

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 27/04/2021 3:30:32 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number:	NSD137/2021
File Title:	CHUBB INSURANCE AUSTRALIA LIMITED (ABN 23 001 642 020) v PHILIP WALDECK
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Dated: 27/04/2021 3:30:37 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.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 17  
Rule 8.05(1)(a)

## Statement of cross-claim

No. NSD 137 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: Commercial and Corporations

**Chubb Insurance Australia Limited (ABN 23 001 642 020)**

Applicant

**Mr Philip Waldeck**

Respondent

**Mr Philip Waldeck**

Cross-claimant

**Chubb Insurance Australia Limited (ABN 23 001 642 020)**

Cross-respondent

### The Parties

1. The Cross-claimant (**Waldeck**) is a natural person.
2. The Cross-respondent (**Chubb**) is and was at all material times a company registered under the *Corporations Act 2001* (Cth) and able to be sued in its corporate name and style.

### The Policy

3. On 25 March 2020, Chubb and Waldeck entered into a written contract of insurance (**the Policy**) which comprised:
  - a. a Chubb Business Pack Insurance Schedule (**Schedule**);

Filed on behalf of (name & role of party)	Philip Waldeck, the respondent and cross-claimant
Prepared by (name of person/lawyer)	Christopher Michael Erfurt, Lawyer for the respondent
Law firm (if applicable)	Clayton Utz
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- b. a Chubb Business Pack Product Disclosure Statement published 03/2019 and numbered Chubb16-156-0319 (**Wording**).

4. The terms of the Policy relevantly include:

- a. the policy number was EPM0018480 (page 3 of the Schedule);
- b. the Named Insured was Philip Waldeck (page 3 of the Schedule);
- c. the Insured Location was 1197 Toorak Road, Camberwell, Victoria 3124 (**Insured Location**) (page 3 of the Schedule);
- d. the Policy Period was from 28 March 2020 to 28 March 2021, both "4:00 pm Standard Time at the Address of the Named Insured shown above" (page 3 of the Schedule);
- e. the Policy Form was the Wording (page 3 of the Schedule);
- f. the term "Insured Location" was defined to mean "the Insured Location(s) stated in the Schedule" (page 13 of the Wording);
- g. the term "Property Insured" was defined to mean "property as described in the Schedule that belongs to You or is held by You in trust or on commission for which You are responsible" (page 13 of the Wording);
- h. within Section 2 — Business Interruption (page 24 of the Wording):

- i. **Cover**

Provided this Section is shown as insured in the Schedule, We will pay the amount of loss resulting from interruption of or interference with Your Business resulting from Insured Damage to Property Insured at an Insured Location that occurs during the Policy Period.

Loss will be calculated in accordance with the Basis of Settlement, and subject to the Indemnity Period and applicable Sum Insured.

- ii. "Business Interruption" was shown as "Insured" in the Summary of Cover in the Schedule;
  - i. within Section 2 – Business Interruption, Extension C: non damage (**Extension C**) (page 26 of the Wording):

- 1. **Infectious Disease, Murder and Closure Extension**

Cover is extended for loss resulting from interruption of or interference with the Insured Location in direct consequence of the intervention of a public body authorised to restrict or deny access to the Insured Location directly arising from an occurrence or outbreak at the premises of any of the following:

(a) Notifiable Disease, or

(b) the discovery of an organism likely to cause Notifiable Disease;

...

leading to restriction or denial of the use of the Insured Location on the order or advice of the local health authority or other competent authority;

j. the term "Notifiable Disease" was defined to mean (page 23 of the Wording):

illness sustained by any person resulting from food or drink poisoning or any human infectious or human contagious disease, an outbreak of which the competent local authority has stipulated must be notified to them. Notifiable disease does not include any occurrence of any prescribed infectious or contagious disease to which the Quarantine Act 1908 as amended applies;

k. the term "Trend in the Business" (**Trend Clause**) was defined to mean (pages 23-4 of the Wording):

adjustments to provide for the trend of Your Business and variations in other circumstances affecting that Business either before or after the Insured Damage or which would have affected that Business had the Insured Damage not occurred, so that the figures adjusted will represent as nearly as may be reasonably practicable the results which but for the Insured Damage would have been obtained during the relative period after the Insured Damage; and

l. the term "Insured Damage" was defined to mean:

physical loss, destruction or damage occurring during the Policy Period caused by an event insured under the Property Damage, Theft, Money, Glass or General Property Sections.

### **Claim by Waldeck**

5. On or about on or about 8 April 2020, Waldeck caused Chubb to be notified that Waldeck sought to make a claim for business interruption.

### **Particulars**

The notification was oral.

The notification occurred in a telephone conversation between Elle Mariconte and Mary Romeo on or about 8 April 2020.

6. Waldeck has updated his claim for indemnity since 9 April 2020.

**Particulars**

Email from Mary Romeo to "AUS Property Claims" ([aus.propertyclaims@chubb.com](mailto:aus.propertyclaims@chubb.com)) copied to, *inter alia*, Business Pack ([Business.Pack@chubb.com](mailto:Business.Pack@chubb.com)) transmitted on 17 April 2020.

Further Particulars will be provided in the Outline Document to be served on Chubb pursuant to paragraph 3.a. of the Order dated 16 March 2021.

7. Chubb has denied Extension C in the Policy responds to the Claim.

**Response to COVID-19**

8. From February 2020, Commonwealth and Victorian (and other state and territory) authorities intervened with the effect of restricting or denying access to the Insured Location (**Authority Response-Waldeck**).

**Particulars**

The orders which Waldeck says comprise the Authority Response-Waldeck will be contained in the Agreed Facts.<sup>1</sup>

**Response of Extension C**

9. Extension C responds to Waldeck's claim because:
- a. Waldeck has suffered loss resulting from interruption or interference with the Insured Location;

**Particulars**

Particulars will be provided in the Outline Document to be served on the applicants pursuant to paragraph 3.a. of the Order dated 16 March 2021.

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<sup>1</sup> References to the Agreed Facts are to the statements of agreed facts (paragraph 5 of the Order dated 16 March 2021).

- b. the interruption or interference was in direct consequence of the Authority Response-Waldeck which:
  - i. directly arose from an occurrence or outbreak of COVID-19 at the premises within the meaning of Extension C; and
  - ii. restricted or denied access to the Insured Location and/or led to the restriction or denial of the use of the Insured Location within the meaning of Extension C.

### **Trend Clause**

- 10. Insofar as the Trend Clause has any application to Extension C (which is denied) the counter-factual required under the Trend Clause ignores the trends or circumstances arising out of the same underlying or originating cause of the interruption to the business.

### **Test Case**

- 11. The Claim is the subject of subject of a complaint to the Australian Financial Complaints Authority (**AFCA**).

### **Particulars**

Complaint no. 721608.

- 12. These proceedings have been commenced with the consent of AFCA under Rule A7.2(b) of the Complaint Resolution Scheme Rules issued by AFCA dated 25 April 2020.

Date: 23 April 2021




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Signed by Christopher Michael Erfurt  
Lawyer for the respondent and cross-claimant

This pleading was prepared by Christopher Michael Erfurt, lawyer for the respondent and cross-claimant and settled by John Sheahan QC, Derek Wong and Naomi Wootton of counsel

**Certificate of lawyer**

I Christopher Michael Erfurt certify to the Court that, in relation to the statement of cross-claim filed on behalf of the cross-claimant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 23 April 2021



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Signed by Christopher Michael Erfurt  
Lawyer for the respondent and cross-claimant