

BRIEFING NOTE

Policy Exclusions**- *General Applicability of Exclusions Embedded Within Policy Extensions***

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Introduction

During the pandemic, we published our briefing note titled [COVID-19 – Extensions, Exclusions and the Fist Fight to Follow](#). We shared how policy exclusions may affect the coverage position with respect to loss or damage. Below, we discuss whether policy exclusions set out in certain extension clauses have any impact on other extension clauses. Particularly, we will make reference to the English decisions of *London International Exhibition Centre v RSA Insurance Plc & Ors* [2023] EWHC 1481 (Comm) ("*EXCEL v RSA*") and the *China Taiping* arbitral award issued by Lord Mance.

What are Policy Exclusions?

Policy exclusions are common in any insurance policy. It is usual for insurers to specify that certain perils, hazards or circumstances are not covered by the policy.

Exclusions are typically contained in a standalone section (i.e., titled 'Exclusions') in the policy. The insuring clause (or the general conditions) of the policy would often make reference to this section. It is only logical that if a peril, hazard or circumstance was set out in this section, then it would apply to exclude coverage (unless there is a write back).

What happens when an exclusion is set out in an extension clause? Does this exclusion apply generally to the policy in general (as well as to other policy extensions)?

Arguments For the General Application of Exclusions Stipulated in Policy Extensions

In *EXCEL v RSA*, the 'Denial of Access (Non-Damage) Extension' stipulated that whilst insurers are liable for government-imposed denial of access to premises, there is no liability if such denial of access was the consequence of infectious or contagious disease; and the 'Infectious Diseases – Extension' stipulated that coverage is extended to include human contagious or infectious disease at the premises. The policyholder relied on the 'Infectious Diseases – Extension' (not the 'Denial of Access (Non-Damage) Extension') for indemnity.

Insurers argued that the infectious or contagious disease exclusion in the 'Denial of Access (Non-Damage) Extension' operated to exclude insurers' liability under the 'Infectious Diseases – Extension' clause in circumstances where business interruption losses were a consequence of government intervention in response to the pandemic.

Yes or No to General Application of Exclusions Stipulated in Policy Extensions?

In *EXCEL v RSA*, the English Commercial Court determined that exclusions in the ‘Denial of Access (Non-Damage) Extension’ do not operate to restrict coverage of the ‘Infectious Diseases – Extension’. It is clear from the policy that the extensions are independent of each other. Exclusions expressed within one extension apply only to that extension, and do not have any broader application.

The English Commercial Court further referenced the *China Taiping* arbitral award, in which Lord Mance stated that extensions “*must be allowed to operate according to their respective terms, whether they contain elements which potentially overlap or not*”. If insurers had intended otherwise, then the policy could have “*made clear the interrelationship between Extensions 1 and 2, by excluding from Extension 1 all or any aspect of the perils to which Extension 2 refers*”.

In short, the answer to – whether exclusions embedded within extension clauses may be read across other extension clauses – is ‘no’. This remains so even where multiple extensions (some with their own embedded exclusions; and some without) may be applicable to a loss and the policyholder elects to proceed with the most favourable extension.

Commentary

Given that considerable time has passed since the pandemic, insurers would have tightened policy wordings with respect to loss or damage arising from an epidemic / pandemic. In light of the *EXCEL v RSA* and *China Taiping* decisions, it may be a good idea to ensure that where the intention is for an exclusion to apply generally to the policy, such exclusion should be drafted within the general exclusion section of the policy (or at least expressly stipulate the general applicability of such exclusions).

For policyholders, it is important to take note of arguments for the cross application of exclusions across extension clauses. Whilst not tested elsewhere, it is likely that Courts within the common law jurisdictions will find *EXCEL v RSA* and *China Taiping* persuasive.

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