

4 NEW SQUARE
CHAMBERS

Take it to the Limit: Aggregation in Liability Policies

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Introduction and Roadmap

- **Aggregation:** Limit of Indemnity = £X. But how many Limits are available?
- **Roadmap for talk:**
 - (1) Panaroma: introducing three ways to regulate the no. of Limits.
 - (2) A digression: a prior issue that may render aggregation irrelevant.
 - (3) "Original cause" wording
 - (4) "Single occurrence or event" wording
 - (5) Conclusion

(1) Panorama

Combined liability policy issued to healthcare group

Schedule: *“Limit of Indemnity = £10m any one claim”*

PIC: *“Insurers shall indemnify the Insured in respect of its legal liability for damages in respect of accidental injury of any person arising out of Medical Negligence, where claims are made and notified to Insurers in the prescribed manner.”*

(1) Panorama

First technique to circumscribe available Limits:

Original Schedule: *"Limit of Indemnity = £10m any one claim"*

Revised Schedule: *"Limit of Indemnity = £10m any one claim
and £20m in the aggregate"*

(1) Panorama

Second technique to circumscribe available Limits:

Original Schedule: *"Limit of Indemnity = £10m any one claim"*

Revised Schedule: *"Limit of Indemnity = £10m any one Claim"*

Definition of Claim: *"All and any claims by the same individual shall constitute a single Claim"*

(1) Panorama

- Positives of first two methods of circumscribing limits:
 - Unambiguous
 - Clear-cut outcomes
 - Minimise disputes between Insurers and Insured

- Negatives:
 - May be prohibited by professional regulation
 - Too blunt/simplistic and insufficiently flexible

(1) Panorama

Third technique to circumscribe available Limits:

“The total amount payable by Insurers in respect of all damages, costs and expenses arising out of all claims during any Period of Insurance consequent on or attributable to one original source or original cause shall not exceed the Limit of Indemnity stated in the Schedule”

(2) A Digression

Schedule: “£10m any one claim” or “£10m any one Claim”.

But what is a “c/Claim”?

1. Look at all the individual claims (or individual parts of one claim).
2. Do they share the same “object”?

Case law:

- *West Wake Price & Co v. Ching* [1957] 1 WLR 45 (Devlin J)
- *Haydon v. Lo & Lo* [1997] 1 Lloyd’s Rep 336 (PC)

(3) “Original Cause” wording

Recap:

Insured = healthcare group, runs private hospitals

Combined liability policy = indemnifying Insured *“in respect of legal liability for damages in respect of accidental injury of any person arising out of Medical Negligence”*

“The total amount payable by Insurers in respect of all damages, costs and expenses arising out of all claims during any Period of Insurance consequent on or attributable to one original source or original cause shall not exceed the Limit of Indemnity stated in the Schedule”

(3) “Original Cause” wording

Spire Healthcare Ltd v. RSA [2022] Lloyd’s Rep IR 130 (CA)

- **Facts:**
 - Group 1 patients: insufficiently extensive tissue removal during surgery
 - Group 2 patients: unnecessary surgery
- **Insurance:** Limit = £10m (£20m in the aggregate); “original cause” wording.
- **Arguments:** 2 x £10m Limits or 1 x £10m Limit? One or two “original causes”?
- **Answer:** Judge = 2 causes. CoA = 1 cause.

(3) “Original Cause” wording

Spire:

1. “Original cause” = widest form of linking words.
2. “Cause” and “source” = interchangeable.
3. “Original” = considerably looser causal connection than proximate.
4. Mr Paterson’s *“pattern of deliberate (and dishonest) behaviour”* was the unifying cause.

(3) “Original Cause” wording

Permutations of the *Spire* facts:

- (1) Mr Paterson was careless (not dishonest). Group 1 problems arose from one type of misunderstanding; the Group 2 problems from another.
- (2) One group of patients; two surgeons committing the same negligent mistake.

