

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2007/0053

BETWEEN:

**DR. NIZAR HADEED
(Trading as Hadeed Variety Store)**

Claimant

and

CLICO INTERNATIONAL GENERAL INSURANCE LTD.

Defendant

Appearances:

Mr. Ruggles Ferguson with Ms. Anyika Johnson for the Claimant
Mr. James Bristol with Ms. Ria Marshall for the Defendant

2011: December 13;
2012: January 12; 23;
2014: December 4.

JUDGMENT

[1] **PRICE FINDLAY, J.:** The Claimant in this matter, Dr. Nizar Hadeed, trading as Hadeed Variety Store, claimed against the Defendant the following relief:

- (1) An indemnity under a policy of fire and other perils No. GCG/FC/003030 dated 6th February 2006, in respect of his liability arising from the destruction of his goods due to a flood on the 10th October 2006.
- (2) Interest pursuant to S.26 of the West Indies Supreme Court Act 1967.
- (3) Costs.

(4) Such further relief as the Court may deem just.

- [2] The Claimant pleads that the policy of insurance (hereinafter referred to as 'the insurance policy') GCG/FC/003030 dated 3rd February 2006 made between the Claimant and the Defendant in consideration of the premium of EC\$2,362.50 paid to the Defendant by the Claimant, agreed for a period of 365 days, that is from 3rd February 2006 to 3rd February 2007, was to indemnify the Claimant for any losses sustained during that period by reason of fire or other peril in respect of his business stock situate at Melville Street, St. George's, Grenada.
- [3] On 28th October 2006 during the commencing of the insurance policy, the insured premises at Melville Street, St. George's, was flooded causing damage to his business stock.
- [4] The Claimant claims that pursuant to the terms of the insurance policy the Defendant was liable to pay the Claimant the sum of \$116,869.33 representing the value of his loss, but the Defendant has failed and/or refused to do so, and has repudiated their liability under the said insurance policy.
- [5] He claims the sum of \$116,869.33 or alternatively, damages for breach of contract, interest, costs and further relief if deemed just.
- [6] The Defendant in their defence deny that the Claimant's premises were flooded within the meaning of the insurance policy.
- [7] The Defendant denied liability under the policy due to the fact that the Claimant was in breach of paragraph 11 of the said insurance policy, in that he failed to deliver to the Defendant the information required and as a result the Defendant was unable to form a judgment as to whether or not the Claimant sustained any loss.
- [8] Condition 11 of the policy reads as follows:

"Condition 11: The insured shall also at all times at his own expense produce, procure and give to the Company all such further particulars,

plans, specifications, books, vouchers, invoices, duplicates or copies thereof, documents, proofs and information relating to the claim and the origin and cause the fire and circumstances under which the loss or damage occurred, and any matter touching the liability or the amount of the liability of the Company as may be reasonably required by or on behalf of the Company together with a declaration on oath or in other legal form of the truth of the claim and of any matters connected therewith.”

[9] By way of reply, the Claimant joined issue with the Defendant on its defence and repeated that the loss was covered by the insurance policy and that Condition 11 was not a condition precedent to the liability of the Defendant.

[10] By way of Amended Claim Form the Claimant claimed:

1. “Damages for breach of the terms of a policy of insurance No. GCG/FC/003030, issued to the Claimant by the Defendant, which is specifically pleaded and described in the Statement of Claim filed and served herewith;
2. In the alternative indemnity or compensation for loss suffered by the Claimant in consequence of flood damage to the Claimant’s stock-in-trade held at rented premises at the corner of Melville and Granby Streets, St. George’s, during the currency of the said insurance policy;
3. Interest on any award the Court may make at such rate and for such period as the Court shall deem fit;
4. Such further or other relief as the Court shall deem fit; and
5. Costs.”

[11] The Claimant also filed an Amended Statement of Claim which, in part reads as follows:

- a. On or about February 3, 2006 the Claimant proposed to the Defendant for insurance coverage for his business furniture, fixtures, fittings and other movables and his stock-in-trade at the Premises, represented as clothing, household items, cosmetics and electronics. The sum or value of the items proposed to be covered was stated to be \$225,000.00. A copy of the proposal form is annexed hereto marked "H1".
- b. The proposal having been accepted and the premium having been paid, the Defendant subsequently issued to the Claimant, Commercial Fire Policy No. GCG/FC/003030, though the same has not, to date, been actually delivered to the Claimant. The said policy was and remains assigned to First Caribbean International Bank. Subsequent thereto, the Claimant applied for and obtained extended coverage for his stock-in-trade on two occasions, namely on July 12th 2006 in the sum of \$50,000.00 and August 25th 2006 in the sum of \$30,000.00.
- c. The preamble to the policy provided as follows:

"The Company shall in the event of loss or damage arising during the Period of Insurance stated in the schedule or any subsequent period in respect of which the insured shall pay to the Company and it shall accept the premium required for the renewal of this insurance by payment or at its option by repair reinstatement or replacement provide indemnity or compensation as described in the following pages."

- d. Under the Special Perils Extension provisions of the policy, paragraph C thereof, the policy specifically provided for coverage and indemnity for loss resulting from flood. Explicitly, the policy provided:

"It is hereby agreed that this insurance covers loss or damage directly caused by: -

Flood which for the purposes of this extension shall mean the overflowing or deviation from their normal channels of either natural or artificial water courses, bursting or overflowing of public water mains and any other flow or accumulation of water originating from outside the building insured or containing the property insured ..."

The provision included certain exclusion clauses which bear no relevance.

- e. On or about October 28, 2006, while the aforesaid policy was in effect, the Premises were flooded by water, the source of which was heavy rainfall, which had entered the building through the damaged roof and accumulated on the floors above and found its way to the Premises below.
- f. In consequence of the said flood, a considerable amount of the Claimant's goods were damaged by the said flood water, resulting in loss to the Claimant.

Particulars of Loss

- a. Stocks and two showcases valued at \$116,869.33
- g. Immediately following the loss, on or about October 30, 2006, the Claimant submitted a claim for the aforesaid damage and loss to the Defendant and was subsequently visited by the Defendant's representative or adjuster for the purposes of assessing the loss and adjusting the claim. The Claimant was then asked by the Defendant or its adjuster for certain information as contained in the Adjuster's letter of November 2, 2006, a copy of which is annexed hereto marked "H2". The Claimant avers that he did prepare a bundle of the information required

and presented same to the Adjuster on a subsequent visit to the Premises, but that the adjuster only selected certain documents from the bundle to wit, the lease for the Premises, a letter from the Claimant to the Landlord dated November 25, 2004 and a reply thereto from the Landlord to the Claimant on even date and a letter from the Landlord to the Claimant dated May 22, 2006. Copies of these documents are annexed hereto respectively marked "H3", "H4", "H5", "H6". The Claimant continues to be possessed of the said bundle of documents requested and is prepared to deliver same to the Defendant at its request."

