The ATP Litigation

The decision of the Court of Appeal in *London International Exhibition Centre Plc v Allianz Insurance Plc [2024] EWCA Civ 1026* is another milestone in the long-running litigation between policyholders and insurers in relation to the recovery of business interruption losses as a result of Covid-19.

In its landmark decision in *Financial Conduct Authority v Arch Insurance (UK) Limited [2021] AC 649*, the majority of the Supreme Court held that, where a policy of BI insurance included a clause providing cover for BI losses sustained as a result of an occurrence of Covid-19 within a specified radius of the insured premises, in order to show that its loss had been proximately caused by one or more cases of Covid-19, it was sufficient for the policyholder to show that its BI losses were caused as a result of Government action taken in response to cases of disease which included at least one case of Covid-19 within the radius specified in the relevant disease or hybrid clause.

In the LIEC case, the principal issue was whether a similar causal requirement applied to so-called 'at the premises' (ATP) clauses in policies of business interruption insurance. Broadly speaking, ATP clauses provide cover for BI losses caused by interruption or interference with the business of the insured as a result of the occurrence of notifiable disease at the premises. Insurers argued that such clauses were materially different from radius diseases clauses, and that the causal requirement was satisfied only if the insured could prove that the BI losses would not have been suffered but for the occurrence of notifiable disease at the relevant premises, or at least where the occurrence was a 'distinct effective cause' of any subsequent Government measures.

Agreeing with the trial judge in the outcome, although not the whole of his reasoning, the Court of Appeal held that, as a matter of interpretation of the ATP clauses in issue, any reasonable reader of a policy including an ATP clause would have contemplated, taking into account the nature of a notifiable disease, that closures or restrictions imposed by an authority as result of occurrences of a notifiable disease at insured premises would be unlikely to be a response to the occurrence of the disease only at the insured premises, but would rather be imposed in response to the outbreak as a whole over the area covered by the restrictions, whether national or local. It followed, according to the Court of Appeal, that the parties could not have intended a conventional but for approach to causation to apply, and that the causal requirement would be satisfied if the occurrence of a notifiable disease at the premises was one of a number of causes of the closure or, in the case of a pure disease clause, of the business interruption losses suffered as a result of the disease.

The decision will, no doubt, be welcomed by policyholders, but they will still have to prove that there was an occurrence of Covid-19 at the insured premises at the relevant time, and many may struggle to do so.

Leaving that aside, the decision provides clarity, at Court of Appeal level, on the issue of causation in relation to ATP clauses. It remains to be seen whether the case goes further.

London-International-Exhibition-Centre-v-Allianz judgment

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