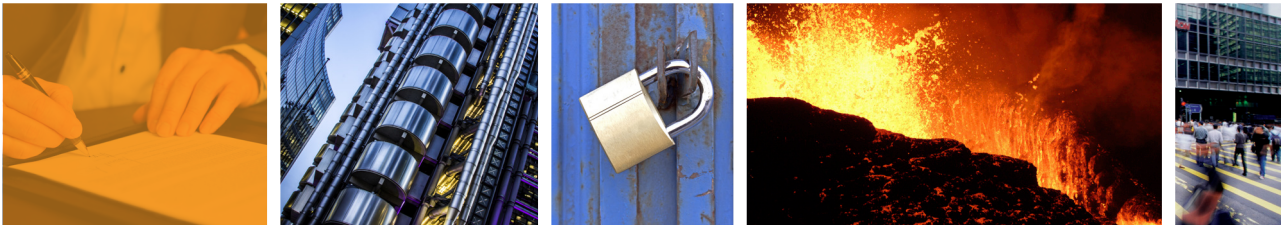


INSURANCE BULLETIN



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.

1. Regulation and legislation

UK: FCA finds complaints handled satisfactorily by the insurance industry

2. Market developments

USA: Contingency policies: Lloyd's Syndicates sued over show cancellations: *Foo Fighters, L.L.C., v Certain Underwriters at Lloyd's et al*

3. HFW publications and events

Brexit: Next steps for out - how will this affect your business?

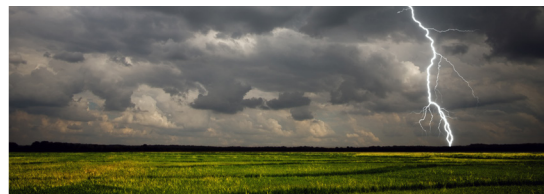
HFW Partner Andrew Bandurka presents at the Maritime London Shipping Law Centre Business Forum

HFW Partner Richard Spiller quoted in articles on the impact of Brexit

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

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

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



hfw 1. Regulation and legislation

UK: FCA finds complaints handled satisfactorily by the insurance industry

In the Financial Conduct Authority's (FCA) Regulation round-up for June, it published details of its findings of the thematic work conducted on complaints handling. The market based thematic work was carried out in advance of the new rules for complaints handling.

In December 2014, the FCA issued its consultation paper CP 14/30 Improving Complaints Handling seeking the views of financial services firms on its proposed new rules.

Aimed at improving firms' identification and handling of complaints, the FCA proposed:

- Extending the "next business day rule" to three business days.
- Requiring firms to report all complaints (including those handled by the close of three business days).
- Requiring firms to send a "summary resolution communication" to consumers when their complaint is resolved within three business days after date of receipt.

Currently, the complaints handling rules under the Dispute Resolution: Complaints Source book (DISP) in the FCA's Handbook, do not apply to firms if a complaint is resolved to the satisfaction of the complainant by the close of the next business day after which the firm received the complaint.

The final rules confirming these new requirements were published in the FCA's policy statement¹ in July 2015 and come into force on 30 June 2016.

The recent thematic work found that complaints were generally handled well by insurance firms once they were identified. However, the FCA did recognise areas for improvement:

- All complaints which expressed dissatisfaction and met the FCA's definition of a complaint must be recorded and dealt with in accordance with the DISP rules.
- Better correlation between a firm's analysis of the root cause of a complaint and the actions taken to address the issues identified as the cause(s). Root cause analysis should address what firms identify to be the key issue(s) and resolve systemic problems in their complaints handling processes.

In light of the FCA's overall findings, it would seem that firms will successfully adapt to the new rules and continue to resolve complaints in the best interest of consumers.

For more information, please contact **Davinia Collins**, Associate, London, on +44 (0)20 7264 8276, or davinia.collins@hfw.com, or your usual contact at HFW.

hfw 2. Market developments

USA: Contingency policies: Lloyd's sued over show cancellations: *Foo Fighters, L.L.C., v Certain Underwriters at Lloyd's et al.*


It has been reported¹ that the US rock band, Foo Fighters, have recently issued proceedings against several Lloyd's Syndicates in the US District Court in California, for failing to pay claims arising from cancellations of their European shows on their Sonic Highways World Tour.

The band purchased a terrorism policy and a contingency policy from several Lloyd's Syndicates which would have covered lost earnings had shows been cancelled, and any costs arising from the cancellations. They claimed for four shows cancelled in Turin, Paris, Lyon and Barcelona under the terrorism policy following the Paris terror attacks, and three shows in the UK under the contingency policy after the lead singer, Dave Grohl, broke his leg. The potential losses were significantly mitigated as Dave Grohl continued to play shows whilst recovering from his broken leg. The band also brought claims against their insurance brokers, Robertson Taylor, for not acting in their interests.

