



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**

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**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

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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

for saying that the cause of the loss was the deliberate act or omission of the Company. As Connell J expressed it (in §48 of the judgment):

I am satisfied that inexperienced staff, inadequately supervised, accepted a regime in which the use of violence by way of pushes, slaps, cuffs and punches was a regular occurrence. Accepting as I do that [redacted] was a complex and difficult child who was himself capable of significant physical violence, nonetheless he was the victim of serious physical abuse over 3 years and at a time in his life when he needed to be able to trust adults and be treated sympathetically by them. He suffered in this way because of faults in the system which was operated in the Community, in which the safety and wellbeing of some of the residents were neglected on a regular basis.

51. Although the wording of the exclusion was changed from 1981 the change did not, in my judgment, significantly change the terms of the policy. The Insurer still has to show that the deliberate acts or omissions were committed by those acting within an operational role and exercising a management responsibility.
52. Again I am not satisfied that the Insurer can bring itself within the exception. At the root of the claim is the negligence which permitted deliberate acts of abuse to occur; but the acts of abuse were not the acts of the Company. The precise status of the abuser within the Company is not the material issue; it is the role of the abuser which is significant. In each case they were not acting in a managerial role, they were acting for their own ends or, as Mr Owen QC put it, 'selfishly and gratuitously'.
53. It is convenient to take the case of [redacted] as an example. [redacted] was subjected to regular sexual abuse by John Allen, and physical abuse from the staff, between 1984 and 1986. As the Judge found (§136) much of the abuse occurred in John Allen's car. He also found (§130) that John Allen warned him that, if he told anyone, he would be sent to a secure unit. The Judge concluded (§136):

In summary (the Company was) negligent in not investigating a strange situation and in taking not steps to prevent the course of conduct which significantly damaged [redacted]. Thus (the Company is) vicariously liable for the proven sexual abuse which (it), and (its) systems, failed to detect or prevent.

54. In my view the nature of the acts (in the car of the abuser) the "strangeness" of the situation, the warnings not to report what had occurred, all militate decisively against the Insurer's submission that this was loss resulting from the deliberate act or omission of the Company.
55. I also accept the submissions of Mr Owen QC that an analysis on the basis of the principles of vicarious liability does not throw significant light on the issue that I have to decide. The exception is confined to injury or damage which results from the

deliberate act of omission of the assured. It is not concerned with deliberate acts or omissions of servants or agents who might have been acting in the course of their employment and in respect of whose acts or omissions (deliberate or otherwise) vicarious liability might attach.

56. I am also not persuaded that the US decisions to which I was referred assist greatly in this case. Each case is likely to turn on the terms of the particular Policy; and, in so far as the cases reflect public policy, it seems to me that it would be necessary to carry out a more complete review of both the relevant public policy issues and the relevant US decisions. As Professor Clarke expresses it, 'the impact of value judgments offers one explanation of the variety of interpretations courts have put on the exceptions', Clarke (*op cit*) §19-2E6.
57. For these reasons I have concluded that the Insurer's defence on the exception issues fail.
58. I should add that, if I had found that the Insurer had provided cover prior to August 1976, I would have found that it was on the terms of the Combined Insurances Policy 1969-70 (p.167B of bundle 1). This provided Third Party Liability cover

In the event of (a) accidental bodily injury to ... any person ...  
caused in the course of business.

The General Conditions provide:

... if any loss destruction or damage be occasioned by the  
wilful act or with the connivance of the Insured all benefit  
under the Policy shall be forfeited.

59. Although the structure of this policy differs from the 1976 and 1981 Policy, I would have found that the Claimants could have recovered against the Insurer had such a Policy been in existence in 1972. The word 'accidental' in the phrase 'accidental bodily injury' has to be looked at from the perspective of the assured and not the insurer. The claims based on abuse would fall within the Policy unless the injury was the result of the deliberate act of the assured. For the reasons already given I would have found that loss was not caused by the deliberate acts of the Company in this early period. However, for the reasons that I have already given, I find that there was no such cover provided by the Insurer.

### Summary

60. I have concluded that:
- i) The cover provided by the Insurer incepted on 22 August 1976, but not before.

- ii) The Insurer's defence based on the exception in the Policies fails.

I will hear the parties on the form of any order.