(4) “Single occurrence” wording

Insured = operator of chain of restaurants and bars

Policy = general commercial combined liability

Cover = for *“Notifiable Diseases and Other Incidents”*

Schedule = Limit of £2.5m *“any one Single Business Interruption Loss”* (SBIL)

SBIL = *“all Business Interruption Loss ... that arises from, is attributable to or is in connection with a single occurrence”*

(4) “Single occurrence” wording

Compare and contrast:

“all Business Interruption Loss ... that arises from, is attributable to or is in connection with a single occurrence”

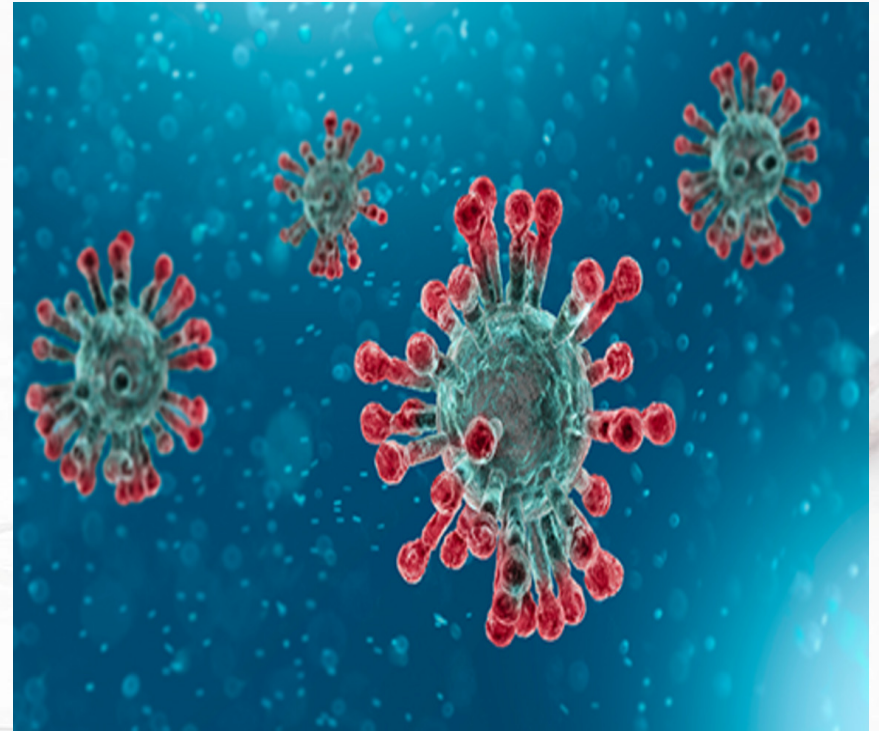
“The total amount payable by Insurers in respect of all damages, costs and expenses arising out of all claims during any Period of Insurance consequent on or attributable to one original source or original cause shall not exceed the Limit of Indemnity stated in the Schedule”

(4) “Single occurrence” wording

COVID

Candidate “occurrences”:

1. The Wuhan event
2. First UK transmission
3. Individual COVID cases
4. A ‘tipping point’ in the pandemic
5. Governmental decisions and announcements



(4) “Single occurrence” wording

Stonegate Pub Co v. MS Amlin [2023] 1 Lloyd’s Rep IR (Plus) 14

➤ Result: several occurrences

➤ Reasoning:

(1) “Occurrence” = “event”

(2) The knowledge of the well-informed observer in the position of the Insured.

(3) At the time the Insured needs to decide whether losses aggregate.

(4) “Single occurrence” wording

Stonegate (cont.)

(4) “*Occurrence*” = requires four unities: cause, locality, time and (if relevant) circumstances and purpose of human interaction.

(5) Degree of causal proximity depends on precise words used: “*arising from or attributable to*” versus “*in connection with*”.

(5) Conclusion

Propositions:

1. Trade off for each party: certainty of outcome versus flexibility.
Financial implications going both ways.
2. Different types/potencies of linkage.
3. No escaping the need for a factually-intensive enquiry.

The End

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