



PIAM
WEBMINAR

How Covid-19 is Affecting Business Interruption Insurance Claims

Speaker: Lam Ko Luen

SHOOK LIN & BOK

EST 1918
KUALA LUMPUR

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CONTENTS

01

BASIC PRINCIPLES

- Causation
 - Orient-Express Hotels Ltd v. Assicurazioni Generali SpA
 - Financial Conduct Authority v. Arch Insurance (UK) Ltd and others

02

STANDARD BII POLICY

- Can Covid-19 cause “physical damage”?
 - TKC London Limited v. Allianz Insurance Plc
 - Cajun Conti LLC v. Certain Underwriters at Lloyd’s, London et al.,

03

NON-PHYSICAL DAMAGE EXTENSION

- Financial Conduct Authority v. Arch Insurance (UK) Ltd and others

P
ART 01

BASIC PRINCIPLES

- Causation:
 - Orient-Express Hotels Ltd v. Assicurazioni Generali SpA [2010] Lloyd's Rep IR 531
 - Financial Conduct Authority v. Arch Insurance (UK) Ltd and others [2021] UKSC 1



WHAT IS BUSINESS INTERRUPTION POLICY?



- Insurance coverage that indemnify losses (e.g. loss of business income, business expenses such as rental) as a result of an event that interrupts operations of business, (e.g. fire or natural disaster).
- Not sold as a separate policy, usually added to property/casualty policy (e.g. fire insurance) or comprehensive master package policy (e.g. industrial all risk insurance)

1

A result of an event

Must be a covered peril

- Whether expressly set out ?
Unlikely as it is unprecedented
- Whether expressly excluded?
More likely to be covered under “all perils” or “all risks” policy
- Look out for terms “infectious diseases”, “notifiable disease”, or arguably, “contamination”

BASIC PRINCIPLES

Sample

B. EXCLUSIONS (APPLICABLE TO SECTIONS I, II)

1. EXCLUDED CAUSES

This policy does not cover

3. Damage occasioned directly or indirectly by or through or in consequence of any of the following occurrences namely
 - (e) the destruction of property by order of any public authority
4. Damage directly or indirectly caused by or arising from or in consequence of or contributed to by
 - (a) nuclear weapons material
 - (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any unclear waste from the combustion of nuclear fuel. Solely for the purpose of this Exclusion A4(b) combustion shall include any self-sustaining process of nuclear fission.

Standard Business
Interruption
Coverage

Must be covered peril

**Question:
Whether expressly
excluded?**

BASIC PRINCIPLES

Sample

6. INFECTIOUS OR CONTAGIOUS DISEASES, MURDER, SUICIDE, PEST, FOOD OR DRINK POISONING; OR DEFECTIVE SANITARY ARRANGEMENTS

It is hereby agreed and declared that the insurance of this Policy is extended to cover contingencies hereunder specified :-

- (i) Human infectious or contagious disease manifested within by any person whilst in the Premises
- (ii) Murder or suicide occurring at the Premises
- (iii) Injury or illness sustained by any person arising from or traceable to foreign injurious matter in the food or drink provided on the Premises
- (iv) Vermin or pets at the Premises
- (v) Defects in the drains and other sanitary arrangements at the Premises

which directly and solely results in the restriction of use of the Premises (whether total or partial) by the order of the competent public authority.

Any interruption of or interference with the Business of the Insured in accordance with the provisions herein contained in the Schedule shall be deemed to be DAMAGE as herein defined under the Policy.

SPECIAL CONDITIONS

1. Notifiable Disease or illness shall mean illness sustained by any person resulting from -
 - (a) food or drink poisoning, or
 - (b) any human infectious or human contagious disease [excluding Acquired Immune Deficiency Syndrome (AIDS)]

an outbreak of which the competent local authority has stipulated shall be notified to them.

