Bellini (N/E) Ltd (t/a Bellini) v. Brit UW Ltd

Court of Appeal affirms the importance of clear drafting

In *Bellini (N/E) Ltd trading as Bellini v Brit UW Limited* [2024] EWCA Civ 435 (see the judgment here), the Court of Appeal reaffirmed the importance of clear and precise drafting in insurance contracts. The case concerned the Claimant seeking coverage under a licensed premises insurance policy for business interruption losses allegedly caused by COVID-19-related restrictions. At issue was the policy's requirement of "damage". The Court of Appeal upheld the High Court's decision, which denied coverage due to the absence of physical damage, emphasising that Courts are reluctant to infer or modify policy terms where clear language already delineates coverage boundaries.

Background and the High Court Decision

The Claimant operated licensed premises and argued that COVID-19-related government restrictions caused business interruption losses that should be covered under its insurance policy. However, the policy expressly stipulated that coverage for business interruption losses required "damage," defined as "physical loss, physical damage and physical destruction."

In the first instance, the High Court examined whether the policy could be read expansively to provide business interruption coverage without physical damage. The Claimant argued that limiting coverage to situations involving physical damage created a gap in the policy, making its business interruption coverage effectively "meaningless" in the face of non-physical impacts. The Claimant asserted that this interpretation would contradict the policy's commercial purpose.

The High Court rejected this approach, holding that the "damage" requirement was explicit and unambiguous. The Court emphasised that its role was to interpret, not rewrite, contracts. The policy terms indicated a clear intent to limit coverage to losses caused by physical damage, and the Court found no basis for extending the definition of "damage" to include purely economic losses. Consequently, the High Court dismissed the Claimant's claim.

The Arguments on Appeal

The Claimant advanced two key arguments to support its interpretation of the policy. Firstly, the Claimant contended that the policy should be construed to cover business interruption losses stemming from non-physical causes, such as government restrictions, as this interpretation was the *"only way to make sense of the policy*." The Claimant submitted that the policy's current interpretation rendered coverage for business interruption illusory when losses occurred without physical damage.

Secondly, the Claimant relied on the principles established in *East v Pantiles (Plant Hire) Ltd* [1982] 2 EGLR 111. These principles provide that a Court may correct a contract by construction if (1) there is an obvious mistake on the face of the document, and (2) it is equally clear what correction should be

made. The Claimant argued that the lack of coverage for non-damage-related business interruptions represented a drafting error that the Court could remedy through construction. The Claimant reasoned that COVID-19-related losses fit within the overall intent of the policy's business interruption cover, and that applying correction by construction would give effect to this intent.

Finally, the Claimant sought to bolster its position by referencing the FCA Test Case, arguing that the interpretation of the trends clause should apply similarly here. The Claimant contended that the trends clause, as interpreted in the FCA Test Case, could provide for loss quantification absent physical damage, thereby supporting coverage.

The Court of Appeal Decision

The Court of Appeal upheld the High Court's decision, reiterating that coverage could not be extended beyond the clear language of the policy. Examining the Claimant's reliance on *East v Pantiles*, the Court noted that correction by construction applies only in narrow circumstances, requiring an unambiguous mistake in the document and a clear correction to rectify it. In this case, the Court found no such mistake in the policy. The requirement for "damage" was deliberate and, therefore, did not represent a drafting oversight.

Addressing the FCA Test Case, the Court distinguished it from the present case. In the FCA Test Case, the trends clause was applied to measure losses from COVID-19, provided there was coverage under the policy for the insured peril. However, in this case, without meeting the threshold of "damage," no insured peril was triggered, making the trends clause inapplicable. The Court emphasised that the trends clause cannot create coverage where none exists under the primary terms of the policy.

Accordingly, the Court of Appeal dismissed the Claimant's appeal, holding that the Claimant's arguments attempted to expand coverage beyond the policy's clear language. The Court reiterated that it is not the role of the judiciary to rewrite or add terms to a contract, particularly where the policy language is both specific and deliberate.

CPB Comment

This judgment underscores the critical role of precise and clear language in insurance contracts, especially where coverage is dependent on specific triggers like physical damage. The Court of Appeal's strict interpretation reflects the judiciary's reluctance to extend policy coverage beyond explicitly stated boundaries or infer terms absent a clear drafting error. This reinforces the importance of specific drafting standards, particularly in business interruption policies, where the nuances of coverage require careful articulation to avoid unintentional ambiguity.

Those seeking coverage for non-physical interruptions should ensure their policies explicitly provide for such risks. This is particularly important for businesses in sectors vulnerable to non-damage-related disruptions, where physical damage may not be the primary risk, but where continuity of operations is vital.

Ultimately, this decision serves as a reminder to both insurers and policyholders of the importance of addressing policy needs comprehensively at the inception of coverage. Insurers should strive for precise and clear language in drafting, while policyholders and their brokers are encouraged to negotiate terms to ensure they align with the business's unique risk exposures.

Looking forward, insurers may increasingly consider additional endorsements or clauses for non-damage-related interruptions, a trend driven by the operational challenges experienced during the COVID-19 pandemic.

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Any questions

If you have any questions regarding the issues raised in this article, please get in touch with Dean or Lisbeth.

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