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Details of Filing

Document Lodged: Non-Prescribed List/Chronology
File Number: NSD132/2021
File Title: SWISS RE INTERNATIONAL SE v LCA MARRICKVILLE PTY
LIMITED ACN 601 220 080
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 21/07/2021 2:25:55 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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List of Issues for Determination

Federal Court of Australia
District Registry: New South Wales
Division: General

Nos. NSD 132-137 and 144-145 of
2021

Swiss Re International SE (ARBN 138 373 211) and others named in the schedule

Applicants

LCA Marrickville Pty Limited (ACN 601 220 080) and others named in the schedule

Respondents

NSD 132 of 2021 - Swiss Re and LCA Marrickville

1. **Disease Clause (9.1.2.1)** (page 31):

On the proper construction of the Disease Clause:

- (a) Did the "Authority Response-LCA Marrickville" cause "*closure ... of the whole or part of the Situation*"?
- (b) Was there a closure or evacuation of the whole or part of the Situation? In assessing:
 - (i) "closure", must there be physical prevention of access to the Situation (or part of it), or is it sufficient there was a restriction of LCA Marrickville's use of the Situation (or part of it) for its Business and if so, what restriction?
 - (ii) "evacuation", must there be a physical removal of persons from the Situation (or part of it), or is it sufficient if there was a restriction of LCA Marrickville's use of the Situation (or part of it) for its Business and if so, what restriction?
- (c) Was there an "*outbreak*" of COVID-19 at the Situation? In particular:
 - (i) Does a single person infected with COVID-19 entering the Situation constitute an "*outbreak*"?
 - (ii) With what degree of prevalence do instances of COVID-19 have to occur at the Situation (or elsewhere) in order to constitute an "*outbreak*" at the Situation?
 - (iii) Does the outbreak have to occur at the Situation or can it occur:
 - A. at the Situation and elsewhere and, if so, where?
 - B. elsewhere but not at the Situation and, if so, where?

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- (d) If yes to (c), was the "Authority Response-LCA Marrickville" "a result of" that "outbreak"?
- (e) Was there a "discovery of [SARS-CoV-2] likely to result in the occurrence of [COVID-19] ... at the Situation"? In particular:
 - (i) Does SARS-CoV-2 have to be discovered at the Situation or is it sufficient if it is discovered elsewhere and, if so, where?
 - (ii) Does SARS-CoV-2 have to be likely to result in the occurrence of COVID-19 at the Situation or is it sufficient if it is likely to result in the occurrence of COVID-19 elsewhere and, if so, where?
- (f) Was the "Authority Response-LCA Marrickville" "a result of" a "discovery of [SARS-CoV-2] likely to result in the occurrence of [COVID-19] ... at the Situation"?
- (g) What if any "interruption" or "interference" occurred "in consequence of" any "closure ... by order of a competent public authority"?
- (h) What is required for there to be an "occurrence" of COVID-19?
- (i) What is required for there to be the "discovery" of SARS-CoV-2?

2. **Biosecurity Act exclusion** (clause 9.1.2.1) (page 31)

On the proper construction of the Disease Clause:

- (a) Is COVID-19 a disease "declared to be a listed human disease pursuant to subsection 42(1) of the Biosecurity Act 2015", in circumstances where it was determined to be a "listed human disease" after the Policy inception date and during the Policy Period?
- (b) If yes to (a), does section 54 of the *Insurance Contracts Act 1984* (Cth) (**ICA**) have the effect that the insurer cannot refuse to pay LCA Marrickville's claim by reason only of the determination and can only reduce its liability to the extent that its interests were prejudiced as a result of the determination?
- (c) **{Swiss Re version; LCA Marrickville does not agree}**: If yes to (b), was LCA Marrickville's loss caused or contributed to by the determination?
- (d) **{LCA Marrickville version; Swiss Re does not agree}**: If yes to (b), could the determination reasonably be regarded as being capable of causing or contributing to LCA Marrickville's loss?
- (e) If yes to (c) and/or (d), to what extent is Swiss Re entitled to refuse to pay the claim?
- (f) If yes to (b) but no to (c) and/or (d), what prejudice, if any, to Swiss Re resulted from the determination and to what extent (if any) should Swiss Re's liability in respect of the claim be reduced?
- (g) If the Biosecurity Act exclusion does apply to exclude LCA Marrickville's loss from cover under the Disease Clause and the Expansion Clause, can such loss be considered for cover under the Catastrophe Clause and/or the Prevention of Access Clause?

