

*Hazanee P/L v Elders Ltd & Ors* [2005] NTSC 37

**PARTIES:** HAZANEE PTY LTD  
(ACN 005 357 522)

v

ELDERS LIMITED (ACN 004 045 121)  
AND  
CGU INSURANCE LTD  
(ACN 004 478 371)  
AND  
BLACK, Gregory Robert

**TITLE OF COURT:** SUPREME COURT OF THE  
NORTHERN TERRITORY

**JURISDICTION:** SUPREME COURT OF THE  
TERRITORY EXERCISING  
TERRITORY JURISDICTION

**FILE NO:** No 87 of 2000 (20010131)

**DELIVERED:** 8 July 2005

**HEARING DATES:** 14-18 March 2005

**JUDGMENT OF:** OLSSON AJ

**CATCHWORDS:**

Insurance - Claims arising in relation to flood damage sustained to business premises and contents at Katherine in January 1998 - Premises and contents subject of general business insurance policy issued by second defendant and negotiated with plaintiff by first defendant and third party, as agent and sub agent respectively - Claims based on terms of policy,

Equity - negligence and equitable estoppel - Liability rejected by insurer on the ground that damage caused by risk not covered by policy - Whether heads of claim the result of a peril covered by the policy - Whether agent and sub agent represented that policy would cover relevant peril - Whether

agent negligent in not specifically directing attention of plaintiff to the fact that relevant risk expressly excluded by terms of policy - Whether estoppel could arise on facts found - Whether, in the event that liability found, plaintiff has proved causation

Quantum - Issues as to proof of quantum of various heads of damage claimed - Judgment for defendants.

*Insurance (Agents and Brokers) Act 1984 (Cth), s9, s 11, s 12, s 12(1), s 13(1), s 13(1)(b), s 13(2); Insurance Contracts Act 1984 (Cth), s 57; Law Reform (Miscellaneous Provisions) Act, s 12(4); Trades Practices Act 1974 (Cth), s 52*

*Waltons Stores (Interstate) Ltd v Maher and Anor (1988) 164 CLR 387;* followed

## **REPRESENTATION:**

### *Counsel:*

Plaintiff:	O Downs
First Defendant:	J Kelly
Second Defendant:	S Ower
Third Defendant:	K McMillan SC

### *Solicitors:*

Plaintiff:	Priestleys
First Defendant:	Clayton Utz
Second Defendant:	Hunt & Hunt
Third Defendant:	Cridlands

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IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

*Hazanee P/L v Elders Ltd & Ors* [2005] NTSC 37  
No. 87 of 2000 (2001013)

BETWEEN:

**HAZANEE PTY LTD (ACN 005 357 522)**  
Plaintiff

AND:

**ELDERS LIMITED (ACN 004 045 121)**  
First Defendant

**CGU INSURANCE LIMITED**  
(incorrectly described as  
**COMMERCIAL GENERAL UNION**  
**INSURANCE CO OF AUSTRALIA**  
**LTD)**  
(ACN 004 478 371)  
Second Defendant

**GREGORY ROBERT BLACK**  
Third Defendant

CORAM: OLSSON AJ

REASONS FOR JUDGMENT

(Delivered 8 July 2005)

**Preliminary**

- [1] In the pleadings in these proceedings the plaintiff is referred to as “*Hazanee*”, the first defendant is referred to as “*Elders*”, the second defendant is referred to as “*CGU*” and the third party is referred to as “*Greg Black*”. For the sake of simplicity I will adopt the same nomenclature. Other

*dramatis personae* in relation to the relevant events are Jim and Lorraine Cobb, who are described as “*the proprietors of Hazanee*”. In common with the parties I will refer to them as “*the Cobbs*”, “*Jim Cobb*” or “*Lorraine Cobb*”, as the circumstances may require.

- [2] It appears that, in the course of the trial, two separate versions of transcript were prepared. I am told that a truncated version was produced for the use of counsel, with the pages sequentially numbered. A full version was prepared for my use, again with the pages of it sequentially numbered. In the result the two separate numbering systems gave rise to page references in the final addresses of counsel, in the written forms in which they were ultimately presented to me, that are incompatible with the version of transcript used by me. The transcript references employed by me in these reasons relate to the full version.

### **Introduction**

- [3] Hazanee was, at all material times, a corporation that owned and operated the business known as “*Shell Katherine Self Service*” at 392 Katherine Terrace, Katherine. It leased the building and premises from Shell, but owned most of the plant and stock located at that address. It was required, as lessee of the building and premises, to maintain appropriate insurance cover in relation to them.

- [4] It is not disputed that, on 26 and 27 January 1998, in the course of a prolonged tropical rainstorm, water entered the building and premises (“*the business premises*”) to a considerable height. I shall have more to say about the detailed evidence related to that incident in due course.
- [5] The plaintiff asserts that, as a consequence of the water entry, it sustained damage or loss in relation to the business premises, contents and stock. It is also said that there was consequential loss related to the removal of debris, business interruption, damage to glass and loss of or damage to goods held in cold storage.
- [6] At the time of the rainstorm, Hazanee was the insured under a current business insurance policy No I5T 2002240 02 (“*the policy*”), issued by CGU in respect of the business premises and its contents. A separate policy was held in respect of certain electronic equipment on the premises.
- [7] On 16 February 1998 Hazanee notified CGU of the water entry and the loss and damage occasioned by it. It claimed indemnity under the policy. So much of the claim as is the subject of this action was rejected on the basis that it did not arise from a risk covered by the policy.
- [8] That rejection precipitated the present litigation.
- [9] The plaintiff sues Elders on the basis that, in about November 1994, it had retained that entity to service its insurance needs and had been induced by it to cause CGU to be selected as its insurance carrier. It asserts that it relied

on Elders for advice and recommendation as to insurance cover appropriate to its needs. It alleges negligence, breach of s 52 of the Trades Practices Act 1974 (Cth) (“*section 52*”) and breach of s 13(1)(b) of the Insurance (Agents and Brokers) Act 1984 (Cth) (“*section 13*”).

[10] The plaintiff sues CGU, seeking a declaration as to liability under the policy, damages for breach of contract and interest pursuant to s 57 of the Insurance Contracts Act 1984 (Cth). It alleges an estoppel against CGU as to the risks covered by the policy. The plaintiff’s primary stance is that the damage sustained as a consequence of the ingress of water into the business premises is in fact covered by the policy issued by CGU. Its secondary position is that, if it is not, then it is entitled to the other forms of relief claimed against the two defendants. It is to be noted that there is no plea against CGU pursuant to s 11 of the Insurance (Agents and Brokers) Act.

