Insurance Likely Kept Swift Out Of The Woods After Vienna

By **Diana Shafter Gliedman, Marshall Gilinsky and Fiona Hogan** (October 1, 2024)

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The cancellation of three Taylor Swift concerts in Vienna in August due to a foiled terror plot was a nightmare for Swifties worldwide, and not a nightmare dressed like a daydream.

While the disruption of the Austrian leg of the Eras Tour was crushing for music lovers, the financial blow to Swift, the Ernst Happel Stadium, the concert promoter Barracuda Music and others involved likely was softened by event cancellation and additional terrorism coverage she is reported to have carried.

Indeed, Swift's loss alone was estimated at $12 million.[1] The Vienna Eras Tour run was set to begin on Aug. 8, and arrests of the suspected would-be terrorists were made right before, on Aug. 6 and 7.

Event Cancellation and Nonappearance Insurance

Event cancellation and nonappearance insurance provides coverage for losses that are the direct result of the cancellation, postponement, relocation or similar alteration of an insured event or inability of a key person to attend or perform for reasons outside the policyholders' control.

This type of coverage differs from property insurance or business interruption insurance. In some respects, event cancellation and nonappearance insurance is broader because it covers a wide range of risks, but in other respects, it is narrower because it only provides coverage for losses relating to a particular event or series of events, like a concert tour.

For example, this type of insurance would provide coverage for a concert that is postponed because of a singer's vocal issues, like the Bruce Springsteen concerts that were postponed in May,[2] or a major sporting event that is canceled due to severe weather conditions, like the Formula 1 2023 Emilia-Romagna Grand Prix, which was canceled due to extreme flooding.[3]

This coverage applies to reimbursement of purchased tickets, lost ticket sales, the entertainer's fee, extra out-of-pocket expenses, travel costs and more.

Terrorism Insurance

While many event cancellation insurance policies exclude coverage for losses due to "any act of terrorism or threat or fear thereof," policyholders, including Taylor Swift, often purchase a terrorism coverage extension or a separate terrorism policy to retain coverage for cancellation losses that are subject to such exclusions.

Terrorism coverage provides coverage for the insured event if it is canceled, etc., "as a direct result of an act or threat of terrorism," sometimes provided that the act or threat of terrorism results in an action or order by a government or public safety official that restricts the policyholder's ability to hold the insured event as scheduled.

It is important to note that this coverage may respond only to situations where there is actual terrorist activity, and not just fear of a potential act of terrorism. That clearly was the case with the cancellation of the Taylor Swift concerts in Vienna, given the disruption of an actual terrorist plot targeting the event.

Policyholders may purchase additional coverage for related perils, like civil commotion, cyberrisks, national mourning, and nuclear, biological or chemical terrorism, which are typically excluded from standard event cancellation and nonappearance policies.

"Bad Blood" Between Performers and Insurance Companies

These valuable policies cover all sorts of other issues that lead to the cancellation of concerts and other events. Other policyholders should take heed of Foo Fighters' row with Lloyd's of London over event cancellation and terrorism coverage.

In 2015, Foo Fighters canceled a total of 11 performances, which implicated both the "Contingency Non-Appearance and Cancellation Insurance Cancellation, Abandonment, Postponement or Interruption of Events Policy" and "Contingency Non-Appearance and Cancellation Insurance Cancellation, Abandonment, Postponement or Interruption of Events Caused By Terrorism Policy" that the band had purchased to cover its Sonic Highways World Tour.[4]

The band called on its event cancellation policy to provide coverage when it canceled seven concerts after lead singer Dave Grohl broke his leg during a performance in June 2015.[5] Foo Fighters subsequently sought coverage under its terrorism policy after canceling four European concerts in the immediate aftermath of the Nov. 13, 2015, Paris terrorist attacks and in response to a terror threat directed at the band.[6]

Disputes arose under both policies, leading Foo Fighters to file an insurance coverage action against its insurance broker and Lloyd's of London in the U.S. District Court for the Central District of California.[7]

Determining whether an event is "canceled," "postponed," or "rescheduled" may appear a pedantic exercise at first blush, but these distinctions are often defined or discussed in the policies and affect the amount of a policyholder's potential recovery. Foo Fighters learned this "all too well" when Lloyd's disputed the amount of coverage for the seven cancellations following Grohl's injury.

