

COVID-19 insurance update – 18th September

Oxbow Partners Coronavirus Coverage

We have introduced a weekly note consolidating all Coronavirus-related news relevant to the UK insurance industry. This will be published on Friday mornings for the foreseeable future. [Click here](#) to sign up to the mailing list.

18 September 2020

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- Covéa and Swiss Re reported to be on verge of arbitration over COVID-19 BI claims (Reinsurance News)
- Remote working to have lasting consequences for re/insurers (Reinsurance News)
- Lloyd's sued for \$180m for COVID-19 related breach of policy (Asia Insurance Review)
- Paris court rules against Axa in row over pandemic pay-outs (Reuters)
- The Reinsurance sector is expected to pay half of all COVID losses (The Insurer)

Analysis

A tight match that may go to extra time

This week's Coronavirus news has been dominated by the High Court's ruling on the FCA Test Case with a mixed result that overall was in favour of policyholders but also ruled in favour of the insurers in some cases. Among these, Zurich and Ecclesiastical have welcomed the ruling as it has confirmed that their policy wordings do not cover business interruption claims under the pandemic. Hiscox's share price reacted favourably to the ruling as it believes that the potential losses on business interruption are likely to be less than £100m, significantly lower than the worst-case scenario.

Despite the ruling this week, this might not be the end of the case as there is the opportunity for either (or both) sides to appeal the decision. Either way, the judgement will take some time to be worked through for all of those involved and for those insurers not directly involved in the case but with similar policy wordings.

The Oxbow Partners View

Just as the impacts of COVID are rolling on and seem here to stay for some time yet, so are the insurance claims. The FCA rest case verdict perhaps brings us to the beginning of the end for one source of claims but the threat of second waves leaves the door open for further events before we get to the other side. Stay safe out there

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FCA BI Test case verdict: The policyholders have it!

Our paying market subscribers would have received our detailed research note analysing the outcomes and implications of the FCA business interruption test case judgement on Tuesday. To summarise the outcomes, the High Court predominantly ruled in favour of policyholders' arguments. The complex judgement runs over 150 pages and considers 21 lead sample policy wordings from eight insurers. Different conclusions were reached in respect of each wording with the insurers involved affected to various extents. If you would like to receive our premium content, please contact one of the team.

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FCA Test Case responses

Hiscox Ltd response to Insurance Industry Test Case Judgement

Hiscox issued a relatively positive response to the outcome of the FCA test case. As a result of the Judgment, the Group estimates additional COVID-19 claims arising from business interruption to be less than £100 million net of reinsurance. This encompasses claims from all divisions including Hiscox Re and is a reduction of £150 million from the upper end of the Group's previously published risk scenario. The Judgment clarifies that fewer than one third of Hiscox's 34,000 UK business interruption policies may respond. Coverage under these policies is essentially limited to those customers who were mandatorily closed by Government orders, and then only in certain circumstances.

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QBE response to UK FCA Test Case Decision

QBE has stated it is considering its options to appeal the decision as the court ruled in favour of QBE with respect to two out of three of the QBE's notifiable disease policy wordings examined, however ruled in favour of insureds with respect to one of QBE's notifiable disease policy wordings. QBE's estimate of its UK business interruption claims exposure is around \$170M before reinsurance, which will be limited to a net cost of \$70M following recoveries from catastrophe reinsurance.

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RSA statement regarding the judgement reached on the FCA's BU court proceedings

RSA estimates the additional financial impact from the outcome of the judgment to be approximately £104m on a gross basis. After the application of catastrophe reinsurance protection, RSA estimates the impact to be around £85m which is in turn expected to reduce further through qualifying as a loss covered by the group-wide aggregate reinsurance programme. RSA's H1 Interim Report showed that the group had paid or reserved for c.£57m in claims in relation to COVID-19 losses.

