

SWISS RE SUCCESSFUL ON CONTRACT BASICS: OFFER AND ACCEPTANCE

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In a recent decision, the Supreme Court of Victoria has confirmed the importance of clear acceptance of an offer for a contract to be binding. The decision arises from an indemnity dispute following a property fire in West Footscray, which burned for days and sent an acrid smoke plume over parts of Melbourne.

IN ISSUE

- Formation of a Contract - Offer and acceptance - Whether an Offer by an insurer to extend an insurance contract was implicitly accepted
- Whether offer by insurer constituted unilateral contract of insurance

THE BACKGROUND

For the policy period of 24 August 2017 to 24 August 2018 (2017 Policy), Swiss Re (the Insurer) agreed to insure and indemnify Danbol Pty Ltd (the Plaintiff) against the risk of property damage with respect to a property at 2 Victoria Drive, West Footscray (the Property).

Leading up to the 2017 Policy expiration date there were communications between the Plaintiff's broker and the Insurer (through its representative), however, as at 24 August 2018, the Plaintiff had not obtained cover to replace that provided by the 2017 Policy.

On 24 August 2018, in anticipation of the 2017 Policy not being renewed, the Insurer made an offer to the Plaintiff (Offer) on the following terms (and subject to a stipulated premium, payable to cover the period of the extension):

"...On further consideration, this is not one we are going to be able to assist with at renewal however given the time-frame we will offer 14 days extension to assist with placement.

...For [the Insurer's representative] to re-consider we would require a survey or suitable qualified engineer report to provide details in relation to the process, adequate ventilation, safety of procedures and storage on site."

The Offer was not formally accepted. In the days that followed considerable correspondence was exchanged seeking to advance negotiations for a renewal of cover and clarifying the specifics of the Plaintiff's operation.

On 29 August 2018, the Insurer provided a renewal quotation to the Plaintiff (Renewal

Quotation).

On 30 August 2018, at about 5:00 am, a fire started at the Property. At 8.44am the broker accepted the Insurer's Renewal Quotation by email.

In the Supreme Court proceedings, the sole question for determination was whether there was an extension of the 2017 Policy. The Plaintiff argued that it had accepted the Offer (and thus formed a bilateral contract), or in the alternative, the Offer constituted a unilateral contract.

THE DECISION AT TRIAL

Justice Riordan found no bilateral contract existed in circumstances where the Plaintiff's broker requested that the Insurer re-consider renewing the 2017 Policy (resulting in the Renewal Quotation being issued), rather than accepting the Offer. All communications between the parties' representatives were in writing (by email), and none purported to accept the offer of a 14 day extension for the payment of the additional premium.

Justice Riordan also determined that no unilateral contract existed because the defendants' offer was expressly to provide the extension of cover in exchange for the payment of additional premium, which the Plaintiff never committed to pay. The Insurer could not unilaterally impose an obligation on the Plaintiff to pay the extra premium, without it having accepted the Offer.

IMPLICATIONS FOR YOU

This case revisits basic tenets of contract law and is a reminder in particular to parties involved in the negotiations of insurance contracts to be clear at each stage of a negotiation as to whether an offer is accepted, and the consequences that may have on an insured's coverage.

This case note was co-authored by Madelaine Swan.

[*Danbol Pty Ltd v Swiss Re International Se* \[2020\] VSC 23](#)

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