SUPREME COURT OF QUEENSLAND

CITATION:	*Cruise Oz Pty Ltd v AAI Ltd* [2015] QSC 215
PARTIES:	**CRUISE OZ PTY LTD** **ACN 115 706 606** (applicant) **v** **AAI LTD** **ACN 005 297 807** (respondent)
FILE NO/S:	SC No 3592 of 2015
DIVISION:	Trial Division
PROCEEDING:	Originating Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	29 July 2015
DELIVERED AT:	Brisbane
HEARING DATE:	20 April 2015
JUDGES:	Justice Carmody
ORDERS:	**The orders of the Court are that:** **1. the respondent must indemnify the applicant in respect of damage or loss caused to the applicant's insured vehicles on 27 March 2014 under Section 3 of the respondent's Motor Dealers Insurance Policy, entered into by the applicant and respondent on or about 12 July 2013.** **2. the respondent must pay the applicant's costs of and incidental to the application, to be assessed on the standard basis.**
CATCHWORDS:	CIVIL LAW – CONTRACT – INTERPRETATION OF CONTRACTS – INSURANCE POLICY AGREEMENT – INTERPRETATIVE CLAUSES – DEFINITION OF KEY TERMS – FORM OF KEY TERMS – where the applicant and respondent entered into an insurance agreement for certain motor vehicles – where the applicant presented the insured vehicles at a show ground for display – where the display area flooded and destroyed or irreparably damaged the insured vehicles – where the applicant filed a claim under the insurance agreement in relation to the destroyed vehicles – where the insuring clause of the insurance agreement did not extend to "your premises" – where "your premises" was

defined in a definitional schedule attached to the insurance agreement – where the respondent rejected the insurance claim on the basis that the phrase "your premises" included the show ground under the technical definition prescribed in the definitional schedule – where an interpretative clause prescribed that all words in bold had the definition prescribed under the definitional schedule – where the phrase "your premises" in the insuring clause of the insurance agreement was not bolded – whether "your premises" should be ascribed its natural and ordinary meaning or prescribed technical definition under the definitional schedule – whether the contract established a sophisticated definitional system or framework delineating the semantic meaning and descriptive criterial content of "your premises" signalled by the bolding of the font – whether the natural and ordinary meaning of "your premises" extended to the relevant show grounds.

COUNSEL: D Atkinson for the applicant
E Goodwin for the respondent

SOLICITORS: Minter Ellison for the applicant
Barry Nilsson Lawyers for the respondent

[1] **JUSTICE CARMODY:** The applicant filed an originating application on 10 April 2015 with the Queensland Supreme Court for:

1. A declaration that, on proper construction, an insurance agreement executed by the applicant and respondent on 12 June 2013 extended to cover flood damage sustained by certain caravans (also known as "travel trailers") displayed at a trade show on 27 March 2014.

2. An order that the respondent pay the applicant's costs of and incidental to the application.

[2] The respondent resists the application, claiming that the insuring clause of the insurance agreement did not extend to the trade show. This is because, according to the respondent, the agreement did not insure the vehicles at "your premises", which is defined broadly under Part 6 of the insurance agreement. Additionally, the respondent claims that Section 3 of the insurance agreement does not respond to the insurance claim because Section 1(A) is the more favourable insurance scheme.

[3] The primary issues in dispute between the parties are:

1. whether it is open for the applicant to claim insurance under Section 3 of the insurance agreement;

2. whether the proper construction of "your premises", which forms part of the definition of "your vehicle" deployed in the insuring clause of the

Section 3 of the insurance agreement, extends to encompass the showgrounds.

[4] Before embarking on an analysis of "your premises", it is convenient to briefly summarise the factual matrix giving rise to the dispute.

Factual Matrix

[5] On 12 June 2013 the applicant and respondent entered into an insurance agreement titled the "Motor Dealers Insurance Solution" (the ***"Insurance Agreement"***).

