

When many become one – aggregation of claims and the importance of Top Up insurance

Many solicitors think that, because they only act for small clients on small transactions, any claims made against them will be for small amounts. Small claims can become large claims when they are aggregated under your PII policy.

All PII policies, including Lawcover's, contain a clause 'aggregating' claims, meaning that if claims arise from the same underlying cause, or claims arise from related transactions, they are treated as one claim for the purposes of insurance. Where claims are aggregated, the law practice will only be required to pay one excess, but there will also only be one \$2 million limit of indemnity available to cover the claims.

Under your PII policy, claims by one or more claimants are treated as one claim where they arise from:

- (a) the same act or omission
- (b) related acts or omissions
- (c) one or more acts or omissions in a number of related matters or transactions
- (d) one matter or transaction

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How does this work in practice?

Example 1

If a solicitor makes a mistake in the drafting of a will, each of the disappointed beneficiaries will have a claim against the solicitor. As all of those mistakes arise from the same “act or omission” (the mistake in the will drafting), all of the beneficiaries’ claims will be aggregated into one claim for the purposes of the policy.

Example 2

A solicitor acts for a husband and wife who wish to buy three adjoining pieces of land. During the conveyance, the couple create three companies, one to purchase each block of land. The law practice makes a number of errors during the purchase transactions, which lead to losses for each company of around \$800,000.

When a claim is made, each of the three companies will have its own cause of action and will be able to claim \$800,000 each.

All of the claims will be covered, but because they arise in a number of related matters or transactions they will be treated as one claim. One excess will apply, and all three losses will be dealt with under the one \$2 million limit of indemnity. However, in this case the aggregate amount of the claim exceeds the \$2 million limit. This means that part of the loss will be uninsured or will be covered by Top Up insurance (if the firm holds that insurance).

The importance of Top Up insurance

Small transactions don’t always equal small claims. It’s not only the size of the transactions, but also whether those transactions are “related”. There are many circumstances under which a claim may be related and when considering whether to purchase Top Up insurance, solicitors need to be mindful of this. Top Up insurance purchased through Lawcover operates in the same way as the primary PII policy, but with a higher limit to cover claims which are worth more than \$2 million. This means you likely won’t be out of pocket when a claim arises.