3. **Expansion Clause (9.1.2.4)** (page 31):

On the proper construction of the Expansion Clause:

- (a) Issues 1(a), (b), (g), (h) and (i) and 2, above also arise in the context of the Expansion Clause.
- (b) Was there an “*outbreak*” of COVID-19 within a five kilometre radius of the Situation? In particular:
- (i) Does a person infected with COVID-19 entering, or residing in, the area within five kilometres of the Situation constitute an “*outbreak*”?
 - (ii) With what degree of prevalence do instances of COVID-19 have to occur within five kilometres of the Situation (or elsewhere), or what other characteristics must such instances have, in order to constitute an “*outbreak*” within a five kilometre radius of the Situation?
 - (iii) Does the outbreak have to occur within a five kilometre radius of the Situation only or can the outbreak occur outside a five kilometre radius of the Situation as well and, if so, where?
- (c) Was the “Authority Response-LCA Marrickville” “*a result of*” an outbreak of COVID-19 within a five kilometre radius of the Situation? In particular, must the relevant order be made in direct response to the specific outbreak within a five kilometre radius of the Situation or is it sufficient if the relevant order is made in response to, or to prevent, the spread of COVID-19 more broadly (e.g. on a regional, state or nationwide scale)?
- (d) Was there a “*discovery of [SARS-CoV-2] likely to result in the occurrence of [COVID-19]*” within a five kilometre radius of the Situation? In particular:
- (i) Does SARS-CoV-2 have to be discovered within a five kilometre radius of the Situation or is it sufficient if it is discovered elsewhere and, if so, where?
 - (ii) Does SARS-CoV-2 have to be likely to result in the occurrence of COVID-19 within a five kilometre radius of the Situation, or is it sufficient if it is likely to result in the occurrence of COVID-19 elsewhere and, if so, where?
- (e) Was the “Authority Response-LCA Marrickville” “*a result of*” a “*discovery of [SARS-CoV-2] likely to result in the occurrence of [COVID-19]*” within a five kilometre radius of the Situation?

4. **Catastrophe Clause (9.1.2.5)** (page 31):

On the proper construction of the Catastrophe Clause:

- (a) **{Swiss Re version; LCA Marrickville does not agree}**: Was the outbreak of COVID-19 a “conflagration or other catastrophe”?
- (b) **{LCA Marrickville version; Swiss Re does not agree}**: Was COVID-19 and its impact a “conflagration or other catastrophe”?
- (c) When did any such “conflagration or other catastrophe” commence and end?
- (d) Was the “Authority Response-LCA Marrickville” an “*action of a civil authority*” implemented “*for the purpose of retarding*” the “conflagration or other catastrophe”?
- (e) What “*interruption*” or “*interference*” occurred “*in consequence of*” any “*action of a civil authority*”?

5. **Prevention of Access Clause (9.1.2.6)** (page 31):

On the proper construction of the Prevention of Access Clause:

- (a) Was there a “*risk to life ... within five kilometres of [the] Situation*”? In particular:
 - (i) Does the “*risk to life*” have to exist within five kilometres of the Situation only or can the “*risk to life*” exist in areas further than five kilometres from the Situation as well and, if so, where?
 - (ii) Must the relevant order be made in direct response to the specific “*risk to life*” within five kilometres of the Situation, or is it sufficient if the relevant order is made as part of an attempt to “*avoid or diminish risk to life*” of a broader scope (e.g. on a regional, state or nationwide scale)?
- (b) Was the "Authority Response-LCA Marrickville" taken in an attempt to avoid or diminish the identified “*risk to life*”?
- (c) Was access to or use of the Situation prevented or hindered? In particular, must the use of or access to the Situation for any purpose be prevented or hindered or is it sufficient for use of or access to the Situation for the purposes of LCA Marrickville’s Business, to be prevented or hindered?
- (d) What, if any, “*interruption or interference*” occurred “*in consequence of*” any “*action of any lawful authority*”?
- (e) **{LCA Marrickville presses for the underlined words in this paragraph}** To what extent would LCA Marrickville’s access to or use of the Situation have been prevented or hindered, regardless of the lawful authority’s action, [and to what extent \(if any\) does this affect indemnity?](#)

