

September 2020

# TSIB Talking Points

*“Breaking News”- Special Bulletin*

---

## **UK COVID-19 Business Interruption Test Case Verdict Revealed**

The Day of Judgment for the Financial Conduct Authority (FCA) business interruption test case has arrived. Since the FCA first announced its intention to seek “legal clarity” on business interruption insurance claims impacted by the COVID-19 pandemic, the eyes of the insurance sector and businesses around the world have been firmly fixed on what this judgment will bring, as this is unprecedented

The London court (The High Court) has ruled today a landmark victory for up to 370,000 small businesses across the UK, who held business interruption insurance and were forced to close due to the COVID-19 pandemic, are entitled to be compensated by the insurers and that, subject to the limits of the policy, this compensation should return them to the position they would have been in had the pandemic never happened. This ruling means that hundreds of HAG members who were forced to close their premises during the pandemic should now receive an insurance pay out from Hiscox Insurance (Hiscox).

Today’s judgment is a step in resolving the uncertainty being faced by policyholders, and is a landmark ruling for many thousands of business who are struggling to survive the impact of the pandemic. The judgment did not say that insurers are liable across all of the 21 different types of policy wording considered by the court in the test sample, but that each policy needs to be evaluated against the detailed judgment to work out what it means for that policy.

The trial, which took place in the last two weeks of July, ruled in favor of the arguments brought by the FCA, representing Hospitality Insurance Group Action and Hiscox Action Group, and the eight defendants who had agreed to be part of the test case. Defendants included Arch Insurance (UK) Ltd, Argenta Syndicate Management Ltd, Ecclesiastical Insurance Office Plc, MS Amlin Underwriting Ltd, Hiscox Insurance Company Ltd, QBE UK Ltd, Royal & Sun Alliance Insurance Plc and Zurich Insurance Plc.

Key issues focused on wording interpretation whether government actions constituted a “mandatory denial of access” but did not focus on the direct physical damage to the property.

Although small business policyholders in the UK see this as a victory and want immediate payments, the outcome can be used as a guideline on how policy wording may be interpreted, as it relates to government shutdown. It remains to be seen how this will affect the U.S Marketplace, as we are witnessing US Insurers (such as Travelers) win rulings where the plaintiff failed to establish direct physical damage to their property, most recently in the state of California in August.

**To read full articles, highlight below links**

<https://www.insurancebusinessmag.com/us/news/breaking-news/regulators-covid19-business-interruption-test-case-verdict-revealed-233578>.

<https://www.lexology.com/library/detail.aspx?g=e674993c-169b-49d4-b49c-924e57623d38>

<https://www.insurancetimes.co.uk/analysis/fca-called-out-as-shining-example-of-regulatory-intervention-for-test-case-action/1434561.article>