

Insurance/
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In this week's Insurance Bulletin:

1. Court cases and arbitration

England and Wales: Notification issues: *Zurich Insurance plc v Maccaferri Limited* [2016] EWCA Civ 1302

2. Market developments

UK: New forum set up to tackle sustainable development challenges

3. HFW publications and events

Hong Kong: International Trade and Commodities Seminar

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hfw 1. Court cases and arbitration

England and Wales: Notification issues: Zurich Insurance plc v Maccaferri Limited [2016] EWCA Civ 1302

The Court of Appeal considered a notification condition precedent in a combined public and products liability policy. The condition precedent required the insured to give notice “as soon as possible after the occurrence of any event likely to give rise to a claim”.

Maccaferri, the insured, supplied a Spenax gun to a builders’ merchant, who hired it out to a construction company. On 22 September 2011 there was an incident involving the gun which resulted in one of the construction company’s employees losing the sight in one eye.

Maccaferri were made aware of that there was an incident involving the Spenax gun on 28 September 2011, although the evidence before the court was that no details of the accident were provided and Maccaferri was not told that there had been a serious personal injury. By 12 January 2012 Maccaferri was aware that there was an injury, but not of any allegations that the gun was faulty and on 12 July 2013 Maccaferri was joined as a Part 20 defendant in an action brought by the building contractor against the builders’ merchant. Maccaferri notified its insurer of the claim that day.

The insurer refused to indemnify Maccaferri on the basis that it was in breach of the notification condition precedent. Its position was that the insured must give notice of an event likely to give rise to a claim “when he becomes aware of the event, and that it was likely to give rise to a claim, or when he ought to have become so aware”.

The court considered that the critical question is whether the event, when it occurred, was likely to give rise to a claim, for that is the notification trigger. The court confirmed that “an event likely to give rise to a claim” required that a reasonable person in the position of the insured would have thought it was at least 50% likely that a claim would be made. Here, this was not the case, as there were other possible causes of the accident and a faulty gun was no more than a possibility. The insurer argued that when it occurred, the event was not likely to give rise to a claim, the insured’s obligation was to notify at the point when he knew or should have known that a claim was likely, but the court disagreed. The insured’s obligation to assess the likelihood of a claim arose at the time the event occurred, or when the insured became aware of it. On the wording of the policy, there was no ongoing obligation to perform a “rolling assessment” as to whether a past event was likely to give rise to a claim. If the insurer wanted to exclude liability, it had to ensure that the wording was clear.

The claim was therefore valid and the case is a reminder for both insurers and insureds of the importance of agreeing clear and precise policy wordings. The case also reaffirms the position that an event is “likely to give rise to a claim” when the likelihood of a claim is higher than 50%.

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hfw 2. Market developments

UK: New forum set up to tackle sustainable development challenges

The United Nations Environment Programme (UNEP) has assembled a new international network of insurance regulators and supervisors.

The Sustainable Insurance Forum (SIF) was established in order to support cooperation on key sustainable insurance challenges now faced across the globe. One example being climate change. Insurance regulators and supervisors from the UK, France, the Netherlands, Morocco, Ghana, Singapore, Brazil and Jamaica, together with the International Association of Insurance Supervisors (IAIS) all met in San Francisco for the SIF’s first meeting.

The launch in December 2016 of the SIF is the result of a joint enterprise between two UN Environment global initiatives, the Principles for Sustainable Insurance and the Inquiry into the Design of a Sustainable Financial System.

The co-director of the Inquiry into the Design of a Sustainable Financial System, Nick Robins, proclaimed that the inauguration of SIF highlighted “*the leadership that exists across the world among a growing number of insurance supervisors. Its work programme aims to make a real difference in the way that insurance supervisors respond to the world’s sustainability challenges.*” The Secretary General of the IAIS also emphasised the importance of the insurance sector in the development of environmental, social and economic sustainability at the launch.

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hfw 3. HFW publications and events

Hong Kong: International Trade and Commodities Seminar

On 24 January 2017, **Peter Murphy** (Partner, Hong Kong) and **Rosie Ng** (Consultant, Hong Kong) will be presenting a seminar on “The Insurance Act 2015 and the duty of fair presentation – practical considerations” at the Hong Kong Bankers Club as part of HFW’s International Trade and Commodities Seminar. Speaking alongside Peter and Rosie will be Mahamoud Islam, Senior Asia Economist, Euler Hermes who will be considering the outlook for global trade in 2017 and HFW’s **Guy Hardaker** (Partner, Hong Kong) and **Leanne Fok** (Associate, Hong Kong), who will be speaking on “Consequential loss – the butterfly effect”.

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