

Cody Gemtec Retail Pty Ltd t/as The National Opal Collection v Lloyd's Australia Limited on behalf of XL Catlin Syndicate 2003

Federal Court of Australia Proceeding NSD 637 of 2021

(the Lloyds BII Claim Class Action)

### About this document

As you will have seen in the Product Disclosure Statement (PDS) for the Lloyds BII Claim Litigation Funding Scheme (**Scheme**) and/or on Omni Bridgeway or Gordon Legal's websites, the Lloyds BII Claim Class Action has been brought on behalf Cody Gemtec Retail Pty Ltd (as the **Applicant** in the proceedings) and other group members.

Group members are persons who:

- held business interruption insurance with Lloyds usually described as 'Jewellers Block and Multi-Perils Insurance' and were insured at any time during the period 19 January 2020 to 1 July 2021; and
- had certain policy terms in their business interruption insurance policies; and
- suffered interruption or interference to their business as a result of the COVID-19 pandemic.

The common facts that both the Applicant and group members will share is that they are all insured by the same insurer and that the wording of their policies are very similar. In particular, group members' policies will include the same or substantially the same terms that the Applicant claims provide coverage for losses relating to the COVID-19 pandemic.

The purpose of this document is to provide details of the 'class of claimants' in the class action now that the proceedings have been filed (as noted in section 3 of the PDS), and also to help you determine if your policy is the same as, or substantially similar to, the Applicant's policy. If it is, you may be a group member and may wish to apply to join the Scheme to become a funded group member in the class action. Any applications to join the Scheme must be done using the Application Form in the PDS, or as part of Omni Bridgeway's online application process (which can be accessed here: <https://portal.omnibridgeway.com/cases/register/business-interruption-insurance/lloyds-business-interruption-insurance-class-action>).

**Part A** of the document sets out some general information about your insurance documents, and **Part B** of this document sets out the policy wording the Applicant claims provides coverage for losses relating to the COVID-19 pandemic.

**There is nothing you need to do in relation to the contents of this document now, and this document is not intended to provide legal advice in respect of your individual policy. It is provided so that you can gain an understanding of who will be included in the class of claimants in the class action.**

If you have any questions, you can contact the Omni Bridgeway Client Liaison Team by email on [lloydsbiicclaim@omnibridgeway.com](mailto:lloydsbiicclaim@omnibridgeway.com) or free call 1800 016 464.

## PART A - About your insurance documents

Your insurer, possibly via your broker, likely issued a number of documents to you when you took out insurance for your business. Included in those documents will be the **policy wording** which sets out all of the terms, conditions, and definitions of the insurance coverage and the **schedule**, which is a document that sets out the name of the insured, the period of insurance, what sections of the policy are insured, the sums insured and any modifications to the base policy wording.

Set out below are the elements in the schedule to the insurance policy (**Schedule**) that may mean you are included as a group member in the class action, together with some guidance on where to locate the various criteria in your Schedule. The information below should be treated as general guidance only:

Criteria	Where to look in the <u>Schedule</u> to find this information
You were insured under a contract of insurance with Lloyd's Australia Limited on behalf of XL Catlin Syndicate 2003.	<p>The name of the insurer is stated in the Schedule under the heading <b>'Security'</b>. Your document will likely state <b>'Certain underwriters at Lloyds'</b>.</p> <p>This information is usually found on about page 8 of the Schedule.</p> <p>Please note you can still apply to join the Scheme even if there is no mention of the XL Catlin Syndicate 2003 in your policy as typically the insurance documents don't include this information. The Lawyers can confirm which Lloyds syndicate is the underwriter of your policy on your behalf.</p>
You have a 'Policy Number'	<p>This is shown on the Schedule under the heading <b>'Policy Number'</b>.</p> <p>This information is usually found on about page 2 of the Schedule.</p>
There is a named 'Insured'	<p>The name of the insured to which the insurance policy applies will be stated in the Schedule under the heading <b>'Insured'</b>.</p> <p>This information is usually found on about page 2 of the Schedule.</p>
There is a 'Situation'	<p>This is shown in the Schedule under the heading <b>'Situation'</b>.</p> <p>This information is usually found on about page 2 of the Schedule.</p> <p>The Situation will likely be a physical address. In some policies the 'Situation' might be shown in a separate table with the heading <b>'Schedule of Locations and Sums Insured Business Interruption'</b>.</p>
There is a 'Period'	<p>The period of time that the insurance policy applies to will be stated in the Schedule under the heading <b>'Period'</b>.</p> <p>The class action covers businesses that were insured <u>at any time</u> during the period <b>19 January 2020 to 1 July 2021</b>.</p> <p>This information is usually found on about page 2 of the Schedule.</p>

