

Landmark Decision Handed Down in Insurance Coronavirus FCA Test Case

The English Court has handed down judgment in the hotly anticipated business interruption insurance test case brought by the FCA against a group of insurers in light of the coronavirus pandemic. Today, the Court found in favor of the FCA on the majority of issues, bringing guidance to a significant number of policyholders impacted by non-damage business interruption losses arising from the pandemic.

Background

At the outset of the coronavirus pandemic in the UK, a number of UK insurers denied businesses cover for the period of lockdown under business interruption policies despite non-damage extensions in the policies. The FCA therefore intervened, seeking declaratory judgment from the Court on 21 sample lead policies to resolve key contractual uncertainties and causation issues, with the aim of ensuring maximum business clarity and the removal of insurance coverage road blocks.

The FCA initiated proceedings on 9 June 2020 against eight insurers who agreed to participate in the test case: MS Amlin Underwriting Limited, Arch Insurance (UK) Limited, Argenta Syndicate Management Limited, Ecclesiastical Insurance Office PLC, Hiscox Insurance Company Limited, QBE UK Limited, Royal and Sun Alliance Insurance PLC, and Zurich Insurance PLC (together, the “Insurers”). Hospitality Insurance Group Action (HIGA) and the Hiscox Action Group (HAG) were also permitted to intervene in the case and supplement the FCA’s arguments.

The trial was heard via Skype on an expedited basis. It commenced on 20 July 2020 before Lord Justice Flaux and Mr. Justice Butcher and lasted eight days.

Decision

The Court found in favor of the FCA on the majority of policies.

Of note, in its decision of 150+ pages, the Court held that most, but not all, of the disease clauses in the sample policies provide policyholders with cover.

In addition, certain prevention of access clauses in the sample policies entitle policyholders to cover, depending on the detailed wording of the clause and how the business was affected by the Government

response to the pandemic, including for example whether the business was subject to a mandatory closure order and whether the business was ordered to close completely.

Individual insurance policies will need to be considered against the detailed judgment to work out what it means for each specific policy.

Conclusion

The Court's decision on the proper operation of cover under certain non-damage business insurance policies provides welcome guidance for policyholders in navigating the unprecedented coronavirus pandemic and detrimental impact on businesses.

The FCA previously estimated that the outcome of the Court's decision regarding these sample policies could in turn potentially impact 700 types of policies across 60 different insurers and 370,000 policyholders. The ramification of the English Court's decision are therefore significant.

Policyholders may need to sit tight for a little longer since the judgment may be appealed by the insurers and possibly "leapfrogged" to the Supreme Court pursuant to the parties' framework agreement.

The judgment can be viewed [here](#).

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