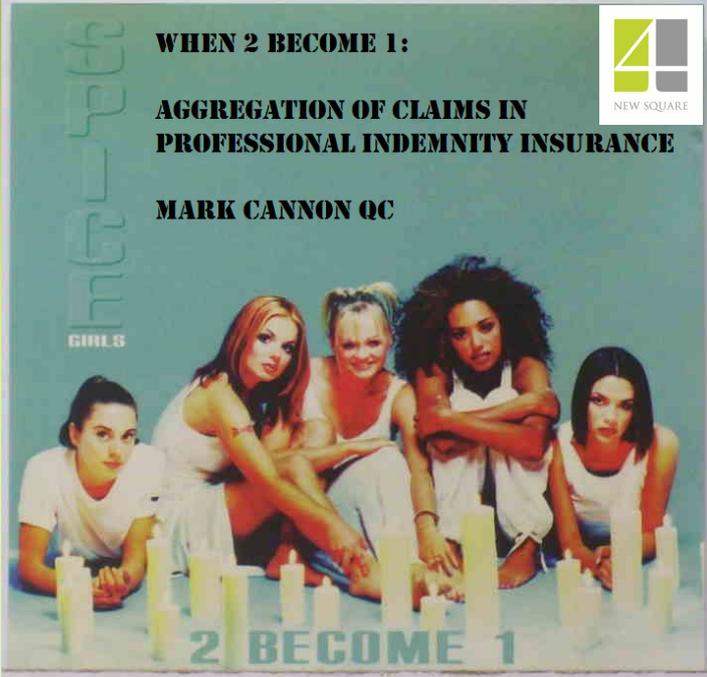


WHEN 2 BECOME 1:

**AGGREGATION OF CLAIMS IN
PROFESSIONAL INDEMNITY INSURANCE**

MARK CANNON QC



The image is a promotional poster for the TV show '2 Become 1'. It features five young women sitting on the floor, surrounded by lit candles. The text '2 BECOME 1' is at the bottom, and 'GIRLS' is on the left. A 'NEW SQUARE' logo is in the top right corner.

'Claim' shall mean each Claim or series of Claims (whether by one or more than one Claimant) arising from or in connection with or attributable to any one act, error, omission or originating cause or source or dishonesty of any one person or group of persons acting together and any such series of Claims shall be deemed to be one Claim for all purposes under this Policy.



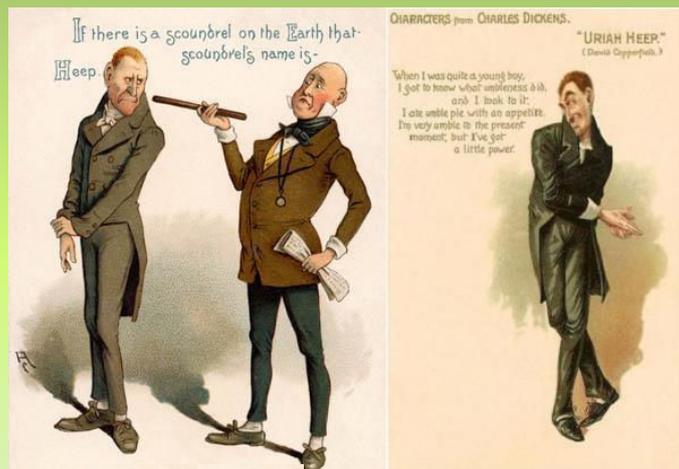
- 1.any demand for damages or compensation from, or assertion of a right against the INSURED
- 2.any notice of intention, whether orally or in writing, to commence legal proceedings against the INSURED
- 3.any communication with the INSURED in whatsoever form invoking any Pre-Action Protocols as may be issued and approved from time to time.



I think that the primary meaning of the word 'claim' - whether used in a popular sense or in a strict legal sense - is such as to attach it to the object that is claimed; and is not the same thing as the cause of action by which the claim may be supported or as the grounds on which it may be based.



If you say of a claim against a defendant that it is for £100, you have said all that is necessary to identify it as a claim; but if you say of it that it is for fraud or negligence, you have not distinguished it from a charge or allegation. In particular, if you identify a claim as something that has to be paid ... it must be something that is capable of separate payment: you cannot pay a cause of action. It follows, I think, that if there is only one object claimed by one person, then there is only one claim, however many may be the grounds or the causes of action which can be raised in support of it: ...



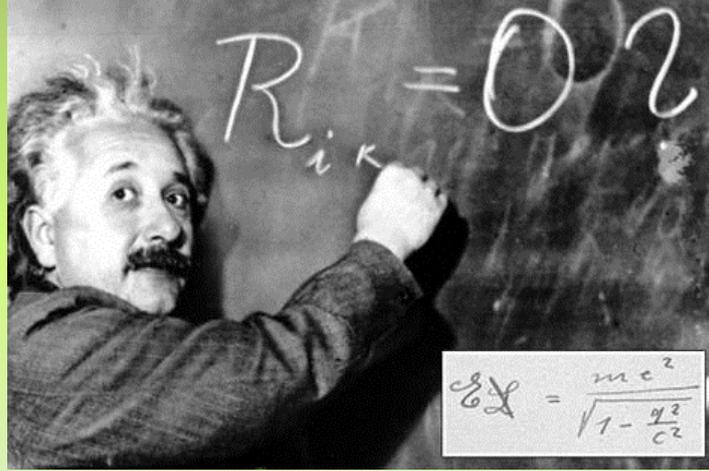


To suggest as [the third party claimant] has done that each separate cause of action which was the cause of a single claim gives rise to separate additional limits of liability for that claim stands the clause on its head; it is a contention contrary to its plain commercial purpose.