[6] On 26 and 27 March 2014 the applicant transported fifteen caravans (the ***"Insured Vehicles"***) to the Mudgeeraba Showgrounds, Worongary, Queensland (the ***"Showgrounds"***) for the purpose of exhibition at the "Gold Coast Caravan Camping, 4WD & Fish Show" (the ***"Exhibition"***) on 28 – 30 March 2014.

[7] It is relatively uncontentious that the Showgrounds were substantially contiguous with Worongary Creek. On 27 March 2014, immediately prior to the Exhibition, a storm event took place which resulted in significant rainfall in the Mudgeeraba catchment area. The precipitation caused the submergence of the portion of the Showgrounds on which the applicant's Insured Vehicles were situated. Following inspection of agents of the applicant, it was discovered that the Insured Vehicles had sustained considerable damage.

[8] On 28 March 2014 the applicant lodged a claim under the Insurance Agreement for damage sustained by the Insured Vehicles. On 29 March 2014 the respondent, trading as "Vero Insurance", instructed an insurance assessor to evaluate the damage sustained by the Insured Vehicles. The assessor concluded that the flooding caused permanent and irreparable damage to twelve of the Insured Vehicles, such that they were, in colloquial vernacular, "written-off", and substantially damaged the three remaining caravans.

[9] On 4 June 2014 the respondent advised the applicant, through their insurance broker, that they declined the insurance claim in relation to eleven of the Insured Vehicles. The declinature ensued because the respondent interpreted the applicant's claim as seeking to activate Section 1(A) of the Insurance Agreement, which included a limitation clause excluding liability for loss or damage caused by "flood". In this respect, the parties' positions diverge regarding the causality of the inundation of the Showgrounds. The respondent claims that the inundation was caused by the overflowing of Worongary Creek, which constitutes "flooding" under the exclusionary clause. The applicant claims that the inundation was caused by stormwater runoff, which apparently may not constitute "flooding" under the exclusionary clause of Section 1(A).

[10] This Court expresses no opinion as to the correct interpretation of "flooding" under Section 1(A) as the applicant has based their originating application on Section 3, which does not possess the abovementioned exclusionary clause and therefore does

not require a resolution of the precise cause of the inundation. It is sufficient to note, however, that on 8 July 2014 the respondent made payments under the Section 1(A) of the Insurance Agreement in respect of four of the insured vehicles, amounting to $68,273.30, being the stock value of the vehicles net of Goods and Services Tax.

[11] Following the initial declinature on the basis of the exclusionary clause, the representatives for the applicant sent a letter dated 22 July 2014 requesting a formal response to the claim in respect of the remaining Insured Vehicles (the ***"Request for Indemnity Response"***). The Request for Indemnity Response, Document ASC-4 to the affidavit of Alison Shay Corcoran, a solicitor of Minter Ellison representing the applicant, states that the property damage is "prima facie covered under section 1(A) of the Policy". The letter does not, however, appear to expressly or impliedly confine the insurance claim to Section 1(A) of the Insurance Agreement. The respondent did not advance any argument in the application before the Court that the Request for Indemnity Response, by only making reference to Section 1(A) of the Insurance Agreement, gave rise to an equitable estoppel or informed waiver precluding the applicant from recovering under Section 3.

[12] On 5 August 2014 the respondents issued a formal response to the Request for Indemnity Response (the ***"Formal Indemnity Response"***) which declined the applicant's claim under both Section 1(A) and Section 3 of the Insurance Agreement. The declinature under Section 1(A) was based on the perils exclusionary clause, whereas the declinature under Section 3 was based on the definition of "your premises" under the Insurance Agreement. It is the latter refusal which forms the foundation of this application.

