PIGOTTSTINSON
LAWYERS SINCE 1863

19 November 2020

COVID-19 AND BUSINESS INTERRUPTION INSURANCE – A WIN FOR BUSINESSES

Yesterday a landmark decision was handed down by the NSW Court of Appeal in *HDI Global Specialty SE v Wonkana No. 3 Pty Ltd* [2020] NSWCA 296, a case which may bring very welcome news to Clubs and businesses in general.

In that case, several insurance companies sought a declaration from the Court that they were entitled to rely on an exclusion clause in their business interruption policies in denying claims by a number of businesses for losses resulting from the COVID-19 pandemic.

The exclusion clause in question referred to diseases "*declared to be a quarantinable disease under the* [Commonwealth] *Quarantine Act 1908 and subsequent amendments*" and excluded any claims for business interruption losses arising from those diseases. In June 2016 the Quarantine Act was repealed by the *Biosecurity Act 2015* (Cth) and it was under that Act that COVID-19 was determined to be a "*listed human disease*".

The insurance companies argued that the reference in the exclusion clause to "subsequent amendments" to the former Quarantine Act should be construed as extending or referring to a "listed human disease" under the Biosecurity Act. It was argued that the Biosecurity Act constituted a "subsequent amendment" to the former Quarantine Act.

The NSW Court of Appeal disagreed with that interpretation and held that claims arising from COVID-19 could not be excluded by reliance on the exclusion clause.

Following this decision, the Insurance Council of Australia announced that, in consultation with its members and legal representatives, it is reviewing the decision of the NSW Court of Appeal to determine if there are grounds to appeal the decision to the High Court of Australia.

It has been claimed in subsequent media reports that many business interruption polices contain exclusion clauses which reference the former Quarantine Act.

If your Club has made a claim for business interruption losses which has been denied by the relevant insurer, we strongly recommend that the basis of the insurer's denial of the claim be reviewed. This is particularly the case if the insurer's decision was based on an exclusion clause which refers to the former Quarantine Act.

Further information

Pigott Stinson regularly advises and acts for clients in relation to a range of insurance matters. If you have any questions regarding your business interruption insurance policy or any other insurance matter please contact Chris Sydes.