

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
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- 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