[11] Each defendant has filed a contribution notice against the other.

[12] Elders has issued a Third Party Notice against Greg Black, seeking various forms of relief arising from what it contends was his breach of contract and negligence and also contribution pursuant to s 12(4) of the Law Reform (Miscellaneous Provisions) Act. The third party claim alleges that Greg Black had been appointed by Elders as a sub agent to assist in arranging contracts of insurance for CGU and, in particular, to assist Elders in identifying potential insurance and liaising between CGU and the intending insured.

[13] On 3 March 2005, an order was made by Riley J that all of the issues in the third party proceedings, other than those that are also the subject of the proceeding between the plaintiff and the defendants, be tried after the proceeding between the plaintiff and the defendants has been determined.

### **The Relevant Narrative Evidence**

- [14] The relevant narrative events arise from certain dealings that are said to have originally taken place between Jim Cobb and Greg Black.
- [15] The former was educated in Adelaide to year nine level. He left school at about the age of 15 and commenced work with Coles as a Packer. He obtained an apprenticeship with it as a butcher and duly completed his qualifications in that trade. Having continued to work for Coles as a tradesman butcher for several years he then engaged in various other forms of employment.
- [16] He came to the Northern Territory in 1977 to take up a position as a member of the staff of the Dunmurra Wayside Inn, situated south of Katherine. After a time, he actually ran the service station at Dunmurra as a lessee from Shell.
- [17] Hazanee, of which the Cobbs are the directors, purchased the lease of the Shell service station at Katherine in 1983. They thereafter conducted that service station business through that entity.

[18] I have dwelt on this history at the outset because it gives important background detail relating to Jim Cobb. He presented as a not overly well educated person who professed to be relatively unsophisticated in his business dealings with others, particularly in the realm of matters such as insurance. It became patently obvious from his performance in the witness box that he is not a quick thinker and had considerable difficulty at times in grasping the real import of what was being put to him or what he was really being asked to address. As a consequence, it not infrequently became obvious that certain of his answers were not really responsive to the questions asked of him. I do not consider that, in those respects, he was deliberately prevaricating. He appeared to experience major problems of comprehension in the courtroom environment in which he found himself.

[19] On the other hand, there were certain respects in which I consider that his evidence was not credible. I will return to these in other contexts.

[20] He testified that, after he had taken over the lease of the Shell service station at Katherine and prior to late 1994, he had effected his business insurances, through a so called insurance industry representative, with TIO. However, he indicated that he had become disenchanted with the relevant broker and/or TIO when one of the business vehicles had been vandalised and his claim in respect of the damage was rejected on the ground that the relevant risk was not covered by the then current policy.



- [21] It is common ground on the pleadings that Elders, trading, *inter alia*, as Elders Insurance Agencies, was at all material times an agent for CGU, within the ambit of s 12 of the Insurance (Agents and Brokers) Act 1984 (Cth); and that CGU was a corporation carrying on business as a general insurer in the Northern Territory. The latter was the principal of Elders, pursuant to and for the purposes of s 12.
- [22] Jim Cobb initially knew nothing of these relationships and, on my assessment of him, would simply not have appreciated the legal implications of them even if he possessed some degree of awareness.
- [23] He was well aware that Elders had a branch office in Katherine and that it effected insurances. He became aware of the existence of CGU as underwriter at the time when he first received the initial policies issued by that company to Hazanee.
- [24] Jim Cobb said that, not long after the vandalism incident and at a time which he ultimately accepted must have been no later than about just prior to August or September 1995, he encountered Greg Black and Bruce Cameron in a social context at the Kirby's Football Club in Katherine. He knew both of them to be in some way employed by Elders, but did not know their precise positions in that organisation. When he had first met Greg Black, the latter had been "*on the pastoral side of things*". However, he was aware that Black had, at some stage, "*moved across to insurance*" within

Elders. He knew Cameron “*as a representative of Elders as well, in the cattle industry*”.

[25] Jim Cobb said that he approached them at the Club “*to speak about insurance*”. He testified that he invited them down to the service station. On his evidence the upshot was that the two men visited the business premises and were shown around them by Jim Cobb. He said that, whilst they were there and in the course of conversation, he expressed his displeasure at what had occurred in relation to the rejection of his vandalism claim.

[26] As I understand his evidence in chief, Jim Cobb asserted that Greg Black and Cameron expressed interest in quoting for an alternative business insurance package for Hazanee. It was asserted that they looked through the existing insurance documentation that Jim Cobb produced for their inspection on this initial occasion.

[27] He testified that he made it clear to them that he wished to have an insurance cover that spanned all relevant risks. He desired to avoid a repetition of what had occurred in relation to the vandalism incident. He did not want claims for damage rejected because they were not covered.

[28] I pause at this juncture to record that Katherine is situated in an area generally known to be prone to occasional flooding. There had, in fact, been a major flood in the town in 1957. Jim Cobb said in evidence that the flood levels then achieved were recorded in photographs on the wall of RJ’s Bar in a local hotel. Jim Cobb was aware of that situation when he first spoke with

Greg Black. The evidence of Greg Black and Cameron indicates that they, also, were aware that Katherine was located on a floodplain (cf tr 314).

[29] Jim Cobb asserted that the outcome of the visit by Greg Black and Cameron to the business premises was that it was agreed that Greg Black was to develop a quote for a business insurance package, for consideration by Jim Cobb. He testified that he made it quite clear to Greg Black that he relied on the latter to produce a package suitable to the needs of the business and which would cover all relevant contingencies. As he put it, "*I relied upon him to cover me for everything. I did not want to have a claim that was rejected*". He had in mind the need for a cover for flood damage, because "*We were in a flood zone*". He did not, however, specifically raise that topic with Greg Black.

[30] This evidence is to be contrasted with particulars of claim given by Hazanee in these proceedings. These averred that Jim Cobb stated to Greg Black and Cameron that he wanted to ensure that he had a policy of insurance in place which would cover any risk that arose in Hazanee's business.

[31] Jim Cobb stated that, at a time subsequent to the initial visit, Greg Black came back to see him and gave him what I take to be a form of quotation for a business insurance policy, the figures being written on some previous insurance schedules that Black had taken away with him (tr 171). (I infer that he was there referring to the then current TIO schedules (see

exhibit T1)). He ultimately accepted that this must have been in about August or September 1995.