6. **Clause 9.1.2** (page 31):

On the proper construction of clause 9.1.2:

- (a) Is Swiss Re’s obligation to indemnify an "Insured" in respect of loss resulting from the interruption of or interference with the "Business" in consequence of closure or evacuation of the whole or part of the "Situation" by order of a competent public authority as a result of:
 - (i) an outbreak of a notifiable human infectious or contagious disease; or
 - (ii) any discovery of an organism likely to result in the occurrence of a notifiable human infectious or contagious disease,

confined to the terms of the Disease Clause and the Expansion Clause (as it applies to the circumstances of the Disease Clause)?

7. **Causation, Adjustment and Basis of Settlement**

If clause 9.1.2 of the Policy responds, on the proper construction of the adjustment clause (being the clause in the last sub-paragraph of Clause 8 on p. 29 of the Policy):

- (a) Was there any interruption of or interference with LCA's Business in consequence of the relevant insured perils in the Disease Clause, the Expansion Clause, the Catastrophe Clause or the Prevention of Access Clause?
- (b) What adjustment of the Rate of Gross Profit, Standard Turnover, Standard Gross Revenue, Standard Gross Rental and Rate of Payroll is necessary to provide for the “*trend*” of the Business, “*variations*” affecting the Business and/or “*other circumstances*” affecting the Business.

- (c) How, if at all, does adjustment take into account the effect that COVID-19 had on the Business (other than the effect of the "Authority Response–LCA Marrickville").
- (d) To what extent should account be made for grants, subsidies, abatements or other benefits received by LCA Marrickville when assessing its entitlement to be indemnified for its loss (if any) including but not limited to JobKeeper, other payments made to it by a Commonwealth or State Government and rental relief or rebates?

If clause 9.1.2 of the Policy responds, on the proper construction of the Basis of Settlement clause (clause 10):¹

- (e) What is the date of the 'Damage'?
- (f) **{LCA Marrickville does not agree that issue (f) should be included in this test case because the factual premise for this issue will be the subject of a separate loss assessment process}** To the extent interruption of, or interference with, LCA Marrickville's business was caused by different matters comprising the "Authority Response-LCA Marrickville", to what extent is the resulting loss (if any) to be aggregated for the purposes of applying a limit, deductible and any other conditions of cover?

8. Interest

- (a) Is interest payable by Swiss Re pursuant to section 57 of the ICA?
- (b) If yes to paragraph (a), from what date is any such interest payable?

NSD 133 of 2021 - CGU and Meridian

- 9. **Disease extension** (policy schedule, paragraph (c) of the "Murder, Suicide or Disease" clause (page 5)):
 - (a) Did an occurrence of an outbreak of COVID-19 occur within a 20 kilometre radius of the Situation? If so, when?
- 10. **Evacuation and Closure extension** (policy schedule, paragraph (d)(1) of the "Murder, Suicide or Disease" clause (page 5)):
 - (a) Was Meridian's Business closed or evacuated by order of a government, public or statutory authority by reason of the "Authority Response-Meridian"?
 - (b) If yes to (a), were those orders consequent upon the discovery of an organism likely to result in a human infectious or contagious disease at the Situation?
 - (c) **{CGU disputes the inclusion of issues (c)-(f)}** Did the discovery have to occur at the Situation or could it have occurred elsewhere and, if so, where?
 - (d) If the outbreak or discovery had to occur at the Situation, did it so occur at the Situation?
 - (e) What is required for there to be an "occurrence" of an outbreak COVID-19?
 - (f) What is required for there to be the "discovery" of SARS-CoV-2?

