

LITIGATION, DISPUTE RESOLUTION AND INVESTIGATIONS  
INSURANCE AND REINSURANCE

# Business Interruption Insurance Update: UK Supreme Court Decision in FCA Business Interruption Insurance Test Case

January 2021

The UK Supreme Court has given its much-anticipated [judgment](#) in the appeal of the business interruption insurance test case brought by the Financial Conduct Authority, substantially allowing the FCA's appeal against the insurers and dismissing the appeals by the insurers.

The Supreme Court decision means that many thousands of policyholders in the UK will now be able to recover for business interruption losses caused by the Covid-19 pandemic. In addition to the particular policies which were the subject of the test case, 700 types of policies held by 370,000 UK policyholders and issued by 60 different insurers may be affected by the decision. This equates to an estimated £1.2 billion in claims.

The Financial Conduct Authority ("FCA") brought the test case in order to assist policyholders and insurers to resolve disputes in relation to the validity and interpretation of business interruption insurance policies. The FCA represented the interests of policyholders (mostly small to medium sized enterprises) that had purchased policies from eight insurers which agreed to participate in the case.

The [High Court](#) decision had been considered a "win" for policyholders as the Court had largely agreed with the interpretations of the policies advanced by the FCA. However, it did not find in favour of the FCA in respect of all of its arguments. Amongst the issues on which the FCA was unsuccessful, there were four that the FCA feared would present substantial obstacles for many policyholders seeking indemnity from their insurers. The FCA appealed the High Court's decision on these four issues,

and the Supreme Court has now found in favour of the FCA, allowing all four of these appeals (in two cases, on a qualified basis).

On the insurers' side, six of the insurers - Arch, Argenta, Hiscox, MS Amlin, QBE and RSA - appealed against aspects of the High Court's ruling. The Supreme Court dismissed these appeals.

We are analysing the UK Supreme Court decision and will publish a more detailed briefing shortly.

Meanwhile, insurers and policyholders in Ireland await the decision of the Irish High Court in a business interruption insurance test case taken by four publicans against FBD Insurance. The High Court had intended to publish its decision today (15 January), but it has delayed doing so until 5 February 2021 in order to allow the parties to make submissions on the UK Supreme Court's decision.

KEY CONTACTS

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