[32] On or about 12 February 1996, two separate insurance proposals were signed by Jim Cobb on behalf of Hazanee. One of these related to computer and certain other electronic equipment and the other was for general business insurance. I will return to the circumstances in which those proposals came to be signed in greater detail in due course.

[33] The evidence indicates that all of the detailed content of the proposals, save for a series of specific questions near the end of the proposals, was filled in by Greg Black in his handwriting, and based on information supplied to him by Jim Cobb at his request. I took Jim Cobb to say that he did not personally read through the documents in detail, but merely signed them, as requested, after first answering the specific questions put to him (tr 33). He asserted that he relied on Greg Black to effect the insurance cover that he had asked for. He said that Black did not go through all of the content of the proposal forms with him in detail.

[34] It is to be noted that each proposal was in fact addressed to CGU (in the name under which it was then trading), although this may not have been readily apparent to Jim Cobb at the time.

[35] There is one curious feature of the proposals. Whereas the general business proposal had a variation and extensions section that, *inter alia*, referred to “*Flood*” cover (and indicated that the inclusion of such a cover would attract

an additional premium and the requirement for a survey), the “*Electronics*” proposal expressly included such a risk.

[36] On the third page of the general business proposal provision was made for “*Variations and Extensions*”, with the note that “*Cover may not be available in all instances and an additional premium is payable for certain extensions*”. In this section reference was successively made to “*Reinstatement and Replacement*”, “*Extra Cost of Reinstatement*”, “*Accidental Damage*”, “*Flood*” and “*Other*” respectively.

[37] Although the boxes adjacent to the first three items were ticked, that adjacent to the line related to “*Flood*” cover was left blank – thereby indicating that such cover was not required. Jim Cobb said in evidence that, when Greg Black was obtaining information for insertion in the proposal, no mention was made by him of the topic of flood damage cover or any additional premium that such a cover would attract.

[38] The two proposals were submitted by Elders to CGU and accepted by the latter. Two separate policies were then issued. I took Jim Cobb to acknowledge that the policy documents were sent to Hazanee. One of these was produced by him in the course of his evidence and comprises exhibit P11. It is his memory that it was probably received by his manager Sharon Allwright and then forwarded to him in Darwin, to which the Cobbs had moved over Easter of 1996. I understood him to say that he did not read

the printed portions of the document, although he did read the letter and the schedule attached to it.

[39] The general business package policy documentation is voluminous.

Although it is expressed in plain English, it runs to some 57 pages in the document book, exhibit P4. A reading and assimilation of all of its contents is not for the fainthearted.

[40] The policy expressly excludes damage caused by “*Flood*”. That expression is defined as meaning:

“... the inundation of land by water escaping from or released from the normal confines of any natural watercourse or lake (whether or not altered or modified) or any dam, reservoir or canal”.

[41] The separate, so called “*Computer Policy*” does not contain a similar exclusion. On the contrary, the risks covered expressly include damage sustained as a consequence of Flood.

[42] Jim Cobb testified that this difference in the policies was not communicated to or appreciated by him at any stage prior to the events giving rise to the present litigation.

[43] The insurances to which I have referred commenced on 22 December 1995 and were renewable annually. Jim Cobb testified and I accept that, as and when the policies were becoming due for renewal at the end of 1996, Greg Black contacted him and went through the schedules of the sums insured, to confirm the appropriate cover amounts for the forthcoming renewal period.

Any adjustments were written on the schedules. This process was illustrated by a comparison of what appear to be combination insurance schedules/invoices appearing at pages 88 and 125 respectively of exhibit P4, although Greg Black stated that this was the insured's copy and the handwriting was not his. It is to be noted that the renewal documentation is issued by Elders Insurance Agencies, to which premiums are payable – given that they also bear the endorsement “Underwritten by Commercial Union Insurance”.

[44] Jim Cobb said that the overall premiums payable were substantial, being of the order of \$13,000-\$14,000 per annum. He testified that Greg Black arranged for payment of them to be financed through some private finance company. This was on the basis that Hazanee would then pay monthly instalments to the financing entity, thereby avoiding cash flow problems.

[45] It is common ground that a tropical rainstorm occurred in the Katherine area on 26 and 27 January 1998. This gave rise to the business premises being inundated by water. Jim Cobb was in Darwin at the time and his then manager at Katherine, Sharon Allwright (now deceased), telephoned him and advised him of the occurrence.

[46] Jim Cobb was not allowed into Katherine for some three days after the inundation. He, Lorraine Cobb, Ms Allwright and two console operators (Peter Shepherd and “Chris”) then all conducted a cleanup and reinstatement exercise that extended over the next two weeks, following which the

business was reopened. During that time both the Cobbs and their children made a series of return trips by car between Darwin and Katherine, mainly to transport food and necessities to Katherine to enable the clean up work to continue (tr 108 *et seq*).

[47] In the course of cross examination, Jim Cobb said that no payments were made by Hazanee to the Cobbs or their children in respect of either travel costs or food and necessities. He personally met the food costs in question and paid for the travel costs for himself and Lorraine Cobb (tr 206 *et seq*). No payments were actually made to any of the children to reimburse them for travel costs.

[48] There is no evidence that Hazanee ever made any payment to the Cobbs for the work that they did or that there was any arrangement whereby it would make such a payment.

[49] The taxation returns of both Hazanee and the Cobbs for the year ended 30 June 1998 contain no reference to salary payments being made by the Company to the Cobbs during that year (see also the evidence of Mr Trezona tr 299). The sole income returned by the Cobbs was, on the evidence of Mr Trezona, sourced from quite separate employment in which they engaged in Darwin.

[50] In the course of his evidence Jim Cobb insisted that he was paid money by Hazanee (tr 204). I note that, during his cross examination, he declined to answer questions related to whether he had fully returned his income to the



Australian Taxation Office, on the ground that he might tend to incriminate himself.

[51] Jim Cobb said in evidence that, when he arrived at the business premises, water and mud markings on the glass and walls indicated that water had entered those premises up to a height of about six feet. There was also evidence that some water had come through the roof on to the gyprock ceiling.