¹ Further issues relating to loss, quantum and adjustment may arise when LCA Marrickville provides documents and information.

11. **Causation, adjustments and loss** (page 21):

If it is found that the Disease extension and/or the Evacuation and Closure extension responds to Meridian's claim:

- (a) Was there any interruption of or interference with Meridian's Business which was a direct result of the relevant insured perils?
- (b) If yes to (a), what losses claimed by Meridian resulted from that interruption of or interference with its Business?
- (c) **{CGU disputes the inclusion of this issue (c)}** Is the term "Adjustment" in the Business Interruption section of the policy applicable to the calculation of Meridian's claim, having regard to the definitions used in the "Settlement of Claims" clause in the Business Interruption section of the policy.
- (d) **{CGU version; Meridian does not agree}**: Should any adjustment be made to Meridian's business interruption loss by reference to uninsured events relating to the COVID-19 pandemic?
- (e) **{Meridian version; CGU does not agree}**: Should any adjustment be made to Meridian's business interruption loss by reference to events (other than the insured perils) relating to the COVID-19 pandemic?
- (f) What loss is payable in accordance with the terms of the policy?
 - (i) Are JobKeeper or other government subsidies to be taken into account in the assessment of any loss and, if so, in what way?
 - (ii) Should rental abatements be taken into account in assessing recoverable loss?
 - (iii) On what dates did the indemnity period/s start and end?
 - (iv) Further quantum issues may be raised when Meridian provides the information that has been requested by CGU.
- (g) **{Meridian disputes the inclusion of subparagraph (f), as those issues should not be included in this test case in circumstances where CGU has denied indemnity and because the factual premise for these issues will be the subject of a separate loss assessment process}** Has Meridian:
 - (i) provided sufficient information for CGU to determine any amount payable under the policy; and / or
 - (ii) failed to respond to reasonable requests for information from CGU?
- (h) If it is found that the policy responds and the CGU is liable to pay an amount to Meridian, from what date is interest under section 57 of the ICA payable?

NSD 134 of 2021 - CGU and Taphouse

12. **Disease clause** (clause 8, page 23):

- (a) Was all or part of Taphouse's premises closed or evacuated by any legal authority by reason of the "Authority Response-Taphouse"?
- (b) If yes to (a), was that closure or evacuation as a result of the outbreak of COVID-19 occurring within a 20 kilometre radius of Taphouse's premises?

13. **Prevention of access (POA) clause** (clause 7, page 23):

- (a) Does the POA clause apply to an outbreak of COVID-19 in light of the separate disease clause?
- (b) If yes to (a), did the "Authority Response-Taphouse" involve any legal authority preventing or restricting access to Taphouse's premises or ordering the evacuation of the public?
- (c) If yes to (a) and (b), were those orders as a result of damage to, or the threat of damage to, property or persons within a 50 kilometre radius of Taphouse's premises?
- (d) **{CGU disputes the inclusion of this paragraph}** Alternatively to (c), how are the words "as a result of ... damage to or threat of damage to ... persons" to be construed? In particular:
 - (i) Does the "threat of damage" have to exist within 50 kilometres of the premises only or it exist in areas further then 50 kilometres from the premises as well and, if so, where?
 - (ii) Must the relevant order be made in direct response to the specific "threat of damage" within 50 kilometres of the Situation, or is it sufficient if the relevant order is made as a result of "threat of damage" both within the radius and of a broader scope (e.g. on a regional, state or nationwide scale)?

