Browne Jacobson

Non-payment of insurance premiums during the Coronavirus pandemic

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The forced closure of many businesses as a result of the Coronavirus pandemic has had a huge impact on the nation's Gross Domestic Product (GDP). Recent reports from the Office for National Statistics state that the economy was 25% smaller in April than it was in February this year[1]. In a situation where cash flow has all but dried up, many financial obligations continue. If difficult decisions are being taken regarding the allocation of funds, some businesses may be looking for "quick wins" and deciding not to pay insurance premiums. However, where the premium is unpaid will the insured still have cover? Having not performed its part of the bargain – are insurers obliged to provide an indemnity? The position is not necessarily as straight forward as one may think.

The starting point

As is usually the case, the starting point is to consider the wording of the insurance contract. In most cases, payment of the insurance premium is not a requirement for the creation of a binding insurance contract.

Payment of the premium may be a condition precedent, with payment usually being made on inception of the risk.[2] However, unless the policy unequivocally states that time for payment of the premium is of the essence, then the default position is that it is not. Such a stipulation will not be implied[3]; absent an express clause to that affect non-payment will not in itself prevent risk from attaching.

We address these two broad categories below:

1. Payment of the premium is a condition precedent

   It is relatively common for insurers to include an express term stipulating that risk will only attach on payment of the premium. Such clauses typically work in one of three ways:

   1.1. There is no binding agreement until payment is made;

   1.2. There is a binding agreement but the risk runs from the date of payment; or

   1.3. There is a binding agreement, and risk runs from the date of the contract, backdated from when payment is made.

   In all these cases, insurers are only liable to indemnify the insured once the premium has been paid.

2. Payment of the premium is not a condition precedent

   Whilst absent an express "time of the essence" clause or equivalent, insurers are bound regardless, they will have a right of set-off and are only required to pay any amount of a claim that exceeds the premium. If the premium exceeds the value of the claim then nothing is payable.[4]

When no express provision is made in the contract, mere delay in payment of the premium will not amount to a repudiatory breach. Unless that delay is a result of insolvency, in which case it is assumed that payment will never be made and the insured will no longer be able to meet their continuing obligations under the contract.[5] Once the insured has been served with a notice requiring payment of the premium within a reasonable time, should they continue to fail to pay, that will amount to a repudiatory breach entitling insurers to treat the contract as if it had never existed.

Payment by instalments

Where payment is made by instalments it is a matter of construction whether the policy is single period or a series of separate contracts, a new one being formed on the payment of each instalment. The distinction is potentially as fine as the policy wording referring to 'the premium' as opposed to 'the premiums'.[6] Ordinarily payment by installments is no more than the insurer providing credit and the policy period will remain as one.

Remedies and concluding remarks

Where the date for payment is of the essence (either as a matter of construction or as a result of notice being served), the insurer may:

1. forfeit or determine the policy;

2. instigate proceedings for payment; or

3. reject claims until the payment has been made.

Given the unprecedented times affecting many businesses, it may be necessary to depend on insurers adopting a reasonable approach to such matters. Indeed, one of the measures mooted by the Financial Conduct Authority is the idea of deferred payments to help insureds suffering from financial difficulties during the coronavirus pandemic.[7]

Indeed, where insurers have the right to offset claims against unpaid premiums, the more palatable and regulator friendly approach would be to allow the insured a period of time to pay the premium. However, in cases where no claims arise, insured's might be happy to waive the insurance it hasn't needed to call upon but in those cases insurers could lose out on millions in premiums.

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[1] *Office for National Statistics, 'GDP monthly estimate, UK: April 2020' (ONS, 12 June 2020) accessed 18 June 2020.*

[2] *Heath Lambert Ltd v Sociedad de Corretaje de Seguros [2004] Lloyd's Rep. I.R. 905*

[3] *Ibid.*

[4] *Lake v Reinsurance Corp Ltd 1967 (3) S.A. 124 (W).*

[5] *Pacific and General Insurance Co Ltd v Hazell [1997] L.R.L.R. 65.*

[6] *JA Chapman & Co Ltd v Kadirga Denizcilik Ve Ticaret [1998] Lloyd's Rep IR 377 CA*

[7] *Financial Conduct Authority, 'FCA Confirms measures to help insurance customers who may be suffering financial difficulties as a result of coronavirus' (FCA, 14 May 2020) accessed 20 June 2020.*

Contact

Mark Hickson

Head of Business Development

onlineteaminbox@brownejacobson.com

+44 (0)370 270 6000

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