

UK FCA's Business Interruption Insurance Test Case Decided by High Court

by Joseph Lewin

On 15 September 2020, the High Court in London delivered an important judgment on liability for business interruption insurance.

The ruling provides much needed clarification for policyholders, in view of the detrimental business effects from the Coronavirus pandemic lockdown and restrictions.

The case had been brought by the Financial Conduct Authority ("FCA") as a test case, seeking a ruling on the scope and meaning of sample insurance wordings to determine Business Interruption policy coverage (*The Financial Conduct Authority v Arch and Others [2020] EWHC 2448 (Comm)*). The FCA represented the interests of policyholders.

The proceedings in this case were heard on an expedited basis to consider issues relating to business interruption insurance policy coverage and causation, in the context of the COVID-19 pandemic, with the aim of relieving the uncertainty in this area. To do this, the Court considered 21 policy wordings from eight different insurers.

Although the High Court reached different conclusions for the differently-worded clauses within each sample policy, the High Court found in favour of the FCA on the majority of the key issues.

These findings included that:

- Most disease clauses in the sample policy wordings do provide cover.
- Some denial of access clauses in the sample policy wordings provide cover, but coverage will depend on the precise wording of the clause and exactly how the business was impacted by the COVID-19 pandemic (for example, whether the business in question had been ordered to close).

Following the judgment, policyholders who have made a claim under business

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interruption insurance policies may want to consider these points:

- If policyholders do not hear back from their insurer within seven days of the date of the judgment in respect of their claim, they should think about whether any of the findings in the judgment are applicable to the wording in their own policy and evaluate whether any additional issues should be considered before taking matters further.
- Policyholders should be aware of the outcome of future appeals. Although insurers have only until October to make declarations relating to the judgment, they have been given the right to appeal directly to the Supreme Court.

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