



Professional Indemnity Claims Examples

Real Estate



Real Estate Agent

- ⌚ 15 staff
- ⌚ \$2M turnover

Background

The purchaser issued proceedings in VCAT against the vendor and our agent insured. The main allegations against the Insured is that they allegedly represented to the purchaser that the auction was not conducted on a GST exclusive nature and the purchaser was led to believe that he did not have to pay an additional sum of \$48,000.

Outcome

The claim settled out of court for \$48,000. The Insured's contribution was \$30,000. The legal costs incurred were \$10,000. Both the legal costs and the insured's contribution were covered by the policy.

Payment: \$88,000.

Real Estate Agent

- ⌚ 7 staff
- ⌚ \$1.1M turnover

Background

The purchaser purchased a block of land from the agent. The advertising material created by the agent stated:

"739sqm fully serviced and sewered block in corner location. Ready to build on."

The purchaser brought a transportable house and incurred further expenses in arranging for the transportable house to be transported and erected onto the block. Following this, the purchaser then made enquiries with the Water Corporation and found out that water was not connected to the block.

Outcome

Normally, the insured may be able to argue Caveat Emptor – Let the Buyer Beware! But in this instance, where the misrepresentation is plainly stated in the advertising material, liability on the part of the agent is easier to establish. In this instance, the purchaser was able to resell the property for a higher amount than what she had purchased it for. As she is only out of pocket less than \$10,000, the Insured has agreed to forfeit their commission, being \$5,300 plus pay an addition amount of \$5,000 to compensate the purchaser for her loss. The total defence costs incurred were \$5,000. Both the defence costs and the claim amount were covered under the policy.

Payment: \$15,300.

Real Estate Agent

- ④ 3 staff
- ④ \$800K turnover

Background

The tenant claimed that she was injured when she tripped on a loose paver in the driveway of the property. About one month before the accident, the tenant complained to the managing agent. The managing agent arranged for repairs. Soon after the repairs were undertaken, the tenant suffered injury.

In this instance, the Managing Agent's Agreement shifts the liability to the owner where the Managing Agent can show that they complied with all their obligations under the Agreement. That is, they conducted regular inspections and arranged for repairs to be undertaken within a reasonable time.

Outcome

Upon inspecting the agent's files, we became aware of many complaints which had been previously made to the agent with respect to the loose pavers. The claim was settled for \$30,000. The owner's contribution was \$21,000, with the agent contributing the remaining \$9,000. In the end, the agent was able to show that they had fulfilled their obligations under the Managing Agent's Agreement. The defence costs incurred were \$12,000. Both the defence costs and the claim costs were covered under the policy.

Payment: \$21,000.

Real Estate Agent

- ④ 5 staff
- ④ \$1.9M turnover

Background

Under instructions from the owner, the agent leased a commercial property to a retailer. Soon after setting up shop, the tenant was informed by the owner of the complex that there was a restrictive covenant in place prohibiting the premises to be used for retail purposes.

The tenant has now made a demand of the owner of the property for the amount of \$200,000, being the costs associated setting up the premises. The owner has sought to join the agent to the impending action arguing that they should have done the research into whether or not there were any restrictive covenants in place.

In this instance, the agent should have used a retail tenancy lease instead of a standard commercial lease as it would have resulted in a disclosure statement being produced, which would have notified the restrictive covenant.

Outcome

As there is some exposure on the agent's part, the claim was ultimately settled for \$40,000 plus \$14,000 in costs, both of which were covered under the policy.

Payment: \$54,000.

Real Estate Agent

- ⌚ 13 staff
- ⌚ \$2M turnover

Background

Proceedings were issued in the Supreme Court of Victoria against our insured in relation to their management of retail premises of a commercial tenant. The allegations are that the insured ‘duped’ the claimant into signing a new lease at a greatly inflated rent to what it should have been. Claim made for over \$3M. Accordingly, the insured did not have authority to renew the lease as alleged by the plaintiff. This point was vigorously denied. In light of the evidence on hand, we consider that the commercial tenant will have difficulty with its claims because: the

correspondence between the lessee and the insured on behalf of owner could not constitute an agreement to renew the lease as there was no meeting of the minds.

Outcome

As liability was not strong against our insured, the claim was ultimately settled with a “walk away” offer being made at mediation with \$100,000 incurred in defence costs which were covered under the policy.

Payment: \$100,000.

Real Estate Agent

- ⌚ 7 staff
- ⌚ \$1.2M turnover

Background

A claim was issued against the Insured Director of an real estate agency and the Company for making false and misleading deceptive comments in order to induce purchasers to an off the plan sale of apartments. A claim was issued in the District Court of NSW where the purchases alleged a loss against the director and entity for the amount of \$360,000 plus costs.

Outcome

It was deemed the Insuring clauses was triggered and indemnity was extended to both the Insured director and Company. It was soon determined that there were many weaknesses with respect to the liability of the Insured and it was decided that this claim should be settled quickly and commercially. The claim was ultimately settled at a case conference for the amount of \$200,000 plus \$20,000 in defence costs, both of which were covered under the policy.

Payment: \$220,000.

Real Estate Agent

- ⌚ 8 staff
- ⌚ \$1.9M turnover

Background

Over a period of 8 months, an employee property manager stole money from the Company’s trust account and made unauthorised payments to their own personal account. The total amount of the theft once discovered was \$75,000.

Outcome

It was deemed that insuring clause was triggered and indemnity was granted. The Insured was only able to prove the entire amount of the loss with the help of a forensic accountant provided by the insurer. The Insured was reimbursed the amount of \$75,000 less their deductible.

Payment: \$75,000.

Real Estate Agent

- ⌚ 3 staff
- ⌚ \$910K turnover

Background

A young female employee of the Insured real estate agency issued a claim against the Insured for wrongful dismissal and sexual discrimination. She issued a claim in Fair Work Australia for reinstatement and compensation in the amount of \$60,000.

Outcome

The Insured denied the claim from the outset and claimed that the employee was terminated based on her lacking performance. Unfortunately, the employee was able to rely on the evidence of her coworkers that she was subjected to sexual discrimination. It was deemed that insuring clause was triggered and indemnity was extended to the Insured. The Insured settled the claim with the ex employee for the amount of \$35,000 plus \$15,000 in legal costs, both of which were covered under the policy.

Payment: \$50,000.

Real Estate Agent

- ⌚ 6 staff
- ⌚ \$1.6M turnover

Background

A claim was issued against the insured real estate agent arising from an accident that occurred on the insured's premises during a sales marketing evening to potential clients. An attendee of the marketing session was scalded by a faulty coffee pot left in the foyer of the agent's office. The claimant suffered injuries and incurred \$2,800 in out of pocket medical costs and \$4,200 in lost wages.

Outcome

It was deemed that Insuring clauses was triggered and indemnity was extended to both the Insured. The damages were covered by the policy and were paid to the claimant without the need for the claimant to resort to litigation.

Payment: \$7,000.

Real Estate Agent

- ⌚ 11 staff
- ⌚ \$2M turnover

Background

A claim was issued against the insured real estate agent arising from an incident that occurred at an open for inspection. The sales executive who attended the property for the open for inspection caused \$7,000 of damage when they accidentally shorted the circuit of the property they were showing.

Outcome

It was deemed that Insuring clauses was triggered and indemnity was extended to both the Insured. The damages were covered by the policy and were paid to the claimant without the need for the claimant to resort to litigation.

Payment: \$7,000.