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Case No: CL-2022-000400

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 26/05/2023

Before :

MR JUSTICE JACOBS

- -

Between :

(1) PIZZAEXPRESS GROUP LIMITED
(2) PIZZAEXPRESS (RESTAURANTS) LIMITED
(3) BOOKCASH TRADING LIMITED
(4) AGENBITE LIMITED
(5) PIZZA EXPRESS (JERSEY) LIMITED

Claimants

- and -

(1) LIBERTY MUTUAL INSURANCE EUROPE SE
(2) XL INSURANCE COMPANY SE

Defendants

- -
- -

Tom Weitzman KC and Peter Ratcliffe (instructed by **Dechert LLP**) for the **Claimants**
David Scorey KC and Sushma Ananda (instructed by **DAC Beachcroft LLP**) for the **Defendants**

Hearing date: Friday 19th May

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Approved Judgment

This judgment was handed down remotely at 10 am on Friday 26th May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

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MR JUSTICE JACOBS

MR JUSTICE JACOBS:

A: The parties and the proceedings

1. The present proceedings are brought by companies in the well-known PizzaExpress restaurant group (together "PizzaExpress") against two insurers, Liberty Mutual Insurance Company SE and XL Insurance Company SE ("the Insurers"), in respect of COVID-19-related business interruption losses. The relevant policy ("the Policy") is an Aon Trio Property and Business Interruption insurance policy covering the period 1 July 2019 to 30 June 2020. The terms of the Policy are contained in a Schedule dated 22 July 2019, a standard-form Aon Trio Property and Business Interruption wording, and Endorsement No.1 dated 21 June 2022.

2. At a case management conference on 3 March 2023, the court ordered the determination of a preliminary issue concerning the construction of the Policy provisions relating to the policy limits, as follows:

> "On the true construction of the Policy, do the Sub-limits applicable to Extension 2(a)(i), Extension 2(b)(v) and to Claims Preparation Expenses apply any one Occurrence (as the Defendants submit) or any one Incident (as the Claimants submit) or on such other basis as the Court may identify?"

3. The dispute between the parties on policy limits is significant in financial terms. PizzaExpress's claim is for around £82 million pursuant to the 'at the premises' cover provided by Extension 2(a)(i) of the Policy, and/or for around £178 million pursuant to the 'prevention of access' cover provided by Extension 2(b)(v) of the Policy. These claims are made on the basis that the relevant policy sub-limits do not operate on the basis of "any one Occurrence", a term which is broadly defined in the Policy so as to encompass "any one loss or series of losses arising out of and directly resulting from one source or original cause". The Insurers contend that PizzaExpress's business interruption losses flowing from the COVID-19 pandemic, if covered at all, would constitute 1 or at most 3 Occurrences, giving rise to a maximum indemnity (prior to application of the Policy excess) of either £ 250,000 (for 1 Occurrence) or £ 750,000 (for 3 Occurrences), together with £ 50,000 for Claims Preparation Expenses (again applying "any one Occurrence"). PizzaExpress contend that the relevant sub-limit provisions do not so confine their claims.

4. The factual background to the claim is that in early 2020 PizzaExpress operated some 475 restaurants in England, Scotland, Wales, Northern Ireland, the Republic of Ireland and Jersey. A large majority of the restaurants (417) were in England. PizzaExpress claims for business interruption losses suffered between March and November 2020 as a result of closures or restrictions on the use of its restaurants, caused by measures introduced in response to the COVID-19 pandemic by the governments in each of the territories in which the restaurants were situated.

5. PizzaExpress's principal claims are made under two extensions in the Business Interruption (or "BI") section of the standard Aon Trio policy wording. Broadly speaking, these extensions extend cover beyond what might be regarded as the ordinary type of business interruption loss which arises when there is covered

physical damage to a policyholder's premises. Extension 2(a)(i) provides cover in respect of "any occurrence of a Notifiable Human Disease at the Premises… that causes restrictions on the use of the Premises on the order or advice of a statutory, local or other competent authority". Extension 2(b)(v) provides cover in respect of the "closure or sealing off of the Premises … by the police, fire brigade or other statutory authority or local or transport authority due to an emergency event at the Premises or within a radius of 1 mile of the Premises… which… prevents or hinders the use of the Premises or access thereto…". The Policy contains a number of other extensions, which are referenced in the sub-limits provisions described below.

