

Indemnity insurance, contribution claims and limitation (RSA Insurance plc v Assicurazioni Generali SpA)

24/07/2018

Dispute Resolution analysis: A claim for a contribution by one indemnity insurer against another was statute barred under the two-year limitation period provided by Section 10(1) of the Limitation Act 1980 (LA 1980), due to the insured's claim against the insurer being a claim for liquidated damages rather than a claim in debt. Written by Olivia Wybraniec, barrister at 3 Hare Court.

RSA Insurance plc v Assicurazioni Generali SpA [2018] EWHC 1237 (QB)

What are the practical implications of this case?

Indemnity insurers seeking to claim a contribution from other relevant insurers will need to act promptly to ensure proceedings are brought within the two-year limitation period provided by [LA 1980, s 10](#) (1). The judge concluded that the two-year limitation applied because the insured's claim against its insurer for an indemnity is a claim for liquidated damages, rather than a debt, so that the contribution claim falls under [Section 1\(1\)](#) of the Civil Liability (Contribution) Act 1978 ([CL\(C\)A 1978](#)). However, despite many cases supporting this finding the judge acknowledged the difficulty with describing the indemnity claim as a claim for 'damages', casting doubt on whether a higher court might make the same finding.

What was the background?

RSA Insurance (RSA) settled a mesothelioma claim brought by the former employee of a dissolved company (relying on the *Fairchild* exception). That claim was brought against RSA as the employer's liability insurer pursuant to the [Compensation Act 2006](#) ([ComA 2006](#)), and settled in January 2011 for £140,500 and £25,826 costs. In July 2015, RSA discovered that two other insurers, Generali and Aviva, had also provided employers liability insurance to the dissolved company at different times during the relevant employment period. RSA sought an equitable contribution from Generali and Aviva to the sum paid in settlement of the claim, in proportion to the length of time within the relevant employment period for which each insurer insured the dissolved company.

Generali argued that the contribution claim was statute barred under [LA 1980, s 10\(1\)](#) which provides a two-year limitation period for claims brought under [CL\(C\)A 1978, s 1\(1\)](#). RSA and Generali agreed that in order to determine whether RSA's claim came under [CL\(C\)A 1978, s \(1\)](#) the court must consider whether the dissolved company's claim against RSA for an indemnity would be a claim sounding in debt or in damages.

What did the court decide?

His Honour Judge Rawlings, sitting as a judge of the High Court, preferred Generali's submissions that the liability arising under an insurance contract of indemnity is a damages indemnity liability, and therefore falls within [CL\(C\)A 1978, s 1](#).

It was accepted that there was a long line of cases supporting this conclusion, including *Jabbour v Custodians of Israeli Absentee Property* [1954] 1 WLR 139, in which Pearson J found that such a claim is a claim for unliquidated damages, although noting that the word 'damages' is used in a somewhat unusual sense because the right to indemnity arises not due to any wrongful act of the insurer but due to a breach of the promise to indemnify the insured in the event of loss. Similarly, Lord Goff in *Firma C-Trade SA v Newcastle Protection* [1991] 2 AC 1 had accepted that at common law, a contract for an indemnity gives rise to an action for unliquidated damages which arises from the failure of the indemnifier to prevent the indemnified person from suffering damage, such as by having to pay a third party.

In reaching his conclusion, Judge Rawlings conceded to RSA that treating insurance indemnities as unliquidated claims in damages causes some anomalies, including in this case where the insurer paid out as soon as it had a liability under

the indemnity and yet the liability is described as being for damages in breach of contract. This is perhaps a signal that the issue ought to be considered by a higher court.

Nonetheless, having accepted that a claim for an indemnity is a claim sounding in damages rather than in debt, RSA's right to a contribution from Generali fell within [CL\(C\)A 1978, s 1](#) and RSA's claim was therefore statute barred.

Case details

Court: High Court (Queen's Bench Division)

Judge: Judge Rawlings

Date of judgment: 15 May 2018

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.