

**[¶61-351] AUSTRALIAN CONSOLIDATED PRESS HOLDINGS PTY LTD v ROYAL
INSURANCE (GLOBAL) & ORS**

Court of Appeal of New South Wales

Judgment delivered 21 February 1997

Judgment below

Insurance — Policy — Construction of policy — Whether value of loss to be determined prior to reduction for deductibles.

This was an appeal from Bainton J's decision in favour of the insurers (1996) 9 ANZ Insurance Cases ¶61-319.

Background

Australian Consolidated Press Holdings Ltd ("ACP") was insured under a Fire Extraneous Perils Combined Material Damage and Business Interruption Policy issued by the eight respondent insurers.

A quantity of gold bullion was stored in a strongroom on the premises of ACP. The strongroom was broken into and the bullion stolen some time between 28 April and 1 May 1995.

The policy

The insurers agreed by the primary insuring clause and pursuant to the Basis of Settlement to pay to ACP the cost of replacement (or value) of goods lost, subject to the limits of liability and the application of the deductible clause. Relevantly, it was provided that the policy limit for gold bullion was \$A5 million. The "aggregate deductible" was \$1 million for each 12 month insurance period. The Basis of Settlement was the cost of replacement or reinstatement. The cost of replacement of gold bullion was plainly its value at the date of loss.

Submissions

The parties were agreed that (i) the theft and related property damage was covered under the policy; (ii) the precise value of the bullion was not yet agreed, but it was agreed that its value exceeded \$A5 million.

The insurers submitted that a calculation of the insurers' obligation to pay commenced with the limit of liability under the policy, and the deductible provisions were applied to that sum. There could not be a claim for any sum in excess of \$A5 million. "Claim" meant the amount which the insured was contractually entitled to claim, ie contractually entitled to be paid prior to application of any deductible provision. It did not mean the value of the property lost.

ACP contended that the calculation was commenced by determining the value of the property lost, ie the amount of the insured's claim, deducting from that sum any deductibles, and thereafter applying the monetary cap provision.

First instance

Bainton J upheld the construction of the policy which the insurers argued for. ACP appealed to the Full Court from this decision.

Held: for the appellant.

Per Cole JA (Beazley JA and Dunford AJA agreeing):

(1) The natural reading of the primary obligation clause was that the insurers were obliged to pay to the insured the value of goods lost. That obligation was qualified by subsequently stated limits. The starting point of the insurers' obligation, however, was the value of goods lost, which obligation might be reduced by a qualifying limit.

(2) The policy contemplated a loss and the subsequent making of a claim. The insured was required to specify the value of goods lost in the claim, thus making clear that the "claim" was not the maximum amount which the insurer was obliged to pay under the policy but the true value of the loss suffered.

(3) The insured's contentions were correct. The basis of settlement clause provided that in the event of loss the insurers would pay the cost of replacement. That was the value of goods lost, not the maximum amount in respect of which a claim might be made, although that obligation was qualified by the capping provisions. Further, the policy required that the claim which was lodged was to specify the value of the goods at the time of the loss. It did not restrict this by reference to the monetary capping provisions. Such a provision accorded with the manner in which a claim for loss or damage for goods is made.

(4) Such an approach involved reading the word "claims" as used in relation to the deductible clause as meaning "losses". It had to mean "losses" if the clause was to have any

sensible meaning. So read, the clause accorded with what would be expected and made commercial sense.

(5) The limits of the insurers' liability meant the maximum amount which, in given circumstances, the insurer was obliged to pay. It did not specify the limit of liability in a monetary sum subject to deduction of deductibles. It was clear that the combined operation of the limit of liability clause and the deductibles clause when read with the primary insuring clause was that the insured was entitled to be reimbursed the value of goods lost except that that value was liable to be reduced by the amount of aggregated deductibles in any one year up to the sum of \$A1 million so that ACP bore the first \$A1 million of insured losses. Thereafter on any claim a particular deductible applied, here \$5000. Subject to that, ACP was entitled to receive the residue value of goods lost, up to the maximum amount, being the limit of the insurers' liability, ie \$A5 million.

(6) The use of the expression "limit of the policy" was misleading. The correct notion was that the limit of the insurers' liability applied after the insured had borne the deductibles specified in the policy.

[Headnote by the CCH INSURANCE LAW EDITORS]

PG Hely QC and JE Robson (instructed by Gilbert & Tobin) for the appellant. CRR Hoeben SC and MT McCulloch (instructed by Peter A Collins & Associates) for the respondent.

Before: Cole and Beazley JJA and Dunford AJA.