The Insurance Agreement

[13] Section 3 of the Insurance Agreement, titled "Commercial Motor Composite", provides that:

> **We** will cover **you** for **loss** or **damage** to **your vehicle**:
>
> 1. whilst being used for the **purpose of use**; and
>
> 2. caused by an **accident** during the **period of insurance**. (emphasis original)

[14] "Your vehicle" is defined under Section 3's definition clause as follows:

> [Your vehicle] [m]eans any motor propelled machinery of every kind and description, motor vehicle, trailers, caravans, boats, motorcycles, motorised homes, whether registered or unregistered, belonging to or being purchased, financed or otherwise acquired by **you** or left in **your** custody for sale, repair, garaging or servicing or for any other purpose in the course of **your business**.
>
> …
>
> **Your vehicle** does not include:

…

> 5. any stock vehicle or customer's vehicle, whilst in, on or about **your** premises, except when being driven under a trade plate or as part of a test-drive. (emphasis original)

[15] "Your" is defined in Part 6 to mean "any person, company or legal entity shown on the **schedule** as the policy holder." It is non-contentious that the applicant is the company listed in the schedule to the Insurance Agreement as the policy holder.

[16] The concept of "premises" is defined expansively to mean "the premises specified in the **schedule** whether owned, leased, used or occupied by **you** for the purposes of the **business**". "Business" refers to the business or occupation described in the **schedule**, including the ownership of any **premises** shown in the **schedule**."

[17] Part 4 of the Insurance Agreement contains an interpretation clause titled "About your insurance policy". Relevantly, the interpretation clause provides that:

> Some words used in this **policy** have special defined meanings. These words are in bold.
>
> **We** explain the meaning of these words in the **policy** sections themselves under the heading **Definitions**. There are also some general definitions listed under **General Definitions** in Part 6 which apply to the whole **policy**.
>
> If the same word is defined in a **policy** section, it will have the meaning for cover in that section as it is defined in the section, but otherwise have the **General Definitions** meaning.

[18] Therefore, the interpretation clause provides that the technical definitions prescribed in the Insurance Agreement apply where the corresponding term is bolded. Accordingly, it may be inferred that a non-bolded term will generally possess its natural and ordinary meaning subject to any contraindications.

Consideration of Select Principles of Contractual Interpretation

[19] A "contract" is an agreement, drafted in sufficiently certain terms, entered into voluntarily by two or more parties to exchange valuable consideration accompanied by an intention to create legal relations. Within functioning legal systems, contracts provide means for the enforcement of legal arrangements and compensation for non-performance. Accordingly, contracts promote greater economic efficiency through facilitating transactions in the absence of interpersonal trust, and reducing the risks of non-performance, moral hazard and adverse selection.

[20] Contracts, as legal devices designed to manage risks and effect transactions, are commonly taciturn instruments executed by persons of commerce, untrained within the arts of law or semantics, who would be unimpressed by excessively pedantic or technical linguistic or legalistic constructions. Rather, contracts are invariably executed to attain specific purposes, which are commonly transparent from the form

and substance of the agreement. Accordingly, the Court should generally prefer a common sense interpretation which effectuates, rather than frustrates, the objectives of the contract. Any alternative method of construction would undermine the purpose of the legal arrangement and render the contract inutile.

[21] Similarly, this Court, and other superior courts, have held that one should seek to interpret the contract according to the "common intentions" of the parties. As I have described elsewhere, the noun "intention" refers to a mental capability, power or faculty directed towards the attainment of a particular objective or outcome. Although the concept of "intention" is typically attributed only to human and non-human animals possessing relatively sophisticated cognitive faculties, it may be deployed somewhat artificially, with different denotations and connotations, to artificial persons or cohesive organisations.

[22] When referring to the "common intentions" of the parties to the agreement, the most obvious and grammatical denotation of the phrase is the actual or apparent intentions of the parties regarding the meaning and purpose of the agreement or any clause contained therein. This interpretation of the principle is reflected in the submissions of the respondent, which are replete with references to the actual or purported intentions of Vero Insurance. As a contract is a legal instrument crystallising as a result of an agreement between two or more parties, the intentions of one party cannot be allowed to control the interpretation of the arrangement.

