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The Question of the Day:

Does my Business
Interruption policy
cover Covid-19 ?

Presented by Alan Chandler, Chartered
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Alan Chandler Training

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- **I have trained more than 2,000 individuals to become ACII qualified**
- I have trained over 50% of the individuals in the last 8 years that have gone onto achieve the highest ACII pass in the whole of the UK.
- I train to a pass rate of more than 96% in all CII qualification levels. Certificate , Diploma and Advanced Diploma.
- I have delivered the Allianz scholarship and academy programmes in both the UK and Ireland and the Ask Alan facility for Zurich.
- I have delivered training throughout Europe for many major brokers and insurers.
- I have trained students who have won national prizes in almost all ACII subjects including Insurance Law (MO5), Liability (M96), Commercial Property and BI (M93), Personal Lines Insurance (P86), Business and Finance (M92), Underwriting Practice (M80), Advanced Underwriting (960), Claims Practice (M85), Advanced Claims (820), Marketing (945), Advanced Broking (930) and Advanced Risk Management (992).

Learning Objectives

- Delegates will be able to :
- Understand the background to disease cover under Commercial Business Interruption policies
- Understand the various Bi extensions that may or may not relate to Covid-19
- Explain to policyholders whether their policy does or does not cover Bi losses relating to Covid-19

Does my Bi policy cover Covid-19?

- There is not an easy one size fits all answer:
- Some insurers did not think the loss was covered at all – they said no
- Some government officials thought there was an easy answer - they just said yes!
- The reality is far more complex – I will give you my opinions ,Insurers will have opinions, brokers will have opinions, so to start with we will look at civil law because this is where the debate will ultimately be decided, by the FOS or judge(s) of the day!

Civil Liability

- What is the burden of proof and why is this important to remember when considering liability in insurance?
- Let's consider Andrew Mitchell and 'Plebgate'



What is Business Interruption insurance

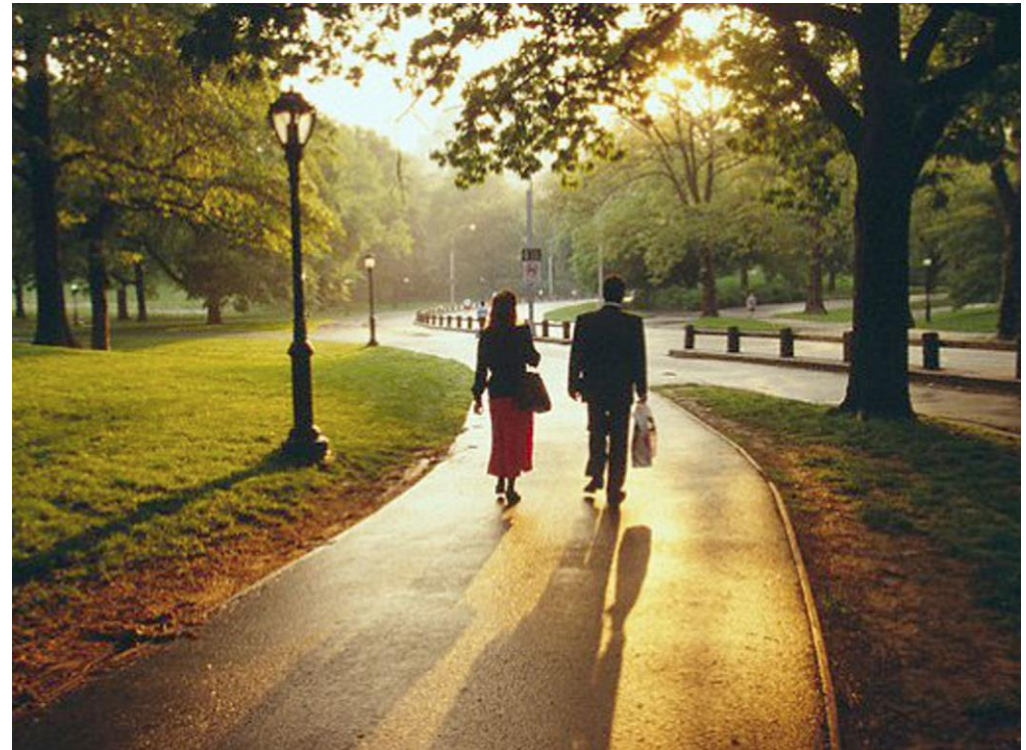
- Lets not forget it is a contract between insurer and insured. A body of words detailing what is and is not covered.
- So what will the FOS/the courts take into account when interpreting contract law?
- Let's remember the contra proferentem rule.
- Let's remember Insurer's raison d'être.
- Some insurers saw a pandemic maybe coming (SARS, Bird Flu and Ebola were all alarm signals) and had the foresight to change their wording to include specified diseases and exclude contagious diseases.

