

Client Alert

COVID-19 Business Interruption: Financial Conduct Authority Test Case Ruling Expected on Friday

January 13, 2021

The U.K. Supreme Court has announced that on Friday, January 15, 2021 it will hand down its decision in the Financial Conduct Authority (FCA) v Arch Insurance (UK) Ltd., et al. matter (known as the FCA “test case”). The case concerns the construction of certain insurance policy provisions that purport to provide coverage in the event of business interruption. The Court below considered the construction of each policy wording and the FCA, the Appellant Insurers and the Hiscox Interveners appeal on a number of points.

Broadly speaking, the Supreme Court is asked to determine:

1. certain matters of construction relating to:
 - a. "Disease Clauses" (i.e. those which can be triggered by the occurrence of severe acute respiratory syndrome coronavirus 2 ("COVID-19"), typically within a specified distance of the insured's premises);
 - b. "Prevention of Access Clauses" (i.e. those triggered by public authority intervention preventing access to, or use of, premises as a result of COVID-19); and
 - c. "Hybrid Clauses" (i.e. those clauses which contain wording from both Disease and Prevention of Access Clauses), and
2. whether the Court below was correct:
 - a. to apply certain counterfactual scenarios in relation to the operation of the clauses in relevant policies which provided for loss adjustments (the "Trends Clauses"); and
 - b. in its analysis of *Orient-Express Hotels Ltd v Assicurazioni Generali S.p.A.*

After the Supreme Court's opinion is released, Crowell & Moring LLP will provide a summary of the ruling, which concerns wordings distinct from those typically being litigated in the COVID-19 related business interruption cases across the United States.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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