

Covid-19 clarity: Stonegate v MS Amlin

11 October 2022

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The High Court in London recently handed down Judgment in *Stonegate Pub Ltd v MS Amlin & others*, a decision that was closely watched by the market. The decision gives some helpful and much needed guidance on some key issues arising from the Covid-19 pandemic (subject to appeal).

Case overview

The Claimant was a large chain of pubs that had suffered losses arising from Covid-19 closures, which it alleged amounted to c.£1.1 billion. There were a number of issues in dispute. For the purposes of this article, the key issues were as follows:

1. were business interruption losses at multiple locations capable of aggregation?
2. was the AICOW aggregate limit in the policy applicable to the policy as a whole, or to each location?
3. were payments received under the furlough scheme taken into account when calculating covered losses.

Judgment

Taking the above issues in turn, the Court held that:

1. whilst the outbreak of Covid-19 was in and of itself too remote to constitute a 'single occurrence' for the purposes of the policies, the Government action in March 2020 did constitute a single occurrence (although there were in fact 2 separate occurrences, being the decision made by the four UK Governments on 16 March, and the subsequent order on 20 March 2020 for pubs and restaurants to close). The result was that claims flowing from the closures were subject to two policy limits of £2.5 million each.
2. the AICOW limit in the policies applied to each single business interruption loss. However, this limit was held on the facts to be subject to the £2.5 million limit referred to above.
3. furlough payments should be taken into account when calculating recoverable losses (i.e. the payments reduced the amount of the insured loss). This is because either the payments amounted to 'savings' within the meaning of the policy and / or because otherwise there would be a double recovery for the insured. In finding that furlough payments must be taken into account, the court essentially reaffirmed the basic principle of insurable loss.

Conclusions

Although this case may well be subject to appeal, it does provide some helpful guidance as to how the court approaches questions of causation, remoteness and aggregation. It also provides some much needed clarity on the treatment of furlough payments.

Notwithstanding the unusual factual scenario, the Court did reaffirm the basic premise that a policyholder cannot make a double recovery.

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Contact

Tim Johnson

Partner

tim.johnson@brownejacobson.com

+44 (0)115 976 6557