In my view, looking at the demand in the letter before action, the formulation of the statement of claim and the annexed schedule of damages (where one single sum was claimed) and the reality of the position, I have no doubt but that there was one claim by [the third party claimant] for the damage caused by the fire. The division made by [the trial judge] was solely for the purpose of distinguishing between the sole liability of [the insured] for the damage to the cabling and the other damages for which all of the three defendants in that action were liable.





In my judgment, the three requirements of a relevant event are that there was a common factor which can properly be described as an event, which satisfied the test of causation and which was not too remote for the purposes of the clause.



In ordinary speech, an event is something which happens at a particular time, at a particular place, in a particular way. ...

A cause is to my mind something altogether less constricted. It can be a continuing state of affairs; it can be the absence of something happening.



Whilst an event, occurrence or claim is 'something which happens at a particular time, at a particular place in a particular way' a 'cause' is not just 'something altogether less constricted' it is a word which is fulfilling a different function. The word event, occurrence or claim describes what has happened; the word 'cause' describes why something has happened.





Insurers' total liability under this Policy in respect of any Claim or Claims arising from one originating cause, or series of events or occurrences attributable to one originating cause or related causes, shall in no event exceed the sum stated in Item 3(a) of the Schedule.



A culpable misappreciation by an individual which leads him to commit a number of negligent acts can arguably be said to constitute a single event or originating cause responsible for all the negligent acts and their consequences.

The same is not true when a number of individuals each act under an individual misappreciation, even if the nature of that misappreciation is the same.



For the purpose of this reinsurance the term 'each and every loss' shall be understood to mean each and every loss and/or occurrence and/or catastrophe and/or disaster and/or calamity and/or series of losses and/or occurrences and/or disasters and/or calamities arising out of one event.





If a series of third party claims shall result from any single act or omission (or related series of acts or omissions) then, irrespective of the total number of claims, all such third party claims shall be considered to be a single third party claim for the purpose of the application of the deductible.



one occurrence or all occurrences of a series consequent upon or attributable to one source or original cause



In my view, the lack of proper training of the selling agents and selling employees was behind the whole problem. It was this which, on the assumed facts, was a consistent and necessary factor which allowed the mis-selling to occur. Maybe, the activities of individual salesmen were also causative but the clause entitles one to move back and find a single source or original cause; and in this case, there is one.



the word 'originating' was in my view consciously chosen to open up the widest possible search for a unifying factor in the history of the losses which it is sought to aggregate.



the distribution of a misleading document in identical terms by someone who was not himself negligent but ought to have been corrected by someone else who was. The two acts or omissions would be a series which together caused each of the losses



all claims or losses ... arising out of or attributable to or consequent upon

(a) the same or similar or related occurrences circumstances events acts errors or omissions of the Assured including an act or acts of dishonesty or

(b) any series or multiplicity of similar or related occurrences circumstances events acts errors or omissions of the Assured including a series or multiplicity of acts of dishonesty

and whether involving or committed or omitted by any person or persons or companies acting together or jointly or in concert or separately or independently shall constitute a single claim



all Claims against any one or more Insured arising from:

(i)....

(ii)one series of related acts or omissions;

(iii)the same act or omission in a series of related matters or transactions;

(iv)similar acts or omissions in a series of related matters or transactions...

will be regarded as one Claim.



Where a contract has been professionally drawn... the draftsman is certain to have in mind decisions of the Courts on earlier editions of the clause. Such decisions are part of the context or background circumstances against which the particular contract falls to be construed. If the draftsman chooses to adopt the same words as previously construed by the Courts, it seems to me to be likely that, other things being equal, he intends that the words should continue to have the same meaning.



each and every loss and/or occurrence and/or catastrophe and/or disaster and/or calamity and/or series of losses and/or occurrences and/or catastrophes and/or disasters and/or calamities arising out of one event



The losses or series of losses envisaged by the clause must have “arisen out of” one event, which in this context straightaway implies some causative element and some degree of remoteness, or lack of remoteness, which must be established in the circumstances of the particular case.



The language of the aggregation clause, read with the definition of “act or omission”, shows that the insurers were not willing to accept as a unifying factor a common cause more remote than the act or omission which actually constituted the cause of action. An act or omission could qualify as a unifying factor in respect of more than one loss only if it gave rise to civil liability in respect of both losses.





All claims or series of claims (whether by one or more than one claimant) arising from or in connection with or attributable to any one act, error, omission or originating cause or source, or the dishonesty of any one person or group of persons acting together, shall be considered to be a single third party claim for the purposes of the application of the Deductible.



Whereas in *Axa* the words used were “arising from”, and in *Municipal Mutual* and *Countrywide* the words used were “consequent on or attributable to”, the Policy here uses the words “arising from or in connection with or attributable to” (emphasis added). The phrase “in connection with” is extremely broad and indicates that it is not even necessary to show a direct causal relationship between the claims and the state of affairs identified as their “originating cause or source”, and that some form of connection between the claims and the unifying factor is all that is required.



for financial loss caused by a breach on the part of the assured or an officer or employee of the assured of the provisions of the Financial Services Act 1986 (including without limitation any rules or Regulations made by any regulatory authority or any self regulatory organisation pursuant to the provisions of the Act)...in respect of which civil liability arises on the part of the assured.

