BUSINESS INTERRUPTION INSURANCE TEST CASE

~~PROPOSED~~ ISSUES MATRIX

9 JUNE 2020

This matrix ~~contains~~ summarises the effect of a few of the key terms that are likely to be argued. In including exclusions or trends clauses, the FCA does not thereby accept that they are in fact applicable to any or all claims being considered here. While a useful summary document, the Issues Matrix is likely to decrease in value as the litigation progresses, and the reader's attention is drawn to the pleadings and other documents which will set out in fuller detail the issues between the FCA and insurers.

Where comments are footnoted, they represent the comments of a particular party and have not been endorsed or agreed by any other party.

Policy type	PoA			Disease	All	
	Just denial or prevention of access	**Authority includes 'government'**	**Vicinity**	**Vicinity**	**Trends clause or similar?**	**Exclusions, Conditions or similar?**
~~MS Amlin type 1~~	~~Yes~~	~~No~~	~~'vicinity'~~	~~25 miles~~	~~Applies to damage~~	~~(Disease clause) Only premises directly affected~~
~~MS Amlin type 2~~	~~No (also hinder)~~	~~Yes~~	~~1 mile~~	~~25 miles~~	~~Variants: (i) Leisure and Retail; (ii) Office and Surgery (iii) Digital Shop~~ ~~All apply to damage~~	~~(Disease clause) Only premises directly affected~~
~~MS Amlin type 3~~	~~No (also hinder and use)~~	~~No~~	~~'vicinity'~~	~~-~~	~~Applies to damage~~	~~Outbreaks of foot & mouth disease or avian flu~~
~~Arch type 1~~Arch1[1]	Yes	Yes	No vicinity limit	-	Two variants: (i) Commercial Combined, (ii) Retailers, Powerplace Both are expressed to apply to ~~damage~~'Damage'	No indemnity for: 'Notifiable Human Infectious or Contagious Disease' ~~[a defined term]~~ as defined in the current relevant legislation occurring at the Premises

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[1] Arch wishes to record that (i) it has accepted the existence of the policy coverage in a substantial proportion of claims made under this perils clause, (ii)

~~Argenta type 1~~Argenta1	-	-	-	25 miles	Two variants: (i) Guest House and B&B; (ii) Holiday Home and Self Catering Both are expressed to apply to ~~damage~~'Damage'	~~Only~~Exclusion: no liability for loss arising from those premises that are not directly affected~~,~~ by the occurrence Exclusion: micro-organism exclusion
~~Ecclesiastical type 1~~Ecclesiastical1.1 and 1.2	No (also hinder and use)	Yes	No vicinity limit	-	~~Applies to damage~~ ~~No trends clause in ME857 or ME858~~ Three variants: (i) ME886 Nurseries; (ii) ME857 Parish Plus and ME858 Parishguard; (iii) all other policies All are expressed as being applicable to 'damage'	~~Exclusion for~~Exclusion: any period when access to the premises was not prevented or hindered Exclusion: closure or restriction in the use of the premises due to the order or advice of the competent local authority as a result of an occurrence of an infectious disease (or the discovery of an organism resulting in or likely to result in the occurrence of an infectious disease)
~~Hiscox type 1~~Hiscox1	~~No~~No (also hinder)	Yes	1 mile	No express vicinity limit	Two variants: (i) ~~Applies~~Expressly refers to insured damage ~~; optional.~~ ~~(:~~ all policies except BI - OM (Jelf) - 8671 ~~WD-HSP-UK-JMBI(3)~~WD-HSP-UK-JMBI(3) and Recruitment BI - 8671 WD-HSP-UK-JMBI) (ii) ~~Applies~~Expressly refers to damage, restriction, failure or cyber attack~~-~~: (BI - OM (Jelf) - 8671 WD-HSP-UK-JMBI(3) and Recruitment BI - 8671 WD-HSP-UK-JMBI only)	-

Arch has not, in response to any claim, sought to rely upon the exclusion for 'Notifiable Human Infectious or Contagious Disease as defined in the current relevant legislation occurring at The Premises', and (iii) the relevance of the trends clause will need to be considered.