[52] At one point, Jim Cobb contacted Greg Black about lodging an insurance claim. The latter brought a claim form to the business premises for completion by him. Jim Cobb asserts that Greg Black told him to state that the cause of the damage was "*Inundation by water*". The claim, as completed by Jim Cobb, is dated 16 February 1998 and comprises exhibit P5.

[53] Jim Cobb subsequently dealt with loss assessors known as L.A.C. Loss Assessors (to whom I will refer as "*LAC*") in relation to the Hazanee insurance claim. He was absent in Adelaide between 16 February and the end of March 1998 and actually had some dealings with LAC in Adelaide.

[54] A series of progress payments were made to Hazanee. Exhibits P6, P7, P8 and P9 are all forms of "*Release*" said to have been prepared by LAC and completed in relation to the payments made.

- [55] I take Jim Cobb to assert that the payment of \$2,410 referred to in exhibit P9 was never received. Documentation tendered during the trial indicates that this was actually made direct to the contractor that executed the relevant work.
- [56] The evidence establishes that all claims arising under the separate policy related to electronic equipment were fully settled (see exhibit P16) and it was to these that the various releases mainly related.
- [57] However, all claims, other than those related to storm damage (such as water affected ceilings and the like), were rejected by CGU on the basis that they arose from "*Flood*". It was contended that they were thus not covered by the general business policy. I will return to the details and quantum of the rejected claims in due course.
- [58] The Hazanee lease of the service station expired in November 2000 and Shell did not renew the franchise. Shell resumed control of the business and purchased the stock then on hand from the company. At the time of purchase Shell intimated that it would not be looking to Hazanee to recoup the cost of replacing or repairing any items that Shell had funded following the events of 26-27 January 1998.
- [59] Jim Cobb's evidence was to the effect that, because of water damage, no stock (other than fuel) was retrievable. All refrigeration plant was damaged beyond repair, and a great deal of furniture and other plant and equipment was either damaged or destroyed. The car manuals, stationery and office

type items were destroyed. Some items were missing. A total of 3000 litres of fuel was lost due to water contamination in the storage tanks.

[60] Jim Cobb took the detail in exhibit P13 as the starting point in formulating the insurance claim. This document was a plant and equipment inventory that he had printed out from his business records about a month prior to the water damage, a copy of which he happened to have at home. The inventory listed the various items held and the original acquisition costs in relation to them. It had constituted a primary source of information for the preparation of income-tax depreciation schedules.

[61] In cross examination, Jim Cobb explained that, after the original computer had been destroyed, he had reinserted data from his inventory list into the new computer and had then updated various figures in accordance with quotes received for replacement purposes. This led to the generation of the document exhibit P13, which, in turn, was the source document for preparation of the claim list in exhibit P12.

[62] He said in cross examination that the plant and equipment items had been replaced in dribs and drabs over a period extending up to April or May 1998.

[63] It is to be noted that, according to the endorsement on it, exhibit P13 was printed out on 15 May 1998.

[64] During her cross examination of him, Ms Kelly of counsel for Elders challenged Jim Cobb's evidence to the effect that he had arranged for the

replacement by Hazanee of plant and equipment over time. She put to him the depreciation schedule for the Year ended 30 June 1998.

[65] Ms Kelly pointed out that, whereas a large number of items of plant and equipment had been written off as at 28 January 1998 due to the water inundation, the schedule contained no items of new plant and equipment acquired except two or three electronic items that had been the subject of payouts under the computer and electronic equipment policy.

[66] She invited Jim Cobb to explain the reason for that situation. He was unable to do so. That aspect needs to be considered in light of the evidence subsequently given by Mr Trezona, to which I will come in due course.

[67] This is a matter that redounds against the credibility of Jim Cobb.

[68] He further said that Hazanee had maintained a stock reorder system whereby, over time, stock holdings had been maintained at fairly consistent levels. For that reason he had used a stock status report printed on 1 January 1998 (set out in exhibit P4) as his basis for computing stock losses.

[69] In doing so he acknowledged that precise holdings of fuel varied according to "*fuel dumps*". He accepted that there was no way of ascertaining the precise value of fuel on hand as at the time of the inundation.

[70] I took him to say that the stock figures used essentially reflected earlier discussions with Greg Black when insurance cover amounts were being reviewed.

- [71] As I understand Jim Cobb's evidence, the documentation appearing in exhibit P10 was, in large measure, a compilation by Hazanee's accountant (Mr Trezona) of the primary data supplied by the former.
- [72] I further understood him to say that virtually all office stationery, equipment and furniture were a write-off due to water damage and that the items listed under the tab "*Stationery & Office Equipment*" in exhibit P10 were compiled by him from memory. He testified that these items had been replaced within about three weeks after the inundation because they were immediately required for a resumption of business.
- [73] In the course of cross examination, Jim Cobb said that Hazanee only kept invoices and/or receipts for items purchased and other prime records such as cheque butts in boxes for about five years, after which they had been destroyed. He said that, after consultation with Mr Trezona, he had destroyed the documents in question about four months prior to giving evidence. He said that he did not realise that they were either relevant or discoverable documents in relation to the present litigation.
- [74] He insisted that he had never been told by his solicitors of his obligations as to discovery in relation to the present proceedings. Mr Trezona had not previously required many of the documents for preparation of company financial statements because he worked from prime records such as cheque butts, bank statements and stock holding computer records. No separate cashbook was kept at the business premises.

- [75] I construe the evidence as indicating that all relevant business trading data was keyed directly into the computerised business system on a daily basis and that relevant reports were generated as required (tr 72).
- [76] The evidence of Jim Cobb was somewhat confused as to how plant and equipment replacement records had been maintained. He said that some manual records were kept and supplied to Mr Trezona for depreciation schedule purposes. He said that the data was in a summary rather than in a detailed item format.
- [77] Jim Cobb was cross-examined at some length. It must be said, as a generalisation, that, like some portions of his examination in chief, his evidence was well-nigh incomprehensible and seemingly contradictory at times. I accept that, in part, this may well have been due to his inability to appreciate what was asked of him, as earlier commented.
- [78] However, as his cross examination proceeded, I was left with a very distinct impression that he was, at times, either shifting ground or prevaricating. For example, his evidence related to the dates and circumstances of his initial negotiations with Greg Black, the destruction of Hazanee records, his state of mind in relation to them, the extent to which plant items were or were not replaced and what payments Hazanee may have made to him was far from convincing.
- [79] Moreover, some aspects of his evidence are impossible to align with that of Mr Trezona and the witnesses Cameron and Greg Black. Even allowing for

the various lacks of memory of Greg Black, I regarded the last three witnesses as essentially honest and credible and generally accurate historians.

