

Financial Conduct Authority Test Case Ruling From High Court And Subsequent Supreme Court Ruling

Background

The FCA and insurance companies have been arguing in court certain legal principles to assist insurers and policyholders in determining whether any cover applies and if so, how much should be paid.

There are about 60 different insurers and 700 policy wordings to consider and hence it is an extremely complicated and complex situation.

Insurers initially argued in case law that the insured business would have lost income in any event because the business trend would have reduced due to a general drop in sales or income due to the pandemic in the wider world. This case law has been overturned in the Supreme Court as have other more obscure arguments.

Am I Covered?

Most insurance policies cover physical damage but there are often “non-damage” extensions under the business interruption section. In order to succeed with a claim, the test case concludes that the following elements should be in place:

- A disease clause that stipulates any notifiable disease or similar, but not a list of specified diseases, or
- A denial of access clause due to the action of government or local authority, or
- A hybrid clause which could be a combination of the above.
- Government announcements have affected different types of businesses in different ways, and some including non-essential retail, pubs and non-takeaway restaurants were required by law to close. If you fall outside this list you may not be able to claim.



Study Edwards Response

It is fair to say that following the SARS outbreak in 2003 most insurers restricted their policy wordings to cover only localised and specific diseases, and not pandemics. There remain a few that did not, but as mentioned above, there are hundreds of different policy wordings.

It is not our company policy to repudiate claims, as it is the insurer who will make the final decision. At all times we represent our clients' interests and if we feel that an insurer has made an incorrect decision then we will intervene.

To the best of our knowledge if a claim is repudiated, there may still be recourse to the Financial Ombudsman Service or legal action. We will offer guidance and our view on prospects in such an event.