Extended Business
Interruption
Coverage

Must be covered peril

**Question:
Whether expressly
specified?**

2

Rider/ add on to property/casualty policy

(standard business interruption
coverage)

Must prove “physical” damage/ loss

BASIC PRINCIPLES

Sample

INDUSTRIAL ALL RISKS INSURANCE POLICY

A. THE COVER

SECTION I – MATERIAL DAMAGE

If any of the Property Insured situated in the Premises within the Geographical Area as specified in the Schedule be accidentally physically lost destroyed or damaged other than by an excluded cause (hereinafter termed Damage) at any time during the period of insurance or any subsequent period in respect of which the Insured shall have paid and the Insurer shall have accepted the premium required for the renewal of this Policy

The Insurer will pay to the Insured the actual value of the property at the time of the happening of the Damage or at its option reinstate or replace such property or any part thereof.

SECTION II - BUSINESS INTERRUPTION

If at any time during the period of insurance the business carried on by the Insured at the Premises specified in the Schedule is interrupted or interfered with in consequence of Damage indemnifiable under Section I, then the Insurer shall indemnify the Insured for the amount of loss resulting from such interruption or interference in accordance with the provisions contained in the specification relating to this Section.

18. PROPERTY DAMAGE CLARIFICATION CLAUSE

Property damage covered under this Policy shall mean physical damage to the substance of property.

Physical damage to the substance of property shall not include damage to data or software, in particular any detrimental change in data, software or computer programmes that is caused by deletion, a corruption or a deformation of the original structure.

Consequently the following are excluded from this Policy:-

Standard Business Interruption Coverage

To trigger coverage, must prove physical damage

Question:
Can Covid-19 cause physical damage?

BASIC PRINCIPLES

Sample

6. **INFECTIOUS OR CONTAGIOUS DISEASES, MURDER, SUICIDE, PEST, FOOD OR DRINK POISONING; OR DEFECTIVE SANITARY ARRANGEMENTS**

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an outbreak of which the competent local authority has stipulated shall be notified to them.

Extended Business Interruption Coverage

- Standard business interruption coverage is extended to include non-physical damage.
- Deemed to be “damage”/ not necessary to prove “physical damage”

3

Losses as result of an event (causation)

But for the event,



would the loss have occurred?

If the loss would not have occurred without the event, then the test is satisfied.

BASIC PRINCIPLES

Orient-Express Hotels Ltd v Assicurazioni Generali SA [2010] Lloyd's Rep IR 531

57. I agree with the Tribunal that the clause is concerned only with the Damage, not with the causes of the Damage. What is covered are business interruption losses caused by Damage, not business interruption losses caused by Damage or 'other damage which resulted from the same cause'. Nowhere in the Trends Clause does it state that 'variations or special circumstances affecting the Business either before or after the Damage or which would have affected the Business had the Damage not occurred' has to be something completely unconnected with the Damage in the sense that it had an independent cause to the cause of the Damage. The assumption required to be made under the Trends Clause is 'had the Damage not occurred'; not 'had the Damage and whatever event caused the Damage not occurred'.

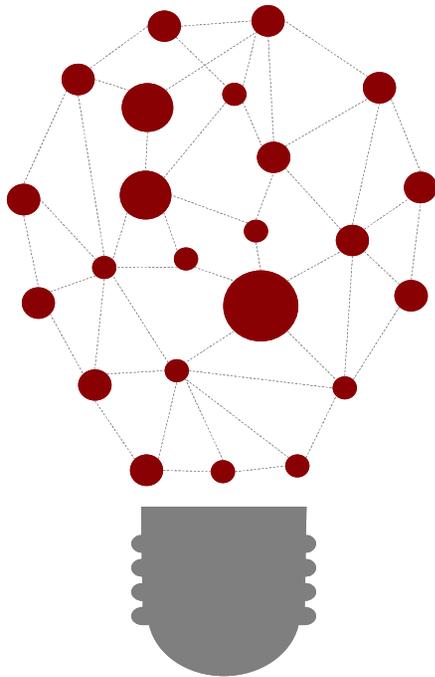
58. I agree with Generali that OEH's construction effectively requires words to be read into the clause or for it to be re-drafted. Further, such a re-drafting of the Trends Clause, which would allow OEH to recover for the loss in gross operating profit suffered as a result of the occurrence of the insured event (i.e. the hurricanes) as opposed to the loss suffered as a result of the Damage to the Hotel, is inconsistent with the causation requirement of the main Insuring Clause which OEH accepts requires proof that the losses claimed were caused by Damage to the Hotel.

