

Book Review – Riley on Business Interruption Insurance*

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Following the first Covid-19 lockdown in spring 2020, business interruption insurance – an insurance product for businesses previously little known by the general public – attracted the attention of the Prime Minister, national newspapers and the BBC, and subsequently became a topic of conversation in re-opened hair salons, at the school gates and in gyms. Meanwhile, the FCA and a group of insurance companies sought clarification under the Financial Markets Test Case Scheme on whether extended BI insurance policy wordings covered business interruption losses arising from the Covid-19 pandemic, culminating in the Supreme Court judgment handed down in January 2021.¹

Business interruption insurance is not a new invention and has been available for businesses since the beginning of the 20th century, and ‘Riley on Business Interruption Insurance’ (Riley) has been the leading reference text for business interruption practitioners since 1956. The new – 11th- edition of Riley is a comprehensive and up-to-date guide to business interruption insurance which covers the basics of business interruption insurance for neophytes as well as highly technical aspects for specialists and experts in this area. The editors, Damien Glyn and Toby Rogers, and their team of contributors cover the whole spectrum of business interruption insurance related experience, including brokers, underwriters, loss adjusters, lawyers, forensic accountants, and other consultants. This broad-church approach is reflected in the structure and contents of Riley: it is not a legal treatise, rather it is an insurance practitioners’ book – a practical guide - that incorporates a discussion of the legal principles and growing number of legal decisions relevant to business interruption claims (Chapter 4). For lawyer readers, this makes Riley a fascinating reading experience that gives insights into technical areas that fall outside our core area of expertise. These insights give useful context to the drafting and construction of business interruption insurance and would also assist lawyers when seeking opinions from, and framing instructions to, expert witnesses when it comes to disputed claims.

Riley is structured as follows: Chapter 1 serves as an introduction to business interruption insurance, sets out its purposes, delineates it from property insurance, and outlines to the different approaches for measuring the loss (gross profit -v- gross revenue -v- loss of business income). Chapter 2 provides an overview of the most common types of business interruption policy wordings and contains a discussion of specific perils clauses, trigger clauses and loss calculation and settlement clauses. Chapter 3 continues in the same vein considering additional clauses and extensions for specific risks. There are also sample policy wordings in the appendices.

Chapter 4 is likely to be the most familiar to insurance lawyers as it covers legal principles. However, anyone looking for a summary of insurance contract law as it applies to business interruption insurance might be disappointed: the chapter has a narrower remit dealing with specific legal issues relating to business interruption

* Damian Glynn and Toby Rogers, *Riley on Business Interruption Insurance* (Sweet & Maxwell, London, 11th ed., 2021) xxvii and 680pp, ISBN 978-0-414-08845-0. Hardback £245. Also available as e-book.

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¹ *Financial Conduct Authority v Arch Insurance (UK) Ltd and others* [2021] UKSC 1

claims, such as insurable interest, causation, claims notification, late payment and subrogation. Chapter 4 also contains a section that has been dedicated to a detailed analysis of the FCA Test Case. Of particular interest might be paras.4.14 and 4.15 which highlight some the issues left unresolved, and questions raised but left answered, by the FCA Test Case such as the aggregation of Covid-19 claims, the recoverability of Covid-19 losses in other countries, and the applicability of a loser causation test in situations where concurrent causes share one originating cause. Riley provides some tentative answers but wisely includes caveats. As a stand-alone chapter, Chapter 4 might seem quite concise, but some legal issues are picked up again and considered in more detail in later chapters (e.g., compliance with claims and settlement conditions is dealt with in Chapter 11).

Chapters 5 to 8 deal with the management and underwriting of business interruption risks. The role of brokers is given relatively little space (paras. 6.2 and 6.3) within a chapter dedicated to “Selecting the Right Cover” and there is no discussion of whether, following the denial of Covid-19 claims under basic business interruption cover dependent on physical damage, brokers have changed their approach to discharging their duties to ascertain their clients’ needs and to obtain suitable cover. Although the pre-contractual duty of fair presentation is not specifically discussed in these chapters, the topics covered give a flavour of what information is likely to be material to a business interruption underwriter when deciding whether to accept the risk and on what terms.

Chapter 9 looks at sector specific business interruption cover and specialist risks. Notably, there is a detailed analysis of cyber risk cover integrated into combined property / business interruption policies compared to stand-alone cyber risk cover that may extend to business interruption losses. Also very topical is the discussion of ‘renewables’ and the risk that renewable energy generation installations can fail due to equipment problems or natural catastrophes or fall short on the required energy production. Paras 9.50-9.62 discuss each type of renewable (wind, solar, tidal and biomass) and the relevant UK and EU energy market policies. Yet, there was little information on current market practices for insuring against business interruption losses caused by the failure or shortfall of renewable energy source – e.g., whether these renewables risks are (where relevant) incorporated into standard business interruption policies or tend to be insured by stand-alone policies. Chapter 10 is entitled “International Considerations” and contains a detailed discussion of different aspects of global programmes and an in-depth comparison of UK and US policy forms and approaches to determining the loss. A particularly impressive resource is 11-page table contrasting UK and US covers. The 11th edition of Riley precedes the war in Ukraine and could not have anticipated the extensive sanction regime applicable to Russian interests, but one could wish for that the next edition might address in Chapters 9 or 10 the delineation between specialist business interruption cover and political risk insurance, and the extent to which business interruption losses caused directly or indirectly by economic sanctions are recoverable.

Chapters 11 to 13 are dedicated to claims (Chapter 11 – Claims - The Process, and Mitigation of Loss; Chapter 12 – Claims - Evidencing Quantum; Chapter 13 – Claims Settlements – Issues that Arise in Practice). These chapters are a fantastic resource for lawyers, brokers, claims experts, loss adjusters and forensic accountants. Chapter 11 is almost like a ‘Claims – what to do?’ manual taking the reader through the process step by step and providing a dramatis personae of the different parties involved. Chapter 12 – on quantum – stands out for helpful worked examples of calculating the net loss. Chapter 13 delves into even more detail on quantum examining what practical issues could increase or reduce the costs of a business interruption event. There is a section (para. 13.39) on the question whether UK Government Covid-19 financial support should be deducted from any business

interruption insurance pay-outs. It references the treatment of other support schemes but does not link the debate to the principles of subrogation.

The final chapter, Chapter 16, looks ahead to current and future developments, including the repercussions of the Supreme Court judgment in the FCA Test Case, the future of business interruption coverage for pandemics and epidemics, the use of parametric insurance, the consequences of Brexit and the hardening of the market.

Riley remains the leading text on, as well as an immensely useful practical guide to, business interruption insurance. The 11th edition brings this highly regarded work up to date and marks the 65th anniversary since the first edition.