3 August 2021

Joanna Bird
Executive Director - Financial Services and Wealth
Australian Securities and Investments Commission

Dear Ms Bird,

RE: **Complaint against landlord insurers unfairly pursuing tenants for accidental or unintentional property damage and request for an investigation**

CHOICE and WEstjustice have concerns about the conduct of landlord insurance providers in pursuing tenants for accidental or unintentional property damage after a landlord makes an insurance claim.

We ask ASIC to investigate whether landlord insurers are in breach of misleading and deceptive conduct provisions (s 12DA of the *Australian Securities and Investment Commission Act 2001*, 'ASIC Act') and general licensee obligations (s 912A(1)(a) of the *Corporation Act 2001*, 'the Corporations Act').

WEstjustice and CHOICE are aware of a number of tenants who have been pursued by insurers for accidental or unintentional property damage. In the most egregious example, an insurer sought over $300,000 in damages from a tenant for accidental or unintentional damages without any explanation in writing of why the tenant was liable.

Insurers have an obligation to provide a proper explanation as to the reason for the claim particularly in circumstances where there was an absence of any malicious or deliberate damage. Despite this, insurers and debt collectors appear to be regularly providing no reason or justification for seeking damages from the tenant. Insurers are taking advantage of people without doing due diligence to confirm whether the debt is legitimate.

Our experience is that when community lawyers or consumer advocates contact insurers about claims, some of these claims are withdrawn. Insurers are using their power imbalance to coerce people who rent into settling a claim that is likely illegitimate. We are concerned that tenants who do not know their legal rights or who do not contact a community legal centre may feel pressured to pay insurance companies.

This complaint documents four examples of insurance companies unfairly pursuing tenants for accidental or unintentional property damage. We have attached detailed case studies in the Appendix of this complaint.

- GIO Insurance (**GIO**) pursued James for over $300,000 in damages for a fire that occurred when he and his family were not present at the rental property. GIO Insurance contacted the family two and half years after the event seeking damages without a written explanation as to why James was being held liable. (See Case 1)

- Mohammad is a refugee who arrived in Australia in 2018. He lives with his partner and teenage kids. The family is reliant on Centrelink Newstart benefits. In 2019, a fire started in the kitchen of the property and Mohammad was able to put the fire out before the fire brigade arrived. Almost a year after the incident, Mohammad received a letter demanding over $30,000 in costs for damage he allegedly caused. Mohammed had not been contacted by the insurer to discuss his financial circumstances or his liability for the fire before receiving this letter. Mohammad's rental provider did not want the tenant to be pursued for the costs of the damage. (See Case 2)

- Rosa was trapped on the balcony on her sixth floor apartment after the latch of the glass sliding door became faulty and broke. Rosa was told by the property manager to call the fire brigade. The fire brigade had to break down the front door to gain entry. DRA Mercantile (DR) acting on behalf of Chubb Insurance (**Chubb**) pursued Rosa for $3,630 in damages. Landlords have a legal obligation to ensure the property is in good repair and is maintained with functioning locks. When pressed, Chubb said the claim was lodged because the tenant "locked themselves out", an absurdity given the lock was faulty. (See Case 3)

- Javier was pursued for $183,527.07 in damages for an accidental fire that occurred at his rental property. There was no assessment presented by the insurer (**QBE**), debt collector, or solicitors regarding the incident or evidence showing Javier's liability for the damage, nor did any party give a proper explanation about the reason for pursuing Javier. There was no evidence of malicious or deliberate damage. (See Case 4)

We have concerns that this conduct is systemic in nature. In the past year, WEstjustice has assisted over ten tenants who have been pursued by landlord insurance companies for accidental or unintentional property damage. The emotional and financial distress caused by this conduct can be overwhelming, especially during the COVID-19 pandemic.

Tenants should not be liable for paying damages that relate to accidental or unintentional property damage on their landlord's insurance policy. We request that ASIC investigate whether the conduct of landlord insurers pursuing tenants for breaches the following financial services law:

- **Misleading and deceptive provisions** (Section 12DA of the ASIC Act). We ask ASIC to investigate whether insurance companies and debt collectors alleging liability without proof of

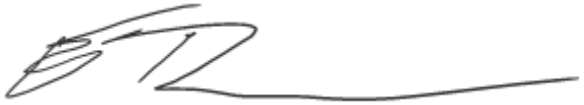
causation or any explanation as to why the individual was being held liable may constitute misleading and deceptive conduct.

