

Real Estate Case Study

Fall from rotting balcony railing



Case Details:

The insured is the managing agent for a rental property of the owner client. District court proceedings were issued against the owners of the property, the insured property manager and a builder.

The plaintiff husband and wife claimed that they were invitees to the subject property by the tenant. The couple were enjoying a moment on the balcony of the property, when one of the plaintiffs leaned against the balcony. The railing gave way, the balcony collapsed and both plaintiffs fell to the ground.

The wife sustained injuries to her cervical spine, collar bone, head, shoulders, little finger and left arm. The husband sustained injuries to the pelvis, left foot, hip and spine.

Allegations of breach of professional duty against the insured included failure to regularly inspect the premises, failure to report on defects of the balcony and failure to rectify the defects.

The collapse occurred due to the rotting wood of the balcony railing which was physically visible.

Prior to the tenancy, the insured property manager had identified that the balcony required repairs and retained the services of the builder to repair the balcony prior to the tenancy commencement. Although action was taken to repair the balcony, the insured was exposed to liability. The property manager failed to follow up that the repairs were carried out properly and failed to inspect that the railings had rotted.

Lawyers for the insured property manager cross claimed against the owners and the builder for complete indemnity or in the alternative, contribution. The owner's lawyers denied contractual indemnity or contribution against the insured. The owner also cross claimed against the builder. The claims by the plaintiffs were ultimately settled on the basis of each of the defendants bearing 33% each.



Case Outcome:

Policy Response

Indemnity was accepted as the policy covered the activities of a property managing agent including property inspections and arranging maintenance of properties for owners.



Reduce Your Risk:

- When conducting periodical inspections, check any wood for instability and rotting;
- Keep a record of any notification of building defects or maintenance requirements notified to the owner;
- Be specific when instructing any tradespeople and builders on repair works. Keep a written record of the instructions and a copy of all quotes, invoices and receipts;
- When arranging repair works to a property prior to tenancy, inspect the works after it has been completed to ensure works been carried out in a proper and workmanship manner and to ensure that the property is safe.