

Oaths Act 1867

Statutory Declaration

QUEENSLAND

TO WIT

I, James Bruce Merchant, care of CGU Insurance, [REDACTED] Williams Street, Melbourne in the State of Victoria, do solemnly and sincerely declare that:

- 1 I am employed by Insurance Australia Group Limited as National Claims Manager for CGU Insurance.
- 2 I provide this declaration in relation to the requirement directed to me by Commissioner Justice C E Holmes dated 9 November 2011 (**requirement**).

Question 1

- 3 The customer question set as annexed to my statement dated 23 September 2011 at Annexure 7 (**the question set**) was developed on 5 January 2011.
- 4 The process of development of the question set was as follows:
 - 4.1 Mr Chris Rodd, Technical Counsel, CGU Insurance, suggested to Ben Bessell, General Manager Claims and me on the morning of 5 January 2011 that, as part of the assessment process, it would be worth including a standardised set of questions to obtain the insured customer's perspective as part of the overall evidence collected. Mr Rodd suggested that the questions should be developed by an expert hydrologist to assist CGU Insurance to have a consistent process when obtaining information from insured customers. This information would assist in determining whether damage was caused by flood, stormwater or a combination of the two. The intention was that both CGU Insurance's claims consultants and loss assessors would use the question set when recording information from insured customers. The responses from insured customers to the question set would also assist CGU Insurance to consider whether further information was required, such as a site specific hydrology assessment. Mr Bessell and I agreed with Mr Rodd's suggestion.
 - 4.2 On 5 January 2011, Mr Rodd telephoned Dr Sharmil Markar, Director and Principal Engineer of WRM Water & Environment Pty Ltd, an expert hydrologist, and asked him to prepare a set of questions to assist CGU Insurance to identify the source of inundation to a customer's residential property. Dr Markar was well known to Mr Rodd as Dr Markar and his firm had been regularly retained by CGU Insurance to provide expert hydrological assessments on a number of previous flood events. I believe that Dr Markar is widely recognised as a leading hydrological expert in Australia.
 - 4.3 On 5 January 2011, Dr Markar emailed CGU Insurance with a set of 14 questions which he proposed for use by 'claims handlers'.
 - 4.4 On 5 January 2011, Mr Rodd forwarded Dr Markar's proposed question set to me but suggested that another question be added. The additional 15th question proposed by Mr Rodd was to ask '*Was there any and if so what damage caused by rainwater through the roof or by overflowing gutters?*'.
 - 4.5 Mr Rodd therefore proposed that the question set comprise of the 14 questions drafted by Dr Markar and his additional question above, so that

the question set was comprised of 15 questions. I agreed with Mr Rodd's proposal and the 15th question was added to the question set.

Question 2

- 5 The hydrological advice relied on by CGU Insurance was that provided by Dr Sharmil Markar in his email to CGU Insurance dated 5 January 2011. Annexed hereto and marked **Annexure 1** is a copy of Dr Markar's email to CGU Insurance dated 5 January 2011.

Question 3.1

- 6 In assessing claims, loss adjusters (also referred to as 'loss assessors' or just 'assessors') were required to provide a report to CGU Insurance recording all information collected in relation to a claim, including the insured customer's responses to the question set which were the insured's own account of what occurred and when it occurred.
- 7 Storm was covered, and flood was excluded, under the relevant CGU Insurance policies.
- 8 However, if a proportion of damage was caused by a storm, prior to any flood damage, the prior stormwater inundation loss would be accepted and paid by CGU Insurance.
- 9 Where there was evidence of both flood and stormwater it was necessary to determine which came first in time, and the extent of any prior stormwater damage, in order to determine the application of the policy to the claim.
- 10 Assessors were asked not to express an opinion in their report about whether there may be stormwater inundation because:
- 10.1 The assessors' primary role was to collect information about the loss to enable CGU Insurance's claims consultants to determine causation and policy coverage.
 - 10.2 Assessors did not have authority to make claims decisions. The authority to make claims decisions rested with CGU Insurance's claims department.
 - 10.3 Assessors were not suitably qualified and had no expertise in determining any hydrology issues, such as the timing and volume of stormwater, the impact of rainfall and the relative contribution of stormwater and flood water to the damage.
 - 10.4 CGU Insurance was concerned that if an assessor expressed an opinion that damage may have been caused or contributed to by stormwater but further investigation revealed that there was no cover for that damage under the policy, that this would create unnecessary concerns for the insured customer.
- 11 Assessors were permitted to express an opinion in their report about whether any inundation was caused by flood, given the location of the insured property to a watercourse, because depending on the proximity of a property to a watercourse, the opinion of an assessor about whether inundation at the property was caused by flood would assist the CGU Insurance Claims consultants to make a determination about the claim.
- 12 Based on the above, an opinion of an assessor about whether stormwater inundation had occurred would not have assisted in the assessment of the claim, and may in fact have detracted from the management of the claim, including customer communication and expectation.

