



## **COVID INSURANCE COVER – HOW TO FIND OUT IF YOUR CLIENT HAS IT**

It is not often that a specialist insurance lawyer can claim to be generally useful to many and not just to the few. Now, in the time of Covid 19, is such a moment. The entire economy, every branch, every commercial entity is in some way being affected, first by the economic slowdown, and then by the more or less complete shutdown. Businesses, large and small, are turning in droves to their lawyers and asking, “are we covered”?

For the lawyer not specialising in insurance, that may not be an easy question to answer. What follows is a brief step by step guide for the uninitiated and the “not quite sure” lawyer, when faced with such a request or demand, allowing them at least to perform a legal “triage” on enquiries received, so that they might themselves advise their clients, or know whether or not, and if so in what respect, more specialist advice might be required.

I would hope that no one reading this would have the brass neck to sue me should anything go horribly wrong for them after having applied this guidance, but life has taught me never to trust a lawyer facing a big claim, and so I must end this brief intro with the words, “errors and omissions excepted”. Good luck.

### **STEP 1**

Ask client for the policy schedule(s) covering the period(s) from the start of the Covid 19 (“Covid”) inspired slowdown and to the present. Commercial insurance renewal season usually takes place in the spring and so, given that the economic impact of Covid first began to bite in the UK in around early February, one may be looking at two periods of insurance in many, if not most, cases.

Ask for the policy wording.

These two documents (policy schedules(s) and policy wording) will contain the answer, one way or the other. Do not be distracted by any other documents, such as “cover notes”, mission statements and the like.

## **STEP 2**

Examine the schedule and look for the insured covers. These may be referenced by subject headings or by reference to insurance “sections”. See if any, by their description, have the potential to provide cover. Ignore any such as “money in transit”, “employers’ liability” etc., which could not conceivably provide the desired cover.

Look in particular for and zero in on any heading or section described as, “Business Interruption”. If there is no Business Interruption cover then, unless the policy has been assembled in a novel or mischievous way, the likelihood is that the policy does not contain any cover which will pick up any Covid losses.

## **STEP 3**

You will need to understand one or two basic tenets of Business Interruption (“BI”) insurance cover.

First, it is a very dry area of insurance, as evidenced by the fact that accountants are usually required to be brought in to assist in putting together the monetary aspects of the claim. Happily, we are not here concerned with issues of quantum, but rather with the viability of the claim itself. So, the good news is that no interaction with accountants is at this stage necessary. Some of my best friends are accountants.

Second, BI cover, unless accompanied by extensions of, or additional, cover (either so described or inserted by way of “endorsements” – check the schedule(s), only provides cover for slowdown or closedown losses where the relevant insured premises has suffered “damage”, in the sense of the physical loss of, damage to or destruction of such premises. “No damage, no cover”, should be your starting mantra.

## **STEP 4**

That said, BI covers have over the years accumulated within their wordings a plethora of additional covers or extensions, not dependent on there first having been damage to the insured premises.

Examples include extensions in relation to oyster norovirus (restaurants) and legionnaire's disease (hotels, retirement homes).

With that in mind, the hunt can begin for a relevant Covid insuring provision. For this, you will need to have metaphorically to hand all of (i) the policy schedule(s), (ii) the BI section of the policy wording and (iii) the section within the BI section or elsewhere, which details "policy" or "cover" extensions (NB. however expressed).

#### **STEP 5**

Look at the schedules. If you are lucky, the schedule(s) may list on their face a relevant extension or endorsement, indicating possible coverage by use of variations on the words, "disease", "communicable", "contagious", "notified" and "notifiable".

Alternatively, the schedule may refer more generally to the presence of additional cover under the BI section; words such as "and all extensions of cover" are typical. OK, the word "thereunder" is unlikely to appear in many of today's insurance wordings, which are afflicted by the plague of "Plain English" (with its propensity to produce misunderstanding, imprecision, confusion and lack of clarity) which has cluster-bombed the reliability and precision of insurance policy wordings. That though is a beef for another day.

#### **STEP 6**

Having identified your targets from the schedule, be assiduous in your search through the corresponding passages in the policy wording. Important provisions, such as conditions "applicable to all sections" of the insurance, or applicable only to "specific sections" of the insurance and also relevant endorsements and exclusions etc., may appear almost anywhere within the 50 to 100 odd pages of the combined insurance policy wording you are examining. So, SCOUR the wording with acute diligence.

#### **STEP 7**

If there is cover under the insurance, it may at one extreme list actual diseases covered, one by one, or it may instead refer more generally to "communicable", "contagious", "notifiable" or "notified"

diseases, and the like. CAVEAT: the more general or vague the cover, the more likely it is that exclusions will apply.

## **STEP 8**

So, look hard for them.

First though, consider the wording of the extension to see whether it contains any “provisos” qualifying the extended or additional cover. Provisos stipulate circumstances which, if not applicable, operate to disarm any cover that would otherwise have been provided (eg. “You are covered for disease losses, provided that the disease has been notified by HM Government”).

Look also at the foot of the possibly multi-paragraph extension of cover; provisos often lurk in the dark recesses of such provisions.

Look next for “exclusions” or “exceptions” (language varies) which are specific to the particular extension of cover.

Next, look in any “Exclusions” or “Exceptions” section, and also (counterintuitively, I know, but bear with me) within any section described as “General Exclusions”, or “Exclusions applicable to all sections”. Exclusions which could only ever be applicable to one particular section of an insurance are not infrequently found, misplaced, within general exclusions sections; so beware.

## **STEP 9**

At the start of this piece, I made the observation that commercial insurance renewal season usually takes place in the Spring. The process may take several, and for the larger companies or companies with complicated structures or multiplicity of functions, many weeks. For many businesses, losses sustained as the result of the Covid outbreak may straddle two one-year insurance periods.

Insurers seldom being slow to react when danger lurks, the current period of renewal has seen some insurers insert specific Covid exclusions into their policies. More can be expected to do so, as the renewal season unfolds.

Although I am currently unable to vouchsafe it, I suspect that few insurers will have had the time to have changed their policy or additional cover wordings, and so any exclusions that have been applied will likely have been imposed by way of policy endorsements. So, look out for them.

Et Voila !

Once you have built up some proficiency, you will not need to follow the above steps in any particular order (other than, obviously, for Steps 1 and 2).

I hope this helps.

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