Unipolsai Assucurazioni S.p.A -v- Covéa Insurance Plc

The Court of Appeal provides guidance on what constitutes a 'catastrophe' and on the interpretation of the "Hours Clause" in the context of property catastrophe excess of loss reinsurance

In *Unipolsai Assucurazioni S.p.A -v- Covéa Insurance Plc* [2024] EWCA Civ 1110 (see the judgment here), the Court of Appeal handed down judgment in the first claim considering cover under a reinsurance contract for business interruption losses caused by COVID-19 lockdowns.

It is rare for reinsurance claims to find their way into the judiciary, as mostly they will be subject to arbitration. On this occasion, the reinsurer, Unipolsai Assucurazioni S.p.A ("Unipol") exercised the option to appeal the arbitration award to the Commercial Court on a point of law pursuant to s.69 of the Arbitration Act 1996. The reinsurer then pursued a further appeal to the Court of Appeal, which is the focus of this analysis.

Background

The factual background is similar to many COVID-19 Business Interruption ("BI") claims that have been litigated in the context of primary insurance cover. The Respondent, Covéa Insurance Plc ("Covéa") provided property insurance, in this case to a number of nurseries under a Nursery Care Policy. The policies included BI cover for damages caused by a peril other than physical damage to insured property. The risk was reinsured by Unipol under a Property Catastrophe Excess of Loss Reinsurance.

Following the COVID-19 pandemic and consequential lockdowns, Covéa paid claims under the Nursery Care Policy, incurring losses in the region of £69.3m plus costs. Unsurprisingly, it called upon its reinsurer to indemnify this, but Unipol declined.

The reinsurance incorporated standard LPO 98 wording, under which *'Loss Occurrence'* is defined as *"all individual losses arising out of and directly occasioned by one catastrophe."* Further, the Clause provides that "*the duration and extent of any 'Loss Occurrence' so defined shall be limited to: … vii) 168 consecutive hours for any Loss Occurrence of whatsoever nature…"* ("the Hours Clause").

The arbitral tribunal ruled in favour of Covéa, finding that the losses were recoverable under the reinsurance policy. Unipol appealed this decision.

The Commercial Court Judgment

At first instance, Mr Justice Foxton in the Commercial Court addressed two primary questions:

(1) Whether the COVID-19 losses for which Covéa sought indemnity arose out of and were directly occasioned by a "catastrophe" under the reinsurance policy.

(2) Whether the Hours Clause within the reinsurance policy, which confined the right to indemnity to individual losses occurring within a specific timeframe, limited Covéa's recovery of BI losses.

Foxton J concluded that the COVID-19 pandemic qualified as a "catastrophe" under the policy and that the Hours Clause did not preclude aggregation of the claimed losses.

The Arguments before the Court of Appeal

The appeal concerned the same two issues: the definition and application of the term "catastrophe" and the interpretation of the Hours Clause. We deal with these in turn below.

1. Definition of Catastrophe:

Unipol argued that the term "catastrophe" required an event of sudden and violent nature capable of causing physical damage. They contended that COVID-19 was a "state of affairs" rather than an identifiable event and, therefore, fell outside the scope of the policy. Furthermore, Unipol sought to rely on the *ejusdem generis* principle, asserting that "catastrophe" should be confined to physical perils akin to those explicitly mentioned in the policy.

The *ejusdem generis* principle is a legal rule of interpretation where, when general words follow specific words in a contract, the general words are limited to the same kind or class as the specific words. In this case, Unipol argued that since the policy referred to specific physical perils, the term "catastrophe" should also be limited to physical events.

In response, Covéa maintained that the reinsurance policy contained no requirement for a catastrophe to involve suddenness, violence, or physical damage. They argued that the exponential rise in COVID-19 infections in March 2020 constituted a sudden disaster of such magnitude as to meet the ordinary meaning of "catastrophe." Covéa also emphasised that the absence of limiting language in the policy meant that "catastrophe" should be construed broadly, encompassing non-physical perils.

