



Insurers Ecclesiastical and MS Amlin successful on various COVID-19 coverage issues in unprecedented FCA Test Case

Gavin Kealey QC
Andrew Wales QC
Sushma Ananda
Henry Moore

The Financial Conduct Authority v Arch Insurance (UK) Limited and others [2020]
EWHC 2448 (Comm)

Gavin Kealey QC, Andrew Wales QC, Sushma Ananda and Henry Moore, instructed by DAC Beachcroft LLP, represented MS Amlin Underwriting Ltd (“**MSA**”) and Ecclesiastical Insurance Office plc (“**EIO**”) in the expedited test case proceedings started by the FCA in June 2020. The test case, brought against eight selected insurers to determine whether certain representative business interruption wordings respond to COVID-19 losses, led to an urgent, remote trial in July 2020.

In the first ever case to be determined under the Financial Markets Test Case Scheme, the two-judge Court, consisting of Flaux LJ and Butcher J, handed down judgment on 15 September 2020.

The Court has held that there is no coverage for COVID-19 claims under any of

the EIO policy wordings at issue in the test case because of the application of an infectious disease carve-out.

MSA has also been successful in relation to its three prevention of access wordings. The Court has concluded in relation to them that there is either no cover for COVID-19 claims or that there is “*highly unlikely*” to be cover.

However, in relation to the so-called “disease clauses” in two of the three MSA policies considered by the Court, the FCA’s submissions were accepted. The Court has held that those clauses insure the effects of COVID-19 both within and outside the specified 25 mile radius.

In addition, the Court has accepted EIO’s and MSA’s submissions that the trends clauses in the policies at issue, which were expressed to be applicable to “damage”, applied to the non-damage extensions to cover as much as they did to the traditional damage-based business interruption cover.

Consequential matters, including any applications for permission to appeal, have been adjourned to a later date.

[Please view the judgment at the 7KBW website.](#)

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