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Business Interruption Insurance
Insurers to cover Covid-19 losses

Despite uproar from businesses across the UK, most insurers have refused to cover for losses of revenue or profit, which businesses have experienced because of Covid-19. However, the Finance Conduct Authority (FCA) did confirm that its recent test case would provide more clarity, and that it has. As a result of The FCA v Arch and Others [2020] EWHC 2448 (Comm) case, many of the roadblocks to successful claims have now been removed and insurers are legally obliged to compensate clients for their COVID-19 business interruptions.

Before this, insurers were relying on a number of justifications to refuse compensating claims relating to Covid-19. Most insurers relied on their own ambiguous clauses or stated that due to the extent of the pandemic, cases were excluded from the usual sickness and disease coverage clauses.

The examined policies

The case reviewed wordings in 21 insurance policies. This means that over 600 policy wordings that the case could impact were not contemplated by the court. The reviewed clauses were those within the terms of the following insurers: Arch Insurance (UK) Limited, Argenta Syndicate Management Limited, Ecclesiastical Insurance Office Plc, Hiscox Insurance Company Limited, MS Amlin Underwriting Limited, Qbe Limited, Royal & Sun Alliance Insurance Plc and Zurich Insurance Plc.

If there is a policy clause which is believed to cover COVID-19 losses (but is not mentioned in the list above) this does not mean you have no recourse - it simply means some advice and guidance may be needed to ensure a successful claim.

The good news for businesses is that due to the judgment, insurers can have past decisions re-examined on the basis of illegality, which may cause indemnity to be provided retrospectively.

It is worth noting here that despite the common understanding of the judgment's repercussions, it was also a common understanding that the judgment was confusing. To that end several other applications have been made:

Declarations

The first application was to have the court to provide declarations to explain what the judgment actually means. This means there should soon be some clear and unequivocal statements as to the law surrounding these insurance policies. This enables insurers and businesses to know exactly where they stand.

Leapfrogging

Although the judgment was extensive it is unfortunately not the end of the matter. There is now an appeal outstanding to determine whether the judgment was correct and the Supreme Court has permitted the appellants the ability to leapfrog the lower appeal Court to bring this matter to a swift and timely conclusion.

The first judgment at the first trial (which had thirty-five Silks and junior counsel in attendance) will remain good law for as long as the appeal remains outstanding. This means that one of the potential risks taken by insurers in failing to meet claims, is the possible breach of financial service obligations if the appeal fails and the increase of consequential losses for the insured that businesses may incur as a result of the failure to compensate.

What should you do next?

The first step to be taken by businesses is a policy review to ensure a claim is made expediently and in accordance with the agreed terms. If there is ambiguity or there has been a prior rebuff by the insurer, then expert advice should be sought. Your legal advisers or accountants are best positioned to advise on whether you have a good case and the amount of indemnity that you should be provided.

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