

Strand Fitness Pty Ltd and others v QBE Insurance (Australia) Ltd

Federal Court of Australia Proceeding NSD 638 of 2021

(the QBE BII Claim Class Action)

About this document

As you will have seen in the Product Disclosure Statement (**PDS**) for the QBE BII Claim Litigation Funding Scheme (**Scheme**) and/or on Omni Bridgeway or Gordon Legal's websites, the QBE BII Claim Class Action has been brought by Strand Fitness Pty Ltd, Garf's Group Pty Ltd, Belettiz Pty Ltd and RBT Holding Co Pty Ltd (as the **Applicants** in the proceedings) on their own behalf and on behalf of group members.

Group members are persons who:

- held business interruption insurance with QBE 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.

There are four representative Applicants bringing the class action against QBE. The reason there are four Applicants is that while all of them are insured by QBE, each one has different wording in the insuring clause(s) in their insurance policies. Each Applicant claims that their insurance policy provides coverage for losses relating to the COVID-19 pandemic and stand as representatives for those group members who have the same or substantially similar terms in their policies.

You may be a group member if, among other things, your insurance policy contains the common terms (see Table 1 in Part B below) and at least one of the coverage terms that one of the representative applicants have (see Table 2 in Part B below).

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 or substantially similar to at least one 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/qbe-business-interruption-insurance-class-action>).

Part A of the document sets out some general information about your insurance documents and what is contained in your Schedule, and

Part B of this document sets out the policy wording the Applicants each claim 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 qbebiicclaim@omnibridgeway.com or free call 1800 016 464.

Part A - About your insurance documents

Your insurer, possibly via your underwriting agent or 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 terms and conditions** which sets out all of the terms, conditions and definitions of the insurance coverage and the **policy 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.

While QBE is the named insurer in many policies, not all of the policies where QBE is the insurer were sold under QBE's brand. Sometimes the branding on your documentation will be that of the underwriting agency or a broker rather than QBE. If QBE is the insurer (also known as the 'underwriter') under the policy this will be stated in your insurance documentation.

Because various companies, with their own branding and style of documents, sold insurance underwritten by QBE, there is a lack of consistency in how the policy terms and policy schedules are set out.

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 QBE Insurance (Australia) Ltd	The name of the insurer is usually stated in the policy schedule under the heading ' Insurer ' or ' Underwriter '. This information is also often contained in the policy terms and conditions under the heading 'Insurer'.
There is a named 'Insured'	The name of the insured to which the insurance policy applies will usually be stated in the Schedule under the heading ' The Insured ' or ' Insured '.
There is an insured location(s)	This is usually shown in the Schedule under the heading ' Location ' or ' Situation '. The Location(s) or Situation(s) will likely be a physical address.
There is a policy 'Period'	The period of time that the insurance policy applies to will usually be stated in the Schedule under the heading ' Period ' or ' Period of Insurance ' or similar. The class action covers businesses that were insured <u>at any time</u> during the period 19 January 2020 to 1 July 2021 .

Criteria	Where to look in the <u>Schedule</u> to find this information
There is a 'Business'	This is usually shown in the Schedule under the heading ' Business '.
One of the perils insured is 'Business Interruption'	<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 of cover listed is '<i>Business Interruption</i>'.</p>
There are specified limits of indemnity	<p>This is usually shown in the Schedule usually under a 'Business Interruption' subheading. There will typically be specified amounts of cover for some or all of the following sorts of items:</p> <ul style="list-style-type: none"> - Gross Income - Payroll - Increased Cost of Working - Outstanding Debit Balance (Book Debts) - Outstanding Accounts Receivable - Indemnity Period (Months) / Number of Weeks - Claim Preparation Costs - Uninsured Working Expenses

PART B – Insurance policy wording

Set out below are the elements set out in the policy terms 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 sections of the Applicants' policy wordings under the heading 'Business Interruption'.

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.

Table 1 below contains a summary of a clause that will be common to all group members (i.e. all group members will have this sort of clause in their policy). If your policy contains this wording and at least one of the clauses shown in Table 2 below, it may indicate that you are a group member and you may be eligible to apply to join the Scheme.

