



Insurance Coverage Implications following the “Death of a Company”

A Comparison of Outcomes Under US and English Law

BARZE TAYLOR NOLES LOWTHER LLC



Agenda

- 15:30** **Registration**
- 16:00** **Welcome and Introductions**
- 16:10** **Overview of fact pattern**
- 16:20** **US deposition of claims professional**
- 16:40** **Summary judgment argument in US court**
- 17:00** **Argument of case in London court**
- 17:30** **Questions**

Followed by Drinks reception

Speakers/Participants

- Sir Bernard Eder, Arbitrators at 24 Lincoln's Inn Fields
- David Mildon QC, Essex Court Chambers
- Stephen Carter, Carter Perry Bailey LLP
- R. Bruce Barze, Jr., Barze Taylor Noles Lowther LLC
- M. Todd Lowther, Barze Taylor Noles Lowther LLC
- John Pyall, Great Lakes Insurance SE
- T. David Rheney, Gallivan White & Boyd, P.A.

The Facts



Bubbas

BBQ Butcher



Montgomery, Alabama

BARZE TAYLOR NOLES LOWTHER LLC



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Timeline

1 June 2017	Policy Incepts with a 12 month period
5 Nov 2017	Fire
12 Nov 2017	Claim made under the policy for: <ul style="list-style-type: none"> Property Damage ["PD"] of \$163k Business Interruption ["BI"] of at least \$250k, with details to follow
12 Dec 2017	Bubba forwards to underwriters its accountants' report quantifying the BI claim at \$244,019.88
5 Jan 2018	Underwriters pay \$163k in respect of the PD loss but make no advance in respect BI claim <ul style="list-style-type: none"> Above funds used to pay cost of keeping Bubba's business afloat until 1 March 2018
1 Feb 2018	Bubba applies for a bank loan secured on the policy to raise the funds it needs to keep the business afloat beyond 1 March 2018.
1 Mar 2018	The bank refuses the loan and Bubba's business folds. The BI claim remains wholly unpaid.
1 Jun 2018	Underwriters agree the claimed figure for BI and pay Bubba \$244,019.88
1 Jul 2018 (English Action)	Bubba claims, under S13A Insurance Act 2015, against underwriters for £200k in respect of actual loss suffered in consequence of the late payment of his claim <ul style="list-style-type: none"> Underwriters accept that Bubba has suffered loss of at least £100k as a result of the collapse of its business.

Bubba's Butcher Market v Underwriters



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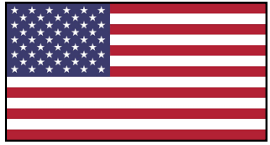
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US Case Law

- **Bi-Economy Market, Inc. v. Harleystown Ins. Co. of New York,**
10 N.Y.3d 187 (2008)
- **West Am. Ins. Co. v. Freeman,**
42 Cal. App. 4th 320 (Cal. App. 4th Dist. 1995)

S13A Insurance Act 2015 - Implied Term About Payment of Claims

- (1) It is an implied term of every contract of insurance that if the insured makes a claim under the contract, the insurer must pay any sums due in respect of the claim within a reasonable time.
- (2) A reasonable time includes a reasonable time to investigate and assess the claim.
- (3) What is reasonable will depend on all the relevant circumstances, but the following are examples of things which may need to be taken into account—
 - (a) the type of insurance,
 - (b) the size and complexity of the claim,
 - (c) compliance with any relevant statutory or regulatory rules or guidance,
 - (d) factors outside the insurer's control.
- (4) If the insurer shows that there were reasonable grounds for disputing the claim (whether as to the amount of any sum payable, or as to whether anything at all is payable)—
 - (a) the insurer does not breach the term implied by subsection (1) merely by failing to pay the claim (or the affected part of it) while the dispute is continuing, but
 - (b) the conduct of the insurer in handling the claim may be a relevant factor in deciding whether that term was breached and, if so, when.
- (5) Remedies (for example, damages) available for breach of the term implied by subsection (1) are in addition to and distinct from—
 - (a) any right to enforce payment of the sums due, and
 - (b) any right to interest on those sums (whether under the contract, under another enactment, at the court's discretion or otherwise).



Questions

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