6. The Insurers have denied coverage under both extensions, contending (among other things) that the cover provided by the extensions is "localised cover" which does not respond to business interruption losses caused by central government action taken in response to a nationwide public health emergency.

7. As part of the Commercial Court's management of its COVID-19 business interruption insurance sub-list, issues of construction relating to the coverage provided by the two extensions have been ordered to be determined as preliminary issues in co-ordination with similar issues arising in other COVID-19 business interruption insurance cases. Thus, I recently heard argument over 7 days in a trial of preliminary issues relating to the correct construction of the 'at the premises' cover provided by Extension 2(a)(i), and by similar clauses in five other sets of proceedings, with judgment reserved. A trial of preliminary issues relating to the correct construction of the 'prevention of access' cover provided by extension 2(b)(v), and by similar clauses in at least five other set of proceedings, will be heard later this year, commencing on 23 October 2023, and will occupy around 8 days.

B: The Policy terms

8. The key relevant provisions of the Policy concerning limits and sub-limits are contained in the Schedule to the Policy. The Schedule describes the insured, the insurers, the period of insurance and a number of other matters. Page 3 of the Schedule is headed "Section 1. Property Damage". This comprises a table with 4 columns, columns headed "Property Insured Item", "Declared Value", "(% uplift)", and "Limit of Liability". Thus, by way of example, the table lists "Buildings" as a Property Insured Item, with a Declared Value of £ 5,759,184, an uplift of 125% and a Limit of Liability of £ 7,198,980. There were then entries for "Machinery and Plant" and "Stock". These various figures were not broken down by reference to individual restaurant premises, but were composite figures for the business as a whole.

9. The next page (page 4) is headed: Section 2: Business Interruption. It provides as follows (including certain text in bold):

"**Section 2: Business Interruption**

Item	**Maximum Indemnity Period**	**Estimate**	**(% uplift)**	**Limit of Liability**

1 **Insured Gross Profit**	12	GBP 360,101,515	(133.33%)	GBP 480,123,351
2 **Gross Revenue**			(133.33%)	
3 **Additional Increased Cost of Working**	12	GBP 250,000	(100%)	GBP 250,000
4 Contractual Penalties	6			GBP 100,000
5 Research and Development Costs	6			GBP 100.000
6 Standalone Increased Cost of Working				
7 **Additional Increased Cost of Working** Hunton House, Highbridge Estate, Oxford Road, Uxbridge	12	GBP 500,000	(100%)	GBP 500,000
8 **Additional Increased Cost of Working** Enterprise House, Cotswold Dene, Standlake, Witney	12	GBP 1,000,000	(100%)	GBP 1,000,000
9 **Advance Profits**	12	GBP 1,000,000	(100%)	GBP 1,000,000
10 **Rent Receivable**	12	GBP 469,486	(100%)	GBP 469,486

N.B. Additional limits and/or sub-limits apply – these are listed later in this Schedule”

10. The various "Item" headings in this table, such as Insured Gross Profit, are referable to various detailed provisions of Section 2, the Business Interruption section, of the Aon Trio wording.

11. Page 5 of the Schedule is headed: "Sub-limits". It is again a table, and this went over the page so as to conclude on page 6. The following parts (again including text in bold where it appears in the document) are material to the arguments advanced at the hearing.

"**Sub-limits**

- Sub-limits form part of the Limit of Liability and do not apply in addition to it;

- all Limits of Liability apply any one **Occurrence**;

- limits are inclusive of the Excess;

unless otherwise stated. If more than one Sub-limit applies to the same loss, the **Insurer**'s liability will be limited to the lesser Sub-limit.

In respect of Section 1 & 2 combined limits

Automatic Acquisitions	GBP 500,000 applying in addition
Claims Preparation Expenses	GBP 50,000 applying in addition
Differences in Conditions/ Differences in Limits	GBP 150,000 applying in addition
Inadvertent Omission to insure	GBP 2,000,000 applying in addition

In respect of Section 1

…	
Employees', directors' and visitors' personal effects	GBP 1,000 per person
…	
Loss of License	GBP 25,000 per Premise
…	
Mitigation of Environmental Impact	5% of the **Damage** or GBP 100,000 applying in addition whichever is the less.
…	

Motor Vehicles	GBP 100,000 applying in addition
Resilient Repairs – Extra Costs	5% of the **Damage** or GBP 100,000 applying in addition, whichever is the less
…	