2. Operation of the Hours Clause:

The Hours Clause limited indemnity to losses occurring within a specified period (168 hours for pandemics). Unipol argued that each individual loss must occur within this timeframe to be aggregated. Losses incurred outside the stipulated hours, even if related to the same peril, should not qualify for indemnity.

Covéa, however, argued that the relevant "individual loss" occurred when the insured peril, i.e the closure of the nurseries, first struck on 20 March 2020. They contended that subsequent financial consequences, even if extending beyond the 168-hour period, were part of the same "Loss Occurrence" and should be aggregated for indemnity purposes. Covéa relied on prior decisions, including *Stonegate v MS Amlin* and *Various Eateries v Allianz*, to support their interpretation.

Decision

The Court of Appeal dismissed the reinsurer's appeal on both grounds.

It was held that the arbitral tribunal's conclusion that COVID-19 constituted a "catastrophe" was evaluative and not subject to challenge under section 69 of the Arbitration Act. It endorsed the tribunal's reasoning, emphasising that the reinsurance policy did not impose suddenness, violence, or physical damage as prerequisites for a catastrophe. The Court noted that the dictionary definition and expert evidence supported a broader interpretation, which included the pandemic. The exponential rise in infections in early 2020 qualified as a disaster of sudden onset, meeting the ordinary meaning of "catastrophe."

The Court also rejected Unipol's *ejusdem generis* argument. It explained that the policy language did not restrict "catastrophe" to a specific class of events. The absence of limiting words such as "event" or "occurrence" further supported this interpretation. The *ejusdem generis* principle was deemed inapplicable because the specific examples in the policy were not intended to define an exhaustive class.

The Court of Appeal also affirmed the tribunal's interpretation of the Hours Clause. It found that an "individual loss" first occurs when the insured peril affects the property, here being the government-mandated closure of nurseries on 20 March 2020. The subsequent financial losses, although occurring outside the 168-hour period, were directly connected to the same peril and therefore aggregated under the policy.

The Court clarified that the term "occur" in the Hours Clause meant "first occur," aligning with the principles in *Stonegate* and *Various Eateries*. This approach avoided practical difficulties associated with apportioning losses and ensured consistency with the policy's intent to provide indemnity for the totality of losses arising from a single peril.

CPB Comment

The Court of Appeal's decision provides welcome clarity for insurers seeking to recover COVID-19 losses under excess of loss reinsurance policies. The judgment confirms that the definition of "catastrophe" can encompass pandemics, even in the absence of physical damage, and that financial losses stemming from an insured peril can be aggregated under an Hours Clause, provided the peril first occurs within the specified timeframe.

The judgment also underscores the importance of clear and precise drafting in reinsurance policies. By rejecting overly restrictive interpretations, the Court reaffirmed the need for policy language to reflect the commercial realities of such policies. This decision is likely to influence ongoing aggregation disputes in both direct insurance and reinsurance contexts.

Moreover, the judgment is a timely reminder that when interpreting contracts, words will be given their natural and ordinary meaning by the Court. Whilst market definitions and practices may provide context to this, firm evidence is required to persuade the Court that a different meaning was intended. Historic commentary might provide helpful background, but it cannot stand alone. The political climate in which contracts are agreed is not static nor is language. In that sense, the judgment is a reminder of the importance of reviewing wording regularly to ensure this matches the

intended cover. Insurers are well advised to consider whether, in view of this, new definitions need to be incorporated into contracts.

January 2025

Any questions

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

Dean De Cesare
Senior Associate

T: 0203 697 1912
M: 0742 535 5252
E: dean.decesare@cpblaw.com
LinkedIn

Lisbeth Poulsen
Solicitor / European Qualified Lawyer

T: 0203 697 1905
M: 07823 467563
E: lisbeth.poulsen@cpblaw.com
LinkedIn

You can review a range of articles on similar insurance and reinsurance related topics in the Publications section of our website.

If you did not receive this article by email directly from us and would like to appear on our mailing list please email tracy.bailey@cpblaw.com