[80] I therefore view some aspects of Jim Cobb's evidence with considerable reservation.

[81] There are certain features emerging from his cross examination by Ms McMillan, senior counsel for Greg Black, which are of particular importance for present purposes. The relevant highlights may be summarised thus:

- He had maintained the Hazanee insurance covers with TIO during the three-year period 1992 to 1995;
- He had read the relevant policy schedules and was well aware of the extent of the coverage under those covers. On one occasion he had actually contacted TIO and asked why he was not covered for a particular risk;
- The TIO coverage had expressly excluded flood damage, a situation of which he was aware;
- He was not unfamiliar with insurance aspects, because he had made a number of claims under the TIO policies;
- The Hazanee coverage with TIO actually expired on or about 11 August 1995, with the result that, contrary to the obligations of Hazanee as lessee from Shell, the business was actually uninsured from such expiry until the issue of the CGU cover as of 22 December 1995;
- The premiums payable to TIO had been "*creeping up*" and, in any event, Jim Cobb was keen to get some premium funding arrangement having regard to the cash flow situation;
- The CGU coverage given, as to types of risk, was the same as the TIO coverage that had preceded it;

- Jim Cobb was unable to identify precisely when he had made any vandalism claim;
- He told Greg Black that he had “*a blue with... (his)... broker*”. (As to this I took one of his answers, as recorded at tr 242-243, to be a tacit concession that he may not, in fact, have told Greg Black about the actual vandalism claim);
- He gave to Greg Black a copy of his pre-existing TIO insurance schedule in the form of exhibit T1 and went over the figures in it with him (tr 243). To his knowledge, this expressly referred to the exclusion of flood damage. His insurance with TIO at all times contained this exclusion, despite the fact that Jim Cobb was aware that Katherine was on a flood plain;
- When pressed, Jim Cobb accepted that, contrary to what he had earlier said, Greg Black would first have discussed the information for an insurance quote with him in August 1995, and not in November of that year (or, as he had earlier said, November 1994). [It was not until he was pressed in cross examination that it first became apparent that the previous insurance had actually lapsed on 11 August 1995 and that Hazanee had, in fact, been uninsured for several months].
- Jim Cobb initially gave the impression that he had accepted Greg Black's CGU quote virtually as soon as it had been given. However, on Black's evidence, it eventually emerged that it was certainly not accepted when first given. When pressed in cross examination, Cobb was prepared to admit that, in the event, he did not accept the quote until November or December –at a time when Hazanee had become bereft of insurance cover and when he told Black that he had fallen out with his broker;
- He accepted that he had been granted cover from 22 December 1995, although the formal proposals were not in fact signed until 12 February 1996. He said that he and Greg Black would have been about half an hour going through the detail in the proposals, although he insisted that he did not carefully read through all of the content of the documents.
- He conceded that the quote originally given to him by Greg Black in effect covered the same categories as the previous TIO schedule. Jim Cobb agreed that he had never specifically raised the issue of flood cover with Black (tr 245). He said that, when the quote was eventually accepted, he assumed that he was covered for flood because he had previously told Greg Black that he wanted to be covered for “*everything*”. Once again, at that



time, the topic of flood cover was not specifically raised by anyone (tr 248).

- [82] Evidence was taken from Mr Trezona, a chartered accountant, by video link from Alice Springs. He confirmed that he had performed accountancy work for Hazanee from about 1980. As at January 1998, he was preparing monthly financial statements for the company from prime documentation such as cheque butts, loan agreements, bank statements and other trading data, including stock records and details of debtors and creditors. The data from such sources was, regularly, being processed by his computer system.
- [83] Following the events of 26-27 January 1998 at Katherine, Mr Trezona reconstructed the business accounts from his own records because all the prime records had been destroyed in the flood. As he put it, once the balance sheet figures were reconstructed following resumption of trading, then it became possible to produce an accurate reconstruction of the profit and loss statements. This was achieved quite rapidly after the occurrence of the water inundation, when the business recommenced.
- [84] This witness acknowledged the difficulty of arriving at a precise pre-inundation stock figure. He felt that it was not unreasonable to select \$91,400 as being realistically indicative, bearing in mind both the figures for months preceding December 1997 and also the stock level when Shell eventually reacquired the business.

[85] He utilised the figure of \$30,000, supplied by Jim Cobb as the credit for fuel salvaged, thus giving a net sum in the order of \$26,000 for fuel stocks after losses. In cross examination, he said that, if only 3000 litres were lost at an average value of \$0.73 per litre, then this would produce the result that the net stock losses would drop from \$61,400 to \$38,400 (tr 301).

[86] Mr Trezona also gave evidence as to the bases on which he computed the various segments of the claims, as set out in exhibit P10. I will come to this in due course when discussing the individual items claimed.

[87] He said that it was normal practice to only include individual items of plant and equipment costing more than \$300 in depreciation schedules. Items below that value were simply written off as business expenses under the headings of repairs or minor parts (tr 292).

[88] When it was put to Mr Trezona that only a few items of plant and equipment were included in the 1998 depreciation schedules as being newly acquired, he responded that it was his understanding that a lot of lost plant and equipment was never actually replaced by Hazanee. This was because cash flow problems gave rise to the situation that "... *there just wasn't enough money available to repurchase them*". Such money as was available went towards stock replacement.

[89] Mr Trezona then went on to comment "*Shell paid for a lot of the replacement plant and equipment*" (tr 292).

[90] Elders called Mr Bruce Cameron to give evidence as to his knowledge of the narrative facts. He was appointed Branch Manager at Katherine in late 1993. He had known the Cobbs since the late 1970s. He said that he had no memory of Jim Cobb ever raising the topic of insurance at Kirby's Football Club.

[91] This witness testified that his first memory of that topic related to an occasion which he placed as being in the mid-1990s, when he and Greg Black went to the business premises to pick up an Elders' vehicle that had been serviced there. Whilst at the service station the two men spoke with Jim Cobb. As Cameron put it, "... *the topic of insurance came up and we asked for the opportunity to quote on his business*".

[92] He said that he had no further involvement in what transpired and had no memory of there having been any discussion concerning the risks to be covered.

[93] Cameron presented as an excellent witness and I have no difficulty in accepting his evidence.

[94] Greg Black gave evidence in support of his case as Third Party.

