

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**COMMERCIAL COURT (QBD)**

Claim No. CL-2021-000161

**BETWEEN:**

**STONEGATE PUB COMPANY LIMITED**

**Claimant**

- and -

- (1) MS AMLIN CORPORATE MEMBER LIMITED**
- (2) LIBERTY MUTUAL INSURANCE EUROPE SE**
- (3) ZURICH INSURANCE PLC**

**Defendants**

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**DEFENCE**

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**A. INTRODUCTION**

**A.1 Preliminary points and summary**

1. In this Defence:

- 1.1 References to paragraph numbers are to paragraphs in the Amended Particulars of Claim, unless otherwise indicated.
- 1.2 Without admission and for convenience only, the Defendants adopt headings and defined terms in the Amended Particulars of Claim.
- 1.3 Save to the extent admitted or not admitted below, the Defendants deny each and every allegation in the Amended Particulars of Claim (including the summary thereof in paragraph 1).
- 1.4 The Defendants reserve generally the right to plead further as necessary if and when there is proper particularisation of the Amended Particulars of Claim, which are in

many instances inadequately particularised, some of those instances being identified below.

2. The Defendants' position in summary is as follows:

2.1 Stonegate's Business will have suffered some interruption or interference and Business Interruption Loss proximately caused by Covered Events during the Period of Insurance (1 May 2019 to 30 April 2020), but no admissions are made as to its timing, extent, or continuity. For the reasons summarised below, Stonegate has no further claim against the Defendants and the Defendants are not in breach of the Policy; if, which is denied, it does have any further claim, the claim made is in any event hugely overstated.

2.2 The Defendants are under no further liability in respect of Business Interruption Loss because:

2.2.1 All Business Interruption Loss alleged by Stonegate arises from, is attributable to, or is in connection with a single occurrence;

2.2.2 Such Business Interruption Loss is accordingly to be aggregated as a Single Business Interruption Loss subject to a Limit of Liability of £2.5 million.

2.2.3 The Defendants discharged their obligations to indemnify Business Interruption Loss by paying Stonegate £2.5 million in December 2020.

2.3 If, contrary to the Defendants' primary case, all Business Interruption Loss alleged by Stonegate does not fall to be aggregated as one Single Business Interruption Loss, then the claim for Business Interruption Loss is nonetheless hugely overstated because it fails to take into account the Limits of Liability applicable after aggregation, as set out further in paragraph 48 below.

2.4 It is denied that the or any Maximum Indemnity Period will or can continue until April 2023, as is alleged and which also results in a huge overstatement of the claim. There is no basis and Stonegate has pleaded no basis on which loss proximately caused by the Covered Events relied upon could have occurred and be recoverable for months and years after the end of the Period of Insurance.

2.5 As to sums other than Business Interruption Loss, Stonegate has received an interim payment of £12 million for Additional Increased Costs of Working of an applicable single limit of £15 million and has not proved that any sums are outstanding under the Policy, the only potential such sums being by way of AICW (limited to a further £3 million), Claims Preparation Costs (limited to a single amount of £175,000), and Public Relations Crisis Management Costs (limited to a single amount of £250,000).

## A.2 Parties

3. As to paragraph 2:

3.1 Stonegate is a company incorporated in the Cayman Islands. It is admitted that it operates public houses, bars, and restaurants, and provides car parking.

3.2 Stonegate listed 760 sites and 46 disposed sites on a Location Schedule dated 18 January 2019 which was presented to the Defendants on 26 April 2019 in advance of the renewal of the Policy (the “**Master Location Schedule**”).

3.3 Paragraph 2 is otherwise not admitted. In this Defence, references to “Stonegate’s Business” are to the Insured’s Business, as defined in the Policy.

4. Paragraph 3 is admitted, save that it is denied (if alleged) that the Defendants agreed to indemnify Stonegate in respect of the alleged losses set out in the Amended Particulars of Claim.

## B. BACKGROUND AND POLICY

5. As to paragraph 4:

5.1 It is admitted and averred that Stonegate’s brokers made a presentation of risk on 26 April 2019. Stonegate was represented by Marsh Ltd (“**Marsh**”) at all material times, and the Policy is accordingly to be interpreted on the basis that Stonegate contracted as a sophisticated insured assisted by professional advice.

5.2 Paragraph 4 is otherwise denied. There was no presentation of risk made by Marsh on 14 May 2019. The document dated 14 May 2019, on which Stonegate relies as a presentation of risk, is a “*Bound Summary*”.

6. As to paragraph 5:

6.1 Stonegate presented the Defendants with a document entitled "*STONEGATE PUB COMPANY HOLDING S.A.R.L AND SUBSIDIARIES RESILIENCE - MD/BI PRESENTATION*" dated 26 April 2019, in which the "*Business Description*" was "*Operators of managed pubs, bars, hotels and restaurants, and provision of Car parking and property owners*".

6.2 It is admitted that the Presentation dated 26 April 2019 attached a Master Location Schedule dated 18 January 2019 which contained data for sites listed by Stonegate, including figures for gross profit which were used to calculate Declared Values for Stonegate's Business under the Policy.

6.3 The Defendants will rely upon Master Location Schedule for its full terms and true effect.

7. As to paragraph 6, paragraphs 5 and 6 above are repeated. The Defendants will likewise rely upon the Presentation dated 26 April 2019 and the Bound Summary dated 14 May 2019 (and attachments) as necessary for their full terms and true effect and reserve the right to plead further as necessary if and when the presentation documents referred to beyond those specified in paragraph 5 are identified and/or Stonegate specifies the purpose(s) for which they rely upon any presentation document and/or the relevance of any such document.