- [12] There was a request for further information filed by the Defendant on 12th June 2007 and that information was provided by way of a written response dated 27th June 2007.

REQUEST FOR FURTHER INFORMATION

You are requested to provide the following clarification or information under CPR 34:

1. Under paragraphs 3 and 4 of the Amended Statement of Claim filed on the 25th day of March 2007.

REQUEST: stating whether the roof of the premises was in a damaged state on the 3rd of February 2006, when the Claimant made the proposal for insurance coverage.

2. Under paragraph 10 of the Amended Statement of Claim filed on the said date.

(a) Of ... "the Claimant avers that he did prepare a bundle of the information required and presented same to the Adjuster on a subsequent visit to the Premise..."

REQUEST: please provide a list and description of all documents comprising the said bundle of information.

(b) Of "... visited by the Defendant's Representative or Adjuster..."

REQUEST: stating whether the representative was the Adjuster or some other person and, if so, whom.

(c) Of "... the Claimant was then asked by the Defendant or its adjuster for certain information ..."

REQUEST: stating whom on behalf of the Defendant made the said request.

Dated the 11th day of June, 2007

Signed

Henry, Henry & Bristol

Legal Practitioners for the Defendant

[13] **Response**

Messrs Henry, Henry & Bristol
Attorneys for the Defendant
Lucas Street
St. George's

1. **Under paragraph 3 and 4 of the Amended Statement of Claim filed March 25, 2007.**

REQUEST: Stating whether the roof of the premises was in a damaged state on the 3rd of February 2006 when the Claimant made the proposal for insurance coverage.

RESPONSE: The Claimant avers that the roof of the premises had been damaged by hurricanes Ivan and Emily and that in both instances, temporary repair measures were taken to replace missing galvanize sheets and that the Claimant was informed by the landlord's representative, one Wilcox Roberts, at the time of renting and prior to the proposal for insurance coverage, that it was intended to later do a complete renovation of the building,

including the roof. That renovative work had not been carried out at the time of the proposal.

2. Under paragraph 10 of the Amended Statement of Claim filed on the said date.

- (a) Of "... the Claimant avers that he did prepare a bundle of the information required and presented same to the Adjuster on a subsequent visit to the premises ..."

REQUEST: Please provide a list and description of all documents comprising the said bundle of information.

RESPONSE: List & Description of Documents:

1. Water damage on October 28, 2006 (handwritten) – 4 pages;
2. Situation of Hadeed Variety Store on August 15, 2006 (handwritten) – 3 pages;
3. Situation of Hadeed Variety Store on July 1, 2006 (handwritten) – 3 pages;
4. Situation of Hadeed Variety Store on January 1, 2006 (handwritten) – 2 pages;
5. Purchases since inventory (handwritten) – 1 page;
6. Sales of store for the months of July, August, September & October 2006 (handwritten) – 4 pages;
7. H's Variety Store financial statement year ending December 31, 2005 (printed) – 6 pages;
8. List of suppliers (handwritten) – 1 page;
9. Auditor (Phillip Gittens) (handwritten) – 1 page;

10. List of Banks (handwritten) – 1 page;

11. Assorted bills, invoices, receipts, customs declaration documents, etc. - 43 pages

(b) Of "... visited by the Defendant's Representative or Adjuster ..."

REQUEST: Stating whether the representative was the Adjuster or some other person and, if so, whom.

RESPONSE: The first visit referred to was from one Brent Phillip, an employee of ALAS Consultants on or about October 30, 2006, while the second visit referred to was from one Monte Ponton, on or about November 15, 2006.

(c) Of "... the Claimant was then asked by the Defendant or its adjuster for certain information ..."

REQUEST: Stating whom on behalf of the Defendant made the said request.

RESPONSE: The request was made via letter of November 2, 2006, under the hand of one Marshall, signing for Monte Ponton of ALAS Consultants. The letter is annex "H2" to the Amended Statement of Claim."

[14] An Amended Defence was filed on the 23rd July 2007. Among other things the Defendant stated:

4. "The Defendant denies that the Claimant's premises were flooded within the meaning of the policy and that his loss, which is not admitted, was caused by an insured peril, namely flood. A copy of the policy is annexed hereto and marked "C1". Save as aforesaid, paragraph 8 of the amended Statement of Claim is not admitted and paragraph 9 of the amended Statement of Claim is also denied.

6. The said policy contained the following condition precedent to the liability of the Defendant:

Condition 11: "The insured shall also at all times at his own expense produce, procure and give to the Company all such further particulars, plans, specifications, books, vouchers, invoices, duplicates or copies thereof, documents, proofs and information relating to the claim and the origin and cause the fire and circumstances under which the loss or damage occurred, and any matter touching the liability or the amount of the liability of the Company as may be reasonably required by or on behalf of the Company together with a declaration on oath or in other legal form of the truth of the claim and of any matters connected therewith.

No claim under this Policy shall be payable unless the terms of this Condition have been complied with."

7. In order to enable the Defendant to form a judgment as to whether or not the Claimant sustained the alleged or any loss, by letter dated 2nd November 2006, the Defendant requested the Claimant to provide certain information. (A copy of the said letter is annexed hereto and marked with the letters "C2")
8. In breach of Condition 11 referred to in paragraph 6 above, the Claimant has failed to deliver to the Defendant the said information as required as a result of which the Defendant was unable to form a judgment as to whether or not the Claimant sustained the alleged or any loss. The documentation presented by the Claimant to the Defendant's loss adjuster, Mr. Monte Ponton, are set out in a letter dated 7th December 2006 from said Monte Ponton to the Claimant. A copy of that letter is annexed hereto and marked "C3".

9. The Defendant denies that it's said loss adjusters were presented with all the documents referred to in paragraph 10 of the amended Statement of Claim and the Defendant repeats paragraph 8 above."