…

In respect of Section 2

…	
Extended Incident - Notifiable disease - Prevention of Access & Loss of Attraction …	 GBP 250,000 GBP 250,000
…	

12. Page 6, following the above table, contained the heading "Excess" and provided as follows:

> "**Excess**
>
> From the amount of all claims in respect of one **Occurrence** … the **Insurer** will deduct the amount of the Excess stated below.
>
> Insurance Limits (and Sub-limits) are inclusive of Excesses.
>
> Only one Excess will apply in respect of any one **Occurrence**. In the event that more than one Excess applies, then only the higher Excess will apply.
>
> Amount GBP 25,000 any one **Occurrence**
>
> …"

13. On each of these pages, as indicated above, some words (such as "Occurrence" and "Insurer") were in bold, thereby indicating that they were defined elsewhere. This use of bold linked with a provision which followed the heading "General Definitions" in the standard Aon Trio wording:

> "Words and expressions to which specific meaning is given in any part of this **Policy** shall have the same meaning

> wherever they appear. When used in bold print in this **Policy** …"

There then followed various defined terms.

14. In the Schedule, the words "Limit of Liability" and "Sub-limits" were not, (except when used simply as headings as part of the formatting of the document), in bold and they are not defined elsewhere in the Policy.

15. The definition of "Occurrence" is contained in the standard Aon Trio policy wording. As explained, this states (among other things) that "**Occurrence** means any one loss or series of losses arising out of and directly resulting from one source or original cause".

16. The Policy definitions also included a definition of "Incident" as follows:

> "**Incident** means loss or destruction of or damage to any property used by or for the benefit of the **Insured** at the **Premises** for the purpose of the Business"

Various policy provisions in Section 2 then use the word "Incident" in the context of the business interruption coverage.

C: The parties' submissions

PizzaExpress

17. On behalf of PizzaExpress, Mr Weitzman KC submitted that the starting point was that the Schedule establishes a clear distinction between 'Limits of Liability' and 'Sub-limits'. Thus, for the purposes of the business interruption cover provided by the Policy, the "Limits of Liability" are those identified in the right-hand column of the table in the Business Interruption section on page 4 of the Schedule. By contrast, the "Sub-limits" were those set out in the tables in the Sub-limits section of the Schedule on pages 5 and 6.

18. This distinction was maintained, and the inter-relationship between Limits of Liability and Sub-limits is described, in the provision immediately below the heading 'Sub-limits'. This states that "Sub-limits form part of the Limit of Liability and do not apply in addition to it … unless otherwise stated". The distinction between Limits of Liability and Sub-limits is fundamental to this provision: Sub-limits will either form part of a Limit of Liability, or (where stated) will apply in addition to the Limit of Liability; but in neither case are they identified with the Limit of Liability. Eliding the distinction would make a nonsense of the provision.

19. On page 5, it is then stated that "all Limits of Liability apply any one Occurrence". These words should not be read as encompassing all Sub-limits. Although not a defined term, the phrase "Limits of Liability" clearly has a specific meaning in the Schedule: it refers to the limits stated in the right-hand columns of the Property Damage and Business Interruption tables on pages 3 and 4. To interpret the phrase otherwise would be inconsistent both with the immediate contractual context (that is, the provisions which immediately precede and immediately follow the provision

in question), and with the approach adopted elsewhere in these sections of the Schedule.

20. As to the immediate context, it is most unlikely that the draftsperson used the phrase "Limits of Liability" in one sense (expressly distinguishing it from "Sub-limits") in the first line of the provisions under the heading 'Sub-limits', only then to give it a wholly different meaning (encompassing Sub-limits) in the second line – and no reasonable reader would interpret the same phrase, used in immediately adjacent provisions, as conveying those two different and contradictory meanings.

21. This is all the more so given the terms of the third line, which states that "limits are inclusive of the Excess". Here, the draftsperson uses the word "limits" (with a small 'l') to refer compendiously to both Limits of Liability and Sub-limits. If there were any doubt about this, the 'Excess' section of the Schedule confirms that the Limits of Liability and the Sub-limits are both "inclusive of the Excess", and, hence, that this is the sense in which "limits" is used here.