59. I therefore consider that the Tribunal's construction and application of the Trends Clause was correct. As already stated, I also consider that they were entitled to treat the Trends Clause as providing clear support for adopting the 'but for' approach to causation which they did.

60. The scheme of the Policy is that business interruption losses caused by Damage to insured property are recoverable under the main Insuring Clause (as is consistent with the Trends Clause). Other losses not caused by Damage (i.e. physical damage to the Hotel) but caused by damage to the City/lack of demand are recoverable under the Loss of Attraction and Prevention of Access extensions. That is what OEH paid premium for under the Policy and that is what the Tribunal held that OEH is entitled to recover.

The High Court held in favour of the insurers that they are not required to pay for business interruption loss on the grounds that even if the physical damage had not occurred, the hotel would have suffered the same interruption to its business because of the devastation to the city and surrounding area due to hurricane.

In other words, the policyholders could not show that, "but for" the damage to the hotel, the business interruption losses would not have occurred anyway.



The Financial Conduct Authority v Arch Insurance (UK) Ltd and others

The Supreme Court disagreed and stated that 'but for' test of causation is sometimes inadequate.

The Supreme Court held there can be situations “where a series of events all cause a result although none of them was individually either necessary or sufficient to cause the result by itself”.

The Supreme Court considered that the principle of proximate causation was more appropriate.

The Financial Conduct Authority v Arch Insurance (UK) Ltd and others [2021] UKSC 1

202

FCA v Arch Insurance (UK) Ltd (SC(E))
Lord Hamblen and Lord Leggatt JJSC

[2021] 2 WLR

clauses issues, on mature and considered reflection we also consider that it was wrongly decided and conclude that it should be overruled.

309 The main error occurred at the first stage of the analysis when considering causation under the insuring clause. Applying the analysis set out earlier under the heading “Causation”, business interruption loss which arose because both (a) the hotel was damaged and also (b) the surrounding area and other parts of the city were damaged by the hurricanes had two concurrent causes, each of which was by itself sufficient to cause the relevant business interruption but neither of which satisfied the “but for” test because of the existence of the other. In such a case when both the insured peril and the uninsured peril which operates concurrently with it arise from the same underlying fortuity (the hurricanes), then provided that damage proximately caused by the uninsured peril (i.e. in the *Orient-Express* case, damage to the rest of the city) is not excluded, loss resulting from both causes operating concurrently is covered. In the *Orient-Express* case the tribunal and the court were therefore wrong to hold that the business interruption loss was not covered by the insuring clause to the extent that it did not satisfy the “but for” test.

310 If the tribunal or the court had held that the loss concurrently caused by both the damage to the hotel and the damage to other parts of the city was covered by the insuring clause, that would have fundamentally affected the approach to the interpretation of the trends clause. In any event, for the reasons set out above under the heading “The trends clauses”, we consider that the correct approach in the *Orient-Express* case would have been to construe the trends clause so as to exclude from the assessment of what would have happened if the damage had not occurred circumstances which had the same underlying or originating cause as the damage, namely the hurricanes.

The Supreme Court overturned Orient-Express and held that even where insured peril and uninsured peril operate concurrently, loss resulting from both causes is covered.

In other words, it is sufficient for a policyholder to show that loss suffered resulted from disruption caused by one case within the relevant geographical area.

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ART 02

STANDARD BUSINESS INTERRUPTION COVERAGE

- Can Covid-19 cause “Physical Damage” to trigger standard business interruption coverage?
- TKC London Limited v. Allianz Insurance Plc [2020] EWHC 2710 (Comm)
- Cajun Conti LLC v. Certain Underwriters at Lloyd’s, London et al., No. 2020-02558



CAN COVID-19 CAUSE PHYSICAL DAMAGE



TKC London Limited v. Allianz Insurance Plc [2020] EWHC 2710 (Comm)

In the recent Financial List test case, The Financial Conduct Authority v Arch Insurance (UK) Ltd and others² ("the FCA test case"), the court was asked to "construe a number of wordings which contain non-damage 'extensions' to the 'standard' Business Interruption cover provided by the relevant insurers ... to which the FCA refers as 'disease clauses'"³. The Policy relied on by TKC in the present case does not contain any such 'disease clause' extension. Although the sums at stake in the present action are, by the standards of the Commercial Court, comparatively modest, the Policy is largely in Allianz's standard form of policy wording. The decision in the present case may therefore be of consequence for other potential claimants. To that limited extent, this judgment is therefore something of a footnote to the comprehensive and (subject to any appeal) authoritative statement of the law and exegesis of the various policy provisions in the judgment of Flaux LJ and Butcher J in the FCA test case.

