

# Australian courts issue a 'common sense' judgment on a rainfall exclusion

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In *Acciona Infrastructure Australia Pty Ltd v Zurich Australian Insurance Limited* [2023] FCAFC 47, Australian courts held that insurers could rely on a rainfall exclusion, based on logic and business efficacy.

## Facts of the case

In 2014 the claimant insured was contracted to undertake construction works on a 19.5 kilometre stretch of road.

In June 2016 the construction site experienced significant rainfall and flooding, resulting in damaged works. The contractors' insurers refused cover on the basis of the following exclusion in the policy:

*'This policy does not provide indemnity in respect of...*

*loss or damage due to rain..., except where such loss or damage is due to an event with a minimum return period of 20 years for the location insured on the basis of the 24 hour statistics prepared by the Bureau of Meteorology for the nearest station to the location insured, or such other independently operated weather station situation near or adjacent to the location insured.'*

Within the road stretch, there were three weather stations that recorded rainfall differently. The two stations closest to the damage did not record that the rainfall event was an extreme 1-in-20-year event. However, the station furthest from the works did. Despite this, the insured argued that '*location insured*' should be interpreted as referring to the whole project site.

## Judgment

The court held that '*location insured*' refers to the place within the project where the loss or damage had occurred.

As the construction works spanned a large geographical area where rainfall levels could differ, it was more logical for the damage or loss to be correlated with the rainfall experienced at or near the location of the loss or damage.

The court found it difficult to identify the logic in ascertaining the magnitude of damage caused, by referencing the severity of the same event at some distance apart from the works. The court held that such an illogical assertion would negate the policy's assumed intention.

Overall, this case highlights that in instances of ambiguity the courts may use a pragmatic approach that makes commercial sense when interpreting wordings.

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