The aggregation of Covid-19 business interruption losses

Sushma Ananda

Rob Merkin

Özlem Gürses

Aggregating factors

- Connecting the loss with the aggregating factors

- Hard to make a generalisation

- Wording determines everything
    - Occurrence/event
    - Originating cause
    - Loss
    - Claim

Event /occurrence

- *Axa Reinsurance (UK) Plc v Field* [1996] 3 All E.R. 517.
- *Kuwait Airways Corporation v Kuwait Insurance Co SAK* [1996] 1 Lloyd's Rep 664
- *Scott v Copenhagen Reinsurance Co (UK) Ltd* [2003] Lloyd's Rep. I.R. 696

➢ Unity of intent: to capture the aircraft and spares and to deprive KAC of them permanently.

➢ Unity of time: 5-8am on 2 August

➢ Unity of locality: Kuwait airport

➢ Unity of cause: the invasion.

Causal link between the loss and the aggregating factor

- ***Stonegate Pub Co Ltd v MS Amlin Corporate Member Ltd*** [2022] EWHC 2548 (Comm)

- Were the claimed Business Interruption Losses capable of being aggregated to one or more "single occurrences"?

➢ Insurers: all of the claims could be related back in a loosely causative sense to the initial outbreak of COVID-19 in Wuhan in China in November 2019. On that basis there would only be one Single Business Interruption Loss, with a limit of £2.5m.

Remoteness test

- Event v originating cause

- Event: the degree of unity

- 'in connection with': a relatively loose link – a wide range of losses might potentially fall to be aggregated as being at least 'connected with' an occurrence.

- 'in connection with' appears alongside 'arising from' and 'attributable to' indicates a causal linkage.

- a relatively weak causal linkage, could embrace indirect causation.

Stonegate Pub Company Ltd v MS Amlin,
Various Eateries Trading Ltd v Allianz Insurance Plc [2022] EWHC 2549 (Comm);
Greggs Plc v Zurich Insurance Plc [2022] EWHC 2545 (Comm)

The relevant occurrences:

➢ the Government's decision on 16 March 2020 to instruct people to avoid social venues;

➢ the instruction to restaurants on 20 March 2020 to close;

➢ the announcement and implementation from 24 September 2020 of early closing and other restrictions on restaurants;

➢ the adoption of three-tiered system on 14 October 2020; and the second lockdown.

➢ The outbreak of disease in China was too remote from the losses to be an event, and the closure of each of the premises was not an occurrence.

Covid-19

PizzaExpress Group Ltd v Liberty Mutual Insurance Europe SE [2023] EWHC 1269 (Comm)

475 restaurants, £250,000 recoverable for each occurrence, defined as

> "any one loss or series of losses arising out of and directly resulting from one source or original cause".

Does the aggregation clause apply to sub-limits.

Not decided how many occurrences there were

Furlough payment

LCA Marrickville Pty Ltd v Swiss Re International SE [2022] FCAFC 17

> ➢ Sums paid by the authorities to mitigate the loss suffered by policyholders were not to be deducted from the amount payable by the insurers

Stonegate Pub Company Ltd v MS Amlin [2022] EWHC 2548 (Comm); *Greggs Plc v Zurich Insurance Plc* [2022] EWHC 2545 (Comm)

> ➢ Sums recovered from the Government -furlough payments- were to be deducted under the savings clause.

> ➢ Sums recovered by way of Business Rate Relief were to be deducted to the extent that they were payable out of turnover.

Covid-19 / Aggregating factors

- Hours clause

- Catastrophe