

UK High Court Hands Down Rulings in Three Landmark Business Interruption Cases

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On 17 October, the UK High Court handed down judgments in preliminary issues trials of three Covid-19 related business interruption claims: [Stonegate Pub Company Ltd v MS Amlin Corporate Member & Others](#); [Greggs Plc v Zurich Insurance Plc](#); and [Various Eateries Trading Ltd v Allianz Insurance Plc](#). The three judgments were separate, but all three cases dealt with similar issues arising out of business interruption claims in the hospitality industry, which was severely affected by the various restrictions imposed on businesses (and on the population at large) by the UK government as a result of the Covid-19 pandemic.

By way of summary, the judgments clarified to some extent the way the courts should approach the key issue of aggregation in relation to Covid-19 related claims. The judgments also decided how furlough payments made to policyholders should be taken into account in loss calculations.

The judgments dealt with the following preliminary issues in relation to the three claims:

- **Covered events:** What constituted an insured or covered event under the relevant policy wordings. The policies provided for cover under three main categories:
 - *Disease wording:* cover for non-damage business interruption losses resulting from the occurrence of a notifiable disease at or in the vicinity of the insured premises. Each case of Covid-19 that occurred at or within the vicinity of the insured premises during the period of insurance would be an insured event.
 - *Enforced closure wording:* the closure of all or part of the insured premises under a relevant order or instruction. Each closure of the insured premises in accordance with an order or instruction would be an insured event, but continued closure in accordance with a repeated order or instruction would not be a new insured event.
 - *Prevention of access wording:* cover for business interruption losses resulting from a public authority's intervention that prevented access to or use of the insured

premises. The number of insured events depended on the number of public authority interventions.

- Aggregation: The policy wordings provided for a limit of liability for any “Single Business Interruption Loss”, defined as all losses that arise from, are attributable to or are in connection with a single *occurrence*. The insurers put forward arguments in favour of multiple possible examples of an *occurrence* for the purposes of aggregation (including any single case of Covid-19 within the vicinity of the insured premises, the initial outbreak of Covid-19 in Wuhan, the moment the pandemic became inevitable and the UK government response). The Court concluded that “occurrence” should be determined by reference to the UK government interventions and suggested that the following actions would each amount to an *occurrence*:
 - the government’s decision made on 16 March 2020 to instruct people to avoid social venues;
 - the instruction to restaurants to close made on 20 March 2020;
 - the announcement and implementation from 24 September 2020 of early closing and other restrictions on restaurants;
 - the bringing into force of the three-tiered system on 14 October 2020; and
 - the imposition of the second lockdown from 5 November 2020.
- Causation: The insureds in the *Stonegate* claim argued that its business interruption losses throughout the maximum indemnity period of 36 months were all caused by insured events occurring during the period of insurance (ending on 30 April 2020). The Court rejected this claim and held that losses resulting from insured events occurring during the period of insurance ceased when the insured premises were allowed to reopen after the first lockdown. However, the Court also held that, in the case of prevention of access and enforced closure cover, it was sufficient for the closure to commence within the policy period, and there would be some circumstances where losses would continue after the policy period had ended (for example, in the case of the cancellation of events that had already been booked).
- Government assistance: There was considerable dispute as to whether UK government assistance (in the way of furlough payments, etc.) should be taken into account in assessing insured losses. The policyholders argued that furlough payments were simply a reimbursement of employment costs and should not be taken into account. However, the Court held that furlough payments should be

deducted from loss calculations, both on the wording of the policies and as a matter of general law.

The decisions in these three cases, although only on preliminary issues, should help to clarify the quantum of loss suffered by insured parties in these and other business interruption insurance disputes. However, Stonegate has indicated its intention to appeal certain aspects of the decision. Until that appeal is heard and decided, the key issue of aggregation in relation to Covid-19 related business interruption insurance claims will remain subject to a degree of uncertainty.



Claire Swirski
International Consultant, London
+ 44 20 7786 3017
cswirski@debevoise.com



Benjamin Lyon
International Counsel, London
+ 44 20 7786 5489
blyon@debevoise.com



Philip Orange
Professional Support Lawyer,
London
+ 44 20 7786 5412
porange@debevoise.com



Laura Jackson
Associate, London
+ 44 20 7786 9127
ljackson@debevoise.com



Katie Power
Associate, London
+ 44 20 7786 5422
kpower@debevoise.com