Note unlike the FCA test case, TKC is a standard business interruption policy without non-physical damage extension

CAN COVID-19 CAUSE PHYSICAL DAMAGE

TKC London Limited v. Allianz Insurance Plc
[2020] EWHC 2710 (Comm)

Taken as a whole, these matters in my judgment show that mere temporary loss of use is not "Damage" as that expression is defined in the Property Damage Section, and so is not covered under that section. I accept Mr Kealey's argument that, to amount to "loss .. of .. Property Insured" within the cover provided by the Property Damage Section of the Policy, the insured must show that it has been physically deprived of that property in circumstances (where it is not plainly irrecoverable) making its recovery uncertain. That is not what is alleged to have happened here.

The Policy, however, only responds to "Business Interruption by any Event". As I have already held, the word "by" here connotes causation. The word "Event" is capitalised, and accordingly bears the meaning given in the definition of that expression. The crucial issue is therefore whether the enforced closure can properly be said (as TKC alleges) to be "accidental loss .. of .. property" within that definition.

As I have already said, the word "loss" takes its colour from its context. The immediate context of the word "loss" within the definition of "Event" is that it is followed by the words "or destruction of or damage to". I again accept Mr Kealey's submission that those words strongly suggest that "loss" here is similarly intended to have a physical aspect.

TKC operated a café which was forced to close by UK Government due to Covid-19.

The claimant contended that the "all risks" policy subscribed covered losses to its business caused by the closure of its premises and/or the loss or destruction of its stock.

The UK High Court summarily dismissed TKC's claim on the grounds that:

- Temporary loss of use of business premises is not "physical" loss/ damage
- the loss of the stock was a consequence of the interruption or interference, not its cause.

CAN COVID-19 CAUSE PHYSICAL DAMAGE

Cajun Conti LLC et al. v. Certain Underwriters at Lloyd's, London et al., No. 2020-02558

20. Plaintiffs faithfully paid policy premiums to Lloyd's to specifically provide all-risk coverage, particularly the extension of coverage in the event of a business closure by order of civil authority. The policy's civil authority coverage provides that Lloyd's will pay the actual loss of business income sustained caused by action of civil authority that prohibits access to the insured premises as a result of a covered cause of loss on another's property within one mile of the insured premises and the civil authority is taken in response to a dangerous physical condition.

21. Under this civil authority coverage, the insured need not demonstrate or allege property loss or damage at its insured premises, rather property loss or damage within one mile of the insured premises of the type of loss or damage covered by the policy.

22. An "all-risk policy" is an insurance policy which covers all-risks unless clearly and specifically excluded. (*Dawson Farms, L.L.C. v. Millers Mut. Fire Ins. Co.*, 34,801 (La. App. 2 Cir. 8/1/01); 794 So. 2d 949, writ denied, 803 So. 2d 34 (La. 2001)).

23. Plaintiffs' policy is an all-risk policy as it provides that a covered cause of loss is any physical loss unless the loss is specifically excluded or limited in the policy.

24. The policy does not provide any exclusion due to losses, business or property, from a virus or pandemic.

25. The policy has only excluded losses due to biological materials such as pathogens in connection with terrorism or malicious use, therefore, providing coverage to other viruses or pandemics.

On March 16, 2020, Oceana Grill, a restaurant in New Orleans sued its insurer, Lloyd's, seeking a declaratory judgment affirming that:

- the business interruption insurance policy would cover physical losses from COVID-19 contamination; and
- the governor's and mayor's orders which, amongst others, limit customers to 50% of capacity and close by 9 p.m., trigger the civil authority provision of the policy.

