

FCA Test Case: Judgment Handed Down on 15 September 2020



On 15 September 2020 the High Court handed down the Judgment in the FCA test case on Business Interruption (“BI”) Policies. A link to the full Judgment can be found [here](#).

The High Court found in favour of the Policyholders on the majority of the key issues. The nature and complexity of the issues involved are reflected in the Judgment, which runs to over 150 pages and provides guidance on issues such as disease clauses, prevention of access clauses and trends clauses.

The Court dismissed the Insurers’ argument in relation to causation that, but for the occurrence of the insured peril, the counterfactual scenario would be one where the effect of the spread of Covid-19 outside the area defined in the policies would have caused corresponding business interruption losses. Considering the nature of contagious diseases, it was considered that this would render cover illusory, which could not have been the intention of the insurance contracts.

Our full analysis of the Judgment will be uploaded to our Covid-19 Hub shortly.



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