



FCA BI Test Case - the judgment

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Today's event

- Thank you to your LI for hosting
- Participation is very much encouraged
- Verbal and chat forum questions welcome
- Please complete the feedback survey
- You will get the slides
- Feel free to connect with me on **LinkedIn**



What I will cover

1. Why does it matter
2. The judgment
3. Insurer Dear CEO
4. Your duties as a broker + ICOBS



Learning objectives

This talk will give you an insight into:-

- The result of the FCA's test case on Business Interruption Insurance
- Why compliance with ICOBS is more important now more than ever



Just bear in mind

- There is a lot of detail and I will attempt to highlight some of the **KEY** pieces of information
- Please refer to the FCA BI pages for full information
- Bear in mind this is not formal advice and do take up whatever professional help you need
- Happy to do this talk in-house



1st Poll

Who do you work for?



Neutral Citation Number: [2020] EWHC 2448 (Comm)

Case No: FL-2020-000018


IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
QUEEN'S BENCH DIVISION
FINANCIAL LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/09/2020

Before:

LORD JUSTICE FLAUX
MR JUSTICE BUTCHER


HERBERT
SMITH
FREEHILLS

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Judgment handed down in FCA's COVID-19 business interruption insurance test case

CATEGORIES
This post is part of the following categories:
MISCELLANEOUS

SEPTEMBER 15, 2020

in

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1. Headline summary

The High Court has today handed down [judgment](#) in the COVID-19 Business Interruption insurance test case of *The Financial Conduct Authority v Arch and Others*. Herbert Smith Freehills represented the FCA (who was advancing the claim for policyholders) in the case, which considered 21 lead sample wordings from eight insurers. Following expedited proceedings, the judgment brings highly-anticipated guidance on the proper operation of cover under certain non-damage business interruption insurance extensions.

While different conclusions were reached in respect of each wording, the Court found in favour of the FCA on the majority of the key issues, in particular in respect of coverage triggers under most disease

HSF LINKS
Herbert Smith Freehills
Insurance
Insurance Coverage

RELATED LINKS
EIOPA website
Enterprise Act 2016
FCA website
Insurance Act 2015

2nd Poll

Have you had a BI claim accepted?



1. Why does this matter?



My thoughts at the start...

- This has caused shockwaves and the clarity of wordings is paramount
- Intentions must be clearly articulated - you can't say notifiable diseases are covered and then contradict this by saying pandemics are not
- The judgment lays down clarity but insurers have a LOT of work to do:-
 - Assess all wordings against 7 categories of business to determine what they had to do in line with advice or regulations
 - Communicate with insureds and brokers
 - Consider further reputational damage if they appeal as it appears exposure is sustainable



2. The judgment



The judgment

1. Crux
2. Key dates
3. The wordings – disease, prevention of access and hybrid
4. Trends clauses
5. Causation
6. Prevalence



