

Hansen Yuncken Pty Ltd v Hollard Insurance: The consequences of “poor” drafting

03 March 2025  Joanna Wallens

This Australian case related to a contract between Choices Flooring (Choices) and Hansen Yuncken (Hansen) to supply and install hardboard, carpet tiles, vinyl and vinyl skirting and to undertake "base building works" as part of a major refurbishment.

Choices had agreed to arrange insurance with Hansen noted as an interested party and entitled to the benefit of indemnity under the terms of the policy.

Choices subcontracted work to a professional carpet layer, who claimed he sustained personal injuries whilst climbing over a retaining wall at the site. He commenced proceedings against Hansen.

Hansen sought indemnity under the insurance policy with Hollard Insurance (Hollard). Insurers declined the claim on the basis that Hansen was not noted as an insured in the Schedule or Certificate.

Hansen argued that it fell within the general definition of "you/your" and due to the information provided under "Who is insured under this policy". It also submitted some alternative grounds as to why it was insured under the policy.

The insurance policy

The scope of persons covered by the Policy was identified in the Policy Wording in the following manner:

"Who is insured under this policy

The persons or organisations that are covered by this policy are shown on the Insurance Certificate. In this policy, those persons or organisations are referred to as 'you' or 'your'. We will extend the policy to cover other persons or organisations requiring cover under this policy if you have advised us of them, and we have named them on the Insurance Certificate. All persons or organisations covered by the policy have to comply with the terms of the policy. We may refuse to pay a claim or reduce the amount we pay if you or any person covered by the policy does not comply with the terms of this policy."

The expression "you/your" was defined as follows:

"you or your means any person or entity (including their social clubs) shown on your Insurance Certificate as the insured." (this was the general definition, there was also a more specific definition of you/you in the Business Liability section).

The Certificate identifies the "Insured" in the following manner:

"Insured Name: Reed Christian Holdings Pty Ltd

*Business name/ Trading name: Choices Hobart and/or subsidiary and/or related Corporations as defined under Australian Corporations Law and/ or financiers **and all parties for whom the Insured undertakes to insure for their respective rights, interests and liabilities.** [emphasis added]"*

Hansen argued that it fell within the general definition of "you/your" by reason of the above underlined words on the Certificate. Hollard initially asserted that Hansen was not an insured because it is not noted as such on the Schedule or the Certificate. However, Hollard later

argued that the scope of any indemnity that Hansen might enjoy under the Policy was qualified by the context of the subcontract agreement between it and Choices, as well as the Certificate which identified Hansen only as an “interested party” as “principal”.

The outcome

Hollard's arguments were rejected. Hansen was entitled to indemnity under the Policy, as it fell within the words, “all parties for whom the Insured undertakes to insure”. Those words meant there was no need for Hansen to be specifically named.

Interesting, when reaching judgment, the judge highlighted that, *“the fact that the drafting [of the policy documents] is poor, and that the extension in the Schedule does not mesh seamlessly with the Policy Wording, does not assist Hollard,”* and, *“the overlap between different clauses of a policy does not require the Court to give meaning to the different clauses to eliminate their overlap with refined precision”*.

Impact for insurers

The comments from the Judge highlight the importance of well drafted insurance policy documentation and the potential consequences of poor drafting.

The case also underlines the importance of ensuring clarity and accuracy in the content of the schedule or certificate of insurance. Adding additional text without careful thought can result in unintended consequences and exposure.

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