

Early Resolution Report

Insured: GE Realty Pty Ltd
Claimant: E & N Marks

Date:	19.03.2024
AIG reference:	AIG 9998
W+K reference:	WK 1112
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CLAIM SUMMARY

The Insured real estate agent is sued in the Melbourne Magistrates' Court by the Claimants regarding alleged misstatements made by the Insured about a ducted heating system during negotiations which resulted in the Claimants buying a residential property in respect of which the Insured acted as selling agent. The Claimants seek compensation for replacing the ducted heating system in the property.

LIABILITY ASSESSMENT

Key allegations:

The Insured:

- was aware of faults in the ducted heating system;
- unlawfully presented in sales material that the property had functional ducted heating; and
- failed to disclose its knowledge of the faulty ducted heating systems in discussions with the Claimants prior to purchase despite enquiries directed at that issue.

Prospects on liability:

The Insured is at some risk because:

- the former tenant of the property has given a statement to the effect that the Insured knew about problems with the ducted heating; and
- sales material prepared by the Insured arguably represents that the ducted heating system was operational and/or functional.

QUANTUM OVERVIEW

Amount Claimed: \$21,620 plus interests and costs

Our Assessment: \$20,000

RECOMMENDED SETTLEMENT STRATEGY

Settlement Range: Up to \$20,000

Resolution Process:

The Insured respond to the proceedings by:

- setting out its defence in letter form; and
- making an offer of \$10,000 which is open for 7 days.

The Insured settle the claim for up to \$20,000 by negotiations and, ideally, before a defence is filed.

LITIGATION TIMELINE

A defence is due in 3 weeks' time and the matter fixed for directions on 28 May 2024 at which time interlocutory orders will be made and a trial date allocated.

NECESSARY STEPS

A without prejudice offer of \$10,000 needs to be sent in the next 7 days and remain open for 7 days with a view to resolving the matter before any formal steps need to be carried out in response to the proceedings.

We will ensure that all necessary steps for the drafting of a defence have been completed but defer drafting the defence itself until a response to the offer has been recovered or the offer has expired.

IMPEDIMENTS TO RESOLUTION (IF ANY)

The Claimants appear to be quite emotive about the claim and adamant that the Insured lied to them about the ducted heating. This may translate into a reluctance to accept a compromised amount.

We will know shortly whether that is the case as the Claimants' response to the offer will reveal its attitude to settlement.

Liability Exposure:



Assessed Value:

