

COVID-19 – A POTENTIAL CRISIS FOR THE INTERNATIONAL INSURANCE MARKET

Will policies respond?

Many businesses in all industry sectors, particularly those involved in retail, energy, construction, infrastructure, hotels, sport & leisure, manufacturing, media & communications, logistics and transportation, are likely to suffer serious loss or damage as a result of business interruption caused by the Covid-19 crisis. Any affected business should already be considering whether their insurance policies provide any coverage for Covid 19-related losses.

Indeed, the Association of British Insurers (“ABI”) has recently advised *“Businesses who are concerned about the impacts of Covid-19 should check the scope of their cover and check with their insurance adviser or broker.”*

The FCA has also responded to the crisis. On 19 March 2020, the FCA published its expectations of general (non-life) insurance firms regarding treatment of customers (“treating customers fairly” (“TCF”). In applying TCF principles, the FCA stated that it expected insurers to *“act fairly, honestly and professionally in accordance with the best interests of customers”* and to *“ensure that all customer communications are clear, fair and not misleading.”*

The current situation presents largely unprecedented issues of great practical and legal complexity. Whether or not an insurance policy will respond, requires a close analysis of its specific terms, conditions and exclusions, in the context of the relevant (evolving) factual circumstances and the applicable law. Although the UK Government has supported the principle that where a business has purchased business interruption insurance cover for pandemics and had been compelled to close due to the guidance from the Government on 16 March 2020, the insurer should respond to the claim (subject to policy terms and conditions), the devil is in the detail.

Some business may find that they face resistance or delay to payment, which further prejudices their situation. The ABI has stated that only a relatively small number of businesses have purchased business interruption cover with a specific pandemic extension. Businesses in this situation will have to consider whether any other insurances afford whole or partial protection and also, their rights and obligations to third parties and whether they have recourse (or exposure) to third parties under non-insurance contractual provisions or the general law of negligence.

In these circumstances, it is critical that businesses suffering significant losses and their insurance brokers obtain early specialist advice, including legal advice, on the terms of relevant policies they have purchased or marketed, to determine whether or not Covid-19-related losses are likely to be covered.

How we can help

With our significant experience in advising on insurance coverage in policy wordings and in acting successfully in insurance disputes, without affiliation to any market sector, Enyo Law is ideally placed to advise businesses, brokers and advisers on their Coronavirus-related legal liability or recovery disputes.

We are able to offer a capped fee arrangement for:

- reviewing the terms of an insurance policy;
- providing an opinion as to whether or not Covid-19-related losses should be covered by the policy; and
- if we do consider that an insurer is on risk, setting out a strategy to successfully resolve the claim(s).

If it becomes necessary to commence legal proceedings, we can also provide advice as to whether or not such a claim might be suitable for litigation funding.

Why we are different

Enyo Law is a leading conflict free disputes practice in London, which offers expertise in international arbitration, litigation and global investigations. We are a dynamic team of highly experienced and respected disputes specialists who have previously practised at leading international law firms. Our lawyers have significant experience in a variety of complex and high value insurance and reinsurance disputes.

Our insurance specialists would be very happy to discuss any of these issues with you.



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Nick has substantial experience of acting in complex, high-value cross-border disputes, both by way of litigation and arbitration. He has a particular focus on matters involving financial products, fraud, asset-tracing and recovery. He has obtained, and responded to, various forms of interlocutory relief such as freezing and mandatory injunctions, for clients on many occasions. Nick also has expertise in dealing with energy disputes, primarily with respect to disputes between entities involved in oil and gas exploration, and insurance/reinsurance disputes. He regularly acts for and against banks and funds, as well as for state institutions, corporations and high-net worth individuals.

Nick trained at Allen & Overy and before joining Enyo Law in 2015 spent several years at a firm which specialised in insurance and reinsurance disputes.

He was also listed by the *Legal 500* 2020 edition as a Next Generation partner in banking and finance disputes.



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Max has advised in relation to a broad range of disputes, often involving financial services, insurance, and an international element. He has considerable experience in high-value actions by individuals and businesses for the mis-selling of interest rate protection products by banks, and has also advised a number of clients in relation to the FCA interest rate hedging review scheme, helping to achieve settlements of several million pounds. He has also acted for companies and individuals who have been the subject of worldwide freezing orders.

Max also has a developing contentious tax practice concerned with a range of taxes and with experience of handling Closure Notices and appeals through to First Tier Tribunal and beyond, Accelerated Payment Notices and GAAR Notices.

Max graduated from Cardiff University, and joined a niche financial services practice where he completed his training contract and spent a further two years upon qualification. Max joined Enyo Law in November 2011.



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Peter has over 25 years' experience of major litigation and arbitration of UK and international commercial disputes. Many of his cases have involved property, liability or specialty insurance products or disputes involving natural catastrophes and/or participants in the financial services, energy, mining, transportation, media, pharma, communications, construction and professional services sectors.

He is widely acknowledged for his depth of understanding of the insurance and reinsurance industries and his commercial approach to finding cost-effective practical solutions.

Peter has spent the last few years advising in relation to cyber risk management and breach response, working with policyholders, brokers, specialist insurers and their service providers. He is a CEDR-Accredited Mediator, Visiting Lecturer in Insurance Law at Leeds University and speaks regularly at conferences and seminars in London and around the world.

Clients reported that Peter is "*capable of lateral thinking in ways others are not*" and has been recommended in *Legal 500*, *Chambers* and *Euromoney* legal directories over many years.