[15] A Reply to the Amended Defence was filed on 26th July 2007. The Amended Defence stated as follows:

2. In reply to paragraph 4 of the Amended Defence, the Claimant repeats paragraph 8 of the Amended Statement of Claim. Further, the Claimant contends, contrary to the said paragraph 4 of the Amended Defence, that the premises were flooded within the meaning of the Policy and that his loss consequential thereon was caused by flood as an insured peril within the meaning of the Policy. The Claimant will rely on the Common Law interpretation of flood as used within the Policy for its full force and effect.
4. In answer to paragraph 6 of the Amended Defence the Claimant avers that not having seen the original of his Policy, he can neither admit nor deny Condition 11 referred to by the Defendant. The Claimant avers however that insofar as the requirements in the said Condition 11 are concerned, the same were complied with by the Claimant pursuant to requests for delivery of information to the Defendant's representative or adjuster, Monte Ponton. The Claimant repeats paragraph 10 of the Amended Statement of Claim.
6. The Claimant denies any breach as pleaded in paragraph 8 of the Amended Defence or at all. The Claimant repeats paragraph 10 of the Amended Statement of Claim and paragraph 4 hereinabove. The Claimant further denies that the Defendant was unable to form a judgment as to whether the Claimant sustained the loss claimed. The Claimant refers to annex "C3" to the Amended Defence wherein the Defendant's said adjuster clearly formed the judgment that the Claim could not be considered fortuitous. The Claimant believes exhibit "C3" to be erroneous and now annex hereto the letter believed to be intended as the exhibit and which is marked "H7".

Further, the Claimant rejects as false, the allegation that the said letter of December 7, 2006 ("H7"), contained the documentation presented by the Claimant to the Defendant's said loss adjuster. The said letter makes no such allegation and in fact refers to an admixture of documents obtained both from the Claimant and otherwise.

7. In answer to paragraph 9 and 10 of the Amended Defence, the Claimant avers that the documents were presented to the said adjuster as pleaded and repeats paragraph 10 of the Amended Statement of Claim.

[16] A further Amended Statement of Claim was filed on the 28th November 2007, the only change was to paragraph 10 of the Amended Statement of Claim, which then reads as follows:

"10. Immediately following the loss, on or about October 30, 2006, the Claimant submitted a claim for the aforesaid damage and loss to the Defendant and was subsequently visited by the Defendant's representative or adjuster for the purposes of assessing the loss and adjusting the claim. The Claimant was then asked by the Defendant or its adjuster for certain information as contained in the Adjuster's letter of November 2, 2006, a copy of which is annexed hereto marked "H2". The Claimant avers that he did prepare a bundle of the information required and presented same to the Adjuster on a subsequent visit to the Premises, but that the adjuster only selected certain documents from the bundle to wit, the lease for the Premises, a letter from the Claimant to the Landlord dated November 25, 2004 and a reply thereto from the Landlord to the Claimant on even date, a letter from the Landlord to the Claimant dated May 22, 2006 and a handwritten document entitled "Water damage on October 28, 2006", comprising four (4) pages. Copies of those documents are annexed hereto respectively marked "H3", "H4", "H5", "H6" and "H7". The Claimant continues to be possessed of the said bundle of

documents requested and is prepared to deliver same to the Defendant at its request.”

- [17] The Claimant is a dentist who owned and operated a variety store selling various items of clothing, material and other miscellaneous items out of premises situate at Melville Street in St. George’s. He no longer practiced as a dentist having closed his practice in April 2005.
- [18] The Claimant took possession of the premises on or about the 25th November 2004 after the passage of Hurricane Ivan. He did so by way of lease of that date between himself and Demerara Mutual Life Assurance Society Limited. He occupied the ground floor of the building at a rent of EC\$3,600.00 per month.
- [19] The intended user of the space was for a pharmacy but the Claimant sought and received possession from the landlord to sell goods in the premises.
- [20] At the time the Claimant rented the premises it had already suffered damage from Hurricane Ivan (September 2004) and the roof was damaged at the time the Claimant rented the ground floor. He was informed by the landlord’s representative that a few sheets of galvanize had been replaced and that a more extensive renovation and repair would be carried out at a later date. No further work was carried out on the roof.
- [21] Business commenced at the store on 27th December 2004 and he testified that he had no problems with the premises between opening and Hurricane Emily which hit Grenada in July 2005.
- [22] The premises were insured with another entity at that time and the Claimant decided to make a change in insurers in early 2006. He contacted Susan Hagley, an agent of the Defendant and she visited the premises with a proposal form which he signed on 3rd February 2006.
- [23] At the time of the signing the roof of the building had already sustained further damage from Hurricane Emily. The roof at the relevant time was covered by a

blue tarpaulin. The Claimant avers that the tarpaulin was visible from the street at the time of the signing.

[24] The ceiling to the premises he occupied was wooden and he stated that he informed Ms. Hagley of this and states that she looked at the roof herself. This meeting having taken place, the Claimant paid the requisite premium. On 12th July and 25th August 2006 the Claimant applied for and obtained extended coverage for his stock in the sums of EC\$50,000.00 and EC\$30,000.00 respectively.

[25] The Claimant wrote to the Defendant Company informing them that the building was due for renovations commencing January 2007. This was prior to obtaining the second extended coverage.

[26] On or about 28th October 2006, torrential rains fell throughout the day. The Claimant did not open the store on that day because he was unwell. He went to the store the following day and discovered that there was extensive damage to his goods. He realized that water had come through the roof and the ceiling, and this is how his goods were damaged.

[27] On 30th October 2006, he informed the insurance company of his loss and testified that Brent Phillip visited the store on that day on behalf of the insurance company. He came to survey and assess the loss. Brent Phillip took pictures of the goods, ceiling and the floor, which still had 2-3 inches of water.

[28] Mr. Phillip requested that he take steps to minimize the damage by separating wet items from dry items, and he did so over a period of about 5 days.

[29] On the 2nd November 2006 the Claimant received a letter from the Loss Adjuster requesting documentation including, among other things, an inventory of damaged goods. The Claimant prepared same and it was ready by 15th November 2006.

[30] The letter from the Loss Adjuster read as follows:

“2nd November 2006
Our ref: 06-G-3929

Hadeed Variety Store
Cnr. Melville & Granby Street
St. George's, Grenada

Re: Policy number : GCG/FC/003030
Date of loss : 28th October 2006
Type of loss : Water Damage

Dear Sirs,

We are loss adjusters appointed by your Insurer in regards to the above noted loss. In this regard we will require the information listed below.

