

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM
THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
COMMERCIAL COURT (QBD)
FINANCIAL LIST
FINANCIAL MARKETS TEST CASE SCHEME
Neutral Citation: [2020] EWHC 2448 (Comm)

BETWEEN:

- (1) ARCH INSURANCE (UK) LIMITED
(2) ARGENTA SYNDICATE MANAGEMENT LIMITED
(3) HISCOX INSURANCE COMPANY LIMITED
(4) MS AMLIN UNDERWRITING LIMITED
(5) QBE UK LIMITED
(6) ROYAL & SUN ALLIANCE INSURANCE PLC

Appellants

-and-

THE FINANCIAL CONDUCT AUTHORITY

Respondent

[(1) HOSPITALITY INSURANCE GROUP ACTION]

[Intervener]

-and-

(2) HISCOX ACTION GROUP

Intervener

Appeal No. 2020/0177-0178

AND BETWEEN:

THE FINANCIAL CONDUCT AUTHORITY

Appellant

-and-

- (1) ARCH INSURANCE (UK) LIMITED
(2) ARGENTA SYNDICATE MANAGEMENT LIMITED
(3) ECCLESIASTICAL INSURANCE OFFICE PLC
(4) HISCOX INSURANCE COMPANY LIMITED
(5) MS AMLIN UNDERWRITING LIMITED
(6) QBE UK LIMITED
(7) ROYAL & SUN ALLIANCE INSURANCE PLC
(8) ZURICH INSURANCE PLC

Respondents

-and-

[(1) HOSPITALITY INSURANCE GROUP ACTION]

[Intervener]

(2) HISCOX ACTION GROUP

Intervener/Appellant

Directions agreed between the Parties

UPON the Judgment of Lord Justice Flaux and Mr Justice Butcher dated 15 September 2020 ([2020] EWHC 2448 (Comm)) and Declarations Order dated 2 October 2020.

AND UPON Lord Justice Flaux and Mr Justice Butcher certifying by Order dated 2 October 2020 that, for the purposes of section 12(1) of the Administration of Justice Act 1969 ('the Act'), each of the alternative conditions in section 12(3A) of the Act is satisfied and there is a sufficient case for an appeal to the Supreme Court under Part II of the Act to justify an application for leave to bring such an appeal, in respect of the Claimant (the "**FCA**"), the First, Second, Fourth, Fifth, Sixth and Seventh Defendants (together, including the FCA, the "**Appellant Parties**") and the Hiscox Action Group (the "**Appellant Intervener**", together with the Appellant Parties, the "**Appellants**").

AND UPON permission to appeal being granted to all Appellant Parties and the Appellant Intervener, with the appeal hearing listed to commence on Monday 16 November 2020 with a time estimate of four days, by Order dated 2 November 2020.

THE PARTIES AGREE AS FOLLOWS:

Terms

- 1 References below to the "parties" are to any Appellant, any Respondent and the Appellant Intervener.

Reading days

- 2 There shall be four pre-hearing reading days.

Cross-appeals

- 3 There shall be no cross-appeal by any Respondent or party pursuant to Rule 25 of the Rules of the Supreme Court 2009.

Appellants' written cases, notice of intent and Statement of Facts

- 4 The Supreme Court has agreed that the FCA is permitted to upload to its website copies of the Appellants' written cases as filed and served on Tuesday 3 November 2020.
- 5 The FCA shall circulate an updated index including further parts of the Appendix and Authorities index to all parties, and will instruct Opus 2 to upload to the Magnum

platform the Appendix and Authorities to Magnum as promptly as possible and in any event by 6pm on Wednesday 4 November 2020.

6 The Appellants shall file and serve their written cases, updated with cross-referencing to the hearing bundle, by midday on Monday 9 November 2020. The FCA is permitted to upload these documents to its website in substitution for the versions at paragraph 4 above.

7 The FCA shall file the Statement of Facts and Issues and Appendix on behalf of the Appellants by midday on Monday 9 November 2020.

Respondent's written cases

8 Any Respondent to any appeal shall file and serve their written cases in response to such appeal by 10am on Monday 9 November 2020. The Respondents in Appeal Nos. 2020/0177-0178 (“**Respondent Insurers**”) shall cooperate so far as is reasonable to ensure that unnecessary duplication is avoided in each of their written cases.

9 The Respondent Insurers shall provide a single updated version of the index including further parts of the Appendix and Authorities index (in alphabetical order), and copies of such authorities, referred to in their respondent written cases, which are not already referenced in the Appendix index and Authorities index, to the FCA by 11am on Monday 9 November 2020.

