

Insurance: Flood Exclusion

QMT acted for Royal & Sun Alliance Insurance Limited (now Vero Insurance Limited) in successfully defending proceedings issued by Eastern Suburbs Leagues Club, originally claiming damages in the sum of \$980,000.00. The club claimed indemnity under an ISR MkV policy for property damage caused by water inundation during a "1 in 100 year" storm that hit Brisbane's south-eastern suburbs on 9 March 2001. The policy excluded damage... caused by or occasioned through flood. The proviso to the exclusion allowed for recovery where the damage was directly caused by a circumstance not specifically excluded under the policy, although the circumstance itself was the result of an excluded cause.

The insurer argued the water that inundated the club was sourced, in part, from Norman Creek flood waters. The club argued that the water that initially entered the club was local stormwater run-off that had been prevented from escaping by the flooding of the creek. Both eyewitness and expert testimony was relied on at trial. Video evidence from security cameras surrounding the club gave an eyewitness view of water entering the club.

Justice Mackenzie of the Queensland Supreme Court in a decision of 8 December 2003 was satisfied that the club had been inundated by a body of water which had two sources, the flooding creek and the rain water runoff that had ponded in front of the club. Consequently he found that flood was a proximate cause of the damage. He applied the principle in the Wayne Tank Pumps decision, that where there are competing causes of damage of equal efficiency and one of the causes is excluded, then cover under the policy is excluded.

The case includes reference to a number of recent flood decisions including the decisions of Justice Einstein of the New South Wales Supreme Court in *Hams v CGU Insurance Limited* (2002) 12 ANZ Ins Cas 61-542 and Justice Angel of the Northern Territory Supreme Court in *Prosser v AMP General Insurance Limited*. [2003] NTSC 80.



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