

Ten Significant Issues Decided By The Federal Court In The Second Business Interruption Test Case

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SUMMARY OF INSURANCE POLICY CLAUSE TYPES CONSIDERED

Type of clause	Cover provided for	Required action	Required cause	Required location
Hybrid clause	Cover for loss from orders/actions of a competent authority closing or restricting access to premises, but only where those orders/actions are made or taken as a result of infectious disease or the outbreak of infectious disease within a specified radius of the insured premises	Example: NSD132/2021: SWISS RE INTERNATIONAL V LCA MARRICKVILLE		
		“... closure or evacuation of the whole or part of the Situation by order of a competent public authority...”	“... as a result of an outbreak of a notifiable human infectious or contagious disease or bacterial infection or any discovery of an organism likely to result in the occurrence of a notifiable human infectious or contagious Disease...”	“... at the Situation or within a 5 kilometre [sic] radius of the Situation.”
Prevention of access clause	Cover for loss from orders/actions of a competent authority preventing or restricting access to insured premises because of damage or a threat of damage to property or persons (often within a specified radius of the insured premises)	Example: NSD308/2021: QBE V COYNE (EWT TRAVEL)		
		“... closure or evacuation of all or part of the premises by order of a competent government, public or statutory authority as a result of... which shall prevent or hinder the use of your building or access thereto, or results in a cessation or diminution of trade due to temporary falling away of potential customers...”	“... a human infectious or contagious diseases.”	Not applicable.
Infectious disease clause	Cover for loss that arises from either infectious diseases or the outbreak of an infectious disease at the insured premises or within a specified radius of the insured premises	Example: NSD134/2021: INSURANCE AUSTRALIA V THE TAPHOUSE TOWNSVILLE		
		“preventing or restricting access to your premises or ordering the evacuation of the public...”	... caused by any legal authority... as a result of damage to or threat of damage to property or persons...	... within a 50-kilometre radius of your premises.”
Catastrophe clause	Cover for loss resulting from the action of a civil authority during a catastrophe for the purpose of retarding the catastrophe	Example: NSD133/2021 INSURANCE AUSTRALIA AND MERIDIAN TRAVEL		
		“the occurrence of any of the circumstances set out in this Additional Benefit shall be deemed to be Damage to Property used by You at the Situation...”	... the outbreak of a human infectious or contagious disease...	... occurring within a 20 kilometre radius of the Situation.”
Catastrophe clause	Cover for loss resulting from the action of a civil authority during a catastrophe for the purpose of retarding the catastrophe	Example: NSD132/2021: SWISS RE INTERNATIONAL V LCA MARRICKVILLE		
		“the Insurer will indemnify the Insured in accordance with the provisions of Clause 10 (Basis of Settlement) against loss resulting from the interruption of or interference with the Business, provided the interruption or interference...”	... is in consequence of... the action of a civil authority during a conflagration or other catastrophe for the purpose of retarding same.”	Not applicable.

Litigation and Dispute Resolution Partner, Louise Massey, and Senior Associate, Finbarr O’Connell are currently acting in the Second Test Case. Please contact us if you wish to receive updates on developments about the Second Test Case or any other matters.