



# General Insurance market update – issues and implications

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INSURANCE BROKER

FEBRUARY 2022

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# Introduction / housekeeping

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Welcome and thank you!

Webinar format – muted and video off. Interactive features – polls, Q&A

60 minutes including short period of Q&A



Diane Jenkins

- Background in Insurance Broking Sector – technical programme design, M&A due diligence, BI reviews
- Former chair and education secretary of London Business Interruption Association

Nick Thomas & Associates

- Specialist training, coaching and consulting to the UK Insurance Sector
- Technical insurance, sales, business and soft skills, compliance training

# Objectives

- Understand how the Supreme Court decision impacts BI in the future
- Be aware of key market developments and their practical implications for brokers and insurers
- Be aware of market innovations and their potential use for clients

# BI and Supreme Court Decision

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Judgment on 15<sup>th</sup> January 2021

114 pages long!

Only considered 21 sample wordings

FCA - decisions 'persuasive guidance'

Today will look at

- practical implications for cover
- how decision will change BI (maybe)



# BI and Supreme Court Decision

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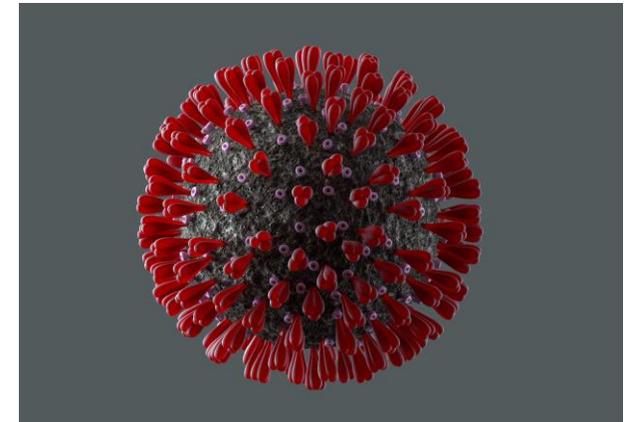
## Disease Clauses

Wordings with definition of list of covered diseases

- no cover as COVID-19 not included
- Rockliffe Hall Limited v Travellers Insurance Company Limited [2021]
- lesson learnt by insurers!
- wordings more likely to take this approach in future...

Or

- not give any cover for disease



# BI and Supreme Court Decision

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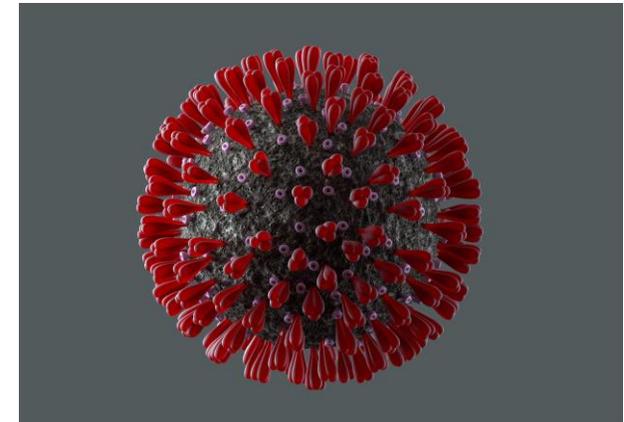
## Disease Clauses

### Wordings with no definition or Human Notifiable Disease

- did include coronavirus pandemic
- 5<sup>th</sup> March 2020 COVID-19 made notifiable disease

### Wordings with defined radius/vicinity

- cover for business interruption caused by **any cases of illness** resulting from COVID-19 that occur within the specified area/radius/vicinity – 1 case can trigger cover
- FCA guidance on proving existence of Covid-19



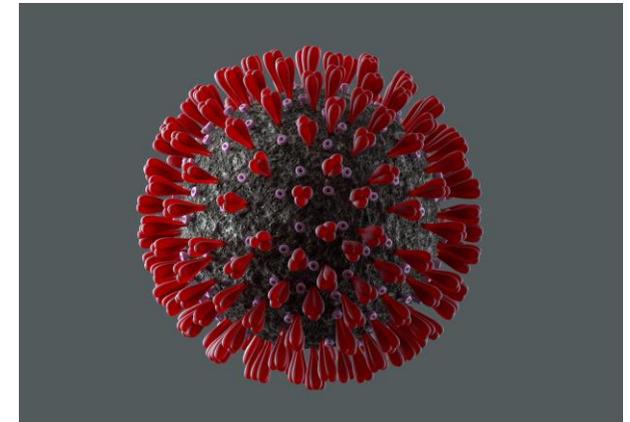
# BI and Supreme Court Decision

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## Prevention of Access

### Restrictions imposed by a public authority

- do not have to be enacted in law to be ‘legislation’
- restrictions in mandatory and clear terms sufficient
- expect wordings to be have requirement for legislation future