High Court Test case

- The FCA have gone to the High court to create some legal clarity.
- The FCA have said that the High Court test case will seek to “*resolve some key contractual uncertainties [in order] to provide clarity for policyholders and insurers*” .

Let's take a journey through a Bi wording to see who is actually covered

- If policyholders cannot claim it is important that they understand why their policy does not respond, so we are going to go through Alan's six rules to work out which Bi wordings will respond and which do not.



Pandemic Exclusion

- If this is in the General exclusions then there is no cover



Rule One

If the Bi policy has a pandemic exclusion in the GENERAL
exclusions, then no cover for Covid-19

Core Business Interruption Cover

- Clients get told their Bi covers All Risks so surely it covers everything including Covid-19
- Time to Celebrate – our Bi policy covers everything!



Core Business Interruption Cover

- Not only is it All Risks the Government have said now that they have made Covid-19 a notifiable disease Bi policies will respond.
- So all commercial policyholders are covered.....or are they?



Core Business Interruption Cover

- The reality is far from simple and most policies will not respond!





So what is the Core
Business Interruption
policy cover?



Next set of policyholders out are those with no Bi extensions

- No extensions then no cover for Covid-19, as it is not a core property damaging insured peril.
- Bi extensions have sometimes been badly understood and poorly sold.





RULE TWO

No extensions then no Covid-19 cover

1. Specified Customers
2. Unspecified Customers
3. Specified Suppliers
4. Unspecified Suppliers
5. Prevention of access (damage)
6. Prevention of access non damage (Action by police or other competent authority)
7. Public Utilities
8. Terminal ends (accidental failure of utilities)
9. Disease, food poisoning, vermin, pests, defective sanitation, murder or suicide
10. Loss of attraction

Business
Interruption
most common
extensions –
let's go
through them
very briefly

Next Group of Policyholders that cannot claim

- So the next group that cannot claim are those that did not have either the disease extension and/or the prevention of access non damage extension.





Rule Three

No disease and/or non damage prevention of access
extension then no cover for Covid -19

Prevention of access non damage

- This extension has more possibilities daily, BUT



Prevention of access non damage

- Read the wording carefully !
- Some wordings have a specific exclusion under this extension for contagious diseases, if that exclusion is there the policyholder cannot claim.





RULE FOUR

- Even if the policyholder has non damage denial of access, if the extension excludes contagious diseases Covid-19 is not covered

Disease, food poisoning, vermin, pests, defective sanitation, murder or suicide extension

- If the Policyholder has the far more common '**Specified** diseases' wording they are not covered.
- If the Policyholder has the older wider and less common expression '**Notifiable** diseases' – they might be covered.



RULE FIVE

- If the policy has been extended but states **specified** diseases there is no cover for Covid-19

Notifiable diseases

- The Government have called Covid-19 a notifiable disease so that part is triggered.
- But there are other considerations
 1. Has an incident occurred on the premises?
 2. Has the extension got radius cover, if so has an incident occurred within the radius?
 3. What is the inner limit?
 4. Are there any other factors within that particular wording?

Should I have notified my insurer of a material circumstance?

- A few insurers are saying the policyholder should have declared Covid-19 as a material circumstance and so they say they will decline all claims.
- Carter v Boehm (1766) would strongly challenge such thinking.
- Lord Mansfield in finding for the policyholder stated:
‘An underwriter cannot insist that the policy is void, because the insured did not tell him what he actually knew’

So who might be able to Claim for loss of Gross Profit/Turnover

1. Those with an extension that includes **notifiable** diseases- if an incident falls within the policy wording and the policyholder starts to lose Gross Profit (or turnover) as a result of Covid-19 restrictions they may well be able to claim up to the inner limit.
2. Those with an extension for prevention of access non damage, where contagious disease is not excluded. Claims could possibly be triggered from when the competent authority prevented access.

Do beware the other circumstances clause.



RULE SIX

- Two sets of policyholders that may be able to claim are:
 1. Those with a notifiable disease extension.
 2. Those with a non damage denial of access extension.

Summary of the Alan Chandler Training

Six General Rules on Bi and Covid-19

1. If the Bi policy has a pandemic exclusion in the GENERAL exclusions = No cover for Covid-19.
2. If the Bi policy has not been extended = No cover for Covid-19.
3. If the Bi policy has been extended but there is no non damage prevention of access and/or Disease, Murder etc. extension = No cover for Covid-19.
4. If the non damage extension has been selected but it excludes contagious diseases = No cover for Covid-19.
5. If the disease extension has been selected but it uses the words specified diseases = No cover for Covid -19.
6. This means that claims may be able to be made by policyholders who have the non damage extension without the contagious disease exclusion, or who have the notifiable disease extension. Read the wording carefully.

How will this affect the market?

- There is enough notifiable disease wordings still in place to give insurers major concern, particularly as many of these wordings are for the larger risks.
- The non damage prevention of access has also been added to many policies in recent years.
- If you think the market is hard now then it could get a lot worse!

Will there be Pi claims against brokers?

- If a broker cannot demonstrate they have gone through the relevant extensions there maybe pi exposure. This is not definite by any means, but if the policyholders business neighbour has managed to claim and the policyholder points out there was never a conversation on Bi extensions, then this could be an awkward conversation!
- Beware flat lining – be proactive with your clients going forward and do TRAIN your staff to be professionally qualified.



Alan Chandler's **Remote** Technical Training Courses alanchandler@uwclub.net

- D&O in a plain English nutshell
- GDPR/Data Protection
- Insurance Distribution Directive
- Vulnerable Customers
- Ogden update
- The perfect storm - Understanding how Covid-19, floods, solvency margins and Ogden are changing your insurance market place
- How broker E&O claims are increasing and how these can be mitigated
- The missed opportunity – how UK employments trends are changing yet the financial services sector is lagging behind
- Financial awareness for account executives and handlers
- Leadership in insurance
- Commercial property insurance
- Business interruption insurance
- Construction insurance
- Liability insurance (EL, PL and Products)
- Professional Indemnity insurance
- Motor Trade insurance
- Directors and officers insurance
- Motor Fleet insurance
- Engineering insurance
- Package insurance
- Legal Principles of insurance
- Household insurance
- Private Motor insurance
- How liability can arise under the law of tort
- Examination Techniques workshop

Alan Chandler Training courses for Cii Examinations alanchandler@uwclub.net

At Certificate Level

- IF1 Insurance legal and regulatory
- IF2 General insurance products
- IF3 Insurance underwriting process
- IF4 Insurance claims handling process
- IF5 Motor insurance products
- IF6 Household insurance products
- IF8 Packaged commercial insurance

- **At Diploma Level**

- MO5 Insurance Law
- M92 Insurance Business and Finance
- M93 Commercial property and business interruption insurance
- M96 Liability insurances
- M80 Underwriting practice
- M85 Claims practice
- M86 Personal Lines insurance

- **At Advanced Diploma Level (ACII)**

- 530 Economics and business
- 820 Advanced claims
- 930 Advanced broking
- 945 Marketing insurance products and services
- 960 Advanced underwriting
- 992 Advanced risk management
- Basically I can set up an entire training programme to take people from nothing to fully ACII qualified.

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