8. As to paragraph 7:

8.1 The Policy was a contract of insurance concluded between Stonegate (as Insured) and the Defendants (as Insurers) in respect of Stonegate's Business and was contained in and/or evidenced by (i) the Resilience MD/BI v1.1 MS Amlin 07.18 wording, drafted, negotiated and arranged by Marsh (acting as agent for Stonegate), and (ii) the Schedule, which was issued on 14 May 2019.

8.2 The Policy was subsequently amended by a further schedule issued on 10 March 2020 (the "**Amending Schedule**") by which various amendments became effective for the period from 1 September 2019 to 30 April 2020 (both dates inclusive).

- 8.3 Subject to paragraphs 8.1 and 8.2 above, it is admitted and averred that the Period of Insurance was 1 May 2019 to 30 April 2020 (both dates inclusive).
- 8.4 It is admitted that the Territorial Limits of the Policy included the United Kingdom. The Territorial Limits also spanned the Isle of Man and the Channel Islands.
- 8.5 It is admitted that the Policy incorporated wording materially similar to the RSA4 wording considered in *The Financial Conduct Authority (FCA) v Arch Insurance (UK) Ltd & Ors* [2020] EWHC 2448 (Comm) and *The Financial Conduct Authority & Ors v Arch Insurance (UK) Ltd & Ors* [2021] UKSC 1.
9. Paragraph 8 is admitted, save that the words “*during the Period of Insurance*” also apply to the words “*discovered at an Insured Location*”.
10. As to paragraph 9:
- 10.1 Stonegate’s Business was described in the Schedule as “*Operators of managed pubs, bars, hotels and restaurants, and provision of Car parking and property owners*”.
- 10.2 The Declared Value for Estimated Annual Insured Profit was £619,962,588.
- 10.3 The Maximum Indemnity Period was 36 months save that Insuring Clause 2.3(xii) (Prevention of Access – Non Damage) was subject to a Maximum Indemnity Period of 6 months (effective from 1 September 2019, pursuant to the Amending Schedule).
- 10.4 The Declared Value for Business Interruption was a Total Value of £2,479,788,356 after application of a 133.33% uplift.
- 10.5 Save as consistent with the above, paragraph 9 is denied.
11. Paragraph 10 is admitted as a summary of certain terms in the Schedule and the Amending Schedule, upon which the Defendants will rely for their full terms and true effect.
12. Paragraphs 11 and 12 are admitted. Further:
- 12.1 General Condition 8 as to “*Limit of Liability, Sub-limits & Retention*”, quoted in part at paragraph 11, also provides that:

*“iii. Where a **Single Business Interruption Loss** is covered under more than one Insuring Clause only one **Limit of Liability**, being the largest applicable, will apply to such **Single Business Interruption Loss**.*

*iv. Certain elements of this policy are subject to a **Sub-Limit**, the liability of the **Insurer** under this policy for such elements will not exceed the applicable **Sub-Limit**.*

*v. The **Limit of Liability** will apply inclusive of the applicable **Retention**...”*

12.2 The Definitions in the Policy included the following definition of “*Covered Event*”:

*“17. **Covered Event** means the events as described in Insuring Clause 2.1, 2.2, 2.3 or 2.4 or any applicable **Extension**.”*

13. As to paragraph 13, the Defendants will likewise rely upon the Policy for its full terms and true effect.

### **C. THE FACTS**

14. As to paragraph 14, the World Health Organisation’s office in China notified the World Health Organisation Western Pacific Regional Office about a Wuhan Municipal Health Commission media statement concerning cases of a viral pneumonia (later known as COVID-19) in Wuhan, China. The initial outbreak of COVID-19, which was the cause of the worldwide and UK-wide pandemic, occurred in Wuhan in late 2019. Save as aforesaid, no admissions are made.

15. As to paragraph 15, it is admitted and averred that the presence of COVID-19 in the UK, an emanation of the Wuhan outbreak, was caused by individuals who had travelled abroad returning to the UK. It is further admitted that the first positive tests for COVID-19 in the UK were announced on 31 January 2020.

16. As to paragraph 16, the facts and matters set out in Appendix One to the Amended Particulars of Claim are admitted. Save as aforesaid, no admissions are made.

17. As to paragraph 17, no admissions are made as to (i) whether Stonegate’s Business was interfered with by COVID-19 from around 17 February 2020, (ii) whether customers stayed away from Insured Locations or (iii) the reasons why any such customers stayed away.

18. Paragraphs 18 to 26 are admitted, save that:
- 18.1 As to paragraph 19, the Defendants admit that several positive tests for COVID-19 within the UK were reported on 1 March 2020 but make no admissions about alleged reports of the first cases of transmission within the UK.
- 18.2 As to paragraph 21, the relevant regulations in Wales were the Health Protection (Notification) (Wales) Regulations 2010 (SI 2010/1546 (W.144)).
- 18.3 As to paragraph 26, no admissions are made as to the “*restrictions*”, other than closures, said to have been described in the guidance of 23 March 2020.
19. The Amended Particulars of Claim refer in various paragraphs to an announcement by the UK Government on 23 March 2020 (see, for example, paragraph 45(1)). This announcement has not been pleaded at paragraphs 18 to 26, but it is assumed that it is a reference to the speech on 23 March 2020 by the Prime Minister announcing the national lockdown which was implemented via the England, Wales and Scotland 26 March Regulations. This 23 March 2020 speech included an instruction for people to stay home save for limited purposes and a statement that the Government would immediately close all shops selling non-essential goods.
20. As to paragraph 27, no admissions are made as to the pleaded closures, the dates of such closures and the reasons for such closures. No particulars of these alleged closures have been provided, and the Defendants will plead further to them (including by making any appropriate admissions) if and when they are particularised and evidenced.
21. Paragraph 28 is admitted, save that the guidance stated that businesses providing holiday accommodation “*should now take steps to close for commercial use as quickly as is safely possible.*”
22. Paragraph 29 is admitted, save that businesses selling food or drink for consumption on the premises in England, Wales, and Scotland had already been required to close pursuant to the 20 March 2020 announcements and/or the 21 March Regulations.
23. Paragraph 30 is admitted. The Defendants will rely as necessary on the further reviews of the requirements and restrictions imposed by the Regulations and repeals of the Regulations.