- List by area of damaged items along with supporting documentation in which a full description is provided including the supplier and manufacturer and approximate arrival date to inventory.
- Date of last physical inventory, copy of the inventory document and the names of individuals involved in the stock taking and of those who verified accuracy.
- Listing by month of purchases since physical inventory and the method of payment.
- Listing of the monthly sales since the physical inventory and where sales monies were deposited.
- Copy of last audited annual financial return.
- List of all suppliers including contact names and telephone/fax numbers.
- Name of Auditors, their address, telephone/fax contact and name of a contact person.
- Name of the company's Bank, their address, telephone/fax contact, account numbers and name of a contact person.

In the event that a physical inventory has not been completed in the last 12 months, we will require one be taken immediately.

Please note that we may need other information as the adjustment process proceeds and, if so, you will be notified accordingly.

Please forward the above requested information and/or documentation to the address noted on this letter or contact the undersigned and arrangement will be made for the collection of the same.

Yours sincerely,

(signed) Marshall
for Monte S. Ponton A.I. I.C

cc: CLICO International Insurance Company”

- [31] On 8th November 2006, ALAS Consultants wrote the Claimant requesting a copy of his lease for the premises and correspondence between him and the landlord. The letter also stated that they had information that he was a tenant of the premises prior to Hurricane Ivan. He provided the requested document. It reads as follows:

“8th November, 2006
Our ref: 06-G-3929

Hadeed Variety Store
Cnr. Melville & Granby Street
St. George's, Grenada

Re:	Policy number	:	GCG/FC/003030
	Date of loss	:	28 th October 2006
	Type of Loss	:	Water Damage

Dear Sir,

Further to our letter dated 2nd November 2006, it has being brought to our attention that you were a tenant in the building prior to Hurricane Ivan. From all indication the said building was damage and not repaired to date.

We are requesting a copy of the lease agreement or any other document between Hadeed Variety Store and Demerara Life Insurance Company as it relates to you occupying the property post Hurricane Ivan.

Please note that we may need other information as the adjustment process proceeds and, if so, you will be notified accordingly.

Please forward the above requested information and/or documentation to the address noted on this letter or contact the undersigned and arrangements will be made for the collection of the same.

Your sincerely,

(signed) Monte S. Ponton A.I.I.C

cc: CLICO International Insurance Company

- [32] When he first sorted the damaged items he completed the process by 30th October 2006, but when Mr. Phillip saw what he had done he was not satisfied and he requested that it be re-done. It took him another seven days to do so. He called Mr. Phillip and was told that a Mr. Ponton was going to be doing the job but that he was off island. Mr. Phillip made an appointment for Mr. Ponton, who visited the store on or about the 15th - 16th November 2006.
- [33] He said that Mr. Ponton visited the premises, glanced around and declared that "this was not a flood". Mr. Ponton requested a copy of his lease and correspondence between himself and his landlord. He asked Mr. Ponton if he did not want to count the goods and he said that there was no need as the damage was not covered by the policy.
- [34] He showed Mr. Ponton the bundle of documents he had prepared after the 2nd November 2006 request and Mr. Ponton inquired why he had so many inventories. He presented Mr. Ponton with the bundle and Mr. Ponton took the list of damaged goods dated 28th October 2006, inventory dated 15th August 2006, letters between the Claimant and landlord and other documents including the lease for the premises. Mr. Ponton left the other documents behind at the store.
- [35] He did not hear from the Defendant for some time thereafter until he was summoned to a meeting on 28th November 2006. At this meeting he was told that the claim was not fortuitous which he understood to mean was not accidental.

- [36] He subsequently saw a report from the adjuster which stated that his rent had been lowered, but says that assertion was false. It also suggested that his claim was overstated and that too was false.
- [37] He denied that he is in breach of Condition 11 of the insurance policy and asserts that he did all in his power to provide the information requested to facilitate the claim.
- [38] On cross-examination the Claimant stated that when he first came to Grenada in 1996 he did not understand much English but his English had improved over time. He said he knew and understood the meaning of the word 'accumulate' and gave his explanation of the word.
- [39] He stated that water did come from the ceiling to the ground floor but that these were minor drops. This was prior to 28th October 2006. He stated that his business was on the ground floor of the building.
- [40] There was a floor above him with offices and above those offices was another floor, which was empty. Above that empty floor was the roof. He did not have access to the floor above him.
- [41] He testified that the rain of 28th October 2006 was heavier than the rain between August 2005 and 26th October 2006. When he went to the store on 29th October 2006, he saw that the town was flooded. He did not know what the word 'torrential' meant, but he could say that the rains which fell were much heavier than before.
- [42] Having heard that St. George's was flooded on 28th October 2006 he went to his business place on 29th October 2006. He informed the Defendant of the damage to his goods by attending the Defendant's offices. Brent Phillip met him at the store on 30th October 2006. He stated that he was in the store between the 31st October 2006 and 8th November 2006.

- [43] He met with Brent Phillip at the store on 8th November 2006, and between 8th November and 15th November 2006, he was classifying the damaged goods in order for the adjuster to view them.
- [44] He waited to hear from the insurance company about his claim between 15th November 2006 – 28th November 2006 as to whether they were going to accept or reject the claim.
- [45] He said he was trying to contact a lawyer to help him with the claim. CLICO had denied the claim, they never told him they denied his claim, but he was told several times that his loss was not fortuitous and not covered by the insurance policy.
- [46] He received a letter from ALAS Consultants on 7th December 2006 stating the same thing, and he understood from that letter that his claim had been denied. That even though that letter had requested further information (if he had any) he did not provide any as he had already submitted all that he had. He indicated that he did not inquire of Mr. Ponton why he did not acknowledge receipt of the other documents which he provided to him. The letter dated 7th December 2006 stated:

Hadeed Variety Store
Cnr. Melville & Granby Street
St. George's, Grenada

Attention: Dr. Nizar Hadeed

Re:	Policy number	:	GCG/FC/003030
	Date of loss	:	28 th October 2006
	Type of loss	:	Water Damage

Dear Sir,

As you are now aware we are loss adjusters appointed by your Insurer in regards to the above noted loss. In this capacity we have requested from you information in support of your claim, general information on your tenancy in the building of reference, held discussions with you and made general enquiries. We have obtained documentation which is listed below:

- 30th November 2006 Letter to the manager of CLICO from Dr. Nizar Hadeed;
- 25th August 2006 Proposal For Policy Amendment Form;
- Undated 3 page damage listing with values;
- 19th July 2006 Letter to the Manager of CLICO from Dr. Nizar Hadeed;
- 22nd May 2006 Letter to Dr. Nizar Hadeed from Wilcox Roberts, Branch Manager;
- 3rd February, 2006 signed Proposal for Commercial Fire Insurance;
- 25th November 2004 Letter to the Manager, Demerara Mutual Life from Dr. Nizar Hadeed;
- 25th November 2004 Letter to Dr. Nizar Hadeed from Wilcox Roberts;
- 25th November 2004 Lease Agreement between Demerara Mutual Life Assurance and Dr. Nizar Hadeed.

