

BRIEFING NOTE

COVID-19 Business Interruption Insurance – Certainty, At Last?

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Introduction

Since the beginning of the year, we have been updating the industry on business interruption insurance in situations where financial loss is suffered as a result of a disease outbreak:

- [The COVID-19 Virus and Business Interruption Insurance Claims – Guidance from *New World Harbourview Hotel Co Ltd & Ors v Ace Insurance Ltd & Ors*](#)
- [COVID-19 – Extensions, Exclusions and The Fist Fight to Follow](#)
- [COVID-19 Business Interruption Insurance – Contract Uncertainty: The FCA Commences Declaratory Proceedings](#)
- [COVID-19 Business Interruption Insurance – Welcome News for Policyholders, and Something for the Insurers](#)

Throughout this time, the initial uncertainties have yielded to eventual certainty (pending an appeal against the judgment of the UK Commercial Court in *The Financial Conduct Authority v Arch & Others* [\[2020\] EWHC 2448 \(Comm\)](#) (the “**Test Case**”)).

Most Recent Developments

Not long after the judgment for the Test Case, two out of the eight insurers – Ecclesiastical and Zurich – decided not to appeal the judgment.

By 22 October 2020, the remaining insurers – RSA, QBE, Hiscox, MS Amlin, Argenta and Arch – dropped their appeals for most of the insurance policies examined in the Test Case.

Implications of Recent Developments

Save for the limited appeals on the Cottagesure and the Eaton Gate Commercial Combined policies, the Test Case provides certainty for determining liability and payment of claims.

For policies with a disease extension:

- The extension is triggered when: (i) the disease manifested at the insured premises (or defined radius); (ii) the insured business was interrupted/interfered as a result of the local or national outbreak; and (iii) there is consequential financial loss.

- The (composite) insured peril was: (i) manifestation of the disease at the insured premises (or defined radius); and (ii) interruption/interference to the insured business. The outbreak of the disease had to be ignored entirely when calculating the financial loss and the amount of the indemnity.

For policies with a prevention of access extension:

- The extension is triggered when: (i) the disease manifested at the insured premises (or defined radius); (ii) the insured premises were closed by a legal order due to that specific manifestation; and (iii) there is consequential financial loss.
- The (composite) insured peril was: (i) the denial of access or prevention of use; (ii) by civil order; and (iii) by reason of a local outbreak, all of which had to be ignored when calculating the financial loss and the indemnity payable. The impact of the disease nationwide should be taken into account.

For policies with a hybrid extension (disease plus prevention of access):

- The extension is triggered when: (i) the insured premises were closed by law due to a local outbreak or national epidemic; and (ii) there is consequential financial loss.
- The (composite) insured peril was: (i) the closure to access or restriction of use; (ii) by civil order; and (iii) by reason of a national outbreak, all of which had to be ignored when calculating the financial loss and the indemnity payable.

How We May Assist

Our lawyers have been assisting all stakeholders in the insurance industry with business interruption insurance claims arising from the pandemic. We would be delighted to assist you or your company in considering its insurance coverage.

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