

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 137 of 2019

**BETWEEN : WR CARPENTER [SOUTH PACIFIC] PTE
LIMITED & CARPENTERS FIJI PTE LIMITED**

PLAINTIFFS

**AND : NEW INDIA ASSURANCE COMPANY PTE
LIMITED**

DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr S J Stanton QC with Mr E Narayan [Patel Sharma Lawyers]

DEFENDANT : Mr F Haniff [Haniff Tuitoga]

RULING BY : Master Ms Vandhana Lal

DELIVERED ON : 03 February 2026

INTERLOCUTORY RULING

[Defendant's application to strike out action on the ground the action is statute barred under the Limitation Act]

The Plaintiffs claim against the Defendant

1. There was a group WR Carpenter (South Pacific) Pte Limited (**WRC**) contract of insurance with New India Assurance (**New India**), whereby New India agreed to insure and indemnify **WRC** against all risks of physical loss or damage to **WRC's** property.

The cover at the time of the incident was from 30 June 2012 to 30 June 2013.

2. On 06 May 2013 **WRC**'s property on Lots 11-14 on Native lease number 10288 situated at Main Street Nadi was destroyed/damaged by fire.
3. **WRC** notified **New India** of the loss and damage and lodged their claims. Several progressive claims were submitted between 2013-2017 totally \$9,219,878.47. An additional claim of \$1,321,252.41 was made on 03 March 2017.
4. **New India** accepted the preliminary claims and the liability and made progressive payments totaling \$4,076,259.95 between February 2014 till October 2017.
5. The balance claim remains unpaid and was under active consideration by **New India** through its authorized agent and Loss Adjuster McLarens Fiji.
6. McLarens Fiji with the assistance of their Brokers Marsh Ltd reached an agreement to settle the building claim for \$3,517,914 which was revised to \$3,754,053.69. this was on basis of full replacement/reinstatement value.
7. On 19 September 2017, **New India** through the authorized agent proposed a fresh settlement for \$2,252,432.21 based on indemnity value.
8. **WRC** deny that the Placing Slip made clear that the policy wordings in place would be the industrial special risks – Mark IV wording with agreed amendments.
9. According to **WRC**, the additional clauses and conditions referred to in the Placing Slip were never disclosed, communicated or agreed to by **WRC** and its brokers nor were the texts of the amendments agreed and/or communicated or disclosed to **WRC** any time prior to the contract of insurance.

10. **WRC** states that the appointment of the loss adjuster Messrs McLarens was made unilaterally by **New India** and without consultation or agreement with **WRC** or its brokers. Messrs McLaren at all times remained the agent of **New India** and acted in accordance with the authority and instructions and directions solely of **New India** and not **WRC** or its brokers.
11. **WRC** denies that Messrs. McLarens were a mutually acceptable loss adjuster for both parties.
12. According to **WRC**, there was a settlement agreement reached between **WRC** and **New India** in or about January 2017 as negotiated and agreed by **WRC's** and **New India's** agent Messrs. McLarens.
13. **New India** through its agent purported to resile and renege from the settlement agreement and instead offered \$2,252,432.21.
14. According to **WRC** the payments made between February 2014 and October 2017, represented part payment and acknowledgement of **WRC's** claim and **New India's** liability.
15. **WRC** relies on section 12 and 13 of the Limitation Act.
16. On 11 January 2017, **New India** by its agent McLarens on behalf of **New India** in a letter acknowledged debt and/or the liquidated pecuniary claim, calculating the material damage for its business interruption claim by **WRC** in an open settlement proposal.
17. Later on 19 September 2017 **New India's** agent on a letter acknowledged debt and or the liquidated preliminary claim in respect of **WRC's** claim for

reinstatement/replacement value under the contract of insurance in recognition of and by way of part payment of **WRC**'s entitlement claim.

18. By virtue of Section 12 and Section 13 of the Act, **WRC**'s right to recover the proceeds of the claim under the contract of Insurance with **New India** accrued in September 2017 which was within 06 years before the action was commenced.

19. **WRC** further states that **New India** is estopped and precluded from relying upon the limitation act as a bar to the institution and continuation of this proceedings by virtue of Section 4 (1) of the Act for the following reasons:

- Parties were in a relationship of insurer and insured and entered into a contract of Insurance dated 22 August 2012;
- **WRC** sustained loss by reason of a fire to its Nadi premises on 06 May 2013.
- Parties from 06 May 2013 till 19 September 2017 entered into negotiation on good faith to settle **WRC**'s claim.
- **New India** by its servants and agents McLarens represented to **WRC** that in consideration of **WRC** not undertaking litigation to enforce their contractual rights, **New India** would continue to negotiate **WRC**'s claim for reinstatement / replacement;
- **New India** induced in **WRC** a belief that it was prepared to perform in good faith and approved numerous claim in recognition of **WRC**'s entitlement under the contract of Insurance and made payments from 04 April 2014 till 24 October 2017;

- **New India** on 09 April 2019 till 30 April 2019 sought a negotiation without resorting to litigation.