[23] In the course of argument, the applicant correctly claimed that the intentions of Vero Insurance were irrelevant, but the Court should have regard to the joint intentions of the parties. Although this position possesses some merit, the interpretation of a contract is not controlled by the intersecting subjective intentions of the parties. There may be many clauses within a contract which are not read or understood by a contracting party, in respect of which they form no actual or apparent intention or belief regarding their meaning. In other cases, the contract may be drafted by an independent legal advisor, or adopted from another standard form, and no contracting party may form *any* intention or belief regarding the meaning of certain clauses contained within the agreement. In either case, the fact that one, both or all parties may not have formed any subjective intentions or beliefs regarding the construction of particular terms does not render such terms inert. Rather, the terms, if valid, remain operational until lawfully amended, waived, avoided, terminated or abandoned by the parties.

[24] The objective theory of contract, which prevails within Queensland, prescribes that the Court is to objectively ascertain the meaning of the text of the contract, interpreted in light of its purposes and commercial context. This promotes legal certainty and predictability, whilst efficiently utilising public resources by removing the need for the Court to enquire into the subjective intentions of the parties. The primary disadvantage of the objective theory of contract is that, in exceptional circumstances, parties may be bound to an arrangement which they neither intended nor contemplated. Although the Court possesses powers to avoid this outcome in

most circumstances, especially where the result would be uncommercial or impracticable, it is appropriate and just for the parties to be bound to the natural and ordinary meaning of the agreement to which they have signified their assent.

Definitional Schedules, and the Construction of Specific Terms and Phrases

[25] Consistently with the objective theory of contract, and to promote consistency and certainty in contractual interpretation, the Court is generally entitled to presume that words and phrases possess their natural and ordinary meaning. The presumption may be displaced where the relevant terms have acquired a special meaning, such as through trade, custom or a definitional clause, or the ordinary meaning of the contract would produce an outcome which is manifestly unreasonable or inconsistent with the objectives of the contract.

[26] Where a definitional clause within a contract prescribes technical meanings for particular terms that depart from their natural and ordinary meaning, the Court should, unless the contrary is indicated, ascribe to the word or phrase the definition agreed by the parties. Proper adherence to the prescribed definition promotes party autonomy, a fundamental precept underpinning contractual interpretation, and is more likely to effectuate the common intentions of the parties. Definitional clauses promote precision and concision in drafting by obviating the need to deploy complex or prolix forms of locution to describe concepts frequently arising in the agreement. Similarly, parties may also voluntarily prescribe a customised system of contractual interpretation which deviates from established principles, provided the system is not inconsistent with any applicable statutory or regulatory constraints.

Responsiveness of the Insuring Clause

[27] Section 4 of the Insurance Agreement is an interpretation clause which prescribes that "Some words used in this policy have special defined meaning. Those words are in bold." Applying the doctrine of *expressio unius est exclusio alterius*, or even ordinary principles of contractual interpretation, it may be inferred that any words which are not in bold do not possess a special defined meaning. In light of Section 4, the phrase "your premises" is not ambiguous and should be ascribed its natural and ordinary meaning, unless the respondent can show that: (a) the failure to bold "your premises" was a mistake; and (b) that the phrase "your premises" should be rectified.

[28] The respondent has adduced limited evidence indicating that the failure to bold "your premises" was a mistake. The contract exhibits at least 18 instances within which "your premises" was not bolded, some circumstances within which it would be irrational or disadvantageous to the respondent to define "your premises" narrowly. As the contract appears to establish a system delineating between the definitional content ascribed to the bolded and unbolded instantiations of "your premises", the limited evidence adduced by the respondent is not sufficient to establish that the failure to bold "your premises" in Section 3 was a mistake.

[29] Even if the Court were satisfied that the failure to bold "your premises" in Section 3 was an error, it constitutes a unilateral mistake which fundamentally modifies the scope of insurance under Section 3 of the Insurance Agreement. The respondent has adduced no evidence of unconscionable conduct on behalf of the applicant which would justify rectification of the Insurance Agreement. Furthermore, the respondent has not established that holding the parties to the natural and ordinary meaning of the agreement would be inequitable or otherwise uncommercial. Accordingly, the respondent is not entitled to rectification and must be held to the natural and ordinary meaning of Section 3.

