

Insurance/
Reinsurance

17 November
2016



In this week's Insurance Bulletin:

1. Court cases and arbitration

England and Wales: High Court considers costs

2. HFW publications and events

IRLA: Where are the re/insurance legacy portfolios running-off to and why?

HFW to host table at IRLA dinner

HFW attending ARIAS Conference

Andrew Bandurka, Partner, andrew.bandurka@hfw.com

Will Reddie, Associate, william.reddie@hfw.com





hfw 1. Court cases and arbitration

England and Wales: High Court considers costs

Three recent cases in the English High Court have considered the thorny issue of costs, which is the subject of recent and ongoing judicial reform.

Except in certain circumstances, parties to cases commenced after 1 April 2013 have been required to submit costs budgets to the court for approval at an early stage. In *Valerie Elsie May Merrix v Health of England NHS Foundation Trust*¹, the court for the first time considered the relationship between the costs budgeting process and the detailed assessment of costs at the end of a case.

The successful claimant in the underlying case was entitled to recover its costs and argued that where those costs were at, or within, the budgeted figure approved by the court, they should be awarded without further assessment. The defendant argued that the costs budgeting process was not intended to fetter the discretion of the court to assess reasonable and proportionate costs. The judge agreed with the defendant, but made it clear that costs budgeting and assessment should not be regarded as independent or competing, but as complementary tools for managing costs. He said it was the responsibility of the parties to engage in the costs budgeting process so as to produce accurate budgets such that costs are capable of agreement at the end of the case, without the need for detailed assessment.



The judge agreed with the defendant, but made it clear that costs budgeting and assessment should not be regarded as independent or competing, but as complementary tools for managing costs.

RUPERT WARREN, SENIOR ASSOCIATE

The case of *Premier Motorauctions Ltd (in Liquidation) v Pricewaterhouse Coopers LLP*² considered the issue of security for costs in circumstances where the claimant was funded by after the event insurance (ATE). The claimant, acting through its liquidators, commenced proceedings and notified the defendant that it had procured ATE policies which would cover an adverse costs award. Nevertheless, the defendants applied for security for costs on the grounds that insolvent claimant would be unable to pay the defendant's costs were it ordered to do so. The defendant argued that the ATE policies should not be taken into account in considering the application for security since (i) the policies may not respond and (ii) some of the insurers could not be accepted as credit-worthy.

The court rejected the argument that ATE should not be considered. Among other things, it was in the public interest to permit ATE to give insolvent companies access to justice. However, the court did find that the credit-worthiness of the insurers was a relevant consideration.

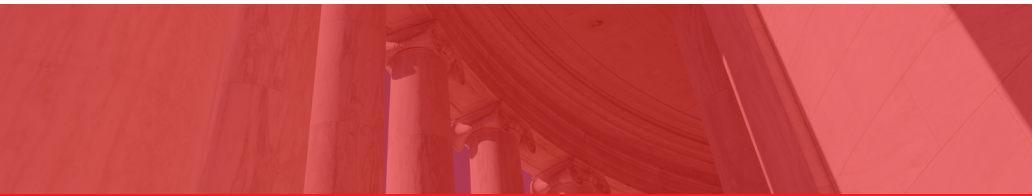
Finally, in *Transocean Drilling UK Limited v Providence Resources Plc*³, the court looked at Part 36 offers and circumstances in which they are deemed to have been beaten. The claimant made a Part 36 offer to accept US\$13 million and was ultimately awarded US\$14.6 million but, significantly, with no order as to costs. The defendant argued that Part 36 was not engaged because, had it accepted the offer, when costs were added it would have had to pay approximately US\$16 million (as opposed to the award of US\$14.6 million with no costs). This argument was rejected by the judge who found it was clear that no account was to be taken of costs when assessing whether a party had beaten a Part 36 offer. However, he accepted that he could take the costs position into account when assessing whether the Part 36 consequences should be applied in full.

For more information, please contact **Rupert Warren**, Senior Associate, London, on +44 (0)20 7264 8478, or rupert.warren@hfw.com, or your usual contact at HFW.

1 [2016] EWHC B28 (QB)

2 [2016] EWHC 2610 (Ch)

3 [2016] EWHC 2611 (Comm)



hfw 2. HFW publications and events

IRLA: Where are the re/insurance legacy portfolios running-off to and why?

HFW and IRLA hosted the second of IRLA's 2016 continental events in HFW's Paris office.

The speakers provided insights into the developing regulatory and cultural challenges, the tools available to deal with such challenges, and the processes that are involved in running-off legacy business.

The speakers also joined HFW's **Edward Rushton** for a lively panel debate at the end of the day in which the participants voiced their opinions on the opportunities and challenges facing the sector, as well as on the market dynamics that drive access to, and pricing of, run-off solutions and opportunities.

HFW to host table at IRLA dinner

HFW Partner **Andrew Bandurka** and Senior Associate **Edward Rushton** will be hosting a table at the IRLA Annual Members' dinner on Thursday 17 November.

HFW attending ARIAS Conference

HFW Partners **Costas Frangeskides** and **Christopher Foster** are attending the ARIAS Fall Conference in New York on Thursday 17 and Friday 18 November. The conference will showcase industry hot topics such as data security best practices, and new ideas from the various ARIAS constituencies to improve the arbitration.

Lawyers for international commerce

hfw.com

© 2016 Holman Fenwick Willan LLP. All rights reserved

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice.

Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please contact Craig Martin on +44 (0)20 7264 8109 or email craig.martin@hfw.com

São Paulo London Paris Brussels Geneva Piraeus Beirut Riyadh Kuwait Dubai Singapore
Hong Kong Shanghai Perth Melbourne Sydney