~~Hiscox type 2~~Hiscox2	~~No~~No (also hinder)	Yes	Two variants: (i) 11431, 16258: 'vicinity' (ii) 16725, 7103 (both types): 1 mile	No express vicinity limit	Five variants: (i) 15779, 9102 – expressly refer to damage (ii) 7103 (ending PVB(2)) – expressly refers to insured damage (iii) 10117 – expressly refers to damage or restriction ~~(i) 15779, 9102 – applies to damage; (ii) 16258, 7103 – applies to insured damage; (iii) 10117 – applies to damage or restriction;~~ (iv) 18680, 16258, 7620, 9280, 10199, 11335, 11905, 10883 ~~and~~, 12578 ~~– apply~~, 11431 – expressly refer to insured damage or restriction~~;~~ (v) remainder: ~~apply~~ expressly refer to insured damage, insured failure or restriction	-
~~Hiscox type 3~~Hiscox3	-	-	-	~~No~~No express vicinity limit	Two variants: (i) 8006 and 10272 ~~– applies~~ – expressly refer to damage~~;~~ (ii) 8358, 14174, 9519 – ~~applies~~ expressly refer to insured damage or restriction	-
Hiscox4	No (also hinder)	Yes	1 mile	1 mile	Three variants: (i) 15299, 15447 – expressly refer to insured damage, insured failure,	-

					cyber-attack or restriction (ii) 15480 – expressly refers to insured damage, insured failure, loss of licence or restriction (iii) 20155 – expressly refers to insured damage or insured failure	
MSAmlin1	Yes	No	'vicinity'	25 miles	Expressed as being applicable to 'damage'	Condition (in Disease clause): Only premises directly affected Exclusion: Pollution and contamination
MSAmlin2	No (also hinder)	Yes	1 mile	25 miles	Variants: (i) Leisure and Retail (ii) Office and Surgery Both are expressed as being applicable to 'damage'	Condition (in Disease clause): Only premises directly affected Exclusion: Pollution and contamination
MSAmlin3	No (also hinder and use)	No	'vicinity'	-	Expressed as being applicable to 'damage'	-
QBE type 1QBE1[2]	-	-	-	25 miles	PBCC and POFF: applies to expressed as being applicable to 'damage.' POFP: uses the term 'trend adjusted' in the definitions of standard gross fees and standard gross revenue, but does not have a	Exclusion: Pollution or contamination (PBCC only)

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[2] QBE has not provided comments on the drafting or content of this document.

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					definition of that phrase	

~~QBE type 2~~QBE2	-	-	-	25 miles	~~Applies to~~ Expressed as being applicable to 'damage'	Exclusion: Pollution or contamination
QBE3	<u>-</u>	<u>-</u>	<u>-</u>	1 mile	Expressed as being applicable to 'damage'	Exclusion: Micro-organism Exclusion: Pollution or contamination
~~RSA type 1~~RSA1	-	-	-	25 miles	~~No~~No trends clause, but the basis of settlement provision requires that any reduction in Gross Revenue be solely a result of '*Damage to Buildings*'	Exclusion: Pollution or contamination~~,~~ [3] Other: the cover requires closure or restrictions placed on the Premises as a result of a disease "'manifesting itself"'
~~RSA type 2~~RSA2.1 and 2.2	No (also ~~hindrance~~ hinder and use)	No	'vicinity'	-	~~Applies to~~ Expressed as applicable to 'damage'	Exclusion in RSA2.1 and 2.2: any loss during any period other than the actual period when access to the Premises was prevented Exclusion in RSA2.2: Pollution or contamination; [4] ~~v27.6 APR18 has a limit of £10,000 for loss as~~ Exclusion in RSA2.2: 'Any loss… As a result of infectious or contagious diseases any amount in excess of £10,000'[5]

[3] RSA: the need for consideration to be given to the 'pollution and contamination' exclusion is under review.
[4] RSA: the need for consideration to be given to the 'pollution and contamination' exclusion in the Retail policy is under review.
[5] RSA: the proper construction of this will need to be resolved: in particular whether it imposes a complete exclusion in respect of 'notifiable or contagious diseases' (with the inner limit of £10,000 being applicable generally to the Public Emergency Extension rather than only to 'notifiable or contagious diseases').