14. **Causation, adjustments and loss** (page 19)

If it is found that the Disease clause and/or the POA clause responds to Taphouse's claim:

- (a) Does the interruption of or interference with Taphouse's business have to be "a *direct result*" of or "*result from*" or be "*caused by*", the relevant insured perils, and if not, what is the relevant test?
- (b) Was there any interruption of or interference with Taphouse's business which satisfies the test of causation identified in the answer to (a)?
- (c) If yes to (b), what losses claimed by Taphouse resulted from that interruption or interference of Taphouse's business?
- (d) **{CGU disputes the inclusion of this issue (d)}** Is the term "Adjustment" in the Business Interruption section of the policy applicable to the calculation of Meridian's claim, having regard to the definitions used in the "Settlement of Claims" clause in the Business Interruption section of the policy.
- (e) **{CGU version; Taphouse does not agree}**: Should any adjustment be made to Meridian's business interruption loss by reference to uninsured events relating to the COVID-19 pandemic?
- (f) **{Taphouse version; CGU does not agree}**: Should any adjustment be made to Meridian's business interruption loss by reference to events (other than the insured perils) relating to the COVID-19 pandemic?
- (g) What loss is payable in accordance with the terms of the policy?
 - (i) Are JobKeeper or other government subsidies to be taken into account in the assessment of any loss and, if so, in what way?

- (ii) Should rental abatements be taken into account in assessing recoverable loss?
 - (iii) On what dates did the indemnity period/s start and end?
 - (iv) Further quantum issues may be raised when Taphouse provides the information that has been requested by CGU.
- (h) **{Taphouse does not agree that this issue be included in this test case in circumstances where CGU has denied indemnity and because the factual premise for these issues will be the subject of a separate loss assessment process} Has Taphouse:**
- (i) provided sufficient information for CGU to determine any amount payable under the policy; and / or
 - (ii) failed to respond to reasonable requests for information from CGU?
- (i) If it is found that the policy responds and CGU is liable to pay an amount to Taphouse, from what date is interest under section 57 of the ICA payable?

NSD 135 of 2021 - Allianz and Mayberg

15. Disease clause (clause 6(a)(i), page 59):

- (a) During the policy period, was all or part of Mayberg's Premises closed or evacuated by any legal authority (by virtue of any one or more of the matters comprising the "Authority Response-Mayberg")?
 - (i) Was the order or announcement relied upon by Mayberg made by a "legal authority"?
 - (ii) Were all or part of Mayberg's Premises closed or evacuated by the order or announcement?
 - (iii) Subject to determination of (i) and (ii), when did that closure or evacuation commence and when did it conclude?
- (b) If yes to (a), was that closure or evacuation the result of an outbreak of COVID-19 occurring within a 20 kilometre radius of Mayberg's Premises? More particularly:
 - (i) Has there been an "outbreak" occurring within a 20 kilometre radius of Mayberg's Premises?
 - (ii) Did any order or announcement compelling the closure or evacuation of Mayberg's Premises result from that outbreak?
 - (iii) If so, when did that "outbreak" commence and when did it conclude?
- (c) If yes to (a) and (b), does the Loss of Income claimed by Mayberg result from an Interruption of Mayberg's "Business" caused by that closure or evacuation?

16. Prevention of Access (POA) endorsement (clause 9, policy schedule page 11):

- (a) Does COVID-19 constitute Damage to persons or threat of Damage to persons?
- (b) If yes to (a), did that Damage to persons or threat of Damage to persons exist within a 50 kilometre radius of Mayberg's Premises? In particular:

- (i) Does the “threat of Damage” have to exist within 50 kilometres of the premises only or may it exist in areas further than 50 kilometres from the premises as well and, if so, where?
- (ii) Must the relevant order be made in direct response to the specific “threat of Damage” within 50 kilometres of the premises, or is it sufficient if the relevant order is made as a result of “threat of Damage” within the radius and of a broader scope (e.g. on a regional, state or nationwide scale)?
- (c) If yes to (b), during the policy period, did any legal authority prevent or restrict access to Mayberg's Premises as a result of that Damage or threat of Damage? More particularly:
 - (i) Was the order or announcement relied upon by Mayberg made by a "legal authority"?
 - (ii) Was access to Mayberg's Premises prevented or restricted by the order or announcement?
 - (iii) If so, when did the prevention or restriction of access commence and when did it conclude?
- (d) If yes to (a),(b) and (c), did the Loss of Income claimed by Mayberg result from an Interruption of Mayberg's "Business" caused by the prevention or restriction of access imposed by the relevant announcement or order?

