

## Choosing Menu Items

### The Judgment in *Ted Baker v AXA Insurance UK*

6 September 2012

The recent decision in *Ted Baker v AXA Insurance UK* [2012] EWHC dealt with a particular issue that sometimes arises in claims.

The Insured had a commercial combined insurance policy. The Insured suffered an employee theft over an extended period of time and claimed under the policy for the stock that was stolen as well as for consequent business interruption.

The Insurer rejected the claim on the ground that there was an option for the Insured to take out theft cover, but the Insured had not done so.

The Court held as follows:

1. Even without the optional theft cover, the Insuring Clause in the policy was drafted widely enough to cover employee theft, and there was no exclusion for that risk, even though the intention of the Insurer was that employee theft would be separately covered if the Insured wished to opt for that cover.
2. The existence of optional theft cover could not influence the interpretation of the policy terms, which were otherwise clear, and neither could market practice. In particular, neither point was enough to make up for the absence of an express exclusion for employee theft.

The case is relevant to those Insurers who sell policies structured on a "menu" basis, where the Insured picks the items of cover that he wishes to take, and to those Insurers who offer a suite of different products to the Insured. In each case, the intention is that the Insured will take the items/products that he wishes to use, and there will be no cover for those items/products that the Insured does not take. The *Ted Baker* case shows that there may be cover where items/products have not been picked if the Insuring Clause wording is widely drafted and/or the relevant exclusions are not inserted.

For further information on this topic please contact Tuli & Co

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Case Summary