Table 1 – Clauses common to all group members	
Criteria	Where to look in the 'Business Interruption' section of the policy terms
<p>The terms of the Business Interruption insurance policies, which are contained in the policy wording, include a clause providing that for the purpose of calculating the quantum of loss payable to an insured under the policy, adjustments will be made to provide for the "trend of the business" which would have affected the business if the insured peril had not occurred.</p>	<p>The specific wording of this term will vary slightly from policy to policy but a term of this nature is usually found in the policy terms and conditions.</p> <p>Sometimes it is referred to in the conditions applicable to the business interruption insurance section, sometimes it is found in the business interruption definitions sections, and sometimes it is referred to in the 'words with special meaning' section in the business interruption section.</p> <p>If you have an electronic copy of your insurance policy wording, you can search for the word 'trend' to help you find it in the document.</p>

Table 2 below contains a number of different insuring clauses. If you have at least one of the clauses shown below in your policy, it may indicate that you are a group member and you may be eligible to apply to join the Scheme.

Table 2 – Insuring Clauses	
Wording of each type of Insuring Clause	Where to look in the 'Business Interruption' section of the insurance policy wording
<p>We will insure you for loss, as described in clause 'What we pay', resulting from interruption of or interference with your business that is caused by any legal authority preventing or restricting access:</p> <p>(a) to your premises; or</p> <p>(b) to premises in the vicinity of your premises; or</p> <p>(c) by ordering the evacuation of the public:</p>	<p>This may be included in a section of your policy entitled 'Business income protection' under the heading 'Prevention</p>

<p>as a result of injury or damage to or threat of damage to property or injury to persons within a 50 kilometre radius of your premises.</p>	<p>of access by a public authority’.</p>
<p>Interruption to or interference with the business as a result of the following shall be deemed to be Damage to property used by you at the situation.</p> <p>...</p> <p>2. The outbreak of a human infectious or contagious disease occurring within a 20 kilometre radius of the situation.</p> <p>...</p> <p>However there is no cover under this extension Items 2 and 3(a) for highly pathogenic Avian Influenza or any disease declared to be a quarantinable disease under the Quarantine Act 1908 (as amended) irrespective of whether discovered at the location of Your premises, or out-breaking elsewhere.</p>	<p>This may be included in the Business Interruption cover section of your policy under the heading ‘Bomb Threat, Murder, Suicide or Disease’.</p>
<p>We will cover you for interruption to or interference with your business due to closure or evacuation of the whole or part of the premises during the period of insurance:</p> <p>...</p> <p>(b) by order of a competent government, public or statutory authority as a result of an outbreak of an infectious or contagious human disease occurring within a twenty (20) kilometre radius of the premises, however there is no cover for highly pathogenic Avian Influenza or any disease declared to be a quarantinable disease under the Quarantine Act 1908 (as amended) irrespective of whether discovered at the location of your premises, or out-breaking elsewhere;</p> <p>...</p>	<p>This may be included in the Business Interruption cover section of your policy under the heading ‘Infectious Disease’.</p>
<p>Prevention of access The indemnity under this section is extended to include interruption or interference with your business in consequence of:</p> <p>...</p> <p>(c) closure or evacuation of all or part of the business premises by order of a competent government, public or statutory authority as a result of:</p> <p>...</p> <p>(ii) infectious or contagious human diseases; within a fifty (50) kilometre radius of your business premises. However there is no cover for highly pathogenic Avian Influenza or any disease declared to be a quarantinable disease under the Quarantine Act 1908 (Cth) (as amended) irrespective of whether discovered at the location of your business premises, or out-breaking elsewhere;</p> <p>...</p> <p>which prevents or hinders the use of your building or access thereto, or results in a cessation or diminution of trade due to temporary falling away of potential customers.</p>	<p>This may be included in the Business Interruption section of your policy in the ‘Additional Benefits’ section.</p>
<p>Interruption to or interference with the business as a result of the following shall be deemed to be Damage to property used by you at the situation.</p> <p>...</p> <p>3. Closure or evacuation of the business by order of a government, authorised public or statutory authority consequent upon:</p> <p>a) the discovery of an organism likely to result in a human infectious or contagious disease; or</p> <p>...</p> <p>However there is no cover under this extension Items 2 and 3(a) for highly pathogenic Avian Influenza or any disease declared to be a quarantinable disease under the Quarantine Act 1908 (as amended) irrespective of whether discovered at the location of Your premises, or out-breaking elsewhere.</p>	<p>This may be included in the Business Interruption cover section of your policy under the heading ‘Bomb Threat, Murder, Suicide or Disease’.</p>