24. Paragraph 31 is admitted. Paragraph 23 above is repeated.

25. As to paragraph 32:

25.1 Save that it is admitted that Stonegate's Business will have suffered some interruption or interference during the Period of Insurance and that interruption or interference caused a Single Business Interruption Loss of £2.5 million, no admissions are made as to the timing, extent, or continuity of the interruption and interference alleged by Stonegate.

25.2 It is denied for the reasons set out below that the or any Maximum Indemnity Period will end in April 2023.

#### **D. CLAIM UNDER THE POLICY**

26. As to paragraph 33:

26.1 It is denied that Stonegate is entitled to any further indemnity for its alleged Business Interruption Loss (the "**Alleged Business Interruption Loss**"). Stonegate has received the applicable Limit of Liability for the relevant Single Business Interruption Loss (£2.5 million) and has no further entitlement under the Policy to an indemnity for Business Interruption Loss, as set out further below.

26.2 As to the claim for further costs set out in section F of the Amended Particulars of Claim, section F below is repeated.

27. As to paragraph 34, sections D.1 and D.2 below are repeated. The cover provided and the requirements which Stonegate must satisfy in order to be indemnified (subject to the applicable Retention, Sub-Limits and Limit of Liability) under Insuring Clause 2.3(viii) (Notifiable Diseases & Other Incidents) are, so far as relevant, as follows: [1] Business Interruption Loss (Reduction in Revenue, Increased Costs of Working, and/or Research & Development Expenditure), [2] resulting from interruption or interference to Stonegate's Business, [3] proximately caused by Notifiable Diseases & Other Incidents (a) discovered at an Insured Location during the Period of Insurance within the Territorial Limits and/or (b) occurring within the Vicinity of an Insured Location during the Period of Insurance within the Territorial Limits.



28. As to paragraph 35, section D.3 below is repeated. The cover provided and the requirements which Stonegate must satisfy in order to be indemnified (subject to the applicable Retention, Sub-Limits, and Limit of Liability) under Insuring Clause 2.3(xii) are, so far as relevant, as follows: [1] Business Interruption Loss (Reduction in Revenue, Increased Costs of Working, and/or Research & Development Expenditure), [2] resulting from interruption or interference to Stonegate's Business, [3] proximately caused by the actions or advice of a governmental authority or agency in the Vicinity of the Insured Locations which prevents or hinders the use of or access to Insured Locations during the Period of Insurance within the Territorial Limits.
29. As to paragraph 36, paragraph 10.1 above is repeated. It is admitted that the locations set out in the Master Location Schedule are Insured Locations if and to the extent that (i) they were owned, occupied, or utilised by Stonegate for the purposes of its Business, and/or (ii) Stonegate had assumed responsibility for them for the purposes of its Business.
30. As to paragraph 37, it is not admitted that interruption or interference was suffered at all Insured Locations. Paragraph 25.1 above is repeated. Save as aforesaid, the paragraph is denied.

**D.1 'The Disease Peril': COVID-19 discovered at an Insured Location or occurring within the Vicinity of an Insured Location**

31. Paragraph 38 is admitted.
32. As to paragraph 39:
- 32.1 The first sentence is admitted.
- 32.2 As to the second sentence, COVID-19 was deemed a notifiable disease from 31 December 2019 when the first cases in Wuhan were confirmed. The occurrence of the first positive test for COVID-19 in England does not constitute the "*initial outbreak*" of COVID-19 for the purposes of the definition of Notifiable Diseases & Other Incidents. The "*initial outbreak*" was the outbreak of the disease in Wuhan in late 2019.
- 32.3 Save in so far as consistent with the above, paragraph 39 is denied.
33. As to paragraph 40:

- 33.1 It is averred that for the purposes of the Disease Peril, the insuring clause is “triggered” only in the event that there has been an interruption or interference to Stonegate’s Business as a result of the Covered Event specified in Insuring Clause 2.3(viii)(a) or (d) (when read with Definition 69(ii)) and Business Interruption Loss indemnifiable under the Policy results from such interruption or interference.
- 33.2 It is denied that the cover is in respect of the interruption or interference with “*the business at an Insured Location*”. Rather, the cover is in respect of the interruption or interference with Stonegate’s Business, as set out in the Policy.
- 33.3 To the extent that it is consistent with paragraph 27 above and save as aforesaid, paragraph 40 is otherwise admitted but only in general terms as a statement of principle. As neither the alleged “triggers” nor the date or nature of the alleged interruption or interference are specified, it is not possible to plead more specifically.
34. As to paragraph 41, paragraphs 27 and 33 above are repeated. Without prejudice to the generality of the foregoing:
- 34.1 Paragraph 41(1) is denied. The words “*discovered at an Insured Location... during the Period of Insurance*” manifestly require “discovery” of disease “*at an Insured location*”, which words are omitted from the opening words of paragraph 41(1). Without prejudice to the foregoing, it is admitted and averred that, if a person was present at an Insured Location and was there diagnosed and known to be diagnosed with COVID-19 or if a person having attended an Insured Location was subsequently diagnosed with COVID-19 such that it was certain that the person had had COVID-19 whilst at the location and that became known, then COVID-19 would have been discovered at an Insured Location within the meaning of Insuring Clause 2.3(viii)(a) and such discovery, if it resulted specifically in interruption or interference to Stonegate’s Business and resulting indemnifiable Business Interruption Loss, would “trigger” Insuring Clause 2.3(viii)(a). It is specifically noted that Stonegate has pleaded no details of the occurrences which are alleged to have been discovered at an Insured Location and no admissions are made in that respect. It is in any event denied that the Alleged Business Interruption Loss (or any part of it) resulted from the discovery of an

occurrence of COVID-19 at an Insured Location and accordingly that Clause 2.3 (viii)(a) has any relevance to Stonegate's claim.

