



Informing Progress - Shaping the Future

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Bath Racecourse v Liberty Mutual

Composite Policy Limits: Construction and Commercial Implications

Introduction & Key Points

In *Bath Racecourse Company Limited v Liberty Mutual Insurance Europe SE*, the plaintiffs (Bath Racecourse and other insured entities) sought a court determination on two key issues arising from their business interruption insurance claims during the Covid-19 pandemic:

- First, they asked whether, under their composite insurance policy, each insured entity was entitled to its own separate limit of indemnity, or whether the policy imposed a single aggregate limit to be shared among all insureds.
- Second, they challenged the insurers' position that furlough payments received from the UK Government under the Coronavirus Job Retention Scheme should be deducted from the insurance indemnity payable for business interruption losses.

The plaintiffs argued for separate limits per insured and opposed the deduction of furlough payments, aiming to maximise their recoveries under the policy. The resolution of these issues was significant for the broader insurance market, particularly for group or composite policies and the treatment of government support during the pandemic.

The Central Issue

The central issue in *Bath Racecourse Company Limited v Liberty Mutual Insurance Europe SE* EWCA Civ 153 was whether, under a composite policy, each policyholder is entitled to its own separate limit of indemnity or whether the limit is an aggregate for all policyholders collectively. The Court of Appeal upheld the first instance judgment, concluding that the proper construction of the policy

wording did not support the insurers' contention that a single aggregate limit applied across all insureds.

Technical Points on Policy Construction

- **Composite vs. Joint Policies:** The Court clarified that the policy was a composite contract, meaning it comprised a series of separate contracts of insurance for each named insured, rather than a single joint insurance for all. This distinction is crucial because, absent clear wording to the contrary, each insured is treated as having its own policy, including its own limit of indemnity.
- **Policy Language and Commercial Intention:** The Court closely examined the policy terms, noting that where the parties intended an aggregate limit for certain risks (e.g., material damage to golf greens), this was expressly stated. The absence of such wording in relation to business interruption cover indicated that the "any one loss" limit was intended to apply separately to each insured.
- **Amendments and Interpretation:** The insurers argued that an amendment to the policy (Condition 22) had replaced the "any one loss" basis with an aggregate limit. The Court rejected this, finding that the amendment did not expressly delete or replace the "any one loss" provision. The Court applied the principle of *contra proferentem* where ambiguity existed, construing the policy against the insurers.
- **Default Position:** The Court confirmed that, in the absence of clear language imposing an aggregate limit, the default is that the limit applies per occurrence or per insured, not for the entire policy period or all policyholders collectively.

Furlough Payments: Legal and Practical Treatment

The second major issue was whether furlough payments received by policyholders should be deducted from the indemnity payable under the policy's savings clause.

Legal Analysis of Savings Clauses

- **Savings Clauses and Indemnity Reduction:** The policy contained savings clauses requiring the indemnity to be reduced to the extent that the loss had been "reduced" or "ceased" because of payments "in consequence of" the insured peril. The Court held that furlough payments, being triggered by the pandemic, were "in consequence of" the insured peril and therefore fell within the scope of these clauses.
- **Collateral Benefits Argument Rejected:** Policyholders argued that furlough payments were *res inter alios acta*—collateral benefits not intended to reduce the insurer's liability. The Court rejected this, holding that the payments directly reduced the insured's wage costs and were therefore not collateral.
- **Causation and Nexus:** The Court emphasised the need for a clear nexus between the insured peril and the payment. Furlough payments, being a direct response to the pandemic, satisfied this requirement.

Practical Implications for Insurance Lawyers

Claims Handling and Policy Drafting

- **Reviewing Policy Wording:** Practitioners must carefully review the policy to ascertain whether limits are aggregate or separate. The Court's decision reinforces the need for explicit language if insurers wish to impose aggregate limits. In the absence of such wording, each insured is entitled to its own limit.
- **Identifying and Accounting for Government Support:** Claims handlers must ensure that all government support payments, including furlough, are identified and considered in the indemnity calculation. The Court's ruling makes clear that such payments are not collateral and must be deducted where the policy wording allows.
- **Documenting Losses and Payments:** Comprehensive records of losses and support payments are essential for accurate claims assessment and to withstand potential disputes.

Dispute Resolution and Litigation Strategy

- **Appeal Prospects:** The unanimous nature of the Court of Appeal's decision suggests that any appeal to the Supreme Court would face significant hurdles. Practitioners should advise clients accordingly.
- **Negotiation Leverage:** The clarity provided by the judgment may facilitate earlier settlement of disputed claims, as the legal principles are now settled.
- **Expert Evidence:** In complex claims, consider instructing experts to assess the quantum of losses and the impact of government support payments, to ensure that indemnity calculations are robust and defensible.

Policy Drafting Considerations

- **Clarity on Limits:** Insurers and brokers should review and, where necessary, amend policy wordings to make clear whether limits are aggregate or separate. If aggregate limits are intended, this must be expressly stated.
- **Savings Clauses:** Policy drafters should ensure that savings clauses are clear and unambiguous, specifying the types of payments that will reduce the indemnity. The Court's decision provides useful guidance on the interpretation of such clauses.
- **Composite Policies:** For group policies, consider whether separate contracts of insurance are intended for each entity, and ensure that the policy language reflects this intention.

Conclusion

The Bath Racecourse decision provides significant technical and practical guidance for the insurance market. It clarifies that, absent clear wording to the contrary, each insured under a composite policy is entitled to its own limit of indemnity, and that furlough payments must be deducted from claims where the policy's savings clauses apply. Insurance lawyers must ensure that their claims handling, policy drafting, and dispute resolution strategies are aligned with these principles to provide robust advice and effective representation for their clients.

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