17. **Causation and Adjustments clause** (clause 1(b), page 58):

If it is found that the Disease clause and/or the POA endorsement responds to Mayberg's claim:

- (a) Was there any interruption of Mayberg's Business caused by the relevant insured perils?
- (b) If yes to (a), what losses claimed by Mayberg resulted from that interruption of Mayberg's Business?
- (c) Should any adjustment be made to Mayberg's business interruption loss by reference to events (other than the insured perils) relating to COVID-19?
- (d) What Loss of Income is payable in accordance with the terms of the policy? More particularly:²
 - (i) Are JobKeeper or other government subsidies to be taken into account in the assessment of any loss and, if so, in what way?
 - (ii) Should rental abatements be taken into account in assessing recoverable loss?

18. **Interest**

- (a) If it is found that the policy responds and Allianz is liable to pay an amount to Mayberg, from what date is interest under section 57 of the ICA payable?

² Further quantum issues may be raised following the provision of further information quantifying Mayberg's loss.

NSD 136 of 2021 - Allianz and Visintin19. **Disease clause** (clause 4(b), page 66):

- (a) During the policy period, was the whole or part of Visintin's Premises closed or evacuated?
- (b) If so, when did that closure or evacuation commence and when did it conclude?
- (c) If so, was that closure or evacuation the result of an outbreak of COVID-19 occurring within a 20 kilometre radius of Visintin's Premises? More particularly:
 - (i) Did an "outbreak" occur within a 20 kilometre radius of Visintin's Premises?
 - (ii) If so, when did that "outbreak" commence and when did it conclude?
- (d) If yes to (a), (b) and (c), is the loss claimed by Visintin attributable to the interruption or interference with Visintin's "Business" due to the closure or evacuation?

20. **Prevention of access (POA) endorsement** (policy schedule, page 6):

- (a) Does COVID-19 constitute a threat of damage to persons?
- (b) If yes to (a), did that threat of damage to persons exist within a 50 kilometre radius of Visintin's Premises?
- (c) If yes to (b), during the policy period, did any legal authority prevent or restrict access to Visintin's Premises as a result of that threat of damage to persons? More particularly:
 - (i) Was the order or announcement relied upon by Visintin made by a "legal authority"?
 - (ii) Was access to Visintin's Premises prevented or restricted by the order or announcement?
- (d) If yes to (a), (b) and (c), did the loss claimed by Visintin result from interruption of Visintin's "Business" caused by any announcement or order relied upon by Visintin?

21. **Causation and Adjustments clause** (item 1, page 63):

If it is found that the Disease clause and/or the POA endorsement responds to Visintin's claim:

- (a) Was there any interruption of or interference with Visintin's Business in consequence of the relevant insured perils?
- (b) If yes to (a), what losses claimed by Visintin resulted from that interruption of or interference with Visintin's Business?
- (c) Should any adjustment be made to Visintin's business interruption loss by reference to events (other than the insured perils) relating to COVID-19?
- (d) What loss of Insurable Gross Profit is payable in accordance with the terms of the policy? More particularly:³

³ Further quantum issues may be raised following the provision of further information quantifying Visintin's

- (i) Are JobKeeper or other government subsidies to be taken into account in the assessment of any loss and, if so, in what way?
- (ii) Should rental abatements be taken into account in assessing recoverable loss?

22. **Interest**

- (a) If it is found that the policy responds and Allianz is liable to pay an amount to Visintin, from what date is interest under section 57 of the ICA payable?