- **Breach of general licensee obligations** (s912A(1)(a) of the Corporations Act). Financial services licensees have an obligation to do all things necessary to ensure your financial services are provided efficiently, honestly and fairly. We ask ASIC to investigate whether the above conduct is in breach of the obligations of insurers to act honestly and fairly.

ASIC should also consider whether this behaviour meets the standard of unconscionability. We also encourage ASIC to undertake a shadow shop of industry practices to examine the extent of industry conduct. This is highly predatory conduct by insurers that needs to be stamped out.

For further information please contact CHOICE on eturner@choice.com.au or WEstjustice on matthew@westjustice.org.au

Yours sincerely,



Erin Turner
Director
Campaigns & Communications
CHOICE

Matthew Martin
Acting Legal Director
Economic Justice Program
WEstjustice

Appendix

Case study 1 - James's story*

James and his family had been renting for a number of years. The whole family went out for dinner one night and returned to find the property in flames and the fire brigade in attendance. James was not aware how the fire had started, but luckily the landlord had a policy of insurance with GIO Insurance (GIO). As far as James and his family understood, the damage resulting from the fire would be dealt with and covered by GIO. James was not aware that GIO would have a right of subrogation to pursue him for the costs of the damage.

Approximately two and half years after the incident, James received a letter in the mail from GIO seeking payment for damages of over $300,000 without an explanation as to why James was being held liable. A report on the investigation into the cause of the fire only made possible assumptions as to the source of the ignition and did not conclusively determine the cause. Fault on James' part had not been properly assessed or determined, and there was and remains no evidence of malice or intent behind the damage. Understandably, this was incredibly alarming and distressing to James.

Since the fire, which destroyed the family's possessions, James has been picking up the pieces and building up his financial situation to a point where he and his family are beginning to establish themselves but are by no means well off. James' family of five is wholly financially reliant on him as the sole income earner, and his family has been severely impacted by the COVID-19 pandemic.

James and his family are facing losing out twice - the immediate aftermath of the fire resulted in them having to replace a lifetime of possessions and irreplaceable belongings such as family photos and mementos and deal with the stress and trauma anyone would experience when their home goes up in flames. Now James is being pursued for the costs of the destroyed property years later.

Since receiving the letter from GIO, he is facing the possibility of entering into a payment plan which will not come close to repaying the entire alleged debt, or being forced into bankruptcy. Both options will have long-lasting financial impacts on James and his family but make no economic sense to pursue from GIO's perspective.

* Names of case studies have been changed.

Case study 2 - Mohammad's story

Mohammed arrived in Australia in 2018 with his family members. Prior to arriving in Australia, he resided in a refugee camp where he spent most of his adult life. Mohammed and his family, which includes his partner and teenage kids, are all reliant on Centrelink Newstart benefits. No one in the family is able to speak, read or write in English. Upon arriving in Australia, his family moved into a rental property and continue to live in the same property now.

On an afternoon in 2019, a fire started in the kitchen of the property. Mohammed was alerted to the fire by one of his children and was able to extinguish the fire before the fire brigade arrived. Due to Mohammed putting the fire out, the damage was mostly contained to the kitchen. On the same day the rental provider was notified and they lodged a claim with their insurer.

Almost a year after the incident, Mohammad received a letter from the insurer demanding over $30,000 in costs for damage that he allegedly caused to the property. Mohammed had not been contacted by the insurer to discuss his financial circumstances or his liability for the fire before receiving this letter. He was extremely confused and upset by this.

Mohammed had not been in the kitchen on the day of the incident. His teenage child was cooking in the kitchen about an hour before the fire started, but in any event the rental provider indicated they were not concerned by the damage. The rental provider stated to Mohammed that accidents happen and allowed Mohammed and his family to continue living in the property they had been such great tenants.

Mohammed contacted WEstjustice for assistance. WEstjustice has had to contact the insurer seeking a waiver of the alleged debt sought on the basis that Mohammed is judgment-proof. However, there is a broader issue that the insurer is recovering against a tenant when the damage was caused unintentionally. Further, the rental provider did not want the tenant to be pursued for the costs of the damage.

Case Study 3 - Rosa's story

Rosa came to the Westjustice Tenancy Legal Clinic seeking advice in regard to a debt she was being pursued for by debt collection agency DRA Mercantile (DRA) acting on behalf of Chubb Insurance (Chubb). DRA was seeking the immediate payment of $3,630 for damage to the property alleged to have been caused by Rosa as the tenant. Rosa had at this point in time vacated this property and was living in a new rental. DRA was sending Rosa letters of demand and calling her regularly seeking payment.

