



News release

Insurance Council
of Australia

Friday, 14 October 2022

High Court declines special leave applications in BI test case

The Insurance Council of Australia (ICA) today acknowledged the High Court's decision to deny special leave to appeal the judgment of the Full Court of the Federal Court of Australia on the interpretation of policy wordings in business interruption policies.

The Full Court of the Federal Court delivered its judgment on 21 February 2022 where it substantially upheld the arguments of insurers in four of the five matters in the test case which were appealed.

The Full Court found that in those four matters the insurers were not liable to indemnify the policyholders.

In the other case, the Full Court upheld the earlier decision to the effect that cover had been triggered but that there were substantial issues as to whether the policyholder could prove any relevant business interruption.

The policyholder in this case is entitled to bring it back before the Federal Court for determination if it considers that it can identify any loss covered by the policy.

With the exception of the one case that might go back before the Federal Court, the High Court's rulings on these matters draws to a close the formal test case process concerning Covid-19-related business interruption matters.

Insurance Council members, including those not directly involved in the court proceedings, have committed to applying the principles of the courts' final rulings in the test cases consistently and efficiently to all business interruption claims.

The first business interruption test case was resolved in favour of policyholders in June 2021, with the outcome that insurers could not rely on references to the Quarantine Act "and subsequent amendments" in policies to exclude Covid-19 related claims.

The second test case has now resolved further interpretations of aspects of business interruption policies.

Claims will ultimately be determined based on the applicable principles of the final judgment in this test case and that of the first test case, as well as the wording of the particular policy of the policyholder.

Insurers have taken steps to ensure claims are prioritised and finalised as quickly as possible. Policyholders should contact their broker or insurer directly if they require clarity on their particular circumstances.

Comment attributable to Andrew Hall, CEO, Insurance Council of Australia:

Today's decision by the High Court marks a significant milestone in a process that at its heart has been about understanding the extent to which business interruption insurance provides cover under the unprecedented conditions we experienced over the last two and a half years.

This has not been an easy or straightforward process, and insurers and the Insurance Council want to thank the policyholders who agreed to be part of both test cases for their patience and community spirit.

We recognise this has been a particularly difficult time for many small businesses and we sought the courts' determinations and funded these test cases in order to establish the principles necessary in order to minimise disputes.

Insurers are pleased that, coupled with the ruling in the first test case, today's determination provides guidance to the industry and policyholders, to help facilitate fair and consistent determinations on claims.

Insurers and brokers will be communicating directly and quickly with policyholders who have made claims affected by the judgment to explain next steps.