

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS**  
**OF ENGLAND AND WALES**  
**QUEEN'S BENCH DIVISION**  
**COMMERCIAL COURT**  
**FINANCIAL LIST**

Claim No. FL-2020-000018

**BETWEEN:**

**THE FINANCIAL CONDUCT AUTHORITY**

**Claimant**

**- 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

**Defendants**

- (1) MURRAY & EMILY PULMAN T/A THE POSH PARTRIDGE  
(2) BLUEBERRY ENTERPRISES LIMITED  
(3) OTHERS INSURED BY QBE UK LIMITED OR AVIVA INSURANCE  
LIMITED

**The 'HIGA' Interveners**

- (1) COMFOMATIC LIMITED  
(2) 368 OTHERS INSURED BY HISCOX INSURANCE COMPANY LIMITED

**The 'Hiscox' Interveners**

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**SECOND DEFENDANT'S NOTE ON ORAL SUBMISSIONS**

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1. This note is filed on behalf of the Second Defendant (Argenta) in response to a point made by the Claimant in its reply submissions.

2. Mr Edelman QC stated today (at page 31 lines 20 to page 32 line 1 of the draft transcript) that Argenta’s oral submissions accepted that in the example of a local lockdown where half the relevant cases were within the circle and half outside it, the lockdown was made on the basis of all the cases and (it followed) the cases within the circle were “an effective cause”.
3. That is incorrect. We do not believe it is a fair reading of the submissions referred to, but we assume that Mr Edelman QC made the submission believing it to be an available reading of what was said, so it is important to clarify what Argenta’s position is, so that the Court is not misled about that.
4. If some cases are within and some without the circle, then the question of fact arises whether the cases within the circle are an effective, proximate cause of the local lockdown.
  - a. If the cases outside the circle would have been sufficient to cause the local lockdown, then the cases within the circle fail the ‘but for’ test of causation and cannot be an effective cause.
  - b. The same answer is reached, even if the cases inside the circle would also have been sufficient. This is the potential problem case of over-specified causation. It is not relevant to the results of national lockdown, because the FCA does not suggest that the cases in any 25-mile circle would meet this test.
  - c. If the cases outside the circle would not have been sufficient on their own to cause the lockdown, then both causes pass the ‘but for’ test and both may be treated as effective causes depending on the factual findings of the Court (as in *The Miss Jay Jay*). This might, for example, include considering the number and perceived importance of the cases in each area; the two causes are both proximate only if they have approximately equal efficacy.
5. The only “concession” which Argenta makes is that it fully accepts – and has always accepted - that where cases within the circle cause interruption, its clause does not exclude coverage merely on the basis that there are also cases outside the circle.

30 July 2020

**SIMON SALZEDO Q.C.  
MICHAEL BOLDING**