

**IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
COMMERCIAL COURT**

**CLAIM NO. CL-2021-000161**

**B E T W E E N:**

**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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**REPLY**

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**A. INTRODUCTION**

**A1. Preliminary points and summary**

1. Save as is set out herein or is consistent with the Amended Particulars of Claim (“the Particulars of Claim”), each and every matter set out in the Defence is denied.
2. Save as stated otherwise, references to paragraph numbers are references to paragraph numbers in the Defence.

3. The allegation in paragraph 1.4 that the Particulars of Claim is inadequately particularised is denied.
4. The Defendants' summary in paragraph 2 is noted. A summary of Stonegate's case is set out in paragraph 1 of the Particulars of Claim, and the Claimant responds to the detail of the Defendants' case in the body of the Reply below.

## **A2. Parties**

5. Paragraphs 3.1 and 3.2 are admitted.

## **B. BACKGROUND AND POLICY**

6. As to paragraph 5:
  - (1) As to paragraph 5.1, the Policy is to be construed based upon the objective meaning of the words used to the reasonable person, in the context they were used. The use of a professional broker is commonplace and does not make Stonegate "*a sophisticated insured*" (whatever that is intended to mean). The Defendants do not explain what impact, if any, is said to result from Stonegate making use of Marsh. Insofar as it is being suggested that the involvement of Marsh should result in a different, less-favourable (to Stonegate) interpretation of the Policy, the same is denied. Moreover, the Policy is to be interpreted on the basis that the wording originated with the Defendants by General Condition 7.ix. Further, the wording is the standard Marsh Resilience wording materially identical to the RSA4 wording as particularised at paragraph 7 of the Particulars of Claim, and as pleaded at paragraph 8.1 and admitted at paragraph 8.5 of the Defence. The wording contained in the Policy also covers a range of types and sizes of business, and is to be construed accordingly.
  - (2) As to paragraph 5.2, the "Bound Summary" formed part of the Presentations.
7. Paragraphs 6.1, 6.2 and 8.2 are admitted.
8. Paragraph 9 is admitted.

9. Paragraph 10.3 is admitted, as set out at paragraph 10 of the Particulars of Claim.
10. Paragraph 12 is admitted.

**C. FACTS GIVING RISE TO COVER**

11. The first sentence of paragraph 14 is admitted. The second sentence is also admitted as regards the initial outbreak of COVID-19, and it is also admitted that it was that outbreak that spread into the worldwide and UK-wide pandemic.
12. Paragraph 19 is admitted. It is confirmed that the references to an announcement of 23 March 2020 was to that by the Prime Minister.
13. Paragraphs 21 and 22 are admitted.

**D. CLAIM UNDER THE POLICY**

14. Subject to the matters set out in sections D1, D2 and D3 below, paragraphs 27 and 28 are admitted.
15. Paragraph 29 is noted. Each of the 760 premises was owned, occupied, or utilised by Stonegate (or Stonegate had assumed responsibility for them) for the purposes of the Insured Business.

**D1. ‘The Disease Peril’: COVID-19 discovered at an Insured Location or occurring within the Vicinity of an Insured Location**

16. Paragraph 32.2 is admitted.
17. As to paragraph 33:
  - (1) As to paragraph 33.1, for the Disease Peril the trigger of the relevant insuring clause is COVID-19 occurring within the Vicinity of or discovered at an Insured Location (the relevant insured peril) causing interruption or interference to the Insured’s Business, which interruption or interference is the harm for which an indemnity is given. The Policy provides insurance cover for Business Interruption Loss resulting from that event (or trigger),

which is the contractual measure of the harm of interruption or interference. Save as is consistent with the above, paragraph 33.1 is denied.

- (2) As to paragraph 33.2, it is admitted that the Policy cover is in respect of the interruption or interference with the Insured's Business, which is defined as "*Operators of managed pubs, bars, hotels and restaurants, and provision of Car parking and property owners*". The relevant COVID-19 occurrence must occur at or within the Vicinity of an Insured Location. For each Insured Location of which COVID-19 is in the Vicinity, where it also causes interruption or interference with the Insured's Business, the clause is triggered. Save as is consistent with the above, paragraph 33.2 is denied.

18. As to paragraph 34:

- (1) Paragraph 17(1) above is repeated as to the trigger and the role of the interruption or interference and occurrence of indemnifiable loss in relation to it.
- (2) As to paragraph 34.1, the second sentence is admitted. It is denied that Stonegate needs to show that it was "*certain*" that a person having attended an Insured Location and was subsequently diagnosed with COVID-19 had COVID-19 whilst at the Insured Location; the applicable test is that of balance of probabilities.
- (3) It is denied an occurrence of COVID-19 must "*specifically*" cause interruption or interference (as alleged in paragraphs 34.1 to 34.3) if and to the extent that that word (which is not explained in the Defence) is intended to qualify in any way the requirement that the occurrence of COVID-19 proximately cause interruption or interference.
- (4) As to paragraph 34.2, it is admitted that the occurrence must be during the Period of Insurance.
- (5) As to paragraph 34.3 it is admitted that in order to be a separate and effective and so proximate cause of any interruption or interference, an occurrence of COVID-19 must have occurred before the interruption or interference or its

continuation, and/or relevant government or public reaction or its continuation.