CAN COVID-19 CAUSE PHYSICAL DAMAGE

Cajun Conti LLC et al. v. Certain Underwriters at Lloyd's, London et al., No. 2020-02558

37. Mayor Cantrell's Order recognized that "COVID-19 may be spread amongst the population by various means of exposure, including the propensity to spread person to person and the propensity to attach to surfaces causing property loss and damage in certain circumstances."

38. Civil Authority Orders across the nation, including those in New York City, San Francisco, Atlanta, and Houston, similarly provide that the cause of the Order in part is the dangerous property condition created by COVID-19's adherence on surfaces, which causes a loss of property.

39. It is undisputable that the Orders affecting the plaintiffs were issued in part because of COVID-19's attachment to surfaces and the dangerous property condition it creates.

61. Louisiana Courts have found that where property has been rendered unusable or uninhabitable, a physical loss has occurred. (*Widder v. Louisiana Citizens Prop. Ins. Corp.*, 2011-0196 (La. App. 4 Cir. 8/10/11); 82 So. 3d 294, 296.)

62. Courts have further determined that whether property is intact and functional is irrelevant because physical damage is not necessary to define physical loss. (*Id*; see also *Ross v. C. Adams Const. & Design, L.L.C.*, 10-852 (La. App. 5 Cir. 6/14/11); 70 So. 3d 949, 952.)

63. Lloyd's does not define the term "physical loss" within the policy.

64. Under information and belief, Lloyd's believes "physical loss" to be "structural damage."

The restaurant argued that contamination of the insured premises by Coronavirus constituted property loss.

On 4.11.2020, New Orleans judge dismissed Lloyd's application for summary judgment and proceeded to hear case in full.

On 10.2.2021, New Orleans judge denied the restaurant's motion for declaratory judgment without offering a written opinion or explanation.

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ART 03

NON-PHYSICAL DAMAGE EXTENSION

- The Financial Conduct Authority v Arch Insurance (UK) Ltd and others

THREE

NON-PHYSICAL DAMAGE EXTENSION

Cajun Conti LLC et al. v. Certain Underwriters at Lloyd's, London et al., No. 2020-02558

Standard Business Interruption Coverage

Question:

What about the civil authority extension?

20. Plaintiffs faithfully paid policy premiums to Lloyd's to specifically provide all-risk coverage, particularly the extension of coverage in the event of a business closure by order of civil authority. The policy's civil authority coverage provides that Lloyd's will pay the actual loss of business income sustained caused by action of civil authority that prohibits access to the insured premises as a result of a covered cause of loss on another's property within one mile of the insured premises and the civil authority is taken in response to a dangerous physical condition.

21. Under this civil authority coverage, the insured need not demonstrate or allege property loss or damage at its insured premises, rather property loss or damage within one mile of the insured premises of the type of loss or damage covered by the policy.

6.4 PREVENTION OF ACCESS

In consideration of the payment of an additional premium which is included in the premium hereon it is hereby agreed and declared that subject to the conditions of the Policy, loss as insured by Item(s) No(s) of this Policy resulting from interruption of or interference with the business in consequence of damage by insured peril (as within defined) to property in the vicinity of the insured's premises which shall prevent or hinder the use thereof or access thereto, whether the premises or property of the insured therein shall be damaged or not, shall be deemed to be loss resulting from damage to property used by the insured at the premises.

147 The prevention of access clause in the Arch wording provides as follows:

"We will also indemnify You in respect of reduction in Turnover and increase in cost of working as insured under this Section resulting from . . . Government or Local Authority Action . . . Prevention of access to The Premises due to the actions or advice of a government or local authority due to an emergency which is likely to endanger life or property . . ."

US

MLS

UK

NON-PHYSICAL DAMAGE EXTENSION

The Financial Conduct Authority v Arch Insurance (UK) Ltd and others [2021] UKSC 1

V Disease clauses

48 We consider first the disease clauses. The general nature of these clauses is that they provide insurance cover for business interruption loss caused by occurrence of a notifiable disease at or within a specified distance of the policyholder's business premises. The following policy wordings

73 Similarly, we think the court below was right to attach significance in interpreting the policy wording to the potential for a notifiable disease to affect a wide area and for an occurrence of such a disease within 2.5 miles of the insured premises to form part of a wider outbreak. But again, the significance of those matters, in our view, is in relation to questions of causation. They cannot justify extending the geographical scope of the cover beyond the area clearly specified in the policy. As discussed, that goes beyond interpretation and involves rewriting the clause.

