



Talking Points- Breaking News

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Talking Points- Breaking News provides you information on the latest developments for a high profiled news story, which can affect the Insurance & Surety industry.

Look for the **TSiB Talking Point** that highlights the issue and keeps you informed.

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[British] Supreme Court hands down judgement in FCA's COVID Business Interruption Test Case

News Highlight-United Kingdom

- In September 2020, the High Court ruled in favor of the Plaintiffs in a suit to force insurers to pay Business Interruption (BI) claims under their policies. [Click here to read a complete summary of the High Court's ruling.](#)
- January 2021, in a unanimous ruling, the Supreme Court dismissed the Insurers' appeals and held for the Plaintiffs. [Click here to read the full Judgement.](#)
- The Supreme Court took up the issues from the High Court's rulings which encompassed the Business Interruption clauses of 21 sample policy wordings for small to medium policyholders.
- This ruling can affect 70 types of policies held by 370,000 policyholders, across 60 different Insurers.
- The Supreme Court rejected the insurer's appeals based on the following policy language interpretations:
 - **Disease Clauses-** The geographic limit in this clause does not reduce a claim to only diseases within the limitation. One case within the boundary, is enough to trigger the policy for the Pandemic.
 - **Prevention of Access/Hybrid Clause-** The Supreme Court broadened the High Court's ruling to expand the criteria for when and how the Civil Authority triggers the policy. In addition, the Court ruled that policyholders can claim partial losses if part of their business was affected. i.e., In person dining is lost, take out is still going.
 - **Trend Clause-** A mechanism to quantify the loss.
 - **Orient Express Test Case-** The Court rebuked the Defendants use of a BI case that denied BI coverage to a New Orleans Hotel after Hurricane Katrina. The precedent in this case served to limit or deny a BI claim if there is widespread damage in the city because the circumstances are beyond the scope of the specific policy.
 - The Court rejected this argument and went further to state that this ruling was wrongly decided and should be overturned.

TSIB's Talking Point: The Supreme Court's ruling has opened the door to policyholders' claims for Business Interruption claims. In September, Deutsche Bank estimated that there is a potential impact of \$10 Billion in claims that Insurers did not collect premium for.

This ruling is counter to what is happening in the U.S. for similar claims and directly challenges the key defense that the BI cannot be triggered without any *Direct and Physical Damage* to the Property. The potential effect of the Orient Express reversal should not be overlooked.

It remains to be seen how this ruling will affect future policy wording and continue to impact the pricing for Property coverage placed in the London Markets.

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