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Pizza Express v Liberty: business interruption policy drafting considerations

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The London High Court has ruled in favour of insurers, Liberty Mutual and XL Insurance, in a preliminary issue hearing relating to whether the business interruption experienced by Pizza Express as a result of the COVID-19 pandemic could be classed as 'any one occurrence' or 'any one incident'.

Pizza Express v Liberty [2023] EWHC 1269

Pizza Express sought an indemnity of £82m pursuant to an 'at the premises' notifiable disease extension and/or £178m pursuant to a 'prevention of access' cover in its Property and Business Interruption policy that was on risk during the COVID-19 pandemic. Pizza Express asserted that the losses did not fall under the sub-limit of 'any one occurrence' but were instead classed as 'any one incident', defined as "loss or destruction of or damage to any property used by or for the benefit of the Insured at the Premises for the purpose of the Business" under the policy.

In response insurers contended that, if covered at all, the losses were to be considered as forming '*any one occurrence'*, defined as "*any one loss or series of losses arising out of and directly resulting from one source or original cause*". If so, the indemnity would be limited to £750,000 plus £50,000 for claims preparation expenses.

Following **Wood v Capita Insurance Services Ltd [2017] AC 1173** and **Arnold v Britton [2015] AC 1619**, the court considered the 'reasonable policyholder' test as to what the policy meant. In doing so, the court construed the words in the appropriate context of the clause and the wider policy, considering the commercial common sense of the suggested construction against a rival one. The court concluded that the losses were part of any one occurrence, and accordingly that the sub-limit applied.

Considerations for insurers

Insurers should consider the importance of policy drafting to ensure that clauses cannot be interpreted in a manner which was not intended. It is important to be mindful of how the 'reasonable policyholder' would interpret such a clause, considering the context in which it appears and commercial common sense.

For example, in the judgment, it was asserted that a reasonable reader would assume that figures and statements appearing on the same page were linked, unless stated otherwise. Therefore, consideration must be made to the placement of words so that the reasonable reader does not make unintended links. Furthermore, consistency and clarity should be ensured. Where multiple terms are used for the same concept, capitalisation of words vary or terms are not defined, this can lead to ambiguity and in turn, the potential for unintended consequences.

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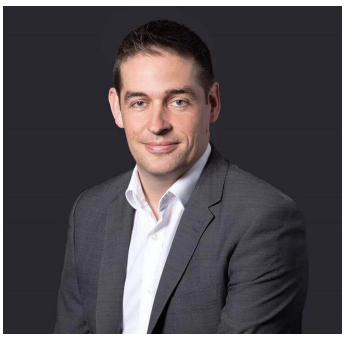

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