The damage alleged by Chubb resulted from an incident that occurred one year prior to Rosa approaching our service. The property was located on the sixth story of a large apartment tower in the Melbourne CBD. Rosa lived alone and had been in the property for four years at the time of the incident. The damage occurred when Rosa stepped outside on her balcony at around 10pm on a winter night to get some fresh air before going to bed, and closed the glass sliding door behind her. The door had no lockable mechanism from the outside for obvious reasons. The locking latch had been worn loose over time and when Rosa closed the door behind her the latch spring failed and the latch fell and locked the door upon closure. Rosa was trapped on the balcony of her apartment with no way to re-enter. She called the building manager who advised her he did not have a key to her apartment to enter and let her in. He advised her to call the fire brigade and seek their assistance. On the building manager's advice, Rosa called the fire brigade who attended, along with the building manager, and broke down her front door in order to gain entry and let Rosa into her apartment from the balcony. In the process her door and doorframe was damaged.

It is noted that section 68 of the Residential Tenancies Act 1997 (Vic) (the Act) requires a rental provider to maintain properties in good repair and section 70 of the Act firmly places the responsibility for doors and locks on the rental provider. After the incident Rosa was told by the building manager, who is an agent of the owners corporation, that the damage was not her responsibility and she would not be required to make recompense for any of the damage caused by the fire brigade in gaining entry. The owners corporation claimed on its policy of insurance with Chubb and Chubb paid for the door and doorframe to be replaced. Chubb Insurance then instructed DRA to pursue Rosa for the cost of rectification.

Rosa sought clarification from the owners corporation about the matter. The owners corporation contacted Chubb, who simply responded:

The circumstances of the claim are as follows: Property damage due to someone being locked out on the balcony and fire bridge forced entry to get him/her out. Had they not locked themselves on the balcony the fire brigade would not have needed to force entry hence the costs would not have been incurred therefore the owners corporation building insurance policy will endeavour to recover against the responsible tenant.

Rosa sought the contact details of Chubb from the owners corporation to discuss the matter, in particular to dispute the notion that she had locked herself on the balcony, which was impossible as the

door had no lock from the outside. The owners corporation advised her that Chubb would not speak with her directly and she would need to direct any correspondence to PNO Insurance Brokers. WEstjustice assisted Rosa in drafting a letter to Chubb via PNO Insurance Brokers pointing out that Chubb was not entitled to pursue Rosa for the damage as it was entirely the fault of the locking mechanism in the door for which the rental provider had an active duty to maintain. We further pointed out that the failure to provide contact details of the insurer and the policy was a breach of the General Insurance Code of Practice 2020. If anyone was responsible for the damage it was the rental provider, and there was absolutely no grounds at law under which Chubb was entitled to pursue Rosa for this damage. We were advised a week later that Chubb had dropped their claim against Rosa.

The whole incident caused a great deal of stress for Rosa and drained resources of us as a community legal service in arguing against the claim, and presumably the resources of Chubb too. It was quite clear that Chubb and its agents took little to no steps to investigate the true nature of the incident and the cause of the damage before deciding to pursue a vulnerable tenant for the full amount of the claim. This case study illustrates something that WEstjustice commonly sees, which is insurance providers pursuing tenants without engaging in an analysis of causation or most importantly whether they have any legal entitlement to pursue the claim at all.

Case study 4 - Javier's story

Javier was a tenant living at a rental property with his housemate. Javier assembled a new barbecue outside, however the ignition was not working. He lit a piece of paper and his housemate turned on the gas to the barbecue, leading to a minor explosion. At this point, Javier believes that embers may have entered the packaging box for the barbecue. He left the piece of paper on the ground outside after stepping on it to make sure it was no longer alight. His housemate then put the packaging box in the spare bedroom where they kept the rest of their recyclable cardboard boxes. Javier returned inside the property from the backyard 30 to 60 minutes later, and noticed light underneath the door of the spare bedroom. He opened the bedroom door and there was a fire alight in the room which caused damage to the property

Javier did not have contents insurance and therefore has no insurance to cover the costs of the damage at the rented premises.

Javier has since received a letter of demand for $183,527.07 from Vardanega Roberts Solicitors acting for CHU Strata Insurance (CHU) as agent and administrator of QBE Insurance (Australia) Limited (QBE) purportedly under an owners corporation insurance policy. There was no assessment presented by QBE, CHU or Vardanega Roberts Solicitors regarding the incident or Javier's liability for the damage, nor did any party give a proper explanation as to the reason for the claim particularly in circumstances where there was an absence of any malicious or deliberate damage.