Upon review of all relative information we reported to your Insurer and as per their instructions we write to advise that the basic principle of Insurance is that a loss must be fortuitous. In this regard you were aware prior to the proposal of coverage and after the issuance of the policy that the property at risk was confined in a building that was lacking a reasonable standard repair which would afford protection from elements such as rain. Accordingly damage as caused by rainwater entering through a roof which required repairs cannot be considered fortuitous thus the resulting damage would not be covered by any property policy of insurance.

In conclusion we present to you our findings along with the listing of documentation in our possession. Should you have further information and/or documentation for our consideration please contact the undersigned.

Yours sincerely,

(signed) Monte S. Ponton A.I.I.C

cc: CLICO International Insurance Company

[47] He insisted that he gave Mr. Ponton the information he requested and that those documents were to assist Mr. Ponton in assessing his claim. He stated that he put Mr. Ponton in a proper position to assess his claim between the 15th – 16th November 2006. He said he offered Mr. Ponton a bundle of documents but Mr.

Ponton only took six of the documents out of the bundle, and left the others behind.

- [48] He added that he asked Mr. Ponton for advice and was told to contact a lawyer, understand the insurance policy and the lease agreement. He admitted that these allegations were not in his witness statement.
- [49] The ceiling that Ms. Hagley looked at was the ceiling of his store. He repeated that he had no access to the floors above him.
- [50] Before 28th October 2006, there would be drips of water, and rain would come through the tarpaulin. He would cover his goods with plastic because of the drips.
- [51] He indicated that the day after the flood he visited the store and looked at the ceiling and there was water dripping from the ceiling. He said he knew the water had accumulated on the floor above the store because on that Sunday there was no rain and that water was dripping from the ceiling. He did not go to the upper floor and he did not see an accumulation of water.
- [52] He stated that the letter sent by his lawyers to CLICO in May 2007 were the documents requested by them on 2nd November 2006, but he went on to say that he had already offered these documents to the adjuster on the 15th – 16th November 2006.

That was the Claimant's case. The defence called two witnesses.

- [53] Monte Ponton is a Loss Adjuster and has been so for 35 years. He is the Managing Director of ALAS Consultants whose offices are situated at Lance Aux Epines, St. George's. He qualified as an adjuster in 1978 and has worked in Canada, the US Virgin Islands, Puerto Rico and Antigua. He worked in Grenada between 2000 - 2007, and at the time of his witness statement he managed an office in Barbados and supervised the office in Grenada.

- [54] In October, 2006 ALAS were appointed as the loss adjuster for the Defendant. They received instructions that the Claimant had suffered water damage and the Claimant was insured for this risk.
- [55] By way of letter dated 2nd November 2006 he formally requested of the Claimant information (8 items) which should be provided in support of a loss of the nature claimed by the Claimant.
- [56] He said the only information provided to him was a listing of claimed damaged items. He said the other seven items were never presented by the Claimant, and the document provided was only partially complete.
- [57] On 25th May 2007, the Claimant through his lawyers provided all the requested items and he received the items around 12th June 2007 through his lawyers. He further requested a copy of the Claimant's lease agreement and received same.
- [58] He visited the Claimant's store on 8th November 2006 with the Claimant. He does not specifically recall telling the Claimant that the loss was not due to a flood but admits that it was possible that it was discussed as an adjuster should be clear about a claim and not lead anyone to think that there is coverage when the insurers have concerns about the loss. He did not count the stock as he had no reason to doubt the numbers but the information in support of the items were never offered or supplied.
- [59] He wrote the Claimant on 7th December 2006 listing the information that had been provided and advised him that his loss could not be considered fortuitous and asked if the Claimant could provide further information.
- [60] He denied that the Claimant presented him with a bundle of documents and said if those documents had been provided he would have taken them. The first time he received the documents requested on 7th December 2006 was in June 2007.

- [61] He reiterated the cause of the loss was not accidental as the Claimant admitted that there were minor drops of water entering his place of business prior to 28th October 2006.
- [62] The information he received in June 2007 was too late to enable him to investigate or verify the claim.
- [63] In cross-examination he stated that as a Loss Adjuster his role was impartial. He reports to the company the facts as he sees them, and that he works neither for insurer or insured.
- [64] The water damage reported by the Claimant occurred on 28th October 2006. He was appointed Loss Adjuster on 30th October 2006. Brent Phillip was his employee but he could not comment on whether Mr. Phillip visited the Claimant's business place on 30th October 2006.
- [65] He said before he sent the letter of 2nd November 2006 to the Claimant, he did not visit the premises and he was not sure that Mr. Phillip had either, but both he and Mr. Phillip visited between the 15th – 16th November 2006 and during the visit he had the opportunity to inspect the premises.
- [66] He requested the information in the letter 2nd November 2006 as a supplement to the condition of the policy for the advancement of the claim. This supplement takes into consideration that the policy condition is general and list specific to the information that would have been needed to quantify the loss.
- [67] He agreed that notice of the loss was given to the insurance company forthwith, and that the Claimant had fifteen days in which to comply with Clause (a) of Condition 11 of the insurance policy.

“Condition 11: On the happening of any loss or damage the Insured shall forthwith give notice thereof to the Company, and shall within 15 days after the loss or damage, or such further time as the Company may in writing allow in that behalf, deliver to the Company.

- a. A claim in writing for the loss and damage containing as particular an account as may be reasonably practicable of all the several articles or items of property damaged or destroyed, and of the amount of the loss or damage thereto respectively, having regard to their value at the time of loss or damage, not including profit of any kind.
- b. Particulars of all other insurances, if any.

The Insured shall also at all times at his own expense produce, procure and give to the Company all such further particulars, plans, specifications, books, vouchers, invoices, duplicates or copies thereof, documents, proofs and information with respect to the claim and the origin and cause of the fire and the circumstances under which the loss or damage occurred, and any matter touching the liability or the amount of the liability of the Company as may be reasonably required by or on behalf of the Company together with a declaration on oath or in other legal form of the truth of the claim and of any matters connected therewith."

No claim under this policy shall be payable unless the terms of this condition have been complied."

He accepted that the policy should include "as may be reasonably practicable items/articles damaged or destroyed."

