

Coronavirus-Related Business Interruption Claims Find Favor With the United Kingdom's High Court

Insights

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On September 15, 2020, the United Kingdom's highest court issued a decision in a case brought by Britain's Financial Conduct Authority concerning the scope of coverage for business interruption claims due to losses caused by Covid-19, rejecting, in most instances, the insurers' vehement argument that only business interruption claims from physical damage to the business premises, are covered.

As we have previously reported, businesses across the world have suffered economic loss from full or partial closures due to the global pandemic. Insurance companies almost universally have argued business interruption claims only are covered when business closures are due to physical damage to the premises. In some cases, coverage has been extended when natural conditions prevent customers from being able to access the business. Some policies expressly provide coverage when closures are mandated by governmental entities; some policies are silent; and some policies exclude such an event from coverage. Similarly, some policies expressly provide coverage for business interruption due to the prevalence of disease; some policies are silent on the matter; and some policies contain "viral exclusion" clauses, explicitly disclaiming coverage for such losses.

The United Kingdom's High Court's ruling tested the scope of coverage under such policies. In its landmark, groundbreaking decision, the Court found in favor of coverage, and hence in favor of policyholders, on the majority of test claims assessing coverage under 21 different policy provisions. The Court specifically ruled that, in most instances, policies with language providing coverage for losses caused by disease provided coverage. In the case of claims due to business closure, the Court validated many of these claims as well, even in the absence of physical damage to the insured business's physical property. However, the Court set forth a complex test that assessed various claim-specific factors, including whether the closures were full or partial.

This ruling dealt a significant blow to insurers, and offers hope that pandemic-related business interruption claims in other world insurance markets, including the United States, could also be successful. London is one of the world's busiest and most experienced insurance markets, and often, coverage rulings issued in the United Kingdom can forecast a trend in other jurisdictions. By rejecting the insurers' previously vehement insistence that only interruption claims resulting from physical damage would be covered, the decision sends a welcome signal to many businesses that pandemic-related business interruption claims may be worth pursuing.

We continue to encourage insureds with business interruption claims to carefully review their own policies' language, and to seek professional advice as to whether, and how, to assert a claim for coronavirus-related business interruption losses.

For further information, please contact [Andrew Struve](#) in San Diego, [Gary Torrell](#) in Los Angeles, or your regular Hooper, Lundy & Bookman contact. We also invite you to visit the Health Care Financial Restructuring practice group's [webpage](#).

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