[95] He confirmed that he commenced in Katherine as an insurance subagent to Elders in July 1995. He had local authority to write cover for houses, motor vehicles and small domestic type risks. Beyond that, all proposals had to be

submitted, through Elders' head office in Adelaide, for quotation and acceptance by the underwriter.

[96] As an initial, general statement it must be recorded that this witness indicated that he had only a limited present memory, restricted to certain detailed aspects of the narrative events relevant to these proceedings. A good deal of what he said was based on his normal practice. It follows that, although he presented as a frank and apparently honest witness, his evidence needs to be reviewed with some care.

[97] Greg Black's memory accorded with that of Bruce Cameron as to how the topic of quoting for insurance first arose. i.e. it arose when the two men went to pick up an Elders' vehicle at the service station.

[98] I understood him to say that, on a subsequent occasion, he went to the service station to look through the premises and obtain details for the purposes of quoting. Jim Cobb gave him a copy of the TIO schedule for the 1994-1995 year (exhibit T1), so that he could take information from it. This would have been shortly after Greg Black arrived in Katherine on 4 or 5 July 1995. According to his memory, the incident of which he spoke would have occurred prior to the expiry of the TIO policy on 11 August 1995.

[99] I should here mention that Greg Black's file relating to Hazanee happened to be in his car at the time of the relevant water inundation. It was destroyed when water entered his vehicle. He has therefore been deprived of resort to it for the purposes of refreshing his memory.

[100] I construe Greg Black's evidence as being to the effect that it was his understanding that Jim Cobb asked him to quote on the same basis as the TIO cover, which expressly excluded flood damage. He said that the topic of flood damage was never raised by anyone. He was aware at the time that CGU would not give such cover for a business in Katherine. He said that this was similar to the attitude of other underwriters (tr 330-331).

[101] Greg Black did obtain and inform Jim Cobb of a CGU quote for the proposed insurance. When asked what happened after the provision of the quote Greg Black responded:

“Well, Jim contacted me to say that we were unsuccessful and that he was going to stay with his current insurer so I said ‘Yeah, fair enough’. I recall writing a letter to him confirming what had happened and saying that we would be around next year to have another look at it”. (tr 330)

[102] Several months later, probably sometime in mid-December, Jim Cobb contacted Greg Black and said that he had an argument with his then current broker and was uninsured. He asked if cover could be procured at the previously quoted premium. There was no further discussion concerning the scope of the proposed cover.

[103] This caused Greg Black to telephone CGU, which intimated that it would stand by its earlier quote. This was conveyed to and accepted by Jim Cobb. Cover was granted with effect from 22 December 1995, although the formal proposals were not signed until later.

[104] Due to the destruction of the Hazanee file by water, Black was unable to recall precisely how he went about seeking the original quote from CGU. He said that his normal practice was to complete a quotation pro forma and fax it to CGU and the Adelaide office of Elders. The quotation would have been received by fax and placed on the Hazanee file that was later destroyed. I construe Greg Black's evidence (tr 355) as indicating that a number of comparative quotes may possibly have originally been sought.

[105] Black specifically denied that he was asked by Jim Cobb to organise a cover for "*everything*". This would have been impossible to achieve in any event.

[106] He did not have an independent memory of the occasion on which the two proposals were completed on 12 February 1996. He accepted that, to some extent, they would have been pre-filled out when he took them to the service station for signature. All that he can say with confidence is that, in accordance with his usual practice, he would have gone through the forms, elicited any information that he did not already have from Jim Cobb and then filled in the detail. He would have expressly put the specific questions near the end of the proposals to Jim Cobb and recorded his responses at the time.

[107] This witness said that he would have sent the signed proposals off to CGU through Elders' head office and then forwarded the policy documentation such as P11 to Hazanee when it was later received by him.

[108] Once again, Greg Black did not profess any clear memory of doing so, but accepted that he would have reviewed the renewal schedules with Jim Cobb for the 1996-1997 period when these were issued by CGU. This would probably have been about six weeks prior to the end of the insurance period. I did not take him to join issue with Jim Cobb concerning that aspect.

[109] Greg Black said that he did not go through that process in the following year, because he had to go to Adelaide in late 1997 to see his sister who was terminally ill. The renewal documentation was simply sent to Jim Cobb (see exhibit P3).

[110] This witness agreed that, at Jim Cobb's request, he arranged for a private finance company to provide premium funding, as described by the latter.

[111] He says that, following the water inundation, he facilitated the completion and lodgement by Jim Cobb of a claim form for the damage sustained by Hazanee. He did not think that he advised Jim Cobb to use the phrase "*inundation by water*" in the documentation, although he obviously has no clear present memory one way or the other.

[112] In cross-examination, Greg Black denied that it was ever made known to him that Hazanee wished to be covered for flood, or that it wanted to be covered for "*everything*". He reiterated that the latter was impossible to achieve in any event. He agreed that, had such a request been made, this would have required him to seek a cover for flood damage.

[113] He responded to a question put to him that it would have been prudent for him, in initially writing what was new business, to go through the proposed policy to see that Hazanee was getting what was expected out of the contract of insurance. I took him to convey that this was wisdom based on hindsight and that he has no memory of precisely what was said on the topic of the coverage to be quoted for (cf tr 348-349).

[114] Greg Black acknowledged that, when he went through the business proposal form with Jim Cobb, he did not specifically raise the issue of flood cover because he knew that CGU would not offer such a cover. He agreed that, with the benefit of hindsight, he should perhaps have specifically raised the issue, even though Jim Cobb had not referred to it. He was aware that the electronic equipment cover did extend to such damage. He also made no specific mention of that.

[115] In response to a question put to him by Mr Downs, of counsel for Hazanee, Greg Black said that, to his knowledge, the only insurer that offered flood cover in the Katherine area as at 1995 was TIO. He did not think of seeking a quote from that insurer, because the previous Hazanee cover had been with it and did not extend to flood cover. His understanding at the time was that *"... Mr Cobb had his previous insurance with TIO and it clearly said that it wasn't covered for flood so I thought he didn't require it. He had the policy for however long and I didn't think it was an issue"* (tr 360).



[116] I took him to say that the extent of risks covered was also never an issue that arose at the time of subsequent renewals.

[117] Following the events of 26-27 January 1998, there was a specific discussion between Greg Black and Jim Cobb, following which a quote including flood cover was sought through TIO. The evidence does not reveal whether such a quote was received and taken up.

