

Insurance/
Reinsurance

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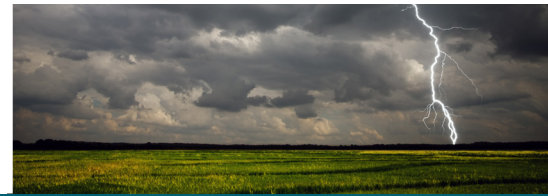
HFW present at Islamic Insurance Association of London seminar

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hfw 1. Court cases and arbitration

England and Wales: Measure of Indemnity and reinstatement: a victory for insureds – *Great Lakes Reinsurance (UK) SE v Western Trading Ltd*

The Court of Appeal in *Great Lakes Reinsurance (UK) SE v Western Trading Ltd*¹ held that an insured was entitled to be reimbursed by its insurers as and when it reinstated its insured premises which had been destroyed by fire.

The policy provided that in the event of destruction of the property, the indemnity was to be the cost of reinstatement, defined as “*the rebuilding of the property, if a building... in a condition equal to but not better or more extensive than its condition when new*”, but only if the reinstatement was carried out “with reasonable despatch”.

At first instance, the insurers denied all liability under the policy on the basis of misrepresentation, breach of warranty and lack of insurable interest. As a result of the insurers’ denial, the insured had not begun reinstatement at the time of the trial. The insurers’ arguments were all rejected by the Judge at first instance. On appeal, the insurers confined argument to the measure of indemnity.

The insurers argued that the relevant measure of indemnity was the reduction in the building’s value. Its market value just prior to the fire was £75,000 since it was almost derelict, was Grade II Listed and it was not capable of being economically developed. Its value actually increased following the fire, as it lost its listed



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status and could therefore be redeveloped. Insurers therefore argued that there was no loss.

The Court of Appeal rejected this argument. The court held that, where the insured was the owner of the property, or where it was obliged to reinstating the property, the cost of doing so is the prima facie measure of indemnity, so long as there is a genuine intention to replace.

Where, at the time of trial, no reinstatement had taken place, the court determined that there were two matters to consider. First, the insured needed to show a genuine intention to reinstate that was fixed and settled and in relation to which there was a reasonable prospect of implementation, if the insurance proceeds were paid. Second, as an insurer would have no redress if the money was not used for reinstatement, the court could decline to make an immediate award of damages and make an order instead for declaratory

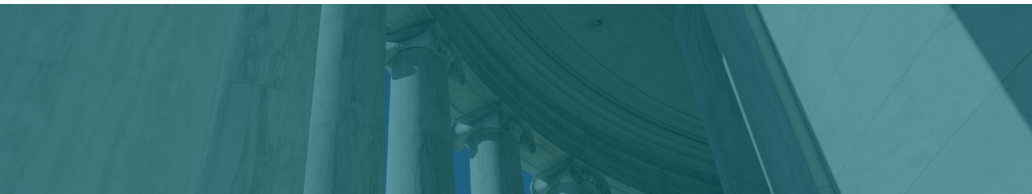
relief, requiring insurers to reimburse the insured for the actual reinstatement costs as and when incurred.

In addition, the Court of Appeal held that, where a reinstatement clause required the insured to undertake the works of reinstatement “*with all reasonable despatch*”, the insured would not be in breach of that requirement unless and until insurers had confirmed indemnity under the policy.

The insured was therefore not prejudiced by its own lack of funds after what was found to be an unjustified denial of cover.

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1 [2016] EWCA Civ 1003



hfw 2. Market developments

UK: IUA creates new group to examine impact of technology on underwriting

The International Underwriting Association (IUA) has created a new London market group (Developing Technology Monitoring Group) to examine the impact of technology on underwriting, and to consider how new risks may be written in London and existing insurance policies adapted to account for change. The group will consist of representatives from the IUA's aviation, cyber, casualty treaty, liability, marine and professional lines underwriting groups.

Of particular note are the following seven emerging risks that, in the last year, have received a lot of press attention. They have also received a significant amount of investment in research and development and have led to some major international incidents:

- Driverless cars.
- Wearables such as “smart watches” and other similar devices.
- Drones (consumer and commercial).
- Advances in the internet and “apps” and its impact on invasion of privacy and data protection.

- 3D printing.
- Telemedicine.
- Nanotechnology.

There is no such thing as a “standard” cyber liability or technology policy, endorsement or exclusion. While insurers have their own forms with their own wording, insureds are finding differences in language, which may have a significant impact on coverage. This has led to a number of new insurance products. Traditional “*cyber policies*” and data protection/breach policies are simply the beginning of the new dawn of technology risk that underwriters are acutely aware of.

Members of the IUA have been monitoring issues such as those set out above and have identified that each of these technologies has insurance implications across several classes of business. The group aims to distribute information to other IUA underwriting contacts, will consider developing their own research papers and will also respond to any relevant government consultations and proposed legislative changes.

For more information, please contact [Nazim Alom](#), Associate, London, on +44 (0) 20 7264 8760, or nazim.alom@hfw.com, or your usual contact at HFW.

hfw 3. Publications and events

The Corporate Veil, porous or impenetrable?

HFW have published a briefing¹ on three recent cases in which attempts were made to pierce the corporate veil. The briefing considers these cases and analyses the extent to which the courts were persuaded that the corporate veil should be pierced.

HFW attend Lloyd’s rugby dinner

On Thursday 17 November, HFW took a table at the Lloyd’s rugby club dinner. HFW Partners Adam Strong, James Clibbon and Graham Denny attended together with a number of insurance clients.

HFW present at Islamic Insurance Association of London seminar

On Thursday 24 November, HFW Partner [John Barlow](#) presented at the Islamic Insurance Association of London’s seminar in Bahrain.

¹ <http://www.hfw.com/The-Corporate-Veil-porous-or-impenetrable-November-2016>

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