



Neutral Citation Number:[2006] 48 (QB)

Case No: **DPA**

**IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
Before: the Hon Mr Justice Simon**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 January 2006

Between:

KR & others

Claimants

- and -

Royal & Sun Alliance Plc

Defendant

Mr R.F. Owen QC and Mr Philip Turton (instructed by Uppal Taylor) for the Claimants
Mr Edward Faulks QC and Mr Nicholas Fewtrell (instructed by Hill Dickinson LLP) for the Defendant

Hearing dates: 11, 12, 13 and 16 January 2006

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
The Hon. Mr Justice Simon

Conclusions

32. One of the difficulties in deciding this issue is that it relates to a period over 30 years ago. Neither the assured nor the brokers have any documentation which assists; and I accept the evidence of Mr Prince that a thorough search has been carried out by the Insurers, and that there is no relevant documentation relating to cover for the Company.
33. The relevant question is what can properly be deduced from the limited material now available? In my view the starting point is the likelihood that after 1972 the Company had employer's liability cover, and that this would have been part of a Combined Policy insuring general liability risks. I accept Mr Prince's evidence that, if the Royal had been the employer's liability insurer before 1976 (either alone or as part of a Combined Policy) there would probably be some evidence of this on the computer records. In fact there is none. The evidence of the brokers must be treated with caution in view of the time that has elapsed. However, the evidence does not assist the Claimants. Mr Williams started his broking business in 1973, but does not describe the Company as one of his first clients. This suggests that, if the Company had the mandatory employer's liability cover from 1 January 1972, it had not been brokered through Williams Insurance Brokers Limited. This view is reinforced by the evidence of Mr Williams that his firm 'took over' broking for the Company in the 1970's; and Ms Addis's statement in October 2002 that the Company had been insured with the Insurer, not for all of its existence, but for 'virtually all of its existence'.
34. This evidence suggests that there was a prior Policy of some sort which had been brokered through Evans & Rowe, and that this had been superseded by the August 1976 policy with the Insurer which had been brokered through Mr William's firm. Furthermore the likelihood is that the prior Evans & Rowe policy was not with the Royal since as, Mr Williams said, his firm took over the broking of the policy on a best terms basis. All this indicates that the Company was not insured against liability risks under a Policy to which the Insurer subscribed prior to the August 1976; and I so find.
35. The fact that the cover point was taken late, and that the Insurer was reported to have reserved against the claims, adds little to the argument. The period of cover issue did not emerge until after a relatively late factual enquiry; and the statement about the reserve does not suggest, let alone establish, knowledge of the existence of a Policy covering the period 1973-August 1976. I should add that (at least in retrospect) it was unfortunate that the Insurer participated in the trial before Connell J on the (at least implicit) basis that they were the Insurer of the Company throughout the period of the claims.

The exception issues