

Chubb ordered to indemnify SXSW for Covid cancellation

24 April 2024

In 2020, an annual conference and festival event held in Austin Texas, South by Southwest (SXSW) was cancelled by the City of Austin due to the outbreak of Coronavirus.

As SXSW refused to refund ticket costs to attendees, two ticket holders filed a class action lawsuit against SXSW in April 2020. The claims alleged breach of contract, unjust enrichment and conversion.

Although SXSW attempted to pass the cost of the action to their insurers, Chubb, insurers confirmed they would not defend or indemnify SXSW.

Subsequently, SXSW sued Chubb in October 2021 alleging breach of contract, breach of implied covenant of good faith and fair dealing, and violations of the Texas Insurance Code. SXSW sought declaratory judgment that Chubb owed SXSW duties to defend and indemnify SXSW against the class action. However, Chubb argued lack of coverage. The Judge ruled that policy exclusions ensured that Chubb did not have to defend or cover the class action. The court subsequently entered judgment for Chubb.

In February 2022, the case brought by the ticket holders in the class action was settled and SXSW paid more than \$1million in settlement.

In March 2024, SXSW appealed the decision and the 5th Circuit (appeal court) found that SXSW's policy exclusions did not preclude coverage. It was concluded that the contractual liability exclusion in the policy did not apply because the plaintiffs' claims were not limited to SXSW's purchase agreement. The court also held that the professional services exclusion did not apply because the refunding of tickets did not constitute a professional service.

Interestingly, the court also dismissed Chubb's argument that a restitution claim is not a covered loss as the court concluded that "Restitution might be uninsurable when the receipt of funds was unlawful... But there is no suggestion that SXSW acquired the plaintiff's money unlawfully".

Whilst it is important to note that the recent case regarding Chubb and SXSW is specific to the jurisdiction in which the insurance claim was heard, its implications are relevant to UK-based insurance policies as well. The court's careful review and consideration of the policy wording in this case highlights the importance of clarity within insurance policies.

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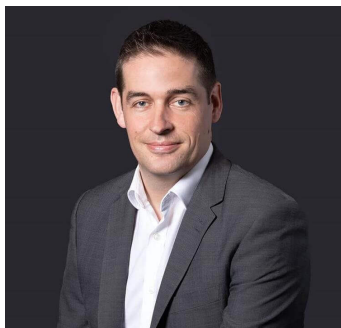
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