

INSURANCE BULLETIN



Welcome to HFW's Insurance Bulletin, which is a summary of the key insurance and reinsurance regulatory announcements, market developments, court cases and legislative changes of the week.

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Should you require any further information or assistance on any of the issues dealt with here, please do not hesitate to contact any of the contributors to this Bulletin, or your usual contact at HFW.

John Barlow, Partner, john.barlow@hfw.com



hfw 1. Regulation and legislation

1.1. UK: Insurance fraud taskforce – terms of reference published

The terms of reference of the UK government’s insurance fraud taskforce have been published following its first meeting in January 2015. The taskforce is chaired by David Hertzell, the former Law Commissioner, who was responsible for drafting the Insurance Act 2015.

The taskforce’s aim is *“to investigate the causes of fraudulent behaviour and recommend solutions to reduce the level of insurance fraud in order to ultimately lower costs and protect the interests of honest consumers”*.

The focus of the taskforce will be on finding practical ways to reduce the level of insurance fraud. The taskforce anticipates that these solutions may be legislative, regulatory or industry-led. One of the issues that it will address is the extent to which insurance fraud is encouraged, or not deterred, by existing claims practices.

The taskforce has stated that it will publish a scoping report in March, with a final report following by the end of the year.

For more information, please contact **Will Reddie**, Associate, on +44 (0)20 7264 8758, or william.reddie@hfw.com, or your usual contact at HFW.

hfw 2. Court cases and arbitration

2.1. UK: Navigators Insurance Company Ltd v Alkahtani Jlawi Mohammed (& Anr)

The origin of an application heard in the London Commercial Court on 20 February 2015 was in a maritime accident in 2008 in which a vessel which the first Defendant (a Saudi Arabian citizen) was the registered owner of, and which the second Defendant (a UAE company) was the manager of, allegedly damaged an underwater telecommunications cable when the vessel raised its anchor. The Claimant, Navigators Insurance Co, had issued P&I insurance cover to the Defendants.

Following the accident, the Emirates Telecommunication Corporation (ETC) began proceedings in Abu Dhabi against a company (UIBC) representing itself as the vessel’s owner, and which was co-owned, operated and managed by the first Defendant. In those proceedings, it was found that UIBC was liable to compensate ETC, and Navigators were ordered to indemnify UIBC once ETC had been paid.

On the grounds that the Defendants were in breach of various warranties and conditions precedent under the policy, Navigators had denied liability under the policy and had sought a declaration of non-liability. In these proceedings, the Defendants applied to set aside Navigators’ application. As there was an exclusive jurisdiction clause under the policy in favour of English courts and the express choice of English law, it was at issue in these proceedings as to whether Navigators had in fact submitted to the jurisdiction of Abu Dhabi court. The Defendants’ application was refused on the

grounds that there was insufficient evidence to show that Navigators’ had submitted to the jurisdiction of the Abu Dhabi court in which Navigators had been found liable under the policy.

In this application hearing, the Defendants submitted that the English Court should not exercise its jurisdiction as the matter was *res judicata* (i.e. already decided) in the Abu Dhabi proceedings. Significantly, the Defendants also argued that although Navigators had challenged the jurisdiction of the Abu Dhabi court, they had in fact engaged with the merits of the case, thereby going further than was necessary. In making this submission, the Defendants relied on a memo issued by Navigators, submissions Navigators had made to the Abu Dhabi court and the evidence of a UAE lawyer stating that jurisdiction is submitted to if an engagement is made with the merits of the case.

In reaching his decision to refuse the Defendants’ application, Eder J held the following:

- It could not be said that Navigators had submitted to the jurisdiction of the Abu Dhabi court, as the Defendants had accepted that the memo had been specifically produced to respond to the question of the jurisdiction of the Abu Dhabi court.
- The Court was of the view that even if Navigators had engaged with the merits of the case during a hearing in Abu Dhabi, this did not amount to submission to the jurisdiction of the Abu Dhabi court.
- Without expert evidence and cross-examination, it was impossible to reach a decision on whether the evidence provided by the UAE lawyer was correct.



As there was an exclusive jurisdiction clause under the policy in favour of English courts and the express choice of English law, it was at issue in these proceedings as to whether Navigators had in fact submitted to the jurisdiction of Abu Dhabi court.

ANDREW SPYROU, ASSOCIATE

■ Finally, even if the Court were wrong in concluding that Navigators had not submitted to the Abu Dhabi court, where a party had “no practical alternative” than to engage with the merits of the case, it could not be regarded as having submitted to the jurisdiction of the foreign court.

For more information, please contact [Andrew Spyrou](#), Associate, on +44 (0)20 7264 8789, or andrew.spyrou@hfw.com, or your usual contact at HFW.

hfw 3. HFW publications

3.1. UK: The UK Public Contracts Regulations 2015 have arrived

HFW has published a briefing on the Public Contracts Regulations 2015, which will enter into force on 26 February 2015 and will only apply to contract award procedures commenced on or after 26 February 2015.

A copy of the Briefing can be found here: <http://www.hfw.com/The-UK-Public-Contracts-Regulations-2015-have-arrived-February-2015>.

For more information, please contact [Anthony Woolich](#), Partner, on +44 (0)20 7264 8033, or anthony.woolich@hfw.com or [Felicity Burling](#), Associate, on +44 (0)20 7264 8057, or felicity.burling@hfw.com, or your usual contact at HFW.

3.2. UK: Dealing with the changing sanctions landscape

HFW has published a briefing on the recent changes to the sanctions in respect of Cuba, Russia and Iran which analyses the complex and volatile sanctions landscape and provides some practical steps to ensure compliance.

A copy of the Briefing can be found here: <http://www.hfw.com/Dealing-with-the-changing-sanctions-landscape-February-2015>.

For more information, please contact [Daniel Martin](#), Partner, on +44 (0)20 7264 8189, or daniel.martin@hfw.com, or your usual contact at HFW.

hfw 4. News

4.1. Middle East: HFW bolsters insurance and reinsurance practice in the Middle East

HFW's strong Middle East insurance and reinsurance practice, headed by Partner Sam Wakerley, has been bolstered by the addition of an insurance transactions and regulation capability which enhances HFW's service offering for clients in the region and internationally.

Consultant Carol-Ann Burton relocated from London to Dubai, effective 5 January, to develop the insurance regulation practice. Carol-Ann has over 10 years' experience of advising on insurance regulation and transactions, as a solicitor in private practice and at the UK's Financial Services Authority (FSA) as a senior legal adviser.

The regulatory insurance team is also joined by Senior Associate Tanya Janfada, who joins from Clyde & Co LLP. Tanya has over five years' experience in Dubai advising re/insurers, intermediaries and third party administrators in relation to their operations across the GCC.

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