

Monday September 7, 2020

## Business interruption test case heads to NSW Court of Appeal

A test case launched by the Insurance Council of Australia (ICA) to examine the application of certain infectious diseases exclusions in business interruption policies will be heard by the NSW Court of Appeal.

On Friday, NSW Supreme Court Justice David Hammerschlag granted a joint motion by legal counsels to move the case to the Court of Appeal.

The Court of Appeal hearing is due to start on Friday October 2.

ICA CEO Andrew Hall said: "ICA legal representatives and the plaintiffs' solicitors provided a joint motion that the combined test case be moved to the NSW Court of Appeal and expedited.

"After reviewing the pleadings and the joint motion, Justice Hammerschlag determined the case was of sufficient importance that it should be moved. The ICA is pleased the case will be heard by the Court of Appeal on an expedited basis.

"The pandemic and resulting uncertainty have had a devastating impact on Australia, so we are pleased the test case hearing is progressing as quickly as possible, and a judgment can be delivered that provides greater clarity to customers, insurers and regulators in the treatment of pandemic-related claims.

"In most cases, pandemic exclusions are a threshold issue in Australia given that most insurers have never contemplated coverage for pandemics, have not priced the risk or collected premiums for this risk. Globally, insurers generally regard pandemics as uninsurable risks."

The test case consists of two separate small business claims that were lodged with the Australian Financial Complaints Authority (AFCA) as part of its dispute resolution process.

The ICA understands AFCA will use the outcomes of the test case in determining complaints arising in respect of business interruption claims with the infectious disease exclusion.

-ENDS-

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**ABOUT THE INSURANCE COUNCIL OF AUSTRALIA:**

The Insurance Council of Australia (ICA) is the representative body of the general insurance industry in Australia. ICA members represent about 95 per cent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

July 2020 Australian Prudential Regulation Authority statistics show that the general insurance industry generates gross written premium of \$51.4 billion a year and has total assets of \$135.4 billion. The industry employs about 60,000 people and on average pays out about \$171.1 million in claims each working day.

Over the 12 months to July 2020 the industry's net profit after tax (NPAT) was \$1.0 billion – a 70.5 per cent decrease from the prior year's NPAT of \$3.5 billion. The industry's underwriting result was \$1.4 billion, falling by 39 per cent from \$2.3 billion in the prior year. <http://www.insurancecouncil.com.au/about-us>