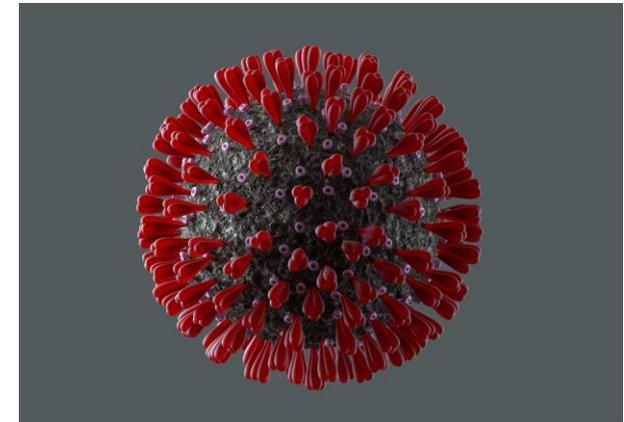
# BI and Supreme Court Decision

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## Prevention of Access

What level of interference on the business is required to trigger coverage?

- "inability to use" - inability does not have to be an inability to use all of the premises for all purposes
- "prevention of access" - means stopping something from happening or making an intended act impossible BUT doesn't have to be to whole business
- "interruption" - interference or disruption does not need to be a complete cessation of the business – but must have a material effect on finances



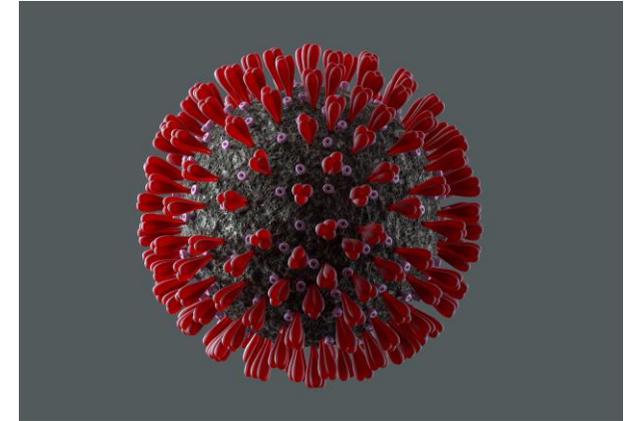
# BI and Supreme Court Decision

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## Prevention of Access

Were businesses not required to close covered?

- was stay at home message a relevant “restriction imposed” – YES
- businesses that allowed to open could also claim under the prevention of access clause, subject to wording
- expect wordings to use ‘complete inability to use all of the premises’ in future
- AND Non-Damage Prevention of Access cover will be harder to get



# BI and Supreme Court Decision

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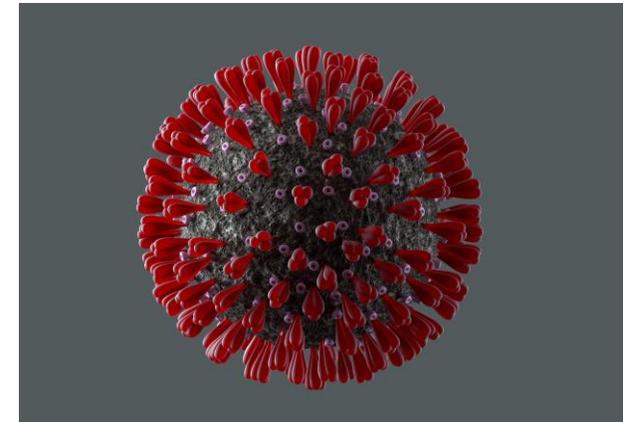
## Causation

Test must take into nature of cover being provided – common sense applied

- every single case of disease is a separate occurrence and insured peril
- thousands of concurrent causes of loss
- insured peril (e.g. outbreak of COVID-19 in vicinity) PLUS uninsured peril (other COVID-19 cases) = cover
- even if insured peril alone not sufficient to cause loss