[30] As a preliminary matter, "your premises" must be defined to have different definitional scope relative to the technical definition, otherwise it would not have been left in an unbolded font by the draftsperson. The Oxford English Dictionary defines the noun "premises" to mean "a house or building together with its grounds, outhouses etc., *esp*. a building or part of a building that houses a business." "Premises" is qualified by the possessive pronoun "your", referring to the applicant. Significantly, a possessive pronoun does not necessarily denote *ownership*, it can signify lesser degrees of conceptual relation analogous to possession. The degree of relational freedom attached to a possessive pronoun largely depends on the subject noun and its grammatical and circumstantial context.

[31] The respondent appears to submit that the qualification of the noun "premises" with the possessive pronoun "your" does not assist the applicant, because "possession" may be defined to include "occupation". This is sophistry insofar as it purports to ascribe the definitional content of "possession" to the possessive pronoun "your".

[32] Despite this, there is some merit in the contention that occupancy may, in some circumstances, justify the qualification of the subject noun with the possessive pronoun "your". One might rightly refer to "your room" in the context of the temporary occupation of a hotel, but one could not refer to "your house" in the context of temporary occupation of a friend's house. However, in each of these illustrations it would distort the customary conventions of oral and written grammar to substitute the subject nouns "room" and "house" for "premises".

[33] The distortionary effect of the noun "premises" is caused by its conceptual scope. "Premises" does not refer to a room in a hotel or a friend's house, nor a site or lot on certain showgrounds. "Premises", on its natural and ordinary meaning as defined at [30], is generally contemplated to encompass the entirety of the relevant building and surrounding grounds to which the term is ascribed. An exception may apply in the context of businesses, where premises may refer to the relevant section of a structure wherein the business engages in commerce. However, in both contexts, the use of the term qualified by the possessive pronoun "your", deployed in the

sense of "occupancy", denotes *at least* a stable, durable and continuous occupation of the building or section of the building comprising of the "premises".[1]

[34] The respondent claims that this interpretation is uncommercial because:

1. the respondent could not control the locations within which the applicant conducted its business;

2. the respondent did not intend to cover the applicant for loss caused by flood inundation, evidence by the perils exclusion in Section 1A; and

3. Section 1A possessed a limitation on liability of $690,000.00 for each "event", whereas Section 3 provided a limitation on liability of $150,000.00 for each insured vehicle.

[35] The factors identified by the respondent are not so grave as to render the Insurance Agreement so uncommercial as to require a departure from the grammatical and common sense meaning of "your premises". Further, the respondent's subjective intentions or beliefs regarding the scope of insurance in Section 3 are irrelevant. The respondent also claims that Section 3 is designed only to cover motor vehicle collisions. It is sufficient to note that such a limited a construction is not transparent from the terms and structure of Section 3.

[36] The respondent also appears to assert that it would not be "harmonious" to interpret "your premises" differently in Section 3 and Section 1A. This argument lacks force where the contract establishes a system delineating between "your premises" being used in its natural and ordinary meaning, and the defined technical meaning. The Court need not adopt a harmonious interpretation where the relevant agreement prescribes divergent constructions for the same phrase deployed in different ways.

[37] Finally, the respondent also contends that Section 3 of the Insurance Agreement contemplates multiple premises. Even if this were true, the phrase "your premises" does not exclude the possibility of an enterprise possessing multiple business premises, such as several regional branches which might sell the insured vehicles.

[38] The Court is satisfied that the natural and ordinary meaning of "your premises" does not include the Showgrounds for the Exhibition. The common sense and grammatical meaning of Section 3 does not produce an unreasonable or uncommercial construction which is incompatible with the purpose of the Insurance Agreement. Accordingly, subject to applicability of Section 3, the insuring clause appears to respond to the insurance claim filed by the applicant.

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[1] This is, of course, subject to any adjectival modifiers of the noun "premises". For example, one might refer to your "temporary business premises", which may denote a section of a building which is temporarily being utilised as an office for the operations of a commercial enterprise.