10 The Appellant Intervener shall provide the FCA with a list of documents to be added to the index including further parts of the Appendix and Authorities index, and copies of such authorities, reflecting the documents and authorities referred to in its respondent written case, by 11am on Monday 9 November 2020.

11 The FCA shall provide to the other parties a final index including further parts of the Appendix and Authorities Index by 5pm on Monday 9 November.

12 The FCA shall prepare, file and instruct Opus2 to upload to the Magnum platform the further parts of the Appendix and further authorities as soon as practicable after receipt of the parties’ authorities.

13 The Respondents shall file and serve their respondent cases with cross-references to the Appendix and Authorities Volumes as soon as possible and in any event by 9am on Wednesday 11 November 2020.

14 The FCA shall file the core volumes and any additional volumes including further parts of the Appendix and the Authorities as soon as practicable after service of the cross-referenced cases and in any event by 5pm on Wednesday 11 November 2020.

Fees to file joint documents

15 Where documents are submitted on behalf of all the parties, the fees shall be split equally between the FCA on the one hand (50%) and the Appellant Insurers and Zurich Insurance Plc on the other hand (50%). The parties agree that such agreement shall apply to the following fees:

- (a) £4,820 fee for filing the Statement of Facts and Issues and Appendix; and
- (b) fees for any other procedural steps that are jointly made, for example, any further procedural applications made on behalf of all the parties.

Appeal hearing timetable

16 The time allowed for oral submissions at the hearing shall be divided equally between:

- (a) The Insurers on the one hand; and
- (b) The FCA and the Appellant Intervener on the other.

17 The FCA shall, after first agreeing its content with the Appellant Intervener, provide to the other parties a draft order of oral submissions and hearing timetable by 4pm on Tuesday 3 November 2020.

18 The remaining parties shall provide their comments on the draft order of oral submissions and timetable by 2pm on Thursday 5 November 2020.

19 The FCA and the Appellant Intervener shall respond to the remaining parties' comments upon the draft order of oral submissions and timetable by 4pm on Friday 6 November 2020.

20 The Appellant Parties shall seek to agree and submit to the Supreme Court Registry the agreed order of oral submissions and timetable by 4pm on Wednesday 11 November 2020.

Remote appeal hearing arrangements

21 The appeal hearing shall be conducted wholly remotely and:

- (a) it shall be conducted via Webex video conferencing;
- (b) it shall be livestreamed;
- (c) Opus 2 shall be retained by the parties to provide transcription services;
- (d) Opus 2 shall be retained by the parties to host the bundles electronically on its Magnum platform; and
- (e) the costs of these steps shall be split equally between the FCA on the one hand (50%) and Insurers on the other (50%), save that each party will bear any costs specific to it.

22 The FCA shall be responsible for providing such hard copy bundles to the Judges as they may request, with the costs to be split equally between the FCA on the one hand (50%) and the Appellant Insurers on the other (50%), save that each party will bear any costs specific to it.

Transcription

23 The FCA shall notify the Registrar not less than 7 days before the hearing that the parties wish to have a stenographer, Opus 2, present at the hearing.

24 Opus 2 are permitted to upload to the Magnum platform for access by the parties the synchronised audio of each day of the hearing so that the parties can review, and agree any amendments to, the transcript of the appeal hearing.

25 The parties shall exchange comments on the draft transcript circulated by Opus 2 by 11am on the working day after each day of the appeal hearing and provide combined comments to Opus 2 that day.

26 To the extent the transcript is finalised and agreed by Opus 2 by 10am the second working day after each day of the appeal hearing, the FCA will publish the final version on its website. If and to the extent the transcript has not been finalised and agreed by Opus 2 by 10am that day, the FCA will publish the draft version marked as "draft" and the final version will be substituted as and when it is ready.

Publication

- 27 The Supreme Court has agreed that the FCA is permitted to publish on its website:
- (a) copies of these Agreed Directions;
 - (b) copies of any Orders and rulings issued by the Supreme Court including the judgment once handed down;
 - (c) copies of all applications for permission to appeal, Appellant, Respondent and any Intervener Notices, the Statement of Relevant Facts and Issues and Appendix, and all written cases, once filed and served;
 - (d) listing details (once announced by the Supreme Court), and the public livestream link of the appeal hearing;
 - (e) copies of the transcripts of the appeal hearing in line with paragraph 39 above; and
 - (f) copies of all applications, notices, written cases, listing details, transcripts and orders and rulings relating to any interim or consequential hearings.