- On or about 09 May 2019 **WRC** instituted proceedings to recover the balance of the proceeds under the contract of insurance and **New India** contrary to its representation pleaded that the claim was statute barred and that **WRC**'s rights under the contract of Insurance was extinguished.

20. **New India** is precluded and estopped from pleading the limitation defence. This is in breach of Section 25 and 26 of the Insurance Law Reform Act.

21. **WRC** seeks declaratory orders for:

- a) An Order for Declaration that **New India** is liable to insure and indemnify **WRC** in respect of the said building claim on a "*reinstatement/replacement value*" and not on an "*Indemnity Value*" basis;

- b) Judgment in the sum of **M\$4,913,329.54 (Four Million Nine Hundred and Thirty Thousand Three Hundred and Twenty Nine Dollars and Fifty Cents)**.

Defence raised by the Defendant

22. According to **New India** a placing slip was prepared and presented by Marsh and signed by **New India** on 22 August 2012. The placing slip made clear the Policy wordings in place would be the Industrial Special Risks–Mark IV wording with agreed amendments.

23. The basis of settlement was subject to the reinstatement / replacement clause in the Industrial Special Risks–Mark IV Policy wordings.
24. The property and building comprised in Lots 11-14 in Native Lease No. 10288 was not completely destroyed.
25. The total claim submitted by **WRC** including material damage and Business Interruption was \$9092,008.34.
26. **WRC** refused to accept the **New India**'s admissible claim in terms of the reinstatement/replacement clause in the policy wordings.
27. The loss adjuster was a mutually acceptable adjuster for both parties in terms of the policy wordings.
28. Marsh Ltd was the broker for **WRC**.
29. No agreement was reached for building claim in sum of \$3,577,914 which was revised to \$3,754,053.69.
30. Any settlement would have been on the basis of full replacement/reinstatement value subject to the reinstatement/replacement clause in the Industrial Special Risks – Mark IV Policy wordings.
31. The \$2,252,432.21 offered to **WRC** was on an indemnity value basis and was calculated based on the reinstatement/ replacement clause in the Industrial Special Risks–Mark IV Policy wordings. The offer was rejected by **WRC**.

32. According to **New India**, the placing slip made clear the policy wording in place would be the Industrial Special Risks–Mark IV wording with agreement amendments and/or extensions as prepared by **WRC**'s Brokers and agreed to by **New India**. The Reinstatement Memorandum thus was part of the policy wordings.
33. **New India** claims **WRC**'s cause of action is statute barred and relies on Section 4(1)(a) of the Limitation Act.

Defendant's argument in support of its application for striking out of the claim

34. **New India** relies on the Supreme Court decision of *New India Assurance Limited v Jai Kumar Solanki* Civil Petition No. CBV 0007, 2016 [delivered on 21/4/17] and submits that the cause of action arose on the date of the occurrence of the insured event that is when the fire occurred.
35. The counsel disagrees that **New India** can be estopped from asserting that the claim is statute barred on account of it acknowledging the progressive claims under the contract of insurance.
36. **New India**'s position is that on 02 February 2018 it had via an email rejected **WRC**'s offer of 17 September 2017.

Plaintiff's contention

37. **WRC** deny that the claim which was filed on 09 May 2019 is statute barred under Section 4(1) (9) of the Limitation Act.
38. Their Counsel submits that Section 12 (3) of the Act applies.
39. **WRC** were under no notice that it was in breach of any condition to both give notice and enforce its claim under the contract of insurance and it was not until **New**

India decided to resile from its agreement to settle in circumstances where it is estopped from asserting “limitation” defence in all circumstances.

40. According to **WRC**, where a right of action has accrued and the person liable or accountable therefore acknowledges the claim or makes a payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or of the last payment.
41. Since **New India**'s last progressive payment was made on the 25 October 2017, the cause of action under the placing slip accrues from the date of the last progressive payment made by **New India**.
42. **New India** through progressive payment and correspondence has conducted itself whereby it constituted an acknowledgement of the debt.
43. **New India** is estopped from asserting that the claim is statute barred.
44. **WRC** argues that the case of Solanki does not deal with the accrual of a cause of action, which is the basis upon which **WRC** brought their claim.
45. The case of Solanki is distinguishable and of no application.
46. According to **WRC** the amended reply (filed on 06 March 2020) pleads the estoppel concerning the fact that in the negotiation period, coupled with part-payments of the monies by way of part-indemnity, and subject to further negotiation, in that period, **New India**, as insurer, induced in **WRC** as insured a belief that the limitation period would not run unless and until the parties indicated that their negotiations were at an end and only to the extent that if those negotiations were to be concluded with a view to the limitation period being relied upon, **New India** would give due

notice prior to the expiration of the limitation period that the negotiation was at an end but sufficient time was allowed for **WRC** to enforce their rights under the policy of insurance.

