

Covid-19 *Insurance Update*

24 August 2020


UNCOMMONLY INDEPENDENT

Regulatory changes



SPOTLIGHT ON: FCA sets sights on mid-September Test Case judgement

A draft judgement over the UK's Financial Conduct Authority's (FCA) business interruption (BI) test case which began back in July is expected by mid-September. Sam Ellerton, Regional Claims Leader at Lockton comments:

"This judgement will have significant implications for (re) insurers who operate under English Law".

"The coronavirus pandemic has led to widespread disruption and business closures resulting in substantial financial loss. Many policyholders believe that their respective insurers wrongfully denied claims on their business interruption insurance over the cost caused by the Covid-19 outbreak. To achieve clarity for all concerned, the FCA has asked the High Court for a ruling on how a representative sample of BI policy wordings respond to Covid-19 related losses."

"Some market observers warn that if the regulator succeeds the consequences could be profound and may potentially lead to insurer insolvencies and heavy reinsurance losses. For policyholders, however, such a judgement could offer financial relief to as many as 370,000 UK businesses."

"Lord Justice Flaux, presiding over the FCA Covid-19 Business Interruption Test Case on its 8th and final day at the High Court, has confirmed that the draft judgement in the matter should be ready by 'mid-September'. Whilst this news will certainly be well received by policyholders it should be noted that Lord Justice confirmed, taking into account the importance and complexity of the case, this estimate may slip."

Read [here](#) for some of the key arguments pursued by the FCA and the response from insurers.

Related news



Astronomical costs prediction should policyholders be successful in the FCA Test Case – with estimates of costs to insurers ranging between £9-18bn, based on £25-50,000 per claim and 370,000 claimants. (From: [Insurance Insider](#), 7 August 2020).



US businesses, hospitals, schools and the trade groups call for Covid protection – and have faced a backlash after urging Congress and the White House to include liability shields against Covid-related lawsuits as part of wider negotiations over liability protections in economic relief legislation. (From: [The New York Times](#), 5 August 2020).

Nevada set to join more than a dozen states enacting virus liability and worker protection ‘deal’ – the state looks to protect businesses from personal injury and wrongful death claims, provided that they follow health standards set by local, state and federal authorities. (From: [Advisen](#), 6 August 2020).

Tennessee lawmakers pass controversial bill to provide sweeping protections for businesses – the bill makes it very challenging for anyone to allege loss, damage, injury or death from the coronavirus without proving the defendant’s “gross negligence or wilful misconduct.” It also crackdowns on recent protests. (From: [Advisen](#), 13 August 2020).

The governor of Connecticut signs executive order to give workers’ compensation – the order assumes workers who fell ill with Covid-19 early in the pandemic fell ill while working and are eligible for workers’ compensation benefits. (From: [State of Connecticut](#), 24 July 2020).

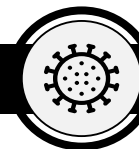
In what is regarded as the first setback for US insurers, Cincinnati Financial is denied dismissal motion – US judge denied the dismissal on the grounds that the Missouri hair salon owner and Kansas City restaurateurs adequately alleged direct ‘physical loss.’ (From: [The Insurer](#), 12 August 2020) This follows on from the insurer estimating that its second quarter Covid losses will total approximately \$65m. (From: [Cincinnati Financial](#), 14 July 2020).

The Insurance Council of Australia launches its own business interruption (BI) test case – following in the footsteps of the UK’s FCA test case, the Supreme Court of New South Wales is now testing the application of certain infectious diseases exclusion policies. (From: [The Insurance Council of Australia](#), 13 August 2020).

Association of British Insurers (ABI) calls for FCA impartiality – ABI director made the demand following its role in the BI test case while also separately suggesting that it was unlikely small businesses impacted by Covid-19 would receive additional funds as they start up again. (From: [Insurance Insider](#), 30 July 2020 and [The Insurer](#), 30 July 2020).

Largest UK caravan park operator sues Axis Syndicate – £60m is being sued for business interruption related to Covid-19 but the insurer says it was the insured who walked away from payment negotiations (From: [Insurance Insider](#), 14 August 2020).





New findings point to US Covid-19 litigation hitting healthcare, manufacturing and retail industries –

claims in healthcare point to failure to provide a safe operating environment, while those in manufacturing cite workplace safety and exercise of leave rights and in retail, employers call for more accommodations around disabilities and working conditions. (From: [Advisen](#), 29 July 2020).

Covid-19 impact on US insurers better than expected –

figures from the second quarter highlight a \$2.5 billion (£1.92 billion) cost to insurers with a large US presence, however, this may increase in the third quarter. (From: [Reuters](#), 11 August 2020).

Covid-19 related Directors and Officers (D&O) claims continue to increase in the US –

claims currently total 16 and relate to cases of Covid-19 on-site, companies that misrepresented gains from the pandemic and those experiencing financial issues and disruptions due to the crisis. (From: [D&O Diary](#), 19 July 2020).

Several other insurers have similarly reported on losses from Covid-19 claims:

- Lloyd's insurer Brit reported \$127.9m in claims for the first half of the year. (From: [Brit](#), 31 July 2020)
- Fairfax recorded \$308.1m of Covid-19 losses for the second quarter. (From: [Fairfax](#), 30 July 2020)
- Hiscox has reserved \$232m for potential claims and noted the outcome of the FCA Test Case might impact this. (From: [Advisen](#), 3 August 2020)
- AIG reported \$458m of Covid losses for the second quarter of 2020. (From: [Financial News](#), 4 August 2020)
- QBE expects a \$239m hit due to Covid-19 in its results for the first half of the year. (From: [QBE](#), 21 July 2020)
- Munich Re registered €700m in reinsurance for the second quarter of 2020, with the largest share of losses attributable to covering major events. (From: [Munich Re](#), 20 July 2020)
- Swiss Re has booked Covid-19 claims and reserves at \$2.5bn, resulting in a net loss of around \$1.1bn for the first half of 2020. (From: [Swiss Re](#), 22 July 2020).

Pandemic insurance developments



Potential pan-European pandemic reinsurance solution emerges from regulator –

The European Insurance and Occupational Pensions Authority (Eiopa) is looking into a new cross-border response given the pan-European nature of the pandemic crisis. (From: [Eiopa](#), 27 July 2020).

Sign-ups to the UK trade credit backstop rise following European Commission –

firms including Markel and QBE are said to have opted into the proposed £10bn backstop scheme. (From: [Insurance Insider](#), 29 July 2020).

France investigates possible public-private

reinsurance solutions – the consultation which will run until the end of August presents four possible options to mitigate the impact of large-scale shocks such as Covid. (From: [The Insurer](#), 11 July 2020).

Munich Re proposes pandemic solution for UK and US

middle market – Syndicate 1840 aims to offer aggregate coverage of \$500m, alongside other market solutions. (From: [The Insurer](#), 22 July 2020).

Lloyd's approves new syndicate to ensure

transportation of Covid-19 vaccine – it aims to start writing business from 1 October 2020 to provide comprehensive insurance and risk mitigation to support the manufacturing and distribution of a vaccine to emerging economies. (From: [Lloyd's](#), 23 July 2020).

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