22. The upshot is that the Insurers' case requires the draftsperson not only to have given the single phrase "Limits of Liability" two different meanings in the first and second lines of these provisions, but also to have used two different expressions ("Limits of Liability" and "limits") to convey a single meaning in the second and third lines of the provisions.

23. There is no good reason to attribute such incompetence to the draftsperson. Much the more reasonable interpretation of these provisions is that they mean what they appear to say: the phrase "Limits of Liability" is used in the first two lines to refer to the limits stated in the Property Damage and BI tables on pages 3 and 4, whereas the term "limit" is used in the third line to refer to the Limits of Liability and the Sub-limits together.

24. The above interpretation is also consistent with the approach taken in the "Excess" section of the Schedule on page 6, which provides that "Insurance Limits (and Sub-limits) are inclusive of Excesses". It is notable that where, as here, the intention is for Sub-limits to be included within the scope of the provision, the draftsperson is clear about it – recognising the (consistently maintained) distinction between Limits and Sub-limits, and expressly stating that Sub-limits are included. Had it been the intention for Sub-limits to be subject to any one Occurrence aggregation, the same approach would have been taken: Sub-limits would have been expressly stated to be subject to aggregation.

25. The fact that the Policy contains no such express provision was a clear indication that the Sub-limits are not intended to be subject to any one Occurrence aggregation. Instead, the Sub-limits apply any one Incident (that is, to each occurrence of an insured peril). This is not to say that there is no cap on the number of Sub-limits which may apply in any given case: any claim remains subject to the applicable Limit(s) of Liability, which apply any one Occurrence.

The Insurers

26. The Insurers submitted that on any reasonable reading of the Schedule, all limits of liability, including the Sub-limits on page 5, apply "any one Occurrence" unless

otherwise stated. They submitted that this approach was supported by a number of specific points. It is not necessary to set these out in detail: many of the points made are reflected in my analysis, favourable to Insurers, set out below.

D: Discussion

27. There was no dispute as to the applicable principles of construction. They have been addressed in a number of the COVID-19 BI insurance authorities by reference to previous Supreme Court authority, including *Wood v Capita Insurance Services Ltd* [2017] AC 1173 and *Arnold v Britton* [2015] AC 1619. The essential principles are as follows:

    i) The Policy must be construed objectively by asking what a reasonable policyholder, with all the background knowledge which would reasonably have been available to both parties when they entered into the contract, would have understood the language of the Policy to mean.

    ii) This does not involve "a literalist exercise focussed solely on a parsing of the wording of the particular clause": *Wood v Capita* at [10]. Instead, it is essential to construe contractual words in their applicable context. Their meaning must be assessed in the context of the clause in which they appear as well as in the landscape of the document as a whole.

    iii) The unitary exercise of contractual construction can require the court to give weight to the implications of rival constructions by reaching a view as to which construction is more consistent with commercial common sense. However, commercial common sense should not be invoked retrospectively, or to rewrite a contract, in an attempt to assist an unwise party or to penalise an astute party.

28. In my view, the most significant points are as follows.

29. The critical words in the Schedule that need to be construed (in the context of the Schedule as a whole) are those at the top of page 5: namely "all Limits of Liability apply any one Occurrence… unless otherwise stated". It is these words which, on the Insurers' case, produce the result that the sub-limits set out in the table apply on an "any one Occurrence" basis. The dispute between the parties is therefore whether sub-limits do or do not come within the expression "all Limits of Liability".

30. It is common ground that neither "Limit of Liability" nor "Limits of Liability" is defined in the Policy. In its ordinary meaning, however, that expression would encompass all the limits of liability set in the Schedule, including those limits described as "Sub-limits". As a matter of ordinary language, a sub-limit is just as much a limit of liability as an aggregate or overall limit. The words at the foot of page 4 ("Additional limits and/or sub-limits apply") identify two types of limit which will be "listed later in this Schedule", namely additional limits and/or sub-limits. These are both, clearly, limits of liability. Thus the Policy contains a number of limits of liability: those set out in the final column of page 4 (and indeed page 3), additional limits and sub-limits. The use of the word "all" ("all Limits of Liability") shows that there was no intention to distinguish between different types of limits which fall within the expression "Limits of Liability".

31. In his reply submissions, Mr Weitzman described sub-limits as a further "restriction" upon the policyholder's rights, or a "further limit which restricts the rights further", but submitted that this did not mean that it was a limit of liability. I do not accept this argument, which draws a distinction without a difference. The "restriction" or "limit" is a limit on the insurer's liability and therefore on the amount which the policyholder can claim. It is, therefore, a "limit of liability" in the ordinary sense of that term.

