

Insurance issues arising from the Covid-19 Outbreak

Thank you for joining us.
This event will start at 11.20am

Please message 'Franziska Arnold-Dwyer' with your questions

Please note this event will be recorded

Agenda



- Introductory address by Professor Ian Walden, Director of the CCLS
- Panel discussion
 1. Who is impacted and which policies might respond?
 2. Wording and coverage issues
 3. Claims process
 4. Regulatory issues and reinsurance
 5. Future outlook
- Concluding remarks by Dr Miriam Goldby, Director of ISALI
- Q&A



Our expert panel



- Jonathan Moss, Global Head of Transport Sector and Head of Marine & Trade at DWF
- Sophie Fennell, Compliance Officer at AXA XL
- Salome Santos, Vice President at Marsh, AFIC team within Credit Specialties
- Dr Antigoni Lykotrafiti, Lecturer in Transport, Energy and the Law at the CCLS
- Dr Franziska Arnold-Dwyer, Lecturer in Insurance Law at the CCLS and Deputy Director of ISALI

Q&A

To ask a question in our Q&A session, please:

1. type your question into the 'chat box'  addressed to 'Franziska Arnold-Dwyer', or
2. 'raise your hand' via the  button and we will ask you to speak and 'unmute' you

1. Financial impact of Covid-19 and types of insurance policies that might respond

Consumers

- Loss of income / loss of employment due to sickness
 - Different types of income protection insurance (ASU cover)
- Medical expenses
 - Private health insurance
- Cancelled holidays and events
 - Travel insurance
 - Wedding / event cancellation insurance

NB: coverage depends on the fact pattern and the terms of the policy in question. To be discussed later.

Non-insurance financial assistance: State subsidies and benefits for consumer and businesses

Businesses

- Loss of profits
 - Business interruption insurance
- Non-performance / non-payment of obligations by counterparties
 - Contingent business interruption / supply chain insurance
 - Credit / non-payment insurance
- Legal liability for workers and to the public
 - Employers' liability insurance
 - Public liability insurance
- Cancelled events
 - Event cancellation insurance
 - Business travel

2. Wording and coverage issues

- Am I covered? Insurance policy wording checklist:
 - Insuring clause: the types of losses that are insured
 - Triggers: the perils / risks that cause the loss
 - Exclusions: the risks / losses that are specifically excluded from insurance cover
 - Definitions: defined terms used in the insuring clause and the exclusions
 - Claims limits and deductibles
 - Causation test: the link between the trigger and the loss
 - Known events and inevitable losses cannot be insured
- Other coverage issues:
 - Breaches of duties and policy terms that can impair coverage
 - Double insurance

3. Claims process

- Most policies contain claims provisions requiring the insured to give notice of loss:
 - “immediate” notice of any loss
 - notice within a specified fixed time from the date of the loss
 - notice “as soon as is reasonably practicable”
 - notice of any circumstances which may or are likely to give rise to a claim, and thereafter to notice of any claim actually made
- Provisions specifying form of notice and proof of loss
- Consequences of breach of notice provision depend on type of term
- Claims co-operation and mitigation of loss
- Insurer is under duty to pay valid a claim within a reasonable time (IA 2015, s.13A)

Covid-19 claims – the FCA test case

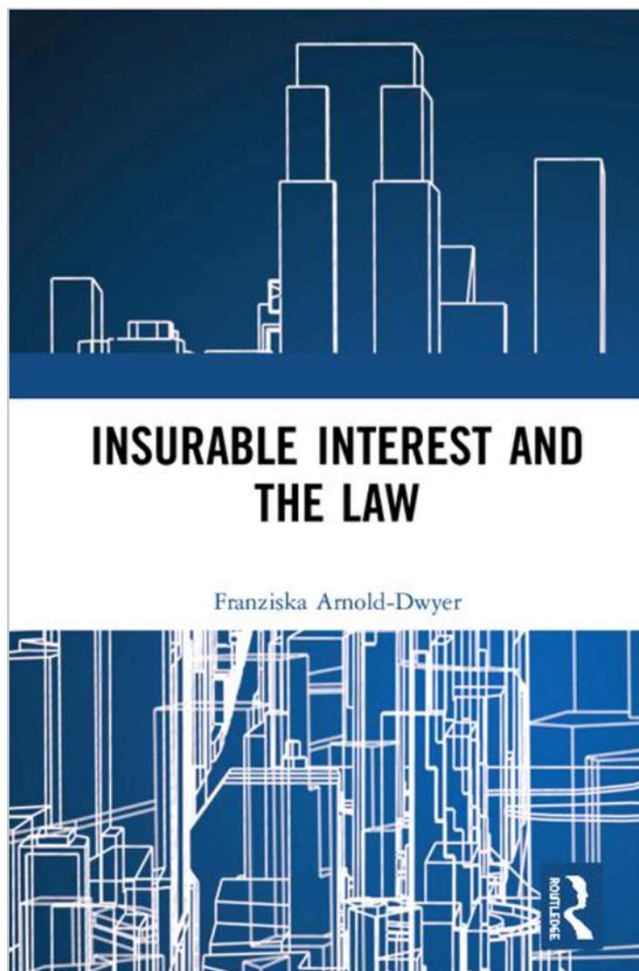
- *FCA –v- Arch Insurance (UK) Limited, Argenta Syndicate Management Limited, Ecclesiastical Insurance Office plc, Hiscox Insurance Company Limited, MS Amlin Underwriting Limited, QBE UK Ltd, Royal & Sun Alliance Insurance plc, and Zurich Insurance plc (FL-2020-000018)*
- Expedited claim brought under the Financial Markets Test Case Scheme (CPR PD 51M)
- Determination of key points relating to business interruption insurance where losses are not required to result from physical/property damage
- FCA selected representative sample wordings
- **Central questions for determination:**
 - Are loss arising as a result of interruption or interference with the insured's business covered under any relevant non-damage insuring clause?
 - Is there the necessary causal link between the losses sustained by policyholders and the relevant peril that is covered?
- Court decision will be legally binding on the insurers that are parties to the test case (and provides persuasive guidance for similar claims)
- FCA guidance: FCA's expectations for insurers and insurance intermediaries when handling claims and complaints for business interruption policies during the test case

4. Regulatory issues and reinsurance

- Regulatory:
 - FCA test case
 - FCA's expectation for firms to be flexible and treat customers fairly in relation to Covid-19 related claims
 - Solvency II firms:
 - must assess their insurance products and their risk exposure: wordings review for affirmative and non-affirmative (silent) pandemic risk exposures
 - effect of pandemic on balance sheet
- Reinsurance:
 - No reinsurance coverage for claims paid but not covered under the underlying policy
 - Mismatch of insurance coverage and reinsurance terms
 - Reinsurance aggregation: event v occurrence v cause; per risk v per policy
 - Pandemic Re in the UK; Germany pandemic cat bond?

5. Future outlook

- Insurance market's perspective
- Transport and aviation sector's perspective
- Compliance function's perspective
- Broker's perspective
- Lawyer's perspective
- Academia's perspective



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BILA Virtual Speaker Event



Daniel Schwarcz (Fredrikson & Byron Professor of Law at the University of Minnesota Law School):



‘The American Legal System's Response to Pandemic-Based Claims for Business Interruption Coverage’

13 July 2020, 16:00 p.m. - 17:00 p.m.

Register at: <https://bila.org.uk/events/>

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