~~RSA type 3~~RSA3	-	-	-	25 miles	~~Applies ~~Expressed as applicable to 'incident'[6] ~~loss or destruction of or damage to property or book debts~~	~~Epidemic and disease;~~ Exclusion: Pollution and contamination clause, which includes within it a reference to 'epidemic and disease' Qualification on perils clause: only loss arising at Premises directly affected by the occurrence discovery or accident
~~RSA type 4~~RSA4	First DoA clause[7] requires: 'enforced closure'. rather than denial or prevention of access Second DoA clause:[8] No (also hindrance and use)	Both DoA clauses: any governmental authority or agency	~~First clause: no~~ ~~Second clause:~~ 'Vicinity' is defined in the policy as being 'an area surrounding or adjacent to an Insured Location in which events that occur within such area would be reasonably expected to have an impact on an Insured or the	Vicinity is defined the policy as being 'An area surrounding or adjacent to an Insured Location in which events that occur within such area would be reasonably expected to have an impact on an Insured or the Insured's Business'[10]	~~Applied to 'covered event~~Applies to 'Covered Event' ~~=~~as defined (and which includes the events as described in relevant insuring clauses)	No

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[6] RSA: the relevant of the trends provisions (introduced via the definitions applicable to basis of settlement clause) to a non-damage extension will need to be considered.
[7] 'Notifiable Diseases & Other Incidents', sub-meaning (v).
[8] 'Prevention of Access – Non Damage', sub-meaning (ii).
[10] RSA note that RSA4 also includes cover for 'Notifiable Diseases & Other Incidents' 'discovered at an Insured Location'.

			Insured's Business'[9]			
~~Zurich type 1~~Zurich1	Yes	~~Police or other competent Local, Civil or Military Authority~~ No	'vicinity'	-	~~No~~Trends clause is included if the policy is written on a Loss of Gross Profit basis but not if written on an Increased Cost of Working basis[11]	~~Loss resulting from pollution~~ Exclusion: Pollution or contamination
~~Zurich type 2~~Zurich2	Yes	~~Police or other competent local, civil or military authority~~No	'vicinity'	-	~~Applies to~~ Trends clause applies to an 'incident'~~= loss or destruction of or damage to property used by the Insured at the Premises for the purpose of the Business; loss resulting from PoA clause is deemed to be an incident~~	~~Loss resulting from pollution~~ Exclusion: Pollution or contamination

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[9] The application of the Vicinity requirement to the DoA clauses is a matter for consideration.

[11] Zurich has informed the FCA that if the cover is written on a Loss of Revenue basis, a trends clause on the same terms would be applied. Zurich has not provided the FCA with any examples to this effect and the FCA cannot confirm whether this is accurate.

Comparison Details	
Title	**pdfDocs compareDocs Comparison Results**
Date & Time	09/06/2020 18:30:49
Comparison Time	2.69 seconds
compareDocs version	v4.3.300.65

Sources	
Original Document	Proposed Issues Matrix.docx
Modified Document	Issues Matrix - 9 June 2020.docx

Comparison Statistics	
Insertions	104
Deletions	26
Changes	55
Moves	8
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	193

Word Rendering Set Markup Options	
Name	
Insertions	
Deletions	
Moves / Moves	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark outside border.
Comments color	By Author.
Balloons	True

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	True
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	[Yes / No]
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	False