Two Section Exclusion Clause: Applicability of Section 3

[39] Another issue arising among the parties is that two insuring clauses, Section 1A and Section 3 of the Insurance Agreement, could respond to the insurance claim filed by the applicant. Relevantly, Part 5 of the Insurance Agreement prescribes that where two or more insuring clauses might respond to the relevant claim, the most favourable clause will apply. This shall be described as the ***"Two Section Exclusion Clause"***, which provides that:

> We will not cover… loss, damage or expense under two different sections of benefits of this policy, however we will cover you under the section that provides the most favourable cover for the loss, damage or expense.

[40] Part 2 of the Insurance Agreement also provides that:

> If you are covered for the same loss, damage or expense under two different sections of this policy, you will only be covered under the section that provides the most favourable cover for the loss, damage or expense.

[41] The respondent submits that Section 1A is the most favourable clause on each of the following grounds:

1. the definition of "your premises" includes the Showgrounds, and therefore Section 1A responds to the insurance claim, whereas Section 3, which does not cover damage to the Insured Vehicles if they are situated at the applicant's premises, does not respond;

2. the respondent considers Section 1A to provide the most favourable cover for the applicant's insurance claim; and

3. the respondent has made certain insurance payments to the applicant in reliance on Section 1A, which was the operative clause originally relied on by the applicant.

[42] During the hearing, the respondent also relied on a fourth ground, namely that the limit of liability under Section 3 of the Insurance Agreement was $150,000.00 per claim, as opposed to for each Insured Vehicle. This argument was subsequently abandoned by the respondent, although it still claims the magnitude of loss recoverable under Section 3 militates against a narrow reading of "your premises" in the insuring clause. The third argument, namely part payment made by the respondent, is more conveniently dealt with under a separate subheading insofar as it raises equitable issues unrelated to the Two Section Exclusion Clause.

[43] The applicant claims that full or substantial recovery is possible under Section 3, whereas the perils exclusion clause under Section 1A will preclude, or substantially limit, the amount recoverable under the insurance claim.

[44] Although the objectives of the Two Section Exclusion Clause are not articulated in the insurance agreement, they appear to include the following: (a) it avoids intractable legal uncertainty regarding the applicable insurance clause; (b) it protects the insurer against double recovery and bifurcated claims arising out of the same claim event; and (c) it protects the insured by ensuring that they receive optimal benefit under the Insurance Agreement. In the absence of the Two Section Exclusion Clause, an insured may risk the insurer unilaterally purporting to apply a less favourable insurance clause to reduce the quantum of compensation payable.

[45] Insofar as the respondent has suggested that the Court should conclude that Section 1A is more favourable because it subjectively considers that to be so, the argument is manifestly inconsistent with the ordinary principles of contractual interpretation. A provision within an agreement is objectively interpreted in accordance with its natural and ordinary meaning in light of its purpose and commercial context. Although the common intentions of the parties may be relevant in interpreting particular contracts, the idiosyncratic intentions, beliefs or apprehensions of each individual party are irrelevant to the construction of the agreement.

[46] In construing contracts, the Courts are entitled to presume that words, terms and phrases are used in accordance with their natural and ordinary meaning. "Favourable" is an inherently vague concept, in this context referring to "beneficial" or "advantageous". The annexation of the adjective "most", which is a superlative of comparison denoting the "greatest of degree and extent", requires the insurer to apply the insuring clause which provides the greatest benefit or advantage to the insured. As an insurance agreement is a commercial contract involving the reimbursement liquidated sums of money, "benefit" or "advantage" will ordinarily be defined in terms of the quantum recoverable, the projected timeline for recovery, any factors impacting on the convenience of recovery,[2] any costs sustainable by the insured during the recovery process, and the availability of any interim arrangements which may alleviate the commercial hardship of the insured.

