The Supreme Court has overturned the Court of Appeal and allowed Insurers to exclude cover under the Solicitors Minimum Terms through applying the trading debts exclusion in *Impact Funding Solutions Limited v AIG Europe Insurance*.

**Summary of the Facts:**

Impact was a disbursement funder and Barrington was a firm of solicitors. Impact made available disbursement funding loans to Barrington’s clients for the purposes of bringing industrial deafness claims under CFAs. Barrington signed an agreement with Impact under which they undertook to repay the loans in the event of default by their clients. Barrington also represented and warranted to Impact that their performance of services to the clients would be in accordance with their underlying CFAs, which included a requirement to assess the merits of each case before taking it on.

A large number of Barrington’s clients’ claims failed or were abandoned and the clients defaulted on the disbursement loans to Impact. Impact pursued Barrington and in an earlier decision the court gave judgment against Barrington for breaching its contract with Impact in failing to assess properly the merits of the underlying claims at the outset. With Barrington insolvent, Impact pursued recovery of the judgment against Barrington’s Insurers under the *Third Party (Rights Against Insurers) Act 1930*.

At first instance the court upheld the Insurer’s refusal to indemnify Barrington on the basis that the exclusion at clause 6.6 of the Minimum Terms applied. This excludes from cover any claim arising from any trading or personal debt of an Insured or any liability assumed by an Insured under any agreement for the supply to, or use by, the Insured of goods or services in the course of their practice.

The Court of Appeal reversed this decision holding that the trading debt exclusion was to be interpreted narrowly and was only intended to prevent cover for those liabilities of a solicitor that were clearly personal to him as
opposed to those arising from professional obligations to clients. It gave the examples of liabilities in respect of photocopier supplies, cleaning services, leases or a mortgage as examples falling squarely within the exclusion.

The Court of Appeal decided that the contractual liability of Barrington to Impact in this case was “part and parcel of the obligations assumed by a solicitor in respect of his professional duties to his [underlying] client… [including]…to advise the client as to the likelihood of success”. The fact that Impact was never Barrington’s client did not feature in the Court of Appeal’s reasoning.

Alarmingly for Insurers of Solicitors, this decision meant that a Solicitors’ insurance policy could be responsible for repaying commercial loans made by a third party to a Solicitor in circumstances where the loan had been taken out for the Solicitor’s benefit to help entice clients to sign up to CFAs at no cost.

Supreme Court decision

The Supreme Court has thankfully overturned the Court of Appeal and agreed with the first instance Judge in holding that “Barrington and Impact made a commercial agreement as principals for their mutual benefit, as well as for the benefit of Barrington’s clients. Impact was not a client or quasi-client of Barrington and the promise by Barrington which led to the judgment [against Barrington] obtained by Impact was part of the commercial bargain struck by them. It did not resemble a solicitor’s professional undertaking…and it falls aptly within the description of a ‘trading liability’.”

Commentary

As well as being of significant interest to Insurers of Solicitors, this case is also of wider interest to all Insurers on the construction and interpretation of insurance policy wordings. The Supreme Court explained that “an exclusion clause must be read in the context of the contract of insurance as a whole…the general doctrine…that exemption clauses should be construed narrowly, has no application to the relevant exclusion in this Policy…The extent of the cover in the Policy is therefore ascertained by construction of all its relevant terms without recourse to a doctrine relating to exemption clauses”.

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