

PART

2

Property + Energy

Emerging Talent Series



EXCLUSIONS: KEY TAKEAWAYS

- Ambiguity read in favour of insured (*contra proferentum*)
- If language clear/unambiguous:
 - interpret exclusion based on natural and ordinary meaning
 - disregard evidence of surrounding circumstances
 - look at the contract as a whole and context clause appears
 - apply a “businesslike interpretation” on the assumption that the parties intended to produce a commercial result
- Where a loss is caused by an insured peril and an excluded peril, exclusion will prevail (*Wayne Tank* principle)
- *Prime* majority held: damage is subsequent within meaning of proviso if later in timing



RESOURCES

Video recording of the session:

<https://vimeo.com/548285698/21627cc11f>

Presentation slides:

<https://www.wottonkearney.com.au/download/10678/>

Other W+K articles and insights:

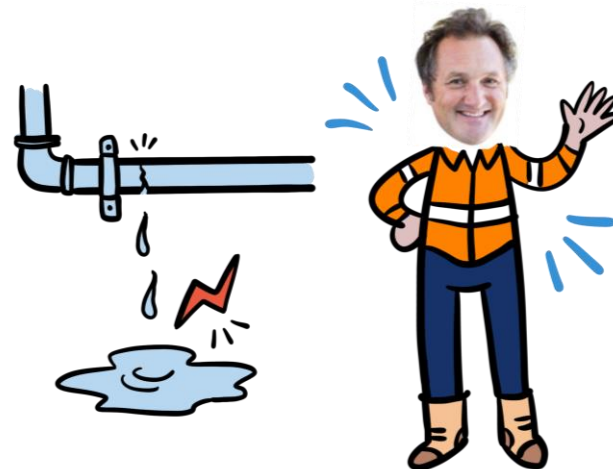
<https://www.wottonkearney.com.au/knowledge-hub/V>

Session 1 summary pack

<https://online.flippingbook.com/view/1009156/>

FEEDBACK & QUESTIONS WELCOME!

We welcome any feedback you have on the presentation materials, format, or what could be done to improve the next session in our Emerging Talent Series. If you have any feedback or further questions, please don't hesitate to email one of our presenters directly.



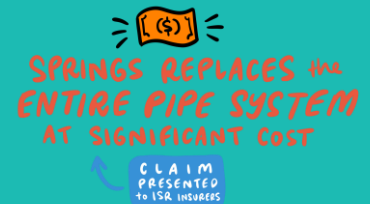
Q&A

If an exclusion clause contains a series of different causal connectors, how will the Court's approach this?

Where an exclusion clause only uses a single causal connector, its meaning will be open to interpretation. An insured will likely contend for a narrow meaning, while an insurer a wide one. Where a series of causal connectors are used, it means two things: firstly, that the parties arguments on the meaning of those words is restricted. A court will need to give each word a different meaning to give them efficacy. Secondly, it will signal that a wider / looser casual connection is intended by the parties to apply.

What happens if property is insured under both an ISR policy extension and a separate standalone cover?

This will depend on the terms of the policies but, if both policies respond to the same damage, then there may be a case of double insurance. In these circumstances, the insured could progress a claim against either insurer. The insurer who indemnified the insured could then seek a contribution claim subject to the double insurance clauses in the policy.



Q&A

Do you think the majority's approach in Prime will prevail in light of the noises made about it in the UK?

Its hard to say, but a challenge based on the minority's approach can't be ruled out based on some strong criticisms made about the majority's reasoning. Prime has now been with us for some time though, and is appellate authority. It would require at least an appeal before the majority's judgment is overturned.

Can multiple exclusions apply to 'knock out' a claim that initially qualifies for cover under an insuring clause?

Yes, it is possible for a number of exclusions to be relevant in relation to a loss/claim. For example, in Prime, both faulty workmanship and developing flaw were argued. There are frequently instances where more than one perils exclusion (out of the many in Perils exclusion 4) has relevance, but to exclude cover, only one excluded event/peril needs to be the proximate cause of the loss.

Poll results

An "all risks" policy provides cover for:

- a) specified risks
- b) any and all risks
- c) all risks to specified property save for those excluded.
- d) all risks save for those excluded



48%

If the language of an exclusion is unclear, it should be:

- a) read with the benefit of doubt going to the insurer
- b) read down against the Insurer, and in favour of the Insured
- c) interpreted by reference to the surrounding exclusions



60%

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Shaping the future of insurance law

What's next?

- Exclusions PART B
- Stay tuned for the next session information
- Look forward to seeing you there

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