[118] Greg Black acknowledged that, in his letter which forms portion of exhibit P3, he included what I took to be a standard form of *PS* that stated that Elders aimed “*to give you the best policy to suit your needs*”. He said that he could not recall ever having used such an expression in actually speaking with Jim Cobb.

[119] Of course, the latter did not ever assert that Greg Black did so. Greg Black also accepted that he may well have said that he would give Hazanee the best service possible. However, he specifically refuted the suggestion that Jim Cobb ever stated that he wanted to be covered for *all* matters or *all* risks (tr 363).

[120] Greg Black accepted that on the renewal of the CGU cover for the 1997-1998 year CGU had, unilaterally, issued a fresh form of general business policy and that he had not explained the significance of this document to Jim Cobb.

[121] However, it seems to me that nothing turns on this point because the span of cover remained unchanged and all that altered was some detailed expression and definitions. Indeed, in certain respects, the terms of the policy were, on the face of it, more favourable to Hazanee, as was demonstrated in the course of debate concerning a potential amendment to the statement of claim propounded by Mr Downs.

[122] It only remains to direct some attention to exhibit C3, a report issued by the Bureau of Meteorology, which contains a detailed analysis of what occurred in the Katherine area at the time of the events pertinent to these proceedings. It is to be noted that, in the terminology employed in the report, a clear distinction is made between “*flooding*” and “*storm water*”. “*Flooding*” is applied to situations in which water in rivers and creeks that provide the natural drainage for the Katherine region overflowed onto land that is normally dry. On the other hand, “*storm water*” is considered as the local runoff collected in roads and other small catchments that do not have a defined natural drainage system of rivers and creeks.

[123] As I construe the report, the major flooding of the town of Katherine was a consequence of the combined flow from the upper Katherine River and the Seventeen Mile and McAdden Creeks.

[124] The water reached record levels. For example, at the Railway Bridge, the maximum level achieved was 20.4 metres on 26 January, by way of contrast with the previous record of 19.3 metres that occurred in March 1957. This

caused the river to overflow its banks and inundate about a thousand square kilometres of land, including the whole of the old town of Katherine itself and the whole of its central business district, including the location of the business premises.

[125] That outcome was the consequence of unprecedented rain precipitation upstream of Katherine associated with tropical cyclone “Les”.

### **Quantum**

[126] To say the least, the evidence as to quantum was most unsatisfactory. It beggars belief that Jim Cobb did not appreciate the need to retain and discover prime records concerning his detailed claim and that, within the space of only several months prior to trial, he innocently destroyed those vouchers that would have substantiated important items of claim.

[127] His evidence in that regard raised serious questions as to his veracity. I have already referred to the inconsistencies between his evidence and that of Mr Trezona concerning what items were or were not replaced after the flood and the original inflated claim for contaminated fuel.

[128] I regard Jim Cobb’s evidence as to quantum with great caution. I am reluctant to accept it except where there is clear verification of the relevant detail or it seems beyond real dispute.

[129] Having said that I turn to the individual heads of claim.

[130] The specific items of damage originally claimed by Hazanee were as follows:

Stock as per stock list		91,400
Less estimated fuel stocks salvaged	<u>30,000</u>	61,400
Plant and Equipment as listed		61,028
Repairs to Site		99,273
Staff Wages – two weeks during cleanup		7,900
Directors Family Travel & Associated Costs		4,230
Stationery, Disks, Minor Office Equipment		3,000
Loss of 16 Days Trading		21,029
Accounting Fees Re Report and Appearances		10,000
Reinstatement Documentation		20,000
Contents, Manuals, Former Extinguishers, Minor Plant		90,500
<b>Total</b>		<b><u>378,360</u></b>

[131] It is necessary to review these figures on a line-by-line basis.

***Stock as per stock list***

[132] As already emerges the stock figures as at the preceding December were utilised as representing an average for the stock held by Hazanee at the time of the water inundation. Moreover, in computing the relevant figures for the claim, Mr Trezona was told by Jim Cobb that only \$30,000 of fuel was salvaged.

[133] In the course of cross-examination, it emerged that Mr Trezona was never informed that only 3000 litres of fuel had actually been lost as was ultimately conceded by Jim Cobb in the course of his evidence. The value of that loss was of the order of \$2,190, with the consequence that the figure for fuel stocks salvaged should have been of the order \$56,133.

[134] An adjustment to allow for that situation will immediately reduce the line item in the claim from \$61,400 to \$35,267.

[135] However, the accuracy of even that figure cannot be vouched for because actual fuel holdings at the time of the inundation would have depended on when the last fuel delivery had occurred and what consumption had actually taken place thereafter. There is simply no means of arriving at a truly accurate result.

[136] Equally, so far as general stock is concerned, a review of the documentation produced by Mr Trezona reveals that monthly closing stock varied considerably during the last six months of 1997, from a minimum of \$67,765 in July to a maximum of \$110,187 in September. The December figure was, in fact, the third highest for the six-month period.

[137] Some assistance may have been gleaned from a review of the restocking that took place immediately after the business was brought back into operation, particularly in relation to general stock items. However, somewhat astoundingly, Jim Cobb destroyed the relevant vouchers only a few months prior to trial, as previously recited.

[138] In the event, no documentary evidence was led to vouch the amounts claimed.

[139] Doing the best that I can on the figures available, the only appropriate course appears to be to take an average of the six-month closing stock

balances that are available, namely \$77,277, and then deduct \$56,133 for salvaged fuel. This results in a net figure of \$21,144.

***Plant and Equipment as listed***

[140] The original claim ascribed the value of \$61,028 to those items that were said to have been lost.

[141] At the end of the trial, the evidence as to these was in a state of considerable confusion.

[142] The list originally included in Mr Trezona's formulation of claim was supplemented by an annotated copy of it marked exhibit P12.

