

Insurance
Case Law Update
Rosling King LLP



The Commercial Court has recently considered the construction of a Retroactive Date Clause under a professional indemnity insurance policy. Specifically, the Court considered the meaning behind the phrase “in any way involving”, when assessing the degree of causal connection required in order for the exclusion clause to be engaged.

The Claim

On 14 August 2014, ARC Capital Holdings Limited (“Capital Holdings”) issued proceedings against the Claimant in this matter, ARC Capital Partners Limited (“Capital Partners”), in respect of a negligent investment in the sum of RMB 480 million made by Capital Partners on behalf of Capital Holdings in December 2010 (the “Investment”).

Capital Partners entered into consecutive and annual professional indemnity insurance policies, with the relevant cover beginning on 5 June 2009, with the Defendants, Brit Syndicates Limited and others. Capital Holdings’ claim was notified to Capital Partners insurers in January 2014.

The 2013/2014 professional indemnity insurance policy (the “2013/2014 Policy”) contained a Retroactive Date Clause, which stated the following:

“The Broker Insurance Document shall not indemnify the Assured against any claim or claims arising from or in any way involving any act, error or omission committed or alleged to have been committed prior to 5 June 2009.”

The Defendants sought to rely on the Retroactive Date Clause to try and avoid the 2013/2014 Policy on the basis that the Investment was linked to events which occurred in 2008, thereby prior to the 5 June 2009. As such, the Defendants argued that the Capital Holdings claim fell outside the 2013/2014 Policy.

The Judgement

The Court held that Retroactive Date Clauses should be read “with an eye to their most sensible construction in light of the nature and object of the contract.” Therefore, “in any way involving” should be read to mean that there was a direct or indirect causal connection between the error or omission and the claim against the Claimant. However, in order for an indirect causal connection to be established, the Court held that the error or omission had to be a genuine part of the chain of causation which led to the Capital Holdings claim.

In light of the above, the Court held that the events which formed a central part of the Capital Holdings claim occurred in 2010, and the agreements entered into in 2008 merely represented the background and context to the actions which led to the alleged breaches of duty in 2010. On that basis, the Court declared that the exclusion clause was not engaged and the Defendants could not rely on the same.

Commentary

This case provides a clear indication of the way in which the Court will interpret Retroactive Date Clauses, namely the clause will be read and interpreted in line with the commercial



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purpose and intention behind the contract. However, regard must be had to the causal connection between the events leading to the error or omission. In order for the exclusion to operate, the events must form part of the chain of causation, rather than merely being background or contextual events.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.