34.2 As to paragraph 41(2), it is averred that any occurrence of COVID-19 within the Vicinity of an Insured Location must be within the Period of Insurance and, to be a "trigger", must specifically cause interruption or interference to Stonegate's Business resulting in indemnifiable Business Interruption Loss. Save as aforesaid, paragraph 41(2) is admitted.

34.3 As to paragraph 41(3) it is admitted that each occurrence of COVID-19 within the Vicinity of an Insured Location is a separate and effective and proximate cause of any relevant interruption or interference with Stonegate's Business (the nature, timing and extent of which interruption or interference is not admitted) only to the extent that it is shown that (i) such occurrence took place before the relevant interruption or interference and (ii) was specifically the or an effective cause of the relevant public reaction or reaction of governmental authorities or agencies. Save as aforesaid, paragraph 41(3) is denied.

34.4 Paragraph 41(4) is admitted, on the basis, for the avoidance of doubt, that "occurred" and "each new case" have the same meaning as "occurrence" as alleged in paragraph 41(2).

34.5 As to paragraph 41(5):

34.5.1 The interruptions or interferences intended to be referred to by "*each interruption and interference*" are not identified and the plea is predicated on paragraph 41(3) which is denied save as pleaded above. For the avoidance of doubt, it is the Defendants' case, as set out at paragraph 33.1 above, that for the purposes of the Disease Peril, the insuring clause is not "triggered" unless and until the Covered Event specified in clause 2.3(viii)(d) (when read with Definition 69(ii)) causes interruption or interference to Stonegate's Business resulting in indemnifiable Business Interruption Loss.

34.5.2 It is further denied that there was a separate "trigger", however that term is understood, of the insuring clause for the purposes of the Disease Peril for each

premises with each occurrence of COVID-19 within the Vicinity of an Insured Location or a single separate “trigger” for each premises.

34.5.3 Without prejudice to the generality of the foregoing, there were from 16 March 2020 at most three relevant interruptions or interferences with Stonegate’s Business and therefore a maximum of three “triggers” (properly understood, see paragraph 33.1 above) constituted by (i) the 16 March 2020 UK Prime Minister’s speech, (ii) the 20 March 2020 UK Prime Minister’s speech, the 20 March 2020 speech by the First Minister of Scotland, and subsequent 21 March England and Wales Regulations, (iii) the 23 March 2020 UK Prime Minister’s speech, and the UK Government guidance of 24 March 2020, and subsequent England, Wales and Scotland 26 March Regulations.

35. As to paragraph 42, it is admitted only that Insuring Clause 2.3(viii)(d) was capable of providing cover for Business Interruption Loss resulting from any interruption or interference to Stonegate’s Business suffered on and after 17 February 2020; but (save to the extent indicated in paragraph 25.1 above) no admissions are made as to the interruption or interference or Business Interruption Loss alleged by paragraph 42 and it is denied that there is any entitlement to cover beyond the indemnity which has already been paid by the Defendants.

## **D.2 The Closure Peril: Enforced Closure of an Insured Location**

36. Paragraph 43 is admitted. The cover provided and the requirements which Stonegate must satisfy in order to be indemnified (subject to the applicable Retention, Sub-Limits and Limit of Liability) by reference to Insuring Clause 2.3(viii) and Definition 69(v) are, so far as relevant, as follows: [1] Business Interruption Loss (Reduction in Revenue, Increased Costs of Working, and/or Research & Development Expenditure), [2] resulting from interruption or interference to Stonegate’s Business, [3] proximately caused by enforced closure of an Insured Location by any governmental authority or agency or a competent local authority or agency for health reasons or concerns within the Vicinity of the Insured Location during the Period of Insurance within the Territorial Limits.

37. Paragraph 44 is admitted.

38. As to paragraph 45, paragraph 36 above is repeated. Further:

38.1 As to paragraphs 45(1) and 45(2):

38.1.1 No admissions are made as to whether any particular Insured Location in fact closed and the reasons for such closure.

38.1.2 Save that it is denied that review and continuation on 15/16 April 2020 of the restrictions imposed by each of the England, Wales and Scotland 26 March Regulations could constitute enforced closure of any Insured Location, it is admitted that the matters pleaded in paragraphs 45(1) and 45(2) were capable of giving rise to enforced closure of Insured Locations by a governmental authority for health reasons.

38.1.3 It is denied, in so far as alleged, that each of these measures referred to in paragraphs 45(1) and (2) gave rise to or comprised a separate and distinct enforced closure. Without prejudice to the generality of the foregoing, there were at most two enforced closures constituted by (i) the 20 March 2020 UK Prime Minister's speech, the 20 March 2020 speech by the First Minister of Scotland, and subsequent 21 England and Wales 21 March Regulations, and (ii) the 23 March 2020 UK Prime Minister's speech, and the UK Government guidance of 24 March 2020, and subsequent England, Wales and Scotland 26 March Regulations.