19. Paragraph 34.5.3 is denied. The interruptions and interferences triggering the Disease Peril are not limited to those resulting from government actions from 16 March 2020 and some pre-dated that date, interruption or interference occurring from around 17 February 2020 as set out in paragraph 17 of the Particulars of Claim. The Defendants' case to the contrary is not understood (in circumstances in which it does not in paragraph 17 deny that interruption or interference occurred from around 17 February 2020). Their case that there are at most three triggers as set out in paragraph 34.5.3 is also not explained or understood and is denied.

**D2. The Closure Peril: Enforced Closure of an Insured Location**

20. Subject to the matters set out in D2, paragraph 36 is admitted.

**E. LIMITS AVAILABLE UNDER THE POLICY**

**E1. Defendants' case on Limits and Single Business Interruption Loss**

21. Paragraphs 45 and 46 are admitted.
22. The first sentence of paragraph 47 is admitted.
23. As to the Defendants' alternative case in paragraph 48, it is denied that where "*the majority of*" the Business Interruption Loss arises from, is attributable to, or is in connection with a single occurrence, a single £2.5 million Limit of Liability applies. Any Business Interruption Loss that does not arise from and is not attributable to or on in connection with a single occurrence falls outside that £2.5m Limit (and will only have its own additional £2.5m Limit to the extent that it arises from, is attributable to or is in connection with another single occurrence).
24. As to paragraphs 48.1 and 48.2, it is denied that the words "*in connection with*" do not require a causal link between the Business Interruption Loss and the single occurrence, although admitted that the words "*in connection with*" denote a weaker causal connection than "*arising from*" and "*attributable to*". Save as aforesaid, paragraph 48.2 is denied.

25. Paragraphs 48.3 to 48.7 are denied for the reasons set out in the Particulars of Claim, and further Stonegate will rely on the Defendants' formulation of over 10 alternative single occurrences and various different permutations as indicating the implausibility of its case that any one of those is a salient single occurrence to which all losses must be aggregated under the relevant provision on its proper construction as would be understood by reasonable readers of the Policy (as opposed to, for example, parts of the background to the losses or to the multiple government actions, or elements of the originating cause of the losses).
26. Further, as to paragraph 48.3.4, it is denied that it necessarily follows from each occurrence of COVID-19 being a proximate causes of all Business Interruption Loss that all Business interruption Loss arises from, is attributable to, or is in connection with any one such occurrence of COVID-19, so as to be a Single Business Interruption Loss on the proper construction of the Policy, in the particular context of a huge number of concurrent proximate causes none of which is a single occurrence i.e. a salient single aggregating cause. Alternatively, there were as many Single Business Interruption Losses as concurrent proximate cause cases of COVID-19.

#### **F. LOSSES TO BE INDEMNIFIED**

27. As to paragraph 65, it is admitted that the consent was qualified in that the Defendants maintained that their liability was limited to a Single Business Interruption Loss Limit plus Additional Costs of Working and, to the extent necessary, the Claimant will refer to the terms of the letter of 29 December 2020 at trial.
28. As to paragraph 68:
  - (1) Paragraphs 68.1 and 68.2 are admitted.
  - (2) As to paragraph 68.4, it is self-evident from the wording and context of paragraph 73 of the Particulars of Claim (and for the avoidance of any doubt it is here clarified) that Stonegate is alleging that the ongoing interruption and interference post April 2020 was as a result of the events pleaded in detail as taking place within the period of insurance.

- (3) Paragraphs 68.5 to 68.11 are admitted.
- (4) As to paragraph 68.12, it is denied that any interruption or interference with the Insured Business occurring after 7 May 2020 or 28 May 2020 was not caused by events taking place prior to 30 April 2020. By way of example, occurrences of COVID-19 occurring on and prior to 30 April 2020 continued to be a proximate cause (by their influence on the public and the Government) of interruption and interference taking place on 8 May 2020 and 29 May 2020.
29. As to paragraph 72, it is denied that the sums are inadequately pleaded for the purpose of the Particulars of Claim and in the context of this dispute. Further detail will be provided in due course.
30. As to paragraph 73.3, Stonegate confirms that there is no other more specific, valid and collectible insurance from which it is entitled to or has recovered any sums in relation to the losses claimed under the Policy.
31. Notwithstanding any denials set out above, and for the avoidance of doubt, insofar as the Court finds that Stonegate is entitled to recover sums over and above the sums paid out to date by the Defendants, whether on the basis of one of the cases advanced by the Defendants or any other basis that the Court finds is the true construction and application of the Policy, then Stonegate will, as an alternative, seek recovery of such sums as it is entitled under the Policy.


**PAUL REED QC, Gatehouse**  
**ADAM KRAMER QC, 3 Verulam Buildings**  
**DAVID PLIENER, Gatehouse**  
**LOUIS ZVESPER, Gatehouse**

**9 September 2021**

**Statement of truth**

The Claimant believes that the facts stated in this Reply 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.

Signed: 

Name: Aaron Le Marquer

Solicitor: Fenchurch Law Limited

Position: Partner

Dated: 9 September 2021