Question 3.2

- 13 Assessors were engaged to report on facts and record responses by the insured customer. This would include collecting and recording the insured customer's responses to the question set. For a customer present at the time of the inundation, the answers would give a first-hand account of the circumstances of inundation.
- 14 The factual information communicated to CGU Insurance by assessors in their reports was used, together with other relevant information, by CGU Insurance's claims staff to assess whether the policy responded to the claim and/or whether further investigation was required.
- 15 This assessment included a decision about whether and the extent to which damage was caused by stormwater and the time that the stormwater damage occurred.

Question 3.3

- 16 I refer to and repeat my responses to questions 3.1 and 3.2.
- 17 The information from the loss assessor's reports that was used to consider the possibility of stormwater inundation was, primarily, the insured customer's responses to the question set. The question set was designed to elicit answers that would lead CGU Insurance to investigate the possibility of stormwater inundation.
- 18 In addition to the information in the loss assessors' report, to establish whether stormwater damage occurred and the policy covered such damage, CGU Insurance also considered other information, including hydrology reports, flood mapping data, aerial photography, time-lined aerial photography, witness statements and any other communications with and information provided by or on behalf of the insured customer or the loss assessor.
- 19 Where the cause of the inundation and/or the application of the policy to the loss was unclear after consideration of this information, a site specific hydrology opinion was ordered.
- 20 I am of the opinion that the development and use of the question set referred to in this statement was appropriate. The basis of this opinion is that the use of the question set did generate consistent and relevant factual information on which CGU Insurance could base informed and timely claim decisions.
- 21 I am of the opinion that the direction given to assessors about the giving of an opinion about the nature of water inundation was appropriate. The basis of this opinion is that an opinion of an assessor about whether stormwater inundation had occurred would not have assisted in the assessment of the claim, and may in fact have detracted from the overall management of the claim, including customer communication and expectation. However, an opinion of an assessor about whether an inundation was caused by flood did assist in the assessment of the claim.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867* (Qld).

[Redacted Signature]

Signature of declarant

Taken and declared before me at Melbourne this 25th day of November 2011.

[Redacted Name]

Justice of the Peace/Commissioner for Declarations/Solicitor

THOMAS LUNN
181 William St, Melbourne VIC 3000
An Australian Legal Practitioner
(within the meaning of the
Legal Profession Act 2004)

Annexure 1

Chris Rodd

From: Sharmil Markar [REDACTED]
Sent: Wednesday, 5 January 2011 12:03 PM
To: Chris Rodd; [REDACTED]
Subject: Flood Assessment Questions

Hi Chris & [REDACTED],

As discussed, please find below a series of questions your claims handlers could ask people putting in claims for water damage.

- What type of house is on the property – low set, highset, double storey, split level, etc?
- Is the house on stumps or slab-on-ground?
- Approximately how high is the habitable floor level above surrounding ground level?
- Is the ground level at the house higher than the street level?
- What date and time was the rain heaviest?
- What time did the heavy rain stop?
- When did the property get inundated (date)?
- What time did the inundation of the property (yard) commence?
- What time did water come into the house, garage, shed, etc?
- What date and time did the water level in the property peak?
- At its peak, how deep was the water inside the house, garage, shed, etc?
- At its peak, how deep was the water in the yard?
- Which direction did the water come into the property?
- Was the water inundating the property 'clean' or 'dirty'?

Hope this helps.

Cheers

Sharmil

Dr Sharmil Markar

Director / Principal Engineer

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