NSD137 of 2021 - Chubb and Waldeck

23. **Disease Extension (Extension C:1 - page 26)**

- (a) **{Waldeck version; Chubb does not agree}** [Was there an occurrence or outbreak at the premises of COVID-19?](#)
- (b) **{Chubb version; Waldeck does not agree}** [Was there an occurrence or outbreak at the premises of illness sustained resulting from COVID-19?](#)
- (c) Was there an occurrence or outbreak at the premises of the discovery of SARS-CoV-2?
- (d) In relation to (a) and (a), did the occurrence or outbreak have to occur at the Insured Location or could it have occurred elsewhere and, if so, where?
- (e) If the answer to (a) or (a) is 'yes', was there an intervention of a public body authorised to restrict or deny access to the Insured Location directly arising from such occurrence or outbreak at the premises?
- (f) If the answer to (e) is 'yes', did such intervention lead to the restriction or denial of the use of the Insured Location on the order or advice of the local health authority or other competent authority?
- (g) If the answer to (f) is 'yes', was there interruption of or interference with the Insured Location in direct consequence of the intervention referred to in (e)?
- (h) **{Chubb disputes the inclusion of this paragraph}** [What is required for there to be an "occurrence" of COVID-19?](#)
- (i) **{Chubb disputes the inclusion of this paragraph}** [What is required for there to be the "discovery" of SARS-CoV-2?](#)

24. If the answer to 23(g) is 'yes', was there any loss resulting from such interruption of or interference with the Insured Location?

25. If the answer to 24 is 'yes', does this loss include:

- (a) any relief from rent payments and outgoings provided to Going Venture in respect of the Insured Location by reason of the Regulations?

loss.

- (b) the loss of rent following the surrender of the lease of the Insured Location by Going Venture on 22 October 2020?
- (c) are JobKeeper or other government subsidies to be taken into account in the assessment of any loss and, if so, in what way?
- (d) Should any adjustment be made to Waldeck's loss otherwise covered by Extension C, clause 1 by reason of the operation of the adjustment clause at page 24 of the policy?

26. If it is found that the policy responds and Chubb is liable to pay an amount to Waldeck, from what date is interest under section 57 of the ICA payable?

NSD138 of 2021 - Chubb and Market Foods has been dealt with in a separate Issues List document

NSD 144 of 2021 - Guild and Gym Franchises

27. **Prevention of access (POA) extension** (page 59)

- (a) Does the "Authority Response-Gym Franchises"⁴ constitute an order of a competent government or statutory authority?
- (b) If yes to (a), was the Business Premises closed or evacuated by reason of the "Authority Response-Gym Franchises"?
- (c) If yes to (b), did the closure or evacuation of the Business Premises arise, directly or indirectly, from the discovery of SARS-CoV-2 or the occurrence of COVID-19 at the Business Premises?
- (d) If no to (c), can sub-clause (c) of the POA Extension be triggered nonetheless by the discovery of SARS-CoV-2 or the occurrence of COVID-19 other than at the Business Premises, and if so, where and when must that discovery be made or that occurrence happen?
- (e) If COVID-19 had to occur or SARS-CoV-2 had to be discovered at the Business Premises, did that occur?
- (f) If yes to (c) or (d), did that cause an inability to trade or otherwise conduct the Business in whole or in part during the relevant period?
- (g) If yes to (f), does the loss claimed by Gym Franchises follow interruption of or interference with the Business as a result of the insured peril?
- (h) What is required for there to be the "discovery" of SARS-CoV-2?

28. **Basis of settlement** (page 57)

- (a) If Gym Franchises is entitled to cover for the claim:
 - (i) What is the date of "Damage" for the purposes of Item (i) of the Basis of Settlement (Loss of Income) clause?
 - (ii) Is Guild entitled to reduce any loss claimed by Gym Franchises under the policy on account of the receipt of payments, by Gym Franchises, under

⁴ Comprising the measures referred to at [9(a)] and [12] of the Respondent's Outline Document.

any financial support programs including but not limited to JobKeeper or other subsidies?

- (iii) Should any adjustment be made to Gym Franchises' loss otherwise covered by the POA extension by reason of the operation of the adjustment clause at page 57 of the policy?
- (iv) From what date is interest under section 57 of the ICA payable?