A summary of the Solanki [supra] case

47. Solanki sought for extension of time to file an action against New India Assurance to pursue his claim under the fire policy he had with them for his commercial premises known as Solanki Fashion Center and the stock of his business for the sum of \$300,000.00.

His insured property was destroyed by fire, his claim was denied after an arson conviction, but even after later acquittal, New India still refused to honor the claim.

48. The then Master held that the Respondents cause of action accrued on 09 March 2017 when his warrant was quashed, amongst other findings. New India appealed against the decision.

Since Solanki had filed his claim against New India, New India filed its defence pleading statutory limitation under section 4 of the Limitation Act.

Thereafter, the High Court file and the appeal file were consolidated and placed before a High Court Judge to decide on a preliminary issue.

Appeal was allowed and Solanki's claim was dismissed on the ground that the cause of action was barred by Section 4 of the Limitation Act.

49. Solanki thereafter appealed to the Court of Appeal.

The Court of appeal held:

- a) *that the repudiation of the claim was based as per the Crime Office, Labasa letter dated 29th August, 2000 and that the repudiation was “unmistakably founded” upon that letter “Could not have meant anything other than the Appellant’s conviction and sentence for arson on the subject matter of the insurance policy”;*
- b) *that the conviction for arson resulted in an automatic forfeiture and thus the Respondent had no legal right to make a claim under the Insurance policy the rights of “the parties were in a frozen state” pending the Appeal and “party was capable in law of suing and” and “no party liable to be sued for the limitation period to begin to run;*
- c) *he cause of action only accrued after the conviction was quashed on 9th March 2007; and*
- d) *the Respondent’s action was not time barred under the Limitation Act as the case involved a claim based on contract for which the prescribed limitation period is 6 years under Section 4(1)(a) of the Limitation Act.*

50. New India thereafter sought special leave of the Supreme Court and the grounds of appeal were:

- a) *Did the cause of action arise when the loss or damage was caused or after the respondent was acquitted by the Court of Appeal?*
- b) *What is the date of the cause of action (if any)?*
- c) *Is the Respondent’s case filed in the Civil High Court barred by the provisions of the Limitation Act?*

51. The Supreme Court found the insurance policy to be an indemnity policy and relied upon the case of *Callaghan and Another v. Dominion Insurance Co. Ltd & others* [1997] 2 Lloyd's Rep 541 at 544 where it was held:

“It seems to me that best way to define an indemnity insurance is that it is an agreement by the insurer to confer on the insured a contractual right which, prima facie, comes into existence immediately when loss is suffered by happening of an event insured against, to be put by the insurer into the same position in which the insured would have been had the event not occurred, but in no better position”.

52. The Supreme Court found that New India became liable to indemnify Solanki from the date of fire. It referred to the view expressed in the case of *Carillion Construction Ltd. v. AIG Australia Ltd* [2016] NSWSC 495 (22 April 2016) where it was held:

“For the purposes of determining the date at which an insured’s cause of action accrued, there is in general a distinction to be drawn between policies of liability insurance on the one hand and all other types of insurance on the other.

It further found:

44.The cause of action does not accrue under a liability policy until the liability of the insured is established by judgment, arbitration or binding settlement vide **Bradley v Eagle Star Insurance Co Ltd** [[1AC 957; [1989] 1 Lloyd's Rep 465].

45. In respect of other types of insurance policy, including property, life, marine and other forms of insurance, the law has

*long been that, because an insurance policy is to be construed as insurance against the occurrence of an insured event, the occurrence of that event is treated as equivalent to a breach of contract by the insurer. Accordingly, in the absence of policy terms affecting the matter, the limitation period begins to run as soon as the insured event occurs, even though no claim has been made: per Potter in **Virk v Gan Life Holding plc** [[Lloyd's Rep IR 159R 159 at p 162]. In property insurance, the cause of action accrues on the occurrence of the peril: see **Callaghan v Dominion Insurance Co Ltd** [1997] 2 Lloyd's Rep 541.”*

53. Supreme held that:

54. As stated above, the indemnity policies which protect the assured against loss and damage, the limitation period runs not from the date of the forfeiture of the claim but from the date of the peril (in this case the fire) itself unless the policy contains a condition precedent clause.

54. Hence the Supreme Court held that the cause of action arose on the date of fire that is 02 January 1998.

55. It further went on to find;

58. A life insurance policy being a contract between the parties, the time period in which a case can be instituted is governed by section 4 (1) (a) of the Limitation Act. Therefore, I am of the opinion that the Respondent should have instituted a case against the Respondent under the fire insurance policy seeking to indemnify his damages prior to the six-year period set out in the said section.

