

All England Reporter/2007/November/HLB Kidsons (a firm) v Lloyds Underwriters subscribing to Lloyd's Policy No. 621/PKIDOO101 and others - [2007] All ER (D) 341 (Nov)

[2007] All ER (D) 341 (Nov)

HLB Kidsons (a firm) v Lloyds Underwriters subscribing to Lloyd's Policy No. 621/PKIDOO101 and others

[2007] EWHC 2699 (Comm)

Queen's Bench Division (Commercial Court)

Gloster J

22 November 2007

Insurance – Liability insurance – Professional indemnity insurance – Accountant – Accountancy firm managing company offering tax avoidance advice – Claims brought against accountancy firm – Firm notifying underwriters in accordance with policy during policy period – Clarification of previous judgment.

Abstract

In the instant case, where both parties had sought clarification on the effect of a judgment in which it was found that the claimant firm had not given the defendant underwriters effective notification by the presentation of a letter but another letter, together with other documentation, had amounted to a valid notification, but to a narrow range of the claims only, the conclusion had been consistent with the manner in which the underwriters had argued the issue throughout the trial.

Digest

The judgment is available at: [\[2007\] EWHC 2699 \(Comm\)](#)

Background

The parties sought clarification of the effect of paragraphs 206-222 of a judgment (see [\[2007\] All ER \(D\) 53 \(Aug\)](#)) in which it was held that the claimant firm had not given the defendant underwriters effective notification by the presentation of a letter dated August 2001 and other documents, of any circumstance or circumstances which might have given rise to a loss or claim against the firm, where the firm had brought an action against the underwriters seeking a declaration that the latter were bound to indemnify it in respect of claims made by clients in relation to the activities of a company, 'S@FI', which had been owned and managed by the firm and where the none of the claims were first made against the firm during the period of the policy, but where the firm alleged that it was entitled to be indemnified in respect of the claims by reason

of having notified the circumstances giving rise to each of the claims in accordance with general condition 4 of the policy. The judgment found that a letter dated March 2002, together with other documentation, had amounted to a valid notification, but to a narrow range of the claims only. General condition 4 of the policy had provided: 'The Assured shall give to the Underwriters notice in writing as soon as practicable of any circumstance of which they shall become aware during the period specified in the Schedule which may give rise to a loss or claim against them. Such notice having been given any loss or claim to which that circumstance has given rise which is subsequently made after the expiration of the period specified in the Schedule shall be deemed for the purpose of this Insurance to have been made during the subsistence hereof'. Claims against 'S@FI' made by J and LM had related to discounted option schemes. Various other claims against 'S@FI' had related to procedural difficulties.

The issues for clarification concerned (i) whether, as the underwriters had contended, the effect of the judgment was that the underwriters' indemnity had only covered claims arising in respect of J and LM, where discounted option schemes were utilised, or whether, as the other parties had contended, the scope of the notification, which was held to be effective, had covered procedural difficulties exemplified by the those two discounted option schemes.

The court ruled:

The conclusion of the judgment [see [\[2007\] All ER \(D\) 53 \(Aug\)](#)] was that the scope of the notification, which had been effective had covered not merely claims arising out of the two particular cases, J and LM, but rather all claims arising out of procedural difficulties exemplified by those discounted option schemes. That conclusion had been consistent with the manner in which the underwriters had argued the issue throughout the trial. For example, the underwriters had contended that the notification had related to procedural difficulties in the field of discounted option schemes, but they had never contended that it had related solely to the two discounted option schemes of J and LM. Furthermore, that conclusion was also consistent with the fact that, at paragraphs 225 and 226 of the judgment, the underwriters' submission that the court should first decide the principal and substantive issues relating to notification, and then, if necessary, address the question of sample claims, was accepted. Paragraph 226 of the judgment would have been redundant if the conclusion of the judgment was that the notification had only related to the cases of J and LM.

Nicholas Davidson and William Godwin (instructed by Holman Fenwick & Willan) for the claimant.

Gavin Kealey QC and Craig Orr QC (instructed by Fishburns) for the first to fifth defendants.

Michael Harvey QC and John Greenbourne (instructed by Herbert Smith) for the sixth defendant.

Roger Stewart QC and Graeme McPherson (instructed by Eversheds) for the seventh defendant.

Tunde Gbadamosi Barrister.