Insurers win COVID-19 business interruption dispute against Star Entertainment Group – what does this mean for businesses?

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Disputes concerning the availability of exclusion clauses to deny liability for COVID-19 related insurance claims continue to be litigated before the Courts. As lockdowns and closure orders take an increasingly heavy economic toll on businesses, policy holders continue to make claims and insurers continue to dispute liability for claims. We consider a recent Federal Court case that considered such a dispute.

Background

The policy holder in that case was Star Entertainment Group (**Star**). Star conducts various hotels and casinos throughout Australia, and the associated hospitality and retail services. As a consequence of the government restrictions in 2020 in response to COVID-19, various premises were closed by a government order. Star had various insurance policies in place (the **Policy**), and sought to make a claim for loss arising from the closures.

The Policy

The Policy stated that if Star's business was interrupted by the premise being physically lost, destroyed or damaged (collectively known as 'Damage'), the insurer would indemnify Star for the associated loss. The Policy also stated that 'Damage" extends to loss caused by a lawful authority in connection with retarding any conflagration or other catastrophe.

The Legal Issues

The Court considered two legal issues:

- does COVID-19 constitute an "other catastrophe"; and
- does the loss suffered have to be physical loss, or can it be financial loss (or even loss of use/access).

Outcome

The Court held that COVID-19 was a catastrophe under the Policy, however the Policy only insured Star for physical loss of property, not financial loss or loss of use. There were a number of factors that led to this conclusion. The Court noted that the Policy was overwhelmingly geared towards covering physical loss, destruction or damage, so the natural meaning of "other catastrophe" is an event that causes physical damage.

Interestingly, the Policy had a clause that excluded cover for diseases in the *Biosecurity Act 2015* (Cth) which includes COVID-19. This meant that COVID-19 was not covered under the Policy, although Star did not seek to challenge this point.

Implications

This decision has several implications for policy holders looking to challenge a refused business interruption claim:

- different policies have different legal interpretations so careful consideration of the wording is required;
- if drafted correctly, insurers can rely on exclusion clauses to avoid liability for COVID-19 insurance claims; and
- insurers are likely to rely on this decision in future business interruption disputes, so policy holders should be mindful of this precedent in any future claims.

Star has already lodged an appeal against this decision. Given the importance of this decision, we will keep you updated on the outcome of the appeal.

In the meantime, if you would like advice on a dispute with your insurer, or an assessment of your insurance contract, please contact Chris Kintis on 02 8235 1251 or your usual ClarkeKann contact.