

Offices 902, Tower 2
Al Fattan Currency House
DIFC
PO Box 507104
Dubai
United Arab Emirates
T +971 (0)4 397 8565
www.dwf.law

DWF (Middle East) LLP



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By email only:

f.abdelaziz@jurisera.com

Your Ref:

Our Ref: 19984/2041229-2/85093640V1

Please quote this when replying

Date: 24 May 2023

Please ask for: Victoria Clucas

Direct Dial: +971565468630

E-mail: Victoria.Clucas@dwf.law

Dear Mr Fouad Abdelaziz,

Water Leakage at Warehouse – Harun al-Rashid Street, Sulay, Exit 16, 11361 Riyadh, Saudi Arabia

Claim for Alleged Damage – Incident Date 31 July 2022

Thank you for confirming by email, dated 18 May 2023, that you are the legal counsel instructed by Metra in respect of the above referenced matter.

This claim relates to alleged damage to IT equipment and supplies (the "**Goods**"), said to have occurred as a result of a water leak through the roof of a warehouse following heavy rain on 31 July 2022.

We assume that you have been provided with all correspondence between the parties, the adjuster and Marsh, and are therefore up to date with the current position on the claim. You will note the correspondence includes requests for information that remain outstanding from Metra, which would assist with GIG's review and resolution of this claim. It is unsatisfactory that Metra have failed to provide this information before seeking a settlement offer from GIG.

We have in any event repeated GIG's position below to provide context to the claim.

1. **The Claim**

As you are aware any claim made under Metra's Marine Open Cover Policy held with GIG, must evidence physical damage as a pre-requisite to cover.

The claim presented by Metra to GIG was initially \$722,333 based on 3,076 items. The claim was reduced several times after inspections revealed that many items showed no evidence of physical damage.

The final claimed amount was presented by Metra in a spreadsheet received on 18 January 2023 (attached for your ease of reference) and was for 2,731 items valued at \$510,389.80 (the "**FCA Spreadsheet**").

Analysis of the FCA spreadsheet by GIG's expert, Tony Sykes, revealed that of the 28 pallets containing the Goods, five pallets contained high numbers of the same product and represented \$323,359 in value,

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or 63% of the value of the claim. These pallets were selected for a more detailed inspection by loss adjusters MatDan in February 2023, who opened each item looking for evidence of damage.

The five pallets contained laptops and replacement ink/ toner cartridges. The ink / toner cartridges showed **no evidence of damage** at all and of 377 laptops which were unpacked and inspected, **only one showed evidence of damage**.

Metra's position appears to be that wetting to the outer packaging is physical damage to the Goods themselves. GIG do not accept this and do not agree with Metra that we are dealing with a 'total loss' situation. By way of example, if the power supply or user manual for a laptop were to be damaged, this would not be considered a 'total loss' and the item would simply be replaced.

Further, where items are onward shipped in bulk there is no issue with replacing the outer packaging with a new one. However the cost of replacement packaging, which GIG's expert anticipates would be minimal, would be an acceptable claim. We note that Metra have made no effort to replace or assess the cost of replacement packaging.

If inner packaging is shown to be damaged, then there should be an attempt to get the supplier to provide fresh packaging and if they refuse, then the goods should be treated as "open box products" and sold accordingly.

Further we note that Metra seek to suggest that no supplier will contemplate goods that have evidence of water damage to their outers and will always treat them as a total loss. GIG's expert advises that this may well be the case for an international OEM in the case of mission-critical servers, however, that would not apply to standard laptops and certainly not to ink cartridges. Laptops and toner cartridges make up 84% of the current claim.

2. Mitigation

There is dramatic footage of water cascading down from the failed roof onto stock outers. Someone was able to film the water ingress from the failed roof and yet, seemingly, no one was able either to move the stock to safety or protect it.

Shrink wrap on pallets appears to be inadequate. The shrink wrapping and the outers themselves provide the second level of protection (after the roof of the warehouse). The shrink wrapping failed because it was not adequately maintained. The outers appear to have done their job and soaked up some water preventing it penetrating deeper towards the Goods- resulting in no damage to the Goods.

There is no apparent evidence of the deployment of pumps and de-humidifiers. The Goods should have been opened urgently to prevent soak into the inner packaging. This does not seem to have been done. We understand that Metra was prevented from doing that because they could not get the necessary authority from "head office". This is unacceptable to GIG.

Despite the above mitigation steps not having been taken, there remains very little evidence of actual physical damage to the Goods themselves.

3. **Outstanding Queries**

In addition to issues relating to proof of damage (a pre-requisite to cover) and mitigation, GIG have repeatedly requested (via Marsh) the following information from Metra:

- 3.1 Details of how goods are sold on. This is a significant point which is relevant to both coverage and potential recovery;
- 3.2 Confirmation of the environmental requirements of the suppliers having been maintained in each of the two storage locations in which the Goods have been stored since the incident;
- 3.3 Update of any progress or response from the warehouse owner or their insurers given that the warehouse was the root cause of the alleged damage / proximate cause.

These queries remain outstanding and affect both coverage and any potential recovery.

It is unacceptable that responses have not yet been received and GIG reserve all their rights under the policy, particularly given Metra are likely to have prejudiced a recovery through their failure to mitigate.

4. **Summary**

By way of summary;

- 4.1 GIG do not consider 'wetting' to outer packaging to be damage to the Goods themselves.
- 4.2 At present GIG can only evidence \$660 physical damage to the goods (1 laptop) and wetting to some outer packaging.
- 4.3 There remain numerous unanswered questions which affect both coverage and recovery prospects (see above).
- 4.4 In addition to the lack of evidence of physical damage to the goods, Metra failed to mitigate the loss having had prior warning of the storm. They also failed to mitigate in the immediate aftermath and there is no evidence of de-humidifiers or immediate unwrapping to avoid future damage. This is likely to have prejudiced any recovery.
- 4.5 There are possible resale 'open box product' opportunities which would reduce the claim significantly. In any event, the Insured has failed to advise on how stock was sold on by the Insured which also affects the claims presentation.

5. **Next Steps**

We note that Metra have filed a settlement notice with the Dubai Courts. This is premature given the various issues raised above.

We would welcome a call with you and GIG's expert, Tony Sykes, on **Friday 26 May** to discuss matters further.

We look forward to hearing from you with your availability.

Yours sincerely

A handwritten signature in blue ink, appearing to read "V. Clucas".

Victoria Clucas

For and on behalf of DWF (Middle East) LLP