32. I do not consider that there is any indication in the Policy that the expression "all Limits of Liability" means something narrower than its ordinary meaning, so that it is referable only to those figures which are set out in the final "Limit of Liability" columns on page 3 (the Property Damage table) or page 4 (the Business Interruption table). This is contrary to the ordinary meaning of "all", and in my view would produce some strange results.

33. For example, PizzaExpress's argument leads to the very odd conclusion that the critical words in the second bullet point on page 5 ("all Limits of Liability apply any one Occurrence") are to be read as inapplicable to any of the figures which appear later on that page. I do not consider that this conclusion would be reached by any reasonable reader, whose natural assumption would be that all of the figures set out on that page (unless otherwise stated) come within that expression. I agree with Insurers that if the intention was that the "any one Occurrence" wording would apply only to the limits set out in the table at pages 3 and 4 of the Schedule, but not the sub-limits on page 5, it would make little sense for that wording to appear where it does on page 5, rather than on pages 3 and 4 of the Schedule. I do not accept PizzaExpress's argument that page 5 was simply a convenient place to collect together provisions dealing with the relationships between the limits of liability applicable to property damage and business interruption, the sub-limits and the excess. In my view, the obvious conclusion to be drawn from the three bullet points at the top of page 5, followed by the table on that page, is that all of the bullet points apply to the table that follows.

34. Consideration of the detail of the bullet points, in the context of what follows on the page, leads to the same conclusion. Each of the three bullet points at the top of page 5 concludes with a semi-colon and each is therefore qualified by the words "unless otherwise stated" at the end of the sentence. Each bullet point was, therefore, as Mr Scorey KC submitted, setting out a default position, which was to apply "unless otherwise stated". The natural and obvious place in which one would expect to find something "otherwise stated" is in the table that follows. Indeed, that is exactly what one does find, as described below. If, therefore, something is "otherwise stated" in the table, then to that extent one or more of the three bullet points does not apply. The converse is, however, also true: if it is not "otherwise stated", then the three bullet points apply to the items in the table.

35. The table on page 5 deals with various specific limits, and it is clear that the draftsperson understood that it was sometimes appropriate to "state otherwise" in order to avoid the application of the default position. Thus, there are 7 items where the table states that the default position in the first bullet point does not apply: the limits for Automatic Acquisitions, Claims Preparation Expenses, Differences in Conditions, Inadvertent Omission to Insure, Mitigation of Environmental Impact,

Motor Vehicles and Resilient Repairs are all stated to apply "in addition" to the Limit of Liability. These, therefore, are not sub-limits, but are additional limits.

36. Importantly, there are also two items where it is "stated otherwise" in relation to whether "any one Occurrence" was applicable. Thus, the personal effects of "Employees, directors and visitors" applied on a "per person" basis, and the Loss of License applied on a "per Premise" basis.

37. Accordingly, the Schedule is drafted on the basis that both of the first two bullet points, including the critical words of the second bullet, apply to the whole of the Schedule, so that any departure from the default position needed to be specified and was indeed, in certain cases, specified. The obvious reading of page 5 (and page 6, which deals with the Excess) is, therefore, that if a departure from any of the three bullet points is not specified, then the bullet points apply. The present case concerns the sub-limits for notifiable disease and prevention of access, and there is nothing "otherwise stated" in relation to those limits. Accordingly, the "any one Occurrence" wording applies to those particular sub-limits.

38. In the course of his submissions, Mr Scorey placed some emphasis on the opening words of the first bullet; that "Sub-limits form part of the Limit of Liability". In the present case, the relevant sub-limits for notifiable disease and prevention of access are (because nothing is "otherwise stated") part of the limits of liability on page 4, rather than additional to them. I think that this does provide some additional support for Insurers' argument. It shows that, contrary to PizzaExpress's argument, there is no fundamental distinction between the limits of liability set out on page 4, and the sub-limits on page 5; since in the majority of cases (i.e. apart from the 7 cases where the limits are "in addition") the sub-limits form part of the overall limit.

