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# Business Interruption and Coronavirus

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# Introduction



- Policies of insurance – typical requirement of damage
- Extensions for non – damage business interruption



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# New World Harbourview Co Ltd v ACE Insurance Ltd [2012] HKCFA 21, [2012] 1 Lloyd's IR 537



- Insuring clause - notifiable human infectious or contagious disease occurring within 25 miles of the Premises
- Limited to infectious or contagious disease that is required by law to be notified to an authority
- Commencement date of coverage – date disease became notifiable



# Financial Conduct Authority v Arch Insurance (UK) Ltd [2020] EWHC 2448 (Comm) – the Issues



1. The history of the pandemic;
2. The Government measures and categories of business;
3. Policy coverage;
4. Causation; and
5. Proof of prevalence.

# Financial Conduct Authority v Arch Insurance (UK) Ltd [2020] EWHC 2448 (Comm) – Key Facts

- 31.1.20 First outbreak
- 5/6.3.20 Notifiable disease
- 11.3.20 Pandemic
- 21.3.20 Regulations (1)
- 25.3.20 Coronavirus Act
- 26.3.20 Regulations (2)
- 4.7.20 Regulations (2)  
revoked and limited  
restrictions imposed

# Financial Conduct Authority v Arch Insurance (UK) Ltd [2020] EWHC 2448 (Comm) – Business Categories



1. Pubs, bars restaurants
2. Cinemas, theatres, nightclubs, indoor gyms, beauty, car showrooms
3. Essential shops
4. Non essential shops
5. Professional, construction manufacturing
6. Holiday accommodation
7. Places of worship, nurseries, schools



Financial Conduct Authority v  
Arch Insurance (UK) Ltd [2020]  
EWHC 2448 (Comm) – General  
Principles of construction

Usual principles applicable to  
construction of written  
contracts

Ejusdem generis and noscitur  
a sociis

Applicable background  
includes legal – that both case  
and statute law develop over  
time



# Financial Conduct Authority v Arch Insurance (UK) Ltd [2020] EWHC 2448 (Comm) – Coverage



- Disease – non damage extensions
- Hybrid – restrictions and disease
- Prevention of access





# Financial Conduct Authority v Arch Insurance (UK) Ltd [2020] EWHC 2448 (Comm) – Disease

- Occurrence within area
- Manifestation
- Following
- Vicinity
- Insured peril
- Extent of cover if occurrence in area
- Quantification clauses

# Financial Conduct Authority v Arch Insurance (UK) Ltd [2020] EWHC 2448 (Comm) – Hybrid

- Restrictions imposed
- Unable to use
- An occurrence
- Interruption
- Enforced closure
- Location of restrictions
- Application of trends clauses
- Application of counterfactual

# Financial Conduct Authority v Arch Insurance (UK) Ltd [2020] EWHC 2448 (Comm) – Restriction of access



- Prevention
- Incident
- Restriction on access
- Interruption
- Following danger,  
disturbance or emergency in  
vicinity of insured premises
- Trends clauses



# Financial Conduct Authority v Arch Insurance (UK) Ltd [2020] EWHC 2448 (Comm) – Causation



- What is the proximate cause of the loss?
- Answer: The insured peril
- Answer feeds into the counterfactual “But for” question

# Financial Conduct Authority v Arch Insurance (UK) Ltd [2020] EWHC 2448 (Comm) – Proof of prevalence



- Evidence required



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# Conclusion

- Events following the decision
- Any questions?



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