

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM
THE HIGH COURT OF JUSTICE, BUSINESS AND PROPERTY COURTS
COMMERCIAL COURT (QBD)
FINANCIAL LIST

Neutral Citation: [2020] EWHC 2448 (Comm)

BETWEEN:

- (1) ARCH INSURANCE (UK) LIMITED
- (2) ARGENTA SYNDICATE MANAGEMENT LIMITED
- (3) HISCOX INSURANCE COMPANY LIMITED
- (4) MS AMLIN UNDERWRITING LIMITED
- (5) QBE UK LIMITED
- (6) ROYAL & SUN ALLIANCE INSURANCE PLC

Appellants

-and-

THE FINANCIAL CONDUCT AUTHORITY

Respondent

-and-

- (1) HISCOX ACTION GROUP
- [(2) HOSPITALITY INSURANCE GROUP ACTION]

Interveners

Appeal Nos 2020/0177-0178

AND BETWEEN:

THE FINANCIAL CONDUCT AUTHORITY

Appellant

-and-

- (1) ARCH INSURANCE (UK) LIMITED
- (2) ARGENTA SYNDICATE MANAGEMENT LIMITED
- (3) ECCLESIASTICAL INSURANCE OFFICE PLC
- (4) HISCOX INSURANCE COMPANY LIMITED
- (5) MS AMLIN UNDERWRITING LIMITED
- (6) QBE UK LIMITED
- (7) ROYAL & SUN ALLIANCE INSURANCE PLC
- (8) ZURICH INSURANCE PLC

Respondents

-and-

- (1) HISCOX ACTION GROUP
- [(2) HOSPITALITY INSURANCE GROUP ACTION]

Interveners

**RESPONDENT'S CASE FILED BY THE SECOND APPELLANT INSURER
(ARGENTA)**

References are in the form: [Bundle/Tab/Page].

1. These submissions should be read together with the written case filed in support of Argenta’s own appeal, dated 3 November 2020.
2. Ground 1 of the FCA’s appeal asserts that the declaration in paragraph 11.4 of the order of Flaux LJ and Butcher J dated 2 October 2020¹ is incorrect, and that it is not appropriate to make any adjustment of the indemnity in order to take account of a reduction in revenue sustained by a policyholder as a result of Covid-19 prior to the date on which cover under the policy was triggered. The FCA states that this ground of appeal relates “*almost entirely to prevention of access/hybrid wordings*”,² and most of its submissions are drafted on that basis. However, the FCA does acknowledge that ground 1 of its appeal also applies to ‘disease clauses’,³ such as Extension 4(d) in Argenta 1.
3. This issue does not arise if Argenta’s appeal is allowed. As explained in Argenta’s written case, the insured peril in Extension 4(d) of Argenta 1 is an occurrence of Covid-19 within a radius of 25 miles of the insured premises. Accordingly, a policyholder is entitled to an indemnity under Extension 4(d) only if and insofar as its loss has been proximately caused by occurrences of Covid-19 within 25 miles.
4. In any event, it is respectfully submitted that ground 1 of the FCA’s appeal should be dismissed (at least insofar as it relates to ‘disease clauses’) even if the Supreme Court does not accept the submissions made in support of Argenta’s appeal. In this respect, Argenta adopts the submissions of the First and Fifth Appellant Insurers (Arch and QBE), *mutatis mutandis*.

9 November 2020⁴

SIMON SALZEDO Q.C.
MICHAEL BOLDING

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¹ [C/1/7].

² FCA’s written case, para. 4 [B/2/27].

³ *ibid.* paras 20 [B/2/36] and 54 [B/2/48].

⁴ Updated on 10 November 2020 to include references to the hearing bundle.