[47] The determination of the most favourable insurance clause must not be a theoretical or abstract exercise taking place within a factual vacuum. Rather, the relative benefit of the insurance clause must be assessed in light of the nature of the claim and the circumstances giving rise to the claim. This is because recovery of a partial amount under a meagre and restrictive insurance clause remains eminently more favourable than no recovery under a generous insurance clause possessing an exclusionary clause applicable to the claim. Any alternative interpretation would deprive the concept of "most favourable" of concrete meaning and undermine the purpose of the Two Section Exclusion Clause. In this respect, the most favourable clause may only be ascertained *after* the event giving rise to the insurance claim.

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[2] For example, in certain insurance agreements different insuring clauses may provide for recovery in different currencies. Recovery in a stable hard currency, such as the Australian Dollar, British Pound or US Dollar, would be preferable to recovery in a soft, non-convertible or volatile currency.

[48] More significantly, the assessment of the most favourable clause only takes place where the insured is covered under two sections of Insurance Agreement. Therefore, where it may be affirmatively established that one insuring clause of the two sections will not respond to the relevant claim, the Two Section Exclusion Clause possesses no application.

[49] The applicant has successfully established that Section 3 responds to its insurance claim. The insuring clause, providing coverage of up to $150,000.00 per vehicle, significantly exceeds the prescribed threshold of Section 1A, which limits liability to $690,000.00. Furthermore, Section 3 is subject to a perils exclusion clause, which will substantially preclude recovery in respect of several insured vehicles which appear to have been damaged or destroyed by flood inundation.

[50] Accordingly, in light of the circumstances of the claim, Section 3 is the most favourable clause. Accordingly, the Two Section Exclusion Clause prescribes that Section 3 will respond to the insurance claim filed by the applicant, whereas Section 1A will have no application.

Significance of Part Payments made by the Respondent under Section 1A

[51] The respondent has claimed that the applicant should not be entitled to rely on Section 3 because its original claim was under Section 1A, and the respondent paid $105,920.89 to the applicant in reliance on Section 1A. The respondent contends that the Two Section Exclusion Clause precludes the applicant from seeking to claim under Section 3 because of its prior claim under Section 1A.

[52] The Two Section Exclusion Clause, as described above, does not prescribe that a party cannot seek to rely on another more favourable insuring clause having already received payment under another provision. Rather, it provides that where multiple insurance clauses may respond to the applicant's claim, the most favourable insuring clause will apply. Accordingly, the fact that payments have been made under a less favourable clause does not preclude the applicant from now seeking to vindicate its rights under a more favourable insurance clause.

[53] The respondent has not sought to argue that the applicant's prior claim under Section 1A amounts to an estoppel preventing the applicant from relying on Section 3. This is an appropriate position to adopt, as there is no evidence that the respondent has sustained any loss or changed its position in reliance on the applicant's prior claim under Section 1A, or that it would now be inequitable, unfair or unconscionable for the applicant to seek to rely on Section 3. Any payments made by the respondent would be in partial satisfaction of its more onerous insurance obligations under Section 3.

[54] Accordingly, the part payments made by the respondent to the applicant in reliance on Section 1A does not constitute a bar to the applicant seeking to recover under Section 3 of the Insurance Agreement.

Costs

[55] The applicant has been successful in its application for a declaration on the grounds outlined in its submissions. The respondent, although ultimately unsuccessful, presented a reasonably arguable case and made appropriate concessions saving considerable public time and resources which would otherwise have been expended if the matter had proceeded to a full hearing.

[56] There are no circumstances articulated in the pleadings or supplementary material before the Court justifying orders that costs should be paid to the respondent, or to the applicant on an indemnity basis. Accordingly, the respondent should pay the applicant's costs of and incidental to the application on the standard basis.

Orders

[57] The orders of the Court are that:

1. the respondent must indemnify the applicant in respect of damage or loss caused to the applicant's insured vehicles on 27 March 2014 under Section 3 of the respondent's Motor Dealers Insurance Policy, entered into by the applicant and respondent on or about 12 July 2013.

2. the respondent must pay the applicant's costs of and incidental to the application, to be assessed on the standard basis.