

**FIFTH CROSS-CLAIM
COMMERCIAL LIST CROSS-
CLAIM RESPONSE**

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial List
Registry	Sydney
Case number	2018/00076580

TITLE OF PROCEEDINGS

First plaintiff	Giabal Pty Ltd (ACN 00908630807)
Second plaintiff	Geoffry Underwood
Third defendant	Wayne Leonard Chapman
Number of defendants	11

FILING DETAILS

Filed for	Chubb Insurance Australia Limited (ABN 23 001 642 020) , the First Cross Defendant to Fifth Cross-Claim
Filed in relation to	Fifth Cross- Claim
Legal representative	Andrew Moore Wotton + Kearney Level 26, 85 Castlereagh Street, Sydney NSW 2000
Legal representative reference	ASM 4965 GAC
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A. NATURE OF THE DISPUTE

The Second Cross-Defendant (**Chubb**) agrees with the description of the nature of the dispute as described by the First Cross-Claimant in the Fifth Cross-Claim Commercial List Cross-Claim Statement (**5CC**) filed on 02 July 2021.

B. ISSUES LIKELY TO ARISE

Chubb agrees with the description and the issues likely to arise as set out in the 5CC and the additional issues which Chubb identified in its Commercial List Response filed on 23 March 2021 (**Chubb's List Response**).

C. SECOND CROSS-DEFENDANT'S RESPONSES TO THE FIFTH CROSS-CLAIMANT'S CONTENTIONS

Chubb has adopted the headings and definitions (unless otherwise indicated) used by the Cross-Claimant in the 5CC for convenience only. Their use does not constitute any admission by Chubb as to the accuracy of the descriptions or any other matters conveyed by them. A reference to the 5CC in this section is a reference to the Contentions of the Fifth Cross-Claimant in the 5CC.

Parties

1. As to paragraph 1 of the 5CC, Chubb refers to and repeats paragraphs 1 to 9 of Chubb's List Response.
2. Chubb admits paragraph 2.
3. Chubb admits paragraph 3.

Primary IMI Policy

4. As to paragraph 4, Chubb:
 - 4.1 refers to and repeats paragraph 105 of Chubb's List Response; and
 - 4.2 otherwise does not admit the paragraph.
5. As to paragraph 5, Chubb:
 - 5.1 refers to and repeats paragraph 106 of Chubb's List Response; and
 - 5.2 otherwise does not admit the paragraph.

Particulars

- (i) Primary Policy, cl 5.4 and 5.5.
 - (ii) Primary Policy Schedule, items 4, 5 and 8.
6. As to paragraph 6, Chubb:
 - 6.1 admits that the Primary Policy contains a term as set out in sub-paragraph 6(a) of the 5CC: cl 1.1 of the Primary Policy Wording;
 - 6.2 admits that the Primary Policy contains a term as set out in sub-paragraph 6(b) of the 5CC: cl 1.2 of the Primary Policy Wording;
 - 6.3 admits that the Primary Policy contains a term as set out in sub-paragraph 6(c) of the 5CC: cl 1.3 of the Primary Policy Wording;

- 6.4 says that the cover afforded by cll 1.1, 1.2 and 1.3 as set out in paragraph 6 of the 5CC to the extent relied upon by the Fifth Cross Claimant is subject to the terms, conditions, and exclusions of the Primary Policy as a whole; and
- 6.5 otherwise does not admit the paragraph.
7. As to paragraph 7, Chubb:
- 7.1 says that for the purposes of the Primary Policy, a person who was a “*Director or Officer*” of an “*Insured Entity*” satisfies the definition of an “*Insured Person*” for the purposes of the Primary Policy;
- 7.2 says that the words “*Director or Officer*” are defined in cl 4.20 of the Primary Policy;
- 7.3 says that to the extent that the Fifth Cross Claimant was an executive or non-executive director or officer, responsible officer or compliance committee member of an “*Insured Entity*”, or became a director or officer of such an entity during the “*Period of Insurance*” (i.e. 30 November 2011 to 30 November 2012), they will satisfy the definition of a “*Director or Officer*” for the purposes of the Primary Policy; and
- 7.4 otherwise does not admit the paragraph.
8. As to paragraph 8, Chubb:
- 8.1 refers to and repeats paragraphs 69, 82-83B, 84, 90B-94A, 102-104, 109.1, 109.3 and 109.4 of Chubb’s List Response;
- 8.2 otherwise does not admit the paragraph.

Catlin Policy

9. As to paragraph 9, Chubb:
- 9.1 refers to and repeats paragraph 110 of Chubb’s List Response; and
- 9.2 otherwise does not admit the paragraph.
10. As to paragraph 10, Chubb:
- 10.1 refers to and repeats paragraph 111 of Chubb’s List Response; and
- 10.2 otherwise does not admit the paragraph.
11. As to paragraph 11, Chubb:
- 11.1 refers to and repeats paragraph 112 of Chubb’s List Response; and

- 11.2 otherwise does not admit the paragraph.
12. As to paragraph 12, Chubb:
- 12.1 refers to and repeats paragraphs 112.3 and 114 of Chubb's List Response;
and
- 12.2 otherwise admits the paragraph.
13. As to paragraph 13, Chubb:
- 13.1 says that for the purposes of the Catlin Policy, the "*Insured*" was the insured named in the First Excess Policy Schedule (as defined in paragraph 110.2(b) of Chubb's List Response), namely GPL, and any party indemnified by the "*Underlying Policies*";
- 13.2 says that the Primary Policy was the only "*Underlying Policy*" for the purposes of the Catlin Policy;
- 13.3 refers to and repeats paragraph 113 of Chubb's List Response; and
- 13.4 otherwise admits the paragraph.