[143] As I understand the evidence, as it finally unfolded following the cross examination of Jim Cobb and the testimony of Mr Trezona, these points emerge:

- Exhibit E3 constitutes the depreciation schedule for Hazanee for the year ended 30 June 1998, as prepared by Mr Trezona. I infer that it accurately reflects the content of his taxation files for the preceding year.
- It discloses the write-off (at depreciated values) of a substantial number of plant and equipment items said to have been lost or rendered useless by the water. This schedule is not the same as that comprising exhibit P12, which was prepared by Jim Cobb and given to Mr Trezona. In all fairness, it must be recognised that Mr Trezona had made the point earlier recited that, for depreciation purposes, it was normal practice to list only specific items having a starting value in excess of \$300.
- Of the items listed in exhibit P12 –
  - (1) Jim Cobb conceded that the following items were not, in fact, ever replaced, namely:

ONQ software (Workshop)  
Breeze software Wages  
Ice Works Freezer and Maker  
Oil Trolleys (4)  
Fuel inj CI/kit Bosch ef 1840  
Pre/Catalyst Exhaust Insertion Kit  
Valve Re-facer W&B 212000  
Valve Seat Cutting Tool  
Hose Reels (3)

- (2) He accepts that the policy was inapplicable to the following electronic items -  
Wireless Telecom  
Forecourt Ice Freezer  
Battery Charger Arlec  
Battery Charger Arlec BC924
- (3) He agreed that the sound equipment was paid for by Shell, which was not seeking reimbursement for it.
- No attempt was made to vouch any of the other individual items claimed and I am far from convinced either that the list is necessarily accurate or that the values attributed have any sound basis.
  - It is to be noted that exhibit E3 lists only one relevant item, namely a pie warmer that had been replaced by Hazanee post the water inundation. This was said to have been purchased on 3 April 1998 at a cost of \$500. As against that, the depreciation schedule for the year ended 30 June 1998 did not show any pie warmer as being written off due to the flood.
  - As earlier recited, Mr Trezona testified that after the flood much of the plant and equipment had actually been replaced by Shell, at its expense. I do not even have before me the detail of any of those relevant replacement costs.

[144] It follows that the plaintiff has fallen far short of proving the figures claimed by it under this head. Quite clearly, some losses of this type were sustained, but the only solid information is that emerging from the depreciation write-off items prepared by Mr Trezona. Beyond that I merely have Jim Cobb's unvouched assessment.

[145] Doing the best that I can I would assess a global value of \$20,000 for plant and equipment lost. However, as discussed with Ms Kelly (tr 124-126) a very real issue arises as to the relevance of this, having regard to the replacement provisions of the policy.

***Repairs to the Site***

[146] It was eventually conceded by Jim Cobb, in the course of his evidence, that Shell had paid for the relevant repairs and had indicated that it would not be seeking reimbursement of its costs (tr106). It follows that this item should be deleted from claim.

***Staff wages***

[147] I have already made the point that the evidence indicates that Hazanee did not pay or agree to pay either Jim Cobb or Lorraine Cobb any remuneration for their work in relation to the cleanup of the site (tr 299) which they presumably did in their role as directors of the company.

[148] Their sole income during that year, as revealed by their income tax returns and confirmed by Mr Trezona, was from their employment in Darwin by a company known as Abrohire Pty Ltd (at a rate much less than that claimed by them (exhibits E1, E2)). No allowance should therefore be made for the amounts claimed in respect of them.

[149] On the other hand, the evidence of Jim Cobb was to the effect that the three employees of Hazanee (Sharon Allwright, Peter Shepherd and Chris) were



not put off because of the flood, as might have been the case. They were retained at their normal wages because they were needed to assist in cleaning up the site (tr 107).

[150] Had this not been done then it may well have been necessary to procure other labour. That being so, it seems to me that the claim for \$3,900 in respect of their wages for the two week period in question is not unreasonable.

*Directors and family travel*

[151] This was a claim for reimbursement of food costs of \$1,500 and a total of \$2,730 for vehicle mileage in respect of trips said to have been made by the Cobbs and their children during the cleanup period. As I understand the evidence, food and supplies were not available in Katherine at the time and the costs included allowances to the persons concerned to travel to Katherine to assist in the cleanup and provide food to those concerned. The figures claimed are based on seven separate return trips, each of 650 kilometres (see tr 109-114,167).

[152] There was no documentary substantiation of any of the claims and no evidence to verify that Hazanee ever accepted liability for any of the items claimed. I have earlier pointed out that Jim Cobb stated that he, personally, paid for the food and supplies out of his own pocket.

[153] Absent any formal verification of the amounts claimed or that Hazanee was liable to reimburse the sums in question, it is impossible to perceive how any amount can properly be assessed under this head.

*Stationery and Office Equipment*

[154] The claim is for a round sum of \$3,000 made up of the various items set out in Mr Trezona's formulated claim. The primary evidence bearing on this is recorded at tr 113-114. Jim Cobb said that all of the stationery and office equipment was destroyed in the flood and that Sharon Allwright and he shared the task of replacing it. He asserts that, as items were replaced, he maintained a list of them and kept relevant receipts. The compiled list was, he said, eventually supplied to Mr Trezona for inclusion in the compiled claim.

[155] Neither the receipts nor the original list were ever tendered in evidence. A belated attempt was made to reconstruct the situation by resort to blatantly hearsay evidence concerning quotations obtained by telephone.

[156] Like many other aspects relating to quantum, the situation remained in a very unsatisfactory state at the conclusion of the trial.

[157] I do not doubt that substantial items of the type listed by Jim Cobb were in fact lost in the flooding of the premises and replaced. However, I remain in doubt as to the precise accuracy of the list compiled and most, if not all, of the figures listed appear to me simply to be round sums.

[158] In all fairness, some allowance must be assessed, but, on the face of them, the figures claimed appear somewhat generous. Applying commonsense and doing the best that I can with what I have, I would allow a total of \$2,000 on this score.

***Loss of 16 days trading***

[159] In his formulation of claim, Mr Trezona arrived at a figure of \$21,029. He took the view that the only practical approach was to adopt the trading figures for the year ended 30 June 1999 as a base for calculation, this being, in his opinion, a reasonably conservative approach.

[160] He considered that the figures for the year ended 30 June 1998 would have been inappropriate, due to the impact of the flood and its sequelae.

Mr Trezona's approach produced a gross profit loss of \$1,314.32 per day, thereby giving rise to the total sum claimed. Jim Cobb's evidence was to the effect that the service station was inoperable for a period of 16 days in all (tr 117).

[161] The problem with Mr Trezona's approach is that which was pointed out to him by Ms Kelly during his cross-examination (tr 295-299).

[162] On the assumption that the policy should have extended to the risk in question, it set out an express formula for the calculation of loss of profit that differed from Mr Trezona's approach. He simply ignored it because he felt that it was unsatisfactory. Mr Trezona conceded that he had access to