56. The Supreme Court only decided on whether Section 11 of the Limitation Act could be applied to institute the said matter. It found that the said provision deals with the extension of the limitation period in case of disability and does not consider incarceration as a disability.

Whether WRC's insurance claim is statute barred and ought to be struck out?

57. In **Callaghan** [supra at paragraph 54], the court held that a cause of action for unliquidated damages on an indemnity insurance arose when the loss occurred because at that moment the insurers were in breach of a promise to hold their insured harmless against loss. The conditions relied on by the insured were construed either to relate to the quantification of the indemnity as opposed to the accrual of the right to be indemnified or to provide a defence to payment of a claim made pursuant to it.

58. In *Universities Superannuation Scheme Ltd v Royal Insurance (UK) Ltd* [2000] 1 ALL ER (Comm) 266, Langley J held that the trigger for accrual of the insured's cause of action remained the occurrence of the loss and not its discovery.

59. *Insurers do not impliedly agree not to rely on a time-bar merely by continuing to negotiate with their insured after the time to commence proceedings has expired. The insured must show that insurers offered not to take a time bar defence and consequent acceptance and valuable consideration by the insured. Nor does the willingness of insurers to continue negotiation to try to compromise the claim established a waiver of the insurers right to rely on the time bar. What is required is a clear, unambiguous and unconditional promise by insurers to forgo a time-bar defence.* [MacGillivray on Insurance law (Sweet & Maxwell) (14th Ed) 2018 at page 651-652.]

60. In the current proceeding the Court has to make a finding of the following:

- What type of insurance policy was between the parties?;
- What is the date of the cause of action?;
- Is the cause of action statute barred?;
- Can WRC rely on Section 12 and Section 12(3) and Section 13 of the Limitation Act to recover the monies under the contract of insurance they had with New India?.

61. At this stage, the only the placing slip signed by **New India** on 22 August 2012 disclosed.
62. This was a "Industrial Special Risks - Mark IV Wording" insurance policy insuring material damage (all real & tangible property of whatever kind as now existing or hereafter acquired in any form or on commission or for which the insured may be liable or have acquired liability all while located at any situation or other places anywhere in Fiji or as otherwise specified.) and business interruption covering all premises owned or occupied by the insured and all other places where the insured has property used or to be used for the purpose of the business anywhere in Fiji.
63. The period of insurance was from 4pm 30 June 2012 to 4pm 30th June 2013.
64. Perils insured was "*All risks of physical loss or damage not otherwise excluded in this policy*".
65. There are no issues regarding the date when the fire occurred that is on 06 May 2013 and that **WRC** submitted notices of claim: several progressive claims between 2013-2017.
66. Settlement was reached for material damage and business interruption.


67. Dispute is regarding the basis of settlement on building claim which was to be settled by way of reinstatement/replacement value with plants/contents on indemnity basis with stock in Trade at landed cost.
68. According to **New India** lots 11 – 14 in Native Lease No. 10288 was not completely destroyed.
69. My findings are that the cause of action arose on the date of fire that is 06 May 2013.
70. According to WRC, it has pleaded estoppel concerning the fact that in the negotiation period, coupled with part-payments of the monies by way of part-indemnity, and subject to further negotiation, in that period, **New India**, as insurer, induced in WRC as insured a belief that the limitation period would not run unless and until the parties indicated that their negotiations were at an end and only to the extent that if those negotiations were to be concluded with a view to the limitation period being relied upon, **New India** would give due notice prior to the expiration of the limitation period that the negotiation was at an end but sufficient time was not allowed for WRC to enforce their rights under the policy of insurance.
71. Solanki's case made determination regarding Section 11 of the Limitation Act.
72. Section 11 of Limitation Act is not relevant in the current scenario as it deals with the extension of limitation period in case of disability.
73. There have been payments made from 04 February 2014 till 24 October 2017.
74. Only at trial will the Court be able to ascertain if there is sufficient evidence of unconditional and unambiguous promise by **New India** to forego a time bar defence.

75. I find it proper not to grant orders as sought by **New India**.

Orders

76. The Defendant's application dated 28 June 2019 is dismissed.

77. The Defendant is ordered to pay cost of the application assessed at \$3,000 and should be paid by 12 noon on 17 February 2026.


.....
Vandhana Lal [Ms]
Master of the High Court
At Suva.



03 February 2026.

TO:

- 1. Suva High Court Civil File No. HBC 137 of 2019;**
- 2. Patel Sharma Lawyers, Solicitors for the Plaintiff;**
- 3. Hanif Tuitoga Lawyers, Solicitors for the Defendant.**