

DETERMINATION

Case number: 210923

Farm Cover – storm event – ambit of cover

SUMMARY OF FACTS

1. The applicants held farm cover with the Financial Services Provider (FSP) from 23 February 2004. Amongst other things, the policy provided fencing cover for up to \$16,000 with a \$100 excess.
2. On 1 January 2010, the applicants filed a claim for damage to their fence as a result of a storm. It was claimed that the storm and associated debris “washed away” the fencing.
3. The FSP denied the claim on the basis that the policy provided no storm cover for the fence.
4. The applicants consider this unfair and seek indemnity for their loss, which is yet to be quantified.

ISSUE IN DISPUTE

5. Whether the FSP’s policy should respond to the applicants’ claim.

RELEVANT POLICY PROVISIONS

Page 8-9 of the Product Disclosure Statement (PDS)

“General definitions applicable to all Sections of this Policy...”

“Flood” means the inundation of normally dry land by water that has escaped or been released from the normal confines of any natural watercourse...

[Note: This Policy does not cover loss or damage caused by or arising from Flood to... Farm Property or... General Property.]

“Storm” means violent wind... thunderstorms or hail... accompanied by rain...

Page 31 of the PDS

“Fencing” means boundary fencing...”

Pages 31-32 of the PDS

“Defined Events applicable to this Section...”

8. Storm or Water

We will pay for loss or damage caused by Storm or Water.

We will not pay for loss or damage caused by...

- a. Flood, or Flood water combined with Run-off and/or Rainwater;...

We will not pay for loss or damage to:

- h. gates, Fencing...”

RELEVANT LAW

Section 71(1) of the Act provides that (outside of the requirements for s58(2)) the onus on the insurer to supply documentation to the insured before a policy is entered into is not required where the insured is represented by a broker, who arranged the insurance and is not acting under a binder to the insurer.

REASONS FOR DECISION

6. I am satisfied that a full exchange of information has taken place between each party and that each party has had the opportunity to address any issues raised.

The Applicants' Submission

7. The applicants' fences were damaged as a result of a storm.
8. They never received a copy of the policy booklet from the FSP and were therefore unaware of any restrictions on cover.

The FSP's Submission

9. The FSP contends that the terms of the policy were clear and no cover was provided for the event that gave rise to the claim.
10. It further submits that the onus for provision of the policy documents was with the applicant's broker, as provided for in s71(1) of the *Insurance Contracts Act 1984* (the Act).

Consideration of each party's submission

11. The applicants' fence was destroyed as a result of a storm.
12. The FSP retained a loss adjuster who visited the site and confirmed that the damage was incurred as a result of heavy rain that caused the overflow of surrounding dry creek beds, and flooding throughout the area including where the applicants' fence was located. The report attributed the damage to flood debris.
13. The applicants deny that there was flooding on their paddocks or that it affected the fence. They maintain that the damage was caused by debris crashing into their fence.
14. No secondary opinion on the cause of the damage was obtained, and in the absence of an alternate evaluation of the loss, I am satisfied with the submission from the Loss Adjuster that the loss was due to flooding of the area and the impact of "flood debris" into the fencing.
15. The FSP declined the claim as the policy did not cover "loss or damage caused by... [f]lood". It also excluded cover for any loss to fences by "storm or water".
16. The relevant conditions are clearly highlighted in the policy and can reasonably be interpreted as clear, concise and effective.
17. The applicants contend that they were never informed about the special conditions in the insurance contract (which did not allow coverage for a flood), and that they never received a copy of the relevant PDS.
18. The FSP counters that as the policy was arranged by the applicant's insurance broker, the onus was on the broker to provide this information (pursuant to s71(1) of the Act), and not the FSP.
19. Section 71(1) permits the FSP to avoid responsibility for providing relevant information prior to entry into a contract of insurance in circumstances where the policy is arranged by a broker on behalf of the insured, and is not subject to an agreement with the FSP.

20. The applicants concede that they were unable to get in touch with the broker after the storm, and that he had been possibly avoiding them. By implication, it is established that the broker was the first point of call and that the FSP facilitated the policy only in its role as an underwriter.
21. The broker was acting on behalf of the applicant (through a financial advisor) and was not an agent of the FSP. This created an onus on the broker to obtain and provide the correct information to the applicant prior to the inception of the policy.
22. Whilst it is possible that this was not done, it was neither the fault nor the responsibility of the FSP, which is excluded from this onus pursuant to s71(1), upon the involvement of a broker acting on behalf of the applicant. If the applicants were genuinely unaware of the policy conditions on account of having not received a PDS, this is an issue that should be addressed with the broker and/or their financial advisor.

CONCLUSION

23. I determine that the FSP is entitled to avoid payment on the claim on the basis that the terms of the policy did not provide cover for the applicant's loss.