf of the Insured, other than

17.1.1 vehicles within Australia which are not required to be registered under Australian Law, but not vehicles which are actually registered or in respect of which liability insurance is in force

and other than liability

17.1.2 caused by the use of any tool or plant performing part of or attached to or used in connection with any motor vehicle or trailer;

17.1.3 arising beyond the limits of any carriageway or thoroughfare and caused by the loading or unloading of any motor vehicle or trailer;

17.1.4 for Damage to any bridge, weighbridge, road or anything beneath caused by the weight of any motor vehicle or trailer or the load thereon;

17.1.5 arising out of any motor vehicle or trailer temporarily in the Insured's custody or control for the purpose of parking;

provided always that no indemnity is granted against liability compulsorily insurable by legislation or for which the government or other authority has accepted responsibility.

3.15 For the purposes of public liability insurance, there are many actions relating to construction site accidents where plaintiffs are injured by vehicles which are not insured. The liability policy responds if the accident was on private property, being the construction site, because compulsory third party insurance is not required for vehicles driven on private property. This is unless the vehicle carried registration and was therefore insured.

3.16 If the place of the accident qualifies as a road open to or used by the public, then the liability of the driver or owner of the vehicle, in the driving of the vehicle, is compulsorily insurable and the policy will not respond.

<u>Employers' liability exclusion:</u>

3.17 Clause 17.5 states:

This Policy does not cover:

17.5 Employers' Liability

liability for Injury to any person under a contract of employment, service or apprenticeship with or for the provision of labour only services to the Insured where such Injury arises out of the execution of such contract.

3.18 Insured is not covered by the public liability policy for injury to its employees, the liability for such injuries being covered by workers compensation insurance.

4. Policy Conditions

4.1 When considering a breach of Policy conditions it is necessary to be aware of section 54 of the *Insurance Contracts 1984* which states:

(1) Subject to this section, where the effect of a contract of insurance would, but for this section, be that the insurer may refuse to pay a claim, either in whole or in part, by reason of some act of the insured or of some other person, being an act that occurred after the contract was entered into but not being an act in respect of which subsection (2) applies, the insurer may not refuse to pay the claim by reason only of that act but the insurer's liability in respect of the claim is reduced by the amount that fairly represents the extent to which the insurer's interests were prejudiced as a result of that act.

(2) Subject to the succeeding provisions of this section, where the act could reasonably regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the contract, the insurer may refuse to pay the claim.

(3) Where the insured proves that no part of the loss that gave rise to the claim was caused by the act, the insurer may not refuse to pay the claim by reason only of the act.

(4) Where the insured proves that some part of the loss that gave rise to the claim was not caused by the act, the insurer may not refuse to pay the claim, so far as it concerns that part of the loss, by reason only of the act.

(5) Where:

(a) the act was necessary to protect the safety of a person or to preserve property; or

(b) it was not reasonably possible for the insured or other person not to do the act;

the insurer may not refuse to pay the claim by reason only of the act.

(6) A reference in this section to an act includes a reference to:

(a) an omission; and

(b) an act or omission that has the effect of altering the state or condition of the subject matter of the contract or of allowing the state or condition of the subject – matter to alter.

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4.2 A breach of condition which commonly applies is late notification. The wording of a typical policy is as follows:

> *8. GENERAL CONDITIONS*
>
> *Conditions 8.2, 8.3, and 8.4 are precedent to Underwriters' liability to provide indemnity under this Policy. If any breach of such conditions should occur, there shall be excluded from the indemnity hereunder any claim which has arisen or may arise in connection with such breach.*
>
> *8.2 Claims Notification*
>
> *The Insured shall give to Underwriters immediate notice in writing during the Period of Insurance of*
>
> *8.2.1 any claim made against any Insured which may fall within the scope of this Policy,*
>
> *8.2.2 the receipt of notice, with a written or oral, from any person or entity of their intention to make such a claim against the Insured,*
>
> *8.2.3 any circumstances of which the Insured shall become aware which might reasonably be expected to give rise to such a claim being made against the Insured, giving reasons for the anticipation of such claim,*
>
> *8.2.4 any other circumstances which might give rise to a claim under this Policy.*

4.3 It should be noted that clause 8.2 only refers to a notice being given during the Period of Insurance. As the insurance relates to occurrences during the period, the claim may be first made long after the Period expires.

4.4 However should the claim, notice or the circumstances arise during the Period and notice is not given, notwithstanding the introductory sub-clause to clause 8, section 54 applies, the omission occurring after the contract of insurance was entered into. The insurer's liability is reduced to the extent of prejudice caused by the late notice. This prejudice may be in a number of forms such as follows:

(i) the insured engaging its own corporate lawyers, at corporate hourly rates, far in excess of the hourly rates of the insurers' panel firms. The prejudice is the unreasonably high defence costs paid by the insured for which it seeks cover under the policy clause 6 for Defence costs.

(ii) Essential witnesses dying or leaving the jurisdiction before notice is given, denying the insurer the opportunity to interview, and prepare a defence.

(iii) Records being destroyed when early notification of the claim would have given the insurer the opportunity to investigate and collect the relevant records, such as incident books and CCTV coverage.

4.5 It will be a matter of degree as to how essential the lost evidence would have been to defending the claim.

Condition Clause 8.3 Claims Handling:

4.6 The insured's appointment of its own lawyers is also relevant to clause 8.3; the insured is not to incur costs without the written consent of the underwriters. This supports the prejudice argument and advice that excessive hourly rates will not be reimbursed. If there is a reimbursement of defence costs, that should go to the extent of reasonably hourly rates for panel firms.

4.7 The insured is at all times to give information and co-operation as is reasonably required by the underwriters. Occasionally is necessary to invoke this clause when investigators are rebuffed by insureds when investigating claims.

4.8 Clause 8.4 is the subrogation clause relevant to the rights of recovery.

5. Conclusion:

5.1 This paper was intended to address issues relating to Policy Coverage which commonly apply to Liability claims. It is not intended as an exhaustive analysis of all exclusions and conditions.

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