Clifford Chance

BRIEFING

# English High Court clarifies operation of policy limits in multi-party insurance policies

In the recent case of *Acasta European Insurance Company Limited v Eshiett & Others* [2026] EWHC 71 (Comm), the Commercial Court has considered how policy limits apply under a composite insurance policy where the same cause results in losses to multiple insureds. The case follows a number of recent judgments on the topic and clarifies the legal principles which apply. Composite policies are used in many contexts, including where insurance is provided to a group of companies under one policy, and the question can have significant financial implications for insureds.

## Background

The case concerned the application of policy limits under structural defects insurance covering a house and a block of flats. The leaseholds for each of the eight flats were separately owned, and each flat was insured under the policy. The insurance included a limit of £1m for "*all claims relating to a Residential Property*" and £1.5m for "*all Residential Property's* [sic] *in one continuous structure*".

For the purposes of the hearing the Court proceeded on the assumption that there was major damage to the apartment block which would trigger cover (although that is disputed). The issue before the Court was whether the aggregate limit of indemnity for all flats within the block of flats was £1.5m, as argued by the Claimant/insurer, or each individual flat had a limit of indemnity of £1m, as argued by the Defendants/policyholders. The Court ruled in favour of the insurer for the reasons set out below.

## Decision

It was common ground that the determination of this issue required an exercise of contractual construction. The judgment helpfully summarises the relevant principles, namely that the same principles apply to the interpretation of insurance contracts as to other contracts and that both the text and surrounding factual matrix are relevant. The Court emphasised that

reliance on the surrounding factual matrix should be limited where, like in this policy, the contract creates rights intended to be negotiable or passed on to third parties who have no way of knowing the past dealings of the parties to the original contract. The policy in this case was standard form and was intended to be for the benefit of all purchasers of the flats, their mortgagees and successors in title. In such cases, more emphasis is to be given to the wording of the policy rather than the surrounding context (as illustrated by the case of *Buckinghamshire v Barnado's* [2019] ICR 495, quoted at paragraph 25 of the judgment).

The Court then considered whether the insurance was composite in nature, or whether each leaseholder had a separate policy. As described in paragraph 30 of the judgment, a composite policy is, from a legal perspective, a series of separate contracts of insurance insuring each of the insureds separately. Conversely, separate insurance policies can be drafted in such a way as to create cover with a shared aggregate limit. The categorisation of the insurance as one composite or multiple separate policies was not determinative of the question, however - in both instances there would be multiple contracts as a matter of law. As such, the key issue in this case was one of the proper construction of the limits described in the policy wording.

The Court focused on the "*Limits of Indemnity*" definition. The first part of this definition - which read "*The maximum the Insurers will pay for all claims relating to a Residential Property is £1,000,000 or the rebuilding cost of the Residential Property, whichever is the lesser*" – meant that the limit for claims for loss in respect of any individual flat was £1m. This was said to be the natural reading of the policy and how it would reasonably be understood by those to whom it was issued.

The key issue to resolve was the interpretation of the second part of the definition, which stated that "[t]*he limit for all claims for all Residential Property's* [sic] *in one continuous structure is £1,500,000*". The Court held that this gave rise to an overall aggregate limit shared by all insureds. This was because:

- On a natural reading of the wording it was reasonably clear that the second part of the definition should have referred to "*Residential Properties*" (not Property's). Indeed, this was the wording adopted elsewhere in the policy. It was also clear that the flats were one continuous structure (particularly when read with the first part of the definition and the meaning attributed to "*Residential Property's*").
- The separate limit of £1m per flat meant the natural meaning of the £1.5m limit was that it applied to all flats.
- An aggregate limit of cover was unsurprising given that: (i) the rebuild cost for the whole development was stated to be £1.4m; and (ii) cover was for interconnected properties at the same location which could be impacted in the same way by a structural defect. In respect of (ii), the Court distinguished the Court of Appeal's judgment in *Bath Racecourse* [2025] EWCA Civ 153, which concerned businesses (hotels, racecourses, pubs and golf courses) that were in different locations, operated in very different circumstances, and were impacted by Covid-19 in different ways. The Court also made a further distinction: in *Bath Racecourse*, the Court of Appeal regarded it as unlikely that an insured would expect its level of cover to be eroded by claims made by others, but that was

because of the lack of any wording to the contrary. In this case, there was such wording.

## Impact

*Acasta* follows the line of Covid-19 related business interruption cases - *Corbin & King Ltd v Axa Insurance UK Plc* [2022] EWHC 409 (Comm) and *Bath Racecourse* (referred to above) – in which group policies were issued to groups of companies covering the different losses that the companies might suffer.

These cases concerned various insured businesses operating under different contexts (including restaurants, cafes, bars, racecourses and golf courses). The group structure of the insureds in both instances meant that different insureds owned different properties. Each judgment held that the proper construction of the relevant policies – which involved an analysis of the policy wording and consideration of the nature of the policy / relevant factual matrix - meant that each insured whose premises were temporarily closed as a result of Covid-19 should have a separate indemnity limit. The Courts in these cases were, however, careful to stress that this was a result of the construction of the particular policy terms. Indeed, they made clear that there is no presumption that a composite policy means that separate limits are applied.

*Acasta* provides helpful guidance on how indemnity limit provisions will be interpreted following both of these cases. It is clear that this will involve consideration of whether one cause is likely to impact all insureds in a similar way – e.g., by virtue of the physical proximity of the insured properties / businesses, as was the case in *Acasta* which concerned leaseholders in a continuous structure (cf. the Covid-19 cases which concerned multiple businesses in different locations). That being said, the Covid-19 pandemic has demonstrated how one problem can give rise to losses at multiple locations - the distinctions previously drawn by the Courts may not always be easy to apply in practice.

## Key Takeaway

These cases have shone light on an area that parties may not always have given sufficient thought to when taking out insurance. Crucially, they demonstrate that getting it wrong can result in a significant shortfall for an insured.

Perhaps the main takeaway from the cases is that when taking out group insurance insureds should consider their potential exposures, how much cover each insured and all insureds need, and – to mitigate the risk of litigating on these matters – that the policy clearly sets this out.

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