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Business interruption test case

LEGAL

During the COVID-19 pandemic, we have seen that insurers have been reluctant to pay out on business interruption (BI) insurance policies. The insurers usually argue that the policy wording does not cover events linked to the COVID-19 pandemic.

Out of concern about the lack of clarity of the situation, the Financial Conduct Authority (FCA) has therefore issued a test case in the High Court against insurers in order to get a determination from the court to resolve contractual uncertainty in BI insurance cover.

The FCA has said that the majority of BI insurance is unlikely to cover the current COVID-19 pandemic, but there do remain a number of policies where it is



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clear that the insurers would have an obligation to pay out.

The test case will not affect insurance claims where the insured has accepted an offer by the insurers in full and final settlement of their claim. The test case also does not prevent parties from concluding a claim in full and final settlement, but

the insurers are required to inform their customers if they believe that their claim could be affected by the outcome.

The hearing is due to finish at the end of July, after the issue has gone to press.

A copy of all documents relating to the test case are available via www.is.gd/cusif.

REGULATORY

TC driver conduct decisions now published online

The traffic commissioners have started publishing the outcomes of driver conduct hearings online (www.is.gd/qazuqu). The action follows widespread approval to the proposals in responses to a 2019 consultation. Published details include: the regulatory outcome of the hearing, the date of the hearing, the driver's name, the driver's year of birth and part of the driver's postcode. Doing so will make it easier for operators to find out if a driver has been subject to regulatory action.

REGULATORY

Changes to D-CPC

Following a consultation in improvements to the Driver-CPC system, DVSA has announced changes. Now, 12 out of the 35 hours can be e-learning; training programmes that align with drivers' work such as dangerous goods and passenger transport are allowed; among other details.

REGULATORY

Tachograph calibrations

In April, DVSA extended all tachograph calibration certificates for three months. Since then, the EU extended certificates expiring from 1 March to 31 August by six months. Given

this, all tachograph calibration and inspection certificates which are listed as expiring between 1 March 2020 to 31 August 2020, are extended by six months from the date the calibration was originally due.

REGULATORY

Kissling seals banned

Following checks, DVSA has stated that Kissling seals may not be used for any GB calibration. If they are seen on a vehicle brought in for calibration, they must be removed as part of the calibration process. DVSA will not take any action on vehicles with this seal fitted if they have not received a GB calibration.

Fact File

What to expect from a PI now

From the call up letters that we have seen, it would appear that the traffic commissioners are imposing new operator actions prior to the Public Inquiry (PI) hearing.

Operators are being required to submit records such as maintenance documentation, in advance of the hearing (usually by post) so that they can be quarantined prior to handling by the commissioner and staff.

At present, we are unsure when you will be expected to take those records back with you. You may need to risk-assess taking them away at the end of the hearing on the basis the commissioner has been handling them. It is also unclear how the commissioner may put documents to you during the inquiry if he/she is asking for comments on a particular document.

If the commissioner has asked for all your vehicle records, it might be open for you to ask them to narrow this request down to a handful of vehicle files so as not to overburden you or their office. In any case, the commissioner will expect the records to be organised and legible.