38.2 Save that no admissions are made as to whether each Insured Location closed and the reasons for such closure, and save that no admissions are made as to the interruption or interference alleged by Stonegate (other than to the extent set out at paragraph 25.1 above), paragraph 45(3) is denied. It is specifically denied that the relevant insuring clause was "triggered", however that term is understood, separately by each alleged enforced closure for each premises or that each such alleged enforced closure was a separate "Covered Event". There were at most two such enforced closures and therefore two "Covered Events" as alleged in paragraph 38.1.3 above. The insuring clause relevant to the Closure Peril was triggered, at most, twice as a result of any interruption or interference to Stonegate's Business caused by these two enforced closures.

39. As to paragraph 46, it is admitted that Insuring Clause 2.3(viii) (read with Definition 69(v)) was capable of providing cover for Business Interruption Loss resulting from any interruption

or interference to Stonegate's Business suffered on 20 March 2020 and thereafter; but (save to the extent indicated in paragraph 25.1 above) no admissions are made as to the interruption or interference or Business Interruption Loss alleged by paragraph 46 and it is denied that there is any entitlement to cover beyond the indemnity which has already been paid by the Defendants.

### **D.3 The Prevention Peril: Prevention of Access – Non Damage**

40. Paragraphs 47 and 48 are admitted.

41. As to paragraph 49:

41.1 The first sentence is admitted.

41.2 As to the second sentence:

41.2.1 Save that it is admitted that the pleaded actions and advice took place within the Vicinity of the Insured Locations, and save to the extent consistent with the below, the second sentence is denied.

41.2.2 Whether or not there was prevention or hindrance of use of or access to an Insured Location is a question of fact (as to which no admissions are made) but no fact or matter pleaded by Stonegate in respect of the period prior to 16 March 2020 was capable of constituting a relevant prevention or hindrance.

41.2.3 It is admitted that any Insured Location which was ordered to close in full or in part and was closed in consequence thereof was subject to prevention or hindrance of use or access by reason of the measures of 20, 21, 23, 24 and/or 26 March 2020 pleaded in the Amended Particulars of Claim and/or paragraph 19 above.

42. As to paragraph 50, paragraph 28 above is repeated. Further:

42.1 As to the first sentence, it is averred that each action or advice as a result of which there was prevention or hindrance of the use of or access to an Insured Location was a "trigger" of the Prevention Peril, but only if it caused interruption or interference to Stonegate's Business and resulting Business Interruption Loss.

- 42.2 As to the second sentence, paragraph 41 above is repeated as to whether any particular action or advice was capable of engaging Insuring Clause 2.3(xii) and the second sentence is accordingly denied. No further admissions are made. No details are given of the alleged additional actions or advice not included in Appendix One or their effects or how and in relation to which Insured Locations or “*non-core businesses*” a claim for indemnity arises in relation to such actions or advice.
43. Paragraph 51 is denied, however the word “triggered” is understood. It is denied that the clause was triggered or that there was a “Covered Event” each time a relevant governmental authority or agency gave advice or took actions in relation to COVID-19 that prevented or hindered access at each Insured Location. Without prejudice to the generality of the foregoing, there were at most three “Covered Events”, constituted by (i) the 16 March 2020 UK Prime Minister’s speech, (ii) the 20 March 2020 UK Prime Minister’s speech and subsequent 21 England and Wales 21 March Regulations, (iii) the 23 March 2020 UK Prime Minister’s speech, and the UK Government guidance of 24 March 2020, and subsequent England, Wales and Scotland 26 March Regulations. The insuring clause relevant to the Prevention Peril was triggered, at most, three times as a result of any interruption or interference to Stonegate’s Business caused by these Covered Events.
44. As to paragraph 52:
- 44.1 It is denied that the Policy provides any cover for Business Interruption Loss in respect of which the Defendants have not already paid an indemnity.
- 44.2 Paragraph 52 is in any event denied because none of the advice or action in February 2020 pleaded by Stonegate was capable of engaging Insuring Clause 2.3(xii). It is admitted that some of the advice and action from 16 March 2020 was capable of giving rise to coverage under Insuring Clause 2.3(xii).
- 44.3 Subject to the foregoing and save to the extent indicated in paragraph 25.1 above, no admissions are made as to the Business Interruption Loss alleged by paragraph 52.

## **E. LIMITS UNDER THE POLICY**

### **E.1 The Defendants' case on Limits and Single Business Interruption Loss**

45. In respect of Insuring Clause 2.3(viii)(a) and Insuring Clause 2.3(viii)(d), a £2.5 million Limit of Liability applies to all Business Interruption Loss that arises from, or is attributable to, or is in connection with a single occurrence (that is, a Single Business Interruption Loss).
46. In respect of Insuring Clause 2.3(xiii), a £1 million Limit of Liability applies to all Business Interruption Loss that arises from, or is attributable to, or is in connection with a single occurrence (that is, a Single Business Interruption Loss).
47. Where Business Interruption Loss arising from, or attributable to, or in connection with a single occurrence (that is, a Single Business Interruption Loss) falls within the scope of more than one Insuring Clause, including 2.3(viii)(a) or (d), or 2.3(xii), in accordance with General Condition 8 of the Policy such Single Business Interruption Loss is subject to only one Limit of liability, being the largest applicable. On this basis, and as set out further below, Stonegate is only entitled to a single Limit of Liability of up to £2.5 million.
48. For the purposes of the Single Business Interruption Loss definition and the aggregating language contained therein, all or the majority of the Alleged Business Interruption Loss arises from, or is attributable to, or is in connection with a single occurrence, such that a single £2.5 million Limit of Liability applies. Without prejudice to the generality of the foregoing, the Defendants' case is as follows:
- 48.1 While the severed expression "*arise from, are attributable to*" might require some causal link between Business Interruption Loss and a single occurrence, the expression "*or are in connection with*" does not. The full expression, of itself, does not require any causal link between the Business Interruption Loss and the single occurrence.
- 48.2 Alternatively, if and in so far as the words "*or are in connection with*" require any causal link between the Business Interruption Loss and the single occurrence, it is of merely the weakest and most remote or, at least, a weak and remote kind.
- 48.3 All the Alleged Business Interruption Loss arises from, is attributable to, or is in connection with a single occurrence, namely:



48.3.1 The initial outbreak of COVID-19 in Wuhan in late 2019; alternatively

48.3.2 The initial outbreak and/or arrival of COVID-19 in the UK (in the Vicinity of all Insured Locations, which Vicinity it has never left) which occurred no later than 31 January 2020; alternatively

48.3.3 The number of cases and/or spread of COVID-19 in the UK reaching such a level that:

(i) an epidemic or pandemic of COVID-19 had occurred or an epidemic or pandemic of COVID-19 was inevitable or likely; or

(ii) a governmental response of the nature in the event taken by the UK Government and/or Governments was inevitable or likely,

such occurrence being by 31 January 2020 and/or 17 February 2020; alternatively

48.3.4 On Stonegate's case, as understood, each occurrence of COVID-19 in the Vicinity causes all the Alleged Business Interruption Loss; if, which is denied, that is the case, it necessarily follows that all Alleged Business Interruption Loss arises from, is attributable to, or is in connection with any one such occurrence of COVID-19 and therefore there is one Single Business Interruption Loss.

48.4 Alternatively, the Alleged Business Interruption Loss on and from 16 March 2020 arises from, is attributable to, or is in connection with the single occurrence comprising the decision of the UK governmental authorities on or before 16 March 2020 that people should not visit pubs, clubs, theatres and other social venues because non-essential social contact in such confined spaces posed a serious threat to public health. Such decision was manifested by and/or embodied in the UK governmental authorities' advice and/or measures comprising (i) the 16 March 2020 UK Prime Minister's speech, (ii) the 20 March 2020 UK Prime Minister's speech, the 20 March 2020 speech by the First Minister of Scotland, and subsequent England and Wales 21 March Regulations, (iii) the 23 March 2020 UK Prime Minister's speech, and the UK government guidance

issued on 24 March 2020 in relation to holiday accommodation providers, and subsequent England, Wales and Scotland 26 March Regulations;

- 48.5 Alternatively, the Alleged Business Interruption Loss on and from 20 March 2020 arises from, is attributable to, or is in connection with the single occurrence comprising the UK governmental authorities' decision to order restaurants, cafes, bars and public houses to close which decision was manifested by and/or embodied in the measures on 20, 21, 23, 24, and/or 26 March 2020 as specified above;
- 48.6 Alternatively, the Alleged Business Interruption Loss on and from 16 March 2020 onwards arises from, is attributable to, or is in connection with the three single occurrences comprising (i) the 16 March 2020 UK Prime Minister's speech, (ii) the 20 March 2020 UK Prime Minister's speech, the 20 March 2020 speech by the First Minister of Scotland, and subsequent England and Wales 21 March Regulations, (iii) the 23 March 2020 UK Prime Minister's speech, and the UK Government guidance of 24 March 2020, and subsequent England, Wales and Scotland 26 March Regulations;
- 48.7 Alternatively, if the speeches of the UK Prime Minister of 20 and 23 March 2020, the 20 March 2020 speech by the First Minister of Scotland, and the UK Government guidance of 24 March 2020, are not to be regarded as part of the same single occurrence as the subsequent regulations (i.e. as regards 20 March 2020 speeches all the 21 March Regulations and as regards 23 March 2020 speech and the 24 March 2020 Government guidance all the 26 March Regulations) the Defendants will contend that the speeches and guidance and the subsequent regulations are each single occurrences. Further or alternatively, if the Regulations in each separate country are separate single occurrences the Defendants will contend that the Alleged Business Interruption Loss in each of England, Wales, and Scotland arises from, is attributable to, or is in connection with such occurrences on and from the date of such Regulations.

## **E.2 Applicable limits for the Disease Peril**

49. Save to the extent consistent with paragraphs 45 to 47 above, paragraph 53 is denied.
50. Paragraph 54 is denied for the reasons set out in paragraphs 27, 33 and 34 above.

51. Paragraph 55 is denied, save that no admissions are made as to Stonegate's alleged losses. All or the majority of the Alleged Business Interruption Loss arises from, is attributable to, or is in connection with a single occurrence, for the purposes of the Single Business Interruption Loss definition, such that a single £2.5 million Limit of Liability applies. Section E.1 above is repeated.

52. Paragraph 56 is denied, save that no admissions are made as to Stonegate's alleged losses. Stonegate can only prove a Single Business Interruption Loss and has already received the available indemnity in accordance with the terms of the Policy (the receipt of which is pleaded by Stonegate in paragraph 78(1)).

### **E.3 Applicable limits for the Closure Peril**

53. Save to the extent consistent with paragraphs 45 to 47 above, paragraph 57 is denied.

54. Paragraph 58 is denied for the reasons set out in paragraph 38 above.

55. Paragraph 59 is denied, save that no admissions are made as to Stonegate's alleged losses. All of the Alleged Business Interruption Loss allegedly covered under Insuring Clause 2.3(viii) (read with Definition 69(v)) falls to be aggregated with the rest of the Alleged Business Interruption Loss as a Single Business Interruption Loss. The highest Limit of Liability of £2.5 million has already been received by Stonegate. Section E.1 above is repeated.

