

**BRIEFING NOTE**

**Aggregation of Business Interruption Losses**

- ***Greggs v Zurich Insurance [2022] EWHC 2545 (Comm): Single Occurrence or Multiple Occurrences of Loss?***

**Justyn Jagger & Sinyee Ong**

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**Introduction**

Previously, we issued briefing notes on COVID-19 business interruption losses following the English Courts' decisions in the test case of *The Financial Conduct Authority v Arch & Others*:

- [Final Words on COVID-19 Business Interruption Insurance – Welcome News for both Policyholders and Insurers](#)
- [COVID-19 Business Interruption Insurance – Welcome News for Policyholders, and Something for the Insurers](#)

Since then, the English Courts have been considering claims by individual policyholders against insurers for indemnity under their respective policies. In *Greggs v Zurich Insurance [2022] EWHC 2545 (Comm)*, the English Commercial Court was tasked to determine whether there was one instance (or multiple instances) of business interruption loss following the various governmental responses to control the spread of the epidemic.

**Brief Facts**

The policyholder was Greggs Plc, a food-on-the-go retailer in the UK. Greggs has stores in all four nations of the UK. Greggs' stores suffered interruption due to government responses in the entirety of the UK (as well as each of England, Wales, Scotland and Northern Ireland). Greggs made a claim in excess of GBP 150 million against Zurich Insurance.

Zurich Insurance underwrote the relevant policies. It paid out GBP 2.5 million. Zurich Insurance contended that there was a single occurrence of loss. As the losses were aggregated as one single business interruption loss, the policy sublimit of GBP 2.5 million applied.

**Decision of the English Commercial Court**

Amongst other preliminary issues, the English Commercial Court was tasked to determine whether all of Greggs' business interruption loss was to be aggregated by reference to one (or a few) occurrence of loss or whether there were multiple occurrences of loss.

Mr. Justice Butcher decided that there were multiple occurrences of loss. Having examined the facts, he rejected Zurich Insurance's arguments that there was a single occurrence:

- occurring at the point where the epidemic reached such a level that a governmental response became inevitable. This argument introduces uncertainties such as the definition of an 'epidemic', as well as identifying the exact point when a governmental response became inevitable; and
- on the basis that the governmental responses in the UK (as well as England, Wales, Scotland and Northern Ireland) constituted a single coordinated response by the UK government. This argument was factually inaccurate. The four nations diverged in their responses after an initial coordinated response in March and April 2020. Further, in each nation, different measures were rolled out at different times for different purposes. Each unique governmental measure constituted one occurrence of loss.

Mr. Justice Butcher agreed with Greggs that each unique governmental measure that triggered business interruption loss was something that happened at a particular time, in a particular place and in a particular way. Having met the 'unities' test (first established in *Axa Reinsurance (UK) Ltd. V. Field* [1996] 1 WLR 1026), each of these unique governmental measures can be said to constitute one occurrence of loss.

### **Commentary**

The result of the decision in *Greggs v Zurich Insurance* meant that policy sublimits and deductibles may apply multiple times depending on the number of occurrences of loss. Of course, whether there is a unique governmental measure giving rise to one occurrence of loss is very much fact dependent. Nevertheless, this decision has a huge impact on the amount of indemnity and is significant for both policyholders and insurers.

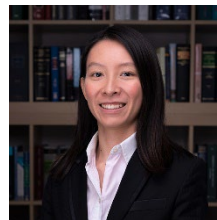
Our lawyers have assisted all stakeholders in the insurance industry with business interruption insurance claims arising from the pandemic. We have assisted commercial, hospitality and retail property owners, as well as international construction companies, with pandemic related claims and negotiating renewal premiums for insurance policies. We would be delighted to assist you or your company in considering its insurance coverage.

**Justyn Jagger**



[justyn.jagger@sjlaw.com.sg](mailto:justyn.jagger@sjlaw.com.sg)  
65 6694 7281 | 65 9154 9695

**Sinyee Ong**



[sinyee.ong@sjlaw.com.sg](mailto:sinyee.ong@sjlaw.com.sg)  
65 6694 7281 | 65 9148 5059