2nd ATILA Lecture – The UNIDROIT Note on the Principles of Reinsurance Contract Law (PRICL) and the COVID-19 Health Crisis

Aggregation of COVID-19 losses under the PRICL
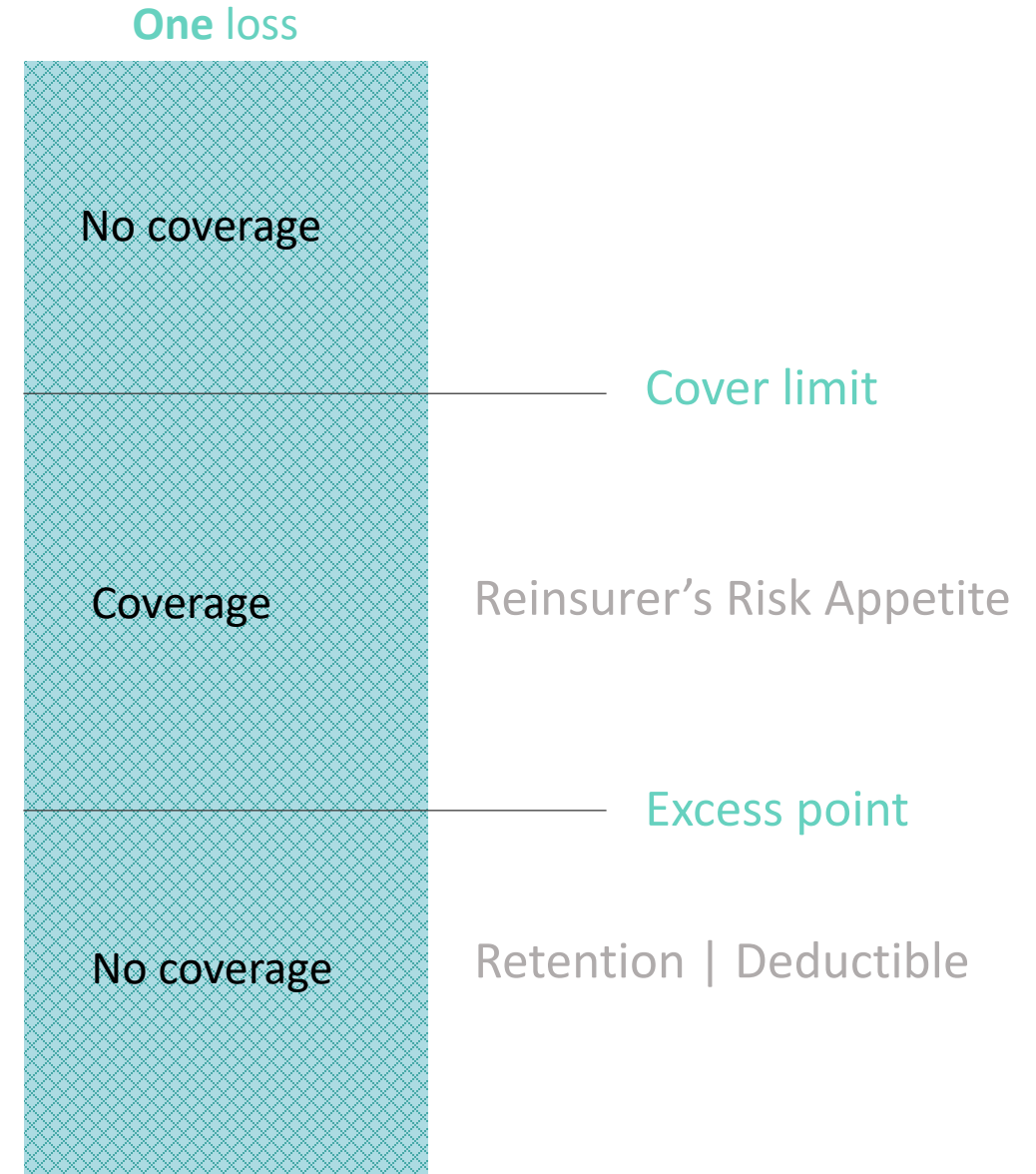
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Aggregation risk.

