



Briefing

Insurance and Professional Negligence

Reduced possibility of aggregation of claims by solicitors' insurers

The High Court has clarified the meaning of the aggregation clause in the Solicitors' Minimum Terms and Conditions (the "MTC") of professional indemnity insurance. In a recent decision it construed the aggregation on a narrow basis.

This may come as a relief to many solicitors carrying lower limits of PI insurance and their clients, who could otherwise have seen aggregation clauses drastically reduce the scope of their insurance cover.

Aggregation clauses – what do they do?

Aggregation clauses are common in liability insurance policies and their essential aim is to treat a number of claims under the policy as a single claim.

The practical effect of this is that a single limit of indemnity and excess is applied to all the claims. This can have a significant effect on how much the policy holder can obtain from the insurer. For example, suppose a solicitor has an insurance policy with a £2m limit of indemnity for each and every claim. The solicitor is then sued separately by four clients for £1.5m each - £6m in total. If the claims can be aggregated the insurer will only be liable for £2m in respect of all four claims, leaving the solicitor with an uninsured potential liability of £4m. If the claims cannot be aggregated, the insurer will be liable for up to the full £6m.

The ability to aggregate can be beneficial for policy holders when faced with a multitude of very small claims. For example, imagine the same solicitor faced four claims of £100,000 each but the policy excess was £200,000 per claim. Without aggregation the solicitor has no right to indemnity as a separate excess of £200,000 is applied to each claim. But if the claims can be aggregated, the solicitor will be able to treat them as a single policy claim of £400,000 and apply a single excess of £200,000, giving £200,000 of cover.

When can insurers aggregate?

A great deal of judicial ink has been spilled over how aggregation clauses operate, but there is no fixed principle – each clause operates depending on the particular words of the clause.

The essential task is to identify the 'unifying factor' in the clause that triggers the right to aggregate.

Aggregation under the MTC

This was the issue at the heart of *AIG v OC320301 LLP*, where the claimant insurers of a firm of solicitors sought to aggregate a number of claims totalling £10m in order to apply a single limit of indemnity of £3m.

The aggregation wording the Court had to consider was the one provided under the MTC, which applies to all solicitors' professional indemnity policies.

The relevant wording allowed the insurers to aggregate multiple claims "*arising from similar acts or omissions in a series of related matters or transactions*".

The consideration was what constituted "*a series of related matters or transactions*". The Court held that the words a "*series of related*" meant that the matters and transactions had to be dependent on each other in some way.

In that case, the claims the insurers sought to aggregate were essentially the same. The firm of solicitors was facing numerous claims from investors who had all been involved in the same property development schemes. They had accused the solicitors of failing to advise adequately on the security arrangements and as a result the investors had lost their investments.

In that regard, the complaint at the heart of each investor's claim was essentially the same – they all identified similar acts and omissions and, at one level, could be said to relate to the same matters or transactions.

However, the Court held that the matters and transactions which gave rise to each investor's claim, while similar, were not dependent on one and other. Each set of transactions could stand alone, irrespective of how the others proceeded. Therefore, the insurers could not aggregate the claims and had to apply a separate limit of indemnity in respect of each one.

Conclusion

The decision in the *AIG* case will come as a relief to solicitors carrying lower limits of insurance (and their clients) as it gives a narrow interpretation to the aggregation wording in the MTC, making it harder for insurers to limit the scope of cover where systemic failures have resulted in multiple claims.

This will be particularly important to solicitors and their lender clients when, for example, mortgage fraud is uncovered.

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