
Insurance
Case Law Update
Rosling King LLP

The Court of Appeal has this week given judgment in an expedited appeal concerning the interpretation of the aggregation clause contained in the Law Society Minimum Terms and Conditions of Professional Indemnity Insurance for Solicitors and Registered European Lawyers in England and Wales (the "MTC").

The Facts

The matter involved claims ("the Underlying Claims") brought by two trustees (who represented around 214 investors or beneficiaries) (the "Investors") against a firm of solicitors (the "Insured") for losses of around £10 million. The solicitors had professional indemnity insurance with AIG Europe (the "Insurers") with a liability limit of £3 million per claim. To review the facts and findings from the first instance hearing in the Commercial Court, please click here to view our August 2015 Insurance Update.

At first instance, Teare J refused to give Insurers a declaration that the Underlying Claims were to be considered as one claim (and thereby aggregated) under clause 2.5 of the MTC ("the MTC aggregation clause"). He interpreted the key phrase "similar acts or omissions in a series of related matters or transactions" in assessing whether claims should be aggregated and so effectively cap Insurers' liability at £3million. Teare J held that "related matters or transactions" meant matters or transactions which were in some way dependent upon each other. It was common ground between the parties that the individual claims were not dependent on each other, and as a result Teare J found that the claims should not be aggregated.

On appeal, the Insurers submitted that, as a question of law, there was no justification for reading into the MTC aggregation clause a requirement that the claims be "dependent" upon one another. The Solicitors' Regulation Authority, given permission to intervene in the appeal, submitted that the clause had wider connotations than that of dependence. Matters which were dependent upon one another were arguably "related" for the purpose of the MTC aggregation clause, albeit it that matters did not have to be "dependent" to be "related".

The Decision

In coming to its decision, the Court of Appeal focused on the literal or natural meaning of the MTC aggregation clause. It was determined, based upon the facts, that this claim concerned a "transaction" as opposed to a "matter". Consequently in order to determine whether the claims could be aggregated, the clause was to be read as "*in a series of related…transactions*", with the word "series" implying some connection between the events.

The Court of Appeal quickly found that the first instance ruling went too far when deciding that the transactions had to be "*dependent on each other*" before claims could be aggregated under the MTC aggregation clause. It was agreed that the MTC aggregation clause envisages varying degrees of inter-connection but does not require the degree of closeness contemplated by "dependence".

Reference was made to a number of cases where the construction of aggregation clauses (and in particular, what constituted the unifying factor between matters such that they feel

within the aggregation clause) had been considered. Drawing upon Lord Hoffmann's point in *Lloyds TSB v Lloyds Bank [2003] 4 All E.R 43*, the Court of Appeal found that one must look to the general context to work out what the unifying factor is, because the express language set out in the MTC aggregation clause ("*a related…transaction*") was imprecise and deliberately avoided making reference to any wider formulations.

The Court found that, given the imprecise wording of the MTC aggregation clause, consideration had to be given to the intrinsic relationship between the transactions, which allowed them to be aggregated under MTC aggregation clause.

Commentary

The Court of Appeal's focus on the intrinsic relationship between matters or transactions is likely to have some influence as to how both the MTC aggregation clause, and aggregation clauses on a wider scale, are interpreted. As the Court of Appeal did not make any findings of fact, the entire case has been remitted back to the Commercial Court to make findings on the issues of fact based upon the guidance and interpretation of the MTC aggregation clause provided by the Court of Appeal.

Whilst no final judgment has been handed down, the guidance provided in the Court of Appeal's judgment does suggest that the interpretation of the MTC aggregation clause has been widened from the Commercial Court's first instance decision. This means that it could be easier for insurers to aggregate claims against solicitors' firms.

We will continue to monitor the position in relation to the findings of fact and provide a further update as soon as judgment is received from the Commercial Court.

For further information, please contact Georgina Squire or the Partner with whom you usually deal.