Foo Fighters' event cancellation policy provided coverage for "70% of the Gross Guarantees and Overages and Production and Airfare/Charter/Media Contribution (where applicable) should any Insured performance(s) or Events specified in the Tour Schedule be necessarily canceled, Abandoned, Postponed, or Interrupted."[8]

It also provided coverage for "100% of proven additional costs and charges reasonably and necessarily paid by the Assured to avoid or diminish a loss in respect of the original Insured Performance(s).[9]

The event cancellation policy defined "Cancellation or canceled" as "the inability to proceed at the Venue with any or all of the Insured Performance(s) or Event(s) prior to commencement"[10] and defined "Postponement or Postponed" as "the unavoidable deferment of any or all of the Insured Performance(s) or Event(s) to another time."[11] Though the event cancellation policy did not define "rescheduled" or "rescheduling costs," it also provided as follows:

> Should any Insured Performance(s) or Event(s) be rescheduled, the insurers will pay:
>
> a) 100% of rescheduling costs and/or
>
> b) any reduction in box office income resulting in a reduced Guarantee and/or income subject to (a) and (b) above not exceeding 70% of the Gross Guarantees and Overages and Production and Airfare/Charter/Freight/Media Contribution (where applicable) for the Insured Performance(s) or Event(s). Insurers agree not to take into account savings made following cancellation of the original Insured Performance(s) or Event(s).[12]

A dispute between Foo Fighters, its broker and Lloyd's of London arose when, according to the band, the broker and Lloyd's began characterizing three canceled UK performances — at Wembley Stadium and BT Murrayfield Stadium — as rescheduled when the band added three new shows to the end of the tour — two at Milton Keynes National Bowl, a smaller venue outside London, and one at BT Murrayfield Stadium.

According to the complaint, Lloyd's refused to pay for the three concerts it characterized as rescheduled. Though Foo Fighters had purchased terrorism coverage, Lloyd's also refused to pay anything for the shows canceled due to the November 2015 Paris terrorist attacks and subsequent terror threat against the band.

It appears that Lloyds delayed payment on Foo Fighters' entire terrorism claim because it did not believe that cancellation of the Barcelona performance six days after the attacks bore a sufficient connection to the attacks. The suit was resolved without any public disclosure of a settlement in 2016.

Business managers, event producers, performance venues and others should take note of the distinctions at issue in the claim stemming from Grohl's injury. When faced with changes to a tour schedule, it is important to be mindful of the language used with brokers and insurance companies, review all endorsements, and to consider the bottom line, because, as the Foo Fighters case shows, the addition of performances at or near canceled venues may lead insurance companies to pay less on a claim.

Conclusion

As is the case with all commercial insurance products, the coverage provided depends on the specific terms of the insurance policy purchased.

Policyholders planning large-scale music and sporting events should take note of the various event cancellation insurance coverages offered to ensure they have adequate insurance in place and should weigh whether to purchase terrorism coverage in light of rising tensions globally.

Luckily for Taylor Swift, she purchased this coverage and should expect to recover $12 million for the three canceled concerts, which, distinct from the facts presented in the Foo Fighters' action, were all at the same venue with the plot only uncovered days before and arrests made on the day before the run was set to begin.

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[1] https://www.insuranceinsider.com/article/2dneg4hqdu4lmmakp1vr4/london-market/brit-leads-event-cancellation-cover-for-12mn-taylor-swift-vienna-loss.

[2] https://www.rollingstone.com/music/music-news/bruce-springsteen-postpones-european-concerts-vocal-issues-1235028124/.

[3] https://www.formula1.com/en/latest/article/breaking-update-on-the-emilia-romagna-grand-prix-at-imola.14xk8GLh2Lr8wBGdJqhxnO.

[4] Amended Complaint at 2, 5, 1/1-/25, Foo Fighters LLC v. Certain Underwriters at Lloyd's, London et al. (C.D. Cal. 2016) (No. 2:16-cv-04208-R-JEM).

[5] Id. at 7.

[6] Id. at 19.

[7] Id.

[8] Id. at 5.

[9] Id. at 6.

[10] Id.

[11] Id.

[12] Id.