[68] He agreed that the Claimant had provided ALAS with a list and that he had complied with paragraph (a) of Condition 11. He accepted Condition 11 does not refer to any specific documents other than those specified in part but the condition is qualified further by requiring such documents in support of the claim as requested by the insurance company.

[69] The items listed in the 2nd December 2006 letter were items identified by him as being necessary in his own judgment. But these items were not provided by the Claimant by 30th November 2006. They were only received in June, 2007. He

stated he would not have necessarily been in a position to process the claim at that time (June 2007), but they may have been able to review the claim at that time.

[70] He agreed that the conduct of insurance business should be in the utmost good faith. He further agreed that the letter of 2nd November 2006 did not state that if the information requested was not provided the claim would fail.

[71] He further admitted that the letter of 7th December 2006 does not state that there were documents which had not been received by the loss adjusters; the thrust of that letter was that the loss was not fortuitous.

[72] He agreed that the letter (to the Claimant) of 2nd November 2006 requesting certain documents could not assist in coming to a determination as to whether there was a flood or not at the insured premises.

[73] He stated that he determined that the loss in question was caused by the poor condition of the roof of the building, but he admitted that he had come to this determination initially on third party reports not on his own observations.

[74] He stated that it was common knowledge that most roofs in Grenada were damaged by Hurricane Ivan in September 2004. He said that he was unaware that the damaged galvanize was replaced on the roof of the insured premises after Ivan. He became aware of this for the first time as he was giving evidence in court.

[75] In answer to the Court he stated that if the insurance company had information at the inception of the policy which would affect a prudent underwriter's decision to accept or reject a risk, that information would have a bearing on whether the risk is undertaken or not.

[76] He also stated that he had no knowledge as to whether the insurance company knew of the state of repair of the building at the time of the issue of the policy.

- [77] The final witness was Brent Phillip. He worked for ALAS Consultants with Monte Ponton. He stated that on 30th October 2006 his company received instructions from the Defendant Company with regards to water damage at the Claimant's store in St. George's. He visited the store on 1st November 2006 and he observed water on the floor and dripping from the ceiling. He spent approximately 25-30 minutes at the premises. He inquired of the Claimant what happened and he told him of not being in the store on the Saturday but was at the store on Sunday and observed that water had come through the roof and damaged his goods.
- [78] He said that the Claimant said he had experienced this problem before and he would normally cover the goods in the store with plastic, but because of the amount of rain that fell the plastic was unable to stop the water from wetting his items.
- [79] He observed clothing, shoes, and fabric and some of the fabric and clothing showed signs of changing colour.
- [80] He advised the Claimant that he ought to separate the wet items from the dry ones and he should provide a detailed listing of the damaged items, their cost, selling price, date purchased and from whom purchased.
- [81] He further requested a copy of the last detailed inventory. The Claimant asked him how long the process would take and he responded that he would need the requested information and that Monte Ponton may require additional information.
- [82] The Claimant told him that it would take him about one week to provide the requested information. He took photographs of the damaged items and the building. He reported to Monte Ponton who suggested that they write the Claimant, and the letter of 2nd November 2006 was sent.
- [83] He and Mr. Ponton returned to the insured premises on 8th November 2006 and he said he observed the property in an unchanged condition and again requested that arrangements be made for the proper drying of damaged goods.

- [84] He said the Claimant told him that prior to 28th October 2006, minor rain drops would enter the building causing him to cover his stock with plastic sheets. In total he may have made three visits to the insured premises; and when he visited with Monte Ponton, they spent approximately 10-15 minutes at the premises.
- [85] He also stated that he inspected other areas of the building, including the floor above the Claimant's store, but he was not quite sure if the building was a three storey building.
- [86] I find as a fact that there were torrential rains in the town of St. George's on the 28th October 2006. Further, I find that the Claimant's premises were subject to water damage, more particularly his stock in trade were damaged by water on or around that date.
- [87] I further find that at the time of these rains, the Claimant had a valid policy of insurance with the Defendant Company. That policy took effect from 3rd February 2006 and was valid and subsisting at the time of the rains on 28th October 2006. It was due to expire on 3rd February 2007 at 4:00 p.m.
- [88] That the original sum insured was for EC\$225,000.00 with a premium of EC\$2,362.50. I find that the Defendant Company representative Susan Hagley attended the premises of the Claimant prior to the issuance of the said insurance policy and that she inquired of the Claimant what the roof to his premises was made of but made no inquiry as to the roof of the building.
- [89] I also find that the roof of the building had been damaged by Hurricane Ivan but that the landlord had effected temporary repairs to the said roof and that a portion of the roof was covered by a blue tarpaulin and intended (as per the lease) to effect substantial repairs at a later date.
- [90] There were two additional occasions when the Claimant applied for and received additional coverage on the same premises. The additional amounts were for EC\$50,000.00 and EC\$30,000.00 respectively. All the necessary premiums had been paid.

- [91] That the Claimant subsequent to the 28th October 2006 informed the Defendant Company of the damage to his premises on or about 30th October 2006. On or about 1st November 2006, Brent Phillip of ALAS Consultants visited the Claimant's premises and spoke with the Claimant and took photographs of the premises.
- [92] A letter dated 2nd November 2006 was sent from ALAS Consultants to the Claimant requesting certain documentation from him. The Claimant prepared a bundle of documents and this was ready by 15th November 2006. The Claimant received another letter from the Defendant Company requesting a copy of the lease of the premises.
- [93] I find that the Claimant did provide the loss adjusters with some of the information they had requested as well as the lease of the premises.
- [94] I find that ALAS Consultants by the 7th December 2006 had concluded that the damage was not fortuitous and wrote the Claimant to that effect.
- [95] Even though they (ALAS) claimed that they had not received all the information which they requested, they came to a conclusion that rainwater had come through a defective roof and the damage was not covered under the relevant policy of insurance.
- [96] And even though according to Monte Ponton he did not get the information requested, he was able to conclude that the damage was not covered by the policy and was not fortuitous.
- [97] Further, according to Mr. Ponton, the documents set out in the letter dated 2nd November 2006 could not assist him in determining whether there was a flood or not at the Claimant's premises.
- [98] One wonders why then were these items asked for if they were of no use in coming to this determination.

Issues

[99] There is basic agreement by both parties as to the issues arising in the suit.

1. Whether the Claimant's goods were damaged by a flood within the meaning of the policy of insurance.
2. Whether the Claimant has complied with Condition 11 of the policy of insurance in all aspects.
3. Whether Condition 11 of the insurance policy is a condition precedent to the satisfaction of the claim.
4. Whether the Claimant is entitled to be indemnified by the Defendant Company.