Criteria	Where to look in the <u>Schedule</u> to find this information
There is a 'Business'	<p>This is shown in the Schedule under the heading '<b>Business</b>'.</p> <p>This information is usually found on about page 2 of the Schedule.</p>
One of the perils insured is 'Business Interruption as per QUA JB 13 v1.1 wording'	<p>The 'perils insured' (i.e. an event that can cause damage or loss to a property which is covered by an insurance policy) will be listed in the Schedule.</p> <p>Check to see if one of the sections includes the words '<i>Business Interruption as per QUA JB 13 v1.1 wording attached</i>'.</p> <p>This information is usually found on about page 2 of the Schedule.</p>
There are specified limits of indemnity	<p>This is shown in the Schedule under the heading '<b>Interests and Limits of Liability</b>' under the '<b>Business Interruption</b>' subheading. There will be specified amounts of cover for some or all of the following items:</p> <ul style="list-style-type: none"> <li>- Gross Income</li> <li>- Payroll</li> <li>- Increased Cost of Working</li> <li>- Reinstatement of Documents</li> <li>- Book Debts</li> <li>- Gross Rentals</li> <li>- Accountants Fees</li> <li>- Indemnity Period (Months)</li> </ul> <p>This information is usually found on about page 4 of the Schedule.</p> <p>In some policies the 'Interests and Limits of Liability' for Business Interruption might be shown in a separate table with the heading '<b>Schedule of Locations and Sums Insured Business Interruption</b>'.</p>
The Policy is governed by the law of Australia and the parties submit to the exclusive jurisdiction of the courts of the Commonwealth of Australia	<p>This is shown in the Schedule under the heading '<b>Choice of Law &amp; Jurisdiction</b>'.</p> <p>This information is usually found on about page 7 of the Schedule.</p>

## PART B – Insurance policy wording

Set out below are the elements set out in the [insurance policy wording](#) which may mean you are included as a group member in the class action together with some guidance on where to locate the various criteria in the insurance policy wording.

All of the excerpts below are taken from the section of the Applicant's policy wording under the heading 'Business Interruption'.

In some policies we have seen, the Business Interruption section is listed as Section 5, located at about page 34 of the insurance policy wording. Where you see ellipses below (i.e. three dots in a row) it is because we have omitted some text from our summary because it isn't relevant to the class action. The main thing for you to look at is whether the text we have shown below *is* included in your policy. This may indicate that you are a group member and you may be eligible to apply to join the Scheme.

Criteria	What to check in the ' <b>Business Interruption</b> ' section of the <b>insurance policy wording</b>
<p>Under the heading '<b>Introduction</b>' the words:</p> <p><i>"This Section forms part of the Policy only if shown in the Schedule and, if so, must be read together with the definitions, terms, conditions, exclusions and limitations expressed in the General Provisions of the Policy and in the Schedule."</i></p>	<p>This is found in the Insurance Policy wording in the section with the heading '<b>Business Interruption</b>' under the '<b>Introduction</b>' subheading.</p> <p>This information is usually found on about page 34 of the insurance policy wording.</p>
<p>Under the heading '<b>Cover</b>' the words:</p> <p><i>If the Business carried on by You is interrupted or interfered with as a result of Loss or Damage occurring during the Period of Insurance, to;</i></p> <p>...</p> <p><i>We will, after taking into account any sum saved during the Indemnity Period in respect of such charges and expenses of the Business as may cease or be reduced in consequence of the interruption or interference, indemnify You in respect of:</i></p> <p><b>Item 1. Gross Income.....</b></p> <p><b>Item 2. Payroll.....</b></p> <p><b>Item 3. Increased Cost of Working.....</b></p> <p><b>Item 4. Reinstatement of Documents.....</b></p> <p><b>Item 5. Book Debts...</b></p> <p><b>Item 6. Gross Rentals..</b></p> <p><b>Item 7. Weekly Income...</b></p> <p><b>Item 8. Accountants' Fees..."</b></p>	<p>This is found in the Insurance Policy wording in the section with the heading '<b>Business Interruption</b>' under the '<b>Cover</b>' subheading.</p> <p>This information is usually found on about pages 34 -37 of the insurance policy wording.</p>
<p>The term '<b>Adjustment</b>' is defined to mean:</p> <p><i>"adjustment as necessary to provide for the trend of the Business and variations in, or other circumstances affecting, the Business, either before or after the date of occurrence of the Loss or Damage, or which would have affected the Business had the Loss or Damage not occurred, so that the figures thus adjusted represent, as nearly as may be reasonably practicable, the results that, but for the Loss or Damage, would have been obtained during the relative period after the Loss or Damage."</i></p>	<p>This is found in the Insurance Policy wording in the section with the heading '<b>Business Interruption</b>' under the '<b>Definitions</b>' subheading.</p> <p>This information is usually found on about page 37 of the insurance policy wording.</p>

Criteria	What to check in the ' <u>Business Interruption</u> ' section of the <u>insurance policy wording</u>
<p>Under the heading '<b>Additional Benefits</b>' the following words:</p> <p><b><i>Murder, Suicide or Disease</i></b></p> <p><i>The occurrence of any of the circumstances set out in this Additional Benefit shall be deemed to be Loss or Damage to Property used by You at the Situation.</i></p> <ul style="list-style-type: none"> <li><i>a. closure or evacuation by order of an authorised public authority consequent upon vermin or pests,</i></li> <li><i>the discovery of an organism likely to result in human infectious or contagious infectious disease, or</i></li> <li><i>defects in the drains or other sanitary arrangements at the Situation.</i></li> <li><i>b. murder or suicide occurring at the Situation.</i></li> <li><i>c. the outbreak of a notifiable human infectious or contagious disease occurring within a 20 kilometre radius of the Situation.</i></li> <li><i>d. injury, illness or disease caused by the consumption of food or drink provided and consumed at the Situation.</i></li> </ul>	<p>This is found in the Insurance Policy wording in the section with the heading '<b>Business Interruption</b>' under the '<b>Additional Benefits</b>' subheading.</p> <p>This information is usually found on about page 41 of the insurance policy wording.</p>