Chubb Policy

14. As to paragraph 14:
- 14.1 refers to and repeats paragraph 116 of Chubb's List Response; and
- 14.2 otherwise does not admit the paragraph.
15. As to paragraph 15, Chubb:
- 15.1 refers to and repeats paragraphs 116 and 117 of Chubb's List Response; and
- 15.2 otherwise does not admit the paragraph.
16. As to paragraph 16, Chubb:
- 16.1 refers to and repeats paragraphs 116, 117.1 and 117.2 of Chubb's List Response; and
- 16.2 otherwise does not admit the paragraph.
17. As to paragraph 17, Chubb:
- 17.1 repeats paragraph 4 above and says that the Chubb Policy Schedule identifies the Primary Policy as the policy referred to in paragraph 117.2(d)(i) of Chubb's List Response; and
- 17.2 otherwise does not admit the paragraph.

18. As to paragraph 18, Chubb:

18.1 says that for the purposes of the Chubb Policy, the “*Insured*” was any person or organisation designated as insured by the Primary Policy;

18.2 refers to and repeats paragraph 120 of Chubb’s List Response; and

18.3 otherwise admits the paragraph.

19. As to paragraph 19, Chubb:

The claim against the Eighth Defendant

19.1 repeats paragraphs 6, 7 and 8 above with regard to the matters alleged against the Eighth Defendant in the FACLS;

The Conflict of Interest Exclusion

19.2 refers to and repeats paragraphs 121.5 to 121.8 paragraph of Chubb’s List Response;

The Lenders Liability Exclusion

19.3 refers to and repeats paragraphs 121.9 to 121.11 paragraph of Chubb’s List Response;

The Insolvency Exclusion

19.4 refers to and repeats paragraphs 121.12 to 121.14 paragraph of Chubb’s List Response;

Wayne Tank

19.5 refers to and repeats paragraph 121.15 of Chubb’s List Response;

Further matters

19.6 otherwise denies the paragraph.

20. As to paragraph 20, Chubb:

The claim against the Eighth Defendant

20.1 repeats paragraphs 6, 7 and 8 above with regard to the matters alleged against the Eighth Defendant in the FACLS;

The Conflict of Interest Exclusion

20.2 refers to and repeats paragraphs 121.5 to 121.8 paragraph of Chubb's List Response;

The Lenders Liability Exclusion

20.3 refers to and repeats paragraphs 121.9 to 121.11 paragraph of Chubb's List Response;

The Insolvency Exclusion

20.4 refers to and repeats paragraphs 121.12 to 121.14 paragraph of Chubb's List Response;

Wayne Tank

20.5 refers to and repeats paragraph 121.15 of Chubb's List Response;

Further matters

20.6 otherwise denies the paragraph.

21. Chubb denies paragraph 21.

22. Chubb denies paragraph 22.

23. Chubb denies paragraph 23, but says that proceedings were commenced by the Plaintiffs against the Eighth Defendant on 20 March 2018.

24. As to paragraph 24, Chubb:

24.1 refers to and repeats paragraph 124 of Chubb's List Response; and

24.2 otherwise does not admit the paragraph.

25. As to paragraph 25, Chubb:

25.1 admits that on 14 February 2019 Catlin wrote a letter setting out its formal position on policy response but says that letter was addressed to the then solicitor for the former fourth defendant, the late Mr Gay;

25.2 say that in its 14 February 2019 letter Catlin said that, having considered the circumstances carefully, it has concluded the Catlin Policy does not respond due to the operation of the following exclusions:

- (a) Endorsement 15 (Conflict of Interest);
- (b) Endorsement 4 (Lender's Liability); and
- (c) Exclusion 3.8/Endorsement 11 (Insolvency); and

- 25.3 otherwise does not admit the paragraph.
26. As to paragraph 26, Chubb:
- 26.1 refers to and repeats paragraph 126 of Chubb's List Response; and
- 26.2 otherwise does not admit the paragraph.
27. As to paragraph 27, Chubb:
- 27.1 refers to and repeats paragraph 127 of Chubb's List Response; and
- 27.2 otherwise does not admit the paragraph.
28. Chubb does not admit paragraph 28.
29. Chubb does not admit paragraph 29.

Limitations Defence

30. In further answer to the whole of the Fifth Cross-Claimant's Contentions, Chubb refers to and repeats paragraphs 132 to 134 of Chubb's List Response.

Laches

31. In further answer to the whole of the Fifth Cross-Claimant's Contentions, Chubb refers to and repeats paragraphs 135 to 137 of Chubb's List Response.

Proportionate liability

32. In further answer to the whole of the Fifth Cross-Claimant's Contentions, Chubb refers to and repeats paragraph 138 of Chubb's List Response.

Further matters

33. In further answer to the whole of the Fifth Cross-Claimant's Contentions, Chubb refers to and repeats paragraph 139 of Chubb's List Response.

D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

1. None

E. A STATEMENT AS TO WHETHER THE PARTIES HAVE ATTEMPTED MEDIATION; WHETHER THE PARTY IS WILLING TO PROCEED TO MEDIATION AT AN APPROPRIATE TIME

1. Chubb would be willing to proceed to a mediation at an appropriate time.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#) that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature



Capacity

Solicitor on the Record

Date of signature

17 August 2021