

Article

The Concept of Aggregation

By Charlotte Berg

In the event that there is more than one claim under the same policy, insurance contracts often make provisions for the aggregation of such claims, whereby two or more separate losses are treated as a single loss for deductible purposes when the losses are linked in the same way. This topic continues to come under much debate and largely depends on the wording of the contract.

The question posed to the Supreme Court in the recent case of AIG Europe Limited v Woodman and others [2017] UKSC 18, (handed down on 22 March 2017), focused on the unifying factor, linking the claims under the insurance policy in question.

The facts were briefly, Midas (a UK property development company, financed by investors), intended to build holiday resorts in Morocco and Turkey. The investors paid monies under an escrow agreement to the solicitors of Midas, (“the Solicitors”), who were to act as escrow agents. Funds were not to be released from the escrow account until the Solicitors had conducted adequate checks to ensure that security was in place.

Funds were released from the escrow account during 2007 – 2008. Both developments failed. Due to the solicitor’s failure to establish that sufficient security was in place before releasing the sums of money to their developer client, the investors were unable to realise their assets.

The solicitors’ professional indemnity policy had a limit of £3 million per claim and permitted the aggregation of claims in the circumstances where claims arose from ‘similar acts or omissions in a series of related matters or transactions’ (clause 2.5 of the Minimum Terms and Conditions (“MTC”), annexed to the Solicitors Indemnity Insurance Rules 2013, which must be incorporated into all solicitors indemnity policies). The judgment concerns the construction of the aggregation provision contained within that clause.

Until the AIG proceedings, the Courts had not intervened with the aggregation wording detailed within clause 2.5 MTC. The Court held that “there must be some inter-connection between the matters or transactions, or in other words that they must fit together”. The Supreme Court stipulated that relevant matters or transactions would need to be identified and then an analysis of the factors connecting them would need to occur. The fact that the alleged acts or omissions were similar was not enough to engage the clause in question.

The Supreme Court held that the claims brought by the investors associated with the Turkish property development ought to be aggregated and the other set of claims brought by the investors associated with the Marrakech development ought to be aggregated. However, the Court held that the insurers did not have a right to aggregate all of the claims, i.e. for both the Turkish and Marrakech investors.
Whilst the judgment does not provide full clarity on when claims may be aggregated and leaves argument as to the extent of inter connectivity between matters and/or transactions, the decision highlights that aggregation firmly remains a fact specific exercise of judgment and the Court will look to objectively consider all aspects of the transactions.

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