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Aggregation in W&I Policies: The Perspective of Italian Jurisdiction

Aggregation allows two or more losses covered by a policy to be treated as a single loss when they are linked by a “unifying factor”.

Aggregation plays a crucial role in determining how many deductibles apply and the available limit of liability.

It is also key to assessing whether a claim exceeds the self-insured retention and, in some cases, whether a claim triggers the policy within the relevant time period.

Given its broad implications, aggregation cannot be defined *a priori* as either beneficial or detrimental to the insurer or the insured. It benefits the insured in cases involving multiple low-value losses, each falling below the retention, by allowing coverage through their consolidation. Conversely, aggregation can favour the insurer, who may rely on a single limit of liability for multiple losses. Therefore, aggregation mechanisms should not be construed *contra proferentem* against the insurer but rather interpreted neutrally.

A policy may include express or implied aggregation wording. In W&I policies, the aggregation mechanism is often embedded within *de minimis* and retention clauses, aiming to group all losses “arising from or related to the same or similar sets of facts and circumstances”.

Under such wording, the relevant connecting factor is the origin of the losses. Different losses will count as one if they arise from the same facts or circumstances (i.e., the same proximate cause or originating source) or from facts or circumstances connected by a substantial degree of similarity or relatedness. Generally, policy wording provides little guidance on how “similar” or “related” should be interpreted, which often leads to a fact-intensive analysis rather than one based on broad conceptual similarities.

The Courts of England and Wales have developed extensive case law concerning aggregation clauses, providing a considerable degree of certainty on their interpretation.

Italian case law, however, is far less developed.

In one of the few cases addressing this issue, the Corte di Cassazione considered a matter involving a private security company insured under a third-party liability policy. One of the insured’s clients reported significant shortages of goods under surveillance as a result of a series of thefts committed by the same individual. Each theft, taken individually, resulted in a loss below the deductible. The insurer denied coverage, arguing that the policy contained no aggregation clause.

The Corte di Cassazione found in favour of the insured, stating:

“The notion of loss in the insurance agreement can only refer to the damaging event considered as a whole, not broken down into the individual episodes that form its unitary legal and economic essence, represented by the financial loss suffered by the damaged party due to the continuous thefts. The fact that each criminal act occurred at different times merely indicates that the various thefts constituted elements of a ‘case with progressive formation’, whose functional unity, for the purposes of applying the deductible, cannot be questioned.” (*Cass. Judgment no. 19865 of 29 September 2011*).

This approach contrasts sharply with that adopted by the English Court of Appeal in *Baines v Dixon Coles & Gill*, where it was held that a series of thefts by the same individual over a number of years, even if concealed through the same method, did not share a sufficient unifying factor to trigger an aggregation clause referring to “one series of related acts or omissions”.

Conclusion

While the application of aggregation clauses is inherently case-specific and dependent on the facts, the key issue remains the degree of connection required to justify aggregation.

Although Italian case law is not yet sufficiently developed to provide a consistent approach, the decisions issued to date suggest that Italian courts may interpret aggregation more flexibly than their English counterparts—and may even apply aggregation in the absence of an express clause.

At a general level, this highlights the importance for market participants of carefully drafting aggregation wording in policies governed by Italian substantive law, ensuring that the relevant unifying factor is defined with greater precision.

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