



Recent Decision

Insurer Cops A Hiding From Supreme Court

In the recent decision of Bigby v. Kondra & Anor [2017] QSC 37. Zurich Australian Insurance who was the second Defendant was ordered to pay for repairs done to the Bigby's residence at the Gap caused by a storm event.

The background however to this needs some explanation.

The first Defendant was the builder of the Bigby's house and had caused and supervised some renovations to be carried out to the property.

A storm event caused pressurisation to occur within the house which effectively blew out a side of the house causing substantial damage.

The expert evidence led was of the view that it was the installation of the windows that caused this pressurisation which meant that effectively once the storm event came through, the wing of the house blew up like a bomb.

The builder was sued in negligence as he had done the work some years prior and so a statute of limitations applied to a contractual claim against him. There needed to be established a claim in negligence.

The builder held insurance with Zurich Insurance at the relevant time.

The builder said that his efforts were not the cause of the explosion.

The expert evidence however suggested that because he supervised the works to the windows being done, that this was sufficient to come under the scope of his building and if it was done improperly, he was therefore negligent.

Therefore, the Court found in negligence against the builder.

There was considerable damage to the residence to the tune of some \$1.8 Million dollars.

If the builder did not have these funds, it would have been a hollow victory for the house owners.

The builder argued that he was covered by Zurich Insurance.

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Zurich Insurance ran an argument that they were not liable under the policy because they said that the damage happened as the result of an “occurrence”.

The occurrence had to be within the scope of the builder’s business. The insurer said that because the occurrence was the storm event, this was plainly not in connection with his business.

Judge Daubney did not accept this argument and rather said that the relevant occurrence was the negligent installation of the windows which is what contributed to the explosion.

As this was clearly within the scope of the builder’s business, he found that the insurer had to indemnify the builder.

Although the Judgment is 43 pages in length, it is as model of clarity and sound reasoning by the Judge. He accordingly declared that the builder was liable to the Plaintiff for the \$1.8 million in damage and he declared that the insurance company had to indemnify the builder for his liability to the home owners.

Need clarification of your rights under your insurance policy? Contact **rb lawyers** for more information.

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