74 We conclude that the disease clause in RSA 3 is properly interpreted as providing cover for business interruption caused by any cases of illness resulting from Covid-19 that occur within a radius of 2.5 miles of the premises from which the business is carried on. The clause does not cover interruption caused by cases of illness resulting from Covid-19 that occur outside that area.

01

Disease Clauses

The Supreme Court took a narrower approach than the High Court and held that disease clauses only provide coverage where there was an occurrence of coronavirus within the geographical area set by the policy and not the effects of any cases outside that area.

NON-PHYSICAL DAMAGE EXTENSION

Malaysia Policy Wording Sample

6. INFECTIOUS OR CONTAGIOUS DISEASES, MURDER, SUICIDE, PEST, FOOD OR DRINK POISONING; OR DEFECTIVE SANITARY ARRANGEMENTS

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which directly and solely results in the restriction of use of the Premises (whether total or partial) by the order of the competent public authority.

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an outbreak of which the competent local authority has stipulated shall be notified to them.

NON-PHYSICAL DAMAGE EXTENSION

The Financial Conduct Authority v Arch Insurance (UK) Ltd and others [2021] UKSC 1

Prevention of access

146 Similar issues arise in relation to whether only the total (as opposed to partial) closure of premises for the purposes of the existing business could qualify as “prevention” or “denial” of access to the premises under the prevention of access clauses in the Arch wording (see judgment at para 330),

151 In our view, for essentially the same reasons as given in relation to Hiscox 1–4, the Arch wording may, depending on the facts, cover prevention of access to a discrete part of the premises and/or for the purpose of carrying on a discrete part of the policyholder’s business activities. We agree with Arch that prevention means stopping something from happening or making an intended act impossible and is different from mere hindrance. In both the situations contemplated, however, access to a discrete part of the premises or access to the premises for a discrete purpose will have been completely stopped from happening.

152 The example of the restaurant which offers a takeaway service illustrates the commercial sense of this interpretation. The distinction drawn by Arch, and accepted by the court below, between continuing to operate such a service (where it is said that there would be no prevention of access or inability to use the premises) and starting a new takeaway service after closing the restaurant for dining is an unsatisfactory and arbitrary distinction. It is also illogical. If the premises can be put to such use, then it can be said that there is an ability to use them and that access to the premises for the purposes of carrying on the policyholder’s business is not prevented. A more realistic view is that there is prevention of access to (and inability to use) a discrete part of the premises, namely the dining area of the restaurant, and prevention of access to (and inability to use) the premises for the discrete business activity of providing a dining in service.

02

Prevention of Access Clause

The Supreme Court held:

- Policies will be triggered if business is unable to use part of its premises. Does not need to be complete closure.
- Suspension of operations may be sufficient

NON-PHYSICAL DAMAGE EXTENSION

The Financial Conduct Authority v Arch Insurance (UK) Ltd and others [2021] UKSC 1

2. The Prime Minister's statement of 18 March 2020 included the following:

"And so following agreement between all the formations of the United Kingdom, all the devolved administrations, we are collectively telling, telling cafes, pubs, bars, restaurants to close tonight as soon as they reasonably can, and not to open tomorrow.

"Though to be clear, they can continue to provide take-out services.

"We're also telling nightclubs, theatres, cinemas, gyms and leisure centres to close on the same timescale. Now, these are places where people come together, and indeed the whole purpose of these businesses is to bring people together. But the sad things [sic] is that today for now, at least physically, we need to keep people apart.

120 Whilst one would expect "restrictions imposed" generally to have the force of law or to carry the imminent threat of legal compulsion, we do not accept that the phrase is limited in its meaning to an exercise or threatened exercise of legal powers, as this case illustrates. When the Prime Minister in his statement of 20 March 2020 instructed named businesses to close "tonight", that was a clear, mandatory instruction given on behalf of the UK Government. It was an instruction which both the named businesses and the public would reasonably understand had to be complied with without inquiring into the legal basis or anticipated legal basis for the instruction. We consider that such an instruction is capable of being a "restriction imposed", regardless of whether it was legally capable of being enforced.