Whether the Claimant's goods were damaged by a flood within the meaning of the insurance policy.

[100] The term 'flood' is defined in the subject policy of insurance as follows:

"Flood shall mean the overflowing or deviation from their normal channels of either natural or artificial watercourses, bursting or overflowing of public water mains and any other flow or accumulation of water originating from outside the building insured or containing the property insured ..."

[101] It is for the Claimant to prove to the Court that the loss suffered was due to the insured peril, to wit, a flood. In **Young v Sun Alliance & London Insurance Ltd**¹ Shaw LJ quoting the judge at first instance said,

"People often use the word 'flood' colloquially to describe an overflow of water in their houses, such as a sink overflowing: but in my judgment it is not what is meant by "flood" in the insurance policy. A "flood" is something large, sudden and temporary, not naturally there, such as a river overflowing its banks. In my judgment the water in the plaintiff's

¹ [1976] 3 All ER 561 at p. 563

lavatory was not there as a result of a 'flood' within the meaning of the policy."

The learned judge himself went on to opine that "flood was not something which came about by seepage or by trickling or dripping from some natural source, but involved a large movement, an eruption of water, as one of the definitions in the Oxford dictionary puts it."

[102] The Oxford dictionary defines a flood as follows:

"The overflowing or deviation from their normal channels of either natural or artificial watercourses, bursting or overflowing of public water mains and any other flow or accumulation of water originating from outside the building insured or containing the property insured ..."

[103] In an insurance policy, as in any other document, the words used must be construed and interpreted in their plain natural and ordinary meaning. Unless there is a particular context which changes or limits or restricts the meaning of any given word or words, words are to be given their normal and natural meaning.

[104] In **Rohan Investments Ltd v Cunningham & Others**² Robert Walker LJ quoted the judge at first instance in describing the cause of the damage in question as "an ingress of water over the top of the flashings or through some defect in them."

[105] Auld LJ in his judgment gave a clear explanation of the word "flood" and I adopt wholly his approach to the issue in deciding whether the damage or loss in this matter was caused by a flood.

"In *Computer Systems*, Lord Justice Beldam drew on that approach on the facts of the case to identify two, possibly three, characteristics of a flood in a similar collection of risks in the JCT form of contract, namely:

One, the rapid accumulation in or sudden release of water from an external source; two, the large volume of water; and three, usually but not necessarily, the result of a natural phenomenon.

It is important when considering the applicability of any of those characteristics to particular circumstances to keep in mind that the flood

² [1998] EWCA Civil Division 44

causing damage to a property and/or its contents is that affecting the building and those contents, whether or not it is part of some larger climatic flooding of the area in which the building stands.

Here the flood is the escape of the water, as the Judge found, from the roof into the property, regardless of the fact and cause of the previous accumulation of water on the roof giving rise to it. Looked at in that way, it seems to me confusing to require of that direct cause of damage various characteristics appropriate to climatic and widespread events such as storms and tempests. Flooding may or may not result from such weather extremes. It may result from prolonged and steady rain and steady slow build-up of water, eventually damaging property. It is nonetheless a flood and capable of causing severe water damage against which a household insurance of this sort is, I believe, intended to provide cover.

As to the volume of water, it is the water that enters and damages the property that is important, not the area or depth of flooding outside that accounts. And as Lord Justice Cairns observed in *Young*, whether there is a sufficiently large quantity of water to constitute a flood for the purpose is largely a question of degree. I add that that also depends on the size of the property affected relative to the amount of water.

As to the naturalness of the phenomenon, I share Lord Justice Beldam's caution in *Computer Systems* in so confining the origin of the accumulation giving rise to a flood causing damage to property. I doubt the relevance of the precise cause of that accumulation, notwithstanding the association of the word 'flood' with storm and tempest common in such policy conditions. A flood is no less a flood, whatever its originating cause. The fact in this case that the blocked outlet may have contributed to the flooding of the water into the house does not change that. To require, as Miss Egan suggested, some natural phenomenon which the householder can do nothing about is to confuse the task of identifying the insurable event with such preconditions of liability as insurers commonly include in their policies to protect them against negligence on the part of their policy holders.

In my judgment, even taking all the criteria identified in *Young* and *Computer Systems* upon which Miss Egan relied as useful guidelines, the Judge was entitled to conclude on the facts as he found them that there was a flood constituting an insurable risk and that it caused the material damage. However, for the reasons I have given I doubt whether he needed to be so constrained. In my view, he was entitled so to conclude on the facts, giving the word 'flood' its ordinary and natural meaning in the context of this policy document."

[106] The Claimant has not provided the Court with any imperical proof on a balance of probabilities that there was a large movement of water or an eruption of water as one of the Oxford dictionary definition requires. But, rather, as what was described by the Claimant before, it was more likely that the damage was caused by dripping, seepage or trickling of water through the already damaged roof of the building over the period of the rainfall which occurred on 28th October 2006.

[107] There is no evidence as to how the damage to the Claimant's goods occurred. There is no evidence as to whether it was due to an accumulation of water or a sudden eruption of water or whether it was due to the rain coming through a defective roof and dripping into the Claimant's premises.

[108] The Claimant himself said that he did not go to the floor above him to see what had happened. The Claimant has made an assumption as to what happened, the Court is not in a position to do so.

[109] Taking into account all the relevant factors and construing the word 'flood' in its ordinary meaning, I find that the loss suffered by the Claimant on 28th October 2006 was not as a result of a flood and this was not a risk covered by the policy of insurance between the Claimant and the Defendant Company.

2. Whether the Claimant has complied with Condition 11 of the Policy of Insurance in all aspects, and

3. Whether Condition 11 of the Insurance Policy is a condition precedent to the satisfaction of the Policy

[110] These two issues are so closely tied together that I will deal with them together. The Defendant Company through its Loss Adjuster had admitted that the Claimant had complied with part (a) of Condition 11 of the policy, that is the claim in writing for the loss or damage with an account of the items and articles damaged or destroyed.

