

Covid 19 and its impact on BI claims

Risk Managers Association, Germany

Friday 30 October 2020

*Please remain on mute but if you have any questions,
please email them to Damian.Glynn@uk.Sedgwick.com*



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- Initial perceptions of cover
- Involvement of UK regulator: Financial Conduct Authority (FCA)
- UK Test case, findings and current position
- Claims pre dating pandemic impacted by covid
- Impact on policies going forwards



- Expectations:
 - Association of British Insurers – limited cover
 - Media/public: expectation of cover
 - UK Government
- 1 May: FCA intention to run a test case to bring clarity
- Framework Agreement
- 8 Insurers as defendants (wordings representative of over 50 Insurers)
- Court Case 20-30 July 2020
- Judgement 15 September 2020
- Declarations 15 October 2020

	Example Businesses	
1	Restaurants, cafes, bars	No customers on the premises, but can do delivery
2	Cinemas, theatres, nightclubs, gyms, museums, galleries	No customers, Close entirely
3	Food retailers, pharmacies, off licenses, banks, dry cleaners	Explicitly allowed to stay open
4	Sale of goods/services, including retailers	Not explicitly referred to in the regulations
5	Accountants, solicitors, professional services, manufacturers, construction	Not explicitly referred to in the regulations
6	Businesses offering holiday accommodation	Restriction on use
7	Places of worship, nurseries, schools	Restriction on use

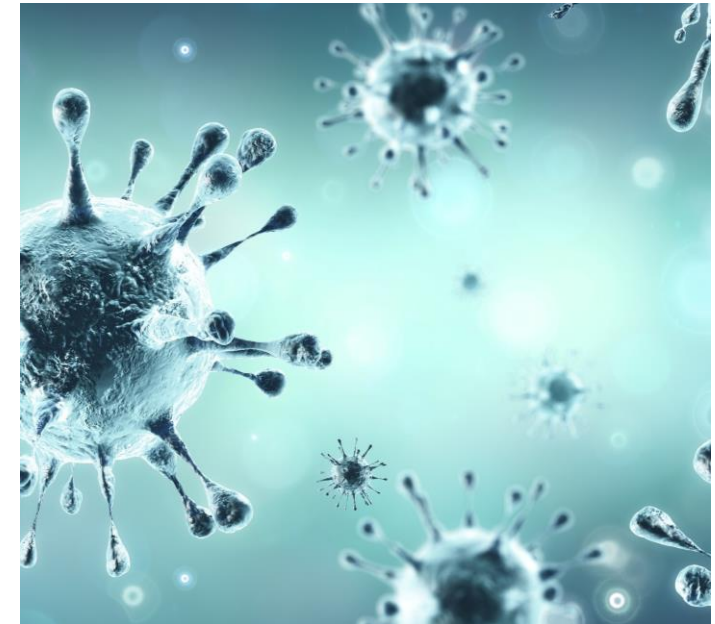
- What has **not** been included in the case
 - Damage at the Premises
 - Quantum
- Overview of the Judgement
 - Structure
 - Disease Clauses
 - Hybrid Clauses
 - Prevention of access Clauses
- Key observations
- Next steps



- Ordinary language to be used
- Principle of ejusdem generis (interpretation of terms in context (terms 'of a same kind'))
- Damage is not being considered (para 80)
- Non-damage extensions only are dealt with
- Causation
- Orient Express Hotels
- Conclusion



- Most notifiable disease clauses to pay
 - One occurrence is sufficient
 - All disease and impacts thereof is removed (including lockdown)
 - 1 mile and 25 mile radii covers respond the same way (just different sized nets to catch a fish)
 - Loss is not restricted to the area of the vicinity
- QBE 2 and 3 found not to pay – extensions cover ‘events’ (Field v AXA)
- Specified diseases not at issue
- Hybrid clauses found as with disease clauses



- Prevention of access cover will not pay for business categories that were not required to close
- Continuation of a service offered pre COVID means that there is no prevention of access
- Prevention of access means prevention of running a business (even if the threshold can be accessed)
- Cover for hindrance of access will turn on the specific facts
- Most policies found not to pay – vicinity is a locality/neighbourhood (usually)



- Applying the 'but for' test to Perils rather than Damage
- Trends applicable to prevention of access
- Composite Perils
- Causation/prevalence
- Orient Express Hotels



- Appeals now set out
- Supreme Court hearing (Court of Appeal to be leapfrogged) – 16 Nov 2020
- Supreme Court judgement) – December 2020, Q1 2021?
- Payment of claims in the interim
- Quantum investigation to be ready to pay on Supreme Court judgement
- Part 5 of the Enterprise Act 2016



- Impact of covid
- Application of trends clause: not optional
- Sector specific impacts (hospitality/leisure particularly)
- Frustration of mitigation vs new intervening causes
- Exacerbation of loss



- Removal of cover for disease
- Potential resurrection of a 'standard' wording?
- Premium increases
- Increase in Parametric policies?



Thank you for your time

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