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29. Prevention of access (POA) extension (page 53)

- (a) {Guild's position is that there is insufficient detail in paragraphs 11 to 13 of the Outline Document for Dr Michael} Do the restrictions set out at paragraphs 11 to 13 of the "Authority Response-Dr Michael" constitute an order of a competent government or statutory authority?
- (b) {Guild's position is that there is insufficient detail in paragraphs 11 to 13 of the Outline Document for Dr Michael} If yes to (a), was the Business Premises closed or evacuated by reason of the "Authority Response-Dr Michael"?
- (c) If yes to (b), did the closure or evacuation of the Business Premises arise, directly or indirectly, from the discovery of SARS-CoV-2 or the occurrence of COVID-19 at the Business Premises?
- (d) If no to (c), can sub-clause (c) of the POA Extension be triggered nonetheless by the discovery of SARS-CoV-2 or the occurrence of COVID-19 other than at the Business Premises, and if so, where and when must that discovery be made or that occurrence happen?
- (e) If COVID-19 had to occur or SARS-CoV-2 had to be discovered at the Business Premises, did that happen?
- (f) If yes to (c) or (d), did that cause an inability to trade or otherwise conduct the Business in whole or in part during the relevant period?
- (g) If yes to (f), does the loss claimed by Dr Michael follow interruption of or interference with the Business as a result of the insured peril?
- (h) What is required for there to be the "discovery" of SARS-CoV-2?

30. Basis of settlement (page 51)

- (a) If Dr Michael is entitled to cover for the claim:⁵
 - (i) What is the date of "Damage" for the purposes of Item (i) of the Basis of Settlement (Loss of Income) clause?
 - (ii) Is Guild entitled to reduce any loss claimed by Dr Michael under the policy on account of the receipt of payments, by Dr Michael, under any financial support programs including but not limited to JobKeeper or other subsidies?

⁵ As outlined at [4] of the Concise Statement in Response.

- (iii) Should any adjustment be made to Dr Michael's loss otherwise covered by the POA extension by reason of the operation of the adjustment clause at page 51 of the policy?
- (iv) From what date is interest under section 57 of the ICA payable?

Date:

.....
Signed by [*]
Lawyer for [*]

Schedule of Parties

Federal Court of Australia
 District Registry: New South Wales
 Division: General

No. NSD 132-137 and 144-145 of
 2021

Applicants

First Applicant: Swiss Re International SE (ARBN 138 373 211)
 Second Applicant: Insurance Australia Limited (ABN 11 000 016 722)
 Third Applicant: Insurance Australia Limited (ABN 11 000 016 722)
 Fourth Applicant: Allianz Australia Insurance Limited (ACN 000 122 850)
 Fifth Applicant: Allianz Australia Insurance Limited (ACN 000 122 850)
 Sixth Applicant: Chubb Insurance Australia Limited (ABN 23 001 642 020)
 Seventh Applicant: Guild Insurance Australia Limited (ACN 004 538 863)
 Eight Applicant: Guild Insurance Limited (ACN 004 538 863)

Respondents

First Respondent: LCA Marrickville Pty Limited (ACN 601 220 080)
 Second Respondent: Meridian Travel (Vic) Pty Ltd (ACN 111 480 883)
 Third Respondent: The Taphouse Townsville Pty Ltd (ACN 603 252 482)
 Fourth Respondent: Mayberg Pty Ltd (ACN 011 024 070)
 Fifth Respondent: The Stage Shop Pty Ltd (formerly Visintin Pty Ltd)
 (ACN 114 449 571)
 Sixth Respondent: Mr Philip Waldeck
 Seventh Respondent: Gym Franchises Australian Pty Ltd and another
 (ACN 611 474 947)
 Either Respondent: Dr Jason Michael t/as Illawarra Paediatric Dentistry

First Cross-Claim

Cross-Claimant

Cross-Claimant: LCA Marrickville Pty Limited (ACN 601 220 080)

Cross-Respondent

Cross-Respondent: Swiss Re International SE (ARBN 138 873 211)

Second Cross-Claim

Cross-Claimant

Cross-Claimant: Mr Philip Waldeck

Cross-Respondent

Cross-Respondent: Chubb Insurance Australia Limited (ABN 23 001 642 020)