

High Court ends casino giant's creative claim for COVID-19 business interruption losses

OCT 22

Authors: [Adam Chylek](#) (Partner), [Matthew Foglia](#) (Special Counsel)

wotton
kearney

A founding member of **LEGALIGN**
GLOBAL

At a glance

- Today, the High Court dismissed with costs The Star's application for special leave, putting an end to The Star's pandemic-related claim against its business interruption insurers.
- The Star had sought to unlock billions in cover under a Civil Authority Extension on the basis that the government orders were the actions of an authority to retard a "catastrophe" in the form of the pandemic.
- This is a significant decision for insurers generally and provides important guidance to the insurance industry on dealing with claims for COVID-19 related BI loss.



Background

The Star sued its business interruption (BI) insurers in Federal Court in mid-2020, seeking indemnity for its BI losses resulting from the State and Commonwealth government orders in response to the pandemic, including the State orders that mandated the closure of The Star's casinos/resorts in Sydney, Brisbane and the Gold Coast for a number of months from March 2020.

The Star's policy had:

- BI limits in the billions of dollars
- a disease extension clause which, among other things, limited the cover under the extension to a sublimit of \$1 million in the aggregate and specifically excluded from cover quarantinable diseases under the Biosecurity Act (which The Star agreed included COVID-19), and
- a Civil Authority Extension (CAE) clause with no sublimit for "loss resulting from or caused by any lawfully constituted authority in connection with or for the purpose of retarding any conflagration or other catastrophe".

The Star acknowledged that there was no cover under the disease clause, but sought to unlock billions in cover under the CAE on the basis that the government orders were the actions of an authority to retard a "catastrophe" in the form of the pandemic.

At first instance, Allsop CJ held in August 2021 that the CAE did not apply to disease-related claims, such as COVID-19, as the scope of cover for such disease claims was specifically delineated and defined by the terms of the disease extension clause. In February 2022, the Full Federal Court dismissed The Star's appeal, upholding the first instance judgment that the CAE did not respond to COVID-19 claims.

Today, the High Court dismissed with costs The Star's application for special leave, putting an end to The Star's claim against insurers. It also rejected similar special leave applications by other insureds in the industry test case known as the Second COVID-19 Business Interruption Test Case or Test Case 2.

A significant decision for insurers

This is a significant decision for insurers generally and provides important guidance to the insurance industry on dealing with claims for COVID-19 related BI loss. In short, where policies contain a specific disease extension clause and other more general extension clauses, cover for disease claims will arise, if at all, only under the specific disease clause and not under the more general clause.

The W+K team has been delighted to act for the insurance market in this critical piece of indemnity litigation.

© Wotton + Kearney 2022



In short, where policies contain a specific disease extension clause and other more general extension clauses, cover for disease claims will arise, if at all, only under the specific disease clause and not under the more general clause.

Need to know more?

For more information, contact our authors, **Major Loss** specialists.



Adam Chylek

Partner, Sydney
Property, Energy + Infrastructure
Practice Leader
T: +61 2 8273 9940
adam.chylek
@wottonkearney.com.au



Matthew Foglia

Special Counsel, Sydney
T: +61 2 8273 9905
matthew.foglia
@wottonkearney.com.au

Get in touch with our specialists

W+K have dedicated **Property, Energy + Infrastructure** specialists across Australia and New Zealand.

Our market-leading team has detailed knowledge of the legal landscape and is ready to assist with all your claims needs across **Major Loss, Commercial Property, Recoveries** and **Marine + Transport**.

Download our team contact card below.



This publication is intended to provide commentary and general information. It should not be relied upon as legal advice. Formal legal advice should be sought in particular transactions or on matters of interest arising from this publication. Persons listed may not be admitted in all states and territories. Wotton + Kearney Pty Ltd ABN 94 632 932 131, is an incorporated legal practice. Registered office at 85 Castlereagh St, Sydney, NSW 2000. For our ILP operating in South Australia, liability is limited by a scheme approved under Professional Standards Legislation.