

GIO General Limited v Centennial Newstan Pty Ltd [2014] NSWCA 13

Key Points

- The NSW Court of Appeal was required to consider the breadth of an insurance policy provided to Longwall Advantage Pty Ltd (**Advantage**) by GIO General Ltd (**GIO**) in considering whether Centennial Newstan Pty Ltd (**Centennial**) was indemnified under the policy.

Background

In 2008 Centennial entered into an agreement with Advantage for the supply of labour personnel to Centennial (**Agreement**). Advantage supplied the labour through an agreement with a separate company called Longwall Labourforce Pty Ltd (**Labourforce**). Advantage duly took out a combined business insurance policy with GIO providing a number of areas of cover, including public liability.

The Agreement incorporated Centennial's *Standard Conditions of Contract* document (**Standard Conditions**) and Centennial's *Standard Contractors Site Regulations* document (**Site Regulations**). Both documents included the following relevant clauses:

Standard Conditions clause 8:

"Indemnities and Insurance". Advantage must indemnify Centennial and agree to hold and save Centennial harmless from all claims for:

(a) Injury to or death of any of your personnel, except to the extent that a claim for such injury or death arises as a result of the negligence of Centennial or a breach of this contract by Centennial.

Site Regulations clause 43.2.2:

Unless otherwise agreed to in writing by the Principal, public and product liability policies must note the Principal and all subcontractors as interested parties and must cover the respective liabilities of each of those parties to each other and to third parties. The policy must cover each indemnified party to the same extent as it would if each of the parties had a separate policy of insurance.

In September 2008 a worker (supplied to Centennial by Advantage through their agreement with Labourforce) was injured whilst working at Centennial's coal mine. The worker brought proceedings in the New South Wales District Court against both Centennial and Advantage negligence. The Court found Centennial, Advantage and Labourforce liable. The trial judge ordered that Centennial contribute 100 percent of the damages.

Centennial sought an indemnity from GIO under the policy it held with Advantage arguing that it was:

...within the defined term "You/Your/Insured" in the Public and Products Liability cover section of the Policy because [the plaintiff] was a person to whom Advantage was "obligated by virtue of any

contract or agreement to provide insurance such as is afforded by this Policy... but only to the extent required by such a contract or agreement”.

GIO argued that:

...the insurance cover “required” to be provided for Centennial by cl 43.2.2 did not include insurance of Centennial’s liability for its own negligence; so that Centennial was not to that extent insured under the policy issued to Advantage.

The argument was rejected by the Judge in the first instance and GIO was ordered to indemnify Centennial (under the policy issued to Advantage) for damages awarded to the injured worker.

GIO then appealed and argued that:

...cl 43.2.2 of the Site Regulations did not form part of the Agreement and, for that reason, that Advantage was not obligated to provide any public liability insurance of Centennial’s interest in eh performance of it.

The Law

The issue for determination by the Court of Appeal was whether the agreement between Advantage and Centennial should be construed as containing an obligation for Advantage to indemnify Centennial for its own negligence. If an obligation could be made out under the agreement, then Centennial would come under the definition of You/Your/Insured under the policy.

Conclusion

GIO’s argument was rejected by the Court of Appeal and the original judgment was upheld. The appeal dismissed and appellant ordered to pay costs.

GIO found itself with greater indemnity liability than intended due to the obligations they found they owed when the policy was read in conjunction with the agreement between Advantage and Centennial; including Centennial’s Standard Conditions and Site Regulations.

Lessons Learnt

This case is relevant to our clients, as insurers, because it illustrates the importance of the insurer understanding exactly who *may* be considered, by a court, to be covered under their policy, in all foreseeable circumstances. This understanding allows better policy drafting that limits or removes insurer liability to parties unintended to be covered and correctly identifies the parties intentions.



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