56. Paragraph 60 is denied, save that no admissions are made as to Stonegate's alleged losses. Paragraph 52 above is repeated.

57. Paragraph 61 is denied, save that no admissions are made as to Stonegate's alleged losses. Section E.1 above is repeated.

### **E.4 Applicable limits for the Prevention Peril**

58. Save to the extent consistent with paragraphs 45 to 47 above, paragraph 62 is denied.

59. Paragraph 63 is denied. Paragraphs 41 to 43 above are repeated.

60. Paragraphs 64 and 65 are denied, save that no admissions are made as to Stonegate's alleged losses. All of the Alleged Business Interruption Loss allegedly covered under Insuring Clause 2.3(xii) falls to be aggregated with the rest of the Alleged Business Interruption Loss as a Single

Business Interruption Loss. The highest Limit of Liability of £2.5 million has already been received by Stonegate. Section E.1 above is repeated.

61. Paragraph 66 is denied, save that no admissions are made as to Stonegate's alleged losses. Paragraph 52 above is repeated.

#### **E.5 Additional Increased Cost of Working ("AICW")**

62. As to paragraph 67:

62.1 The first sentence is admitted.

62.2 The second sentence is admitted. Paragraphs 45 to 47 above are repeated.

62.3 The third sentence is denied. As a matter of the proper construction and application of the Policy, and in the circumstances, Stonegate is entitled to no more than £15 million AICW in the aggregate (although, as set out in paragraph 69 below, no admissions are made as to the Defendants' actual AICW), even if there is more than one applicable Single Business Interruption Loss.

63. Paragraph 68 is denied. It is specifically denied that AICW applies to ICW where the limit for ICW has been exhausted.

#### **E.6 Claims Preparation Costs and Public Relations Crisis Management Costs**

64. As to paragraph 69:

64.1 The first sentence is admitted.

64.2 As to the second sentence, it is denied that the limit of £250,000 for Public Relation Crisis Management Costs applies, on the proper construction and application of the Policy, to each Single Business Interruption Loss. It instead applies on an aggregate basis. Save as aforesaid, the second sentence is admitted.

#### **F. ALLEGED LOSSES**

65. As to paragraph 70, save to the extent indicated in paragraph 25.1 above, the alleged interruption and interference and losses and costs allegedly suffered are not admitted. It is admitted that the Defendants gave qualified consent for the incurring of Claims Preparation

Costs for a Single Business Interruption Loss by letter on 29 December 2020 but no admissions are made as to the amount or reasonableness of any costs incurred.

66. As to paragraph 71, sections D and E above are repeated.

67. As to paragraph 72:

67.1 It is denied that the or any Indemnity Period lasted a year or beyond a year.

67.2 No admissions are made as the alleged Reduction in Turnover or its cause or as to closures or periods of closure of Insured Locations or reasons for such closures.

67.3 The averment that Insured Locations have been permitted to and implicitly that they have been open is noted.

67.4 No admissions are made as to the pleaded costs incurred by Stonegate, their reasonableness, or whether they would qualify as ICW or AICW under the Policy.

68. Save in so far as consistent with the below, paragraph 73 is denied.

68.1 Paragraph 10.3 above is repeated as to the fact that Insuring Clause 2.3(xii) was subject to a Maximum Indemnity Period of 6 months (effective from 1 September 2019, pursuant to the Amending Schedule).

68.2 The Maximum Indemnity Period provided for in respect of Insuring Clause 2.3(viii) was 36 months.

68.3 Stonegate asserts that the latest Covered Events occurred in April 2020 without particularisation or explanation. Save that it is admitted and averred that no event which took place after 30 April 2020 could amount to a Covered Event and/or result in coverage under the Policy, no admissions are made as to this assertion.

68.4 Notwithstanding that, on Stonegate's own pleaded case, no Covered Events took place later than April 2020, Stonegate pleads without particularisation or explanation that "*interruption and interference continues to date and will continue into the future, and accordingly losses are recoverable up to April 2023*". It is notable that there is no allegation, which would be necessary to allege coverage under the Policy, that such

interruption or interference results from Covered Events occurring in (or before) April 2020. If and when such an allegation, properly particularised and verified by a statement of truth, is made, the Defendants will plead further. Without prejudice to the foregoing, the Defendants plead as follows.

- 68.5 On 7 May 2020, the UK Government and the Scottish Government indicated that restrictions would be continued, further to reviews required by the England 26 March and Scotland 26 March Regulations. Restrictions on pubs, bars, hotels, and restaurants remained in place.
- 68.6 On 8 May 2020, the Welsh Government indicated that restrictions would be continued, further to a review required by the Wales 26 March Regulations. Restrictions on pubs, bars, hotels, and restaurants remained in place.
- 68.7 On 28 May 2020, the UK, Welsh and Scottish Governments indicated that restrictions would be continued, further to reviews required by the England, Wales and Scotland 26 March Regulations. Restrictions on pubs, bars, hotels, and restaurants remained in place.
- 68.8 On 24 June 2020, Stonegate announced the reopening of sites on 4 July 2020.
- 68.9 On 4 July 2020, the 26 England March Regulations were revoked and replaced by the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 under which the reopening of pubs and certain other businesses was permitted.
- 68.10 On 13 July 2020, relevant provisions of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 came into force after being made on 10 July 2020. They had the effect of permitting the reopening of pubs and certain other businesses.
- 68.11 On 15 July 2020, relevant provisions of the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 8) Regulations 2020 came into force after being made on 14 July 2020. They had the effect of permitting the reopening of pubs and certain other businesses.

