

FCA High Court Test Case: Response of non-damage business interruption extensions to COVID-19 losses.

The judgment in the FCA Business Interruption Test Case has been published. The full judgment together with a copy of the FCA's press release is available:

<https://www.fca.org.uk/firms/business-interruption-insurance#latest-updates>

At this stage we are reviewing the content of the judgment in detail however, the key message from the FCA is that the Court found in favour of the arguments advanced for policyholders by the FCA on the majority of the key issues under consideration. It will become clear in due course whether any party will seek to appeal any aspect of the judgment, which could take this until early next year.

The key takeaways for policyholders are as follows:

1. The Court has found that the non-damage business interruption extensions it reviewed are capable of being triggered in the context of a global pandemic such as COVID-19.
2. As regards the majority (albeit not all) of the Notifiable Disease extensions under consideration, the Court found that cover would be available for losses caused by the wider COVID-19 pandemic.
3. As regards the Non-Damage Denial of Access extensions under consideration, whilst cover is capable of being triggered, the extent of cover available will turn on the precise terms of the policy and how the business was affected by the Government response to COVID-19.
4. In general terms the Court did not find favour with narrow arguments around causation advanced by insurers, instead agreeing with the FCA's approach to policy interpretation, causation and the calculation of recoverable loss.

Next Steps

The judgment is lengthy and complex. It deals with general principles as well as each of the 21 policy wordings under consideration and will not have identical ramifications for each client or each claim. Not all policies will respond to COVID-19 BI losses, notwithstanding the detail of the judgment.

The insurers who are part of the court ruling are:

- Arch Insurance (UK) Ltd
- Argenta Syndicate Management Ltd
- Ecclesiastical Insurance Office Plc
- MS Amlin Underwriting Ltd
- Hiscox Insurance Company Ltd
- QBE UK Ltd
- Royal & Sun Alliance Insurance Plc
- Zurich Insurance Plc

How does this effect your claim?

Your insurer was not included within the ruling, but the judgement will set a precedent for all other claims/insurers to follow suit,. We need to wait for the final appeal processes to be completed before other insurers to reconsider their stance on the declined claims and this could take us into early next year at this stage it is still unclear , however we are keeping up to date with all developments with an outlook to reproach all insurers making a complaint to insurers if they are dissatisfied with the outcome, and referring their complaint to the Financial Ombudsman Service.

Complaints referred to the Financial Ombudsman Service.

Policyholders with complaints at the Financial Ombudsman Service that are potentially affected by the judgment should await further information from the Ombudsman. The Ombudsman has published information on business interruption insurance complaints on its website.

I hope the above give you some clarification but if you wish to discuss please do give your local office a call.