Insurance/
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INSURANCE BULLETIN





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MENAIR INSURANCE AWARDS 2017 WINNER

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1. Court cases and arbitration

New Zealand: *Annex Developments Limited v IAG New Zealand Limited and Peter J Taylor & Associates Limited*

This case is of interest to parties who may seek to unwind a settlement agreement on the basis that the parties were operating under a mistake as to the terms of the policy. It is also of note to brokers who may be blamed for not having advised their client regarding the effect of reinstatement provisions on the maximum indemnity available.

The decision of the High Court of New Zealand concerns a summary judgment application in favour of an insurer, IAG, in a claim by its assured, Annex Developments.

The claim arose under a material damage and business interruption policy, issued by IAG and placed by broker, Peter Taylor. The claim arose out of damage to and loss of rent from properties that were damaged by earthquakes in 2010 and 2011.

Following two interim payments to Annex, the parties entered into a settlement agreement in respect of Annex's material damage and business interruption claims. However, following the settlement, Annex alleged that the parties had failed to appreciate that the policy limit fell to be reinstated when IAG made each interim payment and when it ought to have made further payments in respect of Annex's claim. On Annex's case, therefore, the maximum indemnity available under the policy was substantially higher than either party had appreciated when they agreed to settle.

Annex also sued the broker for advising what Annex alleged to be the wrong maximum limit.

Annex's claim arose under the New Zealand Contractual Mistakes Act 1977. Comparable remedies are available in other common law jurisdictions.

IAG's summary judgment application succeeded because the judge found that although the policy limit fell to be reinstated in the amount of each of the interim payments, it did not fall to be reinstated in respect of payments that IAG ought to have made because IAG's payment obligation did not arise until Annex had provided and IAG had accepted evidence as to the indemnity to which Annex was entitled. This had not occurred and the reinstatement of the policy limit had therefore not been triggered. Moreover, the judge found that whilst the parties had mistakenly failed to appreciate that the interim payments had reinstated the limit (by 2.4%) they had treated these as being in addition to the maximum policy limit, which had much the same effect as the relevant reinstatement. Accordingly, the settlement could not be set aside.

This decision is a reminder to policyholders and brokers to have close regard to contractual reinstatement provisions as failure to do so could prove very costly. It also serves as a reminder to ensure that all settlement agreements are drafted so as to minimise the possibility that they may be voided if a party later decides that it was agreed on the basis of a mistake.

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2. Market developments

UK: Developments in the driverless car insurance market

The LMA has commented that the UK's ambition to become the centre of the driverless car insurance market is likely to be held back by the general election. The UK government recently announced that it would not pass the Vehicle, Technology and Aviation Bill – the legislation regarding autonomous cars and insurance requirements in relation to the same – until after the general election in June.

The manager of non-marine at the LMA, David Powell, commented that it was in the public interest for the bill to be passed as there is a real need for legislation to catch up with the pace of developments in technology.

The bill was drafted with the assistance and consultation of the insurance industry and its provisions have largely been met with a positive reception from insurers who have agreed that the bill will provide much needed clarity on insurers' position in relation to driverless cars.

The main issue with autonomous vehicles in the UK is the ability of insurers to determine who is liable in the case of an accident. The bill, which has been described as the world's first driverless car insurance legislation, proposes to extend compulsory motor insurance requirements to include cover where the automated vehicle is at fault. This means that, regardless of whether a car is controlled by a human driver or is autonomous, victims of road accidents will still be able to pursue the same route of redress.

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POPPY FRANKS, ASSOCIATE

In the first instance the victim of an accident will have a direct right to claim against motor insurers. Where the vehicle is at fault, the insurer will then have a right to recover any sums paid in relation to the accident from, for example the car manufacturer, to the extent there is a liability, including under product liability.

The Bill also provides that where there is an accident in an autonomous car, the comprehensive insurer would be obliged to compensate the innocent third party victim as well as the insured. However, if an accident were to occur as a result of an act or omission of the insured, such as failing to install software updates or due to negligence in allowing the vehicle to drive itself where it was not appropriate to do so, the insurer would be entitled to exclude liability in relation to the claim from the insured.

The bill provides essential legal certainty on insurers' position in relation to driverless cars and, for that reason, Mr. Powell has urged the proposed bill be resurrected by the winning government following the election as soon as possible.

For more information, please contact Poppy Franks, Associate, London on +44 (0)20 7264 8065 or poppy.franks@hfw.com, or your usual contact at HFW.

3. HFW publications and events

England: HFW to speak at Willis Re Academy

Chris Foster (Partner, London) is speaking on English Reinsurance Law at the Willis Re Academy on 22 May.

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