

COVID-19 insurance update – 15th January

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.

15 January 2021

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Analysis

They think it's all over...it is now

After months of debate both in court and out, today the Supreme Court has announced its ruling on the appeal to the FCA test case on business interruption claims. The result is largely in favour of the FCA and other policyholder action groups with most of the insurers appeals being rejected. As ever with this case the exact details come down to the individual wordings of the policies, but the outcome is negative for insurers. It is notable that the Orient-Express case, which many of the insurers in the case used as a defence has been declared as wrongly decided by the Supreme Court and therefore overruled. This is important for the magnitude of claims as it impacts the 'but for' and trends clauses in the case. Essentially, insurers cannot pay lower claims on the basis that businesses would have seen much lower levels of revenue anyway in 2020 because of Covid-19, even if they hadn't been forced to close. Assessments of losses need to return customers to a level that would have been seen excluding COVID.

The Oxbow Partners View

With the FCA test case finally concluded, the industry and its customers can move on. The results may not have been in favour of the insurance industry but at least there is now clarity. The industry needs to work quickly to settle outstanding claims to help businesses survive through the latest lockdown and build back some of the lost trust that the protracted fight over claims has destroyed. Going forward the wordings and cover have been tightened and reduced so that the insurers are not likely to see another big hit from the latest lockdown. The next step will be bringing in pandemic cover once things get back to normal. Stay safe out there.

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Supreme Court rules on FCA test case: Appeals of policyholders substantially allowed and those of insurers largely dismissed

In the judgement handed down by the Supreme Court today policyholders have received a huge boost as the appeals from the FCA and Hiscox Action Group were substantially allowed while those of insurers were largely dismissed. The judgement once again covered policy wordings falling into the clause categories of disease, access & hybrid, causation, trends, and pre-trigger losses. For disease clauses (RSA 3) the court agreed with insurers that cover was triggered only when at least one case of a notifiable disease occurred within the specified radius of the insured premises. However, for both prevention of access and causation clauses the Court rejected insurers' arguments as too narrow and stated that it is "sufficient for a policyholder to show that at the time of any relevant Government measure there was at least one case of COVID-19 within the geographical area covered by the clause."

In perhaps one of the most important aspects of the judgement, the Supreme Court addressed the issue of the trends clause in the Orient-Express hotel case which occurred following hurricane Katrina and went in the favour of insurers allowing them to pay lower claims on the basis that businesses would have seen much lower levels of revenue anyway. During the BI test case insurers relied heavily upon the arguments from the Orient-Express judgement but the Court explicitly rejected this and concluded that the Orient-Express case was wrongly decided and should be overruled.

Overall, this judgement is a win for the policyholders represented by the FCA and Hiscox Action Group and although insurers are bound to be unhappy with the decision this should at least give all parties closure on the matter and allow payment processes to begin. The ABI has commented that policyholders who have made claims that are affected should expect to be contacted by their insurer to discuss what the judgment means.

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Judgement in Irish test case deferred in anticipation of UK appeal verdict (Insurance Business)

According to The Times, lawyers representing FBD Insurance in the Irish High Court Business Interruption case against publicans have requested a deferment until the UK Supreme Court judgement has been handed down. Justice Denis McDonald was originally scheduled to rule on the Irish BI case today as well, but the insurers argued that the case put forward by claimants had relied heavily on the precedents set by the UK test case. The adjournment has been granted and will allow further submissions from the camps based on today's UK judgement. The Irish high court is now expected to hand its verdict down on the first Friday of February.

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Trust in travel insurers takes a beating (Insurance Business)

A recent poll the Chartered Insurance Institute (CII) of 1000 consumers and 1000 SMEs has found that public trust in travel insurers' claims process declined during the past year. According to the CII's new Public Trust Index, expectation gaps relating to travel insurance have widened. The index measures the gap in expectations for key measures on a scale of plus or minus 30. The expectation gap for travel insurance companies broadened from 2.97 previously to 8.24 in the latest survey. When claimants were asked about whether they could get through to their provider quickly, travel insurers received an 11.89 mark up from a previous of 1.94. In contrast, the expectation gap for motor insurers concerning the avoidance of paying out reduced from 10.93 to 7.21.

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Travel insurance sector set to face more upheaval in 2021 (Insurance Times)

Travel insurance firm International Passenger Protection (IPP) has predicted that there will be more collapses in the travel insurance industry in 2021 and beyond. The continual moving in and out of lockdown is putting pressure on an industry that is already is significant amounts of debt. The stresses are compounded by many companies withdrawing from the financial failure insurance market. This could leave policyholders unable to get cover that complies with the Package Travel Regulations. IPP expects to see companies collapsing from Q2 2021.

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Opportunity around green parts is 'too big to miss' (Insurance Times)

During last year's lockdowns there were distribution gaps in repair network supply chains. Many of these were filled by the use of 'green' or recycled and refurbished parts. The move towards the use of green parts was accelerated by Covid and the lockdowns but many are keen for it to continue as it is good for all involved. Repairers, insurers and customers are all happy with the use of green parts and therefore this should be continued once the pandemic is over.

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RenRe warns of Q4 operating loss amid \$345mn weather & COVID impact (Reinsurance News)

RenaissanceRe has reported that losses from weather-related catastrophe events and the ongoing COVID-19 pandemic will push the firm to a fourth-quarter operating loss. The reinsurer announced that estimated losses relating to the COVID-19 pandemic will have a net negative impact of around \$175 million on its Q4 2020 results of operations. The announcement also revealed that estimated losses from catastrophe events will have a net negative impact of roughly \$170 million on its Q4 2020 results. These events include hurricanes Delta, Zeta, and Eta along with changes in estimated losses from Q3 2020 cat events. In Q3 2020, RenRe saw an underwriting loss of \$206.1 million as its combined ratio hit 120.6%.

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Initial reduction in driving not as significant in lockdown three (BBC)

The BBC has analysed mobility data from Google and Apple during the three periods of national lockdown and found that the latest measures have not limited movement as much as the first. The mini-lockdown in November 2020 was the least impactful on car usage, based on the data. Looking at the drop in car usage on the first Friday of each lockdown (vs January 2020 base), the first lockdown saw a drop of 63% whereas lockdown three only delivered a 31% fall in car usage. The main reason for the relatively higher amount of car usage appears to be more people continuing to travel to work, in part because more businesses have remained open during lockdown three than in lockdown one. While the impact on motor claims frequency might not be as large as was seen in March and April last year, any prolonged lockdown should see low motor claims levels and another positive year for motor underwriting.

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Care homes rejecting hospital patients over lack of insurance (Financial Times)

Care homes across the country are struggling to accept patients with COVID-19 (requested to take pressure off hospitals) because they cannot get adequate liability insurance. Given the high risk of accidental transmission within the homes, many providers have declined cover and where it is available prices have doubled. The care home providers are calling on the government to underwrite the risk to help break the deadlock.

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