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Indemnity insurers secure key PII Supreme Court ruling

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3 Comments



Industry experts say insurers will be heartened by a Supreme Court judgment which could determine how indemnity insurance-related claims are aggregated.

Five justices unanimously opted to allow an appeal from AIG Europe to limit claims to £3m rather than more than £11m it could have been facing if an action was not considered a single claim.

The case was brought by 214 property investors who claimed against their solicitors, The International Law Partnership, for allegedly failing to apply proper tests before releasing funds to developers of holiday resorts in Morocco and Turkey. AIG provided cover for ILP.

The Court of Appeal had ruled matters or transactions involved needed to have an 'intrinsic' relationship to be aggregated into one claim. But in *AIG Europe Limited v Woodman and others*, Lord Toulson said this formulation was neither 'necessary or satisfactory'.

AIG succeeded in arguing the Court of Appeal had introduced an unwarranted qualification into the concept of 'related matters of transactions'.

The Supreme Court **allowed the appeal** and remitted the case to either the Commercial Court or Chancery Division.

Clare Hughes-Williams, a partner at defendant firm DAC Beachcroft and member of the Forum of Insurance Lawyers, said the judgment appeared to have 'widened the scope for aggregation, eschewing the requirement of co-dependency or intrinsic relationship which had been described by the lower courts'.

She said: 'On the facts here, the court envisaged that the claims would be likely to aggregate in accordance with the two developments, but the court emphasised that this was an acutely fact-sensitive exercise requiring judgement in each case, and in so doing left scope for the parties to apply the ruling to the facts of the case on closer examination.'

'How the decision will be applied in different claims scenarios remains to be seen, but our instinctive reaction is that the decision is one which is more palatable to the insurers issuing minimum terms and conditions-compliant policies than those of the lower courts.'

South of England firm Royds Withy King, which acted for the claimants, said investors were right to resist AIG's attempt to aggregate their claims.

Senior associate David Bowman said the firm was 'very content' with the outcome of the case, despite the appeal court ruling being overturned.

'The Supreme Court has found that to determine whether matters or transactions are related or not is an acutely fact-sensitive exercise of judgement,' he added.

'A precedent has been established for cases involving solicitors' professional indemnity policies that insurers should not try to aggregate together multiple insurance claims which involve many transactions that relate to two or more discrete developments or projects.'

<https://www.lawgazette.co.uk/law/indemnity-insurers-secure-key-pii-supreme-court-ruling/5060377.article>