



An interview with Damian Glynn: 11th edition Riley on Business Interruption

Q: WE UNDERSTAND YOU ARE NOW THE CO-EDITOR OF THE NEXT EDITION OF RILEY – CAN YOU EXPLAIN HOW THAT CAME ABOUT?

Well there are two observations to offer, really: the increase in litigation (most notably the FCA v Arch and others) has necessitated a more pronounced legal input – Toby Rogers from Clyde & Co is providing that – so that is why this will be the first edition with two editors. Secondly, Toby and I have assisted the previous editor, Harry Roberts, in the 9th and 10th editions, so our appointment as editors allows for a seamless transition as possible.

Q: SO THIS IS NOW MORE OF A LEGAL BOOK?

It has more specific legal content than previous editions (including a chapter on legal principles relevant to BI claims), but it is still essentially a practitioners manual – this is a new edition of Riley, not a new book from scratch.

Q: DOES THAT IMPLY THERE IS A MODEST AMOUNT OF NEW MATERIAL?

I wish it did, given the effort that has gone into producing this edition since June last year. Overall, there are about 80 additional pages, dealing not just with COVID-19 and issues arising from the FCA test case, but also expanding the cyber content, and including more of an introduction for those unfamiliar with BI cover, and explaining why business interruption policies are structured in the way that they are.

But alongside the new material, there is less content in the 10th edition that has been superseded than you might suppose – I would say 95% of 10th edition is still there. For example, supply chain cover (failure of specified raw materials to arrive at the premises) is not currently available, but we have retained the discussion of that in the

expectation that there may be a renewed interest in such cover following COVID-19 disruption and events such as the Ever Given becoming lodged in the Suez canal.

Likewise, wide area damage issues have largely been resolved by the FCA test case where UK law applies, but Riley is referred to in countries that follow the UK form, but not UK law, and the previous commentary remains relevant to them. And in UK, retention of that discussion helps to give a context in which to better understand the test case.

Q: SO OTHER THAN THE NEW LEGAL PRINCIPLES CHAPTER, THE STRUCTURE AND RUNNING ORDER OF RILEY REMAIN THE SAME?

To an extent. Whilst most of the content of 10th edition is still there, we have moved a significant minority of it around to make it easier to find. So all of the extensions are now dealt with in one chapter, and they are listed alphabetically. And we have brought together discussion on the schedule and policy wording into one chapter whereas it was previously in two. Overall, 11th edition will have 14 chapters (2 less than 10th edition), and will have 8 appendices rather than the previous 15: we have moved content out of the appendices and into the body of the text wherever possible so that material is all in one place.

Q: WHICH POLICY WORDINGS WILL THE NEW EDITION OF RILEY REFERENCE WHEN DISCUSSING COVER?

There is certainly no such thing as a 'standard' wording any more, and we have repeatedly advised that the particular policy wording in force should be consulted. But we have retained the historic ABI wordings in this edition, for several reasons. It would make discussion of cover very difficult if no

wordings were referred to, and using these avoids focusing on any particular insurer wording in the market, whilst anchoring comments on the historical form that most policies developed from. Also, given that many insurers are reviewing their wordings in the light of the FCA test case, it made sense to us to retain the wordings historically offered by the ABI as a reference at this particular juncture.

Q: YOU REFERRED TO THE UK POLICY FORM ABOVE – RILEY DEALS ONLY WITH UK INSURANCE?

Riley certainly has its roots in the UK policy form, but the International Considerations chapter includes discussion about US cover, including a comparison table by element of cover between US and UK policies included with the kind permission of the CILA, ILL, and CII – it was included by those bodies in the publication 'Business Interruption Policy Wordings - Challenges Highlighted by the Claims Experience' (2012, refreshed in 2019), as well as a roundup of cover around the world.

Q: ARE YOU STEERING CLEAR OF COVID-19 ISSUES THAT ARE CURRENTLY IN DISPUTE?

No – Riley is there to identify issues and offer guidance where appropriate – and it would almost be a dereliction of duty to dodge things just because they are tricky. So, acknowledging that litigation over the next few years will inevitably need to be swept up in the next edition of Riley, we have commented on issues such as causation, concurrent causes of loss and deduction of government support as savings.

Q: FINALLY - WHEN WILL 11TH EDITION BECOME AVAILABLE

I don't have a precise date, but late October is probably a good estimate.