

NOTICE OF FILING

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Details of Filing

Document Lodged: Concise Statement
File Number: NSD133/2021
File Title: INSURANCE AUSTRALIA LIMITED ABN 11 000 016 722 v MERIDIAN TRAVEL (VIC) PTY LTD ACN 111 480 883
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 26/02/2021 12:16:39 PM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Concise Statement

No.



Federal Court of Australia
 District Registry: New South Wales
 Division: General

Insurance Australia Limited (ACN 000 016 722)

Applicant

Meridian Travel (Vic) Pty Ltd (ACN 111 480 883)

Respondent

A. IMPORTANT FACTS GIVING RISE TO THE CLAIM**A.1 Summary**

1. The applicant trading as CGU Insurance (**CGU**) is the insurer of the respondent trading as Meridian Travel & The Cruise Gallery (**Meridian**). Meridian operates a travel agency business in Heidelberg, Victoria.
2. Meridian made a claim on CGU for business interruption due to the Commonwealth Government's ban on international travel. Meridian has claimed that it suffered a significant loss in revenue by reason of the travel restrictions, because it was required to cancel all of its business and refund costs back to clients.
3. CGU has denied the claim. CGU has also received similar claims involving this form of policy wording. The proceeding is a test case as to the correctness of the bases upon which CGU has denied Meridian's claim.

A.2 The Policy

4. The relevant policy is CGU Steadfast Office Pack 15T422789306 (the **Policy**). Section 2 of the Policy provides for Business Interruption Insurance which, relevantly, includes

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additional benefits that cover loss arising from the interruption of or interference with Meridian's business as a direct result of:

- (a) the outbreak of a human infectious or contagious disease occurring within a 20 kilometre radius of Meridian's premises (***Disease Extension***) (Additional Benefit 2(c) (Booklet, pp. 23-24));
 - (b) closure or evacuation of Meridian's business by order of a government, public or statutory authority consequent upon the discovery of an organism likely to result in a human infectious or contagious disease at Meridian's premises (the ***Closure or Evacuation Extension***) (Additional Benefit 2(d)(i) (Booklet, pp. 23-24)).
5. The Policy further provides that cover under either of the Disease Extension or Closure or Evacuation Extension does not apply in respect of highly pathogenic avian influenza in humans, or any other diseases declared to be quarantinable diseases under the *Quarantine Act 1908* (Cth) and subsequent amendments (Booklet, p. 24).
 6. The Policy also provides for the adjustment as necessary of various integers relevant to the quantification of any indemnity so that the figures thus adjusted represent, as nearly as may be reasonably practicable, the results that, but for the damage, would have been obtained during the relative period after the damage (definition of "Adjustments" (Booklet, p. 19)).

A.3 *Quarantine Act*

7. Prior to 16 June 2016, the *Quarantine Act 1908* (Cth) empowered the Governor-General to declare a disease a quarantinable disease.
8. On 16 June 2016, the *Quarantine Act* was repealed by cl 2 of Schedule 1 of the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (Cth), which provided that the legislation was repealed with effect from the time of commencement of s 3 of the *Biosecurity Act 2015* (Cth).
9. On and from 16 June 2016, the *Biosecurity Act* empowered the Director of Human Biosecurity to list a human disease as a "listed human disease". If a disease was listed as a "listed human disease", various other provisions of the *Biosecurity Act* conferred further powers on the Commonwealth Government to take actions in relation to that disease. This included empowering the Governor-General to declare a human biosecurity emergency in relation to the disease (s 475(1)) and (for the duration of any such declaration) empowering the Health Minister to determine any requirement necessary to prevent or

control the entry of the disease in Australia, or its emergence, establishment or spread in Australia (s 477(1)).

A.4 COVID-19

10. By the *Biosecurity (Listed Human Diseases) Amendment Determination 2020* (Cth), the Director of Human Biosecurity determined human coronavirus with pandemic potential (**COVID-19**) to be a listed human disease with effect from 21 January 2020. By the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* (Cth), the Governor-General declared a human biosecurity emergency to exist in relation to COVID-19.
11. As made, that declaration was in force for a period beginning on 18 March 2020 and ending at the end of 3 months beginning on the day the declaration was registered. The period the declaration is in force has been subsequently extended.

A.5 COVID-19 measures

12. On 18 March 2020, in response to the spread of COVID-19, the Commonwealth Government issued travel advice for all Australians not to travel overseas.
13. On 19 March 2020, the Commonwealth Government further announced that it would be closing its borders to all non-citizens and non-residents from 9pm on 20 March 2020.
14. On 25 March 2020, the Minister for Health made the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020* under 477(1) of the *Biosecurity Act*. Under this instrument an Australian citizen or permanent resident was prohibited from leaving Australian territory as a passenger on an outgoing aircraft or vessel from 12pm on 25 March 2020.
15. The restrictions referred to in the above three paragraphs are referred to in this concise statement as the **Travel Ban**.