39. Furthermore, these words highlight another strange conclusion to which PizzaExpress's argument leads. Since the relevant sub-limits on page 5 form part of the overall limit on page 4, one would expect (at least until told clearly otherwise) that if the "any one Occurrence" applied to the whole, then it would also apply to that which forms part of the whole. A reasonable reader of the Policy would therefore not understand (in the absence of clear language) that a fundamentally different approach to "any one Occurrence" aggregation was to be taken when considering (i) the limits of liability on page 4 on the one hand, and (ii) the sub-limits on page 5 which form part of those limits, on the other hand.

40. That said, I do not think that the line of argument described in the previous two paragraphs is decisive; because what ultimately matters is the interpretation of the second bullet point on page 5, rather than the first. The first bullet is concerned with whether or not the figures on page 5 are within, or additional to, the earlier limits. It is the second bullet which makes all of those figures, whether a sub-limit or an additional limit, subject to "any one Occurrence" aggregation unless otherwise stated.

41. Mr Scorey also placed reliance on the text at the bottom of page 4, again as showing that there is no fundamental distinction between the "Limit of Liability" in the final column on page 4 and the sub-limits in the table on page 5. I agree with his point that these words show that the figures in the column headed "Limit of Liability" on page 4 are not the last word on limits: they are not an exhaustive list. I do not think,

however, that this adds very much to the points which I have already considered. The argument serves to emphasise that the Policy contains a variety of limits, and that (as stated in the second bullet point on page 5) they are all subject to "any one Occurrence" aggregation, unless otherwise stated.

42. The substance of PizzaExpress's argument is that the draftsperson has been careful to draw a fundamental distinction between the "Limit of Liability" column in the tables on pages 3 and 4, which do apply on the basis of "any one Occurrence", and the Sub-limits on page 5 which do not. I think that it can fairly be said that if this distinction was intended, then one would expect it to be explained clearly; rather than being left to be derived from subtle differences derived from the words "Sub-limits", "Limits of Liability" and "limits" all of which appear in the text at the top of the page. I do not consider that small differences in these expressions can bear the weight of the conclusion which PizzaExpress seeks to draw. As previously indicated, the expression "Limits of Liability" is not defined. Furthermore, the Schedule clearly uses different words to mean the same thing, and is not consistent in the use of capitals. There are a number of examples:

    i) The text at the foot of the table on page 4 refers to "sub-limits", whereas on page 5 there is capitalisation ("Sub-limits").

    ii) On page 5, there is a simple reference to "limits" ("limits are inclusive of the Excess"), and Mr Weitzman accepted that this included all the limits in the Schedule, including the Sub-limits. On page 6, the draftsperson uses different terminology, namely "Insurance Limits (and Sub-limits)", as referring to the same concept. Furthermore, this text on page 6 simply repeats the point already made in the third bullet point on page 5.

    iii) In the first bullet point on page 5, there is a reference to "Limit of Liability", whereas in the second there is a reference to "Limits of Liability".

    iv) It can also be said that the heading on page 5 is not precise: the table includes additional limits as well as sub-limits.

43. In my view, the Insurers' arguments are more significant and weighty than these small textual differences, or any of the other points which Mr Weitzman made in the course of his submissions. Although there may be minor inconsistencies in terminology and capitalisation, the obvious conclusion to be drawn by any reasonable reader of the opening words of page 5, and the table of sub-limits set out thereafter, is that every figure in the table was, unless otherwise stated, subject to the default rules there set out, including the "any one Occurrence" default rule. I agree with the Insurers that PizzaExpress's contrary argument unrealistically dissects what is meant by "Limits of Liability" on page 4, and results in a reading which would surprise any reasonable reader of the Policy.

44. PizzaExpress's argument also leads to another odd conclusion: that the Schedule is completely silent as to the basis on which losses which are subject to the sub-limits are to be aggregated. On this argument, and despite the detail to which pages 4 – 6 descends, the reader has to search elsewhere in the Policy for the basis of aggregation applicable to sub-limits. PizzaExpress was, as Insurers submitted, unable to articulate any reason why the draftsperson would have wanted to achieve this result.

The far more obvious reading of the Schedule is that, both on pages 5 and 6, it specifies in full the way in which both the limits and excess work, and does so on a consistent basis.

45. For all these reasons, the answer to the sub-limits preliminary issue is clear, and is resolved in favour of the Insurers. The sub-limits apply "any one Occurrence" unless otherwise stated. The preliminary issue is answered accordingly.