



Hall&Wilcox
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insurable interest

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Lending a helping hand

The plaintiff, then 10 years old, suffered an injury to his left hand when it became caught between a post driver and a fence post. The post driver was being operated by the plaintiff's grandfather who was insured under a public liability policy. The insurer denied indemnity for the grandfather's claim on the basis that he was in breach of a special condition which required him to take all reasonable precautions to prevent injury.

The plaintiff sued his grandfather who joined his insurer as a third party seeking indemnity for the plaintiff's claim. The plaintiff succeeded against his grandfather and the insurer was ordered to indemnify the grandfather.

On appeal, the Court found that the 'reasonable precautions' special condition must be construed having regard to the commercial purpose of the policy which was to indemnify the insured against liability for personal negligence. The Court noted that for the special condition to apply, the insured must 'deliberately court a danger' which the insured realises creates a risk of someone being injured.

The Court found that the grandfather did not deliberately expose his grandson to a recognised danger. This was substantiated by evidence before the Court that the grandfather had been doing fencing work for over two decades without incident. The Court also found that he had a close and loving relationship with his grandson and that he would not have deliberately exposed his grandson to a recognised danger without regard to whether he suffered bodily injury: *CGU Insurance Limited v Lawless*.

FURTHER ENQUIRIES

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