

*Between  
the Lines*

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## **Catastrophic Injuries: Indemnity Denial Upheld**

### **The Claim**

Thompson Cooper Lawyers acted for Allianz Australia Insurance Limited (Allianz) in respect of a claim for indemnity under two policies of insurance relating to separate rural properties. The claim arose out of proceedings brought by a woman who had been rendered a paraplegic after being thrown off a horse, known as Danny on one of the properties in South Australia. Catherine Martin was the owner of Danny. Peter Vogelsang was the owner of the properties, the policy holder and Martin's de facto partner. The plaintiff sued Martin and Vogelsang, who in turn cross-claimed against Allianz, saying each policy applied. Allianz denied indemnity.

### **The Properties**

Vogelsang is a full time truck driver. He travels interstate. Vogelsang and Martin live together on one of the properties owned by Vogelsang, known as Lot 545. Vogelsang operates a cereal farming business on Lot 545. There are 27 cows and 2 bulls on the property which are used in the cereal farming business. Danny lived on Lot 545. Danny had been purchased approximately 8 weeks before the accident. He was purchased principally for Martin's leisure. Before the accident Danny had been used only once in the cereal farming business.

Vogelsang purchased a paddock adjoining Lot 545. Vogelsang's financier required he obtain insurance coverage for Lot 545 and the paddock. Vogelsang instructed his insurance agent to obtain the lowest level of insurance coverage to satisfy the requirements of his financier and complete the purchase. The insurance policy obtained was the Farm Pack Policy.

Vogelsang owned a second property known as Lot 95. Vogelsang's son lived on Lot 95. When Lot 95 was purchased Vogelsang's financier required he insure the property. Again Vogelsang instructed his insurance agent to simply obtain the cheapest insurance coverage that would fulfill his financier's requirements. The financier was satisfied with buildings cover only, not contents cover. The policy obtained was the Allianz Classic Plus Home Policy.

## The Policies

The plaintiff's claim against Vogelsang was abandoned, leaving only the claim against Martin.

The accident occurred on Lot 545. Section 1 of the Farm Pack policy, being the buildings cover did not provide coverage given an exclusion clause for liability arising out of horse riding activities. Indemnity under section 3 of the policy, which related to public liability, was denied as the "Occurrence" (the accident) was not in connection with Vogelsang's cereal farming business. It was a horse ride for the plaintiff's personal pleasure. The Court did not determine the issue as Martin was found not to fall within the definition of "You" in section 3 and thus was not covered by the section. This was because she was not involved in the business.

Only the house on Lot 95 had been insured by Vogelsang. The effect was that Vogelsang (and Martin as his de facto) only had cover for legal liability arising out of ownership of the house on Lot 95. The accident did not occur on Lot 95. The Allianz Classic Plus Home Policy did not apply.

## The Result

All manner of inventive arguments were made by Vogelsang and the plaintiff through their lawyers to persuade the Court that the policy for the farm or the policies for both properties applied. The consequences of the accident were very sad because the plaintiff is catastrophically disabled, and claimed damages in excess of \$10 million. Clearly Vogelsang and Martin had no assets to pay the damages if awarded. The plaintiff knew this. That is why Allianz was joined.

Ultimately in a common sense decision the arguments were rejected and the Court found that the policies did not respond to the claim. In any event the Court found for the defendant Martin against the plaintiff. The case in negligence failed.

## Our Experience

It has been our experience in over 35 years of litigation that the Courts will look at liability issues far more closely where there is an uninsured defendant. This was our experience in this case, and notwithstanding the potential of huge damages should the indemnity issues be found in favour of Vogelsang or Martin, the decision to contest the claim for indemnity was justified.



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