



News release

Insurance Council
of Australia

Tuesday, 22 March 2022

Appeals to High Court regarding business interruption policies

The Insurance Council of Australia (ICA) notes that applications for special leave to the High Court of Australia have been filed by two policyholders and one insurer to appeal parts of the recent judgment of the Full Court of the Federal Court of Australia in the second business interruption insurance test case.

The judgment delivered by the Full Court of the Federal Court of Australia on 21 February 2022 substantially upheld the arguments of insurers, finding that in most instances the insurers are not liable to indemnify the policyholders.

Two policyholders, The Taphouse Townsville Pty Ltd and LCA Marrickville Pty Ltd, have each filed applications for special leave to appeal to the High Court. Taphouse Townsville's appeal deals with whether cover is available under the 'prevention of access clause' or the 'hybrid clause' in its policy. LCA Marrickville's appeal deals with whether cover is available under the 'prevention of access clause' or the 'catastrophe clause' in its policy. Both the trial judge and the Full Court found in favour of the insurers on these issues, holding that the policyholders were not entitled to cover under any of these insuring clauses.

The appeal filed by the insurer, IAG, is confined to the issue of whether JobKeeper payments are to be taken into account when calculating the amount of the insurance payment (if any) to the policyholder. Although the trial judge held that JobKeeper payments should be taken into account, the Full Court took a different view. This is an important issue for policyholders and insurers throughout the industry given the number of businesses that participated in the JobKeeper program. The ICA supports IAG's application for leave to appeal.

The option for these appeals by either the policyholders or insurers was agreed to as part of the original decision to seek an outcome from the courts through test cases. The insurance industry will continue to meet the costs of the policyholders in the appeal process.

Comment attributable to Andrew Hall, CEO, ICA:

While we understand there is frustration that the matter continues through the courts, we recognise the need for both policyholders and insurers to obtain definitive guidance from the courts as to how relevant business interruption policy wordings are to be interpreted and applied.