Pricing of reinsurance | Capital requirements

$$
X^L =
\begin{cases}
0 & X < \dfrac{d}{1+r} \\[2mm]
\alpha[(1+r)X - d] & \dfrac{d}{1+r} \le X < \dfrac{u}{1+r} \\[2mm]
\alpha(u - d) & X \ge \dfrac{u}{1+r}
\end{cases},
$$

Loss Data Analytics - An open text authored
by the Actuarial Community- 2018-07-28

One loss

No coverage

Cover limit

Coverage

Reinsurer's Risk Appetite

Excess point

No coverage

Retention | Deductible

Article 5.2 (1) PRICL.

(Event-based aggregation)

Where the parties agree on an event-based aggregation in a contract reinsuring first-party insurance policies, all losses that occur as a direct consequence of the same materialization of a peril reinsured against shall be considered as arising out of one event.

Project Group on Principles of Reinsurance Contract Law
(PRICL Project Group)
Zurich, Vienna, Frankfurt am Main
https://www.ius.uzh.ch/de/research/projects/pricl.html

in cooperation with the

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**PRINCIPLES OF
REINSURANCE
CONTRACT LAW
(PRICL)**

2019

Edited by

Helmut Heiss (University of Zurich)
Martin Schauer (University of Vienna)
Manfred Wandt (University of Frankfurt am Main)

3-step analysis:

1. Determination of the materialization of a peril, i.e. an event;
2. Determination of the number of instances of the peril;
3. Individual losses = event's direct consequence?

Prevention of access clause, Arch wording (FCA v Arch, 245).

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"**Prevention of access to The Premises due to the actions or advice of a government or local authority due to an emergency which is likely to endanger life or property**"

3-step analysis:

1. Event = peril;
2. 1 instance = action**s** or advice of government;
3. Individual BI loss = direct consequence of government order

Result: *all individual BI losses that result from the government order are to be aggregated.*

Why such a broad aggregation? Definition of the peril is broad.

Disease clause, RSA 3 lit. a. iii. (FCA v Arch, 50).

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"We shall indemnify You in respect of interruption or interference with the Business during the Indemnity Period following: any occurrence of a Notifiable Disease within a radius of 25 miles of the Premises."

3-step analysis:

1. Event = peril;
2. 1 instance = contraction of COVID-19 by a person within 25 miles of the premises;
3. Individual BI loss ≠ direct consequence of individual contraction

Result: *no aggregation at all. Each individual loss remains separate*

Why such a narrow / no aggregation? Definition of the peril is narrow.

Evolution of the English law of aggregation?

(b) Other issues flowing from the determination of the *disputed issues* (such as aggregation, additional causation issues specific to loss of rent and similar claims under a property owners policy and the specific quantum of any particular claims) will not form part of the *disputed issues* but will be determined according to the claims process of each *Insurer*, taking into account in particular any policy terms setting limits to claims amounts or indemnity periods.

Framework Agreement FCA and Insurers, 31 May 2020.

67.   The word "occurrence", on the other hand, like its synonym "event", has a widely recognised meaning in insurance law which accords with its ordinary meaning as "something which happens at a particular time, at a particular place, in a particular way": see *Axa Reinsurance (UK) plc v Field* [1996] 1 WLR 1026, 1035 (Lord Mustill); *Kuwait Airways Corpn v Kuwait Insurance Co SAK* [1996] 1 Lloyd's Rep 664, 683-686 (and the discussion in that case of the *Dawson's Field Award*); *Mann v Lexington Insurance Co* [2001] 1 Lloyd's Rep 1 (CA).

FCA v Arch Insurance (UK) Ltd and others, [2021] UKSC 1, 67.

Thank you.

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