

Thursday August 13, 2020

Insurance Council launches business interruption test case in NSW Supreme Court

The Insurance Council of Australia (ICA) today commenced proceedings in the NSW Supreme Court to test the application of certain infectious diseases exclusions in business interruption policies.

Lawyers representing the ICA have submitted pleadings to the court for a combined test case. 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 appreciates that Hollard and HDI Global Specialty have offered claims to assist the whole insurance industry in reaching a better understanding of how the infectious disease exclusions in policy documents respond to the unique circumstances of the COVID-19 pandemic.

The ICA notes that globally, insurers have designed and priced their policies on the basis that pandemics are not insurable due to the magnitude of potential losses, and the challenges of modelling the risk and ensuring coverage affordability.

The industry thanks the two insured businesses whose claims form the basis of the test cases for agreeing to take part in the hearings. Their legal costs for the hearing will be paid by the ICA.

The parties have agreed to request the matter to be heard on an expedited basis. The Insurance Council will be represented by Mr Bret Walker SC, instructed by Clyde & Co.

The ICA will not pre-empt legal arguments that will be put forward, and encourages all parties and interested persons to allow the legal process to take place unencumbered by speculation or commentary.

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.

Quotes attributable to Mr Rob Whelan, CEO, Insurance Council of Australia:

“The Insurance Council initiated this test case on behalf of insurers that sell commercial property policies with business interruption cover.

“The ICA believes this test case is an important step towards providing greater clarity to insurers and small business customers in the treatment of pandemic-related claims.

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“The industry wishes to have the case heard as quickly as possible, given the challenging times being experienced by the small business sector because of COVID-19, the past season of natural disasters and the recession.

“Most insurers have never contemplated coverage for pandemics in their policies, and did not price pandemic risks into premiums. They believe pandemic-related exclusions are appropriate, but wish to provide greater clarity through engaging a superior court process.”

Quotes attributable to Mr Richard Enthoven, CEO and founder, The Hollard Insurance Company:

“We remain of the clear view that business interruption coverages do not cover pandemics. However, we volunteered to be part of the test case process so that the court system can clarify for our policyholders, Hollard and the industry how to handle this important issue.”

Quote attributable to Mr Richard Taylor, CMO, HDI Global Specialty SE:

“As a global and prominent insurer in Australia, we take this matter very seriously and we are pleased to be able to make a positive contribution through our involvement in the agreed test case process.”

All media inquiries: Campbell Fuller, Insurance Council of Australia m 0407 170 500

ABOUT THE INSURANCE COUNCIL OF AUSTRALIA:

The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our 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).

March 2020 Australian Prudential Regulation Authority statistics show that the general insurance industry generates gross written premium of \$51 billion a year and has total assets of \$133.8 billion. The industry employs about 60,000 people and on average pays out about \$169.4 million in claims each working day.

Over the 12 months to March 2020 the industry's net profit after tax (NPAT) was \$1.5 billion – a 56.7 per cent decrease from the prior year's NPAT of \$3.5 billion. The industry's underwriting result was also \$1.5 billion, falling by 47 per cent from \$2.8 billion in the prior year. <http://www.insurancecouncil.com.au/about-us>

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