Insured peril PLUS excluded peril = no cover

- likely to see more exclusions



# BI and Supreme Court Decision

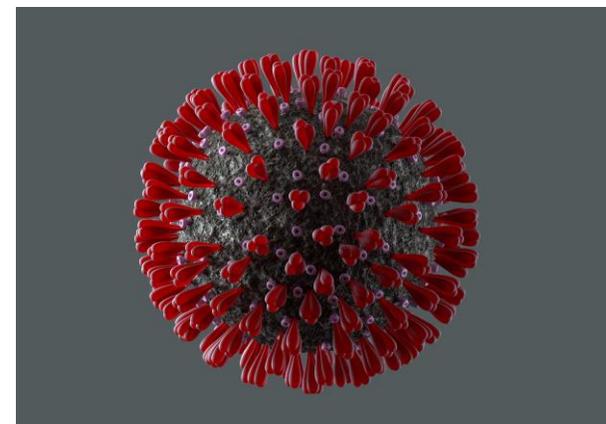
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## Trends clause

Cannot be construed as an exclusion

Only trends that can be taken into account are those unconnected to insured peril

- pre-trigger business adjustments should only be made to reflect circumstances affecting the business which are unconnected with COVID-19
- businesses that suffered downturn before closure – trend ignored – compare with pre-COVID-19 business results



# BI and Supreme Court Decision

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## Orient Express

2010 decision was wrong and should be ignored

Most UK insurers ignored case anyway!



# BI and Supreme Court Decision

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## Interpretation of exclusions

### Need consistency and clarity

SME policies –need to be understood by reasonable person who "is not a pedantic lawyer who will subject the entire policy wording to a minute textual analysis. It is an ordinary policyholder who, on entering into the contract, is taken to have read through the policy conscientiously in order to understand what cover they were getting."

- exclusions relevant to extensions should be in extension
- disease extension and then disease exclusion makes no sense!



# BI and Supreme Court Decision

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Supreme Court did not consider all issues on BI policies

Seeing additional court cases

- Stonegate v MS Amlin & Ors – aggregation, AICOW
- Corbin & King v Axa – POA wording
- Everatt v Aviva – direct v indirect losses
- Parkdean Resorts UK Limited v. Axis – quantum
- Various Eateries PLC v. Allianz - definition of event
- Greggs PLC v Zurich - aggregation
- World Challenge Expeditions Limited v. Zurich – cover in cancellation policy



# BI and Supreme Court Decision

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Check wordings for possible cover – beware of late notification issues

Assess cover needs of clients

- may not be cost effective but needs to be discussed (avoid E&O)
- ensure client understands all the cover they have /don't have
- review indemnity periods (including extensions)
- ensure changes in business post COVID-19 included
- 2022 sum insured should not be based on 2021 accounts or will be too low (hopefully)

Check for return premiums – BI is adjustable



# Market developments-hard market

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## Hard market continues

- interest rates still low – insurers need u/w profit
- price increases continue but may be smaller e.g. D&O
- some classes still hardening with 10%+ rate increases e.g. cyber, property
- reduced capacity – lower limits offered
- some sectors still difficult e.g. construction
- insurers still pulling out of loss-making classes/countries
- more rigorous underwriting continues
- reduced cover – wordings being reviewed



# Market developments – additional exclusions

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## Pandemic exclusions

- lots of versions – added to all types of policy
- no cover for pandemic now available (was in 2019) in UK
- Pandemic parametric cover in Asia – may come to UK

## Cyber exclusions

- different versions for different types of policy
- create cover gap not always closed by purchase of cyber policy
- need to discuss loss scenarios with clients



# Market developments - Brexit

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Loss of UK passporting rights – cannot arrange admitted local cover in EU

Need to review sums insured for property – reinstatement costs increased

Need to review BI Indemnity periods – e.g. take longer to get replacement machinery

Need to check if products liability risk increased



# Market developments - economy

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Inflation – need to review sums insured

- Day One percentage - is 15% enough
- check maximum stock level (NB make adjustable)
- are inner limits still sufficient
- have suppliers changed – BI cover may need amending

Revisit need for credit insurance

Some insurers may offer interest free instalments



# Market developments - parametric

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Growth in parametric solutions

Check if appropriate for your clients

- flood cover solutions
- cyber outage BI
- climate issues for renewable energy (e.g. lack of wind)
- crop insurance

Need to keep up-to-date with new solutions

Look for scheme opportunities



# Market innovation

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## Programme structuring

- first loss
- reconsider self insurance savings
- growth in use of captives, PCCs and mutuals
- layering – property and BI as well as liability
- more co-insurance – takes time to place

## Emerging risks

- driverless cars
- artificial intelligence
- climate change
- modern building methods



# Revisit Objectives

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# Thank you! Questions?

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