

39 ESSEX CHAMBERS

Business Interruption Insurance in the time of corona: the devil is in the policy wording

Non-damage denial of access

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NDDOA – the exception not the rule

- The material damage proviso (“MDP”): all basic BI covers, and most extensions, are dependent on damage to premises or in “vicinity” in wide area damage (“WAD”) clauses
- Non-damage DOA is a minority sub-set of DOA cover – likely event is act of authority closing premises (e.g. cafes, restaurants, gyms) or general lockdown
- NDDOA cover can be provided by extension by:
 - wider general language; e.g. as to “loss”
 - use of loss (or damage) as undefined words
 - deeming language
- Notifiable or infectious disease may still be excluded from the extension

NDDOA – trigger points

- NDDOA extension may use “loss” or “damage” as undefined terms.
- What is trigger for policy coverage if “loss” or “damage” is not a defined term subject to the MDP; e.g.
 - Extended deprivation of use = “loss” for the purpose of “loss or damage”? : *Scott v Copenhagen Reinsurance Co (UK) Ltd* [2003] EWCA Civ. 688
- What is the trigger for policy coverage if no physical damage; e.g.
 - presence of “organism”, “notifiable disease” or “danger” on insured premises or wide area
 - “order”, “action” or “advice” of a “public authority”, “civil authority” or “competent authority”
 - “prevention of” or “hindrance to” access to premises

NDDOA – some wordings (1)

- “loss resulting from interruption or interference with the Insured Location in direct consequence of the intervention of a public body...arising from an occurrence or outbreak at the premises of (a) Notifiable Disease or (b) the discovery or an organism likely to cause a Notifiable Disease....”
- “Any loss ... resulting from interruption or interference with the business of the premises... in consequence of [Action of Competent Authorities] will be deemed to be an incident.
“Action by the police or other competent local, civil or military authority following a danger or disturbance in the vicinity of the premises whereby access thereto is prevented.”
But “excluding infectious diseases which have been declared as pandemic by the World Health Organisation.”

NDDOA – some wordings (2)

- “An incident occurring.. within a one mile radius of the business premises which results in a denial of access or hindrance in access to the business premises, imposed by any civil or statutory authority or by order of the government or any public authority, for more than 24 hours.”
- Cover for “expenses resulting solely and directly from an interruption” – ICW only?
- Cover for “any losses arising from interruption”
- Business trends: “The amount we pay for loss of income or gross profit will be amended to reflect any special circumstances or business trends affecting your business, either before or after the loss, in order that the amount paid reflects as near as possible the result that would have been achieved if the insured damage had not occurred.”

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