- [111] The Claimant contends that he delivered to the Defendant Company through its agent all relevant information regarding the flood and the damaged goods.
- [112] He further contends that he delivered the inventory and the list of damaged goods and that the Loss Adjusters visited the premises and had the opportunity to inspect not only the premises but also the damaged goods. He provided the Defendant Company with further information, the lease and correspondence between himself and his landlord and that no further relevant information that the Defendant Company could have required in order for them to determine whether or not he had suffered a loss.
- [113] The Claimant's evidence is that upon receipt of the letter dated 2nd November 2006, he provided all the documentation requested by ALAS Consultants. That Monte Ponton came to the store around 15th – 16th November 2006. The Claimant presented him with the bundle of documents which the Defendant had requested but that Mr. Ponton went through the documents and only removed three of the documents and left the remaining ones.
- [114] This Court is hard pressed to believe this evidence. Mr. Ponton is an experienced Loss Adjuster. His company having written to the Claimant requesting certain documents, and, these documents having been produced, why would he only take some documents and not others from the bundle? Why then did the Loss Adjuster request the bundle?
- [115] I do not believe the Claimant on this aspect of his evidence. I do not believe that the Claimant ever complied fully with the request contained in the letter of 2nd November 2006 until his lawyers sent all the requested information to the Defendant's Solicitors in a letter dated 25th May 2007, some seven (7) months after the loss occurred. That letter speaks to the documents requested by way of letter from ALAS dated 2nd November 2006.

- [116] Interestingly, despite the Claimant's assertions that he had previously provided the information, the letter of 25th May 2007 makes no mention of the information being previously provided by the Claimant and/or its refusal by ALAS.
- [117] While nothing turns on this particular fact, but it does speak to the credibility of the Claimant. But even if I believed the Claimant that he had provided all the information requested of him, Condition 11 does not end there.
- [118] It states that the insured shall produce such documents as may be "reasonably required by or on behalf of the Company".
- [119] This is within the perview of the Defendant Company to determine what may be reasonably required.
- [120] The Defendant's Company agent did not request every document under the sun, as suggested by the Claimant. They requested such documents as they deemed necessary to determine the claim.
- [121] The letter of 2nd November 2006 requested the following documents:
- List by area of damaged items along with supporting documentation in which a full description is provided including the supplier and manufacturer and approximate arrival date to inventory.
 - Date of last physical inventory, copy of the inventory document and the names of individuals involved in the stock taking and of those who verified accuracy.
 - Listing by month of purchases since physical inventory and the method of payment.
 - Listing of the monthly sales since the physical inventory and where sales monies were deposited.
 - Copy of last audited annual financial return.
 - List of all suppliers including contact names and telephone/fax numbers.

- Name of Auditors, their address, telephone/fax contact and name of a contact person.
- Name of the company's Bank, their address, telephone/fax contact, account numbers and name of a contact person.

[122] Looking at the information requested this Court is not of the view that any of the documents could be described as irrelevant or immaterial to the claim and the Claimant has not shown that any document requested could be so categorised.

[123] Condition 11 is clear, it does not allow for the Claimant to produce the documents he sees it fit to produce; he is bound as the insured to "produce, procure and give" to the Company documents "as may be reasonably required; by or on behalf of the Company."

[124] Indeed Condition 11 must be construed in the context of the entire insurance policy document and the circumstances of the claim. It is not for the Claimant to decide as the insured what is reasonably required it is for the Defendant Company and its agents to do so.

[125] It is certainly for the Loss Adjuster to determine what information he requires in order to settle a claim one way or another, and I find that this is what ALAS did in this matter. Looking at all the circumstances I find that the requests of the 2nd November 2006 letter to have been reasonable.

"A condition precedent is a term going to the root of the contract in relation to its validity in origin. Whether a term is of this type may depend on the ruling given by the Court as to whether taking the contract as a whole, the term in question was fundamental to the whole contract, but the same result can be achieved if the parties have agreed that a term, otherwise less than a fundamental term, is to be deemed a condition precedent."

"There is no obligation on the insurer to relate a condition to a particular aspect of the policy..."

“However, great force is given to the language which the parties themselves have chosen to adopt.”³

[126] In **Welsh v Royal Exchange Assurance**⁴ where the clause in question was in similar terms as Condition 11 in this matter, Slessor, LJ stated:

“I don’t think the arbitrator indicates any finding on the question whether they afforded him any material in assessing the amount of the loss ... If they did not, apparently these accounts were of absolutely no importance, or even of relevance in the case, though he finds that the respondents, before they saw them, had reason to think they might be material and therefore “reasonably required” their production. The question therefore is whether the appellant having acted stupidly and obstinately, but not dishonestly, is upon the construction of the terms of the policy barred from any indemnity for this very serious loss. The arbitrator has upheld the contention of the respondents. Branson J in a very careful judgment has agreed with him. After anxious consideration I am constrained, with some regret to agree with them.”⁵

[127] And further at page 311 of the same judgment Slessor, LJ continues:

“... the promise in the body of the policy is “subject to the conditions which so far as the nature of them permits shall be deemed to be conditions precedent to the right of the insured to recover. In Condition 4 there is the provision that “the insured shall give all information as shall reasonably be required”. The nature of this requirement does permit compliance with it to be a condition precedent to the right of the insured to recover. It is found by the arbitrator that it has not been complied with. There has therefore been a breach of a condition precedent to the right of recovery.”⁶

³ Halsbury’s Laws 4th Ed. Vol. 25 para. 406

⁴ [1939]1 KB 294

⁵ At page 310

⁶ At page 311

[128] I find that in this matter, the Claimant finds himself in a similar position. He has failed to produce the documentation required as a condition for him to recover under the policy.

[129] Further, he has failed to provide the declaration under oath or other legal form of the truth of the claim, and any matter connected with it.

[130] Clearly, these were conditions precedent to him successfully recovering any monies under the policy of insurance. I use the definition furnished to the Court by the Claimant himself:

“A condition precedent is an express or implied stipulation to a contract, that (a) a contracting party must perform its part before it can demand performance from others, or (b) a certain event must occur before a party has right to performance or to demand damages for non performance.”

[131] The Claimant here agreed to do certain things pursuant to Condition 11 before he could successfully make a claim and receive payment under the terms of the policy.

[132] He has failed to do that which he agreed to do. He cannot now expect to have the benefit of the terms of the policy. The claim is not payable unless the terms of Condition 11 have been fulfilled.

4. Whether the Claimant is entitled to be indemnified by the Defendant Company

[133] Having answered the preceding questions, the short answer to this question is no. Having failed to adhere to the terms of the condition precedent, no liability lies with the Defendant Company to pay the Claimant.

[134] In the circumstance I hereby order that:

1. The Claimant's claim is hereby dismissed.

2. Costs to the Defendant in the sum of \$17,530.00

[135] I wish to thank Counsel for their insightful submissions in this matter.

Margaret A. Price Findlay
High Court Judge