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Zurich update on UK business interruption

Zurich welcomed the judgement in the UK High Court, which confirms that the wordings represented by Zurich do not provide cover for business interruption in relation to the COVID-19 outbreak. Reportedly Coronavirus has had a \$686 million impact overall on Zurich during in the first half of 2020. While Zurich is arguably one of the Test Case winners, the insurer has said it is reviewing the broader implications of the judgment in relation to wordings represented by other insurers.

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Ecclesiastical update on UK business interruption

Ecclesiastical has also welcomed the judgement in the UK High Court: losses arising from the Covid-19 pandemic are not covered by Ecclesiastical's Business Interruption policies and therefore the insurer is not required to pay claims.

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Other News

Pandemic exacerbates D&O insurance market woes (Insurance Business)

According to a report from Marsh JLT, directors' and officers' insurance premiums among FTSE 350 companies have increased 195% on average during 2020 Q2. The report also states that, owing to new exposures resulting from COVID-19 many D&O brokers are restructuring their pricing models and rationing capacity with some pausing new business while uncertainty remains. This puts pressure on an already difficult pricing environment, Marsh says organisations should be prepared for a more challenging underwriting process where insurers will ask more probing questions than in previous years.

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Cov a and Swiss Re reported to be on verge of arbitration over COVID-19 BI claims (Reinsurance News)

French mutual insurer Cov a is set to launch an arbitration with its reinsurer, Swiss Re, after the latter refused to cover COVID-19 related business interruption (BI) losses of at least  500 million (potentially up to  1bn). During the pandemic Cov a revealed it would compensate 4000 restaurants in a joint venture with Natixis Assurance costing around  180 million before reinsurance. Both Cov a and Swiss Re are reportedly in the process of selecting their arbitrators as tensions begin to flare with a third arbitrator acting as chair. With the UK High Court ruling in favour of policyholders in the FCA test case, a recent survey also found 4% of BI contracts in France also featured ambiguous clauses.

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Remote working to have lasting consequences for re/insurers (Reinsurance News)

Data and analytics company GlobalData has asserted that the increase in home working due to COVID-19 will have lasting implications for insurers and reinsurers as business models shift and individual risk evolves with this. GlobalData's 2020 UK SME Insurance Survey found only one quarter of SMEs expected remote working to return to pre-coronavirus levels. This has insurance implications as companies plan to downsize their offices and the indirect effects of this become apparent; for instance, Pret a Manger has already announced plans to close 30 locations. Public liability and property cover may suffer as a result but there will be opportunities in other lines of business such as motor due to an increase in home delivery services.

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Lloyd's sued for \$180m for COVID-19 related breach of policy (Asia Insurance Review)

Canadian vacation rental business Wataga Properties is suing Lloyd's in a \$180m class-action lawsuit for "wrongfully refusing" to cover pandemic-related losses. The business, which operates five properties in Canmore, claims Lloyd's Underwriters are in breach of the policy which falls under Lloyd's "all risks" commercial insurance. Wataga reportedly asked Lloyd's to pay-out for its rental income lost as a result of COVID-19 but this was refused. While the lawsuit is still in the process of being certified, the Guardian Law Group representing Wataga stated that it expects other businesses affected will likely come forward.

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Paris court rules against Axa in row over pandemic pay-outs (Reuters)

On Thursday AXA announced that it would appeal a Paris commercial court ruling which ordered the French insurer to pay five restaurants who had shut during the recent lockdown. This comes as another blow for AXA which has been at the centre of disputes over whether policyholders were covered for pandemic losses under business interruption insurance. AXA has said the ruling sets a confusing legal precedent after it had won several earlier cases which concluded that policies did not include pandemic coverage.

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The Reinsurance sector is expected to pay half of all COVID losses (The Insurer)

In an interview with Fitch Ratings' global head of reinsurance, Brian Schneider, he believes that half of the ultimate losses from COVID-19 will be passed on to the reinsurance industry. Fitch estimates that the losses will be manageable for the industry but could be up to \$50bn and expect reinsurers to continue to report COVID losses throughout 2020 and even in to 2021. This should help to continue the drive up in reinsurance pricing that has been seen recently, but Fitch is anticipating reserve additions and maintains a negative outlook on the industry.

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