

# JUDGMENT HANDED DOWN IN SEMINAL COVID-19 BUSINESS INTERRUPTION INSURANCE TEST CASE

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Deals and cases

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Herbert Smith Freehills acted for the claimant in the proceedings - the Financial Conduct Authority.

The test case was brought to determine issues of principle on policy coverage and causation under various specimen insurance wordings in respect of policyholder claims for business interruption losses arising in the context of the COVID-19 pandemic. It is estimated that some 700 types of policies across 60 different insurers and 370,000 policyholders could potentially be affected by the case.

The proceedings were heard on an expedited basis under the Financial Market Test Case Scheme. The Scheme can be applied to claims which raise issues of general importance in relation to which immediately relevant authoritative English law guidance is needed. Given the importance and urgency of the case, permission was also given for the case to be heard by both a Lord Justice of Appeal, Lord Justice Flaux, and High Court Judge, Mr Justice Butcher.

Whilst the judgment considered 21 lead wordings, and different conclusions were reached for each, the Court found in favour of the FCA, representing policyholder interests, on the majority of the key issues, in particular in respect of coverage triggers under certain non-damage clauses (particularly disease and 'hybrid' clauses, and certain denial of access/public authority clauses), causation and 'trends' clauses.

*“This is a really significant judgment” says Paul Lewis, partner and Global Head of Insurance Disputes at Herbert Smith Freehills. “It brings guidance to how business interruption insurance wordings should operate in the context of the COVID-19 pandemic, which has had such a devastating effect on businesses across the country. The decision should bring welcome news to a significant number of policyholders who will need to read the judgment carefully and see how the principles laid down by the Court apply to their particular policy wording. The speed with which the proceedings were brought is testament to the hard work of the FCA, Herbert Smith Freehills and Counsel teams to bring this urgent case to the courts.”*

The Herbert Smith Freehills team was led by partner and Global Head of Insurance Disputes Paul Lewis, partners Sarah McNally and Greig Anderson, and senior associate Antonia Pegden, supported by consultant Frank Thompson, senior associates David Jones, Dan Saunders, Rachelle Waxman, Jade Hu and associates Tristan Smith, Nikita Dave, William Gibson, Joanna Giza, Bianca Chang, Sarah McCadden, Hebe Peck and Juliana Rego.

The Counsel team comprised Colin Edelman QC, Leigh-Ann Mulcahy QC, Richard Coleman QC, Richard Harrison, Adam Kramer, Deborah Horowitz and Max Evans.

The defendant Insurers were represented by Allen & Overy, Clyde & Co, DAC Beachcroft, DWF and Simmons & Simmons.

## **MEDIA CONTACT**

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