- 68.12 In the circumstances pleaded in paragraphs 68.5 to 68.11 above it is denied that any Maximum Indemnity Period can have continued beyond the first reviews of the lockdowns after 30 April 2020 (on 7 May 2020), alternatively the second reviews of the lockdowns (after 30 April 2020) on 28 May 2020 and certainly not beyond 4, 13, and 15 July 2020 at the latest for England, Wales, and Scotland respectively when pubs and certain other businesses were permitted to re-open. Any interruption or interference with Stonegate's Business after these specified dates (as to which no admissions are made) did not result from and was not a consequence of any Covered Event(s) occurring on or before 30 April 2020.
69. The first sentence of paragraph 74 is not admitted. The second sentence is denied for all the reasons set out above. There is no basis for Stonegate's claim for further sums for Business Interruption Loss and AICW beyond the Limit of Liability for a Single Business Interruption Loss of £2.5 million (which has already been paid) and, at a maximum, the aggregate AICW Limit of Liability of £15 million (of which £12 million has already been paid by way of interim payment, as to which see below).
70. Paragraph 75 is denied, save that no admissions are made as to Stonegate's alleged projected losses. Paragraphs 68 and 69 above are repeated.
71. In the premises, the claim set out at paragraph 76 is denied.
72. As to paragraph 77:
- 72.1 Paragraphs 64 and 65 above are repeated.
- 72.2 The claims for Public Relations Crisis Management Costs and Claims Preparation Costs are inadequately particularised and the Defendants reserve the right to plead further if and when proper particulars are provided. No admissions are made as to the estimates provided by Stonegate or whether any such costs have been incurred.
- 72.3 As to the claim for Public Relations Crisis Management Costs, it is specifically not admitted that Stonegate has incurred costs needed to maintain or protect its brand or public image in consequence of the insured perils relied on.
73. As to paragraph 78:

73.1 As to paragraph 78(1), it is admitted that the Defendants have paid £2.5 million in relation to a Single Business Interruption Loss. The £12 million sum paid on account of AICW was an interim payment.

73.2 Paragraph 78(2) is denied as the £400,000 Retention only applies if there was more than one Single Business Interruption Loss. The applicable Retention is £100,000.

73.3 Stonegate is also required to prove that it has no other insurance in respect of the alleged losses set out in its Amended Particulars of Claim.

74. As to paragraph 79:

74.1 No admissions are made as to Stonegate's calculation of its claim, which is inadequately particularised. The Defendants reserve the right to plead further to it if and when proper particulars are provided.

74.2 The Defendants cannot plead further to the unparticularised allegation as to "*Government support*" (made without any reference to a time period or dates, and save as regards furlough payments, its nature).

74.3 Without prejudice to the foregoing, as a matter of law and/or the proper construction and/or application of the Policy, governmental support (including furlough payments) is to be taken into account for the Defendants' benefit when calculating any Business Interruption Loss and/or other sums recoverable under the Policy.

#### **G. INTEREST**

75. As to paragraph 80, the claim for interest is denied for the reasons set out above.

76. In the premises, Stonegate is not entitled to the relief claimed or any relief. It is denied for the reasons set out above that the declarations sought ought to be made.

**GAVIN KEALEY QC**

**ADAM FENTON QC**

**SUSHMA ANANDA**

**HENRY MOORE**



**Statement of truth**

The First Defendant believes that the facts stated in this Defence are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. I am duly authorised by the First Defendant to sign this Defence.

Signed: Frederick Foreman

Date: 29 July 2021

Name: Frederick Christopher Foreman

Position: General Counsel, MS Amlin Underwriting Limited

**Statement of truth**

The Second Defendant believes that the facts stated in this Defence are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. I am duly authorised by the Second Defendant to sign this Defence.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Julie Anna McCabe Tripp

Position: Claims Counsel, Liberty Mutual Insurance Europe SE

**Statement of truth**

The Third Defendant believes that the facts stated in this Defence are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. I am duly authorised by the Third Defendant to sign this Defence.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Charles John Duyland Bush

Position: Head of UK Property, Construction and Energy Claims, Zurich Insurance Plc

Served this 29<sup>th</sup> day of July 2021 by **DAC Beachcroft LLP**, Solicitors for the Defendants

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Position: General Counsel, MS Amlin Underwriting Limited

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Signed:  \_\_\_\_\_ Date: 29 / 07 / 2021

Name: Julie Anna McCabe Tripp  
Position: Claims Counsel, Liberty Mutual Insurance Europe SE

**Statement of truth**

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Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Name: Charles John Duyland Bush  
Position: Head of UK Property, Construction and Energy Claims, Zurich Insurance Plc

Served this 29<sup>th</sup> day of July 2021 by **DAC Beachcroft LLP**, Solicitors for the Defendants

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Name: Julie Anna McCabe Tripp

Position: Claims Counsel, Liberty Mutual Insurance Europe SE

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Signed:  Date: 29<sup>th</sup> JULY 2021

Name: Charles John Duyland Bush

Position: Head of UK Property, Construction and Energy Claims, Zurich Insurance Plc

Served this 29<sup>th</sup> day of July 2021 by **DAC Beachcroft LLP**, Solicitors for the Defendants

**Claim No. CL-2021-000161  
IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY  
COURTS OF ENGLAND AND  
WALES  
COMMERCIAL COURT (QBD)**

**BETWEEN:**

**STONEGATE PUB COMPANY  
LIMITED**

**Claimant**

**AND**

**(1) MS AMLIN CORPORATE  
MEMBER LIMITED**

**(2) LIBERTY MUTUAL  
INSURANCE EUROPE SE**

**(3) ZURICH INSURANCE PLC**

**Defendants**

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**DEFENCE**

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