02

The Supreme Court held:

- There is no need for those restrictions to be gazetted. Restrictions in mandatory and clear terms, such as the Prime Minister's statement could be sufficient.

NON-PHYSICAL DAMAGE EXTENSION

The Financial Conduct Authority v Arch Insurance (UK) Ltd and others

1. The Prime Minister's statement of 16 March 2020 included the following:

"Last week we asked everyone to stay at home if you had one of two key symptoms: a high temperature or a new and continuous cough. Today, we need to go further, because according to SAGE it looks as though we're now approaching the fast growth part of the upward curve. And without drastic action, cases could double every five or six days.

"So, first, we need to ask you to ensure that if you or anyone in your household has one of those two symptoms, then you should stay at home for 14 days. That means that if possible you should not go out even to buy food or essentials, other than for exercise, and in that case at a safe distance from others. If necessary, you should ask for help from others for your daily necessities. And if that is not possible, then you should do what you can to limit your social contact when you leave the house to get supplies. And even if you don't have symptoms and if no one in your household has symptoms, there is more that we need you to do now.

154 Whilst we accept that it is possible for regulation 6 to result in a prevention of access, we consider that such cases are likely to be rare for the reasons set out when addressing para 270 of the judgment in respect of the related issue of inability of use. As the court below stressed, a prevention needs to be established; hindrance does not suffice. We agree with the court below that the Prime Minister's statement of 16 March 2020 did not cause prevention of access to the relevant insured business premises for the reasons given at para 328 of the judgment.

02

- However there must be "prevention". Mere hindrance, such as phrases like "where possible" or "if possible" is not sufficient.

NON-PHYSICAL DAMAGE EXTENSION

Malaysia Policy Wording Sample

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 - (b) any human infectious or human contagious disease [excluding Acquired Immune Deficiency Syndrome (AIDS)]

an outbreak of which the competent local authority has stipulated shall be notified to them.

Not standalone prevention of access clause, but prevention of access due to infectious disease

NON-PHYSICAL DAMAGE EXTENSION

Malaysia Policy Wording Sample

Not standalone prevention of access clause, but prevention of access due damage to property within vicinity

6.4 PREVENTION OF ACCESS

In consideration of the payment of an additional premium which is included in the premium hereon it is hereby agreed and declared that subject to the conditions of the Policy, loss as insured by Item(s) No(s) of this Policy resulting from interruption of or interference with the business in consequence of damage by insured peril (as within defined) to property in the vicinity of the insured's premises which shall prevent or hinder the use thereof or access thereto, whether the premises or property of the insured therein shall be damaged or not, shall be deemed to be loss resulting from damage to property used by the insured at the premises.

Is it a covered peril?

Physical Damage?

P
ART 04

■ **SUMMARY**

First thing to consider when you receive a Covid-19 business interruption claim -



**Does the BII
policy come with
any non-physical
extension(s)?**

If it is a standard BII policy (with no extension),
does the claim satisfy the above conditions?

Is Covid-19/ Lockdown
a covered peril?

- Is it expressly covered?
- Is it expressly excluded?

Was there
physical loss?

- **Cajun Conti** case: Covid-19 does not cause physical damage
- **TKC** case: Temporary loss of use of business premises due to lockdown is not “physical” loss/ damage

Is Covid-19/
Lockdown a proximate
cause for the loss of
business?

- **FCA** case: even where insured peril and uninsured peril operate concurrently, loss resulting from both causes is covered.



SUMMARY



If the BII policy comes with non-physical damage extension, does the claim satisfy the following conditions?

Is Covid-19/ Lockdown a covered peril?

- Is it expressly covered?
- Is it expressly excluded?

Does the non-physical damage extension require “physical loss” nevertheless?

- Cajun Conti case: require physical damage to another property within the vicinity.

Is Covid-19/ Lockdown a proximate cause for the loss of business?

- FCA case: even where insured peril and uninsured peril operate concurrently, loss resulting from both causes is covered.

SUMMARY

The ultimate question is -

How would one construe the
wording of the policy?





Speaker: Lam Ko Luen
koluen@shooklin.com.my

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