16. As at 25 March 2020, there were 2,415 confirmed cases of COVID-19 in Australia,¹ 518 confirmed cases attributed to Victoria,² and 406 confirmed cases attributed to the Melbourne metropolitan area.³

A.6 *Meridian's Claim*

17. On 15 July 2020, Meridian made a claim under the Policy (the **Claim**).
18. It claimed it was entitled to an indemnity under its business interruption cover because of the disruption of its business caused by the Travel Ban and the COVID-19 situation generally. In particular, it stated that due to the then current situation customers were cancelling their travel bookings and requiring costs to be refunded.
19. On 11 August 2020, CGU declined the Claim. Meridian does not accept CGU's denial of the Claim, and has indicated that it considers that it may be entitled to interest under s 57 of the *Insurance Contracts Act 1984* (Cth).

A.7 *Policy wording disputes*

20. In respect of the exclusion for "diseases declared to be quarantinable diseases under the *Quarantine Act 1908* (Cth) and subsequent amendments":
- (a) CGU contends that COVID-19 falls within the exclusion;⁴
 - (b) further or alternatively, CGU contends that s 61A of the *Property Law Act 1958* (Vic) applies to the Policy and has the effect that the reference to the repealed *Quarantine Act* is to be construed as a reference to the *Biosecurity Act*, such that a disease determined to be a "listed human disease" under the *Biosecurity Act* falls within the scope of the exclusion.⁵

¹ Per 'Daily and cumulative number of reported COVID-19 cases in Australia' accessible from: [Coronavirus \(COVID-19\) current situation and case numbers | Australian Government Department of Health](#)

² Per 'All Victorian cases by local government area (CSV)' accessible from: [Department of Health and Human Services Victoria | Victorian coronavirus \(COVID-19\) data \(dhhs.vic.gov.au\)](#)

³ Per 'All Victorian cases by local government area (CSV)' accessible from: [Department of Health and Human Services Victoria | Victorian coronavirus \(COVID-19\) data \(dhhs.vic.gov.au\)](#)

⁴ This issue (not including the contention in paragraph (b) relating to s 61A of the *Property Law Act*) has been the subject of the test case determined adversely to the insurer by the NSW Court of Appeal in *HDI Global Specialty SE & Anor v Wonkana No 3 Pty Limited* [2020] NSWCA 296. The decision is presently subject to a special leave application. On this issue, CGU will abide by the result of the determination of the NSW Court of Appeal in *HDI* if special leave is not granted, and the determination of the High Court of Australia if special leave is granted.

⁵ Although this issue has not yet been the subject of judicial determination, the Applicant does not presently press this issue as the claim is subject to a complaint to the Australian Financial Complaints Authority Form NCF1

21. In the alternative, CGU contends that neither additional benefit applies for one or more of the following reasons.
22. Disease Extension
- Meridian's loss was not a result of an outbreak of COVID-19 occurring within a 20 kilometre radius of Meridian's premises.
23. Evacuation and Closure Extension
- (a) There was no closure or evacuation of Meridian's premises by order of a government, public or statutory authority.
- (b) Further or alternatively, any closure or evacuation of Meridian's premises was not consequent upon the discovery of an organism likely to result in a human infectious or contagious disease at Meridian's premises.
24. Further, if the Court were to find that either additional benefit responded, CGU contends that Meridian is not entitled to a complete indemnity because:
- (a) the interruption or interference the subject of the claim would have occurred regardless of the Travel Ban, by reason of the other (uninsured) impacts of the COVID-19 pandemic;
- (b) any payment must be adjusted to reflect (uninsured) circumstances affecting the business arising from the COVID-19 pandemic, so that the payment reflects the results that, but for the insured events, would have been obtained by Meridian during the relative period.
25. Finally, if the Court were to find that the Policy responds to the Claim, CGU contends that interest only runs pursuant to section 57 of the *Insurance Contracts Act 1984* (Cth) from date of the adjudication of the Claim.

B. THE RELIEF SOUGHT FROM THE COURT

26. CGU seeks relief in the nature of declarations as to the proper interpretation of the Policy.

(AFCA) and AFCA has not given its consent pursuant to A.7.2 and C.2.2(f) of the AFCA Complaints Resolution Scheme Rules to raise this issue in these proceedings.

Form NCF1

C. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

27. The primary legal grounds for the relief sought are section 21 of the *Federal Court of Australia Act 1976* (Cth).

Certificate of lawyer

I, Guy Foster, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 24 February 2021



Signed by Guy Foster *by his partner, Malcolm Stephens*

Lawyer for the Applicant