Russell-Cooke in the Supreme Court – aggregation in insurance policies AIG v OC320301 LLP and Others [2017] UKSC 18

Russell-Cooke acted for the Solicitors Regulation Authority (SRA) intervening in the Supreme Court in what is now the leading authority on aggregation in solicitors' professional indemnity insurance. Aggregation is essentially the question of whether a number of losses amount to a single claim for the purpose of the total sum covered by a policy.

The case arose out of 214 underlying claims by investors and beneficiaries to two trusts which were set up to hold security over land to be purchased at Peninsula Village, Turkey and at Al Johara, Morocco. The investors claimed against The International Law Partnership ("TILP"), a firm of solicitors, that the investment structure set up on behalf of TILP's clients known as the Midas Group, resulted in ineffective security which resulted in losses to the investors. TILP subsequently went into liquidation and had no funds to meet the claims. Their professional indemnity insurers argued that all claims could be aggregated as 'one claim' and therefore refused to pay further sums beyond the £3 million limit of indemnity.

The judgment of Lord Toulson handed down on 22 March 2017, concluded that:

> "*By requiring that the acts or omissions should have been in a series of related transactions, the scope for aggregation is confined to circumstances in which there is a real connection between the transactions in which they occurred, rather than merely a similarity in the type of act or omission*" - Paragraph 18
>
> "*Use of the word "related" implies that there must be some inter-connection between the matters or transactions, or in other words that they must in some way fit together*" – Paragraph 22

Although the Supreme Court disagreed with the Court of Appeal's use of the word 'intrinsic' to describe the connection required, the SRA's submissions were that there was 'no magic' in the word 'intrinsic'. In finding that there must be some inter-connection between the matters or transactions, the Supreme Court followed the SRA's position and more significantly rejected the insurer's specific submissions that confining a relationship to "inter-connected" matters or transactions was too narrow. This reverts to the alternative argument considered by Teare J at first instance (see paragraph 40 of his judgment).

The Supreme Court found that a striking similarity on the facts, the identity of the client and the similarity of legal structure of the development projects were all insufficient to cause aggregation. The proper starting point was to identify the relevant matters or transactions (see paragraph 27).

The Supreme Court also rejected the insurers' primary argument that all claims fell to be aggregated. The Supreme Court concluded that each of the two development projects attracted an aggregation limit and the investors' claims were found to aggregate where they were co-beneficiaries under a common trust.

For matters to be inter-connected, a relationship must be found between two or more matters or transactions. The fact that, for example, losses had the same originating cause, such as the dishonesty or negligence of an individual solicitor or the identity of the client,

would not cause the aggregation clause to apply. Submissions by the insurer that an 'overarching scheme' or a client's similar approach to matters (described in the Court of Appeal as the "*modus operandi*") was sufficient to cause aggregation were not supported by Lord Toulson's judgment.

Counsel for the SRA was David Edwards QC and Tim Jenns of 7KBW.

Solicitors for the SRA at Russell-Cooke LLP were John Gould and Michael Colledge. John Gould is the author of The Law of Legal Services published by Jordans and Michael Colledge is a contributor.

Michael Colledge
Senior associate
+44 (0)20 8394 6526
Michael.Colledge@russell-cooke.co.uk

russell-cooke.co.uk