Contingency insurance typically covers circumstances arising from perils of death, injury or illness of the named artists, and venue destruction. Cancellations of such high profile shows can lead to losses in the millions including lost performance fees, travel and accommodation expenses, crew salaries and public relations and marketing expenses. This case, which is still ongoing, focuses on the anticipated coverage arguments, in

1 PS 15/19

1 <https://www.theguardian.com/music/2016/jun/15/foo-fighters-suing-insurers-cancelled-gigs-dave-grohl> and <http://www.bbc.co.uk/newsbeat/article/36535723/foo-fighters-sue-uk-insurance-companies-over-cancelled-european-shows>



particular whether insurers are correct to re-characterise the shows in the UK as “rescheduled” instead of cancelled which has been used as a means of denying cover.

It is not uncommon for coverage issues to arise; however, high profile disputes at Lloyd’s have been less visible due to the current soft market, with the majority of matters reportedly settled on a commercial basis in the interest of protecting underwriters’ future business. One issue identified in the complaint is how claims were handled and, in particular, the delay in claims payments. It is not uncommon in the Lloyd’s market for an insured to experience delays in receiving claims payments from insurers. However, it is likely that with the introduction of the Enterprise Act 2016 from next May, the new obligations on insurers (where policies are subject to English law) will reduce unreasonable delays because insurers will be exposed to claims for damages for late payment in addition to the insurance claim.

For more information, please contact **Tom Coombs**, Associate, London, on +44 (0)20 7264 8336, or thomas.coombs@hfw.com, or your usual contact at HFW.

hfw 3. HFW publications and events


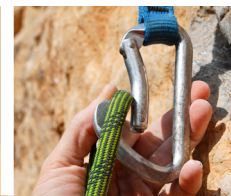
Brexit: Next steps for out – how will this affect your business?

HFW has published a briefing¹ on the areas in which business may be impacted in light of the regulatory upheaval likely to be generated by Brexit.

The briefing considers the enforcement of English judgments, questions over jurisdictional issues, service of English court documents in EU Member States and the regulatory regime and markets in which our businesses operate.

The insurance industry may be impacted by Brexit in the following areas:

1. Potential loss of passporting rights (either or both of the freedom of establishment and the freedom of services).
2. Portfolio transfers – will a UK company still be able to perform a transfer to/from an EEA company?
3. Cross-border mergers – will a UK company still be able to perform a cross border merger with an EEA company?
4. Ability to form a Societas Europaea (SE) and to migrate an SE into or out of the UK.
5. Potential changes to UK laws/regulations which implement EU directives, for example Solvency II (although we anticipate that the UK will want to maintain its equivalence under Solvency II).
6. Broadly speaking, we expect the UK to maintain its current insurance regulatory regime, although there may be some changes which do not affect the UK’s equivalence. There



may also be some gold-plating of UK rules which implement maximum harmonising Directives (for example Solvency II).

For more information, please contact **Anthony Woolich**, Partner, London, EU, Competition & Regulatory, on +44 (0)20 7264 8033, or anthony.woolich@hfw.com or **Richard Spiller**, Partner, London, on +44 (0)20 7264 8770, or richard.spiller@hfw.com.

HFW Partner Andrew Bandurka presents at the Maritime London Shipping Law Centre Business Forum

HFW Partner **Andrew Bandurka** presented a seminar at the Maritime London Shipping Law Centre Business Forum on 29 June 2016. Andrew spoke about the new late payment of claims provisions in the Enterprise Act 2016 and broker duties in light of the *GALATEA*.

For more information, please contact **Andrew Bandurka**, Partner, London, on +44 (0)20 7264 8404, or andrew.bandurka@hfw.com.

HFW Partner Richard Spiller quoted in articles on the impact of Brexit

HFW Partner, and Chairman of the Insurance Law Committee of the City of London Law Society, **Richard Spiller** has been quoted by Insurance Day¹ and Insurance Post² articles analysing the impact of Brexit on the insurance industry. Richard discussed the areas which would be impacted by the UK leaving the EU and explained how UK regulation may change as a result of the historic vote.

For more information, please contact **Richard Spiller**, Partner, London, on +44 (0)20 7264 8770, or richard.spiller@hfw.com.

1 <http://www.hfw.com/BREXIT-Next-steps-for-out>

1 https://www.insuranceday.com/news_analysis/legal_focus/brexit-the-legal-view.htm

2 <http://www.postonline.co.uk/post/news/2463234/brexit-provides-opportunity-to-overturn-dreadful-solvency-ii>



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